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5 May 2026

## Submission on the Fisheries Amendment Bill 2026

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## 1. Overview of position

1. The Bill makes some important improvement to the Fisheries Act by improving the tools available to manage fisheries, making better use of information, recognising the industry's role in management and enabling a more targeted and cost-effective approach. The proposals achieve these outcomes while maintaining sustainability standards, providing for consultation with all sectors and without undermining the QMS or Treaty settlement obligations.
2. We wish to be heard in support of our submission.
3. The Fisheries Act provides a solid foundation for fisheries management in New Zealand. However, the proposals in the Bill will enhance the tool set available to deliver benefits for the management of stocks and therefore to all sectors. The additional mechanisms enable more responsive and timely management and increase the number of stocks that can be reviewed annually.
4. Because the provisions also enable careful planning around future decisions, they support investment in research and monitoring because of clearer links between science and evidence and management decisions. These improvements increase the certainty around how stocks are managed.
5. Management of rock lobster fisheries is driven by science. Most of the information that informs that science is generated by vessel operators collecting information through an extensive logbook program and by independent technicians funded by the industry deployed on commercial vessels. Industry is closely involved in research and management and has made extensive use of management procedures and industry generated management initiatives such as shelving. The Bill recognises the value of these measures and provides for the implementation of appropriate reporting and monitoring requirements. The Bill promotes efficiency by improving the use of the data and information being collected. The improvements to the tools available under the Act are therefore central to better management of rock lobster fisheries, for the benefit of all sectors.
6. Where adverse events or exceptional circumstances, unrelated to sustainability of harvest, prevent ACE being taken, the new provisions will allow for a greater level of unused catch entitlements to be carried over into the next fishing year based on application by owners of 75% of quota shares in a stock. This would not allow a greater amount of catch to be taken overall, but adjusts the timeframe over which the sustainability limit can be taken. This provision would be very important to reduce economic loss in circumstances such as transient biotoxins events that prevent harvest, or temporary market or operating conditions that hinder sale of product for an economic return.
7. Although the Fisheries Act remains a very good statute by world standards, after 30 years of operation, it is evident that changes and revisions would improve its performance and benefit the management of fisheries. For example, changes to the front end of the Act would ensure the most effective and targeted measure is able to be applied to address the issue of concern. The TAC and TACC are primarily directed at managing stock abundance. Decisions on TACs must take into account factors including effect on other stocks, the interaction between stocks and environmental conditions affecting the stock. The provisions will also better recognise the different levels of information available on a stock and enable the more regular revision of TACs to address sustainability and provide for use. Using more direct mechanisms to address sub QMA and adverse effect issues will be more effective, targeted and pose lower cost overall.

8. There has been considerable comment on the Bill, some of it misinformed. Examination of the proposals shows that they will maintain and build on the current protections and safeguards in the Act to ensure sustainability of harvest and address any adverse effects of fishing. In fact they are likely to overall improve environmental performance through increasing the capacity of the system to make timely changes to sustainability settings. Despite concern about consultation, the new provisions support better planning for stock management over multiple years while ensuring the full participation of stakeholders in establishing those frameworks.
9. NZ RLIC supports most of the proposals in the Bill as important enhancements to the Act. There are improvements and amendments that can be made to adjust some of the provisions in the Bill. Our suggestions are set out in this submission.

## 2. Introduction

10. The NZ RLIC is the umbrella organisation for the nine regional organisations known as CRAMACs, which operate in each of the rock lobster (CRA) management areas of New Zealand. CRAMAC membership comprises CRA quota owners, processors, exporters, and fishermen (quota share owner-operators and Annual Catch Entitlement (ACE) owners) in each region. All nine CRAMACs hold a significant majority mandate of rock lobster quota shares owned in the regions. CRAMACs are the shareholders in NZ RLIC, and appoint the Board of Directors.
11. NZ RLIC represents about 430 quota share owners in the nine CRA stocks nationally and the PHC stock. CRA rock lobster landings in the 2025/26 fishing year were 2,840 tonnes, almost all of which was exported live to Asian markets. PHC landings were 49 tonnes. Rock lobster generates export revenue (FOB) of around \$350 million per calendar year. The industry deploys around 220 vessels<sup>1</sup>, employs 1,800 people directly and indirectly in the harvesting sector<sup>2</sup>, lands lobster at around 100 landing points with that product going to about 37 depots, processing and export facilities. The industry supports an extensive network of transport, engineering, electronics and provedoring businesses.

### 3. Position on key proposals

12. The following table summarises the main proposals in the Bill relevant to rock lobster, and the position on the proposal.

Amendment	Position
<b>Changes to TAC decision-making</b>	
Clarifying the role of the TAC	Support clarifying that the TAC is primarily directed at managing stock abundance for a quota management area
s.13 TAC decisions for high/med/low information stocks	Support with amendments. The categorisation will enable the more regular revision of TACs to address sustainability risks and provide for use
Considerations for making TAC decisions	Support with amendments. The inclusion of a comprehensive list of standard factors that are taken into account in all section 13 decisions is appropriate
Recognition of non-regulatory management measures in TAC decisions	Support with amendments to address issues, improve process, and provide better incentives for their development and implementation
Multi-year TAC decisions	Support. Provides another tool to better manage different stock circumstances.
Management procedures	Support recognition of management procedures with the process and requirements proposed. These procedures use science and best available information to allow responsive management and increase the capacity to review more stocks on an annual basis
<b>Other changes to fisheries management</b>	
Additional ACE carry forward in exceptional circumstances	Support with amendments to provide for all appropriate exceptional circumstances
Prohibiting ACE carry-forward when weight is given to non-regulatory measures	Support; alternative drafting needed to achieve intent
Time limit for judicial review	Do not support as drafted. Alternative suggested.
Landings and returns to the sea	Outline policy principles to apply in these circumstances
Alternative deemed value rates	Oppose setting different deemed values for a stock for a sector or method
Confidentiality of camera footage	Support provided that MPI releases reports from coverage

## 4. Changes to TAC decision-making

### 4.1 Clarifying the role of the TAC

13. The Bill clarifies the extent to which environmental considerations are relevant to TAC setting. This will ensure the most effective and targeted measure is able to be applied to address the issue of concern. The TAC is primarily directed at managing stock abundance at a quota management area level rather than address sub-QMA management issues or adverse effects of fishing. Decisions on TACs must take into account factors including effect on other stocks, the interaction between stocks, and environmental conditions affecting the stock. Catch limits are usually not the most effective or appropriate tool to address adverse effects of fishing or fine scale management issues. Using more direct mechanisms to address sub QMA management and adverse effect on habitats or protected species issues will be more effective, targeted and transparent, and pose lower cost overall.
14. This change does not down grade protections for the environment – the purpose of the Act and environmental and information principles remain to be taken into account in all decisions. The adjustment seeks to ensure the right tool is used to achieve the outcome – e.g. the TAC to control take at the level of the QMA, spatial method restrictions to address adverse effects of a method on vulnerable habitat.

**Recommendation;** NZ RLIC supports these proposals.

### 4.2 TAC setting under the high/medium/low information provisions

15. The Bill contains new TAC setting provisions for high, medium and low information stocks. We support this change to better recognise the different levels of information available on a stock. In the current situation, the same uniform statutory test is applied to stocks with variable levels of information. This creates interpretation and practical challenges, particularly for medium and low information stocks, and has contributed to infrequent reviews and adjustments. The proposed categorisation will enable the more regular revision of TACs to address sustainability risks and provide for use. Different provisions are proposed depending on the level of information, but importantly, all retain Bmsy-related objectives.
16. We support the proposal to amend the Act to clarify that the Minister may consider social, cultural, and economic factors in all TAC setting decisions, including decisions on rebuild timeframes and rates.
17. Although supportive of this approach in principle, we propose some drafting changes.
  - a. Under section 13(G), the Minister is able to make rules about how to categorise stocks as high/med/low information. These are important distinctions that involve considering scientific and management matters and have direct and significant impacts on how stocks are managed. There should be a step in the process that allows for consultation on these rules with persons or organisations representative of those affected by the rules.
  - b. In setting the TAC for high information stocks below the level that can produce the maximum sustainable yield, the Minister is directed to the considerations in subsections 13B(5) and (6) only in relation to the appropriate period for the rebuild and the way and rate of the rebuild. This is inconsistent with all other TAC decision-making under new sections 13B, 13C and 13D in which the standard factors and relevant non-regulatory measures apply directly to the TAC decision. It leaves the TAC decision with no direct

guidance in the Act and relates decisions only to the rebuild period and way and rate. In particular:

- The requirement to consider the standard factors is limited to the decision about the appropriate period of rebuild, even though those factors should also be directly relevant to the level of the TAC and the way and rate.
  - The weight given to non-regulatory measures is limited to the decision on the rebuild period, whereas it should also be relevant to the level at which the TAC is set and the “way and rate” (i.e., non-regulatory measures are a “way” in which the rebuild can be achieved).
- c. Section 13D(3) creates an additional requirement for low information stocks requiring the Minister to “take a cautious approach that favours the sustainability of the stock”. Given that section 8 applies (ensuring sustainability) and section 10 applies (more caution when information is uncertain), and the section requires that the Minister must set a TAC that is not inconsistent with managing at or above the level that can produce the maximum sustainable yield, this additional requirement risks preventing even modest utilisation through multiple layers of caution and/or confusion and hesitation resulting from how to interpret and apply this additional requirement.

**Recommendation;** NZ RLIC generally supports this set of proposals provided that;

- a. A consultation requirement is added to 13G;
- b. In section 13B(4), the standard factors, the biological characteristics of the stock, and the weight given to non-regulatory measures should be considered when setting a TAC under subsection (4) in determining the period appropriate to the stock under subsection (4)(a), and determining the way and rate under subsection 4(b);
- c. The requirement in section 13D(3)(a) to “take a cautious approach that favours the sustainability of the stock” should be removed.

### 4.3 Considerations for TAC decisions for s.13 stocks

- 18. The Bill sets out standard factors that must be had regard to across s.13 TAC decisions. In addition, new s.13F clarifies that when setting a TAC, the Minister must take into account the adverse effects of fishing for the stock on the aquatic environment and the environmental principles, but only to the extent that they are relevant to the standard factors.
- 19. The standard factors are comprehensive and the caveat on environmental considerations is generally appropriate with respect to the setting of TACs. However, “biological characteristics of the stock” should be included as a standard factor.
- 20. Clause 6 of the Bill amends section 11 so that the requirements in s.11(2A) no longer apply to TAC decisions. NZRLIC opposes the deletion of these important considerations. Section 11(2A) was inserted in 1999 as part of a major reform of the Fisheries Act that was intended to, among other things, provide flexibility in the delivery of fisheries services, improve the integration of decision-making processes and encourage collective responsibility by fisheries rights-holders.<sup>1</sup>

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<sup>1</sup> Fisheries Amendment Bill 1998, Explanatory Note.

21. Section 11(2A)(a) integrates decision-making for fisheries services and TAC decisions by requiring that any fisheries services are taken into account in sustainability decisions. For example, TAC decisions that provide for additional utilisation may be more appropriate if quota owners were willing to pay, through cost recovery levies, for more detailed and regular monitoring of the status of the stock.
22. Section 11(2A)(b) integrates decision-making and encourages alternative service delivery and stakeholder responsibility by providing that approved fisheries plans must be taken into account in TAC decisions. The amendments have the effect of downgrading the weight given to fisheries plans in TAC decisions from “take into account” to “have regard to”. Fisheries plans are an important mechanism to meet Act objectives in a strategic manner and build understanding and support across fishery sectors. They contain objectives and strategies that are directly relevant to TAC setting.
23. Section 11(2A)(c) recognises alternative ways of providing fisheries services by requiring that any decisions not to require fisheries services (i.e., because the service has instead been procured directly by quota owners) are taken into account in TAC setting. With the revisions made to clarify the role of the TAC, conservation services are no longer a relevant consideration.
24. The policy objectives that section 11(2A) contributes to remain relevant today. They are consistent with the provisions in the Bill that recognise and enable management procedures and non-regulatory measures. These mechanisms also recognise the role that industry can take to initiate sustainability action or support and reinforce management measures initiated by government, sometimes in a more responsive manner and at a finer scale than government.
25. Both fisheries plans and fisheries services are consulted on and agreed to by the Minister. They are relevant considerations for the Minister in making a TAC decision and should retain their current legislative weight by being taken into account.

**Recommendation;** NZ RLIC supports the standard factors that must be had regard to across s.13 TAC decisions. However;

- a. “biological characteristics of the stock” should be included as an additional standard factor;
- b. the factors in section 11(2A), with the exception of the references to “conservation services”, should be taken into account in TAC decisions.

#### 4.4 Giving weight to non-regulatory measures in TAC decisions

26. Clause 16 inserts new sections 14I, 14J and 14K which enable the Minister to give weight to non-regulatory measures in TAC decisions. Recognising these measures is an important step forward and will support more responsive management and tools that can be of benefits to fisheries and all sectors. However, the current drafting discourages industry collective responsibility and creates unnecessary procedural barriers and complexity for the recognition of non-regulatory measures.
27. The rock lobster industry has a long record of implementing non-regulatory sustainability measures, particularly shelving. They are an established and proven part of the fisheries management regime. ACE shelving is an agreement among quota owners in a stock to forego harvesting a specified proportion of the TACC by each transferring an agreed proportion of

their Annual Catch Entitlement (ACE) to a non-fishing entity (FishServe has been used in all recent shelving initiatives). This measure has been used in a number of circumstances over the last 2 decades to address sustainability risks in a responsive manner in rock lobster stocks (CRA 2, CRA 3, and CRA 4 - in some cases multiple times) and for other QMS species, particularly paua stocks. It has often put in place in advance of TACC reductions reflecting the concern of QSOs and operators about a fishery before the assessments reflect a decline in abundance and the extended process required to reduce a TAC can be worked through.

28. This is the situation currently in the CRA 5 fishery. QSOs are concerned about a decline in CPUE in parts of the fishery. The full stock assessment to support a TAC change will take place during 2026 for a potential TAC adjustment for 1 April 2027. In advance of a potential TAC change, QSOs have implemented a 20% shelving of ACE for 2026/27 and two temporal closures to reduce pressure on the fishery.
29. NZ RLIC also supports the recognition of catch spreading – an agreement among quota owners and operators in a stock to spread the commercial catch across sub-areas of a Quota Management Area (QMA), for example by setting industry operated catch limits for sub-areas. Such an arrangement is currently in place in the CRA 3 fishery to recognise the different status and recovery potential of two regions in that QMA. In this case, area based catch limits both constrain catch in an area of concern- but allow the TACC to be maintained or a lesser TACC reduction in a wider area that is not under the same pressure. In CRA 1, the industry recognised the decline in abundance on the east coast of Northland and voluntarily closed the area. The government subsequently implemented a regulatory closure in the area for both recreational and commercial fishing.
30. In recent years, it has become clear that more responsive management, and management at a scale at less than the QMA, is likely to be useful to recognise the different performance of parts of a stock. Non-regulatory measures are likely to play an increasingly important role in management and benefit all fisheries stakeholders. Under MPI's current legal interpretation, there is doubt about whether the decision maker can consider and/or take into account non-regulatory measures leading to uncertainty and an inconsistent approach where the measures are accepted in some circumstances and clearly beneficial to management e.g. the shelving and catch spreading that has been applied in rock lobster fisheries.
31. Amending the Act to enable the Minister to take non-regulatory measures into account when making TAC decisions would remove any legal ambiguity about the status of non-regulatory measures and strengthen the incentives for fishers and quota owners to develop and implement non-regulatory measures for the benefit of the fishery and all stakeholders.
32. Although we strongly support recognition of non-regulatory measures, the drafting of new sections 14I, 14J and 14K is problematic. The discretionary consideration of non-regulatory measures in the Bill creates high uncertainty and does not provide incentives to use the provisions. NZ RLIC proposes changes in a number of areas;
  - a. Support for application – Unlike the other quota owner-initiated provisions in the Bill, there is no specified threshold for proposing a non-regulatory measure. This provides no certainty for potential applicants and is inefficient as it enables poorly supported proposals, that are unlikely to be given any weight, to be put forward. We support a requirement that an application must be supported by at least a majority of quota shares in the QMA for the applicable stock(s);
  - b. Inefficient process - The proposed process requires the Minister to make two separate decisions – i.e., first a decision on whether or not to consult on a non-regulatory measure and, second, a decision on how much weight to give the measure. FNZ would therefore

be required to provide the Minister with two sets of advice. This unnecessarily delays the process. It would be more efficient if the decision on whether to consult were made by the chief executive, leaving the Minister to make a single decision on the weighting, if any, to give the measure following consultation. Furthermore, the decision about whether or not to consult on a non-regulatory measure has an excessively high level of discretion – i.e., the application may not be progressed “for any reason”. The broad discretion creates significant uncertainty for applicants and acts as a disincentive to put the effort into developing a non-regulatory measures. If an application meets the minimum requirements set out in a Notice, it should be consulted on;

- c. Consultation on Notice – Details on the required content of an application and when the application must be made should be set out in a Notice prepared under section 14I(6). Consultation on the Notice should be mandatory in order to ensure the provisions are workable;
- d. Statutory criteria – The matters that the Minister must have regard to when determining what weight (if any) to give to a measure include unclear and inappropriate matters, including:
  - *The effectiveness of the measure in supporting the TAC to comply with the relevant TAC-setting provision:* While “effectiveness” is a relevant consideration, a non-regulatory measure such as ACE shelving does not “support the TAC to comply” with the relevant statutory provisions. The TAC and ACE shelving (and/or any other relevant regulatory and non-regulatory measures that are recognised) together comply with the stock management objectives specified in the Act;
  - *The robustness of the measure:* It is not clear what “robustness” means in this context. If it is intended to refer to the level of industry support for a measure, then this should be stated clearly; and
  - *The sustainability of the stock:* This criterion is unnecessary in light of the purpose of the Act which requires that ensuring sustainability is a criterion for all decisions and the other Act requirements including the environmental and information principles.

The criteria should focus on clear and meaningful considerations; the effectiveness of the measure in helping to meet the Act requirements, whether the measure will be implemented and whether implementation can be monitored.

- e. Decision on weight – The Minister is not required to give weight to a non-regulatory measure even if consultation is supportive and assessment against the decision criteria is favorable. This level of discretion creates significant uncertainty for the proponents of the measure and will act as a disincentive to developing and seeking recognition of non-regulatory measures. While it should be open for the Minister to decide not to give any weight to a measure, that decision should be based on grounds that are related to the statutory criteria and feedback from consultation; and
- f. Standards for monitoring – The ability of the Minister to prescribe standards for record-keeping, reporting and other matters to enable the chief executive to monitor the measure (new section 14K) is overly bureaucratic. Substantial additional monitoring is unlikely to be necessary as electronic reporting, global position reporting and the ACE register provide comprehensive information the chief executive can use to monitor the implementation of a non-regulatory measure. Where additional monitoring would be

appropriate, it would be simpler to enable the Minister to set conditions related to monitoring when making a decision that gives weight to a non-regulatory measure.

**Recommendation;** NZ RLIC supports the recognition of non-regulatory measures but in order to address the concerns outlined above recommends that new sections 14I and 14J should be redrafted as set out in the Appendix to this submission, and section 14K should be deleted.

#### 4.5 Multi-year TAC decisions

33. Under new section 14F, the Minister may set a multi-year TAC for a maximum of 5 years. The TAC can be set at the same level for this period, or different levels for different years (e.g., a phased increase or decrease). After this period, the TAC either reverts to what it was prior to the TAC change (i.e., an adaptive management type increase), or stays at the level it was at the end of the period. NZ RLIC supports these provisions because they provide for establishing management arrangements that create increased certainty for stakeholders, and by setting in place a regime to manage a stock for successive years after carefully considering its circumstances, allow other stocks to be reviewed, increasing the capacity of the system.
34. The Minister may revoke the multi-year TAC decision if “information becomes available to the Minister that indicates that the total allowable catch set for that fishing year might not comply with the relevant TAC-setting provision were it to be set after the information became available”. Before making a revocation, the Minister must consult “to the extent that is reasonably practicable in the circumstances” (new s.14H).
35. These provisions would be useful to phase in a significant catch reduction to allow fishing businesses to adapt rather than having to absorb the impact of larger one off reductions. They would also allow the careful exploration of a temporary increase in a catch limit for a defined period, after which it reverts to the original level. This would allow adjustment where there is insufficient information to support a permanent change. It helps overcome the problem that if there is limited fishing activity, little information is generated, and the status quo prevails. In both of these cases the provisions add useful mechanisms to the tools in the Act to manage different situations while providing safeguards including the ability to specify review triggers or “break out” rules to ensure there is an appropriate response where new information arises.
36. As noted for other provisions, the existing sustainability thresholds and requirements in the Act apply to these mechanism enabling risk to be managed through scale and duration of changes, and continuing to apply the requirement to act with more caution where there are greater levels of uncertainty.

**Recommendation;** NZ RLIC supports the proposal to allow multi-year TAC setting.

#### 4.6 Management procedures

37. Management procedures have been used since the mid 1990s for rock lobster fisheries and have supported the rebuild of stocks and maintenance of stocks at management targets<sup>2</sup>. The CRA 8 fishery, New Zealand’s largest, provides an example of the success of management procedures. A procedure was first introduced for this stock in 1996. The catch rate at that time was less than 1kg per pot lift. Ten years later that figure was around 4kg per pot lift

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<sup>2</sup> Note that some of the MPs in effect in 2019 were compromised by the introduction of electronic reporting and a change in reporting. Those issues have only recent been addressed with changes introduced at 1 April 2026.

reflecting a substantial increase in underlying stock abundance. The current catch rate is over 8 kg per pot lift.

38. They are a key tool in modern fisheries management. Although they have been adopted in some circumstances, they are not applied in a consistent manner, and still require annual consultation even when there is no material change in the information to inform decisions. Recognising and providing for the use of management procedures in the Act would encourage their use and substantially reduce the time and effort needed to put in place responsive management changes, either decreases or increases. For rock lobster stocks that means that we could review the TACs for most or all lobster stocks on an annual basis instead of the current circumstance where usually only two stocks are reviewed each year. NZ RLIC supports the Bill's provisions in clause 16, new sections 14L to 14T, for the formal use of management procedures to adjust TACs, TACCs and allowances.
39. Management procedures encourage a more strategic approach to fisheries management by setting out management targets, the approach to dealing with different circumstances, and the information that will be used to inform decisions. The requirement that the stock management objectives and operating rules must be consistent with and comply with the relevant TAC-setting provision<sup>3</sup> ensures that TACs adjusted under a management procedure meet exactly the same requirements for "ensuring sustainability" and other statutory considerations as TACs set in the standard way. The ability for the Minister to revoke the management procedure if it is no longer meeting the objectives or no longer complying with the relevant TAC-setting provision<sup>4</sup> is important in the event that the fishery does not respond to the management procedure as anticipated.
40. Management procedures are designed based on the stock assessment after careful evaluation of the performance of a procedure against sustainability standards and testing the performance against risks and uncertainty in assumptions. Instead of repeating work annually, placing demands on stakeholders, iwi, officials and decision makers, it puts in place arrangements for the period following a comprehensive decision supported by full consultation, providing for certainty and reducing the transaction costs of annual reviews.
41. Multi-year tools also support more considered and transparent decision making. They enable gradual adjustments, up or down, where appropriate, reduce disruption associated with large one-off changes, and provide greater certainty to all sectors. Stakeholders have clear expectations of how and when adjustments TAC will occur based on science and evidence, removing the potential for reactive decision and to expend resources on lobbying.
42. Putting procedures in place allows more responsive annual management based on information collected. They enable early response to negative trends and allow for increase where the information clearly supports that there has been an increase in sustainable yield. Multi-year catch decision tools are supported by the significant improvements in fisheries data and monitoring in recent years through the introduction of electronic catch reporting and GPS positions. More timely, accurate, and granular information on catch and effort means there is a better ability to monitor the performance of a stocks and make adjustments during the timeframe of a procedure.

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<sup>3</sup> Clause 16 new section 14L(4) and 14M(1)&(2).

<sup>4</sup> Clause 16 new section 14R.

43. Management procedures support planning of research and monitoring and investment in information collection because there is more cohesion and consistency about decisions and clearer links between science and evidence and decisions.
44. The benefits of better management accrue equally to non-commercial and commercial fisheries stakeholders. Those stakeholders are properly involved in the establishment of the procedure. The establishment of the procedure does not change the Minister's discretion about decisions including the target and any adjustment of the TACC and allowances (section 14L(2)(c)(iv)). It just has the Minister make those decisions when the procedure is established. Clearly those decisions need to be made in advance or decisions would be required on an annual basis removing the benefits of having established a management procedure.
45. Management procedures are clearly international best practice. Management procedures and equivalent rule-based processes are widely used to manage fisheries in developed world international fisheries jurisdictions including Australian states, the United States, Norway, Iceland, and some Regional Fisheries Management Organisations.<sup>5</sup>
46. Management procedures are endorsed by the FAO as a mechanism for implementing an ecosystem approach to fisheries.<sup>6</sup> They are also a requirement of Marine Stewardship Council (MSC) certification for sustainable fisheries;<sup>7</sup> and promoted by international environmental NGOS such as the Pew Trust.

**Recommendation;** NZ RLIC supports the provisions for management procedures.

## 5. Other changes to fisheries management

### 5.1 Additional ACE carry forward in exceptional circumstances

47. Clause 28 inserts new sections 67C and 67D that provide for additional ACE carry forward in exceptional circumstances. Quota owners who own at least 75% of quota shares for a stock can apply to the Chief Executive at least two months before the end of the fishing year (eg; by end January), for additional ACE carry forward (instead of carry-forward under section 67A of the Act). The application must specify the amount of carry-forward requested and the reasons for it.
48. For rock lobster entities, their concern has been to ensure that carry forward is not entertained in circumstances that would pose any risk to sustainability. Similarly, their concern has been to ensure that the reasons that ACE cannot be taken, or taken economically, is unrelated to stock sustainability. The 75% threshold requires a high degree of agreement that the circumstances justify an application and ensures that quota share owners can give careful consideration to these matters in making an application.
49. Under section 67C, the proposed requirement for applications to be made at least two months prior to the end of the fishing year may be too restrictive in some circumstances. For example, the ACE carry-forward provided to the rock lobster fishery during COVID-related market disruption would not have been available, as the full extent of the issue did not emerge until within two months of the end of the fishing year. We support the proposal that the Chief

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<sup>5</sup> Regional Fisheries Management Organisations (RFMOs) manage fish stocks such as tuna species that straddle multiple national jurisdictions and the High Seas.

<sup>6</sup> UN Food and Agriculture Organisation (FAO) [here](#)

<sup>7</sup> MSC [here](#)

Executive may specify, by notice, the details to be included in an application and how that application must be made. This could provide clear and standardised framework for applications, improving efficiency and potentially reducing the decision-making timeframes.

50. We consider that the Chief Executive should be required to consult any persons or organisations that they consider are representative of the classes of persons having an interest in the notice, to the extent reasonably practicable in the circumstances. This would provide greater certainty that industry input informs the development of application requirements and processes.
51. The application is determined by the Chief Executive (CE) and may be approved if the CE is satisfied that there were exceptional circumstances that adversely affected the ability for the stock to be fished or sold. A number of “exceptional circumstances” are defined in section 67(D)(9) and include a natural disaster or naturally occurring event and measures related to those matters and a significant change in market conditions for selling the stock.
52. The rock lobster industry has experienced situations where ACE cannot be taken, or taken for an economic return, that are unrelated to stock sustainability. The most prominent example is the closure of the market in early 2020 due to COVID. While operators could harvest and there were no sustainability issues, the closure of the key market meant that the catch could not be sold economically. Biotxin outbreaks which require closure to address food safety risks occur commonly and are increasing in frequency. The longest recent biotoxin closure extended for seven months over a variable area on the east coast of the North Island. It is likely that an extended biotoxin closure will at some time lead to a substantial proportion of ACE not being able to be taken. Prolonged adverse weather that prevents fishing, particularly toward the end of a season, where there is not time to harvest the remaining entitlement, can also lead to under catch of ACE.
53. In these circumstances we support provision for operators to be able to carry forward ACE to be caught in the following fishing year, provided there is no adverse effect on the sustainability of the stock. Carry forward promotes sensible and safe practises by avoiding pressure to harvest in unsuitable conditions, and allows operators to chieve a reasonable return by not being forced to land during unfavourable market periods. Carry forward also alleviates the need for other government intervention or assistance where a sector is badly impacted. Carry forward can be critical to mitigate the disastrous financial circumstances where operators have paid the high price for ACE but are unable to harvest or achieve an economic return. As was observed in the 2020 COVID circumstances – this can put enormous financial pressure on businesses, economic loss and stress for fishing families.
54. This proposal (and ACE carry-forward in general) does not result in more fish being caught – it simply allows some of the ACE from year one to be taken in year two. Assuming the TAC is set appropriately, such a measure does not pose any sustainability risks.
55. The provisions as drafted provides protections against any risk to the stock from carry forward by requiring that the chief executive must consider risks to sustainability and be satisfied that the carry forward is appropriate having regard to the biological characteristics of the stock.
56. NZ RLIC suggests that two further adjustments should be made to the provisions:
  - a. The current “exceptional circumstances” are too limited. As specified they would not cover human induced events, such as a sewage discharge or a contaminant issue that could prevent harvest for a period for food safety reasons or market acceptability reasons that are unrelated to stock sustainability. Similarly, there may be other unforeseen circumstances that temporarily prevent harvesting for an economic return such as substantial increase in price or the availability of fuel; and

- b. The exclusion of stocks where weight was given to a non-regulatory measure should apply only when the non-regulatory measure is intended to reduce the total amount of ACE available for the stock, for reasons discussed in paragraphs 57 and 58 below.

**Recommendation;** NZ RLIC supports additional ACE carry forward in exceptional circumstances. However, we recommend that;

- a. The proposed requirement for applications to be made at least two months prior to the end of the fishing year be removed;
- b. the Chief Executive should be required to consult any persons or organisations that they consider are representative of the classes of persons having an interest in the notice, to the extent reasonably practicable in the circumstances;
- c. clause 28 new section 67D(1)(c) should be amended as follows:
  - (1) After considering an application made under section 67C, the chief executive may allocate under this section annual catch entitlement for the stock for the second fishing year if –
    - (a) ...
    - (b) ...
    - (c) The Minister, in setting the total allowable catch that applies at the beginning of the second fishing year, did not give weight to a non-regulatory measure that reduces the total amount of ACE available for the stock;
- d. Subsection (9) should be redrafted to make it clear that “exceptional circumstances” include extreme or unanticipated events of any type, including events caused by human actions, that prevent or impede ACE being taken, or being taken for an economic return, that are unrelated to stock sustainability.

## 5.2 Prohibiting ACE carry-forward when weight is given to non-regulatory measures

- 57. Clause 23 amends s.67A(3) of the Act – i.e., the provision that sets out when ACE carry forward does not apply. Currently, the “standard” carry forward provisions do not apply to Schedule 5 stocks (e.g., rock lobster at this time) or for the year where the TACC has been reduced (indicating a sustainability issue). The amendment provides that ACE carry forward would not apply to any stock at the end of a fishing year where the Minister gave weight to a non-regulatory measure in a TAC decision at the beginning of that year.
- 58. According to the explanatory note, this is intended to restrict ACE carry-forward when *a non-regulatory measure replaces a TAC reduction*. However, this is not what the drafting achieves – i.e., it effectively prevents carry forward in any stock where a non-regulatory measure has been recognised. Presumably the intent was to prevent carry forward where shelving would be in place for that year – ie a measure that sought to reduce catch. There is no reason to preclude carry-forward when the non-regulatory measure has a different purpose – for example catch spreading.
- 59. NZ RLIC accepts that it is appropriate to prohibit ACE carry forward is when the non-regulatory measure is intended to achieve a reduction in the commercial catch in the subsequent year (i.e., directly equivalent to the existing prohibition on ACE carry-forward if there is a TACC reduction in the subsequent year). We suggest that the provisions relating to a TACC reduction

and non-regulatory measures be drafted as a single consideration as, for the purposes of ACE carry-forward, their effect on the total commercial catch that may be taken in a year must be considered cumulatively rather than separately.

**Recommendation;** NZ RLIC recommends that clause 23, insertion into section 67A(3), new (c) should be replaced with;

(c) a stock for which the Minister, in setting the total allowable commercial catch for the stock in the second fishing year, gave weight to a non-regulatory measure that has the effect of reducing the total amount of ACE available for the stock.

### 5.3 Time limit for judicial review

60. Currently the Fisheries Act does not contain a general limit for the timing of judicial review proceedings (i.e., proceedings can be lodged at any time), but there are limits for review of certain types of decisions – i.e.:
  - Challenge to deemed value rate – 3 months;
  - Challenge to aquaculture decision – 30 working days;
  - Challenge to decision of catch history review committee – 90 days.
61. In sections 62 to 65 the Bill repeals each of these provisions and inserts a new s.313A, which applies to all decisions made under the Act, that a judicial review must be filed within 20 working days of the notification or publication of the decision<sup>8</sup>. A party may apply to the High Court for an extension of the time period, but that application must be made within the original 20 day period.
62. The limits on judicial review are intended to provide certainty to stakeholders that “key fisheries management decisions” cannot be challenged after 20 days. The amendments seem to go further than the stated intent because they apply to all decisions under the Act, not just time-critical decisions such as TAC or deemed value decisions (e.g., including spatial management measures, taiāpure, mātaītai, new regulations and notices etc).
63. We have reservations about this amendment:
  - a. For many of these decisions, the problems may not become apparent until later (e.g., the information relevant to the decision may not become known until later; often the advice papers that form the basis for a challenge are not made available within that timeframe), but by then the opportunity to review the decision would have expired.
  - b. It may create incentives for parties to either lodge proceedings (probably contrary to the intent of the amendment) or apply to the High Court for an extension of time (within the 20 days) so as to enable sufficient time to determine whether or not judicial review proceedings should be lodged. In both cases, the new provision may create incentives for legal action and create costs on all interested parties where an entity might otherwise have time to more carefully consider the circumstances.

**Recommendation;** NZ RLIC does not support sections 62 to 65 as drafted. If a new time limit for judicial review is introduced, it should apply only to annual time-critical decisions with sustainability

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<sup>8</sup> If there is no time limit set in the Act, the default time limit to appeal a high court decision is 20 working days after the decision is given (see rule 20.4(2) High Court Rules)

implications (i.e., the setting of TACs) and should provide a more reasonable timeframe such as three months.

## 5.4 Landing and returning fish to the sea

64. Sections 29 to 31 of the Bill contains changes to the landing and returns regime. The amendments in this Bill provide additional grounds to return fish to the sea and give effect to the decisions made in 2022 by removing legal sizes in regulation where evidence shows that fish are unlikely to survive being returned to the sea. Government has announced that these provisions will be changed or removed. In these circumstances where it is unclear what provisions will be progressed, NZ RLIC outlines below some policy principles that it supports to apply to these issues:
- a. Where a QMS species is harvested and retained or is returned to the sea but is unlikely to survive, that amount of fish should be reported<sup>9</sup> and count against ACE or deemed values be paid on that amount;
  - b. Where best available information suggests a high proportion of fish of a species, taken by a method, returned to the sea will survive, the estimated mortality can be taken into account in other sources of fishing mortality when the TACC is set under s21(1)(b)<sup>10</sup> and those returns do not need to be counted against ACE.
  - c. Where a QMS species is returned to the sea but is unlikely to survive that amount could be monitored by cameras or an observer with that amount of fish counted against ACE. This approach is consistent with using the information that is generated by cameras (or available because of observer coverage) and means fish can be returned to sea rather than landed when there is no commercial return and the fish will potentially be disposed of on land. The requirement that the amount is counted against ACE creates incentives to change gear or fishing practices to avoid catch that does not provide a commercial return.
  - d. We support enabling the Minister to provide a new type of commercial landing exception for releasing QMS fish at depth (i.e., before they are removed from the sea) using fishing gear or technologies that have little to no impact on fish survival;
  - e. We support the use or retention of commercial minimum legal sizes for QMS species where they provide overall fisheries management benefit - e.g they provide an additional useful constraint on harvest, or they support allowing a species to contribute to recruitment before they are available for harvest. Whether there is utility in retaining a minimum legal size depends on the characteristics of a species and the method by which they are taken.

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<sup>9</sup> Or recorded by another mechanism

<sup>10</sup> This is the approach taken for rock lobster taken in pots that is returned to the sea

## 5.5 Alternative deemed value rates

65. Clauses 39 and subsequent provisions insert new provisions into the Act to enable the setting of alternative deemed value rates for inshore stocks that are caught by deepwater freezer vessels, based on the value of the fish when caught by those vessels.
66. Deemed values are intended to provide incentives for fishers to constrain their catch to the TACC for a stock. They are a key sustainability setting. Setting lower deemed values for a sector or method undermines sustainability by enabling catch beyond the TACC by using deemed values as a substitute for acquiring ACE.
67. There are alternatives to address the issue. If the additional catch is sustainable, a review of the TACC would be appropriate. The deemed value for particular stock can also be reviewed using the current provisions that allow consideration of the market value, balanced with other factors.
68. One of the purposes of the transferable nature of quota and ACE is that they can be purchased by the operator who can obtain the most value from harvest. This mechanism to achieve economic efficiency is undermined if a sector or method can effectively obtain ACE by paying less than market value by paying deemed values to the Crown. The Crown should not obtain financial benefit at the expense of both the quota owners and the sustainability of the fish stock.

**Recommendation;** NZ RLIC does not support the proposal to set different deemed values for a sector or method.

## 5.6 Confidentiality of camera recordings

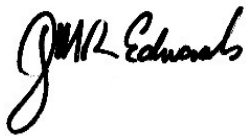
69. Section 57 of the Bill proposes to exempt on-board camera footage from being subject to requests under the Official Information Act (OIA) but allows footage to be disclosed to other parties by MPI in specified circumstances (decision criteria in new section 227D). There are good reasons to prevent public release of camera footage including significant privacy concerns for operators (identification of individuals and vessels), the inadvertent disclosure of commercially sensitive information and intellectual property associated with fishing operations. The purpose of this change is to provide certainty that on-board camera footage is held securely and used only for intended regulatory, management and scientific purposes by MPI, FNZ and other government agencies and organisations carrying out Crown functions.
70. Requests for written summaries of fisheries activity captured by cameras could still be made under the OIA to maintain public transparency and accountability. Public release of footage is not necessary to achieve this, and can lead to selective and misleading presentation. MPI should continue to regularly report providing summaries and analysis of information from camera footage including that related to commercial catch and protected species interactions on commercial vessels. MPI retains its oversight and focus on compliance with the regulatory framework, reinforced by the additional information obtained by cameras.
71. This approach would be consistent with other fisheries management jurisdictions who use on-board cameras as part of their monitoring regime. The United States, Canada and Australia have broadly consistent regimes where the regulatory agency operates under rules that provide confidentiality protections and controlled access and the agency releases data aggregated in reports rather than releasing raw footage publicly.

72. Penalties for knowingly disclosing camera footage are proposed to be a fine not exceeding \$50,000. The level of penalty seems high and not consistent with the recommendations from the Ministry of Justice who suggested \$5,000 to \$10,000 would be more proportionate.<sup>11</sup>

**Recommendation;** NZ RLIC supports the proposal to exempt the release of camera footage under the from the OIA provided that the Ministry regularly and publicly releases reports from that coverage.

Please contact NZ RLIC if you have questions or want to discuss our position. We are committing to working to put in place revisions to the Act that deliver improvements to fisheries management in New Zealand.

Best regards

A handwritten signature in black ink that reads "Mark Edwards". The signature is written in a cursive, flowing style.

Mark Edwards

Chief Executive Officer

NZ Rock Lobster Industry Council

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<sup>11</sup> Departmental Disclosure Statement.

## Appendix: recommended redrafting of provisions relating to recognition of non-regulatory measures

### 14I Application to have non-regulatory measure considered

- (1) One or more quota owners may apply for the Minister to have regard to a non-regulatory measure in setting the total allowable catch for a quota management stock under section 13A, 14(1), or 14B.
- (2) The application must be made by quota owners who together own a majority of the quota shares in the stock ~~Every quota owner making the application must own quota for the stock to which the non-regulatory measure relates.~~
- (3) The chief executive must be satisfied that the application must—
  - (a) ~~be is~~ made to the Minister in accordance with any notice made under subsection (6); and
  - (b) ~~contain~~ contains sufficient details to enable the ~~assessment of Minister to decide the weight (if any) that the Minister should, in setting the total allowable catch, give to the non-regulatory measure in accordance with section 14J.~~
- (4) ~~After considering the application, the Minister may –~~
  - (a) if the chief executive is satisfied that the application complies with subsection (3), the Minister must consult on the non-regulatory measure; or
  - (b) ~~for any reason, decide not to consult on the non-regulatory measure.~~
  - (b) if the application does not comply with subsection (3), the chief executive must notify the applicant that the application will not be progressed ~~(5) If the Minister decides not to consult on the non-regulatory measure, the Minister must notify that decision to every quota owner who made the application before the Minister starts consultation under section 12 on the total allowable catch to which the measure relates.~~
- (6) For the purposes of subsection (3)(a), the chief executive may, by notice, specify all or any of the following:
  - (a) the information that must be included in an application, including information relating to matters described in section 14J(2);
  - (b) how an application must be made;
  - (c) when an application must be made.
- (6A) Before making a notice under subsection (6) the chief executive must consult any persons or organisations that the chief executive considers are representative of the classes of persons having an interest in the notice.
- (7) In this section and section 14J, **consult**, in relation to a non-regulatory measure, means to consult under section 12 on the weight (if any) that the Minister should give to the measure in setting the relevant total allowable catch.
- (8) A notice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

### 14J Consideration of non-regulatory measure

- (1) This section applies if the Minister has consulted on a non-regulatory measure.
- (2) For the purposes of section 13B(3)(b) or (5)(b), 13C(3)(b), 13D(3)(b), 14(2), or 14B(4)(b), the Minister may give the non-regulatory measure the weight (if any) that the Minister considers appropriate after having regard to the following:
  - (a) the effectiveness of the measure, together with the total allowable catch, in complying with ~~in supporting the total allowable catch to comply with~~ the relevant TAC-setting provision:
  - (b) the level of support for the measure among quota owners for the stock and the likelihood that the measure will be implemented in practice ~~the robustness of the measure~~:
  - (c) the ability ~~of the stock's quota owners~~ to monitor ~~their~~ implementation of ~~and adherence to~~ the measure:
  - ~~(d) the sustainability of the stock:~~
  - (e) any other matters that the Minister considers relevant.
- ~~(3) To avoid doubt, the Minister is not required to give weight to any non-regulatory measure, including—~~
  - ~~(a) a measure that is the same as or similar to a measure to which the Minister has previously given weight:~~
  - ~~(b) a measure to which the matters described in **subsection (2)** apply favourably.~~
- (3A) If the Minister gives weight to a non-regulatory measure the Minister may include in the decision conditions relating to monitoring the implementation of the measure.
- (4) The Minister must publicly notify a non-regulatory measure to which the Minister has given weight under this section and any relevant conditions under section (3A).

[14K – deleted]