

Ministry process to amend section 13 of the Fisheries

Act 1996

including

an outline of Maori customary

interests' involvement

2008

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Executive Summary

In February 2008 the High Court ruled the Minister of Fisheries could not use section 13(2) of the Fisheries Act 1996 to reduce the total allowable catch for a fish stock without an estimate of both current biomass and the biomass that can produce the maximum sustainable yield. For a majority of New Zealand's 629 fish stocks this information is not available.

In March 2008 the Fisheries Minister proposed an urgent amendment to section 13 of the Fisheries Act 1996 to enable him to make management decisions for a number of fish stocks by the start of the next fishing year, 1 October 2008.

The Fisheries Act 1996 Amendment Bill (No.2) was drafted, developed and eventually passed into legislation on September 27th 2008. The Fisheries Act 1996 Amendment Act 2008 now contains a new subsection: 13(2A).

Both the Minister and Ministry of Fisheries acknowledged the need to have Maori involved in the amendment process however, due to the urgency they considered there would not be time to consult with all iwi. Instead, they would discuss the amendment with Te Ohu Kaimoana, Te Puni Kokiri and the fishing industry. Maori non-commercial fishing interests were not formally advised of the amendment process until four months later, in late July 2008.

Maori non-commercial fishing interests, both customary and recreational, could have expected to be involved early in the amendment process given the Crown's ongoing statutory obligations contained in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1996.

A Transitional Provision relating to consultation was included in the Amendment Bill and subsequent Act. This is significant acknowledgement by the Crown of their statutory obligations to provide for the 'input and participation' of tangata whenua in fisheries management and have particular regard to kaitiakitanga, as per section 12 of the Fisheries Act. The passage of this transitional clause has enabled the Minister to sidestep his otherwise mandatory obligations under section 12.

Of particular interest to Maori non-commercial fishers is the purpose of the Fisheries Act 1996, which is sustainable utilisation of fisheries to enable people to provide for their social, economic and cultural wellbeing. In part this means having sufficient numbers of acceptable quality fish in the places that people normally fish for food.

Originally the objective of the proposed amendment was to achieve this purpose however, in the period from April to June the focus changed. The new objective was to achieve maximum sustainable yield in a fishery.

Maximum sustainable yield is not a customary concept whereas kaitiakitanga is. The question remains as to whether a focus on maximum yield may be at odds with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, by potentially allowing the depletion of resources below a level that both enables tangata whenua to exercise their customary rights and recognises their traditional interests in fisheries.

Satisfying customary interests in fisheries and enabling the meaningful exercise of these traditional rights requires diversity, abundance, the ability to exercise authority over human activity and balance in nature.

From a Maori non-commercial customary, traditional and environmental perspective it is inappropriate to exchange these values for maximum sustainable yield.

Background to Section 13 amendment

1. In February 2008 the High Court set aside the total allowable catch (TAC) for Orange Roughy 1 (ORH1), which had been reduced by the Minister of Fisheries (the Minister) in October 2007. Justice Miller's judgment is in relation to *Antons Trawling Company Limited vs Minister of Fisheries*¹ is known as the Antons case.
2. The High Court found that before a TAC decision can be made under section 13(2) of the Fisheries Act 1996 (the Act) the Minister must be provided with an estimate of both current biomass and the biomass that can produce the maximum sustainable yield (MSY). For a majority of New Zealand's 629 fish stocks this information is not available.
3. Section 13 is the provision used by the Minister to set the total allowable catch limit for most of the fish stocks within the quota management system. Once this upper catch limit or the size of the 'pie' is set the Minister then decides how many tonnes of a particular fish stock are necessary to 'allow for' non-commercial fishing interests, both Maori customary and recreational, and other fishing-related mortality. The remainder is the total allowable commercial catch (TACC) allocated as quota.
4. In March 2008 the Minister advised his Cabinet colleagues he would be proposing an amendment to the Fisheries Act 1996 and initiating immediate discussions with government agencies, the fishing industry and other stakeholders.
5. Te Puni Kokiri, commercial fishing representatives SeaFIC and Te Ohu Kaimoana were involved in the development of the proposed amendment from March 2008. The Ministry of Fisheries (MFish) did not formally advise Maori customary interests of the amendment process until July 31st.
6. Limited publicity of the amendment process excluded the participation of iwi/hapu, many other people and organisations that could have been expected to have a view on the proposal. This exclusion extended to Antons Trawling Company Limited. Despite being a member of the Seafood Industry Council (SeaFIC) Antons was not aware of the proposed amendment until the day prior to the August 7th Primary Production Select Committee hearing.
7. A record of the process to date is online at http://option4.co.nz/Fisheries_Mgmt/section13.htm.
8. A more comprehensive timeline of events about this process is online at http://option4.co.nz/Fisheries_Mgmt/s13timeline.htm.

Response to Amendment Bill

9. Ten parties submitted responses to the proposed amendment.
10. Te Ohu Kaimoana (TOKM), the Seafood Industry Council (SeaFIC) and the Treaty Tribes Coalition supported the Amendment Bill.
11. The New Zealand Recreational Fishing Council (NZRFC), the Environmental and Conservation Organisations of New Zealand (ECO), the Royal Forest and Bird Protection Society and Greenpeace gave conditional support for the amendment.

¹ Antons Trawling Company Limited And Anor v the Minister of Fisheries High Court WN CIV 2007-485-2199 [22 February 2008].

12. Two submitters opposed the Bill.
13. The joint non-commercial submitters of the mid north iwi fisheries forum (the Hokianga Accord), the New Zealand Big Game Fishing Council (NZBGFC) and option4 opposed the Bill on the grounds that the amendment was a ‘quick-fix’ that would lower the sustainability threshold and permit aggressive fishing strategies on fish stocks with poor information.
14. Anton’s Seafood Limited was concerned that the amendment would be used to reduce total allowable commercial catch limits (TACC’s) without the need for proper scientific analysis of the information.

Maori commercial involvement

15. In March 2008 the Minister, Jim Anderton, advised Cabinet that he would be discussing a proposed amendment to the Fisheries Act 1996 with the “*fishing industry and other stakeholders*”. (Cabinet Paper 446, pt 2).
http://option4.co.nz/Fisheries_Mgmt/documents/Cabinet_Paper_446.pdf
16. Mr. Anderton also advised his Cabinet colleagues of the need for urgency to have the amendment enacted to enable him to make management decisions – set TAC’s - for the new fishing year beginning 1 October. (Cabinet Paper 446, pt 14).
17. In addition the Minister advised, “*because of the urgency in bringing forward legislation, there would not be time to fully consult with all iwi, and therefore I would largely be relying on discussions with Te Ohu Kai Moana and Te Puni Kokiri*”. (Cabinet Paper 446, pt 15).
18. MFish confirmed at the early April hui of the Hokianga Accord that they were speaking to industry and Te Ohu Kaimoana regarding an urgent amendment to the Fisheries Act.

Maori non-commercial involvement

19. Notwithstanding the acknowledgement of the need for Maori involvement as early as March there is no evidence of any attempt by MFish to formally engage Maori non-commercial fishing interests in the development of the section 13 amendment prior to 31st July.
20. From the evidence received to date, MFish’s first specific mention of Maori customary interests is in a Briefing note to the Primary Production Select Committee dated 30th July 2008. A day later MFish distributed a letter to tangata whenua advising of the amendment process, the short consultation period and that advertisements seeking submissions on the Bill would be placed on the Parliamentary website and in newspapers on August 2nd. A copy of the Bill was provided with this letter. A timeline describing Maori involvement in the process is provided in Appendix One.
21. Maori non-commercial fishing interests could have expected to be involved early in the amendment process for a number of reasons, not limited to the following:
 - a. The impact of any changes to the cornerstone sustainability measure within the Fisheries Act and thus the Minister’s ability to ‘allow for’ their non-commercial fishing interests, both customary and recreational;

- b. The Crown's ongoing obligations to Maori customary non-commercial fishing interests contained in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1996;
 - c. The Minister's consultation obligations set out in section 12 of the Fisheries Act, namely to -
 - i. provide for the input and participation of tangata whenua having a non-commercial interest in the fish stock or the effects of fishing on the environment; and
 - ii. have particular regard to kaitiakitanga;
 - d. The urgency of this process limiting both consultation and time for stakeholders to develop their own responses to the issues; and
 - e. The obligation for Maori to execute good process in developing a response and having sufficient time to consult with iwi/hapu and gather mandate for that position.
22. Recognition of the Crown's obligations to both consult and provide for the input and participation of tangata whenua's interests is evidenced in the indicative drafting of the amendment produced in late June. A Transitional Provision relating to consultation was included in the draft amendment provided to the Minister, Cabinet, SeaFIC and TOKM in late June through to early July. This Transitional Provision was not released to non-commercial fishing representatives until July 25th.

Statutory requirements

23. Section 5 of the Fisheries Act 1996 directs any person making decisions under the Act to act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and New Zealand's international obligations relating to fishing.
24. Part 2 of the Act contains:
- a. section 8 – the purpose of the Fisheries Act 1996, and
 - b. the principles to be applied in all fisheries management decisions
 - i. section 9 - environmental principles, and
 - ii. section 10 - information principles.
- The purpose and principles underpin fisheries management in Aotearoa.
25. Section 12 provides that, before giving any approval or carrying out any functions in relation to sustainability measures, including section 13, the Minister **shall** – there is no discretion – consult widely, provide for the input and participation of tangata whenua and have particular regard to kaitiakitanga. Extract in Appendix Two.
26. In contrast with consultation after the issues have been identified, discussed and confirmed, 'input and participation' means being involved in the formulation of the proposal in mind.
27. Section 21 of the Act directs the Minister when setting or varying a total allowable commercial catch to have regard to the total allowable catch for the fish stock and 'allow for' the non-commercial fishing interests of both Maori customary and recreational, and fishing-related mortality.

Transitional Provision relating to consultation

28. MFish, SeaFIC, TOKM and the Parliamentary Counsel Office developed the following Transitional Provision relating to consultation prior to June 25th. This information was not released to non-commercial fishing representatives until late July.

Clause 5 - Transitional provision relating to consultation

(1) This section applies to consultation undertaken before the commencement of this Act under section 12 of the principal Act for the purpose of setting or varying a total allowable catch for a quota management stock under section 13 of the principal Act after the commencement of this Act.

(2) The consultation is to be treated as complying with section 12 of the principal Act if, had it been undertaken after the commencement of this Act, it would have complied with section 12 of the principal Act.

29. Maori can claim customary, recreational and environmental non-commercial interests in fisheries. This makes the Ministerial obligations to tangata whenua within section 12 particularly relevant.
30. Section 12 is an important provision in the scheme of the Act. This is because through the mandatory process of consultation and the provision of input and participation of tangata whenua and having particular regard to kaitiakitanga in relation to a proposed TAC, the Minister is able to gather the necessary and vital information including:
- a. the health and abundance of the particular fishery; and
 - b. the importance of that fishery to non-commercial interests, particularly tangata whenua, for food.
31. The joint submission from the Hokianga Accord, the NZ Big Game Fishing Council and option4 was the only submission to the Primary Production Committee that commented on the Transitional Provision relating to consultation.
32. Apart from the need to consult widely with tangata whenua about the reasons for and the effects of the proposed amendment, the joint non-commercial submitters were concerned the amendment would and will undermine these ongoing obligations of the Crown, or possibly place the Crown in breach of its statutory obligations under s10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
33. The passage of this transitional clause has enabled the Minister to side step his otherwise mandatory obligations under section 12.

Change of amendment objective

34. Of particular interest to Maori non-commercial fishers is the change from the amendment's original objective of achieving the purpose of the Act to the new focus of achieving the maximum sustainable yield in a particular fishery. The Act's purpose is to manage fisheries sustainably to enable people to provide for the social, economic and cultural wellbeing.
35. In March 2008 MFish stated the proposed amendment was to achieve the purpose of the Act.

36. Preliminary wording provided by MFish in April 2008 clearly defines two new, separate subsections to section 13, as follows:

*“13(2A) Where the Minister considers that the **best available information is insufficient to allow a total allowable catch to be set for a stock under subsection (2) of this section, the Minister may set a total allowable catch for that stock that in his or her opinion is likely to lead to maximum sustainable yield.***

*“13(2B) Where the Minister considers that the **best available information is insufficient to allow a total allowable catch to be set for a stock under subsection (2) or subsection (2A) of this section, the Minister may set a total allowable catch for that stock that in his or her opinion achieves the purpose of the Act.**”*

[Emphasis added]

37. By the end of June 2008 subsection 13(2B), that sought to achieve the purpose of the Act, had been removed. The amendment was the proposed as follows:

“13(2A) For the purpose of subsection (2) of this section, if the Minister considers that the current level of the stock or the level of the stock that can produce the maximum sustainable yield is not able to be estimated reliably using the best available information, the Minister must:

- a. not use the absence of, or any uncertainty in, that information as a reason for postponing or failing to set a total allowable catch for that stock;*
- b. have regard to the interdependence of stocks, the biological characteristics of the stock and any environmental conditions affecting the stock; and*
- c. **set a total allowable catch under subsection (2) of this section that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level that can produce the maximum sustainable yield.**”*

Sections (2) and (3) and a transitional provision relating to consultation (section 12) follows.

38. In response to an Official Information Act request to supply copies of all draft amendments, only the two mentioned above have been provided to date. Four drafts have been withheld.
39. MFish have not yet provided any documents for the period of late April 2008 to late June 2008. It is clear from the evidence provided that MFish, the Minister, SeaFIC and TOKM were working together to develop the proposed amendment to section 13 during this time. Moreover that their objective had shifted from achieving the purpose of the Act, to achieving maximum sustainable yield.
40. On 11 June 2008 the Court of Appeal kahawai decision² was released. Included in the Court’s findings was that unlike section 13, the lack of express reference in section 21 to ‘social, economic and cultural’ factors – see also the ‘utilisation’ component of the ‘utilisation whilst ensuring sustainability purpose of the Fisheries Act - was relevant to the interpretation of section 21.

² CA163/07 [2008] NZCA 160 Sanford Limited, Sealord Group Limited and Pelagic & Tuna New Zealand Limited v the New Zealand Recreational Fishing Council Inc and New Zealand Big Game Fishing Council Inc. [11 June 2008].

41. Without any documentation for the period late April 2008 to 25 June 2008 it is difficult to determine what bearing, if any, the Court of Appeal's judgment had on the amendment's development.
42. The Court's decision is significant in the interpretation of key provisions of the Fisheries Act including allowing for non-commercial fishing interests in the setting of the total allowable commercial catch (TACC). Leave has been granted by the Supreme Court to appeal to the Supreme Court and a hearing is presently expected in February 2009.

Non-commercial concerns

43. The joint non-commercial submitters to the Bill:
 - a. rejected the need for an urgent amendment to section 13 of the Act, advising the Select Committee that other measures could be used or Ministerial decisions could be deferred until 2009;
 - b. asked for the Bill to be withdrawn; and
 - c. argued that a deferral until 2009 would allow more time for non-commercial fishing interests, both customary and recreational, to discuss the issue and seek acceptable solutions.
44. In particular, the joint non-commercial submitters were concerned the amendment would compel the Minister to set the highest justifiable catch limit based on poor information, to achieve maximum sustainable yield, thereby creating a significant sustainability risk.
45. Focussing on commercial objectives of maximum yield may threaten sustainable fishing and thus the ability of all New Zealanders to provide for the social, economic and cultural wellbeing. Non-commercial fishers, both customary and amateur, would find it harder to gather kaimoana with reasonable effort.
46. Maximum sustainable yield (MSY) is not a customary concept whereas kaitiakitanga is. The question remains as to whether a focus on MSY may be at odds with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, by potentially allowing the depletion of resources below a level that both enables tangata whenua to exercise their customary rights and recognises their traditional interests in fisheries.
47. Satisfying customary interests in fisheries and enabling the meaningful exercise of these traditional rights requires the following (but not limited to):
 - a. Diversity
 - b. Abundance
 - c. The ability to exercise authority over human activity
 - d. Balance, as with all other natural systems.
48. From a non-commercial customary, traditional and environmental perspective it is inappropriate to exchange these values for maximum sustainable yield.
49. An alternative amendment that would enable the Minister to choose the total allowable catch that best achieves the purpose of the Act, having regard to the best available information would be preferable for both sustainability and long-term utilisation.

50. Concerns with the enactment of the Transitional Provision relating to consultation include sidestepping or contravening the Crown's ongoing statutory obligations to Maori and the principles of kaitiakitanga.
51. As joint submitters the Hokianga Accord, the NZ Big Game Fishing Council and option4 were concerned that the Fisheries Act 1996 was being hastily amended without proper consideration to the effect of the amendment on the purpose – utilisation whilst ensuring sustainability – and adhering to the scheme of the Act.
52. The Act is an important environmental, social, economic and cultural statute relating to the use of fisheries for food by all New Zealanders and designed to incorporate in fisheries management the principles of kaitiakitanga/guardianship and husbandry to provide abundance for present and future generations.

Commercial perspective

53. Both TOKM and SeaFIC attended the Select Committee hearing on August 7th and gave oral submissions advising of their involvement with MFish in the development of the amendment and offering their support for its enactment.
54. Anton's Seafood Ltd, instigators of the original Orange Roughy 1 proceedings, received a late invitation to attend and submit to the Primary Production Select Committee.
55. Antons did not accept an amendment was required with regard to the Orange Roughy 1 stock. Their concern was the amendment would be used to reduce commercial catch limits without the need for proper scientific analysis of the information.

Appendix One – Timeline of Maori customary involvement in section 13 amendment process 2008

April 7 MFish advise of an urgent meeting in Wellington on the 10th “*to discuss the effect of the judgement (sic), necessity for urgent amendment and the potential form of an amendment to s13 of the Fisheries Act*”. An invitation was extended to a representative from each organisation to attend. Aside from the New Zealand Big Game Fishing Council, the New Zealand Recreational Fishing Council and option4 and several environmental organisations, it is unclear who else received this invitation. Neither Ngapuhi nor Ngati Whatua received this invitation.

MFish committed to providing the organisations with “*regular advice as to progress with the amendment over the coming weeks*”. (Email, Terry Lynch)
http://option4.co.nz/Fisheries_Mgmt/s13lmf408.htm

MFish were advised that two non-commercial fishing representatives would attend the Wellington meeting. These two would be representing and reporting back to the mid north iwi fisheries forum (the Hokianga Accord), the New Zealand Big Game Fishing Council and option4.

Amateur fishing representatives advised Richard Orzecki, co-chairman of the National Customary Fisheries Forum, Te Kahui Maunga o Tangaroa, of the Wellington meeting. He had not received an invitation to the meeting nor was he aware of the issue being discussed. Richard attended the April 10th meeting in his capacity as co-chairman of the Customary Forum.

April 8 MFish were asked on April 8th and 10th to provide copies of meeting notes and records of the discussions held between MFish, fishing industry and TOKM representatives. No notes or records of meetings were provided.

April 10 MFish confirmed, prior to the Wellington meeting, that a preliminary meeting had been held with TOKM and industry representatives, to see if everyone was willing to work together to resolve the issue and to ascertain whether TOKM, industry and MFish views were similar as to what the problem was with the Fisheries Act 1996. MFish advise there is no written record the meeting held with TOKM and industry representatives.

MFish-organised meeting held in Wellington to discuss the proposed approach to any section 13 amendment. Ten sector representatives in attendance with four MFish officials. Richard Orzecki was the only customary representative at the meeting. TOKM and SeaFIC representatives were also at this meeting. A report for non-commercial representatives was filed on April 11th.

http://option4.co.nz/Fisheries_Mgmt/documents/MF_s13_meeting_NC_record_408.pdf

April 18 The Hokianga Accord, the NZ Big Game Fishing Council and option4 send a joint letter to the Minister offering assistance and availability to meet, to develop an alternative approach to amending section 13.

http://option4.co.nz/Fish_Forums/documents/FA_amendment_letter_HA_408.pdf

April 28 MFish confirmed James Palmer from the Minister’s office was due to meet with “Parties” (political). A briefing note prepared for Palmer notes that MFish “*has initiated discussions with key stakeholder groups to gain an understanding of their views on the problem and to discuss the approach to be taken to amend the*

Act. These discussions have not included possible wording of any amendments”. (Briefing note, p2).

http://option4.co.nz/Fisheries_Mgmt/documents/Briefing_note_Palmer_28_Apr_08.pdf

- May 1** As co-chairman of Te Kahui Maunga o Tangaroa, Richard emailed MFish asking for an update on the proposed section 13 amendment and requesting reimbursement for travel costs and parking fees.
- May 16** MFish replied advising “*Officials are currently working with the Minister on the way forward to address the difficulties arising from the Courts decision surrounding section 13 of the Fisheries Act. We will inform you and other interested parties as so as there are any developments*”. MFish also advised no reimbursement was available for attendance at the Wellington meeting.
- April 29** Anderton due to meet with Eric Barratt (Sanford Ltd), Peter Talley (Talleys Fisheries) and Graham Stuart (Sealords). The MFish briefing note, dated 28th April, confirmed that, “*the Ministry has contacted key stakeholders and sector representatives to inform them of the issue and the process steps to be taken. A preliminary description and analysis of the problem and the objectives and constraints of the process has been circulated. Some exchange of views has taken place with industry representatives*”. (Briefing note attachment 1, p1).
http://option4.co.nz/Fisheries_Mgmt/documents/Briefing_note_Minister_28_Apr_08.pdf
- June 11** Court of Appeal kahawai decision³ released. The Appeal Court takes a ‘global approach’ to the purpose of the Fisheries Act 1996 [58-61]. The Court found that the lack of express reference to social, economic and cultural factors (‘the purpose’) in section 21 (unlike section 13) was relevant to the approach to statutory interpretation of s21 [64-65]. The Court of Appeal promoted s21(1) as the governing provision rather than s8(1) - the purpose of the Act.
- June 25** MFish advised the Minister that, “*non-commercial stakeholders and environmental groups have been informed of the problem and of the proposed approach to be taken to the amendment... The Ministry of Fisheries has consulted Te Ohu Kaimoana and the Seafood Industry Council on the suggested wording for an amendment to section 13*”. (Letter Cabinet Paper).
http://option4.co.nz/Fisheries_Mgmt/documents/Letter_Cabinet_Paper_454.pdf
- The Cabinet Policy Committee was given the same information in Cabinet Paper 454 http://option4.co.nz/Fisheries_Mgmt/documents/Cabinet_Paper_454.pdf
- MFish also advised the Minister that “*indicative drafting will be provided to stakeholders*” within the week. The initial draft in Cabinet Paper 454 included a new section 13(2A) and a Transitional Provision relating to consultation. This initial draft was not provided to non-commercial fishing representatives until July 25th, after the introduction of the Fisheries Act 1996 Amendment Bill (No.2) into Parliament.
- July 4** SeaFIC confirmed to the Minister that they had “*been consulted in the preparation of the proposed amendment of section 13*” and provided Anderton with wording for the amendment that had been endorsed by the SeaFIC Board. (Letter SeaFIC).
http://option4.co.nz/Fisheries_Mgmt/documents/Letter_Seafic_04_Jul_08.pdf

³ CA163/07 [2008] NZCA 160 Sanford Limited, Sealord Group Limited and Pelagic & Tuna New Zealand Limited v the New Zealand Recreational Fishing Council Inc and New Zealand Big Game Fishing Council Inc. [11 June 2008].

July 7 MFish provided the Minister with a paper “Talking points” which notes that “*support across parties for this vital amendment depends of (sic) the agreement of Te Ohu Kaimoana and the fishing industry through the Seafood Industry Council*”. (Talking Points).
http://option4.co.nz/Fisheries_Mgmt/documents/Talking_points_07_Jul_08.pdf

TOKM and industry support for the amendment was dependent on the withdrawal of the Fisheries Act 1996 Amendment Bill (109-1), which sought to amend section 10 of the Act.

July 9 The Minister asked Cabinet to agree to the withdrawal of the section 10 amendment Bill from the Parliamentary Order Paper. (Talking Points)
http://option4.co.nz/Fisheries_Mgmt/documents/Talking_points_07_Jul_08.pdf

Amateur fishing interests file an application to appeal the Court of Appeal’s 2008 kahawai decision. The Minister, MFish and industry informed and sent copies of the application.

July 10 In a Briefing note to the Minister MFish advise that “*SeaFIC and TOKM have confirmed their support for the Bill and the indicative drafting provided to PCO [Parliamentary Counsel Office], but are keen to see and discuss the PCO drafting and explanatory note to the draft Bill before it is sent to a select committee*”. (Briefing note Minister, p1).
http://option4.co.nz/Fisheries_Mgmt/documents/Briefing_note_Minister_10_Jul_08.pdf

MFish requested and received the Minister’s approval to discuss the draft Bill with both SeaFIC and TOKM after the PCO had completed their work. (Briefing note Minister, p2).
http://option4.co.nz/Fisheries_Mgmt/documents/Briefing_note_Minister_10_Jul_08.pdf

July 14 Cabinet Paper 456 considered by the Cabinet Business Committee. The Paper confirms, “*Te Ohu Kaimoana and the Seafood Industry Council have been consulted in the development of this remedy*”.
http://option4.co.nz/Fisheries_Mgmt/documents/Cabinet_Paper_456.pdf

July 17 and 18 MFish updated amateur fishing representatives on the proposed amendment to section 13 of the Fisheries Act 1996 and distributed a letter, dated 15th July, outlining the background, objectives for amending the legislation and the approach to be taken to insert a new subsection into s13. No actual wording was provided within the advice. The Bill was due to be introduced to Parliament around July 21st. (s13 letter).
http://option4.co.nz/Fisheries_Mgmt/documents/MF_s13_update_18_7_08.pdf

July 24 Anderton introduced the Fisheries Act 1996 Amendment Bill (No.2) into the House and the Bill received its first reading. Both section 13(2A) and the Transitional Provision relating to consultation are included in the Bill.
http://option4.co.nz/Fisheries_Mgmt/documents/Fisheries_Act_1996_Amendment_Bill_No2.pdf

National’s fisheries spokesperson Phil Heatley confirms the party had been kept informed of progress in the development of the Bill. He also advised the House “*needless to say, the relevant stakeholders have been consulted*”.
http://option4.co.nz/Fisheries_Mgmt/documents/S13_Hansard_first_reading_24_7_08.pdf

- July 25** Six amateur fishing representatives advised of the Bill's introduction to the House and provided with a copy of the proposed amendment. This is the first time representatives are aware of Clause 5 – the Transitional Provision relating to consultation.
http://option4.co.nz/Fisheries_Mgmt/documents/MF_advice_s13_Bill_25_7_08.pdf
- July 29** First reading of the Fisheries Act 1996 Amendment Bill (No.2) continues.
- Phil Heatley advises Parliament *“National members will be interested, at the Select Committee, to hear what invited submitters say about the bill as drafted. Should they raise any significant concerns – should there be any angst about the legislation as drafted – National MPs will be very concerned indeed, because we understood that it was a team approach from the Ministry of Fisheries and fishing interests that brought this bill to the House in this form”*. Hansard http://option4.co.nz/Fisheries_Mgmt/documents/S13_Hansard_first_reading_continued_29_7_08.pdf
- Tariana Turia, Maori Party, also addressed the House, *“we have it on good authority that the seafood industry has struck a bargain that not only will it sign off on the wording of the amendment and the process, but also it will do so if the Maori Party and Labour Maori MPs support this amendment”*. Hansard http://option4.co.nz/Fisheries_Mgmt/documents/S13_Hansard_first_reading_continued_29_7_08.pdf
- July 30** MFish provide a Briefing Paper for the Primary Production Select Committee's meeting on July 31st, giving background details of the Amendment Bill and process. MFish advise that SeaFIC and TOKM have been consulted and indicated their support for the wording of the Bill. *“Separate involvement of representatives of Maori customary fishers has been limited, but they will be informed and provided with relevant material.”* (Briefing note Primary Production Committee, pt33).
http://option4.co.nz/Fisheries_Mgmt/documents/Briefing_note_PPC_30_Jul_08.pdf
- July 31** MFish distribute a letter to tangata whenua advising of the amendment process, the short consultation period and that advertisements seeking submissions on the Bill would be placed on the Parliamentary website and in newspapers on August 2nd. A copy of the Bill was provided with this letter.
http://option4.co.nz/Fisheries_Mgmt/documents/Letter_TW_31_Jul_08.pdf
- Notification received from the Primary Production Select Committee that submissions were being called for on the Fisheries Act 1996 Amendment Bill (No.2) and inviting selected parties to appear before the Committee hearing on August 7th. Only twelve parties were invited to the hearing, including SeaFIC, TOKM, the Recreational and Big Game Fishing Councils, option4 and three environmental organisations.
http://option4.co.nz/Fisheries_Mgmt/documents/Section_13_PPC_invitation_31_7_08.pdf
- The Select Committee were advised that the Hokianga Accord, the NZ Big Game Fishing Council and option4 would be providing a joint submission and attending the August hearing.
- August 5** Joint submission from the Hokianga Accord, the NZBGFC and option4 sent to the Primary Production Select Committee prior to the hearing. This was the only submission out of ten that raised concerns about Clause 5 - the Transitional Provision relating to consultation.

http://option4.co.nz/Fisheries_Mgmt/documents/Hokianga_Accord_section_13_submission_FINAL.pdf

August 7 Select Committee hearing, no specific oral submission from any customary Maori representatives although customary interests were discussed during the joint submitter's oral presentation.

August 11 Select Committee deadline for receiving submissions on the Amendment Bill. The joint non-commercial submitters provided a supplementary submission in response to the Committee's concerns raised during the hearing. http://option4.co.nz/Fisheries_Mgmt/documents/HokiangaAccords13SupplementarysubmissionFINAL.pdf

Eleven submissions were made to the Primary Production Committee, including two from the joint submitters. Submissions from other Maori interests were from TOKM and the Treaty Tribes Coalition.

MFish departmental report to Select Committee, including analysis of all submissions. MFish rejected most suggestions to amend the draft section 13. Most submissions focussed on Clause 4. Report filed after the 11th and prior to August 22nd.

http://option4.co.nz/Fisheries_Mgmt/documents/MF_subm_analysis_Aug_08.pdf

August 22 The Select Committee report back to Parliament and recommend the Bill be passed with a few, minor changes to the text due to a drafting omission. No changes were made to the Transitional Provision relating to consultation. http://option4.co.nz/Fisheries_Mgmt/documents/Section_13_PPC_report_22_8_08.pdf

August 27 Sanford Limited, Sealord Group Limited, Pelagic & Tuna New Zealand Limited (jointly), the Minister and MFish lodge objections with the Supreme Court, opposing the application for leave to appeal the kahawai judgment by the Appeal Court. Both the Minister and MFish had previously publicly accepted the 2007 High Court judgment and paid the associated costs. <http://kahawai.co.nz/index.htm>

Given the Appeal Court's interpretation of how the purpose of the Act (section 8) applies when the Minister makes management decisions, it was not in commercial fishers interests to have any reference to the purpose of the Act within the new wording of section 13.

Sept 23 The Fisheries Act 1996 Amendment Bill (No.2) receives its second and third reading in Parliament. http://www.parliament.nz/en-NZ/PB/Legislation/Bills/3/9/1/00DBHOH_BILL8656_1-Fisheries-Act-1996-Amendment-Bill-No-2.htm

Sept 27 The Amendment Bill receives Royal assent and becomes the Fisheries Act 1996 Amendment Act 2008.

Sept 28 The Fisheries Act 1996 Amendment Act 2008 takes effect. http://option4.co.nz/Fisheries_Mgmt/documents/Fisheries_Act_1996_Amendment_Act_2008_000.pdf

Oct 1 The Minister applies the new section 13(2A) to reduce the total allowable commercial catch in five Bluenose fish stocks: BNS 1, 2, 3, 7 and 8.

Oct 2 The Supreme Court grants the application by amateur fishers, for leave to appeal the Court of Appeal's kahawai decision, notwithstanding that the section 13 amendment has already been given effect. The Supreme Court hearing is expected around February 2009. <http://kahawai.co.nz/index.htm>

Appendix Two – Sections 8 and 12 of the Fisheries Act 1996

EXTRACTS

PART 2 - PURPOSE AND PRINCIPLES

8. Purpose

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act—

Ensuring sustainability means—

- (a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
- (b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment:

Utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.

PART 3 - SUSTAINABILITY MEASURES

12. Consultation—

1. Before doing anything under any of sections 11(1), 11(4), 11A(1), 13(1), 13(4), 13(7), 14(1), 14(3), 14(6), 14B(1), 15(1), and 15(2) or recommending the making of an Order in Council under section 13(9) or section 14(8) or section 14A(1), the Minister **shall**—
 - a. **consult** with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Maori, environmental, commercial, and recreational interests; and
 - b. **provide for** the *input and participation* of tangata whenua having—
 - i. A non-commercial interest in the stock concerned; or
 - ii. An interest in the effects of fishing on the aquatic environment in the area concerned—

and have particular regard to kaitiakitanga.