



**Te Ohu Kaimoana's Response to
Fisheries New Zealand Review
of Recreational Management
Measures for PAU3, PAU7 & CRA5**

Te Ohu
Kaimoana




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Introduction

1. Fisheries New Zealand (FNZ) released two consultation papers on 23 August 2018 that review recreational fishing measures for pāua in PAU3 and PAU7, and for rock lobster in CRA5. This document represents the response from Te Ohu Kaimoana. We do not intend for this response to detract from or override any response or feedback provided independently by Iwi, through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs).

Who we are

2. Te Ohu Kaimoana was established to implement and protect the Fisheries Settlement. Its purpose, set out in section 32 of the Māori 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. Te Ohu Kaimoana works on behalf of 58 MIOs, who in turn represent all Iwi who own the Fisheries Settlement Commercial Assets. AHCs hold Fisheries Settlement Assets on behalf of their MIOs. These include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.
4. Te Ohu Kaimoana works on priorities agreed by MIOs to protect and enhance the Settlement by providing policy advice for Iwi. Iwi have identified the review of sustainability measures as critically important to their long-term relationship with Tangaroa. MIOs have also 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.”

Noho ora mai rā,



Dion Tuuta
Te Mātārae - Chief Executive
Te Ohu Kaimoana

1 - Guiding Principles

1.1 - Te Hā o Tangaroa kia ora ai tāua

1. Prior to the colonisation of Aotearoa by the British Crown, Māori enjoyed complete authority over their fisheries resources. Te Ao Māori's relationship with Tāngaroa, and ability to benefit from that relationship, was and remains underpinned by whakapapa – descent from Ranginui, Papatūānuku and their children.
2. 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.
3. 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.
4. 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

5. 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

6. 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.
7. 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

8. 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.
9. 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.
10. 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.

11. 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.

1.2 - Duty to act in a manner consistent with the Fisheries Settlement

12. 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.

13. 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.

2 - Management measures for PAU3 & PAU7

Proposal to reduce recreational daily bag limits and introduce an accumulation limit in

PAU3 and PAU7 fisheries

2.1 Context

14. FNZ is reviewing recreational regulations in pāua fisheries PAU3 and PAU7 to ensure sustainability following the Kaikōura earthquakes. FNZ is considering options for reducing the daily bag limit and the accumulation limit in each area.

15. In 2016 the Kaikōura earthquakes caused an uplift of coastline in both PAU3 and PAU7 that had a detrimental impact on pāua populations. To protect the remaining populations, a section 11 closure under the Fisheries Act 1996 (the Act) was introduced in 2017 which prohibited the take of all shellfish and seaweed between Marfell's Beach and the Conway River. This closure will remain in place until scientific evidence supports re-opening the fisheries. The section 11 closure has consequently shifted harvesting efforts to adjacent areas outside the closure, leading to sustainability issues in these areas.
16. In September 2017 the Minister of Fisheries reduced the total allowable commercial catch (TACC) for both PAU3 and PAU7. While the decision for PAU7 is subject to judicial review, the industry have shelved ACE to ensure the catch is reduced in accordance with the Ministers decision. For PAU7 the recreational allowance was also reduced from 15 to 12.6 tonnes. For PAU3 the total allowable catch (TAC) was set for the first time, allowing 8.5 tonnes for recreational take. However, at this point no steps have been taken to ensure the allowances are adhered to. This means the integrity of the TAC is being undermined.
17. Prior to the Kaikōura earthquakes, the recreational take in PAU7 was estimated to be exceeding the allowance. Scientific estimates of recreational harvest have not been updated since 2012 but were estimated to be 14.13 tonnes for PAU3 and 16.98 tonnes for PAU7. These values are assumed by FNZ to be underestimates and anecdotal information suggests recreational take has been increasing since 2011/12¹. Therefore, there was already a sustainability issue in PAU7 which has been exacerbated by the impact of the earthquakes.
18. Despite reductions in recreational allowances in 2017 for both PAU3 and PAU7, changes did not occur to bag limits or accumulation limits. While the allowance establishes the limits of harvest, the tool for controlling and managing recreational take is through regulatory measures such as bag limits, minimum legal size and seasons. FNZ proposes to reduce the bag and accumulation limits so that harvest is limited to the allowance under the TAC. This requires at least a 50% reduction in recreational harvest in PAU3 and a 50% reduction in PAU7. FNZ does not propose the status quo as an option, as the current bag and accumulation limits are unsustainable.

2.2 Proposed options

19. FNZ have proposed two options for reducing the daily bag limits and introducing accumulation limits for PAU3 and PAU7 (Table 1):

¹ Fisheries New Zealand's science working group assumed they were underestimated due as pāua harvesting methods were not well captured in the New Zealand Panel Survey for Recreational Fishing 2011/12.

Table 1. FNZ’s daily bag limit and accumulation limit proposals for PAU3 and PAU7.

| Stock | Option | Measure | |
|--|-------------------|-----------------|---------------------------------|
| | | Daily bag limit | Accumulation limit ² |
| PAU 3 (east coast South Island) | <i>Status quo</i> | 10 | 20, or 2.5 kg* |
| | Option 1 | 5 | 10, or 1.25 kg* |
| | Option 2 | 3 | 6, or 0.75 kg* |
| PAU 7 (top of the South Island) | <i>Status quo</i> | 10 | 20, or 2.5 kg* |
| | Option 1 | 5 | 10, or 1.25 kg* |
| | Option 2 | 3 | 6, or 0.75 kg* |

* If paua are in a state that is unable to be counted.

2.3 Our position

20. Te Ohu Kaimoana supports Option 2 for both PAU3 and PAU7: a daily bag limit of three pāua and accumulation limit of six pāua, or 0.75 kg.

2.4 Commentary

PAU3

21. Te Ohu Kaimoana supports Option 2 for PAU3 to reduce pressure on areas open to pāua harvesting and to ensure recreational harvest remains within the allowance under the TAC. We support the accumulation limit to be twice the daily bag limit to be consistent with pāua accumulation limits across the country. FNZ considers that due to sustainability concerns, recreational harvest needs to be reduced by at least 50%. We support Option 2 as FNZ estimates that a reduction in the bag limit of three pāua and accumulation limit of six pāua will reduce the recreational harvest by 61%.

22. We do not support Option 1 which proposes a daily bag limit of five pāua as this is predicted to reduce the harvest by only 38.6%. This falls short of the 50% reduction needed to ensure sustainability.

23. We note that recreational harvest may have already reduced due to a lower bag limit on pāua in the Kaikōura Marine Area. The most recent National Panel Survey for recreational fishing will publish results in 2019 and will help inform FNZ on whether further measures are required.

PAU7

24. Te Ohu Kaimoana supports Option 2 for PAU7 to reduce pressure on the areas open to pāua harvesting and to ensure recreational harvest remains within the allowance under the TAC. We support the accumulation limit to be twice the daily bag limit to be consistent with pāua accumulation limits across the country. FNZ considers that due to sustainability concerns, recreational harvest needs to be reduced by at least 50%. We support Option 2 as a bag limit of three pāua and an accumulation limit of six pāua is predicted to reduce harvest by 63.8% in PAU7 and will therefore meet sustainability measures.
25. We do not support Option 1 which proposes a daily bag limit of five pāua as it is predicted to reduce recreational harvest by 42%. This falls short of the 50% reduction required to ensure sustainability.
26. We note that there were concerns in PAU7 about recreational catches prior to the Kaikōura earthquakes but no action has been taken until now to address recreational fishers continually exceeding allowances. If there are sustainability issues, a reduction in the recreational allowance is meaningless, unless regulatory controls are also changed. The regulatory measures are a tool to manage the recreational harvest, not the allowance under the TAC.

Lack of information on recreational harvest

27. It is difficult to provide comprehensive feedback on the proposed reductions due to insufficient information on current recreational harvest. This is especially concerning as it is thought that recreational harvest is exceeding the allowance under the TAC. We note that the National Panel Survey 2017/18 is currently underway and will provide information on harvest once the results are published. Nevertheless, the survey will not provide information at a fine scale required to manage pāua fisheries. For example, the survey does not provide data on the extent of recreational harvest within the section 11 closure prior to the Kaikōura earthquakes.

Implementation considerations

28. In the consultation paper FNZ explains that changes to recreational bag limits will be implemented in 2019. Both PAU3 and PAU7 will therefore be subject to overharvesting for another busy summer holiday season. We strongly recommend changes to bag limits are implemented in 2018 to avoid this. We note that a recreational harvester is not constrained to one QMA, and therefore the bag reductions should be the same for both PAU3 and PAU7 to reduce confusion. In addition, an increase in fishery officer presence may be required to guarantee the reductions are complied with.

29. In the consultation paper FNZ explains that there is localised depletion due to a shift in harvesting effort in the areas adjacent to the section 11 closed area. However, the consultation paper focuses on solutions addressed at a QMA scale. While we are strongly supportive of bag reductions in this instance, finer scale management will become increasingly important if sustainability is to be ensured. We commend the fine scale management measures that commercial fishers and the Kaikōura Marine Guardians have developed to mitigate localised depletion.
30. We are supportive of FNZ proposing to reduce recreational catch for PAU3 and PAU7 due to sustainability concerns. However, we consider that the delay to review bag limits after the earthquakes is excessive, even though regulatory amendments can be lengthy processes. Further consideration needs to be given to enabling the allowance and associated bag limit to be set by gazette notice in the way that TACCs are.
31. Given the uncertainty as to whether the adjustments will be sufficient to constrain the recreational catch within the allowance, Te Ohu Kaimoana considers that there needs to be more effective and timely monitoring of the recreational catch in these fisheries. Relying on recreational surveys every five years is not sufficient to monitor high-value shared fisheries that have sustainability concerns. It is important that recreational harvest remains within the allowance set under the TAC.

Managing recreational harvest

32. Sharing a fishery means that sacrifices need to be made by all users with the tides of sustainability. Customary and commercial have undertaken reductions in their harvest level to account for this. It is the responsibility of FNZ as manager of the recreational sector to ensure catch is restrained within the allowance. The commercial sector currently has measures in place in the form of shelving of ACE for PAU7 and accepted a TACC reduction in PAU3. These measures were implemented immediately and reduced commercial harvest that would have usually been taken in the closed area. Kaitiaki within both PAU7 and PAU3 have also been conserving their harvest.
33. The issue of recreational harvest exceeding allowances is not unique to PAU3 and PAU7. The problem exists across several fisheries with recreational interests. In our view, if the reductions in recreational bag limits fail to keep fishers within the allowance, more stringent measures will need to be pursued.

34. We understand that a daily bag limit of three pāua could potentially reduce harvest beyond the 50% reduction that is required (noting that FNZ did not provide an option of a bag limit of four pāua). However, the following considerations require a conservative approach to be taken:

- if bag limit reductions are implemented, there will be a time lag greater than two years since the Kaikōura earthquakes. This means measures will have to reverse the impact of areas being overfished for over two years as recreational harvest levels are considered to be underestimated
- bag limits only manage recreational fishing at an individual level and there is no current tool that ensures the collective harvest is within the allowance,
- the PAU7 fishery had sustainability issues prior to the earthquakes and was below the soft limit, meaning that recovery will likely be long-term,
- if bag limits are reduced, fishers may be incentivised to harvest their daily bag limit more often, countering the effects of bag reductions. We consider that the most conservative option leaves headroom for those that may be incentivised to harvest more frequently, and
- the lack of information on current harvest is concerning and bag limits should be conservative in the absence of sufficient data. Section 10 of the Fisheries Act requires the Minister to be cautious when information is uncertain, unreliable, or inadequate.

35. Finally, we do not support any FNZ review that increases the recreational allowance for any stocks beyond its initial setting under the TAC, unless there is agreement by all extractive users. An increase in allowance to the recreational sector at the expense of Māori commercial and non-commercial fishing rights reduces the value of settlement quota and is inconsistent with section 5b of the Act. In addition, increasing an allowance to align with take encourages a 'race for fish' and disincentivises sectors to manage harvest within their allowance under the TAC.

2.5 Conclusion

36. Te Ohu Kaimoana welcomes the proposal to reduce recreational bag limits in PAU3 and PAU7 due to sustainability concerns. We support a bag limit of three pāua and accumulation of six pāua for both PAU3 and PAU7. It is the Minister and FNZ's responsibility to remain vigilant in limiting recreational harvest to within their allowance. Recreational harvest that exceeds the allowance under the TAC undermines sustainability and reduces the value of quota delivered to iwi under the Deed of Settlement 1992. We are concerned with the delay in reviewing recreational bag limits and urge FNZ to implement controls as soon as possible.

3 - Management measures for CRA5

Proposal to introduce recreational telson clipping and an accumulation limit in the CRA5 rock lobster fishery

3.1 Context

1. Fisheries New Zealand (FNZ), on behalf of the National Rock Lobster Management Group (NRLMG), is consulting on proposals to introduce recreational telson clipping and an accumulation limit for rock lobster in the CRA5 fishery.
2. The objective of this review is to provide Ministry for Primary Industries Fisheries Compliance with additional and cost-effective tools in their toolkit to address the illegal take and sale of rock lobsters from the CRA 5 fishery by opportunistic non-commercial fishers and fish thieves.
3. The risk of poaching and black-market activity (i.e. unauthorised take of rock lobsters for sale or barter) is likely to be high in the CRA5 fishery. This is due to a combination of reasons, including:
 - a. Easy access to the fishery because much of the CRA 5 coastline can be reached from the road;
 - b. There are generally favourable fishing conditions;
 - c. Rock lobster can be taken in isolated areas where the chances of being seen by someone who could report the activity are lower; and
 - d. The fishery is currently experiencing high levels of stock abundance providing incentives for illegal take by opportunistic fisheries.
4. Illegal fishing activities threaten to undermine the integrity of the fisheries management regime. This reduces the benefits that legitimate fishers can realise from the use of the resource, contributes to localised depletion, and results in increased non-compliance of legitimate fishers if they lose confidence in the fisheries management regime.

3.2 Proposed options

- 5. FNZ propose amending the Fisheries (Amateur Fishing) Regulations 2013 (the Amateur Regulations) to introduce the measures outlined in Table 1.

Table 2: FNZ’s telson clipping, accumulation limit, and bag and tag condition proposals for CRA5.

| Measure | Option | Description |
|---|--------|---|
| Telson clipping | 1A | Telson clipping is mandatory for recreational fishers: Amend the Amateur Regulations to require a recreational fisher to clip the telson of every legal sized rock lobster taken from CRA 5 that they intend to keep. |
| | 1B | Status quo: There is no mandatory requirement for a recreational fisher to telson clip every legal sized rock lobster that they intend to keep from CRA 5, except in the Kaikōura Marine Area where the measure currently applies. A recreational fisher can currently choose to voluntarily clip a lobster. |
| Accumulation limit and bag and tag conditions | 2A | An accumulation limit and associated bag and tag conditions are mandatory for recreational fishers: Amend the Amateur Regulations to: i. Limit the number of rock lobsters taken recreationally from CRA 5 to three daily bag limits (i.e. 18 rock lobsters); and, ii. Require a person in CRA 5 to hold each single day’s rock lobster catch in a container or bag clearly labelled with the fisher’s name, date and place it was taken, fisher’s name, and the number held in that container. |
| | 2B | Status quo: There is no accumulation limit for recreationally caught rock lobsters in CRA 5 nor mandatory bag and tag conditions, except in the Kaikōura Marine Area where the two measures currently apply. A recreational fisher can currently choose to voluntarily apply these measures. |

3.3 Our position

- 6. Te Ohu Kaimoana recommends that FNZ adopt Option 1A for mandatory telson clipping for recreational fishers in the CRA 5 area and Option 2A for mandatory accumulation limits and associated bag and tag conditions for recreational fishers in the CRA5 area.

3.4 Commentary

7. Te Ohu Kaimoana welcomes FNZ's efforts to reduce illegal take in the CRA 5 fishery, as this undermines the integrity of the QMS and negatively impacts legitimate fishers. The Minister set out his intentions to reduce illegal take in his April 1 CRA 2 decision letter, so it is encouraging to see this decision now being applied to the CRA 5 fishery. We expect FNZ to apply this approach in all rock lobster quota management areas.
8. In developing the specific regulation, FNZ will need to ensure fishers cannot telson clip rock lobster that are undersized, or high graded when returned to the water. We are aware of reports of this behaviour occurring in the Kaikoura area.
9. Te Ohu Kaimoana also supports the implementation of an accumulation limit and associated bag and tag conditions for recreational fishers in the CRA5 area. This measure will help to reduce the opportunity for illegal fishers to stock pile rock lobster for the commercial market e.g. restaurants and fish dealers.
10. MPI Compliance has advised that telson clipping, an accumulation limit, and bag and tag conditions will assist in reducing rock lobster illegally entering the commercial market.
11. To help implement the new regulations we recommend that FNZ develops an education programme aimed at implementing the new regulations. We suggest FNZ uses local media and information boards at marinas and launching sites to make the new regulations known.
12. In addition, to the proposed measures, we recommend FNZ and the National Rock Lobster Management Group investigate the utility of recreational horn-tagging (as used in the Victoria State rock lobster fishery). This is a non-invasive method that identifies rock lobster as having been caught recreationally. This simple measure can also help to reduce illegally caught rock lobster entering the commercial supply chain. Horn tagging also provides the opportunity for recreational fishers to report catches based on the number of tags used.

3.5 Conclusion

13. Te Ohu Kaimoana supports Options 1A and 2A. We welcome the Minister's and FNZ's proposal to introduce recreational telson clipping and accumulation limits for the CRA5 fishery as a promising first step towards reducing illegal take in this fishery. To bolster these efforts, we consider FNZ should increase the monitoring of compliance in the CRA5 fishery as well as provide increased information and education to fishers. In addition, we encourage FNZ to investigate the utility of recreational horn-tagging as an additional method for identifying recreationally caught rock lobster.

Te Ohu
Kaimoana

