



**Te Ohu Kaimoana's Response  
to the Review of Sustainability  
Measures for 1 April and 1 October  
2021/2022**



# Contents

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Executive Summary ..... 3

This is our response to this year's sustainability review ..... 5

Leading the recovery of the seafood sector in a Covid environment..... 7

Mai te maunga ki te moana – A mountains to the sea approach ..... 7

Managing fisheries consistent with the Deed of Settlement..... 8

Our preferred approach to managing the fish stocks under review ..... 17

April Stocks ..... 17

October Stocks ..... 26

Tuwakamana Proposed Closure ..... 35

Appendix one..... 39

## Executive Summary

1. E te Minita, tēnei te mihi ki a koe i tēnei ahuatanga o te wā. We welcome Fisheries New Zealand's review of the sustainability measures for April 2021/22 and October 2021/22 fishing years.
2. Our role in this review process arises from our responsibility to protect the rights and interests of Iwi/Māori under Te Tiriti o Waitangi and in accordance with the Māori Fisheries Deed of Settlement. Te Hā o Tangaroa kia ora ai tāua contains the principles we use to analyse and develop modern fisheries policy and in this context the review of sustainability measures. Te Hā o Tangaroa kia ora ai tāua highlights the importance of our interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.
3. Our response is structured as follows:
  - a. First, we set out who we are and the reasons for our interest in the April review of the sustainability measures.
  - b. Second, we describe *Te Hā o Tangaroa kia ora ai tāua* as the principle foundation of our fisheries management advice.
  - c. Third, we identify how to manage fisheries consistent with the Māori Fisheries Deed of Settlement.
  - d. Fourth, based on the above, we set out our preferred approach to managing the fish stocks under review.
4. A summary table of Te Ohu Kaimoana's positions can be found below.

Fish stock	FNZ's Proposal	Our Position	Page
Giant spider crab (GSC3, 5 and 6A)	↑	We support the proposed Option to increase the TAC for GSC3, 5, 6A as set out in the consultation document	<a href="#">17</a>
Kōura (CRA1)	↓	We support an alternative option for CRA1 (Option 1.3)	<a href="#">18 - 19</a>
Kōura (CRA3)	↓	We support Option 3.3 for CRA3 to decrease the TAC as set out in the consultation document	<a href="#">18, 20</a>
Kōura (CRA4)	↓	We support an alternative option for CRA 4 (Option 4.4)	<a href="#">18, 21</a>
Kōura (CRA5)	↓	We support an alternative option for CRA5 (Option 5.3)	<a href="#">18, 23</a>
Pawharu (PHC1)	-	We support an alternative option for PHC1 (Option P.4)	<a href="#">24</a>
Rāwaru (BCO4)	-	We support an alternative option for BCO4 (Option 2)	<a href="#">26</a>
Dark ghost shark (GSH1)	↑	We support Option 2 for GSH1 to increase the TAC as set out in the consultation document	<a href="#">28</a>
Reperepe (ELE7)	↑	We support an alternative option for ELE7 (Option 3)	<a href="#">29</a>
Pātiki (FLA2)	↓	We support an alternative option for FLA2 (Option 4)	<a href="#">30</a>
Kourepoua (STA1)	↑	We support Option 2 for STA1 to increase the TAC as set out in the consultation document	<a href="#">32</a>

Aua (YEM9)	↓	We support an alternative option for YEM9 (Option 4)	<a href="#">33</a>
Tuwakamana proposed closure	-	<p>We support an alternative option, that the:</p> <ul style="list-style-type: none"> <li>the existing seasonal closure is revoked and replaced with a full year-round closure to taking <b>cockles</b> as a sustainability measure under section 11 of the Act.</li> <li>the closure would not be extended to customary take which has been devolved to kaitiaki.</li> </ul>	<a href="#">35</a>

## Our response to this year's sustainability review

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5. This paper contains our response to Fisheries New Zealand's proposals to review sustainability measures for April 2021/22 and October 2021/22 fishing years. Consultation under section 12 of the Fisheries Act 1996 closes on 5 February 2021.
6. We do not intend our response to conflict with or override any response provided independently by Iwi, through their Mandated Iwi Organisations (MIOs) or Asset Holding Companies (AHCs).
7. In developing our response, we sought input from Mandated Iwi Organisations and Iwi Asset Holding Companies. We collaborated with the Māori owned fishing entities Sealord Group, Moana New Zealand. Our draft advice is also made available to the Sector Representative Entity groups (SREs) including the Rock Lobster Industry Council, Deepwater Group and Fisheries Inshore New Zealand.

### We are Te Ohu Kaimoana

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8. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga over our taonga, including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over our affairs. It is practiced by living according to tikanga and mātauranga Māori and striving to ensure that the land, and resources (including fisheries) are protected for future generations. This view endures today and is embodied within our framework Te Hā o Tangaroa kia ora ai tāua (the breath of Tangaroa sustains us).
9. The obligations under Te Tiriti o Waitangi and the Māori Fisheries Deed of Settlement ("the Settlement") apply to the Crown whether there is an explicit reference to Te Tiriti in governing statute, in this case, the Fisheries Act 1996. These obligations are also noted in the Public Service Act 2020, section 14(1) "the role of the public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi".
10. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance the Settlement and Te Tiriti o Waitangi. The Settlement and the Māori Fisheries Act 2004 are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources. Māori rights in fisheries are not just a right to harvest, but also to provide for our social, cultural and economic wellbeing.
11. Our purpose, set out in section 32 of the Māori Fisheries Act, is to "advance the interests of Iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, to:
  - a) ultimately benefit the members of Iwi and Māori generally
  - b) further, the agreements made in the Deed of Settlement
  - c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi

- d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

12. We work on behalf of 58 MIOs<sup>1</sup> who represent Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Māori Fisheries Settlement Assets on behalf of their MIOs. Those assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited (trading as Moana New Zealand), which owns 50% of the Sealord Group.

## We base our advice on Te Hā o Tangaroa kia ora ai tāua

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13. The reciprocal relationship that Māori have with Tangaroa is underpinned by whakapapa. Protection of the relationship with Tangaroa is an inherent part of our identity as Māori. In a contemporary context, the management and protection of fisheries resources is a facet of the relationship with Tangaroa is expressed through the Settlement.
14. Te Hā o Tangaroa kia ora ai tāua is an expression of the unique and lasting connection Māori have with the environment. It contains the principles we use to analyse and develop modern fisheries policy and other policies that may affect the rights of Iwi under the Settlement. In essence, Te Hā o Tangaroa kia ora ai tāua highlights the importance of our interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.
15. Te Hā o Tangaroa kia ora ai tāua does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility. It speaks to striking an appropriate balance between people and nature.
16. In accordance with this view, "conservation" is part of "sustainable use", that is, it is carried out to sustainably use resources for the benefit of current and future generations. The Fisheries Act's purpose is "to provide for the utilisation of fisheries resources while ensuring sustainability." The purpose of the Act aligns with Te Hā o Tangaroa kia ora ai tāua.

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<sup>1</sup> MIO as referred to in The Māori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

## Leading the recovery of the seafood sector in a Covid environment

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17. The Covid-19 pandemic has showcased the leadership of Iwi/Māori and our commitment to ensuring the health and wellbeing of our whānau. Iwi and Māori organisations across the country have mobilised to stop the spread of Covid-19 and protect the most vulnerable. This support was achieved by providing financial support, kai and health and social services to our whānau and hapū.
18. Maintaining domestic and international seafood supplies is essential to food security and vital to our economic recovery. The restrictions resulting from Covid-19 have placed increased attention on food security and the seafood sector. Aotearoa is well placed to provide global leadership in developing policies to recover and maintain seafood systems by applying the experience drawn from the 30 plus years of operating the Quota Management System (QMS). This period has been characterised by ongoing innovation in how seafood is collected from the marine environment. It is evidenced by the reduction in the number of vessels and the industry's environmental footprint. This innovation is set to continue and further improve the alignment of Aotearoa's fisheries management system with Te Hā o Tangaroa kia ora ai tāua supported by vastly improved information-gathering systems.

## Mai te maunga ki te moana – a mountains to sea approach

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19. There is growing awareness and concern over the impacts that human land-based activities have on our marine ecosystems. The connectivity between the land and sea means that onshore activities have flow-on effects to freshwater and marine environments—negative impacts such as nutrification and sedimentation affect the ability for Māori to maintain aspects of their relationship with Tangaroa. The principles of Te Hā o Tangaroa require a reciprocal relationship with Tangaroa and the aquatic life within it. In essence, marine health degradation directly reduces people's ability to sustain their economic, cultural, and social wellbeing from the marine environment.
20. We have serious concerns for the health of the marine environment and the associated relationship between Māori and Tangaroa, especially regarding traditional fishing rights. We understand that the Minister of Ocean and Fisheries ("the Minister") shares our concern about land-based activities' effects. We support initiatives that look at applying tools to the source of this issue and invite opportunities to collaborate. There are tools under the Fisheries Act, such as protecting habitats of particular significance for fisheries management, which could help protect areas from degradation by fishing but not against non-fishing impacts. We emphasise that while the Fisheries Act is the appropriate way to manage the effects of fishing, other legislative frameworks may be

required to manage the effects on fishing. We also support greater integration between governing agencies, industries, stakeholders and Iwi/Māori to support change.

21. This issue is relevant to this year's sustainability review as it contains two stocks that have concerns about habitat degradation affecting their abundance. Flatfish and yellow-eyed mullet occupy harbour and estuarine environments; this means their habitat is directly on the land and sea interface. Further, this year's review includes a closure to shellfish harvesting in Tuwakamana Bay. Filter feeding organisms are particularly vulnerable to land-based pollutants.

## Managing fisheries consistent with the Deed of Settlement

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22. The Fisheries Act 1996 obliges those performing functions under it to act consistently with the Settlement, which recognises the principles of Te Tiriti o Waitangi<sup>2</sup>. As signatories to this Settlement, it is both Māori and the Crown's responsibility to ensure this agreement is upheld. There are some policy and management issues we recognise that potentially diverge from the Settlement; we have set these out into the following broad themes:

1. Section one: constructive working relationships
2. Section two: allocation of the TAC
3. Section three: managing shared fisheries
4. Section four: resolution of 28N rights
5. Section five: application of sustainability measures
6. Section six: application of deemed values.

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<sup>2</sup> Specifically, 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)". Once an allocation formula was agreed the TOW(FC)SA was essentially replaced by the Māori Fisheries Act 2004. Together, these acts give effect to the legal aspects arising from the Māori Fisheries Settlement.

## Section one: We seek constructive working relationships

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23. Before the signing of the Settlement "*Māori and Crown agreed that there should be discussions between them to ensure that the evolution of the Quota Management System, including the term of quota, met both conservation and Treaty of Waitangi principles requirements*"<sup>3</sup>. In the final Settlement, the Crown agreed that Māori would participate in fisheries statutory bodies to reflect the special relationship between Māori and the Crown<sup>4</sup>. In reciprocation, Māori agreed to endorse the QMS as '*a lawful and appropriate regime for the sustainable management of commercial fishing in New Zealand.*'<sup>5</sup>. Under the Settlement, it is paramount that the Crown and Māori work constructively on fisheries management matters to uphold our respective roles, particularly where management outside the QMS is contemplated.
24. We seek a constructive working relationship with the Minister and officials from Fisheries New Zealand. A constructive relationship is an important requirement for a meaningful Te Tiriti-based partnership. The sustainability round is just one contribution to fisheries management. Still, it is essential because it leads to management settings that have a considerable influence on our incentive-based fisheries management system.
25. Fisheries New Zealand initiated a review of the sustainability round process in 2019,<sup>6</sup> and Te Ohu Kaimoana were invited to participate. Our feedback to the reviewer was that we expected more meaningful engagement on behalf of the Treaty Partner through co-development of proposals and greater transparency in the process. Since then, we have seen signs of progress in building a partnership approach to the sustainability round process. While there is still considerable room to improve, we recognise Fisheries New Zealand officials for their concerted efforts towards a partnership approach. Specifically, the early engagement and ongoing communication through the sustainability round process has been a constructive development. We are confident that a genuine investment in partnership will produce positive benefits for the sustainable utilisation of Aotearoa's fisheries.

## Section two: Changes to the TAC should not undermine the Māori Fisheries Settlement

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26. When negotiating the terms of the Settlement, the Crown recognised its duty to develop policies to provide protection for and scope for the exercise of rangatiratanga in respect of traditional fisheries<sup>7</sup>. Consequently, the Minister must ensure the integrity of Māori fishing rights is maintained when adjusting and allocating the TAC. This means acknowledging three things:

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<sup>3</sup> Her Majesty the Queen and Māori, Deed of Settlement, Preamble, page 2, paragraph G, signed by negotiators on 23.09.1992

<sup>4</sup> Fisheries statutory bodies are bodies where existing legislation allows for Māori representation or where legislation is not required but amendments are desirable – Deed of Settlement second schedule p 30

<sup>5</sup> Deed of Settlement 1992, 4.2 p18

<sup>6</sup> Fisheries New Zealand review of sustainability measures: Overview of legislative requirements and other considerations in relation to sustainability measures – Fisheries New Zealand 2020

<sup>7</sup> Her Majesty the Queen and Māori, Deed of Settlement, Preamble, page 3, paragraph K, signed by negotiators on 23.09.1992

1. Priority should be given to the customary allowance for stocks that Iwi and hapū require to meet their customary non-commercial needs.
  2. Any re-allocation to the recreational sector has the effect of reducing the overall value of Settlement quota and the ability for Māori to exercise rangatiratanga over their fisheries.
  3. Settlement quota, as a proportion of the TACC, should not be reduced under any circumstances.
27. The following approach could be taken when adjusting the TAC, so Māori rangatiratanga is not undermined,
- The customary allowance is based on customary needs and is managed through kaitiaki; a TAC should allow for the amount of catch as determined by kaitiaki.
  - In the absence of an agreement between mandated bodies, 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.
  - If to ensure sustainability, the TAC, TACC and the recreational allowance are reduced, the allowance should only be increased back to its initial level when the stock rebuilds.
  - Otherwise, all increases to a TAC should be allocated to the TACC after providing for customary non-commercial fishing and other fisheries-related sources of mortality.
28. In our view, this approach should be adopted as the default. It should apply whether the stock is at, above or below any target stock level when the TAC is set. We believe variations on this approach should only be considered if all interests reach agreement on an alternative approach.

## Section three: good, shared fisheries require shared management and shared responsibility

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### **Better management of shared fisheries is needed**

29. There is no principled approach to the allocation of the TAC in the advice from Fisheries New Zealand. Instead, the recreational allowance is based on the best estimate of the current catch (in some situations it's even higher than the catch). This approach has become an increasing concern for the management of shared fisheries. Recreational fishing effort and catch in some fisheries has significantly increased and now includes a large tourism fleet (Amateur Charter Vessels). The current approach to manage this increase allows a greater proportion of the TAC to be allocated to the recreational sector. We do not consider that a fisheries management system which provides increased utilisation with no visible upper limit is either sustainable or consistent with the purpose of the Act.

30. The QMS provides incentives for sustainable fisheries practises by providing Annual Catch Entitlement linked to the TACC. This means if there is a sustainability concern or a utilisation opportunity, the Ministers decision directly limits the amount of fish that can be commercially caught. However, in contrast, the recreational sector in the same fishery will not be affected by a change in the allowance. The management controls for recreational fishing sits with daily limits, minimum legal size etc. The disconnect between the management setting and the management controls for the recreational fishing effort is a longstanding issue for fisheries management. The failure to bring the recreational catch into the TAC reflects poorly on the way it is administered.
31. If the management response to overfishing the allowance results in a further increase, it undermines our incentive-based management framework. For example, in a recovering fishery, the commercial sector can be efficiently managed through the TACC, fisheries plan and other tools in the Act until the stock recovers. However, the recreational sector can continue unabated. As the fishery recovers, the recreational catch will increase, while the commercial remains restricted through ACE. If the fishery does not recover despite this, and the TAC is reviewed, the recreational sector are typically allocated the catch it currently takes, despite not contributing to the rebuild. The remaining sustainable catch could be attributed to the TACC.
32. Our view is that the recreational allowance, once set, should be retained until a cross-sector agreement is reached to increase it. The management controls for recreational catch need to be altered to ensure catch is within the allowance. Continuous provision for the recreational sector based on unconstrained catch has the lasting effect of undermining the Settlement and destabilising fisheries management.
33. We have also long held a view that a full review of how the recreational sector is managed is critical, including implementing better processes for monitoring catch. This would help increase our overall understanding of the quantity of fish being taken and the kinds of strategies needed to manage our fisheries. Implementing better processes to manage recreational fishing would greatly benefit local communities who rely on and regularly partake in recreational fishing activities.
34. In late 2019, Te Ohu Kaimoana was invited to attend a workshop in Australia to discuss options for improving the management of their snapper fisheries. Despite seeing ongoing reductions in the commercial catch, they struggled to understand why their fisheries were not rebuilding. The workshop concluded that the likely cause was the mismanagement of the recreational sector, including the underestimation of incidental mortality from snapper returned to sea.
35. Without a clear framework for managing shared fisheries, we have encountered delays in sustainability review timeliness. Delays in reviews can have unnecessary negative economic impacts on the commercial sector by payment of deemed values for catch that is sustainably available. The lack of a consistent approach to these fisheries generates uncertainty for rights holders and interested parties. We consider that this approach creates a divide between sectors. Good shared fisheries management needs to work towards reducing this divide and putting the fishery first.

### **Amateur Charter Vessels are creating increasing pressure on fisheries**

36. Amateur Charter Vessels are commercial tourism operators that catch fish under the recreational allowance and generate a profit from this business. Charter trips are a popular attraction for New Zealanders and international tourists alike. Increasingly, we hear concerns about the Amateur Charter fleet regarding effort, localised depletion, and lack of monitoring/management. These concerns come from commercial fishers, kaitiaki and subsistence recreational fishers. We support the review of the management of Amateur Charter Vessels to enable this sector to better contribute to fisheries management and the sustainability of our fisheries.
37. We recommend that Fisheries New Zealand's review of the sustainability measures includes adjustments to the recreational management controls for stocks undergoing a TAC review. The most accessible tools currently available to do this are to adjust or introduce daily catch limits, accumulation limits, size limits or seasonal restrictions.
38. This issue is relevant to this year's sustainability review as it includes several stocks where we have concerns about the data or information regarding the recreational allowances. These stocks include the rock lobster stocks, elephant fish (ELE7) and blue cod (BCO4).

### **IkaNet – supporting initiatives that work**

39. When allocating the TAC, the Minister must make an allowance for customary fishing. We acknowledge that this may be difficult to do when the information on the level of customary catch may not be readily available. We are actively supporting the investment in reporting systems, such as IkaNet. IkaNet is an online customary fishing tool that allows tangata tiaki and co-ordinators to manage the harvest, storage and supply of kaimoana to marae and lwi members for hui and tangi.
40. This online system supports sustainability by providing real-time electronic reporting – based on permits granted over the rohe; kaitiaki can make informed decisions about what, where and how much they authorise. Also, IkaNet provides kaitiaki with a facility to fill, manage, and distribute pātaka kai with a commercial fishing partner's help.
41. With continued technological innovation, we support an approach that enables tangata tiaki/kaitiaki to determine the level of customary catch required. The Ministers decision on the level of the customary allowance should be seen as an accounting exercise rather than one that estimates demand.

## **Section four: The effect of "28N Rights" on the Māori Fisheries Settlement must be addressed**

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42. The existence of 28N rights ([see appendix one](#)), is a dilemma because it creates a contradiction within the Act. 28N rights hinder sustainable TACC increases as they undermine the Settlement.

43. For the 32 fish stocks that currently have outstanding 28N rights, any increase in the TACC will effectively reduce the proportion of quota shares Iwi received through the Settlement. To date, Iwi quota shares valued at approximately \$14 million have been reallocated to 28N rights holders after a TACC increase.
44. In the 2018 and 2019 decision letters for the review of sustainability measures, the (then) Minister of Fisheries expressed intent to resolve the 28N rights issue. We have been actively involved in developing solutions to the 28N rights issue and have provided options to Fisheries New Zealand and the previous Minister on how to achieve this.
45. We look forward to an agreement being reached that removes this obstacle to appropriately implementing the Act. In the meantime, the issues associated with 28N rights need to be addressed each time a stock with latent 28N rights is reviewed as part of the sustainability round. In each case, we request that remedial steps prevent a proportionate reduction in settlement quota.
46. In situations where fisheries management decisions would result in dilution of settlement quota as a proportion of the total shares, Te Ohu Kaimoana is obliged to legally challenge the decision as a matter of principle. There are currently proceedings before the Court concerning PAU5B, SKI2 and SPO3.
47. The current consultation for sustainability measures includes reviewing the TAC for blue cod (BCO4) which has associated 28N rights. We recognise that Fisheries New Zealand has not proposed any changes to the TACC, which would discharge these rights, but there is potential for this to change following consultation. We emphasise our view that we do not support a change to the TACC that would result in the dilution of Settlement quota as a proportion of the TACC.
48. We are aware that Fisheries New Zealand intends to include SNA8 in the sustainability measures review for October 2021. A review of the TACC is well overdue, and the current abundance compared to available ACE is generating a myriad of negative fisheries management implications. SNA8 has associated 28N rights that, if fully satisfied, would reduce Settlement quota from 8.47% to 4.93%. Therefore, any decision to increase the TACC will need to be done in a way that does not deliver this reduction. We would like to discuss with the Minister how a Tiriti-based approach could enable increased sustainable utilisation while not diluting Settlement quota as a proportion of the TACC.

## Section five: The Fisheries Act enables a flexible approach to managing catch

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49. It is often assumed that adjusting TACs and TACCs is the best way to respond to stock assessments that show a stock has declined. This approach is limited as the Fisheries Act 1996 enables various approaches to ensure sustainability and enable rangatiratanga<sup>8</sup>.

### **Collective action better achieves the purpose of the Fisheries Act**

50. We need to do more to encourage collective action. Where quota owners are incentivised to act collectively, the evidence suggests they will adopt strategies to promote the management of stocks at levels above the requirements of section 13 of the Act.

51. Te Ohu Kaimoana has published an international review of Aotearoa's fisheries management systems' effectiveness in achieving conservation objectives. This study has concluded that top-down approaches are inconsistent with modern incentive-based systems. In contrast, the most effective fishery/ecological management systems are bottom-up, and stakeholder developed.<sup>9</sup> We would be happy to meet with the Minister to discuss the findings of this report.

52. Fisheries Plans approved under section 11A of the Fisheries Act are a key tool available to support collective action. Fisheries Plans provide the framework for a more customised and cooperative approach to the sustainable management of our fisheries as they enable fine-scale management of fisheries resources. But, they must be developed by the parties who can be held accountable for the commitments they make.

53. Where led by Iwi, fisheries plans provide an appropriate framework for Iwi to exercise rangatiratanga in managing their relationship with Tangaroa. For instance, they provide:

- a. an opportunity for Iwi to work more closely with their hapū to identify local fisheries management problems and solutions that affect customary non-commercial and commercial fishing,
- b. specify the objectives for management and associated services required to manage the fishery, which Iwi and other quota owners could purchase directly, rather than through cost recovered services provided by the Crown.

54. In January 2020, Fisheries New Zealand released consultation for a draft Inshore Fisheries Plan, a government-led plan intended to be approved under section 11A. Given that the draft plan has not been approved, we consider it inappropriate for the consultation document to be placing weight on its content or taking any direction from it. The Initial Position Papers also seem to assume that this draft plan will provide some management direction for the vast array of fisheries that fall under its potential umbrella. However, Te Ohu Kaimoana does not support the draft plan for a variety of reasons. This is further elaborated in [our response](#) on the Draft Inshore Fisheries Plan.

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<sup>8</sup> Note that section 11(3) of the Fisheries Act 1996 sets out a range of options that are available to the Minister to ensure sustainability

<sup>9</sup> See Libecap, G, Arbuckle, M, and Lindley, C.. An analysis of the impact on Māori Property Rights in Fisheries of Marine Protected Areas and Fishing Outside the Quota Management System. The link to the report can be found [here](#), as can a seminar discussing the findings of the study can be [viewed here](#).

## Section six: Deemed Values are part of our interconnected system of fisheries management settings

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55. Our fisheries management system contains a variety of management settings that can be adjusted to achieve the desired results for a fishery. It is important to note that the components of the system are interrelated, and therefore altering one component in isolation may be fraught. In our view, an analysis of all management settings should be conducted before generating options for changing a particular component.

### **Payment of deemed values can indicate a fisheries management issue to be addressed**

56. Deemed values can be a tool that can be used to identify problems that need to be addressed in a fishery. Deemed values should not be set arbitrarily. There are many potential causes for catch not being balanced with ACE- all of which generate different responses, for example:

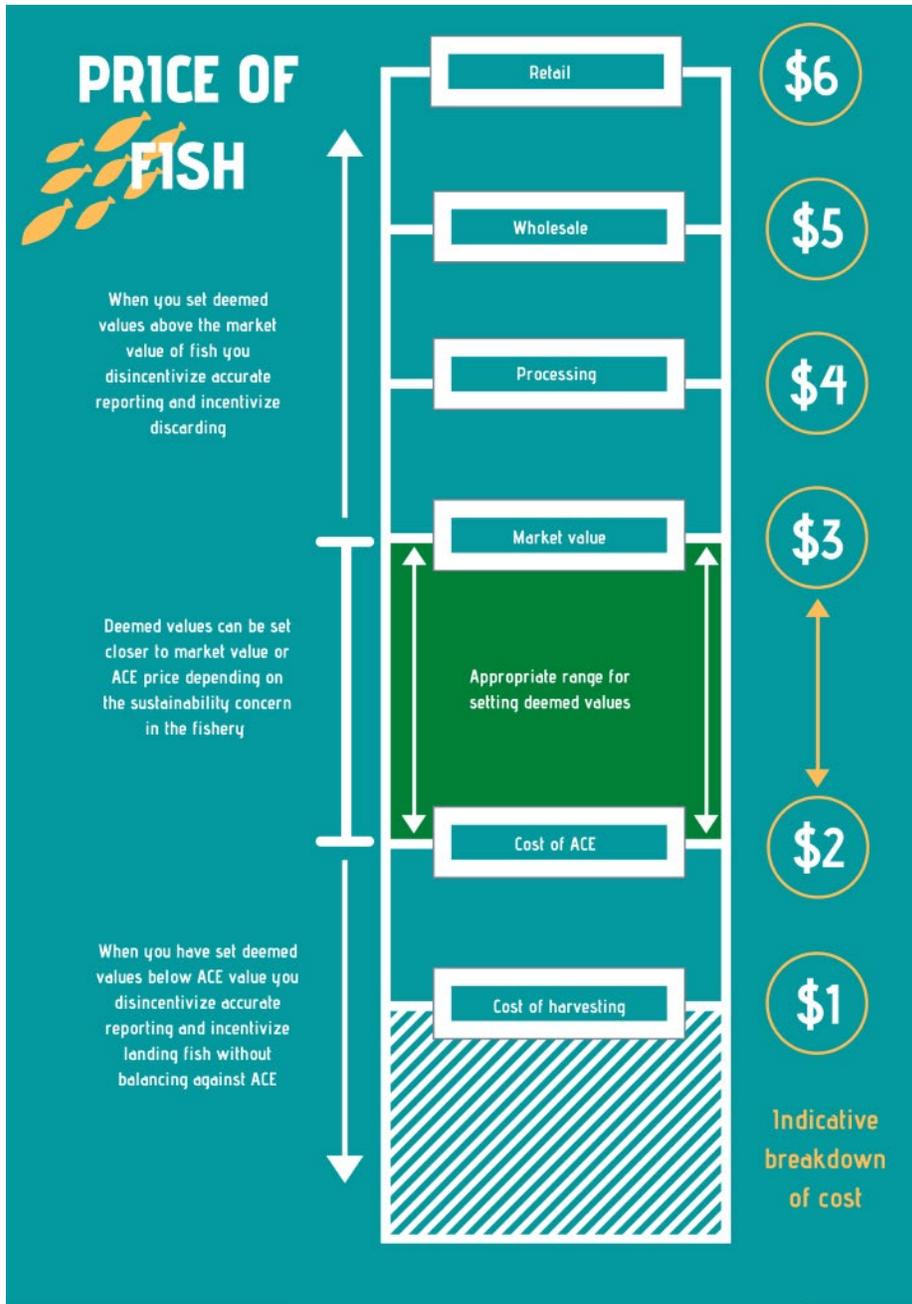
- The TACC is too low – optimum response is to increase the TACC
- Deliberate over catch by one or two parties – respond by setting an overfishing threshold that applies to these parties
- The deemed value is too low – respond by increasing the deemed value
- A recruitment pulse with a consequential (perhaps temporary) increase in biomass – ensure the incentive to balance catch with ACE is maintained while not creating a disincentive to report.

57. We acknowledge that the information available to set deemed values appropriately is imperfect. The key inputs of the market price of fish and the ACE price are confounded by how quota ownership is structured. Hence the setting of deemed values becomes a pragmatic exercise. It needs to find the balance incentives to harvest with the available ACE and accurately reporting all catch.

58. The deemed value for a particular stock can be set at or scaled up to a level that removes any profit after harvesting costs are deducted. These conditions create an incentive for fishers to cover their catch with ACE. If they cannot do so, then there is no disincentive to report the catch and land it. This approach is consistent with the Fisheries Act and the Settlement. It has the real potential to increase the quality of information available to support decision-making if it is administered that way.

59. In our view, deemed values are best set with the range established by the market value of fish and the value of ACE for that stock to retain the incentives to report catch and balance catch with ACE. Discouraging catch in excess of ACE holdings is achieved by ensuring the deemed value is set above the ACE price. The requirement to ensure that the deemed value system does not encourage the discarding of fish at sea is achieved by ensuring the deemed value rate does not exceed the market value of the stock. This supports our view that deemed values should always be set with the range set by the market value of fish and the value of ACE for that stock.

60. Accurate reporting is vital if we are to understand whether TACCs have been set appropriately. If TACCs are set incorrectly, varying levels of deemed value payments can show a need to review the TACC. TACCs themselves are not always set right and need to be regularly reviewed, based on the best available information. This was the basis for deemed values being introduced. We have set out a stylised view of the cost structures that the price of fish and identified the range where deemed values should operate (see figure 1)



**Figure 1:** A value chain depicting the breakdown of the price of fish. The different steps in the value chain help inform a range that deemed values should be set between.

# Our preferred approach to managing the fish stocks under review

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## April Stocks

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### Giant spider crab (GSC3, 5 & 6A)

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#### Our view

- We support the proposed Option to increase the TAC for GSC3, 5, 6A as set out in the consultation document.
- We support retention of the current deemed values.

#### Proposed Options

Stock	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
GSC 3	21 ↑ (6 t)	19 ↑ (5 t)	0	0	2 ↑ (1 t)
GSC 5	96 ↑ (76 t)	86 ↑ (67 t)	0	0	10 ↑ (9 t)
GSC 6A	187 ↑ (22 t)	170 ↑ (22 t)	0	0	17

#### Our approach

##### TAC not reviewed since introduction into the QMS

61. When giant spider crab was introduced to the QMS in 2004, the TAC and TACC were set to reflect catch trends. Best available information for all giant spider crab management areas under review show an increasing CPUE since 2004. During this time the distribution of fisheries effort has not significantly changed. The increased catch rate combined with no change in fishery dynamics suggests an increase in abundance.

##### Sustainable utilisation opportunity in giant spider crab fisheries

62. Giant spider crab is caught entirely as bycatch and currently has little economic value. Despite some early exploratory fishing efforts to target giant spider crab using crab pots, it is now mostly caught by trawl vessels targeting squid. Often the trawl boats are not equipped to store the crab for a marketable product, and therefore this catch is unwanted. Increasing the TACC to cover current catch is unlikely to present a sustainability concern through increased effort. Instead, the additional ACE will authorise sustainable levels of harvest.

## Kōura – red rock lobster

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### **Better recreational catch information required to manage this important fishery**

63. Kōura are taonga and a prized commercial and recreational fishery. The value of this fishery attracts large investment in annual research and management reviews, making it one of the most closely monitored fisheries in Aotearoa. However, there is concern about the reliability of recreational catch and effort information. Because recreational take is so poorly understood, management focuses on constraining commercial catch rather than total harvest. A more accurate understanding of recreational rock lobster fisheries, including amateur charter vessels, will strengthen the current assessment process. More accurate assessments would provide a better insight into the health of rock lobster stocks and enable improved management. We encourage the exploration of different methodology and initiatives for understanding recreational take in rock lobster fisheries.
64. For the recreational sector to make any contribution to a TAC decrease, parallel regulatory changes are required. Merely changing the recreational allowance does not constrain the recreational sector. Regulatory changes such as adjustments to bag limits and accumulation limits need to take place alongside TAC adjustments. If kōura is to be viewed as a shared fishery, then both the commercial and recreational sectors need to contribute to ensuring its sustainability. Te Ohu Kaimoana's full position on allocation can be found in section [three](#) of this response.

### **Illegal take of rock lobster fisheries is a management concern**

65. Reducing and obtaining better estimates of illegal take should be a high priority for kōura. There is poor information on the illegal take for all stocks being reviewed in this year's sustainability round. Although this is a difficult task, Te Ohu Kaimoana supports exploring different means of gathering both better information and reducing the illegal take.
66. Telson clipping is a viable way of ensuring that recreationally caught rock lobsters are not sold to unsuspecting buyers. This measure is a 'tool' in the 'toolbox' for addressing high levels of illegal take in rock lobster fisheries. We are supportive of such implementing such initiatives, particularly when supported by Iwi.

### **Stocks undergoing management settings review should also have deemed values reviewed**

67. The consultation document does not propose any changes to the deemed values for either the red rock lobster stocks or packhorse lobster. We support the retention of the deemed values for all red rock lobster stocks being reviewed and PHC1.

### **Median values, better for kōura management settings not utilised in IPP**

68. It is commonly accepted practice for fisheries analyses to use median (50<sup>th</sup> percentile) results to determine the most likely estimate of stock abundance. This year, the consultation documents for kōura have included the use of the 95<sup>th</sup> percentile estimate. There is a common perception that using higher percentile will always generate a better management outcome. However, this is a misinterpretation of percentiles. Using a median is most

appropriate for skewed data sets (not normally distributed), which is generally the norm for abundance estimates. A population is restricted on one side by not being possible to be below zero. However, the upper restriction is less rigid, and therefore a skewed distribution of data will occur. The general distribution will spread the top 50% of data across a far more comprehensive range of values than the lower 50%. Therefore, using the median value represents the middle of all possible data points and the **most likely** outcome.

69. Particularly relevant to kōura fisheries, median values are better for looking at long term trends. While the 95<sup>th</sup> percentile may identify short term changes, they are not useful for setting a stable catch limit. There is a considerable resource investment in monitoring and managing kōura stocks regularly. For these reasons, we support the retention of using median values to determine kōura management settings.

## Kōura – red rock lobster (CRA1)

### Our view

70. We support an alternative option for CRA1 (Option 1.3).

	TAC	TACC	Customary	Recreational	OSFM
<b>Option 1.3</b>	190.5	110	20	29	31.5

### Proposed options

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	Other mortality
CRA 1 Northland	Option 1.1: Status quo	203	110		32	41
	Option 1.2: Decrease the TAC by 11%	180.5 ↓ (11%)	100 ↓ (9%)	20	29 ↓	31.5 ↓

### Our approach

#### No change to the TACC

71. The rapid assessment updates enable us to see predictions on how the rock lobster stock will perform over the next four years, while still checking in on the stock annually. The rapid assessment update predicted that the vulnerable and spawning stock biomass would increase ~7% and ~5% respectively by 2024 if the current catch is maintained. Based on these results, we support no change to the TACC.

72. In 2019, a stock assessment was completed for CRA1, this resulted in the (then) Minister reducing the TAC in the April 2020 sustainability round. This management decision and the effect of Covid-19 on the kōura market have not exhibited its impact on fisheries catch data. Another year of data to input into an assessment update would

provide insight into how this decrease in catch has tracked through the fishery. A biomass reference level and a 2020 rapid assessment update will give Iwi better information to determine which level they wish to see the CRA1 fishery managed. Until this work is completed and been suitably reviewed, maintaining the status quo will not compromise the sustainability of the CRA1 fishery.

### Decreases to recreational and other mortality allowances do not reduce extractions

73. The current proposed changes to the recreational and other mortality allowance (including illegal take) are generated from the non-commercial catch assumptions for the 2020 rapid assessment update. We support setting these allowances at the current best estimate. These changes, however, are an administrative exercise. Reductions in allowances on paper do not constrain recreational or illegal take. To make a meaningful contribution to reducing these extractions, regulatory change to management settings and increased compliance is essential.

## Kōura – red rock lobster (CRA3)

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### Our view

- We support Option 3.3 for CRA3.

### Proposed Options

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	Other mortality
CRA 3 Gisborne	Option 3.1: Status quo	351.9	222.9		20	89
	Option 3.2: Decrease the TAC by 10%	317.5 ↓ (10%)	209.5 ↓ (6%)		13 ↓	
	Option 3.3: Decrease the TAC by 14%	302 ↓ (14%)	195 ↓ (13%)	20	12 ↓	75 ↓
	Option 3.4: Decrease the TAC by 19%	284 ↓ (19%)	178 ↓ (20%)		11 ↓	

### Our approach

#### Reduce the TAC – the iwi-endorsed option in the 2020 April Sustainability Round

74. In 2019, a stock assessment was completed for CRA3. Iwi and industry supported a reduction to the TAC. However, the (then) Minister decided to postpone any reduction to the TAC due to Covid-19. Iwi expressed their disappointment in the decision not to decrease the TAC. Iwi wish to see this decision rectified by implementing the reduction endorsed in 2020. The full rationale for this option can be found in Te Ohu Kaimoana's response to the 2020 April [review of sustainability measures](#). We consider the rationale still applies for the 2021 review.

### Decreases to recreational and other mortality allowances do not reduce extractions

75. The current proposed changes to the recreational and other mortality allowance (including illegal take) in option 3.3 are generated from the non-commercial catch assumptions for the 2020 rapid assessment update. We support setting these allowances at the current best estimate. These changes, however, are an administrative exercise. Reductions in allowances on paper do not constrain recreational or illegal take. To make a meaningful contribution to reducing these extractions regulatory change to management settings and increased compliance is essential.

### Review of CRA3 differential minimum legal size

76. Previous Ministers have expressed interest in solving the perceived inequity issue of differential minimum legal size (MLS) over the spring/summer period in the CRA3 fishery. Iwi expressed (in a hui facilitated by Te Ohu Kaimoana) the desire to address broader management issues in the CRA3 region. Iwi present supported the status quo option for differential MLS until such broader management issues can be addressed, including:

- Reporting from the recreational sector.
- Amateur charter vessels will need to be better monitored and regulated to understand how amateur charter vessels and other recreational catch are constrained within its allowance under the TAC.
- More funding and work being placed into understanding, mitigating, and reducing land-based and environmental impacts on the marine environment.
- Greater compliance with catch reporting and illegal take, for example, increased Iwi/ Māori involvement as honorary fisheries officers.

77. We support this conversation be taken to the Iwi/Māori and the local community of Tairāwhiti. In the consultation document Fisheries New Zealand intends to hold a multi-stakeholder meeting in Gisborne early this year.

## Kōura – red rock lobster (CRA4)

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### Our view

- We support an alternative option for CRA 4 (Option 4.4)
- We note that Ngāti Kahungunu support Option 4.2.

	TAC	TACC	Customary	Recreational	OSFM
<b>Option 4.4</b>	426.8	318.8	35	40	33

## Proposed Options

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	Other mortality
CRA 4 Wellington Hawke's Bay	Option 4.1: Status quo	513.8	318.8		85	75
	Option 4.2: Decrease the TAC by 24%	388 ↓ (24%)	280 ↓ (12%)	35	40 ↓	
	Option 4.3: Decrease the TAC by 30%	361 ↓ (30%)	260 ↓ (18%)		33 ↓	33 ↓

## Our approach

### Maintain current catch while monitoring the stability of fishery

78. The stock assessment predicted that both the vulnerable biomass would decrease by ~6% and spawning stock biomass by ~5% between 2020 and 2024 if the current catch is maintained. Some operators have noted that the assessment does not seem to reflect their experience on the water so did not see a TACC reduction as necessary. In contrast, other operators noted the fishery was not performing well in their areas and would like to see a better performing fishery.
79. CRA4 is a relatively volatile fishery that has had many TACC adjustments over the past eight years. The unstable nature of the TACC does not lend itself to long term future thinking, given the uncertainty with each fishing year and each TACC adjustment. Last year, Iwi opted to reject a TAC increase with the future stability of this fishery in mind. We support maintaining the current TACC and checking in on the management of CRA4 in 2022 with an agreed biomass reference level and a rapid assessment update. These exercises will provide Iwi with better information to help determine the level to which they wish to see the CRA4 fishery managed.
80. One Iwi<sup>10</sup> within CRA5 has expressed their desire to see some active research into the larval recruitment in CRA4 and the impact of climate change and adverse weather events. We support research into the CRA4 fishery that would lead to improved management.

### Decreases to recreational and other mortality allowances do not reduce extractions

81. The current proposed changes to the recreational and other mortality allowance (including illegal take) in option 4.4 are generated from the non-commercial catch assumptions for the 2020 rapid assessment update. We support setting these allowances at the current best estimate of catch. These changes, however, are an administrative exercise. Reductions in allowances on paper do not constrain recreational or illegal take. To make a meaningful contribution to reducing these extractions regulatory change to management settings and increased compliance is essential.

<sup>10</sup> Te Atiawa Ki Whakarongotai.

## Kōura – red rock lobster (CRA5)

### Our view

- We support an alternative option for CRA5 (Option 5.3).
- We note that Ngāti Apa ki te Rā Tō support option 5.2.

	TAC	TACC	Customary	Recreational	OSFM
<i>Option 5.3</i>	502 ↓	350	40	75 ↓	37

### Proposed Options

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	Other mortality
CRA 5	Option 5.1: Status quo	514	350		87	
Canterbury Marlborough	Option 5.2: Decrease the TAC by 6%	484.5 ↓ (6%)	332.5 ↓ (5%)	40	75 ↓	37

### Our approach

#### No sustainability concerns despite a decrease to vulnerable biomass

82. In 2020, a stock assessment was completed for CRA5. The stock assessment predicted that the overall vulnerable biomass would decrease by ~34% and spawning stock biomass by ~6% between 2020 and 2024 if the current catch is maintained.

83. Although current catch is predicted to decline, the stock will remain above the biomass reference level. The projected spawning stock biomass in 2024 is predicted to be ~67 % of the pre-fishing spawning stock biomass, well above any levels that would trigger Fisheries New Zealand's guidelines for a formal rebuild plan. Given these predictions for both vulnerable and spawning stock biomass, there are no sustainability concerns in this fishery.

#### Access issues in CRA5 are being addressed.

84. Historical access issues have prevented more catch being taken within CRA5. Following the Kaikoura earthquake, beach launch access at Ward has prevented the launch of larger vessels for nearly four years. CRAMAC5 is already making arrangements so that more ACE can be taken from this area. The science team has advised that shifting the catch around will not change the stock assessment's overall outcome. However, it is still an essential factor in the management of the CRA5 fishery. A rapid assessment update will be undertaken next year, which will provide insight into how removing access barriers will track through the fishery.

### Decreases to recreational and other mortality allowances do not reduce extractions

85. The current proposed changes to the recreational and other mortality allowance (including illegal take) in option 3.3 are generated from the non-commercial catch assumptions for the 2020 rapid assessment update. We support setting these allowances at the current best estimate. These changes, however, are an administrative exercise. Reductions in allowances on paper do not constrain recreational or illegal take. To make a meaningful contribution to reducing these extractions regulatory change to management settings and increased compliance is essential.

## Pawharu - packhorse lobster (PHC1)

### Our view

- We support an alternative option for PHC1 (Option P.4).
- We support a recreational allowance of 10 tonnes.
- We note that Ngāti Apa, Whanganui Iwi Fisheries and Ngāti Kahungunu support option P.1.

	TAC	TACC	Customary	Recreational	OSFM
<i>Option P.4</i>	83	58↑	10	10	5

### Proposed options

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	Other mortality
	<b>Current settings</b>	-	<b>40.3</b>	-	-	-
<b>PHC 1</b>	<b>Option P.1:</b> Set the TAC at 65.3 tonnes	65.3	40.3	10	10	5
<b>All of New Zealand</b>	<b>Option P.2:</b> Set the TAC at 79.3 tonnes	79.3	49.3 ↑ (22%)	10	15	5
	<b>Option P.3:</b> Set the TAC at 88 tonnes	88	58 ↑ (44%)	10	15	5

### Our approach

#### We support setting a customary allowance

86. The customary allowance is based on customary needs and is managed through kaitiaki. We support an allowance of 10 tonnes.

### **The Fisheries Act provides for sustainable utilisation of fisheries resources**

87. In 2020, a stock assessment for PHC1 was undertaken. The stock assessment provided a conservative estimate of stock biomass and estimated a maximum sustainable yield of 68 tonnes for commercial and recreational take. Therefore, we support setting the TACC at 58 tonnes, noting this accounts for a conservative approach.

### **Recreational allowances should not exceed the best estimate of the current catch**

88. The best available information on PHC1 recreational catch suggests an allowance of 10 tonnes. An option that supports a recreational allowance of greater than this estimate is contradictory to the framework provided by the Act and examples of case law<sup>11</sup>. Further, it is inconsistent with our views on how allowances should be determined. We believe recreational fisheries should be managed within the best estimate of the current catch through supporting regulatory measures.

89. We are supportive of the regulatory process of changing PHC1 minimum legal size to be measured in tail width rather than the current measure of tail length. This would align measurement techniques with the red rock lobster fishery and make obtaining the PHC1 measurement an easier task for fishers.

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<sup>11</sup> Overview of legal requirements relating to sustainability measures – Fisheries New Zealand 2020 para 30-31.

# October Stocks

## Rāwaru – blue cod (BCO4)

### Our view

- We support an alternative option for BCO4 (Option 2).
- We support setting a TAC for BCO4.
- We support the other sources of mortality for BCO4 being set at 5% of the TACC.
- We support a recreational allowance of 10 tonnes.
- We support the retention of the deemed values.
- We do not support changes to the TACC in a manner that results in a proportional reduction of Iwi settlement quota.

	TAC	TACC	Customary	Recreational	OSFM
<i>Option 2</i>	819.339	759.339	10	10	40

### Proposed Options

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
<b>Current settings</b> (status quo)	-	759.339	-	-	-
<b>Option 1</b> (Set a TAC & allowances)	829.339	759.339	10	20	40

### Our approach

#### Blue cod is a taonga species, highly valued by the Iwi, Imi and the Chatham Islands community

90. Iwi, Imi, the community and quota owners actively participate in the Chatham Island Fisheries Forum and the Chatham Island Finfish Association to communicate and discuss their aspirations for BCO4. Iwi, Imi and Moana are also significant quota owners: collectively owning 24% of BCO4 quota. Commercial catches of high-value species like pāua, rock lobster, blue cod and hāpuku/bass are the primary income source for the Chatham Islands<sup>12</sup>.

<sup>12</sup> <https://fs.fish.govt.nz/Page.aspx?fyk=35&pk=41>

### **Aspirations or concerns of Chatham Island residents in managing their fisheries not recognised in consultation document**

91. Fisheries are a key part of the identity of the Chatham Islands community. Their connection with the ocean is one most Islanders express daily and provides for their social, cultural, and economic wellbeing. Throughout the local community, there has been a long-running concern about the levels of fish that recreational tourist fishers have been taking off the Chatham Islands<sup>13</sup>. Fisheries officers on the Island have carried out several documented assessments at the airport of the volumes of fish that leave the Island as recreational take. As noted in Fisheries New Zealand's Preliminary Risk Assessment, "Visitors take about half of the recreational catch"<sup>14</sup>. However, the total amount of fish taken off the Island by tourists and recreational fishers is currently unknown and therefore not quantified. There is an expectation within the local community that the inshore fisheries resources should always be available for sustenance. Consequently; the Chatham Island Fisheries Forum considered that a recreational allowance 10 tonnes was appropriate and that the daily limit should be reduced to at least 10 per day to manage catch within this allowance.
92. Fisheries New Zealand has made efforts to support the Islands aspiration for a sustainable blue cod fishery by introducing an accumulation limit. On 26 May 2020, Fisheries New Zealand released the Minister's decision on blue cod fishing regulations as part of the National blue cod strategy<sup>15</sup>. A 'traffic light system' was developed as part of the strategy based on the health of local fish stocks. The traffic light system highlighted the Chatham Islands as a 'green light' which reduced the daily limit from 30 to 15. This consultation was an opportunity to set the recreational bag limit to a level aligned with the local community's concerns. On 28 July 2020, at the Chatham Islands Community Forum, it was recommended that Fisheries New Zealand reduce the bag limit of 15 to 10 blue cod. This recommendation was also agreed by the Chatham Island Finfish Association as noted in the Committee Meeting minutes, Wednesday 29 July 2020. As pointed out in the Initial Position Paper, on 16 November 2020, further input was sought on the proposed TAC and allowances for BCO4 at the Chatham Islands Community Forum. Allowances of 10 tonnes were further supported at this forum. Hence we are at a loss to understand why a limit of 15 per day was proposed when the Chatham Island view is clearly 10.
93. Decisions under the Act need to be consistent with its information principles. The proposed options for BCO4 do not reflect the best available information<sup>16</sup> as they have not incorporated the views expressed in the forums. It would have been appropriate for the consultation to include an option that reflected the Islanders' aspirations and narrative around this. We consider that the consultation document does not provide the best available information to assist the Minister in making a decision.

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<sup>14</sup> (Fisheries New Zealand, 2013), Preliminary Risk Assessment - Introduction of Accumulation Limits to Recreational Bag Limits on the Chatham Islands.

<sup>15</sup> <https://www.mpi.govt.nz/dmsdocument/32533-National-Blue-Cod-Strategy-2018>

<sup>16</sup> Fisheries Act 1996: **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time

### **Recreational allowances should not exceed the best estimate of current catch**

94. The last estimate of BCO4 recreational catch is from 2008/09 and equated to 15 tonnes. An option that supports a recreational allowance of greater than this estimate is contrary to the framework provided by the Act and examples of case law<sup>17</sup>. We believe that recreational fisheries should be managed within the best estimate of current catch through supporting regulatory measures.
95. Based on the community's issues and aspirations to decrease the recreational limit, the recreational allowance should be set at a level to achieve a reduction in the limit rather than above the level of estimated current catch. Recreational extractions need to be managed through reductions to daily limits and the active monitoring of the catch to make a meaningful contribution to the fishery's sustainability.
96. We propose that the recreational allowance be set at 10 tonnes and the remaining 10 tonnes be returned to Tangaroa. This would result in a TAC of 819.339t. Following this consultation, additional management settings would need to be taken to ensure the allowance effectively constrains the recreational catch. The most accessible tool currently available to do this is to adjust the daily catch limit from 15 fish to 10 fish per day. However, in the medium-term, we support the fine-scale management of non-commercial catch by Iwi and Imi.

### **The existence of 28N rights in BCO4 requires careful administration**

97. A TACC increase of one tonne is required for all 28N rights to be discharged. We do not support a management decision that will result in a proportional reduction of Iwi ownership. Increasing the TACC in BCO4 will result in 28N rights being discharged, and if it is administered in accordance with s23 of the Fisheries Act 1996, then there will be a breach of the Settlement because it will reduce quota shares as a proportion of the TAC.

### **Deemed value rates are appropriately set**

98. We support retaining the deemed value rates as they currently sit appropriately between ACE price and port price.

## **Dark ghost shark (GSH1)**

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### **Our view**

- We support setting the TAC for GSH1.
- We support Option 2, to increase the TAC, TACC and all other mortality caused by fishing.
- We support a review of the current deemed value rates to better match the ACE price.

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<sup>17</sup>1 Overview of legal requirements relating to sustainability measures – Fisheries New Zealand 2020 para 30-31.

## Proposed Options

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
Current settings	-	22	-	-	-
Option 1 (Set TAC & allowances)	26	22	1	1	2
Option 2	35	30 ↑ (8 t)	1	1	3

## Our approach

### There is a sustainable utilisation opportunity in GSH1

99. Dark ghost shark is caught primarily as a bycatch species in mixed trawl fisheries. Since 2011/12 the catch trend has been increasing, indicating that the current catch is sustainable. Sustainability risks are minimised as the proposed TACC is covering current catch and would not increase effort. Due to the increase in dark ghost shark catch, there is an ACE limitation in this fishery. Increasing the TACC to 30 tonnes will allow for better utilisation of the catch of ghost shark in this fishery.

### Deemed values for this stock are no longer appropriate

100. The current deemed value is higher than the port price, which can degrade the incentives to balance catch with ACE and correctly report. We support decreasing the interim and annual deemed value rate to circa \$0.17.

## Reperepe, makorepe – Elephantfish (ELE7)

### Our view

- We support an alternative option for ELE7 (Option 3).

	TAC	TACC	Customary	Recreational	OSFM
Option 3	133	112	5	5	11

## Proposed Options

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
Option 1 (Status quo)	127	102	5	10	10
Option 2	138 ↑ (11 t)	112 ↑ (10 t)	5	10	11 ↑ (1 t)

## **Our approach**

### **There is a utilisation opportunity in ELE7**

101. Elephantfish (ELE7) is caught as both a target and non-target fishery in Area 7 trawl fisheries. The TACC for ELE7 had not changed since 1992 when the TACC increased from 101 tonnes to 102 tonnes<sup>18</sup>. The total landings of ELE7 have exceeded the TACC on three occasions in the past 10 years. Best available information from the fishery indicates that Option 2 would maintain the biomass at or above the level that would support maximum sustainable yield.

### **Stocks that are fished together should be managed together**

102. We support an approach that manages stocks in mixed fisheries together. This principle is consistent with the Fisheries Act 1996, which sets out an ecosystem-based approach to fisheries management. In 2019, the Area 7 mixed trawl fishery was reviewed (GUR7, SPO7, JDO7, ELE7). In this review, ELE7 was the only stock where Fisheries New Zealand proposed no increase to the TACC. ELE7 appears to be more independent of the other species in the Area 7 Trawl fishery. However, any increase in SPO7 is likely to increase the catch of ELE7, as the two species can be caught together<sup>19</sup>. A more holistic approach would have increased the TACC of ELE7 when SPO7 TACC increased.

### **Recreational allowances are arbitrary without reliable data and information**

103. In our view, increased monitoring and regulation of recreational take will improve our overall understanding of the quantity of fish being taken and what management is required. The estimated harvest of ELE7 by the recreational sector in the 2017/2018 fishing year was approximately 189 fish<sup>20</sup>. No mean weight estimates are available to convert recreational estimates of harvested fish to harvested weights (Plenary, 2020). The Initial Position Paper in 2019 also noted that there was "Not enough catch to make estimates in either year"<sup>21</sup>. Given reliable data is unavailable, we don't support a recreational allowance of 10 tonnes. A recreational allowance of 10 tonnes assumes that the mean weight of fish caught by a recreational fisher is 53 kilograms, which is not plausible. Although the option to decrease is not being consulted on, we see it more appropriate to decrease the recreational allowance. We support removing the excess 5 tonnes from the TAC and returning it to Tangaroa because it is not needed to cover catch.

### **Deemed values should be set correctly to incentivise accurate reporting**

104. We do not support the ramping up of deemed values proposed in the special annual differential rates. The proposed differential rates exceed the most recent port price (\$1.93/kg in 2019/20) and are likely to be above the market price of fish. Ramping of deemed values can disincentivise accurate reporting.

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<sup>18</sup> [https://fs.fish.govt.nz/Doc/5433/ELE\\_07.pdf.ashx](https://fs.fish.govt.nz/Doc/5433/ELE_07.pdf.ashx)

<sup>19</sup> <https://teohu.maori.nz/wp-content/uploads/2019/07/Te-Ohu-Kaimoana-Sustainability-Round-Response-October-2019.pdf>

<sup>20</sup> Noted in the 2017/18 National Panel Survey

<sup>21</sup> <https://www.mpi.govt.nz/dmsdocument/35184/direct>

## Pātiki – flatfish (FLA2)

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### Our view

- We support an alternative option (Option 4).
- Habitat degradation is a concern for this stock.
- We support retaining the current deemed values for FLA2 for the next fishing year.

	TAC	TACC	Customary	Recreational	OSFM
<i>Option 4</i>	178	150	10	10	8

### Proposed Options

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
<b>Current settings</b>	-	726	-	-	-
<b>1 (Set a TAC &amp; allowances)</b>	782	726	10	10	36
<b>2</b>	230	200 ↓ (526 t)	10	10	10
<b>3</b>	163	136 ↓ (590 t)	10	10	7

### Our approach

#### We support constraining potentially unsustainable fishing effort

105. Commercial flatfish catch in FLA2 has consistently declined despite its reasonable port price and value as a target fishery. Catch has been less than half of the TACC for over 20 years. Best available information indicates that the CPUE has fluctuated around the target, which suggests that current fishing pressure does not materially affect the abundance. The decrease in landings is more likely attributed to the change in fishery dynamics and a general reduction in the New Zealand inshore fleet. Therefore, while current fishing effort is unlikely to be causing a decline in abundance, there is an opportunity to reduce the TACC to a level that better aligns with catch. Setting a TACC of 150 tonnes allows for current catch levels with some headroom to recognise the highly variable nature of the fishery.

#### Habitat degradation poses a risk to the sustainability of this fishery

106. There are growing concerns about the quality of estuarine and river mouth ecosystems due to the negative impacts of land use run-off. There is a two-fold risk for bottom-dwelling species like flatfish: the alteration of habitat they require to breed and feed and the direct intake of pollutants, which compromises seafood quality. Generally, reducing catch over a long period would increase CPUE as the abundance of the fishery increases.

However, the FLA2 fishery's CPUE has remained relatively stable despite reduced fishing effort and landings. This suggests that there is another factor limiting the abundance of the stock.

107. In 2018, a review of FLA1 management settings resulted in an almost unanimous response from submissions requesting more fine-scale management that looked at local issues, including minimising the impact of land-based effects. This is currently underway and could serve as a pilot for FLA2.

#### Deemed values for FLA2 should be monitored in future years

108. While the current settings are appropriate, a decrease in the TACC may lead to an increase in ACE price. If so, the deemed value may be too close to the ACE price, and a review may be necessary.

## Kourepoua – giant stargazer (STA1)

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### Our view

- We support Option 2 an increase to the TAC of 5 tonnes and TACC of 4 tonnes.
- We support the other sources of mortality for STA1 being set at 5% of the TACC to account for its robust physical characteristics.
- We support retention of the current deemed value rates.

### Proposed Options

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
Current settings	-	21	-	-	-
Option 1 (Set a TAC & allowances)	24	21	1	1	1
Option 2	29	25 ↑ (4 t)	1	1	2
Option 3	31	27 ↑ (6 t)	1	1	2

### Our approach

#### Utilisation opportunity in STA1

109. Over the past 20 years, STA1 catch has exceeded the TACC more than half of the time. This has resulted in the payment of deemed values for a stock where sustainability does not appear to be an issue. The relatively stable and continuous nature of this catch trend suggests the current level of catch is sustainable. An increase to the TACC would provide for improved utilisation of this fishery.

### Risks to sustainability are minimal

110. Although there is no stock assessment for this fishery, uncertainties and risks associated with increasing the TACC are mitigated through the modest scale of increase and ongoing monitoring of CPUE. The proposed increase does not exceed the current catch; therefore, sustainability risk is minimal. Stargazer is a non-target fishery meaning that the increase in the TACC would not increase fishing effort.

### Deemed value rates are appropriately set

111. We support retaining the deemed value rates as they currently sit appropriately between ACE price and port price.

## Aua, kātaha – Yellow-eyed mullet (YEM9)

### Our view

- We support an alternative option (Option 4).
- Habitat degradation is a concern for this stock.
- We support the review of deemed values for YEM9.

	TAC	TACC	Customary	Recreational	OSFM
<i>Option 4</i>	24	15	4	4	1

### Proposed Options

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
Current settings	38	30	4	4	-
Option 1 ( <i>Set all other mortality</i> )	38	29 ↓ (1 t)	4	4	1
Option 2	26 ↓ (12 t)	17 ↓ (13 t)	4	4	1
Option 3	19 ↓ (19 t)	10 ↓ (20 t)	4	4	1

### Our approach

#### We support the constraint of potentially unsustainable fishing effort

112. Catches of yellow-eyed mullet have remained relatively stable over the past 20 years, fluctuating between 5 and 15 tonnes. This trend does not suggest an unsustainable catch level. However, there is a sustainability risk if the current TACC (38 tonnes) were to be caught year on year. Setting a TACC of 15 tonnes would allow current catch to continue but reduce the chance of unsustainable fishing effort.

**Habitat degradation is a threat to this fishery**

113. The majority of this fishery occurs in the Manakau Harbour, which has an E grade for both water quality and ecological health under the Auckland Council marine report card system. The report card system runs from A alphabetically through to F making the E grade the second-lowest ranking. We are concerned that if the water quality and ecological health do not improve, the fisheries will be less resilient, and sustainability will be further compromised.

**Deemed values for this stock are no longer appropriate**

114. While ACE price and deemed values have remained relatively constant, the port price has increased. The current deemed value is too close to the ACE price relative to the port price, which can degrade the incentives to balance catch with ACE. A decrease in the TACC could increase the ACE price, which would drive it above the current deemed values. We support increasing the interim and annual deemed value rate to circa \$1.00.

# Tuwakamana Proposed Closure

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## Our view

- We support an alternative option, that the:
  - the existing seasonal closure is revoked and replaced with a full year-round closure to the taking of **cockles** as a sustainability measure under section 11 of the Act.
  - the closure would not apply to customary take which has been devolved to kaitiaki.
- We recommend effective monitoring measures and an integrated management approach for the long-term sustainability of the marine environment.

## Risks

- We do not agree to a proposed closure to all recreational intertidal shellfish on the basis of ensuring the sustainability of cockles only. We consider this inconsistent with s 11 and the purpose of the Fisheries Act 1996 and consider there is a risk of legal challenge.

## Proposed options for the taking of intertidal shellfish at Cockle Bay/Tuwakamana

	<b>Management Action</b>
<b>Option 1 (Status quo)</b>	No changes made to the existing management regime for intertidal shellfish at Cockle Bay/Tuwakamana
<b>Option 2</b>	Revoke the existing seasonal closure at Cockle Bay/Tuwakamana and replace it with a full year-round closure to the recreational taking of intertidal shellfish as a sustainability measure under section 11 of the Fisheries Act 1996

## Our approach

### Sustainability risk for cockle population and biological considerations for future management

115. The best and most recent available information suggests a potential sustainability risk to the cockle population at Tuwakamana, as evidenced by a recent decline in the number and density of large cockles and an overall decrease in shell length. The total number of large cockles is at its lowest level since the first survey of Tuwakamana in the 2009–10 fishing year. As research indicates that the presence of adult cockles likely provides a settlement cue for larval cockles, a healthy adult population must be maintained to support future recruitment and a sustainable fishery.

**Full closure on all species for ease of implementation and enforcement may not best fulfil the purpose of the Act**

116. We recognise the practicality of having a closure over all intertidal species. The blanket ban would make understanding and enforcement of the rules far more feasible. However, we do question whether the Minister has jurisdiction under s 11 regarding the purpose of the Act. Section 11 is drafted broadly to allow the Minister to "set or vary sustainability measures for one or more stocks or areas" after considering the matters set out in s 11(1). It is not clear if the Minister can introduce a s 11 sustainability measure for species about which there is no concern regarding their sustainability.

117. The purpose of the Act is to 'provide for the utilisation of fisheries resources while ensuring sustainability. 'Ensuring sustainability' means maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations<sup>22</sup>. As there is no sustainability concern for the intertidal species other than cockles, it would not be appropriate to apply a sustainability measure that would prohibit these fisheries resources enabling people to provide for their wellbeing. 'Utilisation' means "conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing". As there is no concern regarding the sustainability of other intertidal species, a blanket prohibition risks being challenged as ultra vires under the Act.

118. Such a decision would need to take into account "any effects of fishing on any stock and the aquatic environment" (s 11(1)(a)), before imposing a blanket prohibition. That necessarily requires consideration of impacts on *other* intertidal shellfish, including mussels etc. There does not appear to be sufficient information regarding impacts on species other than cockles to justify a blanket prohibition. Other options available would have less impact on utilising other intertidal shellfish, including simply a ban on cockles only (which we support), imposing restrictions on bag limits or catch sizes of cockles.

119. Furthermore, before setting or varying a decision under section 11, fisheries services defined as outputs provided for the purpose of the Act must be considered. We interpret this as requiring adequate resources to support the sustainability measure to achieve the purpose of the Act. This may be compliance or research-related.

120. To ensure that the purpose of the Act is met when implementing a section 11 closure over Tuwakamana Bay, we recommend that the closure only applies to species for which there is a sustainability concern. This will require adequate resource through fisheries services to ensure compliance.

121. It has been noted that there is no noticeable pipi population at this beach, and no information on the crab population in the area has been provided. The paper does describe that several customary authorisations have been issued for mussels.

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<sup>22</sup> The Fisheries Act 1996, Part 2, S8(2a)

### **Land-based impacts pose just as much of a risk to the sustainability of this area**

122. The discussion paper acknowledges that environmental factors such as siltation and run-off may also affect cockle growth and mortality rates at Tuwakamana. It also acknowledges that intertidal shellfish resources fluctuate naturally and are susceptible to environmental degradation. Potential stressors, other than human harvesting, to infaunal bivalves like cockles, include:

- a) anthropogenic contaminants such as organotin compounds and biocides (such as those associated with marine antifoulants), heavy metals, organochlorines and polyaromatic hydrocarbons.
- b) changes in the marine environment associated with human activity, such as increased sediment loading, nutrient enrichment and climate change; and
- c) natural phenomena of an extraordinary nature such as harmful algal blooms, heat stress and diseases/parasite events.

123. Suspended and deposited sediments can impact cockle fitness or survival, with terrestrial sediments having more significant effects than marine sediments<sup>23</sup>. Increasing suspended sediment concentrations have induced increased physiological stress, decreased reproductive status, and decreased juvenile growth rates. Sediment deposition has also been shown to negatively impact the density of cockles<sup>24</sup>. The sum of these effects is seen in the distribution of cockles that decline in abundance across many sites with increasing mud content in the sediments, either above zero or 11% mud content, depending upon the study. These findings are summarised in the [May 2017 Fisheries Plenary Report<sup>25</sup>](#).

124. Given the area borders the main population area, highly susceptible to land-based impacts, we recommend a vigorous monitoring regime to assess the levels of siltation, sedimentation, and run-off during the closure to better understand land-based impacts on intertidal shellfish in the area. To see our full position on land-based impacts refer to '[Mai te maunga ki te moana](#)' in this response.

125. Furthermore, the Auckland Council has responsibilities to mitigate the effects **on** fishing. We encourage the Minister and officials to discuss this issue with Auckland Council to ensure the Council fulfils the obligations it has been assigned under the Resource Management Act 1991 and take steps to address habitat loss and actively restore it.

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<sup>23</sup> <https://niwa.co.nz/publications/wa/vol10-no4-december-2002/effect-of-increased-suspended-sediment-on-suspension-feeding-shellfish>

<sup>24</sup> Lohrer, A; Thrush, S; Hewitt, J E; Berkenbusch, K; Ahrens, M; Cummings, V J (2004) Terrestrially derived sediment: response of marine macrobenthic communities to thin terrigenous deposits. Marine Ecology Progress Series 273: 121–138.

<sup>25</sup> [https://fs.fish.govt.nz/Doc/24301/14\\_COCintro\\_2017.pdf.ashx](https://fs.fish.govt.nz/Doc/24301/14_COCintro_2017.pdf.ashx)

### **Enabling rangatiratanga requires effective communication with the community**

126. We support the continuation of customary non-commercial fishing under regulation 50 of the Amateur Fishing Regulations. Kaitiakitanga is inherent in Te Ao Māori, and from our perspective, the Iwi and tangata tiaki are best placed to assess authorisations in Tuwakamana from a sustainability lens. Over the last 20 years, there have been several authorisations for green-lipped mussel but only one record of customary authorisation for cockle harvest.

127. We understand that there may be a conflict between residents and customary non-commercial fishers with an authorisation due to lack of awareness. The continued provision for those to fish with a customary authorisation should be clearly signposted and further communicated with residents. This will mitigate the potential for unnecessary tension.

### **Safeguarding the environment for future generations**

128. We support a management approach that is intergenerational and considers a future whereby communities can sustainably utilise kaimoana in their rohe. We consider the closure as the first step towards active and responsive management. The closure will be an opportunity to understand and assess the cumulative effects 'mai te maunga ki te moana' on Tuwakamana. To help achieve this goal, we suggest that Fisheries New Zealand support Iwi/hapū and the community to develop a risk assessment and a management strategy for Tuwakamana. An example is with the Scallop fishery in Te Tau Ihu (SCA7). Developing the Scallop strategy ensured Iwi, users and the local community could collectively identify the cumulative pressures facing scallops. This strategy provided a detailed risk analysis of the risks and mitigations to re-opening the fishery<sup>26</sup>.

### **A mix of tools required for the kete**

129. There are a range of management measures available under the Act that can be explored as part of the long-term strategy, such as specific reduced daily limits. During the time of the closure, we would recommend:

- a) Co-developing a management strategy with the community, such as the SCA7 strategy<sup>27</sup> in partnership with tangata whenua and through consultation with local community stakeholders to provide more consistent sustainable utilisation of the cockle beds and other intertidal shellfish in Tuwakamana in the future and a considered approach to re-opening the area.
- b) Ongoing monitoring and surveys by the Northern Intertidal Shellfish Monitoring Survey to measure the closure's effectiveness and better inform management strategies.

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<sup>26</sup> <https://www.mpi.govt.nz/fishing-aquaculture/sustainable-fisheries/the-southern-scallop-fishery-sca-7/>

## Appendix one

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### The history of 28N Rights

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130. When the Quota Management System (QMS) was first introduced in 1986, the quota was in tonnes not shares – each quota owner owned a particular tonnage for the fishery they were involved in. Any changes from year to year were to be made through the marketplace. Participants in each fishery were allocated quota from catch histories; however, for many fisheries, the amount allocated by this system exceeded what was deemed to be the sustainable limit for the fishery at the time. That meant future effort needed to be reduced for a number of stocks. To do this, the Government offered the industry two options:

- industry sell (some of) the quota back to the Government through a tendered 'buy-back' scheme where quota owners nominated the price for an amount and Government accepted those starting from the lowest price; or;
- some of the quota from each owner was 'put on hold'. This quota formed 28N rights, and quota owners could not fish that quota until the fish stock recovered sufficiently to allow additional tonnage to be made available. In that circumstance holders of 28N rights had the first right to receive a proportion of the additional tonnage equal to what they had 'put on hold'. If the amount of additional tonnage exceeded the amount of 28N rights, the Government could then sell it to the market.

131. In 1989 however, the Government was faced with what would have been considerable liabilities to buy quota from the industry for a number of fish stocks whose TACC required a reduction. Therefore, the Government, through legislation, changed quota from being individual tonnages to being proportional shares. The introduction of proportional quota shares was a vast improvement for fisheries management in Aotearoa and created better incentives for each commercial participant to promote long-term sustainability.

132. However, in changing the QMS to a proportional share system, the Government also changed how 28N rights were delivered to those rights holders. The legislation requires that whenever there is an increase to the TACC for a fishery with 28N rights, TACC increase is applied first to 28N rights holders until all 28N rights are satisfied. In the QMS, the only way a TACC increase can be achieved is by transferring shares from other quota owners (both normal quota and settlement quota) to 28N rights holders. These shares are transferred to 28N rights holders.

133. Under the Fisheries Act 1996, these rights are carried forward and clarified under section 23.

Te Ohu  
**Kaimoana**

