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30 November 2022

**Submission:** Support the proposal to reopen the Kaikōura coastline to pāua, shellfish, and seaweed fishing for the 2022-23 fishing year

### Recommendations:

1. **The Minister reopens** the Kaikōura coastline to pāua, shellfish, and seaweed fishing for the 2022-23 fishing year.
2. **The Minister sets** a Total Allowable Catch of 60.5 tonnes (t).
3. **The Minister allows for** a Māori customary catch of 7.5 t, a recreational catch of 23 t, and sets aside 7 t for other fishing related mortality.
4. **The Minister sets** the Total Allowable Commercial Catch at 23 t.
5. **The Minister specifies** the recreational fishing season for pāua, shellfish, and seaweed harvesting along the Kaikōura coastline as 1 May to 31 July 2023.
6. **The Minister notes** the accumulation limit of 2 daily bag limits will continue to apply to recreational harvest, and the Minister sets the daily bag limit (**DBL**) at 5 per person.
7. **The Minister notes** the 80mm minimum legal size (**MLS**) for yellowfoot pāua will continue, and the Minister sets the MLS for recreational harvest of blackfoot pāua at 125mm.
8. **The Minister specifies** the vehicle and vessel daily limit for pāua harvested by recreational fishers in the Kaikōura area as a maximum of 10 pāua, which is 2 daily bag limits.
9. **The Minister does not accept** harvest surveys that are based on a self-selected sample of fishers with no defined sample frame.

### The submitters

10. The New Zealand Sport Fishing Council (**NZSFC**) appreciates the opportunity to submit on the proposal to reopen the Kaikōura coastline to pāua, shellfish, and seaweed fishing for the 2022-23 fishing year. Fisheries New Zealand (**FNZ**)

Discussion Paper 2022/18 was released on 31 October, with submissions due by 30 November 2022.

11. The NZSFC is a recognised national sports organisation of 53 affiliated clubs with over 38,000 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.
12. The Kaikōura Boating and Recreational Fishing Club (**KBRFC**) is an affiliated member of the NZSFC and we support their endeavours to restore both the pāua fishery and reasonable public access to an abundant pāua fishery. The submitters acknowledge club members' valuable input into this submission, and support the Club making their own submission. Club members have considerable experience fishing and diving in the area and have followed the surveys and consultation processes closely.
13. The New Zealand Angling and Casting Association (**NZACA**) is the representative body for its 28 member clubs throughout the country. The Association promotes recreational fishing and the camaraderie of enjoying the activity with fellow fishers. NZACA is committed to protecting fish stocks and representing its members' right to fish. Together we are "*the submitters*".
14. The 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 Amendment Act 2022 and compliance with Court directions. This includes maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations, the Minister using best available information to make precautionary decisions, and the Minister setting aside a reasonable allowance for recreational fishers before the TACC is set.
15. 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

16. In November 2016 the Kaikōura region experienced a series of significant earthquakes that caused up to 6 metres of coastal uplift along 110 kilometres of coastline. The uplift led to extensive habitat modification and mortality of a wide range of species in the intertidal and subtidal zones. Pāua were particularly affected with very high mortality at all life stages and loss of a significant number of critical habitats. An estimate of the amount of the pāua fishery area lost to the uplift is about 20% of previously fished areas.
17. To protect the surviving pāua populations and associated habitats as well as other shellfish and seaweeds, a closure to all commercial and recreational fishing (except rock lobster, scampi, octopus and kina) was introduced between Cape Campbell/Marfells Beach and the Conway River.

18. After public consultation, the Kaikōura Marine Area was open to all pāua fishing for a 3-month period from 1 December 2021 to 28 February 2022.
19. FNZ now propose a range of options for the 2022-23 fishing year. A 2 or 3 month season [for recreational fishers](#) with options for different maximum bag limits and minimum size limits, and a new measure of a vehicle/vessel limit. For commercial fishers [FNZ propose](#) a 12-month season, retaining the 23 tonne TACC and voluntary measures of catch spreading and fine scale reporting under an approved s11A Fisheries Plan.

## Well managed fisheries

20. **The submitters support** the Minister in reopening the Kaikōura coastline to pāua, shellfish, and seaweeds (except bull kelp) fishing for the 2022-23 fishing year however, any process conducted and measures applied must be done in a lawful manner.
21. **First things first.**
22. In October 2021 the PAU 3 Quota Management Area (**QMA**) was subdivided into two smaller QMAs, PAU 3A (Kaikōura) and PAU 3B (Canterbury), and new catch settings were agreed by the Minister.
23. The FNZ current proposal is incoherent and probably illegal in trying to reduce recreational harvest “towards 20 tonnes or less over the next two years...”. [22]. The current tonnage set aside to allow for recreational interests is 5 t and the Minister of Oceans and Fisheries (**the Minister**) has a statutory duty to manage all catch within the Total Allowable Catch (**TAC**).
24. So, the Minister must first review the PAU 3A TAC, the tonnages set aside to allow for Māori customary fishing, recreational fishing and all other mortality caused by fishing and the Total Allowable Commercial Catch (**TACC**).

**Table 1:** Total Allowable Catches, allowances and Total Allowable Commercial Catches for PAU 3 and PAU 3A, in tonnes, from 1986 to present day, including our submission.

Year	TAC	Allowances			TACC
		Māori customary	Recreational	Other mortality	
1986-1995*	--	--	--	--	57
1995-2017*	--	--	--	--	91.62
2017-2021*	79.3	15	8.5	10	45.8
2021-present	40.5	7.5	5	5	23
Our submission	60.5	7.5	23	7	23

\*PAU 3 figures.

25. The best available information on recreational catch is the results from the recent recreational harvest survey of pāua during the 3-month open season from 1 December 2021. That independent survey found recreational harvest was 42 tonnes from PAU 3A and another 3 t from Marfells Beach to Ward Beach, in PAU 7.
26. In 2009 the Supreme Court quoted an earlier Court of Appeal decision<sup>1</sup> that said:
- It is important to recognise that what is allowed for by the Minister in respect of the interests for which he must allow before setting the TACC, **is not a quota as such**. To take recreational fishers as an example, **the ‘allowance’ is simply the Minister’s best estimate of what they will catch during the year**, they being subject to the controls which the Minister decides to impose upon them e.g. bag limits and minimum lawful sizes. Having set the TAC the Minister in effect apportions it between the relevant interests. **He must make such allowance as he thinks appropriate for the other interests before he fixes the TACC**. That is how the legislation is structured. [our emphasis added]
27. While recognising the allowance is an estimate of recreational catch, the Supreme Court also recognised that “it is an estimate of a catch which the Minister is able to control”<sup>2</sup>.
28. The Court also made an important point in terms of the recreational allowance, in saying that, “The Act envisages that the allowance for recreational interests will be a reasonable one in all the circumstances.”<sup>3</sup>
29. So, it’s clear that the scheme of the Act is:
- a. The Minister sets the TAC first.
  - b. The non-commercial allowances must be set aside before the TACC is fixed.
  - c. Non-commercial fishing is not part of the Quota Management System (QMS) that is why a tonnage is set aside to ‘allow for’ both Māori customary and recreational fishing interests; and
  - d. Unlike the TACC, the allowances are not a fixed proportion of the TAC.
30. In October 2021 the Minister David Parker, set a new TAC for PAU 3A, he reduced the TACC by 50%, and reduced the recreational allowance by 50% taking into account the 2011-12 recreational harvest estimate of 10.3 t.
31. So, having made the decision to reduce the recreational allowance to 5 t in PAU 3A, the Minister is obliged to manage recreational harvest to that level, or increase the allowance.

### Setting a precedent

32. The submitters support the proposal for an independent, in-season survey of pāua harvest by recreational fishers. Once finalised, we are interested in how that

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<sup>1</sup> New Zealand Recreational Fishing Council Inc And Anor V Sanford Limited And Ors SC 40/2008 [28 May 2009]. [At 55]

<sup>2</sup> [At 56]

<sup>3</sup> [At 65]

information will be used. We would expect it would inform a TAC review, because as above, the Minister is obliged to both manage all catch within the TAC and make a reasonable allowance for recreational fishing.

33. If the fishery is reopened, FNZ advises it is looking to implement a system to monitor recreational catch throughout the open season -

A further independent recreational fishing survey will be commissioned to provide a rolling weekly catch total. This will be reviewed by Fisheries New Zealand and a reference group comprising of Te Rūnanga o Kaikōura, the Kaikōura Marine Guardians, and stakeholder representatives **with the potential to adjust recreational controls should catch exceed expectations.** [29] [our emphasis added]

34. FNZ's stated intention is to reduce recreational catch to around 20 t over the next two years. If FNZ intend to use results from the in-season monitoring to close the 2023 season early if recreational catch exceeds this amount, then **this intention needs to be made explicit during the consultation phase.** It cannot be a vague suggestion or left to an assumption by stakeholders, that is not a lawful approach to consultation.
35. As above, the recreational allowance is not a fixed quota, it is merely the Minister's best estimate of recreational harvest. The TACC is a fixed quota and the Supreme Court has already acknowledged that the TACC can be set at or to zero<sup>4</sup>.
36. The Minister must also ensure that FNZ regulates commercial effort. The 23 t TACC is not untouchable, and FNZ will fuel the debate around bias if the commercial sector is granted access to the fishery for 12 months and FNZ propose mid-season that the recreational season must close.
37. **The submitters strongly object** to this process that treats the 23 tonne TACC as sacred, untouchable, while promoting in-season controls to limit recreational harvest. That is not the lawful scheme of the Act. FNZ need to include more detail in their proposal papers if they intend to circumvent the scheme of the Act, and they will also have to justify that approach in their advice papers to the Minister.

### Recreational fishing

38. **The submitters acknowledge** that during the 3-month reopened period from 1 December 2021 recreational harvest levels of pāua were high, especially in the first few weeks and over the summer holiday period. Pāua were large and available in shallow waters. However, as the season progressed, the most accessible areas were cleaned out of pāua over 125mm. It is unknown if these areas will be repopulated by 2023.
39. **The submitters appreciate** the Minister commissioning an [independent survey](#) to estimate recreational harvest over the 3-month 2021-22 season. Overall recreational harvest was estimated to be 42 tonnes (t), higher than the 5 t allowance and higher than FNZ had anticipated. As above, FNZ has proposed new management measures with the aim of reducing recreational catch to 20 t or less. And, we would expect

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<sup>4</sup> [At 61]

recreational harvest will return to an equilibrium eventually where low abundance in wadable depths will limit fishing effort and catch.

40. When considering the estimated harvest of 42 t during the 3-month reopening, the Minister must have regard to the fact that the fishery had been closed for 5 years and the reopening was highly anticipated by the community, attracting interest from fishers in Kaikōura and much further afield.
41. The survey of recreational pāua fishers found about 80% of all fishers surveyed travelled from outside the Kaikōura region, with most from Christchurch, Blenheim and north Canterbury, particularly during the weekends and peak summer period. In 2023 we would expect travel patterns to change given the serious effects of storm damage to South Island roads. We can anticipate there will be fewer people travelling long distances to fish for pāua around Kaikōura.
42. If managed well, we would expect interest in the Kaikōura pāua fishery to settle over time. This means setting the maximum daily bag limit and minimum size limit for recreational fishers at reasonable levels so the Minister does not create a derby situation, where people come from miles around to gather something 'rare' just because they can.
43. Toheroa were once abundant on the wild west coast beaches of the upper North Island. As the fishery became depleted the fishery was reduced to a non-commercial fishery, with limited days and bag limits for recreational fishers. This created a derby situation. There are well documented stories of cars queuing for miles to get onto the beaches during the open days. The fishery was eventually closed to commercial and recreational fishing, and Māori customary permitted fishing is now tightly controlled by kaitiaki.

### **Fishing season**

44. **The submitters support the Minister** opening the Kaikōura coastline to recreational pāua fishing from 1 May to 31 July (3 months) on the basis that shifting the recreational season away from the busy peak period will help reduce fishing effort and total catch.

### **Daily limits**

45. **The submitters support the Minister** maintaining the existing accumulation limit of 2 daily bag limits for recreational pāua fishers.
46. **The submitters support FNZ Option 1**, a daily bag limit (**DBL**) of 5 pāua per person. A limit of 3 or 2 pāua per person, per day, cannot be justified by any scientific information or on the basis of fairness. A DBL of 3 would reduce recreational catch by an estimated 33% and is not needed in addition to other controls.
47. It is important to maintain reasonable access for recreational fishers as this encourages compliance.
48. The 5 DBL was widely accepted in 2022. This is half the daily limit for pāua in many

areas nationally, with year-round harvest. A lower DBL would encourage more frequent fishing and more likely to create a compliance problem. Enforcement is already an issue given the large coastline to be patrolled and FNZ's limited resources.

49. **The submitters support** the inclusion of both blackfoot and yellowfoot pāua in the combined daily bag limit for recreational fishers, if that limit is set at 5 per person, per day.

### **Minimum legal sizes**

50. **The submitters support the Minister** maintaining the current minimum legal size limit (**MLS**) for yellowfoot pāua at 80mm.
51. **The submitters support FNZ Option 1**, the Minister retaining the MLS of 125mm for blackfoot pāua and using other measures to control recreational harvest in Kaikōura coastal waters.
52. **The submitters do not support FNZ's Options 2 or 3**, a MLS of 130mm or 135mm for blackfoot pāua taken by recreational fishers.
53. A larger MLS means recreational fishers would have to stay much longer in the water in winter months to harvest legal sized pāua. This is a health and safety risk with no significant benefit for rebuilding stocks. There are already plenty of breeding size pāua in the water.
54. Again, recreational controls need to be justifiable and fair especially if the Minister is to grant 12-month access to commercial fishers, so increasing the MLS to 130mm or 135mm for recreational fishers would be another challenge for enforcement staff.
55. Pāua are haemophiliacs and have no blood clotting agent so they are highly prone to release mortality if cut when removed from rocks. Increasing the MLS would likely lead to an increase in release mortality because amateur fishers are generally less experienced than commercial fishers and therefore handle more undersized pāua.

### **Maximum vehicle/vessel limit**

56. FNZ propose a new measure, to set a maximum vehicle and vessel daily limit. Option 1: a maximum of up to 2 DBLs or Option 2: a maximum of up to 4 DBLs.
57. **The submitters support FNZ Option 1**. A maximum of up to 10 pāua, which is 2 DBLs, will help manage total harvest, especially for large groups travelling into the Kaikōura coastal area from outer regions.
58. A maximum of up to 2 DBLs will also give additional protection to pāua in shallow waters close to the shore and access points. As we saw last season, the easily accessed, wadable areas were the first areas to be targeted.

## Customary fishing

59. **The submitters acknowledge** FNZ's policy that the proposed management measures do not apply to Māori customary pāua fishing for non-commercial purposes.
60. **The submitters support** the extension of the section 186B temporary closure at Waiopuka (Wakatu Quay), Kaikōura Peninsula. The temporary closure means no commercial or recreational harvesting of fish, shellfish and seaweed species. Customary harvest of pāua within the closure area will be managed under the Fisheries (South Island Customary Fishing) Regulations 1999.

## Commercial fishing

61. **The submitters note** FNZ's urgency in proposing the commercial fishery is opened "year-round as soon as practical. This will align catches with peak market price and avoid a potential race to catch the TACC as experienced last season". [40].
62. While we acknowledge the economic benefits of reopening the fishery, the Minister must always meet his statutory obligation to **ensure sustainability**, keeping in mind that some of the measures in the PAU 3 Fisheries Plan are voluntary.
63. **The submitters support** the Minister to reopen the Kaikōura coastline to pāua fishing by commercial fishers for 12 months on the basis that –
  - a. Commercial fishing complies with the current measures set out in the PAU 3 Fisheries Plan and anticipated PAU 7 Fisheries Plan applying to the Marfells Beach/Cape Campbell and Clarence River -
    - i. A minimum pāua harvest size in the range of 135mm to 140mm, to protect spawning biomass.
    - ii. Catch spreading using sub-area limits to avoid localised depletion and support recovery.
    - iii. Collection of fine-scale data on catch and location, to inform future management decisions.
    - iv. Fishery enhancement to promote rebuild rate and local abundance.
  - b. The Fisheries Plans objectives and outcomes are being met; and
  - c. A reliable stock assessment is available to inform a future TAC/TACC review.

## Other matters

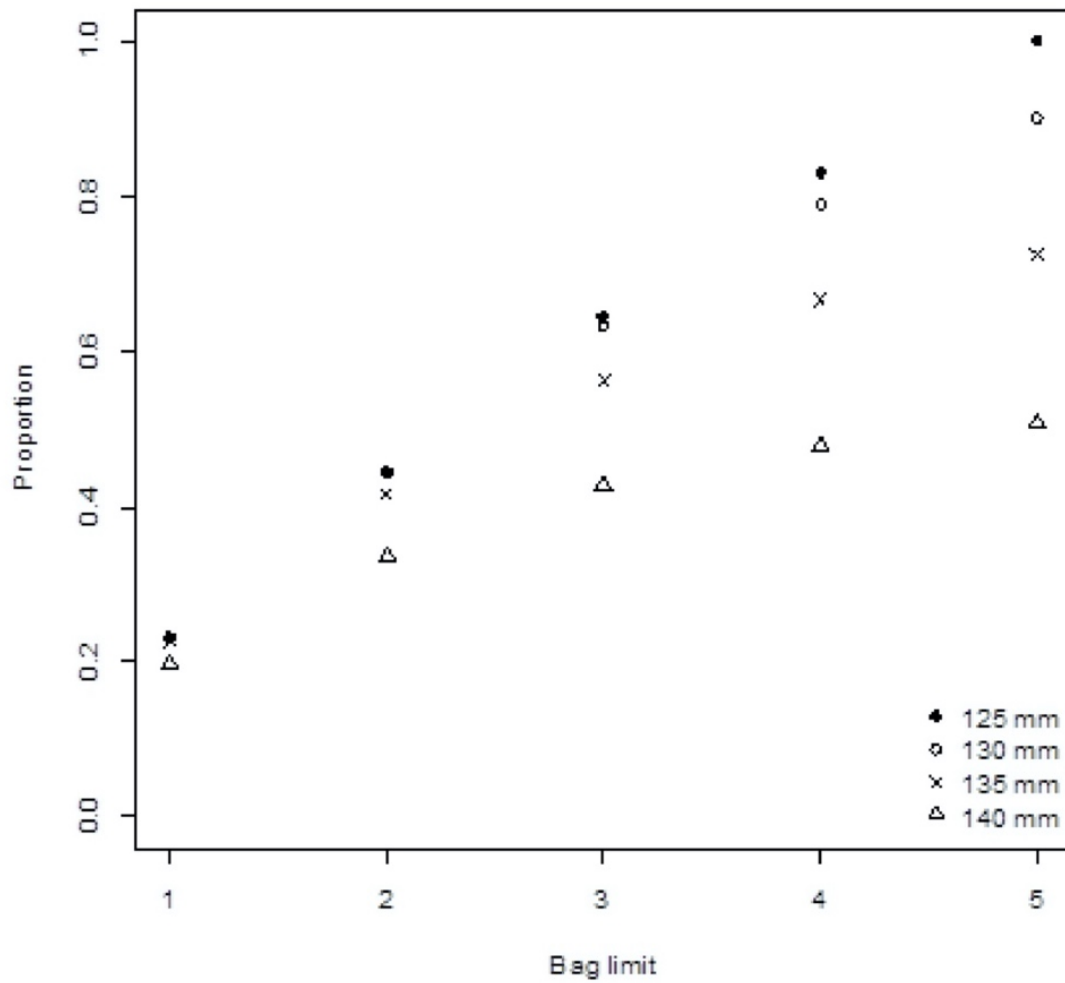
### Matrix of options

64. **The submitters are concerned** that FNZ has failed to provide a useful matrix to demonstrate the outcomes of the proposed scenarios for limiting recreational fishing - the combination of bag limit, size limit and vessel limit over 2 or 3 months seasons. In the Discussion Document FNZ provide a graph showing the reductions achieved compared to last year's 42 t catch. (Figure 1 below)



65. FNZ need to provide adequate information if they seek well informed responses. Once again, this process seems contrary to the scheme of the Act, where the allowances must to be set aside based on best available information and controls to manage catch to that level are considered simultaneously.

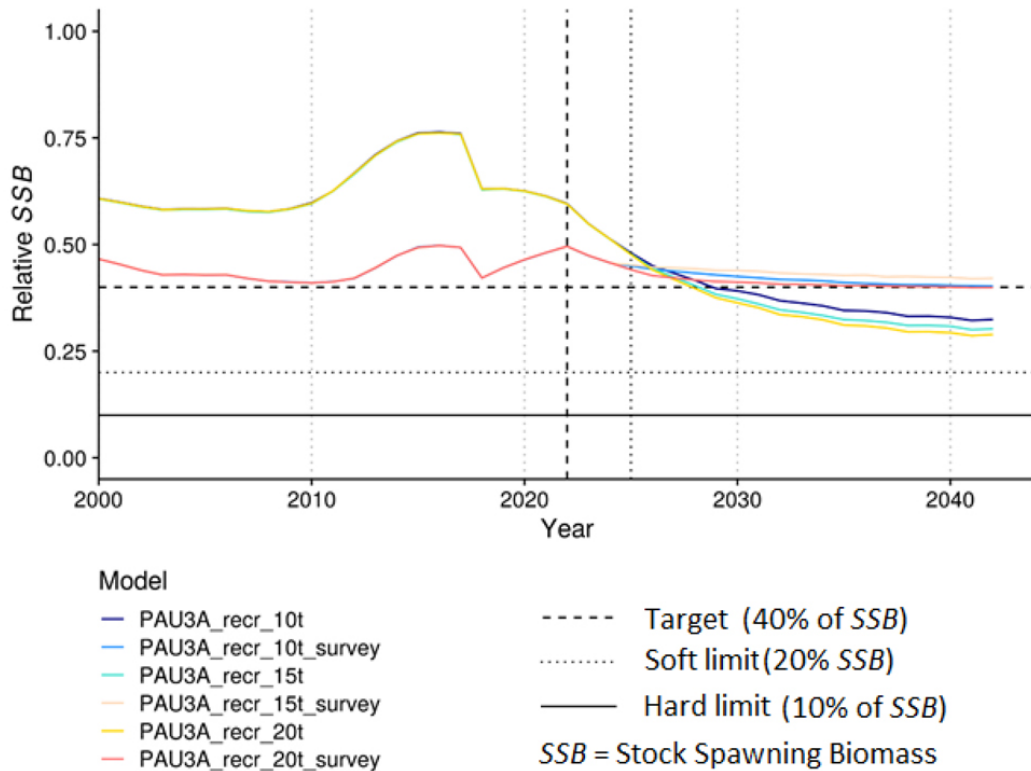
**Figure 1:** Relationship between recreational take and management tools (daily limit and MLS). Must be treated as a guide only. Source: FNZ.



## Biomass projections

66. **The submitters are concerned** that the graph provided in Appendix 1 of the Discussion Document is misleading. (Figure 2).

**Figure 2:** Modelling of future PAU 3 biomass projections relative to catch. Source: FNZ.



**The above graph models various catch scenarios for the PAU 3A stock over time with respect to current/projected spawning biomass against pre-fishing (virgin) spawning biomass (Relative SSB). Spawning biomass means total weight of mature pāua within the overall stock.**

67. The FNZ models assume maximum impact from the earthquakes (short-term mortality and permanent recruitment reduction). What we have seen around Kaikōura is a strong recovery with good recruitment. The models ought to be taken as trajectories measuring the risk level under high impact rather than showing worst case outcomes.
68. Projecting any stock model 20 years into the future requires a very good understanding of current and future productivity, which we currently don't have for the stock. The 5-year projections show that, even with this pessimistic approach, the spawning stock biomass is above the target in 2027.

## Recreational catch recording

69. FNZ raise concerns about “the effectiveness of existing management tools under the Act to constrain recreational take of pāua at Kaikōura when fishing effort is high”. They suggest an interest in “exploring alternative approaches” such as tags, but note

that extensive discussions are required with recreational fishing interests, and that there is no time to have those discussions for this upcoming season.

70. FNZ note some support for a self-reporting catch system for pāua taken by recreational fishers around Kaikōura. A recently developed app is planned for self-reporting of blue cod caught around the South Island, and this could be “expanded to include the Kaikōura pāua fishery. The development of a fishers self-reporting catch system could be an important step towards better describing recreational fisheries...”
71. This is an interesting statement given that FNZ know the Working Group has considered this issue and rejected such a system to obtain reliable information.
72. We support the view that methods and results must be reviewed by the Marine Amateur Fisheries Working Group prior to being used for fisheries management purposes.
73. As we noted in our [2021 submission](#), “the FNZ Amateur Fisheries Working Group has identified significant issues and bias with self-selected recreational fishers using reporting apps to provide information to estimate total harvest. We agree that reliable recreational harvest estimates with confidence intervals are only achievable through independent scientific recreational fishing survey methods with known sample frames approved by FNZ”.
74. The submitters have ongoing concerns about the bias created by self-selected fishers reporting their catch, because volunteers will be biased toward the most active (avid) fishers. Getting an accurate measure of zero catches is also a problem with self-reporting. These biases influence the results by an unknown quantum if the information is scaled up and presented as being representative of total estimated catch in that fishery.
75. The submitters do not accept harvest surveys that are based on a self-selected sample of fishers with no defined sample frame, nor as enabling a valid way of scaling results or as a method for reducing bias.