

Departmental Disclosure Statement

Fisheries Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries (MPI).

MPI certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

6 April 2022

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Part One: General Policy Statement

Fishing plays an important role in New Zealand's economy and society, across commercial, recreational, and customary interests. Commercial fishing employs approximately 13,300 people and contributes \$4.2 billion per year in total economic activity, including \$1.35 billion in export revenue for the year ended June 2021. Recreational fishing is a popular activity for both New Zealanders and tourists – about 700,000 people fish each year and spend almost \$1 Billion on recreational fishing and related activities.¹ Tangata whenua have a central role in the sustainable use of New Zealand's fisheries resources, as managers/kaitiaki (guardians) and users of customary fisheries, and as recreational and commercial fishers.

In 1986, the Fisheries Act 1983 introduced the New Zealand fisheries management system and the Quota Management System (QMS) to provide for the use of fisheries resources while ensuring sustainability. The QMS is a rights-based individual transferable quota system that controls fishing activity through the setting of catch limit, the total allowable catch (TAC). The TAC sets the quantity of fish that can be taken for each fish stock per fishing year. The total allowable commercial catch (TACC) is the tonnage portion of the TAC set aside for commercial quota once allowances for non-commercial (customary and recreational) interests have been considered as well as allowance made for other sources of fishing mortality. In principle, the QMS creates an incentive for fishers to fish within sustainable limits.

A strong fisheries management system requires commercial fishing to be sustainable, productive, and inclusive. While the QMS has improved the sustainability of many of New Zealand's fisheries, there are fundamental issues with the fisheries management system, which contribute to fish wastage, illegal activity, and lost future economic opportunity. The Fisheries Amendment Bill (the Bill) is a Government Bill that will amend the Fisheries Act 1996 (the Act). The Bill will require several consequential amendments to the commercial and recreational fishing regulations and supports a commercial fishing sector that is innovative, technology driven, has highly selective practices and is responsive to cumulative pressures on the marine environment caused by, for example, climate change.

The specific purposes of the proposals are to ensure New Zealand can be a world leader in fisheries management and respond to–

- changing public expectations about how the marine ecosystem is managed; and
- growing demand for high quality, ethically harvested seafood; and
- advances in information capability and fishing innovations; and
- improvement in knowledge about the environment and the potential effects of fishing on the environment; and
- better understanding of science and fisher behaviour.

The Bill will respond to fundamental issues in the fisheries management system to ensure our fisheries management rules operate together to incentivise good fishing practice. Legislative changes include:

- simplifying and strengthening the commercial fishing rules relating to the landing or return of fish and aquatic life, including a new power authorising the

¹ Derived from NZIER report to the Ministry for Primary Industries: *Economic impact of the seafood sector; an input-output and CGE assessment and New Zealand Marine Research Foundation report: Recreational Fishing in New Zealand: A Billion Dollar Industry* (2016).

Minister for Oceans and Fisheries (the Minister) to issue exceptions that allow some species to be returned.

- establishing three criteria for issuing ministerial exceptions for returning catch to the sea as follows:
 - stock or species has an acceptable likelihood of survival; or
 - the retention of the stock or species will have a negative economic value, for example, fish that belongs to an ammoniating species or damaged fish; or
 - mandatory specific stock or species returns are required for a biological, fisheries management, or ecosystem purpose and the stock or species has an acceptable likelihood of survival.
- repealing Schedule 6².
- deeming the stocks or species that can currently be returned or abandoned to the sea by commercial fishers as meeting the assessment and consultation requirements of new section 72A, on enactment.
- introducing graduated penalties for offences relating to the landings and discards rules for QMS fish and aquatic life and empowering the making of regulations to create infringement and demerit points systems.
- including a new defence for catch to be returned to the sea where the return is necessary for the purpose of saving a marine mammal and/or protected shark and ray species.
- allowing for the use of pre-set decision rules for the purpose of setting and adjusting sustainability measures.
- enabling changes to recreational management controls to be implemented more quickly.
- supporting new technology, including on-board cameras, to monitor fishing and fishing-related activities more effectively.
- clarifying that new technology, including on-board cameras, are cost recoverable under the Act.
- developing alternative avenues for fishers to dispose of unwanted catch once landed.
- repealing the Fisheries Act 1983 as its remaining provisions are redundant.

Re-designing the fisheries system to improve outcomes

Simplifying landing and returning rules

The current model of landings and discards rules reflect outdated expectations for how fisheries should be managed. The rules are inconsistent and open to interpretation, have enabled commercial fishers to catch too much and discard what they cannot sell, and have not sufficiently incentivised fishers to reduce unwanted catch by improving fishing practices.

The Bill proposes to simplify and strengthen the commercial fishing rules relating to the landing or returning of fish and aquatic life by clarifying which fish and aquatic life must be landed and which will be allowed to be discarded at sea. To do this, the Bill proposes to include a new power authorising the Minister to issue exceptions that allow stocks or species to be returned to the sea or other waters. This power will be exercised through

² Schedule 6: Stocks which may be returned to the sea or other waters in accordance with stated requirements (Fisheries Act 1996).

an instrument that must be notified in the New Zealand Gazette. The instrument will be used to both allow and require stocks to be returned.

The Bill proposes to amend the Act and associated regulations to clarify that:

- all quota management system (QMS) stocks or species caught by commercial fishers must be landed –live or dead– and accounted for within the fisheries management system (unless subject to an exception issued by the Minister).
- the exception for QMS stocks or species below legal size and the exceptions currently in Schedule 6 will be removed and commercial fishers will have to rely on an instrument issued by the Minister.

The Minister will be able to list certain stocks or species as either being able to be returned or required to be returned for one of the three reasons set out below.

Stocks or species will need to be alive and likely to survive in all but one exception (negative economic value); in most cases commercial fishers will still need to assess whether the stock is alive and likely to survive on return.

The three proposed criteria for issuing ministerial exceptions for returning catch to the sea are as follows:

- stock or species has an acceptable likelihood of survival; or
- the retention of the stock or species will have a negative economic value, for example ammoniating shark species that would taint other catch in the hold; or
- mandatory specific stock or species returns for a biological, fisheries management, or ecosystem purpose and the stock or species has an acceptable likelihood of survival; this criterion could apply to pregnant females to ensure appropriate spawning biomass (for example, female rock lobster carrying external eggs); return of species that play an important ecosystem role (for example, large snapper play an important role in the structure of some ecosystems by keeping kina at bay, which allows kelp to flourish and create habitat for a host of other species).

Transitioning to the new landings and discards rules

To provide commercial fishers with sufficient time to adjust their fishing practices, the Bill proposes to maintain the status quo, for now, by deeming the current exceptions to landing requirements as meeting the consultation and assessment requirements of new section 72A. This will allow the stocks or species to be included in an instrument on enactment without needing consultation or assessment against other criteria set out in the Act, thereby preserving the status quo.

These exceptions include the stocks or species currently listed in Schedule 6 of the Act and stocks or species with minimum legal-size requirements in the various commercial fishing regulations.

The status quo shall continue for some, but not all, of the current exceptions. The Bill proposes that some stocks shall be included in an instrument to continue for a specified period, or indefinitely. Others shall be included in an instrument that expires no later than 30 September 2026.

Those exceptions due to expire on 30 September 2026 will be reviewed over the transition period (from enactment up to 30 September 2026). To continue beyond 30 September 2026, an expiring exception will need to be assessed against the criteria in new section 72A and included in an instrument made under that section. If an expiring

exception is not assessed before the end of the transition period (or earlier revoked), it will be revoked by operation of law on 30 September 2026.

Establishing graduated offences and penalties

The offences and penalties regime in the Act for illegal discards is currently based on a low probability of being caught with high consequential penalties for offending when illegal behaviour is detected. This is regardless of the level of offending.

An improved model is needed for landing and discarding offences, where fishers are penalised proportionate to their offending and MPI can apply compliance measures more easily, more often, and more effectively.

The Bill proposes to amend the Act to introduce new graduated offences and penalties for unlawful discarding or retaining certain quantities of fish or aquatic life.

The Bill will maintain the current maximum penalty (\$250,000) for the most serious breaches of the landings and discards rules with a new graduated penalty model. Fishers that discard 50 or fewer fish a day could face up to a \$10,000 fine, fishers that discard over 50 could face up to \$100,000, and fishers that offend two or more times in a three-year period could receive the maximum \$250,000 fine.

Property forfeiture will apply in certain cases such as when offending occurs two or more times in a three-year period. The court will also have discretion to order forfeiture of property used in the commission of an offence in cases where commercial fishers are convicted for unlawfully returning, abandoning, or retaining more than 50 fish or animals or plants that are aquatic life on any day.

The Bill also proposes to empower the making of regulations for an infringement system and a demerit points system.

Commercial fishing regulation offences will continue to apply to breaches of the commercial fishing regulations.

Allowing the return of protected species

The Bill proposes a new defence provision to allow commercial fishers to return catch to the sea to save marine mammals and/or protected shark and ray species. The defence would only be available where the protected species caught is alive and likely to remain alive on release. The Bill also proposes to enable the Minister to add further protected species to this defence in the future.

As these types of events are considered rare occurrences, and the intention of the defence is to improve outcomes for protected species and incentivise release of protected species, fishers will be required to report the event and provide an estimation of the volume of fish released but will not be required to balance the abandoned fish against annual catch entitlement.

This new defence will prevent situations like in 2017, where a fisher released their catch to safeguard a pod of dolphins and yet was liable for prosecution by MPI. It will also support and encourage the use of innovative fishing equipment, such as modular harvest systems and associated technology (e.g. Precision Seafood Harvesting), which can safely release fish and protected species underwater.

Streamline decision-making

The Bill proposes to empower the Minister to create pre-set decision rules that specify a range or limit within which the Minister can set or vary sustainability measures under the

Act. The Bill also proposes to allow the rules to be used to adjust the total allowable commercial catches for stocks. Unless the specific rule has an expiry date, the rule will remain in place until revoked by the Minister.

As with other sustainability measures under the Act, the Bill will require the Minister to consult and take certain matters into account when developing these rules. But once established, the Minister will be able to use the rules alone to set or vary sustainability measures, or a stock's total allowable commercial catch, provided doing so falls within the range or limit specified in the rule. There will be no further need for consultation, nor will the Minister have to reconsider the matters required to be taken into account when making the rule.

Pre-set decision rules will enable faster responses to change in fish stock status leading to better sustainability and use outcomes.

The Bill proposes to amend the Fisheries (Amateur Fishing) Regulations 2013 by empowering the Minister to specify recreational management controls, such as daily limits and minimum sizes, in an instrument. This would enable recreational management controls to be implemented more quickly. The current limits and sizes will continue to apply until the Minister replaces them with an instrument.

Extending observation of fishing activities

To improve the effectiveness of on-board cameras, the Bill proposes to amend the Act to clarify that requirements and regulations in relation to specified equipment (including electronic equipment) for observing fishing or transportation also extends to the observation of fishing related activities that occur after the fish are brought on board the vessel, including sorting, processing, and discarding of fish.

The Bill will amend the Act to clarify that any tools or specified equipment (including electronic equipment) that are used to deliver a service that is itself cost recoverable, are also able to be cost recovered.

Developing alternative avenues for fishers to dispose of unwanted catch once landed

To complement the new landings and discards rules, the Bill amends some of the current provisions relating to how commercial fishers can dispose of their catch on land. In particular, the Bill proposes to amend the Act to allow commercial fishers to dispose of their catch in accordance with regulations made for that purpose.

These amendments are necessary because:

- Under the current legislative framework, commercial fishers can only dispose of catch (on land) to either a licensed fish receiver or through wharf sales (with some limited exceptions). There is no obligation on the licensed fish receiver to accept all catch and the wharf sales framework only allows for low volume of fish to be sold in a transaction and there is no guarantee of sales.
- If the volume of unwanted fish is more than can be disposed of through existing avenues, fishers could end up in a situation where there are no other legal avenues available to them to dispose of their unwanted catch.

It is intended that these regulations will authorise the Chief Executive of the MPI to approve alternative methods of disposal, and that commercial fishers will only be able to

seek approval if they are unable to dispose of their catch through existing avenues, on a case-by-case basis. The Bill proposes to empower the making of regulations that will:

- authorise the Chief Executive of MPI to approve alternative methods of disposal;
- provide for applications to use an approved alternative method of disposal and prescribe associated requirements;
- prescribe criteria that the Chief Executive of MPI must take into account in considering an application;
- prescribe requirements relating to the disposal of fish, aquatic life, or seaweed by an approved method of disposal; and
- provide for, and prescribe requirements relating to, the verification of the alternative methods of disposal of fish, aquatic life, or seaweed.

Modernising the Fisheries Act

The Bill also repeals the Fisheries Act 1983 as its remaining provisions are redundant.

Part Two: Background Material and Policy Information

Published reviews or evaluations

<p>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</p>	<p>YES</p>
<p>Your fisheries your say, Fisheries New Zealand Discussion Paper, February 2019, and its predecessor programmes Fisheries Management system review and Fisheries Change Programme.</p> <p>The Future of Commercial Fishing in Aotearoa New Zealand, Prime Minister’s Chief Science Advisor Report, March 2021</p> <p>Operation Hippocamp, Ministry for Primary Industries Investigation Report, May 2012</p> <p>Operation Achilles, Final Investigation Report, January 2014</p> <p>Independent review of MPI/MFish prosecution decisions Operations Achilles, Hippocamp and Overdue, Independent Report, September 2016</p> <p>MfE Our Marine Environment, Ministry for the Environment Report, October 2019</p> <p>Using different processes to protect the marine environment, Controller and Auditor-General Report, June 2019</p> <p>EDS Voices from the Sea: managing NZ’s fisheries, Environmental Defence Society (EDS) Report, 2018</p> <p>EDS The Breaking Wave: a conversation about reforming the oceans management system in Aotearoa New Zealand, EDS Working Paper, August 2021</p> <p>Proactive Release Cabinet Paper – Fisheries Amendment Bill: Strengthening fishing rules and policies: landings and discards</p> <p>Proactive Release Cabinet Paper – Fisheries Amendment Bill: Strengthening fishing rules and policies: offences and penalties and agile decision-making</p>	

Relevant international treaties

<p>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</p>	<p>NO</p>
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement Fisheries Amendment Bill: Strengthening fishing rules and policies(mpi.govt.nz) (published October 2021).</p> <p>This document provided analysis and advice for the purpose of informing policy decisions to be taken by Cabinet on regulatory reform of the fisheries management system. Analysed in the document are those proposals requiring changes to the Act and with significant analysis including:</p> <ul style="list-style-type: none"> • amending the rules for commercial fishers that set out what fish must be brought back to port (landed) and what fish can be returned to sea; • introducing a graduated offences and penalty regime; • new defence to lawfully return fish to the sea to save protected species; • streamlining the processes for adjusting commercial and recreational catch limits; • technical amendments to assist with the roll out of cameras on commercial fishing vessels. <p>This package of proposals sits within a broader fisheries system reform agenda.</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The MPI Regulatory Impact Analysis Panel reviewed the regulatory impact statement “Fisheries Amendment Bill: Strengthening Fishing Rules and Policies” produced by MPI. The panel considered that the regulatory impact statement meets the quality assurance criteria.</p>	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES

The regulatory impact statement discussed the option of introducing a new defence to lawfully return fish to the sea to save marine mammals. Cabinet agreed to implement this defence through the Bill.

During drafting of the Bill, the Minister agreed to broaden the new defence to include all protected shark and ray species. Marine mammals are the most likely protected species that would justify the use of this defence. However, in recent years there have been increasing observations of great white shark, basking shark, and mobulid ray interacting with fishing gear.

A power was also included for the Minister to add further protected species to the defence through an instrument if required in the future.

The defence is not going to be extended to all protected species as it should only apply to:

- species that are most caught by methods that require abandonment of catch to save the protected species (for example, bulk methods such as purse seine and trawl); and
- species that can be released alive.

This change is aligned with recommendations agreed by Cabinet, as it provides the ability to improve outcomes for protected species that are incidentally caught by fishing vessels, while still protecting the integrity of the fisheries management system.

The regulatory impact statement also discussed the need to consider how to transition from current regulatory settings to the new landings and discards rules. This includes the need for MPI to monitor interactions between fishers and licensed fish receivers, the fish that licensed fish receivers choose to receive according to the changing profile of what fishers land, as well as the market opportunities to dispose of unwanted fish.

During the drafting of the Bill and following industry engagement, the Minister agreed to further amend the Act to provide for alternative avenues for fishers to dispose of unwanted catch once landed.

Under the current settings, fishers are limited in how they can dispose of catch (on land) to either a licensed fish receiver or through wharf sales. There is no obligation on the licensed fish receiver to accept all catch and the wharf sales framework only allows for low volume of fish to be sold in a transaction.

The new proposed landings and discards rules, which require landing of all QMS species caught (with limited exceptions), are likely to result in higher volumes of unwanted catch being landed - at least initially, while fishers are still adapting their practices and finding innovative solutions to improve and enhance the selectivity of their operations.

There is considerable uncertainty around the potential volume and types of unwanted fish that might be landed. If the volume of unwanted fish are greater than can be dealt with through existing avenues, fishers would end up in a situation where there are no legal avenues available to them to dispose of their unwanted catch.

The Bill proposes to amend the Act to allow commercial fishers to dispose of their catch in accordance with regulations made for that purpose.

It is intended that commercial fishers will only be able to seek approval if they are unable to dispose of their catch through existing avenues, on a case-by-case basis. The Bill proposes to empower the making of regulations that will:

- authorise the Chief Executive of MPI to approve alternative methods of disposal;
- provide for applications to use an approved alternative method of disposal and prescribe associated requirements;
- prescribe criteria that the Chief Executive of MPI must take into account in considering an application;
- prescribe requirements relating to the disposal of fish, aquatic life, or seaweed by an approved method of disposal; and
- provide for, and prescribe requirements relating to, the verification of the alternative methods of disposal of fish, aquatic life, or seaweed.

The Minister has also agreed to proceed with introducing the Bill into the House of Representatives without the consequential amendments to the various commercial fishing regulations. While this approach differs from the original policy agreed by Cabinet in June 2021, it still achieves the policy intent Cabinet agreed. The Minister considered this step necessary as drafting the consequential amendments had proven complex and more time-consuming than expected and risked delaying the Bill process if progressed with the Bill.

As part of the June 2021 Cabinet approvals, Cabinet agreed to roll over the current rules that permitted discarding as if they met the new exception criteria in the Bill for returning catch to the sea. In particular, Cabinet agreed that:

- Some stocks or species are deemed to meet the new consultation and exception requirements on enactment of the Bill; these stocks and species would be included in an exception issued by the Minister.
- Other stocks or species are deemed to continue as if they were exempt on enactment of the Bill up to the end of the transition period, 30 September 2026; at the end of the transition period, these stocks or species will have been reviewed and either included in an exception issued by the Minister or revoked.
- the minimum legal-size requirements in the commercial fishing regulations be revoked with effect 1 October 2022 and to move these requirements into a new instrument on enactment.

To address the timing issue set out above, the Minister intends for the requirements in the commercial fishing regulations to remain in place, instead of being moved into a new instrument from commencement as originally agreed by Cabinet. The initial notice and consequential regulation changes would be made after the Bill is enacted and before the end of the transition period 1 October 2026.

As per Cabinet agreement, the new approach allows the Bill to proceed in a timely way while still meeting Cabinet's agreed policy intent to deem some of the QMS stocks as meeting the new consultation and exception requirements indefinitely, while others are deemed to continue as if they were an exception on enactment of the Bill up to the

end of the transition period, 30 September 2026. At the end of the transition period, these stocks or species will have been reviewed and either included in an exception or revoked.

The date of 1 October 2026 is the ultimate end date when transition into the new system needs to be complete and any exception to the new landings and discards rules would need to be in place, as per Cabinet direction. Officials expect that most stocks would be reviewed in the first two years, prioritising the most significant species by catch volumes.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES

Section B of the [regulatory impact statement](#) provides an analysis on costs and benefits of this Bill. It determines the primary costs from these changes fall to the commercial sector, although no significant costs are expected.

The change to landings and discards rules will have the greatest impact. This includes the cost of landing fish that would have previously been returned to the sea and balancing this against annual catch entitlements (ACE), as well as the lost opportunity cost of storage constraints.

All licensed fish receivers, quota holders and ACE fishers will incur additional costs although the main costs are expected to fall on inshore mixed trawl fisheries because of the methods used, and the species caught will be affected the most by the change in rules.

Government and MPI will also incur costs during the transition period. This includes costs associated with research required to support assessing fish that can be returned to the sea and survive following capture (some of which may be cost recovered from industry) and costs associated with consulting on any proposed changes.

The regulatory impact statement noted policy proposals are likely to cause short to medium-term fluctuations in the commercial fisheries sector markets and could contribute to the ongoing rationalisation of the commercial fishing fleet. It is anticipated these impacts will disappear over time as fishers respond to the new regulatory environment and shift to innovative technologies that avoid unwanted catch.

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Non-compliance with the policy is unlikely, given the new broader roll-out of on-board cameras on inshore fishing vessels and the new graduated offences and penalties regime.</p> <p>The Bill supports the wider roll-out of on-board cameras across the inshore commercial fishing fleet with observation extended to all on-board fishing related activities, including sorting, processing, and discarding. These changes reinforce and help ensure compliance with the new landings and discards rules.</p> <p>The new graduated offences and penalties regime, where fishers are penalised proportionate to their offending and which allows MPI to apply enforcement measures more easily, more often, and more effectively, will also encourage compliance.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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MPI's analysis has considered potential impacts and benefits of New Zealand's international treaties and obligations and considers that there are no significant issues raised by the proposed reform.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Input and participation were sought from iwi/Māori and their views were taken into account in developing the policies. There are a number of Treaty settlements which require the Minister to make regulations under section 186 of the Fisheries Act to provide for the special relationship the claimant iwi have with fisheries in their rohe. The Bill will not affect these regulations. No changes will need to be made to fisheries legislation created through Te Tiriti o Waitangi/Treaty of Waitangi settlements.

The policy proposals have the biggest influence on iwi commercial fisheries interests in quota, catching fish and as fish retailers. Outside commercial interests, tangata whenua have a broad interest in any changes that affect the long-term sustainability and productivity of fisheries as expressed through their role as kaitiaki of their customary fisheries, and any interests they have as individual recreational fishers. Policy proposals on decision-making will have implications for how and when iwi engage on fisheries management decisions and the role that iwi fisheries forums and Māori representative bodies play in that engagement.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	
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The proposals in this Bill are consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

Offences, penalties, and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill establishes a graduated offences and penalties regime for the illegal discarding of fish which:</p> <ul style="list-style-type: none"> • creates graduated penalties for breaches of landings and discards rules, including breaches of any exemptions and conditions; • sets offences for illegally retaining fish that should have been returned; and • provides for regulation-making powers that enable infringements for low level commercial offences, and eventually, the creation of a permit holder-based demerit points system to address repeat offending. 	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice were consulted on and is generally comfortable with the offences and penalties regime in the Fisheries Amendment Bill 2022.</p>	

Privacy issues

3.5. Does this Bill create, amend, or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill supports a wider roll-out of on-board cameras with observation extended to all on-board fishing related activities, including sorting, processing, and discarding. On-board cameras will capture people and collect personal information.</p> <p>As part of the wider roll-out of on-board cameras, MPI will be carrying out a Privacy Impact Assessment (PIA). This will help inform and underpin how personal information is collected, stored, used, or disclosed by the wider roll-out of on-board cameras.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Act provides for the input and participation of tangata whenua into a range of fisheries management processes. Iwi Fisheries Forums, established to provide some of this input, were attended by officials around the country in 2019. Officials also met with individual iwi, Mandated Iwi organisations and Te Ohu Kaimoana (the trust established through the Māori Fisheries Act 2004).</p> <p>MPI undertook public consultation over six weeks between 4 February and 17 March 2019. Officials held 10 public meetings around the country and met with individual iwi, representative bodies, and stakeholders.</p> <p>More than 200 people attended meetings and 1,848 submissions were received. This included 26 submissions from Māori/iwi (including Te Ohu Kaimoana, individuals and representative bodies) 75 submissions from commercial fishers, 1,508 submissions from environmentalists (including 1,479 pre-filled forms from the supporters of one organisation), seven submissions from independent experts, 165 submissions from recreational fishers and 63 submissions from the general public.</p> <p>Post-consultation discussions with a group of industry leaders and Te Ohu Kaimoana, occurred during 2019-20 to address industry concerns with the proposals outlined in the companion paper, which were mainly focused on implementation of the landings and discard rules.</p> <p>Many submitters across the range of interests wanted change to support a more sustainable marine environment. Most submitters representing commercial interests wanted more detail and further consultation, the reforms to include recreational fisheries and a reasonable transition period to adjust fishing practices. Submitters representing environmental, customary, and recreational interests wanted broader reform focussing on managing the marine ecosystem rather than single species.</p> <p>MPI has continued to engage with Māori/iwi, and fisheries and environmental stakeholder post-Cabinet to provide opportunity for input into implementation planning.</p> <p>The following agencies have been consulted: The Ministry of Business, Innovation and Employment; Department of Conservation; Ministry for the Environment; Ministry of Justice; Office for Māori Crown Relations – Te Arawhiti; Te Puni Kōkiri; and The Treasury. The Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet has been informed.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
There are additional forfeiture provisions as part of the graduated offences and penalties regime. These provisions prescribe offences against this Act relating to the taking or possession of fish (> 50 fish a day) and repeat offending (two or more times in three years).	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
The Bill amends Section 72 of the Act, creating a strict liability offence for landing and discarding fish and illegal retention of fish in the breach of an exception. The Bill amends section 72 of the Act. New section 72(7) provides that the burden on proving that an exception or the new defence applies lies on the defendant. The Bill amends the Fisheries (Amateur Fishing) Regulations 2013, specifically it adds new regulations 17B and 17C. Regulation 17C creates a strict liability offence (noting that the defence in the regulations 157(1) does not apply). In this case the “total absence of fault” common law defence would still apply. The defence in section 241 of the Act also applies to the offences in the regulations.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>New Section 72A grants the Minister power to create exceptions from section 72(1) for any stock or species of fish, aquatic life, or seaweed where:</p> <ul style="list-style-type: none"> a) there is an acceptable likelihood of survival; or b) the retention of the stock/species will have a negative economic value, for example, fish that belongs to an ammoniating species or damaged fish; or c) the mandatory return of the stock or species is required for a biological fisheries management, or an ecosystem purpose and the stock or species has an acceptable likelihood of survival. <p>The Bill also gives the Minister power to grant an exemption subject to any conditions the Minister deems appropriate.</p> <p>Before granting, amending, replacing, or revoking an exemption, the Minister must consult the persons and organisations the Minister considers likely to be affected by any exemption, amendment, replacement, or revocation. Any exemption will be notified through a notice in the New Zealand Gazette.</p>	
4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES

The Bill empowers the making of regulations that prescribe infringement offences and penalties in relation to commercial fishing offences, including a demerit points system for repeated offending.

Regulations that prescribe infringement offences for landings and discard offences will be introduced in 2023 following the Bill's passage into law. The demerit points system will be established later once the infringement system is in place.

The Bill empowers the making of regulations to establish alternative disposal methods that will provide lawful avenues for the disposal of unwanted fish if fishers are unable to sell or dispose of their catch through existing avenues.

The Bill gives the Minister power, through a notice, to issue an exception to the new landings and discards rules for any stock or species of fish and aquatic life where: there is an acceptable likelihood of survival; or the retention of the stock/species would have a negative economic value, for example, fish that belongs to an ammoniating species or damaged fish; or the mandatory return of the stock or species is required for a biological fisheries management, or an ecosystem purpose and the stock or species has an acceptable likelihood of survival. The Bill also gives the Minister power to add conditions the Minister deems appropriate.

The Bill includes a power for the Minister to add further protected species to the new defence for the purpose of saving marine mammals, protected shark or ray species, through a notice in the future, if required.

The Bill, through the new Section 11AAA, gives the Minister power to make, amend, replace or revoke pre-set decision rules for sustainability measures.

Amendments to Fisheries (Amateur Fishing) Regulations allow the Minister to decide on, and issue by notice, recreational fishing management controls, including daily catch limits and/or size of catch.

The Bill includes a new section 303, which provides for the consolidation of secondary legislation and published instruments, consistent with a provision in the Statutes Amendment Bill applying a similar requirement to other MPI legislation.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

NO