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8 February 2023

## Review of Review of commercial kina dredging in Tory Channel / Kura te Au, Marlborough Sounds

**Submission:** Support Option 1. Prohibit all dredging.

### Submitters

1. The New Zealand Sport Fishing Council (NZSFC) appreciates the opportunity to submit on the review of commercial kina dredging in Tory Channel. Fisheries New Zealand's (FNZ) Discussion paper 2022/21 was received on 16 December 2022, with submissions due by 8 February 2023.
2. 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](http://legasea.co.nz).
3. 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.
4. 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.
5. 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].

- 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](mailto:secretary@nzsportfishing.org.nz)

## Proposal

- Fisheries New Zealand (FNZ) is seeking feedback on whether commercial kina dredging in Tory Channel, Marlborough Sounds, should be prohibited under section 11 sustainability measures of the Fisheries Act 1996 (**the Act**).



- There are three options: to either fully ban kina dredging in Tory Channel, prohibit kina dredging in some areas under 50m in depth, or a voluntary agreement by commercial dredgers to choose to dredge or not.

Option	Description
Option 1	Regulatory change to prohibit commercial kina dredging in Tory Channel (all areas).
Option 2	Regulatory change to prohibit commercial kina dredging in specified areas of Tory Channel, while allowing it in depths greater than 50 m, where dredging would be less impactful.
Option 3	No regulatory change. Commercial fishers may voluntarily agree not to dredge for kina in Tory Channel.

**Table 1:** Fisheries New Zealand proposed management options.

- The FNZ proposed options only apply to commercial kina dredging. Commercial, recreational, and customary kina harvest by diving is not part of the proposal.
- The Tory Channel kina fishery is located within the wider SUR 7A (Nelson/Marlborough) Quota Management Area (QMA).

TAC	Māori customary allowance	Recreational allowance	Fishing related mortality	TACC
238	80	20	3	135

**Table 2:** Total allowable catch (TAC), allowances and total allowable commercial catch (TACC) applying in SUR 7A, in tonnes.

- These TAC settings have remained the same since October 2002, when South Island kina stocks were introduced into the Quota Management System.

## Discussion

12. **The Minister must implement an amended Option 1**, to apply s11 of the Act to prohibit all dredging in the Tory Channel and wider SUR 7A Quota Management Area. The existing, viable alternative is hand gathering - around 90% of kina harvested from SUR 7A over the past three years was collected by divers.
13. Dredging in the Tory Channel must be banned as soon as possible because commercial dredging effort in shallow waters of the Channel has been increasing over the past few years, despite the earlier voluntary agreement of all but one commercial fisher to dive and gather kina by hand. Over the past three years around 43% of all kina harvested from the Tory Channel by commercial fishers has been dredged. FNZ advise there is a small amount of dredging for kina by recreational fishers. This is unacceptable from an environmental, social, and cultural perspective.
14. **We submit the Minister has a statutory duty to apply s11 to ban all dredging indefinitely** as a harvest method for kina and all other shellfish. Commercial dredging for kina is already prohibited in other Fisheries Management Areas (FMAs) around the North Island. We note that trawling is prohibited in the Queen Charlotte Sound and the entire Marlborough Sounds scallop fishery has been closed since 2017 due to depletion attributed to a loss of suitable habitat.
15. FNZ report that the Tory Channel supports significant benthic marine communities including bryozoans, sponges, hydroids and corals. Prolific kelp forests provide shelter, protection, and resources for important taonga species such as blue cod, pāua and rock lobster.
16. FNZ state the primary objective for this review is to ‘protect sessile, benthic communities from adverse effects with mobile bottom-contact gear’. No other proposed option from FNZ meets this objective, aside from Option 1, and this must be extended to apply to all dredging.
17. In November 2022 the High Court clarified the Minister’s statutory responsibility to **ensure sustainability** while avoiding, remedying or mitigating **any effects** of fishing on **any stock** and the **aquatic environment**<sup>1</sup>. ‘Effect’ means the direct or indirect effect of fishing, including any positive, adverse, temporary, permanent, past, present, future and/or cumulative effect<sup>2</sup>.
18. FNZ has observed that bycatch of commercial kina dredging in Tory Channel makes up most of the catch volume, meaning there is more bycatch associated with kina dredging than kina caught (by volume, not weight). Bycatch species include seaweed, sea lettuce, sea cucumber, octopus, and starfish.
19. The High Court notes that New Zealand is subject to the requirements of the United Nations Convention on the Law of the Sea (UNCLOS), from which certain aspects of the Fisheries Act derive. One aspect is the duty of decision makers to **incorporate wider ecosystem effects into**

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<sup>1</sup> The Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022]

<sup>2</sup> At [22]

**fisheries management**, instead of considering sustainability with a single-species focus<sup>3</sup>. The volume of bycatch compared to the target kina catch due to trawling is not acceptable.

20. The May 2022 Plenary for kina notes that *for all fishstocks it is not known if current catch levels or TACCs are sustainable, or if they are at levels which would allow the stocks to move towards a size that will support sustainable yields*<sup>4</sup>. The Court has identified that decision makers must be more cautious where information is uncertain, unreliable or inadequate<sup>5</sup>. So, in the absence of this vital information **the Minister has a statutory duty to make a precautionary decision**, and in our view the correct decision is to prohibit the dredging of kina in the Tory Channel and elsewhere.
21. As per the Resource Management Act (RMA) and as part of their Environmental Plan, the Marlborough District Council (MDC) has identified a number of ecologically significant marine sites along both sides of the Tory Channel. Section 11 of the Fisheries Act requires the Minister to have regard to any RMA regional plans. **The increasing involvement of regional councils in the marine space reflects the ongoing mismanagement of fish stocks and the aquatic environment**. It is an indictment on current management that the work by MDC seems to have been the trigger to activate this process. We do not support the application of the RMA in the marine space to control fishing activity.
22. In our recent [submission to FNZ](#) we argued that all of the inshore ecosystems form a habitat of significance for fisheries management and must be protected. In the CRA 1 proceedings the High Court accepted expert evidence that the loss of kelp forests is ecologically damaging for surrounding coastal systems, in fisheries production, biodiversity, and ocean carbon sequestration<sup>6</sup>.
23. This evidence adds support to our submission that all elements of the marine environment need to be considered as habitats of significance and therefore trawling and dredging can, and must be, prohibited under s11 of the Fisheries Act 1996.

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<sup>3</sup> At [16]

<sup>4</sup> Fisheries Assessment Plenary. Stock Assessments and Stock Status. May 2022. p732.

<sup>5</sup> At [17]

<sup>6</sup> At [69]