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24 March 2023

## Submission: Review of Pāua 2 (PAU 2) management for 2023-24

### Recommendations

1. **The Minister acknowledges** his statutory duty to make a precautionary decision given the uncertain, unreliable and inadequate information available for managing Pāua 2.
2. **The Minister applies FNZ Option 1 until:**
  - a. New recreational harvest estimates are available, expected next year.
  - b. PAU 2 is split into a minimum of three smaller management areas.
  - c. Stock assessments are completed for each of the smaller management areas.
  - d. FNZ support mana whenua, local clubs and communities to collaborate and find effective solutions to address depletion and rebuild abundance in each area.
3. **The Minister encourages** an Ahu Moana approach to localised management of pāua, as per NZSFC policy of fine-scale spatial management to maintain a high-value niche fishery.
4. **The Minister rejects any cuts to the recreational daily bag limit** until the above measures have been given effect.
5. **Fisheries New Zealand acknowledge** the need to produce more balanced proposal options in future that take account of the statutory obligations on the Minister to allow for non-commercial fishing interests in a fish stock before the TACC is set or varied.

### The Submitters

6. The New Zealand Sport Fishing Council (**NZSFC**) appreciates the opportunity to submit on the review of sustainability measures for Pāua 2 (PAU 2) for 2023-24. Fisheries New Zealand's

(FNZ) Discussion paper 2022/23 was received on 16 December 2022, with submissions due by 8 February 2023. On 1 February FNZ advised the deadline had been extended until 24 March.

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](http://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](mailto:secretary@nzsportfishing.org.nz).

## Background

12. The commercial fishery for pāua dates from the mid 1940s where the shell was sold and the meat was dumped. Markets were found for the meat by the late 1950s.
13. Fisheries New Zealand (FNZ) is currently reviewing some of the sustainability measures for pāua in Quota Management Area (QMA) PAU 2 for the 1 October 2023 fishing year.
14. Currently, only a Total Allowable Commercial Catch (TACC) exists in PAU 2. Due to this review, a Total Allowable Catch (TAC) must be set, and allowances made for non-commercial fishing interests and fishing related mortality.



15. There are increasing concerns around Taranaki, Wairarapa and Hawke's Bay regarding localised pāua depletion, which FNZ and some iwi/hapū and local communities have attributed to increased pressure on the fishery by amateur fishers.
16. Like other intertidal shellfish species around coastal New Zealand, pāua are threatened with overharvest in many areas, on top of other major threats to pāua recruitment. FNZ state in their proposal document that in the PAU 2 fishery threats to recruitment may be attributed to climate change effects on food sources and habitats, as well as overfishing.

## Introduction into the QMS

17. Pāua was introduced into the Quota Management System (**QMS**) in 1986-87. A provisional quota of 100 tonnes (t) was determined by the then Ministry of Fisheries to be the sustainable yield from PAU 2.
18. Pāua 2 fishers who were dissatisfied with their quota allocations successfully appealed to the Quota Appeal Authority (**QAA**) and by 1990 the quota for the PAU 2 area had increased from 100 t to 121.19 t. The TACC has not been reviewed since 1989-90.
19. At the time, the Ministry had the opportunity to advise the Minister to exercise prudence and reduce the inflated TACC back to the estimated sustainable 100 t level, as determined by its own research. No such action was taken.
20. The Ministry allowed the QAA to circumvent the intent of the QMS, which was to limit commercial catches to sustainable levels, and instead allowed the extra catch to be taken.
21. Cumulatively, a total of 705 t of additional commercial harvest in excess of the initial annual 100 t quota has been taken by commercial fishers in PAU 2 between 1986-87 and 2020-21 due to these successful appeals to the QAA.

## Proposal

22. Currently, only a Total Allowable Commercial Catch (**TACC**) has been set in PAU 2. As a part of this review, the Minister of Oceans and Fisheries is required to set a Total Allowable Catch (**TAC**) for the first time.
23. As a part of setting a TAC, the Minister has a statutory duty to set aside a tonnage of fish to 'allow for' for non-commercial interests - Māori customary and recreational, and other mortality caused by fishing (including illegal take), before altering the TACC.
24. The current TACC in PAU 2 is 121.9 tonnes. The most recent data (the fishing year 2020/21) shows the average commercial catch in the 10 years between 2011-2021 to be around 121 tonnes. However, in 5 of those 10 years, the TACC was exceeded, with the maximum amount overcaught being in the 2020/21 fishing year when the TACC was exceeded by 5.07 tonnes.

25. FNZ’s preference is for the Minister to retain the current TACC under all three proposed options for the future management of Pāua 2.
26. FNZ proposes a 12 tonne allowance for Māori customary fishing in all options. Previous data indicate fluctuations in customary harvest, with an average of 11 tonnes a year across PAU 2. Fisheries New Zealand estimates customary catch is underreported so they propose to add an extra tonne onto the average catch amount reported.
27. FNZ proposes three different options for recreational catch allowances and three options for daily bag limits. In 2017/18 the National Panel Survey (NPS) estimated recreational catch in PAU 2 at 83.22 tonnes, and in the 2011/12 NPS, the estimate was similar, at 81.85 tonnes.
28. **Table 1:** Proposed management options for PAU 2, from 1 October 2023. Options for Total Allowable Catch (TAC), Total Allowable Commercial Catch (TACC), allowances for non-commercial interests and fishing related mortality. In tonnes (t). **Source:** Fisheries NZ.

Option	TAC	TACC	Allowances			Recreational Daily Limit
			Customary Māori	Recreational	All other mortality caused by fishing	
Current settings	N/A	121.19t	N/A	N/A	N/A	10 per fisher*
Option 1	227.19t	121.19t	12t	83t	11t	10 per fisher*
Option 2	192.19t	121.19t	12t	48t	11t	5 per fisher*
Option 3	175.19t	121.19t	12t	31t	11t	3 per fisher*

\*Of each species (blackfoot pāua and yellowfoot pāua).

## Discussion

29. We can only imagine how abundant PAU 2 might be now if the commercial catch limit was reset to the original assessed sustainable harvest limit of 100 t, prior to QAA increases. It’s possible we wouldn’t even need to be having this review. Yet now we have another proposal that seeks to protect the TACC on behalf of quota holders at the expense of the public’s access and interests in our pāua fishery.
30. We remind the Minister of the Supreme Court’s discussion –
- The meaning of “utilisation” includes “using....fisheries resources to enable people to provide for their social, economic and cultural wellbeing”. The notion of people providing for their wellbeing, and in particular their social wellbeing, is an important element of recreational interests.<sup>1</sup>
31. We object to the bias apparent in the FNZ proposal paper. FNZ advise there is no sustainability issue in PAU 2 however, because they are reviewing the fishery a TAC must be set for the first time. Firstly, they use sustainability as justification to protect the existing TACC and set aside 12 t to provide for Māori customary fishing interests. Then they propose reductions of 50% or 70% to the individual daily bag limit applying to recreational fishers and use that as a basis to propose an overall allowance for recreational fishing interests. This is not compliant with the scheme of the Act.

<sup>1</sup> New Zealand Recreational Fishing Council Inc And Anor v Sanford Limited And Ors SC 40/2008 [28 May 2009]. At [54].

32. The Minister must apply the relevant the findings of the High Court CRA 1 decision to take an ecosystem-based approach to managing PAU 2, and as part of that, create an environmental bottom that must not be exceeded. Churchman J identifies the key lever in ensuring sustainability is the setting of the TAC<sup>2</sup>.
33. The Minister must use best available information to make a precautionary decision when setting the TAC to ensure sustainability, as required by the international obligations in s5 of the Act, and in the purpose of the Act (s8).
34. The High Court also raised the mandatory obligation on the Minister to take account of **any effects of fishing on any stock and the aquatic environment**. 'Effect' means the direct or indirect effect of fishing, including any positive, adverse, temporary, permanent, past, present, future and/or cumulative effect<sup>3</sup>.
35. There is no evidence in the proposal paper that FNZ have given any regard to **any** of the effects of pāua fishing on the stock itself or the marine environment, aside from targeting recreational harvest. This is not a balanced nor lawful approach.
36. PAU 2 is a massive QMA encompassing all of the lower North Island. Within PAU 2 there is a variety of habitats and a range of depths where pāua are harvested. Varying water temperatures and currents impact recruitment success and growth rates of pāua.
37. FNZ notes that in Taranaki and some areas of Hawke's Bay blackfoot pāua are stunted and do not grow to the commercial and recreational minimum legal size (**MLS**) of 125mm. A different MLS of 85mm was introduced for blackfoot pāua in the area between the Awakino and Whanganui Rivers on the west coast, from 1 October 2009. At that time some of the current submitters objected to reducing the MLS due to sustainability concerns.
38. The efforts by mana whenua to now apply customary management tools to large areas along the southwest coastline due to sustainability concerns indicates to us that allowing the harvest of pāua down to 85mm since 2009 was not a precautionary decision.

## Localised depletion

39. Most commercial fishing for pāua occurs on the southeast coast of the lower North Island, between Turakirae Head and Castlepoint. FNZ is confident the self-reported data they receive from commercial fishers in this area is adequate to inform the annual Fisheries Assessment Plenary report.



Figure 1: Boundaries of PAU 2.

<sup>2</sup> Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022] At [11]

<sup>3</sup> At [22]

40. The 2022 Plenary report advises –

Where commercial fishing occurs, the biomass of pāua is likely to be at or above the target of 40% unfished biomass, that current catch levels are very unlikely to cause the biomass of the stock to be at or below the soft and hard limits, and that overfishing is very unlikely to be occurring with current commercial catch levels.<sup>4</sup>

41. We submit the PAU 2 QMA is too large to effectively manage pāua at this scale. A QMA this big inevitably means localised depletion is masked by catches across the whole QMA. It is simply not feasible to realistically measure Catch Per Unit of Effort (**CPUE**) across an area encompassing the west and east coasts of the whole lower half of the North Island. We note these comments from early Ministry of Fisheries Plenary reports –

There is however a large amount of literature on abalone which suggests CPUE may not be proportional to abundance as it is possible to maintain high catch rates despite a falling biomass. This occurs because pāua tend to aggregate and divers move among areas to maximise their catch rates. Therefore, any apparent stability in CPUE should be interpreted with caution.<sup>5</sup>

A large portion of PAU 2, including the Wellington south coast, is closed to commercial fishing. This means that the CPUE series collected from the commercial catch and effort data are exclusive of this large area. Given that it is widely believed that the level of illegal harvesting is high around Wellington, the abundance of pāua in the fishery as a whole will not be captured very well by the CPUE index, which will only reflect abundance outside of the closed area. This is a cause for concern if stocks in the closed area are being depleted.<sup>6</sup>

42. The QMS is blunt tool that cannot adequately address issues related to localised depletion of pāua. This leaves mana whenua to gather enough resources so they can ask for Ministerial approval to apply customary management tools, in an attempt to restore abundance in their rohe moana. However, because the management area is so large it is unlikely their efforts will have much impact beyond their rohe or an impact for any longer than the duration of a 2-year temporary closure. We remind FNZ that it is the Minister's statutory duty to **ensure sustainability**, a weighty responsibility that cannot be passed onto mana whenua as they have no meaningful control over the TAC or outside their rohe.

43. If the issue is not sustainability but localised depletion, then it is not reasonable for FNZ to exploit this opportunity to recommend a recreational allowance lower than existing harvest levels and reduce daily bag limits, while leaving the TACC intact.

44. Information given in the FNZ proposal document uses the 2021 stock assessment data. The stock assessment only applies to the southeast area of PAU 2, between Turakirae Head and Castlepoint, as that was the information available. (See Figure 1)

45. Since information is not available for the entire fishery, the Minister must take a cautious approach.

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<sup>4</sup> Fisheries Assessment Plenary, May 2022: stock assessments and stock status. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand.

<sup>5</sup> Fisheries Assessment Report. Pāua – Wellington/Wairarapa/Taranaki. 2009. Ministry of Fisheries. At [673]

<sup>6</sup> Fisheries Assessment Report. Pāua – Wellington/Wairarapa/Taranaki. 15 June 2010. Ministry of Fisheries. At [684]

## Setting the TAC and allowances

46. In 2011/12 overall recreational harvest in PAU 2 was estimated to be 81.85 t, in 2017/18 estimated harvest was 83.22 t. A new recreational harvest estimate from the 2022/23 NPS is expected in 2024.
47. FNZ propose three different TACs, based on varying reductions to the overall recreational allowance and daily bag limit. The TACC proposed in all options is status quo, 121.9 t. The proposed allowance for Māori customary interests is 12 t. In all three proposed options, FNZ determine the TAC by adding the TACC and allowances together. This is not in accordance with the scheme of the Act.
48. The scheme of the Act is:
- a. The Minister must ensure sustainability by firstly setting the TAC; then
  - b. Allowances are set aside for non-commercial fishing interests both Māori customary and recreational, and for fishing related mortality.
  - c. The remainder of the TAC is allocated to quota holders as the TACC.
49. In 2009 the Supreme Court quoted an earlier Court of Appeal decision<sup>7</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]
50. Non-commercial fishing, both Māori customary and recreational interests, are not part of the QMS that’s why a tonnage is set aside to ‘allow for’ those interests; and unlike the TACC, the allowances are not a fixed proportion of the TAC.

## Daily Bag Limits

51. FNZ estimates recreational harvest has increased since the last survey estimate of 83 t. FNZ advise that tangata whenua and recreational fishers along the Hawke's Bay, Wairarapa and Taranaki coastlines estimate recreational harvest has increased particularly during the summer months. Areas closest to population centres and with easy road access are most popular.
52. The Mai Paritu tae atu ki Turakirae Fisheries Forum (representing iwi and hapū from Gisborne to South Wairarapa) are seeking a review to reduce daily bag limits (**DBL**) from 10 to 5 or 3 in their respective rohe moana areas.

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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]. [At 55]

53. FNZ proposes the Minister applies any changes to the recreational DBL across the entire PAU 2 fishery.
54. Pāua 2 is one of the biggest pāua fisheries in the motu, important for commercial, Māori customary and recreational interests. The 2017/18 NPS notes that 66% of all recreational landings of blackfoot pāua nationwide was harvested from the PAU 2 management area.
55. Most recreational pāua is harvested by hand, gathered by people wading from shore or diving.
56. Based on the 2017/18 estimates, FNZ advise that 69% of people harvest between seven to ten pāua per day of fishing. The NPS also shows that –
  - a. 17% of people harvested between one to three pāua per day.
  - b. 26% of people harvested up to five pāua per day.
  - c. 71% harvested between 6 to 10 pāua per day; and
  - d. 52% harvested the maximum of 10 pāua per day.
57. FNZ's Options 1,2 & 3 retain the status quo for Māori customary and commercial interests.
- 58. We submit the proposed reductions in FNZ's Option 2 and 3 will have a disproportionate effect on recreational fishers.** A reduction to 5 per person (pp), per day, means 71% of recreational harvesters in 2018 would have been impacted. A reduction to 3 pp, per day, means 80% of people impacted. This is unacceptable.
- 59. We remind the Minister this is not a sport fishery; these people are gathering pāua to put kaimoana on the table.**
60. And, unlike the TACC, recreational bag limits do not increase once they have been decreased.
61. Our members and supporters have over the years demonstrated a willingness to support conservation and voluntarily reduce their harvest to help rebuild depleted fish stocks or stocks in obvious trouble. Recent examples include voluntary reductions in CRA 2, Hauraki Gulf pink maomao, Coromandel scallops.
62. This current proposal has drawn a mixed response from our members and supporters. If there is a sustainability issue then the general feedback has been that all sectors need to contribute to conservation. However, because FNZ has advised there is no sustainability issue, more a local depletion issue, the feedback to us has been that commercial and recreational catches need to be reduced.
63. Around Gisborne and up the coast pāua fishing has been hard for years. There is even more concern that the pāua and cray fisheries around the east coast will be in a worse state now due to the impacts of extreme weather events, including Cyclones Hale and Gabrielle. There were many reports of dead pāua and crayfish all along the coastline after these events.



64. **We only support bag limit reductions on the basis that –**
- a. The QMA is split into a minimum of 3 smaller manageable areas;
  - b. Stock assessments are completed for each of the smaller management areas;
  - c. The public is involved in the review to achieve the above outcomes.
  - d. FNZ support mana whenua, local clubs and communities to work together taking an [Ahu Moana approach](#) so interested and affected parties can collaborate and find solutions suitable and workable for each area.
65. MPI clearly doesn't have the capacity to monitor and enforce regulations across the entire PAU 2 area so any localised solution that has community support ought to be attractive to both compliance staff and mana whenua.
66. The submitters have supported numerous customary management proposals in the past including the recent roll-over of the 2-year temporary closure to pāua harvest in Waimārama, south of Napier. However, relying on mana whenua to use section 186A of the Fisheries Act is not a long term solution to addressing sustainability, that is the statutory duty of the Minister.
67. The submitters strongly object to any reduction to the recreational daily bag limit in areas not experiencing depletion. FNZ advise that the southeast coast between Castlepoint and Turakirae Head is where most commercial fishing occurs for pāua. The only possible outcome of bag limit reductions in the shared areas is to prop up the unsustainable TACC allocated to the commercial sector in the fishery by a previous Minister, Ministry and Quota Appeals Authority process. This would be unacceptable.
68. If it is true that the pāua biomass in the area between Castlepoint and Turakirae Head is likely above 40% of unfished biomass then we do not accept a cut to the recreational daily bag limit if the TACC is retained.

## Poaching

69. Currently, there is no allowance set aside to account for other mortality including poaching, the illegal harvest of pāua. FNZ acknowledge that "illegal harvest is likely high around Wellington and on the Wairarapa coast". An estimate of 10 t was used in the stock assessment. FNZ now propose the Minister sets aside 11 t of the TAC to 'allow for' all mortality associated with fishing including poaching.
70. Section 21(1) of the Fisheries Act 1996 is as follows –
- In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall allow for – (a) the following non-commercial fishing interests in that stock, namely –
- (i) Māori customary non-commercial fishing interests; and
  - (ii) Recreational interests; and

(b) All other mortality to that stock caused by fishing.

71. We agree the Minister must 'allow for' the mortality associated with illegal harvest, and agree that 11 t is reasonable.
72. Again, this process smacks of bias against recreational interests.
  - a. Firstly because FNZ seek to protect the existing TACC under all three proposed options; Then
  - b. FNZ propose the Minister sets aside 11 t for other mortality, an amount greater than what is estimated to be taken; Yet
  - c. FNZ still recommend the Minister reduces the recreational allowance by 42% in Option 2 and 63% in Option 3; And
  - d. To achieve these reductions, cuts to the daily bag limit will impact between 70% and 80% of amateur fishers.
73. We have a proven record of conservation and acknowledge the Minister's duty to make an allowance for illegal harvest. However, we reiterate the Minister's statutory obligation under s21 to set aside all allowances before the remainder of the TAC is available to allocate as a TACC.