

# Briefing for Incoming Minister for Oceans and Fisheries

## New Zealand Sport Fishing Council

December 2023



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## 2. Introduction

The New Zealand Sport Fishing Council (**NZSFC**) is a recognised national sports organisation of 53 affiliated clubs who represent 36,700 members nationwide. NZSFC supports the 700,000 New Zealanders that fish or harvest kaimoana. A key role is to advocate for [responsible and sustainable management of our marine environment](#) to ensure future generations are able to enjoy the unique experiences we share with our children and mokopuna.

The NZSFC conducts education programmes, commissions and funds research projects and participates in fisheries management. While our [outreach LegaSea](#) raises public awareness of the issues impacting on our ability to fish and feed our families, and the wider marine environment.

NZSFC and LegaSea collaborate with a range of partners and organisations to advocate for a healthy and diverse marine ecosystem with restored abundance, and a fair go for future generations.

### 3. Problem definition

The overarching problem in fisheries management is institutional gridlock due to the Quota Management System (**QMS**). New Zealand embarked on a precarious experiment almost 40 years ago when it introduced a governance regime underpinned by private fishing rights. There was no practical experience in such schemes and only economic theory was advanced to rationalise such a fundamental change, yet the private rights were issued in perpetuity. The economists promoting such changes claimed that resource stewardship and economic efficiency would be two beneficial consequences of the new scheme.

The QMS has locked in many unintended consequences, including the [failure to protect fish stocks](#) while destroying economic efficiency. The small inshore owner-operator fleet has all but disappeared, and a few larger entities have gained control over the regulator that now operates as a partner.

**Reform of fisheries management is urgent.**

### 4. Institutional failure

We are fishing down marine fish food webs, disrupting predator/prey dependencies, with little attention or recognition to what's happening, despite the Fisheries Act (**the Act**) making it illegal to do so. If we don't have mostly natural age-structured fish populations thriving in a healthy food web we lose productivity. From here it is a race to the bottom.

Single species management has led to perverse outcomes where one resilient species such as snapper can dominate the ecosystem with little thought given to the disappearance or depletion of more vulnerable species. Around much of New Zealand's coastline mixed trawl fisheries are common. Some excessive catch limits that were set at the outset of the QMS in 1986, still apply today. The outcome is an unnatural mix of finfish species in nearshore waters.

Complaints of snapper being a 'choke' species, by limiting the ability of commercial fishers to target more valuable species in trawl fisheries, are incoherent. An effective quota based system in a mixed species fishery will always cause fishing to stop due to catches of the species most constrained by the Total Allowable Commercial Catch. This is an inevitable outcome of ecosystem based management and is a sign of success; not the tragic barrier as posited by commercial interests.

In 1996 the appreciation of a full ecosystem based management system wasn't understood, and so other terms were used in the new Fisheries Act. Sections 8, 9, 10 and 11, 12 and 13 reflect the popular notion of maximum sustainable yield (**MSY**), which was in vogue at the time. The Fisheries Act uses the language of the '90s to try and describe a regulatory regime that is ecosystem based.

**The 1986 reforms were initially a fantastic effort, it is now time to refresh and provide much more visible red lines to defend ecosystem function and more vulnerable species.**

## 5. Purpose and Principles of the Act

In the [CRA 1 proceedings](#), *The Environmental Law Initiative v Minister for Oceans and Fisheries* [2022] NZHC 2969, the Court cited the findings of the Supreme Court and found that:

The Fisheries Act contains **mandatory environmental bottom lines** in its purpose of “ensuring sustainability” and in its “environmental principles”<sup>1</sup>:

- i. Associated or dependent species should be maintained above a level that ensures their long-term viability;
- ii. The biological diversity of the aquatic environment should be maintained;
- iii. Habitat of particular significance for fisheries management should be protected.

The Fisheries Act is to be interpreted and applied in a manner consistent with New Zealand’s international law obligations relating to fishing, which imports both an “ecosystem approach” and a “precautionary approach”.

**It follows that the Fisheries Act is an ecosystem based enabling Act.**

## 6. Ecosystem based fisheries management (EBFM)

The Minister, when making a decision, must exercise that authority in a manner that conforms with the Purpose and Principles of the Act, and how those provisions have been interpreted by the Courts. Court directions support EBFM.

The Supreme Court in *New Zealand Recreational Fishing Council Inc v Sanford Limited* [2009] NZSC 54, [2009] 3 NZLR 438 held at [39]-[40] that “**Utilisation**” and “**ensuring sustainability**” in the purpose of the Fisheries Act are “[two competing social policies](#)” however, the ultimate priority is with “ensuring sustainability”:

*....The statutory purpose is that both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system. But recognising the inherent unlikelihood of those making key regulatory decisions under the Act being able to accommodate both policies in full, s 8(1) requires that in the attribution of due weight to each policy that [the weight] given to utilisation must not be such as to jeopardise sustainability. **Fisheries are to be utilised, but sustainability is to be ensured.***

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<sup>1</sup> The Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969, paragraphs [11], [108], [117].

*This ultimate priority is recognised in the two definitions. The first consideration in the definition of “utilisation” is the conserving of fisheries resources. Their use, enhancement and development, to enable fishers to provide for their social, economic and cultural wellbeing, are considerations which follow. The definition of “ensuring sustainability”, on the other hand, reflects the policy of meeting foreseeable needs of future generations which is concerned with future utilisation. These complementary definitions apply whenever those terms are used in the Act.*

**Ecosystem based fisheries management must underpin all decisions.**

## **7. Pre-set decision rules and Ministerial discretion**

In April 2022 the Fisheries Amendment Bill was introduced into Parliament. The Primary Production Select Committee considered the Bill and reported back to the House in September, recommending its passage, including support for pre-set decision rules. Officials promoted pre-set decision rules as a means of enabling faster responses to change in fish population levels.

### **Ministerial discretion**

Pre-set decision rules would remove the requirement for the Minister to apply his/her discretion when considering changes to the management of fish stocks. This proposal was strongly opposed at the time because (a) Ministerial discretion is fundamental to the scheme of the Fisheries Act, and (b) because previous precautionary Ministerial decisions have saved fish stocks from collapse and overfishing.

Sustainability provisions in the Act provide the Minister with a wide range of actions that can be taken to protect the marine environment, fish stocks, and biodiversity. A form of decision rule has been used to alter rock lobster commercial catch limits since the 1990s. Most stocks have not rebuilt to desired levels because the formula relies on self-reported commercial catch data to increase catch limits or maintain existing catch limits even if the stock is failing.

### **Pre-set decision rules**

Some industry representatives are again promoting the use of pre-set decision rules as withdrawn from the Bill in 2022. Pre-set decision rules take the form of adjusting catch limits based on measured catch per unit of effort (CPUE). The NZSFC strongly objected to the inclusion of the legislative amendment permitting this practice to become routine.

Pre-set decision rules collide directly with Ecosystem Based Fisheries Management and kaitiakitanga, by treating a fish stock as if it exists on its own. The use of CPUE-based rules are attractive to commercial interests for the very reason they are objectionable to others; the use of a simple self-generated data point can be used to justify increased catches. However, fisheries management is moving beyond these simple single species assessments and embarking on a

more ambitious and considered approach that considers the ecosystem as a functioning food web - in accordance with kaitiakitanga.

The NZSFC continues to advocate for Ecosystem Based Fisheries Management in support of the recent CRA1 Court decision by Churchman J (2022). This reinforces the view that when making decisions on catch settings a Minister is obliged to eschew simple single species surplus production models and embrace ecosystem based management that includes both applying the precautionary principle and mitigating the cumulative effects of fishing. A fuller and more considered view and application is required of Parts 2 and 3 of the Fisheries Act 1996.

**Pre-set decision rules enable a predetermined approach that ignores the impacts of fishing on other species and the marine environment.**

## 8. Food web disruption

The Fisheries Act contains [environmental bottom lines](#) for the maintenance of the biological diversity of the aquatic environment. People exercising functions under the Act have a duty to remedy or mitigate **any** past, present, future, or cumulative effects of fishing on **any** stock and the aquatic environment<sup>2</sup>. This includes the adverse historical effects of fishing that have present day adverse effects on the biological diversity of the aquatic environment. For example, the destruction of benthic habitats by mobile, bottom contact fishing methods including trawling, Danish seining, and dredging.

In 2012 experts reported that the foremost threat to marine habitats was sedimentation. In terms of human activity, bottom trawling represented the third equal highest threat to New Zealand's marine habitats and second highest was shellfish dredging<sup>3</sup>.

Adverse environmental effects of fishing activities on biodiversity can no longer be balanced or traded off against utilisation objectives. Accordingly, the effects of purse seining cannot be ignored because removing whole schools of forage fish i.e. bait fish, impacts on the food availability for dolphins, whales, and seabirds. The [State of our Gulf 2023 report](#) notes:

*Food web modelling of the impact of removing small to medium pelagic fish (e.g. jack mackerels, blue mackerel, pilchard and anchovy) found that predatory species that had limited diet flexibility were most affected. Seabirds (particularly tara (white-fronted tern), rako (Buller's shearwater), pakahā (fluttering shearwater), taranui (caspians terns) and tītī wainui (fairy prions) and popokanua (common) and terehu (bottlenose) dolphins were*

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<sup>2</sup> The Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969, paragraph [22].

<sup>3</sup> MacDiarmid A, McKenzie A, Sturman J, Beaumont J, Mikaloff-Fletcher S, Dunne J. Assessment of anthropogenic threats to New Zealand marine habitats. New Zealand Aquatic Environment and Biodiversity Report no 93. Ministry of Agriculture and Forestry; 2012.

*the species most affected by changes in small pelagic fish<sup>4</sup>. Ecosystems that are damaged by bottom trawling and are fished close to maximum sustainable yields are less resilient to other stressors, such as climate change<sup>5</sup>. Ecosystem based management is now accepted as best practice in fisheries management, but we are still managing species individually.*

When making a decision, in the absence of any assessment of the effects of an increase in catch limits, the decision maker is statutorily obliged, and empowered, to apply the precautionary principle to the extent of prohibiting purse seining and mobile, bottom contact fishing methods in once-productive inshore waters.

To ensure a rebuild of depleted fish populations, the Court rulings support a Minister in setting the environmental bottom line at a minimum of 50 percent of the stock's estimated unfished level (B50). Many of our inshore stocks have been fished to B20 or below.

**Rebuilding a finfish population to at least B50 would reduce the risk of breaching the environmental bottom line and increase the probability of restoring a more natural age structure to the population.**

## 9. Fisheries New Zealand's role at odds with the Act

There seems to be a wall of resistance against taking fewer fish now so there is future abundance. Part of the problem is the partnership between quota owners and officials. Fisheries New Zealand (FNZ) is part of the Ministry *for* Primary Industries, so straight away environmental and non-commercial interests are subsumed by the Ministry's goal to increase the value of exports and create more overseas markets.

The [Fisheries Industry Transformation Plan](#) devised by commercial interests and officials in early 2023 was presented as an innovative pathway to more abundant fisheries. In reality, it was a shallow, self-serving grab for taxpayer funds to build bigger boats, including more powerful trawlers to exploit our fish while destroying the 3-D life on the seafloor.

**The Minister has a statutory duty to apply the Act and take a precautionary approach to ensure marine ecosystems are maintained and protected from the adverse effects of fishing.**

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<sup>4</sup> Pinkerton MH, Moore BR, O'Driscoll RL. Role of low- and mid-trophic level fish in the Hauraki Gulf ecosystem. New Zealand Aquatic Environment and Biodiversity Report no 301. Fisheries NZ; 2023.

<sup>5</sup> Ministry for Primary Industries. Aquatic environment and biodiversity annual review 2017. Compiled by the Fisheries Science Team, Ministry for Primary Industries; 2017.

## 10. Regulatory capture

Regulatory capture is when regulatory agencies become dominated by the interests they regulate and not by the public interest.

An effective regulatory regime is necessary for fisheries to be managed and operated efficiently and equitably. It is inevitable that the regulator will become captured, but the degree of capture will vary across agencies. Strong capture violates the public interest to such an extent that the public would be better served by either (a) no regulation of the activity in question - because the benefits of regulation are outweighed by the costs of capture, or (b) comprehensive replacement of the policy and agency in question (Carpenter and Moss 2014:11).

In general, New Zealand's fisheries suffer from strong regulatory capture, with many of the stock assessments based on self-reported data from commercial fishers. Then the assessments are analysed and outputs generated by a collaboration of industry lobbyists and agency staff. In these discussions, the views of environmental and non-commercial fishing interests are often dismissed as 'anecdotal evidence'. The harvest strategies devised by these processes are most often preoccupied with maximising commercial catch, often using contrived models to support the strategy. The declines of age structure and abundance in fish stocks over time contradict the promise of the devised harvest strategies. Rarely will a stock survive to rebuild to ecosystem functional level while this process continues.

The regulatory environment has become heavily captured and the popular quote attributed to Albert Einstein seems appropriate" 'No problem can be solved from the same level of consciousness that created it'. Over time it has become more obvious that the problem of over exploitation will not be solved with the current regime in place.

**We must immediately apply a policy that values abundance and ecosystem function over a short-term desire for maximum catches. This is the only correct response to the Court rulings emphasising the need to *ensure* sustainability.**

## 11. Failure of the QMS to deliver value for New Zealand

The QMS is a rent-seeking regime that fails to deliver on the promises made prior to its establishment in 1986. The QMS relies on feudal governance attributes - the property is owned by a Lord and the workers that use the property pay the maximum rent that can be captured by the Lord. We have an ageing fleet of vessels and skippers who are impoverished by the need to pay for ACE owned by quota holders, many who don't even get their hands wet. This incentivises low cost, bulk harvesting which is proven to be destructive to benthic communities. It is time for a rethink and reform.



Despite the considerable public subsidies enjoyed by the seafood industry, many in the name of innovation, the transition from commodity production to value-added processing remains elusive, a mirage often cited but which never materialises.

Poor governance means that there is no accountability for decision-makers to comply with the Purpose and Principles of the Act. Operationally [FNZ remains accountable to quota holders](#), and occasionally the Courts, leaving the public interest advocates in fisheries and the marine environment to fend for themselves.

Through poor implementation of the QMS perverse incentives have evolved that thwart precautionary management and value creation. The gifting of catching rights for free to those who had the most destructive impact on fish stocks encourages more of the same exploitative behaviour. Now, we have an industry reliant on free inputs i.e. fish, and still there is an expectation that government subsidies and grants will be made available to [keep the industry afloat](#).

Placing no value on the fish through gifting also encourages wastage. An international study in 2016 found New Zealand was catching over double the amount of fish it was reporting to the UN<sup>6</sup>. There is no coherent case available to continue gifting fish to industrialists to sell. Without a royalty system that captures the rents, overexploitation is inevitable - free cast food breeds cats, free fish breeds overexploitation.

The institutional governance grievance, the reliance on incentives embodied in private rights producing economic efficiency and resource sustainability, remains the roadblock to innovation and value creation.

**The talk of innovation and transformation while the existing regime remains intact is simply virtue signalling - there is zero chance they will evolve while trapped in rent-seeking governance.**

## 12. Nonsense of export prices

The contribution that commercial fisheries make to New Zealand is over hyped, at around half the value of wine exports. As a nation looking for added value we need to consider [what we are exporting](#) and for what return.

For example, 5450 tonnes of blue mackerel (tawatawa) were exported in 2022. Around 92% of that catch was exported as frozen, whole fish. No value added, merely earning \$1.60 per kilo when sent to the Ivory Coast<sup>7</sup>.

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<sup>6</sup> <https://www.seaaroundus.org/new-zealand-fishery-catch-estimated-at-2-7-times-more-than-reported-study/>

<sup>7</sup> New Zealand Seafood Exports By Species. By Country. Calendar year to December 2022 (Final). Seafood New Zealand.

In the past three years over 5800 tonnes of blue mackerel have been taken out of the Hauraki Gulf Marine Park. This is just one of many important forage fish species for animals further up the food chain, including whales, dolphins, and seabirds, namely gannets. At \$1.60 per kilo exported these fish are worth more to our wildlife, in the water and as part of the ecosystem.

Kahawai suffers similar disrespect. In 2022 around 97% of all exports was frozen, whole kahawai, selling for as little as \$1.81 to the Ivory Coast. Kahawai are an integral part of the foodweb, driving bait fish to the water's surface providing a valuable food source for seabirds, mammals and other finfish species.

Another reason supporting precautionary management is that overseas markets are becoming more discerning about how we fish and food miles. In terms of food miles attributed to imports, being at the bottom of the Pacific New Zealand is already at a disadvantage when compared to other countries who are much closer to their markets.

For several years now snapper, tarakihi, gurnard and other species harvested from Māui dolphin habitat on the North Island's west coast has been subject to an [import ban by the United States](#) Court of International Trade, due to bycatch concerns.

**New Zealand needs to be mindful of the growing interest in ecosystem based fisheries management and how that might influence other nations' import policies.**

### 13. Rescue Fish Ika Rauora - an alternative to the QMS

As Teddy Roosevelt once said, '**Complaining about a problem without posing a solution is called whining**'.

Rights based fisheries management has failed to deliver real value for New Zealand and largely driven owner-operators out of their vessels. Commercial fishing is now dominated by around 100 investors who control 90% of all quota. The 10 entities who own 78% of all quota are a powerful lobby who successfully influence the science processes that inform management decisions. Reform of the Fisheries Act, the QMS and governance arrangements is urgently required if we are to have abundant fish populations in the future.

We have developed an alternative policy called [Rescue Fish Ika Rauora](#) as a starting point to restoring biodiversity while ensuring all New Zealanders benefit from our national resource. This can be achieved by increasing the abundance of fish populations and protecting the benthic environment from destructive fishing methods.

However, success will only be realised if we firstly dismantle the structures that support the Quota Management System that provides for rights based fisheries management. Then, we

must encourage commercial fishers into low impact, small-scale fishing enterprises so they can fish locally and supply their own communities with fresh fish.

**With some popular species hitting \$50 per kilo and the current cost of living crisis, it makes sense to have locally caught, fresh fish available to families at more affordable prices.**

## 14. Ahu Moana - localised management

Many of the statutory tools available are inadequate when it comes to addressing localised issues such as depletion of shellfish beds or overharvesting of particular species. This fuels the debate for marine protection, generating highly divisive discussions around marine reserves.

Ahu Moana is a community based solution that encompasses iwi/hapū and communal aspirations, allowing for continued use of an area with controls to suit local conditions.

Ahu Moana was first discussed during the [Sea Change process](#) (2013-16) and supported as a means to help Hauraki Gulf communities manage their nearshore environment and sealife. In 2021 [Ahu Moana](#) was included in the government's response to Sea Change, the [Revitalising the Gulf strategy](#).

Since the strategy was released very few resources have been applied to Ahu Moana. Two pilot projects were proposed but the lack of resources, leadership and support from officials has left these pilots to squander. In response, mana whenua have taken the lead, demonstrating how Ahu Moana, community-based management, may work on a local scale.

For example, in 2021 conflict arose in Coromandel when hundreds of pink maomao were being landed daily and people realised no bag limits applied. [MPI were powerless to respond](#) because the regulations have not kept pace with changing fishing patterns. Ngāti Hei stepped in to quell the growing unrest by placing a rāhui on any fishing for pink maomao within their rohe of 2400 sq. km. Subsequently, the Minister reviewed the regulations and included pink maomao in the recreational daily bag limit.

Ngāti Hei, Ngāti Pāoa, Ngāti Rehua and Ngāti Manuhiri have all [placed rāhui to stop the harvest of scallops](#) and other species of concern in their rohe. This is localised management in action, yet there has been a mixed response from officials and the Minister to these localised actions. Ultimately, these are successful community driven initiatives and recent experience has shown that localised efforts have a high rate of compliance and support. Ahu Moana would complement the existing tools available under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and Fisheries Act.

**Ahu Moana could provide a structured approach to localised management where the community is engaged and official resources are constrained.**