

Legislative Statement presented in accordance with Standing Order 272

### **Fisheries Amendment Bill 2022 – Second Reading**

This legislative statement supports the second reading of the Fisheries Amendment Bill 2022.

#### **Objective**

The objective of the Fisheries Amendment Bill 2022 (the Bill) is to strengthen and modernise New Zealand's fisheries management system to a more sustainable, high-value operating model and incentivise better fishing practice by commercial fishers.

The Bill aims to:

- tighten commercial fishing rules for which fish must be landed, and which will be allowed to be discarded at sea;
- improve transparency, accountability, and responsiveness in the fisheries system;
- establish a graduated approach for offences and penalties;
- enable more efficient and responsive decision-making for commercial and recreational management measures;
- provide for the development of alternative avenues for fishers to dispose of unwanted catch to be established through regulations; and
- further facilitate on-board cameras on fishing vessels.

#### **Background**

Fishing plays an important role in New Zealand's economy and society across commercial, recreational, and customary interests. Commercial fishing employs approximately 13,300 people and contributes \$4.2 billion per year in total economic activity, including \$1.35 billion in export revenue for the year ended June 2021. Recreational fishing is a popular activity for both New Zealanders and tourists – about 700,000 people fish each year and spend almost \$1 billion on recreational fishing and related activities.<sup>1</sup> Tangata whenua have a central role in the sustainable use of New Zealand's fisheries resources, as managers/kaitiaki (guardians) and users of customary fisheries, and as recreational and commercial fishers.

The Fisheries Act, introduced in 1986, created the New Zealand fisheries management system and the Quota Management System (QMS) to provide for the use of fisheries resources while ensuring sustainability. The QMS is a rights-based

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<sup>1</sup> Derived from NZIER report to the Ministry for Primary Industries: *Economic impact of the seafood sector; an input-output and CGE assessment and New Zealand Marine Research Foundation report: Recreational Fishing in New Zealand: A Billion Dollar Industry* (2016).

individual transferable quota system that controls fishing activity through the setting of the catch limit, the total allowable catch (TAC). The TAC sets the quantity of fish that can be taken for each fish stock per fishing year. The total allowable commercial catch (TACC) is the tonnage portion of the TAC set aside for commercial quota once allowances for non-commercial (customary and recreational) interests have been considered as well as allowance made for other sources of fishing mortality. In principle, the QMS creates an incentive for fishers to fish within sustainable limits.

A strong fisheries management system requires commercial fishing to be sustainable, productive, and inclusive. While the QMS has improved the sustainability of many of New Zealand's fisheries, there are some issues with the fisheries management system, which contribute to fish wastage, illegal activity, and lost future economic opportunity. The Bill will amend the Fisheries Act 1996 (the Act). The Bill will require several consequential amendments to the commercial and recreational fishing regulations and supports a commercial fishing sector that is innovative, and technology driven, has highly selective practices and is responsive to cumulative pressures on the marine environment caused by, for example, climate change.

The specific purposes of the proposals are to ensure New Zealand can be a world leader in fisheries management and respond to:

- changing public expectations about how the marine ecosystem is managed;
- growing demand for high quality, ethically harvested seafood;
- advances in information capability and fishing innovations;
- improvement in knowledge about the environment and the potential effects of fishing on the environment; and
- better understanding of science and fisher behaviour.

The Bill will respond to some issues in the fisheries management system to ensure our fisheries management rules operate together to incentivise good fishing practice. Legislative changes include:

- simplifying and strengthening the commercial fishing rules relating to the landing or return of fish and aquatic life, including a new power authorising the Minister for Oceans and Fisheries (the Minister) to issue exceptions that allow or require some species to be returned;
- establishing three criteria for issuing ministerial exceptions for returning catch to the sea as follows:
  - stock or species that has an acceptable likelihood of survival; or
  - stock or species that would damage other catch if retained or fish damaged through unavoidable circumstances; or
  - mandatory specific stock or species returns that are required for a biological, fisheries management, or ecosystem purpose and the stock or species that has an acceptable likelihood of survival
- introduce a set of factors the Minister has to have regard to when considering stock or species for the acceptable likelihood of survival exception;
- repealing Schedule 6<sup>2</sup>;

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<sup>2</sup> Schedule 6: Stocks which may be returned to the sea or other waters in accordance with stated requirements (Fisheries Act 1996).

- deeming the stocks or species that can currently be returned or abandoned to the sea by commercial fishers as meeting the assessment and consultation requirements of new section 72A, on enactment;
- introducing graduated penalties for offences relating to the landings and discards rules for QMS fish and aquatic life and empowering the making of regulations to create infringement and demerit points systems;
- including a new defence for catch to be returned to the sea where the commercial fisher reasonably believed it was necessary to abandon the catch in order to save a marine mammal and/or protected shark and ray species;
- allowing for the use of pre-set decision rules for the purpose of setting and adjusting sustainability measures;
- enabling changes to recreational management controls to be implemented more quickly;
- supporting new technology, including on-board cameras, to monitor fishing and fishing-related activities more effectively;
- clarifying that new technology, including on-board cameras, are cost recoverable under the Act;
- developing alternative avenues for fishers to dispose of unwanted catch once landed; and
- repealing the Fisheries Act 1983 as its remaining provisions are redundant.

## **Key features of the Bill**

### Simplifying landing and returning rules

The Bill proposes to simplify and strengthen the commercial fishing rules relating to the landing or returning of fish and aquatic life by clarifying which fish and aquatic life must be landed and which will be allowed to be discarded at sea. To do this, the Bill proposes to include a new power authorising the Minister to issue exceptions that allow or require stocks or species to be returned to the sea or other waters. This power will be exercised through an instrument that must be notified in the New Zealand Gazette. The instrument will be used to both allow and to require stocks to be returned.

The Bill proposes to amend the Act and associated regulations to clarify that:

- all quota management system (QMS) stocks or species caught by commercial fishers must be landed – live or dead – and accounted for within the fisheries management system (unless subject to an exception issued by the Minister).
- the exception for QMS stocks or species below legal size and the exceptions currently in Schedule 6 will be removed and commercial fishers will have to rely on an instrument issued by the Minister.

The Minister will be able to list certain stocks or species as either being able to be returned or required to be returned for one of the three reasons set out below.

Stocks or species will need to be alive and likely to survive in all but one exception (where stock or species will damage other catch if retained or fish caught is damaged through unavoidable circumstances); in most cases commercial fishers will still need to assess whether the stock is alive and likely to survive on return.

The three proposed criteria for issuing ministerial exceptions for returning catch to the sea are as follows:

- stock or species has an acceptable likelihood of survival; or
- stock or species would damage other catch if retained (for example – but not limited to - ammoniating species) or itself was damaged through unavoidable circumstances (for example – but not limited to – through disease or predation); or
- mandatory specific stock or species returns for a biological, fisheries management, or ecosystem purpose and the stock or species has an acceptable likelihood of survival.

This last criterion could apply to females of the species to ensure appropriate spawning biomass (for example, female rock lobster carrying external eggs); return of keystone species that play an important ecosystem role (for example, large snapper play an important role in the structure of some ecosystems by keeping kina at bay, which allows kelp to flourish and create habitat for a host of other species).

#### Transitioning to the new landings and discards rules

To provide commercial fishers with some time to adjust their fishing practices, the Bill proposes to maintain the status quo, for now, by deeming the current exceptions to landing requirements as meeting the consultation and assessment requirements of new section 72A. This will allow the stocks or species to be included in an instrument on enactment without needing consultation or assessment against other criteria set out in the Act, thereby preserving the status quo.

These exceptions include the stocks or species currently listed in Schedule 6 of the Act and stocks or species with minimum legal-size requirements in the various commercial fishing regulations.

The status quo shall continue for some, but not all, of the current exceptions. The Bill proposes that some exceptions will continue indefinitely, and some will be gradually reviewed against the criteria in new section 72A over the four-year transitional period and either retained (in an instrument made under that section) or removed. If not reviewed, these exceptions will expire by 30 September 2026.

#### Establishing graduate offences and penalties

An improved model is needed for landing and discarding offences, where fishers are penalised proportionate to their offending and extending the range of tools available the Ministry for Primary Industries (MPI) to encourage and support improved compliance outcomes.

The Bill proposes to amend the Act to introduce new graduated offences and penalties for unlawful discarding or retaining certain quantities of fish or aquatic life.

The Bill will maintain the current maximum penalty (\$250,000) for the most serious breaches of the landings and discards rules with a new graduated penalty model. Fishers that discard 50 or fewer fish a day could face up to a \$10,000 fine, fishers that

discard over 50 could face up to \$100,000, and fishers that offend two or more times in a three-year period could receive the maximum \$250,000 fine.

Property forfeiture will apply in certain cases such as when offending occurs two or more times in a three-year period. The court will also have discretion to order forfeiture of property used in the commission of an offence in cases where commercial fishers are convicted for unlawfully returning, abandoning, or retaining more than 50 fish or animals that are aquatic life on any day.

The Bill also proposes to empower the making of regulations for an infringement system and a demerit points system. Infringement offences would apply only to new landings and discards rules. The demerit points would be recorded for infringement offences and would apply to permit holders and vessel masters, with any demerit points awarded to offenders expiring after three years. Any demerit system developed under the empowering provisions in the Bill would be required to include a review and appeal process.

Commercial fishing regulation offences will continue to apply to breaches of the commercial fishing regulations.

#### Allowing the return of protected species

The Bill proposes a new defence provision to allow commercial fishers to return catch to the sea if it is to save marine mammals and/or protected shark and ray species. The defence would be available if the commercial fisher reasonably believed the protected species caught is alive and likely to remain alive on release before returning or abandoning the catch. The Bill also proposes to enable the Minister to add other protected species to this defence in the future.

As these types of events are considered rare occurrences, and the intention of the defence is to improve outcomes for protected species and incentivise their release, fishers will be required to report the event and provide an estimation of the volume of fish released but will not be required to balance the abandoned fish against annual catch entitlement.

#### Streamline decision-making

The Bill proposes to empower the Minister to create pre-set decision rules that would allow him or her to set or vary sustainability measures under the Act. The Bill also proposes to allow the rules to be used to adjust the total allowable commercial catches for stocks.

The Bill sets out that, at a minimum, each rule would include:

- a management objective for the stock or area;
- a corresponding target biomass level for the stock concerned;
- a threshold above or below which the Minister may make a response in respect of the stock or area concerned; and
- agreed responses to changes in abundance of the stock(s) and/or impacts of fishing.

Defined thresholds would serve as triggers signalling that management action in the form of pre-agreed response is needed to achieve the management objectives and the target biomass.

A pre-set decision rule would need to be consulted on when the rule is made, amended, reviewed, revoked, or replaced. However, the Bill proposes that no consultation is required when the Minister makes a decision in accordance with the rule. This is because there would have already been consultation on the pre-agreed responses when making the rule.

Before making, amending, applying, revoking, reviewing, or replacing pre-set decision rules the Bill will require the Minister to comply with requirements of section 11(1) to (2A) as if they were setting a sustainability measure following the existing process. These provisions require the Minister to consider a number of matters, such as the natural variability of the fish stock concerned, regional plans, and relevant fisheries plans.

The Minister also would be required to have regard to the matters specified in section 13 (2), (2A), and (3) when setting or varying a total allowable catch in accordance with a pre-set decision rule. These provisions require that a total allowable catch is set: to maintain, restore to, or move toward or above a level at which a stock can produce the maximum sustainable yield; with regard to the interdependence of stocks; and using the best available information.

When using a rule for the total allowable commercial catch the Minister would not be required to consult if the rule that was consulted on provides for non-commercial fishing interests. Otherwise, before making a decision the Minister must consult with representative of classes of persons having an interest, including Māori, environmental, commercial, and recreational interests.

Rules would have to be reviewed (including consultation) within five years of implementation or the last review, whichever is the sooner. The rule would automatically expire if it is not reviewed within five years. The Minister would have to notify interested parties in writing as soon as practicable after making, amending, revoking, or replacing pre-set decision rules.

Pre-set decision rules will enable faster responses to changes in fish stock status leading to better sustainability and use outcomes.

The Bill proposes to amend the Fisheries (Amateur Fishing) Regulations 2013 by empowering the Minister to specify recreational management controls, such as daily limits, minimum sizes etc, in an instrument. The current limits and sizes will continue to apply until the Minister replaces them with an instrument. This would enable recreational management controls to be implemented more quickly.

#### Extending observation of fishing activities and cost recovery

To improve the effectiveness of on-board cameras, the Bill proposes to amend the Act to clarify that requirements and regulations in relation to specified equipment (including electronic equipment) for observing fishing or transportation. It also extends to the

observation of fishing related activities that occur after the fish are brought on board the vessel, including sorting, processing, and discarding of fish.

The Bill will amend the Act to clarify that any tools or specified equipment installed on fishing vessels (including electronic equipment) that are used to deliver a service that is itself cost recoverable, are also able to be cost recovered.

### Developing alternative avenues for fishers to dispose of unwanted catch once landed

To complement the new landings and discards rules, the Bill amends some of the current provisions relating to how commercial fishers can dispose of their catch on land. In particular, the Bill proposes to amend the Act to allow commercial fishers to dispose of their catch in accordance with regulations made for that purpose.

These amendments are necessary because:

- Under the current legislative framework, commercial fishers can only dispose of catch (on land) to either a licensed fish receiver or through wharf sales (with some limited exceptions). There is no obligation on the licensed fish receiver to accept all catch and the wharf sales framework only allows for low volume of fish to be sold in a transaction and there is no guarantee of sales.
- If the volume of unwanted fish is more than can be disposed of through existing avenues, fishers could end up in a situation where there are no other legal avenues available to them to dispose of their unwanted catch.

It is intended that these regulations will authorise the Chief Executive of the MPI to approve alternative methods of disposal, and that commercial fishers will only be able to seek approval if they are unable to dispose of their catch through existing avenues, on a case-by-case basis. The Bill proposes to empower the making of regulations that will:

- authorise the Chief Executive of MPI to approve alternative methods of disposal;
- provide for applications to use an approved alternative method of disposal and prescribe associated requirements;
- prescribe criteria that the Chief Executive of MPI must take into account in considering an application;
- prescribe requirements relating to the disposal of fish, aquatic life, or seaweed by an approved method of disposal; and
- provide for, and prescribe requirements relating to, the verification of the alternative methods of disposal of fish, aquatic life, or seaweed.

### Modernising the Fisheries Act

The Bill proposes the Fisheries Act 1983 be repealed as its remaining provisions are redundant.

### **Amendments recommended by the Primary Production Select Committee**

The Primary Production Select Committee (the Committee) has examined the Bill and recommended that it be passed with amendments. These amendments are consistent with the original policy of the Bill, but address some technical issues with the Bill and

take the opportunity to make some further improvements to the functioning of the Act. The key amendments recommended include:

### Relating to landing and returns rules

The Committee agreed that a non-limiting list of factors that the Minister must have regard to when considering the acceptable likelihood of survival of a stock or species should be included. These factors are:

- the sustainability of the stock or species
- the method by which the stock or species is taken
- the handling practices for the stock or species taken
- the social, cultural, and economic factors the Minister considers relevant.

The provision is designed to improve transparency and reflect the relative trade-offs inherent in the consideration of the policy intent to encourage fishers to avoid catching fish they do not want and make best use of all catch and the cost and practicalities associated with survivability in particular circumstances. The overall range of acceptable likelihood for a particular species or stock would be based on scientific evidence and expert advice, but determination of the acceptable level in relation to a particular method/circumstance could be influenced by the four factors, leading to higher or lower survival rates being 'acceptable' within that range.

Other amendments relating to landing and returns rules include:

- Revising the clause 13 (Dumping of fish prohibited) and other relevant clauses to focus on fish and animals that are aquatic life, and to exclude plants. A requirement to count plants would make enforcement of this provision in relation to plants that are aquatic life impractical, and no plant species is expected to be brought into the QMS in the foreseeable future.
- Removing the reference to "negative economic value" in the new section 72A(2)(b). "Negative economic value" is open to subjective interpretation and this amendment will clarify that this exception is to allow commercial fishers to discard catch that would damage existing catch (for example, an ammoniating species), or that has been unavoidably damaged (for example, by disease or predation).

### Key changes relating to graduated offences and penalties

- Requiring a commercial fisher to reasonably believe that returning the fish or animal that is aquatic life is necessary to ensure the safety of the marine mammal, protected ray or shark species; and other protected species the Minister wishes to add.
- Specifying separate offences in the new section 72(4) for each of the following actions:
  - returning or abandoning fish that must be landed;
  - landing fish that must be returned;



- returning fish that must be returned, but in breach of the conditions of its return;
- returning fish that may be returned, but in breach of the conditions of its return.
- Specifying that the demerit points system only apply to fishing permit holders and vessel masters.
- Specifying that the demerit points:
  - may only be recorded for infringement offences;
  - would expire after 3 years;
  - would be subject to review and appeal processes.
- Removing the specific reference to the number of demerit points recorded when making a decision to place an observer onboard a fishing vessel.

#### Key changes relating to streamlined decision-making

- Including a definition of the “pre-agreed response” in section 2(1).
- Requiring that pre-set decision rules must specify:
  - the management objectives for the stock or area concerned;
  - a target biomass level for the stock concerned (if any);
  - a threshold above or below which the Minister may make a response in respect of the stock or area concerned;
  - the responses that the Minister is authorised to make.

This provision sets out the content that each pre-set decision rule must contain in order to be considered for approval in addition to other factors considered relevant. The requirements reflect that rules may apply to areas and groups of species/stocks as well as single stocks. Where the rule applies to an area rather than a stock, it may not be appropriate to have a particular target biomass. The threshold is designed to set out the level of acceptable variation in performance of the stocks, species or area covered by the rule before the rule is triggered. If performance varies beyond the level considered acceptable then the Minister can consider whether to take the pre-set action authorised under the rule.

- Requiring the Minister to review each pre-set decision rule within 5 years of being made or within 5 years of the last review. Specifying that failure to conduct a review within the prescribed timeframe would result in the rule automatically being revoked.
- Requiring the Minister to:
  - notify the persons consulted under section 12(2)(a) and 12(2)(b) that a pre-set decision rule has been revoked;
  - provide, in writing, the reasons for revoking the rule.
- Requiring the Minister when setting or varying any sustainability measure for 1 or more stocks or areas in accordance with a pre-agreed response to:
  - take into account the matters in section 11(1) and (2A);

- have regard to the matters in section 11(2) and (5).
- Requiring the Minister to carry out consultation before making, amending, replacing, reviewing, or revoking a rule.
- Clarifying that when setting or varying a total allowable catch in accordance with a pre-set decision rule, the Minister must have regard to the same matters as he or she would when setting or varying a total allowable catch under the existing decision-making process in section 13(2), (2A) and (3).
- Clarifying that the provisions in section 20(1) to (5) apply if the total allowable commercial catch is set or varied under a pre-set decision rule.
- Amending section 21 to require consultation for adjustments to a total allowable commercial catch unless the Minister allowed for non-commercial fishing interests and other sources of fishing mortality when making the pre-set decision rule