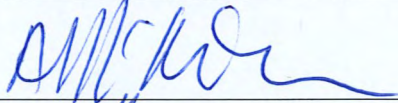
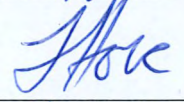
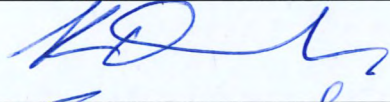
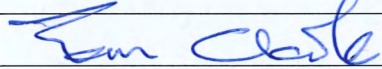


**Northland Regional Plan – Topic 14 – Marine Protected Areas
Fisheries Expert Conference on 11 June 2021 - Joint Witness Statement (JWS)
ENV-2019-AKL-000117**

Unless authorised otherwise by the Court, this JWS is confidential to the experts and the parties and their counsel

Witnesses who participated and signed their agreement to the content of this Joint Witness Statement (“JWS”) on 11 June 2021 are:

Name	Employed or engaged by	Signature
Alicia McKinnon	Minister for Oceans and Fisheries	
Jacob Hore	Minister for Oceans and Fisheries	
Jonathan Holdsworth	New Zealand Sport Fishing Council Incorporated	
Kim Drummond	Te Ohu Kai Moana Trustee Limited	
Thomas Clark	Fishing Industry Parties	

Facilitator: Environment Commissioner Jim Hodges

Recorder: Ms Ingrid Kuindersma

Environment Court Practice Note

When signing this JWS, the experts confirm that they have read the Environment Court Consolidated Practice Note 2014 and in particular Section 7 (Code of Conduct, Duty to the Court and Evidence of an expert witness) and Appendix 3 - Protocol for Expert Witness Conferences - and agree to be bound by it. They also confirm that they were familiar with all relevant information prior to the start of conferencing unless stated otherwise in this JWS.

Statement of Agreed Facts

The experts noted that the proposal has changed since the Agreed Statement of Facts was prepared. It is intended to amend the statement but the JWS was prepared to take account of the revised proposal to the extent possible. The experts note that there are some disagreements noted in the statement but they relate to the appellants views rather than the experts.

Definitions

The experts referred to in this JWS are the fisheries experts listed above unless stated otherwise.

Amateur fishing regulations - refer paragraph 23 of Agreed Statement of Facts

Te Ha o Tangaroa kia ora ai tāua – translates to “the breath of Tangaroa sustains us.” It speaks to the ongoing reciprocal living relationship between Tangaroa and Māori

BACKGROUND

1. A brief background is set out in the JWS Ecology.
2. When preparing this JWS Fisheries, the experts focused on the desire of the appellants to protect and restore areas from the Bay of Islands to Mimiwhangata (refer to the Map in Attachment 1 of the JWS Ecology¹) from the actual and potential adverse effects of fishing activities including impacts of fishing on marine biodiversity.
3. The experts use the same descriptions of Areas as those used in the JWS Ecology, namely:

The proposed Te Hā o Tangaroa Protection Area includes:

Area A	Maunganui Bay-Oke Bay Rāhui Tapu
Area B	Ipipiri benthic protection area

¹ The Map is the updated version provided by Bay of Islands Maritime Park Inc, Royal Forest and Bird Protection Society Inc, Ngāti Kuta Te Uri o Hīkīhiki immediately prior to conferencing on 8 June 2021.

Area C Ipipiri-Rakaumangamanga Protection Area

The proposed Te Mana o Tangaroa Protection Area includes:

Area A Mimiwhangata Rāhui Tapu
Mimiwhangata Rāhui Buffer Area
Area C Te Au o Morunga Protection Area

Note: While the ecology experts said there was no Area B, in the fisheries evidence what the ecology experts call Area C the experts call Area B. The experts advised that in updating their evidence they will refer to Area C in future.

CONFERENCE OUTCOMES

Impacts of the proposed marine protection measures on Māori customary non-commercial, recreational, and commercial (including customary) fishing activities

1. How will the proposed measures impact on the Māori Fisheries Settlement and Māori customary non-commercial fishing?
 - (a) Mr Drummond stated that the establishment of marine protected areas under the Resource Management Act 1991 by the Northland Regional Council would mean that the Crown/Iwi partnership in the management of fisheries resources would be undermined. Further, customary rights to utilise fisheries resources in accordance with tikanga would be denied. Supporting reasons are included in attachment 1.
 - (b) Other experts note that they do not have the same detailed knowledge to provide specific comment on this matter.
2. How will the proposed measures impact on recreational fishing activities?

The experts agree that:

- (a) People who are fishing under the amateur fishing regulations will not be able to fish in Areas A except for kina in Te Hā o Tangaroa Protection Area. The

effect of this will be to increase the fishing pressure on adjacent and wider areas. Both Areas A are attractive to fishers because they are sheltered and provide a range of fishing opportunities. This is particularly important for Charter Fishing Operators as they have a business to run in a wide range of weather conditions. Fishers in small boats use sheltered waters for safety reasons.

- (b) In Area B in Te Hā o Tangaroa Protection Area, the main effect on recreational fishing will be the prohibition on scallop dredging. However, a number of recreational fishers and organisations support this restriction. If this were to be implemented under the RMA there would be limited opportunity for this to be reviewed within the term of the Plan.
- (c) In Areas B and C of Te Hā o Tangaroa Protection Area, and in Area A buffer and Area B of Te Mana o Tangaroa Protection Area, it is proposed that longlining is only allowed with approved seabird mitigation devices. It is unclear if this applies to recreational fishing.

3. How will the proposed measures impact on commercial (including customary) fishing activities?

The experts agree:

- (a) Part of both Areas A Te Hā o Tangaroa Protection Area and Te Mana o Tangaroa Protection Area are already protected under the Fisheries Act and the experts are unaware of any commercial fishing in the remainder of Area A.
- (b) There will be no impact on commercial fishing within Area B of Te Hā o Tangaroa Protection Area because of existing fisheries controls. Refer to the evidence of Mr Clark and Ms McKinnon.
- (c) Within Area C of Te Hā o Tangaroa Protection Area, there will be impacts on bottom trawling, Danish seining and purse seining. The estimated effects on catch will need to be recalculated in light of the revised relief sought, but the actual effects on the catch will only be able to be assessed retrospectively. The impact will be either catch is forgone or displaced to elsewhere in the

Northland area. The impact will be particularly felt by operators of small vessels who cannot relocate their activity to other areas for safety reasons in poor weather.

- (d) The experts understand there is no proposal to prohibit the taking of rock lobster based on the evidence of Mr Reaburn.
 - (e) Within Area C of Te Mana o Tangaroa Protection Area, there will be impacts on bottom trawling, Danish seining and purse seining. The actual effects on the catch will only be able to be assessed retrospectively if the proposal goes ahead. The impact will be either catch will be forgone or displaced to elsewhere in the Northland area. The impact will be particularly felt by operators of small vessels who cannot relocate their activity to other areas for safety reasons in poor weather.
 - (f) Any significant reduction in access will have an associated cost to future fishing opportunities.
4. Will closure of some areas to fishing or the prohibition of specific methods increase the pressure of fishing in other parts of Northland and, if so, in what way and which areas might be affected?
- (a) This has been addressed above. The experts note that the existing fished areas are easily accessible and are the most desirable locations from safety and economic viewpoints. If they are no longer available, fishing would still occur on broadly similar habitats, meaning more fishing pressure on those habitats and greater safety and cost issues.

5. Are there issues with overlapping fisheries controls between the Resource Management Act and the Fisheries Act?

The experts agree that:

- (a) The Fisheries Act provides for a wide range of controls over existing fishing activities. The Bay of Islands is already highly regulated with provision to respond to changing circumstances.

- (b) There would be significant overlaps between existing fisheries restrictions and the proposed protection measures.
- (c) The key implications of these overlaps would be:
- Similar controls on the same activities under two different Acts broadly aimed at achieving the same outcomes.
 - An additional complex process for fishers to navigate with potentially significant costs involved and the potential to put some fishers out of business.
 - Potential fisher confusion (actual or claimed).
 - Conflict with Treaty relationships and obligations.
 - Duplication of monitoring and enforcement activities with increased costs and potential for confusion.

Managing the effects of fishing on the marine environment

6. How can/does the Fisheries Act regime implement an ecosystem-based fisheries management approach?
- (a) The experts address this in their evidence and wish to highlight the following.
- (b) The Fisheries Act 1996 provides for an ecosystem-based approach to fisheries management. Mr Drummond notes that this was developed following the signing of the Fisheries Deed of Settlement and an extensive consultation process undertaken by the fisheries task force on behalf of the Crown. He expands on this in his evidence (including paragraphs 119-122).
- (c) The experts agree that a range of measures is in place to protect:
- The sustainability of all aquatic life.
 - Habitats of significance, including a benthic protection area in Spirits Bay and the closure of the waters of the inner bays of east Northland

to bottom trawling and Danish seining in order to protect juvenile fish and their habitats.

- A range of species including seabirds, marine mammals, reptiles and some fish species.

7. What are the effects of different fishing methods on the marine environment in the areas proposed for protection (including the relevance of different fishing methods used in different locations)?
- (a) The experts note that the ecology experts provided their assessment of the effects of fishing activities on ecological values. The experts generally agree with the assessment in the JWS Ecology except as noted below.
- (b) The experts agree that alongside fishing, there are a number of other factors that impact the marine environment.
- (c) Scallop populations are highly variable and have declined in a number of locations in east Northland. The experts agree that there is no evidence to demonstrate that this has resulted primarily from fishing.
- (d) The experts acknowledge that there has been a die off of greenlipped mussels and note that significant numbers of empty shells have been observed in some of the bed areas. This suggests that it was not harvesting alone that caused the decline.
- (e) While acknowledging the importance of small pelagics being accessible on the sea surface, Mr Drummond and Mr Clark have reservations about attributing the decline in fish work ups to fishing alone.
8. To what extent is there evidence from a fisheries management perspective for a causative relationship / interaction between kina barrens and the presence of kelp forests?
- (a) The experts note the views expressed by the ecology experts and comment as follows.

- (b) They agree that fishing can be a contributing factor to the formation of kina barrens, as fishing can contribute to a reduction in predator numbers.
 - (c) The experts agree with the ecology experts that a number of factors influence where kina barrens occur and their extent. The experts consider that the causes of kina barrens are complex and not fully understood.
 - (d) The experts have difficulty with paragraph 22(f) of the ecology JWS: "When natural densities and size range of predators exist, significant areas of kina barrens do not occur". The experts do not consider that this conclusion can be made with certainty.
 - (e) With regard to paragraph 22(h) of the JWS Ecology, Mr Holdsworth's evidence indicates that while kina barrens may have increased in recent times, this has been at the same time as an increase in the biomass of snapper in east northland and of rock lobsters in the relevant fisheries reporting area from the Bay of Islands to Mimiwhangata.
 - (f) The experts agree that some of the points raised in paragraph 22 of the JWS Ecology do not reflect management observations by the fisheries experts.
9. To what extent will the proposed protection measures have an effect on marine biodiversity in the areas proposed for protection?
- (a) The experts note fishing is only one of a number of threats to biodiversity and identifying the effects of fishing regimes is problematic. Some of the other threats include: climate change, sedimentation, invasive species and pollution.
 - (b) The experts note that the evidence of witnesses for Ngati Kutā (Clendon, Willoughby and Riley) expressed concerns about the recent marine heatwave with sea temperatures of 25 degrees centigrade recorded in Ipipiri (Area B).
 - (c) Overall, the experts acknowledge there will be some effects of fishing on biodiversity but it is not possible to assign the extent of the effects of the proposed changes when there are other complex contributing factors.

10. What is the current status of stocks, such as snapper (SNA 1), spiny rock lobster (CRA 1), packhorse rock lobster (PHC 1)?
- (a) The basic information is included in the evidence of Mr Holdsworth and Mr Hore.
 - (b) The experts note that a re-build plan for snapper on the upper east coast of the North Island has been underway since 2013. Mr Holdsworth noted that abundance increased 33% from 1999-2013 in east northland.
11. How is this status of stock information used to inform fisheries management decision-making?
- (a) Information is used to determine whether the current stock levels and trends will ensure sustainable levels now and in the future.
 - (b) Further information is provided in the evidence of Mr Hore.
12. What other management tools are available to address the issues raised by the hāpu?
- (a) The experts agree that tools are available under the Fisheries Act to assist hāpu in achieving their fisheries management objectives.
 - (b) Further information is provided in the evidence of Mr Drummond (paragraphs 80-112) and Mr Hore (paragraphs 69-84)

Compliance, Enforcement and Monitoring

13. What is involved in the compliance and enforcement of fisheries controls made under the Fisheries Act?
- (a) This is set out in the evidence of Mr Hore in paragraphs 88-95. This is consistent with the other experts' understanding.

14. Will MPI Fishery Officers be able to assist with the enforcement of the proposed marine protection measures made under the Resource Management Act?
- (a) The experts note that it is critical to have an effective and reliable compliance and enforcement regime to support successful marine resource management.
 - (b) The experts consider this is a matter best addressed by others but they consider two matters that would need to be carefully considered would be authority to do so and any resourcing required.
15. How are commercial fishing activities monitored by MPI?
- (a) This is addressed in the evidence of Mr Hore (paragraphs 61 and 88) and Mr Clark (paragraphs 29-35)
 - (b) MPI has specialist business units which monitor fishing activity and catch under the Fisheries Act.
 - (c) An important recent improvement is a move to electronic reporting of fishing activity and catch as well as geospatial position reporting. There has also been recent roll out of camera monitoring of fishing activities in some areas.
 - (d) The experts agree that consideration of monitoring and enforcement at the time of rule preparation is critical.

Attachment 1

- Article II of Te Tiriti o Waitangi confirmed and guaranteed te tino Rangatira tanga within the area over which Iwi/hāpu held rangatiratanga at the time the Treaty guarantee was issued. All species of marine life are taonga to Māori.
- As is well known, the solemn undertakings in Article II of Te Tiriti o Waitangi were not honoured by the Crown, and in the case of fisheries led to the Fisheries Deed of Settlement (DOS) being signed in 1992. Under the DOS the Quota Management System was endorsed for the management of customary commercial fishing and the Crown agreed to develop and administer a regulatory framework to support the role of Tangata Kaitiaki/Tiaki in the management of customary non-commercial fishing.
- The Quota Management System (QMS) is, as its name implies, an integrated set of fisheries management measures established under the Fisheries Act 1996. These management measures, and the way they have evolved, not only provide for customary commercial and customary non-commercial take but also lay the foundation for Māori to exercise te tino rangatiratanga and, by that authority, kaitiakitanga.
- The QMS received explicit endorsement from Māori in the Deed of Settlement (DoS) that settled all fisheries claims in 1992 and the ongoing involvement in the evolution of the QMS by Māori, to protect and enhance Māori rights in fisheries guaranteed under Te Tiriti o Waitangi, was anticipated and explicitly provided for under the DoS. Māori did not anticipate or endorse the Resource Management Act 1991, or any other legislation providing for the management of aquatic life, for this purpose.
- In addition to receiving Settlement Quota (in accordance with both the Maori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Māori interests have also further invested in the Quota Management System and purchased non-Settlement Quota. The Crown cannot get rid of, supplant, or alter the QMS unless it does so with the same level of Māori support that was required to endorse the DoS in the first place. To take any of these three actions by effect of plans and regulations established under the Resource Management Act 1991 would comprise a fatal breach of the DoS by the Crown.

- The Fisheries Act 1996 was enacted four years after the signing of the Fisheries Deed of Settlement and following an extensive consultation process undertaken on behalf of the Crown by the Fisheries Taskforce. In this way both Parts II and III of the Act were developed and given effect. Where required, related environmental legislation was amended to enable integrated management of marine life. As a result, the purpose and principles of the Fisheries Act, which governs the management of all marine life in Aotearoa (with few exceptions), echo Te Hā o Tangaroa Kia Ora Ai Tāua ensuring that conservation is an integral part of sustainable use.
- In addition, and in accordance with the Fisheries Deed of Settlement, a regulatory framework to manage customary non-commercial fishing is provided under the Fisheries Act 1996, and the Act itself provides a range of tools that are available to kaitiaki appointed under those regulations. The Crown's role is to operate the process that results in the appointment of kaitiaki, and once appointed the responsibilities for authorising customary non-commercial fishing are fully devolved to kaitiaki.