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Recommendations for Pāua 3A (PAU 3A)

1. **The Minister acknowledges** and makes a decision for Pāua 3A that complies with the Supreme Court’s decision confirming “the allowance for recreational interests will be a reasonable one in all the circumstances”¹.
2. **The Minister acknowledges** the need to make a precautionary decision for Pāua 3A due to the 2016 earthquake’s impacts on recruitment and suitable habitats for pāua.
3. **The Minister makes a precautionary decision** for Pāua 3A (PAU 3A) as follows –
 - a. Increases the allowance set aside for recreational interests from 5 t to 46 t; and
 - b. Resets the recreational daily bag limit from 3 to 5 per person within a 10 month season beginning 1 February each year; and
 - c. Retains the recreational minimum legal size for pāua at 125 mm.

Submitters

4. 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.
5. 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.
6. 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.

¹ New Zealand Recreational Fishing Council Inc and Anor v Sanford Limited and Ors. SC 40/2008 [28 May 2009]. At [p.33]

7. 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].
8. 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.

Proposal

9. **Table 1:** Proposed management options for PAU 3A for 1 October 2024, in tonnes.

Option	TAC	TACC	Allowances		
			Customary Māori	Recreational	All other mortality caused by fishing
Option 1 <i>Status quo</i>	40.5	23	7.5	5	5
Option 2a	55.5 (↑ 15)	34.5 (↑ 11.5)	7.5	7.5 (↑ 2.5)	6 (↑ 1)
Option 2b	63 (↑ 22.5)	34.5 (↑ 11.5)	7.5	15 (↑ 10)	6 (↑ 1)
Option 3a	70.5 (↑ 30)	46 (↑ 23)	7.5	10 (↑ 5)	7 (↑ 2)
Option 3b	80.5 (↑ 40)	46 (↑ 23)	7.5	20 (↑ 15)	7 (↑ 2)

10. Fisheries New Zealand (**FNZ**) is also consulting on an increase in the minimum legal size (MLS) from 125 mm to 130 mm to apply to recreational and commercial harvest.

Discussion

Consultation

11. On 27 June 2024 Fisheries New Zealand (**FNZ**) released the [Discussion Paper No:2024/21](#), seeking to review the Total Allowable Catch (**TAC**), the non-commercial allowances, the allowance for Other Mortality and the Total Allowable Commercial Catch (**TACC**) for Pāua 3A (PAU 3A). Submissions are due by 29 July 2024. The NZSFC released a [Preliminary View](#) for PAU 3A on 15 July requesting feedback prior to developing a submission.
12. **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 19 other fish stocks.
13. 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”². [emphasis added]

² Wellington International Airport Limited and others v Air New Zealand [1993] 1 NZLR 671. At p.675.

Current status

14. PAU 3A is estimated to be 'About as Likely as Not (40-60%)' to be at or above³ the management target⁴. Future projections estimate a slight increase in abundance under current catch settings.
15. It is 'Unknown' whether overfishing is occurring in Kaikōura and 'Unknown' if current catch levels or total allowable catch settings will cause overfishing in the future⁵.
16. Hand gathering while freediving is the primary fishing method used to harvest pāua in this area. Some recreational and customary catch is taken by wading in shallow water.
17. Pāua are an important contributor to the Kaikōura coastal ecosystem, grazing seaweeds and as food for rock lobster and fishes.
18. The 2016 earthquakes caused the loss of critical intertidal and sub-tidal pāua habitat, and the fishery was closed for five years.

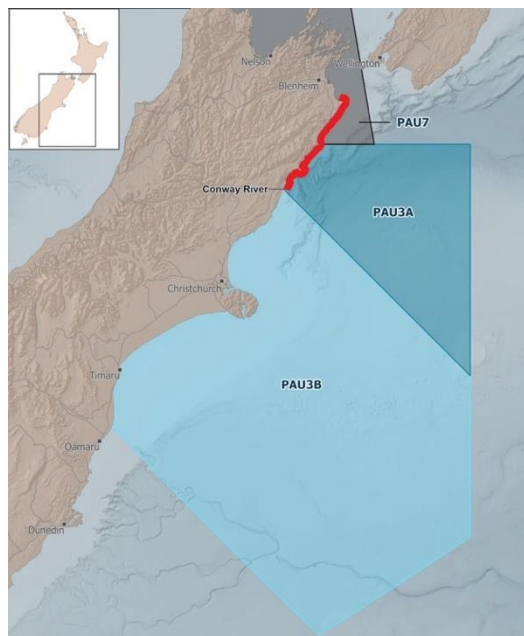


Figure 1: Pāua 3A & 3B management areas

Recreational interests

19. A staged resumption of harvesting began in December 2021 with a 3-month open season for commercial and recreational interests. The onsite recreational harvest survey that year recorded high catch rates of large pāua as these were more available after the coastline had uplifted in many places.
20. The estimated recreational harvest in the 3-month open season was 42 t with a CV of 17.5%.
21. The estimated recreational harvest during the 2-month open season from 15 April 2023 was 11.7 t (CV 25%).
22. Large scale recreational harvest surveys (regional or national) have not provided accurate harvest estimates for PAU 3 or the Kaikōura Marine Area.
23. The FNZ Shellfish Working Group recommended using 24 tonnes as the best estimate of pre-earthquake recreational harvest for the recent PAU 3A stock assessment.
24. The current allowance set aside for recreational interests is 5 tonnes. This was set arbitrarily and bears no relationship to reality given the high profile and easy access to this fishery from State Highway 1. Nor does the 5 t fulfil what is required of the Minister in making a lawful allowance.

³ Fisheries Assessment Plenary – Volume 3: Red Gurnard to Yellow-eyed mullet. May 2024. Fisheries New Zealand. At [p.1115]

⁴ Management target is the level that a fish stock should be managed at or above to ensure sustainable use. The management target for PAU 3A is 40% of the unfished biomass, PAU 3A is estimated to be at around 46%.

⁵ Fisheries Assessment Plenary – Volume 3: Red Gurnard to Yellow-eyed mullet. May 2024. Fisheries New Zealand. At [p.1115-1116]

25. In 2009 the Supreme Court confirmed the Minister has a statutory obligation to make a reasonable allowance for recreational interests in a fish stock⁶.
26. The Minister may take the commercial sector's PAU 3 Fisheries Plan into account, however, he also is obliged to follow the Court's rulings. In deciding the Kahawai Legal Challenge, the Supreme Court recalled the 1997 Court of Appeal decision discussing the recreational allowance, "the allowance is simply the Minister's best estimate of what they will catch during the year, they being subject to the controls which the Minister decides to impose upon them e.g. Bag limits and minimum lawful sizes"⁷.

Resetting catch limits

Recreational allowance

27. Current pāua abundance in the Kaikoura Management Area is high. The submitters support the Minister in making a decision that will maintain the pāua stock above estimated pre-earthquake levels, so this would rule out having an open season in the near future for recreational fishers over the peak summer holiday period.
28. However, if a precautionary decision is made this year, and if pāua abundance increases as projected, then future abundance may provide for a resumption of all-year access for recreational fishers, to align with Māori customary and commercial interests in PAU 3A.
29. Meantime, we make the following recommendations for Pāua 3A (PAU 3A) –
 - a. Increase the allowance set aside for recreational interests from 5 t to 46 t; and
 - b. Reset the recreational daily bag limit from 3 to 5 per person within a 10 month season beginning 1 February each year; and
 - c. Retain the recreational minimum legal size for pāua at 125 mm.
30. FNZ and the Minister must acknowledge that the Courts have recognised that the allowance is what the Minister expects recreational fishers to harvest in a year, as such we recommend the Minister sets aside 46 t to ensure that all mortality caused by fishing is within the TAC, as required by law.

Commercial access

31. FNZ's proposed Options 3a and 3b are unreasonable in terms of increasing the TACC from 23 t to 46 t. The Minister's statutory duty is to first set the TAC, then set aside allowances for non-commercial interests and mortality caused by fishing, and the remainder is the TACC.
32. A TACC of 46 t would mean a TAC in excess of the scientifically assessed available level that would maintain the stock above the acceptable size.
33. There is no rush. These pāua are not going anywhere, notwithstanding another natural disaster. A new assessment and review in several years' time would provide another opportunity to consider the pāua population and its ability to cope with extra harvest.

⁶ SC 40/2008 [28 May 2009]. At [p.33]

⁷ New Zealand Fishing Industry Association (Inc) v Minister of Fisheries (CA 82/97, 22 July 1997) ("Snapper 1") at p 17 per Tipping J for the Court.

34. Meantime, the Minister must act in a precautionary manner as he has a statutory duty to **ensure sustainability**.
35. 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.”⁸ [emphasis added]
36. This judgment applies to pāua and all other species in the Quota Management System and their habitats.

Minimum legal size (MLS)

37. FNZ propose increasing the MLS for pāua from 125 mm to 130 mm for both recreational and commercial fishers.
38. FNZ advise this change would reduce localised depletion and maintain spawning stock biomass. We don’t accept their advice. It is clear that any MLS increase to 130 mm will only affect recreational fishers and will not have a significant impact on overall catch or spawning stock biomass.
39. Moreover, we have reports of commercial fishers targeting areas easily accessible to the public just prior to the recreational season opening day. Heavy harvesting of pāua in these areas by commercial fishers prior to opening day does nothing for maintaining goodwill in the community, but it just adds weight to the arguments that the Minister must make a precautionary decision when deciding on any increase to the TACC.
40. Increased spatial conflict is not desirable when harvesters have sharp tools at hand so changing the commercial MLS to 130 mm may be a means of reducing potential conflicts.
41. **The submitters recommend** the MLS for recreational fishers remains at 125 mm.

⁸ Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969 [11 November 2022]. At 22.