



**Fisheries New Zealand**

Tini a Tangaroa

# Temporary Closure of the Southern Scallop (SCA 7) Fishery

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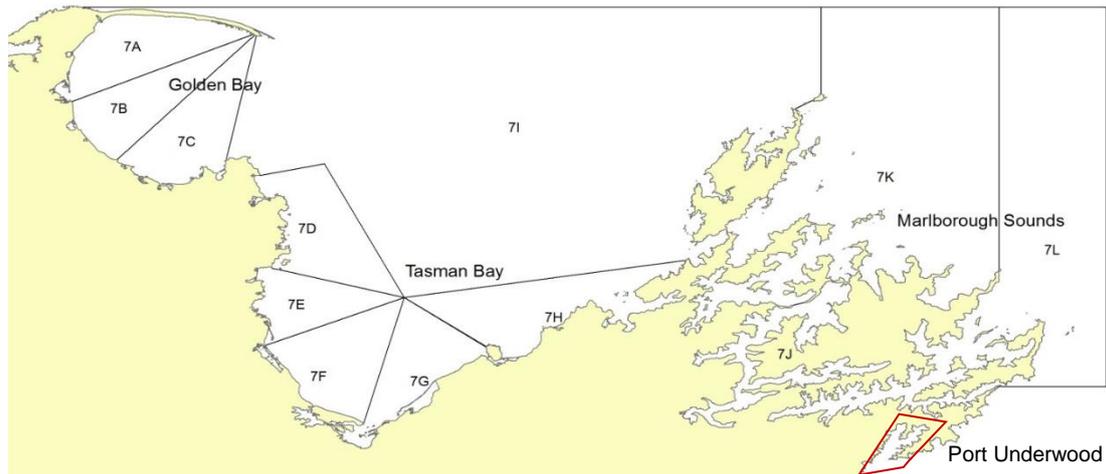


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**Figure 1: Map of the Southern Scallop fishery (SCA 7) showing reporting areas. Port Underwood is outlined in red.**

## 1 Executive Summary

Surveys show the Southern Scallop fishery (SCA 7, Figure 1) has been in decline since 2002. The historically productive areas of SCA 7 (Tasman and Golden Bays) have not been commercially fished for around a decade. This is despite measures including a reduced total allowable catch, reduced commercial catch limits for Marlborough Sounds, reseeded of juvenile scallops in Tasman Bay, a partial closure of the fishery over the 2016-17 season<sup>1</sup>, and a closure of all SCA 7, including Port Underwood<sup>2</sup>, in 2017-18.

Only some areas in the outer Marlborough Sounds now hold significant beds of scallops. Most of these beds were also declining up to 2016, but appeared to stabilise since they were closed to fishing in 2016. A survey in January 2018 shows the biomass of many of these beds now appears to be trending upwards, however, the trend is not yet statistically different (the estimates overlap) to the surveyed biomass in 2015 and 2017.

Following discussion with tangata whenua, the Challenger Scallop Enhancement Company (Enhancement Company), recreational and other stakeholders, Fisheries New Zealand publicly consulted from 11 to 25 June 2018 on a further temporary closure of SCA 7 and Port Underwood. Specifically, we consulted on the following options:

1. Continue a total closure of the SCA 7 fishery, including Port Underwood.
2. No closure. The fishery, including Port Underwood, would be open to fishing when the season opens on 15 July.

Most submissions received during the period of public consultation supported a further closure given the poor status of the stock. Submitters were generally willing to forgo immediate access to the fishery this season in the interests of the longer-term sustainability.

Some recreational fishers proposed the fishery be opened subject to conditions such as excluding dredging and/or commercial fishing, increasing the minimum legal size of scallops, reducing the daily bag limit, dive only areas and/or introducing a shorter season.

The Challenger Scallop Enhancement Company (for commercial fishers) supports an interim closure-only, with the expectation that it would be lifted later this year when a new multi-sector group has agreed on management settings suitable for the current state of the fishery.

<sup>1</sup> The open season for both recreational and commercial fishers is 15 July to 14 February. The fishery operates on an April fishing year.

<sup>2</sup> Port Underwood is not within SCA 7; it is in SCA 7C.

Taking into account the information and views expressed during consultation, Fisheries New Zealand's recommended option is to implement a further total closure of SCA 7 and Port Underwood (Option 1). This would protect the remaining scallop beds and is more likely to allow scallop biomass to increase to a level where it can be sustainably utilised. A further closure of SCA 7 is consistent with international best practice, where partial or complete closures are routinely used as part of ongoing management strategies for scallops to rebuild depleted scallop biomass.

Commercial and recreational fishing would be impacted under this option, along with wider benefits from harvesting the stock including accommodation, charter boat income, and income associated with the sale of fishing gear and expertise. In the last open season in 2015, 22 tonnes of scallops, with a port price value of approximately \$374k<sup>3</sup>, was taken commercially, and an estimated 11 tonnes<sup>4</sup> was taken recreationally.

Under Option 2 the fishery would open on 15 July, as the 2017 closure has expired<sup>5</sup>. The sustainability of SCA 7 would rely on the management regime set under a range of fisheries regulations, which were developed when the fishery was at its peak. Fisheries New Zealand is concerned that, if fishing were to occur, these are unlikely to constrain fishing to sustainable levels, and that this option does not respond to the scientific information showing the stock is close to its lowest level, with only a small remaining area of productive scallop beds. While it allows utilisation in the short term, this option does not provide for long term use, and a future recovery of SCA 7 could be compromised by over-fishing the remaining beds.

The proposed closure would be implemented under s11 of the Fisheries Act 1996 by your decision published in the Gazette, as for previous years. Such closures do not require Cabinet approval.

Fisheries New Zealand proposes no end date be specified for the closure. We will continue to monitor the stock to determine when it is capable of sustaining fishing, and will work with the new multi-sector group established for the fishery to develop recommendations to you on an agreed opening regime that would allow for utilisation without compromising the rebuild of the remaining scallop beds. This will include consideration of options put forward by submitters during consultation, such as diving-only areas, as well as the results of the NIWA study currently underway on the factors suppressing settlement, growth and survival of scallops, which will report initial results later this year.

Given the low level of scallop biomass, the need for updated survey information, and that a new opening regime would require changes to regulations, we consider it unlikely that the fishery could re-open this season. We will provide you with a report later this year on progress by the new multi-sector group and any recommendations for your consideration.

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<sup>3</sup> Based on a port price of \$17.00 per kg.

<sup>4</sup> There is uncertainty associated with this estimate.

<sup>5</sup> SCA 7 operates on an April fishing year, however, access to the fishery is also controlled by a season which operates from July 15 until February 14 each year.

## 2 Introduction

Fisheries New Zealand has consulted on a proposal for a further temporary closure of the SCA 7 fishery and Port Underwood to commercial and recreational scallop fishing. This decision document provides you with Fisheries New Zealand's final advice on this proposal. It comprises relevant background information, legal considerations, summarises submissions and analyses proposed management options, and provides Fisheries New Zealand's recommendations.

### 2.1 PROBLEM DEFINITION

A new biomass survey completed in January 2018 shows the biomass of adult<sup>6</sup> scallops in SCA 7 remains very low. There is a trend of increasing biomass in some outer beds of the Marlborough Sounds, however, the increases are not yet large enough to show a statistical significance from previous survey estimates (the estimates overlap) suggesting the fishery as a whole may still be below the 'hard limit', the biological reference point at which it is Fisheries New Zealand policy that a closure should be considered.

Fishing is unlikely to be the only driver of the decline in biomass. However, Fisheries New Zealand is concerned that any future recovery would be jeopardised by direct and indirect fishing mortality this coming season, which opens on 15 July 2018. Fisheries New Zealand considers that action is required to protect these beds and ensure the sustainability of the fishery.

### 2.2 OBJECTIVE

Scallops are fast growing with variable abundance and Fisheries New Zealand's management approach enables responsiveness to changing abundance levels. The options proposed in this paper are consistent with this management approach as they respond to the low biomass of SCA 7. Fisheries New Zealand's strategy is to ensure the sustainability of SCA 7 by resting parts or all of the fishery while developing other management measures and undertaking research to better understand the environmental and anthropogenic factors affecting scallop abundance in SCA 7.

### 2.3 BACKGROUND

#### 2.3.1 Fishery information

Fan scallops (*Pecten novaezelandiae*) are found in a variety of coastal and intertidal habitats, particularly in semi-enclosed areas where circulating currents are thought to retain larvae. After a three week planktonic larval phase and a relatively mobile phase as very small juveniles, scallops are largely sessile. They are extremely fecund and may spawn several times each year and can produce up to 40 million larvae. Initial settlement occurs when the larval spat attaches via a byssus thread to filamentous material or dead shells on or close to the seabed.

In SCA 7 a sophisticated reseeding programme has operated, collecting larval spat on artificial substrates and reseeding them as juveniles onto suitable areas of seabed in Golden and Tasman Bays. However, over the past 10 years the programme has failed and natural scallop numbers have also declined. It is thought that the seabed has changed, with mobile sediments caused by a combination of land run-off and disturbance to the seabed (including from fishing) creating a benthic environment that is no longer suitable for scallops.

Commercial catch dropped from 684 tonnes in 2002 to 22 tonnes when last fished in 2015 (valued at approximately \$374k based on the current port price for scallops in New Zealand of

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<sup>6</sup> The minimum legal ('adult') size for SCA 7 is 90 mm.

\$17.00 per kilogram). The fishery in Golden and Tasman Bays has collapsed, with almost all commercial fishing in recent years concentrated on the natural fishery in the Marlborough Sounds. This part of the fishery is not enhanced, and biomass and yields are estimated on an annual basis.

The commercial fishery operates under regulatory constraints, including a 90 mm minimum legal size, maximum dredge size and number, number of days fished, fishing only in daylight hours, and a commercial season from 15 July to 14 February.

Scallops are a popular target species for recreational fishers, and are taken by dredge or diving in SCA 7. They can only be taken recreationally above a minimum legal size of 90 mm, and there is a daily bag limit of 50 scallops per person per day, with a recreational open season from 15 July to 14 February. The bag limit is much higher than elsewhere (20 scallops or less) as a result of the previously enhanced nature of the fishery. Best available information suggests that recreational harvest was approximately 11 tonnes prior to its closure but there is considerable uncertainty around this estimate.

Scallops (tupa/tipa) are an important kaimoana species for tangata whenua. They are identified by Te Waka a Māui me Ōna Toka Iwi Forum<sup>7</sup> as a taonga species in the Te Waipounamu Iwi Fisheries Plan. This plan includes objectives relating to supporting and providing for the customary and commercial interests of South Island iwi. The customary take of SCA 7 scallops has been modest in recent years, and iwi have implemented rahui during the last two seasons' closures and have indicated this will be continued if the fishery is closed to other sectors.

### 2.3.2 Stock status

The results of a new survey of SCA 7 carried out by NIWA in January 2018 were reviewed by the Fisheries New Zealand Shellfish Working Group in February 2018, and are summarised in Figure 2.

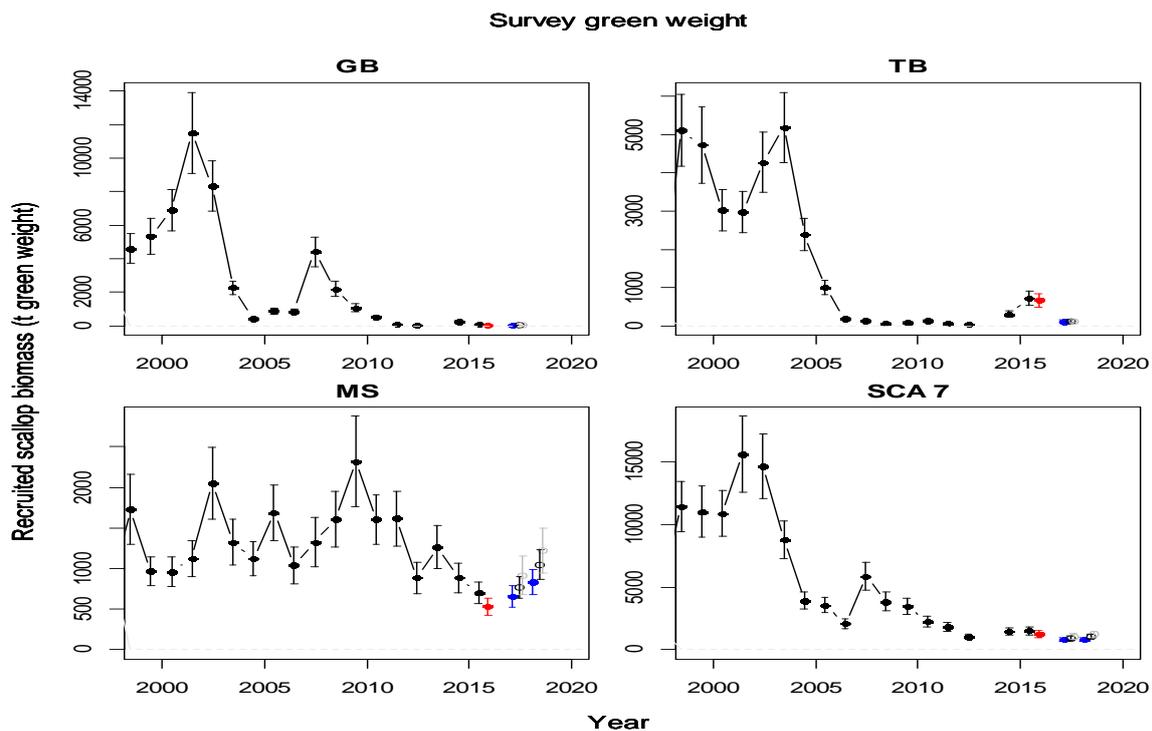
They show that SCA 7 biomass, overall, remains at a low level, with only some areas in the outer Marlborough Sounds now holding significant beds of scallops. Most of these beds were also declining up to 2016-17 when, after being closed, they stabilised. The biomass of many of these beds now appear to be trending upwards, however, the trend is not yet statistically different to the surveyed biomass in 2015 and 2017, when the fishery was closed.

Given this, the biomass remains close to its lowest recorded level and is only about a half of the 2003-2009 biomass (around 300 tonnes); a potential 'target' period when some stakeholders consider the Marlborough Sounds scallop beds were in a more 'healthy' state. Of particular concern is a decline in the number and extent of scallop beds of fishable density, especially in Pelorus Sound.

There are signs of what appear to be improving numbers of pre-recruit scallops coming through in some areas in the outer Marlborough Sounds, possibly as a result of previous closures, but the number of pre-recruits that will actually recruit into the fishery is uncertain.

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<sup>7</sup> This forum represents the nine iwi of the South Island, each holding mana moana and significant interests (both commercial and non-commercial) in South Island fisheries.



**Figure 2. Graphs showing surveyed scallop biomass in SCA 7 (90mm or larger). GB: Golden Bay, TB: Tasman Bay, MS: Marlborough Sounds, SCA7: overall fishery. Note that the scales on the vertical axis are different.**

Overall, the estimates of recruited scallop abundance across SCA 7 are at or near the lowest that have been observed since surveys began in 1998. Scallop biomass is very likely to be below the hard limit for both Golden Bay and Tasman Bay, and the stock as a whole (i.e. including the Marlborough Sounds) is likely to be below the hard limit.

### 3 Consultation

#### 3.1 PRE-CONSULTATION

You must provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned. You must also have particular regard to kaitiakitanga. Fisheries New Zealand has undertaken pre-consultation on your behalf.

Tangata whenua (through the Te Tau Ihu Iwi Forum) are concerned for the health and wellbeing of the fishery, but also want to ensure the integrity of their Treaty of Waitangi fishing rights. Iwi have supported previous closures by choosing not to issue customary authorisations and have indicated that they will put in place a rahui on customary fishing for scallops for the coming season.

In 2017 iwi stated they wished to see a unified research and management approach for the fishery and have sought long term protection and active restorative fisheries management. In response, Fisheries New Zealand hosted workshops throughout 2017 and 2018 with regional researchers, iwi and stakeholders to identify the factors suppressing settlement, growth and survival of scallops, and commissioned a new research programme to better understand these factors and help rebuild the fishery. This research, which commenced in May, is being carried out by NIWA with interim results anticipated in late October 2018.

Fisheries New Zealand has also been in regular discussion with recreational, environmental and other stakeholders and with Enhancement Company and tangata whenua representatives

to discuss issues and options for the fishery. This included meetings in March 2018 to discuss the results of the survey, and further meetings since then, where initial views were provided on whether a further temporary closure of the fishery should be considered for the coming season.

Feedback from this preliminary engagement showed support for some form of further closure. Many recreational fishers and local environmental groups consider a two year closure has been insufficient time to stimulate a rebuild. They are also concerned that leaving Port Underwood (which is immediately adjacent to SCA 7) open to harvest will expose it to excessive fishing effort and over-harvesting.

Commercial fishers, through the Enhancement Company, supported an interim closure, with the expectation that it would be lifted later this year when a new multi-sector group being established has agreed on management settings suitable for the current state of the fishery.

### 3.2 PUBLIC CONSULTATION

On 11 June 2018, Fisheries New Zealand released a discussion document proposing that SCA 7 be temporarily closed under s 11 of the Fisheries Act 1996 to both commercial and recreational fishing. Submissions were sought through newspaper advertising, Fisheries New Zealand website, facebook and social media channels, and our extensive emailing/ mailing list. Two options were consulted on.

<b>Option 1</b>	A total closure of the SCA 7 fishery, including Port Underwood.
<b>Option 2 (Status quo)</b>	No closure. The fishery, including Port Underwood, would be open to fishing when the season opens on 15 July.

### 3.3 SUMMARY OF SUBMISSIONS

A total of 366 submissions were received on the proposals. Of these, 296 were provided through a new online submission format that Fisheries New Zealand is trialling to improve public engagement on fisheries decisions, and 70 were written submissions. Copies of these submissions are attached (refer to Appendix 2).

Most submissions<sup>8</sup> supported closing the fishery, primarily on the grounds that the fishery is at a low point and it needs more time to recover. Of these, 52 referred that Port Underwood should also be closed. This included the Port Underwood Association representing 120 Port Underwood households.

The Enhancement Company, Talley’s and other commercial fishers supported an interim closure-only “through until mid-September /early October 2018, pending the establishment of the Southern Scallop Working Group [the multisector working group] and the development of recommendations from that Group for the upcoming season”.

Fourteen percent of submitters supported Option 2 including some commercial fishers, as well as some dive or chartering operators who consider continuing the closure would negatively impact on their business.

Thirty seven percent of submitters proposed alternative options with alternative or additional management changes, including a reduction in the recreational bag limit, a ban on dredging (a dive-only fishery), and/or opening to recreational fishing only. Other recommended measures included:

- increasing the minimum size limit to 100 mm;

<sup>8</sup> Some submissions required interpretation to determine the preferred option.

- shortening the season;
- removing or reducing the boat safety person's allowance;
- a maximum quantity per boat and an accumulation limit;
- prohibiting commercial fishing and/or dredging from the Marlborough Sounds; and
- excluding dredging from within the Marlborough Sounds.

A consistent theme across many submissions was concern about the negative impact of dredging in the Marlborough Sounds.

Tangata whenua, through the Te Waka a Māui me Ōna Toka Iwi Forum (with support from Te Ohu Kai Moana), has also indicated support for a further closure (Option 1) and that, if the fishery is closed to other sectors, they will implement a rahui on customary scallop take for the entire fishery for the coming season. Te Atiawa o Te Waka-a-Māui Trust have submitted in support of Option 1 but ask for long term protection and active restorative fisheries management.

Overall, submissions indicate widespread acknowledgement of the poor status of the fishery and the need for significant changes to the management settings before it is opened again.

Most non-commercial stakeholders and tangata whenua appear willing to forgo immediate utilisation of the fishery in the interests of the longer term sustainability and improved future access.

### **3.4 CHALLENGER SCALLOP ENHANCEMENT COMPANY**

The Enhancement Company has a particular role in the fishery and has operated annual management and consultation processes since 1998 under an Enhancement Plan approved under s 310 of the Fisheries Act 1996, and an MoU with Fisheries New Zealand.

Given the decline in the fishery, and failure of the enhancement programme over the last 10 years, we consider aspects of the Enhancement Plan to be no longer relevant, and are in discussion with the Enhancement Company regarding a review of the plan. In particular, we wish to ensure that the annual decision-making process for the fishery is transparent and engages all users as effectively as possible in management of the fishery. The establishment of a new multi-sector working group, and the wider public engagement processes run by Fisheries New Zealand are part of our strategy to achieve this.

The Enhancement Company supports an interim closure-only, “through until mid-September 2018/early October pending the establishment of the Southern Scallop Working Group and the development of recommendations from that Group for the upcoming season.” (refer to Appendix 1). It considers that Fisheries New Zealand's proposal as described in its consultation document is based on flawed information.

In particular, the Enhancement Company submits that scallop recruitment in the Marlborough Sounds is largely separated from Tasman and Golden Bays and should be managed separately. Therefore, the Marlborough Sounds should not be included within the “hard limit” policy. In addition, that new dredge efficiency research appears to support that scallop biomass has been previously underestimated.

Fisheries New Zealand agrees there is likely to be some separation between the scallop populations in the Marlborough Sounds, Tasman Bay and Golden Bay, but notes there is limited information on the extent of this and overall stock connectivity. We also agree that new research we have commissioned, due for completion in October, does suggest that the dredges used in the fishery are not as efficient as was thought, and therefore there is likely to be more scallop biomass present. However, this does not change the survey trends which point to the fishery being at an historically low biomass level.

## 4 Legal Considerations

Fisheries New Zealand's assessment of the relevant legal provisions under the Fisheries Act 1996 (the Act) and the Fisheries New Zealand Harvest Strategy Standard is attached for your consideration as an appendix to this decision document (Appendix 1). Key considerations in terms of s 8, 10, 11 and 12 of the Act are summarised below.

Your decision to temporarily close the Marlborough Sounds and part of Tasman Bay for the 2016-17 scallop season and all of SCA 7 including Port Underwood in 2017-18 was based on survey information suggesting the fishery biomass was below the hard limit, a point below which it is Fisheries New Zealand policy that the fishery should be considered for closure. The latest survey suggests the fishery remains at or near this low level, and that proposing a further closure of the fishery is appropriate, given the risk fishing poses to the sustainability of SCA 7.

A further closure of SCA 7, as proposed, will reduce any impact on associated or dependent species, biological diversity of the aquatic environment, and any habitat of particular significance for fisheries management.

The recommendations in this paper are based on NIWA biomass surveys completed in November 2015, January 2017 and January 2018, which have been reviewed through Fisheries New Zealand's Science Working Group, including independent scientists and sector representatives.

Scallop populations are known to vary over time and in response to environmental changes, and can also be affected by fishing pressures. The proposal to close some scallop beds to harvesting seeks to address the risk that fishing will further exacerbate conditions that have led to declining populations.

Closure of the fishery means there will be a reduction in impact on any sensitive or biodiverse areas that are of concern to the Marlborough District Council.

Section 11(4) allows sustainability measures to be set or varied by Gazette Notice or by recommending the making of regulations. Fisheries New Zealand proposes that the temporary closure be set by notice in the Gazette.

Fisheries New Zealand's consultation process is described in Section 3 of this decision document. We have consulted with stakeholders and provided for the input and participation of tangata whenua for SCA 7, as described in section 3 of this decision document.

## 5 Management Options

There are a range of management tools available under the Act that may be used to manage the impacts of fishing pressure on scallop abundance, including catch limits and method restrictions, which are set out in fisheries regulations.

Fisheries New Zealand has sought views on the use of some of these tools as part of the longer-term package of measures to manage the fishery, and has established a new multi-sector forum to develop options on an opening regime which will allow future utilisation of the fishery without compromising its rebuild. In the interim, Fisheries New Zealand considers a temporary closure as proposed in this paper is the appropriate mechanism to protect remaining scallop beds.

The temporary closure options are outlined in the following table.

Option 1	A total closure of the SCA 7 fishery, including Port Underwood.
<b>Option 2</b> ( <i>Status quo</i> )	No closure. The fishery, including Port Underwood, would be open to fishing when the season opens on 15 July.

Fisheries New Zealand notes that you have broad discretion in exercising your powers of decision making, and may make your own independent assessment of the information presented to you in making your decision. You are not bound to choose the option recommended by Fisheries New Zealand or any of the options proposed.

## 5.1 OPTION 1 –A TOTAL CLOSURE

Under Option 1 all of the Southern Scallop fishery, as well as Port Underwood, would be closed to scallop fishing. The closures would be implemented under section 11 of the Fisheries Act 1996.

### 5.1.1 Impacts and benefits

Under this option the scallop biomass in SCA 7 would remain unaffected by fishing. The remaining stock of takeable size scallops would be safeguarded and small scallops would be protected from incidental fishing mortality under this option. Overall, relative to Option 2, Option 1 has less risk to the stock from fishing-related mortality.

A majority of submitters supported a closure of the fishery based on the current state of the stock, and considered that closing all of SCA 7 and Port Underwood would have a positive long term impact, providing an opportunity for scallops to spawn, settle and grow without fishing mortality and disturbance.

Fisheries New Zealand considers this option is appropriate. Biomass in the Marlborough Sounds appears to have stabilised, and is now trending upwards. However, the trend is not statistically significant. It remains close to its lowest surveyed level and within the biomass range in which the stock has previously declined and was closed.

Overall, the SCA 7 stock is near or at its lowest recorded level and likely to be below the hard limit, the biological reference point at which point it is Fisheries New Zealand policy that a closure should be considered. Fisheries New Zealand notes the Enhancement Company's submission that the Marlborough Sounds could be considered as a separate stock within SCA 7, and that the policy is only a guide. However, within Marlborough Sounds, Fisheries New Zealand considers the low biomass level poses significant risk to ongoing sustainability of the resource, and notes that these are the last remaining dense beds in the fishery (and that high scallop density is critical to scallop breeding success).

The biomass of scallops at fishable density is limited to only a few areas; in particular Wynen's Bank, Guards Bank, the Chetwode Islands and Ship's Cove. Biomass in the Sounds remains close to its lowest recorded level, and is about half of the 2003-2009 biomass (around 300 tonnes), a 'target' period when some stakeholders consider the Marlborough Sounds scallop beds were in a more 'healthy' state.

Scallops in the inner parts of Pelorus Sound have been in poor condition over the past several years, with Fisheries New Zealand testing showing the presence of a bacterial disease (*Rickettsia*) and the presence of a parasitic protozoan *Perkinsus olseni*. A closure would allow diseased scallops to recover without stress from disturbance arising from fishing activities.

Closing all or significant parts of a scallop fishery has proven to be a successful approach in rebuilding scallop numbers both in SCA 7, and overseas. Overseas examples, where large scale closures and/or substantial reductions in fishing mortality have been successful in

rebuilding scallop biomass, include Georges Bank, several UK scallop fisheries, and Bass Strait, Australia.

Both commercial and recreational fishing would be significantly impacted under this option and it would prevent wider access to the benefits that could have been available from the fishery. This includes tourism benefits such as accommodation and charter boat income, and income associated with the sale of fishing gear and expertise. In the last open season in 2015, 22 tonnes of scallops, with a port price value of approximately \$374k<sup>9</sup>, was taken commercially, and an estimated 11 tonnes<sup>10</sup> was taken recreationally.

Tangata whenua, through discussion at the Te Waka a Māui me Ōna Toka iwi forum, show support for a closure and have indicated that they will put in place a rahui on customary fishing for scallops for the coming season if it is closed to other sectors. Iwi supported the previous closure by choosing not to issue customary authorisations.

Overall, Option 1 would have an immediate impact on fishing this season, but should have a positive effect on the long term sustainability and rebuild of the SCA 7 stocks. The benefit of including Port Underwood within the closure is that it protects these scallops from any increased harvesting effort that may be transferred as a consequence of closing the Marlborough Sounds.

## 5.2 OPTION 2 – NO CLOSURE

Option 2 is the status quo. No temporary closures would be implemented under this option.

### 5.2.1 Impacts and benefits

Under this option, the fishery would be open and the sustainability of SCA 7 would rely on the regulatory management settings for the fishery. The scallop beds would be available for commercial and recreational fishing this season and there would be benefits for the tourism and retail operations associated with the fishery.

A minority (13%) of submitters supported this option. These submitters considered that scallops are more abundant than suggested (particularly in localised patches) and that as fishing is not the primary driver of decline in the fishery, the season should proceed. In addition closing the fishery would have a negative impact on their business operations.

Fisheries New Zealand's view is that the status quo option is not a responsive approach to the significant declines in scallop abundance. While it has the least impact on fishing in the short term, it presents a risk that the increasing trend in some of the scallop beds in the Marlborough Sounds will be reversed. The sustainability of SCA 7 would rely on the management regime set under a range of fisheries regulations, which were developed when the fishery was at its peak. Fisheries New Zealand is concerned that, if the fishery were not closed, these are unlikely to constrain fishing to sustainable levels. While it allows utilisation in the short term, it does not provide for long term use, and a future recovery of SCA 7 could be compromised by over-fishing the remaining beds.

## 5.3 WIDER MANAGEMENT PROPOSALS

A large number of submitters supported wider management changes, or proposed alternative options. In particular, the Enhancement Company (for commercial fishers) supports an interim closure, with the expectation that it would be lifted later this year when the multi-sector group established for the fishery has agreed on management settings suitable for the current state of the fishery.

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<sup>9</sup> Based on a port price of \$17.00 per kg.

<sup>10</sup> There is uncertainty associated with this estimate.

There is support from many recreational fishers, particularly divers, to open the fishery to allow recreational diving only. They submit that they traditionally have fished localised discrete scallop beds that are not dredged and that this harvest has been sustainable. Based on this, many submit the fishery should be opened only for recreational fishers and/or divers and that dredging, more generally, should be banned, especially within the Marlborough Sounds.

There was also support from stakeholder discussions and in submissions for the new multisector working group to develop longer-term proposals and regulations that are more in line with the current state of the fishery.

Should a further closure be approved, Fisheries New Zealand will continue to monitor SCA 7 to determine when it is capable of sustaining fishing, and will work with the new multi-sector group to develop recommendations on an agreed opening regime that would allow for utilisation without compromising the rebuild of remaining scallop beds. Given the low level of scallop biomass, the need for updated survey information, and that a new opening regime would require changes to regulations, we consider it unlikely that the fishery could re-open this season.

The options put forward by submitters during consultation will be considered by the multi-sector group as it works to develop these management proposals for SCA 7.

In addition the results of the NIWA study currently underway on the factors suppressing settlement, growth and survival of scallops will become available from October this year and will inform the development of proposals.

The group's proposals would be subject to wider engagement and consultation to gauge stakeholder and public views before any decisions are made. Fisheries New Zealand will provide you with a report later this year on progress by the group and any recommendations for your consideration.

# Appendix 1 Legal Considerations

## SECTION 8 – PURPOSE OF THE FISHERIES ACT 1996

The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

“Ensuring sustainability” is defined in section 8 as: “maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment”.

“Utilisation” of fisheries resources is defined as “conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.”

The Supreme Court has stated that the purpose statement incorporates “the two competing social policies reflected in the Act” and that “both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system ... [I]n the attribution of due weight to each policy that given to utilisation must not be such as to jeopardise sustainability”<sup>11</sup>.

Utilisation may be provided for at different levels, and the extent of such use should be considered on a case-by-case basis. Where there is a significant threat to the sustainability of a fish stock, the measures adopted to achieve sustainability are likely to be more stringent than where there is a lesser threat.

Your decision to temporarily close the Marlborough Sounds and part of Tasman Bay for the 2016-17 scallop season and all of SCA 7 including Port Underwood in 2017-18 was based on survey information suggesting the fishery biomass was below the hard limit, a point below which it is Fisheries New Zealand policy that the fishery should be considered for closure. The latest survey suggests the fishery remains at or near this low level, and that proposing a further closure of the fishery is appropriate, given the risk fishing poses to the sustainability of SCA 7.

## SECTION 9 – ENVIRONMENTAL PRINCIPLES

The Act prescribes three environmental principles that you must take into account when exercising powers in relation to utilising fisheries resources and ensuring sustainability.

**Principle 1: Associated or dependent species should be maintained above a level that ensures their long-term viability.**

The Act defines “associated or dependent species” as any non-harvested species taken or otherwise affected by the taking of a harvested species. “Harvested species” means any fish, aquatic life, or seaweed that may for the time being be taken with lawful authority. Taken together, these definitions mean that only protected species constitute associated or dependent species. A further closure of SCA 7, as proposed, will reduce any such impacts.

**Principle 2: Biological diversity of the aquatic environment should be maintained.**

“Biological diversity” means the variability among living organisms, including diversity within species, between species, and of ecosystems. There has been no formal assessment of the extent to which dredging for scallops in SCA 7 reduces biological diversity as defined in the Act, although dredge and trawl fisheries in general are known to significantly affect benthic

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<sup>11</sup> *New Zealand Recreational Fishing Council Inc v Sanford Limited and Ors* (Supreme Court, [2009] NZSC 54 at [39]).

communities, with severe impacts on some sensitive communities. Closure of the fishery, as proposed under Option 1 would reduce such impacts.

**Principle 3: Habitat of particular significance for fisheries management should be protected.**

“Habitat of particular significance for fisheries management” is not defined in the Act but Fisheries New Zealand considers that the maintenance of healthy scallop stocks requires the mitigation of any major threats to habitat important for scallop spawning and recruitment. The activity of dredging could affect such habitats and could also exacerbate other impacts like sedimentation from a range of terrestrial activities. The proposed closures will reduce impacts on habitats important for scallops.

## **SECTION 10 – INFORMATION PRINCIPLES**

The nature of data and assumptions used to generate fisheries assessments and the results produced contain inherent variation and uncertainty. Section 10 of the Act specifies the information principles that must be taken into account:

- a) Decisions should be based on the best available information;
- b) Decision makers should take into account any uncertainty in the available information;
- c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate; and
- d) The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.

“Best available information” is defined in the Act to mean the best information that, in the particular circumstances, is available without unreasonable cost, effort or time.

Less than full information suggests caution in decision-making, not deferral of a decision completely if information standards are not met. “The fact that a dispute exists as to the basic material upon which the decision must rest, does not mean that necessarily the most conservative approach must be adopted. The obligation is to consider the material and decide upon the weight which can be given it with such care as the situation requires.”<sup>12</sup>

Both scientific and anecdotal information need to be considered and weighed accordingly when making management decisions. The weighting assigned to particular information is subject to the certainty, reliability, and adequacy of that information.

As a general principle, information on stock status outlined in the Fisheries New Zealand Fishery Assessment Plenary Report is considered the best available information and should be given significant weighting. The information presented in the Plenary Report is subject to a robust process of scientific peer review and is assessed against the Research and Science Information Standard for New Zealand Fisheries. Corroborated anecdotal information also has a useful role to play in the stock assessment process and in the management process.

The recommendations in this paper are based on NIWA biomass surveys completed in November 2015, January 2017 and January 2018, which have been reviewed through Fisheries New Zealand’s Science Working Group, including independent scientists as well as sector representatives.

## **SECTION 11- SUSTAINABILITY MEASURES**

Section 11(1) of the Act allows you to set or vary any sustainability measure for one or more stocks or areas, after taking into account any effects of fishing on any stock and the aquatic

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<sup>12</sup> *Greenpeace NZ Inc v Minister of Fisheries* (HC, Wellington CP 492/93, 27/11/95, Gallen J) p 32.

environment, any existing controls that apply to the stock or area concerned, and the natural variability of the stock concerned. Scallop populations are known to vary over time and in response to environmental changes, and can also be affected by fishing pressures. The proposal to close some scallop beds to harvesting seeks to address the risk that fishing will further exacerbate conditions that have led to declining populations.

Section 11(2) states that before setting or varying any sustainability measure, you shall have regard to any provisions of: any regional policy statements, regional plans, or proposed regional plans under the Resource Management Act 1991; any management strategy or plan under the Conservation Act 1987; sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000; any regulations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and any planning documents lodged with you (the Minister of Fisheries) by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011. There are no specific matters under the above provisions that are relevant to this proposal.

The Marlborough District Council is consulting on a provision within the Marlborough Sounds to close a number of areas identified as having high biodiversity values to bottom impacting fishing methods. Fisheries New Zealand has seen the locations of the proposed areas and notes that these areas will not meaningfully impact on the scallop fishery and, conversely, closure of the fishery means there will be a reduction in impact on any biodiverse areas that are of concern Marlborough District Council.

Section 11 (2A) requires you to take into account:

- (a) Any conservation services or fisheries services
- (b) Any relevant fisheries plan approved under this Part-see discussion of section 11A below
- (c) Any decisions not to require conservation services or fisheries services.

Services of particular relevance to the decisions in this paper relate to programmed research used to monitor stock abundance. These are the regular biomass surveys of SCA 7, which since 2015 have been commissioned by Fisheries New Zealand and carried out by NIWA.

There is no approved fisheries plan relevant to scallops. So the management of the SCA 7 fishery is guided by the non-binding policy objectives that are found in Fisheries New Zealand's Harvest Strategy Standard.

Section 11(3) outlines a non-exhaustive list of sustainability measures that you may set for a stock. Sustainability measures may relate to the areas from which any fish, aquatic life, or seaweed of any stock may be taken. You may implement any sustainability measures by notice in the Gazette (as proposed in this paper) or by the making of regulations under section 298 of the Act. Fisheries New Zealand is proposing a further temporary closure to address the observed declines in the SCA 7 population.

Section 11(4) allows sustainability measures to be set or varied by Gazette Notice or by recommending the making of regulations. Fisheries New Zealand proposes that the sustainability measures be set by notice in the Gazette.

## **SECTION 12- CONSULTATION**

Before implementing any section 11 sustainability measure, section 12 of the Act specifies you shall consult with persons or organisations that you consider have an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Māori, environmental, commercial, and recreational interests. Fisheries New Zealand's consultation process is described in section 3 of this decision document.

You must also provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned. You must also have particular regard to kaitiakitanga. Fisheries New Zealand has consulted with and provided for the input and participation of tangata whenua for SCA 7 as described in section 3 of this decision document.

## **SECTION 310 - ENHANCEMENT PLAN**

The Enhancement Company operates annual management processes for the fishery under an Enhancement Plan approved under section 310 of the Act in 1998, and a MoU with Fisheries New Zealand. These documents set out timeframes, information requirements and the process for approval of an annual harvest plan. Section 310(5) says that nothing in any enhancement plan prevents you from taking any sustainability measures under Part 3 of the Act for the fishery and this power is reflected in the MoU.

The MoU was signed in 1998, at a time when SCA 7 was primarily an enhanced fishery operating in Golden and Tasman Bay. While the Enhancement Company still attempts enhancement, in recent years the scale of enhancement has been small and survival of reseeded scallops very poor.

## **HARVEST STRATEGY STANDARD**

The Harvest Strategy Standard<sup>13</sup> is a policy statement of best practice in relation to the setting of fishery and stock targets and limits for fishstocks in New Zealand's Quota Management System (QMS). It is intended to provide guidance on how fisheries law will be applied in practice, by establishing a consistent and transparent framework for decision-making to achieve the objective of providing for utilisation of New Zealand's QMS species while ensuring sustainability.

It outlines Fisheries New Zealand's approach to relevant sections of the Act and forms a core input in our advice to you on the management of fisheries. It defines:

- Hard Limit as a biomass limit below which fisheries should be considered for closure
- Soft limit as a biomass limit below which the requirement for a formal time-constrained rebuilding plan is triggered.

It is not legally binding and you are not obliged to choose options based upon it.

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<sup>13</sup> The Harvest Strategy Standard can be found at: <https://www.mpi.govt.nz/document-vault/728>