

**BRIEFING FOR
PRIMARY PRODUCTION SELECT COMMITTEE**

Subject	Fisheries Act Amendment Bill (No.2)
Summary	This paper provides you with a response to a question put to officials at the meeting of 31 July 2008 regarding the proposed section 13(2A)(b)
Action sought	Response to question in meeting of 31 July 2008
Submitted	5 August 2008
Contact	Terry Lynch 819 4638 or 0272444318 Ministry of Fisheries

Purpose

1. This paper provides you with a response to a question put to officials at the meeting of 31 July 2008 regarding paragraph (b) of sub-section 13(2A) proposed in the Fisheries Act Amendment Bill (No.2).

Question

2. Phil Heatley asked officials about the proposed s.13(2A)(b) to the effect of:
whether or not this provision, as currently drafted, would compel the Minister to have information about all 3 criteria mentioned in the provision and therefore whether or not this would present an information burden on the Minister that he might not be able to meet? Would the provision require comprehensive gathering of information on interdependence, biological characteristics and environmental conditions affecting the stock?

Response

3. It is the Ministry of Fisheries' view that the proposed s13(2A)(b) requires the Minister to have regard to:
 - a. the independence of stocks;
 - b. the biological characteristics of the stock; and
 - c. any environmental conditions affecting the stock.
4. These phrases are used in the existing s13(2) of the Act but not all in the same place. Thus:

- a. is used in s13(2)(a),(b) & (c)
 - b. is used in s13(2)(b)
 - c. is used in s13(2)(b).
5. The criteria are the same and their status is the same (ie "have regard to"). Putting them together in one place is a change from the existing structure. But given that the operating principle of the proposed news13(2A)(c)(ii) is a combination of the cases covered by s13(2)(a),(b) & (c) it is not inappropriate to combine the 3 criteria in the way proposed. The information required to satisfy these criteria will be the same under the proposed amendment as it is now in the existing legislation. That is, the best available information on these matters will be required pursuant to s10 and pursuant to the proposed s13(2A)(c)(i).
6. Therefore the wording of the proposed s13(2A)(b) should not increase the information obligations over what exists in section 13(2) at present other than in the way of combining the 3 items together, as discussed above.

Comment

7. The drafting of the amendment attempts to replicate the scope and nature of considerations already present in section 13(2). These considerations are subject to the information principles in section 10 of the Act and to the interpretation of "best available information" as used in that section. This limits the information burden on the decision-maker to "the best information that, in the circumstances, is available without unreasonable cost, effort, or time."
8. It is possible that bringing these considerations together could highlight this area as one that the Ministry could be challenged on, to be accountable for its performance in providing advice on TAC decisions. However, it is the view of the Ministry of Fisheries that the actual information burden in respect of these issues will not be increased by this amendment over that represented in current provisions.

Mark Edwards
Manager Fisheries Policy
Ministry of Fisheries