



Fisheries New Zealand

Tini a Tangaroa

Legal Appendix

Overview of legislative requirements and other considerations in relation to sustainability measures for the 2025 April round

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Introduction

1. Fisheries New Zealand (**FNZ**) periodically seeks input on proposed settings for sustainability measures for selected fish stocks in New Zealand's Quota Management System (**QMS**).
2. This document provides an overview of key legal requirements as they relate to decision-making on sustainability measures and signposts the relevant provisions in the *Fisheries Act 1996* (**the Act** or **the Fisheries Act**). The full version of the Act can be accessed at: <https://www.legislation.govt.nz/act/public/1996/0088/latest/DLM394192.html>.
3. This paper also explains how the Minister must consider the [Harvest Strategy Standard for New Zealand Fisheries \(HSS\)](#) when making decisions on sustainability measures.
4. FNZ consults on behalf of the Minister for all proposals with representatives of people who have an interest in the stocks or the effects of fishing on the aquatic environment in the areas concerned, including Māori, environmental, commercial, and recreational interests.
5. FNZ provides for input and participation of tangata whenua on these proposals primarily through Iwi Fisheries Forums, which have been set up for this purpose. We have identified species and areas over which these groups have expressed kaitiakitanga, to which the Minister must have particular regard when making decisions.
6. The measures FNZ is consulting on for these stocks are:

Catch limits and allowances

- setting or varying the Total Allowable Catch (TAC);
- setting or varying allowances for Māori customary and recreational fishing;
- allowances for other sources of mortality to stocks from fishing; and
- setting or varying the Total Allowable Commercial Catch (TACC).

Deemed values

- Adjusting interim, annual, and differential deemed value rate settings for stocks where needed.
7. Decisions on proposed catch limits, allowances, and deemed value rates will take effect from the start of each stock's respective fishing year – beginning on 1 April 2025 or 1 October 2025.

Note regarding the use of citations and references

8. Throughout the consultation documents, we have used in-text citations and have compiled a list of the references at the end of each document. FNZ has included these citations and references to show where statements are supported by relevant science and information. Some information presented, such as commercial catch data, does not include citations because the data was sourced internally from FNZ databases.

The Fisheries Act 1996

9. The Act gives the Minister the power to:

Part 3: Sustainability measures

- Set and vary sustainability measures such as the TAC.

Part 4: Quota Management System

- Make allowances for Māori customary and recreational fishing and all other mortality to the stock caused by fishing
- Set and vary the TACC
- Set deemed value rates to provide an incentive for fishers not to exceed the available annual catch entitlement (**ACE**)

10. In making decisions on these matters, there are several things the Minister is required to do and take into account. These are outlined below.
11. The requirements and details of each of these sections are set out below, in the following order:
- a) Section 5 (Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992);
 - b) Section 8 (Purpose);
 - c) Section 9 (Environmental principles);
 - d) Section 10 (Information principles).
 - e) Section 11 (Sustainability measures);
 - f) Section 13 (Setting a Total Allowable Catch);
 - g) Section 14 (Alternative Total Allowable Catch for stocks specified in Schedule 3);
 - h) Section 20 (Setting and variation of the Total Allowable Commercial Catch)
 - i) Section 21 (Matters to be taken into account in setting or varying any total allowable commercial catch)
 - j) Section 23 (The effect of increases in Total allowable Commercial Catch)
 - k) Section 75 (Minister to set deemed value rates)

1 Overarching requirements

1.1 Application of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 – section 5(b) of the Act

5 Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

This Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act, in a manner consistent with—

- (a) New Zealand’s international obligations relating to fishing; and
- (b) the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

12. Section 5(b) of the Act requires the Minister to act in a manner consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (**the Settlement Act**). The Settlement Act provides that non-commercial customary fishing rights continue to be subject to the Principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown.
13. Section 10 of the Settlement Act also requires the Minister to consult and develop policies to recognise the use and management practices of tangata whenua in the exercise of non-commercial fishing. Consistent with this section, FNZ has worked with Iwi to develop engagement processes that enable Iwi to work together to reach a consensus where possible and to inform FNZ on how tangata whenua wish to exercise kaitiakitanga with respect to fish stocks in which they share rights and interests and how those rights and interests may be affected by sustainability measures proposed by FNZ.
14. Section 10 of the Settlement Act requires the Minister to develop policies and programmes to give effect to the use and management practices of tangata whenua.
15. The Ministry has worked with Iwi to develop engagement processes that enable Iwi to work together to reach a consensus where possible and to inform the Ministry on how tangata whenua wish to exercise kaitiakitanga with respect to fish stocks in which they share rights and interests, and how those rights and interests may be affected by sustainability measures proposed by the Ministry.
16. For information on input and participation of tangata whenua, see heading 2.2.

1.2 Application of international obligations – section 5(a) of the Act

17. The Minister must also act in a manner consistent with New Zealand’s international obligations relating to fishing. The international obligations FNZ considers most relevant are the United Nations Convention

on the Law of the Sea (UNCLOS)¹ and the United Nations Convention on Biological Diversity (Biodiversity Convention).²

18. UNCLOS provides that States have the sovereign right to exploit their natural resources subject to an overriding duty to protect and preserve the marine environment (articles 192 and 193). Articles 61 and 62 of the UNCLOS are particularly relevant. It was recognised that these articles “drive the focus of the Fisheries Act on exploitation of fishery stocks within sustainability limits” by the Court of Appeal in the Sanford case.³ The requirements in Article 61, and the general duty to protect and preserve the marine environment in article 192 have the effect of requiring the Minister to consider the effects of fishing on the wider ecosystem. These ecosystem considerations are also acknowledged in the Act (via the requirement for the Minister to consider the interdependence of species under section 13 of the Act when making a decision as to TAC, as well as through sections 9 and 11 of the Act).⁴
19. The Biodiversity Convention is the international legal instrument for “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources”.⁵ It sets out a range of obligations on its signatories. Although New Zealand gives effect to this convention in a variety of ways (including under other legislation), the Act specifically recognises the importance of biodiversity in section 9(b) of the Act and the requirement to ensure the sustainability of the aquatic environment (section 8 of the Act).

1.3 The purpose of the Act – section 8 of the Act

8 Purpose

- (1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.
- (2) In this Act,—
 - ensuring sustainability** means—
 - (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
 - (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment
 - utilisation** means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

20. The Supreme Court has stated that the purpose statement incorporates “the two competing social policies reflected in the Act” and that “both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system”.⁶ It has also stated “in the attribution of due weight to each policy that [the weight] given to utilisation must not be such as to jeopardise sustainability. Fisheries are to be utilised, but sustainability is to be ensured”.⁷
21. The practical effect of section 8 is that, when deciding something under a particular section of the Act (such as operating provisions like sections 13 and 20) the Minister’s powers must be exercised to promote the policy and objectives of the Act. That is, in deciding whether a proposal fits within the scope of the Act, the Minister must keep section 8 in mind and act in a way that promotes the Act’s objectives. Subject to this constraint, however, “the nature and scope of [the Minister’s] powers and the restrictions on them are as is provided for in the operating provisions of the Act”.⁸

¹ Convention on the Law of the Sea 1833 UNTS 397 (opened for signature 10 December 1982, came into force 16 November 1994).

² Convention on Biological Diversity 1760 UNTS 79 (opened for signature 5 June 1992, came into force 29 December 1993).

³ *Sanford Ltd v New Zealand Recreational Fishing Council Inc* [2008] NZCA 160 at [25].

⁴ As stated in *Environmental Law Initiative v Minister for Oceans and Fisheries* [2022] NZHC 2969 at [16].

⁵ Convention on Biological Diversity 1760 UNTS 79 (opened for signature 5 June 1992, came into force 29 December 1993), art 1.

⁶ *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54 at [39].

⁷ *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54 at [39].

⁸ *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54 at [59].

1.4 Environmental principles - section 9 of the Act

9 Environmental principles

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:

- (a) associated or dependent species should be maintained above a level that ensures their long-term viability;
- (b) biological diversity of the aquatic environment should be maintained;
- (c) habitat of particular significance for fisheries management should be protected.

22. The environmental principles the Minister must take into account when considering sustainability measures are as follows:

- (a) associated or dependent species (non-harvested species taken or affected by the taking of a harvested species) should be maintained above a level that ensures their long-term viability
- (b) biological diversity of the aquatic environment should be maintained
- (c) habitat of particular significance for fisheries management should be protected.

23. ‘Associated or dependent species’ is interpreted in the Act to mean any non-harvested species taken or otherwise affected by the taking of any harvested species. ‘Biological diversity’ means the variability among living organisms, including diversity within species, between species, and of ecosystems.

24. ‘Habitat of particular significance for fisheries management’ is not defined in the Act. FNZ recently consulted on draft [guidance for identifying a habitat of particular significance for fisheries management](#) and the operational proposals to take into account the need for these habitats to be protected. In this context, protection means taking measures that would avoid, remedy, or mitigate the adverse effect of a decision that could undermine the function the habitat providing for the fisheries resource and ecosystem. Submissions on the draft guidance have been considered and work is underway to finalise the guidance.

1.5 Information principles: uncertainties and unknowns - section 10 of the Act

10 Information principles

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles:

- (a) decisions should be based on the best available information;
- (b) decision makers should consider any uncertainty in the information available in any case;
- (c) decision makers should be cautious when information is uncertain, unreliable, or inadequate;
- (d) the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.

25. Section 2(1) of the Act defines “best available information” to mean “the best information that, in the particular circumstances, is available without unreasonable costs, effort, or time”.

2 Statutory considerations relevant to TAC and TACC decisions

26. The following sections outline the main statutory considerations for varying sustainability measures under the Act, and the more specific statutory considerations for setting a TAC and TACC. The stock-specific details relating to these considerations have been set out within the individual review documents.

2.1 Sustainability measures – section 11 of the Act

11 Sustainability measures

(1) The Minister may, from time to time, set or vary any sustainability measure for 1 or more stocks or areas, after taking into account—

- (a) any effects of fishing on any stock and the aquatic environment; and
 - (b) any existing controls under this Act that apply to the stock or area concerned; and
 - (c) the natural variability of the stock concerned.
- (2) Before setting or varying any sustainability measure under subsection (1), the Minister shall have regard to any provisions of—
- (a) any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991; and
 - (b) any management strategy or management plan under the Conservation Act 1987; and
 - (c) sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (for the Hauraki Gulf as defined in that Act); and
 - (ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
 - (d) a planning document lodged with the Minister of Fisheries by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011—
that apply to the coastal marine area and are considered by the Minister to be relevant.
- (2A) Before setting or varying any sustainability measure under this Part or making any decision or recommendation under this Act to regulate or control fishing, the Minister must take into account—
- (a) any conservation services or fisheries services; and
 - (b) any relevant fisheries plan approved under this Part; and
 - (c) any decisions not to require conservation services or fisheries services.
- (3) Without limiting the generality of subsection (1), sustainability measures may relate to—
- (a) the catch limit (including a commercial catch limit) for any stock or, in the case of a quota management stock that is subject to section 13 or section 14, any total allowable catch for that stock;
 - (b) the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken;
 - (c) the areas from which any fish, aquatic life, or seaweed of any stock may be taken;
 - (d) the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area;
 - (e) the fishing season for any stock, area, fishing method, or fishing vessels.

11A Fisheries plans

- (1) The Minister may from time to time approve, amend, or revoke a fisheries plan.
- (2) A fisheries plan approved under subsection (1) may relate to 1 or more stocks, fishing years, or areas, or any combination of those things.
- (3) Without limiting anything in subsection (2), a fisheries plan may include—
 - (a) fisheries management objectives to support the purpose and principles of the Act;
 - (b) strategies to achieve fisheries management objectives, which may include—
 - (i) sustainability measures set or varied under any of sections 11, 13, 14, and 15;
 - (ii) rules to manage the interaction between different fisheries sectors;
 - (c) performance criteria to measure the achievement of the objectives and strategies;
 - (d) conservation services or fisheries services;
 - (e) contingency strategies to deal with foreseeable variations in circumstances.

27. Under section 11, the Minister may set or vary sustainability measures for any stock. Under section 11A, the Minister may approve or revoke fisheries plans. To date, national fisheries plans have been approved for inshore, deepwater and highly migratory species, the Hauraki Gulf fisheries, the Foveaux Strait oyster fishery, PAU 3 (A & B), and PAU 4 (Chatham Islands).

28. Other plans and strategies that are not mandatory considerations under section 11 of the Act may be considered relevant to sustainability reviews.

The Hauraki Gulf Marine Park Act 2000

29. Section 11 of the Fisheries Act requires the Minister to have regard to sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (**HGMPA**) when setting or varying a TAC that includes the area of the Hauraki Gulf as defined in that Act. Section 13 of the HGMPA requires that the Minister have particular regard to sections 7 and 8 of the HGMPA when setting or varying TACCs and deemed values.

7 Recognition of national significance of the Hauraki Gulf

- (1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.
- (2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—
 - a. to provide for—
 - (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
 - (ii) the social, economic, recreational, and cultural well-being of people and communities:
 - b. to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation:
 - c. to maintain the soil, air, water, and ecosystems of the Gulf.

30. Section 7 of the HGMPA recognises the national significance of the Hauraki Gulf. Section 8 sets out objectives for management of the Gulf. The HGMPA is discussed in individual consultation documents where this is relevant.

8 Management of the Hauraki Gulf

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—

- a. the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:
- b. the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
- c. the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:
- d. the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:
- e. the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:
- f. the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

31. Section 13 of the HGMPA requires that decisions under various acts, including the Fisheries Act, that affect the Hauraki Gulf must have particular regard to sections 7 and 8 of the HGMPA. This applies to the setting or varying of TACCs and deemed values.

13 Obligation to have particular regard to sections 7 and 8

Except as provided in sections 9 to 12, in order to achieve the purpose of this Act, all persons exercising powers or carrying out functions for the Hauraki Gulf under any Act specified in Schedule 1 must, in addition to any other requirement specified in those Acts for the exercise of that power or the carrying out of that function, have particular regard to the provisions of sections 7 and 8.

Relevant strategies and plans

32. Within each consultation document we have highlighted which strategies and plans are important to consider for those stocks and their proposed sustainability measures (including those plans which the Minister must take into account or have regard to under the Act).

33. Te Mana o te Taiao (the Aotearoa New Zealand Biodiversity Strategy) is also broadly relevant to the proposed changes for all stocks in this round.⁹ Te Mana o te Taiao sets a strategic direction for the protection, restoration and sustainable use of biodiversity, particularly indigenous biodiversity in New Zealand. The strategy sets a number of objectives and goals across three timeframes. The most relevant to setting sustainability measures for fish stocks are Objectives 10 and 12:
34. **Objective 10:** Ecosystems and species are protected, restored, resilient and connected from mountain tops to ocean depths. Relevant goals within Objective 10 include:
- **10.1.1** Prioritised research is improving baseline information and knowledge of species and ecosystems.
 - **10.4.1** Significant progress has been made in identifying, mapping and protecting coastal ecosystems and identifying and mapping marine ecosystems of high biodiversity value.
 - **10.5.1** A framework has been established to promote ecosystem-based management, protect and enhance the health of marine and coastal ecosystems, and manage them within clear environmental limits.
 - **10.6.1** A protection standard for coastal and marine ecosystems established and implementation underway.
35. **Objective 12:** Natural resources are managed sustainably. Relevant goals within Objective 12 include:
- **12.1.1** Environmental limits for the sustainable use of resources from marine ecosystems have been agreed on and are being implemented.
 - **12.1.2** Marine fisheries are being managed within sustainable limits using an ecosystem-based approach.
 - **12.1.3** Marine fisheries resources are abundant, resilient and managed sustainably to preserve ecosystem integrity.
 - **12.2.1** The number of fishing-related deaths of protected marine species is decreasing towards zero for all species.
 - **12.2.2** The direct effects of fishing do not threaten protected marine species populations or their recovery.
 - **12.2.3** The mortality of non-target species from marine fisheries has been reduced to zero.
36. FNZ is working with the Department of Conservation and other agencies on implementation plans for the strategy. As part of those plans, we have identified areas of focus and actions for FNZ in delivering Government biodiversity objectives including progression to a more integrated ecosystem-based approach to managing fisheries. In that context, the consultation documents contain information on potential biodiversity impacts, ecosystem function and habitat protection associated with adjustments to sustainability measures, consistent with the Minister’s legislative obligations and the intent of Te Mana o te Taiao.

2.2 Consultation – section 12 of the Act

12 Consultation

- (1) Before doing anything under any of sections 11(1), 11(4), 11A(1), 13(1), 13(4), 13(7), 14(1), 14(3), 14(6), 14B(1), 15(1), and 15(2) or recommending the making of an Order in Council under section 13(9) or section 14(8) or section 14A(1), the Minister shall—
- (a) consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Māori, environmental, commercial, and recreational interests; and
 - (b) provide for the input and participation of tangata whenua having—
 - (i) a non-commercial interest in the stock concerned; or
 - (ii) an interest in the effects of fishing on the aquatic environment in the area concerned— and have particular regard to kaitiakitanga.

⁹ Te Mana o te Taiao is not a mandatory consideration under section 11 of the Act. However, the strategy is intended to guide in maintaining biodiversity, consistent with the purpose of the Act and the environmental principle under section 9(b) that biological diversity of the aquatic environment should be maintained.

- (2) After setting or varying any sustainability measure, or after approving, amending, or revoking any fisheries plan, the Minister shall, as soon as practicable, give to the parties consulted in accordance with subsection (1) reasons in writing for his or her decision.
- (3) This section does not apply in respect of emergency measures under section 16.

37. Before making decisions, the Minister must consult with people or organisations he or she considers represent those classes of people who have an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Māori, environmental, commercial, and recreational interests. After making decisions, the Minister must provide the reasons for his or her decisions to the people consulted.

Input and participation of tangata whenua

38. Before undertaking any sustainability process the Minister must provide for the input and participation of tangata whenua who have a non-commercial interest in the stock or an interest in the effects of fishing on the aquatic environment in the area concerned.

39. Input and participation of tangata whenua into the sustainability decision-making process is provided mainly through Iwi Fisheries Forums, which have been established for that purpose. Each Iwi Fisheries Forum can develop an Iwi Fisheries Forum Plan that describes how the iwi in the Forum exercise kaitiakitanga over the fisheries of importance to them, and their objectives for the management of their interest in fisheries. Iwi Fisheries Forums may also be used as entities to consult iwi with an interest in fisheries.¹⁰

Kaitiakitanga

40. In considering the views of tangata whenua, the Minister is required to have particular regard to kaitiakitanga.¹¹ Information provided by forums, and iwi views on the management of fisheries resources and fish stocks, as set out in Iwi Fisheries Plans, are ways that tangata whenua can exercise kaitiakitanga in respect of fish stocks.

2.3 Total Allowable Catch – section 13 of the Act

13 Total allowable catch

- (1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable catch for that stock, and that total allowable catch shall continue to apply in each fishing year for that stock unless varied under this section, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26.
- (2) The Minister shall set a total allowable catch that—
- (a) (a) maintains the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; or
 - (b) (b) enables the level of any stock whose current level is below that which can produce the maximum sustainable yield to be altered—
 - (i) in a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; and
 - (ii) within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock; or
 - (c) enables the level of any stock whose current level is above that which can produce the maximum sustainable yield to be altered in a way and at a rate that will result in the stock

¹⁰ However, FNZ also engages directly with Iwi (outside of Forums) on matters that affect their fisheries interests in their takiwa (district) and consults with any affected Mandated Iwi Organisations and Iwi Governance Entities where needed.

¹¹ The Fisheries Act defines kaitiakitanga to mean “the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori”, where tikanga Māori refers to Māori customary values and practices.

moving towards or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks.

- (2A) For the purposes of setting a total allowable catch under this section, if the Minister considers that the current level of the stock or the level of the stock that can produce the maximum sustainable yield is not able to be estimated reliably using the best available information, the Minister must—
- (a) not use the absence of, or any uncertainty in, that information as a reason for postponing or failing to set a total allowable catch for the stock; and
 - (b) have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock; and
 - (c) set a total allowable catch—
 - (i) using the best available information; and
 - (ii) that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level that can produce the maximum sustainable yield.
- (3) In considering the way in which and rate at which a stock is moved towards or above a level that can produce maximum sustainable yield under subsection (2)(b) or (c), or (2A) (if applicable), the Minister shall have regard to such social, cultural, and economic factors as he or she considers relevant.
- (4) The Minister may from time to time, by notice in the Gazette, vary any total allowable catch set for any quota management stock under this section by increasing or reducing the total allowable catch. When considering any variation, the Minister is to have regard to the matters specified in subsections (2), (2A) (if applicable), and (3).
- (5) Without limiting subsection (1) or subsection (4), the Minister may set or vary any total allowable catch at, or to, zero.
- (6) Except as provided in subsection (7), every setting or variation of a total allowable catch shall have effect on and from the first day of the next fishing year for the stock concerned.

41. If the Minister considers that stock levels (being the current level of the stock, or the level which can produce the *MSY*) cannot be estimated reliably using the best available information, he or she must not use the absence of or uncertainty in that information as a reason for postponing or failing to set a TAC. The Minister must set a TAC for the stock using the best available information and that is not inconsistent with the objective of maintaining the stock at or above or moving the stock towards or above a level that can produce *MSY*. In doing so the Minister must have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock.
42. The Minister must also have regard to any social, cultural, and economic factors he or she considers relevant when considering the way and rate at which a stock is moved towards or above a level that can produce maximum sustainable yield.
43. This section also provides information about when the Minister can vary any TAC, that decisions must be notified in the *Gazette*, and about when decisions come into force.

2.4 The Harvest Strategy Standard

44. The Harvest Strategy Standard (**HSS**) is a policy statement of best practice in relation to the setting of fishery and stock targets and limits for fish stocks in New Zealand's Quota Management System (**QMS**). It is intended to provide guidance as to how fisheries law will be applied in practice, by establishing a consistent and transparent framework for decision-making to achieve the objective of providing for utilisation of New Zealand's QMS species while ensuring sustainability.
45. It is important to note that a minimum requirement for satisfying the HSS is that fishery or stock targets will be set at the level of *MSY*-compatible reference points (however, they may also exceed this minimum requirement).
46. The HSS outlines FNZ's approach to relevant sections of the Act and, as such, forms a core input to FNZ's proposals on the management of fisheries, particularly the setting of TACs under section 13.
47. The High Court (as confirmed by the Court of Appeal) has held that the HSS is a mandatory relevant consideration that the Minister must have regard to when setting a TAC under section 13 of the Act. In addition, the Court concluded that the HSS is the "best available information" in terms of section 10(a)

of the Act in relation to acceptable default probability levels for rebuilding stocks (as well as for other matters relevant to the interpretation of section 13).

48. The HSS assists us to decide when a review of sustainability and related settings for a stock may be warranted, by establishing reference points and guidance for the fisheries management responses when stocks are at those reference points. The HSS establishes default targets and limits as a minimum standard (Table 1):

Table 1: Guidelines on default targets as set out in the Harvest Strategy Standard.

Reference point	Default	Management response
Management target	<i>Differs depending on productivity of the stock</i> 40% unfished biomass (B_0) is the default target for low-productivity stocks	Stock permitted to fluctuate around this management target. TAC/TACC changes will be employed to keep the stock around the target (with at least a 50% probability of being at the target).
Soft limit	$\frac{1}{2} B_{MSY}$ ¹² or 20% B_0 , whichever is higher	A formal, time-constrained rebuilding plan will be implemented if this limit is reached.
Hard limit	$\frac{1}{4} B_{MSY}$ or 10% B_0 , whichever is higher	The limit below which fisheries will be considered for closure.
Rebuild strategy		Stocks that have fallen below the soft limit should be rebuilt back to at least the target level in a time frame between T_{min} and $2 * T_{min}$ with an acceptable probability. Stocks will be considered to have been fully rebuilt when it can be demonstrated that there is at least 70% probability that the target has been achieved and there is at least 50% probability that the stock is above the soft limit ¹³ . T_{min} is the number of years to rebuild a stock to the target, in the absence of fishing.

Categories used to describe stock status in relation to the target and limits

49. In cases where a fish stock's status is known in relation to its management target and/or hard or soft limit,¹⁴ we use probability categories to define the status and surrounding uncertainty. These categories relate to the probability of stocks being 'at or above' biomass targets, below biomass limits, and above overfishing thresholds. Categorisations are derived from our Fisheries Assessment Plenary.¹⁵ Table 2 below provides a summary of the category descriptions and their associated probabilities.

Table 2: Descriptions of stock status and their represented probabilities.

Description	Probability
Virtually Certain	> 99 %
Very Likely	> 90 %
Likely	> 60 %
About as Likely as Not	40–60 %
Unlikely	< 40 %

¹² B_{MSY} is the biomass that enables a fish stock to deliver the maximum sustainable yield.

¹³ A stock that has a probability of 70% of having achieved the target must have more than a 50% probability of being above the soft limit. Fisheries New Zealand notes this was an error and that the 50% should have been a higher number, such as 80% or 90%.

¹⁴ This is the case for fish stocks in which TACs are being set or varied under section 13(2)(a), (b), or (c) of the Act.

¹⁵ Fisheries Assessment Plenaries summarise fisheries, biological, environmental, and stock assessment information for NZ's commercial fish species and groups. The Plenaries, which are released annually in May and November (two different versions covering different stocks) provide our best available information on stock status for QMS fish stocks, including rock lobster. FNZ incorporates new research and information into the plenaries on an annual basis. This research and information is reviewed through a plenary working group process (led by FNZ's science team) that includes input from fisheries scientists, subject matter experts and fisheries stakeholders.

Description	Probability
Very Unlikely	< 10 %
Exceptionally Unlikely	< 1 %

50. For example, if a fish stock is described as 'Very Likely' to be at or above management target, this means that there is a more than 90% probability that the fish stock is at or above its management target (in this case the stock is most likely well above its target). Note that the designations reflect both the model-based estimates and the level of robustness of the models as determined by FNZ's peer review processes.
51. Fish stocks fluctuate due to environmental **variation** and can never be maintained 'at' a particular level: fisheries managers aim to ensure that stocks fluctuate around their management targets, and TAC/TACC changes are employed to keep the stocks near those management targets. Generally, this means that FNZ attempts to manage fisheries so that stocks are at least About as Likely as Not (40-60% probability) to be at or above their management targets.
52. Within our consultation documents, we have used these categories where applicable and included the associated probabilities within parentheses.

2.5 Alternative TAC for stocks specified in Schedule 3 – section 14 of the Act

53. For stocks listed in Schedule 3 of the Act, the Minister may set a TAC otherwise than in accordance with section 13 if he or she considers that the purpose of the Act would be better achieved by doing so.
54. Schedule 3 identifies stocks that:
- (i) have biological characteristics that make it impossible to estimate maximum sustainable yield;
 - (ii) have had a national allocation for New Zealand determined as part of an international agreement;
 - (iii) are managed on a rotational or enhanced basis, or
 - (iv) comprise one or more highly migratory species.

2.6 Setting and variation of the Total Allowable Commercial Catch (TACC) – section 20 of the Act

20 Setting and variation of total allowable commercial catch

- (1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable commercial catch for that stock, and that total allowable commercial catch shall continue to apply in each fishing year for that stock unless varied under this section, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26.
- (2) The Minister may from time to time, by notice in the Gazette, vary any total allowable commercial catch set for any quota management stock by increasing or reducing that total allowable commercial catch.
- (3) Without limiting the generality of subsections (1) and (2), the Minister may set or vary a total allowable commercial catch at, or to, zero.
- (4) Every total allowable commercial catch set or varied under this section shall have effect on and from the first day of the next fishing year for the quota management stock concerned.
- (5) A total allowable commercial catch for any quota management stock shall not—
 - (a) be set unless the total allowable catch for that stock has been set under section 13 or section 14; or
 - (b) be greater than the total allowable catch set for that stock.

55. Once the TAC is set for a stock, the Minister must set the Total Allowable Commercial Catch (**TACC**) for the stock. The TACC cannot be larger than the TAC for a stock.

2.7 Matters to be taken into account in setting or varying any total allowable commercial catch – section 21 of the Act

21 Matters to be taken into account in setting or varying any total allowable commercial catch

- (1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall allow for—
 - (a) the following non-commercial fishing interests in that stock, namely—
 - (i) Māori customary non-commercial fishing interests; and
 - (ii) recreational interests; and
 - (b) all other mortality to that stock caused by fishing.
- (2) Before setting or varying a total allowable commercial catch for any quota management stock, the Minister shall consult such persons and organisations as the Minister considers are representative of those classes of persons having an interest in this section, including Māori, environmental, commercial, and recreational interests.
- (3) After setting or varying any total allowable commercial catch under section 20, the Minister shall, as soon as practicable, give to the parties consulted under subsection (2) reasons in writing for his or her decision.
- (4) When allowing for Māori customary non-commercial interests under subsection (1), the Minister must take into account—
 - (a) any Mātaitai reserve in the relevant quota management area that is declared by the Minister by notice in the Gazette under regulations made for the purpose under section 186;
 - (b) any area closure or any fishing method restriction or prohibition in the relevant quota management area that is imposed by the Minister by notice in the Gazette made under section 186A.
- (5) When allowing for recreational interests under subsection (1), the Minister shall take into account any regulations that prohibit or restrict fishing in any area for which regulations have been made following a recommendation made by the Minister under section 311.

56. When setting the TACC the Minister must make allowances for Māori customary non-commercial fishing interests, recreational interests, and all other mortality to the stock caused by fishing. Before setting the TACC, the Minister must consult with people and organisations that the Minister considers are representative of those classes of people having an interest in the TACC, including Māori, environmental, commercial, and recreational interests. After making decisions, the Minister must give those consulted the reasons for his or her decisions.

57. The Courts have considered what is involved in making allowances for non-commercial interests. In *Snapper 1*¹⁶ the Court of Appeal said that the recreational allowance is simply the best estimate of what recreational fishers will catch while subject to the controls the Minister decides to impose, such as daily limits and minimum sizes. Having set the TAC, the Minister apportions it among the relevant interests.¹⁷

58. The Supreme Court in *Kahawai*¹⁸ endorsed this approach and said that the words ‘allow for’ require the Minister both to take into account the interests and make provision for them in the calculation of the TACC.¹⁹ The Court further noted that:²⁰

The sequential nature of the method of allocation provided for in s 21 does not indicate that non-commercial fishing interests are to be given any substantive priority over commercial interests. In particular, the allowance for recreational interests is to be made keeping commercial interests in mind.

59. Under the customary fishing regulations,²¹ customary take is regulated through the authorisation system which requires that all customary fishing is to be undertaken in accordance with tikanga and the overall

¹⁶ *New Zealand Fishing Industry Association Inc v Minister of Fisheries* CA 82/97, 22 July 1997 (Snapper 1).

¹⁷ At 17.

¹⁸ *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54, [2009] 3 NZLR 438 (Kahawai)

¹⁹ At [55].

²⁰ At [61].

²¹ Fisheries (South Island Customary Fishing) Regulations 1999 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998

sustainability of the fishery. This framework was put in place to give effect to legal obligations in the Settlement Act.²²

60. When allowing for Māori customary non-commercial fishing interests, the Minister must take into account any mātaihai reserves, area closures or fishing method restrictions or prohibitions in the relevant area. The mātaihai reserves and other customary management tools relevant to each review are set out within their respective consultation documents.
61. When allowing for recreational interests the Minister must take into account any regulations that prohibit or restrict fishing under section 311 of the Act.

2.8 The effect of increases in Total Allowable Commercial Catch – section 23 of the Act

62. Section 23 sets out the actions and calculations that must be implemented in the event the TACC of any stock that has preferential allocation rights associated with it is increased. Preferential allocation rights are sometimes referred to as “28N rights”.
63. In the 2025 April sustainability round, there are no stocks with associated 28N rights.

3 Statutory considerations relevant to deemed value rate decisions

3.1 Deemed value framework

64. The Quota Management System (**QMS**)²³ is the backbone of New Zealand’s fisheries management regime and includes a total of 642 fish stocks representing 98 species or species groups. Balancing catch against catching rights is key to ensuring the integrity of the QMS.
65. On the first day of each fishing year,²⁴ all quota owners are allocated ACE, based on their share of quota and the current Total Allowable Commercial Catch (**TACC**). ACE may be freely traded between fishers to balance against catch. Under the catch balancing regime, deemed values are charges that commercial fishers must pay for every unprocessed kilogram of QMS fish landed in excess of their ACE holdings (\$/kg).
66. The purpose of the deemed values regime is to provide incentives for individual fishers to acquire or maintain sufficient ACE to cover catch taken over the course of the year while allowing flexibility in the timing of balancing, promoting efficiency, and encouraging accurate catch reporting. By achieving this purpose, deemed values act to protect the long-term value of stocks and support kaitiakitanga²⁵ by providing incentives for the overall commercial catch for each QMS stock to remain within the total available ACE.
67. The effectiveness of the incentive to balance catch against ACE is dependent on individual fishers’ compliance with landing and reporting requirements, their responses to the incentives provided, and the impact of other incentives such as those created by market conditions.

²² Where the customary regulations don’t apply customary fishing is regulated under regulations 50-52 of the Fisheries (Amateur Fishing) Regulations 2013 and a similar authorisation system applies.

²³ For more information on the Quota Management System, go to: <https://www.mpi.govt.nz/legal/legislation-standards-and-reviews/fisheries-legislation/quota-management-system/>.

²⁴ Depending on the stock, fishing years commence 1 October, 1 April, and 1 February.

²⁵ The Act defines Kaitiakitanga to mean “the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori”, where tikanga Māori refers to Māori customary values and practices.

3.2 Minister to set deemed value rates – section 75 of the Act

75 Minister to set deemed value rates

- (1) For each quota management stock, the Minister must, by notice in the Gazette, set an interim deemed value rate and an annual deemed value rate for that stock, and those rates continue to apply in each fishing year for that stock unless varied under this section.
- (2) In setting an interim deemed value rate or an annual deemed value rate, the Minister—
 - (a) must take into account the need to provide an incentive for every commercial fisher to acquire or maintain sufficient annual catch entitlement in respect of each fishing year that is not less than the total catch of that stock taken by that commercial fisher; and
 - (b) may have regard to—
 - (i) the desirability of commercial fishers landing catch for which they do not have annual catch entitlement; and
 - (ii) the market value of the annual catch entitlement for the stock; and
 - (iii) the market value of the stock; and
 - (iv) the economic benefits obtained by the most efficient commercial fisher, licensed fish receiver, retailer, or any other person from the taking, processing, or sale of the fish, aquatic life, or seaweed, or of any other fish, aquatic life, or seaweed that is commonly taken in association with the fish, aquatic life, or seaweed; and
 - (v) the extent to which catch of that stock has exceeded or is likely to exceed the total allowable commercial catch for the stock in any year; and
 - (vi) any other matters that the Minister considers relevant.

75A Requirement to consult in relation to deemed values

1. Before setting any interim deemed value rate or annual deemed value rate under [section 75](#), the Minister must, if practicable, consult persons or organisations that the Minister considers represent classes of persons who have an interest in the stock, including Māori, recreational, commercial, and environmental interests.

68. The stock-specific sections within the consultation documents for deemed value rate reviews set out how FNZ's recommendations are consistent with the Minister's mandatory statutory consideration under section 75(2)(a).
69. As a measure of the market value of a stock's ACE, FNZ uses an annual ACE price value that is calculated by FishServe using information supplied as part of registering ACE transfers.
70. As a measure of a stock's market value, FNZ uses port prices. These are calculated annually via a survey of that collects information on the average price paid by licenced fish receivers to independent fishers from whom they receive fish.

Deemed Value Guidelines

71. The Deemed Value Guidelines April 2020²⁶ (**Deemed Value Guidelines**) set out the operational policy that Fisheries New Zealand will use to inform the development of proposals on the setting/adjusting of deemed value rates. The 2020 version of the Guidelines was developed as part of the deemed values review and supersedes the previous (2012) version.
72. In summary, the Deemed Value Guidelines set out six statements used to inform the setting of deemed value rates:
 - (a) Deemed value rates should incentivise fishers to balance catch against annual catch entitlement;
 - (b) Deemed value rates should incentivise accurate catch reporting;
 - (c) Differential deemed values may be set;
 - (d) Other relevant matters may be considered when setting deemed value rates;
 - (e) The interim deemed value rates of all stocks should be set at 90% of the annual rate; and

²⁶ Available at: <https://www.fisheries.govt.nz/dmsdocument/40250-Deemed-value-guidelines>

(f) The deemed value rates for Chatham Island landings may be lower.²⁷

73. The Deemed Value Guidelines are not intended to be overly prescriptive and should provide for flexibility in the deemed value rate settings of individual stocks to meet the sustainability and utilisation objectives of the Act. They serve only as a guide and do not preclude the Minister from taking into account relevant information on a case-by-case basis. As such, the deemed value rates of some stocks may depart from the Guidelines, if appropriate.

Types of deemed value rate

74. The deemed values regime does not create a standard deemed value rate, but a set of rates that apply under different circumstances:

- **Interim deemed value rates** are invoiced each month for every kilogram of unprocessed fish landed in excess of ACE. If the fisher subsequently sources ACE to cover their catch, the interim deemed value payments are remitted. All interim deemed value rates are currently set at 90% of the basic annual deemed value rate in line with the recommendations in FNZ's Deemed Value Guidelines. Permits are suspended if deemed value debt remains above \$1,000 to incentivise fishers to cover deemed value invoices promptly, rather than delay balancing.
- **Annual deemed value rates** are invoiced at the end of the fishing year on all catch in excess of ACE. If the fisher has not sourced ACE by the end of the fishing year, the difference between the interim and annual deemed value rates is invoiced for all catch in excess of ACE.
- **Differential deemed value rates** (also known as ramping) are the progressively- increased annual deemed value rates that apply to some stocks as the percentage by which a fisher's catch in excess of ACE also increases. The standard approach, which is set out in the Deemed Value Guidelines, is to increase the annual rate in 20% increments, up to a maximum of 200% of the annual deemed value rate. However, more or less stringent schedules may be applied depending on the specific circumstances of the stock.²⁸ Differential rates provide fishers with a stronger incentive to remain within their ACE holding and reflect the increasingly detrimental impact of higher levels of over-catch on sustainability and the long-term value of the resource.

Review of the deemed values regime

75. A multi-stakeholder review of the operation of the deemed values regime was conducted during 2019. The outcome of the review was a series of recommendations on how the operation of the deemed values regime could be improved. These recommendations were subsequently accepted by FNZ and have been used to develop options for deemed value rate reviews.²⁹

²⁷ The price for fish landed in the Chatham Islands is generally lower than the price for the same species landed elsewhere because of the higher cost of transporting fish to markets. Therefore, there may be reasons to set different deemed value rates for the Chatham Islands.

²⁸ For vulnerable or rebuilding stocks, or those taken with a high degree of selectivity, a more stringent differential schedule may be appropriate. Likewise, less stringent differential schedules may be more appropriate for low value, low TACC stocks where targeted fishing does not occur.

²⁹ The final report of the deemed values working group is available online via this link: <https://www.mpi.govt.nz/dmsdocument/40253-deemed-values-working-group-final-report>.