

Briefing for incoming
Minister for Oceans and Fisheries
Hon. Rachel Brooking

3 May 2023

New Zealand Sport Fishing Council

LegaSea

New Zealand Angling & Casting Association

New Zealand Underwater



Purpose

This briefing provides a summary of:

1. The ongoing commitment by representative recreational fishing and environmental organisations to assist fisheries Ministers to achieve the statutory obligation under the Fisheries Act 1996 to **ensure sustainability**.
2. Issues arising due to current management of our marine fisheries and waters and the impacts they are having on the public's interest.
3. The urgent need to apply policy that values abundance and ecosystem function over the immediate grab for maximum catches.

Introduction

Over the past 20 years recreational fishing and environmental organisations have collaborated to [advocate for more fish in the water](#), for a mandatory transition from destructive, mobile bottom-contact fishing techniques to low impact commercial fisheries in the waters surrounding Aotearoa, and a fair go for future generations.

The New Zealand Sport Fishing Council is made up of 53 affiliated clubs nationwide and their 31,000 members. The Council launched LegaSea in 2012 to help the wider public better understand what is being considered for the marine environment in terms of public interests, and what's at stake. [LegaSea](#) is resourced by a significant and rapidly expanding set of businesses who are regarded as Partners (17 Platinum, 45 Gold and 100+ SMEs). 800 individuals identify as LegaSea Legends and have committed to monthly contributions. The LegaSea supporter database now exceeds 50,000 people.

The New Zealand Angling & Casting Association is the representative body for its 24 member clubs and grassroots fishers from across the country.

The New Zealand Underwater Association comprises three distinct groups including Spearfishing NZ, affiliated scuba clubs throughout the country, and Underwater Hockey NZ.

Traditionally, the public's interests in the marine environment and fisheries have been largely ignored unless there was overwhelming publicity or a Court judgement. Your predecessor, David Parker, was an exception. He was committed to 'doing the right thing', he carefully considered reasoned arguments and then made precautionary decisions for important fish stocks including [west coast snapper](#) (SNA 8), [Coromandel scallops](#) (SCACS) and [east coast tarakihi](#). His precautionary decisions have been widely publicised and are deeply appreciated.

Discussion

Governance

Governance of New Zealand's fisheries is in crisis. Too often the statutory obligation to ensure sustainability has been subsumed in the pursuit of maximum catches. The Quota Management System has created an environment where quota has aggregated to create a bloc of influence that past fisheries ministries and Ministers have struggled to resist. Consequently, fish stocks are managed on a knife-edge, ignoring past abundance and the worldwide trend towards ecosystem based management to provide more resilience to environmental degradation and climate change.

To successfully implement ecosystem based fisheries management there needs to be a new standard of abundance. That is, managing for abundance, not maximum yield. We note that Queensland, Australia, is instituting policies aimed at managing their important fish stocks to a minimum biomass of 60% of estimated original, unfished stock size (B60)¹. Since 2018 we have [advocated for higher management targets](#) for our fish stocks at a minimum of B50 or equivalent thereof. Prior to 2018 we relied on B40 as per the official's Harvest Strategy Standard.²

As Minister, you now have the opportunity to stop trying to maximise yield while degrading the environment that sustains healthy ecosystems in all areas, not just pockets designated as marine protected areas.

We urge you to get serious about ecosystem based fisheries management, by firstly accepting that increasing fish stock levels provides greater ecosystem services.

Relevance of High Court CRA 1 decision

On 11 November 2022 the High Court delivered its decision in respect of the application for a judicial review of the Minister of Oceans and Fisheries' March 2021 and March 2022 decisions for the future management of CRA 1, the Northland rock lobster fish stock³. Aspects of the decision are relevant to your future decision-making.

Firstly, the Court identified that "there are two approaches to fisheries management that are identifiable at international law, being an 'ecosystem approach' and 'precautionary approach'"⁴.

"The ecosystem approach requires decision-makers to incorporate wider ecosystem effects into fisheries management, instead of considering sustainability with a single-species focus. This approach is acknowledged in the Act through the requirement for the

¹ https://www.daf.qld.gov.au/?a=109113%3Apolicy_registry%2Fharvest-strategy-policy.pdf

² <https://www.mpi.govt.nz/dmsdocument/728/direct>

³ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022]

⁴ At [15]

Minister to consider the interdependence of species when making a decision as to the TAC, as well as through ss 9 and 11.”⁵

The Court continued:

“The ecosystems approach requires that decisions as to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.”⁶

The precautionary approach stipulates that decision-makers are more cautious where information is uncertain, unreliable or inadequate. This approach is acknowledged in the Act by s 10⁷. While we aspire to have policy decisions evidence based and consulted on widely, the methodology of stock assessments makes this impossible. The uncertainties and information gaps in stock models require you to apply the precautionary principle to ensure ecosystem productivity is preserved, and not degraded, in the pursuit of next year's catch.

The Court also highlighted the statutory requirement on the Minister to take into account **any effects** of fishing **on any stock and the aquatic environment**.⁸

In the Fisheries Act, ‘effect’ means the direct or indirect effect of fishing, including any positive, adverse, temporary, permanent, past, present, future and/or cumulative effect.⁹ The Court accepted expert evidence that the loss of kelp forests is ecologically damaging for surrounding coastal systems, in fisheries production, biodiversity, and ocean carbon sequestration¹⁰.

Significantly, Justice Churchman noted that “the purposes of the Act appear to create what could be described as an ‘**environmental bottom line**’, and are accordingly complemented by a scheme that favours precaution.”¹¹

In our [recent CRA 1 submission](#) we highlighted the solution to having an effective defence of inshore ecosystems would require you to take a two-pronged approach –

- a. Rebuild fish stocks to a minimum target biomass of 50% of their estimated original, unfished size.
 - i. Rebuild all stocks within $2 \times T_{\min}$. T_{\min} being the time required to rebuild the stock size to target in the absence of fishing; and
- b. Apply a Type 2 Marine Protection Area (MPA) - to enable a Minister to phase out all mobile bottom contact fishing methods from the Territorial Sea, within 12 nautical miles of the coastline, and then only permit the use of low impact fishing techniques in this Type 2 MPA inshore zone.

⁵ At [16]

⁶ Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, SPRFMO, art 3(2)(b).

⁷ At [18]

⁸ Section 11(1)(a) Fisheries Act 1996.

⁹ Section 2.

¹⁰ At [69]

¹¹ At [108]

Pre-set decision rules

Last year officials and commercial fishing interests collaborated to rid the Minister of his discretionary powers when catch limits were reviewed - instead installing a simpler system of using catch per unit of effort, CPUE-based data to formulaically determine changes in catch settings. In the past this “simple” pre-set decision rule system has limited public input and proved extremely damaging for our fish stocks. Pre-set decision rules were neatly folded into the [Fisheries Amendment Bill](#) and our strong reaction to the Bill mid-2022 blindsided the Minister.

David Parker and his Cabinet colleagues had no idea the public would so strongly object to being locked into a decision rule under the Quota Management System. Thankfully, at the last minute, Minister Parker recognised what was at stake and successfully deleted the offensive elements of the Amendment Bill by way of Supplementary Order Paper 257. Consequently, you, as Minister, have retained the ability to apply discretion and make precautionary decisions taking into account a range of factors, including submissions by local interests.

The [strong public reaction to the Bill](#) was, in part, driven by the underhanded manner in which pre-set decision rules were unnecessarily folded into reforms to enable cameras aboard commercial fishing vessels. The process reinforced our concerns that after 37 years quota owners have developed a strong sense of entitlement to the public's fishery. And, the revolving door between the regulator and the regulated has blurred the lines of responsibility.

These are some of the reasons why the public will not accept their interests being integrated into a failing Quota Management System. System-wide reform is desperately needed if we want viable local commercial fisheries in the future.

Rescue Fish

Parties to this Briefing have contributed to an alternative policy called [Rescue Fish Ika Rauora](#). It was developed after three years of research and preparation by a team of experts who have decades of in-depth knowledge of the challenges in fisheries, and the resulting environmental, economic, cultural and social impacts of the status quo. The [Rescue Fish policy package](#) is a holistic solution to address fish depletion and biodiversity loss. If given effect, it will make our marine environment more productive, boost job opportunities and grow regional economies while delivering benefits for all New Zealanders.

Hauraki Gulf Marine Park

Since the Hauraki Gulf Marine Park Act 2000, successive State of the Gulf reports show ongoing declines in fish abundance, benthic damage and loss of productivity. Increasing numbers of people are seeking remedies, this is causing conflict between marine reserve proponents, mana whenua exercising customary management practices, and the general public

who have no legal mechanism to protect the intertidal zone. Commercial fishers continue to deploy industrial-scale bulk harvesting fishing techniques to capture a diminishing number of fish in the Hauraki Gulf Marine Park (HGMP).

The Purpose of the Hauraki Gulf Forum, established under this statute was to coordinate and align agencies that have overlapping functions and obligations that impact the HGMP waters. For example, Regional Councils, DOC, MPI, MfE etc. The continued decline of Park waters points to the ongoing failure of the agencies to operate in an accurate and co-ordinated way as anticipated when the Forum and Marine Park was established.

The incessant demand for [marine protected areas \(MPAs\) to revitalise the Gulf](#) is completely incoherent.

One of the major disruptions degrading the biodiversity and abundance of marine life in the HGMP comes from the land. The loading of silt arising from land development and contamination from human population continues to increase, yet these remain the least managed and most destructive inputs entering the ocean and spreading throughout the Marine Park. Councils' lack of controls or their inability to enforce standards and regulations on land developments is a crucial point of failure.

MPAs are no answer to the reckless manner that land is developed, causing run-off which is smothering the nearshore habitats that are so necessary to many species' early life development.

Over 30,000 people have signed the [Hauraki Gulf Alliance petition](#) calling for a ban on destructive fishing methods such as scallop dredging and bottom trawling. Earlier this year over 7000 [New Zealanders united to submit](#) against Fisheries New Zealand's Hauraki Gulf Fisheries Plan, because it contains few meaningful or time-bound actions to improve marine abundance and productivity. They want a bolder plan.

Historically, fisheries management has focused on the biomass of a single fish species. We urge you to adopt a [more holistic approach](#). We have invasive biosecurity threats like the seaweed Caulerpa infesting our waterways. The country has been experiencing a marine heatwave for the past 24 months and issues such as ocean acidification all pose existential threats to the future of our fisheries. With many of our fish populations at historically low numbers any one of these events may push them over an unforeseen tipping point.

The Hauraki Gulf Marine Park Fisheries Plan is the prime opportunity to remove environmentally damaging fishing techniques from coastal waters while setting new standards of abundance for all marine fish species.

Resource Management vs Fisheries Act

In 2019 the Court of Appeal ruled that regional councils have jurisdiction to control fisheries resources, provided they do not do so for Fisheries Act purposes¹². The [Motiti decision](#) must now be seen in the context of the subsequent CRA 1 decision of the High Court addressed above.

The [significance of the High Court's decision](#) cannot be overstated. The Fisheries Act contains environmental bottom lines for the maintenance of the biological diversity of the aquatic environment. Adverse environmental effects of fishing activities on biodiversity can no longer be balanced or traded off against utilisation objectives.

Management of fisheries resources and the effects of fishing ought to be the domain of the Fisheries Act, given that this is the act which regulates how much biomass is removed from the marine environment, and by what methods.

We continue to advocate that area closures under resource management legislation are a [band-aid solution](#) that does not address the root cause of the problem. If management of fisheries resources under the Fisheries Act is not adhering to the mandatory bottom line of maintaining indigenous biodiversity, the remedy lies with institutional reform to ensure proper application and implementation of the Fisheries Act.

Because the *Motiti* decision did not prescribe a certain test between the Resource Management Act and the Fisheries Act, practical application of this overlapping jurisdiction is already creating considerable complexity and cost. The concern is that regional councils are already struggling with the task of managing land-based pollution of the marine environment, and they need to stick to this task which is their core business. There is the opportunity to revisit this issue through the Natural and Built Environments Bill.

To avoid any confusion and overlap, we encourage you to activate Fisheries New Zealand to conduct more timely processes, and urge you to exercise your statutory authority to make precautionary decisions.

Northland RMA closures

As a result of Environment Court rulings, there are a range of marine protected areas (MPAs) included in the Proposed Regional Plan for Northland. The [proposed east coast MPAs](#) are around Cape Brett, the inner Bay of Islands, and marine area south to Mimiwhangata.

The New Zealand Sport Fishing Council, the Bay of Islands Swordfish Club, LegaSea and others have [submitted in support of improved management](#) under section 11 of the Fisheries Act, and opposed Regional Council control of fishing access under the RMA. Our submissions

¹² *Attorney-General v The Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532

to date have been largely unsuccessful, to the detriment of the community's interests in increasing abundance and biodiversity, while maintaining public access.

The failure by Fisheries New Zealand and its predecessors to directly address fisheries management issues has forced people to search for effective remedies elsewhere. Consequently, there is now a plethora of Regional Council marine plans in development which will include, to various extents, fishing controls or area closures. The government has already stated its intent to reform MPA legislation, and the framework for marine protection must be considered in that workstream.

Ad hoc marine protection under the RMA and the proposed Natural and Built Environments Bill is not a strategic or appropriate approach to creating a network of MPAs to protect examples of our rare, outstanding and different marine habitats and ecosystems.

South Island blue cod debacle

The [mismanagement of Blue cod 3](#) on the east coast of the South Island has alienated the community and destroyed any remaining goodwill towards Fisheries New Zealand. The process to implement the Traffic Light System specifying various catch limits in designated areas was impacted by Covid, limiting meetings to online. However, the public's views were made clear yet largely ignored by officials implementing regulatory change.

The public are concerned that productivity on the South Island's east coast has collapsed due to bottom trawling yet officials continue to target recreational catch. The public deeply resent the changes that limit their take-home bag to two per person, per day, in areas where bottom trawling is permitted and where blue cod is a significant bycatch in the trawl fisheries. This is not good for compliance or enforcement.

Fisheries NZ will have to work hard to regain public trust in management and allocation issues.

The demise of scallops

The historic management of scallops in Aotearoa is shameful. Once prolific fisheries in Northland, the Hauraki Gulf and around the top of the South Island have been dredged to depletion and collapse. There is no more commercial scallop fishing nationwide. This occurred because the Total Allowable Commercial Catch (TACC) was overallocated due to over optimistic stock modelling and ambitious Ministerial decisions. Consequently, there was no limit on dredging effort despite the declining scallop populations. The South Island scallop fishery (SCA7) has been fully closed since 2017 and has not yet recovered to harvestable levels. The [Northland scallop fishery](#) has been closed since 1 April 2022. The Coromandel scallop fishery has been fully closed since December 2022, under s11 of the Fisheries Act.

Collectively, we have advocated for a transition from dredging to low impact, hand gathering of scallops for all fishers. Yet, despite [public support for change](#) and a willingness by innovative commercial fishers, officials have not found a way to support those commercial fishers to transition to using more selective methods.

Scallop fishers need encouragement and support to transition away from destructive dredging and into using methods that have lower impacts on the marine environment, if we want a viable, high value scallop fishery in the future.

The draft Fisheries Industry Transformation Plan

The draft Fisheries Industry Transformation Plan fails to specify a timeline to permanently remove mobile bottom contact fishing methods from inshore waters. Without a deadline, there will be no incentive to satisfy public demand for banning bottom trawling, scallop dredging and Danish seining from inshore waters. There is increasing evidence showing the destructive impact of these mobile bottom contact fishing methods on the benthic environment.

The overharvest of bait species due to purse seining is also impacting on fish and vulnerable seabird and mammal populations. The loss of productivity due to the effects of fishing is already impacting on the availability of food and habitat for non-target species.

Unless there are clear policies in place to stop using destructive fishing techniques and managing fish stocks to higher levels, New Zealand will continue to lose its reputation as an innovative fishing nation.