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Hon Jim Anderton

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Office of the Minister of Fisheries

Chair
Cabinet Business Committee

FISHERIES AMENDMENT BILL: APPROVAL FOR INTRODUCTION**Proposal**

1 I propose that the Cabinet Business Committee approve the attached Fisheries Amendment Bill for submission to Cabinet and introduction to the House.

Executive Summary

2 The proposed Bill would amend the Fisheries Act 1996 (the Act) to remedy a deficiency that was identified in a February 2008 High Court decision. That deficiency prevents the continuation of current practice by the Minister of Fisheries of taking key decisions on catch limits for fisheries stocks in the quota management system.

3 A remedy has been developed to ensure that the Act can be used to set catch limits for all fish stocks. Te Ohu Kaimoana and the Seafood Industry Council have been consulted in the development of this remedy.

4 This amendment is required urgently to allow decisions on catch limits to be made for the start of the fishing year on 1 October 2008. A shortened process of consideration by Select Committee will be required to enable this amendment to pass in the available timeframe.

Background

5 On 2 July 2008 Cabinet Policy Committee agreed that the proposed amendment to the Act, to remedy a deficiency that was identified in a February 2008 High Court decision, should be drafted into a Bill and submitted for approval for introduction with priority 2 [POL Min (08) 11/3]. This decision was confirmed by Cabinet of 7 July 2008 [CAB Min (08) 26/3].

6 I have asked that drafting instructions be issued to the Parliamentary Counsel Office to prepare a Bill which would make amendments to restore the ability of the Minister of Fisheries to make total allowable catch (TAC) decisions for all relevant stocks, in a way that takes into account best available information, consistent with the following objectives:

- a) The Minister should be able to take TAC decisions in the absence of the biomass estimates currently required by section 13(2) of the Act, using the best information available from a range of sources;
- b) Amendments should not disturb the balance of the Act as it has functioned in respect of TAC setting in recent years;

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- c) Amendments should be as consistent as possible with the current construction of the Act and be as simple as possible while conveying the intent clearly.
- d) No TAC decision should be knowingly inconsistent with the current objective to maintain stocks at or above, or move them to a point at or above the level that can produce the maximum sustainable yield.
- e) TAC setting should use the most information rich process available, without necessitating a level of research and stock assessment investment involving unreasonable cost, effort or time – consistent with section 10(8).
- f) TAC setting should continue to consider relevant social, cultural and economic factors.

Comment

7 The effect of the judgment of Justice Miller of 23 February 2008 in *Anton's Trawling Company Limited v The Minister of Fisheries* (CIV 2007-485-2199) is that a key provision of the Fisheries Act – Section 13: Total Allowable Catch – is not available for use in management decisions for many fish stocks. The TAC (set under section 13) is the main instrument used to constrain fishing on each fish stock to levels that can be sustained over time.

8 The Court found that before a TAC decision can be made under section 13(2), the Minister must be provided with an estimate of both current biomass and the biomass that can produce the maximum sustainable yield (MSY). For a majority of New Zealand's quota management stocks, this specific information is not available.

9 Since the Fisheries Act came into effect, various management strategies – all aimed at supporting the goal of maximum sustainable yield – have been pursued using alternative indicators of the relative state of the stocks, in addition to modelled estimates of biomass levels where available. Some of the alternative indicators have links to the MSY reference points of the Act but others do not.

10 This approach to management with limited information is the norm internationally, being commonly used in jurisdictions with similar regimes such as Australia, the United States, and Canada. In order to continue lawful management with these strategies for stocks with limited information, the Act needs to be amended.

Consultation

11 The rapid development of this issue has meant that full consultation with departments has not been possible. However, the paper considered by Cabinet Policy Committee on 2 July 2008 and this paper have both been circulated to the Ministry for the Environment, Department of Conservation, Te Puni Kōwhiri and the Department of Prime Minister and Cabinet.

Regulatory Impact and Business Compliance Statement

12 A Regulatory Impact Statement is not considered to be required as the amendment is intended only to restore the ability of the Minister of Fisheries that was thought to exist before the findings of the High Court in February 2008, to take TAC decisions under Section 13 of the Act. There are no business compliance costs arising from this proposal.

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Compliance

13 The proposed Bill will be consistent with the following:

- a) The principles of the Treaty of Waitangi;
- b) Rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- c) The principles and guidelines set out in the Privacy Act 1993;
- d) Relevant international standards and obligations; and
- e) LAC Guidelines: Guidelines on Process and Content of Legislation, a publication by the Legislative Advisory Committee.

14 There are no financial, gender or usability implications arising from the recommendations in this paper.

Certification by Parliamentary Counsel

15 The Parliamentary Counsel Office has certified the attached Bill as in order for submission to Cabinet.

Binding on the Crown

16 The proposed Bill will be binding on the Crown.

Commencement of Legislation

17 The Fisheries Amendment Bill will come into force on the day after the date of assent.

18 It is proposed that the Bill be passed no later than 11 September 2008. The reason for this urgency is that the amendment is required before I can take the next set of fisheries management decisions for stocks proposed for TAC changes for the fishing year commencing 1 October 2008. These decisions must be taken in mid-September.

Parliamentary Stages


19 The Fisheries Amendment Bill is proposed for introduction on 21 July, and for its first reading on 24 July 2008.

20 I propose the Bill be referred to the Primary Production Select Committee for its consideration. The Committee will be requested to report the Bill to the House by 25 August 2008. This will leave six sitting days for the Bill to pass through its final stages in the House and be in place for my decisions in mid-September.

Recommendations

31 I recommend that the Cabinet Business Committee:

1. note that I have lodged a bid seeking a priority of 2 on the 2008 Legislative Programme for the Fisheries Amendment Bill;
2. note that on 7 July Cabinet agreed that the Fisheries Act 1996 be amended to remedy a deficiency that was identified in a February 2008 High Court decision, [CAB Min (08) 26/3];
3. note that the attached Fisheries Amendment Bill will amend section 19 of the Fisheries Act 1996 to achieve the policy intent noted in paragraph 6;
4. approve introduction of the Fisheries Amendment Bill;
5. agree that the Bill be introduced on 21 July 2008;
6. agree that the Government propose the Bill be:
 - a) referred to the Primary Production Select Committee for consideration; and
 - b) enacted by 10 September 2008.


 Hon. Jim Anderton
 Minister of Fisheries

10/17/2008