



# Submission Form

## Review of sustainability measures for 1 October 2021

### Once you have completed this form

Email to: [FMSubmissions@mpi.govt.nz](mailto:FMSubmissions@mpi.govt.nz)

While we prefer email, you can also post your submission to:

2021 Sustainability Review, Fisheries Management, Fisheries New Zealand, PO Box 2526, Wellington 6140, New Zealand.

### Submissions must be received no later than 5pm on Tuesday 27 July 2021.

Anyone may make a submission, either as an individual or on behalf of an organisation. Please ensure all sections of this form are completed. You may either use this form or prepare your own but if preparing your own please use the same headings as used in this form.

### Submitter details:

<b>Name of submitter or contact person:</b>	Peter van Eekelen
<b>Organisation (if applicable):</b>	Pegasus Bay Game Fishing Club Sumner Boating & Fishing Club
<b>Email:</b>	peterve@xtra.co.nz
<b>Fish stock(s) this submission refers to:</b>	Blue Cod BCO3
<b>Your preferred option as detailed in the discussion paper</b> (write "other" if you do not agree with any of the options presented):	Other as per the attached submission

### Official Information Act 1982

Note, that your submission is public information. Submissions may be the subject of requests for information under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available to requesters unless there are sufficient grounds for withholding it, as set out in the OIA. Submitters may wish to indicate grounds for withholding specific information contained in their submission, such as the information is commercially sensitive or they wish personal information to be withheld. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.



**Submission:<sup>1</sup>**

**Details supporting your views:**

As per the attached submission.

This is the revised version to take into account 'Recreational Catch' under Sec 111 by Commercial Fishers

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<sup>1</sup> Further information can be appended to your submission. If you are sending this submission electronically we accept the following formats – Microsoft Word, Text, PDF and JPG.



## Review of Sustainability Measures for Blue Cod 3 2020/2021

This submission is made on behalf of the Pegasus Bay Gamefishing Club and the Sumner Boating and Fishing Club, members of the NZ Sport Fishing Council.

This submission is also made in the interests of assisting the Minister of Fisheries (the Minister) and Fisheries NZ (FNZ) to achieve abundant fisheries that will enable all New Zealanders to provide for their social, economic and cultural well-being.

The joint submitters appreciate the opportunity to comment on the review of sustainability measures for Blue Cod 3 (BCO3). The Discussion Paper (DP) was released for consultation on the 23<sup>rd</sup> June, with submissions due by 27th July 2021.

### Preamble

The commercial value of Blue Cod is increasing, the non-commercial catch is highly prized and is the main target species providing cultural, social, and economic wellbeing to the people of the greater Canterbury area, and their visitors.

No Total Allowable Catch (TAC) or Allowances were set when BCO3 was put in the Quota Management System, (QMS). Historical Legislation only provided for setting a Total Allowable Commercial Catch, (TACC) and, has not been formally reviewed since.

A Total Allowable Catch (TAC) is being proposed for the first time, and within the TAC allowances will be made for non-commercial interests, both customary and recreational, and the Total Allowable Commercial Catch (TACC) will be set. These must be made as prescribed by the Fisheries Act 1996, and, based on real world information. We are concerned at the poor quality of the National Blue Cod Strategy Traffic Light System, (TLS) and the unprincipled approach being proposed to manage our Blue Cod.

FNZ are proposing a potential decrease from 100 tonne to 83 Tonne for Recreational catch in the BCO3 area with the following reductions being a nominated 20% reduction, due to the implemented Traffic Light System. Understanding the actual Recreational deductions are:

Canterbury 93%  
North Otago 66%  
South Otago 50%

and, understanding that most of the Commercial catch, (72%), is taken is from below the Waitaki, it is reasonable to assume the same ratio could be applied to Recreational catch as well, considering the lack of launching and landing areas in the BCO3 area.

On that basis a graduated average of Recreational catch in the BCO3 area is more likely to be around 40 tonne, at best, under the current TLS.

FNZ have already identified that Customary, non commercial, fishing is likely to increase from the 20 tonne proposed limit due to Recreational fishing bag limits now mostly being under the 15 fish in the TLS 'green and orange' areas.

With 20 tonne nominated for Customary catch and, a likely 40 tonne catch for Recreational fishing based on the TLS, ...is that fair and reasonable?

Further to this FNZ have, under the Treaty of Waitangi, consulted with Iwi, and Ngai Tahu is the iwi with mana moana over BCO3 on behalf of Customary Fishing Rights. Considering Ngai Tahu is a significant Commercial operator encompassing more than 100 commercial inshore and deepwater fish species, (from Ngai Tahu Seafoods website), with the leasing of ACE, (Annual Catch Entitlement), to other parties, there is a significant conflict of interest with the Management Objectives listed in the DP being:



- Management Objective 1) To create thriving customary non commercial fisheries that support the cultural wellbeing of South Island iwi and whanau.
- Management Objective 2) To develop environmentally responsible, productive, sustainable and culturally appropriate commercial fisheries that create long term benefits and economic development opportunities for South Island iwi.

How can Ngai Tahu be consulted, as a party to the recreational management of the fishery, on the proposed changes when they have a vested commercial interest in the outcome? How was this conflict of interest handled?

In 2009, 80% of the quota was owned by 8 companies with an estimated value of 3.5 Billion dollars

2011 saw FNZ introduced gifting reduced public catch to ITQ, (Individual Transferable Quota), shareholders.

This meant that FNZ freely offered ITQ, shareholders catch rights previously held by the public. They can sell quota within the TACC limit. If the public catch limit under the TAC is not achieved then, the uncaught Recreation allowance becomes part of the TAC and 'transfers' to the ITQ members to fish or sell within their group. The public lose access to this transferred quota.

This was made without comment. The Supreme Court determined that the Minister make all of a TAC available to be caught.

FNZ appears to apply a catch-it or lose-it approach to recreational allowances. For example, if the current allowance for BCO3 of 83 tonne is considered to be not fully caught then the uncaught portion will transfer to the TACC essentially becoming a perpetual transferable property right for Commercial fishing. It gets handed over with no discussion.

In this context it is essential that the recreational allowance imports the full meaning from the Supreme Court insofar as the quality and availability of fish to meet the reasonable needs of the public is provided for by both the TAC and TACC decisions.

To introduce a revised recreational harvest estimate based on the TLS reduced daily bag limits, without importing the recreational qualitative factors into their allowance, is not only poor process but unlikely to withstand a review. The implementation of the TLS did not fulfil FNZ's requirement to fully consult with Recreational Fishers and is open for challenge.

Under the National Blue Cod Strategy:

- The decision and implementation of the TLS ultra vires the Fishing Act
- FNZ did not complete meaningful consultation with Stakeholders
- FNZ made the decision to implement the TLS without consulting Stakeholders of the significant changes, making a decision on insufficient information and review with Stakeholders.

The High Court has recently supported similar positions acting in the interests of the New Zealand public against actions by Ministers of the Crown contravening the basic principles of protecting the public's rights, examples being:

- 2017 Lower NI Red Deer Foundation vs the Minister of Conservation in which Justice Simon



France said:

Para 52 "...Did the particular circumstance require consultation with the Applicant, notwithstanding it was a national process and generally intended only to apply an established framework? I am satisfied that such a duty existed.....

(a) The changes proposed were significant;

(c) The recognition is in s 23(c) of the Wild Animal Control Act...and the fact that that Statute makes this a mandatory consideration;

(f) The consultation process that was followed in 2009

Para 54 "...it was appreciated by the Department that the changes were significant....

Para 55 "This was a nationwide exercise and so caution is needed in identifying specific areas as candidates for localised consultation.....

Para 56 " The figures identified above (24) tell their own story..... (81 percent down to 16 per cent)... The scale of the change therefore suggests the recreational hunters represented by the applicant could be significantly affected.

Para 59 "There is undoubtably a level of unfairness created here..."

Para 63 "Standing back, I am satisfied this has been an unfair process caused by a failure to consult with the applicant....particularly as here where the changes proposed were significant....

Justice France ruled on behalf of the Applicant against DOC

- 2020 The NZ Tahr Foundation vs the Minister of Conservation in which Justice Robert Dobson said:

Para 72 "The longstanding existence of the TPILG, (Tahr Plan Implementation Group), and interested parties in recent years, plus the proposal for consultation that was disrupted by the COVID 19 lockdown, cumulatively provide a sound basis for claiming a legitimate expectation of meaningful consultation about the content of the 2020-2021 plan."

Para 75 "It follows from this reasoning that the second step listed by the Court of Appeal in *Comptroller of Customs*, the Foundation's reliance on a practice of consultation was legitimate."

Para 78 "...I accept that the organisations and individuals involved in dialogue with DoC were not advised of the scale of the culling activity..... I do accept that the manner in which the critical ingredient of the proposed plan was conveyed, left hunting interests with inadequate time to make a full response.....

Para 88 "...Returning then to the prospect for the extent of DoC's failure to provide a meaningful opportunity of consultation about the level of culling it was proposing...The part of the Foundations complaint I have upheld relates to the adequacy of the process adopted by DoC in arriving at the decision to adopt the plan."



Justice Dobson ruled on behalf of the Applicant against DoC

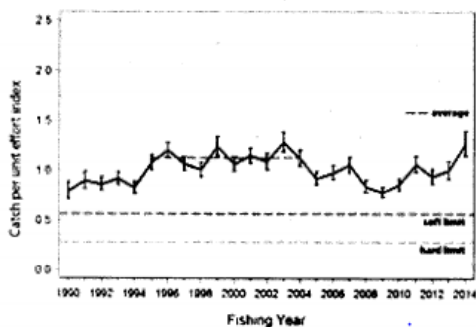
Both decisions revolved around DoC not following the prescribed consultation process within the respective Act.

This is the same that has occurred with the legislation of the National Blue Cod Strategy and the implementation of the TLS. The changes in the decisions above were significant, as are the implemented changes under the TLS.

FNZ abrogated the process, citing the COVID 19 event as the reason. They did not engage with stakeholders on the outcome of Wider Engagement 2, 2018, and did not complete the consultation process understanding there was a significant difference in what had been consulted to date and what FNZ were proposing to implement.

The information provided to stakeholders did not show a reduction of the CPUE years 1990 through to 2014, in actual fact, showing a mean average improvement in the stock. This information was provided by FNZ as the basis for review for the discussion and implementation of the National Blue Cod Strategy and TLS.

### Stock status of BCO 3

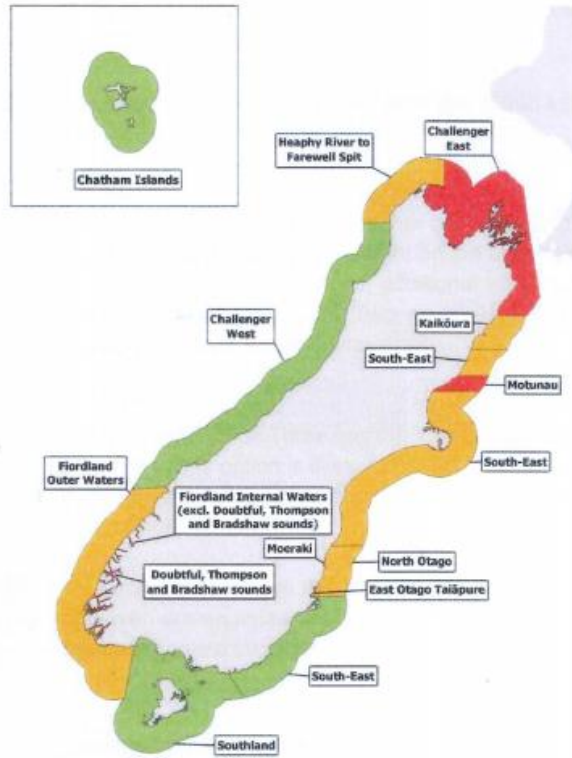


Blue cod (BCO 3) catch per unit effort from 1990 to 2014

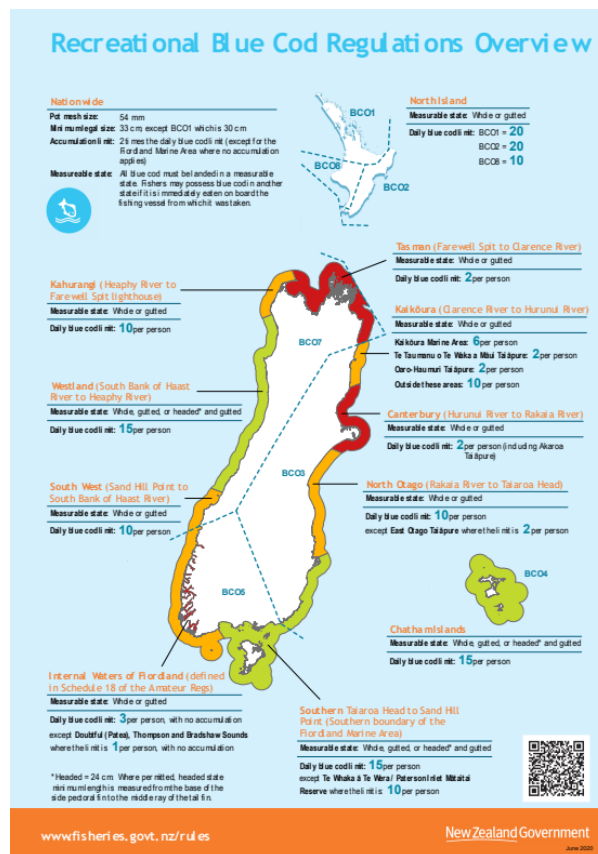
Recreational fishers catch most blue cod in BCO 3. In the 2011-2012 fishing year, almost 120 tonnes of blue cod were caught by recreational fishers in BCO 3. Commercial catch averages around 160 tonnes a year.

Blue cod are mostly caught in pots – and stock levels are measured using a method known as "pot catch per unit effort" (CPUE). The graph shows stock has fluctuated in a narrow band since the early 1990s but has stayed above soft and hard management limits. If stock falls below a soft limit, Fisheries New Zealand manages the fishery to rebuild stock. If stock falls below a hard limit, we close the fishery.

After FNZ Wider Engagement 2, the proposed process was for the further nominated Expert Workshop 3 would have reviewed the wider feedback and resolved a number of issues that have since become major structural problems in the delivery of the TLS. It would have also become apparent the significant changes that FNZ were going to implement, which contrasted significantly from what was discussed in the consultation process with stakeholders up to that point.



The proposed Traffic Light System issued for consultation under the NBCS



The actual implemented Traffic Light System with a significant change to the Canterbury region



There was no consultation on the final outcome of the TLS and stakeholders had no opportunity for further consultation before the Minister legislated the TLS. Had further consultation been engaged with stakeholders, significant consequential outcomes could have been avoided, requiring additional ongoing review by the Minister.

The subsequent decision by the Minister in implementing the plan, and the significant reductions to a number of areas, is not supported by the information provided to the public as part of the consultation process, leads to the assumption that either FNZ were misleading the public with incorrect information or, the Minister acted in the interest of Commercial fishing over Recreational.

### **The Purpose of the Fishing Act must be promoted.**

What comprises Customary and Recreational interests is not defined in the Act, however the Supreme Court had this to say:

*SC [54] The notion of people providing for their wellbeing, and in particular their social wellbeing, is an important element of recreational interests.*

*SC [59] The terms of the definition of utilisation, including the wellbeing concept, are contextually relevant to what is meant by recreational interests and in that sense are relevant considerations in decisions under s 21.*

It follows that providing for the cultural and social wellbeing of the public are key relevant factors when the Minister determines allowances.

The Minister is able to impose bag and fish length limits and this has occurred under the TLS. The allowance accordingly represents what the Minister considers recreational interests should be able to catch, but also, all that they will be able to catch and this no longer is the case under the TLS.

The Act envisages that the relevant powers will be exercised as necessary to achieve that goal.

This is underpinned by Moyles Promise.

*"The Recreational Fisheries Policy I am now releasing can be seen as the first step in a programme which will address the needs of the recreational fishery. It is not a set of rules and regulations governing recreational fishing; it is a set of principles which will provide a framework for specific management measures to be introduced in the regions, to meet regional needs and local conditions.*

*The cornerstone of the policy is presented in the first national objective: **to ensure recreational users have access to a reasonable share of fishery resources. Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing. This position reflects Government's resolve to ensure all New Zealanders can enjoy and benefit from our fisheries.***

*New Zealand is now recognised as a world leader in commercial fisheries management. This policy ensures we are at the forefront of recreational fisheries policy as well."*

Colin Moyle  
Minister of Fisheries  
June 1989





FNZs action in implementing the Traffic Light System under the Blue Cod Strategy contravenes the purpose of the Act and dismisses the basis of the Moyles principal. It holds the same weight as the New Zealand Constitution, which, is also not a “set of rules or regulations governing New Zealand, it is a set of principles which will provide a specific framework for governing New Zealand.”

To negate Moyles principle is to negate the principles under which the New Zealand Constitution works and grows and, renders the Treaty of Waitangi meaningless.

## Submission:

- That the TAC be set at 243 tonnes
- That the TACC be set at 110 tonnes
- That Customary allowance be 20 tonnes
- That recreational allowance be 104 tonnes and the TLS reviewed to support the Recreational Catch at this level.
- That the TLS has a review period incorporated within the legislation and an immediate review of the traffic light system applying varying catch limits to coastline areas
- The allowance for other mortality be 9 tonnes
- That there is equity between Recreational and Commercial fishing regarding stock management and practices
- That a monitoring programme be established that samples catch and effort with a purpose of representing relative abundance over time with regular reviews of catch levels, release mortality and impacts on the benthic environment due to fishing
- Removes bottom trawling from inshore waters.

## Background

1. The DP reports that the stock is declining in abundance and age, and catch limits need review – with Option 1 in the Total Allowable Commercial Catch (TACC) remaining the same, and, Option 2 being a reduction of 20%, being 34 tonne against current landed fish.

However, Commercial will not actually lose any TACC under the proposed submissions with the TLS in place, as the balance of the recreational catch not caught, will immediately be available to them under the TAC, being an additional 45 tonne uncaught recreational catch, due to the consequences of the TLS, giving them a nett increase even with a reduced TAC. This gives Commercial a potential 204 tonne TACC under Option 1 and 181 tonne TACC under Option 2.

2. BCO3 is the largest recreational Blue Cod fishery prior to implementation of the TLS, and the only spatial description of depletion identifies the inshore areas of the East Coast as being relatively depleted.

3. Blue Cod are vulnerable to localised depletion, and there is no way of knowing how representative the Catch Per Unit of Effort (CPUE) data is of the wider Fisheries Management Area (FMA). It seems is noted that the primary area for Commercial fishing, below the Waitaki, contributes most of the CPUE data, and not reflect the stock condition across the wider FMA.

4. The stock status of BCO3 is unknown, and catch decisions have been made by examining CPUE records, which apparently shows a decline in abundance Catch Per Unit of Effort (CPUE). However, FNZ also reports that the Commercial CPUE has declined since 2002/03 but the Commercial catch exceeded the TACC over the same period of time. Understanding that 72% of the bulk of Commercial catch is taken from below the Waitaki, both CPUE and catch trends are strongly influenced by catches in this area. Commercial catches have been generally 5% greater than the TACC.



The major area of uncertainty is the relationship between BCO3 and abundance is unknown, (Beentjes and Carbines Bank Peninsula Abundance Reports), and the changes in Commercial pot mesh sizes, (38mm up to June 2009, 48mm to June 2020 and now 54mm June 2020 onwards) coupled with the change in MLS from 30cm to 33cm affects CPUE indices, losing the comparability of the earlier series making the data available for review redundant.

## Commercial catch

5. BCO3 is the 2<sup>nd</sup> largest commercial Blue Cod fishery in New Zealand. Most of the 170 tonne annual landed catch is taken by target cod potting in the Otago area.
6. Commercial catches have exceeded the TACC by an average of 5% each year since 2002 reflecting the trend in CPUE.

## Recreational catch

7. The recreational catch estimates have been consistent with a minor decrease from the 2011/2012, Panel Survey results, 101 tonne, through to the 2017/2018 at 99 tonne with no accounting for Customary catch. The DP suggests a reduction of 17% being 17 tonne reduction to the Recreational catch, prior to the implementation of the TLS, being in line with the FNZ Option 2 proposal to reduce the TACC by a similar percentage.

However this suggestion on the reduction of the Recreational take has been made redundant by the implementation of the TLS which will reduce the recreational take by an average of 60% over the total area of BCO3 and, 93% in Canterbury where 22 % of the TACC is caught by inshore trawl. **If FNZ is serious about the state of the fishery, then there needs to be equity in the reduction of catch and spatial areas for fishing between Recreational and Commercial.** The current situation puts Commercial interests ahead of Recreation, in contravention of the Act. Coupled with Commercial interests' being able to fish, without reduction or restriction, in designated Red Zone areas under the TLS, makes a mockery of the objectives of the National Blue Cod Strategy and the TLS.

The Banks Peninsula area is designated as Red Zone under the TLS and the benthic areas for Blue Cod congregation are limited by the geology of the Peninsula and the environmental impact of high sedimentation.



## The level of sedimentation typically around Banks Peninsular

In the cod potting surveys undertaken since 2002 it is clear there are a number of Blue Cod habitats along the immediate shoreline specially through areas 2,3,4 and 5 on the graph following, Figure 2.



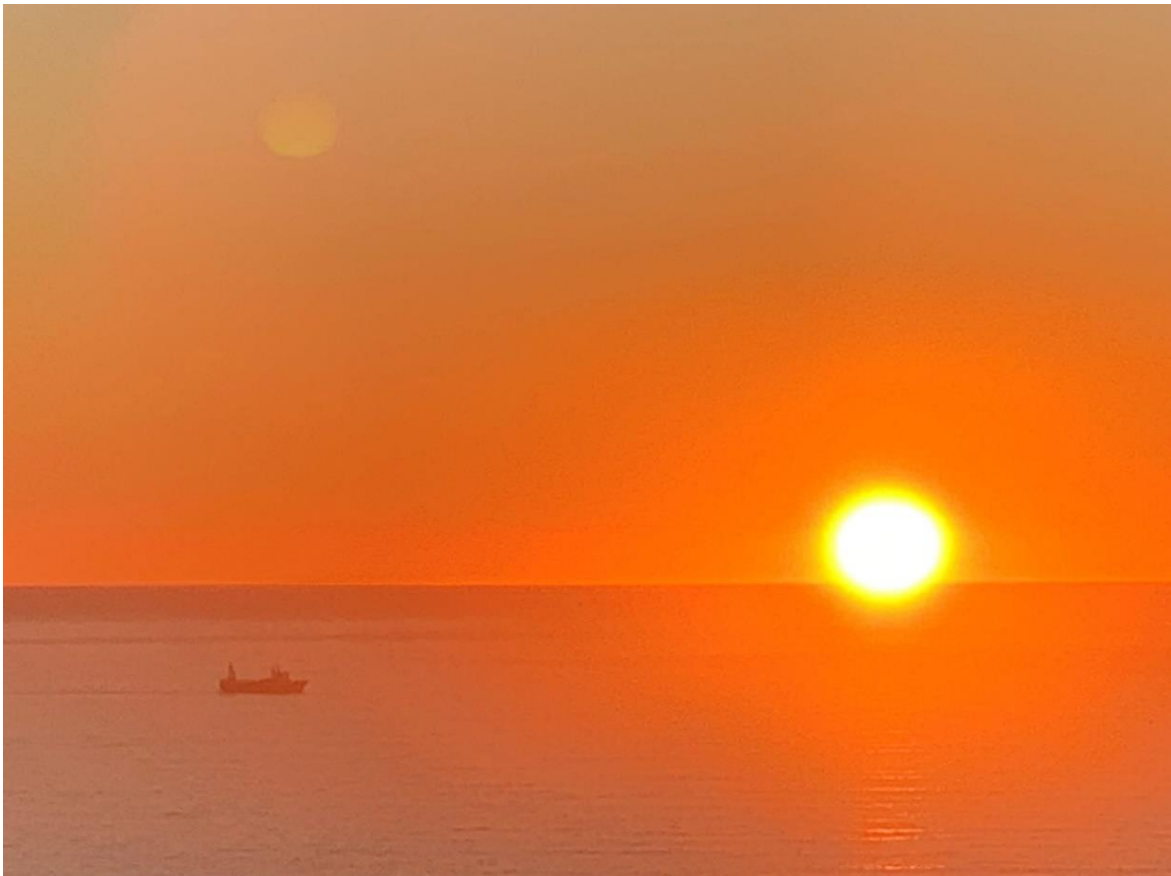
There is a reef structure that runs across the face of the Peninsula which then subsides out moving past Le Bons Bay. (Ref: Mapping physical habitats and bathymetry on the South Coast of Banks Peninsula, ECAN/DoC 2018). Beyond this reef structure is the standard mud and shellfish seafloor which makes up the majority of the Canterbury Bight.

In the Canterbury region we have a high proportion of inshore trawling, primarily for Red Cod, Gurnard, Tarakihi and flatfish. This trawling comes right in close to the inshore Blue Cod benthic areas all the way out to the offshore foul which is targeted by Commercial offshore potting.

Inshore Trawling was introduced to Canterbury in the early 1900s, (Ref: Te Ara, NZ Govt) and there has been no assessment of the ongoing benthic damage to the seabed nor has any assessment been made on the ongoing impact of inshore trawling on the Blue Cod fishery apart from the recent admission by FNZ that 22% of the Blue Cod TACC is taken as bycatch.

This systemic destruction of the seabed floor and indiscriminate method of fishing is a far more serious impact on the Blue Cod stock in Canterbury than Recreational fishers fishing impact who are restricted due to distance from port to fishing grounds and ongoing prevailing weather conditions which significantly limit opportunity to fish.

Considering that inshore trawl through the Canterbury basin has a 22% bycatch of Blue Cod in the Red Zone area, on what basis does FNZ justify a 93% reduction in Recreational fishing catch for Canterbury being best practice to support the fishery? Commercial trawl from dawn to dusk taking everything. Fish mortality is extremely high as the fish are dead by the time they are returned to the ocean. (Beentjes & Carbines)



**Inshore trawl at dawn, taken from land.**



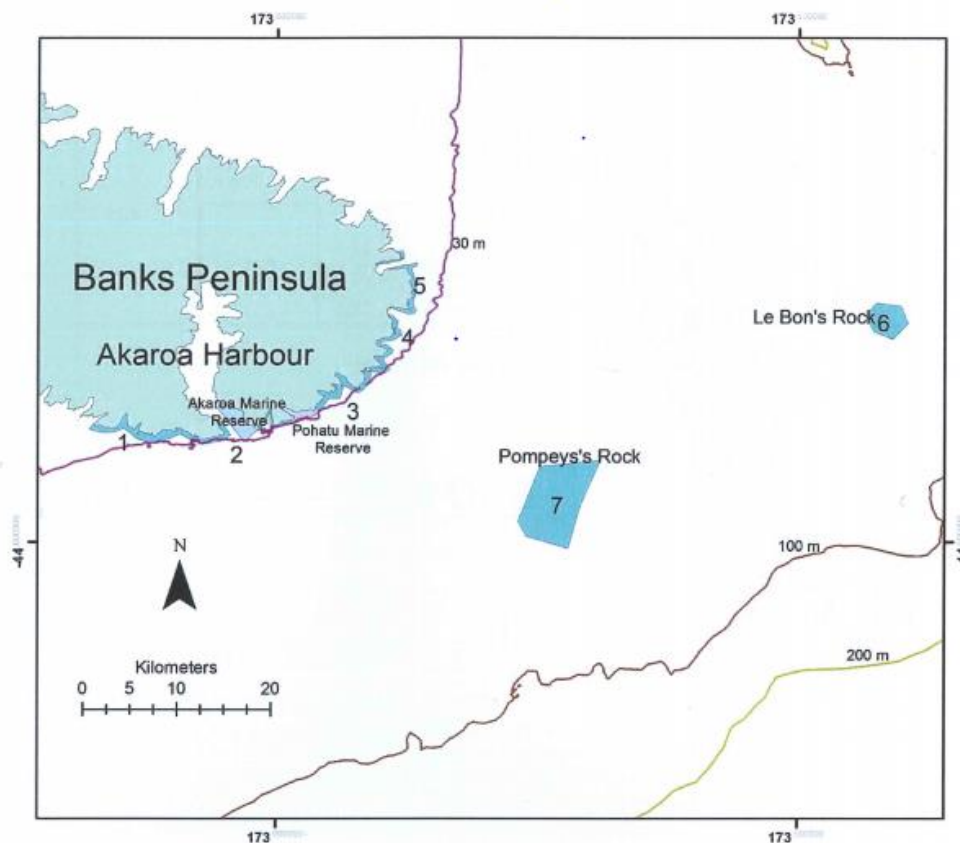
Understanding the TACC landed fish being an average of 170 tonne, this gives an upper limit of 56.6 tonne and a lower limit of 37.4 tonne of Blue Cod being landed as a bycatch of inshore trawl fishing in the designated Canterbury Red Zone where Recreational fishers have had the 93% reduction in recreational take and can only land 2 Blue Cod per day for a maximum of 2 days.

In addition to this, the blue cod catch of 5 tonnes, using the National Panel Survey estimate of 0.5kg per fish that is 10,000 blue cod per annum taken by commercial fishers under s111 approvals, need further explanation.

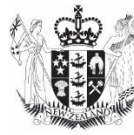
Has the catch under s111 catch increased over time? Its is reasonable to expect this to be the case considering Commercial have exceeded the TACC on an ongoing basis. We submit that at this rate this catch is not recreational and it must be classed as commercial harvest.

FNZ have also stated that “in recent years bycatch associated with the inshore fleet of trawlers has increased in BCO3” and that “Blue Cod catch and productivity may also be affected by the disturbance of the benthic habitat.”

Few recreational boats can make the offshore trip to the offshore fowl, (areas 6 and 7). These areas are considered to be the best Blue Cod Fisheries in NZ, by FNZ, and this has been confirmed by a number of Abundance Reports however, they have also been included in the TLS and have effectively become a Commercial only fishery with Canterbury only allowing a 2 fish bag limit. There is little point to travel in excess of 36km one way to catch two fish.



**Figure 2: Map of Banks Peninsula potting survey of inshore strata (1–5) and offshore strata (6 and 7). Fixed site survey areas are the length (km) of coastline within each inshore stratum, and three times the length of the longest side of each stratum for offshore strata (fixed site polygons for offshore strata are smaller than shown). Random site survey areas are the areas (km<sup>2</sup>) within the strata polygons.**



8. In BCO3 there is no analysis of catch per fisher per trip, apart from the National Panel Survey for the year 2011-12 which showed in the area of BCO3 there were 146 fishers surveyed with 300 'events';

Being: 12.5% caught 1 fish, 17.7% caught 2 fish, 7.3% caught 3 fish, 5.8% caught 4 fish, 11.3% caught 5 fish, 5.2% caught 6 fish, 2.6% caught 7 fish, 3.4% caught 8 fish, 3% caught 9 fish, 11.3% caught 10 fish, .2% caught 11 fish, 3.2% caught 12 fish and 16.7% caught over 13 fish.

Understanding the bag limit at that time was 30 Blue Cod per fisher it is easy to see the majority of fishers did not catch their bag limit of Blue Cod,

and; the National Panel Survey for the year 2017-18 which showed in the area of BCO3 there were 123 fishers surveyed with 295 'events';

Being: 7.9% caught 1 fish, 13.2% caught 2 fish, 9.6% caught 3 fish, 8.7% caught 4 fish, 6.2% caught 5 fish, 6.4% caught 6 fish, 6.4% caught 7 fish, 3.5% caught 8 fish, 1.6% caught 9 fish, 15.2% caught 10 fish, .1% caught 11 fish, 3.2% caught 12 fish and 18.1% caught over 13 fish.

There is very little else to catch in the greater Canterbury area and this can be seen by the total finfish caught in the National Panel Surveys. Anecdotally for the 2019-2020 year FNZ confirmed a significant reduction in Red Cod landed by trawl as well as agreement on the significant drop in Kahawai caught between Commercial and Recreational fishers. Conversely there was an increase in Red Gurnard but this was substantially caught by inshore trawl with little left for recreational fishers to land.

## **Setting the Total Allowable Catch (TAC)**

Target biomass

9. Using the Ministry's interpretation of s13(2)(c) of the Fisheries Act, the Minister will make a policy choice when selecting a target spawning stock biomass (SSB). This target is decided not by sustainability constraints alone, but with the prospect of promoting the Purpose of the Fisheries Act by choosing a SSB that best enables the economic social, and cultural well-being of New Zealanders.

10. This DP notes spawning stock biomass targets for the Otago area (2018 random site survey), was 30% and that overfishing was occurring.

11. If the objective of this review is to meet a statutory duty - to promote the Purpose of the Fisheries Act by better enabling people to provide for their economic, social, and cultural well-being - then there needs to be a statement of objective.

12. One clear result of ignoring the spawning stock biomass and other stock parameters is that the TAC is not set prior to the allowances and TACC, but is a consequence of them. Section 21 of the Fisheries Act is explicit, when making allowances and setting the TACC "the Minister shall have regard to the total allowable catch for that stock". It is not possible to have regard to the TAC when it hasn't been fixed. The intention of the Fisheries Act is not for the TAC to have regard to the TACC and allowances.

13. We recommend that an improvement would be to separate the TAC setting process from the TACC setting process, with the intention of better complying with the Fisheries Act and securing better risk/reward decisions and value propositions.



14. The DP contains no stock size description or target, no sustainability risk profile, no harvest strategy, no monitoring programme, no principles or any other sustainability context for the review.

15. The BCO3 biomass must provide an opportunity for the public to take a reasonable daily bag limit without compromising sustainability. A suitable stock target with an associated monitoring regime is an absolute prerequisite to any meaningful review.

16. Cultural, social and economic well-being of the public is enabled by providing for abundance when setting TACs. It is a statutory duty and the main mechanism whereby the Minister allows for recreational fishing interests and must be consciously imported into the TAC decision as a key relevant factor.

### **Gifting reduced public catch to ITQ shareholders**

17. The Supreme Court determined that the Minister make all of a TAC available to be caught. The Ministry appears to apply a catch it or lose it approach to recreational allowances. For example, if the current recreational allowance of 100 tonne in BCO3 is considered to be not fully caught then the uncaught portion will transfer to the TACC.

This will occur under the implementation of the TLS. In this context it is essential that recreational allowance imports the full meaning from the Supreme Court insofar as the quality and availability of fish to meet the reasonable needs of the public is provided for by both the TAC and TACC decisions

18. In this context it is essential that recreational allowance imports the full meaning from the Supreme Court insofar as the quality and availability of fish to meet the reasonable needs of the public is provided for by both the TAC and TACC decisions Management options.

19. Option 1 represents the status quo but the recreational daily bag limit is reduced by 60% due to the TLS, and the consequential estimated recreational catch actually transfers the uncaught public catch of 45 tonne to ITQ shareholders increasing the existing TACC.

20. Option 2 reduces the TACC by 20%, but recreational reduction of 45 tonnes, due to the TLS, is transferred to ITQ shareholders still increasing the proposed reduced TACC above the current TACC.

21. To introduce a revised recreational harvest estimate based on reduced daily bag limits, without importing the recreational qualitative factors into their allowance, is not only poor process but unlikely to withstand a review. The Minister's discretionary powers are not to be exercised on a whim. The TLS implementation is an example of this outcome with significant unintended consequences.

### **Allowing for recreational interests**

22. When setting a TACC under sections 20 and 21 of the Fisheries Act 1996 the Minister must allow for recreational interests. The Supreme Court decision contains a section titled: The correct approach to applying s21.

SC [53] It follows that the total allowable commercial catch is ultimately determined by a calculation.

We describe this as -  $TACC = TAC - (CA + RA + OM)$

Where CA = Customary allowance; RA = Recreational allowance OM= Other mortality



23. The Supreme Court continued - SC [59] In s 8 Parliament has stipulated the overall purpose and objects of the Act. The scope of the Minister's powers under ss 20 and 21 has limits, set by that purpose, in that they must be exercised to promote the policy and objects of the Act.

24. The Purpose of the Act must be promoted.

25. What comprises Customary and Recreational interests is not defined in the Act, however the Supreme Court had this to say: SC [54] The notion of people providing for their wellbeing, and in particular their social wellbeing, is an important element of recreational interests.

SC [59] The terms of the definition of utilisation, including the wellbeing concept, are contextually relevant to what is meant by recreational interests and in that sense are relevant considerations in decisions under s 21. It follows that providing for the cultural and social wellbeing of the public are key relevant factors when the Minister determines allowances.

26. How this 'important element' of 'people providing for their wellbeing' is to be 'allowed for' was subsequently refined, "by having a right to, a claim upon, or a share in something". Oxford Shorter Dictionary p.1026

SC [56] Although what the Minister allows for is an estimate of what recreational interests will catch, it is an estimate of a catch which the Minister is able to control. The Minister is, for example, able to impose bag and fish length limits. The allowance accordingly represents what the Minister considers recreational interests should be able to catch but also all that they will be able to catch. The Act envisages that the relevant powers will be exercised as necessary to achieve that goal. The allowance is an estimate and an allocation of part of the total allowable catch in that way.

27. It follows that the recreational allowance will be a quantity of Blue Cod that should be able to be caught, a quantity sufficient to enable people to provide for their social wellbeing and will lie between two bounds;

(a) All that the recreational fishers will be able to catch (in effect this expression "will" represents a minimum, as allowing anything less than what will be taken would imperil the sustainability objectives) and

(b) An allowance which recreational fishers should be able to catch. The use of the verb "should" by the Supreme Court contemplates the Minister forming a normative opinion about what ought to be and reflects a value judgment by the Minister, which enables the fulfilment of the statutory utilisation purpose i.e. of enabling people to provide for their social economic and cultural wellbeing. At the maxima, what "should" be taken by non-commercial interests could amount to a wholly non commercial fish, recognising that the TACC may be set to zero: section 21 (3).

28. It is not reasonable to make an allowance in a depleted fishery for what may be caught, when such an allowance fails to enable people's social well-being. The allowance to be made for recreational interests at s21 refers to future catches that should be caught, not past catches, nor catches chosen by convenience for use in a numerical model.

29. The key relevant factor is to make an allowance for a quantity of Blue Cod that enables people's social well-being, and then manage the stock so it should get caught. It is not necessary that this allowance is fully caught in the year following the gazetting; in fact it is not necessary that any non commercial allowance or TACC allocation is fully caught, nor should the uncaught element of the non commercial catch then be allocated to the commercial catch.

30. As directed by the Courts, the total allowable catch (TAC) must be fully allocated, but the TAC does not necessarily need to be fully caught. Recreational aspirations are met by maintaining abundance, and the Minister provides for recreational interests by setting a TAC that provides an appropriate abundance of mature fish.



31. There does not appear to be a reasonable expectation that non-commercial fishers should have an allowance made on a use-it or lose-it basis. Such a concept has never been anticipated in the Fisheries Act yet, is evident in the Ministry's proposals.

32. It is not anticipated that BCO3 will be reviewed again for several years and allowances need to be sufficient to keep catches within the TAC. The Customary allowances of 20 tonnes reflects this principle, as when caught, it is expected to satisfy Customary demand. There is a concern expressed by FNZ that this allowance will need to be increased within the foreseeable future. The TLS needs to be rapidly overhauled to be in line with the objectives of the Act for recreational fishers to be able to catch their nominated allowance.

33. The correct principle to be applied to the recreational allowance is that used with the customary allowance, - the Minister sets aside an allowance in anticipation of what future catches should be caught to satisfy the interests, and also, what might be caught given stock abundance, availability and regulations.

34. The current recreational allowance is the current best estimate of recreational catch – 100 tonne. No new harvest estimates are being derived from the National Panel Report 2018. There may be some rough estimates of what survey participants caught on the good weather days that were surveyed by non scientific means, but there is no way of scaling this up for part, or all, of BCO3.

35. The overarching relevant factor to consider is that any allowance decisions made in s21 must promote the Purpose of the Act (s 8), and are made using the best available information, and conform to the Principles in Part 2 of the Act.

### **Setting the Daily Bag Limit**

36. The daily bag limit for public fishing serves two purposes. The first is to limit catches by an individual to non-commercial quantities, in the interests of ease of compliance. The second is to ensure that public catch opportunities are available to all.

37. The Blue Cod daily bag limit currently sits, as with many species, as part of a maximum daily limit of mixed species; for BCO3 this is 30 finfish, however in the Canterbury region there is very little else to catch. This is confirmed by the National Panel Survey assessments for finfish in the BCO3 area.

The reductions under the TLS have effectively closed recreational fishing in the greater Canterbury region.

38 There is no data to suggest that recreational fishers are using their maximum daily limit as a means of commercial fishing, or that a few 'greedy' recreational fishers are taking the stock and depriving their neighbours of fishing opportunity. This is supported by both the National Panel Surveys of 2011-12 and 2017-18

39. Fishing opportunities can be very limited on the East Coast of New Zealand. Most trailer boat fishers can only launch and fish if wind and sea conditions permit. Beentjes & Carbines noted this situation a number of times in their Abundance Reports for Banks Peninsula referring to times when even the chartered commercial vessel being used could not depart port due to adverse weather. FNZ need to acknowledge that a higher bag limit may be needed to provide for social economic and cultural well-being in locations that are more challenging to fish. BCO3 is not the Marlborough Sounds.

40. There is no valid case made for any reduction in daily bag limits or the overall recreational allowance. The TLS performs in contravention to the Act.





## **Lack of Stock Target**

41. Management intervention is proposed with no stated purpose. It appears the TLS and this review responds to general observations and opinions by local users that BCO3 has been fished down below an acceptable level. There is no attempt made to define or describe an acceptable or targeted level of abundance.

42. On the broadest possible scale a management target, a monitoring system and tools for intervention combine to enable fisheries management. The failure of the Ministry to include in the DP matters beyond the simple transfer of catch from public to private users reflects the low quality of the DP.

43. The failure to set stock targets leaves the TAC to be decided by the TACC and allowance decisions; the TAC becomes a consequence of catch rather than the primary sustainability measure intended in the Fisheries Act to constrain catch, and, provide abundance and quality for all fishers.

44. If the stock cannot be managed on the basis of stock estimates giving absolute abundance estimates, then it must be managed by measuring relative abundance. This is possible by maintaining a time series of catch and effort data gathered for this purpose.

45. There is no reference to unfished, or any other biomass data, no catch sampling of either commercial or public landings, no management targets, no monitoring to achieve targets, no value estimates; just a general comment that the declining CPUE probably reflects decreasing abundance.

46. The DP, without being explicit, has the single objective of reducing public allowances and transferring this public fishing allowance to ITQ shareholders on the BCO3 stock, free of charge and in perpetuity. The TLS guarantees this as an outcome.

## **Consequential Outcomes:**

The greater Canterbury area has about 25,000 recreation fishers within its region.

The TLS has had a number of consequential outcomes that have seen a change in how FNZ deal with the public. There has been a significant increase in the number of FNZ Compliance Officers with no corresponding increase in FNZ staff to manage the outfall from the implementation of the National Blue Cod Strategy and the direct outcomes from the implementation of the Traffic Light System. It appears as though FNZ are more interested in raising revenue through compliance than working with Recreational fishers to be able to achieve their human right to put food on the table.

Time continues to pass and Canterbury Recreational fishermen remain significantly disadvantaged by an unfair set of laws that takes away their human right to put food on the table whilst Commercial fishermen take advantage of areas which effectively now are commercial only fishing zones.

It sounds terrible and, some say that it's not correct...but it is. A year has now passed since the completely inequitable legislation around the TLS has been put into force without correct due process.

In the interim we have been working with our Clubs and are coming to the table with a list of actions that we see are an absolute if FNZ want to see ongoing support and compliance of the inequitable Traffic Light System. These are the points as follows:



1. Transit allowed for fishing outside current designated Red Zone, (12 nautical mile limit), before Oct 2022
2. Changing the Red zone status back to Orange for Canterbury
3. Filleting at sea permitted - should be parity with Commercial
4. Using frames for craybait permitted, need to utilise whole of fish and resolve disposal issues
5. If the Transit Rule passes, a 50% reduction in the Recreational take (to 15) would be acceptable provided that the same percentage reduction is applied to Commercial for the same area.
6. If the Transit Rule passes, that Recreational fishing outside the designated Red zone has a MLS at 350mm provided that Commercial agree to the same MLS
7. Measurable state, considering the options for Orange and Green to be applied to Red areas

Currently there is no review period for the TLS to be re-evaluated, its in place, without the required consultation, and no ability by the Public to request a review.

The Recreational members of the National Blue Cost Strategy Technical Working Group, (TAG) have worked with the Clubs to made provision for real changes to meet FNZs requirement to create a sustainable fishery. If FNZ are that committed to a sustainable fishery then the rules should apply to all on an equal basis, not just one sector of the fishery.

Further to these issues the Recreational members of the TAG have also been looking at the impact of what the current inequitable Legislation has created out of our immediate fishing zone. The two most affected areas are Kaikoura and Moeraki and there is a definite significant impact on these areas as Canterbury has migrated part of its recreational fishing activities to these areas causing further depletion of the stocks in those areas above and beyond what would normally occur creating a false outcome on the apparent sustainability of fish stock in the respective areas.

Locals have confirmed the significant amount of out of area boats on the water causing real issue with ramp access, parking and fish frame disposal that is causing a real headache for local residents. Over Queens Birthday weekend there were over 300 boats at the South Bay Ramp of Kaikoura and over 200 at Moeraki. The trailers were parked all of the way up the main access road up the hill. There is no remedy apart from resolving the issue within our own local area of fishing.

We trust the Minister will carefully consider his decision and the impact it has on a large constituency. Your decision affects us, our children and their children....

The Pegasus Bay Game Fishing Club and the Sumner Boating and Fishing Club appreciate the opportunity to submit on the review of sustainability measures and other management controls for Blue Cod 3. We look forward to FNZ addressing our concerns. We would like to be kept informed of future developments.

Yours faithfully,

Peter van Eekelen

Past President Pegasus Bay Game Fishing Club  
Zone 7 Representative for PBGFC and the Sumner Boating and Fishing Club



National Blue Cod Strategy TAG Member  
Father and fisherman

**Reference Material:**

- National Blue Cod Strategy (NBCS)
- NBCS Wider Engagement 1 Summary Report
- NBCS Wider Engagement 2 Summary Report
- FNZ Review of Blue Cod Fishing Regulations 2019/01
- NZ Tahr Foundation vs The Minister of Conservation NZHC 1669
- Lower NI Red Deer Foundation vs The Minister of Conservation NZHC 1346
- FNZ Abundance of Blue Cod off Banks Peninsular 2002, Beentjes/Carbines
- FNZ Abundance of Blue Cod off Banks Peninsular 2008, Beentjes/Carbines
- FNZ Relative Abundance of Blue Cod Banks Peninsular 2012, Carbines/Haist
- FNZ Relative Abundance of Blue Cod Banks Peninsular 2016 Beentjes/Fenwick
- DoC/ECAN Mapping physical habitat types and bathymetry on the South coast of Banks Peninsular, Brough/Mac Tavish Bolton-Ritchie
- FNZ Fishing Assessment Plenary 2014
- FNZ Fishing Assessment Plenary 2021