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29 July 2024



Recommendations for FMA 2 stocks SNA 2, SPO 2 & JDO 2

1. **The Minister acknowledges** the need for precautionary decisions for SNA 2, SPO 2 and JDO 2 because the impacts of the 2023 Cyclone Gabrielle on FMA 2 stocks are uncertain and may not be apparent for 4-5 years.
2. **The Minister acknowledges** that the proposals for SNA 2, SPO 2 and JDO 2 when combined represent a risk to associated and dependent species, and low knowledge stocks in FMA 2, because of the impact of increased trawl activity.
3. **The Minister seeks clarification from Fisheries New Zealand** on how he can make precautionary decisions for these FMA 2 stocks when they propose to increase the TACC for SNA 2 and SPO 2 while recognising the need to decrease the TACC for JDO 2.
4. **The Minister makes a precautionary decision** for Snapper 2 (SNA 2) as follows –
 - a. The TAC is increased from 450 tonnes to 482 tonnes (t).
 - b. The allowance set aside for Māori customary interests is retained at 14 t.
 - c. The allowance set aside for recreational interests is increased from 90 t to 122 t.
 - d. The allowance set aside for Other Mortality is retained at 31 t.
 - e. The TACC is retained at 315 tonnes.
5. **The Minister** makes a precautionary decision for Rig 2 (SPO 2) and **maintains the status quo**.
6. **The Minister makes a precautionary decision** for John dory 2 (JDO 2) by setting a TAC and setting aside allowances for the first time, then resetting the TACC as follows –
 - a. The TAC is set at 124 tonnes.
 - b. The allowance set aside for Māori customary interests is 1 tonne.
 - c. The allowance set aside for recreational interests is 2 tonnes.
 - d. The allowance set aside for Other Mortality is 11 tonnes.
 - e. The TACC is reduced from 269.5 t to 110 tonnes.
7. **The Minister makes precautionary decisions** as described above because there are no details on how the Minister can or will avoid, remedy or mitigate the adverse effects of fishing on associated and dependent species, and their habitats, as required by law.

Submitters

8. The New Zealand Sport Fishing Council (**NZSFC**) is a recognised national sports organisation with over 37,000 affiliated members from 48 clubs nationwide. The Council has initiated LegaSea to generate widespread awareness and support for the need to restore abundance in our inshore marine environment. Also, to broaden NZSFC involvement in marine management advocacy, research, education, and alignment on behalf of our members and LegaSea supporters. www.legasea.co.nz.
9. The New Zealand Angling and Casting Association (**NZACA**) is the representative body for its 24 member clubs throughout the country. The Association promotes recreational fishing and the camaraderie of enjoying the activity with fellow fishers. The NZACA is committed to protecting fish stocks and representing its members' right to fish.
10. The New Zealand Underwater Association (**NZUA**) comprises three distinct user groups including Spearfishing NZ, affiliated scuba clubs throughout the country and Underwater Hockey NZ. Through our membership we are acutely aware that the depletion of inshore fish stocks has impacted on the marine environment and the wellbeing of many of our members.
11. Collectively we are '*the submitters*'. The joint submitters are committed to ensuring that sustainability measures and environmental management controls are designed and implemented to achieve the Purpose and Principles of the Fisheries Act 1996, including "maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..." [s8(2)(a) Fisheries Act 1996].
12. Our representatives are available to discuss this submission in more detail if required. We look forward to positive outcomes from this process. We would like to be kept informed of future developments. Our contact is Helen Pastor secretary@nzsportfishing.org.nz.

Proposals

13. **Table 1:** Proposed management options for FMA 2 stocks combined, for 1 October 2024.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
SNA 2	Option 1 (<i>Status quo</i>)	450	315	14	90	31
	Option 2	540 (↑ 90)	367 (↑ 52)	14	122 (↑ 32)	37 (↑ 6)
	Option 3	585 (↑ 135)	409 (↑ 94)	14	122 (↑ 32)	40 (↑ 9)
SPO 2	Option 1 (<i>Status quo</i>)	146	119	5	10	12
	Option 2	175 (↑ 29)	145 (↑ 26)	5	10	15 (↑ 3)
	Option 3	190 (↑ 44)	159 (↑ 40)	5	10	16 (↑ 4)
JDO 2	<i>Current settings</i>	<i>N/A</i>	269.5	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>
	Option 1	299.5	269.5	1	2	27
	Option 2	211	189 (↓ 80.5)	1	2	19
	Option 3	152	135 (↓ 134.5)	1	2	14

Discussion

Consultation

14. On 27 June 2024 Fisheries New Zealand (**FNZ**) released the [Discussion Paper 2024/17](#), seeking to review the Total Allowable Catch (**TAC**), Total Allowable Commercial Catch (**TACC**) and allowances for Snapper 2 (**SNA 2**), Rig 2 (**SPO 2**) and John dory 2 (**JDO 2**). Submissions are due by 29 July 2024. The NZSFC released a Preliminary View for [Snapper 2](#), [Rig 2](#) and [John dory 2](#) on 15 July requesting feedback prior to developing a submission.
15. **The submitters** appreciate the opportunity to submit on the proposal, however we object to the unreasonable timeframe available to respond to these proposals and those for 17 other fish stocks.
16. The 21 working days submission period is inadequate and likely unlawful given the Court of Appeal Wellington Airport judgment determining that, “**Consultation must allow sufficient time**, and a genuine effort must be made. It is a reality not a charade...Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses”¹. [emphasis added]

FNZ proposals

17. The FNZ proposals for FMA 2 are incoherent. The Minister cannot meet his statutory obligations to **ensure sustainability** by implementing the current proposals. That is because the TACC increases for SNA 2 and SPO 2 proposed by FNZ will increase bycatch of John dory, when significant catch decreases are required in JDO 2.
18. If sustainability of all stocks can be achieved then FNZ must explicitly describe how sustainability will be ensured with these proposed management changes.
19. The Minister must also acknowledge that the proposals for SNA 2, SPO 2 and JDO 2, when combined, represent a risk to associated and dependent species, and low knowledge stocks in Fisheries Management Area 2 (**FMA 2**), because of the impact of increased trawl activity.
20. Increasing the TACCs for SNA 2 and SPO 2 will result in more trawl events which means increased catches of John dory.
21. And, if the TACC for SNA 8 is increased on 1 October then the John dory 2 stock is further jeopardised due to increased trawling in FMA 8, on the west coast of the lower North Island.
22. The burning questions are, how can the catches of other species lawfully increase while John dory 2 catches decline? And, how long can the catches of other species even be allowed to continue when they result in JDO 2 being over-exploited?

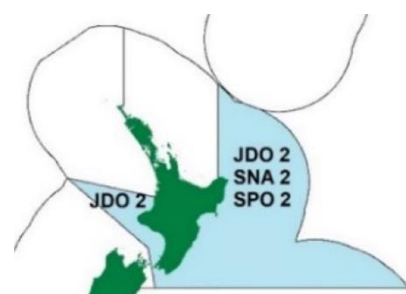


Figure 1: Fisheries Management Area 2

¹ Wellington International Airport Limited and others v Air New Zealand [1993] 1 NZLR 671. At p.675.

Effects of fishing

23. The common denominator among these fisheries is trawling. Bottom trawling is destructive and non-selective. Bottom trawling does not discriminate between target and non-target species or organisms in its path. It catches them all while leaving extensive, long-term damage to the seafloor. This impacts benthic productivity and function.
24. In November 2022 the High Court provided clarification on the Minister's responsibilities in terms of setting the TAC. Churchman J. described those responsibilities (in part) as follows –
 - a. “When setting or varying [the] TAC **the Minister must take into account any effects of fishing on any stock and the aquatic environment.** ‘Effect’ means the direct or indirect effect of fishing, including any positive, adverse, temporary, permanent, past, present, future, and/or cumulative effect. ‘Fishing’ means the catching, taking, or harvesting of fish, aquatic life, or seaweed.”² [emphasis added]
25. This judgment applies to all species in the Quota Management System (QMS) and their habitats, not just the fish stocks of value to commercial interests.
26. Despite the High Court judgment, FNZ does not describe how the proposed changes to the TACCs will impact on the aquatic environment, nor how it will address the direct or indirect effects of fishing. This is essential information if the Minister is to make a lawful decision for SNA 2, SPO 2 and JDO 2.

Selectivity is the issue, not low TACCs

27. The underlying issue in FMA 2 (and other areas) is that there is a selectivity issue due to trawling, not an issue with the TACC being too low. In fact, in some stocks there is an overallocation of catching rights compared to the available fish. The selectivity issue is particularly apparent given the declining catches of JDO 2 while snapper and rig are apparently sufficiently abundant to warrant a TACC increase.
28. FNZ caution that a large TACC reduction in JDO 2 could lead to John dory becoming a ‘choke’ species in some areas, particularly in Snapper 8 on the west coast³. We reject this assessment on the basis that single trawl has poor selectivity and the species most abundant and susceptible to trawling will be caught in greater numbers, regardless of any TACC.
29. John dory in JDO 2 are caught as low volume bycatch in the trawl fisheries which also catch snapper and rig. Substantial proportions of John dory landings are also taken as bycatch in target trawl fisheries for Jack mackerels in FMA 8, the lower west coast of the North Island. Around 30% of JDO 2 is taken as bycatch targeting tarakihi, and red gurnard (25%). The remainder is taken by midwater trawl and set net fisheries⁴. John dory generally do not form schools, though spawning aggregations do form in midwater during summer. Avoiding known areas with high catch rates during the spawning season will help the stock recover and prevent the TACC from being exceeded.
30. To be lawful, fishing in New Zealand must comply with national and international obligations. Officials and operators are always going to struggle in multi-species complexes if

² Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022]. At 22.

³ Review of sustainability measures October 2024: SNA 2, SPO 2, and JDO 2. Fisheries New Zealand. At [p.3]

⁴ Fisheries Assessment Plenary. Volume 2: Horse mussel to Red crab. Fisheries New Zealand. At [p.695-7]

they continue to sanction and use bulk harvesting, indiscriminate fishing methods such as trawling, Danish seining and dredging.

31. After more than a century of bottom bashing it's about time we innovated our way out of mobile, bottom contact fishing and transitioned to more selective techniques such as longlining.
32. If snapper are as abundant as FNZ suggest then now would be the ideal time to transition more of the trawl fleet to a longline fishing, to both enable more selective fishing and avoid the capture of other species. Making this transition would be beneficial for the marine environment and our coastal communities while supporting regional development, whanau businesses and innovation.

Associated and dependent species and habitats

33. Associated and dependent species of SNA 2, SPO 2 and JDO 2 include flatfish, blue warehou, blue moki, red gurnard, tarakihi, Jack mackerel, school shark, spiny dogfish and trevally.
34. The stock status of Flatfish 2, Blue warehou 2, Blue moki 1, are unknown. Red gurnard 2 (GUR 2) is another stock with a TACC that is only half caught so it also fails to constrain commercial effort in FMA 2.
35. Tarakihi 2 (TAR 2) is part of the east coast tarakihi stock which is below the biomass soft limit and currently subject to a Ministerial approved rebuild plan⁵.
36. The Minister has a statutory obligation to consider the status of, and the impacts on, all species that are associated with any fishing in FMA 2.
37. The Wairoa Hard in Hawke Bay is considered a snapper nursery ground. It was impacted by land runoff due to Cyclone Gabrielle in February 2023. Impacts on snapper recruitment are unknown and may not be evident for 4-5 years. Habitats such as the Wairoa Hard need to be included in the Minister's considerations when deciding on catch limits for all trawl caught species in FMA 2.
38. There is negligible observer coverage (<5% based on event-level data), and limited onboard camera coverage in Fisheries Management Area 2 (FMA 2)⁶. Monitoring cameras are due to be activated on trawl vessels in FMA 2 later in 2024, however, the Minister has earlier indicated [a review of the camera programme](#) so these installations may not proceed as planned.
39. We note with concern the [1 April 2024 MPI report](#) that highlights the change in fisher reporting for vessels operating cameras, compared with the period from 2018 until cameras were operating. That report notes 1) A 3.5 times increase in albatross interactions, 2) 6.8 times increase in dolphin captures, 3) 34% increase in the number of fish species reported in catch, and 4) a 46% increase in the volume of fish discards.

⁵ At [p.3]

Environmental bottom line

40. The purpose and principles in sections 8, 9 and 10 of the [Fisheries Act 1996](#) form an environmental bottom line that will **ensure sustainability**. This bottom line applies to all species – none are exempt from the obligation to ensure sustainability. Bycatch species are not exempt and cannot be ignored or given secondary status. **Ensured** applies to all species.
41. The primary tool used to defend the bottom line is the setting of catch limits pursuant to s13 of the Act, determining the TAC for each stock.
42. The biomass that will provide the maximum sustainability yield (B_{MSY}) of any species is only a starting point at determining the environmental bottom line. From this theoretical point the Act's principles must be applied to describe and take into account the uncertainty, information fullness and reliability, international obligations, and to adopt the precautionary principle, as described by Churchman J. of the High Court:
 - a. "Accordingly, I accept Mr Salmon's submission that the importance of the requirement relating to the use of the 'best available information' in a fisheries context, is somewhat elevated. Indeed, the purposes of the Act appear to create what could be described as an '**environmental bottom-line**', and are accordingly complemented by a scheme that favours precaution"⁷. [emphasis added]
43. The single species focus has been ruled by the Court as insufficient. In considering the challenge to the Minister's 2021 and 2022 decisions for CRA 1, the Court described how the Minister applies the Fisheries Act 1996, saying "there are two approaches to fisheries management that are identifiable at international law, being an 'ecosystem approach' and a 'precautionary approach':
 - a. The ecosystem approach requires decision-makers to incorporate wider ecosystem effects into fisheries management, instead of considering sustainability with a single-species focus; and
 - b. The precautionary approach stipulates that decision-makers are more cautious where information is uncertain, unreliable or inadequate⁸.
44. Full application of the relevant factors is required to ensure the bottom line is at least achieved; the bottom line is not an aspiration, it is a bottom line not to be breached.
45. Each TAC option must include assessments of each of the relevant factors identified in Part 2 of the Fisheries Act, and describe how a Minister may take these into account; how to explicitly reflect each of the factors when making a determination. Without full advice from officials, the Minister will be unable to take the mandatory factors into account.
46. Considering the High Court judgment, it is insufficient for officials to gloss over these requirements with a light hand. Simply reviewing Snapper 2, Rig 2, and John dory 2 simultaneously, and mentioning that the impacts of an increased TACC on associated prey species is uncertain, does not meet the statutory requirements. In fact, it could be viewed as a defiant dedication to the status quo, making as few concessions as may be lawful. It certainly doesn't engage in the spirit and detail directed by the High Court.
47. In order for the Minister to make a lawful decision, officials must provide the Minister with

⁷ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]. At [108]

⁸ At [16-17]

more complete information that takes into account all of the uncertainties, and the interactions with associated and dependent species. In the absence of this information the Minister is obliged to apply all of the Act’s principles in setting a TAC to achieve a stock size well above the bottom line, to ensure sustainability.

Snapper 2 proposals

48. **Table 2:** FNZ’s proposed management options for SNA 2 from 1 October 2024, in tonnes.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
SNA 2	Option 1 (<i>Status quo</i>)	450	315	14	90	31
	Option 2	540 (↑ 90)	367 (↑ 52)	14	122 (↑ 32)	37 (↑ 6)
	Option 3	585 (↑ 135)	409 (↑ 94)	14	122 (↑ 32)	40 (↑ 9)

49. Snapper were introduced into the Quota Management System (**QMS**) in 1986. The TACC was set at 130 t and increased to 157 t by 1989. In 1993 the TACC was increased to 252 t and to 315 t in 2003 based on claims that snapper were unavoidable bycatch in the trawl fisheries targeting other species such as red gurnard, trevally and tarakihi. In the last decade, around 99% of commercial landings of snapper from SNA 2 were trawl caught.

50. Since the QMS was established the TACC for SNA 2 has been exceeded 32 out of 37 years. It’s clear that the TACC has never been an effective constraint on commercial harvest, yet the Minister has a statutory obligation to set the TAC at a level that encompasses all mortality in that fish stock.

51. We support the Minister in making a precautionary decision for Snapper 2, including applying effective constraints to the trawl fisheries operating in FMA 2 so that snapper catches are within the statutory limit defined by the TAC.

52. The Minister has a statutory duty, not just a policy setting, a legal obligation, “*to maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..*” as per s8 of the Fisheries Act 1996. On this basis we recommend the TACC is retained at the current level and the TAC is increased to account for the current estimated 122 t of mortality due to recreational fishing.

53. **The submitters support** the Minister in making a precautionary decision for Snapper 2 (SNA 2). Our alternative is Option 4, as follows –

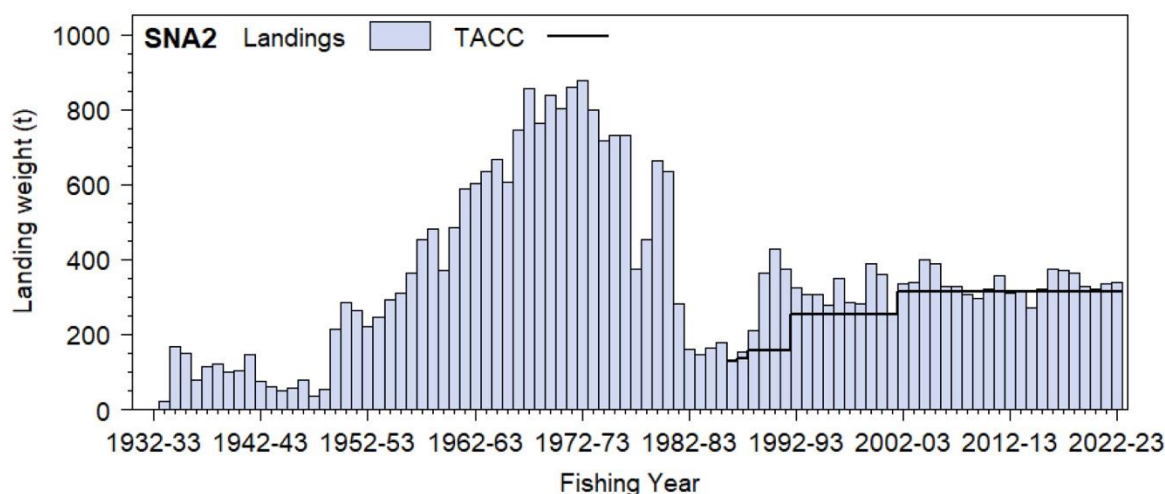
- a. The TAC is increased from 450 tonnes to 482 tonnes (t).
- b. The allowance set aside for Māori customary interests is retained at 14 t.
- c. The allowance set aside for recreational interests is increased from 90 t to 122 t.
- d. The allowance set aside for Other Mortality is retained at 31 t.
- e. The TACC is retained at 315 tonnes.

54. In trawl caught fisheries we support the Minister setting the allowance set aside for Other Mortality based on 10% of the TACC.

55. The TACC is retained as we cannot keep rewarding catches in excess of the legally

sanctioned TACC with increased TACCs simply because fishers have failed in the past 37 years to change their methods and/or behaviours.

56. **Figure 2:** Total reported landings and TACCs for SNA 2, 1933 to 2023. Source: FNZ Plenary.



Sustainability concerns

57. FNZ has only partial stock assessment information for SNA 2. SNA 2S area is estimated to very likely (>90%) to be at or above the management target, but no reference points are known for SNA 2N. Due to the lack of information, future projections of the SNA 2 stock are unknown⁹.

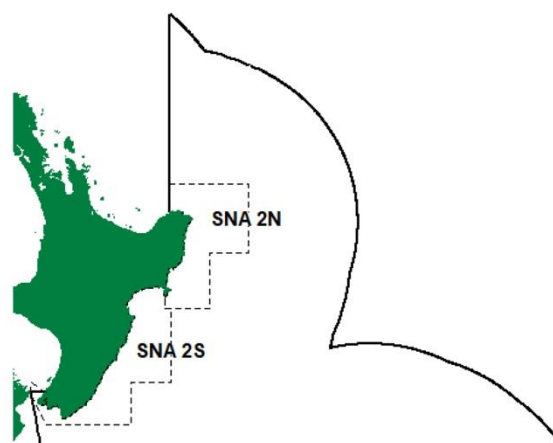


Figure 3: Snapper 2 sub-areas

58. Given the importance of SNA 2, it is a major concern that there is insufficient information to determine if current catches or the TACC is causing overfishing to continue or commence in SNA 2¹⁰.

59. SNA 2 is another ridiculously large management area which, given the evidence, is impossible to manage in a timely and meaningful manner. The current proposals to increase the TACC for SNA 2 and Rig 2 (SPO 2) while decreasing the TACC for John dory 2 supports our concerns that the SNA 2 TACC has never been an effective limit in this mixed finfish trawl caught fishery, because each species has different characteristics and abundance levels.

60. Our concern is that the current raft of proposals do not meet the statutory test of ‘ensuring sustainability’, as required by the Fisheries Act and as confirmed by the High Court. The CRA 1 High Court decision in 2022 confirmed that **“the Fisheries Act requires the Minister to act in accordance with New Zealand’s international obligation to favour a precautionary approach where information is uncertain, unreliable, or inadequate”**¹¹.

⁹ Fisheries Assessment Plenary. Volume 3: Red gurnard to Yellow-eyed mullet. Fisheries New Zealand. May 2024. At [p.1621]

¹⁰ At [p.1621]

¹¹ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 Nov 2022]. At [17 & 44]

61. A higher TACC for SNA 2 will inevitably mean more bottom trawling, yet there is widespread and growing opposition to trawling. If snapper are as abundant as FNZ suggest then now would be the ideal time to transition more of the trawl fleet to longline fishing, to enable more selective fishing and avoiding the capture of other species.

Rig 2 (SPO 2) proposals

62. **Table 3:** FNZ’s proposed management options for SPO 2 from 1 October 2024, in tonnes.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
SPO 2	Option 1 (<i>Status quo</i>)	146	119	5	10	12
	Option 2	175 (↑ 29)	145 (↑ 26)	5	10	15 (↑ 3)
	Option 3	190 (↑ 44)	159 (↑ 40)	5	10	16 (↑ 4)

63. **The submitters support** the Minister retaining the status quo for rig in SPO 2. Since SPO 2 was introduced into the Quota Management System (**QMS**) in 1986 the TACC has been exceeded in 26 of the subsequent 37 years.

64. SPO 2 was part of the Adaptive Management Programme (**AMP**) which granted a 20% TACC increase in 1991-92. This increase still didn’t satisfy commercial interests who continued to exploit the fishery, exceeding the TACC until SPO 2 was removed from the AMP in 1997.

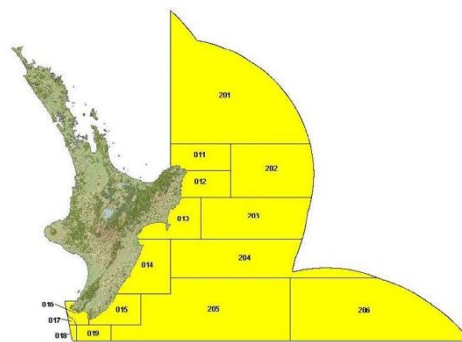
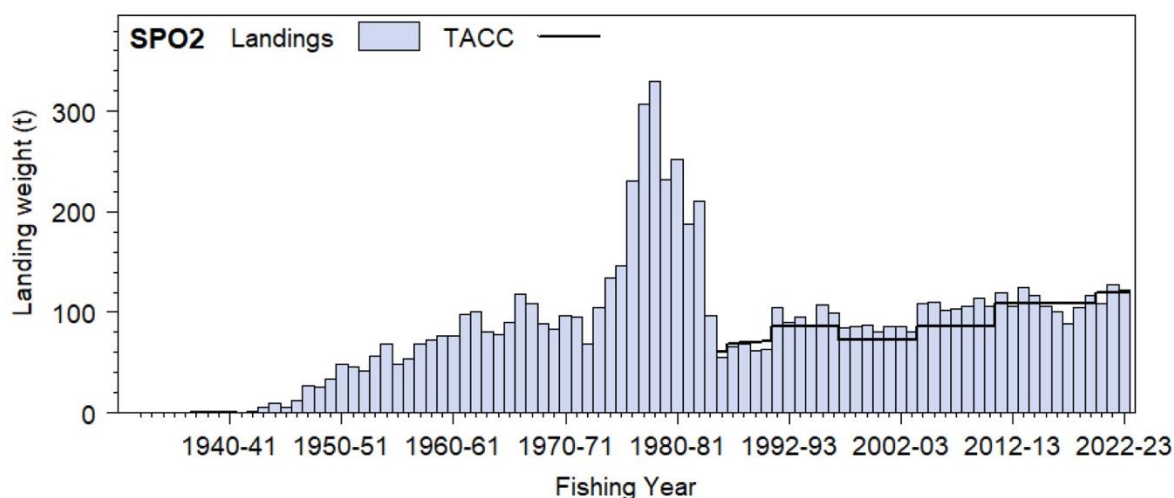


Figure 4: FMA 2 stat areas

65. **Figure 5:** Total reported landings and TACCs for SPO 2, 1933 to 2023. Source: FNZ Plenary.



66. It seems inconceivable that the TACC for SPO 2 was again increased from 72 to 86 t in 2004

under the low knowledge bycatch framework¹². Logic would suggest that rig needed more protection under this framework, not greater exploitation.

67. In 2012 the SPO 2 TACC was increased again, to 108 t, and to 119 t in 2021. Rewarding excessive catches above the TACC with an increase has proven over many years to be counterproductive to achieve sustainable management of our fish stocks.
68. The TACC is supposed to represent the sustainable, acceptable commercial catch limit. For SPO 2, the TACC has been largely ignored and routinely increased merely to cover excessive commercial catches, not to constrain effort to an acceptable level.
69. The Minister has a statutory obligation to manage all catch within the TAC, clearly this obligation has been breached in SPO 2. It's time to apply the precautionary principle and manage this fish stock as required by the Fisheries Act 1996.
70. The limited scientific information available suggests the SPO 2 stock has increased, so the Minister may choose to increase the TACC. While we recommend the status quo, if the TACC is increased we only want a modest increase to the TACC, from 119 t to 122 t, on the basis that the planned stock assessment occurs in 2026 and that is followed by another management review of SPO 2.
71. Our recommendation is for the Minister to **maintain the status quo**.

Sustainability concerns

72. FNZ acknowledge in the Fisheries Assessment Plenary that the lack of information on stock abundance during the 1970s and 80s, when the SPO 2 stock was heavily fished, means it is difficult to determine today's abundance compared to historic abundance¹³. FNZ assesses SPO 2 to be currently at or above the management target based on a B_{MSY} proxy. FNZ advise it is unlikely that overfishing is occurring. FNZ has limited information on predators of rig and the potential interdependence with other stocks.
73. The SPO 2 management target is only based on average trawl catch per unit effort (CPUE) during the period 2013–2018 and FNZ note that the stock may have been depleted for an extended period since rig was introduced into the QMS in 1986. Given increases in trawl efficiency and environmental changes over the last 38 years, selecting recent average CPUE is an arbitrary target. Managing this stock above this level should be the management objective.
74. The Minister has a statutory obligation to ensure sustainability of all fish stocks including SPO 2. Ensuring sustainability includes maintaining the potential of fisheries resources to provide for current and future generations' needs, and to avoid, remedy or mitigate any adverse effects of fishing¹⁴. New Zealand also has international obligations under the National Plan of Action for the Conservation and Management of Sharks ([NPOA Sharks 2013](#)) to maintain rig and other elasmobranchs at or above target.

¹² Fisheries Assessment Plenary. Volume 3: Red gurnard to Yellow-eyed mullet. Fisheries New Zealand. May 2024. At [p.1345]

¹³ At [p.1381-3]

¹⁴ Fisheries Act 1996. Section 8.

75. Given that SPO 2 is largely a bycatch fishery its stock status will be influenced by associated fisheries for flatfish, red gurnard and tarakihi.
76. Increasing the TAC and TACC for SPO 2 may jeopardise the time-bound rebuild plan for Tarakihi 2. TAR 2 is currently fully caught so unless there is a change from bottom trawl, it is inevitable the catch of tarakihi will increase if the TACC and catches for SPO 2 and other species in FMA 2 are increased.
77. Small sharks have an important role in the coastal ecosystem. Increasing the commercial catch in SPO 2 may degrade the ecosystem function that rig perform and may increase the dominance of spiny dog fish, which have no economic value and they can be discarded by fishers.

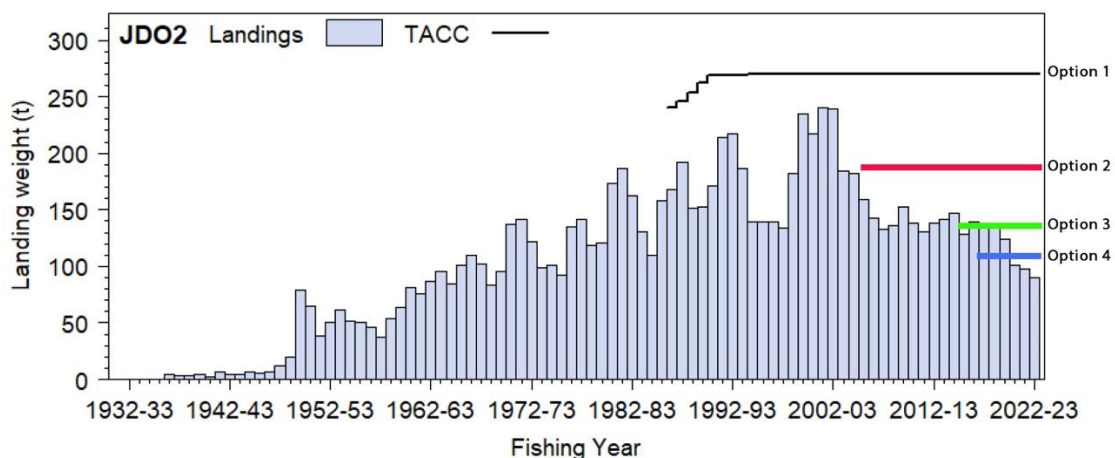
John dory 2 (JDO 2) proposals

78. **Table 4:** FNZ’s proposed management options for JDO 2 from 1 October 2024, in tonnes.

Stock	Option	TAC	TACC	Allowances		
				Customary Māori	Recreational	All other mortality caused by fishing
	Current settings	N/A	269.5	N/A	N/A	N/A
JDO 2	Option 1	299.5	269.5	1	2	27
	Option 2	211	189 (↓ 80.5)	1	2	19
	Option 3	152	135 (↓ 134.5)	1	2	14

79. It is blatantly obvious that the options offered by FNZ for the future management of JDO 2 are ineffective in limiting commercial catches. The TACC has never constrained commercial effort in this vulnerable fish stock, and more must be done to protect John dory 2 from further excessive exploitation.

80. **Figure 6:** FNZ’s proposed Options 1, 2 and 3, and our alternative Option 4, for the future management of JDO 2. Source: FNZ and NZSFC.



81. The Minister has a statutory duty, not just a policy setting, a legal obligation, “to maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..” as per s8 of the Fisheries Act 1996. The proposed settings do not meet that statutory obligation.

82. Moreover, as the High Court has established, consultation has to be genuine, not a charade. Options 1, 2 and 3 seem like a charade that's why we present an alternative: Option 4.
83. **The submitters support** the Minister in making a precautionary decision for John dory 2 (JDO 2). Our alternative is Option 4, as follows –
- a. The TAC is set at 124 tonnes.
 - b. The allowance set aside for Māori customary interests is 1 tonne.
 - c. The allowance set aside for recreational interests is 2 tonnes.
 - d. The allowance set aside for Other Mortality is 11 tonnes.
 - e. The TACC is reduced from 269.5 t to 110 tonnes.
84. The above recommended settings for JDO 2 are based on a TAC and TACC that reflects the average catch of John dory in Area 2 over the past 5 years, and that landings have declined annually since 2018.
85. The allowance set aside for Other Mortality is based on 10% of the TACC, given that John dory in Area 2 is mostly caught by bottom trawlers.

Sustainability concerns

86. FNZ estimate the JDO 2 fish stock is unlikely (<40%) to be at or above the management target. Overfishing is unlikely (<40%) to be occurring. And, without information on recruitment, it is not possible for FNZ to predict how the stock will respond in the next few years.
87. It is a major concern that the TACC for JDO 2 has never constrained fishing effort since John dory was introduced into the QMS in 1986.
88. Even more concerning is that the TAC and TACC cuts proposed by FNZ will still not constrain commercial effort in this vulnerable fish stock. Therefore the current raft of proposals do not meet the statutory test of '**ensuring sustainability**', as required by the Fisheries Act and as confirmed by the High Court.
89. John dory in JDO 2 are caught as bycatch in the trawl fisheries which also catch snapper and rig. Substantial proportions of JDO 2 are taken as bycatch in target trawl fisheries for Jack mackerels in FMA 8, the lower west coast of the North Island. Around 30% of JDO 2 is taken as bycatch targeting tarakihi, and red gurnard (25%). The remainder is taken by midwater and set net fisheries¹⁵.
90. Aside from the proposed TACC reduction, there is no information on how the Minister will fulfil his statutory duty to **ensure sustainability**. This is important because the TACC for JDO 2 has never limited commercial fishing effort in 37 years, and the proposed cuts are unlikely to limit future catches in this declining fish stock.
91. FNZ does not describe how the proposed TACC cut will impact on the aquatic environment, nor how it will address the direct or indirect effects of fishing. This is essential information if the Minister is to make a lawful decision.

¹⁵ At [p.695-7]