

## **Sustainable fishing put further at risk?**

### **Important questions raised and answered about the Fisheries Act 1996 Amendment Bill (No.2).**

*By the Hokianga Accord*

September 2008

#### ***What is the issue?***

Section 13 of the Fisheries Act 1996 is the prime sustainability measure used by the Minister of Fisheries to set total catch levels for New Zealand's fish stocks. The Minister and Ministry of Fisheries advise they need to amend section 13 a consequence of a recent High Court decision.

#### ***What did the Court rule?***

The Court held (in part) that the Minister could not use section 13 to set total catch limits if existing information is inadequate to determine current fish stock levels.

#### ***How does section 13 work now?***

Section 13 operates well for stocks with full information but is not designed for any others. Less than 4% of the 629 fish stocks in the quota system have sufficient information to enable the Minister to make decisions using section 13. Another method is needed to enable total catch limits to be set when stocks cannot be estimated reliably.

#### ***What is the problem with the amendment?***

The real concern is the proposed amendment to section 13 will lower the information threshold required to support sustainable fisheries management decisions resulting in less fish in the water.

#### ***What effect will the amendment have?***

The amendment will legalise what the Court found to be an unlawful practice. It would authorise the Minister to set catch limits as if he was in possession of the most comprehensive and reliable information. The Minister could then justify setting the highest total allowable catch to maximise yield as opposed to managing the fishery to enable people to provide for their wellbeing.

#### ***Do New Zealanders know what's going on, and have they had time to have their say?***

No on both counts. In particular, non-commercial fishing interests with knowledge and experience in fisheries management have had insufficient time to put forward their solutions for consideration and debate.

#### ***Why is there urgency to amend legislation now?***

Despite MFish's claim, there is no urgency. Only two stocks require Ministerial approval by October: Orange Roughy and Bluenose. Interim decisions can easily be made for these fisheries to continue the status quo or deferred until next year, as in the case of kahawai.

#### ***If they don't pass the legislation immediately what will happen?***

Status quo would prevail until all parties have put their cases clearly and fairly.

#### ***Why is the proposed amendment being rushed through Parliament?***

As we understand it, MFish and corporate commercial fishing representatives are using the Court's ruling as an opportunity to change the way the fisheries legislation works by a 'quick-

fix' that will lower the sustainability threshold and permit aggressive fishing strategies on stocks with poor information.

This hasty and unnecessary process has effectively excluded most New Zealanders from this important sustainability issue and debate.

***Will the focus and purpose of the Fisheries Act be affected?***

The purpose of the Act is to provide for the utilisation of fisheries by all New Zealanders whilst ensuring sustainability. This means maintaining fisheries to meet future generations' needs, protecting the environment, conserving and developing fisheries to enable all New Zealanders to provide for their social, economic and cultural wellbeing.

The proposed amendment will likely change the focus of fisheries management by concentrating on achieving maximum sustainable yield. The most likely effect is less fish in the water thus reducing the ability of ordinary New Zealanders to catch fish to feed their family.

***Does the Minister have to set the TAC every year?***

No. Once the Minister sets a TAC using section 13 of the Act, that total catch limit continues to apply in each fishing year until it is varied or the management area is changed. Each fishing year starts on October 1<sup>st</sup>.

The following table gives examples of when the total allowable catch (TAC – which includes all fishing) and/or total allowable commercial catch (TACC) were last set. Many fish stocks were introduced into the quota management system in 1986, at its inception. Many of these stocks have no TAC or allowances made for non-commercial fishing interests, and many of the original TACC's still apply.

**Table 1:** Total allowable catch (TAC's) and total allowable commercial catch (TACC's) for various fish stocks

<b>Fish stock</b>	<b>Last year TAC set</b>	<b>Last year TACC set</b>	<b>Last year non-commercial allowances set</b>
Snapper 1 North-east NI*	1997	1997	1997
Red Gurnard 1 North-east & North-west NI*	Never	1994	Never
Kahawai 8 North-west NI*	2005	2005	2005
Kingfish 2 South-east NI*	2003	2003	2003
Blue Cod 3 East coast SI*	Never	2001	Never
Flatfish 7 Top of SI*	Never	1986	Never

NI\* = North Island SI\* = South Island

***What is the transitional provision about?***

The Ministry of Fisheries propose a transitional provision that will sanction consultation expected under section 12 of the Act to have already been carried out, if the proposed amendment is enacted.

Section 12 obliges the Minister first, to consult widely with people or representative groups

who have an interest in the fish stock or the effects of fishing on the environment, and secondly, places a mandatory obligation on the Minister to provide for the input and participation of tangata whenua having a non-commercial interest in the stock or the environmental effects of fishing, and to have particular regard to kaitiakitanga (guardianship/stewardship).

Pursuing a maximum catch regime while weakening the Act's sustainable utilisation purpose, to enable people to provide for their wellbeing, is contrary to the principle (or tikanga) of kaitiakitanga of both the fisheries resource and the people who depend on the fishery to provide for their needs.

This transitional provision would barely pay lip service to the Crown's ongoing statutory obligations towards Maori non-commercial interests under the Treaty of Waitangi 1840 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. As an agent of the Crown, these obligations extend to all aspects of MFish's functions: to act reasonably and in good faith in its dealings with Maori, to make informed decisions, to avoid impediments to providing redress and avoid creating new grievances.

At the very least, consultation on the proposed amendments ought to have occurred with the national body established for representatives of all iwi fisheries forums around the country, Te Kahui Maunga o Tangaroa. Neither this body nor the iwi forums themselves were offered the opportunity to have input or participate in the amendment process.

Maori can with some justification ask the Minister and Ministry of Fisheries what they intend to do to discharge the Crown's section 12 obligations.