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Review of Sustainability Measures and Other Management Controls for Blue Cod 5

This submission is made on behalf of the New Zealand Sport Fishing Council's member clubs and supporters.

This submission is also made in the interests of assisting the Minister of Fisheries (the Minister) and Ministry of Fisheries (MFish) to achieve abundant fisheries that will enable all New Zealanders to provide for their social, economic and cultural well-being.

The joint submitters appreciate the opportunity to comment on the review of sustainability measures and other management controls for Blue Cod 5 (BCO 5). The Initial Position Paper (IPP) was released for consultation on 30 June, with submissions due by 29 July 2011.

Blue Cod are Taonga [treasure]

Blue Cod (BCO) have a right to exist and flourish in the cold, clear waters of BCO 5, in the Southland/Sub-Antarctic area. The commercial value of BCO is increasing, the non-commercial catch is highly prized and is the main target species providing cultural, social, and economic wellbeing to the people of area, and their visitors.

A Total Allowable Catch (TAC) is being proposed for the first time, and within the TAC allowances will be made for non-commercial interests, both customary and recreational, and the Total Allowable Commercial Catch (TACC) will be set. These must be made as prescribed by the Fisheries Act 1996, and based on real world information. We are concerned at the poor quality of the Initial Position Paper (IPP) and the unprincipled approach being proposed to manage our Taonga [treasure], our Blue Cod.

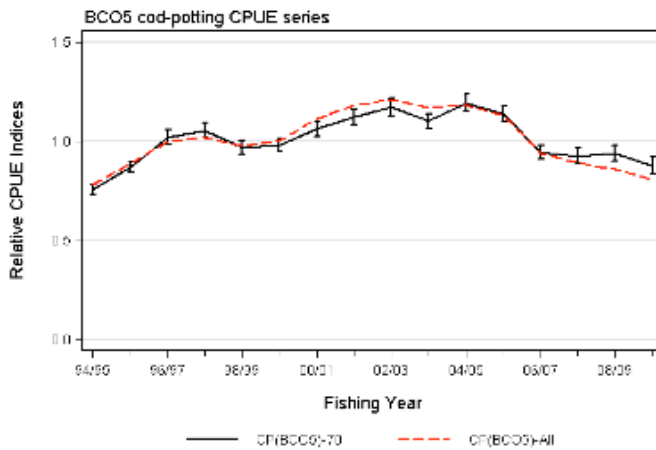
Submission:

- That the TAC be set at 1469 tonnes
- That the TACC be set at 1190 tonnes (original setting made in 1986)
- That customary allowance be 30 tonnes
- That recreational allowance be 229 tonnes (point estimate from 1999 survey)
- The allowance for other mortality be 20 tonnes
- That a monitoring programme be established that samples catch and effort with a purpose of representing relative abundance over time.

Background

1. The IPP reports consensus amongst all stakeholders that the stock is declining in abundance and age, and catch limits need review – 90% of ITQ shareholders favour a 20% reduction in the Total Allowable Commercial Catch (TACC).
2. BCO 5 is the largest Blue Cod fishery by a large margin, and the only spatial description of depletion identifies a small area in western Foveaux Strait as being relatively depleted.
3. BCO are vulnerable to localised depletion, and there is no way of knowing how representative the Catch Per Unit of Effort (CPUE) data is of the wider Fisheries Management Area (FMA). It seems the intense fishing of Foveaux Strait might contribute most of the CPUE data, and not reflect the stock condition across the wider FMA.
4. The stock status of BCO 5 is unknown, and catch decisions will be made by examining CPUE records, which the Working Group accepts indicates a decline in abundance.

Catch Per Unit of Effort (CPUE)



Commercial catch

5. BCO 5 is the largest commercial Blue Cod fishery in New Zealand. Most of the 1200 t annual catch is taken by target cod potting in Foveaux Strait and around Stewart Island.

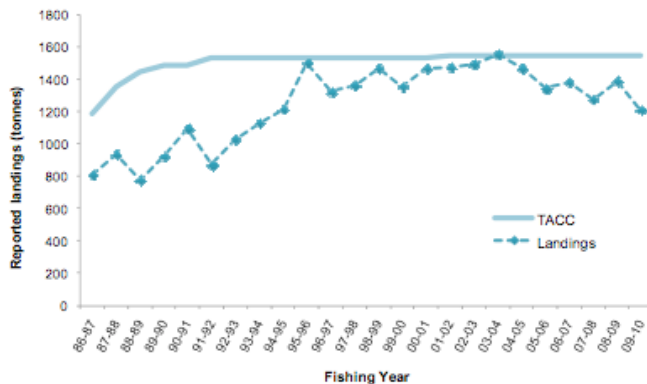


Figure 3: BCO 5 reported commercial landings and the TACC from 1986-87 to 2009-10.

6. Commercial catches have declined over the last 6 years, reflecting the trend in CPUE.

Recreational catch

Year	Estimated Number caught	Coefficient of Variation ⁴ (%)	Estimated harvest range (t)	Point estimate (t)
1991-92	188 000	22	150-230	N/A
1996	171 000	12	120-155	139
1999-00	326 000	28	165-293	229

Table 2: Recreational catch estimates for BCO 5

7. The recreational catch estimates are known to contain flaws and are offered with the warning they should only be used with careful consideration of the uncertainties embodied in each estimate.
8. There is no analysis of catch per fisher per trip, which would inform a discussion on what daily bag limit would constrain or reduce recreational catch. A recent survey by NIWA collected some recreational catch information from private fishers and charter boat operators, but the analysis on individual catch was not presented. It has been requested by the Marine Amateur Fisheries Working Group.

Setting the Total Allowable Catch

Target biomass

9. Using the Ministry's interpretation of s13(2)(c) of the Fisheries Act, the Minister will make a policy choice when selecting a target spawning stock biomass (SSB). This target is decided not by sustainability constraints alone, but with the prospect of promoting the Purpose of the Fisheries Act by choosing a SSB that best enables the economic social, and cultural well-being of New Zealanders.
10. This IPP is notable insofar as the Ministry remains silent on spawning stock biomass targets for BCO 5.
11. If the objective of this review is to meet a statutory duty - to promote the Purpose of the Fisheries Act by better enabling people to provide for their economic, social, and cultural well-being - then there needs to be a statement of objective.
12. One clear result of ignoring the spawning stock biomass and other stock parameters is that the TAC is not set *prior* to the allowances and TACC, but is a *consequence* of them. Section 21 of the Fisheries Act is explicit, when making allowances and setting the TACC "*the Minister shall have regard to the total allowable catch for that stock*". It is not possible to have regard to the TAC when it hasn't been fixed. The intention of the Fisheries Act is not for the TAC to have regard to the TACC and allowances.
13. We have previously recommended that an improvement would be to separate the TAC setting process from the TACC setting process, with the intention of better complying with the Fisheries Act and securing better risk/reward decisions and value propositions.
14. The IPP contains no stock size description or target, no sustainability risk profile, no harvest strategy, no monitoring programme, no principles or any other sustainability context for the review.

15. The BCO 5 biomass must provide an opportunity for the public to take a reasonable daily bag limit without compromising sustainability. A suitable stock target with an associated monitoring regime is an absolute prerequisite to any meaningful review.
16. Cultural, social and economic well-being of the public is enabled by providing for abundance when setting TACs. It is a statutory duty and the main mechanism whereby the Minister allows for recreational fishing interests and must be consciously imported into the TAC decision as a key relevant factor.
17. The IPP treats the TAC as an irrelevant consequence of a process that is simply driven by utilisation options; none of the options carries a sustainability caveat.

Making allowances and setting the Total Allowable Commercial Catch

Allowing for recreational interests

18. When setting a TACC under sections 20 and 21 of the Fisheries Act 1996 the Minister must allow for recreational interests. The Supreme Court decision contains a section titled: The correct approach to applying s21.

SC [53] It follows that the total allowable commercial catch is ultimately determined by a calculation.

We describe this as -

$$\text{TACC} = \text{TAC} - (\text{CA} + \text{RA} + \text{OM})$$

Where CA = Customary allowance; RA = Recreational allowance OM= Other mortality

19. The Supreme Court continued -

SC [59] In s 8 Parliament has stipulated the overall purpose and objects of the Act. The scope of the Minister's powers under ss 20 and 21 has limits, set by that purpose, in that they must be exercised to promote the policy and objects of the Act.

20. The Purpose of the Act must be promoted.

21. What comprises Customary and Recreational interests is not defined in the Act, however the Supreme Court had this to say:

SC [54] The notion of people providing for their wellbeing, and in particular their social wellbeing, is an important element of recreational interests¹.

SC [59] The terms of the definition of utilisation, including the wellbeing concept, are contextually relevant to what is meant by recreational interests¹⁰ and in that sense are relevant considerations in decisions under s 21.

It follows that providing for the cultural and social wellbeing of the public are key relevant factors when the Minister determines allowances.

22. How this 'important element' of 'people providing for their wellbeing' is to be 'allowed for' was subsequently refined, if a little clumsily;

¹ by having a right to, a claim upon, or a share in something. Oxford Shorter Dictionary p.1026

SC [56] Although what the Minister allows for is an estimate of what recreational Interests will catch, it is an estimate of a catch which the Minister is able to control. The Minister is, for example, able to impose bag and fish length limits. **The allowance accordingly represents what the Minister considers recreational interests should be able to catch but also all that they will be able to catch.** The Act envisages that the relevant powers will be exercised as necessary to achieve that goal. The allowance is an estimate and an allocation of part of the total allowable catch in that way. (emphasis added)

23. It follows that the recreational allowance will be a quantity of Blue Cod that *should* be able to be caught, a quantity sufficient to enable people to provide for their social wellbeing and will lie between two bounds;
 - (a) *All* that the recreational fishers will be able to catch (in effect this expression "will" represents a minimum, as allowing anything less than what will be taken would imperil the sustainability objectives) and
 - (b) An allowance which recreational fishers should be able to catch. The use of the verb "should" by the Supreme Court contemplates the Minister forming a normative opinion about what ought to be and reflects a value judgment by the Minister, which enables the fulfillment of the statutory utilisation purpose i.e. of enabling people to provide for their social economic and cultural wellbeing. At the maxima, what "should" be taken by non-commercial interests could amount to a wholly non-commercial fish, recognising that the TACC may be set to zero: section 21 (3).
24. It is not reasonable to make an allowance in a depleted fishery for what may be caught, when such an allowance fails to enable people's social well-being. The allowance to be made for recreational interests at s21 refers to *future* catches that *should* be caught, not past catches, nor catches chosen by convenience for use in a numerical model.
25. The key relevant factor is to make an allowance for a quantity of Blue Cod that enables people's social well-being, and then manage the stock so it should get caught. It is not necessary that this allowance is fully caught in the year following the gazetting; in fact it is not necessary that any non-commercial allowance or TACC allocation is fully caught.
26. As directed by the Courts, the total allowable catch (TAC) must be fully allocated, but the TAC does not necessarily need to be fully caught. Recreational aspirations are met by maintaining abundance, and the Minister provides for recreational interests by setting a TAC that provides an appropriate abundance of mature fish.
27. The majority of TACCs are not fully caught; many are less than half caught. There does not appear to be a reasonable expectation that non-commercial fishers should have an allowance made on a use-it or lose-it basis. Such a concept has never been anticipated in the Fisheries Act, yet is evident in the Ministry's proposals.
28. It is not anticipated that BCO 5 will be reviewed again for several years and allowances need to be sufficient to keep catches within the TAC. The Customary allowances of 5 tonnes reflects this principle, as when caught it is expected to satisfy customary demand. There is no concern expressed by MFish that this allowance will not be immediately caught.
29. The correct principle to be applied to the recreational allowance is that used with the customary allowance - the Minister sets aside an allowance in anticipation of what future catches *should* be caught to satisfy the interests, and also what might be caught given stock abundance, availability and regulations.

30. The current recreational allowance is the current best estimate of recreational catch – 239t. No new harvest estimates are being derived from REC 2009/03. Some rough estimates of what survey participants caught on the good weather days that were surveyed but there is no way of scaling this up for part or all of BCO 5. There will be new harvest estimates available in 2013
31. There is no consideration given to the frequency of BCO in the 30 mixed species bag limit, or the observed daily landing per fisher. This data will be provided by NIWA in the revised report on REC2009/03 but it was not presented to the Working Group. Are there new or unseen assumptions being imported into the IPP?
32. The overarching relevant factor to consider is that any allowance decisions made in s21 must promote the Purpose of the Act (s 8), and are made using the best available information, and conform to the Principles in Part 2 of the Act.
33. A further critical gap in the IPP is silence on complying with s12(1)(b), which places an obligation on the Crown to meet the principles of the Treaty of Waitangi, in a deliberate way. The IPP is silent on s12 obligations and continues as if they are not applicable.

Setting the Daily Bag Limit

34. The daily bag limit for public fishing serves two purposes. The first is to limit catches by an individual to non-commercial quantities, in the interests of ease of compliance. The second is to ensure that public catch opportunities are available to all.
35. The Blue Cod daily bag limit currently sits, as with many species, as part of a maximum daily limit of mixed species; for BCO 5 this is 30 fish. The IPP suggests two options for setting a reduced daily limit of Blue Cod, to 20 and 10 per day. (note error in table 3 of IPP)
36. There is no data to suggest that amateurs are using their maximum daily limit as a means of commercial fishing, or that a few ‘greedy’ amateurs are taking the stock and depriving their neighbours of fishing opportunity.
37. Fishing opportunities can be very limited in Fouveaux Strait and around Stewart Island. Most trailer boat fishers can only launch and fish if wind and sea conditions permit. NIWA extended their survey (REC2009/03) by two months to find 32 days which were fishable. MFish need to acknowledge that a higher bag limit may be needed to provide for social economic and cultural well-being in locations that are more challenging to fish. BCO 5 is not the Marlborough Sounds.
38. There is no need to link a particular TAC and TACC option with only one bag limit option. Surely, what is considered an adequate and reasonable bag limit can be discussed on its merits. Rather than insisting that fishers agree to 66% reduction in amateur bag limit as the only way to see the TACC constrained below current catch. The Working Group is of the view that current catch has resulted in declining CPUE.
39. There is no valid case made for any reduction in daily bag limits or the overall recreational allowance.

Setting the Total Allowable Commercial Catch

40. Options 1 and 2 contain a TACC higher than recent catch. Option 3 alone offers a chance of reducing commercial catch.

41. The commercial catch increased about 400 t a year (40%) in the early 1990s and stayed between 1300 and 1400 t for 10 years. Since 2004 the TACC has been increasingly under-caught. The commercial fishery for BCO 5 is not constrained by quota and yet catches show a decline.
42. An explicit statement is required as to the intention for commercial catch with respect to current catch levels. At what catch level does the Ministry consider catches to be sustainable? Or what CPUE represents a target?

Gifting reduced public catch to ITQ shareholders

43. This year has seen the Ministry, for the first time, freely offer ITQ shareholders perpetual catch rights previously held by the public. This is made without comment.
44. The Supreme Court determined that the Minister make all of a TAC available to be caught. The Ministry appears to apply a catch it or lose it approach to recreational allowances. For example, if the current recreational allowance of 189t in BCO 5 is considered to be not fully caught then the uncaught portion will transfer to the TACC.
45. In this context it is essential that recreational allowance imports the full meaning from the Supreme Court insofar as the quality and availability of fish to meet the reasonable needs of the public is provided for by both the TAC and TACC decisions

Management options

Option	TAC	TACC	Customary allowance	Other mortality	Recreational allowance	Daily bag limit
Current		1548.471				30
1	1809.471	1548.471	2	20	239	30
2	1452	1239	2	20	191	20
3	1273	1084	2	20	167	10
4	1469	1190	30	20	229	30

46. Option 1 represents the status quo.
47. Option 2 reduces the TACC by 20%, to just above current catches. The amateur daily bag limit is reduced by 33%, and the consequential estimated recreational catch reduction of 48 tonnes is transferred to ITQ shareholders.
48. Option 3 is the only option that reduces commercial catch below current removals. It represents a 30% reduction in TACC and a possible small reduction in catch (commercial catch was 1210 t in 2009-10 a 20 t or 1.7% reduction). The daily bag limit for recreational catch is reduced 66%, and the consequential estimated recreational catch reduction of 72 tonnes is transferred to ITQ shareholders. (note the MFish error in table)
49. In the interests of resetting this fishery to a position from which utilisation opportunities may be reallocated we offer option 4. This should be the base case from which a monitoring programme is set to inform a future review.

50. Option 4 sets the TACC at the original level (prior to QAA² increases), increases the customary allowance to reflect what will provide for future use, sets the recreational allowance at the point estimate (best information), and leaves estimates of other mortality at 20t. All these utilisation provisions have regard for a TAC of 1469 tonnes.

Lack of Stock Target

51. Management intervention is proposed with no stated purpose. It appears this review responds to general observations and opinions by local users that BCO 5 has been fished down below an acceptable level. There is no attempt made to define or describe an acceptable or targeted level of abundance.
52. On the broadest possible scale a management target, a monitoring system and tools for intervention combine to enable fisheries management. The failure of the Ministry to include in the IPP matters beyond the simple transfer of catch from public to private users reflects the low quality of the IPP and throws up the question as to why it was included this year.
53. The failure to set stock targets leaves the TAC to be decided by the TACC and allowance decisions; the TAC becomes a consequence of catch rather than the primary sustainability measure intended in the Fisheries Act to constrain catch, and provide abundance and quality for all fishers.
54. If the stock cannot be managed on the basis of stock estimates giving absolute abundance estimates, then it must be managed by measuring relative abundance. This is possible by maintaining a time series of catch and effort data gathered for this purpose.
55. There is no reference to unfished, or any other biomass data, no catch sampling of either commercial or public landings, no management targets, no monitoring to achieve targets, no value estimates; just a general comment that the declining CPUE probably reflects decreasing abundance.
56. The IPP, without being explicit, has the single objective of reducing public allowances and transferring this public fishing allowance to ITQ shareholders on the BCO 5 stock, free of charge and in perpetuity.
57. There is no reference to Fisheries 2030, the Harvest Strategy Standard, or the direction of the Supreme Court. The IPP fails to make a case for any review or change.

Gifting reduced public catch to ITQ shareholders

58. This year has seen the Ministry, for the first time, freely offer ITQ shareholders catch rights previously held by the public. This is made without comment.
59. The Supreme Court determined that the Minister make all of a TAC available to be caught. The Ministry appears to apply a catch it or lose it approach to the recreational allowance. For example, if the current allowance for BCO5 of 239t is considered not fully caught then the uncaught portion will transfer to the TACC. In this context it is essential that recreational allowance imports the full meaning from the Supreme Court insofar as the quality and availability of fish to meet the reasonable needs of the public is provided for by both the TAC and TACC decisions.
60. To introduce a revised recreational harvest estimate based on reduced daily bag limits, without importing the recreational qualitative factors into their allowance, is not only poor process but unlikely to withstand a review. The Minister's discretionary powers are not to be exercised on a whim.

² Quota Appeal Authority.

The NZ Sport Fishing Council appreciates the opportunity to submit on the review of sustainability measures and other management controls for Blue Cod 5. We look forward to MFish addressing our concerns. We would like to be kept informed of future developments.

Yours faithfully,

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