

Ian Steele  
President  
NZ Sport Fishing Council  
PO Box 54242, The  
Marina, Half Moon Bay,  
Auckland 2144  
[secretary@nzsportfishing.org.nz](mailto:secretary@nzsportfishing.org.nz)



Fisheries New Zealand  
[FMSubmissions@mpi.govt.nz](mailto:FMSubmissions@mpi.govt.nz)



29 July 2024

## Recommendations for Jack mackerel 7 (JMA 7), Pilchard 7 & 8 (PIL 7 & PIL 8), and Kingfish 7 & 8 (KIN 7 & KIN 8) for 2024/25

1. **The Minister acknowledges his statutory duty** to make precautionary decisions given the uncertain, unreliable, and inadequate information available regarding the abundance of JMA 7, KIN 7 & KIN 8, PIL 7 & 8 and associated species caught as non-target in the Jack mackerel fishery.
2. **The Minister acknowledges** that the FNZ proposals represent a risk to associated and dependent species, and low knowledge stocks in FMA 7, 8 and 9, because of the threat of increased trawl activity.
3. **The Minister prioritises the activation of onboard camera monitoring on all trawl vessels operating in New Zealand waters, regardless of vessel size.**
4. **The Minister makes a precautionary decision** for Jack mackerel 7 (JMA 7) by setting aside allowances for the first time and setting the Total Allowable Catch as follows –
  - a. The Total Allowable Catch is set at 32 872 tonnes (t).
  - b. Increase the allowance set aside for Māori customary interests from 0 t to 5 t.
  - c. Increase the allowance set aside for Recreational interests from 0 t to 10 t.
  - d. Increase the allowance set aside for Other Mortality from 0 t to 320 t.
  - e. Retain the current Total Allowable Commercial Catch of 32 537 t.
5. **The Minister makes a precautionary decision for Pilchard 7 (PIL 7)** based on the best available information and sets the Total Allowable Catch as follows –
  - a. The Total Allowable Catch is set at 76 tonnes (t).
  - b. Retain the allowance set aside for Māori customary interests at 5 t.
  - c. Retain the allowance set aside for Recreational interests at 10 t.
  - d. Increase the allowance set aside for Other Mortality from 0 t to 5 t.
  - e. Decrease the Total Allowable Commercial Catch from 150 t to 56 t.

6. **The Minister makes a precautionary decision for Pilchard 8 (PIL 8)** based on the best available information and sets the Total Allowable Catch as follows –
  - a. The Total Allowable Catch is set at 108 tonnes (t).
  - b. Retain the allowance set aside for Māori customary interests at 5 t.
  - c. Retain the allowance set aside for Recreational interests at 10 t.
  - d. Increase the allowance set aside for Other Mortality from 0 t to 8 t.
  - e. Increase the TACC from 65 t to 85 tonnes.
7. **The Minister** implements a land-all catch policy for all pilchards caught in the trawl fishery.
8. **The Minister** makes precautionary decisions for Kingfish 7 and Kingfish 8 (KIN 7 & KIN 8) and **maintains the status quo for the TACCs in both fish stocks.**

## Submitters

9. The New Zealand Sport Fishing Council (**NZSFC**) is a recognised national sports organisation with over 37,000 affiliated members from 48 clubs 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).
10. 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.
11. 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.
12. 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].
13. 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).

## Proposals

**Table 1.** Proposed management options (in tonnes) for JMA 7, KIN 7 & KIN 8, and PIL 7 & PIL 8 from 1 October 2024.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
JMA 7	Option 1 ( <i>Status quo</i> )	N/A	32,537 <sup>1</sup>	N/A	N/A	N/A
	Option 2	34,387	34,037 (↑1,500)	0	10	340
	Option 3	35,902	35,537 (↑3,000)	0	10	355
KIN 7	Option 1 ( <i>Status quo</i> )	98	44	6	40	8
	Option 2	105 (↑7)	50 (↑ 6)	6	40	9 (↑ 1)
	Option 3	109 (↑11)	54 (↑ 10)	6	40	9 (↑ 1)
KIN 8	Option 1 ( <i>Status quo</i> )	167	80	19	55	13
	Option 2	179 (↑12)	90 (↑ 10)	19	55	15 (↑ 2)
	Option 3	184 (↑17)	95 (↑ 15)	19	55	15 (↑ 2)
PIL 7	Option 1 ( <i>Status quo</i> )	165	150	5	10	0
	Option 2	99 (↓ 66)	80 (↓ 70)	5	10	4 (↑ 4)
PIL 8	Option 1 ( <i>Status quo</i> )	80	65	5	10	0
	Option 2	157 (↑77)	135 (↑ 70)	5	10	7 (↑ 7)

## Discussion

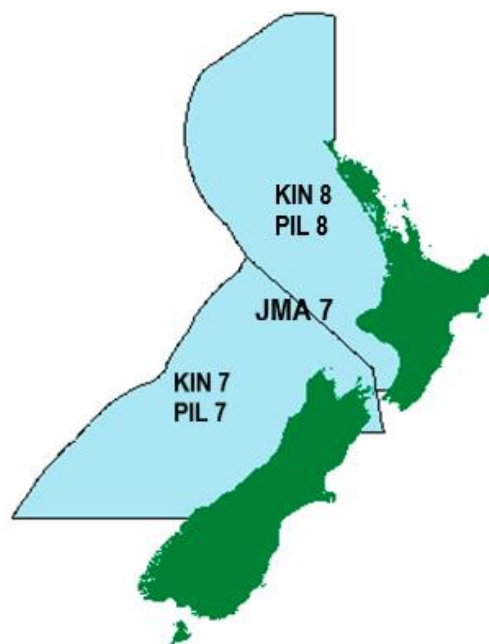
### Consultation

14. On 27 June 2024 Fisheries New Zealand (**FNZ**) released the [Discussion Paper No: 2024/22](#), to review the Total Allowable Catch for Jack mackerel 7 (**JMA 7**), Kingfish 7 and Kingfish 8 (**KIN 7 & KIN 8**) and Pilchard 7 and Pilchard 8 (**PIL 7 & PIL 8**). Submissions are due by 29 July 2024. The NZSFC released Preliminary Views for [Jack mackerel 7](#), [Kingfish 7 & 8](#) and [Pilchard 7 & 8](#) on 15 July requesting feedback prior to developing a submission.
15. **The submitters** appreciate the opportunity to submit on the proposal, however we object to the unreasonable timeframe available to respond to these proposals and those for 17 other fish stocks.
16. The 21 working days submission period is inadequate and likely unlawful given the Court of Appeal Wellington Airport judgment determining that, “**Consultation must allow sufficient time**, and a genuine effort must be made. It is a reality not a charade...Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses”<sup>1</sup>. [emphasis added]

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

## Fisheries New Zealand proposals

17. FNZ is proposing the Minister for Oceans and Fisheries (**the Minister**) sets the Total Allowable Catch (**TAC**) for Jack mackerel midwater trawl fishery on the west coast of New Zealand for the first time (**JMA 7**) (**Table 1**). The options proposed include significant increases in the Total Allowable Commercial Catch (**TACC**) of up to 3,000 tonnes, an allowance set aside for Recreational interests and an allowance set aside for Other Mortality equating to 10% of the TACC. FNZ are also proposing changes to catch limits for two bycatch species, kingfish (**KIN 7 & KIN 8**) and pilchard (**PIL 7 & PIL 8**) (**Figure 1**).



**Figure 1.** Fisheries Management Areas for pilchard, kingfish and Jack mackerel.

18. The Minister cannot meet his statutory obligation to **ensure sustainability** by complying with the current proposals. FNZ have simply failed to effectively outline how the proposed increases in Jack mackerel catch will impact associated species caught as non-target catch by the Jack mackerel midwater trawl fishery beyond the six bycatch QMS species mentioned by FNZ (frostfish, barracouta, blue mackerel, snapper, kingfish and pilchard).

19. The changes for pilchard (PIL 7 & PIL 8) have been proposed by FNZ to better align TACC settings with the past 20 years of catch settings. The overall combined PIL 7 and PIL 8 TAC settings are proposed to remain the same. Should the Minister decide to adopt the FNZ proposals, based on catch over the past 20 years, PIL 7 and PIL 8 will be overallocated, making these fish stocks, that do not have stock assessments, vulnerable to overfishing.

20. Commercial caught kingfish is almost all bycatch in fisheries targeting other species. The midwater trawl fleet on the west coast of New Zealand (JMA 7) targeting Jack mackerel catches the largest proportion of kingfish in the KIN 7 and KIN 8 fishery. The pelagic trawl fleet is responsible for 65% of the KIN 7 and KIN 8 catch (returned and retained). Between 2002 and 2019 observers on Jack mackerel vessels noted kingfish as being in the top 10 of bycatch fish species by weight<sup>2</sup>.

21. These proposals are the perfect example of where FNZ is once again failing to recognise the wider ecosystem in decision-making and doing the bare minimum to take an ecosystem-based fisheries management (**EBFM**) approach to managing inshore fish stocks.

## Effects of fishing

22. In JMA 7, Jack mackerel is the target species of the pelagic midwater trawl fishery. Nearly all

<sup>2</sup> Non-target fish and invertebrate catch and discards in New Zealand jack mackerel trawl fisheries from 2002-03 to 2018-19. Fisheries New Zealand. 2022. At [p.49].

of the pilchard catch and 65% of the kingfish catch (returned and retained) was caught by trawlers targeting Jack mackerel. The remaining proportion of kingfish catch is caught as bycatch by inshore trawlers. In separate proposals for snapper ([SNA 7](#) and [SNA 8](#)), FNZ is proposing increases in the TACC, which will contribute to greater non-targeted kingfish catch and trawl effects on the seafloor. Further, midwater trawls targeting Jack mackerel are sometimes fished on or near the seabed.

23. In November 2022 the High Court provided clarification on the Minister’s responsibilities in terms of setting the TAC. Churchman J. described those responsibilities (in part) as follows –
- a. “When setting or varying [the] TAC **the Minister must take into account any effects of fishing on 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. ‘Fishing’ means the catching, taking, or harvesting of fish, aquatic life, or seaweed.”<sup>3</sup> [emphasis added]
24. This judgment applies to all species in the Quota Management System (**QMS**) and their habitats, not just the fish stocks of value to commercial interests.
25. Despite the High Court judgment, FNZ does not describe how the proposed changes to the TACCs will impact on the aquatic environment, nor how they will address the direct or indirect effects of fishing. This is essential information if the Minister is to make a lawful decision for JMA 7, PIL 7, PIL 8, KIN 7 and KIN 8.

## Associated and dependent species and habitats

26. We recognise that FNZ is reviewing Jack mackerel, pilchard and kingfish together as they are caught primarily by the same midwater trawl fishery mainly targeting Jack mackerel in JMA 7. However, FNZ has glossed over the importance of baitfish (pilchard and Jack mackerel) within the food web and the impact that removing more of these small fish will have on other trophic levels. They have also stated the bare minimum when referring to the direct fishing effects on non-target species and habitats.
27. FNZ has stated in their proposal paper that Jack mackerel and pilchards are ‘likely’ to be important prey species<sup>4</sup>. There is no mention in the proposal of how predator species such as larger fish (gemfish, sharks), seabirds and marine mammals may be impacted by the ongoing bulk harvest of baitfish or how this might be monitored following a TACC increase. The only clear mention of risks to marine mammals and seabirds is in the context of vessel interactions.
28. Between 2002 and 2019, observers onboard JMA 7 trawlers reported 370 taxa (species, species groupings) including invertebrates, caught as non-target<sup>5</sup>. Nowhere in the proposal has FNZ mentioned how an increase in TACC will impact any of these species or how it will

---

<sup>3</sup> Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022]. At 22.

<sup>4</sup> Review of sustainability measures October 2024: JMA 7, KIN 7 & 8, PIL 7 & 8. Fisheries NZ. At [p. 52]

<sup>5</sup> Non-target fish and invertebrate catch and discards in New Zealand jack mackerel trawl fisheries from 2002-03 to 2018-19. Fisheries New Zealand. 2022. At [p.19].

be monitored. Simply proposing to increase the TACC for kingfish and snapper, two bycatch species is not enough.

29. The Minister has a statutory obligation to consider the status of, and the impacts on, all species that are associated with the JMA 7 fishery. Table 2 outlines vertebrate species caught as bycatch by Jack mackerel trawlers. These fish stocks overlap with the JMA 7 fish stock. Table 2 summarises the most recent stock status estimate, TACC for each fish stock and proportion of TACC caught in most recent complete fishing year.

**Table 2.** Partial list of associated and dependent species of the Jack mackerel JMA 7 fish stock. Stock status, total allowable commercial catch and proportion of TACC caught is listed as per reported by the Fisheries Assessment Plenary.

Species and fish stock	Stock status	TACC (2022-23)	% TACC caught (22-23)
Barracouta - BAR 7 West coast NZ	Unknown	11 173 t	14%
Blue mackerel – EMA 7 - West coast NZ	Likely to be at or above management target	3350 t	98%
Frostfish – FRO 7 West coast & top of South Island	No available information to estimate status	2110 t	54%
Frostfish – FRO 8 South west coast North Island	No available information to estimate status	900 t	72%
Frostfish – FRO 9 West coast North Island	No available information to estimate status	400 t	6%
Gemfish – SKI 7 West coast NZ	Unknown	1091 t <sup>6</sup>	99%
John dory – JDO 2 South west coast North Island	Unlikely to be at or above the target	270 t	33%
John dory – JDO 7 – West coast South Island	About as likely as not to be at or above target	230 t	69%
Kingfish – KIN 7 West coast South Island	Very likely to be at or above target	44 t	122%
Kingfish – KIN 8 West coast North Island	Very likely to be at or above target	80 t	87%
Pilchard – PIL 7 West coast South Island	Insufficient information to estimate status	150 t	48 %
Pilchard – PIL 8 West coast North Island	Insufficient information to estimate status	65 t	94%
Ray's bream – RBM 1 All of New Zealand	No available information to estimate status	980 t	44%
Redbait – RBT 7 West coast NZ	No available information to estimate status	400 t <sup>7</sup>	2%
Red cod – RCO 2 East Cape & south-west coast	About as likely as not to be at or above target	500 t	5%
Red cod – RCO 7 West coast South Island	Unknown	3126 t	2%

<sup>6</sup> Increased from 839 t in 2022.

<sup>7</sup> Reduced from 2841 t in 2022.

Spiny dogfish– SPD 7 West coast South Is.	Unknown	1902 t	30%
Spiny dogfish – SPD 8 West coast North Is.	Unknown	307 t	31%

30. **We reject FNZ’s statement** that “there are no sustainability concerns for any of the species that are taken as non-target catch in Jack mackerel target tows in JMA 7”<sup>8</sup>. Of the 18 non-target fish stocks listed in Table 2, the current status of 12 stocks is unknown. **Unknown does not default to sustainable.**
31. Frostfish and barracouta were reported among the highest proportion of bycatch between 2002-19. FNZ has stated in their proposal that an increase in Jack mackerel TACC may impact frostfish and barracouta however, without a stock assessment how will FNZ monitor the effects? Regarding the other species in Table 2, FNZ has failed to mention these.
32. Observed invertebrate non-target catch included sponges, sea cucumbers, arrow squid, sea pens and corals including black corals which are protected under [Schedule 7A of the Wildlife Act 1953](#). None of which have been mentioned in the FNZ proposal paper.
33. In a separate [proposal paper](#) for Fisheries Management Area 2 (**FMA 2**) fish stocks, FNZ is proposing options to decrease the TACC for John dory (JDO 2). John dory is bycatch of the Jack mackerel trawl fishery. How can FNZ expect fishers to reduce their catch of John dory whilst increasing the TACC for JMA 7?
34. The Minister ought to be concerned that these current proposals do not meet the minimum statutory standard nor do they provide sufficient information for him to make a precautionary, lawful decision.

## Onboard monitoring

35. In 2019, trawl vessels no more than 29 m in length operating along the west coast of the North Island (stat areas 040 to 046) were required to install onboard cameras to verify any interactions with Māui dolphins. In 2023 the requirements for on-board cameras was extended to trawl vessels up to 32 m.
36. The camera monitoring programme excludes Jack mackerel trawl vessels, as all these vessels are greater than 46 m in length. A fishery with such high volume of catch and diversity in bycatch must, by default, be a priority to have cameras installed. **We insist the Minister requires cameras to be activated on all trawl vessels regardless of size.**
37. We note with concern the [1 April 2024 MPI report](#) that highlights the change in fisher reporting for vessels operating cameras, compared with the period from 2018 until cameras were operating. That report notes 1) A 3.5 times increase in albatross interactions, 2) 6.8 times increase in dolphin captures, 3) 34% increase in the number of fish species reported in

<sup>8</sup> Review of sustainability measures October 2024: JMA 7, KIN 7 & 8, PIL 7 & 8. Fisheries NZ. At [p. 21]

catch, and 4) a 46% increase in the volume of fish discards.

38. FNZ state there has been a high level of observer coverage on Jack mackerel trawl vessels, with 60-80% of tows observed since 2012. However, in the most recently available [Annual Review Report](#) 2020-21, the observer coverage for Jack mackerel, blue mackerel and barracouta was just 33% of tows, despite having high observer days (95%). We cannot reconcile this discrepancy so FNZ will need to clarify this data prior to the Minister making his decisions for these important fish stocks.

## Environmental bottom line

39. The purpose and principles in sections 8, 9 and 10 of the [Fisheries Act 1996](#) form an environmental bottom line that will **ensure sustainability**. This bottom line applies to all species – none are exempt from the obligation to ensure sustainability. Bycatch species are not exempt and cannot be ignored or given secondary status. **Ensured** applies to all species.

40. The primary tool used to defend the bottom line is the setting of catch limits pursuant to s13 of the Act, determining the TAC for each stock.

41. The biomass that will provide the maximum sustainability yield ( $B_{MSY}$ ) of any species is only a starting point at determining the environmental bottom line. From this theoretical point the Act's principles must be applied to describe and take into account the uncertainty, information fullness and reliability, international obligations, and to adopt the precautionary principle, as described by Churchman J. of the High Court:

- a. "Accordingly, I accept Mr Salmon's submission that the importance of the requirement relating to the use of the 'best available information' in a fisheries context, is somewhat elevated. Indeed, 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"<sup>9</sup>. [emphasis added]

42. The single species focus has been ruled by the Court as insufficient. In considering the challenge to the Minister's 2021 and 2022 decisions for CRA 1, the Court described how the Minister applies the Fisheries Act 1996, saying "there are two approaches to fisheries management that are identifiable at international law, being an 'ecosystem approach' and a 'precautionary approach':

- a. The ecosystem approach requires decision-makers to incorporate wider ecosystem effects into fisheries management, instead of considering sustainability with a single-species focus; and
- b. The precautionary approach stipulates that decision-makers are more cautious where information is uncertain, unreliable or inadequate<sup>10</sup>.

43. Full application of the relevant factors is required to ensure the bottom line is at least achieved; the bottom line is not an aspiration, it is a bottom line not to be breached.

---

<sup>9</sup> Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]. At [108]

<sup>10</sup> At [16-17]



44. Each TAC option must include assessments of each of the relevant factors identified in Part 2 of the Fisheries Act, and describe how a Minister may take these into account; how to explicitly reflect each of the factors when making a determination. Without full advice from officials, the Minister will be unable to take the mandatory factors into account.
45. Considering the High Court judgment, it is insufficient for officials to gloss over these requirements with a light hand. Simply reviewing Jack mackerel 7, Pilchard 7, Pilchard 8, Kingfish 7 and Kingfish 8 simultaneously, and mentioning that an increase in TACC may impact the ecosystem role of a species, does not meet the statutory requirements. In fact, it could be viewed as a defiant dedication to the status quo, making as few concessions as may be lawful. It certainly doesn't engage in the spirit and detail directed by the High Court.
46. In order for the Minister to make a lawful decision, officials must provide the Minister with more complete information that takes into account all of the uncertainties, and the interactions with associated and dependent species. In the absence of this information the Minister is obliged to apply all of the Act's principles in setting a TAC to achieve a stock size well above the bottom line, to **ensure sustainability**.

## Jack mackerel 7 (JMA 7) proposals

**Table 3.** FNZ's proposed management options for JMA 7 from 1 October 2024, in tonnes.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
JMA 7	Option 1 ( <i>Status quo</i> )	N/A	32,537 <sup>1</sup>	N/A	N/A	N/A
	Option 2	34,387	34,037 (↑1,500)	0	10	340
	Option 3	35,902	35,537 (↑3,000)	0	10	355

47. Jack mackerel were introduced to the Quota Management System (**QMS**) in 1987. Allowances for Māori customary, Recreational, and allowance for Other Mortality have only been set for JMA 3.
48. Three species of Jack mackerel are caught in JMA 7, *Trachurus declivis*, *Trachurus novaezealandiae* and *Trachurus murphyi*. The stock status estimate for *T. declivis* is 'likely (>60%) to be at or above the target' and the estimate for *T. novaezealandiae* is 'very likely (>90%) to be at or above the target'. *T. murphyi* has historically been an important component of the North Island part of JMA 7, however catches have declined and there is no stock status estimate.
49. We support FNZ in their proposal to set a TAC for the first time, and set aside allowances for recreational interests and fishing related mortality. We recommend an allowance is also set aside for Māori customary interests.

50. Jack mackerel were introduced to the QMS in 1987 with the largest TACC, of 20,000 t, for any inshore fish stock. That increased each year to 32,000 t in 1989. Landings have exceeded the TACC five times since 2011.
51. While there are no publicly available plans to activate cameras on trawl vessels targeting Jack mackerel, and so few non-target species have a valid index of abundance or stock assessment, we support the Minister in making a precautionary decision for Jack mackerel 7, including activating cameras onboard to monitor non-target species catch levels.

## Sustainability concerns

52. The two Jack mackerel species caught in JMA 7 are monitored using observer data from the midwater trawl fleet to generate an index of abundance based on Catch Per Unit of Effort (CPUE). Determining the true species mix from bulk processed trawl catch is problematic, but the primary species taken is *T. declivis*. There is a sharp decline in the CPUE index for *T. declivis* in 2022, the last year assessed. The CPUE index for *T. novaezealandiae* CPUE increased prior to 2018 but has fluctuated without trend to 2022. Despite having proxy targets for the biomass that would produce maximum sustainable yield for these two species there is limited or no available information on many species that are caught as bycatch. It seems selective of FNZ to not acknowledge the impact on non-target species and the impact of these significant quantities of catch on associated and dependant species.
53. FNZ need to clearly explain how the effects of increased catches will be monitored and mitigated. It is stated in the proposal that there are measures currently implemented by vessel operators to minimise catch of kingfish and snapper and that these measures will continue<sup>11</sup>. However, catches of kingfish and snapper continue to be high and there is no information provided regarding mitigation methods for the catch of other species.
54. Forage fish hold a key trophic position in the ecosystem between planktons and large fish, marine mammals and seabirds. Forage fish are a known component in the diet of gemfish, kingfish, albatross species, Australasian gannet and humpback whales. It seems counterintuitive to be removing large quantities of Jack mackerel for low value exports when there are uncertain, high risks to species that are highly valued socially and culturally, by the commercial and non-commercial fishing sectors, environmental groups and tourism interests.
55. Scientists from FNZ have already [stated this year](#) that climate conditions on the east coast of New Zealand may have led to a decline in food availability for forage fish and therefore contributing to chronic malnutrition in larger fish. If turbulent climate conditions are having an impact on prey availability then we need to manage what we can and leave more fish in the water to maintain resilience in fish populations. Changes in climate and oceanographic conditions will only continue.

---

<sup>11</sup> Review of sustainability measures October 2024: JMA 7, KIN 7 & 8, PIL 7 & 8. Fisheries NZ. At [p. 3-4]

56. Our concern is that the current suite of proposals do not meet the statutory test of ‘ensuring sustainability’, as required by the Fisheries Act and as confirmed by the High Court. 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***<sup>12</sup>.
57. Midwater trawling is the primary fishing method used to target Jack mackerel. A higher TACC for JMA 7 will inevitably mean more bulk harvest fishing and potential increased contact with the seafloor and benthic habitats.

## Recommendations for JMA 7

58. The Minister has a statutory duty, not just a policy setting, a legal obligation, “*to maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations.*” as per s8 of the Fisheries Act 1996. On this basis, **we recommend** the TACC is retained at the current level and the TAC is increased to account for the current estimated recreational catch, an allowance set aside for Māori customary interests and an allowance of 10% of the TACC set aside for all other mortality caused by fishing.
59. **The submitters support** the Minister in making a precautionary decision for Jack mackerel 7 (JMA 7). Our alternative is Option 4, as follows –
- a. The Total Allowable Catch is set at 32 872 t.
  - b. The allowance set aside for Māori customary interests is set at 5 t.
  - c. The allowance set aside for Recreational interests is set at 10 t.
  - d. The allowance set aside for Other Mortality is set at 320 t.
  - e. The Total Allowable Commercial Catch is retained at 32 537 tonnes.
60. In trawl caught fisheries we support the Minister in setting the allowance set aside for Other Mortality based on 10% of the TACC.

---

<sup>12</sup> Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]. At [17 & 44]

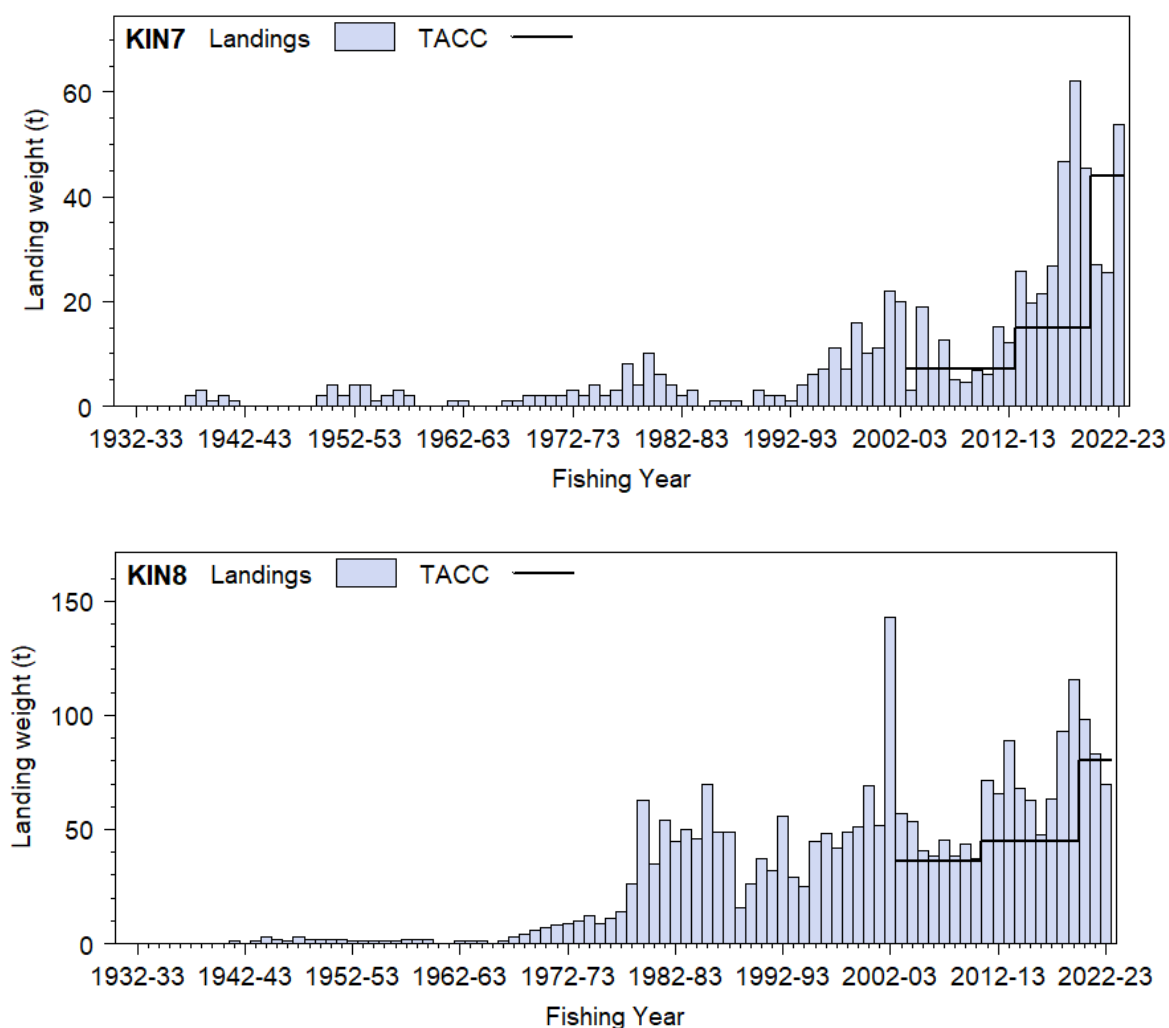
## Kingfish 7 & 8 proposals

**Table 4.** FNZ’s proposed management options for KIN 7 & KIN 8 from 1 October 2024, in tonnes.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
KIN 7	Option 1 ( <i>Status quo</i> )	98	44	6	40	8
	Option 2	105 (↑7)	50 (↑ 6)	6	40	9 (↑ 1)
	Option 3	109 (↑11)	54 (↑ 10)	6	40	9 (↑ 1)
KIN 8	Option 1 ( <i>Status quo</i> )	167	80	19	55	13
	Option 2	179 (↑12)	90 (↑ 10)	19	55	15 (↑ 2)
	Option 3	184 (↑17)	95 (↑ 15)	19	55	15 (↑ 2)

61. Kingfish were introduced to the Quota Management System (**QMS**) in 2003 to manage commercial catches to non-target levels only, in recognition of the value of kingfish to non-commercial fishers.
62. Kingfish is highly valued by non-commercial fishers for eating and as a challenging target species. They form a valuable component of the charter boat business with clients travelling from around New Zealand and the world. Kingfish caught in KIN 7 and KIN 8 are primarily caught as non-target in the Jack mackerel midwater trawl fishery. Small-scale inshore trawlers have also reported small amounts of kingfish catch.
63. KIN 7 and KIN 8 are managed as separate stocks, however, they are assessed together as one stock. The most recent estimate states KIN 7 and KIN 8 combined is ‘very likely (>90%) to be at or above the management target’. The future projection of the stock under the current settings is unknown.
64. FNZ is reviewing KIN 7 and KIN 8 in combination with JMA 7 as the proposal to increase the JMA 7 TACC will lead to greater catches of kingfish. There are additional proposals to increase snapper TACC along the west coast (SNA 7 and SNA 8), approval of these proposals will result in a similar outcome. FNZ have stated in their proposal document that due to growing abundance of kingfish, fishers are finding it more difficult to avoid kingfish catch and are incurring high deemed value invoices.
65. The TACC for KIN 7 and KIN 8 has been reviewed twice since their introduction to the QMS in 2003. The TACC in KIN 7 has been exceeded 12 out of 20 years and 19 out of 20 years for KIN 8 (**Figure 2**). It is clear that the TACC has not been an effective constraint on commercial harvest.
66. In 2020 when the TAC was reviewed for KIN 7 & KIN 8, the Minister at the time considered it was appropriate that **“commercial catch be managed at unavoidable non-target levels only”**. In 2022-23 the KIN 7 landings exceeded available TACC, this however, is likely due to

fishers exceeding Jack mackerel quota by 2,012 tonnes. This is also the only year the KIN 8 landings were below TACC settings which could indicate greater movement of kingfish or increased fishing by Jack mackerel fishers in KIN 7 compared to KIN 8.



**Figure 2.** Commercial landings and total allowable commercial catch for Kingfish 7 (top) and Kingfish 8 (bottom).

67. The abundance of kingfish in KIN 7 and KIN 8 is estimated to have increased significantly between 2012 and 2016. Partial stock assessments suggest that abundance is at a level which could provide greater utilisation opportunities<sup>13</sup>. However, this statement seems to suggest that kingfish could be more than a non-target fishery. We reject this and insist that the kingfish TACCs stay at a level which encourages fishers to both avoid kingfish catch and release live kingfish under section 72A of the Fisheries Act (the Act).

68. Under section 72A of the Act, commercial fishers are permitted to return live legal-size kingfish in accordance with the Fisheries (Landing and Discard Exceptions) Notice, only if the fish is likely to survive on return and the return takes place as soon as practicable. This excludes kingfish caught by set net. All commercially caught kingfish under the commercial minimum legal size (MLS) of 65 cm are required to be returned to sea, dead or alive.

<sup>13</sup> Review of sustainability measures for jack mackerel (JMA 7), kingfish (KIN 7 & 8), and pilchard (PIL 7 & 8) for 2024/25. Fisheries New Zealand. Discussion Paper. [At 24 & 25]

69. We recognise that high deemed value invoices may be having an economic impact on individual fishers and as abundance increases, an increase in kingfish catch may be unavoidable, particularly by fisheries utilising non-selective fishing methods. However, modest TACC are needed to retain the incentive to release kingfish that are likely to survive and to discourage targeting by commercial fishers, which was a major problem in KIN 1 and KIN 2 in the 1990s.

## Sustainability concerns

70. Although there is a partial stock assessment for KIN 7 and KIN 8 combined, the stock status is estimated using available Catch Per Unit of Effort (**CPUE**) information from Jack mackerel target trawl trips and does not cover the full range of kingfish habitat.

71. We acknowledge that it is widely accepted that kingfish abundance may be increasing, however, the partial stock assessment only provides a snapshot into the kingfish abundance.

72. FNZ have proposed additional increases in TACC for [Kingfish 3](#) (KIN 3) on the east coast and bottom of the South Island. The growing number of kingfish in southern regions is estimated to be overflow of fish from neighbouring stocks yet FNZ has failed to mention how more KIN 3 catch may then impact northern kingfish fish stocks.

73. The issue at hand is that kingfish is a bycatch species and many are not able to be returned to sea due to low survival rate because of fishing method utilised and the rollout of cameras on boats. There needs to be a transition to lower impact, selective fishing methods, enabling fishers to have a high chance of returning kingfish live.

74. We are concerned that FNZ are proposing a suite of TACC increases along the west coast of New Zealand and are failing to fully acknowledge and inform the Minister of the impacts of these potential TACC increases on the wider ecosystem. Increasing catch limits for fisheries that utilise bulk harvest, non-discriminative fishing methods will lead to more bycatch and greater effects on the environment.

## Recommendations for KIN 7 & KIN 8

75. **As the submitters do not support an increase in JMA 7 TACC**, we will not be supporting any change in TAC setting for KIN 7 and KIN 8.

76. **The Minister has a statutory duty**, not just a policy setting, a legal obligation, *“to maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..”* as per s8 of the Fisheries Act 1996. On this basis we recommend the TAC is retained and all current catch settings for KIN 7 and KIN 8 remain at status quo.

77. **The submitters support the Minister in making precautionary decisions** for Kingfish 7 (KIN 7) and Kingfish 8 (KIN 8). We recommend Option 1, ‘status quo’ for KIN 7 and KIN 8.

## Pilchard 7 & 8 proposals

**Table 4.** FNZ’s proposed management options for PIL 7 & PIL 8 from 1 October 2024, in tonnes.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
PIL 7	Option 1 ( <i>Status quo</i> )	165	150	5	10	0
	Option 2	99 (↓ 66)	80 (↓ 70)	5	10	4 (↑ 4)
PIL 8	Option 1 ( <i>Status quo</i> )	80	65	5	10	0
	Option 2	157 (↑ 77)	135 (↑ 70)	5	10	7 (↑ 7)

78. When pilchard were introduced to the QMS in 2002 the TACCs were set based in the predicted pilchard distribution, not catch history. FNZ is now proposing changes to the PIL 7 and PIL 8 TACCs to better reflect the past 20 years of catch. FNZ is also proposing to increase the allowance set aside for Other Mortality.

79. The current state of the pilchard fish stock along the west coast of New Zealand is unknown and it is not known whether overfishing is occurring<sup>14</sup>. There is no target pilchard fishery in PIL 7 and PIL 8. The Jack mackerel (JMA 7) midwater trawl fishery lands the majority (99%) of pilchard as non-target catch<sup>15</sup>.

80. The combined TACC for PIL 7 and PIL 8 is 215 tonnes. Commercial catch of pilchards has fluctuated since 2002, however, landings have only exceeded the combined TACC twice, once in 2002-03 by 3 t, and in 2017-18 by 180 t. Excessive catches in the 2017-18 fishing year correlate with a marine heatwave and high Jack mackerel catches which exceeded the JMA 7 TACC.

81. We acknowledge that a review of the TACC is necessary to align with the best available information and support FNZ’s proposal to set aside an allowance for Other Mortality. However, PIL 7 and PIL 8 catch settings have not been reviewed since their introduction to the QMS in 2002. Pilchard abundance is highly variable and fluctuations in population size are generally considered to be environmentally driven and exacerbated by fishing intensity<sup>16</sup>.

## Sustainability concerns

82. Forage fish such as pilchards, hold a key trophic position in the ecosystem between planktons and large fish, marine mammals and seabirds. Forage fish are a known component in the diet of Māui dolphin, pelagic fish, seabirds and humpback whales. Humpback whales

<sup>14</sup> Fisheries Assessment Plenary – Volume 2: Horse mussel to Red crab. May 2024. Fisheries New Zealand. At [p.1209]

<sup>15</sup> At [p.1204]

<sup>16</sup> Pilchard (*Sardinops neopilchardus*) biology and fisheries in New Zealand, and a review of pilchard (*Sardinops*, *Sardina*) biology, fisheries, and research in the main world fisheries. L.J. Paul, P.R. Taylor, D.M. Parkinson. Ministry of Fisheries. 2001

are known to migrate through Cook Strait around the entirety of New Zealand's coastline overlapping the distribution of pilchards<sup>17</sup>. Despite having high ecological value pilchard stocks in New Zealand are data deficient and the effect of fishing pressure is unknown.

83. Climate and oceanographic conditions will continue to fluctuate over the coming years. FNZ has already stated that past climate conditions have affected prey availability along the east coast of the North Island which has driven symptoms of chronic malnutrition in valuable species such as snapper. We cannot control how marine ecosystems react to rising sea surface temperatures and changes in productivity, however, the Minister and FNZ have a responsibility to manage fisher behaviour. Removing fewer fish through extraction leaves more fish in the water providing stronger resilience against environmental perturbations.

## Recommendations for PIL 7 & 8

84. The Minister has a statutory duty, not just a policy setting, a legal obligation, "*to maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..*" as per s8 of the Fisheries Act 1996. **On this basis we recommend** the TACC for PIL 7 and PIL 8 is reset to reflect landings for the past 5 years, the TAC is increased to account for an allowance of 10% of the TACC set aside for all other mortality caused by fishing.

85. **The Ministers makes a precautionary decision for Pilchard 7 (PIL 7)** based on the best available information and sets the Total Allowable Catch as follows –

- a. The Total Allowable Catch is set at 75 tonnes (t).
- b. Retain the allowance set aside for Māori customary interests at 5 t.
- c. Retain the allowance set aside for Recreational interests at 10 t.
- d. Increase the allowance set aside for Other Mortality from 0 t to 5 t.
- e. Decrease the Total Allowable Commercial Catch from 150 t to 56 t.

86. **The Ministers makes a precautionary decision for Pilchard 8 (PIL 8)** based on the best available information and sets the Total Allowable Catch as follows –

- a. The Total Allowable Catch is set at 108 tonnes (t).
- b. Retain the allowance set aside for Māori customary interests at 5 t.
- c. Retain the allowance set aside for Recreational interests at 10 t.
- d. Increase the allowance set aside for Other Mortality from 0 t to 8 tonnes.
- e. Increase the TACC from 65 t to 85 tonnes.

87. **We do not agree that the proposed 5% of the TACC for Other Mortality is appropriate for trawl vessels.** In trawl caught fisheries we support the Minister setting the allowance set aside for Other Mortality based on 10% of the TACC.

88. Further, we recommend the Minister implements a land-all catch policy for all pilchards caught in the trawl fishery.

---

<sup>17</sup> Pilchard (*Sardinops neopilchardus*) biology and fisheries in New Zealand, and a review of pilchard (*Sardinops, Sardina*) biology, fisheries, and research in the main world fisheries. L.J. Paul, P.R. Taylor, D.M. Parkinson. Ministry of Fisheries. 2001