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Sustainability Review 2021  
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27 July 2021

## **Submission: Review of management measures for Blue cod 3 (BCO 3) for 2021/22**

### **Recommendations**

1. The Minister takes a precautionary approach when considering the inadequate information available to improve the management of Blue cod 3 for the benefit of future generations.
2. The Minister directs Fisheries New Zealand to establish regular reviews of catch levels in BCO 3, gathers fisheries independent data on catches and release mortality, and takes into account the impacts on the benthic environment due to fishing.
3. The Minister makes the following decisions for the future management of BCO 3 –
  - a. Sets the Total Allowable Catch (TAC) at 243 tonnes.
  - b. Sets aside an allowance for Maori customary fishing interests of 20 tonnes.
  - c. Sets aside an allowance for recreational interests of 104 tonnes.
  - d. Sets aside an allowance to account for other mortality caused by fishing of 9 tonnes.
  - e. Sets the TACC at 110 tonnes.
  - f. Removes bottom trawling from inshore waters.
  - g. An immediate review of the traffic light system applying varying catch limits to coastline areas.

### **The submitters**

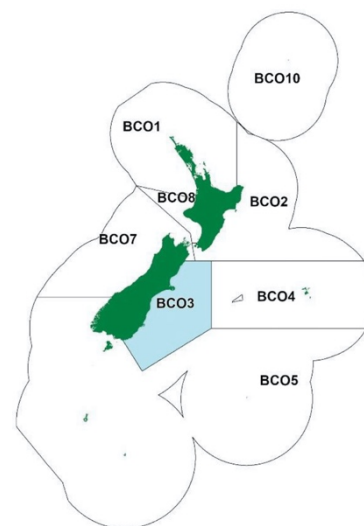
4. The New Zealand Sport Fishing Council (NZSFC) appreciates the opportunity to submit on the review of management measures for Blue cod 3 (BCO 3) for 2021/22. Fisheries New Zealand (FNZ) advice of consultation was received on 23 June 2021, with submissions due by 27 July 2021.
5. The NZ Sport Fishing Council is a recognised national sports organisation of 55 affiliated clubs with over 36,200 members nationwide. The Council has initiated LegaSea to generate widespread awareness and support for the need to restore abundance in our inshore marine environment.

Also, to broaden NZSFC involvement in marine management advocacy, research, education and alignment on behalf of our members and LegaSea supporters. [www.legasea.co.nz](http://www.legasea.co.nz).

6. The New Zealand Angling and Casting Association (NZACA) is the representative body for its 35 member clubs throughout the country. The Association promotes recreational fishing and the camaraderie of enjoying the activity with fellow fishers. The NZACA is committed to protecting fish stocks and representing its members' right to fish.
7. The New Zealand Underwater Association is comprised of three distinct user groups including Spearfishing NZ, affiliated scuba clubs throughout the country and Underwater Hockey NZ. Through our membership we are acutely aware that the depletion of inshore fish stocks including blue cod has impacted on the marine environment and the wellbeing of many of our members.
8. Collectively we are '*the submitters*'. The joint submitters are committed to ensuring that sustainability measures and environmental management controls are designed and implemented to achieve the Purpose and Principles of the Fisheries Act 1996, including "maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..." [s8(2)(a) Fisheries Act 1996].
9. Our representatives are available to discuss this submission in more detail if required. We look forward to positive outcomes from these reviews and would like to be kept informed of future developments. Our contact is Helen Pastor, [secretary@nzsportfishing.org.nz](mailto:secretary@nzsportfishing.org.nz).

## Background

10. Blue cod (rāwaru) were introduced into the Quota Management System in 1986. The Total Allowable Commercial Catch (TACC) has not proven to be a successful constraint on commercial catch, the TACC has been exceeded in 16 of the last 20 years. Fisheries New Zealand now propose the Minister sets a Total Allowable Catch (TAC), reduces the TACC, and makes allowances for non-commercial fishing interests, Māori customary and recreational, and other fishing related mortality.
11. Blue cod (rāwaru) are a taonga species for tangata whenua in the South Island iwi fisheries forum. They are important ecologically and are a highly prized catch for their eating qualities. For generations they have been the target species for recreational and traditional fishers along the east coast of the South Island. There is an estimated 35,000 recreational fishers with access to BCO 3.
12. Nationwide around 293 tonnes of blue cod is harvested by recreational fishers annually. Nearly 80% of all recreational harvest is taken from three Quota Management Areas: BCO 3, 5 & 7. In 2018 recreational harvest of blue cod in BCO 3 was estimated to be around 99 tonnes. Another 5 tonnes was recorded by commercial fishers landing blue cod as recreational catch under section 111 of the Fisheries Act 1996.
13. A National Blue Cod Strategy was published by Fisheries New Zealand (FNZ) in 2018. FNZ has no immediate plans to protect important spawning or benthic habitats, those measures will be addressed later, while wider habitat and ecosystem impacts will be addressed in the longer term



plan. An outcome from the planning process was the development of a traffic light system and regulation changes to manage recreational fishing in BCO 3. During 2019-20 FNZ managed a Technical Working Group process to develop the traffic light system and discuss regulatory changes. Local New Zealand Sport Fishing Council (NZSFC) club representatives and fishers contributed time and resources to the Working Group process.

14. Local representatives were expecting further consultation with FNZ on proposed regulatory measures, this did not occur and what has emerged from that process is unsatisfactory. The outcomes do not align with earlier agreements and there are serious concerns of non-compliance by recreational fishers due to the widespread perception that the traffic light system and regulations are unfair and complex.

## FNZ Proposals

### Details for blue cod in BCO 3

15. Fisheries New Zealand (FNZ) propose the following options for the Total Allowable Catch (TAC), Total Allowable Commercial Catch (TACC) and allowances (Table 1).

**Table 1:** Fisheries New Zealand proposed TAC, TACC and allowances for blue cod in BCO 3. In tonnes.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
<b>Current settings</b> ( <i>status quo</i> )	-	162.732	-	-	-
<b>Option 1</b> ( <i>Set a TAC &amp; allowances</i> )	277.732	162.732	20	83	12
<b>Option 2</b>	243 ↓	130 ↓ (32.732 t)	20	83	10 ↓

### FNZ rationale for setting the TAC

16. Fisheries New Zealand (FNZ) rationale for reviewing Blue cod 3 includes:
  - Concerned about localised overfishing.
  - The stock has not been reviewed since introduction to the Quota Management System in 1986.
  - No known status in relation to target stock size.
  - Deemed value rates need adjustment.
  - Commercial landings: 67% caught by target cod potting, 22% is bycatch from the flatfish, red cod and tarakihi bottom trawl fisheries in FMA 3.
  - Estimated recreational harvest is 104 tonnes per annum.

## Submission

17. In the words of the famous tennis player John McEnroe, “you cannot be serious”.
18. Commercial catch has exceeded the Total Allowable Commercial Catch (TACC) in 16 of the last 20 years, strict regulations now limit recreational catch and so Fisheries New Zealand propose that

the Minister sets a Total Allowable Catch (TAC) and makes a proportional 20% cut to the TACC and recreational allowance. In doing so, FNZ propose the Minister sets aside an allowance that is less than current estimated recreational harvest, and an allowance for other mortality that may not capture all fishing related mortality in Blue cod 3 (BCO 3).

19. In the absence of any reliable information to inform current biomass, and to meet the Minister's statutory obligation to **ensure sustainability**, the Minister must make a precautionary decision by setting a conservative TAC under s13 of the Fisheries Act 1996, setting aside sufficient allowances to account for mortality caused by non-commercial fishing and other fishing activities, and then allocating the remainder as the TACC.

### **Ensuring sustainability**

20. The Fisheries Act 1996 has a purpose of enabling utilisation while ensuring sustainability. The Minister may provide for utilisation at his or her discretion however, sustainability must be **ensured**; demanding the highest available threshold to bring certainty of sustainability.

21. Ensuring sustainability is imperfectly defined in the Fisheries Act, section 8;

**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
22. It isn't possible to determine a point estimate of what level of abundance and diversity will meet the reasonable foreseeable needs of future generations and thus comply with the Fisheries Act. At a high level we can assume that maintaining functioning and resilient ecosystems is a bottom line. Catch settings must import the consideration of the environmental and information principles alongside any science advice to ensure that vulnerable species are protected.
  23. The requirement to avoid, remedy, or mitigate adverse effects of fishing is a non-discretionary power. It requires that when considering catch limits to ensure sustainability the Minister must enquire into the adverse effects of fishing and take action to avoid, remedy, or mitigate any identified effects.
  24. Trawling, the practice of dragging chains across the seabed, is an adverse effect of fishing and places an obligation on the Minister to establish what these effects are and take appropriate steps to avoid, remedy or mitigate these effects. Blue cod prefer habitats with hard sea bed or structure which also supports complex 3-dimensional biodiversity of invertebrates and fish - until they are repeatedly trawled.
  25. Around 22% of BCO 3 catch is taken as bycatch from the flatfish, red cod and tarakihi bottom trawl fisheries operating in Quota Management Area 3 (QMA 3). FNZ advise that "any environmental interactions from trawl bycatch vessels is most appropriately discussed under those target fisheries. The changes proposed in this paper will not increase any environmental interactions arising from the BCO 3 fishery". However, they also note that, "Blue Cod catch and productivity may also be affected by the disturbance of the benthic habitat". FNZ cannot dismiss concerns about the environmental impacts so easily.

26. We submit that making a statement of this nature does not abrogate the Minister from his statutory obligation to firstly enquire into the adverse effects and then to take action to avoid, remedy or mitigate those effects.
27. We have seen over recent months that inaction by FNZ to protect biodiversity will lead to a raft of proposals for regional councils to protect indigenous biodiversity under the Resource Management Act (RMA). It is the failure to apply the Environmental Principles of the Fisheries Act that has led people to resort to the RMA for remedy. However, fisheries activity needs to remain under the direct management of the Fisheries Act 1996 therefore in the absence of any immediate moves to avoid, remedy or mitigate the effects of fishing we submit that bottom trawling needs to be banned from inshore waters, within 12 nautical miles of the coast.
28. Banning bottom trawling (and dredging) from inshore waters is a key element of the Rescue Fish policy<sup>1</sup>, an alternative to the Quota Management System, developed by the New Zealand Sport Fishing Council and promoted by LegaSea. Rescue Fish is a holistic solution to remedy depleted fish stocks and address environmental damage by restoring abundance and biodiversity.
29. There are further fishing effects to consider. MPI Compliance reports identify “significant illegal dumping and high grading in the South Island’s south-eastern inshore commercial fishery”<sup>2</sup>. And express concerns that “commercial catch limits, the TACCs, are being set on the basis of incorrect and misleading catch information”<sup>3</sup>. We are not aware of any substantial changes to effectively monitor or account for this catch when South Island fish stocks have been reviewed in the years since these reports. In fact, in this process, FNZ suggest the Minister sets aside a lesser than normal percentage of the TAC to account for ‘fishing related mortality’. The direction that FNZ is taking this conversation is at odds with Government policy and direction.
30. On 26 June 2021 the Hon. David Parker, the Minister of Oceans and Fisheries, announced the Government had adopted an oceans vision and principles based on taking a precautionary approach when managing fish stocks.
31. The Minister ensures sustainability by setting the Total Allowable Catch (TAC) at a level that will maintain a fish stock above or at Maximum Sustainable Yield (MSY)<sup>4</sup>. The Ministry’s Harvest Strategy Standard default management target for a low productivity fish such as blue cod is 40% of unfished biomass, B40. To meet the standard of ecosystem based management the submitters consider that –
  - a. Maximum Economic Yield (MEY) occurs at 60% of the unfished biomass;
  - b. Maximum Sustainable Yield (MSY) occurs at 50%;
  - c. 40% is the appropriate soft limit; and
  - d. 20% is the appropriate hard limit<sup>5</sup>.
32. We acknowledge that not many fish stocks can be successfully managed by catch limits alone. Fishing intensity needs to be regulated by both input and output limits working in tandem. Over time in BCO 3 there have been an increase in the cod pot mesh size (from 48mm to 54mm), and changes to recreational controls, bag and size limits.

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<sup>1</sup> <https://rescuefish.co.nz/>

<sup>2</sup> Operation Hippocamp. Ministry for Primary Industries. 2012.

<sup>3</sup> Operation Achilles. Ministry for Primary Industries. 2013.

<sup>4</sup> New Zealand Recreational Fishing Council Inc And Anor V Sanford Limited And Ors SC 40/2008 [28 May 2009]. Para 43.

<sup>5</sup> Rainer Froese, Henning Winker, Didier Gascuel, U Rashid Sumaila, Daniel Pauly (2015). Minimizing the impact of fishing. Fish and Fisheries. 7 December 2015.

33. However, as the Supreme Court has identified, responsibility for ensuring sustainability rests with the Minister and that is achieved by the TAC setting process as per s13 of the Fisheries Act 1996. Following that, the Minister apportions the available catch as allowances, as per sections 20 & 21 of the Act, taking a range of factors into account. The remainder can be allocated as the Total Allowable Commercial Catch (TACC). The Supreme Court confirmed the Minister can set the TACC at zero. The equation being:

$$\text{TAC} - \text{allowances (Māori customary, recreational, other mortality)} = \text{TACC}.$$

### **Utilisation of available catch**

34. Under the scheme of the Fisheries Act once sustainability has been ensured, the Minister must apply section 21 to set aside a tonnage of fish to allow for the following non-commercial fishing interests –
- a. Māori customary non-commercial fishing interests; and
  - b. Recreational interests; and
- All other mortality to that stock caused by fishing.
35. The Supreme Court has also confirmed that while the Minister has discretion on how the TAC is apportioned, “The Act envisages that the allowance for recreational interests will be a reasonable one in all the circumstances. It also envisages that will be the case for the allowance for Māori customary fishing interests. The position is the same for the total allowable commercial catch, although the Act recognises that in some circumstances it may be reasonable to fix the commercial catch at zero”<sup>6</sup>.

### **Māori customary harvest**

36. In terms of the Māori customary allowance, there is unknown catch taken as per provisions of the Fisheries (South Island Customary Fishing) Regulations 1999. Ngai Tahu advised FNZ to consult on an allowance of 20 tonnes. FNZ advise that some previous customary harvest may have been taken under the amateur regulations when the daily bag limit (DBL) was 30 per person, per day. Now that the DBL is 15/10/2 depending on the area fished under the traffic light system, customary catch may increase from 2021 onwards.
37. The submitters support the Minister in setting aside a 20 t allowance to allow for Māori customary fishing interests in BCO 3.

### **Recreational harvest**

38. Recreational fishing for blue cod is mainly line fishing with some set netting, potting and spear fishing. The main controls are daily bag limits and size limits. In 2020 the recreational minimum legal size (MLS) for blue cod increased from 30cm to 33cm.
39. The National Panel Survey estimates of blue cod harvest by recreational fishers was 119 tonnes in 2012, and 99 tonnes in 2018 plus another 5 t taken by commercial fishers under section 111 of the Fisheries Act.

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<sup>6</sup> SC 40/2008. [At 65]

40. FNZ propose that the Minister when making an allowance for annual recreational fishing mortality, sets aside 83 tonnes. This represents a 20% reduction on the combined 2018 recreational harvest estimate of 99 t and the 5 t of s111 removals. FNZ propose the Minister agrees with this reduction on the basis that “the recreational limits introduced in 2020 are expected to have reduced recreational catch”.
41. The Minister has a statutory obligation to ‘allow for’ our *recreational interests* not just our catch. In providing for our ‘recreational interests’ as per s21 of the Act the Court has confirmed that “people providing for their wellbeing, particularly their social wellbeing, is an important element of recreational interests”<sup>7</sup>. So the Minister has to both set aside an allowance that covers the expected mortality from recreational fishing, while also ensuring that the allowance, and abundance, provides sufficient opportunity for people to provide for their wellbeing.
42. Recreational fishers do not accept the process to introduce the traffic light system as legitimate. There are now 4 different daily bag limits (DBLs) over 5 separate management areas, and a 2-DBL within the 4 taiāpure within BCO 3.
43. On the east coast of the South Island recreational fishing is not for the faint-hearted, a simple fishing trip takes planning and often has to be cancelled due to adverse weather or sea conditions. The traffic light system certainly does not provide for people’s wellbeing when considering the reality that in some red zones people have to travel over 60kms offshore to blue cod fishable areas and are only permitted to return with 2 fish per person. For many people this is not a safe, practical nor reasonable expectation. It is also significantly increasing the pressure on adjacent areas, like Kaikoura and Moeraki.
44. The Minister in making his decision for BCO 3 cannot consider it reasonable that the inshore red zones around Canterbury are now pseudo-commercial zones, available to unbridled bottom trawling effort yet recreational fishers are limited to 2 blue cod each. This is effectively a reallocation of the blue cod catch in the area unless there are increased controls on commercial methods that take blue cod. **The red areas need to be red for commercial fishers as well.**
45. The objective is to rebuild the stock and move to better management arrangements as soon as possible. There must be a clear threshold for when this will happen and an effective monitoring system of blue cod abundance to support it.
46. Local fishers highly object to the process FNZ undertook to implementing the National Blue Cod Strategy, and, the resultant ‘Traffic Light System’, (TLS). FNZ implemented the TLS without discussing the significant changes with the Technical Working Group or engaging in the last stakeholders consultation process advised earlier by FNZ. Where there was general agreement to reduce daily bag limits around Canterbury, from 30 to 6 in an orange zone, that zone is now red meaning a 2-DBL applies.
47. All the goodwill developed during the Working Group process has been incinerated and now there are serious concerns about non-compliance by recreational fishers due to the widespread perception that the traffic light system and regulations are unfair and complex.
48. Moreover, after decades of trawling, BCO 3 been depleted to a level where it does not provide sufficient abundance so we can provide for our wellbeing even when we do go fishing.

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<sup>7</sup> New Zealand Recreational Fishing Council Inc And Anor V Sanford Limited And Ors SC 40/2008 [28 May 2009]. Para 54.

49. We submit that the proposed 83 t recreational allowance is unreasonable and contrary to the Minister's statutory obligation to provide for our recreational fishing interests. We do not accept a proportional reduction to the allowance. Further to this, the TLS severely restricts the ability of recreational fishers even being able to land the nominated 83 t due to the significantly reduced bag limits.
50. We submit that FNZ are proposing the 83 t recreational allowance because it minimises the reductions that need to be applied to the TACC. This is unacceptable. The TACC is the merely the remainder of what is left after the TAC has been set and reasonable allowances have been made for the expected mortality caused by fishing.
51. Moreover, the blue cod catch of 5 tonnes taken by commercial fishers under s111 approvals need explanation. Using the National Panel Survey estimate of 0.5kg per fish that is 10,000 blue cod per annum –
  - a. Where is this catch being taken from?
  - b. How many fishers are claiming these fish?
  - c. Are these fish being caught on hook and line, or are they harvested using commercial methods?
  - d. How does FNZ monitor s111 catch? Only a daily, weekly or monthly basis?
  - e. What are the trends in s111 catch over time?
52. We submit that at this rate this catch is not recreational and it must be classed as commercial harvest.

#### **Other mortality**

53. FNZ propose the Minister sets aside either 12 or 10 tonnes to allow for the mortality caused by fishing. This represents around 5% of the combined recreational allowance and the TACC, and is similar to the settings in BCO 4.
54. Clearly FNZ is assuming that the TACC is set before this allowance can be set aside. Notwithstanding that, we remind the Minister that around 22% of commercial catch is taken by bottom trawling. Historically, an allowance of 10% of the TACC is set aside to allow for mortality in trawl fisheries.
55. Also, given the unfair nature of the traffic light system, and that high grading by recreational fishers has increased as people strive to make the most of their limited time out fishing we recommend an allowance for fishing related mortality of 9 tonnes. This represents around 8% of the TACC and takes into account the relative proportions of trawling versus potting in the commercial fishery.
56. High grading, where smaller fish are discarded if a larger or more desirable fish is caught, is wasteful. If high grading occurs in deeper waters mortality rates could be much higher than previous years.
57. Given the lack of available data on release mortality and extent of post release predation, along with the suggestion to combine the mortality associated with commercial and recreational fishing, we submit that an allowance of 8% of the TACC is the absolute minimum that the Minister must set aside if he is to meet his statutory obligation to account for all mortality within the TAC.



## **Total Allowable Commercial Catch (TACC)**

58. FNZ propose the Minister sets the TACC at the existing level of 163 tonnes (option 1) or reduce the TACC by 20%, to 130 t (option 2).
59. Option 1 is proposed on the basis that the “commercial fishery is stable at the current level of fishing and that the current TACC is appropriate”. We disagree, on the basis that the stock status in relation to the management target is unknown, it is unknown if overfishing is occurring, and the available information is highly uncertain.
60. Option 2, a 20% TACC reduction, is meaningless unless the deemed value rates are adjusted to an effective level, and if commercial effort is controlled to ensure overfishing does not occur. In 16 of the last 20 years the TACC has been overcaught, what’s more, the TACC has never constrained commercial catch or effort since 1986. This level of fishing has had impacts on the productivity of the marine environment and the blue cod fishery. Now FNZ propose to constrain recreational catch to ensure minimal cuts are applied to the TACC. This is not acceptable.
61. Under the Fisheries Act 1996 environmental and information principles the Minister must take a precautionary approach if information is uncertain, unreliable or inadequate. We strongly agree.
62. FNZ report that 22% of Blue cod 3 catch is taken as bycatch in the red cod, flatfish and tarakihi bottom trawl fisheries. Red cod catch and effort is also unconstrained by a meaningful TACC. The FLA 3 TACC was only 70% caught last year and commercial interests have already admitted to not complying with the tarakihi rebuild plan agreed in 2019. So there is no real constraints on trawl catch for BCO 3. This raises serious sustainability concerns so the Minister has no choice but to act in a precautionary manner and set a conservative TACC.
63. In red areas, trawling must be moved off important blue cod habitat and away from areas where Hector's dolphin congregate.
64. Taking a precautionary approach could mean stepped, moderate increases to the TAC and TACC in the future. However, that will require regular reviews informed by fisheries independent monitoring of blue cod abundance.
65. We submit the information available to properly manage BCO 3 is inadequate, therefore we recommend the Minister makes the following decisions for the management of BCO 3 from 1 October 2021 –
  - a. Sets the TAC at 243 tonnes.
  - b. Sets aside an allowance for Maori customary fishing interests of 20 tonnes.
  - c. Sets aside an allowance for recreational interests of 104 tonnes.
  - d. Sets aside an allowance to account for other mortality caused by fishing of 9 tonnes.
  - e. Sets the TACC at 110 tonnes.
  - f. Regular reviews of catch levels, release mortality and impacts on the benthic environment due to fishing.
  - g. Removes bottom trawling from inshore waters.
  - h. An immediate review of the traffic light system applying varying catch limits to coastline areas.