

8 March 2013

**For: Bryce Johnson**

New Zealand Fish & Game Council  
PO Box 13141  
Johnsonville  
WELLINGTON 6440

Anderson Lloyd  
Level 10, Otago House  
Cnr Moray Place & Princes Street  
Dunedin 9016, New Zealand  
Private Bag 1959, Dunedin 9054  
P: 03 477 3973  
F: 03 477 3184  
**Also in:**  
Christchurch  
Queenstown  
[www.andersonlloyd.co.nz](http://www.andersonlloyd.co.nz)

Dear Bryce

**'RM2' - effect of proposed reforms for freshwater fisheries**

***Introduction and summary***

1. This advice focuses solely on the proposed changes to sections 6 and 7 of the RMA as they relate to the protection of trout and salmon fisheries, as detailed in the Ministry for the Environment's discussion document *Improving our Resource Management System*, February 2013.
2. In summary the proposed changes to sections 6 and 7 will reduce the protection afforded to freshwater fisheries' habitat generally, primarily through removal of the direction to "protect" habitat, and secondly through the introduction of the qualifying word "significant".
3. The proposed deletion of reference to the maintenance and enhancement of amenity values (section 7 (c)) will materially reduce the weight that can be placed on the importance of amenity values. This, in combination with weakened directive in respect of public access to waterways, is likely to significantly reduce the weight that decision makers can place on the value of sports fisheries to people generally. These changes have implications for any recreation or amenity value, particularly those that involve or rely upon water bodies.
4. The proposed changes to the introductory wording of section 6 remove reference to "national importance", which is likely to alter the weight to be given to section 6 matters. This is an additional change, along with the others noted above, that will need to be interpreted by the Courts before there is any certainty as to the combined effect.

***Discussion***

5. The protection and enhancement of freshwater fisheries is currently safeguarded by five key provisions in Part 2 of the RMA. These provisions in combination have been relied upon over the last two decades to justify provisions in regional plans, and appropriate decisions on resource consents that will protect and enhance trout and salmon fisheries.

6. Those provisions, in order of importance, are:
  - a. The section 7 (h) requirement that the protection of the **habitat of trout and salmon** be given particular regard.
  - b. The section 7 (c) requirement that particular regard be given to the maintenance and enhancement of **amenity values**; and
  - c. The section 5 (2) (b) requirement that **life supporting capacity** of water be safeguarded;
  - d. The section 6 matter of national importance that requires the maintenance and enhancement of **public access** to and along lakes and rivers be recognised and provided for;
  - e. The section 6 matter of national importance that the **natural character** of wetlands, lakes, rivers and their margins be preserved and protected from inappropriate subdivision use and development;
7. The only provision from the above list that is not affected by the proposed amendments is section 5 (2) (b), life supporting capacity. In all other respects the proposed amendments weaken, and in one case completely removes, the protection currently afforded to freshwater habitats and fisheries.
8. The key changes of concern are:
  - a. Section 6 is no longer noted as containing matters of national importance but is instead proposed to be a list of "Principles". Section 7 is deleted, with only some provisions being transferred to section 6. It is therefore unclear whether the "principles" listed in section 6 have the status of matters of national importance, or something less than that.
  - b. Section 7 (h) is moved to new section 6 (n). The total effect of the amendments to section 7 (h) can be shown as:
 

~~*In achieving In making the overall judgement to achieve the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to recognise and provide for the following matters*~~  
*(h) areas of significant aquatic habitats, including The protection of the habitat of trout and salmon.*
  - c. The direction to "protect" trout and salmon is removed, and the provision now only relates to "significant" habitat, rather than all habitat. These two changes reduce the weight that decision makers will be required to give to protecting the habitat of trout and salmon in decisions on regional plans and resource consents. These two changes appear to be deliberate, as other section 6 provisions retain directives such as "protect" or "preserve", and some provisions are qualified by the use of "significant" or "outstanding" while others are not.
  - d. Section 7 (c) in relation to amenity values is deleted. The discussion document notes that this (and other) deletions are because they are

effectively encompassed in section 5 of the Act. However, in our opinion the only provision in section 5 of the Act that could remotely relate to the maintenance and enhancement of amenity values is the section 5 (2) provision that refers to enabling people and communities to provide for the social, economic and cultural wellbeing and for their health and safety. In our opinion there is an indirect relationship between protecting amenity values (such as recreation values) and this aspect of section 5. We are confident that if reference to amenity values is deleted, decision makers will place less weight and importance on protecting recreation resources such as freshwater fisheries.

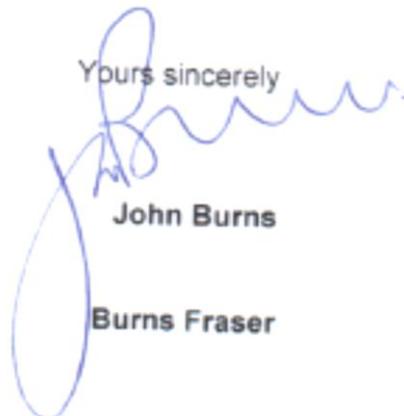
- e. The discussion document proposes to effectively weaken the importance of the section 6 (d) requirement in respect of public access to water bodies, by deleting the direction that recognition and provision be made for the maintenance and enhancement of public access to waterways, replacing it with a weaker requirement that the "value" of public access be recognised and provided for.
9. These material changes generally mean that little weight will be placed on previous case law applying those provisions and there will be a significant bedding in period while the Courts are required to reinterpret the meaning and weight to be given to the amended provisions. Wherever there is uncertainty or ambiguity, it is likely to lead to litigation to resolve that uncertainty.

Yours faithfully  
**Anderson Lloyd**



**Maree Baker-Galloway**  
Partner Owner  
P: 03 471 5447  
M: 027 295 4704  
E: maree.baker-galloway@andersonlloyd.co.nz

Yours sincerely



**John Burns**

**Burns Fraser**