



N Z RECREATIONAL FISHING COUNCIL

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Submission to: Primary Production Committee

Submission: On the Fisheries Act 1996 Amendment Bill (No.2) 240-1 (2008)

From: New Zealand Recreational Fishing Council Inc.

Hearing: We wish to be heard by the Primary Production Committee

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The Council and its Representation:

1: The national organizations represented by this body are New Zealand Angling and Casting Association, New Zealand Trailer Boat Federation, New Zealand Marine Transport Association, New Zealand Sports Retailers Association and New Zealand Underwater Association. We also support the Ministry led and funded recreational forums of which many of these regional members are now members as individuals.

2: The New Zealand Recreational Fishing Council (NZRFC) also has Te Runanga o Ngai Tahu as a regional association. We also maintain contact with a number of Iwi representatives. While every effort has been made to consult we do not suggest that this submission is representative of their views.

3: This Council represents over 75,000 recreational and sustenance amateur fishers. In addition by default we represent the public interest in the fishery and those amateur fishers who are non-members. We say by default because we are the only constituted representative body that has been recognized by Government and the Courts of doing so.

4: Over 1.4 million people or by recent Ministry of Fisheries figures 25% of New Zealanders fish for sustenance or recreation and this does not include those elderly or infirmed amateur fishers who can no longer actively participate in catching seafood for the table. The 1996 research to provide estimates of Recreational and Sustenance Harvest Estimates found that there are approx 1.35 million and increasing recreational and sustenance amateur fishers in New Zealand and therefore we effectively, through our

associated member groups, and lack of any other democratically elected or statutory recognized group represent this number also.

5: The Council has been recognized in three court cases as representing the recreational and amateur fishers of New Zealand. The Council was attached to two of these cases without its prior knowledge and the court papers show it was ordered, “to represent the recreational fishing public of New Zealand”. The first of these was the order of attachment to the High Court Action on the Manukau, Taiapure application. The second relates to the SNA1 challenge of the Minister’s decision that was heard by the High Court. The Council also holds “Approved Party Status” for consultations with the Ministry of Fisheries and is recognized by them and the Minister of Fisheries as a stakeholder group. In the third case the Council along with one of our respected affiliates the NZ Big Game Fishing Council was the applicant in the recently successful kahawai case.

6: The Council has a Board of elected officers and members. The Council consults with its members and the public using various means. These include newsletters, both written and electronic, its web site and various press releases. In addition it consults through the various fishing media and meetings it holds and receives input through those forums.

7: This submission has been prepared and presented after consultation via email to our board members.

8: As previously stated, we are aware that other recreational lobby groups are submitting their own submissions and in most cases we have seen and support these submissions where they are not in direct conflict with this submissions intent or requested outcome.

9: In the submission we may talk of both recreational and amateur fishers as these two descriptions are so intertwined. For sake of some clarity recreational fishers referred to are generally those who have an interest in supporting recreational fishing interests while amateur refers to all fishers who exercise their rights to fish under the amateur fishing regulations.

Introduction:

10: Fish are the last wild population commonly hunted for food, and New Zealanders enjoy and treasure the common law right to access the oceans to secure this food. These rights stretch back beyond the middle ages and form a vital cultural plank in New Zealand society. The right of all New Zealanders to “access a feed’ deserves the highest level of protection.

11. The Crown is both entrusted with and obligated to protect and provide for these rights, and ensuring that the manner in which we use this treasured resource, our taonga, does not deny our following generations a similar ability to source food. We have an overarching responsibility to preserve this productivity for future generations.

12: The Primary Production Select Committee is asked to take great care when considering the meaning and effect the amendments within this Bill will play in setting the Total Allowable Catch (TAC)

13: The NZRFC has observed a steady undermining of the intent of the Fisheries Act 1996 to control fishing activity by continued legal challenges resulting in stop gap legislative measures being introduced. It appears the more prescriptive the Act becomes the more open to challenge it is.

14: Decision makers must not be impaired in their role by being forced to take less than precautionary decisions.

Recommendations:

15: The NZRFC request that you fully investigate and understand the implications of the Bill before making recommendations on the Fisheries Act 1996 Amendment Bill (No.2).

16: The NZRFC recognizes the necessity to make TAC decisions and supports the amendment so long as there are no negative outcomes for amateur/sustenance fishers.

17: Section 14 ought to be applied to stocks where B_{MSY} cannot be estimated to enable the TAC to be set.

18: More shared fish stocks should be managed under Section 14 to enable them to be maintained significantly above B_{MSY} .

Overview:

19: The High Court decision of Miller J on 22 February 2008 in *Antons Trawling Company Limited vs Minister of Fisheries*, known as the Antons case, set aside the total allowable catch (TAC) for Orange Roughy 1 (ORH1) which had been set by the Minister of Fisheries for the fishing year starting 1 October 2007. The Court ruled the Minister erred when applying section 13(2)(a) to set the TAC when estimates of B_{MSY} were not available to the Minister.

20: Attempts to rectify this problem by strengthening the precautionary approach principles within section 10 to allow the ministers decision to stand were successfully lobbied against by commercial and Maori fishing interests.

21: Commercial fishers undertook to provide science under an AMP to support their continued fishing of this stock. After failing to provide the information they were able to use this lack of information to take a case against the minister. This can only be described as bizarre.

22: On the advice of the Ministry of Fisheries, in response to the Antons case, Parliament has agreed to receive and support an urgent amendment to section 13. The Fisheries Act 1996 Amendment Bill (No.2) has received its first reading and is now before the Select

Committee. From Parliamentary speeches on the first reading the Bill appears to have multi-party support.

23: Because most of the 629 fish stocks within the quota management system (QMS) do not have reliable estimates of the biomass that will produce the maximum sustainable yield (B_{MSY}) it is reasonable to ask how many existing TACs would pass this statutory test, and how the Minister would set TACs in the future when B_{MSY} estimates were absent.

24: While B_{MSY} may satisfy commercial objectives it does not necessarily achieve the purpose of the Fisheries Act 1996 (the Act), which is to manage fisheries sustainably to enable all New Zealanders to provide for their social, economic and cultural wellbeing.

25: We acknowledge the frustration faced by the Minister in being seemingly unable to implement sensible precautionary decisions, but do not believe the proposed amendments are the best solution.

26: We submit:

- Urgent amendments to legislation often result in unforeseen results.
- The amendments must be considered within the context of their effect on other sections of the Fisheries Act.
- There must be no undermining of Part II of the Fisheries Act as a result of including this amendment.
- There is still a lack of urgency shown to rebuild timeframes.
- Schedule 3 is for stocks that do not have or do not need B_{MSY} estimates, but need a TAC.
- If there is an impediment in section 14 of the Fisheries Act that prevents the Minister from using Schedule 3 then that should be the basis for an amendment.
- Optimum Sustainable Yield strategies would achieve the purpose of the Fisheries Act far better than B_{MSY} strategies, and that the Minister should be left with the ability to choose the strategies that he/she considers will best achieve the purpose of the Act.
- The continued piecemeal approach to reviewing and amending sections of the Act only serve to confuse and create further possible opportunities for legal challenge.
- After more than 20 years of the QMS there are but a handful of stocks that B_{msy} has been determined with any degree of accuracy and hence most TAC's are (educated) guesses.
- With TAC estimates likely to be inaccurate into the foreseeable future, our continuing access to fish as a food source is threatened.

- Charge the select committee with ensuring any legislative changes do not further undermine the public access to achieving a reasonable daily bag limit.

27: Why amend section 13?

- **MFish believes they cannot review TAC's without this amendment.**
- **Surely if there is information available on the state of a fish stock then the existing provisions within section 13 can be applied in the same way they have been for years.**
- **If insufficient information is available then why not simply move the stock to schedule 3 and use section 14?**

28: Effect of the Amendment:

- The importation of words from sections 9 & 10 has also included some change in emphasis.
- Changing from directing that the Minister “shall & should”, contained in sections 9 & 10, to “must”, contained in proposed amendment (2A), adds strength to those sections moved.
- We are concerned this movement and strengthening of parts of sections 9 & 10 may result in the remaining sub sections being demoted or undermined. If this is the case then the amendment must be declined and other options explored.
- The amendment may force the Minister to concentrate solely on Bmsy and be less cautious when “information is uncertain, unreliable, or inadequate” as found in section 10 (c).

Section 14:

29: The stocks in Schedule 3 are managed under section 14. The essential difference between sections 13 and 14 is that s13 is solely preoccupied with achieving a biomass that produces MSY. There is no other objective.

30: Section 14 on the other hand does not mention B_{MSY} and has the objective of achieving the purpose of the Fisheries Act in s8. Section 14 is for fish stocks where the Minister, given the information at hand, considers the purpose of the Act will be better achieved by setting a TAC without relying on biomass estimates.

31: It is obvious that the most common reason for using Schedule 3 to set a TAC is when biomass estimates are unavailable, unreliable, or unnecessary, and an alternative strategy is required. The Minister then adds the stock to Schedule 3 and sets the TAC under s14. Schedule 3 exists for stocks like ORH1, and the Minister should use it when those criteria apply.

32: The proposed amendment would *compel* the Minister to make decisions to set a TAC in some circumstances that could be at best be considered negligent, at worst reckless from a risk management perspective by [always] sanctioning the maximum possible catch so long as the information does not demonstrate that the effect of the decision will be to reduce the stock below B_{MSY} .

33: Given the lack of and uncertain nature of information on any fish stock it is difficult to see how it can ever be demonstrated that a stock is below B_{MSY} .

34: The select committee needs to be absolutely certain that section 14, or any other section of the Fisheries Act 1996, cannot be used to address the impasse before recommending amendments to section 13 be passed into law.

35: By way of information we provide the following:

Section (14) subsection (8) begins:

*(8) The GovernorGeneral
may from time to time, by Order in
Council,—*

- (a) Omit the name of any stock from Schedule 3 to this Act:*
- (b) Add to that Schedule the name of any stock if—*
 - (i) It is not possible, because of the biological characteristics of the species, to estimate maximum sustainable yield; or*

36: In one sense, there is no such thing as being unable to estimate maximum sustainable yield. There is no biological characteristic that could not conceivably be including in such a calculation. What is at issue is how much it would cost to come up with a reliable estimate of such a figure.

37: In another sense, there are many stocks which because of biological characteristics such as distribution over time and space, depth, degree of relatedness to other stocks, etc we are unable to make an assessment with the time and budget available.

38: Thus in the strictest of sense, 14(8)(b)(i) makes no sense at all. If we relax the criteria of "possible" to include what is possible within constraints of time and budget - then the section has a more common sense meaning.

39: In this sense, it is clear that most stocks, other than the very few for which we have reasonably reliable estimates of B_{msy} , ought to be managed under Section 14.

40: The NZRFC submits: Schedule 3 is for stocks that do not have or do not need B_{MSY} estimates, but need a TAC. If there is an impediment in s14 that prevents the Minister from using Schedule 3 then that should be the basis for an amendment.

41: Unforeseen outcomes:

The proposed amendment may diminish the role of the purpose and principles in Part 2 of the Fisheries Act by promoting:

- a. selective parts of the information and environmental principles while ignoring other parts thereby changing the overall meaning and intent of the legislation.
- b. B_{MSY} as a sole measure of how to achieve the purpose of the Act, resulting in the following being lost:
 - i. the need to maintain fisheries potential for future generations of New Zealanders.
 - ii. the need to conserve, use, enhance and develop fisheries to enable people to provide for their social, economic, and cultural wellbeing.

42: MFish has signaled a desire to initiate a rewrite of the front end of the Act, concentrating on Parts 2 and 3. This proposed amendment could radically alter the status quo before a review is even underway.

43: We would like to take the opportunity to explain to the Select Committee some key overarching concerns not covered in this submission that are best done face to face and answer any questions members of the Committee may have in relation to this submission.

Thank you for the opportunity to submit to this amendment.

Yours faithfully,
New Zealand Recreational Fishing Council

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