

Fisheries Amendment Bill (No 4)

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Fisheries Amendment Bill (No 4) and recommends by majority that it be passed with the amendments shown. These provisions have been divided from the Fisheries Amendment Bill (No 3), having been Part 3 of that bill, pursuant to Standing Order 288.

Introduction

The management of the scampi fishery has been the subject of controversy and judicial proceedings for more than a decade. Following a number of allegations, we undertook an inquiry into the administration and management of the scampi fishery in 2003 and recommended that scampi be introduced into the quota management system (QMS) by 1 October 2004, using catch history as the basis of quota allocation. We also made specific recommendations relating to individual catch history records. This bill gives effect to those recommendations.

This commentary focuses on the main issues raised during the hearing of evidence and consideration phases.

Introducing scampi into the QMS

Those submitters who support the bill believe that scampi would be best managed in the QMS framework and that quota should be allocated on a catch-history basis. These submitters believe that

delaying the passage of the bill is bad for the resource and will make the management and marketing of the fishery less successful.¹

Those submitters who oppose the bill do so for two main reasons.² They argued that the passage of the bill will impede effective negotiations with the ministry on appropriate compensation/redress of the grievances identified by us in our report on the administration and management of the scampi fishery.

Many submitters argued that they were having to make their submission prior to the release of the State Services Commission's report, they stated this was inappropriate and unfair. These submitters sought a delay in the passage of the bill to enable the State Services Commission report to be reviewed and further submissions to be heard. We note the report was released prior to our reporting to the House.

Some submitters have also suggested that if the bill is enacted, arbitration provisions should be included so that access to fair compensation for the ministry's mistakes can be ensured.

The majority of the committee does not accept the arguments against the passage of the bill. With the exception of the Green Party we have previously stated that we support the allocation framework in the Fisheries Act 1996 and seek to preserve the integrity of the QMS. By majority, we support the introduction of the scampi fishery into the QMS by 1 October 2004.

The majority of the committee recommended in our report that *ex gratia* payments be made in recognition of the particular and individual consequences suffered by some scampi fishers as a result of the actions of the ministry. The Government has accepted these recommendations, and we expect the Government to negotiate a fair payment to resolve outstanding issues with these fishers.

We disagree with the proposal for an independent arbitrator because this would only result in the further litigation of matters raised during our inquiry.

¹ Simunovich Fisheries Limited, New Zealand Seafood Industry Council Limited, Solander Group, Challenger Finfish Management Company Limited and Sanford Limited all support the passing of this bill.

² Howell and Cave, Sealord Group Limited, Barine Developments Limited, Area 2 Inshore Finfish Management Company Limited, Trevor Goodship/Pranfield Holdings Limited, United Fisheries Limited, Noel Edward McLellan and Petromont Holdings Limited oppose the passage of this bill.

The State Services Commission's inquiry into management of the scampi fishery

Some submitters suggested that the dates for concluding consideration of the bill should be extended until after the public release of the State Services Commission's report on its inquiry into management of the scampi fishery. Pending the release of their report we decided to receive a private briefing from the State Services Commissioner and the reviewers on 27 May 2004. However, the report was actually released the day before our briefing, on 26 May 2004.³

The findings of the report mirror those of our inquiry. In particular, the report is severely critical of the former Ministry of Agriculture and Fisheries for its unfair and inconsistent policies and procedures, and for inappropriate, unprofessional relationships that compromised the impartiality and integrity of its management of the scampi fishery. The report however, found there are no grounds for further investigation of potential criminality on the part of either officials or fishers.

The report also recommended to the Ministry of Fisheries that:

if the legislation, policy and process for the allocation of scampi quota finally adopted allows administrative discretion, then to the extent such discretion allows, those exercising it consider, when coming to an overall view of the relevant public interest, the exercise of the discretion be informed by the findings of this Inquiry.⁴

The committee considered a number of quota allocation options to address the recognised grievances. By majority, we concluded there was no practical way, given the mechanistic nature of the Fisheries Act 1996 for allocating quota.

It was National's view that when scampi is placed into the QMS the ministry investigate giving the seven aggrieved fishers identified in the Primary Production Committee Inquiry report⁵ (and any others proving similar circumstances with evidence that has come to light since that inquiry) a right of first refusal to each buy an equal proportion of the surplus Crown quota in the quota management areas (QMAs) they historically indicated they wished to fish.

³ Helen Cull, QC and David Smyth, *Report for the State Services Commissioner of an Inquiry into Fisheries Management of the Scampi Fishery*, State Services Commission, 25 May 2004.

⁴ Helen Cull, QC and David Smyth, *Report for the State Services Commissioner of an Inquiry into Fisheries Management of the Scampi Fishery*, State Services Commission, 25 May 2004, p 11.

⁵ Primary Production Committee, *Inquiry into the Administration and Management of Scampi Fishery*, I.11A.

Labour and New Zealand First members consider that the *ex gratia* payments recommended by the inquiry already enables aggrieved fishers to purchase quota should it be tendered.

New quota management areas for scampi

The bill establishes the QMAs to be used when scampi is introduced into the QMS. Changes have been made to some of the existing scampi QMA boundaries.⁶ Many submitters opposed this change arguing that the change is not justified and that they had not been consulted.

The majority of the committee recommends the changes to boundaries to improve the management of the fishery. The proposal to amend the QMAs is supported by scientific advice and is said to meet the obligations of ensuring sustainability of this fish stock.

It is National's view that when scampi is placed in the QMS, quota management area boundaries involving QMA3, QMA4W and QMA4E be reinstated to the original boundaries, QMA3 and QMA4 for quota allocation purposes. Any sustainability issues can subsequently be addressed in other ways if required.

Name of bill

As Part 3 and Schedule 2 of the bill are being divided from Parts 1 and 2, we recommend that this legislation be entitled Fisheries Amendment Bill (No 4).

Amendment to Schedule 2

We recommend an amendment to Schedule 2 to amend the provisional catch history allocation for Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market:

SCI1	14,280
SCI3	9,250
SCI4A	1,669
SCI5	258
SCI6A	35,700
SCI9	1

⁶ The areas with boundary changes are SCI3, SCI4A, SCI6A and SCI6B

This amendment could not be incorporated into the bill before it was introduced.⁷ It reflects the Mount Fish Market response to a ministry letter sent in February 2004. We are advised that this letter set out the amount of provisional catch history for proposed allocation and was sent to all fishers with eligible scampi catch.⁸ Fishers were asked to respond if they thought a miscalculation had been made. The ministry received submissions from eight fishers leading to changes for three fishers that were all incorporated before the bill was introduced.

Minority view

The Green Party opposes this legislation. The Green Party is fundamentally opposed to scampi fishing on the grounds that it can be very destructive of the marine ecosystem. However, within sustainability limits the Green Party believes that the scampi quota should be based on the principles of fairness and justice. This bill does not achieve this as in the Green Party's view it is clear that some fishers were repeatedly advantaged by the actions of the ministry while the majority of fishers were disadvantaged.

Scampi is unusual because quota is being allocated by legislation rather than by normal *Gazette* process that allows fishers the right of appeal. The Green Party supports the adoption of an alternative allocation model that in effect takes the catch history of the vessels *FV Drysdale* and *Petersen* and redistributes it amongst the other qualifying fishers.

The Green Party does not support the proposed new fishing area boundaries on the grounds that the scientific evidence is inconclusive.

⁷ The instructions for drafting the bill had been already given when Mount Fish Market's response to the ministry's letter was received.

⁸ As scampi is not a controlled fishery nor a fishery subject to Individual Catch Entitlement, in order to be eligible to receive provisional catch history, a fisher must meet the following criteria set out by section 32 of the Fisheries Act 1996. Either a fisher:

- was issued a fishing permit under section 2(2) of the Fishery Amendment Act 1994 or
- held a fishing permit issued under section 63 of the Fishery Act 1983 at any time during the qualifying years and
- is not an overseas person (or is exempt under sections 56 or 57 of the Fisheries Act 1996) and
- has provided the chief executive with eligible returns for the stock for the applicable qualifying year or qualifying years.

The Green Party considers that a fair re-allocation of quota would bring a degree of justice to fishers who have long been denied it.

Appendix

Committee process

The Fisheries Amendment Bill (No 3) was referred to the committee on 6 April 2004. The closing date for submissions was 3 May 2004. We received and considered 16 submissions from interested groups and individuals in relation to Part 3 of the Fisheries Amendment Bill No 3. We heard 11 submissions in relation to Part 3. Hearings of evidence took 2 hours and 43 minutes and consideration took 2 hours and 19 minutes.

We received advice from the Ministry of Fisheries.

Committee membership

Hon David Carter (Chairperson)

Janet Mackey (Deputy Chairperson)

Clayton Cosgrove

Hon Harry Duynhoven

Gerrard Eckhoff

Ian Ewen-Street

Phil Heatley

Hon Dover Samuels

R Doug Woolerton

Key to symbols used in reprinted bill

As reported from a select committee

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon David Benson-Pope

Fisheries Amendment Bill (No 4)

Government Bill

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Schedule 2
New Schedules 13 and 14 added to principal Act

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fisheries Amendment Act (No 4) **2004**.

1A Commencement

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

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65 Commencement of Part

This Part and Schedule 2 come into force on the day on which this Act receives the Royal assent.

66 Interpretation

Section 2(1) of the principal Act is amended by inserting, after the definition of **scallop spat**, the following definition:

“**scampi** means any fish of the species *Metanephrops challengerii*”.

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67 Qualifying years

Section 33 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

- “(a) in the case of a person eligible under section 32(1)(a)(ii) to receive provisional catch history by virtue of a fishing permit issued under section 2(2) of the Fisheries Amendment Act 1994, either—
- “(i) the first consecutive 12 months following the date of issue of the fishing permit; or
- “(ii) the fishing years commencing respectively on 1 October 1990 and 1 October 1991:”.

68 New heading and sections inserted

The principal Act is amended by inserting, after section 369M, the following heading and sections:

“*Introduction of scampi into quota management system* 15

“369N Scampi subject to quota management system

“(1) On 1 October 2004 scampi in quota management areas SCI1, SCI2, SCI3, SCI4A, SCI5, SCI6A, SCI6B, SCI7, SCI8, SCI9, and SCI10 become subject to the quota management system under Part IV. 20

“(2) In this section and **sections 369O to 369R**,—

“(a) the references to quota management areas SCI1, SCI2, SCI5, SCI7, SCI8, SCI9, and SCI10 are references to the fishery management areas described by reference to the same numbers in the First Schedule: 25

“(b) the references to SCI3, SCI4A, SCI6A, and SCI6B are references to the scampi quota management areas described by reference to those numbers in **Schedule 13**.

“(3) The fishing year for scampi is the 12-month period commencing on 1 October. 30

“(4) The total allowable commercial catch and annual catch entitlement for scampi in the quota management areas referred to in **subsection (1)** are to be expressed in greenweight.

“369O Allocation of provisional catch history

“(1) Each person named in column 1 of **Part 1 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of <that part of> that schedule opposite 35

that person's name, and those allocations apply to scampi in quota management area SCI1.

- “(2) Each person named in column 1 of **Part 2 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of <that part of> that schedule opposite that person's name, and those allocations apply to scampi in quota management area SCI2. 5
- “(3) Each person named in column 1 of **Part 3 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of <that part of> that schedule opposite that person's name, and those allocations apply to scampi in quota management area SCI3. 10
- “(4) Each person named in column 1 of **Part 4 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of <that part of> that schedule opposite that person's name, and those allocations apply to scampi in quota management area SCI4A. 15
- “(5) Each person named in column 1 of **Part 5 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of <that part of> that schedule opposite that person's name, and those allocations apply to scampi in quota management area SCI5. 20
- “(6) Each person named in column 1 of **Part 6 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of <that part of> that schedule opposite that person's name, and those allocations apply to scampi in quota management area SCI6A. 25

New (majority)

- “(7) Each person named in column 1 of **Part 7 of Schedule 14** is allocated the amount of provisional catch history for scampi set out in column 3 of that part of that schedule opposite that person's name, and those allocations apply to scampi in quota management area SCI9. 30

“369P Notification of fishers allocated provisional catch history

- “(1) As soon as practicable after the date on which **this Part** comes into force, the chief executive must notify every person named in **Schedule 14** of— 5
- “(a) the amount of provisional catch history allocated to the person under **section 3690** for each of the quota management areas SCI1, SCI2, SCI3, SCI4A, SCI5, *<and>* SCI6A~~, and SCI9~~; and
- “(b) the person’s right to appeal under section 51(1) (as read in accordance with **section 369R(4)**); and 10
- “(c) the requirement that any appeal to the Catch History Review Committee must be lodged not later than the date specified for that purpose in the notification.
- “(2) The date referred to in **subsection (1)(c)** and specified in the notification must be not less than 20 working days after the date of the notification. 15

“369Q Public notification of provisional catch history allocation

- “(1) As soon as practicable after the date on which **this Part** comes into force, the chief executive must publicly notify— 20
- “(a) that provisional catch history for scampi has been allocated under **section 3690**; and
- “(b) that a person may appeal to the Catch History Review Committee under section 51(1) (as read in accordance with **section 369R(4)**) if the person— 25
- “(i) has not been allocated provisional catch history for scampi; and
- “(ii) believes that he or she is or will be entitled to receive provisional catch history on the grounds specified in that section or is entitled to receive quota for scampi; and 30
- “(c) that the appeal must be lodged no later than the date specified for that purpose in the notification.
- “(2) The date referred to in **subsection (1)(c)** and specified in the notification must be not less than 20 working days after the date of the notification. 35

“369R Application of certain provisions to scampi

- “(1) Sections 36 and 37 apply in relation to scampi as if the references to ‘20 working days’ in sections 36(2)(b) and 37(2)(b) were instead references to ‘10 working days’.
- “(2) Sections 42 to 44, 46 to 49, 51 to 53, 54(1)(a), (2), and (3), 55, and 283 to 293 apply to the allocation of individual transferable quota for scampi. 5
- “(3) Section 45 applies to scampi as if the declaration in **section 369N(1)** were a notice in the *Gazette* under section 18.
- “(4) For the purposes of **subsection (2)** of this section, section 51 must be read as if, for subsection (1) of that section, there were substituted the following subsection: 10
- ‘(1) Any person, including the chief executive, may, subject to subsection (3) and on or before the date specified in the notification referred to in **section 369P(1)(c)** or **section 396Q(1)(c)**, appeal to the Catch History Review Committee against the allocation of provisional catch history under **section 3690** on the ground that the information used to calculate the provisional catch history— 15
- ‘(a) was incorrectly recorded by the chief executive; 20
- or
- ‘(b) excluded scampi that were lawfully taken and lawfully reported as landed or otherwise lawfully disposed of in eligible returns from the person’s eligible catch during the period commencing with 1 October 1990 and ending with 30 September 1992.’ 25
- “(5) For the purposes of this section,— 30
- “(a) **eligible catch** has the meaning given it by section 34(2), as if— 30
- “(i) the provisional catch history for scampi allocated under **section 3690** were calculated in a manner consistent with section 34(1)(c); and
- “(ii) the applicable qualifying years were the period commencing with 1 October 1990 and ending with 30 September 1992; and 35
- “(b) **eligible return** has the meaning given it by section 32(2).”

69 New Schedules 13 and 14 added

The principal Act is amended by adding the **Schedules 13 and 14** set out in **Schedule 2** of this Act.

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Schedule 2 s 69
New Schedules 13 and 14 added to principal Act

Schedule 13 s 369N
**Quota management areas for particular
scampi stocks** 5

*Scampi quota management area 3—South East Coast and
Western Chatham Islands combined*

All that area of New Zealand fisheries waters enclosed by a line—

- (a) commencing at a point 42° 10.0'S and 180° 00.0'; then
- (b) proceeding south along the 180° 00.0' line of longitude to latitude 46° 00.0'S; then 10
- (c) proceeding west along the 46° 00.0'S line of latitude to longitude 176° 00.0'E; then
- (d) proceeding in a generally south-westerly direction directly to a point 48° 19.0'S and 170° 31.0'E; then 15
- (e) proceeding in a generally north-westerly direction directly to the mean high-water mark of the South Island at the southernmost point of Slope Point (approximately 46° 40.5'S and 169° 00.0'E); then
- (f) proceeding in a generally north-easterly direction along the mean high-water mark of the South Island to latitude 42° 10.0'S (approximately 173° 56.5'E, near Clarence Point); then 20
- (g) proceeding east along the 42° 10.0'S line of latitude until reaching the point of commencement.

Scampi quota management area 4A—Chatham Islands East 25

All that area of New Zealand fisheries waters enclosed by a line—

- (a) commencing at point 42° 10.0'S and 180° 00.0'; then
- (b) proceeding south along the 180° 00.0' line of longitude to latitude 46° 00.0'S; then
- (c) proceeding east along the 46° 00.0'S line of latitude to the exclusive economic zone boundary (longitude approximately 171° 46.7'W); then 30
- (d) proceeding in a generally northerly direction along the exclusive economic zone boundary to latitude 42° 10.0'S (longitude approximately 171° 59.1'W); then 35

Schedule 13—continued

- (e) proceeding west along the line of latitude 42° 10.0'S until reaching the point of commencement.

Scampi quota management area 6A—Auckland Islands

All that area of New Zealand fisheries waters within fishery management area 6—Sub-Antarctic in Part I of the First Schedule of the Fisheries Act 1996 that surround the Auckland Islands within an area bounded by latitude 49° 00'S in the north, and a line from 52° 00'S and 164° 30'E to 51° 30'S and 168° 30'E in the south and by line of longitude at 164° 30'E in the west and 168° 30'E in the east.

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Scampi quota management area 6B—Part Sub-Antarctic

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All that area of New Zealand fisheries waters within fishery management area 6—Sub-Antarctic in Part I of the First Schedule of the Fisheries Act 1996, excluding scampi quota management area 6A.

Schedule 14

Scampi provisional catch history allocations

s 3690

Part 1

Quota management area SC11

Legal name	Client number	Provisional catch history allocation (kgs)	5
Barine Developments Limited	8920034	1 707	
Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market	8630094	<14 281> <14 280>	10
Howell, Wayne Terrence	8810054	21	
Montgomery, Robert Johnstone	8720123	12 793	
Petromont Holdings Limited	9120012	696	
Simunovich Fisheries Limited	8422209	187 989	

Part 2

Quota management area SCI2

Legal name	Client number	Provisional catch history allocation (kgs)	15
Barine Developments Limited	8920034	69 350	20
Montgomery, Robert Johnstone	8720123	1 684	
Petromont Holdings Limited	9120012	420	
Sanford Limited	8422125	90 717	
Simunovich Fisheries Limited	8422209	151 798	
Vautier Shelf Company No 14 Limited	9040015	38 509	25

Part 3

Quota management area SCI3

Legal name	Client number	Provisional catch history allocation (kgs)	30
Amaltal Fishing Co. Limited	8460042	11 530	
Barine Developments Limited	8920034	7 881	
Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market	8630094	<823> <9 250>	35
Petromont Holdings Limited	9120012	6 884	
Sanford Limited	8422125	4 894	
Simunovich Fisheries Limited	8422209	106 727	
Vautier Shelf Company No 14 Limited	9040015	21 213	

Schedule 14—continued

Part 4

Quota management area SCI4A

Legal name	Client number	Provisional catch history allocation (kgs)	
			5
Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market	8630094	<1 673> <1 669>	
Petromont Holdings Limited	9120012	4 106	
Sanford Limited	8422125	5 860	
Simunovich Fisheries Limited	8422209	98 412	10
Vautier Shelf Company No 14 Limited	9040015	155	

Part 5

Quota management area SCI5

Legal name	Client number	Provisional catch history allocation (kgs)	
			15
Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market	8630094	<11> <258>	

Part 6

Quota management area SCI6A

Legal name	Client number	Provisional catch history allocation (kgs)	
			20
Amaltal Fishing Co. Limited	8460042	18 350	
Barine Developments Limited	8920034	32 675	25
Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market	8630094	<44 370> <35 700>	
Petromont Holdings Limited	9120012	18 884	
Sanford Limited	8422125	60 033	
Simunovich Fisheries Limited	8422209	130 385	30
Vautier Shelf Company No 14 Limited	9040015	15 797	

Schedule 14—continuedPart 6—*continued***New (majority)**

Part 7
Quota management area SCI9

Legal name	Client number	Provisional catch history allocation (kgs)	5
Deadman, Brian Sydney & Lees, Robert Whitelaw trading as Mount Fish Market	8630094	1	

Legislative history

17 June 2004

Divided from Fisheries Amendment Bill (No 3) as
Bill 109–2A