Fisheries Policy Team
Ministry for Primary Industries
By email: fish.reform@mpi.govt.nz

11 April 2025

SUBMISSION ON PROPOSED AMENDMENTS TO THE FISHERIES ACT CONSULTATION DOCUMENT

SUBMITTER DETAILS

FULL NAME:	Environmental Defence Society Incorporated
ADDRESS:	PO Box 91736, Victoria Street West, Auckland 1142
CONTACT:	Raewyn Peart
EMAIL:	raewyn@eds.org.nz

INTRODUCTION

1. This is a submission by the Environmental Defence Society (**EDS**) on the Ministry for Primary Industries' (**MPI**) Proposed amendments to the Fisheries Act Consultation Document (**Consultation Document**).[1]

2. EDS is an apolitical, not-for-profit organisation dedicated to achieving improved outcomes for New Zealand's environment. It is active as a legal watch-dog, policy think tank and conference organiser.

3. EDS has a special interest in the marine environment. In May 2022, it completed the first phase of a multiyear project looking at issues within the national oceans management system and options for future reform.[2] EDS is undertaking phase two of the project which is focused on developing concrete recommendations for oceans reform.[3]

4. EDS is familiar with the issues that the proposed reforms seek to address. In 2018, it led an in-depth review of the national fisheries management system and published findings in a report entitled "*Voices from the Sea: Managing New Zealand's Fisheries*".[4] Drawing on this work, EDS has proactively sought to improve fisheries management outcomes through submissions on previous reforms of the Fisheries Act 1996 (**Act**) and regulations, temporary closure requests, and sustainability measures for wild fish stocks.[5]

[1] Ministry for Primary Industries (**MPI**) (2025) "*Proposed amendments to the Fisheries Act: Consultation Document*" (MPI, February 2025, Fisheries New Zealand Discussion Paper No: 2025/03) [**Consultation Document**], available here.
[2] Greg Severinsen et al (2022) "*The Breaking Wave: Oceans Reform in Aotearoa New Zealand*" (EDS, May 2022), available here.
[3] Key findings are being published in a series of working papers and case-studies. For example, see: Raewyn Peart, Deidre Koolen-Bourke and Salif Sidibe (2024) "*Restoring the Sea: The role of marine spatial planning*" (EDS, December 2024), available here; and Raewyn Peart (2024) "*Restoring the Marlborough Sounds: An oceans reform case study*" (EDS, December 2024), available here.
[4] Raewyn Peart (2018) "*Voices from the Sea: Managing New Zealand's Fisheries*" (EDS, 2018), available here.
[5] Our submissions are available on EDS's website here.

5. This submission provides a summary of EDS's position on the proposed reforms (as a whole) and then outlines its feedback in relation to specific proposals in the Consultation Document. It is divided into four parts:

    a. Summary of EDS's position;
    b. Framework for decision-making;
    c. On-board camera requirements; and
    d. Landing and discard rules.

SUMMARY OF EDS'S POSITION ON PROPOSED REFORMS

6. EDS supports the intent of the proposed reforms, which it sees as being to provide for more responsive and agile decision-making and improved use of electronic data.

7. However, this support is qualified.

8. EDS is concerned that certain proposals may not achieve these policy objectives in a way that ensures sustainability of wild fish stocks and the wider marine environment. This is because the proposed amendments fail to address the root causes of inertia in the current fisheries management system, including:

    a. Prolonged underinvestment in fisheries research and stock assessment. This has resulted in an information-poor context where:
        i. Few stocks are regularly assessed; and
        ii. Stock assessments place too much reliance on fisheries-dependent data despite known sustainability risks.

    b. Stock assessment models do not always reflect the best available information. To date, most Fisheries New Zealand (**FNZ**) assessments have not incorporated fisheries-independent data. This data provides a useful check on model results and should be formally recognised in the stock assessment process.

    c. There is strong scientific evidence that some stocks are being managed at inappropriate scales. This in turn creates increased risks of localised depletion and ecosystem degradation.

    d. The current policy framework for fisheries management is weak and outdated:
        i. It adopts an exclusive focus on managing stocks to minimum biomass levels that will achieve the maximum sustainable yield (**MSY**);
        ii. It fails to provide for ecosystem-based management; and
        iii. It lacks legal status – this makes it to a 'nice to have' rather than a directive tool.

9. In this context, some of the proposals create increased sustainability risks because they:

    a. Provide the Minister with more discretion to make decisions without independent checks and balances;
    b. Remove existing sustainability controls from processes for setting catch limits for low information stocks and depleted stocks;
    c. Provide additional opportunities for industry to influence decisions on catch settings and sustainability measures; and
    d. Enable carry forward of annual catch entitlement (**ACE**) without adequate safeguards.

10. Overall, there is a lack of supporting evidence to justify proposals that create *increased* sustainability risks. This is particularly concerning because certain proposals overturn Court decisions.

11. EDS's submission outlines where there are opportunities for the proposed reforms to be reshaped to minimise sustainability risks.

12. EDS would welcome the opportunity to meet with MPI to discuss further refinements before the reforms are introduced as a Bill.

PROPOSALS TO IMPROVE RESPONSIVENESS, EFFICIENCY AND CERTAINTY OF DECISION-MAKING

13. The proposals in Part 1 of the Consultation Document include substantive changes to requirements under the Act for making decisions on sustainability measures, including catch limits. This section of the submission provides a brief overview of the legislative framework and outlines EDS's feedback on the proposed amendments.

Legislative framework

14. Section 13 of the Act requires the Minister to set a Total Allowable Catch (**TAC**) for each quota management stock in each quota management area. The Minister *may* vary a TAC but there is no fixed period for review.[6] Therefore, once a TAC is set it continues to apply until (and unless) it is varied.

15. Section 14 allows the Minister to set an "*alternative*" TAC for stocks listed in Schedule 3 if certain criteria are met.[7] This pathway affords the Minister with wider discretion than s 13 (as addressed below) but only in relation to eligible stocks.

Setting a TAC based on MSY (s 13)

16. The TAC must be set at a level that maintains a stock "*at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks*".[8]

17. The Act defines the "*maximum sustainable yield*" as:[9]

> in relation to any stock, means the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock

18. The Act does not define the phrase "*interdependence of stocks*". However, the Supreme Court recently confirmed that the concept includes the role of target species in the food chain as well as impacts on non-target species (e.g. bycatch).[10]

19. Past experience demonstrates that the interdependence of stocks can be of critical importance when setting sustainable catch limits. For example, rock lobster and snapper in northeastern New Zealand fulfil an important role in keeping kina populations in check and mitigating urchin

[6] Fisheries Act 1996, s 13(4).
[7] Fisheries Act 1996, s 14(1).
[8] Fisheries Act 1996, s 13(2)(a).
[9] Section 2(1) definition of "*maximum sustainable yield*".
[10] *Seafood New Zealand Limited v Royal Forest & Bird Protection Society of New Zealand Inc* [2024] NZSC 111 [*Tarakihi case*] at [23].

barrens.[11] However, for many years this role was not adequately factored into decisions on catch limits resulting in widespread degradation of shallow reef ecosystems from Northland to the Bay of Plenty. Similar relationships apply in other parts of the country (e.g. rock lobster and blue cod are important predators of kina in the Marlborough Sounds).[12] Therefore, it is critical this concept remains embedded in decision-making processes for setting and varying catch limits under the Act.

20. Section 13(2)(b) applies if a stock is below a level that can produce the MSY (i.e. depleted). The Minister must set the TAC at a level that will enable the stock to recover "*within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock*".[13]

21. Section 13(2A) applies when there is uncertainty about the level of a stock (i.e. it "*is not able to be estimated reliably*"). In this situation, the Minister must set the TAC at a level that "*is not inconsistent with*" the objective of managing the stock at or towards the MSY.[14]

22. Section 13(2)(c) applies if a stock is above a level that can produce the MSY. It allows the Minister to set the TAC at a level that enables the stock to be fished down.[15]

23. Section 13(3) provides that the Minister must have regard to any social, cultural and economic factors (as the Minister considers relevant) when determining the "*way*" and "*rate*" at which a stock is rebuilt or fished down.[16] The interplay between this provision, and the direction to set a rebuild period that is appropriate to the stock in s 13(2)(b), has been the subject of judicial scrutiny and is addressed below.

Setting an alternative TAC (s 14)

24. Section 14 allows the Minister to set an "*alternative TAC*" for stocks listed in Schedule 3.

25. A stock can be added to Schedule 3 if:[17]

    a. It is not possible to estimate the MSY because of the species' biological characteristics;
    b. A national allocation has been determined as part of an international agreement;
    c. The stock is managed on a rotational or enhanced basis; or
    d. The stock comprises 1 or more highly migratory species.

26. The TAC for a stock listed in Schedule 3 can be set under s 13 or s 14. However, the Minister can only set the TAC under s 14 if it would better achieve the purpose of the Act than if the TAC was set under s 13. If this test is passed, the Minister has broad discretion to set the TAC at a level the Minister considers "*appropriate*" to achieve the purpose of the Act.[18]

27. When setting an alternative TAC under s 14, the Minister is not explicitly required to consider the "*interdependence of stocks*", the need to rebuild depleted stocks, or MSY-related reference targets and limits. Compared to the s 13 process, the Minister has wide discretion to set the TAC at a level the Minister considers appropriate for listed stocks.

---

[11] *Environmental Law Initiative v Minister for Oceans and Fisheries* [2022] NZHC 2969 at [69].
[12] Raewyn Peart (2024) "*Restoring the Marlborough Sounds: An oceans reform case study*" (EDS, December 2024), at 33-34, available here.
[13] Fisheries Act 1996, s 13(2)(b)(ii).
[14] Fisheries Act 1996, s 13(2A)(c)(ii).
[15] Fisheries Act 1996, s 13(2)(c).
[16] Fisheries Act 1996, s 13(3).
[17] Fisheries Act 1996, s 14(8)(b).
[18] Fisheries Act 1996, s 14(1).

28. However, the criteria for listing stocks in Schedule 3 means that this ability is only available in a narrow set of circumstances, including when it is not possible to assess status relative to MSY-reference levels due to the biological characteristics of the species. This differs from s 13(2A) where deficient information may temporarily constrain the ability to evaluate a stock. This is an important distinction because, in the case of s13(2A), additional investment and information could address the issue.

Setting or varying the total allowable commercial catch (s 20)

29. The Minister must also set a total allowable commercial catch (**TACC**) for each stock.[19] The TACC must not exceed the TAC.[20] It is set after making an allowance for Māori customary and recreational harvest and all other mortality caused by fishing (such as illegal harvest and discards).[21]

Key procedural requirements

30. The Minister must comply with various requirements before deciding to set or vary the TAC/TACC for a stock, including:

    a. *Consult* with parties who have an interest in the stock or area, including Māori, environmental, recreational and commercial groups.[22]
    b. Consider specified matters, including any effects of fishing on any stock and the aquatic environment, existing controls that apply to the stock or area, and the natural variability of the stock.[23]

EDS's feedback

31. The proposals in Part 1 of the Consultation Document aim to streamline decision-making on catch limits and other measures by modifying some of these requirements.

Proposal 1: Multi-year Catch Decisions

32. MPI proposes to introduce an ability for the Minister to make multi-year catch decisions:

    a. *A phased catch limit adjustment* – a stepped increase or decrease in the catch limit over a specified period.[24]
    b. *A temporary catch limit increase* – an increase in the catch limit for a fixed period with the catch limit reverting back to its original status at the end.[25]

33. Currently, the Minister must comply with procedural requirements (above) each time the TAC/TACC is adjusted. The proposed amendments would enable the Minister to pre-approve changes to the catch settings for a period of up to 5 years.[26]

34. EDS supports the intent of the proposed amendments, which it sees as being to provide for more responsive and timely adjustments to the catch limits for stocks.

[19] Fisheries Act 1996, s 20.
[20] Fisheries Act 1996, s 20(5).
[21] Fisheries Act 1996, s 21(1).
[22] Fisheries Act 1996, s 12(1) (**TAC**) and s 21(2) (**TACC**).
[23] Fisheries Act 1996, s 11(1).
[24] Consultation Document at [50]-[53].
[25] Consultation Document at [54].
[26] Consultation Document at [49].

35. EDS's previous work has shown that the current process for adjusting catch limits is lengthy and resource intensive, with many adjustments in harvest levels lagging behind changes in stock levels.[27] Inertia in the catch adjustment process remains prevalent. For example, Table 1 (below) shows that the TACCs for several key finfish species in northern New Zealand have not been adjusted for more than two decades.

Table 1. Changes in TACC for key finfish stocks since introduction to QMS.

Stock	Introduction to QMS	Last TACC change	Years since last TACC change (up to 2022/23)
Snapper (SNA 1)[28]	1986-87	1997-98	25
Jack mackerels (JMA 1)[29]	1986-87	1994-95	28
Pilchard (PIL 1)[30]	2002-03	2002-03	20
Kahawai (KAH 1)[31]	2004-05	2005-06	17
Kingfish (KIN 1)[32]	2003-04	2003-04	19
Trevally (TRE 1)[33]	1986-87	1988-89*	34
Leatherjacket (LEA 1)[34]	2003-04	2003-04	19
Rig (SPO 1)[35]	1986-87	1997-98	25
Barracouta (BAR 1)[36]	1986-87	1996-97	26

* There have been no substantive changes to the TACC since this time (i.e. up to 14t).

36. Many of the current TACCs are set at or above historical harvest levels and do not operate as a practical limit on harvest. Based on reported landings for the 2022/23 fishing year, Table 2 shows that a number of stocks were under caught. This indicates that the TACC is not the main constraining factor for the harvest levels of these species. Harvest is likely affected by a range of factors, including stock depletion and fleet configuration. However, little is known about these stocks and the TACCs largely reflect guesswork.

Table 2. Examples of under caught stocks based on reported landings for 2022/23.

Stock	Percentage of TACC caught
Anchovy (ANC 1)[37]	0% (0/200t)
Pilchard (PIL 1)[38]	7% (146/2000t)
Flatfish (FLA 1)[39]	26% (233/890t)
Rig (SPO 1)[40]	35% (241/692t)
Jack mackerels (JMA 1)[41]	33% (3,328/10,000t)

[27] Raewyn Peart (2018) "*Voices from the Sea: Managing New Zealand's Fisheries"* (EDS, 2018) at 51-53.
[28] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 3*", at 1574, available here.
[29] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 2*", at 666, available here.
[30] Ibid, at 1206, available here.
[31] Ibid, at 723, available here.
[32] Ibid, at 769-770, available here.
[33] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 3*", at 1880, available here.
[34] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 2*", at 799, available here.
[35] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 3*", at 1346, available here.
[36] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 1*", at 87, available here.
[37] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 1*", at 64, available here.
[38] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 2*", at 1206, available here.
[39] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 1*", at 340, available here.
[40] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 3*", at 1346, available here.
[41] FNZ (2024) "*Fisheries Assessment Plenary, May 2024: stock assessments and stock status – Volume 2*", at 666, available here.

37. The lack of responsiveness in the current catch adjustment process is concerning because:

    a. It increases the risk of persistent stock depletion (and potential collapse) with consequential broader ecosystem effects.
    b. It means larger reductions in catch are required to rebuild stocks when depletion is eventually identified.

38. Given the above, EDS supports the need for more agile and responsive decision-making.

39. However, it questions whether *faster* decisions will lead to *better outcomes*. The main reason that catch settings for various stocks have remained static is because there is insufficient information to support scientifically robust adjustments. Deficiencies in available information have resulted from prolonged underinvestment in fisheries science and stock assessments. The proposed amendments do not address this fundamental issue.

40. Therefore, EDS is concerned about the lack of checks and balances in the proposed framework for multi-year catch decisions. Further safeguards are necessary to ensure the Minister's decisions do not jeopardise the sustainability of stocks and the wider marine environment.

<u>Weak assessment criteria do not ensure sustainability</u>

41. The Consultation Document does not contain any assessment criteria to guide the Minister's decisions on *phased catch limit adjustments*. EDS finds this concerning because other proposals (addressed below) would allow the Minister to consider socio-economic factors when setting the rebuild period for depleted stocks. In combination, these changes could delay necessary action to rebuild stocks and undermine their long-term sustainability.

42. The Consultation Document contains criteria to assess when it is appropriate for the Minister to make *temporary catch limit increases*. However, the suggested criteria are vague and may override more stringent requirements in the Act. For example, the suggested criteria include (in italics):[42]

    a. "*Best available information on the status of the stock*"

       This criterion is unnecessary because the Minister is already obliged to consider the information principles in s 10 of the Act, which include "*decisions should be based on the best available information*". The suggested criterion adopts a narrower focus (i.e. "*on the status of the stock*"). This creates a risk that relevant information about fishing impacts on the marine environment (i.e. not the target stock) could be ignored in decisions.

    b. *"This approach is appropriate where there is good information to suggest that a stock has been lightly fished (now and in the past) and is therefore above the biomass that support maximum sustainable yield"*

       This guidance note suggests that "*lightly fished*" stocks can be assumed to be above a level that can produce the MSY. It ignores the potential for the heavy fishing of other stocks, fishing methods or environmental factors to impact stock productivity. In particular, in a climate changing world sea warming, ocean acidification and increased

[42] Consultation Document at [55].

storminess are impacting levels of recruitment and productivity of stocks. It is inappropriate to assume they are in good shape based on past fishing efforts.

c. "*Biological information (with particular focus on susceptibility to overfishing and also ecosystem function)*" and "*Interdependence of stocks (with a particular emphasis on impacts on stocks taken in association)*"

We agree these are important considerations. However, they are already covered by s 13 of the Act and should be retained in that provision (addressed further below) rather than modified and attached to the temporary adjustment process, which creates unnecessary complexity.

d. "*The likelihood that a temporary increase to the catch limit would provide useful additional information on stock abundance relative to risk of overfishing or adverse environmental impact*"

This criterion suggests that the Minister could increase the catch limit for a particular stock despite *known risks* of overfishing or adverse environmental impacts, which is a high risk strategy. It is unclear what "*likelihood*" would be acceptable given these risks.

43. Overall, the suggested criteria do not provide any reassurance that multi-year catch decisions would ensure sustainability in accordance with the purpose and principles of the Act.

<u>Additional safeguards must be incorporated into decision-making</u>

44. To address these concerns, additional safeguards must be incorporated into the legislative framework for multi-year catch decisions, including:

    a. Clear statutory criteria for *phased adjustments* and *temporary increase* decisions.
    b. The criteria must be consistent with (i.e. not override or narrow the scope of) existing requirements in the Act (e.g. ss 8, 9, 10, 11, 13).
    c. Minimum information requirements should be incorporated into the framework to limit when multi-year catch decisions can be made. For example:
        i. Operational guidelines must be developed with independent scientific input (and peer reviewed) prior to decisions being approved for a stock; and
        ii. A full stock assessment must be undertaken and remain relevant (i.e. be no more than 2 years old), at the time of the Minister's decision.
        iii. The information informing the stock assessment must be sufficient to enable the current status of the stock to be reliably estimated.
    d. A review of the catch settings established by a multi-year catch decision *must* be undertaken:
        i. If new information becomes available that suggests the status of the stock was different to that at the time of the Minister's decision; and
        ii. No later than 5 years after the decision was made.

<u>Multi-year catch decisions should enable temporary reductions</u>

45. The proposed temporary adjustment pathway does not provide for temporary *reductions* in the catch limits. A reduction may be beneficial if a stock is seriously depleted and requires rapid rebuilding. This option should be considered as part of the legislative reform.

Streamlined consultation with checks and balances

46. The proposed amendments could limit opportunities for interested parties to provide input and participate in decision-making. However, this would only occur if multi-year catch decisions are applied to stocks that have traditionally been subject to frequent review and adjustment. This has rarely occurred in practice. As outlined above, the catch limits for many stocks have not been adjusted for decades. This means there has been no real opportunity for interested parties to provide input on their management.

47. Therefore, EDS supports:

    a. Mandatory consultation with interested parties (as currently required by s 12) *before* the Minister makes a multi-year catch decision;
    b. A maximum timeframe of 5 years for multi-year catch decisions (as proposed); and
    c. Additional safeguards (as outlined above) to ensure multi-year catch adjustments are only implemented where they are appropriate for a particular stock.

Proposal 2: Management procedures

48. MPI proposes to introduce an ability for the Minister to approve "*management procedures*" for adjusting catch limits.

49. The Consultation Document indicates that the parameters of management procedures could be prescribed by the Act as follows:[43]

    a. Objectives for the stocks concerned;
    b. Biomass target (if any);
    c. Performance measure(s);
    d. An equation that calculates the appropriate catch limit based on the performance measures; and
    e. Operating specifications and parameters about how it would operate (including provision for exceptional circumstances where a management procedure may not be followed).

50. In principle, EDS supports the intent to enable more responsive decision-making through implementation of management procedures.

51. However, history demonstrates that the effectiveness of management procedures is dependent on high quality information, and things can go badly wrong when the management procedure is based on inaccurate assumptions because it effectively operates in an automatic fashion. EDS has serious concerns about the potential for management procedures to enable long-term overfishing in the absence of a robust policy framework and information to guide their application.

Significant sustainability risks

52. Management procedures operate by generating an output (e.g. appropriate catch limit) based on a given input (e.g. standardised catch per unit effort (**CPUE**)). They rely heavily on accurate and timely stock assessment information.

[43] Consultation Document at [73].

53. In summary, management procedures consist of:[44]

    a. A harvest control rule (i.e. equation) which determines the relationship between an input (e.g. CPUE) and an output (e.g. catch limit); and
    b. Trigger limits so that if an input changes by a prescribed amount, the output will automatically adjust in response. The trigger limits are designed to accommodate some variability so they do not demand action unless there is a material change in the input data. It is therefore critical that trigger limits are set based on accurate scientific information or they can enable ongoing fishing despite stock depletion.

54. However, robust scientific information is not available for the vast majority of stocks in the QMS. As outlined in a 2021 report prepared by the Office of the Prime Minister's Chief Science Advisor, most stocks are not regularly assessed or scientifically evaluated. Even where scientific assessments have been undertaken for high value stocks, they are constrained by uncertain and incomplete data.[45]

55. Overall, the current fisheries management system can be characterised as information-poor. This means that the system, itself, does not provide the necessary foundations to support the widespread application of management procedures.

56. Therefore, EDS finds it concerning that the Consultation Document does not contain any explicit criteria to assess when it is appropriate to apply management procedures. It simply states that management procedures will be used to set catch limits for stocks and, in relation to setting TACCs, they would only be used "*where appropriate*".[46]

57. The danger of applying management procedures in the context of an information-poor environment was highlighted in the Hauraki Gulf rock lobster fishery (**CRA 2**).

58. Between 2013 and 2016, decisions on the setting of catch limits in CRA 2 were informed by a "*management procedures*" approach.[47]

59. The management procedure adopted for CRA 2 relied heavily on fisheries-dependent CPUE data, which was considered to be a reliable indicator of relative stock size.[48] This proved to be inadequate and led to significant depletion of rock lobster biomass over the span of several years.

60. When it became apparent that rock lobster populations had been critically depleted across shallow reef habitats in CRA 2, industry agreed to voluntarily shelve 25 tonnes of quota (i.e. 12.5% of the TACC) for the 2015-16 fishing year. The amount of shelved quota was increased to 49 tonnes (i.e. 25% of the TACC) in the 2016-17 and 2017-18 fishing years.[49]

61. In 2017, a stock assessment was undertaken for CRA 2. Results showed the spawning biomass of rock lobster was critically low at about 18.5% of the (then) management reference level and very

---

[44] For an example of how management procedures operate, see D N Webber and P J Starr (2020) "*Operational management procedures of New Zealand rock lobster (Jasus edwardsii) stocks for 2020-21*" (FNZ, December 2020, New Zealand Fisheries Assessment Report 2020/46), available here.
[45] PMCSA (2021) "*The Future of Commercial Fishing in Aotearoa New Zealand: A report from the Office of the Prime Minister's Chief Science Advisor Kaitohutohu Mātanga Pūtaiao Matua ki te Pirimia"* (February 2021) at 159-162, available here.
[46] Consultation Document at [66]-[69].
[47] D N Webber et al (2018) "*The 2017 stock assessment and management procedure evaluation for rock lobsters (Jasus edwardsii) in CRA 2"* (MPI, May 2018, NZ Fisheries Assessment Report 2018/17), at 23, available here. See Table 9.
[48] Ibid at 11.
[49] Ibid at 2.

likely (82%) below the soft limit for the stock (which required a rebuilding plan).[50] The management procedure rule had indicated that no change in TACC was necessary between 2013 and 2016, despite the low and declining stock levels.[51]

62. The 2017 stock assessment suggested that low recruitment played a part in the declining trends.[52] However, it also found changes in the commercial fleet likely contributed to the disconnect between CPUE data and stock biomass levels. Vessels with lower catch rates had left the fishery, while those with higher catch rates remained.[53] This led to an observed increase in CPUE that was independent of any increase in stock biomass and likely overestimated the abundance of the stock in preceding years.

63. In 2018, the (then) Minister decided to implement a 'fixed catch approach' and to depart from the management procedures approach for CRA 2 as part of a rebuilding plan.[54] This involved reductions in the TAC (from 416.5 to 173 tonnes), TACC (from 200 to 80 tonnes), recreational catch allowance (from 140 to 34 tonnes) and other mortality allowance (from 60 to 42.5 tonnes).[55] In 2020, the recreational daily bag limit was reduced from 6 to 3 red rock lobster.[56] These catch settings remain in force as of April 2025.

64. The Minister recently confirmed a temporary closure of the inner Hauraki Gulf (within CRA 2) fishery to address the ecosystem impacts of rock lobster harvest on the demise of kelp forests in this area.[57]

<u>Weak policy framework</u>

65. The Consultation Document appears to recognise the importance of setting appropriate objectives and biomass targets for stocks that are subject to management procedures. However, it does not contain any details around how these will be set.

66. EDS finds this lack of transparency concerning because the current policy framework for fisheries management is not fit for purpose – it is out of date and does not provide for effective ecosystem-based management.

67. The Harvest Strategy Standard (**HSS**)[58] and Operational Guidelines[59] establish the policy framework for managing stocks in accordance with the requirements of the Act. The HSS was published in October 2008 while the Operational Guidelines were revised in 2011. They have not been updated since their promulgation.

68. The HSS aims to establish a framework for setting stock targets and limits in accordance with the Act. It has three core elements:[60]

    a. A specified target about which a fishery or stock should fluctuate;

[50] Webber et al, above n 47, at 23. See Table 8: $P(SSB_{2016}<0.2SSB_0)$ = 0.816; and SSB_{2016}/SSB_0 = 0.185 (both 50% base scenario).
[51] Webber et al, above n 47, at 23. See Table 9.
[52] Webber et al, above n 47, at 14.
[53] Webber et al, above n 47, at 3.
[54] Hon Stuart Nash (26 March 2018) "*Fisheries sustainability measures for 1 April 2018*", at 3, available here.
[55] Ibid at 3.
[56] MPI "*Review of the CRA 2 rock lobster fishery*" available here.
[57] Hon Shane Jones (25 March 2025) "*Changes to fisheries sustainability measures for rock lobster stocks as part of the 2025 April sustainability round*", available here.
[58] Ministry of Fisheries (2008) "*Harvest Strategy Standard for New Zealand Fisheries*" (24 October 2008) [*HSS*], available here.
[59] Ministry of Fisheries (2011) "*Operational Guidelines for New Zealand's Harvest Strategy Standard (Rev 1)"* (June 2011), available here.
[60] HSS at [23].

b. A soft limit that triggers a requirement for a formal, time-constrained rebuilding plan; and
c. A hard limit below which fisheries should be considered for closure.

69. The approach adopted by the HSS has known limitations. For instance, it adopts a focus on "*single species biological considerations and related uncertainties, and includes only limited consideration of economic, social, cultural or ecosystem issues*".[61] Moreover, it does not contain any guidance around how decisions will achieve consistency with the environmental principles in s 9 of the Act.[62] When the HSS was developed, it was envisaged that further standards may be implemented to address environmental considerations.[63] However, no such standards have been developed.

70. In practice, managing stocks to the minimum target biomass that will produce the MSY has failed to ensure the sustainability of certain fisheries. This is because it does not adequately consider the environmental impacts of fishing. For instance, there is strong evidence that bottom trawling and dredging has resulted in widespread loss of important biogenic habitats in the Marlborough Sounds.[64] This has, in turn, limited recruitment and productivity of finfish stocks. Adopting a management procedures approach fails to account for these factors and risks perpetuating poor environmental outcomes.

71. The HSS and Operational Guidelines do not have legal status. The Supreme Court recently accepted that these documents may contain "*the best available information*" but they are not (on their own) mandatory relevant considerations for the Minister when setting or varying catch limits under the Act.[65] Consequently, there is no explicit requirement for the Minister to comply with the HSS, by setting reference and target limits for a stock, before approving management procedures.

72. Overall, EDS is concerned that management procedures will fail to achieve consistency with the purpose and principles of the Act without a suitably robust policy and legislative framework to guide their development and operation. Therefore, EDS seeks:

    a. An urgent review of the HSS and Operational Guidelines, with a focus on incorporating standards that require environmental considerations to be factored into management objectives, biomass targets and catch limits.
    b. Associated amendments to the Act to require that the Minister comply with the HSS and Operational Guidelines prior to approving any management procedures for a stock or fishery. This would provide a stronger (and explicit) link between the policy and legislative framework for decision-making.
    c. Incorporation of further safeguards (as set out above in relation to multi-year catch decisions) that must be satisfied before management procedures can be approved.

<u>Streamlined consultation</u>

73. In principle, EDS supports amendments that would provide for proactive engagement with stakeholders in the development of management procedures.[66]

[61] HSS at [9].
[62] In contrast, it explicitly addresses how it aligns with s 8, 10, 13, 14, 14A and 14B of the Act. See the HSS, Appendix II, from 22.
[63] HSS at [10].
[64] Raewyn Peart (2024) "*Restoring the Marlborough Sounds: An oceans reform case study*" (EDS, December 2024), at 31, available here.
[65] *Tarakihi case* at [125].
[66] Consultation Document at [75]-[76].

74. However, it cautions against changes that would allow stakeholders to influence the *parameters* of management procedures as these should be based on the best available scientific information.

75. This risk could be mitigated through legislative safeguards and a robust policy framework that ensures management procedures are developed in accordance with the purpose and principles of the Act.

Proposal 3: Low information stocks

Current law

76. As previously indicated, there are two pathways for setting the TAC for low information stocks under the Act. In summary:

    a. Section 13(2A) applies if the Minister considers there is insufficient information to reliably estimate the current level of a stock. The Minister must set a TAC that is "*not inconsistent with"* maintaining the stock at or above the MSY (or moving it toward that level*)*,[67] after having regard to the interdependence of stocks, the biological characteristics of the stock and any environmental conditions affecting the stock.[68]
    b. Section 14 allows the Minister to set an alternative TAC for stocks listed in Schedule 3. The Minister can set the TAC at a level the Minister "*considers appropriate to achieve the purpose of the Act*" if the TAC would better achieve the purpose of the Act than setting the TAC in accordance with s 13.

Proposed new approach

77. MPI proposes to introduce a new process for setting catch limits for low information stocks.[69] The new process could be used if:

    a. The Minister is satisfied that it is not possible to manage the stock under s 13(2A) which would mean the "*not inconsistent with*" test (above) would not apply.
    b. The Minister considers that setting the TAC under the new process would "*better meet the purpose of the Act*" than setting a catch limit under s 13.

78. In considering whether to set the catch limits using this new process, the Minister would need to have regard to the interdependence of stocks, the biological characteristics of the stock and environmental conditions affecting the stock.[70]

79. The new process would be underpinned by a "*risk-based categorisation*" approach. The Consultation Document suggests this would involve an assessment of the biological characteristics of a stock and catch information.[71] Specific traits listed in the Document include age at maturity, productivity, and susceptibility to the effects of climate change.[72]

80. The Consultation Document seeks feedback on three implementation options:

[67] Fisheries Act 1996, s 13(2A)(c)(ii).
[68] Fisheries Act 1996, s 13(2A)(b).
[69] Consultation Document at [93]-[97].
[70] Consultation Document at [94].
[71] Consultation Document at [97].
[72] Consultation Document, see Figure 4, at 24.

a. Limit the new process to stocks listed in a new schedule to the Act (Option 1);
b. Limit the new process to stocks that are listed in a Notice which could be amended by the Minister following consultation (Option 2); or
c. Allow the Minister to use the new process for any stocks if the above criteria are met (Option 3).

New approach is not sufficiently cautious

81. EDS does not support the proposed new approach for managing low-information stocks.

82. In an information-poor context, it is important that a cautious approach is adopted when setting catch limits. However, the proposed amendments would *remove* existing safeguards and give the Minister *wider* discretion than is currently the case.

83. In particular, EDS finds it concerning that the "*not inconsistent*" test in s 13(2A) would be dispensed with. This test is important because it provides a direct connection between decisions on catch limits and the objective of achieving MSY-compatible reference points (or better). While EDS accepts it may present implementation difficulties, its key concern is that this could operate as a disincentive for obtaining necessary information about stocks. The goal should be to improve the information basis for decisions over time, not to enable blind decision-making.

84. Therefore, it is important that adequate safeguards are included in the legislative framework to ensure a cautious approach is adopted when setting catch limits under the new process.

85. In principle, EDS supports a management approach that incorporates relevant information about the vulnerability of stocks to fishing impacts and other environmental changes. However, there is a lack of detail in the Consultation Document around how the suggested 'risk-based categorisation' approach would be implemented. For instance, if there is insufficient information to determine the current status of a stock then it would be difficult to evaluate its current or future risk profile. This aspect requires further consideration.

86. In this context, EDS considers the suggested decision-making criteria are not sufficiently cautious to ensure catch limits are set at a level that ensures sustainability. This is because:

    a. The criteria grant the Minister with wide discretion to set catch limits at a level the Minister considers appropriate. This is particularly concerning given the process would only apply when there is *insufficient* information to evaluate the status of a stock.
    b. While the Minister would need to consider the interdependence of stocks, biological characteristics and environmental factors affecting the stock, the ability to do so will always be constrained in the context of poor information.
    c. The criteria do not provide any direction, or set any limits, on when the TAC/TACCs for stocks can be reduced or increased.

87. If a new framework is developed for low information stocks, EDS supports limiting its application to stocks that are listed in a schedule to the Act (i.e. Option 1). This would provide an opportunity to determine the risk profile of a stock *before* decisions on catch limits are made under the new process (i.e. this could be a mandatory requirement for inclusion in the new schedule).

88. In addition, stronger decision-making criteria should be incorporated into the legislative framework to direct when TAC/TACCs can be reduced or increased. For instance, if a stock is

assessed to be of 'higher risk' then additional information should be sought before a catch adjustment is made.

Proposal 4: Better integrate social, cultural, and economic factors when deciding a rebuild period

89. MPI proposes to amend the Act to provide for greater recognition of social, cultural and economic factors when making decisions on catch limits.[73]

Current law

90. Currently, the Minister must have regard to certain criteria when setting or varying the TAC under s 13. As previously indicated, different criteria apply depending on the status of the stock relative to the MSY. Of particular relevance to the proposed amendments are:

    a. Section 13(2)(b) requires the Minister to alter the TAC to enable a depleted stock to recover to a level that can (at least) produce the MSY "*within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock*".
    b. Section 13(3): requires the Minister to have regard to any social, cultural and economic factors that the Minister considers relevant when determining the "*way in which and rate at which a stock*" is moved towards the MSY.

91. The Supreme Court recently considered the above provisions and the Ministers' ability to consider socio-economic factors when setting the TAC for a depleted fishery.[74] The case involved a challenge to the (then) Ministers' assessment of the "*period appropriate to the stock*" when deciding to reduce the TAC for the East Coast Tarakihi fishery.

92. The Supreme Court held that:[75]

    a. The Minister must assess the "*period appropriate to the stock*" by reference to the stock's biological characteristics and environmental conditions and without regard to social, cultural and economic factors.
    b. There may be a range of rebuild periods appropriate to the stock. Relevant social, cultural and economic factors may influence the Ministers' choice of a rebuild period but only to the extent that the Minister was selecting a period within the range that was appropriate to the stock based on biological and environmental considerations.

Proposed amendments

93. MPI proposes to replace the differential decision-making criteria in ss 13 and 14 with the following factors:

    a. Biological characteristics of the stock;
    b. Any environmental conditions affecting the stock;
    c. Interdependence of stocks; and
    d. Any social, cultural, and economic factors the Minister considers relevant.

[73] Consultation Document at [115].
[74] *Tarakihi case*, above n 10.
[75] *Tarakihi case*, above n 10, at [93] and [99]-[100].

94. These criteria would apply to all decisions on catch limits under the Act irrespective of the level of a stock relative to MSY.

No clear case for change

95. The Consultation Document indicates that changes are necessary because the current wording of the Act creates implementation issues. It states:[76]

> The Fisheries Act requires the Minister to first determine the way and rate a stock rebuilds and then consider an appropriate period over which a stock rebuilds. However, for the provisions to work in combination, as intended, it is more practical to consider a period of rebuild appropriate to the stock, and then consider the way and rate the stock rebuilds within that appropriate period.

96. This statement has potential to be misleading. In EDS's view, it overstates the level of complexity involved in the current decision-making process under s 13. The Supreme Court recently confirmed that the Act provides the Minister with considerable flexibility when setting the TAC for a depleted stock. It found (emphasis added):[77]

> The Act does not prescribe a process, and as we have explained, the Minister may take non-scientific considerations into account when choosing among recovery periods appropriate to the stock. **We think it immaterial whether the rebuild period is set first or used to check, and if necessary change, the period that results from a proposed TAC decision, so long as the final decision adopts a period that is appropriate to the stock's biological characteristics and environmental conditions** and the way and rate will result in the stock returning to [the MSY reference level] in that period.

97. The proposed amendments are not necessary to address this perceived concern because an appropriate level of flexibility is already available to the Minister under the Act.

98. The Consultation Document places considerable reliance on the fact that the proposed amendments reflect "*historic practice*", and the approach has been used in the past to successfully rebuild stocks.[78] In EDS's view, this should be given little weight. The fisheries management context has changed since the Act was enacted in 1996. There is a growing body of scientific information which confirms that fishing has significant impacts on target species as well as the wider ecosystems they form part of. There is also an increased awareness of the cumulative pressures facing the marine environment and the risks associated with climate change. If anything, this new information would justify a more cautious management approach. The proposed amendments would do the opposite by removing safeguards for depleted stocks.

99. Overall, the proposed amendments do not address the problems raised in the Consultation Document and they are not supported by any clear rationale.

Proposed amendments will jeopardise long-term sustainability of depleted stocks

100. The proposed amendments would remove an important sustainability control on catch limits for depleted stocks. EDS finds this concerning for a number of reasons.

101. First, the suggested criteria would enable fishing interests to influence the rebuild period for depleted stocks. This gives rise to sustainability concerns because it could delay necessary action to rebuild a stock. The Supreme Court in the *Tarakihi* case observed that s 13(2)(b) "*is concerned*

[76] Consultation Document at [112.1].
[77] *Tarakihi case*, above n 10, at [110].
[78] For example, see Consultation Document at [106], [107], [116].

with a period appropriate to the stock, not a period appropriate to those having an interest in the stock".[79] The amendments would have the opposite effect by allowing socio-economic factors to extend the rebuild period beyond what is appropriately defined by the biological limits of a stock.

102. Second, the proposed criteria are likely to result in utilisation being elevated above sustainability in decision-making. In the *Kahawai* case, the Supreme Court held that the purpose of the Act expresses a single purpose by reference to utilisation and sustainability over the long term. However, utilisation may not jeopardise sustainability.[80] Therefore, sustainability effectively formed an environmental bottom line. Economic considerations are easier to quantify than environmental impacts of fishing. This creates a risk that utilisation will always be given greater weight than sustainability, particularly in the context of depleted stocks where necessary reductions in catch are likely to have significant financial implications for fishers.

103. Third, the proposed criteria would give too much discretion to the Minister to set unsustainable catch limits for depleted stocks. In the *Tarakihi* case, the Supreme Court described these criteria as "*broad and imprecise*" and observed that they afford the Minister with "*substantial scope for the exercise of judgement*".[81]

104. The Consultation Document indicates that the purpose and principles of the Act "*would ensure that decisions do not give inappropriate weight to social, cultural and economic factors relative to biological factors when setting the catch limit*".[82] This outcome is not guaranteed. In the *Tarakihi* case, the Supreme Court observed "*the statute does not specify the weight that must be attached to these considerations. Some of them are likely to point in opposing directions and a TAC decision may need to balance them, within the limits set by the Act*".[83] The proposed amendments would actually remove an important 'limit' for decisions related to depleted stocks and provide the Minister with wider powers to give weight to economic considerations.

105. For the above reasons, EDS does not support the proposed amendments. Our preference is to retain the status quo where rebuild periods (and therefore catch limits) are constrained by what is sustainable based on scientific factors.

Proposal 5: Recognition of non-regulatory sustainability measures

Current law

106. The Act does not *explicitly* allow the Minister to consider voluntary measures when making decisions on sustainability measures.

107. However, the Minister *can* consider such measures to the extent they are relevant and within statutory limits. For example, in the *Tarakihi* case, an Industry Rebuild Plan included proposals to increase the age at which fish are caught and to modify catches and fishing gear in areas with juvenile fish.[84] The Supreme Court accepted that these voluntary measures were relevant considerations, to the extent the Minister decided they could be relied on when making decisions about the "*way and rate*" to rebuild a stock within an appropriate period.[85]

[79] *Tarakihi case*, above n 10, at [82].
[80] *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54, [2009] 3 NZLR 438 [*Kahawai case*] at [39] and affirmed by the Supreme Court in the *Tarakihi case*, above n 10, at [15].
[81] *Tarakihi case,* above n 10, at [84].
[82] *Tarakihi case*, above n 10, at [118].
[83] *Tarakihi case,* above n 10, at [85].
[84] *Tarakihi case,* above n 10, at [87].
[85] *Tarakihi case,* above n 10, at [87].

Proposed amendments

108. MPI proposes to amend the Act to explicitly allow the Minister to consider voluntary measures in decision-making on sustainability measures.[86]

109. The Consultation Document includes two options:

    a. Provide the Minister with discretion to recognise non-regulatory measures (Option 1); or
    b. Require the Minister to consider ACE shelving and catch spreading (Option 2).

110. It contains suggested criteria to guide the Minister in assessing the relevance and weight to be given to voluntary measures:[87]

    a. "*The effectiveness of the measure in supporting sustainability*";
    b. "*The status of the stock*";
    c. "*The desire to maintain integrity of the management system*"; and
    d. "*The robustness of the arrangement*".

Voluntary measures are too uncertain

111. The proposed amendments would allow voluntary measures to influence decisions on catch limits (and other sustainability measures). EDS finds this concerning because:

    a. Voluntary measures are unenforceable. The effectiveness of a measure is dependent on all quota owners agreeing to and implementing it. This creates uncertainty around implementation, particularly over meaningful timeframes (i.e. that would allow a depleted stock to recover).

    b. Voluntary measures are industry-led. They are not designed objectively and often lack a strong evidence-basis. For instance, the latest sustainability review of Northland rock lobster (**CRA 1**) included consideration of a voluntary harvest cap, seasonal closures and area closures.[88] The voluntary harvest cap of 5t *exceeded* the annual catch for the area (4t). Therefore, while it reflected a reduction in what could be caught (based on the TACC) it did not actually operate as a practical cap on the annual harvest.

    c. Currently, voluntary measures can only be considered to the extent they do not jeopardise sustainability. The proposed amendments would allow the Minister to give weight to voluntary measures when setting the rebuild period for stocks that are severely depleted. This approach is not sufficiently cautious given industry is likely to have a strong interest in depleted stocks and there is uncertainty around the implementation and effectiveness of voluntary measures.

112. All of the above means there is considerable uncertainty as to the effectiveness of voluntary measures. They should not be relied on to independently influence decisions on catch limits or other sustainability measures unless they are relevant to existing requirements (i.e. this reflects the status quo).

[86] Consultation Document at [119].
[87] Consultation Document at [141].
[88] FNZ (2024) "*Discussion of proposed measures for the Northland spiny rock lobster fishery (CRA 1)*" (November 2024), at [41]-[44], available here.

Weak assessment criteria

113. The suggested decision-making criteria are vague and subjective. For instance, the Consultation Document indicates that "*use of non-regulatory measures would generally be considered less appropriate as a primary approac*h *in situations where there was good information to indicate the stock required significant rebuilding*".[89] This does not prevent the Minister from relying on voluntary measures where a stock requires significant rebuilding. This is inappropriate for reasons already addressed.

Concerns elevated by other proposed amendments

114. EDS does not support either of the options put forward in the Consultation Document. Both options would provide for voluntary measures to influence management decisions despite considerable uncertainty around the effectiveness of implementation. This is not sufficiently cautious in the context of an information-poor fisheries management system.

115. EDS's concerns are elevated by the combined effect of other proposals in the Consultation Document. Enabling the Minister to consider and give greater weight to voluntary measures has flow on implications that could pose risks for sustainability. For example, currently, ACE cannot be carried forward if TACCs are reduced in a fishing year.[90] If voluntary measures are given greater weight in decision-making this could lead to fewer reductions in the TAC/TACC, and it would therefore enable ACE to be carried forward despite sustainability concerns.

116. EDS finds it particularly concerning that voluntary measures could influence catch limits set through proposed multi-year catch decisions or management procedure approaches. This is inappropriate given there is a high level of uncertainty as to whether such measures would be implemented or remain effective over that timeframe. It does not sufficiently recognise their *voluntary* status and potential for disagreement between stakeholders to arise and impact on implementation over the lifespan of a decision (i.e. up to 5 years).

Proposal 6: Differential ACE carry forward

Current law

117. ACE provides the right to harvest a specified tonnage of a stock during the fishing year. It is calculated based on the number of quota shares held by a quota owner and the TACC for the stock.[91] Quota owners can sell their ACE if they do not wish to harvest it in any given year.

118. Currently, s 67A allows up to 10% of unfished ACE to be carried forward to the next year if:[92]

    a. The ACE does not relate to a stock listed in Schedule 5A of the Act;[93] and
    b. The TACC was not reduced in the prior fishing year.[94]

Proposed amendments

119. MPI proposes to amend the Act by:

[89] Consultation Document at [141.2].
[90] Fisheries Act 1996, s 67A(3)(b).
[91] Fisheries Act 1996, s 66.
[92] Fisheries Act 1995, s 67A(2)(b).
[93] Fisheries Act 1995, s 67A(3)(a).
[94] Fisheries Act 1995, s 67A(3)(b).

a. Increasing the standard ACE carry forward limit from 10% to 15% (Option 1); and
b. Enabling additional ACE carry forward for a stock for 1 year in "*exceptional circumstances*" (Option 2).

120. As outlined in the Consultation Document, quota owners (by a majority of at least 75%) would need to apply for additional ACE (i.e. Option 2). The MPI Chief Executive would then need to decide whether to approve the additional ACE after having regard to:[95]

> the reason for any underfishing in the stock i.e., that the underfishing is not related to stock sustainability; and
> whether the additional ACE carry forward is likely to pose a sustainability risk to the stock

Lack of supporting evidence

121. The Consultation Document indicates that the proposed amendments will provide more flexibility for fishers to respond to individual circumstances (e.g. illness or boat issues) that constrain their ability to catch the full ACE in any given year.[96] It also indicates that there is an opportunity to reduce economic impacts on fishers associated with one-off adverse events.

122. However, the Consultation Document is lacking supporting evidence for the options presented. For example:

a. There is no evidence that a blanket increase in ACE carry forward (of 5%) is necessary. For example, it is unclear what stocks are currently being underfished because of individual fisher circumstances (as opposed to unknown factors or sustainability concerns) to justify this change.

b. No assessment has been undertaken of the potential sustainability risks associated with a blanket increase of 5% applying to all stocks that are not listed in Schedule 5A. This concern is not resolved by the existing control in s 67A, which prevents ACE from being carried forward if the TACC has been reduced for a stock. As previously indicated, there are significant delays between observed declines in stock levels and associated reductions in catch limits. This creates a risk that ACE could be carried forward for a number of years despite sustainability concerns.

c. Providing for 'additional ACE' (i.e. that is above the proposed 15% or where stocks are listed in Schedule 5A) is not necessary. The stocks listed in Schedule 5A can be amended by Order in Council on recommendation of the Minister after consultation with interested parties.[97] In 2021, this mechanism was successfully used to temporarily remove rock lobster from Schedule 5A (for one year) so ACE could be carried forward in response to market disruption associated with COVID-19.[98] This is not an onerous process, and it provides an important sustainability control on the ability to carry forward ACE.

123. Enabling additional carry forward of ACE provides for *increased fishing* effort in a given year. This in turn creates *increased risks* of overfishing with potential for adverse impacts on associated species and the wider marine environment. There is no evidence that these increased sustainability risks are justified or necessary. Therefore, EDS does not support the proposed amendments.

[95] Consultation Document at [160].
[96] Consultation Document at [152].
[97] Fisheries Act 1996, s 67B.
[98] Fisheries (Schedule 5A – Rock Lobster) Order 2020.

Insufficient consideration of environmental factors

124. The proposed criteria to guide decisions on requests for additional ACE carry over are very narrow and adopt an exclusive focus on the *target stock*.

125. EDS supports the need to ensure additional ACE does not result in overfishing and depletion of target species. However, the suggested criteria *exclude* consideration of wider environmental risks associated with increased fishing effort. For example, the criteria do not address:

    a. Interdependence of stocks (e.g. role of target species in food chain);
    b. Associated stocks (e.g. impacts on non-target species through bycatch); and
    c. Environmental impacts of fishing. For instance, any potential or actual adverse effects associated with increased fishing effort within a particular area (e.g. increased spatial footprint of benthic disturbance).

126. If the proposed amendments are progressed through legislative reform, it is important that fishers who request additional ACE bear the onus of proving that associated increases in fishing effort, landings and environmental impacts do not jeopardise sustainability.

127. An alternative approach could be to:

    a. Require applications for any additional ACE carry forward that is greater than the status quo (i.e. >10%).
    b. Require decision-makers to consider potential impacts on associated species and the wider marine environment (not only impacts on the target stock).
    c. Set an explicit time limit of one year on *all* ACE carry forward (i.e. not only additional ACE) so it cannot be accumulated.

128. This would reduce sustainability risks associated with enabling additional ACE carry forward.

Proposal 7: Carry forward of ACE for rock lobster stocks

129. A number of rock lobster stocks are listed in Schedule 5A of the Act. This means that unfished ACE cannot be carried forward unless Schedule 5A is amended on the Minister's recommendation.

130. MPI proposes to amend the Act to enable the carry forward of unused ACE for rock lobster stocks through:[99]

    a. Permanent removal of rock lobster from Schedule 5A (Option 1); or
    b. A bespoke carry forward arrangement for rock lobster (Option 2). As described in the Consultation Document, this option would involve:
        i. An application by at least 75% of quota owners for ACE carry forward.
        ii. A maximum of 10% carry forward for a rock lobster QMA.
        iii. A time limit of 1 year for additional ACE to be used.
        iv. Development of policy to guide the circumstances where carry forward should be exercised.

131. EDS does not support the proposed amendments for the reasons already addressed (above).

[99] Consultation Document at [163].

132. The proposal to enable ACE carry forward for rock lobster stocks is particularly concerning. There is strong evidence that rock lobster populations in northeastern New Zealand (i.e. CRA 1 and CRA 2) are severely depleted. As rock lobster have become difficult to find in parts of these fisheries, commercial effort has shifted to new areas. For instance, there is little commercial harvest of rock lobster on the east coast of CRA 1 and the number of vessels operating in this area has reduced through time.[100] It is inappropriate to enable ACE to be carried forward in this context as it could provide for additional harvest in areas where rock lobster populations have already collapsed.

133. Of the options included in the Consultation Document, EDS prefers 'Option 2' as this is the most conservative of the options consulted on.

134. However, further amendments would achieve better consistency with the purpose and principles of the Act. As a starting point, the Act should:

    a. Require the MPI Chief Executive to make decisions on applications for ACE carry forward for rock lobster stocks (i.e. this should not be automatic);
    b. Include mandatory decision-making criteria *in the Act* that consider broader ecosystem impacts of fishing (as addressed above in relation to the differential ACE carry forward proposals); and
    c. Exclude rock lobster stocks in northern New Zealand (CRA 1 and CRA 2) from the bespoke process by retaining these stocks in Schedule 5A.

Proposal 8: threshold for suspension of fishing permit for non-payment of deemed value

135. Currently, commercial fishing permits may be automatically suspended if a permit holder exceeds their ACE without paying the 'deemed value' for that catch.[101]

136. MPI is proposing to increase the threshold for suspension from $1000 to $2000.[102]

137. EDS supports the need to retain the ability to suspend fishing permits where deemed value charges are not promptly paid. It is important that the value is not set too high, so it provides a disincentive for non-payment. We are neutral to the proposed increase and would caution against increasing the threshold above the proposed amount (i.e. >$2,000).

GREATER PROTECTION FOR ON-BOARD CAMERA FOOTAGE AND ENSURING THE ON-BOARD CAMERA PROGRAMME IS WORKABLE

138. The proposals in Part 2 of the Consultation Document include changes to the requirements for on-board cameras. This section of the submission addresses relevant context to the on-board camera programme and then provides EDS's feedback on the specific proposals.

Relevant context

139. The Fisheries (Electronic Monitoring on Vessels) Regulations 2017 (**Camera Regulations**) require the installation of video cameras on all commercial fishing vessels unless (as addressed below) exemptions have been granted or a vessel is out of scope. A phased roll-out of on-board cameras commenced in August 2023 after several delays.

[100] Fisheries New Zealand (2024) "*Discussion of proposed measures for the Northland spiny rock lobster fishery (CRA 1)*" (FNZ Discussion Paper No: 2024/30, November 2024), at [27]-[28], available here.
[101] Fisheries Act 1996, s 79(1).
[102] Consultation Document at [174].

140. As outlined in the Consultation Document, on-board cameras have now been installed on approximately 185 vessels, with two further rollouts to be undertaken by May 2025.[103] The on-board camera programme will enable monitoring of about 85% of the total commercial catch (by volume) of inshore fisheries when the rollout is complete.[104]

141. The installation of on-board cameras on vessels has already improved the accuracy of fisher-reported catch data.

142. A comparison of catch data reported by commercial vessels before and after on-board cameras found there were substantial increases in reported discards and protected species interactions.[105] For example:

    a. Albatross interactions had increased by 3.5 times;
    b. Dolphin captures had increased by 6.8 times;
    c. Number of fish species reported in catch had increased by 34%;
    d. Number of fish species reported in discards had increased by 2.1 times; and
    e. Volume of fish discards had increased by 46%.

143. These trends reflect data collected up until April 2024. Therefore, we consider it is possible that further increases will be observed as cameras are rolled out across the remainder of the inshore fleet.

EDS's feedback

Proposal 1: Camera footage protections for on-board cameras

Current requirements

144. On-board camera footage is not required to be published under the Act. However, it is subject to the Official Information Act 1982 (**OIA**).

145. As outlined in the Consultation Document, fishers have raised concerns about the potential for privacy breaches to occur or commercially sensitive information to be released through the OIA process.[106]

146. MPI has developed Guidelines to assist with decisions on OIA requests.[107] The Guidelines address risks associated with the release of on-board camera footage and outline when information will be withheld to protect commercially sensitive data or privacy of fishers.

Proposed amendments

147. MPI is seeking feedback on proposals to clarify (or limit) when on-board camera footage can be requested by the public under the OIA.

148. The Consultation Document includes two options:

[103] Consultation Document at [188].
[104] MPI "*On-board cameras for commercial fishing vessels*" available here.
[105] MPI (2024) "*Update at 1 April 2024: Progress on the rollout*", at [4], available here.
[106] Consultation Document at [199].
[107] MPI (2023) "*Guidelines for the Release of Fisheries Information (Collected under Statutory Regulations) Version 1.2*", available here.

a. Confirm that MPI's current approach is consistent with the requirements of the OIA through the Ombudsman (Option 1).
b. Exclude on-board camera footage from the OIA by amending the Act (Option 2).

Lack of supporting evidence

149. EDS supports Option 1.

150. There is no evidence to support the need for an exemption from the OIA (i.e. Option 2). The Consultation Document indicates that MPI has responded to 10 OIA requests for footage from on-board cameras. To date, MPI has withheld footage due to commercial sensitivity, privacy risks, or where release could prejudice the maintenance of the law.[108]

151. Option 1 will enable MPI to confirm that this approach is available and consistent with the law. This would also provide an opportunity to improve the current Guidelines if they are found wanting. In EDS's view, it would be premature to create an exemption before testing the Guidelines with the Ombudsman.

152. As previously indicated, on-board cameras provide a strong incentive for fishers to comply with commercial reporting requirements. This incentive exists even where footage is not actually released. It is strengthened by the ability of the public to request detailed information from MPI.

153. There is a strong public interest in ensuring commercial fishing activities are undertaken in accordance with the law and associated sustainability controls (i.e. required mitigation practices and reporting standards). Enabling public access to appropriate information (i.e. where it would not breach fisher privacy or involve release of commercially sensitive data) promotes transparency in the commercial fishing industry and the wider fisheries management system in New Zealand. It gives responsible operators the social license to sell their catch in domestic and international markets.

154. Option 1 strikes an appropriate balance between these competing interests. In the absence of any reason to justify departing from this approach, by reducing transparency and public access to relevant information, EDS supports retention of the status quo.

Proposal 2: Amendments to the scope of on-board cameras

Current requirements

155. Currently, the following vessels are excluded from on-board camera requirements:

a. Deepwater trawl vessels (>32m in length);
b. Trawl vessels that exclusively target scampi; and
c. Small set net vessels (<8m in length).

156. EDS previously raised concerns about excluding the above vessels from the scope of on-board camera requirements.[109] It remains concerned about the exclusion of scampi vessels given this fishery has a high rate of bycatch and discards. Similarly, EDS seeks greater oversight of small set-net vessels given this method poses significant risks to protected marine mammals and seabirds.

[108] Consultation Document at [202].
[109] EDS (2021) "*EDS Submission on Proposals on Wider Rollout of On-board Cameras*", available here.

If on-board cameras cannot be deployed, then additional measures must be developed to provide for effective monitoring of these fisheries.

Proposed amendments

157. MPI proposes to amend the scope of the Camera Regulations to *also* exclude:

    a. Bottom long-line vessels (32m or greater in length);
    b. Set net vessels using the '*mothership and tender model'*; and
    c. All other vessels that are less than 8m in length.

158. The Consultation Document indicates that this would result in 3 bottom long-line vessels (>32m in length), 7 set net vessels, and 3 bottom long-line vessels (<8m in length) being excluded from the on-board camera requirements.[110] However, additional commercial vessels could be excluded in the future if they enter the relevant fisheries.

Requirements should apply to bottom long-line vessels

159. EDS does not support the proposed exclusion of large bottom long-line vessels.

160. The rationale for this change is that observer coverage is generally high within the EEZ fishery (around 30%) due to biological sampling requirements.[111] However, observer coverage is not complete. Based on the Consultation Document it is unclear what percentage of observer coverage was achieved across the 3 vessels that would be affected by the proposed exclusion.

161. Moreover, the exclusion would apply to large vessels (>32m) and there is no supporting evidence to suggest the on-board camera requirements would be impractical or unworkable. If on-board camera requirements are removed, then observers should be mandatory on these vessels.

Bespoke requirements should be developed for mothership/tender model

162. EDS accepts that it may be difficult to implement on-board camera requirements in the context of a mothership/tender model. However, that does not justify excluding set net vessels using this approach from on-board camera requirements.

163. Based on the Consultation Document, the mothership/tender model involves small tenders being used to set and haul nets with landed fish brought back to the mothership for storage.[112] Currently, the Camera Regulations require cameras to be installed on both the mothership and the tender. The Consultation Document indicates that a "*bespoke solution would need to be developed and installed at potentially significant expense relative to the volume of catch from these vessels*".[113]

164. Set nets are deployed across shallow habitats that are frequented by threatened and at-risk species, including marine mammals and seabirds. The sustainability risks are elevated in these fisheries and therefore consideration should be given to alternative monitoring options.

[110] Consultation Document at [222], [228] and [231].
[111] Consultation Document at [223].
[112] Consultation Document at [226].
[113] Consultation Document at [228].

Exemptions could be issued for small vessels

165. The Consultation Document indicates that small vessels are unable to utilise on-board cameras due to the lack of independent power and dry space.[114]

166. EDS accepts that small vessels may require exemptions due to practical considerations. However, the Camera Regulations already provide for exemptions where specific criteria are satisfied.[115] The MPI Chief Executive must:

    a. Be satisfied that it is unreasonable or impracticable to comply with the requirements;
    b. Be satisfied that the exemption is no broader than reasonably necessary; and
    c. Have regard to the purpose of the Regulations.

167. EDS supports exemptions being granted if these criteria are met. It prefers this approach over a blanket exemption for all vessels <8m as it would ensure cameras are used where reasonable and practicable (e.g. there is sufficient space and a power source).

Proposal 3: Clarifying camera use requirements

Current requirements

168. Currently, on-board cameras must be used to record fishing and related activities, including transportation connected with monitored fishing.[116] The Consultation Document indicates that the meaning of "*transportation*" has created uncertainty around the requirements.[117]

Proposed amendments

169. MPI proposes to amend the Camera Regulations to clarify when on-board cameras must be turned on. The Consultation Document includes two options:[118]

    a. Require on-board cameras to operate port-to-port (Option 1);
    b. Require on-board cameras to operate during fishing and transit to and from fishing locations (Option 2).

170. In *Commercial Fishers Whanau Inc v Attorney-General*,[119] the High Court considered whether on-board cameras breached fishers' rights under the New Zealand Bill of Rights Act 1990 (**NZBORA**). The case involved a judicial review of the Camera Regulations. A group of commercial fishers with small vessels (<28m) challenged the Regulations for various reasons, including that constant video monitoring was an unacceptable breach of their rights to privacy.[120]

171. Of particular relevance, the Court observed:

> [92] I am not persuaded that regulations requiring fishers to install and operate devices to electronically monitor their fishing activities will per se constitute the conduct by MPI of a search that is unreasonable in terms of s 21 of NZBORA. The monitoring activity is not covert, and fishers know that compliance with this regulatory requirement is, in effect, a condition precedent to their

[114] Consultation Document at [230].
[115] Fisheries (Electronic Monitoring on Vessels) Regulations 2017, Reg 14.
[116] Fisheries (Electronic Monitoring on Vessels) Regulations 2017, Reg 9(1).
[117] Consultation Document at [247].
[118] Consultation Document at [250]-[256].
[119] *Commercial Fishers Whanau Inc v Attorney-General* [2019] NZHC 1204.
[120] Ibid at [70].

continuing to fish lawfully in terms of their Annual Catch Entitlements. However unusual, or even exceptional, it is for a system to monitor work activities in private places, its reasonableness is to be assessed in context. Fishers are exercising a regulated privilege to take a resource that is of national significance, and the sustainability of which is a matter of real importance in preserving New Zealand's future resources.

[93] However, that is not to dismiss the prospect that insistence on the use of the devices may raise the spectre of unreasonable search. **For example, it could become unreasonable in circumstances that fail to discriminate between a record of fishing or transporting activities, and the conduct by fishers in small-scale operations of non-commercial and personal activities.** Despite fishers having to concede the reasonableness of intrusion into their privacy rights to the extent necessary to carry out the statutory purposes, that does not require a concession that MPI has carte blanche to observe everything.

172. Option 1 would result in footage being recorded every time a fisher is in view of a camera regardless of whether fishing was occurring.[121] This creates a risk of the type identified by the High Court (above); it elevates the risk that footage released under the OIA could give rise to privacy concerns; and means irrelevant footage will be captured (i.e. of non-fishing related activities).

173. Given the above, EDS supports Option 2. However, it is important that all fishing and related activities are actually recorded and analysed.

174. If cameras are not automatically 'activated' by defined spatial or temporal cues then there is a risk they may not capture all fishing-related activities (whether inadvertent or intentional). To minimise this risk, it is important that penalties for non-compliance with the Regulations are swiftly enforced and close monitoring of recorded footage is undertaken to identify (and address) any discrepancies between landed and reported catch.

IMPLEMENTING NEW RULES FOR COMMERCIAL FISHERS THAT SET OUT WHEN QMS FISH MUST BE LANDED AND WHEN THEY CAN BE RETURNED TO SEA

175. The proposals in Part 3 of the Consultation Document include changes to the landing and discard rules.

EDS's feedback

Proposal 1: Monitored returns

Proposed amendments

176. The Government has decided to provide for monitored returns at sea.[122] MPI proposes to implement this decision by amending the Act to include a new provision that permits returns at sea that are monitored by on-board observers or on-board cameras.

177. All monitored returns would be required to be balanced with ACE or incur deemed values unless exceptions applied (and could be complied with).[123] MPI also proposes to amend existing exceptions that are considered unlikely to meet the new statutory criteria (introduced in 2022)

[121] Consultation Document at [252].
[122] Consultation Document at [270].
[123] Consultation Document at [280].

due to low likelihood of survival post-release; and to adjust the TACC for certain species to account for this.[124]

Missed opportunity to minimise bycatch

178. EDS's primary concern with the proposed amendments is that they do not provide any incentive to minimise (or avoid) bycatch of non-target species, including juvenile fish and protected species. They simply make it easier for fishers to discard bycatch at sea. This represents a missed opportunity.

179. The scope of regulatory reforms should include consideration of mechanisms that will enable (and incentivise) improved gear selectivity. For example, regulations promulgated in 2017 provide an avenue for trialing innovative trawl technologies,[125] but action has been lacking in other fisheries (e.g. where set nets are used).

180. Stronger area-based controls should be implemented to protect areas of particular significance for juvenile fish species.

Minimum requirements to support verification

181. The proposed amendments assume that the footage recorded by on-board cameras will be of sufficient quality to enable verification of fisher reporting. Therefore, monitored returns should only be available where an observer or on-board camera is able to record relevant information (i.e. species, weight or number, quantity) at sufficiently detailed resolution to enable reported data to be verified.

Proposal 2: Other proposed amendments to the landing and discard rules

182. MPI proposes a suite of other changes to the landing and discard rules.

183. As previously addressed, EDS's primary concern is to ensure that any discards are effectively monitored with proactive steps taken to reduce bycatch through development of selective gear and stronger area-based controls.

184. However, EDS finds the proposed new exception for allowing release of fish at depth concerning for a number of reasons. In particular:

    a. The Consultation Document does not contain any information or statutory requirements related to monitoring of the release of fish at depth. It is important that the effectiveness of any 'approved' method is monitored to ensure it does not provide for post-release mortality at depth.

    b. The Consultation Document indicates that the new exception would apply to certain gear/technologies. It would not account for species/stock specific risk factors. This assumes that all species are impacted by gear/technologies in the same way and overlooks differences in the risk profile of species which is affected by multiple complex factors.

[124] MPI (2025) "*Implementation of monitored returns: Supplementary information: Proposed adjustments to settings within the Total Allowable Catch for stocks if a current landing exception is removed* (MPI Discussion Paper No: 2025/04, February 2025), available here.
[125] Fisheries (Innovative Trawl Technologies) Notice 2017, available here.

c. The Minister would be required to consider assessment criteria before approving an exception. The suggested criteria are broad and imprecise. While they include a requirement to consider "*evidence of gear design and use that minimises damage and stress to the fish*", there is no obligation to obtain independent scientific input or peer review.

185. If an exception for release of fish at depth is progressed, the approval criteria must be strengthened to ensure there is a high degree of confidence that the gear/technology is effective.

CONCLUSION

186. EDS supports the intent behind the proposed reforms but considers that some of the proposed amendments lack supporting evidence, increase sustainability risks, and may result in worse outcomes for wild fish stocks and the wider marine environment. EDS would welcome an opportunity to meet with MPI to discuss how the proposed amendments can be improved to ensure sustainability before they are introduced as a Bill.