

Fisheries Amendment Bill 2022 – First Reading

This legislative statement supports the first 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

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 individual transferable quota system that controls fishing activity through the setting of 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 some species to be returned.
- establishing three criteria for issuing ministerial exceptions for returning catch to the sea as follows:
 - stock or species has an acceptable likelihood of survival; or
 - the retention of the stock or species will have a negative economic value, for example, fish that belongs to an ammoniating species or damaged fish; or
 - mandatory specific stock or species returns are required for a biological, fisheries management, or ecosystem purpose and the stock or species has an acceptable likelihood of survival.
- repealing Schedule 6¹.
- 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 return is necessary for the purpose of saving 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.

¹ Schedule 6: Stocks which may be returned to the sea or other waters in accordance with stated requirements (Fisheries Act 1996).

- 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.
- 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 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 (negative economic value); 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
- the retention of the stock or species will have a negative economic value, for example ammoniating shark species that would taint other catch in the hold; 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 criterium could apply to pregnant females to ensure appropriate spawning biomass

Transitioning to the new landings and discards rules

To provide commercial fishers with sufficient 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 stocks shall be included in an instrument to continue for a specified period, or indefinitely. Others shall be included in an instrument that expires no later than 30 September 2026.

Those exceptions due to expire on 30 September 2026 will be reviewed over the transition period (from enactment up to 30 September 2026). To continue beyond 30 September 2026, an expiring exception will need to be assessed against the criteria in new section 72A and included in an instrument made under that section. If an expiring exception is not assessed before the end of the transition period (or earlier revoked), it will be revoked by operation of law 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 the Ministry for Primary Industries (MPI) can apply compliance measures more easily, more often, and more effectively.

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 or plants 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. 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 only be available where the protected species caught is alive and likely to remain alive on release. 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 release of protected species, 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 specify a range or limit within which the Minister can 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. Unless the specific rule has an expiry date, the rule will remain in place until revoked by the Minister.

As with other sustainability measures under the Act, the Bill will require the Minister to consult and take certain matters into account when developing these rules. But once established, the Minister will be able to use the rules alone to set or vary sustainability measures, or a stock's total allowable commercial catch, provided doing so falls within the range or limit specified in the rule. There will be no further need for consultation, nor will the Minister have to reconsider the matters required to be taken into account when making the rule.

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 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 (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.