

Fisheries Act 1996 Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

This Bill amends section 13 of the Fisheries Act 1996. The purpose of the amendments is to enable the continuation of established practice in relation to setting a total allowable catch (TAC) under section 13. The Bill provides for technical amendments as a consequence of the judgment of Miller J in *Antons Trawling Company Limited v The Minister of Fisheries* (High Court, Wellington, CIV 2007-485-2199, 22 February 2008). The court in that case decided that before a TAC can be set under section 13, the Minister must be provided with an estimate of both current biomass and the biomass that can produce the maximum sustainable yield (MSY).

Since the Act came into force, various management strategies—all consistent with the concept of MSY—have been pursued, some using modelled estimates of biomass levels and others using alternative indicators of the relative state of the stocks. Some of the alternative indicators have direct links to MSY. In other cases the links are inferred. These alternative approaches are commonly used in fish stocks where information on biomass is not readily available. This is the case for the majority of New Zealand's 629 quota management stocks and is the norm internationally, being commonly used in jur-

isdictions with similar regimes such as Australia, the United States, and Canada.

The amendments will enable TACs to continue to be set under section 13 using existing management approaches, even where the current biomass and the biomass that can produce a MSY are not able to be estimated reliably for many stocks.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after it receives the Royal assent.

Clause 3 provides that the Bill amends the Fisheries Act 1996.

Clause 4 amends section 13, which requires the Minister of Fisheries to set a TAC in respect of the quota management area relating to each quota management stock

Subclause (1) inserts a *new subsection (2A)* which provides for the setting of a TAC if the Minister considers that the current level of the stock or the level that can produce a MSY is not able to be estimated reliably. Section 13(2) requires the Minister to form a view as to whether a stock is below, at, or above a biomass level that can produce a MSY. In circumstances where the Minister is unable to form such a view because of the absence of reliable biomass estimates, the new subsection requires the Minister to set a TAC and specifies how this is to be done.

Paragraph (a) of new subsection (2A) reiterates the requirement in section 10(d) that the absence of, or uncertainty in, information is not to be used as a reason for postponing or failing to set a TAC.

Paragraph (b) requires the Minister to have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock, being the same matters as specified in section 13(2).

Paragraph (c)(i) reiterates the requirement in section 10(a) that a decision should be based on the best available information.

Paragraph (c)(ii) requires the Minister to set a TAC that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level that can sustain a MSY.

Subclauses (2) and (3) make consequential amendments to section 13(3), (4), and (7).

Clause 5 is a transitional provision. It applies to consultation undertaken before the commencement of the Bill for the purposes of setting a TAC on or after the commencement of the Bill. The consultation is to be treated as complying with section 12 if, had it been undertaken after the commencement of the Bill, it would have complied with section 12.

Hon Jim Anderton

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Fisheries Act 1996 Amendment Act (No 2) **2008.**
- 2 Commencement**
This Act comes into force on the day after the date on which 5
it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Fisheries Act 1996.

4 Total allowable catch

- (1) Section 13 is amended by inserting the following subsection after subsection (2):
- “(2A) For the purposes of setting a total allowable catch under this section, if the Minister considers that the current level of the stock or the level of the stock that can produce the maximum sustainable yield is not able to be estimated reliably using the best available information, the Minister must—
- 5 “(a) not use the absence of, or any uncertainty in, that information as a reason for postponing or failing to set a total allowable catch for the stock; and 10
- “(b) have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock; and
- “(c) set a total allowable catch— 15
- “(i) using the best available information; and
- “(ii) that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level that can produce the maximum sustainable yield.” 20
- (2) Section 13(3) is amended by omitting “paragraph (b) or paragraph (c) of”.
- (3) Section 13(4) and (7) are amended by omitting “subsections (2) and (3)” and substituting in each case “subsections (2), **(2A)** (if applicable), and (3)”. 25

5 Transitional provision relating to consultation

- (1) This section applies to consultation undertaken before the commencement of this Act under section 12 of the principal Act for the purpose of setting or varying a total allowable catch for a quota management stock under section 13 of the principal Act after the commencement of this Act. 30

- (2) The consultation is to be treated as complying with section 12 of the principal Act if, had it been undertaken after the commencement of this Act, it would have complied with section 12 of the principal Act.
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