



**Te Ohu Kaimoana's Response to
Fisheries New Zealand's Review of
Sustainability Measures for Rock
Lobster (CRA3), (CRA4), (CRA8) and
Malborough Sea Cucumber (SCC7A)
for 2019/20**

Te Ohu
Kaimoana




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Introduction

1. Te Ohu Kaimoana welcomes the opportunity to provide a response to Fisheries New Zealand (FNZ) on their Review of Sustainability Measures for Rock lobster in Gisborne (CRA3), Hawkes Bay/Wellington (CRA4), Southern (CRA8) and Marlborough Sea Cucumber (SCC7A) for 2019/20.

About Te Ohu Kaimoana

2. Te Ohu Kaimoana was established to implement and protect the Fisheries Settlement. Its purpose, set out in section 32 of the Maori Fisheries Act 2004, is to “advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:
 - ultimately benefit the members of Iwi and Māori generally; and
 - further the agreements made in the Deed of Settlement; and
 - assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
 - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.”
3. Mandated Iwi Organisations (MIOs) have approved a Māori Fisheries Strategy and three-year strategic plan for Te Ohu Kaimoana, which has as its goal “that MIOs collectively lead the development of Aotearoa’s marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent”.
4. The principles guiding our response to the draft report are set out below.

Noho ora mai rā,



Dion Tuuta
Te Mātārae - Chief Executive
Te Ohu Kaimoana

1.0 - Guiding Principles

1.1 - Te Hā o Tangaroa kia ora ai tāua

5. Prior to the colonisation of Aotearoa by the British Crown, Māori enjoyed complete authority over their fisheries resources. Te Ao Māori's relationship with Tangaroa, and ability to benefit from that relationship, was and remains underpinned by whakapapa – descent from Ranginui, Papatūānuku and their children.
6. The signing of Te Tiriti o Waitangi in 1840 affirmed Māori tino rangatiratanga over their taonga including fisheries which was an essential affirmation of the traditional Māori world view. This world view endures in the modern day. Te Tiriti o Waitangi and the 1992 Maori Fisheries Settlement are built on a much deeper foundation of Māori whakapapa connection to and relationship with Tangaroa.
7. In the modern context, when considering or developing fisheries-related policy, Te Ohu Kaimoana is guided by the principle of 'Te Hā o Tangaroa kia ora ai tāua' - the breath of Tangaroa sustains us. In this context Tangaroa is the ocean and everything connected to and within, on and by the ocean. This connection also includes humanity, one of Tangaroa's descendants.
8. Ko 'Te hā o Tangaroa kia ora ai tāua', highlights the importance of an interdependent relationship with Tangaroa, including his breath, rhythm and bounty and how those parts individually and collectively sustain humanity. The guiding principles underpinning 'Te hā o Tangaroa kia ora ai tāua' highlight how we ensure that we foster and maintain our relationship with Tangaroa.

1.1.1 - Tangaroa

9. Tangaroa is the God of the Sea and everything that connects to the sea. He is the divinity represented through Hinemoana (the ocean), Kiwa (the guardian of the Pacific), Rona (the controller of the tides – the moon) and the connection with other personified forms of the Great Divine. For some tribes, he is also the overlord for all forms of water, including freshwater and geothermal as well as saltwater.

1.1.2 - Te Hā

10. Te Hā means, breath and to breathe. Te Hā o Tangaroa represents the breath of Tangaroa, including the roar of the ocean, the crashing of waves on the beach and rocks, the voice of the animals in and above the ocean and of the wind as it blows over the ocean, along the coast and the rocks and through the trees that stand along the shoreline. Through our whakapapa to Tangaroa, we as humanity, we as tangata whenua, are the human voice for Tangaroa.
11. When Tangaroa breathes it is recognised through the ebb and flow of tide and the magnetism of the moon. This magnetism is recognised as the kaha tuamanomano (the multitudinal rope of the heavens). Therefore, we must also be mindful of the lunar calendar when working with Tangaroa and his various modes.

1.1.3 - Purpose and Policy Principles

12. Te hā o Tangaroa ki ora ai taua provides Te Ohu Kaimoana with guidance on key principles which should underpin our consideration of modern fisheries policy.
 - **Whakapapa:** Māori descend from Tangaroa and have a reciprocal relationship with our tupuna;
 - **Tiaki:** To care for Tangaroa, his breath, rhythm and bounty, for the betterment of Tangaroa in order to care for humanity as relatives;
 - **Hauhake:** To cultivate Tangaroa, including his bounty, for the betterment of Tangaroa (as a means of managing stocks) and for the sustenance of humanity; and
 - **Kai:** To eat, enjoy and maintain the relationship with Tangaroa as humanity.
13. Whakapapa as a principle recognises that when Māori (and Te Ohu Kaimoana as an extension of Iwi Māori) are considering Tangaroa, we are considering the wellbeing of our tupuna (ancestor) – rather than a thing or inanimate object. Therefore, the obligation and responsibility of Tiaki – caring for Tangaroa – comes from our descent from our Tupuna. Similarly, the responsibility and obligation of Hauhake (cultivation) is underpinned by our Tiaki obligations to Tangaroa in order to Tiaki humanity.
14. Ultimately, humanity's right to Kai – to enjoy the benefits of our whakapapa relationship with Tangaroa – are dependent upon our ability to Tiaki and Hauhake and how we uphold the responsibility and obligation in a modern and meaningful way to maintain legitimacy through practicing Tiaki, Hauhake and Kai.

15. These principles were inherent within the Treaty of Waitangi fisheries settlement and – Te Ohu Kaimoana asserts – the quota management system, which Māori endorsed as part of that historic settlement. This underscores its ongoing relevance and importance in modern New Zealand fisheries management.

1.1.4 Duty to act in a manner consistent with the Fisheries Settlement

16. Section 5 (b) of the Fisheries Act 1996 obliges “all persons exercising or performing functions, duties, or powers conferred or imposed by or under it” to “act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (TOW(FC)SA)”. The TOW(FC)SA implements the Deed of Settlement between Māori and the Crown, which represented a full and final settlement of Māori claims to fisheries.

17. It follows that whenever a minister makes a decision to implement a sustainability measure or to provide for utilisation, they must ensure their decision is consistent with, and does not undermine, the Fisheries Settlement.

18. When the Interim Fisheries Settlement was agreed between Māori and the Crown in 1988, the Crown undertook to provide Māori with 10% of the quota for all stocks in the Quota Management System (QMS) at that time. When the Deed of Settlement was finalised, it was agreed that all stocks introduced to the QMS from that time would generate a 20% share for Māori. As part of this agreement, Māori agreed that the QMS was an appropriate regime for managing commercial fisheries. At the time of the Settlement the only proportional interests held were by quota owners (who owned a share of the TACC). Allowances for customary and recreational interest were for a fixed amount.

19. This system formed the basis for the commercial part of the settlement and underpins sound management of commercial fishing, in which rights holders take responsibility for managing their share of the overall TAC. The expectation was that the benefits of good stock management would accrue to those who had a proportionate interest in the fishery, notwithstanding the priority right held by customary interests in the event that customary needs increased.

20. As part of the Settlement, it was also agreed that the Minister would develop policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights. The Minister was also to recommend the making of regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance to the extent such food gathering is neither commercial in any way nor for pecuniary gain or trade. Within the customary regulations, kaitiaki take responsibility for managing customary fishing, including issuing authorisations and reporting catch.

21. When agreeing to the provisions of the Deed of Settlement, Māori expected the value and integrity of the Settlement to be retained. After all, the Settlement is full and final: any action the Crown takes to undermine the value of settlement quota or fails to recognise customary non-commercial needs is a matter of bad faith.
22. Thus, when allocating the TAC, the Minister must ensure the integrity of Māori fishing rights is maintained. In Te Ohu Kaimoana's view this means:
 - a. priority should be given to the customary allowance for stocks that Iwi and hapū require to meet their customary non-commercial needs; and
 - b. the proportion of the TACC that makes up the TAC should not be reduced (but can be increased). Any reallocation to the recreational sector has the effect of reducing the overall value of settlement quota.
23. Te Ohu Kaimoana views recreational fishing as a privilege which should not be exercised at the expense of Māori commercial and non-commercial fishing rights. In recent times the recreational sector has effectively operated within an unconstrained allowance – which provides little incentive for the recreational sector to exercise responsibilities to constrain catch within the recreational limit. Similarly, this provides little incentive for the commercial sector to work collaboratively with recreational bodies to increase stock abundance, given the likelihood that any benefits of a rebuild will be allocated to the recreational sector. We acknowledge there are input controls such as bag limits; however, there is no effective means of keeping the total recreational catch within the allowance set.
24. Te Ohu Kaimoana does not support decisions that increase the recreational allowance at the expense of the TACC. These kinds of re-allocations affect the rights of settlement quota holders and reduce the incentives on the commercial sector to take responsibility and invest in good management.
25. Te Ohu Kaimoana considers that the appropriate way of reflecting the recreational share of the fishery is to set an allowance that as near as possible reflects the catch taken in 1992, when the Deed of Settlement was signed. We note that a recreational allowance did not become part of the TAC until the Fisheries Act 1996 came into effect, and since then it has been the general practice to set allowances when TACCs are varied and TACs are set, or when stocks are introduced into the QMS. We note that the courts have ruled that the Minister has discretion to set the allowance when initially allocating a TAC up to the level of estimated catch. However, we do not support any increases in this allowance after a TAC is set. From a fisheries management perspective, such decisions encourage a "race for fish" – which is what we are seeing in the case of species like Southern Bluefin Tuna. This kind of behaviour should be what responsible fisheries management aims to avoid.

26. If the recreational sector wishes to see a system in which the allowance can be increased above its initial allocation, a full review of the framework for managing the recreational sector is required. This would involve further consideration of options to more tightly manage recreational catch to ensure it stays within the recreational allowance. A system that allows for the recreational sector to increase catches would need to be carefully designed and take explicit account of obligations under the Deed of Settlement.

1.1.5 Allocating the TAC

27. To protect Māori fisheries settlement rights, the following approach should be taken to adjusting the Total Allowable Catch (TAC):

- a. the recreational allowance should not be increased above the level it was first set by the Minister when the TAC was set for any particular stock; and
- b. all increases to a TAC should be allocated to the commercial sector after providing for non-commercial customary fishing and other fisheries-related sources of mortality;
- c. if, in order to ensure sustainability, the TAC, Total Allowable Commercial Catch (TACC) and the recreational allowance is reduced, the allowance can be increased back to its initial level when the stock rebuilds;
- d. the customary allowance is based on customary needs and managed through kaitiaki. In some instances, customary needs may not be fully identified and there may be insufficient capacity to harvest what is needed. Therefore, there can be expected to be increases to the customary allowance over time as both needs are better identified and capacity to harvest is realised;
- e. in situations where the abundance of a stock drops, kaitiaki will respond appropriately.

28. In our view, the approach above should be adopted as the default option and apply whether the stock is at, above or below any target stock level at the time the TAC is set. Variations on this approach should only be considered by the Minister if all extractive interests reach agreement on an alternative approach.

1.1.6 Integrity of the TAC

29. The process to make regulatory change is slow and cumbersome. The current regulatory process takes 62 weeks whereas 'simple' gazettal and 'complex' gazettal's take 11 and 27 weeks respectively. The time it takes to carry out this process inhibits the ability of fisheries managers to make the appropriate changes to manage fisheries.

30. The Rock Lobster Fisheries are good examples of where more responsive decision making is required. On April 1, 2018, the CRA2 TAC was heavily reduced, with reductions to the TACC and recreational allowance. While the TACC can be managed by industry to ensure that it isn't over caught, however the recreational fishery is managed using a combination of input controls i.e. daily bag limit, pot design and pot limits. The modelling used to estimate the success and rate the fishery rebuilds uses the current recreational allowance. Any recreational catch above the allowance puts the success and rate of rebuild at risk. As the fishery rebuilds and more lobster become available, the inability to manage the recreational sector to their allowance further jeopardises the rebuild. These are key issues which undermine the integrity of the TAC. A 12 to 18-month period for new arrangements to be put into effect is too long to manage the fishery effectively. We support a gazettal process that ensures that the appropriate management measures are in place as soon as possible after decisions are made.

2.0 Management measures for CRA3, CRA4 and CRA8

2.1 - Context

Annual Assessment Results for CRA3, CRA4 and CRA8

31. Fisheries New Zealand (FNZ) has sought submissions on proposals to adjust the total allowable catch (TAC) settings in CRA3, 4, and 8, based on the results of management procedures. The proposals were developed based on recommendations from the National Rock Lobster Management Group (NRLMG). The proposed options are outlined below in Table 1.

Table 1: Proposed management options (in tonnes) for CRA 3, 4 and 8 from 1 April 2019.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	Other mortality
CRA 3	CRA3_01: Status quo	366.86	237.86			
	CRA3_02: Based on the operation of the CRA 3 management procedure	351.9 ↓ (4.1%)	222.9 ↓ (6.3%)	20	20	89
CRA 4	CRA4_01: Status quo	513.8	318.8			75
	CRA4_02: Based on the operation of the CRA 4 management procedure	558 ↑ (8.6%)	380 ↑ (19.2%)	35	85	58 ↓ (22.7%)
CRA 8	CRA8_01: Status quo	1,161.7	1,070.7			
	CRA8_02: Based on the operation of the CRA 8 management procedure	1,220.6 ↑ (5.1%)	1,129.6 ↑ (5.5%)	30	33	28

2.2 - Proposed options for CRA3

32. Catch per unit effort (CPUE) has been trending downward since 2012 and has decreased a further 0.25 kg over the 17/18 fishing year. In response to this, the CRA3 management procedure proposes a decrease in the TAC and TACC. FNZ have proposed two options:

- status quo; or
- decrease the TAC and TACC

Under option two, the TAC would decrease from 366.86 t to 351.9 t, and the TACC would decrease from 237.86 t to 222.9 t, while the current settings for customary, recreational and other sources of mortality would remain unchanged.

2.3 - Our position on CRA3

33. Te Ohu Kaimoana supports option two and the operation of the CRA3 management procedure to decrease the TAC and TACC for CRA3.

34. Our policy is to employ a 'shared pain, shared gain' approach to fisheries that have sustainability concerns. As such, we would ordinarily recommend the recreational allowance also be reduced. However, since the recreational catch is set at 20 t, we consider it impractical to reduce it at this point in time.

35. In accepting the decrease to the TACC, the expectation is that when the fishery rebuilds, and the TAC is increased that all increases are allocated to the TACC and not reallocated to the recreational allowance. Any reallocation to the recreational sector would have the effect of reducing the overall value of settlement quota.

2.4 - Proposed options for CRA4

36. CPUE has been trending upward since 2016, and increased by 0.21 kg over the 17/18 fishing year. In response to this, the CRA4 management procedure proposes an increase in the TAC and TACC. FNZ have proposed two options:

- status quo; or
- increase the TAC and TACC and decrease Other Sources of Mortality.

Under option two, the TAC would increase from 513.8 t to 558 t, the TACC would increase from 318.8 t to 380 t and other sources of mortality decrease from 75 t to 58 t. Other sources of mortality would be decreased to better reflect the model estimate used in the stock assessment. The current settings for customary and recreational would remain unchanged.

2.5 - Our position on CRA4

37. Te Ohu Kaimoana supports option two and the operation of the CRA4 management procedure.

38. In the past we have submitted for more realistic quantities to be used in the TAC for other sources of mortality and commend FNZ and the NRLMG for more accurately reflecting the model estimate used in the stock assessment.

2.6 - Proposed options for CRA8

39. CPUE has been trending upward since 2011 and is now at an all-time high. CPUE increased by 0.54 kg over the 17/18 fishing year. In response to this, the CRA8 management procedure proposes an increase in the TAC and TACC. FNZ have proposed two options:

- status quo; or
- Increase the TAC and TACC.

Under option two, the TAC would increase from 1161.7 to 1220.6 t and the TACC would increase from 1070.7 t to 1129.6 t. The current settings for customary, recreational and other sources of mortality would remain unchanged.

2.7 - Our position on CRA8

40. We note tht Ngāi Tahu supports option two. We likewise support option two.

2.8 - Commentary

41. To address the significant levels of illegal take we also suggest the introduction of telson clipping be considered. This measure could assist with reducing the possibility of illegally caught rock lobster entering the commercial supply chain and has been successfully implemented in the Te Whata Kai o Rakihouia i Te Tai o Marokura (the Kaikōura Marine Area) area.

3.0 Management measures for SCC7A

3.1 - Context

Annual Assessment Results for SCCA7A

42. FNZ has sought submissions on proposals to adjust the TAC settings for SCC7A, based on scientific surveys and quota owners' requests. The proposed options are outlined below in Table 2.

Table 2: Proposed management settings (in tonnes) for SCC 7A from 1 April 2019

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality to the stock caused by fishing
Option 1 (<i>Status quo</i>)	8	5	1	2	0
Option 2	18 ↑ (225%)	15 ↑ (300%)	1	2	0

3.2 - Our position on SCCA7A

43. Te Ohu Kaimoana supports option 2, to increase the TAC from 8 t to 17 t, the TACC from 5 t to 14 t, and to maintain the allowances for customary, recreational and other mortality. SCC7A is a relatively high value small scale fishery in a developmental stage.

3.3 - Other commentary

44. In developing these positions Te Ohu Kaimoana has engaged with Iwi impacted by the proposed changes and their feedback has been incorporated into this document. We do not intend for this submission to derogate from or override any submissions iwi through their MIOs and/or AHCs may decide to make.

45. We commend the Minister for providing a six-week consultation period. In the past we have responded on how short the four-week consultation period is and how it constrains our ability to communicate with Iwi effectively to build their views in to our response.

Te Ohu
Kaimoana

