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## **NZ Sport Fishing Council submission on the review of sustainability measures for southern scallops (SCA 7) for 1 April 2014**

### **Recommendations**

- The southern scallop fishery (SCA 7) is rebuilt within a reasonable timeframe to restore abundance and diversity in the marine ecosystem.
- That a rebuilding plan be implemented to achieve the necessary rebuild and better achieve the purpose of the Fisheries Act 1996, including:

The Minister agrees to reduce the Total Allowable Catch (TAC), Total Allowable Commercial Catch (TACC) and allowances for SCA 7 as follows –

- Set the TAC at 64 tonnes
  - Make an allowance for Maori customary non-commercial fishing interests of 30 tonnes
  - Make an allowance for recreational interests of 30 tonnes, maintaining current controls
  - Make an allowance for fishing related mortality of 4 tonnes
  - Set a TACC of zero in Golden Bay, Tasman Bay and the Marlborough Sounds.
- Any scallops within the Marlborough Sounds above the non-commercial yield are required to remain in the water to support the marine ecosystem and contribute to the rebuild.
  - Current closures to commercial dredging within the Marlborough Sounds are retained.
  - When the fishery has rebuilt the Minister consult with tangata whenua and the local community prior to reopening one or more of the commercially closed areas of Golden Bay, Tasman Bay and the Marlborough Sounds.

### **NZ Sport Fishing Council - LEGASEA**

1. The New Zealand Sport Fishing Council and our outreach LegaSea (the submitters) appreciate the opportunity to submit on the review of sustainability measures for southern scallops (SCA 7). The Ministry for Primary Industries (MPI) released their Discussion Paper on 27 January 2014 with submissions due by 21 February. Any changes will apply from 1 April 2014.
2. The submitters object to the Ministry's tight consultation timetable, initially giving only 18 working days to respond to the complex sustainability measures for SCA 7 and selected crayfish stocks. It is even more offensive for Ministry to advise on February 20<sup>th</sup> that the 21<sup>st</sup> February deadline has been

extended by six working days, because they are consulting on another option. This is unacceptable consultation and, in our opinion most likely unlawful, as judged by the Court of Appeal<sup>1</sup>.

3. It is unreasonable to expect non-commercial interests to respond with adequate information to inform the Minister's decision in the time allowed, as required by ss 12 and 13 of the Fisheries Act.
4. NZSFC 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 Roz Nelson, [secretary@nzsportfishing.org.nz](mailto:secretary@nzsportfishing.org.nz).
5. The NZ Sport Fishing Council is a national sports organisation with over 32,000 affiliated members from 55 clubs nationwide.
6. The New Zealand Sport Fishing Council has initiated LegaSea to generate widespread support for the ongoing effort to protect and enhance the public's access to abundant fisheries in a healthy marine environment. Also, to broaden NZSFC involvement in marine management advocacy, research, education and working together on behalf of our members and LegaSea supporters. [www.legasea.co.nz](http://www.legasea.co.nz)
7. We 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]

### **Scallop 7 fishery (SCA 7)**

1. Scallop abundance is naturally highly variable between and within seasons. Scallops in SCA 7 are at the lowest levels since surveys began in 1998. SCA 7 extends east from Cape Farewell to the Tory Channel and includes Golden Bay, Tasman Bay and the Marlborough Sounds.
2. Low abundance in Golden and Tasman Bays has led to a recent voluntary commercial closure in these areas. Commercial effort is now focused within the Marlborough Sounds. This has led to increased conflict with recreational interests.
3. SCA7 has been managed on an enhanced and rotational basis since the 1990s, by the Challenger Scallop Enhancement Company (CSEC), owned by SCA7 quota owners. The last fishing season was the first where the CSEC and recreational fishers could not agree on a closure strategy for the Marlborough Sounds.
4. Average commercial landings have been less than 50 tonnes (t) over the past few years. MPI's proposed Total Allowable Commercial Catch (TACC) in option 2 reflects average survey biomass of the Marlborough Sounds over the past five years, with a 20% exploitation rate applied. MPI's latest, proposed option 3 TACC of 416t is justified on the basis of "*having regard to socio-economic factors*".
5. Commercial controls include a 90mm Minimum Legal Size (MLS), a maximum dredge size and number, number of days fished, daylight fishing only and a season from 15 July to 14 February.
6. Scallops are highly valued by recreational interests and a taonga [treasure] for customary interests. Scallops are harvested by dredging or diving. The recreational MLS is 90mm. The daily bag limit is 50 per person.
7. SCA 7 is managed under ss 310 and 14 of the Fisheries Act 1996.
  - Section 310 enables the Minister to implement an enhancement programme developed by stakeholders, and after consultation with other interests and the Minister.

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<sup>1</sup> International Airport Ltd and Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671).

- Section 310(4) says, in part, “...or where, in the opinion of the Minister, the enhancement programme, once implemented, fails to enhance the fishery, the Minister may cancel the enhancement programme, in whole or in part, and, upon cancellation in whole, the Minister may recommend the removal of the stock from Schedule 3 in accordance with section 14”.
- Section 14 of the Act enables the Minister to set a Total Allowable Catch (TAC) to **better achieve** the purpose of the Act.
- Section 14(4) enables the Minister to set the TAC at or to zero.
- Section 20(3) enables the Minister to set or vary a Total Allowable Commercial Catch (TACC) at, or to, zero.

## NZSFC Submission

8. The submitters propose the Minister implement a rebuild plan to restore abundance and diversity in the marine ecosystem at the top of the South Island. There is legislative support and an obligation for the Minister to do so, pursuant to the purpose of the Act. Section 8(2) of the Fisheries Act 1996 (the Act), “*The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability*”.
 

“...**ensuring sustainability** means –

  - (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of **future generations**; and
  - (b) avoiding, remedying, or mitigating any **adverse effects** of fishing on the aquatic environment.

**utilisation** means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their **social, economic, and cultural well-being**.”
9. Under s14 of the Act the TAC is set to **better achieve** the Act’s purpose. The Minister cannot **ensure sustainability** of SCA 7 if commercial effort is moved into the Marlborough Sounds because–
  - The Minister must not knowingly risk the productivity and fragile nature of the Marlborough Sounds. Years of commercial dredging has contributed to the massive collapse of stocks in Golden and Tasman Bays, the lack of regrowth, the acknowledged poor survival of spat and lack of adequate habitat in these areas. This has jeopardised future productivity in these areas.
  - The Minister has a lawful obligation to avoid any adverse effects of fishing on the marine environment. There are already numerous threats to the ecosystem, both landbased and water borne invasive species.
  - The Minister must not risk the sustainability or productivity of other species within the Marlborough Sounds. Blue cod is currently subject to a controversial and strict management regime that limits only recreational access.
  - Already there has been increased inter-sector conflict in the Sounds, because commercial effort is concentrated in areas that were previously the domain of local fishers seeking to find food for their family and friends.
10. The level of Maori customary harvest is uncertain. Only interim estimates of recreational catch are available and MPI advise these cannot be used as a basis for making an allowance for recreational interests.
11. The submitters propose no changes to recreational bag or size limits. The Minister must attribute the necessary rebuild to the responsible sector and method, namely commercial dredging.

12. We support the following management regime until the southern scallop (SCA 7) fishery rebuilds –

**Table 1:** Proposed TAC, TACC and allowances for southern scallops (tonnes, meatweight)

Option	TAC (t)	TACC (t)	Allowances		
			Maori customary (t)	Recreational (t)	Other mortality (t)
<b>MPI option 1 (status quo)</b>	827	747	40	40	0
<b>MPI option 2</b>	130	46	40	40	4
<b>MPI option 3</b>	500	416	40	40	4
<b>NZSFC/LegaSea</b>	64	0	30	30*	4

\* No change to recreational controls.

### **MPI option 1 (status quo)**

13. The current catch levels were set in 2002. Given the current stock status and the Minister's duty to sustainably manage this fishery, it is inconceivable the Total Allowable Catch (TAC), the TACC and zero allowance for fishing related mortality remains intact.
14. When there is known fishing related mortality the Minister is obliged to set aside a tonnage to allow for it -
  - There is relatively high mortality associated with dredging scallops and this cannot be ignored.
  - While unknown, there will be a level of illegal or unreported scallop harvest. That mortality must be allowed for within the TAC.
15. In option 1 MPI ignores the lost productivity associated with ongoing dredging of the seabed, despite their acknowledgement of environmental changes. MPI note *"it appears that the benthic habitat in Golden and Tasman Bays is no longer suitable for scallops.....reasons for the decline in Golden and Tasman Bays are being investigated. Other shellfish stocks in this area have also declined and it appears that the suitability of benthic habitats for scallops might be lower now than in the past"*.
16. Commercial interests have hammered this fishery since the early 1960s. By 1975 landings reached 1244 t from a fleet of 245 vessels. The fishery was closed by 1980. It later reopened with an agreed enhancement and rotational programme in place. Last season Golden and Tasman Bays were closed and 11 boats fishing in the Marlborough Sounds landed 43 tonnes.
  - Given the purpose and principles of the Fisheries Act 1996 the Minister cannot lawfully agree to option 1 for the SCA7 fishery.

### **MPI option 2**

17. MPI propose to reduce the TAC from 827 to 130 tonnes, and the TACC from 747 to 46t. MPI also propose the Minister sets aside 4t to allow for fishing related mortality. In the absence of any data in the MPI Discussion Paper it is impossible to determine if the proposed 4t allowance is sufficient.
18. MPI consider option 2 better meets the requirement to set a sustainable TAC, under s14 of the Fisheries Act and complies with the draft National Fisheries Plan objective, to protect spawning stock by limiting catch to recent low levels until the fishery rebuilds.
  - How does MPI expect the fishery to rebuild unless actual catch levels are reduced?
19. The Directors of the Challenger Scallop Enhancement Company (CSEC) do not support a TAC change even though option 2 would reduce cost recovery levies from around \$200K to less than \$15K.
  - Industry cannot lay claim to non-existent scallops. SCA 7 is a public resource and the Minister can lawfully reduce the TACC for sustainability purposes.

20. Most commercial scallop fishers are sole operators selling to a processor. A 94% cut to these individuals' quota/ACE will probably spell the end of the smaller fisher who cannot afford to buy ACE and stay afloat. The companies and bigger boats will likely take over what is left. That is the nature of quota, and the quota management system.
21. Despite the Ministry's initial view, commercial interests are likely to challenge the 40t allowances for Maori customary and recreational interests, and highlight the imprecise data associated with our harvest levels. Interim survey estimates indicate around 11t of recreational harvest, mostly from the Marlborough Sounds. About 60% of overall recreational catch is reported as coming from Cape Komaru to D'Urville Island. The harvest estimates exclude catch taken from charter vessels or commercial crews using s111 approvals.
22. Not all customary catch is reported as there are two regimes operating, one is a voluntary scheme, the other has mandatory permit reporting requirements. MPI is not clear if the limited number of issued authorisations reflects the level of concern by tangata whenua for the low stock levels, the lack of issuance of mandatory reporting permits or whether tangata whenua are still operating under the voluntary regime. The Minister must do more to determine if tangata whenua are not issuing permits due to their concerns about the poor state of the scallop fishery.
  - Option 2 will not reduce real-time commercial catch and a rebuilt fishery is unlikely.
  - Option 2 does not enable the Minister to meet his obligations to current and future generations, as required by the Fisheries Act.
  - The Minister has an obligation to have particular regard to kaitiakitanga [guardianship of the resource], as per s12(1)(b) of the Act.

### **MPI option 3**

23. MPI propose to reduce the TAC from 827 to 500 tonnes, and the TACC from 747 to 416t. MPI also propose the Minister sets aside 4t to allow for fishing related mortality. In the absence of any data in the MPI Discussion Paper it is impossible to determine if the proposed 4t allowance is sufficient.
24. The Minister cannot take this option seriously. Its late arrival for consultation and lack of any meaningful basis apart from providing "*some headroom*" just intensifies the notion that this is merely pandering to commercial interests, at the expense of environmental and public interests.
25. It seems industry wants to hold onto quota in the event that scallops regenerate to commercially viable levels in Tasman and Golden Bays. If this rebuild occurs and adequate science is produced confirming this regeneration then the Minister will have the opportunity to revisit management controls at that time. In the interim, there is no justification for the Minister to provide "headroom".
26. MPI note in their letter (20 February) that reducing the TACC from 747 t 416t provides "*a balance between the need to ensure long term sustainable management of the scallop fishery and the economic impacts of reducing the TAC*". Quota owners have made it quite clear they do not want the TACC to be reduced, even though they are paying levies for their quota holdings. This option is a fraudulent attempt at protecting quota holders' interests at the expense of environmental and public interests.
27. It is unfathomable that the Minister would make 416t of catching rights available, knowing the two Bays are closed, and then unleash the commercial fleet into the Marlborough Sounds. The potential for disaster is very high and poses unacceptable risk.
28. MPI note that option 1 does not address legal requirements under s14 of the Act, and that the existing TACC is "*likely to be unobtainable given current biomass estimates*". This equally applies to the proposed TACC in option 3; therefore this option 3 is redundant.

## NZSFC/LegaSea

29. A rebuild is necessary both for the fishery and to enable the Minister to fulfil his obligations to enable residents and visitors of the Marlborough Sounds to provide for their social, economic and cultural wellbeing.
30. The Minister has a lawful duty to 'allow for' our non-commercial interests in southern scallops, pursuant to s21 of the Act.
31. The Minister must sustainably manage this fishery for future generations. Given current conditions the best available information indicates the most practical remedy is to reduce the TAC from 827 to 64 tonnes, reduce the TACC from 747 to zero tonnes, make a 4t allowance for fishing related mortality and reduce the non-commercial allowances, from 40 to 30 tonnes, while maintaining current controls.
32. The current 747t TACC was set in 2002-03 and has never been caught. Commercial catch has not exceeded 200t since 2003-04. A more realistic and lawful TAC and TACC is long overdue.
33. Setting a zero TACC in SCA 7 until the fishery is rebuilt will mean that any scallops within the Marlborough Sounds, above that required to provide for non-commercial yield, will remain in the water to support the marine ecosystem and contribute to the productivity and rebuild of the fishery.
34. After the fishery has rebuilt, and prior to any future change in the TAC and TACC or any reopening of closed areas, the Minister must consult with tangata whenua and the local community to determine their non-commercial interests so those can be allowed for in any management processes.
35. We acknowledge the reality that commercial operators supply retail outlets so the wider public can enjoy scallops if they are not active harvesters. However, commercial harvest must not jeopardise the necessary rebuild of the scallop fishery or pose undue environmental risks.
36. The submitters acknowledge the Marlborough Recreational Fishers Association's concerns that if the overall recreational allowance is reduced it will not be restored in the future, and that a reduced allowance will likely mean lower bag limits and possibly an increased size limit. These are valid concerns given historic, inadequate management practices, the lack of Ministry support for local concerns, and intense commercial lobbying.
37. The submitters also acknowledge the need to act conservatively, to protect the remaining scallop fishery and habitat for future generations. As such, we propose a 25% reduction to the overall non-commercial allowances, from 40 to 30 tonnes, and an allowance of 4t to for other sources of mortality. The Minister is obliged to 'allow for' all mortality associated with non-commercial use and fishing related activities. Given the unknown extent of that mortality, the absence of commercial dredging under this option, and the paucity of information, these allowances ought to suffice.
38. Recreational fishers are also concerned that a reduced TACC will lead commercial fishers to ignore existing agreements to voluntarily close selected areas in the Marlborough Sounds to commercial dredging. These areas are closed due to their fragile nature and to provide a life-sustaining ecosystem for other species, including blue cod, which is subject to a strict management regime. Current closures within the Sounds must be retained.
39. When making his decision the Minister must take into account the local community's concerns and address those by regulatory or other means.
40. Scallop 7 is a public fishery and neither the fishery nor the locals ought to be held to ransom merely to appease quota owners' interests.