

Fisheries Act 1996 Amendment Bill (No.2)

Frequently Asked Questions

By the Hokianga Accord

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What is the issue?

The Minister and Ministry of Fisheries have advised they need to amend section 13 of the Fisheries Act (1996), ostensibly as a consequence of a recent High Court decision. This will lower the information threshold required to support effective, sustainable fisheries management decisions.

What is the purpose of the Act?

The purpose of the Act is to provide for the utilisation of fisheries by all New Zealanders whilst ensuring sustainability. This means maintaining fisheries to meet future generations' needs, protecting the environment, conserving and developing fisheries to enable all New Zealanders to provide for their social, economic and cultural wellbeing.

What is the problem with the amendment?

The amendment will simply legalise current, defective MFish management practices. It would also authorise the Minister, when he has no reliable stock estimates, to set catch limits as if he was in possession of the most comprehensive and reliable estimates.

The Minister would be able to apply any information, however uncertain, unreliable or inaccurate, to set the highest justifiable total allowable catch to meet the objective of maximising yield as opposed to managing the fishery to enable people to provide for their wellbeing.

Why is there urgency to amend legislation now?

There is no urgency. The urgency has been touted by the Ministry of Fisheries. Only two stocks require Ministerial approval by this October: Orange Roughy and Bluenose. Interim decisions can easily be made for these fisheries - or deferred until next year, as in the case of kahawai.

Why are the Ministry and Industry supporting rushing this change through?

The Ministry and corporate commercial fishing representatives are using the High Court ruling as an opportunity to change the meaning of the fisheries legislation and thereby alter the Minister's focus. It is an unprincipled attempt at a 'quick-fix' that will lower the sustainability threshold and permit aggressive fishing strategies on stocks with poor information. Having such a hasty process excludes most of the public from being aware or exercising their democratic right to pass comment.

If they don't pass the legislation immediately what will happen?

Status quo would prevail until all parties have put their cases clearly and fairly.

What is so special about section 13?

Section 13 of the Fisheries Act is the prime sustainability measure used by the Minister to set total catch levels for New Zealand's fish stocks.

What did the High Court decide?

Earlier this year the High Court ruled that the Minister of Fisheries cannot use section 13 of the Fisheries Act to set a total allowable catch (TAC) for a fish stock unless he/she has an estimate of both current stock size (biomass) and the biomass that can produce 'maximum sustainable yield' (MSY).

What is the biomass that can produce maximum sustainable yield (MSY)?

For most New Zealand fisheries the biomass that can produce MSY is usually between 20 and 30 percent of its original, unfished stock size.

How many fish stocks have current estimates?

Less than 4% of the 629 fish stocks in the quota management system have estimates that the Minister requires to make management decisions under section 13.

Hasn't the Minister historically used MSY as a management target?

If the Minister has been setting catch limits with the single objective of achieving maximum sustainable yield then he is exercising powers under the Act without regard to the purpose of the Act and that undermines the ability for ordinary New Zealanders to feed their families.

What about the precautionary approach?

Currently it is mandatory for the Minister to apply the environmental and information principles before he makes any decisions. The new subsection 13(2A) imports selected parts of those principles in such a way that it changes both their meaning and importance. In addition to potentially weakening the purpose and principles of the Act, this will confuse Ministerial discretion while offering fertile ground for litigation.

The amendment will effectively lower the information and environmental standards and would make maximum sustainable yield the Minister's single objective. This would preclude any discretion to set precautionary catch limits when information is poor or environmental risks exist.

Rather than import parts of the principles in sections 9 and 10 of the Act it would be preferable to amend section 14, or insert a completely separate section into 13, so that the purpose and principles can be applied to any total allowable catch decisions.

What is wrong with current fisheries management?

Existing management approaches have been exposed by the Court as being unlawful, and not simply because of some oversight by the Minister. Section 13 operates well for stocks with full information but is not designed for any others. Where stocks cannot be estimated reliably, another method is needed to enable a total allowable catch limit to be set.

Does the Minister have to set the TAC every year?

No. Once the Minister sets a TAC using section 13 of the Act, that total catch limit continues to apply in each fishing year until it is varied or the management area is changed. Each fishing year starts on October 1st.

The following table gives examples of when the total allowable catch (TAC – which includes all fishing) and/or total allowable commercial catch (TACC) were last set. Many fish stocks were introduced into the quota management system in 1986, at its inception. Many of these stocks have no TAC or allowances made for non-commercial fishing interests, and many of the original TACC's still apply.

Table 1: Total allowable catch (TAC's) and total allowable commercial catch (TACC's) for various fish stocks

Fish stock	Last year TAC set	Last year TACC set	Last year non-commercial allowances set
Snapper 1 North-east NI*	1997	1997	1997
Red Gurnard 1 North-east & North-west NI*	Never	1994	Never
Kahawai 8 North-west NI*	2005	2005	2005
Kingfish 2 South-east NI*	2003	2003	2003
Blue Cod 3 East coast SI*	Never	2001	Never
Flatfish 7 Top of SI*	Never	1986	Never

NI* = North Island SI* = South Island

What is the transitional provision about?

The Ministry of Fisheries propose a transitional provision that will sanction consultation expected under section 12 of the Act to have already been carried out, if the proposed amendment is enacted.

Section 12 obliges the Minister first, to consult widely with people or representative groups who have an interest in the fish stock or the effects of fishing on the environment, and secondly, places a mandatory obligation on the Minister to provide for the input and participation of tangata whenua having a non-commercial interest in the stock or the environmental effects of fishing, and to have particular regard to kaitiakitanga (guardianship/stewardship).

Pursuing a maximum catch regime while weakening the Act's sustainable utilisation purpose, to enable people to provide for their wellbeing, is contrary to the principle (or tikanga) of kaitiakitanga of both the fisheries resource and the people who depend on the fishery to provide for their needs.

This transitional provision would barely pay lip service to the Crown's ongoing statutory obligations towards Maori non-commercial interests under the Treaty of Waitangi 1840 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. As an agent of the Crown, these obligations extend to all aspects of MFish's functions: to act reasonably and in good faith in its dealings with Maori, to make informed decisions, to avoid impediments to providing redress and avoid creating new grievances.

At the very least, consultation on the proposed amendments ought to have occurred with the national body established for representatives of all iwi fisheries forums around the country, Te Kahui Maunga o Tangaroa. Neither this body nor the iwi forums themselves were offered the opportunity to have input or participate in this process.

Maori can with some justification ask the Minister and Ministry of Fisheries what they intend to do to discharge the Crown's section 12 obligations.