

SUBMISSION ON FISHERIES NEW ZEALAND REVIEW OF RECREATIONAL DAILY BAG LIMITS FOR FINFISH (OCTOBER 2021)

SUBMITTER DETAILS

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1. Introduction

- 1.1. This is a submission on the Review of Recreational Daily Bag Limits for Finfish, based on information released by Fisheries New Zealand (**FNZ**) for public consultation on 6 October 2021 (**the Discussion Document**).¹
- 1.2. The Environmental Defence Society (**EDS**) is an independent not-for-profit organisation conducting interdisciplinary policy research and litigation. It was established in 1971 with the purpose of improving environmental outcomes in Aotearoa New Zealand. EDS has a special interest in coastal and marine ecosystems and is currently leading research on future options for oceans system reform.
- 1.3. EDS is familiar with the key issues that need to be addressed in fisheries management decision-making in Aotearoa New Zealand. In 2018, EDS published findings from an in-depth study of the fisheries management system.² The Report evaluates the extent to which current management approaches for inshore fisheries are sufficient to support thriving fisheries and communities. The findings represent an investigation of national and international literature reviews; an economic analysis and review of stock assessment data for key stocks; and more than 60 interviews with people closely involved in fisheries management. More recently, EDS has submitted on proposals to temporarily close fishery areas to the harvest of taonga species; and proposed sustainability measures for the management of wild fish stocks.³

2. Summary of submission

2.1. EDS requests:

- a) The removal of the proposed daily recreational bag limit settings described as “Option 1” from ministerial consideration.
- b) The adoption of a unified combined daily bag limit for all finfish species, meeting the description of “Option 3”.

¹ Ministry for Primary Industries (2021) Review of recreational daily bag limits for finfish. Fisheries New Zealand Discussion Paper No: 2021/21. October 2021. Accessed online at: <https://www.mpi.govt.nz/dmsdocument/47800-Review-of-recreational-daily-bag-limits-for-finfish-Discussion-document>

² Peart, R. (2018) “Voices from the Sea: Managing New Zealand’s Fisheries”, EDS, Auckland, New Zealand.

³ Copies of recent submissions prepared by EDS are available at: <https://www.eds.org.nz/our-work/publications/submissions/>

- c) The inclusion of additional protection for vulnerable reef finfish species, including (as a minimum) pink maomao, golden or red snapper, redfish and pigfish. To achieve this outcome, EDS requests that FNZ include an additional proposal to amend the Regulations that:
- excludes these species from the general combined daily bag limit for finfish; and
 - prohibits the taking or possession of any of these species.
- d) The adoption of a nationally standardised approach to the setting of combined daily bag caps for all finfish species, with a maximum cap of 10 finfish.
- e) The adoption of a separate combined daily bag limit for select baitfish species, with a maximum cap of 20 baitfish.

2.2. EDS supports the proposal to consolidate the existing daily bag limit settings for southern bluefin tuna under one regulatory regime.

3. Background

3.1. Current recreational daily bag limits (herein referred to as “bag limits”) are set under the Fisheries (Amateur Fishing) Regulations 2013 (**Regulations**). The scope of the Regulations is limited to specified finfish species.⁴ All other finfish species are not subject to bag limits, meaning recreational fishers can legally harvest unconstrained numbers of these species. Recent observations of concerted efforts by recreational fishers to target and harvest unspecified finfish species in localised areas has led to concerns about the effectiveness of the current Regulations.⁵

3.2. In June 2021, several recreational fishing vessels were observed landing hundreds of pink maomao, along with other species (e.g., banded perch, golden snapper, redfish, pigfish) at Tairua, on the east coast of the Coromandel Peninsula.⁶ The scale of fishing led to public outcry, mounting tension, and conflict between stakeholders.⁷ Eventually, vigilante action was undertaken by community members to prevent recreational fishing vessels from launching at the Tairua boat ramp.⁸ The media coverage of events at Tairua prompted

⁴ The current recreational daily bag limits apply to between 27 and 43 finfish species, with different bag limit settings applying to each of the five recreational fishing areas. The bag limit settings for each recreational fishing area are included in Schedules 6, 7, 8, 9, and 11 of the Regulations.

⁵ Ministry for Primary Industries (2021), above n 1, at pages 4-5.

⁶ As reported by: Smith, A. (2021) “Fishermen filmed with ‘thousands’ of pink maomao in bins in Tairua” Bay of Plenty Times, 24 June 2021, published online at: <https://www.nzherald.co.nz/bay-of-plenty-times/news/fishermen-filmed-with-thousands-of-pink-maomao-in-bins-in-tairua/TOLOSXOST56XJTYJSU5SKUEBSU/>.

⁷ Refer to: Howie, C. (2021) “Fish fight: Ngāti Hei iwi announce rāhui over maomao fishery” NZ Herald, 26 June 2021, published online at: <https://www.nzherald.co.nz/nz/fish-fight-ngati-hei-iwi-announce-rahui-over-maomao-fishery/XRX5GFM2CUAN3CEDPB7AM42AWM/>; and Morrah, M (2021) “MPI considers pink maomao rule change amid claims hundreds are being caught and sold on black market”, Newshub, 25 June 2021, published online at: <https://www.newshub.co.nz/home/new-zealand/2021/06/mpi-considers-pink-maomao-rule-change-amid-claims-hundreds-are-being-caught-and-sold-on-black-market.html>; and multiple subsequent news articles.

⁸ Smith, A. (2021) “Locals block wharf after fishermen filmed with ‘thousands’ of pink maomao”, NZ Herald, 26 June 2021, published online at: <https://www.newstalkzb.co.nz/news/upper-north-island/locals-block-wharf-after-fishermen-filmed-with-thousands-of-pink-maomao-in-bins-in-tairua/>

widespread requests for urgent amendments to the Regulations; and led the Minister for Oceans and Fisheries (**Minister**) to initiate a national review of current bag limits.⁹

3.3. The Discussion Document proposes to amend the Regulations to address concerns about the sustainability of current recreational harvest levels on unspecified finfish. It contains several options for proposed amendments to:

- daily bag limits for finfish species (**primary proposal**);
- combined daily bag limit caps (**secondary proposal A**)
- combined daily bag limit settings for baitfish (**secondary proposal B**); and
- daily bag limit for southern bluefin tuna (**additional matter**).

3.4. This submission provides comments on the options set out in the Discussion Document in the context of the relevant provisions of the Fisheries Act 1996 (**the Act**).

4. Legislative context

4.1. Section 297(1) of the Act authorises the Governor-General to make regulations for a variety of purposes, including the setting of recreational bag limits for finfish.¹⁰ Amendments to the Regulations must comply with the requirements of s 297(1), and achieve consistency with the purpose and principles of the Act.

4.2. Part 2 of the Act sets out its purpose and principles. The purpose of the Act is to “*provide for the utilisation of fisheries resources while ensuring sustainability*”.¹¹ The terms “*utilisation*” and “*ensuring sustainability*” are defined in s 8(2) of the Act, and are reproduced below:

“***ensuring sustainability*** means -

(a) *maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and*

(b) *avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.*

utilisation means *conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.*”

4.3. In *New Zealand Fishing Council Inc v Sanford Ltd*, the Supreme Court provided interpretive guidance on the purpose of the Act.¹² The guidance is useful for understanding the weight

⁹ Smith, A. (2021) “Pink maomao: Fisheries Minister David Parker seeks advice on rule change”, Bay of Plenty Times, 1 July 2021, published online at: <https://www.nzherald.co.nz/bay-of-plenty-times/news/pink-maomao-fisheries-minister-david-parker-seeks-advice-on-rule-change/O464SR72U5HG7ECYLL4AMMF37U/>

¹⁰ Fisheries Act 1996, s 297(1)(a)(x). Daily bag limits are within the scope of “maximum catch limits”.

¹¹ Fisheries Act 1996, s 8(1).

¹² *New Zealand Recreational Fishing Council Inc and anor v Sanford Limited and others* [2009] NZSC 54, at [39] to [40].

to be given to sustainability in decision-making under the Act, and is reproduced in part below (emphasis added):

“Section 8(1) appears in Part 2 of the Act headed “Purposes and principles”. It expresses a single statutory purpose by reference to the two competing social policies reflected in the Act. Those competing policies are “utilisation of fisheries” and “ensuring sustainability”. The meaning of each term in the Act is defined in s 8(2). The statutory purpose is that both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system. But recognising the inherent unlikelihood of those making key regulatory decisions under the Act being able to accommodate both policies in full, s 8(1) requires that in the attribution of due weight to each policy that given to utilisation must not be such as to jeopardise sustainability. Fisheries are to be utilised, but sustainability is to be ensured”.

- 4.4. This judicial direction demonstrates that the sustainability of fish stocks is intended to be an important priority in decision-making; effectively amounting to an environmental bottom line that should not be undermined by unreasonable or reckless harvest levels.
- 4.5. In exercising powers under the Act, decision-makers are required to take account of environmental and information principles listed under ss 9 and 10 of the Act. These principles are mandatory relevant considerations, and are addressed in greater detail in the following submission points. In regard to recreational bag limit settings, a key environmental principle is the desirability of maintaining biological diversity;¹³ while relevant information principles include the requirement to consider any uncertainty or gaps in available information, and to take a cautious approach where information is inadequate.¹⁴

5. Primary proposal: amendment to daily bag limits for finfish

- 5.1. FNZ proposes to amend the current daily bag limit settings for finfish. The Discussion Document includes three options for consideration:¹⁵
 - **Option 1:** retain current daily bag limit settings (i.e., preserve the status quo).
 - **Option 2:** expand the scope of the current Regulations to include all finfish species that are not already regulated in a combined daily bag limit. In addition to the combined daily bag limit, separate bag limits for specified finfish species will be retained. These apply to commonly targeted species including snapper, kahawai and kingfish.
 - **Option 3:** include all finfish species in a combined daily bag limit, and remove additional daily bag limits for commonly targeted species.

¹³ Fisheries Act 1996, s 9(b).

¹⁴ Fisheries Act 1996, s 10.

¹⁵ Ministry for Primary Industries (2021), above n 1, at pages 5-6.

EDS comments

- 5.2. There is a paucity of information on the biological characteristics of most finfish species in Aotearoa New Zealand.¹⁶ This presents a challenge for sustainable fisheries management, which requires the implementation of best practice measures including determination of the maximum sustainable yield, and soft limits and hard limits for fish stocks.¹⁷ There is particularly limited information on finfish species that are not of commercial significance; as these species are not managed under the Quota Management System (QMS); and no scientific assessments of these stocks have ever been undertaken.
- 5.3. Many of the finfish species recently targeted by recreational fishers are highly localised reef fish (e.g., pink maomao, golden or red snapper). No stock assessments have been undertaken for these species, and there is little information available on their biological characteristics. Anecdotal evidence suggests these species are slow-growing, long-lived and that they breed infrequently.
- 5.4. Section 10 of the Act contains a list of information principles to guide decision-making when information is uncertain, inadequate, or limited. In exercising powers under the Act, these principles must be taken into account by decision-makers. Section 10(c) directs decision-makers to take a cautious approach when information is inadequate; while s 10(d) states that inadequate or uncertain information should not be used as a reason for failing to take any measure to achieve the purpose of the Act.
- 5.5. EDS submits that the best available information on multiple finfish species, including vulnerable reef species, is inadequate. Due to inadequate information, it is impossible to assess the sustainability of current recreational harvest levels on most finfish species. Due to information constraints, EDS submits that a cautious approach is required to protect the future utilisation of fish stocks, and achieve consistency with the purpose of the Act.
- 5.6. EDS does not consider Option 1 to be sufficiently cautious, and requests that FNZ remove this option from ministerial consideration. Option 1 represents a decision not to regulate the recreational harvest of multiple finfish species, despite concerns about the sustainability of unconstrained harvest levels. EDS submits that a failure to regulate will leave multiple finfish species vulnerable to over exploitation; and is not consistent with the purpose of the Act. Option 1 is also considered inappropriate because it does not manage the adverse effects of fishing on unspecified finfish species (which would remain subject to unregulated recreational harvest levels). This outcome is not consistent with the purpose of the Act, which requires the avoidance, remediation or mitigation of any adverse effects.
- 5.7. EDS supports Option 2 in principle, but prefers Option 3 because it will strengthen regulatory protection for all finfish species. Option 3 will better achieve the purpose of the Act, and is most consistent with the environmental and information principles contained in ss 9 and 10 of the Act.

¹⁶ Refer to the Fisheries Assessment Plenary – stock assessment and stock status reports for May 2021, which summarise the best available information relating to the biological characteristics of fish stocks; and the sustainability of harvest levels on fish stocks. These Reports are available at: <https://www.mpi.govt.nz/science/fisheries-research-and-science/about-our-fisheries-research/>

¹⁷ Ministry for Primary Industries (2008) "Harvest Strategy for New Zealand Fisheries: Ministry of Fisheries – October 2008", pp 27.

- 5.8. Option 2 proposes to expand the coverage of the daily combined bag limit for finfish to include species that are currently unregulated (e.g., pink maomao and gemfish). It proposes to retain additional, separate daily bag limits for select species. The species that are subject to individual bag limits vary between fishery management areas, but nearly always include snapper, kingfish and hāpuku.¹⁸
- 5.9. Option 3 proposes to regulate all finfish species under a combined daily bag limit. No separate species bag limits will be retained, making this option the most conservative of the proposed options contained in the Discussion Document. All finfish species, including snapper, kingfish and hāpuku will be subject to the combined daily bag limit.
- 5.10. The National Panel Survey of Marine Recreational Fishers 2017-2018 (**NPS**) contains relevant information on recreational fishing activity in Aotearoa New Zealand.¹⁹ For the fishing year 2017-2018, snapper was the most frequently harvested finfish species, comprising nearly 50% of the total finfish harvest.²⁰ The NPS demonstrates that kingfish and hāpuku are also highly regarded by recreational fishers (these species represent the 10th and 15th most frequently harvested finfish respectively).²¹ By including these popular species in the combined bag limit, Option 3 will reduce the potential for fishing pressure to adversely impact other finfish species. EDS supports the cautious approach advanced by Option 3 in respect of most finfish species.
- 5.11. EDS supports Option 3, subject to the implementation of additional protection for vulnerable reef finfish species, because it provides for enhanced mitigation of the adverse effects of fishing on finfish species and the wider marine environment.
- 5.12. It is widely accepted that fishing can lead to declines in stock biomass, while persistent overfishing can lead to stock collapse.²² Fishing is selective, and can alter the population structure of species, with wider impacts on ecosystem structure and nutrient cycling.²³ For example, there is evidence that the removal of mature snapper from parts of the Hauraki Gulf has led to an increase in the abundance of kina and a decrease in kelp cover.²⁴ These wider ecosystem changes represent a trophic cascade, and evidence suggests they may be associated with the development of urchin barrens,²⁵ and reduced ecosystem functionality (e.g., the loss of kelp may reduce potential for carbon sequestration). Studies have also demonstrated that fishing can reduce intra-species diversity by preferentially selecting fish with unique life histories or traits.²⁶

¹⁸ Refer: Fisheries (Amateur Fishing) Regulations 2013, Schedules 6, 7, 8, 9, and 11.

¹⁹ Fisheries New Zealand (2019), "National Panel Survey of Marine Recreational Fishers 2017-18, New Zealand Fisheries Assessment Report 2019/24", July 2019, published online at: <https://www.mpi.govt.nz/fishing-aquaculture/recreational-fishing/national-survey-of-recreational-fishers/>

²⁰ Fisheries New Zealand (2019), above n 19, at page 49.

²¹ Fisheries New Zealand (2019), above n 19, at page 49.

²² There are multiple scientific studies that have reported on the relationship between overfishing and stock declines or collapse. It is recognised that many of these studies focus on the impacts of commercial fishing, which is of a larger scale than recreational harvest and therefore exerts increased pressure on marine ecosystems. For a general review of overfishing impacts on fish stocks, refer: Jackson, J et al. (2001) "Historical overfishing and the recent collapse of coastal ecosystems" *Science*, volume 293, pp 629-637.

²³ Scheffer, M, Carpenter, S and de Young, B. (2005) "Cascading effects of overfishing marine systems" *Trends in Ecology and Evolution*, 20(11), pp 579-581. Selective effects are discussed in Parson, D, et al. (2014) "*Snapper (Chrysophrys auratus): a review of life history and key vulnerabilities in New Zealand*", *New Zealand Journal of Marine and Freshwater Research*, 48:2, 256-283.

²⁴ For example, see: Babcock, R., Kelly, S., Shears, N., Walker, J., and Willis, T. (1999) "Changes in community structure in temperate marine reserves" *Marine Ecology Progress Series*, 189:125-134; and Shears, N and Babcock, R. (2002) "Marine reserves demonstrate top-down control of community structure on temperate reefs", *Oecologia*, 132:131-142.

²⁵ Ibid.

²⁶ Parson, D, et al. (2014), above n 23, at pages 270-271.

- 5.13. Fishing is just one of many stressors on fish stocks, marine ecosystems and the marine environment. Other stressors include sedimentation, plastic pollution, and invasive species.²⁷ A significant body of scientific evidence demonstrates that climate change will threaten the stability of our oceans, by elevating sea surface temperature and changing ocean chemistry.²⁸ It is not clear how these changes will impact fish stocks, but changes in species composition, distribution and habitat impacts are expected.²⁹
- 5.14. EDS submits that it is no longer sustainable to consider the potential and actual impacts of fishing in isolation from other stressors. EDS requests the adoption of Option 3, with additional protection for vulnerable reef finfish species, because this regulatory approach will enhance mitigation of the adverse effects of recreational fishing on all finfish species, and therefore represents a reduction in the overall pressure facing the marine ecosystem.
- 5.15. EDS requests that FNZ include additional protection for vulnerable reef finfish species in the Regulations, including (as a minimum) pink maomao, golden or red snapper, red fish, and pigfish. EDS considers that these species are particularly vulnerable to localised depletion because they aggregate over rocky reef habitats; are likely to have lower reproductive rates (i.e., they are long-lived and slow-growing) and have been subject to unconstrained recreational harvest levels. Recent observations of changes in recreational fisher behaviour demand urgent protection for these species. The available information demonstrates that the sustainability of continued harvest of these species is completely uncertain; and that additional protection is required to ensure the sustainability of these species.

6. Secondary proposal A – combined daily bag limit caps

- 6.1. Existing combined daily bag limit caps differ between northern and southern recreational fishing areas. A cap of 20 finfish applies to the Auckland/Kermadec, Central and Challenger areas, while a cap of 30 finfish applies in the South-east and Southland areas.
- 6.2. The Discussion Document contains two options for consideration:
- the retention of existing combined daily bag limit caps; or
 - national standardisation of the combined daily bag limit caps, via regulatory amendment, to achieve a consistent cap of 20 finfish across all recreational fishing areas.

EDS comments

- 6.3. EDS supports national standardisation of the combined daily bag limit caps. However, EDS does not support the retention of a combined daily limit of 20 fish. EDS requests that FNZ amend the Regulations to implement a combined daily limit of 10 fish. This outcome will better achieve the purpose of the Act for the reasons outlined at paragraphs 4.2 to 4.13 of this submission.

²⁷ Office of the Prime Minister's Chief Science Advisor, (2021) "The Future of Commercial Fishing in Aotearoa New Zealand", at pp 61-108.

²⁸ Ibid.

²⁹ Ibid.

6.4. Estimates of average harvest rates in the five recreational fishing areas are reproduced in the Discussion Document.³⁰ On average, only 4 to 6 fish are caught per fishing trip in the southern fishing areas; while only 3 to 4 fish are caught per fishing trip in the northern fishing areas.³¹ This data indicates that a reduction in the combined daily bag limit for all recreational fishing areas will better align with current harvest levels and have minimal impact on the majority of recreational fishers. A combined daily limit of 10 fish will only constrain unusually high recreational catch efforts, which have the greatest localised impact on fish stocks. EDS supports this outcome because it will strengthen protection for finfish species, and reduce pressure on the wider marine ecosystem.

7. Secondary proposal B – exclusion for baitfish species

- 7.1. FNZ proposes to exclude select baitfish species from the combined daily bag limits for finfish; and to set a separate combined daily bag limit of 50 for the excluded baitfish.
- 7.2. The proposed baitfish limit will apply to the following finfish species: yellow-eyed mullet (Aua); slender/stout sprat (Kupae) Jack/Horse/Chilean mackerel (Hauture), Pilchard (Mohimohi), Piper/Garfish (Takeke), Anchovy (Kokowhaawhaa), and Koheru/Scad.

EDS comments

- 7.3. EDS supports the proposal to set recreational daily bag limits for baitfish species. As previously described, EDS does not support a regulatory framework that permits the unconstrained harvest of finfish species.
- 7.4. EDS supports the proposed exemption in principle, noting that this support relies on the adoption of daily bag limits for finfish (described as Option 2 or Option 3 in the Discussion Document). EDS requests that FNZ decrease the proposed daily combined bag limit for specified baitfish from 50 to 20.
- 7.5. The latest Fisheries Assessment Plenary Report (May 2021) (**the Report**) summarises the best available information on fish stocks managed under the QMS. The Report acknowledges that there is inadequate information to assess the sustainability of current harvest levels on the specified baitfish included in the proposed exemption.³² Based on the best available information, it is evident that some baitfish species (e.g., anchovies and sprats) are currently subject to minimal harvest levels and therefore, it is assumed that these species are at or close to their natural level.³³ However, other species have been subject to higher harvest levels in certain areas and are at risk of localised depletion (e.g., yellow mullet).³⁴ Due to inadequate information, EDS submits that a cautious approach to the setting of any bag limits for baitfish is justified in accordance with s 10 of the Act.
- 7.6. EDS submits that a combined daily limit of 50 baitfish is not sufficiently cautious for ensuring sustainability. Baitfish are recognised as an important food source for many fish,

³⁰ Fisheries New Zealand (2019), above n 1, at page 4.

³¹ Ibid.

³² Fisheries New Zealand (2021), above n 16. This comment is based on a review of the information included in the Report for baitfish species falling under the proposed exemption (except Koheru/Scad as no information was found in relation to this species).

³³ Fisheries New Zealand (2021), above n 16, at page 65 (anchovies) and page 578 (sprats).

³⁴ Fisheries New Zealand (2021), above n 16, at page 781.

seabirds, and marine mammals.³⁵ For example, anchovies form a major component of the diet of fur seals at Cape Foulwind.³⁶ Variability in baitfish stocks therefore have the potential to disrupt the wider marine ecosystem.³⁷

7.7. EDS requests that FNZ reduce the proposed combined daily bag limit from 50 to 20. A lower combined daily bag limit recognises there is inadequate information to assess the sustainability of harvest levels on baitfish and the wider marine environment; and enhances the potential to maintain marine biodiversity. A bag limit of 20 will strike an appropriate balance between the need to provide for reasonable levels of utilisation while avoiding, remedying and mitigating adverse effects on the aquatic environment. Therefore, EDS considers this outcome will better achieve the purpose of the Act.

7.8. There is no evidence to indicate that a higher recreational harvest limit for baitfish is justified. Particularly as common baitfish species (e.g., pilchards) are caught under commercial licenses and purchased for use as bait by recreational fishers.³⁸

8. Additional matter - southern bluefin tuna daily bag limit

8.1. FNZ proposes to include southern bluefin tuna under the Regulations. This proposal will not change the existing bag limit settings of one southern bluefin tuna per person, per day, but will consolidate the settings under the recreational fishing regulations.

EDS comments

8.2. EDS supports the proposal to consolidate the existing daily bag limit settings for southern bluefin tuna under the Regulations.

³⁵ Fisheries New Zealand (2021), above n 16, at page 65 (anchovies) and page 577 (sprats).

³⁶ Fisheries New Zealand (2021), above n 16, at page 65.

³⁷ As reported in Fisheries New Zealand (2021), above n 16, at page 65 (anchovies) and page 577 (sprats).

³⁸ Fisheries New Zealand (2021), above n 16, at page 142.