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8 February 2023

Submission: Review of sustainability measures for Coromandel scallops (SCACS) for 2023-24

Recommendations

1. **The Minister supports FNZ Option 2** - a full closure of SCA CS under s11 of the Fisheries Act 1996, for a minimum of three years.
2. **The Minister prohibits the use of all dredges to harvest scallops** for commercial or non-commercial purposes in any New Zealand scallop fishery.
3. **The Minister initiates** at least one expanded camera survey of the Coromandel scallop fishery over the next three years to determine the abundance of scallops prior to any future management review of these stocks.
4. **The Minister establishes a multi-party working group** to collaboratively develop a management plan before the Coromandel scallop fishery is reopened for harvest.
5. **The Minister gives effect to the statutory requirements of the Fisheries Act** to create an environmental bottom line of sustainability, by taking both an ecosystem and precautionary approach to managing the marine environment that supports scallop productivity.

The submitters

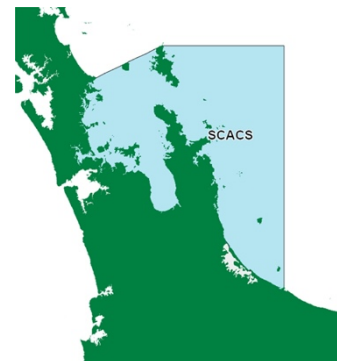
6. The New Zealand Sport Fishing Council (**NZSFC**) appreciates the opportunity to submit on the review of sustainability measures for Coromandel scallops (**SCA CS**) for 2023-24. Fisheries New Zealand's (**FNZ**) Discussion paper 2022/21 was received on 16 December 2022, with submissions due by 8 February 2023.
7. The NZ Sport Fishing Council is a recognised national sports organisation of 53 affiliated clubs with over 36,000 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. legasea.co.nz.

8. The New Zealand Angling and Casting Association (**NZACA**) is the representative body for its 24 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.
9. The New Zealand Underwater Association comprises 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 has impacted on the marine environment and the wellbeing of many of our members.
10. 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].
11. Our representatives are available to discuss this submission in more detail if required. We look forward to positive outcomes from this review and would like to be kept informed of future developments. Our contact is Helen Pastor, secretary@nzsportfishing.org.nz.

Background

12. As of 1 April 2022 the then Minister for Oceans and Fisheries, David Parker, shut most of the Coromandel scallop fishery (**SCA CS**) to commercial and recreational harvest, due to sustainability concerns. Two areas remained open to harvesting, one at Hauturu/Little Barrier Island and the other in the Colville Channel. The Total Allowable Catch (**TAC**), allowances and Total Allowable Commercial Catch (**TACC**) were significantly reduced to reflect the limited fishing available from the two open areas.



13. On 13 December 2022 the Minister announced the two remaining open areas in the Coromandel scallop fishery would be closed to all fishing (commercial, recreational and Māori customary) pursuant to section 16 of the Fisheries Act 1996 (**the Act**). This emergency closure was in response to new information showing a sharp decline in scallop abundance for both sites since 2021.
14. The emergency measures apply for three months, allowing time for public consultation on longer term management measures.

Proposed changes

15. FNZ propose the Minister closes SCA CS to commercial and recreational fishing under s11 of the Act, indefinitely. During the closure FNZ will seek new information on scallop abundance, before 2025. If new information indicates the stock has recovered, the closure will be reviewed.

16. The current, partial closure is not an option. Both Options 1 & 2 propose a full closure, the difference is whether the current catch settings are retained or changed. Māori customary harvest of scallops is permitted under both options.
17. In managing scallops catch limits, allowances and reported catches are described as meatweight, which is the calculated weight of the scallop after the shell, gut and gill are removed.

Table 1: Proposed management options for Coromandel scallops. All figures are in tonnes (t) of meatweight.

Option	Closure	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
Current settings (Status quo)	Partial closure (s11)	19	5	10	3	1
Option 1	Full closure (s11)	19	5	10	3	1
Option 2	Full closure (s11)	11 ↓ (8 t)	0 ↓ (5 t)	10	0 ↓ (3 t)	1

Need for change

18. In 2022 FNZ commissioned NIWA to conduct pre-season camera surveys of the two open areas in SCA CS. The surveys were carried out between June and August 2022. Initial results from the survey were presented in late October 2022, indicating a serious decline in the density and biomass of scallops since the 2021 surveys.
19. FNZ report the estimated biomass loss in both areas since the previous survey were far greater than reported commercial scallop harvest and the recreational allowance. FNZ proposes that fishing is unlikely to be the only factor contributing to the decline.
20. FNZ consider a cautious management approach is required. We agree and emphasise that a broader range of environmental issues need to be accounted for in order to give effect to the recent High Court judgment that requires the Minister to take into account all the past, present and future effects of fishing¹.
21. The High Court also clarified the statutory duty of the Minister to make decisions that conform with the purpose of the Act – to create an environmental bottom line of sustainability².
22. An ecosystem-based fisheries management approach needs to be at forefront for managing scallops in the future. Shellfish species such as scallops are crucial for maintaining healthy benthic habitats, and all seafloor species within proximity of scallop dredging are negatively affected by this destructive fishing method. In considering the wider ecosystem:
 - a. harvesting must transition to selective scallop harvest methods; and
 - b. the impacts on the seafloor must be minimised to ensure benthic ecosystems are able to naturally buffer other environmental effects due to climate change and land runoff.

¹ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022] At [22]

² At [11]

Discussion

23. We acknowledge Ngāti Hei, Ngāti Pāoa and the Ngāti Manuhiri Settlement Trust for their proactive stance over the past few years in declaring rāhui and other customary management protection measures to protect scallop beds in the Hauraki Gulf for future generations.
24. We submit in support of FNZ Option 2 – the Minister reduces the TAC and sets the TACC and recreational allowances at zero.
25. Given the concerns for the sustainability of the Coromandel scallop fishery, the proactive effort of mana whenua to protect the remaining scallop beds in the Hauraki Gulf, and the Minister’s statutory responsibility to **ensure sustainability**, our preference is for the Minister to set the Māori customary allowance at zero, however, we understand the existing FNZ policy is that Māori customary fishing must be provided for, unless in emergency situations. We encourage FNZ to work with affected customary groups to support their decisions on how they will manage permitted fishing under a s11 closure of the fishery. If the fishery is to remain open to Māori customary harvest we submit in support of hand gathering only.
26. We submit there is no legal justification for FNZ Option 1. FNZ propose that the Minister retains the existing catch settings in SCA CS if the stock is closed under s11 of the Act. We note that:
 - a. Section 11(3)(a) of the Act provides statutory support for the Total Allowable Catch (TAC) to be reduced.
 - b. The Supreme Court (2009) confirmed the Minister is required to set a TAC “at a figure which maintains the stock at or above a level which can produce the maximum sustainable yield”. There is no estimate of MSY.
 - c. FNZ advise the latest survey results show that overall the biomass has declined substantially since the previous survey in 2021 despite a “conservative” approach to setting the 2022 catch limits.
 - d. If new information becomes available that suggests the stock has recovered in the future a new round of consultation will be required. That will be the time when a new TAC, allowances and Total Allowable Commercial Catch (TACC) can be debated because a TAC cannot be set without some understanding of stock status and management objectives. However, it is not clear in the Act how the Minister might allocate the new TAC to commercial interests if the TACC has been set to zero. If there is limited availability, the Minister can decide on a TAC and then set aside allowances to provide for a staggered reopening of the scallop fishery to non-commercial interests first and commercial exploitation later.
27. There is currently no accepted management target and the biomass that will support a maximum sustainable yield (**MSY**) is unknown. And, it is well understood that scallop populations fluctuate between years and during seasons.
28. Given the best available information, **the Minister must close the fishery** for a period of time and not reopen the fishery until new information becomes available that suggests the stocks

have recovered to levels that will provide for the foreseeable needs of future generations and our social, economic and cultural wellbeings, as per the purpose of the Act.

29. Adequate consultation must be undertaken with the public and local iwi/hapū before the stock is reopened.

Let's get serious about rebuilding abundance

30. There is a poor understanding of scallops and what causes their variability that results in boom and bust years. The Southern (SCA 7) stock has been closed since 2016 with no sign of any recovery to exploitable levels. Fish farming and changes due to bottom fishing, farming and forestry have contributed to degrading the environment that sustains fragile benthic communities.
31. A change in land use can destroy larvae settlement and deprive species the environmental conditions they require to complete their life cycle. When coupled with sediment resuspension from mobile bottom contact fishing methods such as dredging and trawling, filter feeding shellfish species cannot re-establish viable populations.
32. We need to act now. Ocean temperatures are rising at an unprecedented rate. New Zealand is suffering from record high sea temperatures in places around the North and South Islands. We can anticipate mass changes in range, species, abundance and survival yet we have no real clue how the marine ecosystem will adapt, or even if it is capable of adapting without major disruptions. The depleted and unbalanced state of our inshore marine environment caused by human activity will put productivity to the test. We can expect the unexpected.
33. The uncertainty associated with managing scallops, and the CRA 1 High Court decision, requires the Minister to both act in a precautionary manner when making decisions and apply an ecosystem approach. Churchman J describes the ecosystem approach as requiring decision-makers to incorporate wider ecosystem effects into fisheries management, instead of considering sustainability with a single-species focus³.
34. It is well accepted that scallops need to be close to others during spawning to ensure that sperm concentrations are high enough to fertilise the released eggs. We also know that it only took three years to deplete the large deep-water bed discovered off the western Coromandel coast in 2012. The loss of downstream recruitment from wiping out this mother-bed cannot be measured however, the loss of a bed of this size must have contributed to the subsequent loss of scallops in historical beds around the Hauraki Gulf, the previously prolific beds off Coromandel and the Bay of Plenty.
35. Successive *State of the Gulf* reports demonstrate that serial depletion destroyed the Hauraki Gulf beds until only a hardy few, deeper beds remain viable. Existing scallop beds in Northland and Coromandel must be considered broodstock, essential for the rebuild of our depleted scallop beds. They carry a high value beyond their immediate yield. Success shouldn't just be increasing abundance in those beds, but allowing previously fished beds to return to abundance.

³ At [16]

36. We also know that scallop recruitment isn't linear, it has periods of almost no successful recruitment and periods of successful recruitment. This means that short periods of closure might not be long enough for beds to benefit from a couple of good years. Some beds will strike it lucky and populations may greatly increase in a couple of years. Given this, it would be prudent to develop an index of abundance that informs discussions around reopening the fishery in the future.
37. The current challenge is to close the Coromandel fishery to all harvest, give the beds a rest and then reopen the fishery applying effective controls.

Reopening the scallop fishery in SCA CS

38. **We recommend** the Minister closes SCA CS to all harvest for a minimum of three years. Prior to reopening SCA CS to harvest we recommend the Minister establishes a multi-party working group to collaboratively develop a scallop management plan. This would enable discussions around management targets, allowances for Māori customary and recreational fishing, commercial catch limits, permissible fishing methods, season length, potentially a staggered reopening to non-commercial first and commercial exploitation later, and stock monitoring.
39. **We also recommend** the Minister initiates at least one expanded camera survey of SCA CS within three years to determine the abundance of scallops. The surveys must be conducted and reported on prior to any future management review of these stocks.
40. **We recommend the Minister prohibit dredging** for the purpose of gathering scallops. The Minister has the authority under s11(3)(d) of the Fisheries Act 1996 to prohibit any fishing method, in any area. A s11 closure of the Coromandel scallop fishery is the opportune time to demonstrate strong leadership, act in the interests of the benthic environment, and indicate to all interests that when the area reopens for harvest that dredging will not be permitted.
41. If dredging is not banned under the Fisheries Act the Minister runs the risk that a Regional Council will exercise its authority under the Resource Management Act to ban fishing in the interests of protecting indigenous biodiversity, as has happened around Mōtītī in the Bay of Plenty and now being pursued in the Bay of Islands.
42. **We recommend** the Minister and FNZ retain control of fishing activity within the Territorial Sea rather than ceding that authority to a Regional Council.
43. Commercial production must pivot towards cultured scallops. There are already New Zealand based enterprises trying new innovations to cultivate shellfish. Ongoing depletion of local scallop populations is a strong incentive for New Zealand to follow Japan's success in producing over 400,000 tonnes of scallops annually, for local consumption and high value export.
44. The scallop fisheries are taonga, a precious gift from Tangaroa, to all of us. We must do what we can to protect and enhance the scallop populations for the benefit of future generations.