



15 July 2008

Dear Stakeholders

URGENT AMENDMENT OF THE FISHERIES ACT 1996: TAC SETTING

This note provides updated information relating to a proposal to amend the Fisheries Act 1996 (the Act) before the end of the current Parliamentary term.

Earlier this year the Ministry of Fisheries (the Ministry) notified you that a problem had arisen with the Minister's ability to set total allowable catches (TACs) under section 13 of the Act. You were advised of the need to amend the Act urgently and of the general approach being investigated. Since that time the Ministry has been working with the Minister on how the problem could be solved and on indicative drafting for an amendment to section 13 to resolve the problem. A proposal has now been developed that has the necessary support so that the Act could be amended before the start of the new fishing year. Cabinet approval has been sought for an urgent amendment to section 13 of the Act. The Ministry has the expectation that, if approved, a Bill would be introduced before the end of July 2008, and considered by Select Committee during August 2008.

The Problem

The effect of the judgment of Justice Miller of 22 February 2008 in *Anton's Trawling Company Limited v The Minister of Fisheries* (CIV 2007-485-2199) is that a key provision of the Fisheries Act – Section 13: Total Allowable Catch (TAC) – is not available for use in management decisions for many fish stocks. The TAC set under section 13 is the main instrument used to constrain fishing on each fish stock to levels that can be sustained over time.

The Court found that before a TAC decision can be made under section 13(2), 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 quota management stocks, this specific information is not available.

Since the Act came into effect, various management strategies – all aimed at supporting the goal of maximum sustainable yield – have been pursued using alternative indicators of the relative state of the stocks, in addition to modelled estimates of biomass levels where available. Some of the alternative indicators have links to the MSY reference points of the Act but others do not.

This approach to management with limited information is the norm internationally, being commonly used in jurisdictions with similar regimes such as Australia, the US and Canada.

In order to continue lawful management with these strategies for stocks with limited information, the Act needs to be amended.

Objectives for an Amendment

As indicated previously, the intention of the government is to focus an amendment to section 13 on addressing the issues raised by the court case. Any other reason for potentially amending the Act is better left to be picked up in the review of the legislation that has been signalled in the Ministry's 2008 Statement of Intent. This wider review of the Act will commence later this year.

Specifically, the following are the objectives for the current proposed amendment:

- Enable TAC decisions to be taken by the Minister in the absence of the biomass estimates currently required by section 13(2), using the best information available from a range of sources.
- Do not disturb the balance of the Act as it has functioned in respect of TAC setting
- Be as consistent as possible with the current construction of the Act and be as simple as possible while conveying the intent clearly.
- No TAC decision should be knowingly inconsistent with the current objective to maintain stocks at or above, or move them to a point at or above the level that can produce the maximum sustainable yield.
- TAC setting should use the most information rich process available, without necessitating a level of research and stock assessment investment involving unreasonable cost, effort or time – consistent with section 10(a).
- TAC setting should continue to consider relevant social, cultural and economic factors.

Approach to Amendment

- the approach being taken to amendment is to insert a new subsection into section 13 following the existing operative provision (subsection (2)) as subsection (2A).
- the new subsection will refer to subsection (2) to make clear that these are firmly linked in their objectives and considerations.
- specific wording from s.13(2) is to be replicated to the extent possible in s.13(2A).
- the final drafting of an amendment Bill is the responsibility of Parliamentary Counsel.
- the suggestion has been made that section 14 should be used for stocks that don't meet the information tests of the present section 13. This was considered but not progressed because the purpose for section 14 is to manage stocks other than for MSY. It is a specific objective of the amendment process to maintain consistency with past practice and with the MSY based management objective.

Next Steps

- The Minister is currently moving to draft a Bill and introduce it to the House as soon as possible – proposed for 21 July 2008;
- the intention is to have the Bill passed before the TAC decisions for the coming fishing year are made in September 2008;
- this will require a shortened period for consideration of the Bill by Select Committee;
- Select Committee consideration will need to occur during August.

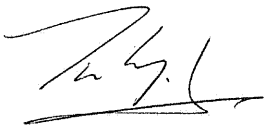
Further Discussion

If you or your organisation wish to discuss this matter further with the Ministry at this stage you are invited to call or email to put your views or ask questions, or you may wish to arrange a time for a meeting with Ministry staff.

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Yours sincerely



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