
BEFORE THE ENVIRONMENT COURT
HELD AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE

ENV-2019-AKL-000117
ENV-2019-AKL-000127

IN THE MATTER OF the Resource Management Act 1991 (RMA)

AND IN THE MATTER OF AN APPEAL PURSUANT TO CLAUSE 14,
SCHEDULE 1 OF THE RMA IN
RELATION TO A DECISION ON THE
PROPOSED NORTHLAND REGIONAL
PLAN

BETWEEN BAY OF ISLANDS MARITIME PARK
INCORPORATED

Appellant

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

Appellant

AND NORTHLAND REGIONAL COUNCIL

Respondent

BRIEF OF EVIDENCE OF JACOB DYLAN HORE FOR THE MINISTER FOR
OCEANS AND FISHERIES (s274 party) REGARDING FISHERIES
MANAGEMENT

22 June ~~14 May~~ 2021

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KEY:

~~Red strikethrough~~; deletion from 14 May 2021 Evidence in Chief arising out of changes to the proposed protection areas.

Blue; addition to 14 May 2021 Evidence in Chief arising out of changes to the proposed protection areas.

Green; new text/minor correction or update from 14 May 2021 Evidence in Chief.

INTRODUCTION

1. My full name is Jacob Dylan Hore. I am employed at Fisheries New Zealand (**FNZ**) within the Ministry for Primary Industries (**MPI**) as the Manager for Inshore Fisheries in the northern region (**Inshore Fisheries – North**). The Minister for Oceans and Fisheries (**Minister**) and MPI are responsible for administering the Fisheries Act 1996 (**Fisheries Act**) and associated legislative instruments. I have been authorised by MPI to provide this brief of evidence.
2. I have provided two briefs of evidence in this proceeding. This brief addresses how the Fisheries Act regime functions and how fishing activities are currently managed (generally and in Northland). Ms McKinnon’s brief then considers the specific regime of regulation (as to method, location, limits) that applies to the areas and sub-areas identified by the appellants and s 274 parties for RMA regulation and considers the regulatory issues that arise.
3. My second brief considers the fisheries activities that currently occur in the proposed Protection Areas and indicates how they may be impacted by the measures proposed. My evidence has been split to make the fisheries activities brief a standalone document as it discusses commercially sensitive matters.

Qualifications and expertise

4. I have held the role of Manager Inshore Fisheries - North for over 2 years. In this role I am responsible for overseeing and coordinating the operational delivery of New Zealand’s fisheries management regime to support the sustainable use of New Zealand’s fishing resources for the Northern region. This includes monitoring of fisheries information and responding to identified fisheries issues, such as sustainability concerns for particular stocks, delivering annual planning and service delivery functions such as sustainability reviews for stocks and setting sustainable catch limits, as well as operationalising inshore fisheries policy and work programmes. The Northern region is

comprised of Fisheries Management Areas 1 and 9, running from Cape Runaway on the East Cape, north to North Cape and down the west coast of the North Island to North Taranaki at Nukuhakari Bay.¹

5. Prior to this, I was the Regional Fisheries Compliance Manager for the Western North Island where I had oversight of, and responsibility for, planning and delivery of regional fisheries monitoring, control and surveillance activities, including land and water-based operations. I have also held a front-line fisheries enforcement role as a Fishery Officer, based in Auckland, and conducted fisheries monitoring and data gathering when working as Fisheries Observer, where I was posted aboard commercial fishing vessels around New Zealand. Overall, I have worked at FNZ for 14 years.
6. Before joining FNZ, I studied Marine Science at university. I hold a Bachelor of Science, with majors in Marine Science and Environmental Science, from the University of Auckland.
7. Through my roles at FNZ I have gained a thorough understanding of fisheries management, the fisheries regulatory framework and fishing activity in the Northland region and therefore have direct knowledge of the matters I discuss in this brief of evidence.

Code of conduct

8. I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014, and I agree to comply with it. I confirm that the issues raised in this brief of evidence are within my area of expertise, except where I state otherwise or that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Material considered

9. In preparing my evidence, I have read and considered:
 - a) The appellants' clarified relief confirmed for Court from late December 2020;
 - b) The evidence of Ms Alicia McKinnon for the Minister;

¹ See Figure 1.

- c) The evidence of Mr Enrique Pardo for the Minister of Conservation and Mr Murray Brass for the Minister of Conservation and the Minister;
 - d) The evidence of Mr Peter Raeburn (planning), Dr Vicky Froude (natural character and ecology), Dr Nicholas Shears (ecology), Dr Mark Morrison (ecology), and Dr Timothy Denne (economics) for the appellants, Mr Matutaera Te Nana Clendon, Mr Robert Sydney Willoughby and Mr George Frederick Riley on behalf of themselves and Ngāti Kuta, Dr Mark Bellingham (planning and ecology) and Ms Diane Lucas (landscape) for Te Uri o Hikihiki, and Mr James Griffin (planning) and Mr Philip Ross (ecology) for the Northland Regional Council.
10. I have reviewed the revised relief which amends sub-area C and deletes the buffer to sub-area A of the mapped Te Hā o Tangaroa Protection Area. The changes to my evidence from that filed on 14 May shown in red and blue are in response. I have not considered the revised objectives, policies and rules for the Te Mana o Tangaroa Protection Area circulated on 21 June 2021, or the planning Joint Witness Statement and the planning Agreed Statement of Facts received today (22 June 2021).

OUTLINE SUMMARY

- 11. My evidence addresses “Topic 14” matters in relation to the Proposed Regional Plan for Northland. That is, the appellants’ and s 274 supporting parties’ proposals to introduce Protected Areas for the Bay of Islands and the coast between Cape Brett and Mimiwhangata regulating fishing activities under the RMA.
- 12. Specifically, in this first brief I consider the way the Fisheries Act regime functions and therefore how fishing activities are currently managed. My evidence includes an examination of the Fisheries Act regime and how this regime operates in the Bay of Islands and surrounding areas including: general fishing related zones; fisheries regulations; provision for customary management, Regional Iwi Fisheries Fora; and compliance and enforcement.

THE FISHERIES MANAGEMENT REGIME

- 13. This section examines the fisheries management regulatory regime at a national level and within the Northland Region and covers how the relevant Acts are administered.

Statutory Context

14. The Ministry for Primary Industries is the government agency responsible for administering the Fisheries Act.
15. The purpose of the Fisheries Act is set out in section 8 as being “to provide for the utilisation of fisheries resources while ensuring sustainability”. Section 8 defines both ‘ensuring sustainability’ and ‘utilisation’ as follows:
 - ensuring sustainability means –**
 - (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
 - (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment
 - utilisation** means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.
16. This purpose is to be read in conjunction with section 5 (application of international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (**Fisheries Settlement Act**)), section 9 (environmental principles) and section 10 (information principles) of the Fisheries Act.
17. Section 5 requires that all persons exercising or performing functions, duties, or powers conferred or imposed by or under the Fisheries Act shall act in a manner consistent with New Zealand’s international obligations relating to fishing and the provisions of the Fisheries Settlement Act.
18. Section 9 requires that all persons exercising or performing functions, duties or powers under the Fisheries Act shall take into account the following “environmental principles”:
 - (a) associated or dependent species should be maintained above a level that ensures their long-term viability:
 - (b) biological diversity of the aquatic environment should be maintained:
 - (c) habitat of particular significance for fisheries management should be protected.

19. Section 10 provides that all persons exercising or performing functions, duties or powers under the Fisheries Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following “information principles”:
- (a) decisions should be based on the best available information:
 - (b) decision makers should consider any uncertainty in the information available in any case:
 - (c) decision makers should be cautious when information is uncertain, unreliable, or inadequate:
 - (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 this Act.
20. The Fisheries Act is concerned with fishing and fisheries resources, which are defined as follows:²
- 20.1 “fishing” means the catching, taking, or harvesting of fish, aquatic life, or seaweed and includes: (a) any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and (b) any operation in support of or in preparation for any of these activities.
- 20.2 “fisheries resources” means any one or more stocks or species of fish, aquatic life or seaweed.
21. Thus, fisheries management by MPI seeks to balance the use of fisheries resources while maintaining their sustainability. This includes avoiding, remedying or mitigating adverse effects on the aquatic environment while also considering international and Treaty of Waitangi obligations.
22. The Fisheries Act defines the aquatic environment as the natural and biological resources comprising any aquatic ecosystem; and includes all aquatic life³ and the oceans, seas,

² Fisheries Act, section 2.

³ Fisheries Act section 2: aquatic life – (a) means any species of plant or animal life that, at any stage in its life history, must inhabit water, whether living or dead; and (b) includes seabirds (whether or not in the aquatic environment).

coastal areas, inter-tidal areas, estuaries, rivers, lakes, and other places where aquatic life exists.

23. Also important to MPI's fisheries management is the Fisheries Settlement Act. Māori customary non-commercial food gathering is included in the recognised fishing rights of tangata whenua for traditional and customary practices. This includes the traditional management of a fishery as well as customary non-commercial food gathering. These rights are guaranteed to tangata whenua under Te Tiriti o Waitangi and protected by law in the Fisheries Settlement Act.

Managing fishing and fisheries resources

24. There are many ways in which fishing, fisheries resources and the aquatic environment are expressly managed and controlled under the Fisheries Act, including:
- 24.1 sustainability measures and fisheries plans in Part 3;⁴ and
 - 24.2 the quota management system (QMS) in Part 4⁵ and the spatial areas by which the Fisheries Act generally enables management of a species or stock respectively; and
 - 24.3 Part 6 which governs the access to a fishery, including the need for all commercial fishers to hold a fishing permit unless specifically exempted;⁶ and
 - 24.4 Input controls on fishing in Part 16 (Miscellaneous provisions), such as restrictions on equipment and methods, size restrictions on fish, aquatic life or seaweed and restrictions on time periods and areas.
25. I am not an expert in the Resource Management Act 1991 (RMA), but I understand that the RMA works alongside the Fisheries Act and the two Acts cross reference each other:

⁴ Part 3 of the Fisheries Act includes the setting of a total allowable catch (TAC) under section 13, where by notice in the *Gazette*, the Minister shall set, in respect of a fish stock a TAC which shall continue to apply in each fishing year unless varied under section 13, or an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26 of the Fisheries Act.

⁵Part 4 of the Fisheries Act applies to every stock made subject to the QMS and includes section 20, the setting and variation of a total allowable commercial catch (TACC), and sections 24, 25 and 26, the setting, alteration and effect of alteration of Quota Management Areas (QMAs).

⁶ Part 6 of the Fisheries Act does not apply to recreational fishing or Māori customary non-commercial fishing.

- 25.1 The purpose of the RMA is to promote the sustainable management of natural and physical resources.⁷
- 25.2 When preparing a regional plan under the RMA a regional council shall have regard to regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiāpure, mahinga mātaītai, or other non-commercial Māori customary fishing).⁸
- 25.3 Under section 6 of the Fisheries Act (Application of Resource Management Act 1991) no provision in any regional plan or coastal permit is enforceable to the extent that it provides for *the allocation to 1 or more fishing sectors in preference to any other fishing sector of access to any fisheries resources in the coastal marine area* or the conferral on any fisher of a right to occupy any land or related part of the coastal marine area, if the right to occupy would exclude any other fisher from fishing in any part of the coastal marine area.
- 25.4 Before setting or varying any sustainability measure under the Fisheries Act the Minister must have regard to any provisions in any regional policy statement, regional plan or proposed regional plan under the RMA.⁹
26. Therefore, as I understand it, when viewed together, the Acts anticipate that:
- 26.1 management of fish stocks is for the Fisheries Act, but that also includes a role in species management given the environmental principles that are required to be taken into account;
- 26.2 a provision in an RMA plan or permit that gives access to fishing resources to one sector in preference to another is unenforceable and should be a decision for Fisheries Act management;¹⁰
- 26.3 when preparing its plan Northland Regional Council must, when considering the proposed provisions, have regard to how those matters are being regulated

⁷ RMA, section 5.

⁸ RMA, section 66(2)(c)(iii).

⁹ Fisheries Act, section 11(2)(a).

¹⁰ “sector” is defined in section 6(3) of the Fisheries Act as commercial fishers, recreational fishers, Maori non-commercial fishers, other fishers authorised under the Fisheries Act to take fish, aquatic life or seaweed.

currently under the Fisheries Act, including regulations¹¹ and any bylaws relating to customary fishing.¹²

27. In my view, these sections guide the detail of what may be included in a regional plan under the RMA¹³ to ensure that the two regimes can work effectively together. Ms McKinnon's evidence addresses the detail of the proposals and the issues that arise.

Fisheries management areas and quota management areas in Northland

28. The Northland Regional Council boundary encompasses two fisheries management areas (**FMA**s). FMA 1, includes the North East Coast of New Zealand and FMA 9 covers the North West (**Figure 1**). Having two FMA's within the Council's boundary means there are more complications for decision making in Northland than in many other regions.¹⁴
29. FMA boundaries usually determine the boundaries for quota management areas (**QMA**s) but in some instances QMA boundaries differ from FMA's to align with the biological characteristics of particular species and stocks.¹⁵ Within the Northland Region, 'non-standard' QMA's exist for some species of shellfish (cockles, pipi, scallops, rock lobster/crayfish, kina and surf clam/tuatua), sea cucumber and long-finned and short-finned freshwater eel. For example, the boundary for the kina stock located in the Northland Region (SUR 1A) extends from North Cape down to just south of Mangawhai.
30. For the large majority of stocks, the Minister has set a total allowable catch (**TAC**) and a total allowable commercial catch (**TACC**) for each respective QMA under the Fisheries Act. The TAC has allowances for Māori customary non-commercial fishing interests, recreational interests, as well as all other mortality caused by fishing such as illegal take.

¹¹ Fisheries (Kaimoana Customary Fishing) Regulations 1998 and Fisheries (South Island Customary Fishing) Regulations 1999.

¹² Part 9 of the Fisheries Act.

¹³ The Court of Appeal provided interpretation of section 30(2) RMA.

¹⁴ Contrast, for example, the Gisborne District Council unitary authority, whose coastal marine area falls wholly within FMA 2 (Central East).

¹⁵ Fisheries Act, section 19(2): "In defining the quota management area, the Minister shall, as far as practicable, maintain the same quota management areas for different species."

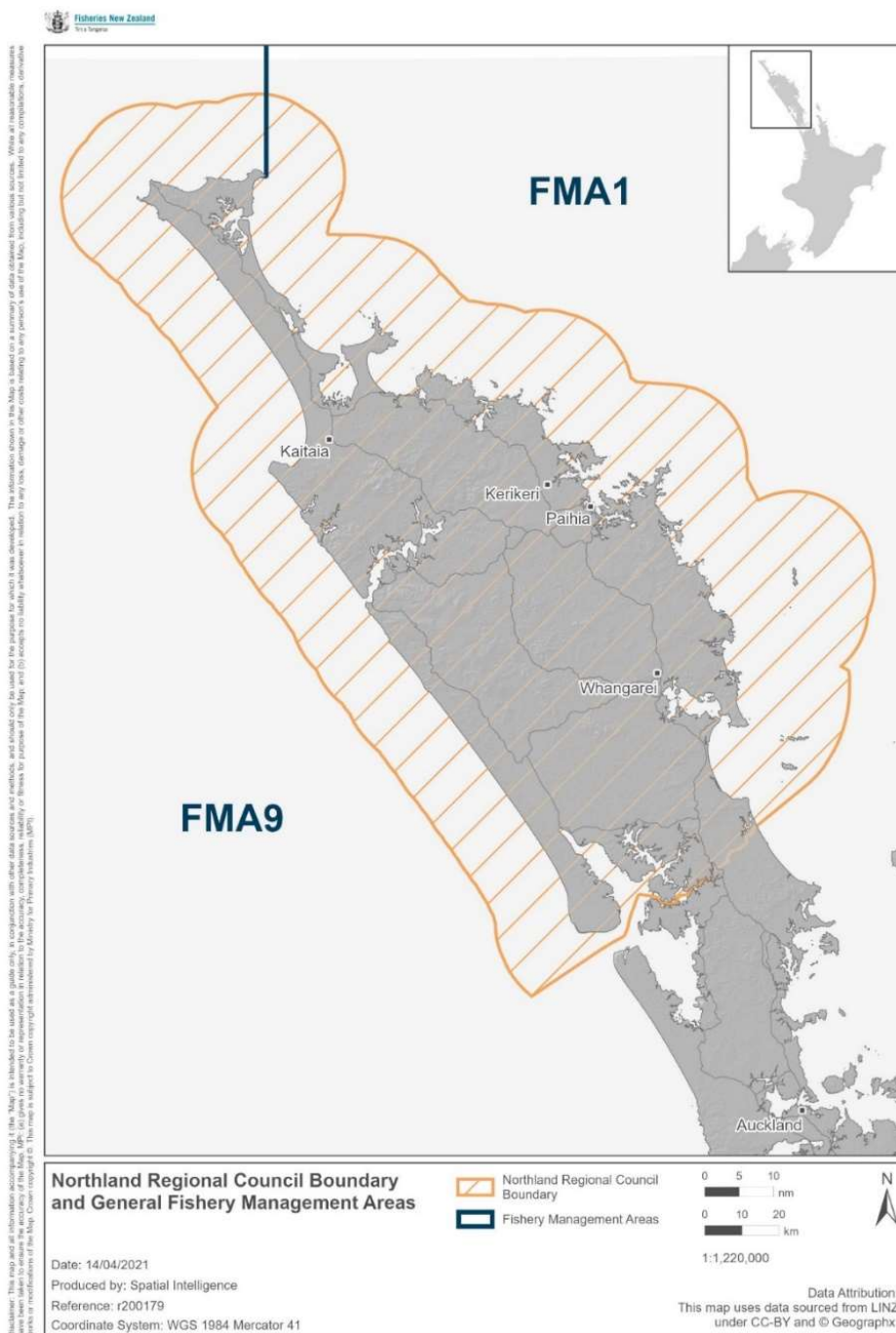


Figure 1: The Northland Regional Council Boundary in relation to Fisheries Management Areas FMA 1 and FMA 9.¹⁶

Managing stock sustainability – catch settings

- 31. Under the Fisheries Act, 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

¹⁶ Larger versions of my figures are attached to the back of my evidence.

moves the stock towards or above a level that can produce the maximum sustainable yield¹⁷¹⁸.

32. 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 FNZ and whose membership comprises FNZ officials, independent scientists, and representatives of fishing stakeholder sectors. These working groups evaluate available fishery data and research reports and determine scientifically based options for fish stock management.
33. A key role for the science working groups is to estimate the sustainable yield for stocks and to make predictions of how a stock is likely to respond to different levels of catch or changes to other management controls, such as method restrictions, bag limit changes or area closures. These estimates are summarised in highly detailed plenary reports that are published by FNZ in May and November each year. These reports and other information are used by fisheries management teams in FNZ, including my team, to advise the Minister on potential changes to TACs or other management controls, including regulatory measures.

Harvest Strategy Standard

34. Since 2008 FNZ has had in place a Harvest Strategy Standard¹⁹ - a policy statement that outlines the approach for managing stocks under the QMS. It provides guidance on the application of the Fisheries Act and establishes 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.
35. The Harvest Strategy Standard forms a core input to FNZ's advice to the Minister on the management of fisheries, particularly the setting of TACs under sections 13 and 14. The Standard is not, however, legally binding and the Minister is not obliged to choose TAC options based upon it.

¹⁷ Fisheries Act, section 13.

¹⁸ Fisheries Act, section 2(1): The maximum sustainable yield means the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock.

¹⁹ The Harvest Strategy Standard is available on the MPI website here: www.mpi.govt.nz/dmsdocument/728-Harvest-Strategy-Standard-for-New-Zealand-Fisheries.

36. Under the Harvest Strategy Standard, FNZ monitors and manages stocks using four performance measures:
- **A target level** – the level stock abundance should fluctuate around for the best balance between use and sustainability, while allowing for environmental variation.
 - **A soft limit** – if the stock falls below this level it is considered overfished or depleted and needs to be actively rebuilt, for example by reducing the TAC.
 - **A hard limit** – if the stock falls below this level it is considered to have collapsed and fishery may need to be closed to rebuild at the fastest possible rate.
 - **Overfishing threshold** – a rate of stock removal that shouldn't be exceeded as it will lead to stocks falling below the other performance measures.
37. Thus, while the focus of the Fisheries Act may be on utilisation of fish and other species, the outcome sought is sustainable management. Hence, the emphasis on avoiding overfishing in the performance measures above.

Stock specific examples

38. In the ecological evidence provided by Mr Ross, Mr Shears and Mr Morrison, the science and management of snapper, rock lobster and scallop stocks are addressed. I take the opportunity to provide updated science and management information for these stocks as follows.

Snapper

39. Snapper in the Bay of Islands is managed under the SNA 1 QMA which extends from North Cape down to East Cape and consists of three sub populations (Bay of Plenty, Hauraki Gulf and East Northland).
40. While snapper populations in SNA 1 declined in the 1980s they started to recover again in the 1990s and FNZ is now managing the fishery to rebuild the snapper population until it is around the target level of 40% of the original unfished stock level (the stock

level before modern fishing methods were introduced) in line with the Harvest Strategy Standard guidelines for low productivity²⁰ stocks like SNA 1.

41. The management of SNA 1 is informed by stock assessments which give an indication of the status of the stock in relation to the target. The last assessment for SNA 1 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.
42. The next stock assessment for SNA 1 is due to commence this year, and it will be informed by trawl surveys undertaken in 2020 and 2021 designed to better understand the abundance of juvenile snapper over time.
43. I note the evidence of Mr Ross in this regard and while it is likely that the abundance of adult snapper in East Northland has increased, we cannot make final statements on this until the stock assessment has been completed.

Scallops

44. Scallops in the Bay of Islands are managed under the SCA 1 QMA which is bounded by Reef Point (near Ahipara) on the west coast and Cape Rodney (near Leigh) on the east coast of the North Island.
45. A review of the SCA 1 stock 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.
46. FNZ is aware of the ban on recreational scallop dredging proposed by the New Zealand Sport Fishing Council. FNZ is actively exploring this for other regions in New Zealand, such as the Hauraki Gulf, and would be open to considering it in the Bay of Islands as proposed in the evidence of Mr Mark Morrison.

²⁰ Productivity is the function of the biology of the species and the environment in which it lives in. Species with high productivity are able to sustain higher rates of fishing mortality than species with lower productivity.

Rock lobster

47. Rock lobster or crayfish in the Bay of Islands are managed under the CRA 1 QMA which extends from Te Arai Point north around the coast to the North Head of Kaipara Harbour. 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.
48. Regular monitoring of the CRA 1 stock will be undertaken. An assessment update for CRA 1 is proposed for later in 2021, which will provide an opportunity to continue to monitor the effects of the 2020 decreases to catch settings, and to inform a review of catch settings for April 2022 if required.²¹

Managing the effects of fishing on the aquatic environment

49. The management of fisheries under the Fisheries Act is not limited to managing catch levels of certain species. The purpose of the Fisheries Act also requires that any adverse effects of fishing on the aquatic environment are avoided, remedied, or mitigated.
50. Fishing can affect aquatic life and their habitats through incidental capture of untargeted species, competition effects (disturbing the balance of ecosystems), habitat modification, and other indirect effects. These can differ depending on the method being used.
51. Mobile bottom-contact fishing methods such as bottom trawl, Danish seine and dredging impact the seafloor. The nature and extent of those impacts depends on a range of factors including seafloor type (e.g. mud, sand or rock), gear type, types of organisms encountered and the physical and oceanographic characteristics.
52. Mr Ross states that he is unaware of any monitoring programme in the New Zealand Coastal Marine Area on the ongoing effects of trawling and dredging.²² Since 2007/08 FNZ has conducted annual monitoring of the national trawl footprint for the New Zealand exclusive economic zone and territorial sea. More recently FNZ has established a comprehensive research programme to improve understanding of the distribution of benthic organisms, the impacts of bottom trawling on benthic habitats and organisms,

²¹ Kina are discussed in the evidence of Mr Pardo.

²² Mr Ross, Evidence in Chief at [52].

including identifying potential expansion of the fishing footprint, and the potential for recovery of benthic habitats and organisms impacted by fishing.

53. Numerous spatial restrictions are in place nationally and within the Northland region to manage the impacts of mobile bottom-contact fishing methods. These are discussed further below and in the brief of evidence of Ms McKinnon.
54. Protected species²³ can be impacted by fishing through incidental capture and interactions with fishing gear. Seabirds are particularly prone to being caught on hooks or tangled in fishing line, as well as being caught in trawl or set nets or colliding with trawl warps.
55. The joint FNZ and Department of Conservation National Plan of Action²⁴ to reduce the incidental capture of seabirds (NPOA-seabirds) sets out a vision that all New Zealanders work towards zero fishing-related seabird mortalities. This vision is supported by goals and objectives as well as regulations (described below) that prescribe mitigation requirements for commercial vessels. Whilst there are no regulatory requirements for recreational fishers, they are encouraged to use responsible seabird handling and mitigation techniques when fishing. The NPOA-seabirds implementation plan²⁵ sets out the tangible management actions each year that will work to reduce fishing-related seabird mortalities towards the zero target.
56. The NPOA-seabirds is also 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. The risk assessment uses the spatially explicit fisheries risk assessment (SEFRA) method.²⁶ For each seabird population, the seabird risk assessment combines an impact assessment of deaths from all commercial fisheries with a biological assessment of the associated effect on the population, taking into account population size and factors that influence the productivity of a population such as birth rate in a population. This approach is informed by observed seabird captures on commercial fishing vessels recorded by fisheries observers.²⁷

²³ As defined in section 2 of the Wildlife Act 1953 and section 2(1) of the Marine Mammals Protection Act 1978.

²⁴ <https://www.mpi.govt.nz/dmsdocument/40652-National-Plan-Of-Action-Seabirds-2020-Report>.

²⁵ <https://www.mpi.govt.nz/dmsdocument/40655-National-Plan-Of-Action-Seabirds-2020-Implementation-Plan>.

²⁶ The SEFRA method is described in chapter 3 of the Aquatic environment and biodiversity annual review 2018, available at <https://www.mpi.govt.nz/dmsdocument/34854-aquatic-environment-and-biodiversity-annual-review-aebur-2018-a-summary-of-environmental-interactions-between-the-seafood-sector-and-the-aquatic-environment>.

²⁷ Part 12 section 223 of the Fisheries Act establishes the observer programme.

57. The conservation and management of sharks in New Zealand is guided by a National Plan of Action²⁸ (also a joint plan by FNZ and the Department of Conservation), which includes an overall purpose of maintaining the biodiversity and the long-term viability of all New Zealand shark populations by recognising their role in marine ecosystems, ensuring that any utilisation of sharks is sustainable, and that New Zealand receives positive recognition internationally for its efforts in shark conservation and management.
58. Whilst not an exhaustive summary of the range of work FNZ has underway²⁹ to avoid, remedy or mitigate the adverse effects of fishing on the aquatic environment, the above indicates that fisheries management is not limited to managing the catch levels of certain species, contrary to the assertions of Mr Shears in his brief of evidence.³⁰

FISHING MANAGEMENT IN NORTHLAND

Commercial fishing controls in Northland

59. Controls on commercial fishing in Northland arise from national regulations set under Part 16 of the Fisheries Act.³¹ This includes the Fisheries (Commercial Fishing) Regulations 2001, which includes restrictions on equipment and methods (for example regulation 58D prohibits commercial drift netting in all New Zealand waters), size restrictions on fish, aquatic life and seaweed and spatial and temporal restrictions. In addition, the Fisheries (Seabird Mitigation Measures—Surface Longlines) Circular 2014, and the Fisheries (Seabird Mitigation Measures—Bottom Longlines) Circular 2018 specify the regulatory requirements for surface longline and bottom longline vessels respectively, to deploy seabird mitigation devices, including the use and specifications of streamer lines, line weighting requirements and night setting.
60. Alongside these national regulations which apply in Northland, specific commercial regulations apply to the region, such as the Fisheries (Auckland and Kermadec Areas

²⁸ <https://www.mpi.govt.nz/dmsdocument/1138-National-Plan-of-Action-for-the-Conservation-and-Management-of-Sharks-2013>.

²⁹ Other work programmes include the Hector's and Māui dolphin threat management plan, the New Zealand sea lion threat management plan, administration and coordination of the multi-stakeholder black petrel working group and a hoiho (yellow-eyed penguin) governance group overseeing the development of a threat management and recovery plan to name a few. The full range of FNZ's aquatic environment and biodiversity work is described in the Aquatic Environment and Biodiversity Annual Review available here: <https://www.mpi.govt.nz/science/fisheries-science-research/about-our-fisheries-research/aquatic-environment-and-biodiversity-annual-review-aecbar-2019-2020/>

³⁰ Mr Shears, Evidence in Chief at [5].

³¹ Fisheries Act, Part 16 "Miscellaneous provisions".

Commercial Fishing) Regulations 1986, and the Fisheries (Beach Cast Seaweed Area Prohibition) Notice 2002.

61. These regulations include broad controls over wide areas. For example, trawling by vessels larger than 46 metres is prohibited within the entire Northland Region. There are also more localised control measures for commercial fishing. For example, commercial fishers are prohibited from using trawl nets and Danish seines within Whangaruru Harbour³² and all commercial fishing is prohibited in the Mimiwhangata Peninsula area³³. The brief of evidence of Ms McKinnon brings this regulation together and applies it specifically to the areas proposed for marine spatial protection by the appellants.
62. More recently, new regulations were introduced to require all commercial fishers to report their catch and position electronically during fishing trips.³⁴ This information gives fisheries managers finer scale and more timely information about each fishery. Additionally, electronic position reporting allows for better enforcement of spatial fishing regulations. This is supported by the MPI maritime domain awareness tool, *Waka Haurapa*, which is used for monitoring New Zealand registered commercial fishing vessels, positions and tracks.

Recreational fishing controls in Northland

63. 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.
64. Recreational fishing is controlled under various local and national measures. The Fisheries (Amateur Fishing) Regulations 2013 contain a general set of regulations for all recreational fishing. Management measures include daily bag limits, minimum legal sizes, restrictions on certain fishing methods and seasonal and spatial closures.³⁵ For example, recreational drift netting is prohibited in all New Zealand waters³⁶ and a person must not take or possess trevally below the minimum legal size of 25 cm.

³² Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 10A(1)(q).

³³ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 23 (1)(b).

³⁴ Fisheries (Reporting) Regulations 2017 and Fisheries (Reporting) Amendment Regulations 2018.

³⁵ Fisheries (Amateur Fishing) Regulations 2013, regs 11 to 54.

³⁶ Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

65. Some recreational fishing controls are specific to the Northland region. For example, no recreational set netting or set lines³⁷ are allowed in the eastern Bay of Islands from 1 October to 30 April except nets used for targeting grey mullet or flatfish,³⁸ and specified species of finfish and shellfish must not be taken from the Mimiwhangata Peninsula area unless: using a single hook on an unweighted line, trolling, using a spear, hand-gathering or potting.³⁹ Again, this is discussed further in the brief of evidence of Ms McKinnon.
66. There are no catch reporting requirements for recreational fishers. National Panel Surveys are done every 5 to 6 years as part of a wider piece of research with the National Research Bureau (NRB) and the National Institute for Water and Atmospheric Research (NIWA). These surveys involve interviews to collect catch information from a panel of fishers over the course of a year. The information is then scaled up to estimate national catch using statistical methods.⁴⁰

The Fisheries Settlement

67. The Fisheries Settlement Act required the Minister to work with tangata whenua to develop policies to recognise Māori non-commercial use and management practices and recommend regulations implementing policies for customary food gathering.⁴¹ Accordingly, the Fisheries Act includes the extensive framework to provide for Māori non-commercial use and management practices.
68. The Fisheries (Kaimoana Customary Fishing) Regulations 1998 (**Kaimoana Regulations**) and the Fisheries (South Island Customary Fishing) Regulations 1999, made in consultation with tangata whenua, provide a legislative framework for ensuring that Māori customary non-commercial fishing takes place under the management of Tangata Kaitiaki/Tiaki or Tangata Tiaki/Kaitiaki (Kaitiaki/Tiaki) in defined customary fishing areas (**rohe moana**).⁴²

³⁷ 'Set line' fishing is fishing using a number of short lines carrying hooks which are attached to a longer main line. Set lines can include drop lines, long lines and Kontikis. Set lines do not include rod and reel or hand lines.

³⁸ Fisheries (Amateur Fishing) Regulations 2013, reg 75(2).

³⁹ Fisheries (Amateur Fishing) Regulations 2013, reg 69.

⁴⁰ Wynne-Jones, J.; Gray, A.; Heinemann, A.; Hill, L; Walton, L. (2019). National Panel Survey of Marine Recreational Fishers 2017–2018. New Zealand Fisheries Assessment Report 2019/24. 104 p.

⁴¹ Fisheries Settlement Act, section 10.

⁴² I note that the evidence of Ngāti Kuta discusses the Kaimoana Regulations developed for their rohe moana.

69. These policies and regulations became the cornerstones of the Fisheries Act cultural provisions: tangata whenua controlling customary food gathering in rohe moana,⁴³ controlling fishing altogether in traditional fishing grounds,⁴⁴ being able to recommend regulations over areas of special significance⁴⁵ and empowering temporary closures to recognise and provide for tangata whenua non-commercial use and management practices.⁴⁶

Zones formed by tangata whenua

Rohe Moana

70. The Kaimoana Regulations provide for tangata whenua to manage customary food gathering within the rohe moana for which they are tangata whenua.⁴⁷
71. Under these regulations, tangata whenua notify people (Tangata Kaitiaki/Tiaki) to manage Māori customary non-commercial fishing.⁴⁸ These notifications are confirmed by the Minister once a submission process has been undertaken to ensure there are no disputes as to who is tangata whenua of the area/rohe moana, who should be Tangata Kaitiaki/Tiaki, or the boundaries of the area/rohe moana concerned. Where the rohe moana of tangata whenua overlap, management of customary non-commercial fishing can be conducted by more than one hapū or iwi.
72. There are 10 gazetted rohe moana areas⁴⁹ in the Northland region where Tangata Kaitiaki/Tiaki are responsible for managing customary food gathering, including ~~one~~ ~~two~~ that ~~falls~~ ~~fall~~ within the proposed marine protection areas (**Figure 2**). Following a public notification process, these Tangata Kaitiaki/Tiaki have been confirmed as able to authorise the taking, for customary food gathering purposes, of any fish, aquatic life, or seaweed, in their notified rohe moana. There are also further rohe moana proposed or in dispute.

⁴³ Both for hui or tangi under regulation 50(1) of the Fisheries (Amateur Fishing) Regulations 2013, and for customary food gathering more generally under regulation 5(1) of the Fisheries (Kaimoana Customary Fishing) Regulations 1998.

⁴⁴ Fisheries (Kaimoana Customary Fishing) Regulations 1998, mātaihai reserves, regs 27-28.

⁴⁵ Fisheries Act, Taiapure-local fisheries, section 185.

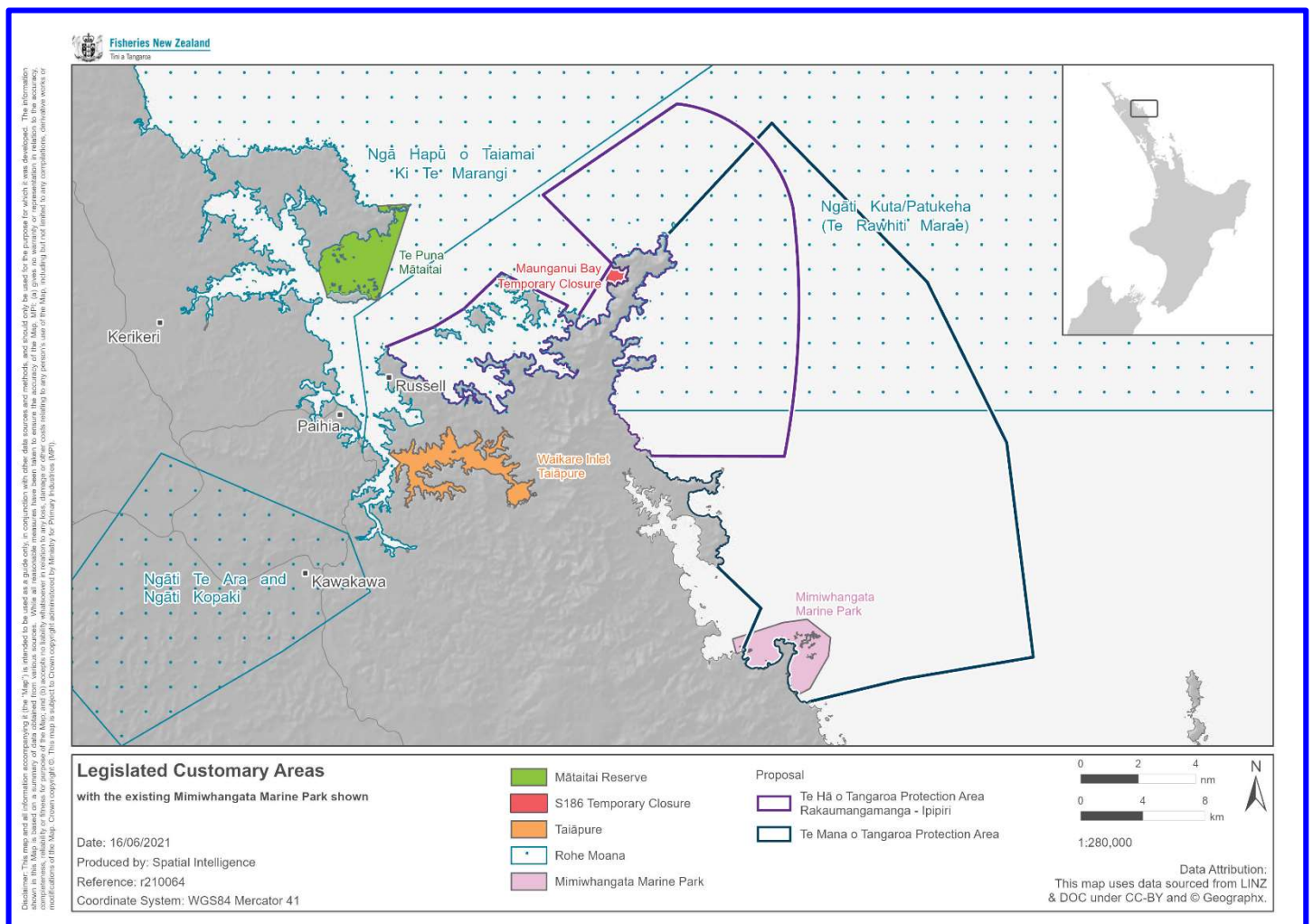
⁴⁶ Fisheries Act, section 186A, 186B.

⁴⁷ Fisheries (Kaimoana Customary Fishing) Regulations 1998, reg 5(1).

⁴⁸ Fisheries (Kaimoana Customary Fishing) Regulations 1998, reg 5(2).

⁴⁹ Kaipara Ki Te Tonga; Nga Hapu o Taimai Ki Te Marangi; Ngāti Kuta/Patukeha; Nāgti Takapari; Te Waiariki and Ngāti Koroa; Patuharakeke; Ngāti Te Ara and Ngāti Kopaki; Te Harakeke O Te Awa; Te Hikutu Hapū; Te Huahua and Te Uri O Hau.

- 73. The Tangata Kaitiaki/Tiaki may authorise both the taking and method, including requisite tikanga, and may do so regardless of other regulations under the Fisheries Act.
- 74. Provided the relevant hapū or iwi resolve any dispute over how the mana whenua/mana moana is exercised for a particular area, there are no prohibitions on overlapping rohe moana in which Tangata Kaitiaki/Tiaki may be appointed.
- 75. Where rohe moana haven't been established, Marae committees, rūnanga and Māori Trust Boards can notify MPI, and formally authorise any fishing for the purposes of hui or tangi,⁵⁰ or other customary purpose approved by the Director-General of MPI.⁵¹



⁵⁰ Fisheries (Amateur Fishing) Regulations 2013, reg 50(1).

⁵¹ Fisheries (Amateur Fishing) Regulations 2013, reg 52(1).

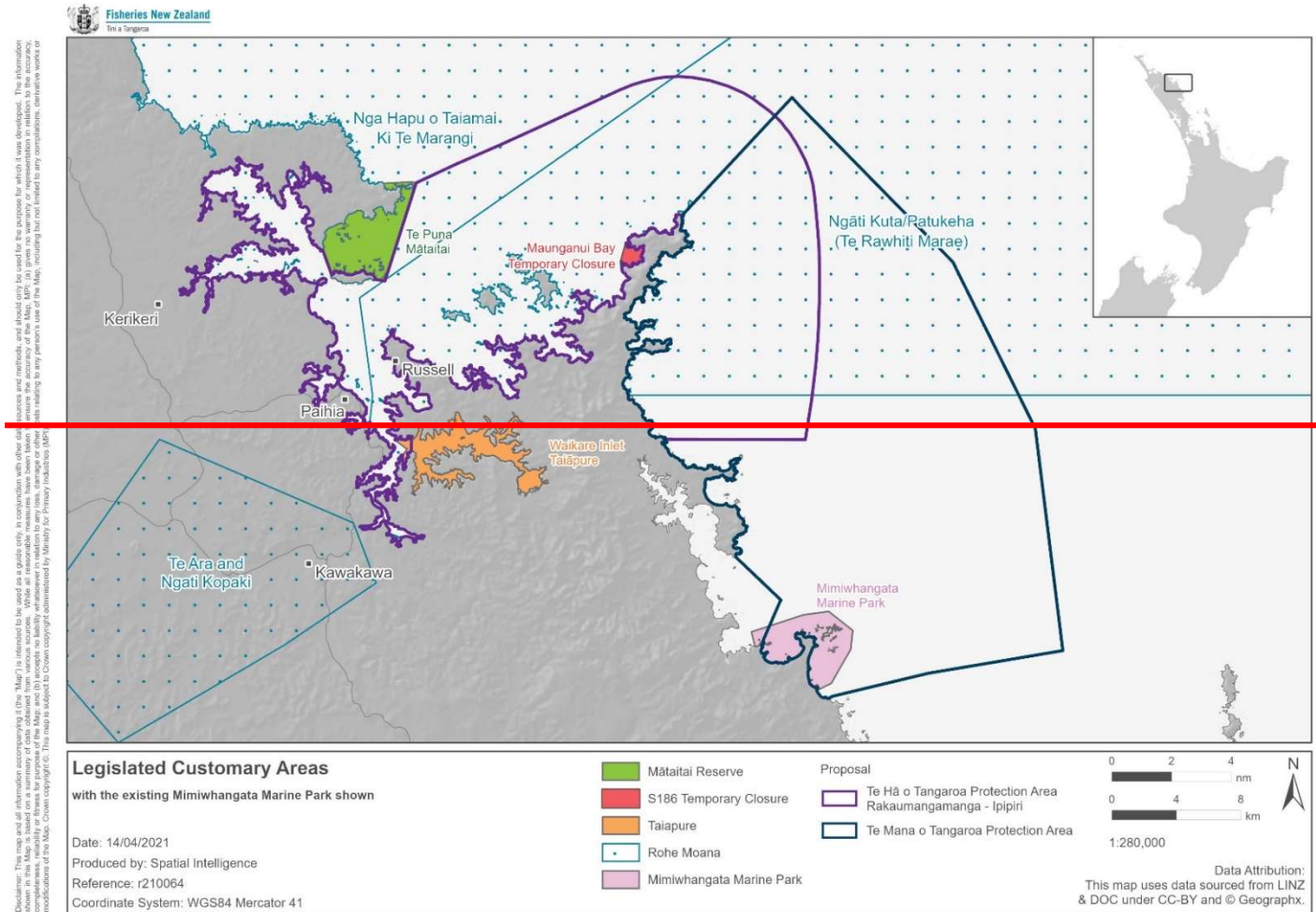


Figure 2: Customary areas in the vicinity of the proposed marine spatial protection measures.

Mātaítai Reserves

76. All confirmed Tangata Kaitiaki/Tiaki (and the tangata whenua they represent) may apply to establish mātaítai reserves within their rohe moana.⁵² Mātaítai reserves recognise a special relationship between applicant tangata whenua and identified traditional fishing grounds,⁵³ and prohibit all commercial fishing except at the express request of the appointed Tangata Kaitiaki/Tiaki.⁵⁴ The mātaítai reserve Tangata Kaitiaki/Tiaki also have the power to recommend bylaws further restricting or prohibiting the taking of fisheries resources from the reserves.
77. This mechanism provides an ability for Tangata Kaitiaki/Tiaki to not only take greater control over all forms of fishing, it enables groups to close all areas to fishing if they are concerned about significant areas and wish to put in place greater protection to address ecological pressures from fishing.
78. One mātaítai reserve has been established in the Northland Region: Te Puna Mātaítai⁵⁵ (**Figure 2**) consisting of a 19km² area in the northern Bay of Islands. In addition to the ban on commercial fishing within the Te Puna Mātaítai reserve, no green-lipped, blue or black mussels may be taken.

Taiāpure-local fisheries

79. Part 9 of the Fisheries Act provides for Taiāpure-local fisheries and customary fishing. One of the objects of Part 9 is to better provide for the recognition of rangatiratanga and the rights secured by Article II of the Treaty of Waitangi. This is in relation to fishing areas that have customarily been of special significance to any iwi or hapū as a source of food or for spiritual or cultural reasons. An example of managing fishing or fisheries resources under Part 9 is:

79.1 the Governor-General must make regulations recognising and providing for customary food gathering by Māori and the special relationship between tangata whenua and places of importance for customary food gathering⁵⁶ (although the

⁵² Fisheries (Kaimoana Customary Fishing) Regulations 1998, reg 18(1).

⁵³ Fisheries (Kaimoana Customary Fishing) Regulations 1998, reg 23(1).

⁵⁴ Fisheries (Kaimoana Customary Fishing) Regulations 1998, reg 27(2).

⁵⁵ Fisheries (Notification of Appointment of Additional Tangata Kaitiaki/Tiaki for Te Puna Mataítai Reserve) Notice 2013 (MPI 205).

⁵⁶ Fisheries Act, section 186(1).

Fisheries Act is permissive, section 10(c) of the Fisheries Settlement Act⁵⁷ requires the making of regulations for this purpose);

80. Taiāpure-local fisheries are governed by a committee of management which has the power to recommend regulations to the Minister for the conservation and management of the fish, aquatic life, or seaweed in the fishery.⁵⁸
81. Regulations made as a result of these recommendations may override other general or sustainability regulations under the Fisheries Act,⁵⁹ and a recommendation is required from the committee for any new regulation proposed to relate only to the taiāpure-local fishery.⁶⁰
82. In Northland one 18 km² area at Waikare Inlet in Northland was declared a taiāpure-local fishery on 15 January 1998. This is the only taiāpure-local fishery in Northland (**Figure 2**). I discuss the potential implications for taiāpure and mātaītai if the proposed Protected Areas are put in place under the RMA in my second brief.

Temporary closures

83. Under section 186A of the Fisheries Act the Minister may impose closures, restrictions, or prohibitions to fishing, but only if it will recognise and make provision for non-commercial use and management practices of tangata whenua by improving availability or size of a fisheries resource, or by recognising a customary fishing practice.
84. This provision of the Fisheries Act ensures that while temporary closures are possible to sustainably maintain fisheries resources (including maintaining the biological diversity of the aquatic environment), it is not at the cost of the customary activities that may be undertaken.
85. As discussed further in the brief of evidence of Ms McKinnon, in Northland, at Maunganui Bay, there is a 2-year temporary closure to the harvest of all fish, marine life

⁵⁷ Section 10 (c): The Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade.

⁵⁸ Fisheries Act, section 185(1).

⁵⁹ Fisheries Act, section 185(2).

⁶⁰ Fisheries Act, section 185(4).

and seaweed other than for kina (**Figure 2**). This closure is in place until October 2022 (and may be renewed further) and has been approved every two years since 2010.

Regional Iwi Fisheries Fora

86. Before making sustainability measures like changing catch limits or excluding fishing from particular areas, the Fisheries Act requires the Minister to provide for the input and participation of tangata whenua, to have regard to kaitiakitanga, and to consult with Māori who have an interest in the fish stocks. Iwi and MPI have agreed to provide for some of this participation through Regional Iwi Fisheries Fora.
87. Regional Iwi Fisheries Fora develop Forum Fisheries Plans that establish iwi objectives for the management of their fisheries, both commercial and Māori customary non-commercial, and may indicate how iwi choose to exercise kaitiakitanga.
88. There are two iwi Fora relevant to the Northland District - the Mid North Iwi Fisheries Forum and Te Hiku o Te Ika Iwi Fisheries Forum, which cover the upper North Island, north of Auckland. Fisheries New Zealand meets with these two iwi forums at least quarterly to discuss fisheries sustainability measures, enable input and participation into fisheries planning processes and to provide capacity building. The Hiku o Te Ika Iwi Fisheries Forum has developed an Iwi Fisheries Forum Plan that describes how the iwi in the Forum exercise kaitiakitanga⁶¹ over the fisheries of importance to them, and objectives for the management of their interest in fisheries. The Mid North Iwi Fisheries Forum is yet to develop an Iwi Fisheries Forum Plan.

Monitoring, Compliance and Enforcement

89. Part 12 of the Fisheries Act (specifically section 223) establishes the observer program for the purpose of collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement among other things. The introduction of digital technology including electronic catch and position reporting⁶² and onboard cameras in some fisheries⁶³ provides more timely reporting information and additional independent monitoring capability.

⁶¹ The Fisheries Act defines Kaitiakitanga to mean “the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori”, where tikanga Māori refers to Māori customary values and practice.

⁶² The Fisheries (Reporting) Regulations 2017 and the Fisheries (Reporting) Amendment Regulations 2018.

⁶³ The Fisheries (Electronic Monitoring on Vessels) Regulations 2017, which apply to vessels in a defined fishing area on the west coast of the North Island from 1 November 2019.

90. The enforcement and administration of the Fisheries Act is undertaken by Fishery Officers appointed under section 196 of the Fisheries Act. Fishery Officers are responsible for monitoring fishing activity, which includes commercial, recreational and customary fishing.
91. The MPI “Upper North Island region” covers all of Northland. In this area MPI employs seven Fishery Officers in Whangarei, and three in Kaitaia. These staff are supported by Honorary Fishery Officers, who are required to undergo extensive training to hold and maintain their Fishery Officer warrants.
92. Fishery Officers in the Upper North Island region conduct land-based patrols and waterborne patrols on three patrol vessels. 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.
93. I have given some thought to whether MPI Fishery Officers would be able to assist with enforcement of the proposed RMA Regional Plan fishery controls if asked.
94. In the Bay of Plenty the regional council is leading the implementation of the new measures, including compliance (reporting, casefile management and outcomes that align with a penalties framework) and education activities following the *Motiti* decision. This is likely to result in significant additional costs for the Council, including the development of new staff capabilities, assets and processes. At the request of the Bay of Plenty Regional Council assistance by MPI is actively being considered in relation to the new marine protected areas.
95. In the case of what is proposed in Northland, I consider that section 6 of the Fisheries Act may prevent this. As discussed above, section 6 of the Fisheries Act, says that a regional plan is not enforceable if it allocates access to fisheries resources that gives preference to one sector over another and the sectors are defined – commercial fishers, recreational fishers, Māori non-commercial customary fishers.
96. This issue does not arise in the case of Motiti and the Bay of Plenty Regional Plan because there the prohibition applies to all fishers and fishing activities (around three relatively small islands) so there is no “sector” preference in the provisions. But the provisions proposed for the Northland Protected Areas make distinctions by sector and by method

(and even species) that will differentiate sectors. For example, the proposed hapū management plan will allocate access to the buffer areas in Te Mana o Tangaroa; ~~and, in Sub-Area A buffer of proposed Te Hā o Tangaroa the commercial sector is banned except for hand fishing and hand gathering which appears to make concessions for recreational fishing;~~ the limitation on methods in Sub-Area C of proposed Te Hā o Tangaroa and Sub-Area ~~CB~~ of proposed Te Mana o Tangaroa focuses on commercial methods. This needs further investigation.

Conclusions

97. In summary, my evidence demonstrates there is an extensive regulatory regime in place in relation to the management of fisheries resources in the Northland region. The Fisheries Act, its purpose and environmental principles (and the other regulatory instruments discussed in this brief), provide a comprehensive framework to enable the sustainable utilisation of fisheries resources.
98. This brief of evidence should be read in conjunction with my second brief of evidence discussing current fishing activities in the proposed Protection Areas, and the evidence of Ms McKinnon on the regulatory overlap of the proposed protection measures with existing regulations under the Fisheries Act in the Protection Areas.