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27 July 2018

Submission: We support an increase to the STN 1 TAC and an allowance of 40 t for recreational fishing interests

Recommendations

1. The Minister applies the proposed 88 tonne increase to the Southern Bluefin tuna 1 (STN 1) Total Allowable Catch (TAC) as allowed for by the CCSBT.
2. That FNZ recognise that a new recreational fishery has emerged off northeastern New Zealand.
3. FNZ advise the Minister in the Final Advice Paper that setting an adequate allowance for a new recreational fishery is critical to avoiding allocation disputes in the future.
4. The Minister is advised that we support a 40 tonne allowance being set aside to allow for recreational harvest (FNZ Option 3), and to allow this fishery to develop responsibly.
5. The submitters support a one fish per person daily bag limit in the North Island fishery and two fish per person daily bag limit in the South Island.
6. The Minister is advised that we do not support a boat limit being applied as it is unnecessary at this time.
7. The Minister is advised the submitters will continue to promote voluntary limits and responsible fishing practices.
8. The Minister is advised the submitters support the development of an allocation policy for non-commercial catch.

The submitters

9. The New Zealand Sport Fishing Council (NZSFC) appreciates the opportunity to submit on the proposals for the future management of Southern Bluefin tuna (STN 1). Fisheries New Zealand (FNZ) advice of consultation was received on 4 July, with submissions due by 27 July 2018.
10. The New Zealand Sport Fishing Council is a recognised national sports organisation with over 34,000 affiliated members from 56 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. Together we are *'the submitters'*.

11. The 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. The submitters continue to object to FNZ’s truncated consultation timetables. It has been impossible for us to consult with our constituents on the 17 various proposal papers issued by FNZ and respond within 18 working days. In our view this timeframe does not allow for adequate consultation. It is particularly offensive for non-commercial organisations such as ours that need to consult with a range of interests and volunteers nationwide. This is unacceptable consultation and, in our opinion, most likely unlawful as per ss12 & 13 of the Fisheries Act 1996 and as judged by the Court of Appeal¹.
13. Our representatives are available to discuss this submission in more detail if required. We look forward to positive outcomes from these reviews and would like to be kept informed of future developments. Our contact [REDACTED], secretary@nzsportfishing.org.nz.

Background

14. Management of Southern Bluefin tuna (SBT) throughout its range is the responsibility of the Commission for Conservation of Southern Bluefin Tuna (CCSBT) of which New Zealand is a founding member. Japanese longliners were catching 1000s of tonnes of SBT a year in New Zealand waters (1960s to 1980), mostly prior to the establishment of the Exclusive Economic Zone (EEZ). NZSFC supported the “New Zealandisation” of our tuna fishers in the 1980s and early 1990s.
15. There has been a small recreational fishery based out of Fiordland and SBT are taken as a by-catch of the Pacific bluefin tuna fishery out of Greymouth and Hokitika. In 2017 a new, more accessible recreational fishery off Cape Runaway was developed. Good catch rates and favourable weather attracted hundreds of anglers to the eastern Bay of Plenty at short notice.
16. Southern Bluefin had a domestic catch limit of 420 t since early 1990s. On introduction to the QMS in 2004 the Total Allowable Commercial Catch (TACC) was set at 413 tonnes, with a recreational allowance of 4 t, a customary allowance at 1 t and other sources of fishing related mortality at 2 t. There have been a series of in-season increases following allocation decision by the CCSBT. In 2012 the Total Allowable Catch (TAC) was set at 830 t, with a TACC of 817 t, a recreational allowance of 8 t, a customary allowance at 1 t and other sources of fishing related mortality at 4 t (Figure 1). In 201
17. The reported catch worldwide was around 14,000 t for a long time. CCSBT agreed to reduce global catches by 20% in 2010 to 2011 (to 9,449t). The Commission has decided over recent years to increase the “Global” TAC to 10,449 t in 2012, 10,949 t in 2013, 12,449 t in 2014, and 14,647 t in 2015.

Proposals for southern bluefin tuna

18. For the three years 2018 to 2020, the CCSBT has raised the Global Total Allowable Catch by 3,000 tonnes to 17,647 t. As a result, New Zealand’s national allocation has increased by 88 t to 1,088 t per annum. An in-season adjustment was made in 2018 to increase the TACC to 1,047 and the allowance for recreational fishers to 20 t.

¹ International Airport Ltd and Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671).

19. The options in the Fisheries New Zealand Discussion Document include: Option 1. Retain the settings from the in-season allowance; Option 2. Apply all 88 t to the commercial TACC; Option 3. A 40 t allowance for recreational interests and 56 t added to commercial TACC (Table 1).

Table 1: The three options included in the MPI discussion document for southern bluefin tuna allowances in tonnes.

Option	Total Allowable Catch (TAC)	Total Allowable Commercial Catch (TACC)	Allowances		
			Customary Māori	Recreational	All other mortality to the stock caused by fishing
Current settings (as at 1 October 2017)	1000	971	1	8	20
Option 1 (2017/18 in-season settings)	1088 ↑ (9%)	1047 ↑ (8%)	1	20 ↑ (250%)	20
Option 2	1088 ↑ (9%)	1059 ↑ (9%)	1	8	20
Option 3	1088 ↑ (9%)	1027 ↑ (6%)	1	40 ↑ (500%)	20

20. There is an error in the table as the percentage change in the recreational allowance relative to the current settings is overstated. The increase in option 1 is 150% and in option 2 400%. These increases need to be viewed in perspective with the 558 t increase in the TACC since Southern Bluefin tuna’s introduction to the QMS (Figure 1).

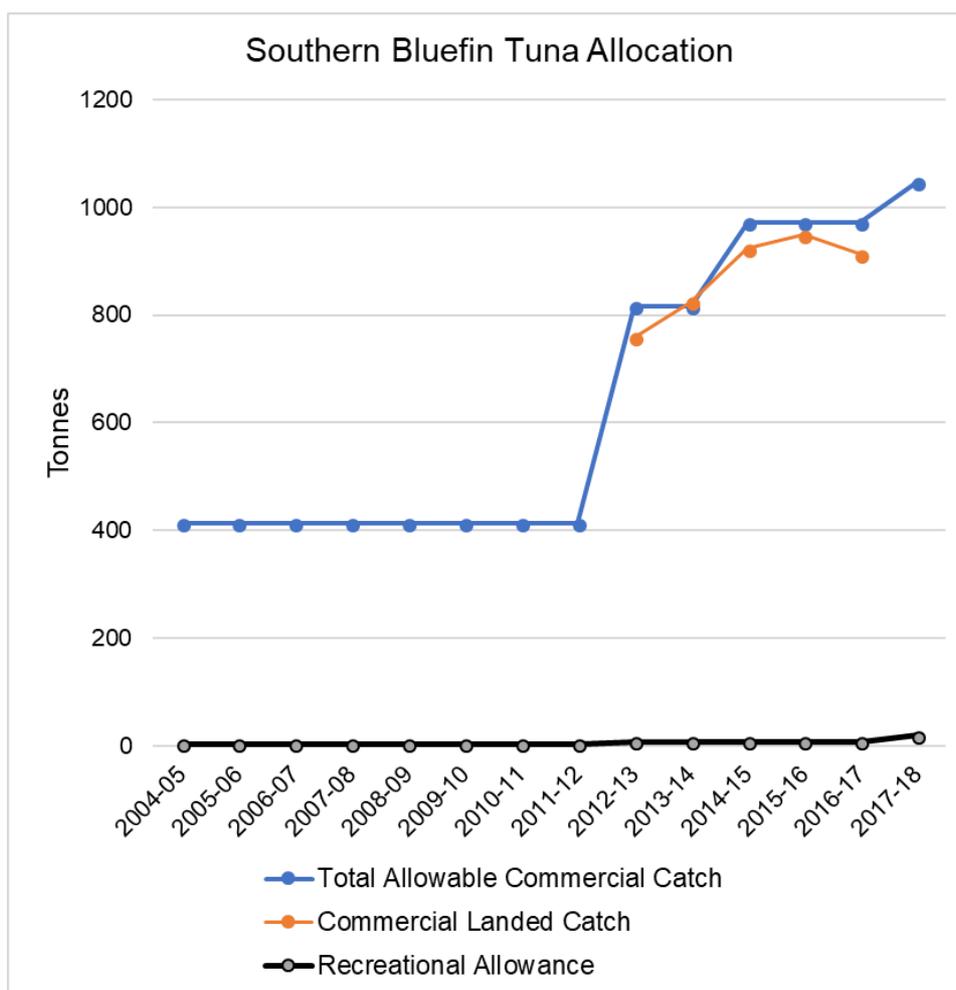


Figure 1: The allowances for commercial and recreational fishers for southern bluefin tuna made under the Quota Management System including the in-season adjustments made in 2017–18.

Submission

21. The submitters support the increase in the STN 1 Total Allowable Catch (TAC) of 88 tonnes as allowed for by the CCSBT. It represents just 0.5% of the 2018 Global TAC and not allocating this increase would have no effect on the spawning stock biomass which is currently rebuilding strongly.
22. The New Zealand TAC has been regularly under caught in recent years. The recreational allowance of 8 t was under caught every year between 2012-13 and 2015-16. There is no record of catch against the customary fishing allowance. Commercial fishers are able to carry over up to 10% of uncaught ACE they hold at the end of the fishing year. Over the last 4 years commercial landings exceeded the TACC once by 8 t in 2013-14 (Table 2). In 2016-17, when the recreational catch did exceed the allowance for the first time, the TACC was under caught by 58 t and ACE under caught by 15%.

Table 2: Total Allowable Commercial Catch (TACC) and landed commercial catch in tonnes by fishing year. Uncaught ACE can be carried over to the following year but is not fully caught. (Source Fish Serve 5-Nov-2017)

Fishing year	2013-14	2014-15	2015-16	2016-17
TACC (t)	817	971	971	971
Commercial landed catch (t)	825	923	949	913
Uncaught TACC (t)	-8	48	22	58
Annual Catch Entitlement (t)	943	1044	1075	1075
Percent of ACE caught	87%	88%	88%	85%

Recreational catch

23. The sudden development of the recreational fishery for Southern Bluefin tuna off Cape Runaway in 2017 caught many people by surprise. Information from tuna longline fishers and a social media storm saw hundreds of anglers gamefishing in July. Thanks largely to the hard work by members of the Waihou Bay Sport Fishing club and the patience of returning anglers, we have weigh station data for a high proportion of landed catch. This is useful for describing the fishery and estimating total recreational harvest.
24. NZSFC clubs recorded 266 landed southern bluefin tuna and 13 released from the east coast recreational fishery, mostly during late June and July 2017. The peak days were over the weekend of 14 and 15 July, when 124 fish were caught, nearly half of the total. There are no records for unsuccessful trips last year, but the average catch across all successful boats that weekend and overall was one and a half tuna per trip.
25. Most of the tuna caught in the North Island were over 60 kg and the average weight was 72 kg. It is rare to find large Southern Bluefin tuna reasonably close to the coast in such large numbers.
26. The total landed weight of Southern Bluefin tuna recorded by clubs in 2016-17 is 19.4 tonnes. MPI Amateur Charter Vessel logbooks recorded 47 SBT with an estimated average weight of 40 kg from the South Island in 2016-17. A conservative estimate of unreported catch would be about 15% which, when added to reported catch, would give a total of 24.3 t last fishing year.
27. In 2018 there were reasonable catches of SBT off Waihou Bay around the 23rd of June. Up to 200 boats fished in a good weather window the following week with limited success. Southern Bluefin tuna catch has been poor so far in July. Fisheries NZ have contracted a project to survey fishers at the Waihou Bay boat ramp during the 2018 season and to compile SBT weigh station records from fishing clubs around New Zealand.

28. A recommendation from the Waihou Bay Sport Fishing Club in 2018 asked fishers to limit their landed catch to one SBT per boat per day. This voluntary measure has been promoted by other NZSFC clubs and LegaSea has used the advice of experts to develop a [FishCare guide to best practice handling techniques for SBT](#). This guide includes information on handling for release of SBT and the importance of looking after the fish that are kept, to avoid waste of these valuable fish.
29. There is significant expenditure on recreational fishing, which makes an important economic contribution to regional New Zealand. In 2016 the New Zealand Marine Research Foundation estimated that gamefishing generated \$381 million in total economic activity contributing \$145 million to GDP and employment for 1,800 people. There has been a trend away from chartering large launches for gamefishing trips toward people buying large, offshore capable, trailer boats and fishing part of the year for gamefish. This interest has also sparked the development of a trailer boat charter fleet. There is considerable interest in Southern Bluefin tuna and broadbill swordfish as new and challenging fisheries. These species are available in autumn and winter months which extends the gamefish season. There is already international interest in a number of world record catches for these species and international anglers will spend considerable amounts to experience a new fishery. The Southern Bluefin tuna off the North Island's east coast is an exciting development.

Setting the allowance for recreational fishing interests

30. Estimates of the 2018 recreational fishery will not be available until the end of August. Current indications are that recreational catch will be less than in 2017. The FNZ options of no increase in the allowance for recreational fishing interests, or a 12 t increase do not cover the range of possible outcomes as this new North Island fishery matures in subsequent years.
31. The submitters support the development of a non-proportional allocation policy for non-commercial catch. Section 21 of the Fisheries Act 1996 states that the Minister shall 'allow for' non-commercial fishers when setting of varying the TACC. It is generally acknowledged that setting the right allowance for a new recreational fishery is critical to avoiding allocation disputes in the future. This is even more important for SBT, which is a regional fishery subject to a national allocation set by the CCSBT. It is fortunate that this decision can be made at a time when the national allocation is increasing by 88 t. FNZ must advise the Minister in the Final Advice Paper that where initial allocations are not adequate future increases are made difficult due to claims from quota holders of "reallocation" of catch entitlement between sectors.
32. The 20 t allowance as part of the 2018 in-season adjustment to the TAC was a stop-gap measure. The submitters continue to support a 40 t allowance for recreational harvest (option 3) to allow this fishery to develop responsibly. As the SBT stock improves and interest in catching large tuna increases the existing 8 t allowance will be adequate for the South Island fishery. A 12 t increase (option 1) for the new North Island fishery will not be adequate to cover recreational catch based on existing information from the fishery in 2017. NZSFC weigh stations at four clubs in the Bay of Plenty weighed 9.4 t of SBT on one weekend alone in mid-July 2017.
33. There has been extensive discussion, within our organisations and online, about the options for regulatory controls for amateur catch of SBT. The submitters support the majority view that one fish per person is an adequate daily bag limit in the North Island fishery. A boat limit is not supported as it is unnecessary at this time. In the South Island, most SBT are smaller (30 to 40 kg) and access is even more limited. A bag limit of two per person per day is supported for the South Island. We will continue to promote voluntary limits within the bag limits and responsible fishing practices.
34. We disagree with the statement in the FNZ Discussion Document that there are currently no

constraints on the recreational catch of this species. The reality is that these fish are available for a short time from remote locations that are not fishable in poor weather. Most fishers will only target SBT for two or three days a year because of the travel and expense involved. So far in 2018 the fish stayed well offshore and were not available to most recreational fishers. Surely these are constraints on recreational catch, even though they are not regulations.

From: [REDACTED]
To: [FMSubmissions](#)
Subject: RE: Review of sustainability measures for 1 October 2018
Date: Wednesday, 25 July 2018 11:45:10 PM

Sorry can I please add my 2 cents about STN1... I think I have already some other time but again won't hurt.

I support option 3.... At least for a few years and then if they don't get 40t bring it back to 30t. The we can sit on moral high ground and make sure Aussy is doing it right.

I would like to see a limit of 1 tuna per person with a boat limit of 3 per (week if it was possible) but day if not.

The "tuna" should be a tuna over 100cm (or there about.... Maybe 105 cm) but at the size that 98% of ALB are smaller than (and 100% of skj)

This would pretty much leave ALB and SKJ unrestricted but more importantly save a lot of confusion and the rules being flantaded.... Most MPI officers don't know the diffence between a STN,TOR,BIG or YFN how is a rec fisher meant to know... And it just kills the "I thought they were Big eye" line.... Also why the hell do you need that much food???????? I challenge you all to try to eat a 20kg tuna (about 100 cm) ... it will probably take you weeks... now times that buy 4 for a 80kg one... and then 3 for the boat limit... SO SO SO much eating.

It would also sneak in management for BIG,TOR and YFN.... And while you are at it you may as well include bill fish

Cheers

.

Hi can you please let me know that you have recived this ok.

Thanks

[REDACTED]

Review of sustainability measures for 1 October 2018

JD01

- I don't see Option 1 as a realistic option
- I prefer option 3 as it leaves 35 or so extra tonne a year in the water to rebuild the stock
- I don't think Option 2 does enough; effectively the same amount of fish could still be caught

TAR

- [REDACTED]
- I don't support the Industry's proposal because:
 1. It is far far too complicated
 2. I feel it hits TAR1 the hardest and not the other areas
 3. I am not sure that is goes far enough to look after the stock
 4. [REDACTED] I feel it disadvantages me even more

- I don't have a preferred Ministry option that I like, they all have advantages and disadvantages
- I do support cutting the recreational catch back
- I don't like this TAR1 W and TAR1 E nonsense. TAR1 W is Area 9; in case you forgot! Our book- work is already far too complex please don't make it any worse! I am guessing that there are reasons for this that I don't know about but I still don't like it. Please try to use the existing framework.
- 95% of what I catch is KTA, I don't feel that there is a problem with that stock. Why am I getting a cut?

Deemed Values

The question for me is not WHAT it should be, but WHERE WHERE WHERE does the money go? You wrote a comprehensive paper explaining the deemed value system that didn't provide any insight into where that actual money goes and what happens to it. Someone that pays deemed values has effectively stolen that fish from the quota owners. It will be harder to catch that stock next year and/or it may not get increased as fast or get decreased in time because of the extra catch. Not only does this has management/sustainability issues; it is theft and therefore it is imperative that the deemed value collected goes back to the quota holders of the stock it came from!!

It is like the police confiscating a stolen car then not trying to find the owner; selling it and putting the money towards their Christmas fund!!

The deemed value money collected could very easily be credited back to the quota holder via levy reductions for that stock; i.e. total levies for Stock x is \$1000 and TACC is 10000 kg the levy is 10 cents per kilogram but last year \$500 in deemed values were collected so levies would be 5 cents this year.

I look forward to you sorting this out.

Cheers,

████████████████████

██████████

27th July 2018

Mr D Vallieres
Ministry for Primary Industries
PO Box 2526
Wellington 6140

Attention: Highly Migratory Species Team

Dear Dominic

COMMENTS ON 2018 SUSTAINABILITY ROUND FOR STN

Introduction

1. FNZ has issued Discussion Paper No. 2018/05 on the Sustainability Controls for 1 October 2018 stocks and invited responses on the proposals that were released for consultation on 2 July 2018. This response is in relation to the proposed TAC/TACC increase for southern bluefin tuna (STN).
2. This response is presented on behalf of the FINZ Highly Migratory Species (HMS) Committee that works directly with and on behalf of STN quota owners.
3. There is a diversity of views associated with the Options provided in the consultation paper. For that reason, FINZ has not provided a position on any one Option but instead its submission focuses on the more fundamental concerns relating to the management of the STN recreational fishery.
4. We note that companies and other quota-holders may also make their own submissions on the proposals and make specific reference to their preferred option as they consider appropriate.
5. The submission is in three parts and covers:
 - a. Allocation concerns
 - b. Recreational management
 - c. International obligations

Allocation concerns

6. FINZ are cognisant of Te Ohu Kaimoana's position with regards to the 1992 Deed of Settlement and are aware that Te Ohu Kaimoana supports maintaining the recreational allowance at 8 tonnes and contends any change in allocation proportions would be in breach of the 1992 Deed of Settlement.
7. Whilst the issue of the 1992 Deed of Settlement is primarily an issue to be addressed between the Crown and Maori as parties to the 1992 Deed of Settlement, it is noted that this has far reaching implications for New Zealand and all fisheries decisions. It is of paramount importance that the development and agreement of a coherent policy for allocation of TACs be established as soon as possible.
8. The following response provides comments on the consultation document whilst recognising that the arrangements between Te Ohu Kaimoana and the Crown need to be addressed first.

Recreational management

Unconstrained effort

9. Fisheries NZ acknowledged as part of the in-season consultation process, that for the remainder of the 2017/18 fishing year, the recreational fishery will remain unconstrained. The only management of the fishery being bad weather, the availability of fish and the ability of recreational fishers to catch those fish.
10. It is wholly inappropriate to consider any recreational increase without implementing an effective management system to address this shortcoming.
11. It has been recorded that on one weekend day during the recreational season, there were approximately 200 boats fishing for STN out of Waihou Bay (the recreational fishery spans at least two months in Waihou Bay alone). The table below shows the reality of this uncontrolled fishing effort based on the average weight of a recreational STN, estimated at 72kg.

12. In short, we submit that it is inappropriate to consult on changes to the recreational allowance when MPI and the NZSFC both accept that the recreational sector is unconstrained. It is contrary to good practice fisheries management and the Minister’s legal obligations to progress without some reasonable expectation that the recreational catch will be constrained to the allowance provided.
13. Such action, or lack thereof, also damages New Zealand’s international reputation by increasing the risk that New Zealand breaches its international obligations (discussed further below).
14. demonstrates that even on one day, based on the estimate of 200 vessels, that several tonnes of STN can be removed from the fishery. Regardless of what allowance the Minister may set, this clearly indicates how an unconstrained fishery has the potential to damage the rebuild of the STN fishery. Recreational effort controls are imperative to ensure a well-managed fishery and should be considered and implemented well before any consideration of recreational allowances.

Table 1: Impact of uncontrolled recreational effort in the STN fishery.

Proposed Management measures	Estimated 2016/17 effort figures based on one day *	Fish numbers (based on a 100% trip success rate)	STN catch (based on an average 72kg fish)	
			kilos	tonnes
STN daily bag limit of one	200	200	14,400	14.4
STN daily bag limit of two	200	400	28,800	28.8
STN boat limit of three	200	600	43,200	43.2

*assuming one person on a vessel.

Inadequate response

15. We consider that the consultation document is inadequate in that, while it provides three options for recreational bag limits, it fails to provide any assessment of the volumes of recreational catch that would result. Nor do we consider that MPI has undertaken sufficient research to assure the Minister or the public that the proposed measures will in fact constrain catch to the recreational allowances proposed.
16. The NZSFC in-season submission indeed notes that the Minister has a statutory obligation to manage New Zealand within its international allocation.¹ This should be through management of all sectors—the commercial sector should not bear the management, compliance and research costs of a New Zealand STN fishery while subsidising a recreational fishery.
17. It is notable that the NZSFC submission on the in-season increase acknowledged the over-catch of the recreational allowance in the 2016/17 fishing year. The 2017 Plenary states that “in the few instances when the New Zealand allocation has been exceeded, the domestic catch limit has been reduced in the following year by an equivalent amount”.² Rather than the recreational allowance being reduced to recognise previous over-catch, it is instead being considered for an increase.
18. The voluntary measures proposed by the recreational fishery for the current fishing year (2017/18), whilst admirable for the current season, are not a long-term management solution as they do not provide an enforceable, regulated management system. Importantly neither do they incorporate charter vessels.
19. Charter vessels cannot be considered part of any recreational allowance. These are commercial operations, and as such, should be required to have quota as with all commercial operators and fish within the constraints of their quota. Charter vessel operators, like any other small business, have to fulfil legal obligations such as tax, employment or health and safety obligations. It is therefore unfathomable as to why FNZ label these operations as recreational whilst by every other government department they are recognised as small commercial businesses.
20. Unlike the recreational sector who are amateur fishers fishing to the best of their ability and resources, charter vessels are professionally-resourced and operated akin to commercial vessels. They should be managed as such. We recognise that the management of charter vessels is part of a wider discussion that is needed to implement management constraints to prevent exploitation of the resource.

¹ New Zealand Sports Fishing Council (NZSFC) in-season consultation submission on MPI paper 2018/01 at [35].

² Fisheries Assessment Plenary November 2017 (20-STN_2017_FINAL).

21. The measures proposed by FNZ in the consultation document will not manage or constrain recreational catch. The NZSFC makes the point in its previous submission that bag limits will be ineffectual in constraining catch.³
22. The position proposed, of uncontrolled recreational catch, is inconsistent with the Supreme Court's guidance that management settings for the recreational sector should be appropriate to constrain the catch to the allowance. It is inappropriate for the Minister to set a recreational allowance without having appropriate and effective management measures in place to allow the Minister to control that fishing effort.⁴
23. In short, we submit that it is inappropriate to consult on changes to the recreational allowance when MPI and the NZSFC both accept that the recreational sector is unconstrained. It is contrary to good practice fisheries management and the Minister's legal obligations to progress without some reasonable expectation that the recreational catch will be constrained to the allowance provided.
24. Such action, or lack thereof, also damages New Zealand's international reputation by increasing the risk that New Zealand breaches its international obligations (discussed further below).

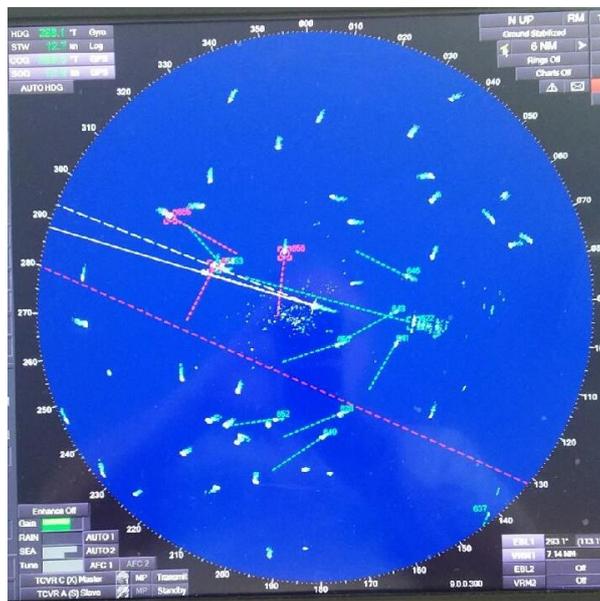


Figure 1: Snapshot of recreational vessels fishing STN.

Management necessary

25. Instead of the proposals provided by FNZ, it is our view that a responsibly-managed recreational fishery, supported by government, will be able to develop in a sustainable manner using effective output controls. We propose that the following measures should be considered for the STN fishery:
 - a. A ballot system for a single fish – only those fishers with a tag from the ballot are allowed to target STN. An allowance for STN bycatch could be accommodated as part of this system.
 - b. Formalised STN licensing – an increasingly formal system whereby fishers register and are allocated a portion of the recreational allowance.
26. These suggestions are based on ensuring catch is appropriately constrained and that robust catch information from the recreational fishery is available to inform our international obligations and contribute to a continued rebuild strategy. There is no question that greater information on STN catches within New Zealand is not beneficial to provide informed management.
27. The assertion that different recreational management measures cannot be used for STN ignores the fact that STN is a game fishery, a migratory species, and not endemic to or resident in NZ. This is a species managed internationally with NZ having international obligations to ensure its sustainability.

³ New Zealand Sports Fishing Council (NZSFC) in-season consultation submission on MPI paper 2018/01 at [37].

⁴ SC 40/2008 [2009] NZSC 54 at [56].

28. In advance of progressing a robust long-term management regime for the recreational sector, and regardless of the allowance set by the Minister, FNZ must implement a one STN per boat daily limit. This should be used only whilst FNZ strengthens the measures the Ministry can do in the short term while it considers a more fundamental policy.

International obligations

29. New Zealand has advocated for all member states to account and manage their recreational catch for inclusion in a Member's national allocation of STN through CCSBT. We are supportive of this. Knowing and managing all sources of mortality is imperative for the continued rebuilding of this stock.
30. If NZ is truly committed to sustainability and its international obligations under CCSBT, all sectors should be responsible for ensuring it.
31. To protect New Zealand's position as a responsible member of CCSBT it is irresponsible for FNZ to use creative accounting at CCSBT to justify a recreational over-catch on the basis of a commercial under-catch. The commercial sector has a TACC to which the commercial fishery is constrained. Any under-catch is not there to be used as a substitute for a lack of recreational fisheries management. It is inappropriate that FNZ should manage the fishery such that one sector of the fishery is committed and managed for sustainability whilst another remains unconstrained.
32. At best this practice is temporary, at worst this practice undermines the position that NZ has taken at CCSBT to successfully advocate for the inclusion and management of recreational catches. The inclusion of recreational catches as part of the country allocation is pointless unless members manage it.
33. We note that recreational fishers may not be cognisant of this matter and therefore feel that FNZ has a responsibility to educate and inform recreational fishers of their important role in promoting and maintaining the rebuild of STN.
34. If, as New Zealand states, we are committed to rebuilding the STN stock then this must be done based on evidence-based management combined with effective regulation of sector allowances.



██████████
██████████
Fisheries Inshore New Zealand Ltd.
(on behalf of the FINZ HMS Committee)



Fisheries New Zealand Review of
Sustainability Measures for 1 October
2018 – Te Ohu Kaimoana’s Response



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Introduction

1. Fisheries New Zealand (FNZ) released an Initial Position Paper (IPP) on 2 July 2018 that reviews sustainability measures for the fishing year beginning on 1 October 2018. This document represents the response from Te Ohu Kaimoana. We do not intend for this response to derogate from or override any response or feedback provided independently by Iwi, through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs).

Who we are

2. Te Ohu Kaimoana was established to implement and protect the Fisheries Settlement. Its purpose, set out in section 32 of the Māori Fisheries Act 2004, is to “advance the interests of Iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to;
 - ultimately benefit the members of Iwi and Māori generally; and
 - further the agreements made in the Deed of Settlement; and
 - assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
 - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.
3. Te Ohu Kaimoana works on behalf of 58 MIOs, who in turn represent all Iwi throughout Aotearoa. AHCs hold Fisheries Settlement Assets on behalf of their MIOs. These include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.
4. Te Ohu Kaimoana works on priorities agreed by MIOs to protect and enhance the Settlement by providing policy advice for Iwi. Iwi have identified the review of sustainability measures as critically important to their long-term relationship with Tangaroa. MIOs have also have approved a Māori Fisheries Strategy and three-year strategic plan for Te Ohu Kaimoana, which has as its goal “that MIOs collectively lead the development of Aotearoa’s marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent”.
5. This response to the IPP sets out several important matters of principle that should guide the Minister and puts forward our recommendations on the sustainability measures and allocation decisions that should be applied to each stock.

Noho ora mai rā,





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1 – Guiding Principles

1.1 – Te Hā o Tangaroa ki ora ai tāua

1. Prior to the colonisation of Aotearoa by the British Crown Māori enjoyed complete authority over their fisheries resources. Te Ao Māori's relationship with Tāngaroa, and ability to benefit from that relationship, was and remains underpinned by whakapapa – descent from Ranginui and Papatūānuku and their children.
2. The signing of Te Tiriti o Waitangi in 1840 affirmed Māori tino rangatiratanga over their taonga including fisheries which was an essential affirmation of the traditional Māori world view. This world view endures in the modern day. Te Tiriti o Waitangi and the 1992 Maori Fisheries Settlement are built on a much deeper foundation of Māori whakapapa connection to and relationship with Tangaroa.
3. In the modern context, when considering or developing fisheries-related policy, Te Ohu Kaimoana is guided by the principle of 'Te Hā o Tangaroa kia ora ai tāua' - the breath of Tangaroa sustains us. In this context Tangaroa is the ocean and everything connected to and within, on and by the ocean. This connection also includes humanity, one of Tangaroa's descendants.
4. Ko 'Te hā o Tangaroa kia ora ai tāua', highlights the importance of an interdependent relationship with Tangaroa, including his breath, rhythm and bounty and how those parts individually and collectively sustain humanity. The guiding principles underpinning 'Te hā o Tangaroa kia ora ai tāua' highlight how we ensure that we foster and maintain our relationship with Tangaroa.

1.1.1 – Tangaroa

5. Tangaroa is the God of the Sea and everything that connects to the sea. He is the divinity represented through Hinemoana (the ocean), Kiwa (the guardian of the Pacific), Rona (the controller of the tides – the moon) and the connection with other personified forms of the Great Divine. For some tribes, he is also the overlord for all forms of water, including freshwater and geothermal as well as saltwater.

1.1.2 – Te Hā

6. Te Hā means, breath and to breathe. Te Hā o Tangaroa represents the breath of Tangaroa, including the roar of the ocean, the crashing of waves on the beach and rocks, the voice of the animals in and above the ocean and of the wind as it blows over the ocean, along the coast and the rocks and through the trees that stand along the shoreline. Through our whakapapa to Tangaroa, we as humanity, we as tangata whenua are the human voice for Tangaroa.
7. When Tangaroa breathes it is recognised through the ebb and flow of tide and the magnetism of the moon. This magnetism is recognised as the kaha tuamanomano (the multitudinal rope of the heavens).

Therefore, we must also be mindful of the lunar calendar when working with Tangaroa and his various modes.

1.1.3 – Purpose and Policy Principles

8. Te hā o Tangaroa ki ora ai taua provides Te Ohu Kaimoana with guidance on key principles which should underpin our consideration of modern fisheries policy.
 - **Whakapapa:** Maori descend from Tangaroa and have a reciprocal relationship with our tupuna;
 - **Tiaki:** To care for Tangaroa, his breath, rhythm and bounty, for the betterment of Tangaroa in order to care for humanity as relatives;
 - **Hauhake:** To cultivate Tangaroa, including his bounty, for the betterment of Tangaroa (as a means of managing stocks) and for the sustenance of humanity; and
 - **Kai:** To eat, enjoy and maintain the relationship with Tangaroa as humanity.
9. Whakapapa as a principle recognises that when Māori (and Te Ohu Kaimoana as an extension of Iwi Māori) are considering Tangaroa we are considering the wellbeing of our tupuna (ancestor) – rather than a thing or inanimate object. Therefore, the obligation and responsibility of Tiaki – caring for Tangaroa – comes from our descent from our Tupuna. Similarly, the responsibility and obligation of Hauhake (cultivation) is underpinned by our Tiaki obligations to Tangaroa in order to Tiaki humanity.
10. Ultimately, humanity’s right to Kai – to enjoy the benefits of our whakapapa relationship with Tangaroa – are dependent upon our ability to Tiaki and Hauhake and how we uphold the responsibility and obligation in a modern and meaningful way to maintain legitimacy through practicing Tiaki, Hauhake and Kai.
11. These principles were inherent within the Treaty of Waitangi fisheries settlement and – Te Ohu Kaimoana asserts - the quota management system which Māori endorsed as part of that historic settlement. This underscores its ongoing relevance and importance in modern New Zealand fisheries management.

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

12. Section 5 (b) of the Fisheries Act 1996 obliges “all persons exercising or performing functions, duties, or powers conferred or imposed by or under it” to “act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (TOW(FC)SA)”. The TOW(FC)SA implements the Deed of Settlement between Māori and the Crown, which represented a full and final settlement of Māori claims to fisheries.
13. It follows that whenever a Minister makes a decision to implement a sustainability measure or to provide for utilisation, they must ensure their decision is consistent with, and does not undermine, the Fisheries Settlement. The following matters are particularly relevant.

1.2.1 – Allocating the TAC

14. To protect Māori fisheries settlement rights, the following approach should be taken to adjusting the Total Allowable Catch (TAC):
 - a. the recreational allowance should not be increased above the level it was first set by the Minister when the TAC was set for any particular stock; and
 - b. if, in order to ensure sustainability, the TAC, Total Allowable Commercial Catch (TACC) and the recreational allowance is reduced, the allowance can be increased back to its initial level when the stock rebuilds;
 - c. all increases to a TAC should be allocated to the commercial sector after providing for non-commercial customary fishing and other fisheries-related sources of mortality;
 - d. the customary allowance is based on customary needs and managed through kaitiaki. In some instances, customary needs may not be fully identified and there may be insufficient capacity to harvest what is needed. Therefore, there can be expected to be increases to the customary allowance over time as both needs are better identified and capacity to harvest is realised;
 - e. in situations where the abundance of a stock drops, kaitiaki will respond appropriately.

15. In our view, this approach should be adopted as the default option and apply whether the stock is at, above or below any target stock level at the time the TAC is set. Variations on this approach should only be considered by the Minister if all extractive interests reach agreement on an alternative approach. Our rationale for this approach is set out below.

16. When the Interim Fisheries Settlement was agreed between Māori and the Crown in 1988, the Crown undertook to provide Māori with 10% of the quota for all stocks in the Quota Management System (QMS) at that time. When the Deed of Settlement was finalised, it was agreed that all stocks introduced to the QMS from that time would generate a 20% share for Māori. As part of this agreement, Māori agreed that the QMS was an appropriate regime for managing commercial fisheries. At the time of the Settlement the only proportional interests held were quota owners (who owned a share of the TACC). Allowances for customary and recreational interest were for a fixed amount.

17. This rights-based system formed the basis for the commercial part of the settlement and underpins sound management of commercial fishing, in which rights holders take responsibility for managing their share of the overall TAC. The expectation was that the benefits of good stock management would accrue to those who had a proportionate interest in the fishery, notwithstanding the priority right held by customary interests in the event that customary needs increased.

18. As part of the Settlement, it was also agreed that the Minister would develop policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights. The Minister was also to recommend the making of regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food

gathering importance to the extent such food gathering is neither commercial in any way nor for pecuniary gain or trade. Within the customary regulations, kaitiaki take responsibility for managing customary fishing, including issuing authorisations and reporting catch.

19. When agreeing to the provisions of the Deed of Settlement, 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 to undermine the value of settlement quota or fails to recognise customary non-commercial needs is a matter of bad faith.
20. Thus, when adjusting the TAC, the Minister must ensure the integrity of Māori fishing rights is maintained. This means:
 - a. priority should be given to the customary allowance for stocks that Iwi and hapū require to meet their customary non-commercial needs; and
 - 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 settlement quota.
21. Te Ohu Kaimoana views recreational fishing as a privilege which should not be exercised at the expense of Māori commercial and non-commercial fishing rights. In recent times the recreational sector has effectively operated within an unconstrained allowance – which provides little incentive for the recreational sector to exercise responsibilities to constrain catch within the recreational limit. Similarly, this provides little incentive for the commercial sector to work collaboratively to increase stock abundance given the likelihood that any benefits of a rebuild will be allocated to the recreational sector. We acknowledge there are input controls such as bag limits; however, there is no effective constraint on total catch.
22. Te Ohu Kaimoana does not support decisions that increase the recreational allowance at the expense of the TACC. These kinds of re-allocations affect the rights of settlement quota holders and reduce the incentives on the commercial sector to take responsibility and invest in good management.
23. Te Ohu Kaimoana considers that the appropriate way of reflecting the recreational share of the fishery is to set an allowance that reflects the catch taken in 1992, when the Deed of Settlement was signed. We note that a recreational allowance did not become part of the TAC until the Fisheries Act 1996 came into effect, and since then it has been the general practice to set allowances when TACCs are varied and TACs are set, or when stocks are introduced into the QMS. We note that the courts have ruled that the Minister has discretion to set the allowance when initially allocating a TAC up to the level of estimated catch. However, we do not accept any increases in this allowance after this time. From a fisheries management perspective, such decisions encourage a “race for fish” – which is what we are seeing in the case of Southern Bluefin Tuna. This kind of behaviour should be what responsible fisheries management aims to avoid.

24. If the recreational sector wishes to see a system in which the allowance can be increased above its initial allocation, a full review of the framework for managing the recreational sector is required. This would require further consideration of options to more tightly manage recreational catch to ensure it stays within the recreational allowance. A system that allows for the recreational sector to increase catches would need to be carefully designed and take explicit account of obligations under the Deed of Settlement.

1.2.2 – 28N rights can affect the Fisheries Settlement and this needs to be avoided

25. When the QMS was first introduced, the ITQ for each stock was based on a set tonnage that could be caught by each quota owner. It soon became apparent that the TACC in some fisheries exceeded the sustainable capacity of those fisheries and the Crown acted to reduce the catch.
26. The regime at that time required the Government to buy quota back and retire it. The Government chose to change the law and provide quota owners with the choice of putting a specific amount of their quota “on hold” in the hope that the TACC for the fishery would subsequently be increased. Once the fishery recovered, the ‘quota on hold’ would have priority to the increase. Once ‘refunded’ in this way, that quota is normalised and holds the same rights as other quota. This quota and the associated rights and processes were set out in Section 28N in the Fisheries Act 1983.
27. Many affected quota owners took the latter path of having the amount of their quota the government wanted reduced declared to be subject to 28N conditions. Subsequent to this, the Crown made other changes to the QMS that changed the basis of quota being volume based to proportional shares of the TACC. The effect of this last change, when combined with s 28N rights, means that when a TACC increases for fisheries where some quota owners hold 28N rights, all the increase transfers to those quota owners (until the total of the 28N rights for that fishery is exhausted). Because there is only a fixed number of shares in the fishery, this can only be achieved by increasing the number of shares held by the 28N rights holder and decreasing the shares held by other quota owners.
28. The Deed of Settlement was signed in 1992 and was put into effect through the Fisheries (Treaty of Waitangi Fisheries Claims) Settlement Act 1992. However, the Fisheries Act 1983 was not amended to reflect the settlement obligations, and 28N rights were subsequently carried through into the Fisheries Act 1996.
29. Ultimately, this situation means that where 28N rights are invoked, the share of quota that Iwi hold will be reduced. This undermines the agreement between the Crown and Māori, that Māori would receive 10% of all stocks in the QMS at the time of the interim fisheries settlement (1989).
30. In light of the obligations under s 5(b) of the Fisheries Act, the Minister must ensure that any decisions that trigger 28N rights, are administered by FNZ in such a way that they do not have the effect of diluting the proportional share that Iwi have in the TACC. If FNZ fails to act in this way, it will have the effect of

undermining the Fisheries Settlement. This issue is relevant for a number of fisheries that are being reviewed as part of the 2018 sustainability round. Where the potential for a breach of the Settlement exists because of so called s 28N rights exists, our response points this out and requests that remedial steps be taken to ensure there is no breach of the Settlement.

1.2.3 – Appropriate Consultation Period

31. Te Ohu Kaimoana was initially provided 19 working days to respond to the IPP. We note that in more public communications, FNZ have stated that it is standard practice to provide for a six-week consultation period for stakeholders.
32. The statutory and non-statutory mandate that is held by Te Ohu Kaimoana is set out in the introduction to this document. This includes working with, and on behalf of, the 58 MIOs and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi. Te Ohu Kaimoana does not consider that being given 19 days to respond to an IPP of this magnitude signals that FNZ understands the obligations it has to work with us as the agent of the Treaty Partner.
33. This lack of time to respond is of particular concern where Te Ohu Kaimoana is not provided with an opportunity to have input into confirming the stocks for review. In this instance, we have been granted an extension that means the response period has been extended to five weeks. Notwithstanding the extension to a five-week response timeframe, we would like to meet with FNZ officials to discuss how Te Ohu Kaimoana can be better positioned to deliver on our statutory and non-statutory obligations in the future.

1.3 – Other Matters

1.3.1 – Shelving of ACE is a matter for the Minister to take into account

34. The IPP places a primary focus on adjusting TACs and TACCs in response to assessments that indicate a stock's position around relative biomass reference points. This represents a very limited view of the tools provided under the Fisheries Act 1996 to ensure sustainability. Of note is that s 11(3) sets out a range of options that are available to the Minister to ensure sustainability. Only where a catch limit is deemed to be the most appropriate is the Minister referred to setting or varying a TAC under ss 13 or 14 for stocks managed under the QMS.
35. Notwithstanding the broad range of tools available to the Minister to address a sustainability concern, Te Ohu Kaimoana interprets the Fisheries Act to be structured in a way that enables the Minister to give full consideration of the relevant fisheries management regime for a particular stock (or stocks) before considering whether or not a formal sustainability measure should be proposed. We consider that the Act provides for more responsive fisheries management than can be achieved through a blunt TAC/TACC reduction, by recognising the potential for Iwi or industry-led actions to better address sustainability

concerns. This is reflected in the opportunity to “take into account” such actions under s 11(1) before the Minister decides whether or not to propose setting a sustainability measure. Even in situations where the Minister proposes to set a sustainability measure, Te Ohu Kaimoana considers that Iwi or industry can promote an alternative approach in response to consultation under s 12 of the Act.

36. In particular, s 11(1) requires that 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. The former Ministry of Fisheries developed and consulted on a series of policy definitions on the “Front End” of the Fisheries Act 1996 and in relation to s 11(1)(a), confirmed that it provided 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”.
37. This interpretation of s 11(1)(a) was subsequently used to support the use of shelving Annual Catch Entitlement (ACE) as a means of effecting a reduction in the commercial catch in the PAU 7 fishery as part of the decisions made by the Minister of Fisheries in 2003. However, in more recent times the shelving of ACE has not been supported by FNZ, although the rationale for this position has not been given publicly.
38. Te Ohu Kaimoana considers that shelving of ACE is a viable way of reducing the commercial catch and that the Minister of Fisheries is obliged to take this into account in accordance with the provisions of s 11(1)(a). If the Minister is satisfied that the approach will adequately mitigate a risk to sustainability, there is no legislative obligation to choose from the list of statutory sustainability measures set out in s 11(3). This would also mean that the Minister would not be directed to either section 13 or section 14 in order to vary a TAC for one or more stocks.

1.3.2 – Managing fish stocks

39. In situations where the Minister decides to set or vary a catch limit under s 11(4) (after choosing that option from the (non-limiting) list of choices in s 11(3)), sections 13 and 14 set out the considerations that apply for a stock managed under the QMS. The provisions of s 13 require that a stock should have a TAC set 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. Where the stock is above or below B_{MSY} , there is discretion over the way and rate the stock rebuilds or is fished down to the level of B_{MSY} . Importantly, as noted above, there is a range of tools available under s 11(3) (in addition to TACs) to assist with any rebuild process that may be required to ensure sustainability.
40. In considering the obligations set out in s 13, FNZ defers to a ‘Harvest Strategy Standard for New Zealand Fisheries’ (HSS). This document was produced in 2008 by the Ministry of Fisheries. The HSS is described as “a policy statement of best practice regulation to the setting of fishery and stock targets and limits for fishstocks in New Zealand’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. This means the HSS document is now 10 years old and it is difficult to sustain an argument that a non-statutory document of that age could be viewed as promoting best practice regulation.

41. 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.
42. However, Te Ohu Kaimoana notes that the purpose of the Fisheries Act 1996 sets out 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. Employing default target levels and timeframes for fisheries management has the real potential to undermine the purpose of the Act.
43. 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 FNZ are inherently setting utilisation targets that the Act enables people to consider and take the necessary actions to achieve. In this way the suggested targets have the effect of prescribing rather than enabling management of fisheries beyond the levels required to ensure sustainability.
44. 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, have considered all tools available to the Minister, account for relevant social, economic, cultural factors, have regard to the interdependence of stocks and ensure the stock is tracking to level that can produce the maximum sustainable yield.
45. As noted, providing one tool for stock recovery in the form of a reduction to the TAC cannot be best management practice. This “set and forget” approach disregards the range of tools available to rebuild the stock at an optimal rate. Therefore, application of 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. In view of this, Te Ohu Kaimoana considers the unique biological and environmental conditions facing each stock and socio-economic implications to be an important explicit consideration when contemplating management targets. The provisions of the Fisheries Act should be the first point of reference when contemplating management decisions and rebuild strategies to reach those targets.
46. We further note that where quota owners are incentivised to act collectively, the evidence suggests that they will adopt strategies that promote the management of stocks at levels above the requirements of section 13. Te Ohu Kaimoana considers it is an appropriate role for FNZ to develop frameworks that encourage collective action. This focus is most particularly needed in shared fisheries, where there are many examples of the recreational sector being rewarded (through an increased allowance) for fishing

beyond the level allowed for by the Minister of Fisheries when the TAC was set. As noted, this practice also offends the Settlement (we refer to our comments on the role of s 5b of the Fisheries Act).

1.3.3 – Use of Deemed Values

47. Deemed Values have played an important role in the administration of the QMS since it was introduced in 1986. Commercial fishers who do not balance catch with ACE must make deemed value payments.
48. Section 75 of the Fisheries Act 1996 requires the Minister to set deemed values (both interim and annual) for a stock. In setting a deemed value, the Minister must take into account the need to provide an incentive for every commercial fisher to acquire or maintain sufficient ACE in respect of each fishing year that is not less than the total catch of that stock taken by that commercial fisher. The Minister should have regard to a range of matters that are set out in s 75(2)(b)(i)-(vi), including the market value of the stock and the value of ACE for that stock. There is also scope for the Minister to set differential annual deemed values. These provisions were last amended in 2004.
49. FNZ consider that “the deemed value regime is intended to constrain commercial catch to respective catch limits by encouraging commercial fishers to balance their catch with ACE, while not discouraging them from landing and accurately reporting catch”. To understand the rationale for this purpose, potential respondents to the IPP are referred to “Deemed Value Guidelines” that 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.
50. Te Ohu Kaimoana considers that the overriding purpose of deemed values is to encourage the reporting of catch, while discouraging the catch of stocks that individual fishers cannot cover with ACE. Deemed values were never intended or designed to be a mechanism for ensuring commercial catch did not exceed the TACC. Rather, the key focus was on encouraging transparency across the fisheries management system so that catch was 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.
51. While deemed values act to discourage fishers from fishing without ACE, TACCs themselves are not always set right and need to be regularly reviewed, based on the best available information. Hence there is a balance to be struck between incentives to fish with ACE (and hence within the TACC) and accurate reporting of catch (whether or not it is covered by ACE), which is fundamental to understanding whether TACCs have been set appropriately. This was the basis for deemed values being introduced and it is notable that s 75 has not been amended since 2004. In contrast the FNZ guidelines were developed in 2012 and we do not believe they are aligned with the purpose of the Act.
52. The discouraging of catch in excess of ACE holdings is achieved by ensuring that the deemed value is set at a level that is 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. In this way, the key considerations that the Minister should have regard to under 75(2)(b)(ii)-(iii) are met.

53. Te Ohu Kaimoana considers that the deemed value for a particular fish stock can be set at, or scaled up to, a level that removes any profit after harvesting costs are deducted. Under these conditions a fisher is incentivised to both retain catch for which ACE cannot be obtained and to report the catch. Importantly, a fisher has no incentive to target the stock as returns will be maximised where the catch can be covered by ACE. This application of deemed values is consistent with the purpose of the Act and the Settlement and has the real potential to increase the quality of information available to support fisheries management decision-making.
54. The current policy, conversely, has the potential to increase incentives for discarding catch. This, in turn, has led to a misinformed view that cameras should be required on all vessels to detect any discarding of catch at sea. Rather than focus the public debate on the use of cameras, Te Ohu Kaimoana considers a more appropriate response would be to utilise the deemed value provision in the way Parliament and the law intended. Other tools are available to address issues where additional action is required to ensure sustainability.

5 – Southern Bluefin Tuna (STN 1)

5.1 – Context

1. FNZ is proposing to adjust the TAC for southern bluefin tuna – STN. The proposal is based on an increased national allocation after the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) increased the Global Total Allowable Catch (GTAC). New Zealand’s national allocation has increased by 88 tonnes to 1088 tonnes.
2. The CCSBT is an intergovernmental organisation that is responsible for the management of southern bluefin tuna. The CCSBT’s objective is to ensure, through appropriate management, conservation and optimum utilisation of southern bluefin tuna. New Zealand is a founding member, and other members include; Australia, Japan, the European Union, the Fishing Entity of Taiwan, Indonesia, the Republic of Korea and South Africa. The CCSBT sets the global total allowable catch (GTAC) for southern bluefin tuna in three-year blocks, with the GTAC allocated to individual member countries.
3. The national allocation for New Zealand is determined as part of an international agreement. Southern bluefin tuna is a highly migratory species, migrating over considerable distances and spending only part of its time in New Zealand waters. Therefore, it is not possible to calculate the maximum sustainable yield (MSY) for the portion of the stock found within New Zealand fisheries waters. Section 14 of the Act provides for alternative TACs to be set for stocks specified in Schedule 3 (which includes southern bluefin tuna) if the Minister considers it appropriate to better achieve the purpose of the Act.
4. For highly migratory species (including southern bluefin tuna), New Zealand will generally rely on international organisations in which we participate to determine the status of the species in question – in this instance the CCSBT. FNZ is satisfied that the advice from the CCSBT’s Science Committee (including an independent panel) represents the best available information to inform management decisions.
5. The Minister approved the use of an in-season increase to the TAC during the 2017-18 fishing year to allow New Zealand to benefit from the first of a three-year allocation block. The changes proposed as part of the 1 October 2018 sustainability round are required to adjust the final two years of the three-year quota block.

5.2 – Proposed Options

6. FNZ proposes three options (Table 29). All options include an 88 tonne increase in the current TAC, which reflects the increase in New Zealand’s national allocation that was determined by the CCSBT at the end of 2017. All three options focus on how the increased TAC will be allocated.

Table 29: Proposed management settings in tonnes for STN 1 from 1 October 2018, with the percentage change relative to the status quo in brackets.

Option	Total Allowable Catch (TAC)	Total Allowable Commercial Catch (TACC)	Allowances		
			Customary Māori	Recreational	All other mortality to the stock caused by fishing
Current settings (as at 1 October 2017)	1000	971	1	8	20
Option 1 (2017/18 in-season settings)	1088 ↑ (9%)	1047 ↑ (8%)	1	20 ↑ (150%)	20
Option 2	1088 ↑ (9%)	1059 ↑ (9%)	1	8	20
Option 3	1088 ↑ (9%)	1027 ↑ (6%)	1	40 ↑ (400%)	20

5.3 – Our Position

7. Te Ohu Kaimoana make the following recommendations:

- a. Te Ohu Kaimoana recommends that the TAC/TACC decision in STN 1 set the recreational allowance at or close to zero. This would align with the size of the recreational catch of STN 1 at the time of the Deed of Settlement.
- b. Of the three options consulted on, Te Ohu Kaimoana notes that option two is the closest to our recommendation. This increases the TAC from 1000 tonnes to 1088 tonnes, increase the TACC from 971 tonnes to 1059 tonnes, retain the customary allowance of 1 tonne, retain the recreational allowance of 8 tonnes, and retain other sources of mortality at 20 tonnes (Table 29).
- c. Put in place new measures to ensure the recreational catch is managed within the recreational allowance. New measures could include a daily boat limit of one southern bluefin tuna, and a balloting system to enable the recreational catch to remain within the recreational allowance.
- d. We also propose that FNZ review their approach to international negotiations over access to fisheries that have implications for the way in which obligations under the Deed of Settlement are met. In particular, we consider that Te Ohu Kaimoana (as the agent of the Treaty Partner for fisheries matters such as this) should be invited to participate alongside the Treaty partner. In addition provision could also be made for MIOs that wish to participate in both scientific workshop and management negotiations as part of the New Zealand delegation be identified.

5.4 – Commentary

5.4.1 – Previous Advice

8. Te Ohu Kaimoana provided a comprehensive response to the proposal for an in-season increase to the TAC for the current (2017-18) fishing year. We refer FNZ to that response as background to our position for the more formal review of the TAC that is now being undertaken.
9. That response identified a number of management decisions that have been made in recent years that have had the effect of reducing both the size and proportion of the commercial catch limit/TAC that has been allocated to the TACC. In particular:
 - a. The initial allocation to New Zealand did not reflect the size of the catch taken in New Zealand waters. Rather, much of that catch was allocated to Japan;
 - b. The allocation to New Zealand was initially a commercial catch limit;
 - c. When the fishery was introduced into the QMS in 2004, the TAC was set at the New Zealand allocation of 420 tonnes, but the TACC was set at 413 tonnes after allowing for customary and recreational fishing and other sources of mortality – without evidence to suggest those mortalities were real. In particular, we understand the actual level of recreational catch at that time was at, or close to, zero. The net effect was that Iwi received shares in the fishery below the 20 % agreed in the Deed of Settlement;
 - d. When the New Zealand allowance was increased to 1000 tonnes in 2014, the recreational allowance was increased to eight tonnes, and other sources of mortality was increased to 20 tonnes. This had the effect of further reducing the Iwi share of the New Zealand allowance;
 - e. There is no evidence to suggest New Zealand negotiators pushed for the allowances for other sources of mortality to be added to the commercial catch, rather than be deducted from it. Consequently, it would appear that New Zealand has been the only participating nation to fully account (effectively over account) for non-commercial mortality. It appears that other nations have been incentivised to substantially under report non-commercial catch in order to avoid diluting their commercial allocation;
 - f. The net effect of the way that New Zealand has given effect to the allocation domestically has been driven by International agreements or concessions, rather than Treaty Settlement obligations. However, we note that the Fisheries Act 1996 requires decision-makers to be consistent with both International and Fisheries Treaty Settlement obligations. From a domestic policy perspective Te Ohu Kaimoana considers the Fisheries Treaty Settlement should be afforded a higher level of commitment than International Obligations;
 - g. FNZ and the Minister should begin immediate discussion with Iwi to reconcile the policy issues that are raised in this submission to underpin any future TAC and TACC increase.

5.4.2 – Setting the Customary Allowance

10. Te Ohu Kaimoana understands that New Zealand officials have determined the allowance for customary fishing at an arbitrary level. Further, this allowance has been internalised within the New Zealand TAC. We consider that there are significant implications that arise from treating the customary allowance this way. In particular, we consider determining a customary allowance in an international context without conferring with Iwi to be problematic. This is especially so when it seems that the allowance for recreational fishing has been set at a higher level and beyond estimates of actual take.
11. Notwithstanding these concerns we note that all three options provided assume the customary allowance should remain at one tonne, and that it is only the recreational allowance that can be varied.

5.4.3 – Setting the Recreational Allowance

12. Te Ohu Kaimoana has set out our recommended approach to allocation of a TAC in Section 1.1.1 of this response. In the case of southern bluefin tuna our preference is that the setting of an allowance for recreational fishing should be based on the extent of the recreational catch at the time of the Deed of Settlement. Our understanding is that at that time the recreational catch was at, or close to, zero.
13. Te Ohu Kaimoana notes that FNZ have not provided an option to set the recreational allowance at or close to zero. We note that in considering the in-season increase to the TAC for the current year, FNZ recommended an option to the Minister that was above all options that were consulted on. This option was based on anecdotal information that the recreational catch was higher than the three options provided for. In advancing this option, Te Ohu Kaimoana considers that FNZ placed a greater weight on s 5a (international obligations) than on s 5b (Treaty Settlement obligations).
14. Notwithstanding our preference for setting the recreational allowance at the level of catch that was taken in 1992, if the Minister is limited to considering options that have been consulted on, then option two comes closest to being acceptable. This would have the effect of retaining the existing allowance and ensuring the most recent benefits of the rebuild would flow through to the TACC, consistent with the expectations that arise under the Fisheries Settlement.
15. As noted in Section 1.2.1 of this response, if the recreational sector wishes to see a system in which the allowance can be increased above its initial allocation, a review of the framework for managing the recreational sector is required. An alternative option available to the sector is to purchase ACE to cover catch and, in that way, ensure the integrity of the TAC. This is a viable option in this fishery given that the recreational catch is taken by a combination of charter boats and private launches.
16. Finally, we note that it is entirely possible that the current recreational catch exceeds the recreational allowance. This is a likely consequence of the “race for fish” we have seen during recent years as the sector

has actively sought to fish beyond their allowance and in so doing undermine the integrity of the TAC. If the best available information confirms that the recreational catch is above the allowance set, then Te Ohu Kaimoana considers that the Minister needs to take steps to address this situation. In the interim there is potential for any over-catch of the recreational allowance to be reflected in other sources of fishing mortality. The current level of 20 tonnes set for other sources of fishing mortality should be sufficient to cover the over-catch.

17. Once the new measures to control the over catch of the recreational allowance are addressed, the allowances for other sources of fishing mortality should be returned to the TACC.

5.4.4 – Managing to the Recreational Allowance

18. We are extremely concerned about unconstrained recreational catches in established commercial fisheries. As noted, the allowance for recreational fishing has increased in 2010 and 2018 (in-season), and there is an option that could result in an increase to as high as 40 tonnes under the current review.
19. Of particular concern is that the presentation of an option to increase the allowance to 40 tonnes would appear to be encouraging the sector to continue to increase its catch and therefore continue to undermine the integrity of the TAC. If this behaviour is subsequently rewarded by increasing the allowance this can only come at the expense of the TACC, and by association, undermining of the Fisheries Settlement.
20. In our view New Zealand fisheries management needs to develop a system that will enable the recreational catch to be managed within the allowance set by the Minister. Failure to do this will mean that the integrity of the TAC will continue to be undermined. This will impact negatively on the reputation of New Zealand as a credible manager of fisheries.
21. The use of a ballot system has been successfully used in the red abalone fishery in northern California, and the Western Australian snapper fishery. The total number of tags reflects the recreational allowance. Fishers should be required to tag, measure and weigh southern bluefin tuna, and report back information to FNZ to contribute to the National and CCSBT science programme. A tag would be provided to every ballot holder to attach to any southern bluefin tuna they catch. We invite FNZ to engage with Te Ohu Kaimoana and MIOs to develop a ballot and tag system.

Fisheries New Zealand Online Survey

#	Which group do you identify with?	What is your preferred option for recreational fishing limits?	Any supporting information
1	Recreational fishing	Two southern bluefin tuna per person daily bag limit	
2	Recreational fishing	One southern bluefin tuna per person daily bag limit	
3	Recreational fishing	One southern bluefin tuna per person daily bag limit	
4	Recreational fishing	One southern bluefin tuna per person daily bag limit	
5	Commercial fishing	One southern bluefin tuna per person daily bag limit	
6	Recreational fishing	A combination of boat and bag limits	One per person maximum three per boat
7	Recreational fishing	One southern bluefin tuna per person daily bag limit	
8	General public	One southern bluefin tuna per person daily bag limit	
9	Recreational fishing	One southern bluefin tuna per person daily bag li	To assist in the rebuild of the stock
10	Recreational fishing	One southern bluefin tuna per person daily bag limit	
11	Recreational fishing	Three southern bluefin tuna per boat daily limit	
12	Recreational fishing	A combination of boat and bag limits	2 per day up to max 5 for a weeks fishing trip
13	Recreational fishing	One southern bluefin tuna per person daily bag li	One tuna per person is ample for anyone. A boat bag limit may prove a little inconsistent as some vessels might only have two anglers, another such as a long range charter vessel, may have 6-8 anglers on board.
14	Recreational fishing	Three southern bluefin tuna per boat daily limit	
15	Recreational fishing	A combination of boat and bag limits	1 per boat per day
16	Recreational fishing	A combination of boat and bag limits	One per person per day to a max of 3 per boat
17	Recreational fishing	One southern bluefin tuna per person daily bag limit	
18	Recreational fishing	A combination of boat and bag limits	1 per angler with a maximum of 3 per boat but on the condition that for that 3rd fish atleast 2 have been released with tags for research.
19	Recreational fishing	One southern bluefin tuna per person daily bag limit	
20	Recreational fishing	A combination of boat and bag limits	No need to take more then 1 fish per person each season in my view
21	Recreational fishing	A combination of boat and bag limits	1 per person upto 3 per boat
22	Recreational fishing	A combination of boat and bag limits	One per person per week

#	Which group do you	What is your preferred option for recreational fis	Any suporting information
23	Recreational fishing	A combination of boat and bag limits	1 per person and 3 per boat per (??? day or maybe week) Of ALL tuna OVER 105 cm long
24	Recreational fishing	One southern bluefin tuna per person daily bag limit	
25	Recreational fishing	Three southern bluefin tuna per boat daily limit	
26	General public	One southern bluefin tuna per person daily bag limit	
27	Recreational fishing	One southern bluefin tuna per person daily bag limit	
28	Recreational fishing	One southern bluefin tuna per person daily bag limit	
29	Recreational fishing	A combination of boat and bag limits	One southern bluefin tuna per person daily bag limit, and boat limit of 4
30	Recreational fishing	One southern bluefin tuna per person daily bag limit	
31	Recreational fishing	One southern bluefin tuna per person daily bag limit	
32	Recreational fishing	A combination of boat and bag limits	1 per boat per day. Tags made readily available for anglers
33	Recreational fishing	One southern bluefin tuna per person daily bag limit	
34	Recreational fishing	One southern bluefin tuna per person daily bag li	I refuse to have a cap on recreation fishing only. If we need more the minister shall allow
35	Recreational fishing	Two southern bluefin tuna per person daily bag limit	
36	Recreational fishing	Three southern bluefin tuna per boat daily limit	
37	Recreational fishing	One southern bluefin tuna per person daily bag limit	
38	Recreational fishing	One southern bluefin tuna per person daily bag limit	
39	Recreational fishing	One southern bluefin tuna per person daily bag limit	
40	Tangata whenua	Three southern bluefin tuna per boat daily limit	
41	Recreational fishing	One southern bluefin tuna per person daily bag li	One per person seems fair as the fishery is typically a long haul for traile boats and also a long trip for non trailer recreation boats. One per person would still justify the cost of targeting SBF. A boat limit would be fine fo most at three however I feel this would be unfair to larger boats with mc people and larger expenditures to get there. Also why should a boat wit one or two anglers be able to take more per person if a three boat limit was used.
42	Recreational fishing	One southern bluefin tuna per person daily bag li	One per person per boat a day is plenty, preserve the resource
43	Recreational fishing	One southern bluefin tuna per person daily bag limit	
44	Recreational fishing	A combination of boat and bag limits	1 fish per boat per day
45	Recreational fishing	One southern bluefin tuna per person daily bag limit	

#	Which group do you identify with?	What is your preferred option for recreational fishing limits?	Any supporting information
46	Recreational fishing	A combination of boat and bag limits	I would like to see 1 per person per day. With a total boat limit of 3 or 4 per day This allows people fishing with only a Couple of people on board which is often the case, to take home one each but if fishing with more than that the limit will get capped at 3 or 4 per boat per day to prevent a boat with 15 pob taking home 15 fish. I think it does need to be a comb of vessel and pob limit. If you have had a vessel limit of three one perso could be taking home three fish...
47	Recreational fishing	One southern bluefin tuna per person daily bag limit	
48	Recreational fishing	A combination of boat and bag limits	I think 1 tuna per person is to many. Could you do a per person limit of 1 but a boat limit of say 2.
49	Recreational fishing	A combination of boat and bag limits	I dont want any limit set for boat or angler just yet. There are no rules on SBT at the moment, most fish were caught with multiple hook ups and therefore if a boat was only allowed 3 fish and had caught 2 already, the next hook up is likely to be a double, triple or more and the survival rate a released tuna wont be flash, you just need to look at a big yellowfin wh they come to the boat, they are always bleeding! Thank you for listening
50	Recreational fishing	A combination of boat and bag limits	One per person a day and only three per boat a day
51	Recreational fishing	One southern bluefin tuna per person daily bag limit	
52	Recreational fishing	One southern bluefin tuna per person daily bag limit	
53	Recreational fishing	A combination of boat and bag limits	Max 1 per angler, plus max 2 per boat per day
54	Recreational fishing	A combination of boat and bag limits	One southern bluefin tuna per boat per day.
55	Recreational fishing	One southern bluefin tuna per person daily bag limit	
56	Recreational fishing	A combination of boat and bag limits	1 per boat per day
57	Recreational fishing	Three southern bluefin tuna per boat daily limit	
58	Recreational fishing	One southern bluefin tuna per person daily bag li	Also add a boat limit of maybe 3
59	General public	A combination of boat and bag limits	One southern bluefin tuna per boat daily limit
60	Recreational fishing	A combination of boat and bag limits	1 per boat per day
61	Recreational fishing	One southern bluefin tuna per person daily bag limit	
62	Recreational fishing	Two southern bluefin tuna per person daily bag limit	
63	Recreational fishing	One southern bluefin tuna per person daily bag limit	

Which group do you identify with?	What is your preferred option for recreational fishing limits?	Any supporting information
Recreational fishing	One southern bluefin tuna per person daily bag li	1 per person, per day. That way if multiple hook ups occur and fish unabl to be released the fish can be utilised without wastage.
Recreational fishing	A combination of boat and bag limits	1 per BOAT per day
Recreational fishing	Two southern bluefin tuna per person daily bag li	Due to the distance to travel and then the distance off-shore to catch wh may be a fish of a life time I believe two per person per day is acceptable reward to provide for friends and family.
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	A combination of boat and bag limits	1 fish per boat per day
Recreational fishing	A combination of boat and bag limits	Daily allowance of one per person and 4 per boat.
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	A combination of boat and bag limits	1 per person per day - up to 3 fish per vessel
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	A combination of boat and bag limits	One fish per boat per day
Recreational fishing	A combination of boat and bag limits	A maximum of 1 per person per day and a maximum of t3 per boat per da
Recreational fishing	Three southern bluefin tuna per boat daily limit	
Recreational fishing	One southern bluefin tuna per person daily bag li	1 SBT per person per day with a max total of 3 SBT per boat per day.
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	Three southern bluefin tuna per boat daily limit	
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	A combination of boat and bag limits	one per angler or two per boat
Recreational fishing	A combination of boat and bag limits	1 per angler, max three per boat
Recreational fishing	Two southern bluefin tuna per person daily bag li	One per person per day or max 2 / 3 per boat per day
Recreational fishing	A combination of boat and bag limits	One bluefin tuna per person per season
Recreational fishing	One southern bluefin tuna per person daily bag limit	
Recreational fishing	One southern bluefin tuna per person daily bag li	Daily boat limit of 1 and must be reported so the information can be use to form an accurate database
Recreational fishing	Three southern bluefin tuna per boat daily limit	

#	Which group do you identify with?	What is your preferred option for recreational fishing limits?	Any supporting information
91	Recreational fishing	A combination of boat and bag limits	1 per person, with max 2 fish per boat
92	Tangata whenua	A combination of boat and bag limits	One southern bluefin tuna per boat, per day.
93	Commercial fishing	A combination of boat and bag limits	Ballot for tags and all mortality accounted for. The no of tags allocated to reflect the recreational allocation
94	Recreational fishing	A combination of boat and bag limits	One per boat per day
95	Recreational fishing	One southern bluefin tuna per person daily bag limit	
96	Recreational fishing	A combination of boat and bag limits	1 per angler. max 2 per boat regardless of how many fishing on boat
97	General public	A combination of boat and bag limits	1 per person daily limit and 2 per boat daily limit. Encourage tag and release after 1 on boat per day
98	Recreational fishing	A combination of boat and bag limits	1 per person and max of 3 per boat per day
99	Recreational fishing	A combination of boat and bag limits	One bluefin per person/ two bluefin per boat
100	Recreational fishing	A combination of boat and bag limits	1 bluefin per angler per season.
101	Recreational fishing	One southern bluefin tuna per person daily bag limit	
102	Prefer not to specify	Two southern bluefin tuna per person daily bag limit	The south island fishery is mainly small fish.
104	Recreational fishing	One southern bluefin tuna per person daily bag limit	
105	Recreational fishing	One southern bluefin tuna per person daily bag limit	With a max of 3 per boat
106	Recreational fishing	Two southern bluefin tuna per person daily bag limit	
107	Recreational fishing	A combination of boat and bag limits	One per person, two per boat. Who really needs more than that?
108	Recreational fishing	One southern bluefin tuna per person daily bag limit	
109	Recreational fishing	One southern bluefin tuna per person daily bag limit	
110	Recreational fishing	A combination of boat and bag limits	One per person with a max of three per boat a day
111	Recreational fishing	One southern bluefin tuna per person daily bag limit	
112	Recreational fishing	A combination of boat and bag limits	One per person daily bag limit, max 2 per boat.
113	Recreational fishing	A combination of boat and bag limits	One per person per day, maximum 2 per boat per day.
114	Recreational fishing	One southern bluefin tuna per person daily bag limit	
115	General public	One southern bluefin tuna per person daily bag limit	
116	Recreational fishing	Two southern bluefin tuna per person daily bag limit	
117	Recreational fishing	One southern bluefin tuna per person daily bag limit	
118	Recreational fishing	Three southern bluefin tuna per boat daily limit	Needs to be a boat limit to stop the slaughter by some based on how many we can fit in boat
119	Recreational fishing	One southern bluefin tuna per person daily bag limit	

#	Which group do you identify with?	What is your preferred option for recreational fishing limits?	Any supporting information
120	Recreational fishing	A combination of boat and bag limits	one per person to a maximum of three per boat
121	Recreational fishing	A combination of boat and bag limits	1 per person daily, with a total boat limit of 2.
122	Prefer not to specify	A combination of boat and bag limits	<p>Bluefin tuna are relatively large fish and waste should certainly be discouraged. The modern sport fishery is always promoting tag and release. My own evaluation is that a small number of recreational anglers made fools of themselves last (2017) season when they underestimated the whole result of boating such a large fish. Having seen the remarkable effort this year towards waste minimisation, it is very clear to me that things have improved dramatically. We are on a new level, with the recs actually taking great pride in preserving and valuing their catch. We're all still learning but looking after these valuable fish has become a clear priority. Our own crew, although not being lucky enough to hook a bluefin, had gone to the trouble and expense of carrying approx sixty kilos of subcooled ice in purpose-built fishbins, from Hawkes Bay to Waihou Bay to augment what salt ice we may have needed to purchase up there. We had also devised a specific strategy for dealing with a fish if we got one. Finally, and possibly hard to understand, it was actually our intention to tag and release if possible. A boat with just one or two anglers is very different to a large 10m sportfisher crewed by individuals from different families or communities who may actually be able to justify a fish each. But even then, I could not see a normal need for this bag limit to extend to subsequent, consecutive days, unless the boat changed crews each day, such as for charters. Perhaps seasonal limits could be adopted.</p>