



## CHANGES TO THE FISHERIES ACT

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There are a number of changes to the Fisheries Act 1996 currently in the pipeline, which will be of interest to those skippers in the fishing industry. There is currently a Bill before Parliament, which will implement two interesting changes to the Fisheries Act. Firstly the settlement reached between the Crown and Industry, whereby the Crown will effectively credit the Industry with \$24.6 million it overcharged in the past on fishstock levies will be implemented through changes to the Act. The refund of the overcharges will be paid by reducing future levies. It will take two years to complete the refund for the majority of levy payers, but up to seven years in some fish stock categories. While obviously the refund is to be welcomed, we should not lose sight of the fact that Government somehow managed to overcharge the fishing Industry some \$24.6 million in levies in the first place.

The second important change in the Bill corrects a drafting error, which received recent publicity due to a Court of Appeal decision. The error related to one of the most important offence provisions in the Act, aimed at commercial poachers and black market offending. The provision made it an offence to knowingly contravene the Act for the purpose of obtaining a benefit under the Act. The Court of Appeal held that commercial gain from black market offending was not a benefit obtained under the Act. Benefits under the Act related to obtaining such things as permits, catch history and quota. The provision will be amended so that it covers benefits derived from poaching offences.

While the above provisions are relatively straightforward some more fundamental, and controversial, amendments to the Act have also been proposed by the Ministry of Fisheries. The proposed amendments would involve significant changes to the Quota Management System ("QMS") and particularly to how quota is allocated on the

introduction of new species into the QMS. The Ministry have circulated a consultation document on the proposed changes.

In part, the proposed changes are driven by the need to deal with the pending removal of the moratorium preventing expansion in non-QMS fisheries. The moratorium was imposed as a temporary measure in 1992, but has remained in place ever since. In contrast, fisheries have not remained static and the moratorium has created a number of anomalies and distortions in fisheries management. In part the solution is to get as many fisheries into the QMS as possible.

The proposed changes would make the decision on whether or not to introduce a species into the QMS much easier. They would remove the requirement to weigh the costs and benefits of introducing a species and, instead, the Minister would look at such issues as sustainability, adverse effects on other stocks, conflicts between commercial and non-commercial uses and whether the stock is being efficiently utilised.

But the most significant changes are in how quota will be initially allocated. The Ministry is proposing to abandon the concept that fishers historically involved in a particular fishery have preferential entitlement to quota, which would enable them to continue in that fishery. This concept has been eroded over time, with the initial "commitment and dependence" criteria being whittled down to the blunt instrument of catch history years, whereby if you happen to have harvested a non-QMS species over 10 years ago (between 1990 and 1992) you could get quota on introduction of that species into the QMS. You are also entitled to receive quota if you are currently harvesting the species under an Individual Catch Entitlement ("ICE"). The proposals will see all this swept away and quota tendered and sold to the highest bidder. This, apparently, is based on the

economic theory that those who can afford to pay the most for quota will be the most profitable users of the quota. There will be some transitory provisions, so that a number of species (including Tuna species) will be introduced under a catch history regime, but the idea is that the concept will be phased out rapidly after these species are allocated. There will obviously be winners and losers if the new regime goes ahead. With more and more species being introduced into the QMS there are bound to be on-going deemed value problems for by-catch species where quota is difficult to obtain. This could be exacerbated if speculators are able to buy up the by-catch quota in tendering rounds.

The proposed changes will have a significant impact on smaller fishers. In recent times non-QMS fisheries have mainly been developed by small regional operators who cannot afford to buy quota in the main species and accordingly have put in the effort to develop boutique non-QMS fisheries. In many cases they have done so in the hope that they will either be allowed to continue fishing under the non-QMS framework or that if their species is introduced into the QMS that they will be allocated quota based on their historical involvement. Now those fishers will be forced to compete in tendering rounds with others who have had no

involvement in the fishery, but may have a bigger cheque book.

The value of the fishery will have been set by the pioneer's development of a new fishery, but at the end of the day the Government will benefit from this, rather than the pioneer. Real issues arise as to how new, currently non-QMS fisheries, will be developed in the future, as there appears to be no incentive for an entrepreneur to develop such a fishery under the proposed arrangements.

The proposals also consider new ways of authorising commercial fishing. The main proposal in this regard is to remove the current permit moratorium for non-QMS species, but to limit the number of non-QMS species that may be taken by fishers. These limits will be imposed by regulations, fisheries plans or other statutes, rather than by conditions on individual permits.

The Ministry has invited submissions and consultations on the above proposals and we will all watch with interest to see how these radical proposals are developed or altered during this consultation process.