

BILLS DIGEST

FISHERIES ACT 1996 AMENDMENT BILL 2007

Date of Introduction: 22 February 2007

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FISHERIES ACT 1996 AMENDMENT BILL 2007

Date of introduction:	22 February 2007
Portfolio:	Fisheries
Select Committee:	As at 01 March, 1st reading not held

PURPOSE

The aim of the Bill is to clarify the law by providing clearer direction to persons making fisheries management decisions where there is inadequate information¹.

BACKGROUND

The Fisheries Act 1996 (the Act) empowers the Minister of Fisheries to set various sustainability measures (eg, Total Allowable Catches and fishing method restrictions). The Act's purpose is to provide for the utilisation of fisheries resources while ensuring sustainability. In order to achieve this, the Act provides for limits to be set within which sustainable fishing can occur. Often there is limited information available on how ecosystems and fish stocks actually behave. This means all decisions to allow harvest carry some degree of risk because of uncertainty, inadequacy, or other defects in the information. If the decision overestimates the relevant stock levels, sustainability of the fishery is put at risk. If it underestimates the stock levels, then harvest has been unnecessarily constrained. There is a consensus that, where information is inadequate, managers should take a precautionary approach and take measures to ensure sustainability even though complete information is not available. This general precautionary approach is contained in a number of international agreements to which New Zealand is a party².

MAIN PROVISIONS**Information principles**

Section 10 of the Fisheries Act 1996 currently provides that all persons exercising or performing functions, duties, or powers under that Act, in relation to the utilisation of

¹ Fisheries Act 1996 Amendment Bill, 2007 No 109-1, Explanatory Note, General policy statement, p. 1.

² Fisheries Act 1996 Amendment Bill, 2007 No 109-1, Explanatory Note, General policy statement, p. 1. The international agreements referred to are the United Nations Convention of the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA). UNFSA sets out the framework for cooperation with other countries to conserve and manage highly migratory fish stocks such as tuna and stocks that straddle both the high seas and a state's economic zone. Article 6 of UNFSA is headed "Application of the precautionary approach" and provides that "... states shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment" (Article 6(1)) and "... states shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures" (Article 6(2)).

fisheries resources or ensuring sustainability, must take into account the following information principles:

- decisions should be based on the best available information;
- decision makers should consider any uncertainty in the information available in any case;
- decision makers should be cautious when information is uncertain, unreliable, or inadequate.

Section 10 further provides that " ... the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act".

"There is a concern that the current wording of section 10 fails to make it sufficiently clear that decision makers should not, where the best available information is incomplete or otherwise deficient, delay or avoid taking measures to ensure sustainability. This Bill is intended to remove any ambiguity in that regard, and thus ensure that the Act is consistent with the precautionary approach on that point"³.

The Bill provides that if information is absent or is uncertain, unreliable, or inadequate, decision makers should be cautious and should not use any of those factors as a reason for postponing or failing to take measures to ensure sustainability (*Clause 4, amending Section 10 of the Fisheries Act 1996 by replacing paragraphs (c) and (d) with new paragraph (c)*).

Comment

"The amendment is intended to clarify where the balance lies in deciding between the utilisation or the sustainability of fisheries resources if a decision has to be made in cases where information is absent or is otherwise poor. By collapsing section 10(c) and (d) of the Act into a single paragraph and expressly referring to sustainability rather than the purpose of the Act, the amendment clarifies that in those cases decision makers should not only be cautious but should also act towards ensuring sustainability"⁴.

Limitation of liability

The Bill provides that where any consultation that was carried out in respect of decisions that require consultation under the Act and that are to be made after the commencement of this Bill, that consultation is to be treated as complying with the consultation requirements of the Act even though some or all of it occurred before the commencement of this Bill (*Clause 5*).

³ Fisheries Act 1996 Amendment Bill, 2007 No 109-1, Explanatory Note, General policy statement, p. 2.

⁴ Ibid.