

Discussion document – Commercial Landing Exception Review of Red Cod

A summary of issues for the New Zealand Sport Fishing Council



July 2023

Fisheries New Zealand (FNZ) is reviewing the mandatory return of all red cod smaller than the 25 cm minimum legal size (MLS) to the sea. Amendments to the Fisheries Act in 2022 now require all Quota Management System (QMS) species caught by commercial fishers to be landed unless exempted by the Minister for Oceans and Fisheries. There is provision for exceptions to this rule, 20 species are already exempted and will be reviewed by September 2026. The current FNZ review seeks feedback on the survivability of red cod and whether sub-legal red cod ought to be exempted from the FNZ land-all catch policy. **Submissions are due by 12 July 2023.**

What now?

Given the limited time available we make a recommendation for red cod, and encourage discussion on the wider issue of the New Zealand Sport Fishing Council's policy response to the current land-all catch provisions and exceptions as set out in the 2022 amendments to the Fisheries Act.

Any feedback on the red cod review is due with Fisheries New Zealand by 12 July. Any feedback on the wider issue of the land-all catch policy is welcome by 20 July so this can be considered as a remit for the AGM.

Please email Sydney Curtis at sydney@legasea.co.nz or Trish Rea at trish@legasea.co.nz. Individual and club submissions on the red cod review can also be made direct to Fisherieschangeprogramme@mpi.govt.nz.

Recommendation for red cod review

1. The Minister takes a precautionary approach and does not grant an exception to exclude red cod from the land-all catch provisions.

Background

In 2022, the NZSFC submitted a [comprehensive response](#) to the Fisheries Amendment Bill. In our submission we reiterated our concerns that the QMS enables commercial fishers to catch too much fish and discard what they cannot sell. The QMS rules and regulations have not sufficiently incentivised fishers to reduce unwanted or undersize catch by improving fishing practices. We supported land-all catch in conjunction with the widespread rollout of cameras on all commercial fishing vessels over 8 metres in length, to reduce discarding and waste of fish that must be legally retained. The NZSFC supported exemptions from the land-all catch provisions for particular high value recreational species including kingfish, southern bluefin tuna, Pacific bluefin tuna, striped marlin, blue marlin, black marlin and shortbill spearfish.

Discussion

In 2022 the [Fisheries Act was amended](#) to require all commercial catch to be landed and counted against Annual Catch Entitlement (ACE), unless a stock is granted an exception. Exceptions may be granted by a Minister on any of three grounds if:

- a) The Minister considers there is an acceptable likelihood of survival if abandoned back to the sea;
- b) The fish, if retained on board, would damage other species of the catch or the fish is diseased or damaged;
- c) If the return or abandonment to the sea is for a biological, fisheries management, or ecosystem purpose and the stock has an acceptable likelihood of survival if abandoned back to the sea.

Currently, red cod is one of over 20 species with an exception to the land-all requirement. These exceptions must be reviewed by 2026. The first exempted stock to be reviewed is red cod, with a Ministerial decision expected this year.

FNZ considers the current exception for fish under 25cm being returned to the sea should expire and all red cod catch landed and counted against ACE. This is a relatively simple exception to review as there is a very low likelihood of the fish surviving abandonment (a softer term being introduced, rather than dumped).

Other stocks will not be quite so obvious. NIWA recently held a release/discard mortality workshop to discuss the likelihood of survival of inshore fish species. NZSFC representatives attended and contributed to this meeting.

Essentially, there is little research available on the survivability of discarded fish and there is no single answer. Many factors determine the likelihood of surviving and these change with each fishing event.

It is also essential to know how many fish of each stock would be discarded if current exceptions were carried forward, or new exceptions made. The only recent data comes from self-reported data submitted by fishers and this has been problematic for years. Much of these data are incomplete and unreliable. Validation of self-reported catch and discards can be achieved with either observers or cameras.

For a stock with very low catches it is unlikely ecosystem benefits will arise from applying an exception. Good catch data is required to measure catch levels. Current reporting systems have failed to provide fine-scale catch and release data.

So here we are, trying to give effect to the Fisheries Act amendments without the necessary data. It might be theoretically favourable to retain all catch unless it can be discarded with a high likelihood of survival, however, survival rates can vary depending on the species, fishing capture methods, capture depths, and varying times on deck before being discarded. Each of those variables has a huge impact on the likelihood of survival. Fisheries NZ will have to consider method specific and conditions for any exemptions. Currently Schedule 6 only applies to fish that are alive and likely to

survive on return to the sea. The minimum legal size could be removed and similar conditions could apply where there is scientific support for good survival rates.

Kingfish currently has a 65 cm MLS for commercial methods. The NIWA assessment of the scientific literature and expert input is that, of all the inshore species considered for an exemption, kingfish are the most likely to survive commercial catch and release.

How to apply the new provisions

The statutory requirements are straightforward and the operational guidelines for Section 72A are [here](#). The starting point is clear – all quota species must not be discarded and must be landed. Exceptions to this provision may be granted subject to achieving one or more of the three outcomes listed in s 72A(2)(a), (b) and (c). Further to this test, the exception must conform to the Purpose and Principles of the Fisheries Act (Part 2). In effect, a series of tests are established to determine whether any exception should be made for a stock from the obligation to land-all catch.

A key consideration is how to apply the Environmental and Information Principles (in sections 9 and 10 of the Fisheries Act) to each exception being proposed. There is unlikely to be sufficient data to form a scientific method to measure the effects of discarding on a stock, or ecosystem, with sufficient certainty to reach a robust decision.

As per s10 of the Act, **when information is incomplete, uncertain, or unreliable the decision maker must be cautious**. How would the precautionary principle apply? By requiring all catch to be landed and counted against ACE. After all, the land-all catch policy was introduced in response to widespread claims of dumping, and to determine the real level of commercial catch.

It seems that very few stocks will escape the need to apply the precautionary principle. Given the very low likelihood that red cod survive commercial catch and release, **the default starting point of land-all catch ought to apply to red cod**.

For the NZSFC and in regards to mainly commercial species, there are few examples where discarding provides a benefit to non-commercial fishers. Kingfish, tuna, marlin, maybe a few other species. The Minister would have to be satisfied that there is a biological, fisheries management, or ecosystem purpose, and the species has an acceptable likelihood of survival if live fish are released. For most species there's generally no benefit from an exception as it merely allows sorting of commercial catch on the deck, so the NZSFC is unlikely to support exceptions for many stocks. The addition of onboard cameras may reduce reliance on skipper hearsay or unvalidated self-reports of the condition and number of fish released.

Permitting sorting and discarding on economic grounds must be excluded due to the self-evident incentives that many fishers have taken advantage of in the past. We've had years of this in mixed trawl fisheries, to the detriment of some less marketable species.

If land-all catch is to deliver potential benefits it needs to apply to all commercial catch with very few specific exceptions, otherwise the investment is wasted. Land-all catch ought to apply to red cod.