

Fisheries Act 1996 Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is intended to clarify the law by providing clearer direction to persons making fisheries management decisions where there are gaps or flaws in the available information.

The Fisheries Act 1996 (the **Act**) is the principal statute governing the management of New Zealand's fisheries resources. It empowers the Minister of Fisheries to set various sustainability measures (eg, Total Allowable Catches and fishing method restrictions). The Act's purpose is to provide for the utilisation of fisheries resources while ensuring sustainability. In order to achieve this, the Act provides for limits to be set within which sustainable fishing can occur. Often there is limited information available on how ecosystems and fish stocks actually behave. This means all decisions to allow harvest carry some degree of risk because of uncertainty, inadequacy, or other defects in the information. The impact of a flawed decision will vary according to the nature of the information flaw, the stock characteristics, and other factors. If the decision overestimates the relevant stock levels, sustainability of the fishery is put at risk. If it underestimates the stock levels, then harvest has been unnecessarily constrained.

Internationally, there is a consensus that, where information is absent or uncertain, managers should adopt a precautionary approach and take measures to ensure sustainability even though complete information is not available. This general precautionary approach is contained in a number of international agreements to which New Zealand is a party.

Section 10 of the Act currently provides several specific principles on how fisheries managers should deal with information when making decisions under the Act. These principles apply to both utilisation and sustainability decisions (in practice many fisheries management decisions involve both components). In addition to outlining the need to use the best available information, section 10 contains several principles that reflect aspects of the precautionary approach regarding information quality.

There is a concern that the current wording of section 10 fails to make it sufficiently clear that decision makers should not, where the best available information is incomplete or otherwise deficient, delay or avoid taking measures to ensure sustainability. This Bill is intended to remove any ambiguity in that regard, and thus ensure that the Act is consistent with the precautionary approach on that point.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the principal Act amended is the Fisheries Act 1996.

Clause 4 amends section 10 of the Act, which sets out certain information principles that must be taken into account by persons who exercise or perform functions, duties, or powers under the Act in relation to the utilisation of fisheries resources or in relation to ensuring the sustainability of those resources.

Currently, section 10(c) of the Act provides that decision makers should be cautious when information is uncertain, unreliable, or inadequate. Section 10(d) of the Act, as currently framed, then provides that the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act (which is to provide for the utilisation of fisheries resources while ensuring sustainability).

The amendment replaces section 10(c) and (d) of the Act with a provision that states that if information is absent or is uncertain, unreliable, or inadequate, decision makers should be cautious and should not use any of those factors as a reason for postponing or failing to take measures to ensure sustainability.

The amendment is intended to clarify where the balance lies in deciding between the utilisation or the sustainability of fisheries resources if a decision has to be made in cases where information is absent or is otherwise poor. 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 ensuring sustainability.

Clause 5 is a transitional provision relating to any consultation that was carried out in respect of decisions that require consultation under the Act and that are to be made after the commencement of this Bill. The clause provides that the consultation is to be treated as complying with the consultation requirements of the Act even though some or all of it occurred before the commencement of this Bill.

Regulatory impact statement

Statement of problem and need for action

There are deficiencies in the current expression of the precautionary approach in the Fisheries Act 1996 (the Act). These deficiencies affect a range of decision-making powers under the Act, notably setting of sustainability measures (eg, Total Allowable Catches). Furthermore, the information principles are not fully consistent with the internationally accepted view on the precautionary approach.

The purpose of the Act has two elements: providing utilisation and ensuring sustainability. A decision maker can use the uncertainty, or limits, in information as a ground for taking a measure to achieve either sustainability or utilisation, depending on his or her view of the greater risk at the time. Such an approach is not consistent with the precautionary approach, which requires measures to be taken that would achieve sustainability, in preference to providing utilisation, where information is uncertain or limited.

The current situation therefore unduly complicates and constrains the decision-making process and places unreasonable risk on fisheries managers wishing to ensure sustainability in situations where information is uncertain or limited.

Statement of public policy objective

The public policy objective is to ensure that the Act enables decision makers to ensure sustainability of fisheries resources and address the

adverse effects of fishing on the aquatic environment in situations where information is uncertain or limited.

Statement of options for achieving desired objective

Status quo

The Act provides fisheries managers the ability to take into account risks to both fisheries sustainability and utilisation when making resource management decisions. The Act's information principles (section 10) also guide decision makers to—

- make use of the information that is already known, but not to ignore any gaps or lack of detail; and
- be cautious when information is of poor quality, and not to avoid making a decision simply because of the lack, or poor quality, of information.

Preferred option: Amend the Fisheries Act 1996

It is proposed that the Act be amended so that fisheries managers are able to exercise caution in favour of conservation over utilisation where there is uncertainty in the information available. This change will be effected through an amendment to the Act's information principles (section 10). The information principles are taken into account by all decision makers and this enables a consistent approach across a variety of management decisions provided for in the Act.

It is highly desirable that the amendment be enacted before the middle of 2007. The reason for this urgency is so that legislative change is in place prior to the development of the next major set of fisheries management decisions (for the fishing year commencing 1 October 2007).

Statement of net benefit of this proposal

Government

The proposal will provide greater certainty around fisheries management decisions. This certainty will reduce costs too, as there will be more direction and clarity for the construction of resource management advice. It will also reduce the risk of legal challenges of fisheries management decisions. Furthermore, the proposed change would ensure consistency with the international use of the precautionary approach.

Industry

The impact of the proposal on the industry's utilisation interests will depend on the specific decisions being made, the stocks they relate to, and the state of information about them. In general, it is unlikely to cause sudden changes in current fisheries management measures. It may negatively impact on utilisation in certain circumstances in the short run (eg, due to reduced harvest levels), but it should ensure a more stable and sustainable resource base for fisheries utilisation in the future.

In some fisheries a cautious approach in favour of sustainability may lead to recommendations for Total Allowable Catch (TAC) reductions, even though no additional information on stock performance has become available since setting the original TAC. Commercial fishers will likely oppose any TAC reductions.

The proposal changes the way that decision makers take into account uncertain or limited information when making decisions. In some situations, commercial fishers may have to invest more in collecting information and funding stock assessment research on the impact of their activities if they wish to maintain their harvest levels.

There are no compliance costs to commercial fishers arising directly from this proposal.

Society

The proposal should provide positive benefits to society by ensuring the sustainability of resources and the health of the aquatic ecosystem. The benefits of a sustainable and healthy aquatic ecosystem come from—

- extractive use values (eg, customary Maori, recreational, or commercial fishing values); and
- non-extractive use values (eg, amenity value from the quality of the marine environment); and
- non-extractive non-use values (eg, value in knowing resources are more likely to be available for use by future generations).

A cautious approach to setting TACs could also have implications for non-commercial fishers (eg, customary Maori or recreational fishers) in the short run, to the extent that there are any constraints on their take. But the approach should ensure a more stable, sustainable, and abundant resource base for their fishing in the future.

Consultation

Stakeholders

Letters advising of the proposed amendments have been sent to fisheries stakeholders, and the Ministry of Fisheries has met with fishing industry representatives.

Government departments/agencies

Consultation has been undertaken with the Ministry for the Environment, Ministry of Economic Development, Te Puni Kokiri, Ministry of Justice, The Treasury, Department of Conservation, and the Ministry of Foreign Affairs and Trade.

Hon Jim Anderton

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Fisheries Act 1996 Amendment Act **2007**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Fisheries Act 1996.
- 4 Information principles**
Section 10 is amended by repealing paragraphs (c) and (d) and substituting the following paragraph: 10
“(c) if information is absent or is uncertain, unreliable, or inadequate, decision makers—
 “(i) should be cautious; and
 “(ii) should not use any of those factors as a reason for postponing or failing to take measures to ensure sustainability.” 15

5 Transitional provision relating to consultation

Any consultation carried out in respect of decisions that require consultation under the principal Act and that are to be made after the commencement of this Act is to be treated as complying with the consultation requirements of the principal Act even though some or all of the consultation occurred before the commencement of this Act.

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