



Ministry of
Fisheries
Te Tautiaki i nga tini a Tangaroa

Date	28 April 2008	Reference	S8476/MR567
Security Level	Low - Confidence	Submission type	Briefing

Minister of Fisheries

**MEETING WITH ERIC BARRATT, PETER TALLEY, AND
GRAHAM STUART ON CURRENT FISHERIES ISSUES,
TUESDAY 29 APRIL**

PURPOSE

The attached material provides support for your discussion of current fisheries issues at your meeting with fishing industry Principals on 29 April 2008.

RISK

Financial implications	No
Sustainability Risk	None
Legal Risk	No
Media/public interest	None
Publicity	None

CONTACTS FOR DISCUSSION

	Name	Position	Phone	Cell Phone
1	Mark Edwards	Manager Fisheries Policy	04-819 4619	021 469 762
2	Terry Lynch	Policy Manager	04-819 4638	027 244 4318

Terry Lynch
for Chief Executive
Ministry of Fisheries

AGREE/NOT AGREE/AGREE AS AMENDED

Hon Jim Anderton
Minister of Fisheries

/ / 2008

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Purpose

1 The attached material provides support for your discussion of current fisheries issues at your meeting with fishing industry Principals on 29 April 2008. You have requested notes on the proposed amendment of section 13 of the Fisheries Act, SPRMO bottom trawling measures, and timelines for the cost recovery review.

Background

2 On Tuesday 29 April 2008 you are scheduled to meet with fishing industry Principals Eric Barratt, Peter Talley, and Graham Stuart to discuss current fisheries management issues. In particular you have requested information on the progress of the Ministry on:

- addressing the issues raised by the High Court decision on the ORH1 TAC (section 13);
- SPRFMO bottom trawling measures; and
- timelines for the cost recovery review.

Information Attached

3 Notes on these three issues are attached to this note as a separate document.

Recommendation

4 It is recommended that you:

- a) Note the attached material provided for your meeting with industry Principals on Tuesday 29 April 2008.

ADDRESSING THE ISSUES RAISED BY THE HIGH COURT DECISION ON THE ORH1 TAC (AMENDMENT OF SECTION 13)

The Problem

1. In February 2008, a High Court review of a decision by the Minister of Fisheries on total allowable catch (TAC) for orange roughy found that the TAC was unlawful and set the decision aside. The findings in this case create a legal problem for setting TACs for many QMS under current information constraints.
2. The Court found that the language of section 13(2) of the Fisheries Act requires knowledge, or an informed estimate, of the state of the fish stock relative to the level that can produce the maximum sustainable yield (MSY), before the Minister of Fisheries can take a decision under that section.
3. The implication of this finding is that TACs for many QMS stocks cannot continue to be set and varied in the way they have been in the past, because the information the specific wording of the Act requires is not available, and cannot be obtained at reasonable cost.
4. This situation poses a considerable threat to the integrity of the QMS and the sustainable management of fish stocks. The Minister and the Ministry of Fisheries are of the view that a rapid response is required to re-enable business-as-usual in respect of TAC setting. It is hoped that an amendment to the Act to effect this can be achieved in time for sustainability round decisions to be taken under the new provisions for October 2008 fishing year.

Process for Addressing the Problem

5. The three key elements to developing an amendment are:
 - Properly identify the problem
 - Agree on the best approach to addressing the issues
 - Develop specific legal drafting for an amendment
6. The Ministry has contacted key stakeholders and sector representative^s to inform them of the issue and the process steps to be taken. A preliminary description and analysis of the problem and the objectives and constraints of the process has been circulated. Some exchange of views has taken place with industry representatives.
7. The specific objectives of an amendment are:
 - To enable the lawful setting of TACs using the types of internationally accepted information that have been used to inform the Ministers decisions to set TACs in many stocks for the past two decades;
 - The amendment should be the minimum necessary to achieve this objective and should seek to leave the existing operation of setting catch limits unchanged, including the balance between sustainability and utilisation.

- While enabling TAC decisions to be made for stocks where information required by current provisions is not available at reasonable cost, an amendment would not lessen the obligation in the Act to use the best available information in making TAC decisions.

8. The general approach favoured to achieve these objectives is not to change the effect of existing provisions of the Act, including all existing provisions of section 13 and section 14. An additional section or subsection would be added to provide a mechanism for making decisions where the information tests of section 13 are unable to be satisfied. That is, where estimates of current biomass and the biomass that will allow MSY are not both available. The general objective – to achieve MSY – will still guide TAC setting where information makes this possible (for example, if current biomass is available then an F_{msy} strategy may be possible).

Timeframe

9. TACs for the 2008/09 fishing year must be set by early September 2008. To enable TACs to be adjusted (upward or downward) in stocks with information constraints, the new provisions need to be developed and enacted as soon as is possible.

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