



Primary Production Select Committee  
Parliament Buildings  
Wellington

7<sup>th</sup> August 2008

### **Fisheries Act 1996 Amendment Bill (No 2)**

Forest & Bird would like to provide the following comments in support of our oral submission on the Amendment Bill (No 2).

#### **Forest & Bird**

The Royal Forest and Bird Protection Society (Inc) (Forest & Bird) was established in 1923 and has campaigned for over 80 years for the protection of New Zealand's native species and the habitats on which they depend.

The constitutional purpose of Forest & Bird is:

*“To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and natural features of New Zealand, for the benefit of the public including future generations.”*

The Society has a long history of advocacy for the protection of New Zealand's marine environment and has been at the forefront of efforts to promote sustainable fisheries management.

#### **Summary position**

1. Forest & Bird supports the intention of the Amendment Bill
2. Section 13 (2) and 13 (2A) should be modified to include the text ‘to meet the purpose of the Act’
3. Section 13 (2A) (cii) should be modified to exclude the words “at or” and “towards or”
4. Following the consideration of this Bill the select committee should initiate a more comprehensive review of sections 10, 13 and 14 of the Fisheries Act.

#### **Introduction**

Under the Fisheries Act 1996, the Minister of Fisheries is required to balance resource utilisation with sustainability. The purpose of the Act outlined in section 8 defines ‘ensuring sustainability’ as:

- (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.*

Under section 9 the Act also requires that the following environmental principles be accounted for:

- (a) Associated or dependent species should be maintained above a level that ensures their long-term viability;*
- (b) Biological diversity of the aquatic environment should be maintained;*
- (c) Habitat of particular significance for fisheries management should be protected.*

Sections 13 and 14 of the Act provide mechanisms for the Minister to set TACs under the current Quota Management System.

### **Intent of the Amendment Bill (No. 2)**

Forest & Bird supports the intention of the Amendment Bill (No 2).

The High Court judgement in *Antons Trawling Company v the Minister of Fisheries*, showed that the law is inconsistent with current fisheries management. The TAC can not be set without an assessment of stock levels and of the stock levels that are required to produce the maximum sustainable yield (MSY).

Under section 14 alternative TACs may be set for stocks, without the need for this information, if:

- (8b) (i) It is not possible, because of the biological characteristics of the species, to estimate maximum sustainable yield; or*
- (ii) A national allocation for New Zealand has been determined as part of an international agreement; or*
- (iii) The stock is managed on a rotational or enhanced basis; or*
- (iv) The stock comprises 1 or more highly migratory species.*

The High Court ruling means that the majority of stocks that lack adequate information for accurately determining their MSY, or where there is inadequate information about the status of the present stock size in relation to the MSY, do not qualify for management under section 13. However, most of these stocks will also not qualify for management under section 14 because their 'biological characteristics' do not prohibit a MSY determination.

## Section 13 Amendment

Forest & Bird generally supports the Bill's amendment of section 13 of the Fisheries Act as the short-term solution to the problem presented above.

### *The Purpose of the Act*

The purpose of the Act is not reflected adequately in the current section 13 or in the proposed amendment. Sections 10(d) and 14(1) make specific reference to decisions being made “*to achieve the purpose of this Act*” and this reference implies that the decisions must explicitly balance the utilisation and environmental protection principles of the Act.

Forest & Bird recommends that the Amendment Bill be altered to provide explicit reference to the purpose of the Act as follows:

*13 (2A) For the purpose of setting a total allowable catch under this section **to achieve the purpose of this Act**, if the Minister considers that the current level of the stock that can produce maximum sustainable yield is not able to be estimated reliably using the best available information, the Minister must—*

Similarly, we propose that the previous sub-section also be amended:

*13 (2) **To achieve the purpose of this Act**, the Minister shall set a total allowable catch that —*

### *MSY as a target threshold*

Specifying MSY as a target threshold requires that TAC's are set with a goal of achieving the highest possible TAC. In other words, it favours maximum justifiable utilisation. The wider environmental sustainability aspects of the Act are not adequately considered.

There are many examples of fisheries management around the world that demonstrate that management based solely on MSY can and has led to stock crashes. In New Zealand, collapses of orange roughy, bluenose and west coast hoki stocks also highlight the problem of overemphasising the MSY target within the Quota Management System.

Given the requirements under sections 8 and 9 of the Fisheries Act, a biomass threshold above that which produces MSY should be the target for all stocks. This threshold could be viewed as the wider ‘sustainability target’. For each stock the ‘sustainability targets’ could be set not only on the best information available on the stock and its MSY, but also on factors such as protected species bycatch, habitat damage, impacts on associated or dependent species and other environmental variables associated with the exploitation of that stock.

This approach is currently being explored by the Ministry of Fisheries through the 'Harvest strategy'. Forest & Bird supports the development of this work which better reflects the purpose of the Fisheries Act.

Regardless of the policy work being developed, the Fisheries Act remains unbalanced with respect of TAC setting under section 13, particularly for stocks where available information on MSY is absent, uncertain, unreliable or inadequate. If the MSY can not be determined with any certainty then the Minister should not be required to attempt to set a TAC to take the stock to the target of the MSY. Where such uncertainty exists the TAC should be set to keep the stock above the MSY. Forest & Bird therefore propose that the Bill be altered as follows:

*13 (2A) (cii) that it 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.*

### **Implementing the sustainability provisions of the Fisheries Act**

With the proposed modifications the Bill should achieve a short-term solution to the current problem of setting TACs when information on MSY is absent, uncertain, unreliable or inadequate. However, it does not resolve the wider problem that most of New Zealand's fish stocks are grossly understudied and there is little information upon which to manage stocks in line with the purpose of the Act. Implementation of sustainability provisions are problematic even when information on MSY is available.

Forest & Bird therefore recommends that following its consideration of this Bill, the Select committee initiate a more comprehensive review of sections 10, 13 and 14 of the Fisheries Act.

Should you have any queries regarding our comments, please do not hesitate to contact me.

Yours sincerely,



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