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SUBMISSION ON FISHERIES AMENDMENT BILL 2026

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Introduction

1. This is a submission on the Fisheries Amendment Bill 2026 (**Bill**) from the Environmental Defence Society (**EDS**). EDS wishes to appear before the Primary Production Committee to speak to the matters raised in this submission.
2. EDS is an independent not-for-profit organisation conducting interdisciplinary policy research and litigation. It was established in 1971 with the objective of bringing together the disciplines of law, science and planning to promote better environmental outcomes. EDS has a special interest in the marine environment and recently completed a multi-year project looking at issues within the national oceans management system and options for future reform, which had (among other things) a focus on fisheries matters.¹
3. EDS is familiar with the issues the Bill seeks to address. In 2018, EDS led an in-depth review of the fisheries management system and published findings in a report titled *Voices from the Sea: Managing New Zealand's Fisheries*.² It has also sought to improve

¹ Severinsen G, Peart R, Rollinson B, Turner T and Parson P, 2022, *The breaking wave: Oceans reform in Aotearoa New Zealand*, Environmental Defence Society, Auckland, available [here](#); Peart R, 2025, *Pathways to oceans reform*, Environmental Defence Society, Auckland, available [here](#)

² Peart R, 2018, *Voices from the sea: Managing New Zealand's fisheries*, Environmental Defence Society, Auckland, available [here](#)

fisheries decision-making by membership of the Hauraki Gulf Fisheries Plan Advisory Group and submitting on proposals to set sustainability measures for the management of fish stocks.³

4. This submission is divided into the following parts:
 - (a) EDS's general position on the Bill (page 2)
 - (b) Amendments relating to the TAC and TACC
 - A. Purpose of sustainability measures (page 4)
 - B. Categorisation of stocks based on information availability (page 6)
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EDS's general position on the Bill

5. *Voices from the Sea* identified a range of problems with the fisheries management system including:
 - a) Lack of investment in science to underpin robust fisheries management
 - b) Many stock assessments being based on self-reported catch and effort data which is well-recognised as being an unreliable indicator of stock health
 - c) Lengthy decision-making processes, which lack agility, meaning many stocks are not reviewed in a timely manner
 - d) Lack of alignment between biological stocks and quota management areas undermining the maximum sustainable yield (**MSY**) premise underpinning the quota management system (**QMS**)
 - e) A single stock management approach being applied to mixed species fisheries resulting in unbalanced fisheries and 'choke' species
 - f) Poor management of the environmental impacts of fishing, including on habitats of significance to fisheries
 - g) Lack of integrated ecosystem management resulting in degrading marine environments and reducing fish stock productivity
 - h) No provision for national policy statements and weak provisions around fisheries plans
 - i) Poor conflict resolution processes resulting in frequent litigation

³ Copies of EDS's recent submissions on a range of wild fish stocks are available from www.eds.org.nz

- j) Aggregation of fisheries quota leading to market domination, rent-seeking behaviour and lack of innovation
 - k) Separation of quota ownership from the harvesting sector, with harvesters receiving a reducing share of the value of the catch
 - l) Lack of investment in the fishing fleet, resulting in a notably aging inshore fleet which is costly to maintain and operate
 - m) Strong reliance on bulk harvesting which produces a low value commodity product
6. Eight years on, these issues remain largely unaddressed. The Bill does little to rectify this situation and will likely make some of the issues more acute.
 7. The stated intention of the Bill is to “*grow the value of seafood sector exports*” by “*improving responsiveness, certainty and efficiency of the fisheries management system.*”⁴ **Notably, the Bill is not expressly intended to increase the “effectiveness” of the fisheries management system. This is surely the most important goal if we are to build a thriving wild fisheries sector.**
 8. A key focus of the Bill is on amending the processes to set the total allowable catch (**TAC**) and total allowable commercial catch (**TACC**). These decisions underpin the QMS because they set the harvest cap which is a prime determinant of the sustainability of fish stocks. TAC and TACC decisions can also significantly impact the health of the marine environment.
 9. If the harvest cap is set too high, fish stocks will decline, and some may collapse as we have seen with orange roughy, pāua, scallop and rock lobster stocks. There is no certainty that collapsed stocks will recover.
 10. It is highly concerning that, after 40 years of the QMS being in place, there is insufficient data to undertake a formal scientific assessment of over 60% (250 of 402) of the stocks monitored by Fisheries New Zealand (**FNZ**).⁵ In addition, the number of stocks that are assessed each year has declined since 2017, after a period when ongoing improvements were made. Not only are fewer stocks assessed, but less are above the soft limit (see Figure 1).⁶ This highlights the declining performance of the QMS system in recent years.

⁴ Fisheries Amendment Bill 2026, Explanatory note, page 1

⁵ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, page 28, available [here](#)

⁶ Fisheries New Zealand, 2025, *The status of New Zealand fisheries 2025*, Fisheries New Zealand, Wellington

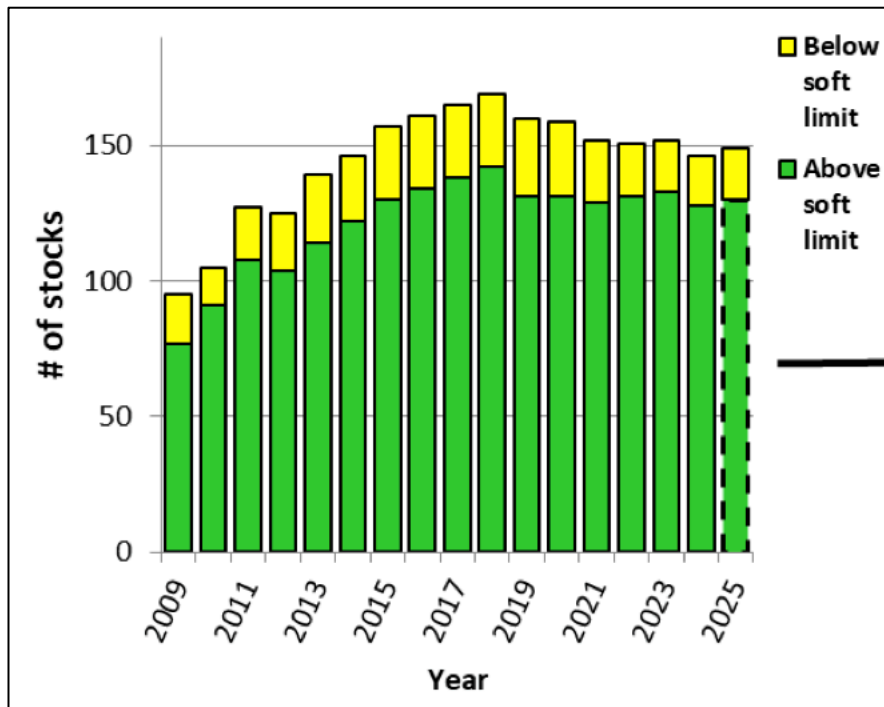


Figure 1: Status of assessed stocks 2009-2025⁷

11. Within this context, instead of increasing investment in science to underpin more robust stock assessment, the Bill reduces checks and balances on decision-making. This may increase agility, but significantly enhances risk to fish stocks. In EDS’s view, this is extremely unwise in the context of rapidly warming seas and reducing productivity as our climate changes.
12. Overall, **EDS considers there is so little of merit in the Bill that it should not proceed.** Instead, there should be an independent Inquiry into the fisheries management system to fully identify the underlying problems within the system and effective ways of addressing them.
13. We set out our concerns with the Bill in more detail below.

Part 1: Amendments relating to TAC and TACC

14. This part of the Bill amends decision-making requirements for TAC and TACC decisions and introduces new purposes and processes.

Purpose of sustainability measures

15. Clause 5 of the Bill introduces a new purpose for sustainability measures. This seeks to separate TAC decision-making (under the new section 13A and related sections – see

⁷ Fisheries New Zealand, 2025, *The status of New Zealand fisheries 2025*, Fisheries New Zealand, Wellington, page 1

below) from decisions aimed at addressing the environmental effects of fishing (under section 11 which provides a more general power to set sustainability measures).

16. The intent of the new purpose clause is evidently to avoid a repeat of recent court cases where judicial review of TAC setting decisions by the Minister were sought on the basis they did not adequately address the adverse environmental effects of fishing.⁸
17. Environmental issues have been raised in the context of TAC decision-making, because it is one of the few ways to achieve progress in managing the environmental effects of fishing activity. There has been a paucity of other decisions addressing environmental matters, as FNZ and successive Ministers have largely failed to implement the environmental provisions of the Fisheries Act 1996 (**Act**).⁹
18. Instead of addressing this failure, by strengthening the environmental provisions of the Act, this amendment relating to TAC setting (along with the new section 13F discussed below) seeks to sideline them. As a result, we will likely to see more environmental damage from fishing activity, and faster declining marine ecosystems.

Decision sought from Select Committee:

- Delete section 11AAA from clause 5 of the Bill.
 - Amend section 9 (environmental principles) of the Act by replacing “shall take into account” with “shall give effect to”.
19. If the new Section 11AAA is not deleted, then additional matters need to be addressed. Section 11AAA(2)(a) sets a purpose for TAC setting which is “*to manage the effect of fishing on the abundance of quota management stocks at the level of the quota management area.*”
 20. Focusing TAC purely on *abundance* is misguided. The underlying purpose of a MSY-based fisheries management system is to optimise overall *productivity* (ie maintain a stock at a level where maximum production is achieved over time), not just achieve a certain abundance at any one time.
 21. The reference to “*at the level of the quota management area*” appears intended to explicitly exclude addressing localised depletion. This is a matter that affects many coastal areas, and customary and recreational fishers. Addressing localised depletion will sometimes require building a stock to greater abundance than achieves MSY. As such, this purpose prioritises commercial fishers at the expense of others using a shared resource.

⁸ Regulatory Impact Statement: Amendments to the Fisheries Act 1996, 6 August 2025, page 2

⁹ See chapter 4, Peart R, 2018, *Voices from the sea: Managing New Zealand's fisheries*, Environmental Defence Society, Auckland, available [here](#)

Decision sought from Select Committee:

Add “and productivity” after abundance and delete “at the level of the quota management area” from section 11AAA(2) of clause 5 of the Bill.

Categorisation of stocks based on information availability

22. Under section 13(2)(a) of the Act, the TAC must be set at a level that “*maintains the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks*”. The Act defines MSY as:¹⁰

In relation to any stock, means the greatest yield that can be achieved over time while maintaining the stock’s productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock.

23. While “*interdependence of stocks*” is not defined in the Act, the Supreme Court has confirmed it includes trophic interactions of the target species and impacts on non-target species (ie bycatch).¹¹ The importance of these factors has been further emphasised in the High Court, in the context of northeastern New Zealand, where rock lobster and snapper are important in regulating kina population levels and thus mitigating urchin barrens.¹²
24. Not all stocks come within the section 13(2)(a) requirement to peg the TAC at, or above, MSY. Section 13(2A) applies when there is uncertainty about the level of a stock (ie it “*is not able to be estimated reliably*”). In these circumstances, the Minister must set the TAC at a level that “*is not inconsistent with*” the objective of managing the stock at or towards MSY.¹³
25. In addition, section 14 allows the Minister to set an alternative TAC for stocks listed in Schedule 3. A stock can be added to the Schedule if:¹⁴
- a) It is not possible to estimate MSY due to the biological characteristics of the species;
 - b) A national allocation has been determined as a part of an international agreement;
 - c) The stock is managed on a rotational or enhanced basis; or
 - d) The stock comprises one or more highly migratory species.
26. Current stocks in Schedule 3 include tuna, shark, swordfish, squid, mussel and scallop species. For such stocks, the Minister can set the TAC at a level he or she considers “*appropriate*” to achieve the purpose of the Act.¹⁵ The Minister’s broad discretion under section 14 is not limited by the same considerations as section 13, notably the

¹⁰ Fisheries Act 1996, section 2(1)

¹¹ *Seafood New Zealand Limited v Royal Forest & Bird Protection Society of New Zealand Inc* [2024] NZSC 111 [Tarakihi case], para [23]

¹² *Environmental Law Initiative v Minister for Oceans and Fisheries* [2022] NZHC 2969 [CRA 1 case], para [69]

¹³ Fisheries Act 1996, section 13(2A)(c)(ii)

¹⁴ Fisheries Act 1996, section 14(8)(b)

¹⁵ Fisheries Act 1996, section 14(1)

interdependence of stocks, the need to rebuild depleted stocks or MSY-related reference points.

27. The limited circumstances in which a stock may be listed in Schedule 3 mean the application of such broad discretion is narrowed, including when it is not possible to assess status relative to MSY-reference levels due to the *biological characteristics* of the species.¹⁶ This differs from section 13(2A), where deficient information may temporarily constrain the ability to evaluate a stock. This is an important distinction because, in the case of section 13(2A), additional investment in information can address the issue.
28. Under the Bill, in new sections 13B to 13G, the Minister will classify stocks as either high, medium or low information:
 - a) High information stocks are those where the status of the stock can be reliably estimated and the TAC is set at or above MSY (roughly equivalent to section 13(2)(a) stocks above).
 - b) Medium information stocks are those where the status cannot be reliably estimated but where “*trends in abundance*” can be reliably estimated, and where the TAC must be *consistent* with MSY (a higher test than under section 13(2A) above).
 - c) Low information stocks are those where neither status nor trends can be reliably estimated), and where the TAC is *not inconsistent* with MSY (the same test as in section 13(2A) above).
29. The section 14 category is also retained.
30. How stocks are categorised is left to the Minister to determine (see new sections 13B(1), 13C(1) and 13D(1)). EDS considers the categorisation of stocks as high, medium or low information to be a purely scientific, and not a political, exercise and it should therefore be undertaken by an independent science panel, not the Minister.

Decision sought from the Select Committee:

Remove the power of the Minister to determine the categorisation of a stock into high, medium and low information and provide for a process whereby an independent science panel categorises stocks.

Decision-making criteria for setting the TAC

31. Under the Act, when setting the TAC for a stock that is not depleted, the Minister needs to have regard to:
 - a) The interdependence of stocks

¹⁶ Fisheries Act 1996, section 14(8)(b)(i)

- b) The biological characteristics of the stock (where status cannot be reliably estimated)
 - c) Any environmental conditions affecting the stock (where status cannot be reliably estimated)
 - d) The environmental principles
 - e) The information principles.
32. The environmental principles are listed in section 9 and include:¹⁷
- a) Associated or dependent species should be maintained above a level that ensures their long term viability
 - b) Biological diversity of the aquatic environment should be maintained
 - c) Habitat of particular significance for fisheries management should be protected.
33. The importance of these principles, in the context of setting the TAC for a stock, was discussed by the High Court in 2022. The Court made it clear they are mandatory and constitute an environmental bottom-line.¹⁸
34. The Minister is also required to consider the information principles listed in section 10 which include:¹⁹
- a) Decisions should be based on the best available information
 - b) Decision makers should consider any uncertainty in the information available in any case
 - c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate
 - d) 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.
35. The requirement of precaution listed in section 10(d) is related to New Zealand’s international obligations that are referred to the Act.²⁰ Notably, the precautionary principle is included in the Rio Declaration on Environment and Development 1992.²¹ Importantly, the information-deficient status of fisheries elevates the need to employ caution in decision-making.²² The High Court has noted this is supported by the “*environmental bottom line*” of the Act’s purpose; “*to provide for the utilisation of fisheries resources while ensuring sustainability*”.²³
36. Notably, all these decision-making criteria relate to *biophysical* factors impacting a stock, and the information available on these matters. This is significant, because there is a biological reality associated with the management of fish stocks: if we harvest too

¹⁷ Fisheries Act 1996, sections 9(a) to (c)

¹⁸ CRA 1 case, para [117]

¹⁹ Fisheries Act 1996, sections 10(a) to (d)

²⁰ Fisheries Act 1996, section 5(a)

²¹ *Rio Declaration on Environment and Development* (adopted 14 June 1992), principle 15

²² CRA 1 case, para [108]

²³ CRA 1 case, paras [108] and [117]; Fisheries Act 1996, section 8(1); *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54 [**Kahawai case**], para [39]

many fish, the productivity of the stock will be impaired leading to smaller harvests in the future, and the risk of irreversible stock collapse. **It is therefore critical that TAC decisions are based on robust biophysical considerations and are not influenced by other matters.**

37. The Bill puts in place very different decision-making criteria. The starting point is a new set of “*standard factors*” which apply to TAC setting and are introduced via a replacement section 13 in clause 10 (see box below). The Minister must have regard to the standard factors when setting the TAC for high, medium and low information stocks.

- a) if other quota management stocks are likely to be taken at the same time as the specified stock, the effects of the taking of the specified stock on those other stocks
- b) the adverse effects (if any) of the taking of the specified stock on the stock’s ability to fulfil its role as a predator or prey of other species, but only to the extent that the adverse effects are relevant to determining the appropriate abundance of the stock at the level of the quota management area
- c) the environmental conditions (including environmental conditions caused by the effects of climate change) that affect the specified stock
- d) the social, cultural, and economic factors that the Minister considers relevant
- e) the controls (if any) that are set under this Act or other legislation and that—
 - i. apply to the specified stock or the quota management area; and
 - ii. the Minister considers relevant
- f) the relevant fisheries plans (if any) approved under section 11A.

38. On the positive side, there is now direct mention of considering the effects of climate change on stocks and consideration of the role of stocks as a predator or prey of other species.

39. However, as drafted, the standard factors supplant the sustainability purpose of the Act (which includes “*avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment*”), and the environmental principles in section 9. Both can be taken into account in TAC setting only “*to the extent that they are relevant to the standard factors*”.²⁴

40. **Excluding the consideration of sustainability and environmental principles when setting TACs is extremely concerning and EDS opposes doing so.**

41. At the same time as excluding specific sustainability and environmental matters, the standard factors introduce social, cultural and economic factors into TAC setting decisions. As highlighted above, TAC setting decisions are purely biophysical in nature and need to be based on the best scientific information. **Muddying the waters with**

²⁴ Fisheries Amendment Bill 2026, clause 10 which inserts new section 13F into the Fisheries Act 1996

social, cultural and economic factors can only serve to undermine the very core of the QMS, leading to weak decision-making, to the detriment of the country's fish stocks.

42. We also note that applying a *"cautious approach that favours the sustainability of the stock"* only applies to low-information stock.²⁵ A cautious approach needs to be applied to all stocks. This is because there are significant uncertainties in all stock assessments, even those for which there is relatively high levels of information.
43. This uncertainty will be enhanced under climate change, where it has been found that individual stock assessments *"commonly indicated twice or half the true stock status"* particularly for fast life-history stocks. This is because *"accounting for the influences of climate change and environmental variability is at odds with the assumptions of most stock assessment models"*.²⁶

Decision by the Select Committee:

- Retain the requirement to consider the effects of climate change on stocks and the role of stocks as a predator or prey of other species when setting the TAC.
- Delete section 13F from clause 10 of the Bill.
- Delete section 13(d) from clause 10 of the Bill.
- Insert *"(a) must take a cautious approach that favours the sustainability of the stock, having regard to—"* into sections 13B(3) and 13C(3) of clause 10 of the Bill.

Rebuilding depleted stocks

44. Section 13(2)(b) of the Act applies to depleted stocks (stocks below an MSY-producing level). The Minister is required to set a TAC for the stock at a level that will enable the stock's recovery *"within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock"*.²⁷
45. Under section 13(3), the Minister is to have regard to relevant social, cultural and economic factors when considering the *"way in which and rate at which a stock is moved towards or above"* a level that can produce MSY.
46. The Supreme Court recently clarified the considerations relevant to the Minister's decision when setting the TAC for a depleted stock. It held that: ²⁸

²⁵ Fisheries Amendment Bill 2026, clause 10 which inserts new section 13D(3)(a) into the Fisheries Act 1996

²⁶ Neubauer P, A'mar T and Dunn M, 2023, *Climate impacts on fished populations. Part 2: Effects of climate and environmental variability on fishery stock assessment accuracy*, New Zealand Fisheries Assessment Report No 57, pages 14-15, available [here](#)

²⁷ Fisheries Act 1996, sections 13(2)(b)(ii)

²⁸ Tarakihi case, paras [93] and [99]-[100]

- a) The Minister must assess the “*period appropriate to the stock*” by reference to the stock’s biological characteristics and environmental conditions and without regard to social, cultural and economic factors.
- b) There may be a range of rebuild periods appropriate to the stock. Relevant social, cultural and economic factors may influence the Minister’s choice of a rebuild period, but only to the extent that the Minister was selecting a period within the range that was appropriate to the stock based on biological and environmental considerations.
47. This means rebuild periods appropriate to the stock are to be identified first, based on biophysical considerations, and the choice of which period to adopt can then be influenced by social, cultural and economic factors. As the Court noted, there is significant flexibility for decision-making within these bounds, in that “[t]he Act does not prescribe a process, and as we have explained, the Minister may take non-scientific considerations into account when choosing among recovery periods appropriate to the stock”.²⁹
48. In the context of depleted stocks, the requirement that the “*period that is appropriate to the stock*” is determined with reference to the biological characteristics of the stock and environmental conditions affecting the stock, acts as an important assessment to help ensure sustainability.
49. Under the Bill, this clarity of purpose is diluted. A stock rebuild strategy is not even mentioned in respect of medium or low information stocks. In terms of high information stocks, the Minister must set a TAC that enables the stock to be restored “*within a period that is appropriate to the stock*” and “*in a way and at a rate that the Minister considers appropriate*”.³⁰ On the face of it, this could be considered broadly consistent with the Supreme Court decision. However there are significant differences which undermine the Court’s approach.
50. For a start, there are no criteria provided to guide when the Minister might consider a rebuild rate “appropriate” apart from the requirement that they must have regard to relevant social, cultural and economic factors.³¹ Notably, there is no mention to having regard to biophysical matters. Ultimately, it is a largely unconstrained discretion.
51. Secondly, when determining what period might be appropriate to the stock, the Minister must have regard to the standard factors along with the biological characteristics of the stock. As noted above, the standard factors include social, cultural and economic factors. They would potentially enable fishing interests to influence the rebuild period, and to extend it beyond what is appropriate with regard to biological limits. As noted by the Supreme Court in the *Tarakihi* case, the current law “*is concerned with a period appropriate to the stock, not a period to those having an interest in the stock*”.³²

²⁹ Tarakihi case, para [110]

³⁰ Fisheries Amendment Bill 2026, clause 10 which inserts new section 13B (4) into the Fisheries Act 1996

³¹ Fisheries Amendment Bill 2026, clause 10 which inserts new section 13B(6)

³² Tarakihi case, para [82]

52. Thirdly, the introduction of the standard factors is likely to cause added and unnecessary complexity in the TAC setting process for depleted stocks. Notably, the standard factors include several considerations that are likely to act against one another, such as the biological characteristics of the stock versus social, cultural and economic considerations.³³ With no clear indication as to how these factors are to be weighted, those that are harder to quantify (such as biophysical factors) are likely to be trumped by those that are easier to measure (such as economic factors).
53. For the above reasons, EDS does not support this amendment to the Act. Instead, the current process for determining rebuild periods for depleted stocks should be retained.

Decision sought from the Select Committee:

- Delete sections 13B(4), (5) and (6) in clause 10 of the Bill.
- Reinstate sections 13(2)(b) and 13(3) of the Act.

Multi-year catch decisions

54. Once a TAC is set under section 13 of the Act, it continues to apply at the same level, until a decision is made to change it. The Bill introduces sections 14D to 14H in clause 18, which enable multi-year TAC decisions to be made, where a catch limit can automatically change over a specified time-period.
55. In principle, EDS supports amendments that enable decision-making processes to be more responsive and timely. However, these provisions lack sufficient checks and balances to ensure sustainability of fish stocks.
56. Section 14D(b) enables the Minister to set a TAC for the next fishing year, and subsequent years, for a maximum of 5 fishing years. No criteria is provided as to when it might be appropriate for the Minister to set such a multi-year TAC, instead leaving this to broad Ministerial discretion. This is of concern, as such a pre-programmed TAC-setting regime should only be applied where there is good information on a stock, and the trajectory of the stock can be adequately tracked over the period.
57. The gathering of information relevant to stock status, over the multi-year period for which the TAC is set, is particularly important to enable the Minister's power to revoke the TAC (under new section 14H(1)(b)) to be properly exercised. This section provides that where "*information becomes available to the Minister*" indicating that the TAC setting is no longer compliant with TAC-setting requirements, the Minister may revoke the TAC for that fishing year.

Decision sought from the Select Committee:

Insert a new subsection (c) into section 14D in clause 16 of the Bill as follows:

³³ Tarakihi case, para [85]

The Minister may only set the total allowable catch under subsection (b):

- i. for a high-information quota management stock;
- ii. where the stock assessment is not more than 2 years old and the Minister is satisfied it provides a reliable estimation of stock status; and
- iii. the Minister is satisfied there will be sufficient collection of information during the period for which the TAC is set to enable changes in stock status to be identified in a timely manner.

In-season adjustments to TAC

58. Under section 13(7) of the Act, the Minister is able to increase the TAC for stocks listed in Schedule 2 during the current fishing year (an “in-season” adjustment). Schedule 2 lists stocks whose abundance is highly variable and includes flatfish, eel, red cod and scallop. The rationale for enabling an in-season adjustment for these species is they are relatively short-lived, and can vary considerably in abundance from year to year. An in-season increase enables harvesters to take advantage of high abundance years.
59. Section 13E (in clause 10 of the Bill) reflects this situation but only enables an in-season increase for high or medium (not low) information stocks. This is a positive requirement as an in-season adjustment should only be made where there is good information about stock status.
60. Section 14(4) (in clause 12 of the Bill) also enables an in-season adjustment for stocks managed with an alternative TAC as listed in Schedule 3. This currently includes shark, tuna, mussel, scallop, squid and swordfish. This new section reflects the current provisions in section 14(6) of the Act. There is no requirement that an in-season increase only apply to high or medium information stocks, and there should be, for the reasons outlined above.
61. As well as in-season increases, it is also important that *in-season reductions* in TAC can be made. There are a range of circumstances where it may be appropriate for the TAC of a stock to be lowered temporarily. For example, sedentary coastal stocks such as pāua are particularly vulnerable to the impact of severe weather events and resultant changes in salinity and sediment plumes.³⁴ We have also seen the significant impacts of sediment and slash discharges into the Hawkes Bay after Cyclone Gabrielle.³⁵
62. In such a situation, an in-season decrease in the TAC for a potentially vulnerable stock would be precautionary, while allowing the impacts to be fully assessed. This would complement section 16 emergency measures, which have a more restricted application.

Decision sought from the Select Committee:

³⁴ V J Cummings, CJ Lundquist, M R Dunn, M Francis, P Horn, C Law, M H Pinkerton, P Sutton, D Tracey, L Hansen, and E Mielbrecht, 2021, *Assessment of potential effects of climate-related changes in coastal and offshore waters on New Zealand's seafood sector*, New Zealand Aquatic Environment and Biodiversity Report No 261, at 43, available [here](#)

³⁵ Leduc D et al, 2024, *Cyclone impacts on fisheries*, New Zealand Aquatic Environment and Biodiversity Report No 326, available [here](#)

- Include a requirement that in-season increases in the TAC of Schedule 3 stocks can only be applied to high or medium information stocks.
- Include a new section enabling in-season decreases in TAC to be made for all stocks.

63. Under the Act, when changing the TAC, the Minister is required to consult with parties who have an interest in the relevant stock or area. This explicitly includes groups with Māori, environmental, commercial, and recreational interests.³⁶ The amendments relating to multi-year catch decisions potentially limit consultation for interested parties at the time the TAC changes. Therefore, EDS supports the mandatory requirement to consult with interested parties before the Minister makes multi-year catch decisions.

Decision sought from Select Committee:

Retain the mandatory requirement to consult with interested parties before the Minister makes multi-year catch decisions.

Requirement to review the TAC

64. Once a TAC or TACC has been set under section 13, it continues to apply at the same level, with there being no requirement to review once set. FNZ only addresses 20 to 30 of the “most pressing” quota management stocks out of the 350 regularly harvested each year.³⁷
65. The assessment as to which stocks are “most pressing” is made in the context of patchy information. As noted above, there is insufficient evidence to assess the status of over 60% of harvested stocks. As a result, many species languish with little or no management attention. This is illustrated by Table 1 which shows that (up until the 2023-24 fishing year) many finfish stocks in northern New Zealand have not had a TACC adjustment for more than two decades.

Table 1: Changes in TACC for key finfish stocks since introduction to the QMS

Stock	Introduction to QMS	Last TACC Change	Years since last TACC change (up to 2023-24)
Snapper (SNA 1) ³⁸	1986-87	1997-98	26
Jack mackerels (JMA 1) ³⁹	1986-87	1994-95	29
Pilchard (PIL 1) ⁴⁰	2002-03	2002-03	21
Kahawai (KAH 1) ⁴¹	2004-05	2005-07	18

³⁶ Fisheries Act 1996, sections 12(1) and 21(2)

³⁷ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, page 2, available [here](#)

³⁸ Fisheries New Zealand, 2025, *Fisheries assessment plenary, may 2025*, page 1594, available [here](#)

³⁹ Ibid, page 698

⁴⁰ Ibid, page 1233

⁴¹ Ibid, page 759

Kingfish (KIN 1) ⁴²	2003-04	2003-04	20
Trevally (TRE 1) ⁴³	1986-87	1988-89*	35
Leatherjacket (LEA 1) ⁴⁴	2003-04	2003-04	20
Rig (SPO 1) ⁴⁵	1986-87	1997-98	26
Barracouta (BAR 1) ⁴⁶	1986-87	1996-97	27

*There has been only a minor change to the TACC since this time

66. Additionally, many current TACC levels are reflective of historic harvest levels that have since declined. In these instances, examples of which are shown in Table 2, the TACC does not operate as a practical constraint on harvest, and stocks are undercaught as a result. Little is known about the reason for the declines in catch (eg whether it is due to stock depletion or changing harvest behaviour), highlighting the need for greater investment in the assessment of stock status.

Table 2: Examples of under-caught stocks based on reported landings for 2023-24

Stock	Percentage of TACC caught
Anchovy (ANC 1) ⁴⁷	0.0% (0/200 t)
Pilchard (PIL 1) ⁴⁸	9.8% (196/2000 t)
Flatfish (FLA 1) ⁴⁹	40.0% (356/890 t)
Rig (SPO 1) ⁵⁰	31.1% (215/692 t)
Jack mackerels (JMA 1) ⁵¹	61.7% (6165/10000 t)

67. This lack of responsiveness regarding catch limit adjustments is concerning, as it both increases the risk of persistent stock depletion and collapse (with implications for the stock, fishery and wider aquatic environment), and means that when depletion is eventually identified, larger catch limit reductions are required to address it. **It highlights the need for a mandatory TAC review of each stock at least every 10 years.**
68. Under section 14H(5) (in clause 16 of the Bill), when a multi-year TAC is revoked, the TAC reverts to that of the previous fishing year. When the multi-year TAC-setting period ends, the TAC is maintained at the level of the last year of that period or, if specified in the TAC setting notice, reverts to the TAC that applied before the multi-year period commenced (section 14F(4)).
69. This approach lacks robustness. If the Minister has received new information about a stock that raises issues, he or she should initiate a proper review of the TAC. In addition, at the end of a five year period during which catch limits have been varied (particularly if they have been increased), there should also be a review of catch limit

⁴² Ibid, page 806

⁴³ Ibid, page 1897

⁴⁴ Ibid, page 834

⁴⁵ Ibid, page 1375

⁴⁶ Ibid, page 87

⁴⁷ Ibid, page 63-64

⁴⁸ Ibid, page 1233

⁴⁹ Ibid, pages 359-361

⁵⁰ Ibid, page 1375

⁵¹ Ibid, page 698

settings. This would be consistent with section 14T, where a review of the TAC is required as soon as practicable after a management procedure ceases to have effect or is revoked.

Decision sought from Select Committee:

- Insert a new section in the Bill requiring a mandatory TAC review for every QMS stock once every 10 years.
- Require a mandatory TAC review when a multi-year TAC is revoked or expires.

Research investment to support TAC setting

70. New Zealand’s fisheries management system is operating in an information-poor context. As noted above, the status of most stocks is unknown, few are regularly assessed, and even fewer are assessed based on fisheries-independent information.⁵² Key issues that have been cited by the Prime Minister’s Chief Science Advisor, in her 2021 report, also include misreporting, outdated assessment methods and outdated management frameworks.⁵³
71. The Ministry for Primary Industries notes that the “*current process for setting catch limits is... resource intensive*”.⁵⁴ This is a strain on the current system, but removing the need for informed decision-making will lead to worse outcomes for both management and sustainability. EDS is concerned that if the proposed amendments are not paired with an increased investment in fisheries information, faster decision-making will come at the cost of long-term sustainability.
72. EDS also emphasises the need to address the potential perverse incentives created by the current user-pays model for funding fisheries management. By levying quota owners for research, there is an incentive to drive the research dollar down, as this reduces costs to the quota owner and increases their bottom line. Additionally, this self-funding model perpetuates the lack of knowledge regarding smaller fisheries and fish stocks, which cannot economically support the cost of research required to manage them properly.⁵⁵

Decision sought from the Select Committee:

- Require a review of the current user-pays funding model for fisheries management.
- Require a funding package directed at boosting fisheries science to accompany the Bill.

⁵² Peart R, 2018, *Voices from the sea: Managing New Zealand’s fisheries*, Environmental Defence Society, Auckland, page 144, available [here](#)

⁵³ Prime Minister’s Chief Science Advisor, 2021, *The future of commercial fishing in Aotearoa New Zealand: A report from the Office of the Prime Minister’s Chief Science Advisor Kaitohutohu Mātanga Pūtaiao Matua ki te Pirimia*,) at Prime Minister’s Chief Science Advisor, Auckland, pages 159-162, available [here](#)

⁵⁴ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, page 1, available [here](#)

⁵⁵ Ibid, at 144

Management procedures

73. Management procedures are rules or functions that operate by generating an output (in this case, a catch limit for a given stock) based on a given input.⁵⁶ These may take the following forms:
- a) A harvest control rule, which is an equation determining the relationship between the input and output.
 - b) A system of trigger limits that automatically adjusts the output when the input shifts by a set amount (ie the trigger level is reached). Trigger limits accommodate greater variability in input before a change is required.
74. Both forms of management procedures require a robust scientific basis for development. Harvest control rules require an accurate understanding of the reliability of data inputs, the way in which data inputs translate to stock abundance, and how biological parameters relate to management targets and MSY.⁵⁷ These factors are then translated into a formula, which is a simplification of the complex relationships between fishing effort and abundance.
75. Such simplification means that important interactions can be missed. This is because fishing not only has a direct impact on abundance (ie reducing the stock by the amount harvested) but also has indirect effects which are hard to account for in a simplified formula. For example, fishing activity in the Chatham Rise orange roughy fishery (ORH 3B) not only impacts abundance through the direct removal of individuals, but has indirect impacts as it targets spawning aggregations, potentially causing their dispersal.⁵⁸ This is hard to account for in a management procedure.
76. Trigger limit systems face similar issues. Additionally, as they account for variability and therefore are less responsive to changes in inputs, they need to be based on accurate scientific information so ongoing depletion of stocks trigger a response. The danger of applying trigger limit systems within an information-poor environment has been highlighted within the Hauraki Gulf CRA 2 rock lobster stock (see below).

Application of management procedures in CRA 2

⁵⁶ D N Webber and P J Starr, 2020, *Operational management procedures of New Zealand rock lobster (*Jasus edwardsii*) stocks for 2020-21*, New Zealand Fisheries Assessment Report No 46, pages 2-3, available [here](#); D S Butterworth and A E Punt, 1999, Experiences in the evaluation and implementation of management procedures, *ICES Journal of Marine Science*, 56(6), page 985, available [here](#)

⁵⁷ D S Butterworth and A E Punt, 1999, Experiences in the evaluation and implementation of management procedures, *ICES Journal of Marine Science*, 56(6), page 986

⁵⁸ Fisheries New Zealand, 2026, *Review of proposed spawning area closure to orange roughy fishing in East and South Chatham Rise (ORH 3B) from 1 June 2026*, Fisheries New Zealand Discussion Paper No 2, paras [15]-[20], available [here](#); Environmental Defence Society, 2026, *Submission on review of proposed spawning area closure to orange roughy fishing in East and South Chatham Rise (ORH 3B) from 1 June 2026*, Environmental Defence Society, Auckland, available [here](#)

Management procedures informed catch limit setting for the Hauraki Gulf rock lobster fishery (CRA 2) between 2013 and 2016.⁵⁹ These were highly reliant on catch per unit effort (CPUE) data, rather than fisheries-independent inputs, to determine stock size and thus the appropriate catch limits.⁶⁰ This proved to be inadequate and resulted in inappropriate catch limits that led to the depletion of the stock biomass over several fishing years.

Due to the depletion of the stock, the industry agreed to voluntarily shelve 12.5% of the TACC for 2015-16, which was increased to 25% in 2016-17 and 2017-18.⁶¹ A stock assessment in 2017 found the stock to be significantly depleted, which had long been recognised by stakeholders despite the management procedure indicating no catch limit change was necessary.⁶²

The 2017 stock assessment also noted that changes in the commercial fleet likely impacted the disconnect between the CPUE input data and actual stock biomass. Vessels that had lower catch rates had left the fishery, while vessels that had higher catch rates remained.⁶³ As such, the average catch levels of the fishery increased while lower fishing effort took place, leading to an observed increase in CPUE that was independent of the stock's decline. This highlights the problems of relying on CPUE to manage stocks.

77. Investment in fisheries-independent research is vital in the context of management procedures. The automated nature of their function relies heavily on good understanding of any given stock. They cannot simply be derived from fisheries-dependent data inputs, such as CPUE, that primarily describe patterns in fishing effort rather than stock abundance.
78. EDS supports management procedures in principle, but they should only be used when there is high quality information to support them, and robust oversight to enable timely intervention when the procedure is not working as intended.
79. Sections 14L to 14T (in clause 16 of the Bill) provide for the setting and operation of management procedures that detail when, why and how the catch limits for certain stocks will be adjusted.⁶⁴
80. Management procedures can operate for up to 5 years. Once a management procedure is approved, decision-making on TAC and TACC adjustments is delegated to the Chief Executive, who is then required to make changes to catch limits based on the operating rules in the management procedure (section 14O).
81. Management procedures cannot be made for a limited category of stocks under Section 14L. These do not include low-information stocks or stocks that are depleted. These categories need to be added to the exclusions from management procedures.

⁵⁹ D N Webber et al, 2018, *The 2017 stock assessment and management procedure evaluation for rock lobsters (Jasus edwardsii) in CRA 2*, New Zealand Fisheries Assessment Report No 17, page 23, available [here](#)

⁶⁰ Ibid, page 11

⁶¹ Ibid, page 2

⁶² Ibid, pages 14 and 23

⁶³ Ibid, page 3

⁶⁴ Fisheries Amendment Bill 2026, clause 16

82. Management procedures must include objectives and operating rules (section 14L(2)). The objectives must be “*consistent with*” the relevant TAC-setting provision in the Act (section 14L(4)) which is positive.
83. Section 14M sets out the matters the Minister must be satisfied with in order to approve a management procedure. These include that the operating rules are “*consistent with*” the objectives (section 14M(1)). This requirement is too weak. **The operating rules must enable the objective to be met. In addition, there should be a requirement around the robustness of information underpinning the development of the management procedure.**
84. Section 14R enables management procedures to be revoked, including when the operating rules are not meeting (or will not meet) the objectives, or where information becomes available to the Minister indicating that the operating rule may no longer comply with the requirements of the Act. This is positive. However, the requirement is too weak in that the Minister “may” revoke. **This needs to be changed to “must” revoke.**
85. In addition, this section will not work as intended unless there is a process for overseeing the operation of management procedures. Otherwise such procedures could malfunction without that fact coming to light and action being taken. For this reason **there needs to be a regular independent review of the operation of management procedures.**

Decision sought from Select Committee:

- Insert two new subsections into section 14L(1) of clause 16 to read:
 - (c) *the stock is a low-information stock:*
 - (d) *the stock is below a level that can produce maximum sustainable yield:*
- Amend section 14M (1) of clause 16 to read:

The Minister must be satisfied that:

 - (a) *The operating rules will enable the objectives that are included in the procedure to be met:*
 - (b) *The information used to develop and apply the operating rules is of sufficient quality to provide high confidence that they will function as intended.*
- Insert a new subsection 14QA as follows:

14QA Independent review of management procedures

- (1) *The operation of each management procedure must be reviewed by an independent scientist at least every 12 months.*
- (2) *The independent scientist must provide an opinion on whether:*
 - (a) *the management procedure is operating as intended: and*
 - (b) *the management procedure should continue to operate or be revoked.*
- (3) *A report containing the findings of the review must be forwarded to the Minister and made publicly available.*

- Amend section 14R(1) to replace “may” with “must”.

Non-regulatory measures

86. Non-regulatory measures, such as shelving annual catch entitlements (**ACE**), have been frequently applied within the fisheries management system. By their very nature, non-regulatory measures are unenforceable. Their implementation is voluntary and therefore relies on all harvesters and/or quota owners for a particular stock agreeing to and implementing them. This is easier to achieve in some fisheries than others. Inherently, there is significant uncertainty regarding the implementation of non-regulatory measures.
87. Non-regulatory measures are industry-led, and so do not go through the same robust analysis and scrutiny as statutory measures. They may not achieve the intended result. For example, the 2024 sustainability review of Northland rock lobster (CRA 1) included consideration of a voluntary harvest cap, seasonal closures and area closures.⁶⁵ The voluntary harvest cap of 5 t exceeded the actual annual catch for the area of 4 t. Therefore, while it reflected a reduction in what could be caught (based on the TACC), it did not operate as a practical harvest cap.
88. Voluntary measures have been considered by the Court of Appeal in the *Tarakihi case*. The Court confirmed an industry rebuild plan was an irrelevant consideration in determining the appropriate period under which a stock should be rebuilt.⁶⁶
89. Because of their lack of robustness, EDS does not support the consideration of voluntary measures when setting the TAC. If they are to be considered the following amendments should be made.
90. Section 14I (in clause 16 of the Bill) enables a quota owner to apply to the Minister for a non-regulatory measure to be had regard to in setting the TAC for a stock. Under section 14J, if the Minister has consulted on the measure, they may give it the weight (if any) they consider appropriate after having regard to a range of factors. These factors include the effectiveness of the measure in supporting the TAC, the robustness of the measure, the ability of the quota owners to monitor implementation and adherence to the measure, the sustainability of the stock, and any other matters the Minister considers relevant.
91. EDS supports most of the factors included as assessment criteria except for “*any other matters that the Minister considers relevant*”. This would open the door to commercial fishing interests, which may oppose TAC reductions that cause a financial loss, to have undue influence.
92. In addition, under section 14K, if the Minister gives weight to a non-regulatory measure in setting the TAC, they *may* prescribe standards for record-keeping,

⁶⁵ Fisheries New Zealand, 2024), *Discussion of proposed measures for the Northland spiny rock lobster fishery (CRA 1)*, Fisheries New Zealand Discussion Paper No 30), paras [41]-[44], available [here](#)

⁶⁶ *Tarakihi case*, paras [95]-[96]

reporting and other matters to enable the chief executive to monitor the effectiveness of the measure, its implementation and its effect on sustainability of the stock. Given the uncertainty that surrounds voluntary measures, monitoring to ensure adherence should be required rather than being left to the discretion of the Minister.

93. It is inappropriate to consider voluntary measures when multi-year catch decisions or management procedures are employed (and thus adjustments are made without review for up to five years). This is due to the high level of uncertainty regarding whether voluntary measures would remain effective over that time period when there is less direct scrutiny of the stock. For this reason, **EDS submits the Minister should be expressly prohibited from considering non-regulatory measures when setting a TAC through a multi-year catch decision or when approving a management procedure.**

Decision sought from the Select Committee:

- Delete section 14J(2)(e) in clause 16.
- Amend section 14K(2) in clause 16 to replace “may” with “must”.
- Insert a new section 14I(1A) to read:

An application to the Minister under subsection (1) may not be made for a quota management stock where:

- (a) *A total allowable catch for multiple fishing years has been set for the stock under section 14F:*
- (b) *A management procedure has been made for the stock under section 14L.*

ACE carry-over

94. Under the Act, ACE may be carried over to the next fishing year in accordance with section 67A. This allows up to 10% of unfished ACE to be carried forward, if some specific conditions are met, including that TACC for the stock was not reduced in the previous fishing year.⁶⁷ These provisions make sense and allow fishers to adjust for changes in fishing seasons.
95. The Bill inserts new sections 67C and 67D (in clause 28), which would allow one or more quota owners (who collectively own at least 75% of the quota shares in the stock) to apply to have a percentage of their ACE carried over into the following fishing year. There is no restriction on the amount of ACE that can be carried over.
96. The chief executive can agree to this request where certain conditions are met. These include there being “*exceptional circumstances*” that affected the ability for the stock to be fished or sold; the TAC is the same or higher as the fishing year the carryover is from; and non-regulatory measures were not given weight when setting the TAC.⁶⁸

⁶⁷ Fisheries Act 1996, section 67A(3)(b)

⁶⁸ Fisheries Amendment Bill 2026, clause 28 which inserts new section 67D(1)

97. The exceptional circumstances specified in new section 67D(9) include:
- a) A natural disaster;
 - b) A regulatory measure in response to a naturally occurring event that restricts fishing;
 - c) A non-regulatory measure implemented by quota owners that the chief executive is satisfied is a necessary response to a naturally occurring event that restricts fishing; or
 - d) A significant change in market conditions for selling the stock that is not reasonably foreseeable.
98. There are further constraints that apply when determining the maximum percentage that can be carried over. The chief executive must have regard to the sustainability of the stock, and be satisfied it is appropriate, having regard to the biological characteristics of the stock.⁶⁹
99. The justification for these amendments is that there is a need to mitigate the economic impact of one-off extreme events (such as natural disasters), that lead to quantities of ACE going unfished, by allowing fishers to take more of their uncaught catch in the next fishing year.⁷⁰
100. However, this fails to appreciate the fact that extreme natural events are inherently detrimental to fish stocks and the aquatic environment, and negative impacts can last for years. Allowing increased effort shortly after a natural event occurs, through carryover of ACE, is likely to create heightened risk of depletion and degradation. It is directing more effort, and therefore more stress, on a marine system that has already been highly impacted. For these reasons, EDS considers these amendments ill-founded.

Decision sought from Select Committee:

Delete sections 67C and 67C from clause 28 of the Bill.

Part 2: Other amendments

Subpart 3: Alternative deemed value rates

101. These amendments would enable the Minister to set different (and lower) deemed value rates for inshore stocks caught by deepwater freezer vessels. This is a late addition to the Fisheries Act reform package and is said to be in response to a fishing industry submission.⁷¹

⁶⁹ Fisheries Amendment Bill 2026, clause 28 which inserts new section 67D(3)

⁷⁰ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, paras [94]-[99], available [here](#)

⁷¹ Proposed changes to the Fisheries Act 1996 – Alternative deemed value rates, Cabinet Paper, 2 December 2025, page 1, available [here](#)

102. Deepwater freezer vessels “receive significantly lower than the average price” for their bycatch of inshore stocks. This is because they freeze their catch, and frozen fish is a lower value product (and receives a lower market price) than the fresh fish typically sold by the inshore fleet. The fishing industry submission claimed that deepwater vessels are therefore unfairly penalised by having to pay a deemed value rate based on the higher port price of fresh fish landed by the inshore fleet.⁷²
103. The cabinet paper also states that the issue is being accentuated by an increase in abundance or distribution of inshore stocks in areas fished by the deepwater fleet, something which will likely be enhanced by climate change.⁷³
104. Deemed values play a critical role in the quota management system. Their purpose is to ensure commercial catches do not significantly exceed the TACC set for a particular stock, whilst providing some flexibility for harvesters who may inadvertently catch fish in excess of their allowance.
105. Each fishing year, ACE is issued to quota owners permitting a specific tonnage of fish to be caught based on their percentage share of the TACC. Commercial harvesters must balance their catch of QMS species with ACE at the end of the fishing year. Most commercial harvesters lease ACE from quota owners to achieve this. If harvesters have insufficient ACE to cover their catch, they must pay a ‘deemed value’ for the excess.
106. The deemed value is a penalty rate designed to act as a disincentive against harvesting more than authorised by the ACE issued for the year (which equates to the TACC tonnage). At the same time, it is also designed to incentivise harvesters to land their fish, rather than discard and waste it, through enabling excess fish to be sold to generate some (albeit a reduced) income. For this reason, deemed values are generally set between the lease price for ACE and the port price for the fish.
107. The Cabinet Paper setting out the deemed value proposals claims that it supports “*the Government’s target to double the value of exports in ten years by unlocking growth through enabling regulatory settings.*”⁷⁴ This is misguided. **EDS submits it will incentivise lower value returns from our limited inshore fish stocks, thereby reducing (and not increasing) overall economic returns for the country**
108. It is clear that the country’s fish stocks are a limited and declining resource. We are well past ‘peak’ fish harvest with the total commercial catch reducing more than 30 per cent over the past two decades (see Figure 2). This trend will almost certainly continue. Seawater warming has reduced productivity in our warmer waters and, since 2019, has impacted our subantarctic fisheries as well. With further warming (that is

⁷² Ministry for Primary Industries, 2025, *Regulatory impact statement: Fisheries Act amendments – alternative deemed value*, Ministry for Primary Industries, Wellington, page 14, available [here](#)

⁷³ *Ibid*, page 4

⁷⁴ Proposed changes to the Fisheries Act 1996 – Alternative deemed value rates, Cabinet Paper, 2 December 2025, page 1, available [here](#)

Proposed changes to the Fisheries Act 1996 – Alternative deemed value rates, Cabinet Paper, 2

inevitable) we will see additional reductions in primary productivity that will flow through to reduced harvests in our fisheries.⁷⁵

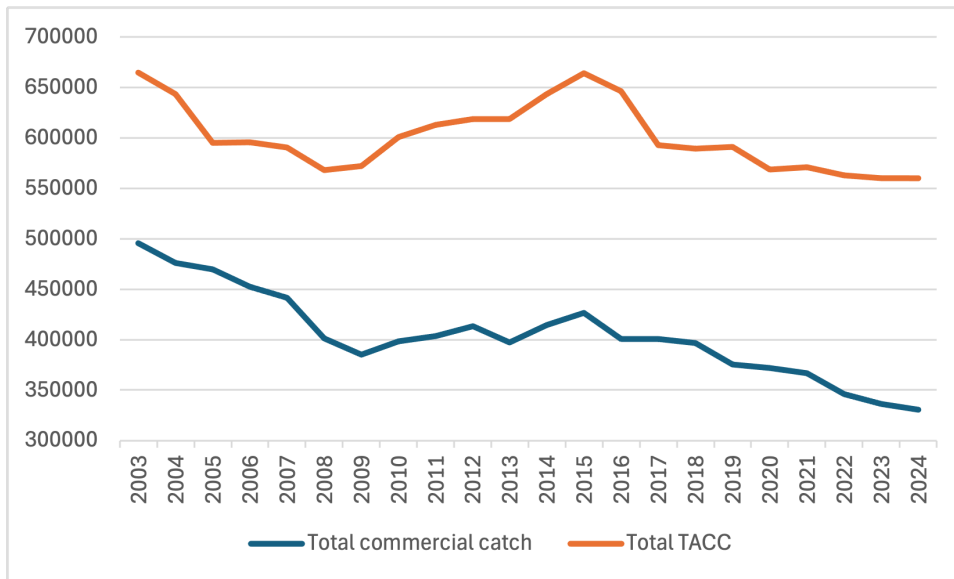


Figure 2: Total commercial catch and total allowable commercial catch for all commercially caught species 2003-2024 (Source: FNZ)

109. It is in the national interest to obtain the best value from our declining fish harvest, which in inshore stocks, is currently achieved through producing high quality fresh fish that achieves the highest market price. The higher quantity of inshore fish species caught by the deepwater fleet, the less there will be for the inshore fleet to harvest. To achieve best value, it is therefore important the deepwater freezer fleet is strongly disincentivised from catching inshore stocks.
110. The current system appears to be achieving this. Figures provided in the Regulatory Impact Statement show that deepwater operators were paying \$2,300,000 in deemed value charges for inshore stocks during the 2019/20 fishing year (80% of total deemed value charges paid), but this had reduced to just \$615,000 in the 2023-24 year (and only 18% of total deemed value charges paid).
111. We also note there has been a longstanding problem with ‘choke species’ in the inshore fleet, where inshore fishers are unable to catch the species they have ACE cover for, because they risk catching too many of a species where ACE is not available and for which deemed value needs to be paid. This is something EDS pointed out, in 2018, in *Voices from the Sea*.⁷⁶ **It is symptomatic of broader issues within the fisheries management system, which arise from applying a single species management approach to a mixed-species fishery. There is no proposal in the current amendments to address this issue.**

⁷⁵ Pinkerton M, Gall M, Thorl F, Sutton P and WoodS, 2024, *Monitoring ocean health: Satellite indicators for surface temperature, productivity and suspended solids*, National Institute of Water and Atmospheric Research Limited, Wellington, at 82, available [here](#)

⁷⁶ Peart R, 2018, *Voices from the Sea: Managing New Zealand's fisheries*, Environmental Defence Society, Auckland, page 25

112. The proposed amendments appear to be a knee jerk reaction to a self-serving complaint from within the deepwater fishing sector and are in EDS's view poorly conceived. **They prejudice inshore fishers and will likely reduce overall market value of the inshore harvest.** We note the officials' preferred option is the status quo on the basis that other regulatory tools can be used to address any imbalances in the deepwater fishery. EDS strongly agrees.

Change sought from Select Committee:

Delete subpart 3 from the Bill.

Subpart 5: Confidentiality of camera recordings

113. These amendments remove camera recordings from the Official Information Act 1982 (OIA) and put in place a different, much more restrictive regime when it comes to releasing information. It specifies that camera recordings can only be made available for the purposes of:
- a) Enforcement by a public service agency
 - b) Enabling listed governmental agencies to perform their functions
 - c) Fisheries research commissioned or approved by the Chief Executive
114. Recordings can also be made available to the owner, operator or master of a vessel to which the camera recording relates.
115. The penalty for knowingly disclosing camera recordings in contravention of these provisions is up to \$50,000.⁷⁷
116. The rationale given for these amendments include that footage may include personal and commercially sensitive information, MPI needs to consider each request on a case-by-case basis, any decision to withhold information is subject to a complaint to the Ombudsman, and the risks of footage being released may erode fisher support for cameras.⁷⁸
117. EDS submits the rationale for creating a carve out from the OIA does not stack up. There is no evidence the OIA framework is not currently working to effectively manage requests for the release of camera footage. Under section 9 of the OIA, reasons for withholding information include to "protect the privacy of natural persons" and where it "would be likely unreasonably to prejudice the commercial position of the person who supplied or who is subject of the information". The Act therefore protects camera footage where there are personal privacy or commercial sensitivity issues at stake.
118. The effectiveness of the operation of the OIA in relation to camera footage, in practice, is evidenced by the fact that only a modest number of OIA requests have been lodged (18 since the rollout in 2023), and no camera footage has been released. The number

⁷⁷ Fisheries Amendment Bill 2026, clause 59 introducing new section 252(5AA)

⁷⁸ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, pages 47-48, available [here](#)

of OIA requests is likely to reduce as it becomes evident footage can and will be withheld under the OIA. In short, there is no evidence of a problem that needs to be addressed.

119. The lack of a compelling problem needs to be considered against the significant negative public interest of creating a carve out from the OIA. The OIA is not just any legislation. It plays a critical role within the country's constitutional arrangements. As former Ombudsman Peter Boshier stated, the OIA "*helped usher New Zealand into an era of increasingly open, accountable and participatory government*".⁷⁹ The Court of Appeal has emphasised the "*permeating importance of the Act*" to the extent that "*it is entitled to be ranked as a constitutional measure*".⁸⁰ This is highlighted by the purpose of the Act which includes "*to enhance respect for the law and promote good government of New Zealand*".⁸¹
120. Putting in place carve-outs from the Act serves to undermine its purpose, and the important constitutional role it plays, as highlighted by the New Zealand Law Society.⁸² In addition, Peter Boshier has emphasised, in relation to private and commercially sensitive information, that "*carve-outs are not necessary. The OIA as it stands protects any such interests and initiative*".⁸³ It is therefore clear that carve outs should only be created in the most compelling cases.
121. In addition, the maximum penalty of \$50,000 for breach of these provisions is harsh. We note the maximum penalty for releasing sensitive information in breach of section 121 of the Fisheries Act is \$5,000.⁸⁴
122. The case for change is not compelling. It is based on a perceived risk that camera footage containing personal and commercially sensitive information *may* be released in the future. But there is no solid basis for this perception. Such information can be specifically withheld under the provisions of the OIA and has been withheld. **EDS submits there is no justification for the proposed amendments.**

Change sought from Select Committee:

Delete subpart 5 from the Bill.

Subpart 6: Time limit for applying for judicial review

123. These amendments restrict the timeframe within which an application for judicial review can be filed to 20 working days.

⁷⁹ Boshier P, 2025, *The Chief Ombudsman's reflections on the Official Information Act*, Chief Ombudsman, Wellington, page 2

⁸⁰ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385, page 391

⁸¹ Official Information Act 1982, section 4(a)

⁸² https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Improving-scrutiny-of-OIA-exemptions-18_3_24.pdf

⁸³ Boshier P, 2025, *The Chief Ombudsman's reflections on the Official Information Act*, Chief Ombudsman, Wellington

⁸⁴ Fisheries Act 1996, section 252(6)(b)

124. There are no appeal rights provided for in the Act in respect of Part 3 sustainability decisions. Therefore, judicial review is the only mechanism by which parties can legally challenge such decisions made by the Minister. Currently, there is no stated time restriction for filing such judicial review proceedings.
125. Judicial review provides a legal mechanism whereby the High Court oversees executive decision-making, therefore playing a critical role in the country’s constitutional system. As explained by the Ministry of Justice, “*judicial reviews are important in New Zealand to make sure that Government and government agencies act within the law, fairly and reasonably*”.⁸⁵ In a judicial review proceeding, the court does not review the merits of the decision, but instead focuses on whether it was made legally. This includes considering whether a decision complies with the requirements of the legislation under which it is made (in this case the Fisheries Act).
126. Access to judicial review is a fundamental part of the human right of access to justice. This is highlighted by its inclusion in the New Zealand Bill of Rights Act 1990 where it states under section 27(3), “*Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination*”.⁸⁶
127. As highlighted by Crown Law, “*the best way to prevent judicial review, or any other scrutiny of your decision, is to ensure proper procedure is followed and recorded throughout the decision-making process*”.⁸⁷ This approach is reinforced in the Regulatory Impact Statement where it states “*MPI can reduce the risk of being successfully challenged by applying good mitigations*”. These include “*fuller consideration of the obligation to make decisions based on best available information*” and that “*MPI’s advice reflects that it has considered all relevant information*”.⁸⁸ **In short, the best way to avoid judicial review is to follow the law when making decisions.**
128. The stated intention of the proposal to limit the judicial review filing time to 20 working days is to “*provide certainty to fishers and other stakeholders that key fisheries management decisions will not be challenged after a certain time*”.⁸⁹ However, the proposal appears as part of a broader package of measures assessed in the Regulatory Impact Statement under the heading “*Reducing the risk of judicial review of sustainability decisions*”,⁹⁰ indicating the broader intent may be to make it more difficult for people to lodge judicial review proceedings.

⁸⁵ <https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/media/rules-and-resources/Judicial-reviews.pdf>

⁸⁶ New Zealand Bill of Rights Act 1990, section 27,

⁸⁷ <https://joys.crownlaw.govt.nz/annex-2/>

⁸⁸ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, pages 76, available [here](#)

⁸⁹ Fisheries Amendment Bill 2026, Explanatory Note

⁹⁰ Ministry for Primary Industries, 2025, *Regulatory impact statement: Amendments to the Fisheries Act 1996*, Ministry for Primary Industries, Wellington, pages 76, available [here](#)

129. There is no general prohibition on including a filing time limit for judicial review proceedings in legislation.⁹¹ However, such restrictions must be appropriate,⁹² and in line with, and proportional to, the relevant legislative objectives.⁹³ This is to recognise the important constitutional right of access to justice.
130. EDS has not been able to find any justification for the selection of 20 working days as a filing time limit in the explanatory material in the Bill or the Regulatory Impact Statement. In addition, it is clear a longer filing time period could equally “*provide certainty to fishers and other stakeholders that key fisheries management decisions will not be challenged after a certain time*”.⁹⁴ In EDS’s view, 20 working days is not appropriate or proportional to the complex nature of judicial review proceedings under the Act.
131. This is recognised in the Regulatory Impact Statement where it states that prescribing 20 working days would “*significantly*” limit the timeframe for judicial reviews. It further states “*MPI consider that this option [20 working days] may be viewed by fisheries stakeholders as restricting the right to judicial review.*”⁹⁵
132. It is also notable that MPI preferred a very different approach, where a period of three months would be given to lodge a judicial review of catch limits, and six months for other sustainability measures.
133. These periods were considered by the Ministry to be “*Reasonable lengths of time for parties to assemble a challenge to a particular decision, given that most plaintiffs will seek further information from the Minister and MPI through the OIA (20 working days to respond to a request) before submitting a challenge to the Court.*”⁹⁶ EDS submits no time constraints should be applied to the lodgement of judicial review proceedings. But if they are, this approach should be adopted in place of the 20 working days in the Bill.
134. EDS notes that under the Act the current time period for judicial challenges to deemed values is three months⁹⁷ and a similar time period has been provided for challenging a decision of the Catch History Review Committee (90 days).⁹⁸ An outlier is the judicial review of aquaculture decisions where there is a 30 working day limit.⁹⁹
135. Providing sufficient time to seek, receive and digest information under the OIA after a decision has been made is essential, as this can provide critical further material on the Minister’s decision-making process which is required to assess whether there are grounds for judicial review. Twenty working days would not enable this to occur and therefore is not a reasonable time period.

⁹¹ *Edwards v Hutt Valley District Court* [2020] NZHC 1388, para [14]

⁹² *Ibid*

⁹³ *Mangawhai Ratepayers and Residents Association Inc v Kaipara District Council* [2015] NZCA 612, para [72]

⁹⁴ Fisheries Amendment Bill 2026, Explanatory Note

⁹⁵ Regulatory Impact Statement: Amendments to the Fisheries Act 1996, 6 August 2025, page 78

⁹⁶ Regulatory Impact Statement: Amendments to the Fisheries Act 1996, 6 August 2025, page 78

⁹⁷ Fisheries Act 1996, section 75B

⁹⁸ Fisheries Act 1996, section 293(1)(5)

⁹⁹ Fisheries Act 1996, section 186J(1)

Change sought from Select Committee:

- Delete clause 65 of the Bill (which inserts a new section 313A).
- If clause 65 is not deleted, amend it to provide a limit of three months to lodge a judicial review of a catch limit decision, and six months for judicial review of other decisions.

LIST OF CHANGES SOUGHT TO THE BILL

Purpose of sustainability measures

- Delete section 11AAA from clause 5 of the Bill.
- If section 11AAA is not deleted, add “and productivity” after abundance and delete “at the level of the quota management area” from section 11AAA(2) of clause 5 of the Bill.
- Amend section 9 (environmental principles) of the Act by replacing “shall take into account” with “shall give effect to”.

Categorisation of stocks based on information availability

Remove the power of the Minister to determine the categorisation of a stock into high, medium and low information and provide for a process whereby an independent science panel categorises stocks.

Decision-making criteria for setting the TAC

- Retain the requirement to consider the effects of climate change on stocks and the role of stocks as a predator or prey of other species when setting the TAC.
- Delete section 13F from clause 10 of the Bill.
- Delete section 13(d) from clause 10 of the Bill.
- Insert “(a) must take a cautious approach that favours the sustainability of the stock, having regard to—” into sections 13B(3) and 13C(3) of clause 10 of the Bill.

Rebuilding depleted stocks

- Delete sections 13B(4), (5) and (6) in clause 10 of the Bill.
- Reinstate sections 13(2)(b) and 13(3) of the Act.

Multi-year catch decisions

Insert a new subsection (c) into section 14D in clause 16 of the Bill as follows:

The Minister may only set the total allowable catch under subsection (b):

- for a high-information quota management stock;*
- where the stock assessment is not more than 2 years old and the Minister is satisfied it provides a reliable estimation of stock status; and*
- the Minister is satisfied there will be sufficient collection of information during the period for which the TAC is set to enable changes in stock status to be identified in a timely manner.*

In-season adjustment to TAC

- Include a requirement that in-season increases in the TAC of Schedule 3 stocks can only be applied to high or medium information stocks.
- Include a new section enabling in-season decreases in TAC to be made for all stocks.
- Retain the mandatory requirement to consult with interested parties before the Minister makes multi-year catch decisions.

Requirement to review the TAC

- Insert a new section in the Bill requiring a mandatory TAC review for every QMS stock once every 10 years.
- Require a mandatory TAC review when a multi-year TAC is revoked or expires.

Research investment to support TAC setting

- Require a review of the current user-pays funding model for fisheries management.
- Require a funding package directed at boosting fisheries science to accompany the Bill.

Management procedures

- Insert two new subsections into section 14L(1) of clause 16 to read:
(c) the stock is a low-information stock;
(d) the stock is below a level that can produce maximum sustainable yield;
- Amend section 14M (1) of clause 16 to read:

The Minister must be satisfied that:
(a) The operating rules will enable the objectives that are included in the procedure to be met;
(b) The information used to develop and apply the operating rules is of sufficient quality to provide high confidence that they will function as intended.
- Insert a new subsection 14QA as follows:

14QA Independent review of management procedures

- (4) The operation of each management procedure must be reviewed by an independent scientist at least every 12 months.*
- (5) The independent scientist must provide an opinion on whether:*
 - (a) the management procedure is operating as intended; and*
 - (b) the management procedure should continue to operate or be revoked.*

(6) A report containing the findings of the review must be forwarded to the Minister and made publicly available.

- Amend section 14R(1) to replace “may” with “must”.

Non-regulatory measures

- Delete section 14J(2)(e) in clause 16.
- Amend section 14K(2) in clause 16 to replace “may” with “must”.
- Insert a new section 14I(1A) to read:

An application to the Minister under subsection (1) may not be made for a quota management stock where:

(c) A total allowable catch for multiple fishing years has been set for the stock under section 14F:

(d) A management procedure has been made for the stock under section 14L.

ACE carry-over

Delete sections 67C and 67C from clause 28 of the Bill.

Alternative deemed value rates

Delete subpart 3 from the Bill.

Confidentiality of camera recordings

Delete subpart 5 from the Bill.

Time limit for applying for judicial review

- Delete clause 65 of the Bill (which inserts a new section 313A).
- If clause 65 is not deleted, amend it to provide a limit of three months to lodge a judicial review of a catch limit decision, and six months for judicial review of other decisions.