

Section 13 Review

By the option4 team
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The Problem

For almost all Quota Management System (QMS) fish stocks the Minister of Fisheries (the Minister) is tasked to set a total allowable catch (TAC) under section 13 or section 14 of the Fisheries Act 1996 (the Act). It has become common practice to use section 13 (s13) as a “default” provision.

Section 13 directs the Minister to move stocks to a size (Bmsy) that produces the maximum sustainable yield (MSY). In effect it makes Bmsy stock strategies the proxy for section 8, which defines the purpose of the Act as utilisation while ensuring sustainability.

The information principles in section 10 direct the Minister to consider any uncertainty in the information placed before him, and to be cautious when information is uncertain, unreliable, or inadequate.

There is a basic conflict, as the Bmsy directives of s13 do not permit the Minister to exercise the caution required by s10. Any attempt to set precautionary TACs attract litigation from quota owners and TOKM, with associated claims for compensation.

An alternative provision for setting TACs is available under s14 where stocks may be added or removed from Schedule 3. This provision is ideally suited to setting precautionary TACs, as it allows the Minister to set the TAC at any level that he thinks best achieves the purpose of the Act. It would form an excellent mechanism for setting TACs for species with little or poor knowledge, except for a single subclause that restricts the stocks which may be added to Schedule 3 as those for which a Bmsy estimate is biologically impossible. No stock can meet the threshold of “impossibility”.

The Solution

In effect s14 is ineffective for any purpose as currently written. However, if the offending subsection (8)(b)(i) were removed, then s14 would become the default TAC setting clause under the Act, and all species entering the QMS would be added to Schedule 3.

Only those stocks with thoroughly believable information would migrate from Schedule 3 to a s13 process where the highest catch (highest risk) strategy could be accepted by moving stocks to Bmsy. Stocks with uncertain or incomplete information would move to Schedule 3 via Order in Council and have a TAC set which the Minister considers best achieves the purpose of the Act (s8).

The only other change required is to ensure that the s13 references to “estimate” have some qualifiers to stop fanciful estimates. For example, Orange Roughy 1 (ORH1) having a Bmsy estimate from one to ten million, and this being legitimate. Some discretion for the Minister to accept or reject any estimate on a qualitative basis is essential.

These two small technical amendments could provide a powerful and elegant solution to the current impasse and resurrect the TAC setting provisions of the Act to the position the authors anticipated, and allow any Minister to exercise judgment, and respond to the electorate.