

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of Schedule 1 of the Act

BETWEEN **BAY OF ISLANDS MARITIME PARK
INCORPORATED**

(ENV-2019-AKL-000117)

**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**

(ENV-2019-AKL-000127)

Appellants

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

**AGREED STATEMENT OF FACTS – FISHERIES ISSUES
TOPIC 14 – MARINE PROTECTED AREAS**

CONFIDENTIAL

22 ~~2~~ JUNE 2021

Note – This Agreed Statement of Facts (ASOF) for Fisheries Issues updates the ASOF dated 2 June 2021. It responds to the changes in the relief sought by the Bay of Islands Maritime Park Inc, Royal Forest & Bird Protection Society, and Ngāti Kuta ki te Rawhiti Hapū which the parties were given notice of on 8 June 2021. Changes to the text are shown as red/blue trackchanges.

This updated ASOF was circulated to all the parties before being finalised by the Fisheries topic witnesses, all of whom attended the Expert Conference. The The Bay of Islands Maritime Park Inc and Ngāti Kuta and Te Uri O Hikihiki provided comment. For the record, those comments are recorded in this ASOF. They are not agreed changes/additions by the Fisheries expert witnesses.

The proposal

- 1 The appellants (Bay of Islands Maritime Park Incorporated (**BOI Maritime Park**) and Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**)), Ngāti Kuta ki te Rawhiti hapū (**Ngāti Kuta**) and Te Uri o Hikihiki hapū seek provisions in the proposed Regional Plan for Northland (**Proposed Plan**) to protect areas in the Bay of Islands and Mimiwhangata from the potential adverse effects of fishing activities.
- 2 BOI Maritime Park, Forest and Bird and Ngāti Kuta seek to introduce objectives, policies and rules based on the “Ta Hā o Tangaroa Protection Areas” spatial layer, which includes the following sub-areas:
 - 2.1 Sub-Area A: Maunganui Bay – Oke Bay Rāhui Tapu;
 - ~~2.2 Sub-Area A Buffer: Maunganui Bay – Oke Bay Rāhui Tapu Buffer Area;~~
 - 2.3 Sub-Area B: Ipipiri Moana Mara Tipu Rohe ~~Benthic Protection Area~~; and
 - 2.4 Sub-Area C: ~~Ipipiri~~ Rakaumangamanga Moana Mara Tipu Rohe ~~Protection Area~~.
- 3 Te Uri o Hikihiki seek to introduce objectives, policies and rules based on the “Te Mana o Tangaroa Protection Areas” spatial layer, which includes the following sub-areas:
 - 3.1 Sub-Area A: Mimiwhangata Rāhui Tapu;
 - 3.2 Sub-Area A Buffer: Mimiwhangata Rāhui Tapu Buffer Areas; and
 - 3.3 Sub-Area ~~C~~ **B**: Te Au o Morunga Protection Area.

Fisheries regulations applicable to the proposed marine protection areas (commercial, recreational/non-commercial, customary)

- 4 Within the proposed Te Hā o Tangaroa Protection Area and Te Mana o Tangaroa Protection Area, there are existing fisheries controls that have been implemented under the Fisheries Act 1996 (**Fisheries Act**). These controls include minimum legal sizes, restrictions on certain fishing methods, seasonal and spatial closures, and recreational daily bag limits.
- 5 A full description of the relevant provisions can be found in the Evidence in Chief of Ms McKinnon, tables 1 through 7 8. A summary list can be found at **Appendix 1**. Maps showing the geographic extent of the various regulations can be found at **Appendix 2**.
- 6 Many of the existing fisheries regulations apply nationally or to the Northland region (including to the proposed Protection Areas). In particular:
- 6.1 In addition to the area-specific provisions, the Driftnet Prohibition Act 1991 prohibits driftnet fishing using nets more than 1 km in length in New Zealand fisheries waters (EEZ) and since 2020 that prohibition has been extended to all driftnets. It also prohibits the transportation and transshipment of any fish or marine life taken using a driftnet and prohibits driftnets on vessels. There are also prohibitions on drift net fishing in the Fisheries Act regulations for commercial and amateur fishers;
 - 6.2 Seabird bycatch mitigation measures are required for all commercial longline activity pursuant to the Fisheries (Seabird Mitigation Measures – Bottom Longlines) Circular 2020 (Notice No. MPI 1174) and Fisheries (Seabird Mitigation Measures—Surface Longlines) Circular 2019 (Notice No. MPI 1104);
 - 6.3 No commercial fisher shall use any trawling vessel over 46m long in the territorial sea;¹
 - 6.4 (Applicable throughout all proposed protection areas) No commercial fisher shall take banded wrasse, cockle, pipi, spotted black grouper, shortbill spearfish or sailfish, or sell or possess for sale banded wrasse, black angelfish, butterfly perch, giant boarfish, green wrasse, kelpfish, long-finned boarfish, marble fish, notch-headed marblefish, painted moki, red moki, red mullet, red pigfish, rock cod, Sandager’s wrasse, scarlet wrasse, silver drummer, splendid perch, or toadstool grouper.²
- 7 The following table provides a summary of the existing fisheries regulation that already apply to each sub-area (in addition to regulations noted above). See Tables 1 to 7 8 in Ms McKinnon’s brief of evidence for full description of the fisheries regulations in place.

¹ Fisheries (Commercial Fishing) Regulations 2001 (SR 2001/253), reg 72.

² Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 (SR 1986/216).

Location	Summary of provisions currently in place
Sub-Area A Maunganui Bay-Oke Bay Rāhui Tapu & Sub-Area A buffer	<ul style="list-style-type: none"> • Temporary closure to all fishing except kina in Maunganui Bay only (s186A Fisheries Act) • No commercial fisher shall use any trawl or Danish seine net • No commercial fisher shall take any scallops • No commercial or recreational fisher shall use any set net 1NM around Twins Rock
Sub-Area B Ipipiri Moana Mara Tipu Rohe benthic protection area	<ul style="list-style-type: none"> • No commercial fisher shall use any trawl or Danish seine net • No commercial fisher shall take any scallops • No commercial fisher shall take fish 1 October-30 April. Rock lobster can be taken by potting under permit • No commercial fisher shall use for taking fish: a box or teichi net, purse seine net, Danish seine net, trawl net, lampara net, or set nets >1000m in length • No commercial or recreational fisher shall use any set net 1NM around Whale Rock • No recreational fisher shall use or possess a set net or set line between 1 October to 30 April except when targeting flatfish or grey mullet
Sub-Area C – Inner Bay of Islands (south of Tapaka Point)	<ul style="list-style-type: none"> • No commercial fisher shall use any trawl or Danish seine net • No commercial fisher shall take any scallops • No commercial fisher shall use for taking fish: a box or teichi net, purse seine net, Danish seine net, trawl net, lampara net, or set nets >1000m in length (Port Russell) • Waikare Inlet Taipure excluded from the proposed Sub-Area C
Sub-Area C – Rakaumangamanga Moana Mara Tipu Rohe Outer Bay of Islands	<ul style="list-style-type: none"> • No commercial fisher shall use any trawl or Danish seine net (south of a line Cape Wiwiki-Red Head-Cape Brett) • No commercial fisher shall take any scallops (south of a line Cape Wiwiki-Red Head-Cape Brett) • No commercial fisher shall take scallops from the outer waters of Sub-Area C other than between the hours of 6am and 6pm on any day. • No commercial fisher or recreational fisher shall use any set net (1NM around Cape Wiwiki, Twins Rock, Whale Rock) • No commercial fisher or recreational fisher shall use any net (1NM around Ninepin, Cape Brett, Bird Rock)

Location	Summary of provisions currently in place
	<ul style="list-style-type: none"> Te Puna Mātaitai Reserve is excluded from the proposed Sub-Area C
Sub-Area A Mimiwhangata Rāhui Tapu & buffers (West & East)	<p>The majority of this area falls within the The existing Mimiwhangata Marine Park covers some of this area where:</p> <ul style="list-style-type: none"> No commercial fisher shall take or possess fish or seaweed by any method. Recreational fishers using lines with a maximum of 1 hook, trolling, spears, hand gathering or pots (max 1 pot/person or vessel) may harvest: barracouta, billfish, blue maomao, flatfish, garfish, green-lipped mussel, gurnard, kahawai, kina, kingfish, mackerel, rock lobster, scallop, shark, snapper, tarakihi, trevally, tuatua, tuna, yellow-eyed mullet <p>Outside the Marine Park:</p> <ul style="list-style-type: none"> No commercial fisher shall take scallops other than between the hours of 6am and 6pm on any day.
Sub-Area C B - Te Au o Morunga Protection Area (Mimiwhangata to Cape Brett excluding near shore Bland Bay and Whangaruru Harbour)	<ul style="list-style-type: none"> No commercial fisher shall take scallops other than between the hours of 6am and 6pm on any day. No commercial fisher or recreational fisher shall use any net (1NM around Bird Rock)

Managing stock sustainability

- As well as the above regulations, the Minister for Oceans and Fisheries is required to set a Total Allowable Catch (TAC) for each fishstock managed under the Quota Management System. The TAC is then allocated between fishing sectors. An allowance is made for Māori customary non-commercial fishing, recreational fishing, and other mortality, and then a Total Allowable Commercial Catch (TACC) is set.
- For species such as snapper and rock lobster, the Minister is required to set a TAC that maintains a stock at or above, restores a stock to or above, or moves the stock towards or above a level that can produce the *maximum sustainable yield*. Reviews of TACs are informed by a range of information sources alongside the application of statistical methods and supported by scientific working groups chaired by Fisheries New Zealand (FNZ) and whose membership comprises FNZ officials, independent scientists, and representatives of fishing stakeholder sectors. This is explained in the evidence of Mr Hore on Fisheries Management at [31] and [36].

Stock specific information

- 10 The last assessment for Snapper populations in the SNA 1 management area (east Northland, Hauraki Gulf, Bay of Plenty) was completed in 2013 and it estimated that the East Northland population (which includes snapper in the Bay of Islands) was at 24% of the unfished stock level. The next stock assessment for SNA 1 is due to commence this year, and it will be informed by up-to-date information on annual harvest, growth rates and recruitment, with additional information from trawl surveys undertaken in 2020 and 2021 designed to better understand the abundance of juvenile snapper over time.
- 11 A review of the scallop stock in Northland (SCA 1) in April 2020 acknowledged a long-term decline in scallop abundance and indicated a sustainability risk if catch limits were fully caught. As a result, the TAC and TACC were reduced by 45 tonnes and 30 tonnes respectively and FNZ has commissioned two projects to assess the commercial and recreational scallop areas for 2021. The Bay of Islands will be included in the survey sites. Information from the projects will be used to determine if the current measures in place in SCA 1 are ensuring the sustainability of the stock.
- 12 Rock lobster or crayfish in the Bay of Islands are managed within the CRA 1 management area, which covers most of Northland from Te Arai Point on the east coast around to the North Head of Kaipara Harbour. Most of the commercial catch is taken from the Far North and Northland west coast. An updated scientific assessment for CRA 1 was completed in 2020 and it indicates that the decrease to the catch settings (the TAC, allowances, and TACC) implemented by the previous Minister of Fisheries on 1 April 2020 has successfully halted the decline in biomass that was predicted by the 2019 CRA 1 stock assessment.
- 13 Packhorse rock lobster have a single national management area (PHC 1), but they are mainly found in Northern New Zealand. They are less abundant than red rock lobster but are much larger, often over 2 kg and they can weigh up to 15 kg. Packhorse numbers have increased significantly from very low abundance over the last 25 years. The stock assessment for packhorse in 2020 estimated that packhorse biomass in 2019 was about 510 tonnes, which is 79% of unfished stock levels in the early 1950s. The Minister approved an increase of 9 tonnes to the TACC in 2021 and set allowances for, customary Maori at 10 tonnes, recreational 15 tonnes, and other mortality 5 tonnes. This precautionary management approach is predicted to maintain the stock at current levels until the next assessment in 2024.

Fishing methods

- 14 Commercial fishing methods that have taken place in the proposed Te Hā o Tangaroa Protection Area and Te Mana o Tangaroa Protection Area over the last

Commented [A1]:

Comment from appellants

The stock status graphs for East Northland show a steady decline from at least the year 1900 to about the year 2000 when it dropped below 20% of B_0 (or virgin biomass). Since then it has increased slightly but remained relatively steady in the low twenties over the ten years leading up to the 2013 stock assessment

Commented [A2]:

Comment from appellants

The recreational scallop survey for Eastern Northland including Bay of Islands has been completed. Virtually no scallops remain in the Bay of Islands recreational harvest areas

Commented [A3]:

Comment from Te Uri o Hikihiki

When looking at the Mimiwhangata area using fisheries data, stocks are at very low levels indicating ecological function is at risk or locally extinct. Monitoring done between 2002 and 2011 supports a conclusion that Crayfish abundance is at very low levels. Discussed in evidence of Vince Kerr and Dr. Shears's.

Commented [A4]:

Comment from appellants

The advice to the Minister of Fisheries (Review of rock lobster sustainability measures for 2021/22- Final advice paper. Prepared by the National Rock Lobster Management Group. Fisheries New Zealand Information Paper 2021/01) states:

"Tangata whenua and commercial NRLMG members, and Fisheries New Zealand recommend that you [Minister] agree to Option 1.1, which is to retain the current settings for CRA 1. They consider that the previous year's reductions to the TAC, TACC and allowances were sufficient to halt the decline in biomass that was projected by the 2019 stock assessment, and note that the vulnerable and spawning biomass are now projected to increase by 2024 under the status quo according to the 2020 rapid assessment update.

"Recreational and environmental NRLMG members support Option 1.2, which is to decrease the TAC by 22.5 tonnes, decrease the TACC by 10 tonnes, decrease the recreational allowance by 3 tonnes, and decrease the other mortality allowance by 9.5 tonnes. Recreational and environmental members consider that further reductions to the TAC are required to increase the likelihood that the vulnerable biomass will increase."

11 years include bottom trawl fishing, Danish seining, bottom longlining, purse seining, setnetting, rock lobster potting, diving and handgathering. The main methods at issue in this appeal are described in Mr Clark’s brief of evidence ([656] – [889]) and in Appendix 1 of Mr Hore’s “Fisheries Activities” brief of evidence.

- 15 Non-commercial fishing methods that take place in the proposed Te Hā o Tangaroa Protection Area and Te Mana o Tangaroa Protection Area include but are not limited to scallop dredging, rod and line fishing, longlining (set line, Contiki or Kite) and hand gathering by diving for shellfish such as kina, pāua, scallops and rock lobster.

Effects of fishing activity

- 16 The fishing methods which make most contact with the seabed are dredging, bottom trawling and Danish seining. Bottom trawling and Danish seining almost exclusively do not occur over the significant ecological areas identified in the Northland Regional Plan maps, this can be seen in the mapping below (noting that mapping was focused on reefs and reef edges (to 100m depth) only).
- 17 Protected species can be impacted by fishing through incidental capture and interactions with fishing gear. This does not always result in mortality. Current information indicates that observed interactions in the areas under appeal are low however levels of observed fishing activity in the areas under appeal are also low.
- 18 Fisheries New Zealand has a range of work underway to avoid, remedy or mitigate adverse effects of fishing on the aquatic environment. This includes the joint FNZ and Department of Conservation (DOC) National Plan of Action to reduce incidental capture of seabirds, supported by the New Zealand seabird risk assessment, which is the main way that FNZ evaluates the impact of commercial fisheries on New Zealand seabirds. Other work of relevance is the National Plan of Action on the conservation and management of sharks.

Commented [A5]:
Comment from the appellants
This should be expressed as "largely avoid".

Commented [A6]:
Comment from appellants
Fishers often fish near reef edges as there are often more fish here. This means that they can damage outlier reefs and reef edges

Commented [A7]:
Comment from Te Uri o Hikihiki
To evaluate a statement like this we would have to know spatial distribution of catch, actual effect on stock levels in area of question as a start point. For a recovering species a 'low' catch can mean recovery is adversely affected.

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Comment from appellants
Include the word "some" or "a number of". Not all effects are being addressed.

Existing commercial fishing activity

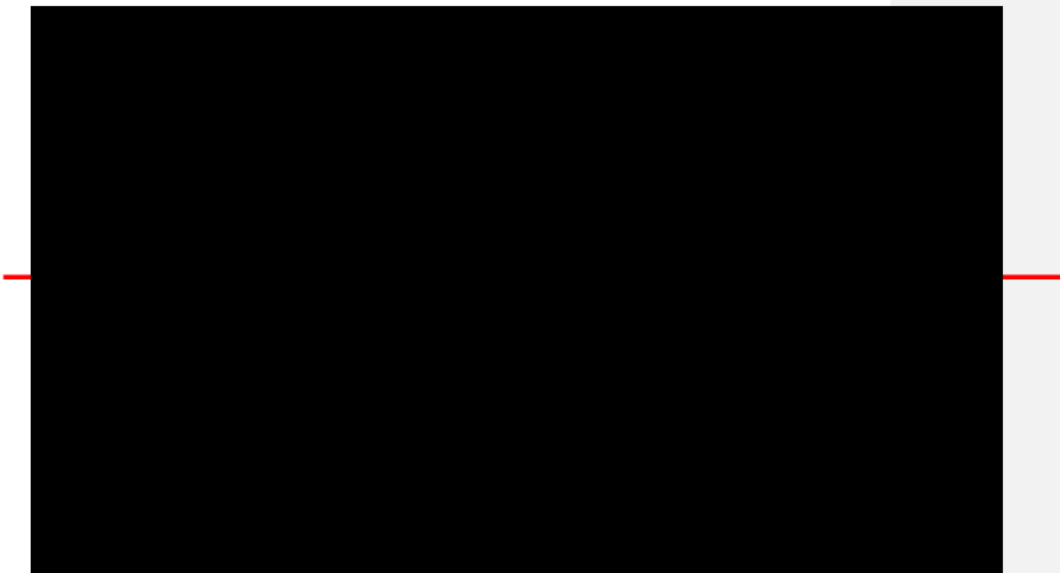
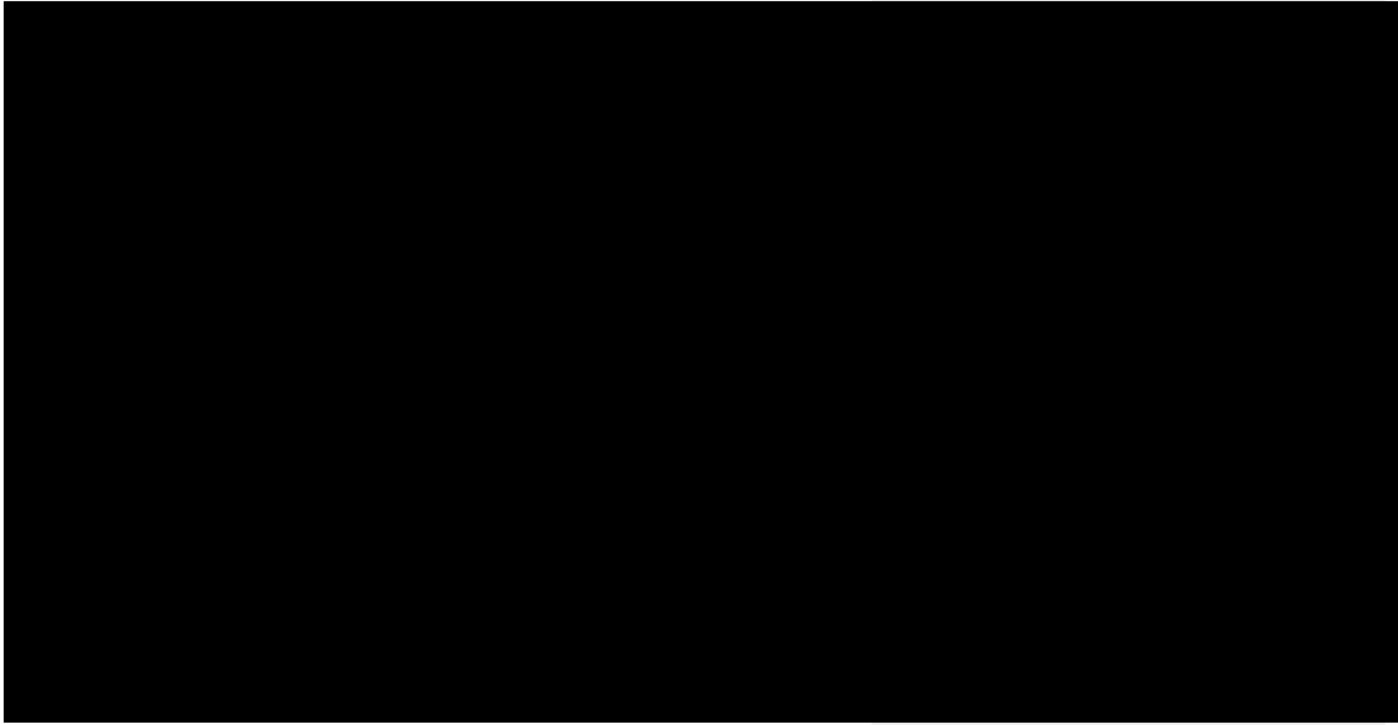
- 19 [REDACTED]

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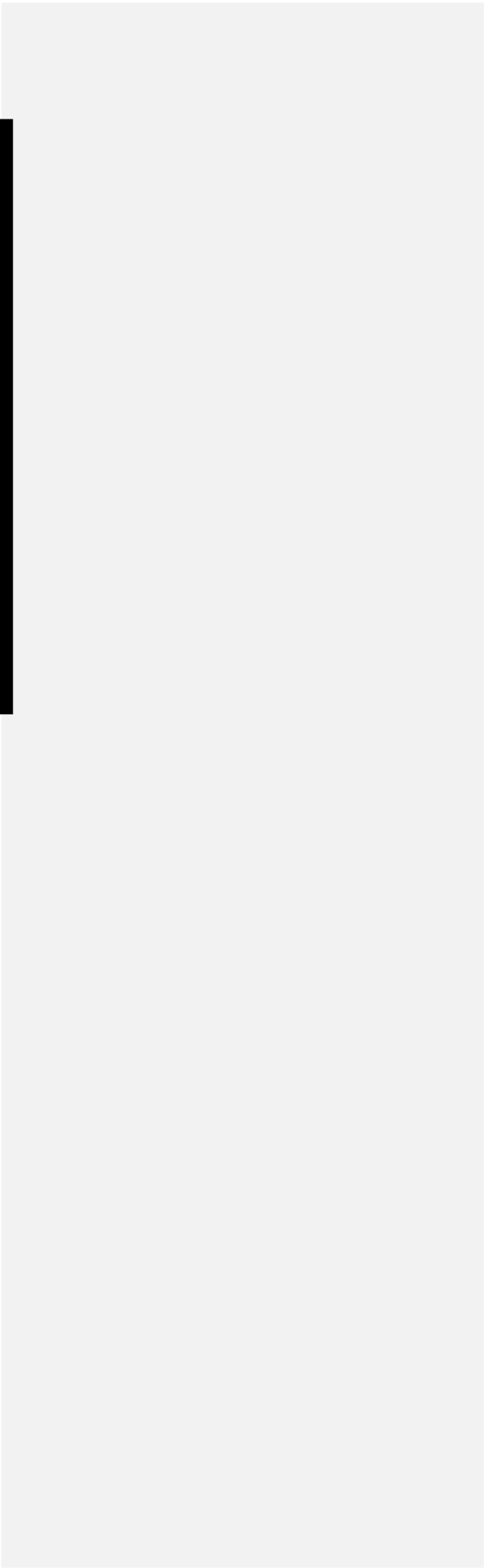
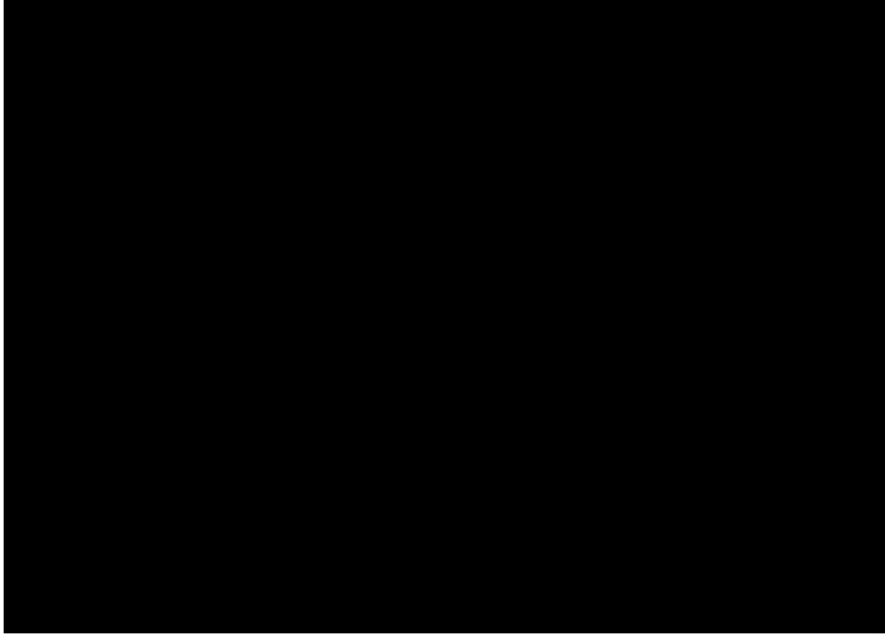
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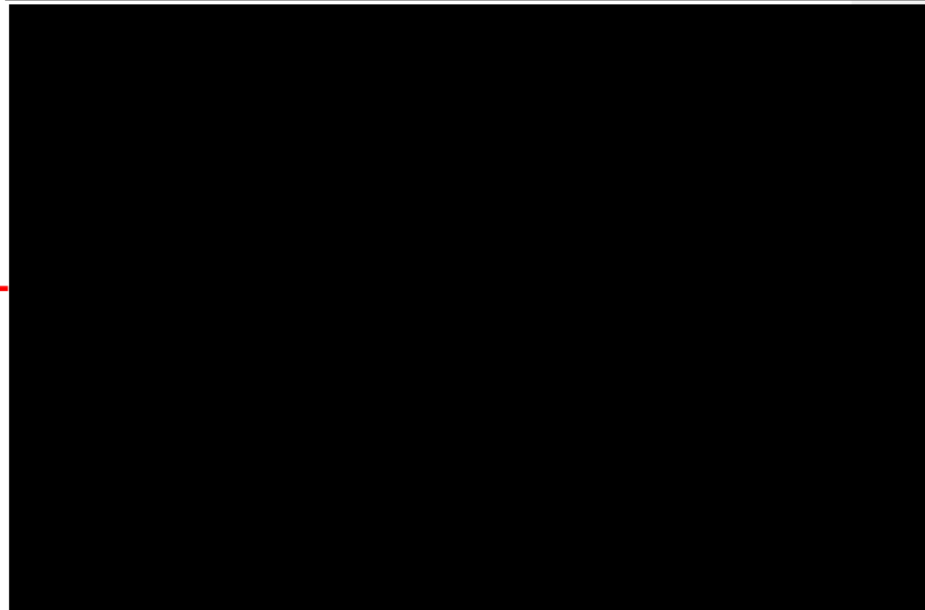
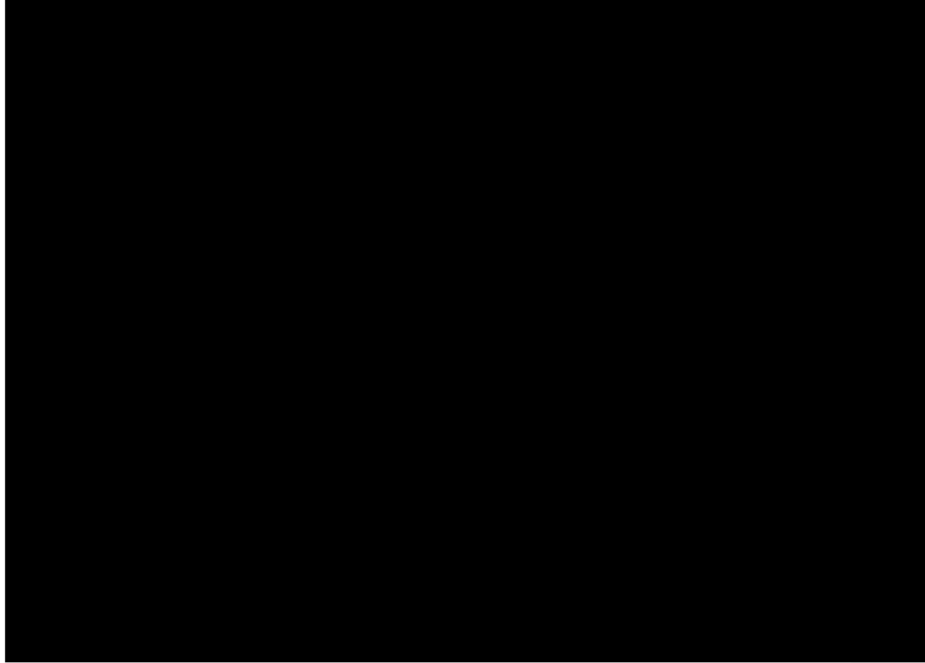
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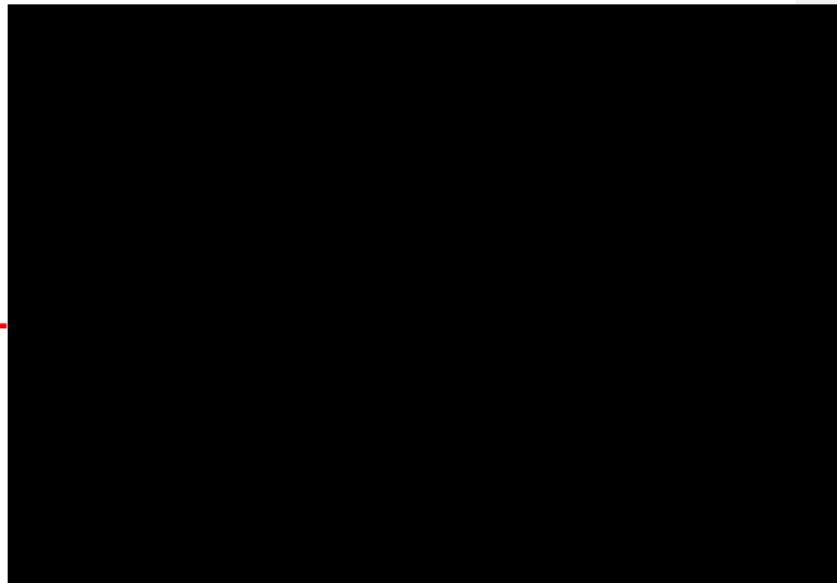
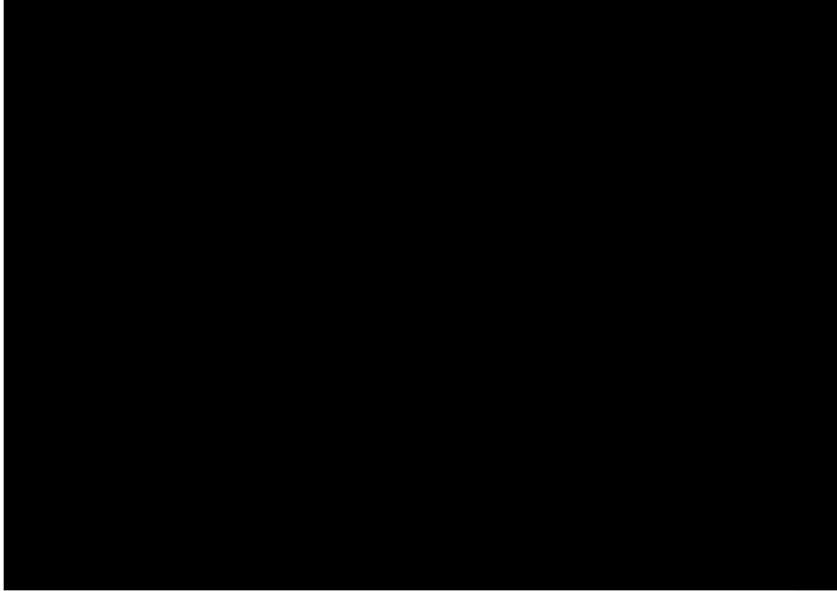
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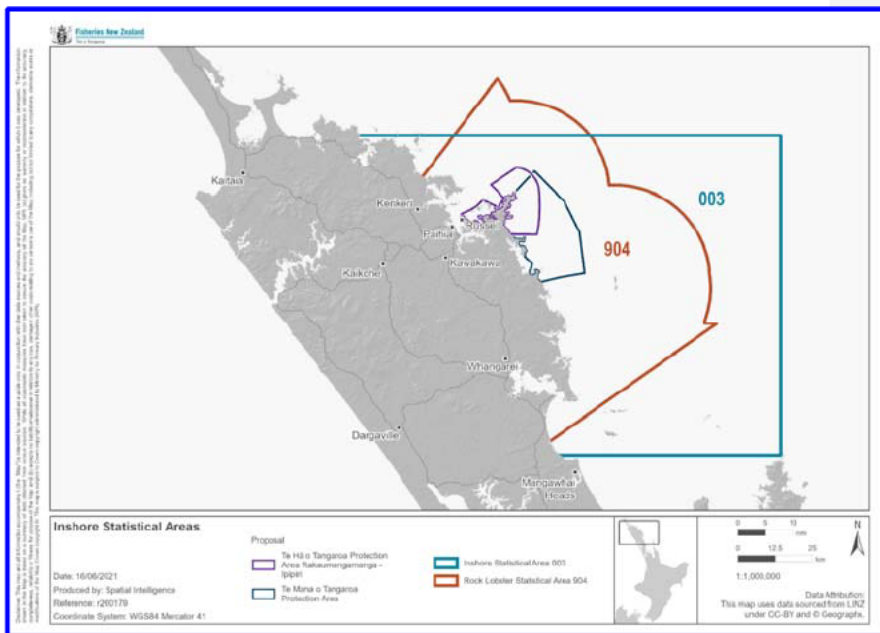


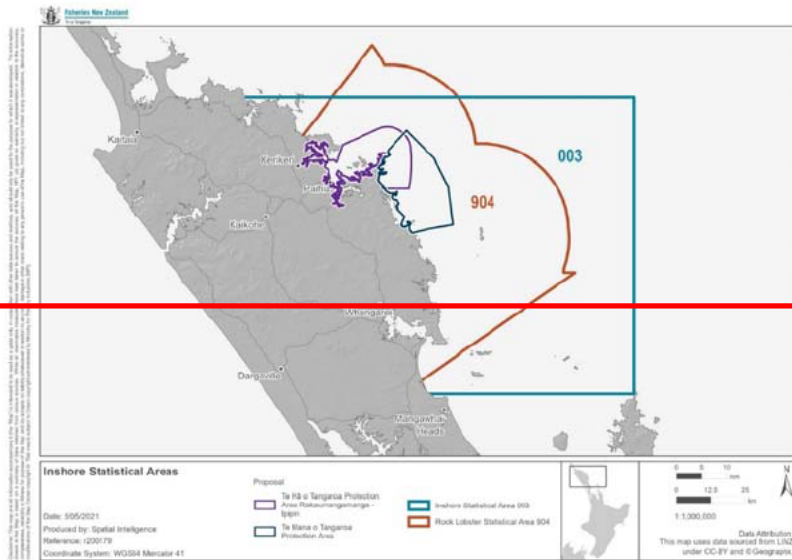


22 Rock Lobster potting

22.1 Until 2019, when new reporting requirements were introduced, fine-scale information on rock lobster commercial potting has not been available at the scale of the proposed Te Hā o Tangaroa Protection Area or Te Mana o Tangaroa Protection Area. The two proposed Protection Areas fall within

rock lobster statistical area 904 (see map below). Over the last 10 years (2010/11 to 2019/20) between 2 and 3 vessels have reported a catch greater than 1000kgs in statistical area 904. The catch in that period from statistical area 904 averaged 11,400 kgs per annum. In the last two fishing years, it is considered that potting has not occurred in the proposed Protection Areas for operational reasons.





Existing recreational fishing activity

- 23 “Recreational fishing” is the taking of fish, aquatic life, or seaweed by a person other than for the purpose of sale and in accordance with any amateur fishing regulations made under, and any other requirements imposed by, the Fisheries Act (for example, fishing pursuant to the Fisheries (Amateur Fishing) Regulations 2013) (see [62] of Mr Hore’s evidence regarding fisheries management).
- 24 Annual figures for tonnage of recreational catch by species/method are not available as recreational catch is not required to be reported, so this information is incomplete.
- 25 Northland is one of the most significant areas for recreational fishing in New Zealand. Recreational fishing effort (including charter vessels) is relatively high throughout the area from North Cape to Te Arai Point, including the Bay of Islands.
- 26 Based on the 2017/18 National Panel Survey of Marine Amateur fishers, rod and line is by far the most common recreational fishing method (>80% of fishing trips) used on Northland’s east coast. Other fishing methods used include, but are not limited to, long lining (set line, Contiki or Kite) and hand gathering by scuba diving, free diving and low tide harvest for shellfish such as kina, pāua, scallops, pipī and cockles and rock lobster. Freediving spearfishing is also common.

Commented [A13]:
Comment from appellants
 Virtually no scallop harvesting now as there are very few scallops left

- 27 The 2017/18 survey shows that snapper was the most sought after and most frequently caught finfish in the Bay of Islands and surrounding areas, followed by kahawai and kingfish. Other finfish of interest include john dory, red gurnard, tarakihi, trevally, and skipjack tuna.
- 28 The estimated annual recreational catch (tonnes) for commonly caught finfish in eastern Northland based on the 2017/18 National Panel Survey of Marine Amateur fishers is as set out below:

Species	North Cape to Cape Brett	Bay of Islands	Cape Brett to Te Arai Point
Snapper	206 t	133 t	229 t
Kahawai	71 t	46 t	63 t
Kingfish	51 t	33 t	26 t
Trevally	9 t	9 t	11 t

- 29 Non-fish commonly collected inside the Bay of Islands include mussels and oysters (although there are very few mussels now and those that remain are under a temporary closure (Te Puna mataitai)). Kina and pipi are commonly targeted species throughout the east coast. Tuatua, scallops, pāua, cockles, squid, crab and crayfish are also collected in these regions.
- 30 The estimated annual recreational catch (total number) for some common non-fish in eastern Northland based on the 2017/18 National Panel Survey of Marine Amateur fishers is as set out below:

Species	North Cape to Cape Brett	Bay of Islands	Cape Brett to Te Arai Point
Kina	45,379	16,385	63,991
Pipi	20,382	10,242	7,876
Mussel	12,494	36,131	-
Oysters	-	19,995	-

- 31 The inner Bay of Islands has relatively high levels of recreational fishing effort. Indicative levels of recreational fishing activity in the Bay of Islands are shown in the figure below:

Commented [A14]:
Comment from appellants
 Green-tipped mussels are not commonly harvested. The eastern Bay of Islands beds have gone and in the west there is a temporary closure on the collection of 3 mussel species

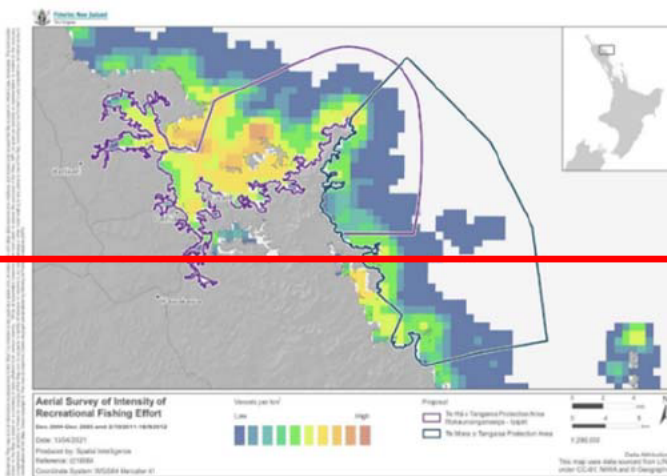
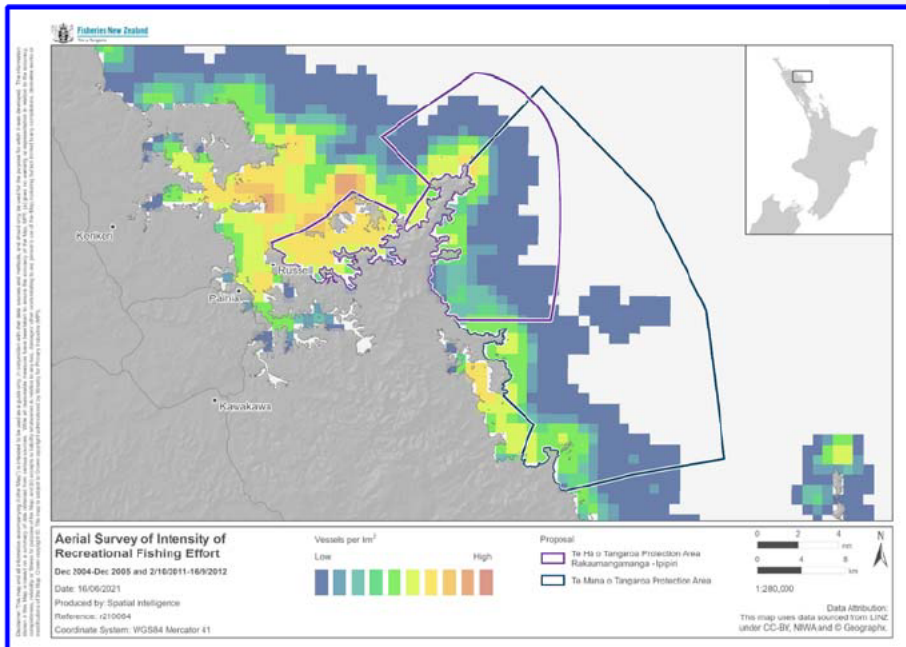


Figure 6: Intensity of recreational fishing effort in Bay of Islands and surrounds based on aerial surveys done in 2004/5 and 2011/12.³²

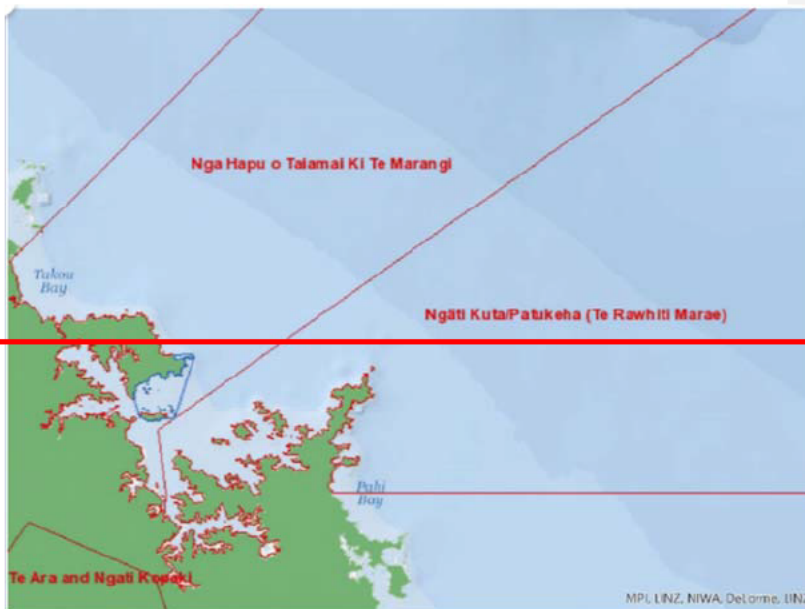
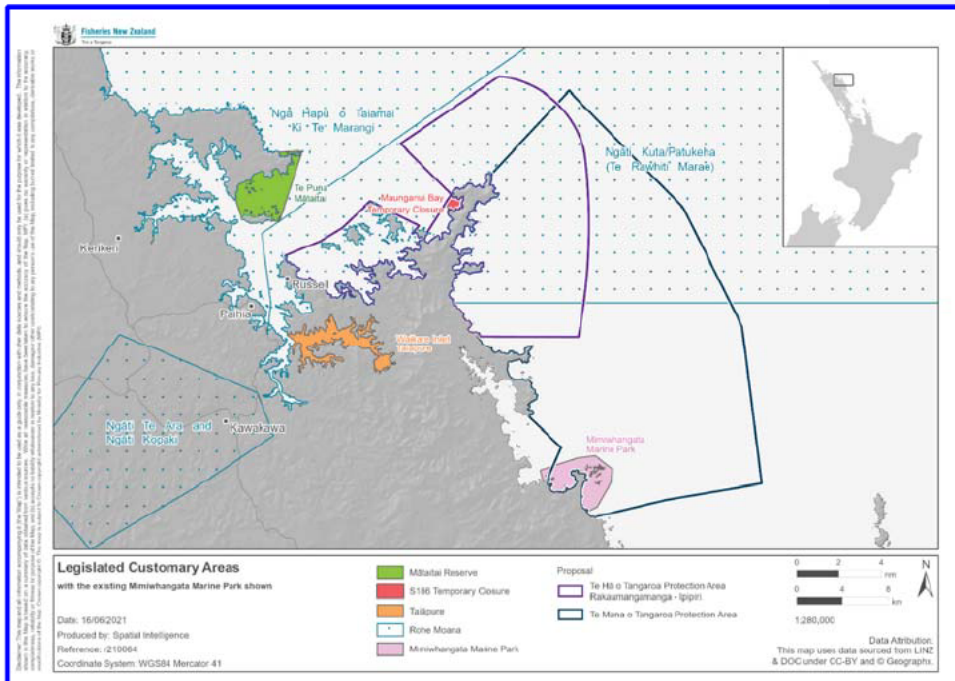
32 This indicates that the two proposed Area A areas, Maunganui-Oke Bay and Mimiwhangata) attract relatively low recreational fishing effort from vessels compared to surrounding areas. Heatmaps do not pick up shore-based fishing in

Commented [A15]:
Comment from Te Uri o Hikihiki
 Dispute that there are relatively low levels of recreational fishing.

these areas. Noting that Maunganui Bay is subject to a closure under s186A Fisheries Act 1996 and Mimiwhangata is a Marine Park.

Existing customary (non-commercial) fishing activity

- 33 “Customary food gathering” is defined in the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and means the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, being the taking of fish, aquatic life, or seaweed or managing of fisheries resources, for a purpose authorised by Tangata Kaitiaki/Tiaki, including koha, to the extent that such purpose is consistent with Tikanga Māori and is neither commercial in any way nor for pecuniary gain or trade.
- 34 It should be noted that not all fishing for customary purposes falls within the legal definition of “customary food gathering” as outlined below. Outside gazetted rohe moana, customary fishing can be authorised under the Fisheries (Amateur Fishing) Regulations 2013 for the purposes of hui or tangi, but this information is not required to be reported to MPI and is considered incomplete. As a practical matter, food gathering which does not require authorisation under the Kaimoana regulations represents the majority of non-commercial fishing undertaken by Māori. Customary food gathering within areas that are gazetted rohe moana is carried out in accordance with the Fisheries (Kaimoana Customary Fishing) Regulations 1998, and harvest information required to be provided to MPI. There ~~is one~~ ~~are two~~ gazetted rohe moana in the proposed protection areas (~~Ngā Hapū o Taiamai Ki Te Marangi~~ and Ngāti Kuta-Patukecha) and one nearby (Ngā Hapū o Taiamai Ki Te Marangi) as shown below. Customary food gathering within a gazetted rohe moana that falls within the parameters of the Amateur Fishing Regulations (i.e. within amateur daily bag limits and size limits) will not usually be undertaken through an authorisation under the Kaimoana Regulations.
- 35 Instead, the Amateur Fishing Regulations will be relied upon. As a practical matter, this represents the majority of non-commercial fishing undertaken by Māori in Northland.



- 36 Within the gazetted Ngā Hapū o Taimai Ki Te Marangi and Ngāti Kuta-Patukeha rohe moana areas, Tangata Kaitiaki have the role of providing permits for customary fishing. Permits are provided for when whānau need kaimoana for events such as tangi, celebrations, and when hosting manuhiri. The Ngā Hapū o Taimai Ki Te Marangi gazetted rohe moana is organised and implemented at the hapū or marae level by Te Komiti Kaitiaki and focusses on customary food gathering and fishing. This hapū rohe moana is also part of the wider rohe moana of Ngāpuhi at an iwi level. From 2014 to 2016, for the ~~one~~^{two} rohe moana in the Bay of Islands covered by the proposed protection areas, 202 ~~332~~ authorisations were issued under the Kaimoana Regulations for 15 species with the highest take authorised for kina (32,150~~46,675~~ individuals), mussels, (26,100~~36,094~~), scallops (9,740~~10,940~~) and oysters (7,756~~10,805~~).
- 37 From 2016 to 2018, 49 customary authorisations were issued for 12 species under the Amateur Regulations in areas of Northland covered by the proposed protection areas. The most take was issued for kina (11,100 individuals), mussels (2,100) and scallops (1,300).

Fisheries enforcement undertaken by the Ministry for Primary Industries (MPI)

- 38 The enforcement and administration of the Fisheries Act is undertaken by MPI Fishery Officers.
- 39 In the Upper North Island region, MPI employs seven Fishery Officers in Whangarei, and three in Kaitiāia to monitor commercial, recreational, and customary fishing activity. These staff are supported by Honorary Fishery Officers, who are required to undergo extensive training to hold and maintain their Fishery Officer warrants.
- 40 Fishery Officers conduct land-based patrols and waterborne patrols on three patrol vessels in the region. In addition, Fishery Officers work with partner government agencies such as New Zealand Customs, the Royal New Zealand Navy and the Royal New Zealand Airforce to provide extended maritime capability using larger vessels and surveillance flights.
- 41 To support monitoring of commercial fishing, new regulations were recently introduced to require all commercial fishers to report their catch and position electronically during fishing trips. Electronic position reporting allows for better enforcement of spatial fishing regulations. This is supported by the MPI maritime domain awareness tool, *Waka Haurapa*. This system monitors New Zealand registered commercial fishing vessels, positions and tracks in near real time and has built in alerts that notify MPI when vessels have strayed into closed areas.

Details of the Māori Fisheries Settlement

- 42 Fisheries is expressly referenced in Article II of the Treaty of Waitangi 1840.
- 43 After the signing of the Treaty of Waitangi, a series of laws were developed that impacted Māori control of fisheries.
- 44 To address overfishing, the quota management system (QMS) was introduced in a limited way under the Fisheries Act 1983 and in final form under the Fisheries Amendment Act 1986.
- 45 Māori discontent with the QMS led to requests for relief in the Waitangi Tribunal and the courts.
- 45.1 In 1987 the High Court provided interim relief and restrained further implementation of the QMS.
- 45.2 In 1988 the Waitangi Tribunal's Muriwhenua Report found that the QMS, in its then form, was: "in fundamental conflict with the Treaty's principles and terms ..."
- 45.3 In 1992 the Waitangi Tribunal's Ngāi Tahu Sea Fisheries Report found that "the [1986] Act, as it stands, constitutes a serious breach of the Treaty."
- 46 In 1989, an interim settlement between the Crown and Māori was given effect by the Māori Fisheries Act 1989.
- 46.1 The interim settlement created the Māori Fisheries Commission, which progressively received 10 percent of all fish species in the QMS and approximately \$10 million to hold and manage on behalf of all Māori. Where the Crown was unable to provide the agreed 10 percent of fish species in the QMS, Māori were provided the equivalent value in further cash.
- 47 In 1992 Māori fishing claims were settled with the signing of a Deed of Settlement. This was given effect through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The settlement involved:
- 47.1 providing funds for Māori to assist in buying a 50 percent stake in Sealord Products Limited (now Sealord Group Limited)
- 47.2 undertaking to provide Māori with 20 per cent of commercial fishing quota for all new species brought within the QMS; and
- 47.3 empowering the making of regulations recognising and providing for customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai).

Commented [A16]:

Counsel for BOIMP seeks that this section is deleted on the grounds that it is mostly law. Counsel for TOKM disagrees that it is mostly law and considers it is a factual chronology of the fisheries settlement history.

48 The full framework of deeds and legislation to give effect to the agreements between the Crown and Maori in the Fisheries Settlement involves:

48.1 the (now repealed) Maori Fisheries Act 1989.

48.2 the 1992 Fisheries Deed of Settlement.

48.3 the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This Act implemented the initial 1992 Deed of Settlement.

48.4 customary fisheries management, contained in Part 9 of the Fisheries Act 1996 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998 .

48.5 the Maori Fisheries Act 2004.

48.6 the Māori Commercial Aquaculture Claims Settlement Act 2004.

Appendix 1: Summary of commercial and recreational regulations that apply nationally and to the Northland region (including the proposed Protection Areas)

Type	Short description of regulation
Commercial regulation	
Species prohibition	Taking of spotted black groper, shortbill spearfish and sailfish prohibited
	Taking of tuatua prohibited
	Taking of pipi prohibited in quota management area PPI1B (East Northland)
	Taking of cockle prohibited in quota management area COC1B (East Northland)
Method prohibition	No person shall sell or possess for sale certain reef fish (Banded wrasse, Black angelfish, Butterfly perch, Giant boarfish, Green wrasse, Kelpfish (hiwihiwi), Long-finned boarfish, Marblefish, Notch-headed marblefish, Painted moki, Red moki, Red mullet (goatfish), Red pigfish, Rock cod, Sandager's wrasse, Scarlet wrasse, Silver drummer, Splendid perch, Toadstool groper)
	Trawling by vessels over 46 m long prohibited in territorial sea (12 nautical miles)
	Foreign-owned New Zealand fishing vessels used for tuna longline fishing must not fish in the territorial sea (12 nautical miles)
	Foreign-owned Skipjack tuna purse seiner must not fish in the territorial sea
Method restriction	Foreign-owned New Zealand fishing vessels that are squid jiggers must not fish in the territorial sea
	Restriction on taking kina other than by hand-gathering
	Restriction on the use of underwater breathing apparatus (scuba) – certain species/circumstances
	No take of snapper, trevally, or rig by means of any set net which has mesh of a size less than 125 mm
	Minimum set net mesh size for specified species (including kahawai, school shark, snapper and trevally)
	Trawl net with a mesh size of less than 125 mm in the cod end cannot be used (unless authorised)
Species restriction	Anchovy, pilchard, or saury may be taken by means of a net (not being a purse seine or lampara net) with no mesh of which is less than 25 mm.
	Snapper cannot be taken by any drag net with a mesh size of less than 125 mm.
Species restriction	The Precision Seafood Harvesting Modular Harvest System trawl net is authorised for use only when targeting hake and hoki, fishing in HAK1 and HOK1, using bottom trawl or midwater trawl methods and at a water depth greater than 250m.
	Size limits for female and male lobsters, no take of lobsters in prohibited state (i.e. berried females, soft-shell lobsters), Apertures required in rock lobster pots
Recreational regulation	
Species restriction	Daily limit for snapper for the Auckland (East) FMA (seven snapper)
	Minimum length for snapper
	Combined daily limit for specified finfish species is 20 (including individual species limit of 5 bluenose.
	Combined daily limit for hapuku/bass and kingfish is 5
	Daily limit for grey mullet is 30
	Daily limit for kingfish is 3
	Daily bag limit for kina is 50
Method restriction	Daily blue cod limit of 20. Pot mesh minimum size of 54mm. Minimum length of 30cm. Accumulation limit of 2 times the daily blue cod limit. Must be landed in a measurable state unless eaten on vessel.
Method restriction	Minimum net mesh size for specified finfish species (e.g. 125 mm for snapper)
Species prohibition	No take of scallops during closed season, 1 April to 31 August
Species and method restriction	Daily bag limit of 6 rock lobsters, size limits for female and male lobsters, no take of lobsters in prohibited state (i.e. berried females, soft-shell lobsters), certain loops or spears cannot be used to take rock lobster, daily pot limits (3 per individual, 6 two or more individuals), Apertures required in rock lobster pots.

Appendix 2: Map of existing fisheries regulations that apply nationally, to the Northland region, and to parts of the proposed Protection Areas

