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## Submission: Review of sustainability measures for the wider Kaikōura recreational pāua fishery (PAU 3A)

### Recommendations

1. **The Minister reopens** the wider Kaikōura pāua fishery to recreational harvest from 22 April to 22 July 2024 (three months).
2. **The Minister** commits Fisheries New Zealand to work towards reopening the wider Kaikōura pāua fishery to recreational harvest for nine months of the year (12 months excluding the busiest holiday season), with a daily bag limit of 3 pāua per person.
3. **The Minister notes** that the recreational sector rejects proportional allocation of the TAC and any moves to change the nature of the tonnage set aside to 'allow for' recreational interests from an allowance to an allocation.

### The submitters

4. The New Zealand Sport Fishing Council (**NZSFC**) appreciates the opportunity to submit on the reopening of the Kaikōura recreational pāua fishery (PAU 3A) for a further season in 2024. On 13 December 2023 Fisheries New Zealand (**FNZ**)

released the Discussion Paper 2023/27, with submissions due by 2 February 2024. On 8 January 2024 FNZ advised amendments to the Discussion Paper with the same feedback deadline of 2 February.

5. The New Zealand Sport Fishing Council is a recognised national sports organisation of 50 affiliated clubs with over 36,700 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)
6. 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.
7. The New Zealand Underwater Association (**NZUA**) 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.
8. 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].
9. The 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 and compliance with Court directions. This includes maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations and the Minister using best available information to make precautionary decisions.
10. 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)

## Discussion

11. The submitters support FNZ option 2, a 3-month recreational fishing season, from 22 April to 22 July, for the 2024 year, and after 2024 we support the wider Kaikōura pāua fishery to be reopened to recreational harvest for nine months of the year (12 months excluding the busiest holiday season), with a daily bag limit of 3 pāua per person.
12. Pāua is an iconic species in many parts of the country, it is one our national treasures. Pāua are highly valued by all sectors and anyone willing to get in the frigid waters of Kaikōura to gather a special treat for the family ought to have reasonable access to the available pāua.
13. The submitters urge the Minister to direct Fisheries New Zealand to provide advice on what controls will be required to restore recreational harvest of pāua over 9 months. This information would inform a Ministerial decision to restore the recreational season to better align with current commercial and Māori customary 12-month access to pāua when the Total Allowable Catch (**TAC**) is next reviewed.
14. The submitters note FNZ advice that this review does not include changes to the PAU 3A TAC, allowances or the Total Allowable Commercial Catch (**TACC**). And that new stock assessment information may be available later this year to enable a review of the TAC, allowances and TACC for the 2024/25 fishing year.
15. We also note FNZ advice that the PAU 3A fishery is rebuilding, and that management measures applied to recreational harvest last season “constrained recreational catch to a sustainable level through a relatively short season during autumn/winter 2023”.

## Proportionality

16. The obsession to control recreational harvest while allowing commercial and an unknown Māori customary catch to continue demonstrates a clear bias towards limiting public access to what is a public resource. We have previously submitted in support of Māori customary harvest having priority when it comes to providing

kai for special occasions. However, there is no alignment with this current policy promoted by FNZ and the statutory obligations on the Minister. As the Supreme Court in the Kahawai case has previously highlighted, the Minister has discretion however, *“The Act envisages that the allowance for recreational fishing interests will be a reasonable one in all the circumstances. It also envisages that will be the case for the allowance for Maori customary fishing interests. The position is the same for the total allowable commercial catch, although the Act recognises that in some circumstances it may be reasonable to fix the commercial catch at zero”*<sup>1</sup>.

17. This bias is also evident in the following statement from paragraph 77 of the discussion document).

*“FNZ is proposing to commission a third independent survey to estimate recreational harvest of pāua if the season is opened. This survey will enable weekly catch totals to be reviewed by a reference group consisting of FNZ, Te Rūnanga o Kaikōura, Kaikōura Marine Guardians, and relevant stakeholder representatives, with the potential to adjust recreational controls in-season if appropriate.”*

18. This is misleading the public as there is no obligation to adjust recreational controls in-season. While an in-season reduction in recreational harvest may suit the parties mentioned, there is no statutory basis for such action. While we have a history of taking a responsible approach in promoting a reduction in recreational daily bag limits or limiting harvest for sustainability reasons, this is not applicable in this circumstance.

19. Under s21 of the Act the tonnage set aside to ‘allow for’ non-commercial fishing interests, both Māori customary and recreational, is an allowance not an allocation. In contrast, the TACC is an allocation which is then apportioned to commercial fishers based on the proportion of quota they hold in each fish stock. At the end of each fishing year commercial landings are compared to the TACC and financial penalties can be ascribed to any over catch, and under catch can be carried forward to the next fishing year. No such regime exists for non-commercial interests. The allowances are set aside to allow for yearly fluctuations in effort, weather, and availability of fish inshore.

20. We do not accept the targeting of recreational harvest as a means to protect the TACC from reductions. If the recreational allowance is insufficient to cover catch

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<sup>1</sup> New Zealand Recreational Fishing Council Inc And Anor V Sanford Limited And Ors SC 40/2008 [28 May 2009]. At [65]

under current controls, then the TAC needs to be reviewed. FNZ has indicated that review may occur prior to the 2024/25 fishing year.

21. Moreover, the Courts have traversed the scheme of the Act. The Kahawai decision quotes the Court of Appeal Snapper 1 decision:

*“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.**”<sup>2</sup> [emphasis added]*

22. Under the existing legislation and as confirmed by the Courts, there is clearly no proportional allocation of the TAC between commercial and non-commercial interests. Statements such as that included in paragraph 77 of the FNZ proposal document perpetuate the myth that the TAC is proportionately shared amongst the various interests. This is a grave misrepresentation of the truth. We do not accept proportional allocation by stealth.

23. And we do not find it acceptable practice by Fisheries New Zealand to make such misleading statements when many of the people reading paragraph 77 will not have a good understanding of the scheme of the Act. This practice is contrary to the principles underpinning public consultation and as laid out in the Wellington Airport proceedings<sup>3</sup>.

24. At the outset of the Quota Management System (QMS) the TACC was set at 57 tonnes (t). There were regular increases to the TACC and by 2017 it was 91.615 t due to appeals by commercial interests to the Quota Appeal Authority. The TACC has never constrained commercial harvest as prior to the 2016 earthquakes the TACC had been exceeded 11 years out of the 30 preceding years. And any uncaught catch could be carried forward to the following year.

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<sup>2</sup> At [55].

<sup>3</sup> *Wellington International Airport Limited and ors v Air New Zealand* [1993] 1 NZLR 671 At [p.675].

## **Recreational allowance**

25. Prior to October 2017 there was no TAC or allowances set aside for non-commercial fishing interests or fishing related mortality. In 2017 the allowance set aside for recreational interests was 8.5 t. This was based on 50% of the 2011/12 National Panel Survey recreational harvest estimate of 16.98 t in PAU 3.
26. Due to the effects of the 2016 earthquakes, the PAU 3 fishery was split into PAU 3A (Kaikoura) and PAU 3B (Canterbury). These areas were established as new fish stocks with new catch settings. In the PAU 3A Kaikoura fishery new controls were established and the TAC was set at 40.5 t, and within that the recreational allowances was reduced from 8.5 t to 5 t. This reduction provided, in part, protection for the new TACC which was reduced from 45.8 to 23 tonnes.
27. When the fishery did reopen it was clear from this decision that the new allowance of 5 tonne was insufficient to cover expected catch. Given that the fishery had been closed to recreational harvest for five years, Fisheries New Zealand ought to have advised the Minister that he could reasonably expect a large public interest in harvesting pāua and that he ought to set aside an allowance to cover the expected catch. If that allowance was under-caught it could be reduced again after further review.
28. The deliberate under-setting of the recreational allowance is contrary to the Court's directions for the Minister to set aside an allowance that is reasonable and that represents the estimated, expected recreational catch.
29. During the first 3-month open season in 2022 recreational harvest was estimated around 42 t. The second open season (2023) the recreational harvest estimate was 12 t. Such large fluctuations in recreational harvest emphasise the need for a precautionary decision when it comes to setting the TAC and then setting aside the non-commercial allowances. There are gaps in the knowledge of catch by both Māori customary and recreational fishers, so the Minister has an obligation to set aside sufficient allowances to cover potential catch. There is no escape from this statutory duty.

## **Recreational daily bag limit**

30. Until December 2019 the recreational daily bag limit (DBL) in PAU 3 was 10 per person, per day. On 12 December 2019 this reduced to 5 per person, per day.

An accumulation limit of two DBLs was also introduced, to a maximum of 10 per person.

31. For the 2023 open season the recreational DBL was reduced again, from 5 to 3 per person, per day. The accumulation limit of two DBLs was reduced to a maximum of 6 per person.
32. The submitters urge the Minister to consider what controls may be required to restore a 9-month recreational fishing season for pāua, with a DBL of 3 per person, per day however, the impacts of such a change would be moderated by removing the 'derby' nature of the current season where people rush in while the fishery is open. Clearly there was a larger public harvest prior to the earthquakes and changing to a 9-month season may help to dampen the 'goldrush' mentality.