

Hokianga Accord

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

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18 April 2008

FISHERIES ACT AMENDMENT

Tena koe Jim

The Hokianga Accord understands, as a consequence of the *Anton's Trawling* case, that you are considering an urgent amendment to section 13 of the Fisheries Act 1996 (the Act) to enable you to continue Ministry of Fisheries (MFish) practice of using information now ruled as being unlawful to set total allowable catches (TAC's). Two Accord representatives attended the urgent meeting in Wellington on Thursday 10th April to discuss this matter. MFish informed the meeting that the proposed amendment would not include changes to any other provisions of the Act.

The Hokianga Accord is concerned to ensure that any amendment you propose achieves the sustainable utilisation purpose of the Act. The present approach to amending section 13 appears as a high-risk option that could have the opposite effect, namely unsustainable fishing and adverse effects on the aquatic environment.

We would therefore like to explore with you the possibility of an alternative approach that would enable you to make TAC decisions whilst better achieving both the government's environmental objectives and the sustainable utilisation purpose of the Act.

In the very short time we have had to consider your proposed amendment and its ramifications if implemented, our initial thoughts are that an amendment to section 14(8)(b)(i), by removing the reference to 'biological characteristics', and managing fisheries within Schedule 3 may assist you to better achieve the sustainable utilisation purpose of the Act. The High Court Judge in *Antons Trawling* noted (at para 52, 55 and elsewhere) the potential use of section 14 of the Act, and that the advice to you had not referred to section 14 (see para 51).

Complementary to the appropriate section 14 amendment we also suggest a reconsideration of your earlier proposal that had our support¹, to amend section 10 to provide clear direction to decision-makers when information is inadequate or uncertain.

It is our view that amending sections 10 and 14 as described would go some way towards ensuring that your TAC decisions are less open to challenge in the Courts. This is because, as Minister, you would be empowered to take a precautionary approach to better achieve the purpose of the Act by enabling people to provide for their social, economic and cultural wellbeing.

¹ http://option4.co.nz/Fish_Forums/hamr507.htm

When information on fish stocks is poor and the true levels of mortality, including amateur catch, cannot be adequately quantified, the risk of unsustainable fishing increases. Even though MFish has stated there are very few fisheries with adequate information to estimate the biomass, for twenty years MFish has attempted to manage Snapper 8 (SNA8) at Bmsy. After two Ministerial decisions to rebuild SNA8 the biomass remains at approximately half the level required to produce maximum sustainable yield. SNA8 is a prime example of a fishery that would benefit from a precautionary management approach.

Before we commit precious non-commercial fishing resources on developing a full response with recommendations to your proposed amendment, we would appreciate you letting us know whether you are open to a consideration of the alternative approach we now put forward, with possible improvements following further consideration, to provide you with certainty in achieving the purpose of the Act when making TAC decisions.

We are available to meet and discuss this matter at a time or times to suit you and are confident that we can offer overwhelming support from non-commercial fishing interests to find an enduring solution to enable TAC's to be set that will meet the purpose of the Act and achieve "more fish in the water/kia maha atu nga ika i roto i te wai".

We look forward to hearing from you as soon as possible.

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