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*“More fish in the water/Kia maha nga ika i roto te wai”*

Secretary  
Primary Production Committee  
Select Committee Office  
Room 9.10, Bowen House  
Parliament Buildings  
WELLINGTON

29 April 2007

## **Submission in Support of the Fisheries Act 1996 Amendment Bill**

### **Introduction**

option4 appreciates the opportunity to submit in support of the proposed amendments to the Fisheries Act 1996. We acknowledge the Select Committee Office for granting an extension to the original submission deadline to enable us to comment on the Amendment Bill.

This document comprises the submission from option4, an NGO that promotes sustainable fisheries management and the New Zealand public's non-commercial fishing interests.

option4 has not been able to conduct extensive consultation due to the limited timeframe to respond, however we believe the views expressed in this submission are a fair representation of non-commercial interests. Both the Hokianga Accord (mid north regional iwi fisheries forum) and the New Zealand Big Game Fishing Council (NZBGFC) have been involved in the development of this submission.

option4 also support the Environment and Conservation Organisations of NZ (ECO) concerns that amendments to section 10 of the Act should be clear that the decision-maker is applying a precautionary approach.

We do not require a hearing in support of this submission.

### **Background**

The Minister of Fisheries has proposed amendments to sections 10 (c) and (d) of the Fisheries Act 1996 (the Act) to enable a more precautionary approach to be taken by fisheries managers. Where information about a fishery is uncertain or limited, this approach would ensure sustainability and

address the impacts of fishing on the aquatic environment. This precautionary approach is an internationally accepted standard.

The Minister has acknowledged that the original intent of the Act was to implement a precautionary approach when making decisions. The Minister asserts that the current information principles are not consistent with the international application of this approach. He considers that the issue is more about the way the principles are being applied to fisheries management decisions and wants to remove the ambiguity in favour of conserving fisheries where risks are identified but information is uncertain or limited.

Letters advising of the proposed amendments were sent to commercial and non-commercial fishing interests. The Ministry of Fisheries (MFish) also met with fishing industry representatives to discuss the amendments.

Submissions on the Amendment Bill closed on 13 April 2007. An extension to that deadline was requested. Confirmation was received that a late submission would need to be sent by the end of April.

## **Submission**

The Minister's proposal states,

“Sustainability and utilisation both have status in the context of section 10, and one does not receive precedence over the other in the context of decision making. It therefore allows the decision-maker to act in favour of sustainability if they choose to do so, but each such decision must be justified on its facts.”

We note that this amendment was proposed before the release of the High Court judgment<sup>1</sup> in relation to the judicial review of the Minister's 2004 and 2005 decisions for the allocation of kahawai – the ‘Kahawai Legal Challenge’ (KLC). The ruling, released on March 21<sup>st</sup> 2007, has now overtaken some statements made in the Minister's proposal documents. Of particular relevance is Justice Rhys Harrison's reference to the hierarchy of sustainability and utilisation, where he clearly states<sup>2</sup>,

“...on plain reading of s 8 the bottom line is sustainability. That must be the Minister's ultimate objective.”

As conservationists we support the ‘fish come first’ approach when managing our fisheries.

In the light of the KLC decision, it seems that the Minister can apply a more precautionary approach now, without any changes to the Act.

Also of note is that the High Court judgment suggests that it would be illegal for the Minister to act in a way that did *not* favour conservation. The Justice Harrison's ruling has fortified the Minister's precautionary approach to fisheries management, not diminished it.

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<sup>1</sup> NZ RECREATIONAL FISHING COUNCIL INC AND ANOR V MINISTER OF FISHERIES And Ors High Court AK CIV-2005-404-4495 [21 March 2007].

<sup>2</sup> CIV-2005-404-4495 [21 March 2007], para 17.

## Impact

The Minister suggests the precautionary approach will be reflected in policy and advice developed by MFish. It should also have an impact on the research services MFish purchases to support management advice. The Minister's expectation is that this new approach is not likely to cause sudden changes, though short-term catch reductions may be required in some fisheries. We agree with the Minister that the overall impact is expected to be positive.

We also acknowledge the Minister's advice that a more precautionary approach in favour of sustainability may lead to recommendations for total allowable catch (TAC) reductions, even if no new information has become available since the original TAC was set, and that "*commercial fishers will likely oppose any TAC reductions*"; and that there could be short-term constraints on non-commercial take.

Long-term adverse constraints are not expected if a TAC reduction results in a more stable, sustainable and abundant fishery. However, the process to achieve any bag limit or other restrictions on non-commercial fishers would need to be fully consulted and agreed upon.

The Minister also suggests that,

"commercial fishers may have to invest more in collecting information and funding stock assessment research on the impact of their activities if they want to maintain their harvest levels".

The lack of reliable catch rate information (catch per unit effort) from many commercial fisheries is a major source of uncertainty in stock assessment models. Commercial catch rate over time is a key indicator of changes in stock abundance. Catch information (commercial, amateur and customary) is also useful, but it should include all fishing related mortality. This requires plausible estimates of undersized fish killed in fishing gear, dumping of damaged fish and misreporting. This is particularly important for shared fisheries where non-commercial fishing interests are major stakeholders. Non-commercial fishing representatives want to be involved in ensuring better information is available for all sectors.

The Bill states that,

"By collapsing section 10 (c) and (d) of the Act into a single paragraph and expressly referring to sustainability rather than the purpose of the Act, the amendment clarifies that in those cases decision makers should not only be cautious but should also act towards sustainability."

Considering the High Court judgment regarding the primacy of sustainability and the purpose and principles of the Act, there has been some debate on whether the focus on sustainability only, rather than on the purpose of the Act, would be detrimental to non-commercial fishing interests. This is particularly relevant, as the purpose of the Act specifically directs the Minister to consider future needs as well as the social, economic and cultural wellbeing of people.

However, during the KLC Justice Harrison identified two separate processes: first, setting the TAC to ensure sustainability, and secondly to 'allow for' non-commercial fishing interests before setting the total allowable commercial catch (TACC). As long as the focus is on maintaining

sustainability, allowing for the public's non-commercial fishing rights should follow from that process.

## **Conclusion**

We support the Minister's proposed amendments to section 10 of the Act, as it is more likely to achieve our goal of more fish in the water/kia maha atu nga ika i roto te wai.

Changes to any other sections of the Act must not be made without notification and full consultation. Any additional process will need to provide the public with adequate time to consider and respond to such proposals.

So, while we are supportive of the use of the precautionary approach, it is our expectation that the amendments will be applied in a way that is not contrary to the KLC decision or the purpose and environmental principles of the Act, in that commercial fishers are not allocated quota at the expense of the Minister's mandatory obligation to 'allow for' non-commercial fishing interests, the needs of future generations and in so doing enabling people to provide for their social, economic and cultural wellbeing<sup>3</sup>.

## **Recommendations**

- Support the Amendment Bill to focus fisheries management on a more precautionary approach to ensure sustainability
- Do not support changes to other sections of the Act unless they are fully consulted on.

Yours faithfully,



Trish Rea  
On behalf of the option4 team

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<sup>3</sup> NZ RECREATIONAL FISHING COUNCIL INC AND ANOR V MINISTER OF FISHERIES And Ors High Court AK CIV-2005-404-4495 [21 March 2007], para 55.