

Legislative Statement presented in accordance with Standing Order

Fisheries Amendment Bill 2022 – Third Reading

This legislative statement supports the third 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 to 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 recreational management measures;
- provide for the development of alternative methods 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.¹ Tangata whenua have a central role in the sustainable use of New Zealand's fisheries resources, as managers/kaitiaki (guardians), as 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

¹ 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 a catch limit, known as 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. These issues contribute to fish wastage, illegal activity, and lost future economic opportunity. The Bill will amend the Fisheries Act 1996 (the Act) and will require several consequential amendments to the commercial and recreational fishing regulations. It supports a commercial fishing sector that is innovative, technology driven and has highly selective practices.

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 or other animal that is aquatic life that is subject to the QMS. This includes 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:
 - stocks or species that have an acceptable likelihood of survival; or
 - stocks or species that would damage other catch if retained or are 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 has an acceptable likelihood of survival
- introducing a set of factors the Minister has to have regard to when considering stocks or species for the acceptable likelihood of survival exception;
- repealing Schedule 6²;

² 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 other animals that are 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 to save a marine mammal or a protected shark or ray species;
- 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 methods 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 other animals that are aquatic life by clarifying which fish and aquatic life must be landed and which will be allowed or required 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 by requiring commercial fishers to land – live or dead – all QMS stocks or species caught unless they are subject to an exception issued by the Minister. They must also be accounted for within the fisheries management system. 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 catch 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:

- stocks or species have an acceptable likelihood of survival; or
- stocks 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) or to the 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 many other species).

The Minister would also have regard to a non-limiting list of factors 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.

This would improve transparency and reflect the relative trade-offs inherent in the consideration of the policy intent encouraging fishers to avoid unwanted fish 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 or circumstance could be influenced by the factors above, leading to higher or lower survival rates being 'acceptable' within that range.

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 on 30 September 2026.

Establishing graduated 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 to 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 other animals that are 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 or a protected shark or 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 for recreational management controls

The Bill proposes to amend the Fisheries (Amateur Fishing) Regulations 2013 by empowering the Minister to specify recreational management controls, such as daily limits and minimum sizes 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 the things that can be observed and recorded by the electronic equipment extend to the fishing related activities as set out in the updated definition of fisheries services. These include activities that occur after the fish are brought on board the vessel, such as 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 volumes 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 methods, fishers could end up in a situation where there are no other legal options 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 use those approved methods if they are unable to dispose of their catch through existing avenues. The Bill proposes to empower the making of regulations that:

- 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.

Changes introduced via Supplementary Order Papers

Supplementary Order Paper No 252

This Supplementary Order Paper consists of two parts. The first part amends the Act and changes the fishing year for green-lipped mussel in quota management area 9 from 1 October each year to 1 April with a consequential amendment to the definition of fishing year in section 2(1) of the Act. The first fishing year for green-lipped mussel in quota management area 9 to commence on 1 April commences on 1 April 2024. The Supplementary Order Paper includes a consequential amendment to the definition of fishing year in section 2(1) of the Act, and a transitional provision in Schedule 1AA of the Act to provide for a 6-month fishing year commencing on 1 October 2023.

The second part amends the Fisheries (Amateur Fishing) Regulations 2013 and provides additional protection for hapuku/bass fish stocks in the Auckland East and West, the Central, and the Challenger Fisheries Management Areas in relation to daily and accumulation bag limits. Inclusion of these changes in the regulations as provided in this Supplementary Order Paper allows for them to be made and be carried over under the transitional provisions in the Bill that apply to existing sustainability measures.

Supplementary Order Paper No 257

This Supplementary Order Paper amends the Bill by removing the provisions relating to pre-set decision rules.