

Marine Animals Protection Law Reform Bill

Member's Bill

Explanatory note

General policy statement

This bill amends the Marine Mammals Protection Act 1978, the Wildlife Act 1953, and the Fisheries Act 1996. The purpose of the bill is to—

- state clear species protection objectives and information principles for species management in the Marine Mammals Protection Act 1978 and the Wildlife Act 1953
- adjust legal tests in the amended Acts to broaden the Minister's ability to choose appropriate mechanisms for achieving the set objectives. The adjusted legal tests also ensure that the Minister implements applicable principles and national and international standards
- adjust the decision making relationship between the Minister of Conservation and the Minister of Fisheries for approving population management plans.

Objectives and information principles

Clauses 5 and 16 insert new sections 2A of the Marine Mammals Protection Act 1978 and 14F of the Wildlife Act 1953 respectively which set overall protection objectives for these Acts. The objectives are to ensure that marine animals are a functioning element of their ecosystem, that populations be maintained at healthy levels and that depleted or threatened populations be allowed to recover to non-threatened status within a reasonable timeframe.

Clauses 6 and 15 respectively insert new provisions in the Marine Mammals Protection Act 1978 (section 3A (2)–(4)) and the Wildlife Act 1953 (section 14HA (2)–(5)) and provide clear statements of the monitoring that is required to ensure that the objectives of the Act are met. Clauses 5 and 15 insert new sections to ensure that decisions are based on the best available information, uncertainty in the information available is taken into account and that the precautionary principle is adhered to (section

2B of the Marine Mammals Protection Act 1978 and section 14G of the Wildlife Act 1953). A new definition of ‘best available information’ is inserted in all of the amended Acts to ensure the scientific basis for decision making is as sound as possible (clauses 4, 14, and 20).

Using appropriate legal standards to implement the Act

The test ‘take into account’ implies that the listed principles and standards are relevant, but may in the end be put aside by decision makers. New tests are inserted by clauses 4, 14, and 20 to ensure that these principles and standards are both considered and then implemented.

The standard of ‘necessity’ in sections 15(1)(b) and (2) of the Fisheries Act 1996) is strict. This test has proved overly demanding, and the bill replaces the test in clause 20 with the more balanced standard of reasonableness. The function of the Minister of Fisheries to approve fisheries plans is changed by clause 23 to a power to make fisheries plans. The object of this amendment is to ensure that the relevant government agency prepares the plan, rather than, for example, a stakeholder writing the plan and the Minister restricting his or her involvement to approval.

Relationship between decision makers adjusted

Finally, the bill adjusts the relationship between the Ministers of Fisheries and Conservation under the Marine Mammals Protection Act 1978 and the Wildlife Act 1953 in relation to the making of population management plans (see changes proposed to sections 3H of the Marine Mammals Protection Act 1978 and 14H of the Wildlife Act 1953 in clauses 9 and 16). The adjustment reflects the corresponding relationship between these two Ministers under the Fisheries Act 1996. This new scheme should be more efficient, and help avoid duplication in the functions of the Ministers in developing population management plans.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the bill comes into force on the day after it receives the Royal assent.

Clause 3 provides that Part 1 amends the Marine Mammals Protection Act 1978.

Clause 4 inserts interpretation in section 2(1) of the Marine Mammals Protection Act 1978, and replaces subsection 3 with new subsections 3 and 4 giving the Minister of Conservation power to declare new threatened species by notice in the *Gazette*. A new definition of ‘best available information’ is inserted in all of the amended Acts to ensure the scientific basis for decision-making is as sound as possible.

Clause 5 inserts new sections after section 2 of the Marine Mammals Protection Act 1978, which set overall protection objectives for these Acts. The amendments clarify the purpose of the Marine Mammals Protection Act 1978 in relation to the protection of marine mammals; information principles; a duty to avoid, remedy or mitigate ad-

verse effects; and an appeal process. The objectives are to ensure that marine animals are a functioning element of their ecosystem, that populations be maintained at healthy levels and that depleted or threatened populations be allowed to recover to non-threatened status within a reasonable timeframe.

Clauses 6 and 7 insert new subsections to section 3A of the Marine Mammals Protection Act 1978 to clarify the role of the Department of Conservation in administering marine mammals and sanctuaries. These provide clear statements of the monitoring that is required to ensure that the objectives of the Act are met.

Clause 8 repeals sections 3F and 3G of the Marine Mammals Protection Act 1978.

Clause 9 amends the procedure for preparation and approval of population management plans.

Clauses 10 and 11 amend the requirements for the application for a permit, and reporting of death or injury.

Clause 12 amends the offences and penalties under the Marine Mammals Protection Act 1978.

Clause 13 provides that Part 2 amends the Wildlife Act 1953.

Clause 14 amends interpretation to the Wildlife Act 1953 in line with the interpretation in Clause 4.

Clause 15 inserts new sections after section 8 of the Wildlife Act 1953 in relation to a duty to avoid, remedy or mitigate adverse effects and an appeal process. The objectives are to ensure that marine animals are a functioning element of their ecosystem, that populations be maintained at healthy levels and that depleted or threatened populations be allowed to recover to non-threatened status within a reasonable timeframe.

Clause 16 substitutes sections 14F to 14HA of the Wildlife Act 1953 to clarify the purpose of the Act in relation to the protection of marine mammals, information principles, population management plans, fishing-related mortality of marine wildlife.

Clause 17 amends the procedure for preparation and approval of population management plans.

Clause 18 amends the offences and penalties under the Wildlife Act 1953.

Clause 19 provides that Part 3 amends the Fisheries Act 1996.

Clause 20 amends interpretation to the Fisheries Act 1996 in line with the interpretation in clauses 4 and 14.

Clause 21 inserts environmental principles into the Fisheries Act 1996.

Clause 22 inserts after section 9 a duty to avoid, remedy or mitigate adverse effects and an appeals process.

Clause 23 substitutes a word in section 11A(1) of the Fisheries Act 1996.

Clause 24 amends section 15 of the Fisheries Act 1996 in relation to fishing-related mortality of marine mammals or other marine wildlife.

Clause 25 amends section 228(1) regarding the breach of conditions or requirements.

Metiria Turei

Marine Animals Protection Law Reform Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Marine Animals Protection Law Reform Act **2009**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1

Marine Mammals Protection Act 1978

3 Principal Act amended

This Part amends the Marine Mammals Protection Act 1978. 10

4 Interpretation

- (1) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

- best available information** means—
- (a) information that is scientifically robust taking into account the views of qualified independent scientists; and
 - (b) the best information that, in the circumstances, is available without undue cost, effort, or time
- (2) Section 2(1) is amended by repealing the definition of **fishing-related mortality** and substituting the following definition:
- fishing-related mortality** means the death of any marine mammal that can be attributed directly or indirectly to any fishing activity
- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- maximum net productivity** means the greatest net annual increment in population size, resulting from reproduction minus natural mortality
- natural range means**, in respect of a species, all areas currently occupied or occupied in the recent past by the species
- population** means a demographically independent population, being a population in which internal dynamics (births and deaths) are more important for sustainability than external dynamics (emigration and immigration)
- (4) Section 2 is amended by repealing subsection (3) and substituting the following subsections:
- (3) Subject to **subsection (4)**, the Minister may, from time to time, by notice in the *Gazette*, declare any species of marine mammal to be a threatened species for the purposes of this Act.
 - (4) In determining whether or not to declare any species of marine mammal to be a threatened species, the Minister must ensure compliance with any relevant international agreements or standards and any relevant standards within New Zealand.
- 5 New sections 2A, 2B, 2C, and 2D inserted**
- The following sections are inserted after section 2:
- 2A Purpose**
- (1) The purpose of this Act is to provide for the protection of marine mammals.
 - (2) In this Act, **protection of marine mammals** means ensuring that—
 - (a) marine mammals are able to be a functioning element of their ecosystem:
 - (b) populations of marine mammals are maintained above the level at which they have their maximum net productivity throughout their natural range:

(c)	depleted or threatened populations of marine mammals are able to recover to non-threatened status within a reasonable timeframe:	
(d)	human impacts on marine mammal populations are managed so that—	
(i)	populations do not decline; and	
(ii)	there is a high probability that each population will be at or above the level at which it has its maximum net productivity within 10 years after the coming into force of Part 1 of the Marine Animals Protection Law Reform Act 2009 ; and	5
(iii)	human-induced mortalities of marine mammals are reduced to insignificant levels, approaching zero, within 20 years after the coming into force of Part 1 of the Marine Animals Protection Law Reform Act 2009 ; and	10
(iv)	management of local and regional populations and areas meet the objectives in this section for each individual population and for the species as a whole.	15
2B	Information principles	
	All persons exercising or performing functions, duties, or powers under this Act must take into account the following information principles:	20
(a)	decisions should be based on the best available information:	
(b)	decision makers should consider any uncertainty in the information available in any case:	
(c)	decision makers should be cautious when information is uncertain, unreliable, or inadequate:	25
(d)	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 this Act.	
2C	Duty to avoid, remedy, or mitigate adverse effects	
(1)	Every person has a duty to avoid, remedy, or mitigate any adverse effect on marine mammals arising from an activity carried on by or on behalf of that person, whether or not the activity is in accordance with a policy, strategy, plan, or permit made under this Act.	30
(2)	The duty referred to in subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.	35
(3)	Despite subsection (2) , the Director-General or an officer may serve an enforcement order under this subsection to—	

- (a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Director-General or an officer, is or is likely to have an adverse effect on the environment; or
- (b) require a person to do something that, in the opinion of the Director-General or an officer, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person.

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2D Appeals

- (1) Any person on whom an enforcement order is served may appeal to the District Court against the whole or any part of the order.
- (2) Subject to this section, every appeal shall be made and determined in accordance with the District Courts Act 1947 and the rules of Court made under that Act.
- (3) Notice of an appeal under **subsection (1)** shall—
 - (a) state the reasons for the appeal and the relief sought; and
 - (b) be lodged with the District Court and served within 15 working days of service of the enforcement order on the appellant, or within such further period as the District Court may allow.
- (4) In determining an appeal the District Court may—
 - (a) confirm, reverse, or modify the order appealed against, and make such orders and give such directions to the Director-General or officer, as the case may require, as may be necessary to give effect to the Court’s decision; or
 - (b) refer the matter back to the Director-General or officer, as the case may require, with directions to reconsider the whole or any specified part of the matter.
- (5) Any appeal under this section shall be by way of rehearing.
- (6) The decision of the District Court shall be final.
- (7) An appeal against an enforcement order does not operate as a stay of the order.

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6 Department of Conservation to administer marine mammals and sanctuaries

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Section 3A is amended by adding the following subsections:

- (2) The Department of Conservation must regularly monitor human impacts on marine mammals to ensure that the objectives specified in **section 2A** are being met.
- (3) The purposes of monitoring under **subsection (2)** are to—
 - (a) obtain statistically reliable estimates of human impacts:

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- (b) obtain statistically reliable population estimates for impacted populations:
- (c) monitor the effectiveness of any measures taken to reduce human impacts.
- (4) In the case of fisheries impacts, monitoring to obtain statistically reliable estimates of human impacts under **subsection (3)(a)** involves placing observers on a sufficiently high proportion of fishing vessels to obtain a statistically reliable estimate of fisheries mortality. 5
- (5) Information obtained under **subsection (3)** must be reviewed from time to time but at least once every 5 years in order to ensure progress towards the objectives specified in **section 2A**. 10
- 7 Department of Conservation to administer marine mammals and sanctuaries**
- (1) Section 3E is amended by repealing subsection (1) and substituting the following subsections: 15
- (1) The Minister must approve population management plans for all threatened species in a timely fashion, and may from time to time approve a population management plan in respect of other marine mammal species.
- (1A) Population management plans under **subsection (1)** must contain all of the following information in respect of each species: 20
- (a) an assessment of the biology and status of the species:
- (b) an assessment of any known or potential fisheries interaction with the species:
- (c) an assessment of the degree of risk caused by fishing-related mortality and other human-induced sources of mortality to the species, whether within New Zealand fisheries waters or elsewhere within the range of the species: 25
- (d) an estimate of the range of human-induced mortality for each population that would allow the purpose of this Act as set out in **section 2A** to be met: 30
- (e) the maximum level of fishing-related mortality for each population, in New Zealand fisheries waters, that would allow the purpose of this Act as set out in **section 2A** to be met:
- (f) recommendations to the Minister of Fisheries on measures to mitigate the fishing-related mortality of the species, including recommendations relating to the fishing method that results in the lowest fishing-related mortality of marine mammals: 35
- (g) recommendations to the Minister of Fisheries on the standard of information to be collected on fishing-related mortality.
- (2) Section 3E(2) is amended by omitting “or paragraph (g)”. 40

8 Sections 3F and 3G repealed

Sections 3F and 3G are repealed.

9 Procedure for preparation and approval of population management plans

- (1) Section 3H(1) is amended by repealing paragraph (a) and substituting the following paragraph: 5

(a) the Director-General must prepare every population management plan in consultation with every Conservation Board and with representatives of Māori, environmental interests, commercial interests, academic or research institutions, and recreational interests:

- (2) Section 3H(1) is amended by repealing paragraphs (m), (n), and (o) and substituting the following paragraphs: 10

(m) the Minister must consult with the Minister of Fisheries having regard to the impacts of implementing the maximum allowable level of fishing-related mortality on commercial fishing and, after having regard to—

- (i) the provisions of **sections 2A and 3E**; and 15
 (ii) all submissions made on the draft plan; and
 (iii) such other matters as the Minister considers relevant:

(n) the Minister may approve the plan:

10 Application for permit

- (1) Section 5(2) is amended by repealing paragraph (b) and substituting the following paragraph: 20

(b) in the case of an intended research project, a full description of the project or programme in which the marine mammal to be taken will be used, a complete list of the sponsors or co-operating institutions concerned with the project, the names and qualifications of any scientists involved, a review of other research methods that could be used to gather the same data without physical contact with or harassment of the marine mammals involved, and an outline of any financial or other reasons why invasive research methods were chosen in this case: 25

- (2) Section 5(6) is repealed and the following subsection substituted: 30

(6) Despite subsection (5), the Minister is not, except in the case of an application for a permit to hunt and kill any marine mammal or capture any marine mammal for display purposes, required to publish the notice referred to in that subsection if the Minister is satisfied that the application relates to an emergency marine mammal rescue situation. 35

11 Reporting of death or injury

- (1) The heading to section 16 is amended by omitting “accidental”.
 (2) Section 16(1) and (2) are amended by omitting “accidentally or incidentally”.

12 Offences and penalties

Section 23(1) is amended by repealing paragraph (a) and substituting the following paragraph:

- (a) acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, condition, or enforcement order given, made, or imposed under this Act or any regulations made under it; or 5

Part 2 Wildlife Act 1953

13 Principal Act amended

This Part amends the Wildlife Act 1953. 10

14 Interpretation

- (1) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

best available information means—

- (a) information that is scientifically robust taking into account the views of qualified independent scientists; and 15
(b) the best information that, in the circumstances, is available without undue cost, effort, or time

- (2) Section 2(1) is amended by repealing the definition of **fishing-related mortality** and substituting the following definition: 20

fishing-related mortality means the death of any marine wildlife that can be attributed directly or indirectly to any fishing activity

- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

maximum net productivity means the greatest net annual increment in population size, resulting from reproduction minus natural mortality 25

natural range means, in respect of a species, all areas currently occupied or occupied in the recent past by the species

population means a demographically independent population, being a population in which internal dynamics (births and deaths) are more important for sustainability than external dynamics (emigration and immigration) 30

- (4) Section 2 is amended by repealing subsection (1A) and adding the following subsections:

- (2) Subject to **subsection (3)**, the Minister may, from time to time, by notice in the *Gazette*, declare any species of marine wildlife to be a threatened species for the purposes of this Act. 35

- (3) In determining whether or not to declare any species of marine wildlife to be a threatened species, the Minister must ensure compliance with any relevant international agreements or standards and any relevant standards within New Zealand.

15 New sections 8A and 8B inserted 5

The following sections are inserted after section 8:

8A Duty to avoid, remedy, or mitigate adverse effects

- (1) Every person has a duty to avoid, remedy, or mitigate any adverse effect on marine wildlife arising from an activity carried on by or on behalf of that person, whether or not the activity is in accordance with a policy, strategy, plan, or permit made under this Act. 10
- (2) The duty referred to in **subsection (1)** is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.
- (3) Despite **subsection (2)**, an enforcement order may be made or served under this subsection to— 15
- (a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Director-General, is or is likely to have an adverse effect on the environment; or
- (b) require a person to do something that, in the opinion of the Director-General, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person. 20

8B Appeals

- (1) Any person on whom an enforcement order is served may appeal to the District Court against the whole or any part of the order. 25
- (2) Subject to this section, every appeal shall be made and determined in accordance with the District Courts Act 1947 and the rules of Court made under that Act.
- (3) Notice of an appeal under **subsection (1)** shall— 30
- (a) state the reasons for the appeal and the relief sought; and
- (b) be lodged with the District Court and served within 15 working days of service of the enforcement order on the appellant, or within such further period as the District Court may allow.
- (4) In determining an appeal the District Court may— 35
- (a) confirm, reverse, or modify the order appealed against, and make such orders and give such directions to the Director-General, as the case may require, as may be necessary to give effect to the Court's decision; or

- (b) refer the matter back to the Director-General, as the case may require, with directions to reconsider the whole or any specified part of the matter.
- (5) Any appeal under this section shall be by way of rehearing.
- (6) The decision of the District Court shall be final. 5
- (7) An appeal against an enforcement order does not operate as a stay of the order.

16 Sections 14F to 14H repealed and new sections substituted

Sections 14F to 14H are repealed and the following sections are substituted:

14F Purpose

- (1) The purpose of **sections 14H and 14HA** is to provide for the protection of marine wildlife. 10
- (2) In this Act, **protection of marine wildlife** means ensuring that—
 - (a) species and individuals of any species of marine wildlife are able to be a functioning element of their ecosystem:
 - (b) populations of marine wildlife are maintained above the level at which they have their maximum net productivity throughout their natural range: 15
 - (c) depleted or threatened populations of marine wildlife are able to recover to non-threatened status within a reasonable timeframe:
 - (d) human impacts on marine wildlife populations are managed so that— 20
 - (i) populations do not decline; and
 - (ii) there is a high probability that each population will be at or above the level at which it has its maximum net productivity within 10 years after the coming into force of **Part 1 of the Marine Animals Protection Law Reform Act 2009**; and 25
 - (iii) human-induced mortalities of marine wildlife are reduced to insignificant levels, approaching zero, within 20 years after the coming into force of **Part 1 of the Marine Animals Protection Law Reform Act 2009**; and
 - (iv) management of local and regional populations and areas meet the objectives in this section for each individual population and for the species as a whole. 30

14G Information principles

All persons exercising or performing functions, duties, or powers under **sections 14H and 14HA** must take into account the following information principles: 35

- (a) decisions should be based on the best available information:

- (b) decision makers should consider any uncertainty in the information available in any case:
- (c) decision makers should be cautious when information is uncertain, unreliable, or inadequate:
- (d) 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 this Act. 5

14H Population management plans

- (1) The Minister must approve population management plans for all threatened species of marine wildlife in a timely fashion, and may from time to time approve a population management plan in respect of other marine wildlife species. 10
- (2) Population management plans under **subsection (1)** must contain all of the following information in respect of each species:
 - (a) an assessment of the biology and status of the species: 15
 - (b) an assessment of any known or potential fisheries' interaction with the species:
 - (c) an assessment of the degree of risk caused by fishing-related mortality and other human-induced sources of mortality to the species, whether within New Zealand fisheries waters or elsewhere within the range of the species: 20
 - (d) an estimate of the range of human-induced mortality for each population that would allow the purpose in **section 14F** and principles in **section 14G** to be met:
 - (e) the maximum level of fishing-related mortality for each population of marine wildlife in New Zealand fisheries waters that would allow the purpose in **section 14F** and principles in **section 14G** to be met: 25
 - (f) recommendations to the Minister of Fisheries on measures to mitigate the fishing-related mortality of the species, including recommendations relating to the fishing method that results in the lowest fishing-related mortality of marine wildlife: 30
 - (g) recommendations to the Minister of Fisheries on the standard of information to be collected on fishing-related mortality.

14HA Fishing-related mortality of marine wildlife

- (1) Subject to **section 14H**, the Minister may take reasonable measures to avoid, remedy, or mitigate any adverse effects of fishing on marine wildlife. 35
- (2) The Department of Conservation must regularly monitor human impacts on marine wildlife to ensure that the objectives specified in **section 14F** are being met.

- (3) The purposes of monitoring under **subsection (2)** shall be to—
- (a) obtain statistically reliable estimates of human impacts:
 - (b) obtain a statistically reliable population estimate for impacted populations:
 - (c) monitor the effectiveness of any measures taken to reduce human impacts. 5
- (4) In the case of fisheries impacts, monitoring to obtain statistically reliable estimates of human impacts under **subsection (3)(a)** must involve placing observers on a sufficiently high proportion of fishing vessels to obtain a statistically reliable estimate of fisheries mortality. 10
- (5) Information obtained under **subsection (3)** must be reviewed from time to time, and at least once every 5 years in order to ensure progress towards the objectives specified in **section 14F**.

17 Procedure for preparation and approval of population management plans

- (1) Section 14I(1) is amended by repealing paragraph (a) and substituting the following paragraph: 15
- (a) the Director-General must prepare every population management plan in consultation with every Conservation Board and with representatives of Māori, environmental interests, commercial interests, academic or research institutions, and recreational interests: 20
- (2) Section 14I(1) is amended by repealing paragraphs (m), (n), and (o) and substituting the following paragraphs:
- (m) the Minister must consult with the Minister of Fisheries having regard to the impacts of implementing the maximum allowable level of fishing-related mortality on commercial fishing and, after having regard to— 25
 - (i) the provisions of **sections 14F and 14H**; and
 - (ii) all submissions made on the draft plan; and
 - (iii) such other matters as the Minister considers relevant:
 - (n) the Minister may approve the plan:

18 Offences and penalties 30

Section 65(1) is amended by repealing paragraph (j) and substituting the following paragraph:

- (j) fails to comply in any respect with any of the provisions of this Act or of any regulation or notice or enforcement order made under this Act, or does any act in contravention thereof. 35

Part 3 Fisheries Act 1996

19 Principal Act amended

This Part amends the Fisheries Act 1996.

20 Interpretation

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- (1) Section 2(1) is amended by repealing the definition of **best available information** and substituting the following definition:

best available information means—

- (a) information that is scientifically robust taking into account the views of qualified independent scientists; and
- (b) the best information that, in the circumstances, is available without undue cost, effort, or time

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- (2) Section 2(1) is amended by repealing the definition of **fishing-related mortality** and substituting the following definition:

fishing-related mortality means the death of any marine mammal or marine wildlife that can be attributed directly or indirectly to any fishing activity

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- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

marine mammal has the meaning given to it by section 2(1) of the Marine Mammals Protection Act 1978

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marine wildlife has the meaning given to it by section 2(1) of the Wildlife Act 1953

maximum net productivity means the greatest net annual increment in population size, resulting from reproduction minus natural mortality

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population means a demographically independent population, being a population in which internal dynamics (births and deaths) are more important for sustainability than external dynamics (emigration and immigration)

21 Environmental principles

- (1) Section 9 is amended by omitting “shall take into account” and substituting “must recognise and provide for”.
- (2) Section 9(a) is amended by omitting “a level that ensures their long-term viability” and substituting “the level at which they have their maximum net productivity through their natural range”.

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22 New sections 9A and 9B inserted

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The following sections are inserted after section 9:

- 9A Duty to avoid, remedy, or mitigate adverse effects**
- (1) Every person has a duty to avoid, remedy, or mitigate any adverse effect on marine mammals and marine wildlife arising from an activity carried on by or on behalf of that person, whether or not the activity is in accordance with a policy, strategy, plan, or permit made under this Act. 5
- (2) The duty referred to in **subsection (1)** is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.
- (3) Despite **subsection (2)**, an enforcement order may be made or served under this subsection to—
- (a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Chief Executive or a fishery officer, is or is likely to have an adverse effect on the environment; or 10
- (b) require a person to do something that, in the opinion of the Chief Executive or a fishery officer, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person. 15
- 9B Appeals**
- (1) Any person on whom an enforcement order is served may appeal to the District Court against the whole or any part of the order.
- (2) Subject to this section, every appeal shall be made and determined in accordance with the District Courts Act 1947 and the rules of Court made under that Act. 20
- (3) Notice of an appeal under **subsection (1)** shall—
- (a) state the reasons for the appeal and the relief sought; and
- (b) be lodged with the District Court and served within 15 working days of service of the enforcement order on the appellant, or within such further period as the District Court may allow. 25
- (4) In determining an appeal the District Court may—
- (a) confirm, reverse, or modify the order appealed against, and make such orders and give such directions to the Chief Executive or fisheries officer, as the case may require, as may be necessary to give effect to the Court's decision; or 30
- (b) refer the matter back to the Chief Executive or fisheries officer, as the case may require, with directions to reconsider the whole or any specified part of the matter. 35
- (5) Any appeal under this section shall be by way of rehearing.
- (6) The decision of the District Court shall be final.
- (7) An appeal against an enforcement order does not operate as a stay of the order.

23 Fisheries plans

Section 11A(1) is amended by omitting “approve” and substituting “make”.

24 Fishing-related mortality of marine mammals or other marine wildlife

(1) Section 15(1)(b) is amended by omitting “may take such other measures as he or she considers necessary” and substituting “may take other reasonable measures”.

(2) Section 15 is amended by repealing subsection (2) and substituting the following subsections:

(2) In the absence of a population management plan, the Minister must, after consultation with the Minister of Conservation, take reasonable measures to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species, and such measures may include setting a limit on fishing-related mortality.

(2A) In the absence of a population management plan, the Minister may, after consultation with the Minister of Conservation, take reasonable measures to avoid, remedy, or mitigate the effect of fishing-related mortality on any species of marine mammal or marine wildlife, and such measures may include setting a limit on fishing-related mortality.

(3) Section 15(3) is amended by inserting “or desirable for the purposes of this section” after “considers necessary”.

25 Breach of conditions or requirements

Section 228(1) is amended by adding “; or” to paragraph (b) and adding the following paragraph:

(c) any enforcement order made under **section 9A**.