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Submission: Review of sustainability measures for spiny rock lobster (CRA 3) for 2024/25

Recommendations

1. **The Minister acknowledges his statutory duty** to make a precautionary decision given the uncertain, unreliable, and inadequate information available regarding the condition of the CRA 3 fishery.
2. **We recommend the Minister supports Option 4** to reduce the Total Allowable Catch (TAC) to 194 tonnes, which includes a 40% reduction to the Total Allowable Commercial Catch, from 195 t to 117 t, and a reduction to the allowance for all other sources of mortality to 45 t.
3. **We recommend the Minister supports Option A** to retain the current settings of the recreational daily limit of 6 for the combined daily limit of spiny rock lobster and packhorse lobster and a maximum spiny rock lobster daily limit of 6.
4. **We insist the Minister revokes the concession** in CRA 3 which permits commercial fishers to take male rock lobsters with a tail width (TW) of 52 mm and 53 mm and restores the minimum legal size (MLS) of 54 mm TW year-round.
5. **The Minister splits the CRA 3 management area** at the boundary of stat areas 910 and 911 using section 25 of the Fisheries Act.
6. **The Minister acknowledges** the risks associated with the interim management target for CRA 3 because it does not support the rebuild of the fishery nor build resilience of the fishery against poor recruitment or future extreme weather conditions.

The submitters

7. The New Zealand Sport Fishing Council (**NZSFC**) appreciates the opportunity to submit on the review of sustainability measures for rock lobster (*Jasus edwardsii*), in Quota Management Area CRA 3 for 2024-25. Fisheries New Zealand's (FNZ) Discussion paper was received on 13 December 2023, with submissions due by 2 February 2024.
8. The NZ Sport Fishing Council is a recognised national sports organisation of 50 affiliated clubs with over 36,500 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.
9. 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.
10. 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.
11. 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].
12. 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.

Background

13. Rock lobster are an important species and fishery for all sectors in New Zealand. Historically, rock lobster were abundant and played a significant role in coastal ecosystems. However, in recent years the adverse effects of poor management have been witnessed in rock lobster fisheries including Quota Management Areas (**QMA**) CRA 1, CRA 2 and now CRA 3.

14. Fisheries New Zealand (**FNZ**) with input from the National Rock Lobster Management Group (**NRLMG**) is reviewing the sustainability measures for crayfish in QMA 3 also referred to as CRA 3. CRA 3 is assessed as two regions to reflect varying rock lobster size distributions and historic catch per unit effort (**CPUE**) trends. Region 1 encompasses statistical areas 909 (East Cape) and 910 (Gisborne), while Region 2 is 911 (Māhia) (Figure 1).

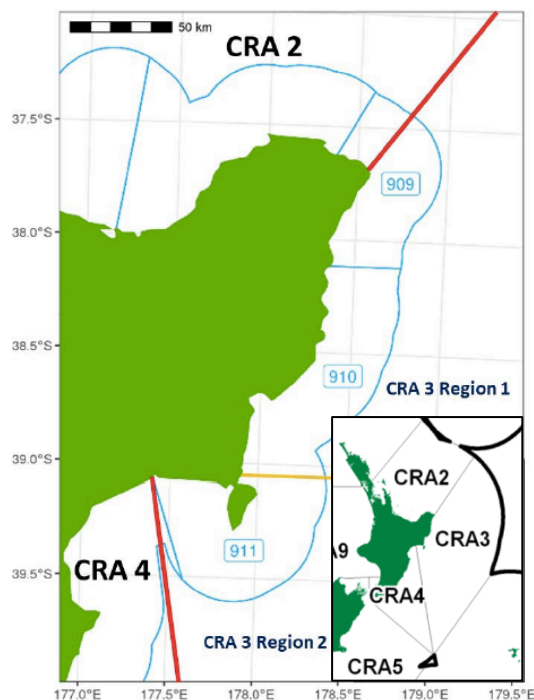


Figure 1. Map of CRA 3. Stat areas 909 and 910 make up region 1 and 911 is region 2

15. CRA 3 supports an unusual fishery, Region 1 is dominated by large numbers of small male rock lobster while rock lobsters in Region 2 are generally larger and there is a greater proportion of females caught.

16. CRA 3 is also a concession area which permits commercial fishers to land male rock lobsters that have a 52 mm or 53 mm tail width (**TW**), smaller than the 54 mm recreational TW minimum legal size (**MLS**). The concession or differential MLS is primarily fished in Region 1 where fishers land 52 mm and 53 mm males during June, July and August and have a voluntary seasonal closure between September and January. In Region 2, commercial fishers have agreed not to land smaller males and there is no seasonal closure.

17. This review follows concerns from commercial fishermen and NIWA benthic surveys which suggest significant impacts of Cyclones Hale and Gabrielle in January and February 2023 on near shore reefs, particularly in Region 1. FNZ state in their Discussion Document that the full extent of effects from the cyclones are still unknown and it is expected that recruitment may be impacted by increased land-derived sedimentation.¹

¹ Review of sustainability measures for spiny rock lobster (CRA 3) for 2024/25. Fisheries New Zealand. At [44]

18. The most recent rapid assessment update at the end of the 2022/23 fishing year (31 March 2023) estimated the vulnerable biomass² of Region 1 to be higher than the reference level in 2023 but declining in Region 2. Current overall biomass of CRA 3 is estimated to be likely at or above the vulnerable biomass reference level of 347 tonnes (12.7% of the unfished level).
19. The rapid update was not able to include a reliable index of abundance (CPUE) since the introduction of the Electronic Reporting System (ERS) in 2019 and data following the cyclones, and anecdotal evidence from fishers in Region 1 suggests that there has been a decrease in catches despite increased effort and pots encountering debris.
20. FNZ have highlighted in the Discussion Document, due to shifting effort and effects of the cyclones, the vulnerable biomass in both regions could potentially decline further to a level below their respective management targets.³ since the introduction of ERS there has been no reliable CPUE from CRA 3 commercial fishers and there is no consistent voluntary logbook data that could be used as an alternative index of abundance.

Management proposals

21. FNZ has released a [Discussion Document](#) proposing changes to the Total Allowable Catch (TAC), Total Allowable Commercial Catch (TACC) and allowance for All Other Mortality caused by fishing for rock lobster in CRA 3.
22. FNZ are proposing four options for CRA 3 as outlined in Table 1. Option 1 retains the current catch settings, whereas Options 2-4 provide for varying levels of reductions to the TAC.

Table 1: Proposed management options (in tonnes) for CRA 3 from 1 April 2024.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
Option 1 (Status quo)	302	195	20	12	75
Option 2	248 (↓ 54)	156 (↓ 39)	20	12	60 (↓ 15)
Option 3	220 (↓ 82)	136 (↓ 59)	20	12	52 (↓ 23)
Option 4	194 (↓ 108)	117 (↓ 78)	20	12	45 (↓ 30)

Table 2: Proposed recreational daily limit options (in number of rock lobsters) for CRA 3 from 1 April 2024.

	Combined daily limit ⁴	Max spiny rock lobster daily limit
Option A (current settings)	6	6
Option B	6	3 (↓ 3)

² The autumn-winter biomass that is available to be caught legally. The combined weight of all individuals within a stock (usually males) that have reached maturity. Excludes berried females.

³ Review of sustainability measures for spiny rock lobster (CRA 3) for 2024/25. Fisheries New Zealand. At [7]

23. FNZ are also proposing a change to the recreational daily limit as outlined in Table 2. Option A retains the current settings, a combined daily limit of 6 and combined maximum spiny rock lobster limit of 6. Option B retains a combined daily limit of 6, but reduces the maximum spiny rock lobster limit by 50% to 3.

Discussion

24. There is no doubt that the 2023 cyclones have caused unknown impacts on the CRA 3 fishery, and we will continue to feel the effects over the next five years. However, it is highly probable that these weather events have just exacerbated underlying issues in this fish stock. The 2023 rapid update which used catch information prior to the cyclones was used to update the status of the stock table in the November 2023 Plenary Report stating -

“Overfishing is Likely (>60%) to be occurring in region 1 while overfishing is As Likely As Not (40-60%) to be occurring in region 2.”⁴

25. FNZ state in their Discussion Document that over the last five years fishing effort appears to be shifting from Region 1 to Region 2, with the 2023 rapid update showing a decline in vulnerable biomass in Region 2.⁵ This increased fishing pressure in Region 2 has continued following the cyclones and reflects anecdotal reports from commercial fishers in Region 2 that commercial fishing effort from Region 1 has been moving south to Region 2.
26. We share FNZ’s concerns regarding the shift in fishing intensity to Region 2 where there is lower biomass and a declining trajectory.⁶ There are also concerns shared with commercial fishers in Region 2 that Region 1 fishers will begin to land concession fish from Region 2, which Māhia fishers have agreed not take.
27. Māhia commercial and Māori customary fishers are committed to conserving and sustaining their local fishery at a higher level than in Region 1, so they have agreed not to harvest concession size crayfish. Consequently, all fishers benefit from having access to larger crayfish in Region 2.
28. The submitters note and support FNZ’s view throughout the Discussion Document that a precautionary approach is needed when considering the management of CRA 3. The CRA 1 High Court decision in 2022 confirmed that ***the Fisheries Act requires the Minister to act in accordance with New Zealand’s international obligation to favour a precautionary approach where information is uncertain, unreliable, or inadequate.***⁷
29. The submitters support Option 4, which includes a 40% reduction to the TACC. Made clear by FNZ’s Discussion Document, the current state of CRA 3 is uncertain and the information

⁴ Fisheries Assessment Plenary - Introductory Section to Yellowfin Tuna. November 2023. Fisheries New Zealand. At [p.369]

⁵ Review of sustainability measures for spiny rock lobster (CRA 3) for 2024/25. Fisheries New Zealand. At [65]

⁶ At [69]

⁷ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]. At [17 & 44]

that is available is inadequate. Until FNZ and the NRLMG have a better understanding of the fishery the Minister is statutorily obliged to take a precautionary approach.

30. When considering the factors that separate CRA 3 into two separate regions for assessments coupled with differing management strategies [at 14] and the growing concerns from Region 2 fishers, **we recommend the Minister exercises his powers under sections 25 of the Fisheries Act to split the QMA at the boundary of stat areas 910 and 911 to create two separate management units, potentially CRA 3A & CRA 3B.** This is not a novel approach; many other fish stocks have been sub-divided for management purposes and it's a legitimate approach for the Minister to take given the known variations in stock characteristics.
31. **We recommend the Minister supports Option 4 to reduce the Total Allowable Catch (TAC) by 40% to 194 tonnes, which includes a reduction to the Total Allowable Commercial Catch to 117 t and a reduction of all other sources of mortality to 45 t.**
32. **We also recommend the vulnerable biomass management targets for CRA 3 Region 1 and CRA 3 Region 2 are set before any increase in the TAC is considered.**

Recreational daily limit

33. FNZ are proposing an option to review the current settings of the recreational daily limit.
34. Recreational CRA fishing in CRA 3 is primarily over the summer months by land-based fishers who are restrained by poor weather and water conditions, particularly visibility and debris. It is highly likely that fishing success for crayfish has already reduced drastically over the past 12 months and will continue to be affected by remaining debris and sedimentation for some time.
35. The rock lobster MLS for recreational fishers in CRA 3 is 54 mm TW. We have heard reports from recreational fishers that they are struggling to catch rock lobster with a 54 mm TW or larger. FNZ has previously acknowledged that non-commercial fishing sectors may be affected by differential MLS, stating, ***“the impacts of concessions may only be felt or exacerbated if overall abundance is low and the availability of legal sized lobsters for the recreational sector is limited.”***⁸ We have consistently raised these concerns in our submissions and highlight again that this has been an ongoing issue since the concessions were introduced (for 3 years) in the 1990s and never revoked as promised by decision makers at that time.
36. Recreational catch of rock lobster is decreasing. The 2022/23 National Panel Survey of recreational catch estimates a 60% reduction in numbers of rock lobster caught in CRA 3 since the 2017/18 survey.
37. The submitters do not support a 50% reduction to the rock lobster daily limit in CRA 3. The current recreational allowance of 12 t was based on the 2017/18 National Panel Survey estimate and is just 4% of the current TAC. A reduction to the daily limit would not contribute

⁸ Review of Rock Lobster Commercial Area Regulations – Initial Position Paper. 2011. Ministry of Fisheries. At [9]

significantly to the rebuild of the fishery when fishers are already inhibited by environmental conditions and declining abundance.

38. FNZ express concerns that as the fishery rebuilds recreational fishers will take an increasing number of crayfish, which will inhibit the rebuild process. Similar concerns are expressed by commercial interests. There is no acknowledgement that this is a public fishery of which the Minister is statutorily obliged to manage at a level that provides for the wellbeing of the current generation and the foreseeable needs of future generations. If recreational harvest increases over time then the Minister must review the TAC and the tonnage set aside to 'allow for' recreational interests. Given the regular reviews of the rock lobster stocks, this is not an onerous prospect.
39. In previous reviews such as CRA 2 (2018), the submitters have accepted the need for a reduction in the maximum daily bag limit for spiny rock lobster. However, in the past few weeks we have learnt more about the status of Region 1 and 2, and must acknowledge the views of Māori customary interests in Region 2. Māhia customary interests in particular have agreed they will only issue permits to harvest crayfish for tangi, for all other occasions they are encouraging the applicants to use their recreational bag limit to harvest what they need. If the daily bag limit for spiny rock lobster was to be reduced from 6 to 3, this would have a disproportionate impact on the social and cultural wellbeing of the Māhia locals. With this understanding, we reject the FNZ Option B.
40. Moreover, FNZ propose the recreational daily bag limit stays at 6 including packhorse crayfish, with spiny rock lobster reduced to a maximum of 3 per person. Packhorse crayfish are rarely caught in CRA 3. Commercial fishers report the capture of packhorse crayfish is rare, with no legal size fish in Region 2. In the entire CRA 3 area, the estimated recreational harvest in the 2017-18 fishing year was only 330 packhorse crayfish. This compares to over 36,000 spiny rock lobster.⁹ With this understanding, we reject the FNZ Option B.
- 41. We recommend the Minister rejects Option B to reduce to recreational daily limit by 50% to 3 maximum spiny rock lobster and insist that the Minister retains the current daily limit settings of 6.**

Revoke the differential minimum legal size

42. The differential MLS in CRA 3 was introduced in 1993 as part of a suite of management measures to reduce commercial take to address stock depletion. The concession and voluntary seasonal closure are the final remaining measures. Also included in the suite of measures introduced:
 - a. A 50% decrease in the TACC.
 - b. Closed season to all users during September, October and November.
 - c. Additional closures to commercial fishers from 1 December until 31 January and 1 May until 31 May.
 - d. Prohibition on removing female lobsters during June, July and August.

⁹ National Panel Survey 2017-18. Fisheries New Zealand. At [60]

43. The concession was included in this package so that the *effect of reduced commercial catches would be mitigated*.¹⁰ By permitting commercial fishers access to a larger size range of rock lobsters, **concession areas provide economic benefits to the commercial sector**¹¹ while ignoring the effects on the ecosystem and other users.
44. There is widespread understanding by fishers in CRA 3 and by FNZ that there is an agreement in Region 2 that fishers will not land concession fish. They have made this commitment so the fishery can thrive and there are larger fish available for harvest. However, local commercial fishers have expressed concerns that commercial fishers from outside Region 2 are now fishing in Region 2 and landing concession fish. This flies in the face of local conservation efforts, and is a concern given there are lots of concession size crayfish around Māhia.
45. It is not good enough that a tool that was introduced to prevent economic disaster from commercial overexploitation is now being used as a weapon against conservation efforts.
46. The 2022 CRA 1 High Court decision confirmed the Minister must ensure sustainability regardless of economic consequences.¹²
47. Landing concession fish results in a larger number of crayfish being caught per tonne of Annual Catch Entitlement (**ACE**), fishing down new recruits before they have a chance to grow, so reducing yield per recruit.
48. The Minister must consider the importance of age structure within the population. As seen in CRA 1 and 2, the loss of larger fish has resulted in the significant loss of kina predation and spread of kina barrens. Region 2 fishers report an increase in the prevalence of kina barrens.
49. The differential MLS for rock lobster is a clear unfair advantage that commercial fishers have on top of fishing power and ability to shift fishing effort to maintain catch rates. Anecdotal information from recreational fishers and the fishing clubs in CRA 3 that are represented within this submission have stated that they are having difficulties catching legal sized rock lobster [see 34].
50. There is no statutory requirement for the commercial sector to separately report the weight or number of landed concession rock lobster. There are indications that concession fish make up a significant component of the commercial catch.
51. **The Minister must insist** that there is comprehensive reporting on the numbers and weights of concession fish being landed into LFRs, and that this information is made publicly available in a machine-readable format.
52. In 2023, the submitters adopted a [National Rock Lobster Policy](#) that aims to increase the size and abundance of rock lobster in New Zealand and ensure the needs of customary and amateur fishers are met. [At 5.9 b]

¹⁰ At [22]

¹¹ At [7]

¹² Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]

- 53. The submitters insist the Minister removes the concession permitting commercial fishermen to land rock lobster with a 52 mm and 53 mm MLS TW and reinstates the MLS of 54 mm TW for all fishers. In doing so, the Minister must retain the closure to commercial fishing in Region 1, between 1 September and 15 January the following year.**

Input controls - commercial effort limit

54. Recreational cray fishers are limited in the amount of fishing effort able to be lawfully deployed – the use of a maximum of 3 pots per person. Commercial fishers have no effort limit – they may lawfully deploy as many pots as they wish. The effect of not limiting commercial effort was clearly displayed as a primary cause in the collapse of CRA 2.
55. In our view, the lack of effort limits reduces the effectiveness of catch limits. We accept that commercial fishers will now be restrained by the current state of the fishery. However, effort limits must be addressed to ensure that when the fishery does rebuild to an abundant state, an effective management regime is already in place.
56. In a declining fishery there is no defence against further depletion if there are no limits constraining commercial effort. Each vessel must be limited in the number of pots available to be lawfully deployed. If there is insufficient catch from this level of effort the option of increasing pot numbers is unavailable. The signal of depletion will become very clear.

CRA 1 Court decision

57. In November 2022 the High Court (Justice Churchman) released its decision regarding the challenge by the Environmental Law Initiative (ELI) in respect of Ministerial management decisions for Northland crayfish, CRA 1. ELI were successful. Four of the five grounds under review were established, the Court found that the Minister’s decisions were unlawful. The Minister was directed to reconsider and remake decisions for CRA 1. A subsequent review of CRA 1 was completed in early 2023.
58. The ruling by Churchman J is significant as it highlights ongoing deficiencies in the way our fish stocks are managed. In particular, the High Court described key principles for decision-making under the Fisheries Act, including (in part) –
- a. The purpose of the Act is broadly to create an environmental ‘bottom-line’ of sustainability, with the key lever in ensuring sustainability the setting of the TAC¹³ at [11];
 - b. The Minister is required to “take into account” the environmental principles (section 9) and the information principles (section 10);
 - c. Consistent with the application of the principles, there are two approaches to fisheries management identifiable at international law, an ‘ecosystem approach’ and ‘precautionary approach’.

¹³ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]. At [11]

59. The Minister has a clear obligation to take a precautionary approach given the paucity of information related to the crayfish population and dynamics in CRA 3.
60. The Court also clarified that the Minister must use best available information when making his decisions. The paucity of information elevates the need to use the ‘anecdotal’ evidence from people with commercial and non-commercial interests in the fishery and take that information into account.
61. Also important is the clarity provided by the High Court in regards to the TAC setting, described (in part) as follows –
- a. “When setting or varying [the] TAC the Minister must take into account any effects of fishing on the 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.**” At [22] [emphasis added]
62. We submit that current management of CRA 3 does not meet this statutory level.
63. The pending Ministerial decision for CRA 3 must take into account the matters described in [22] including the effects on the stock of harvesting concession size fish. We do not have access to data on concession fish landings, but earlier estimates suggest between 60 to 70 percent of landed commercial catch is concession fish. Based on plots of CRA 3 length frequency collected by MPI observers in 2013-14 we estimated in 2018 that about 47 percent of commercial catch (by number) was concession fish. It is a grave concern that our repeated requests to make reporting of concession fish mandatory have been ignored.
64. Since 2013 we have received no response from officials when asked for the following information –
- a. What percentage of fish below the MLS are landed, per stock?
 - b. Where and when fish below the MLS are being harvested, per stock?
 - c. What proportion of legal rock lobster catch is returned to the sea?
 - d. What is the trend in high grading over time in each rock lobster fishery?
- Management without this supporting information means there is no ability to cross-check the changes observed in CPUE. Validation of such important information enable more credible management. Without validation, the value of CPUE is limited.
65. While the current and cumulative effects of concession fishing will be difficult to quantify, this adds weight to the need for the Minister to make a precautionary decision in the interests of the CRA 3 fishery and to fulfil the statutory requirement on the Minister to manage fish populations to meet the foreseeable needs of future generations.
66. Given the High Court decision all future decisions must take into account the impacts of fishing on the target species and the associated and dependent species, and the environment which sustains all marine life in the area.