Te Ohu Kaimoana's response to Fisheries New Zealand's review of sustainability measures for 1 April 2020

Te Ohu Kaimoana

Contents

This is our response to this year's 1 April 2020 sustainability review

1. This paper contains our response to Fisheries New Zealand's proposals on the review of sustainability measures for the 2020/21 April fishing year. Fisheries New Zealand released its Initial Position Paper on 13 December 2019. Responses are due on 5 February 2020.

2. Our response is structured as follows:
    - First, we set out who we are and the reasons for our interest in the Initial Position Paper.
    - Second, we describe *Te Hā o Tangaroa kia ora ai tāua* as the foundation of our fisheries management principles.
    - Third, we identify how fisheries management should be consistent with the Māori Fisheries Deed of Settlement[1].
    - Fourth, based on the above, we set out our preferred approach to managing the fish stocks under review.

3. We do not intend our response to conflict with or override any response provided independently by Iwi, through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs).

We are Te Ohu Kaimoana

4. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance the Deed of Settlement. Our 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
    - further the agreements made in the Deed of Settlement
    - assist the Crown to discharge its obligations under the Māori Fisheries Deed of Settlement and Te Tiriti o Waitangi
    - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

[1] Māori Fisheries Deed of Settlement 1992. The Deed is given effect to by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Māori Fisheries Act 2004.

5. It is critically important that the Crown, in its review of sustainability measures, is cognisant of and recognises the Deed of Settlement, as given effect by the Maori Fisheries Act 2004. The Deed of Settlement and the Maori Fisheries Act are expressions of the Crown's legal obligation to uphold the Treaty of Waitangi. We note that the obligations under Te Tiriti o Waitangi apply to the Crown generally, whether or not there is an explicit reference to the Treaty in the governing statute, in this case the Fisheries Act 1996. Of particular note are the comments in the *Barton-Prescott* case, that "since the Treaty of Waitangi was designed to have general application, that general application must colour all matters to which it has relevance, whether public or private and…whether or not there is a reference to the treaty in the statute" (*Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179, 184).

6. We work on behalf of 58 mandated Iwi organisations (MIOs)[2], who represent Iwi throughout Aotearoa. Asset holding companies (AHCs) hold Māori Fisheries Settlement Assets[3] on behalf of their MIOs. The assets include individual transferable quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.

7. In consulting a draft National Inshore Finfish Fisheries Plan, we note that Fisheries New Zealand states that "Te Ohu Kaimoana is the representative of Iwi commercial interests and may represent Iwi for other purposes." This view considerably undervalues the role that Te Ohu Kaimoana has under the Maori Fisheries Act 2004.

8. In addition to our statutory mandate, MIOs have approved our Māori Fisheries Strategy and three-year strategic plan, 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". We play a key role in assisting MIOs to achieve that goal.

9. MIOs expect us to protect and enhance the Māori Fisheries Settlement by providing them with policy advice on fisheries-related issues. Iwi have identified advice engaged in the six-monthly review of sustainability measures as critically important to their long-term relationship with Tangaroa.

[2] MIO as referred to in The Maori 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

[3] Māori Fisheries Settlement Assets consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Māori Fisheries Act 2004

Te Hā o Tangaroa kia ora ai tāua is the foundation of our fisheries management principles

The significance of Tangaroa to Te Ao Māori

10. Before colonisation by the Crown, Māori enjoyed full exclusive, undisturbed possession and tino rangatiratanga of their fisheries. The relationship Māori have with Tangaroa is intrinsic, and the ability to benefit from that relationship was and continues to be underpinned by whakapapa. Tangaroa is the son of Papatūānuku, the earth mother, and Ranginui, the sky father. When Papatūānuku and Ranginui were separated, Tangaroa went to live in the world that was created and has existed as a tipuna to Māori ever since[4].

11. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over their own affairs and is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations. This view endures today and *Te Hā o Tangaroa kia ora ai tāua* is an expression of this.

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

12. *Te Hā o Tangaroa kia ora ai tāua* (the breath of Tangaroa sustains us) is an expression of a Māori World View. It contains the principles we use to analyse modern fisheries policy, and other policies that may affect the rights of Iwi under the Māori Fisheries Settlement.

13. In essence, *Te Hā o Tangaroa kia ora ai tāua* highlights the importance of an interdependent relationship with Tangaroa, including his breath, rhythm and bounty, and the way those aspects work together to sustain both Tangaroa and humanity in an enduring way.

14. Protection of the reciprocal relationship with Tangaroa is an inherent part of the Māori Fisheries Settlement agreed by Māori and the Crown in 1992. The Māori Fisheries Settlement is an important and relevant part of modern fisheries management for Aotearoa.

[4] Waitangi Tribunal. "Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity." Te taumata tuatahi (2011).

Fisheries management should be consistent with the Deed of Settlement

15. The Fisheries Act 1996 obliges those performing functions under it to act consistently with the Treaty of Waitangi (Fisheries Claims) Settlement Act, which partially delivers on a full and final settlement of Māori claims to fisheries[5]. An equally important legislative provision to be consistent with is the provisions of the Māori Fisheries Act 2004 which replaced key components of the 1992 Act and sets out the Settlement entities (including Te Ohu Kaimoana). This means whenever a Minister decides to implement a sustainability measure or to provide for utilisation, they must ensure their decision is consistent with, and does not undermine, the Māori Fisheries Settlement. Our assessment of the stocks being reviewed identifies the following key policy matters:
    - a constructive relationship with Fisheries New Zealand
    - allocating the TAC appropriately
    - options for reducing catch
    - determining target stock levels and rebuild rates
    - application of Deemed Values.

We seek a constructive working relationship with Fisheries New Zealand

16. Section 12 of the Fisheries Act 1996 requires the Minister to provide for the input and participation of tangata whenua, and Fisheries New Zealand seeks to meet that obligation on behalf of the Minister through the regional fisheries forums it supports. However, as noted the Fisheries Settlement obligations were subsequently re-expressed in the Maori Fisheries Act 2004. This Act sets out the agreed structure and process for the ongoing treaty relationship between Iwi and the crown over fisheries matters. Our view is that Fisheries New Zealand needs to invest further in the relationship with Te Ohu Kaimoana as the mandated agent of Iwi.

Changes to the TAC should not undermine the Māori Fisheries Settlement

17. When settling their fisheries claims, Māori expected the value and integrity of the Settlement to be retained. After all, the Settlement is full and final. Any action the Crown takes should not undermine the value of Māori Fisheries Settlement assets or customary non-commercial needs. Consequently, the Minister must ensure the integrity of Māori fishing rights is maintained when adjusting the TAC. This means two things:

    a) Priority should be given to the customary allowance for stocks that Iwi and hapū require to meet their customary non-commercial needs.

[5] 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)".

b) The proportion of the TACC that makes up the TAC should not be reduced (but can be increased) by reallocations to the recreational sector. Any reallocation to the recreational sector has the effect of reducing the overall value of Māori Fisheries Settlement quota.

18. We cannot support increases in the recreational allowance at the expense of the TACC. Such re-allocation affects the rights of settlement quota holders and reduces the incentives on the commercial sector to take responsibility and invest in good management.

The Fisheries Act enables a flexible approach to managing catch

19. The Initial Position Paper assumes changes in TACs and TACCs are the best way to respond to stock assessments that show a stock has declined. This approach is very limited as the Fisheries Act 1996 enables a variety of approaches to ensure sustainability[6]. The Minister should only consider setting or varying a TACC where it is the most appropriate option.

20. In our view, the Fisheries Act enables the Minister to consider the way a fishery is managed before deciding whether a formal sustainability measure should be proposed. The Fisheries Act provides for more responsive fisheries management than can be achieved through a blunt TAC/TACC reduction, by recognising the potential for Iwi and/or industry-led actions to better address sustainability concerns. This is reflected in the opportunity to "take into account" such actions under section 11(1) of the Fisheries Act before deciding whether to propose a sustainability measure. Even in situations where the Minister proposes to set a sustainability measure, Iwi and/or industry can promote an alternative approach in response to consultation under section 12 of the Fisheries Act.

21. Before proposing to set or vary a sustainability measure for one or more stocks, the Minister must take into account a range of matters, including the effects of fishing on the aquatic environment[7]. The former Ministry of Fisheries developed and consulted on a series of policy definitions on the "Front End" of the Fisheries Act 1996. It confirmed that section 11(1)(a) of the Fisheries Act provides for "existing or proposed measures that currently, or potentially, manage any adverse effects of fishing to be taken into account before the need for a sustainability measure to be determined".

ACE shelving is an appropriate option

22. Shelving ACE is a viable way of reducing the commercial catch. The Minister is obliged to take such shelving arrangements into account in accordance with section 11(1)(a) of the Fisheries Act. If the Minister is satisfied that the arrangements will adequately mitigate a risk to sustainability, there is no legislative obligation to choose from the list of statutory sustainability measures set out is in section 11(3) of the Fisheries Act. In such cases, the Minister would not be directed to either section 13 or section 14.

[6] 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.

[7] See section 11(1) of the Fisheries Act 1996

There isn't a "one fits all" approach to setting target stock levels and rebuild rates

23. If the Minister decides to set or vary a catch limit[8], he or she must consider those matters relevant to a stock managed under the QMS[9]. Under section13 of the Fisheries Act, a stock should have a TAC that maintains the stock at or above a level that can produce the maximum sustainable yield (often summarised as B_{MSY}), having regard to the interdependence of stocks. The Fisheries Act enables discretion over the way and rate the stock rebuilds or is fished down to the level of B_{MSY}. Importantly, as noted above, the Fisheries Act[10] provides a range of tools - in addition to TACs to assist with any necessary rebuild process.

24. In considering the obligations set out in section 13, Fisheries New Zealand defers to a 'Harvest Strategy Standard for New Zealand Fisheries' (HSS), produced by the Ministry of Fisheries in 2008. The HSS is described as "a policy statement of best practice regulation to the setting of fishery and stock targets and limits for fish stocks in Aotearoa's QMS." It was intended to form a core input to the Ministry's advice to the Minister of Fisheries on the management of fisheries, particularly the setting of TACs under sections 13 and 14. However, the HSS document is now 12 years old. It is difficult to sustain an argument that a non-statutory document of that age could be viewed as promoting best practice regulation.

Default targets and timeframes do not mirror the full purpose of the Fisheries Act

25. The purpose of the Fisheries Act 1996 includes an obligation to provide for utilisation, with a focus on enabling people to provide for their own social, cultural and economic wellbeing within limits that ensure sustainability. The HSS sets out default management targets for stocks as well as both "soft" and "hard' Limits. Where the best available information suggests a stock has fallen below the soft limit of 20% B_0, the HSS triggers a rebuild plan. Employing default target levels and timeframes for fisheries management has real potential to undermine the purpose of the Fisheries Act.

26. Target reference points that correspond to levels of biomass and fishing pressure that are considered to provide for 'optimal' harvests, implicitly internalise economic considerations and/or the ecological requirements for each stock. Hence the target reference points promoted by Fisheries New Zealand avoid explicit consideration of utilisation objectives despite explicit provision for them in the Fisheries Act – and the necessary actions to achieve them. In this way, the targets suggested by the HSS have the effect of prescribing rather than enabling management of fisheries beyond the levels required to ensure sustainability.

[8] See section 11(4) of the Fisheries Act 1996

[9] Sections 13 and 14 of the Fisheries Act 1996 set out the considerations that apply to a stock managed under the QMS

[10] See section 11 (3) of the Fisheries Act 1996

27. There is considerable discrepancy between the requirements of the Fisheries Act and the implementation of the HSS guidelines. To be consistent with the Fisheries Act, stock rebuild plans should:

    - be based on the best available information
    - consider all tools available to the Minister
    - account for relevant social, economic, cultural factors
    - have regard to the interdependence of stocks
    - ensure the stock is tracking to level that can produce the maximum sustainable yield.

    These considerations cannot be delivered through a prescriptive rule-based approach.

28. The HSS has the potential to have significant adverse social and economic impacts if applied without careful consideration of the specific circumstances of the fishery and the range of existing mechanisms to promote recovery. As we have already pointed out, it is hard to accept that only one tool for stock recovery in the form of a reduction to the TAC is best management practice. This "set and forget" approach disregards the range of tools available to rebuild the stock at an optimal rate.

29. The unique biological and environmental conditions facing each stock, as well as socio-economic implications, are all important matters to consider when contemplating management targets. The provisions of the Fisheries Act (rather than the HSS) should be the first point of reference when contemplating management decisions and rebuild strategies to reach those targets.

Collective action will better achieve the purpose of the Fisheries Act

30. Fisheries New Zealand should 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. Collective action is particularly necessary in shared fisheries, where there are many examples of the recreational sector being rewarded (through an increased allowance) for fishing beyond the allowance made by the Minister when the TAC was first set. As noted, this practice also offends Māori Fisheries Settlement (we refer to our evaluation of the role of s 5b of the Fisheries Act).

31. Te Ohu Kaimoana commissioned an international review of the effectiveness of fisheries management systems in achieving conservation objectives. This study concluded that top-down approaches (of which the HSS guidelines are an example) are inconsistent with modern incentive-based systems. In contrast, the most effective fishery/ecological management systems are bottom up. Aotearoa is ideally placed to benefit from these findings and become a world leader in marine conservation[11].

[11] See Libecap, G, Arbuckle, M, and Lindley, C. (In prep). An analysis of the impact on Māori Property Rights in Fisheries of Marine Protected Areas and Fishing Outside the Quota Management System. A seminar discussing the findings of the study can be viewed here.

Deemed Values aim to encourage reporting and discourage harvesting without ACE

32. Commercial fishers who do not balance catch with ACE must make deemed value payments. These payments play an important role in making the QMS work effectively. They are intended to:

    - encourage accurate catch reporting
    - discourage fishers from harvesting stocks without ACE.

33. The Minister sets "interim" and "annual" deemed values for each stock[12]. In doing so, the Minister must take into account the incentive needed for every commercial fisher to have enough ACE to cover their catch for each fishing year. Amongst other things, the Minister should have regard to the market value of the stock and the relevant ACE value.

34. We do not consider that the Deemed Value guidelines[13], used by Fisheries New Zealand, are aligned with the purpose of the Fisheries Act. Fisheries New Zealand's approach to deemed values is to ensure commercial catch does not exceed the TACC. This approach has the potential to increase incentives for fishers to discard catch. In our view, deemed values are not intended to only ensure commercial catch does not exceed the TACC. Rather, a key purpose is to encourage transparency across the fisheries management system so that catch is reported, and the information forms an important input to the monitoring of harvesting. Ultimately, the relationship between the TACC and catch reporting is a dynamic one.

Balance incentives to fish with ACE and accurate reporting of catch

35. It is important to avoid any disincentive to record catch. There is a balance to be struck between incentives to harvest with ACE (within the TACC) and accurate reporting of catch.

36. 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 are unable to do so, having the deemed value set correctly means that there is no disincentive to report the catch and land it. This approach is consistent with the Fisheries Act and the Māori Fisheries Settlement and has the real potential to increase the quality of information available to support decision-making if it is administered that way.

[12] See section 75 of the Fisheries Act 1996.

[13] "Deemed Value Guidelines" were released in 2012. Application of the guidelines has resulted in deemed values being set at, or ramped to, levels that are higher than the market value of a stock in some instances. Under this situation the incentive to land and report catch is removed.

37. 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 implies 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.

38. 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 there is 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 the introduction of deemed values.

39. The Minister established a working group to provide advice on the appropriate use of deemed values. The working group concluded that deemed values are primarily a utilisation tool and should not be set higher than the market value of fish unless necessary to ensure sustainability. The recommendations of the working group have been accepted by the Minister and we understand that step one (aligning the interim deemed values to 90% of the annual deemed value) is to be achieved as a first step.

Payment of deemed values can indicate there is a fisheries management issue to be addressed

40. Deemed values can be used as a tool to identify problems that need to be addressed in a fishery. They should not be set arbitrarily. There are many potential causes for catches being greater than the TACC 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
    - The deemed value is too low – respond by increasing the deemed value
    - A recruitment pulse with a temporary increase in biomass – to remove the incentive to fish what is balanced with ACE

41. We acknowledge that the information available to set deemed values appropriately is imperfect. The key inputs of market value of fish and ACE price are all confounded by the way that quota owners are structured. Hence the setting of deemed values becomes a pragmatic exercise. It needs to find the balance between incentivising catching with the available ACE and accurately reporting all catch, irrespective of what can be balanced with ACE.

Our preferred approach to managing the fish stocks under review

Overview of Spiny (red) rock lobster (Rock Lobster) stocks

42. Considering the outbreak of the Coronavirus, we acknowledge the difficulties being faced by all parties involved in the fishing industry. There is much work that needs to be done to find acceptable resolutions to the challenges the Coronavirus has brought to light. We look forward to working with officials and the New Zealand Rock Lobster Industry Council to develop options for mitigating the impact on the rock lobster fishery.

43. Nevertheless, Fisheries New Zealand are consulting on five rock lobster stocks in the 2020/21 April Sustainability Round. Fisheries New Zealand and the National Rock Lobster Management Group (NRLMG) developed options for consultation following a full stock assessment for CRA1 and CRA3, and the application of "management procedures" for CRA4, CRA7 and CRA8. No new management procedures have been developed for CRA1 and CRA3 following this year's stock assessment. Management procedures guide catch limit proposals for the upcoming April fishing year.

44. There will not be enough data to run a new management procedure due to the transition from paper to electronically reported data (from CELR to EDW reporting) at the end of a current management procedure. It will take around four to five years to be able to generate a time series of catch per unit effort (CPUE) data from electronic reporting to run a new management procedure confidently. The consultation document noted that the Rock Lobster Fisheries Assessment Working Group are considering alternative assessment approaches to use as the basis for advice to the Minister on TAC changes beyond April 2020.

45. We note the concerns of Iwi raised in this April Sustainability Rounds regarding the effects of climate change on Māori rights in fisheries. Māori rights in fisheries can be viewed as a share of the productive potential of all aquatic life in Aotearoa's waters. These rights do not just involve a right to harvest. They also include using aquatic resources in a way that provides for their social, cultural and economic wellbeing. Iwi have directed us to lead development of national and regional fisheries policy based on Māori values and principles in light of their rights. We are working on how we can best assist Iwi to achieve these objectives in the context of climate change.

Rock Lobster (CRA1)

Our view:

46. We support a decrease to the TAC, and allowances for recreational fishing and other sources of mortality.

47. We support a third option requiring the shelving of 21 tonnes of ACE as a means of reducing the commercial catch (as set out in Table 2).

Proposed options

Table 1: Proposed management settings in tonnes for CRA1 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	Other mortality
Option 1.1: *Status quo*	273.062	131.062	20	50	72
Option 1.2: Based on the new CRA 1 stock assessment	203 ↓ (26%)	110 ↓ (16%)		32 ↓ (36%)	41 ↓ (43%)

Table 2: Option 3 for CRA1 involving voluntary shelving with the percentage change relative to the status quo in brackets.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	Other mortality
Option 3	224.062 ↓ (18%)	131.062*	20	32 ↓ (36%)	41↓ (43%)

* 21 tonnes of ACE will be shelved by industry, therefore 110 tonnes of the TACC will be available to be caught.

Our approach:

48. We support an approach that reverses the projected decline in biomass. At present, there is no agreed reference point for CRA1 (a suggested percentage at which the vulnerable biomass should be managed to). Until a robust reference point for this stock can be identified, Te Ohu Kaimoana is supportive of a management approach that halts the projected decline in biomass. At the current catch, the vulnerable biomass of CRA1 is projected to decrease, therefore a reduction in extractions is necessary.

49. We note that there is uncertainty as to whether packhorse rock lobsters are displacing the spiny red rock lobsters. We are supportive of a stock assessment for packhorse rock lobsters and sequential management recommendations that will be pursued this year.

ACE shelving is an appropriate option

50. Option 3 involves shelving 21 tonnes of ACE for the 2020/21 fishing year and likely for several years into the future. Shelving of ACE is a legitimate way of reducing the commercial catch for CRA1[14] and will allow for adaptive management of this fishery. This is of high importance given the implications on the loss of the ability to run management procedures following the change from paper to electronic data reporting. This action highlights fisher's commitment to actively maintain a healthy and sustainable fishery at their own expense.

51. We note that some Iwi do not think option 3 provides enough of a reduction for to ensure future sustainability of the CRA1 fishery. These Iwi would like to see a larger volume of ACE shelved for a set number of years. Shelving of ACE was their preferred mechanism to achieve catch reductions.

The proposed change to recreational catch is superficial

52. The current proposed changes to the recreational allowance in option 3 is an administrative exercise to reflect the best estimate of recreational catch. To make a meaningful contribution to the fishery, recreational extractions need to be managed through reductions to bag limits and active monitoring of the catch.

Increased compliance required to address uncertainty in the estimated figure for other sources of mortality and to reduce any level of illegal take

53. The current proposed changes to the other sources of mortality allowance in option 3 is an administrative exercise to reflect a more accurate indication of other sources of mortality. The proposed allowance of 41 tonnes suggests high levels of illegal take which is concerning to all parties in this fishery.

[14] For Te Ohu Kaimoana's approach on Shelving of ACE please refer to paragraph 22.

Rock Lobster (CRA3)

Our view:

54. We support option 2 to decrease the TAC, TACC, recreational and other sources of mortality allowances.

Proposed options

Table 3: Proposed management settings in tonnes for CRA3 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	Other mortality
Option 3.1: *Status quo*	351.9	222.9	20	20	89
Option 3.2: Based on the new CRA 3 stock assessment	303 ↓ (14%)	195 ↓ (13%)		13 ↓ (35%)	75 ↓ (16%)

Our approach:

55. We support an approach that reverses the projected decline in biomass. At present, there is no agreed reference point for the CRA3 fishery (a suggested percentage at which the vulnerable biomass should be managed to). Until a robust reference point for this stock can be identified, Te Ohu Kaimoana is supportive of a management approach that halts the projected decline in biomass. At the current catch the vulnerable biomass of CRA3 is projected to decrease, therefore a reduction in extractions is necessary.

The proposed change to recreational catch is superficial

56. The current proposed changes to the recreational allowance in option 2 is an administrative exercise to reflect the best estimate of recreational catch. To make a meaningful contribution to the fishery, recreational extractions need to be managed through reductions to bag limits and active monitoring of the catch.

Increased compliance activity required to address uncertainty in the estimated figure for other sources of mortality and reduce any level of illegal take

57. The current proposed changes to the other sources of mortality allowance in option 2 is an administrative exercise to reflect a more accurate indication of other sources of mortality. The proposed allowance of 75 tonnes suggests seriously high levels of illegal take and which is concerning to all parties in this fishery.

Rock Lobster (CRA4)

Our view:

58. We support the status quo for the CRA4 fishery.

Proposed options

Table 4: Proposed management settings in tonnes for CRA4 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	Other mortality
Option 4.1: *Status quo*	513.8	318.8	35	85	75
Option 4.2: Based on the CRA 4 management procedure	552.4 ↑ (8%)	374.4 ↑ (17%)			

Our approach:

59. The CPUE data from CRA4 fishery suggests that an increase is not appropriate. Off-set year CPUE has been consistent for the last two fishing years, 0.9012 kg per pot lift in 2018 and 0.8961 kg per pot lift in 2019. The offset CPUE data triggered the management procedure to output a proposed 17% increase to the TACC for the 2020/21 fishing year. The management procedure also triggered a proposed TAC and TACC increase in 2019/20 fishing year which was not applied. The Minister provided the rationale of retaining the current TAC and TACC as being the best decision for the interest in the long-term sustainability of CRA4. This decision was preferred by some Iwi who raised concerns over the impact that climate change is having on this fishery.

60. Given the similarity in CPUE between the two fishing years (2018/19 and 2019/20) with the same TACC, our view is that the best course of action would be status quo for the CRA4 fishery. CRA4 is scheduled for a stock assessment this year. The information from this should provide better information on which to consider the future management of CRA4.

CRA4 is a volatile fishery

61. The TACC has had many adjustments over the past eight fishing years (Figure 1). 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. We support retaining the current TACC and close monitoring of the fishery. A review of CRA4 management settings in 2021 April Sustainability Rounds is likely given there will be a new stock assessment.

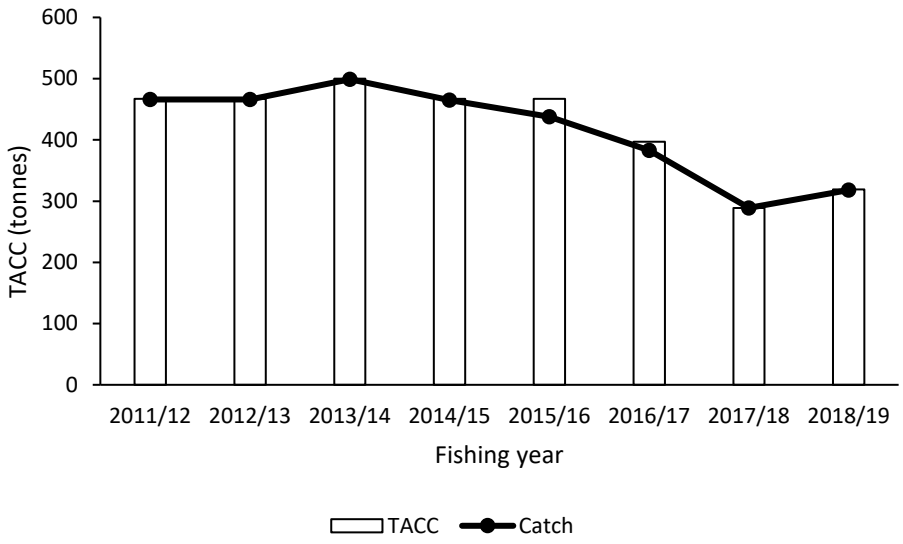

Figure 1. The TACC and catch for the CRA4 fishery across 8 fishing years.

Data on TACC and catch sourced from "New Zealand commercial fisheries: The atlas of area codes and TACCs 2019/2020", published by Clement and Associated Limited.

Rock Lobster (CRA7)

Our view:

62. We support option 2, an increase in the TAC and TACC.

Proposed options

Table 5: Proposed management settings in tonnes for CRA7 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	Other mortality
Option 7.1: *Status quo*	117	97	10	5	5
Option 7.2: Based on the CRA 7 management procedure	146.9 ↑ (26%)	126.9 ↑ (31%)			

Our approach:

63. The CRA7 management procedure suggests a TAC and TACC increase for the 2020/21 fishing year. We note that Ngāi Tahu supports the use and outcome of management procedures in their rohe moana. The CPUE in CRA7 has increased from 2.595 kg per pot lift in 2018 to 3.217 kg per pot lift in 2019. Overall, the CRA7 fishery CPUE has performed well over the past five years.

64. The last stock assessment for CRA7 was undertaken in 2015. The best available information for CRA7 suggests that the vulnerable biomass is likely to be at or above the agreed reference point.

Rock Lobster (CRA8)

Our view

65. We support option 2, an increase in the TAC and TACC.

Proposed options

Table 6: Proposed management settings in tonnes for CRA8 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	Other mortality
Option 8.1: *Status quo*	1220.6	1129.6	30	33	28
Option 8.2: Based on the CRA 8 management procedure	1282.7 ↑ (5%)	1191.7 ↑ (5%)			

Our approach

66. The CRA8 management procedure suggests a TAC and TACC increase for the 2020/21 fishing year. We note that Ngāi Tahu supports the use and outcome of management procedures in their rohe moana. The catch per unit effort (CPUE) CRA8 has increased form 4.2481 kg per pot lift in 2018 to 4.8743 kg per pot lift in 2019. Overall, the CRA8 fishery CPUE has increased each year for the past five years.

67. The last stock assessment for CRA8 was undertaken in 2015. The best available information for CRA8 suggests that the vulnerable biomass is highly likely to be at or above the agreed reference point.

Scallops (SCA1)

Our view

68. We support option 2, a decrease in the TAC, TACC and the allowance for other sources of mortality.

Proposed options

Table 7: Proposed management settings in tonnes for SCA1 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Stock	Option	Total Allowable Catch (tonnes)	Total Allowable Commercial Catch (tonnes)	Allowances		
				Customary Māori (tonnes)	Recreational (tonnes)	All other mortality to the stock caused by fishing (tonnes)
SCA 1	Option 1 *(Status quo)*	75	40	7.5	7.5	20
	Option 2	30 ↓ (60%)	10 ↓ (75%)	7.5	7.5	5 ↓ (75%)

Our approach

69. A decrease to SCA1 catch is necessary as there is a sustainability risk to this fishery. Anecdotal information indicates there has been a decline of biomass in SCA1. It is noted in the consultation document that the Far and Mid-North Iwi have raised their concerns for a number of years over the status of this stock.

Improving knowledge of the SCA1 fishery in partnership with Iwi should be made a priority

70. The best available information for this fishery is now outdated, with the last comprehensive fisheries independent biomass survey being undertaken in 2007. It is important that this knowledge gap is filled to ensure this fishery is being managed appropriately. Fisheries New Zealand stated in their consultation document that they will continue to monitor and review SCA1 in the short and medium term. This needs to be done in partnership with Iwi.

71. We note that the measures proposed apply to the commercial stock only and question whether additional steps should be taken to manage recreational extractions.

Southern Blue Whiting (SBW6B)

Our view

72. Our preference of the two options is a decrease in the TAC/TACC for SBW6B of 10%. However, best fisheries management will come from increased industry engagement with the fishery.

Proposed options

Table 8: Proposed management settings in tonnes for SCA1 from 1 April 2020, with the percentage change relative to the status quo in brackets.

Stock	Option	Total Allowable Catch (tonnes)	Total Allowable Commercial Catch (tonnes)	Allowances		
				Customary Māori (tonnes)	Recreational (tonnes)	All other mortality to the stock caused by fishing (tonnes)
	Current Setting	**3,209**	**3,145**	**0**	**0**	**64**
SBW 6B	Option 1	2,888 ↓ (10%)	2,830 ↓ (10%)	0	0	58 ↓
	Option 2	2,567 ↓ (20%)	2,516 ↓ (20%)	0	0	51 ↓

Our approach

73. SBW6B is a variable fishery, the level of recruitment to this fishery fluctuates. Changes in level of catch against the TAC/TACC in part reflects this variability and hence there is no compelling reason to suggest that an adjustment of the settings will make a difference. Information used to inform catch limits is obtained through regular acoustic surveys – carried out by one of the operators who fishes in the area – and catch sampling by observers on fishing vessels. Observer sampling helps understand the status of a stock by looking at the composition of the catch and assessing the strength of the different year classes within it.

74. SBW6B is targeted during spawning, which usually occurs from mid-August to September. Fish form large aggregations which are targeted with mid water trawl gear. Acoustic surveys are also carried when these large aggregations occur.

75. Low catch rates in SBW6B are likely to be influenced by timing and economics**.** Despite a TACC of 3145 tonnes, only around 788 tonnes has been caught this season. The timing of spawning in SWB6B (which is on the Eastern corner of the EEZ) overlaps with the hoki fishery on the West Coast. For this reason, few operators have fished the area in recent years. Instead some have been content to fish in SBW6B because it is closer to the West Coast and spawns slightly later.

76. The level of current biomass is uncertain as annual acoustic surveys have not been completed in 2018 and 2019 for practical reasons. Acoustic surveys focus on spawning aggregations. We understand the timing of the surveys attempted has not coincided with the spawning aggregations being present.

77. There are signs that recruitment has been poor in this fishery in recent years. Catch sampling by observers provides some information but it is not clear whether sampling was adequate, given a limited number of tows. Hence the information gathered by observers may not be representative of the fishery as a whole.

Collective action by quota owners will better achieve the purpose of the Act than TAC/TACC adjustments

78. Fisheries New Zealand is aware of our view on their harvest strategy standard and the benefits of collective action[15]. Default targets and timeframes do not mirror the full purpose of the Fisheries Act, which enables a variety of tools to address a substantiality issue—not just adjustments to the TAC/TACC. The level of catch in comparison to the TACC is not, it itself, an indicator of stock abundance.

79. Ideally, quota owners would take more responsibility for managing this fishery collectively. However, as there is no proposal for collective action on the table, the default seems to be management through the TAC/TACC settings.

[15] For Te Ohu Kaimoana's approach on harvest strategy standard please refer to paragraph 23-31.

80. Our understanding is that the circumstances of the fishery mean that industry would support a TAC/TACC decrease of 10%. Such action would have the appearance of doing something while still being economic for the main operator to undertake a voyage this coming fishing year. This will mean the industry will be able to continue to gather further information through catch sampling by observers and carry out another acoustic survey. This operator carries out an acoustic survey each year at no cost to the other quota holders (we understand it would cost quota owners several million dollars for the Tangaroa to carry out a similar survey). Depending on the level of information gathered, the situation could be reviewed again for the April 2021 fishing year.

Review of sustainability measures for selected stocks with a zero tonne TACC

Our view

81. We support assessing the management settings for selected stocks with a zero TACC. However, we do not support the options proposed for selected stocks. Rather, we support reducing the deemed values for selected stocks to $0.00 in order to more accurately assess the commercial catch before varying the TAC.

Proposed options

Table 9: Proposed management settings in tonnes for selected stocks with a zero TACC from 1 October 2020.

Stock	Option	Total Allowable Catch (tonnes)	Total Allowable Commercial Catch (tonnes)	Allowances		
				Customary Māori (tonnes)	Recreational (tonnes)	All other mortality to the stock caused by fishing (tonnes)
RBY 5	Current setting	0	0	0	0	n/a
	Option 1	2 ↑	2 ↑	0	0	0
RBY 6	Current setting	0	0	0	0	n/a
	Option 1	1 ↑	1 ↑	0	0	0
TRU 6	Current setting	0	0	0	0	n/a
	Option 1	1 ↑	1 ↑	0	0	0
TRU 9	Current setting	0	0	0	0	n/a
	Option 1	4 ↑	2 ↑	1 ↑	1 ↑	0
WWA9	Current setting	0	0	0	0	n/a
	Option 1	1 ↑	1 ↑	0	0	0
YEM 5	Current setting	2	0	1	1	n/a
	Option 1	3 ↑ (50%)	1	1	1	0

Our approach

82. We acknowledge the initiative taken to review the stocks with a zero tonne TACC. We support in principle setting a TACC above zero for stocks in circumstances where catch is reported by fishers. Setting a positive TACC allows for fishers to balance their catch with ACE rather than immediately incur deemed values which are paid to the Crown. However, a more robust assessment on the commercial catch on each stock should be conducted prior to setting a TACC.

83. We assume that the basis for introducing these stocks into the Quota Management System and setting a TACC of zero related to the desire to allocate proportional rights in the TACC and allow each fishery to be proved up. This approach has merit where there is flexibility in the way TACCs are altered in response to information collected from the fishery. Since this time, Fisheries New Zealand have adopted a more prescriptive approach to advising the Minister on TAC/TACC setting considerations, including using a Harvest Strategy Standard.

Setting TACC in current environment will trigger cost recovery levies for Iwi where stocks may not be economically viable

84. Our assessment is that there will be financial implications for Iwi in setting TACCs above zero for these stocks. Cost recovery levies will be payable and there may be a net cost for Iwi holding quota in these fisheries. Further, there is little indication that fishery-dependent information will be able to used to prove up the TAC/TACC in these fisheries in the way that it was envisaged at the time they were introduced into the Quota Management System.

85. We are not confident that the proposed options (as they stand) for the selected stocks will warrant the levies Iwi will be required to pay for the selected stocks, given the low port prices in 2018/19 and the low quantities of commercial catch as noted Table 10. Imposing costs that are above levels of return is inconsistent with the Deed of Settlement.

Commercial catch data to date not sufficient to inform the setting of a TAC for the selected stocks

86. There has been minimal commercial catch reported in the selected stocks since 1998, as stated in the Fisheries New Zealand Initial Position Paper and the 2018/19 fishing year (see Table 10). This could be the result of inaccurate reporting because fishers are unable to balance catch against ACE. We support further assessment of the commercial catch by adjusting the management settings to incentivise accurate reporting.

Table 10: Recorded commercial catch, deemed values and port price for selected stocks with a zero TACC in the 2018/2019 fishing year

	Commercial catch* (kg)	Deemed values* (per kg)	Port price* (per kg)

RBY5	158	$ 0.28	$ 0.07
RBY6	1	$ 0.28	$ 1.54
TRU6	2	$ 1.50	$ 2.07
TRU9	57	$ 1.50	$ 2.56
WWA9	19	$ 0.54	$ 1.50
YEM5	160	$ 0.33	$ 3.62

*Data on catch and port price are sourced from FishServe. Data on deemed values is sourced from the "New Zealand Commercial fisheries: The Atlas of Area Codes and TACCs 2019/2020"

Deemed values are a diagnostic tool that could help to inform the setting of a TAC for the selected stocks

87. There is an opportunity to test an alternative approach given the selected stocks are consistently reported to be caught at a sustainable level. We advise adjusting the deemed values for the selected stocks to $0.00. This will remove any impediment to reporting catch and instead provide the means for an accurate assessment of the commercial catch and encourage greater accuracy in reporting by fishers. The catch data collected will then provide a stronger foundation for setting a TAC and TACC for the selected stocks.

Review of Deemed Value Rates for Selected Stocks

Our view: Te Ohu Kaimoana supports the recommendations made by the 2019 Deemed Values Working Group

88. We support Fisheries New Zealand's proposal to implement one of the recommendations from the Deemed Value Working Group. The rationale for setting the interim deemed value rate at 90% of the annual deemed value rate is to incentivise fishers to balance their catch with ACE. If the interim deemed value rate is set much lower than the annual rate it may increase the incentive to delay balancing, leading to a 'race for ACE' at the end of the fishing year. This would increase the risk that fishers will be unable to balance their catch with ACE. In addition, setting lower interim rates than annual rates creates a risk that fishers may not be able to cover the cost of annual rates by the end of the fishing year.

Proposed options

89. Fisheries New Zealand is proposing to increase the interim value of 454 stocks to 90% of the annual rate[16]. Changing the interim deemed values was one of seven recommendations made by the Deemed Values Working convened in 2019. This recommendation is also present in the Deemed Values Guidelines 2012. Until now a 90% interim deemed value rate has only been applied to stocks which received a TAC review from 2012 onwards.

[16] See Appendix 1 for list of stocks being reviewed.

90. However, we consider that this is but a first step in implementing the recommendations and that there is no indication that annual deemed value rates are set appropriately. We expect the other recommendations made by the Working Group to be implemented.

Appendix 1- Selected stocks for deemed values review

Frilled venus shell (BYA1-9)

Spiny (red) rock lobster (CRA10)

Ringed dosinia (DAN1-9)

Silky dosinia (DSU1-9)

Horse mussel (HOR1-10)

Trough shell (MDI1-9)

Large trough shell (MMI1-9)

Deepwater tuatua (PDO1-9)

Triangle shell (SAE1-9)

Scallop (SCA1-9, SCA CS)

Sea cucumber (SCC1-10)

Anchovy (ANC1-8, ANC10)

Barracouta (BAR1, BAR4, BAR5, BAR7, BAR10)

Blue cod (BCO1, BCO2, BCO4, BCO5, BCO7, BCO8, BCO10)

Bigeye tuna (BIG1)

Bluenose (BNS10)

Butterfish (BUT1-7, BUT10)

Blue shark (BWS1)

Black cardinal fish (CDL1-10)

Cockle (COC1-5, COC7-9)

Elephant fish (ELE10)

Blue (English) mackerel (EMA1-3, EMA7, EMA10)

Flatfish (FLA2, FLA3, FLA7, FLA10)

Frostfish (FRO13, FRO5-7, FRO10)

Garfish (GAR1-4, GAR7, GAR8, GAR10)

Green-lipped mussels (GLM1-3, GLM7A & 7B, GLM8, GLM10)

Grey mullet (GMU2, GMU3, GMU7, GMU10)

Knobbed whelk (KWH1-9)

Lookdown dory (LDO3, LDO10)

Leatherjacket (LEA10)

Long-finned freshwater eel (LFE20-23)

Ling (LIN1-6, LIN10)

Mako shark (MAK1)

Moonfish (MOO1)

Oreo (OEO1, OEO3A, OEO6, OEO19)

Orange roughy (1-3, ORH7A & 7B, ORH10)

Dredge oysters (OYO1-5, OYO7-9)

Paddle crab (PAD1-10)

Parore (PAR1, PAR2, PAR9, PAR10)

Paua (PAU1-7, PAU10)

Pilchard (PIL1-4, PIL7, PIL8, PIL10)

Porbeagle shark (POS1)

Pipi (PPI1-5, PPI7-9)

Prawn killer (PRK1-10)

Deepwater clam (geoduck) (PZL1-9)

Jack mackerel (JMA1, JMA10)

Kahawai (KAH1-4, KAH10)

Bladder kelp (KBB4G, KBB5G)

Kingfish (KIN10)

Knobbed whelk (KWH1-9)

Lookdown dory (LDO3, LDO10)

Stargazer (STA10)

Southern bluefin tuna (STN1)

Kina (SUR1-10)

Pale ghost shark (GSP1, GSP5, GSP7)

Gurnard (GUR1, GUR2, GUR8, GUR10)

Hake (HAK1, HAK4, HAK7, HAK10)

Hoki (HOK1, HOK10)

Hapuku & Bass (HPU1-8, HPU10)

John dory (JDO2, JDO3, JDO10)

Jack mackerel (JMA1, JMA10)

Kahawai (KAH1-4, KAH10)

Bladder kelp (KBB4G, KBB5G)

Kingfish (KIN10)

Silver warehou (SWA1, SWA10)

Swordfish (SWO1)

Tarakihi (TAR5, TAR10)

Pacific bluefin tuna (TOR1)

Trevally (TR3, TRE7, TRE10)

Tuatua (TUA1-5, TUA7-9)

Blue warehou (WAR1-3, WAR7, WAR8, WAR10)

White warehou (WWA1-5, WWA7-10)

Yellow-eyed mullet (YEM1-10)

Yellowfin tuna (YFN1)