In the Environment Court of New Zealand
at Auckland Registry

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

under: the Resource Management Act 1991

in the matter of: an appeal pursuant to clause 14(1) of the First Schedule to the Resource Management Act 1991

between: **Northland Regional Council**
Respondent

and: **Royal Forest and Bird Protection Society of New Zealand Incorporated**
Appellant

and: **Bay of Islands Maritime Park Incorporated**
Appellant

Statement of evidence of Thomas Clark on behalf of Fishing Industry Parties

Dated: ~~14 May~~ 22 June 2021

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STATEMENT OF EVIDNCE OF THOMAS CHARLES CLARK

INTRODUCTION

1 My full name is Thomas Charles Clark

2 I am currently the Manager Policy at Fisheries Inshore New Zealand, a post I have held for the last 6 years. Prior to that I held policy advisory roles at Seafood New Zealand and its predecessor the Seafood Industry Council. I have been engaged in seafood policy services since 2005. My role is not limited to policy alone and I am heavily involved in the management of fisheries and the aquatic environment, representing the commercial fishing industry in a wide range of committees, working groups and discussions on those matters. In my duties, I have close and frequent discussions and engagement with fishers and processors in the commercial fishing industry.

3 Fisheries Inshore New Zealand (FINZ) and the New Zealand Rock Lobster Industry Council (NZRLIC) (The Fishing Industry Parties) are Sector Representative Entities. They are non-profit organisations that were established by quota owners, ACE holders and fishers to work together to advance their interests in inshore finfish, pelagic and tuna fisheries (in the case of FINZ) and the rock lobster fishery (in the case of NZRLIC). Seafood New Zealand is the peak body for the fishing and aquaculture industry.

4 I hold a Masters degree in Geography and Economics from Auckland University and have previously worked in a range of government organisations, including the Treasury, the Rural Banking and Finance Corporation and the Government Superannuation Department, with senior executive posts in the last two organisations.

5 I am familiar with the matters to which these proceedings relate.

6 I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. As I am employed by Fisheries Inshore New Zealand, I acknowledge I am not independent; however, I have sought to comply with the Code of Conduct. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

7 My evidence will cover the following topics:

7.1 the operation of the quota management system;

7.2 the regulations which apply to regulate commercial fishing in the area to which this appeal relates;

7.3 the commercial fishing activity which occurs in the area to which this appeal relates; and

7.4 the effects that the proposed relief sought in this appeal will have on commercial fishing operations in Northland.

8 I have read the evidence lodged by the following parties:

8.1 Bay of Islands Maritime Park Inc (BOIMP);

8.2 The Royal Forest and Bird Protection Society (F&B);

8.3 Ngāti Kuta;

8.4 Te Uri o Hikihiki; and

8.5 Northland Regional Council.

THE AREAS UNDER APPEAL

9 For the sake of clarity throughout this report, I use the area naming adopted by the Ecology Joint Witness Statement ~~refer to the areas~~as in the following map ~~in the appeals as follows~~:

Te Hā o Tangaroa Protection Areas

~~9~~ The title applying to the extent of sea being~~defined in the following map:~~

10

~~11~~ ~~Sub-~~Area A -- Maunganui Bay – Oke Bay Rāhui Tapu - consists of ~~:~~

~~12~~ the ~~orange~~ red area ~~(labelled A in the map) above~~ being from Kariparipa Point in the north to the top of Oke Bay and includes all the bays from Maunganui Bay to Oke Bay~~; and~~

~~13~~11 ~~the associated buffer zone~~.

~~14~~12 ~~Sub-~~Area B - Ipipiri benthic protection area - consists of the area in ~~pink (labelled B)~~purple in the above map being the waters inside a line from Kohangaatara Point to the north western tips of Okahu Island, Rangiatea Island, Motuarohia Island to Tapeka Point. ~~It is sometimes referred to as the Ipiriri area.~~

~~15~~13 ~~Sub-~~Area C - Ipipiri – Rakaumangmanga Protection Area - consists of the area in ~~grey (labelled C)~~lavender in the above map ~~and includes both the inner Bay of Islands, the outer Bay of Islands and the area Cape Brett. The area I refer to as inner Bay of Island is the area inside a line from Cape Wiwiki to Red Head on the north east of Oahu Island and to the northern extremity of Cape Brett. The reason for this description will become apparent further in the evidence~~.

Te Mana o Tangaroa Protection Areas

~~16~~ This area stretches from Mimiwhangata in the south to Cape Brett in the north.

14

~~17 There have been some changes in the terminology to describe the sub-areas during these proceedings. I have used the terminology in the updated relief confirmed by Te Uri o Hikihiki.~~

~~18~~15 ~~Sub-~~Area A ~~refers to the~~ Mimiwhangata Rāa~~h~~ui Tapu and the buffer area ~~as~~ consists of the areas shown in blue and green respectively i~~o~~n the above map.

~~19~~16 ~~Sub-~~Area ~~B~~ C ~~refers to the~~ Te Au o Morunga Protection Area – refers to the area with diagonal lines in the above map~~as above~~.

Overlap of relief

17 There is an overlap of relief as shown in the map ~~below~~above. Since the relief is being advanced separately, I have treated each area separately and avoided trying to account for the overlap in any discussions or analyses of fisheries activity or impacts.

REGULATION OF COMMERCIAL FISHING

Fisheries Act 1996

~~20~~18 Fishing is regulated through the Fisheries Act 1996 (FA96). I deal with the FA96 in my day to day work and I am familiar with the key parts of the FA96 which relate to commercial fishing. In this section of my evidence, I will explain the key parts of the FA96 from a fisheries management and policy perspective, including a brief explanation of how they operate in practice, in my experience.

~~21~~19 New Zealand's fisheries management system is often discussed as being the Quota Management System (QMS). That parlance is incorrect in that the fisheries resources are in fact managed through various mechanisms and provisions of the FA96. The QMS only applies to the commercial fishing sector and is used to apply catch controls to the commercial sector.

~~21.1~~19.1 Part 1 of the FA96 provides preliminary provisions such as interpretations and applications of other legislation.

~~21.2~~19.2 Part 2 provides the purpose of the FA96, being to "provide for the utilisation of fisheries resources while ensuring sustainability" and the Environmental and Information Principles. Section 9 contains the Environmental Principles as follows:

9 Environmental principles

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, 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."

Where the biological diversity is defined to be *the variability among living organisms, including diversity within species, between species, and of ecosystems*

~~21.3~~19.3 Part 3 Sustainability Measures provides the Minister with the powers to make sustainability decisions in respect of fishstocks and the adverse effects of fishing, including on protected species. When making sustainability decisions, the Minister has to take into account, inter alia, —any effects of fishing on any stock and the aquatic environment. To understand the scope of his interest, the FA96 defines the aquatic environment as follows:

aquatic environment—

(a) means the natural and biological resources comprising any aquatic ecosystem; and

(b) includes all aquatic life and the oceans, seas, coastal areas, inter-tidal areas, estuaries, rivers, lakes, and other places where aquatic life exists

And

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).

~~21.4~~19.4 The Minister's sustainability measures may relate to:

(a) The catch limit (including a commercial catch limit) for any stock or, for any stock in the Quota Management System any total allowable catch (TAC) for that stock:

(c) the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken:

(d) the areas from which any fish, aquatic life, or seaweed of any stock may be taken:

(e) the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area:

(f) the fishing season for any stock, area, fishing method, or fishing vessels.

~~21.5~~19.5 Section 13 of the FA96 empowers the Minister to set the Total Allowable Catch (TAC) for any each quota management stock, the objective being to maintain the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks. Stocks that have an abundance in excess of the level required to produce the maximum sustainable yield, may have that abundance reduced over time by an increase to the annual allowable catch to achieve that level. Conversely, a stock that is below the abundance appropriate to achieve the maximum sustainable yield should have the annual allowable catch level reduced to allow the stock abundance to lift over time to the appropriate level.

~~21.6~~19.6 Section 15 empowers the Minister to take such decisions as are considered necessary to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species. The environmental principle to ensure the long term viability of an aquatic species places a bottom-line on the decision the Minister must take.

~~21.7~~19.7 In addition to powers to set allowable catch limits having regard to the effects of fishing on the aquatic environment, the FA96 gives the Minister powers to set measures to provide for sustainability and environmental protection. The Minister uses these powers regularly.

~~21.8~~19.8 Part 4 Quota Management System – this section of the FA96 contains provisions as to the operation of the Quota Management system (QMS). Quota are the in perpetuity right to a share of the Total Allowable Catch, as determined by the Minister. Part 4 contains provisions that are used to allocate quota on the introduction of any stocks into the QMS, the entitlement of persons to hold quota, the allocation of Annual Catch Entitlement to quota holders and the catch balancing mechanism.

~~21.9~~19.9 Each QMS stock has 100 million shares. Those shares may be traded as a commodity and are held by quota-holders. Having set the Total Allowable Catch for a stock, the Minister is then required to set allocations for each sector and also other sources of fishing related mortality. The Minister has a wide discretion is determining those amounts and case law has set out that there is no priority and the Minister must address each sector on its circumstances. The allocation of the TAC for the commercial sector is known as the Total Allowable Commercial Catch (TACC). This is then divided by 100 million being the number of quota shares in a stock to give an amount of the annual TACC per share. Each quota-holder is thus provided with a share of the TACC proportional to the number of shares they hold in a particular stock. This is known as their Annual Catch Entitlement (ACE). A quota-holder may choose to fish the ACE themselves, contract another fisher to catch it on their behalf, sell the ACE and allow another fisher to catch the ACE or choose not to sell the ACE, in which instance it will not generate revenue.

~~21.10~~19.10 A fisher is required to balance their catch of a particular stock with ACE for that stock. If the fisher is unable to obtain ACE to balance their catch, they are required to pay a deemed value on the catch in excess of their ACE holdings. Deemed values are set at a price to remove the profitability of fishing a stock in excess of ACE entitlements held by the fisher. The catch balancing mechanism provides strong incentives for individual fishers to balance their catch against ACE and strong disincentives to catch in excess of the ACE that cumulatively result in the overall catch generally not exceeding the TACC.

~~21.11~~19.11 The remaining 13 parts of the FA96 relate to access to the fishery, customary fishing, aquaculture,

quota as a financial instrument, monitoring and enforcement powers, penalties, cost recovery, administration of the FA96 and other allied fisheries management mechanisms including the ability to make regulations to direct activities and methods

~~22~~20 Sections 297 and 298 of the FA96 provide the regulation making powers and processes to give effect to decisions and controls.

~~23~~21 In respect of this set of proceedings, the substantive parts of the FA96 are Parts 2 providing the purpose and the environmental principles and Part 3 being the powers of the Minister to make sustainability decisions in respect of fishstocks and the wider aquatic environment.

~~24~~22 When making a TAC or sustainability decision on a stock, the Minister is required to have regard have regard to such social, cultural, and economic factors as he or she considers relevant, impacts on other stocks, (for example, those caught in conjunction with the target stock in review) and the impacts of the wider aquatic environment, (for example, protected species or the benthic environment). This environmental approach to fisheries management is a holistic approach, with the Minister being required to take into account all factors over which he has some responsibility.

~~25~~23 The primary purpose of the FA96 is to provide for the utilisation of fisheries resources while ensuring sustainability, where sustainability is defined in the FA96 to be maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment. The considerations are not limited solely to fish stocks. The Minister has and uses their powers under Part 3 of the Act to protect the aquatic environment.

~~26~~24 To provide some indication of the extent of the use of these Ministerial powers, in 2011, the Department of Conservation produced a report on coastal marine protection in the territorial sea.[1] That report indicates that, as at 31 August 2011, Fisheries Act regulations with provisions that restrict the use of bottom contacting fishing methods cover nearly 27,000 square kilometres. The areas protected include all estuaries, bays and harbours and a number of other

[1] Coastal marine habitats and marine protected areas in the New Zealand Territorial Sea: a broad scale gap analysis. Department of Conservation and Ministry of Fisheries. 2011 Wellington, New Zealand.

significant ecological areas such as Separation Point in Golden Bay, and the Poor Knights Islands. These regulations were initiated and enacted as sustainability measures under the FA96. Since that date, additional restrictions have been introduced. These include:

~~26.1~~24.1 the 22,100 square kilometres of territorial waters protected under Type 1 (no-take marine reserves) and Type 2 (prohibit bottom-contacting gear) marine protected areas initiated under other Crown processes;

~~26.2~~24.2 the 700 square kms managed under customary provisions of the FA96, most of which prohibit all commercial fishing activity; and

~~26.3~~24.3 other small areas initiated under special regulations.

~~27~~25 Many regulations imposed under the FA96 also apply to the mitigation of risk to marine mammals, such as Maui and Hector's dolphins, seabirds, marine reptiles, sharks and chondrichthyans.

Wildlife Act 1953 provisions

~~28~~26 Under section 63 of the Wildlife Act 1953, it is an offence to kill any absolutely protected or partially protected wildlife. However, section 63B provides a defence to that offence in respect of protected species caught accidentally or incidentally in the activity of commercial fishing if the capture is reported to MPI or DOC.

~~29~~27 That defence is also repeated in the Marine Mammal Protection Act 1978.

Monitoring and oversight of commercial fishing activity

~~30~~28 Commercial fishing activity is subject to a variety of monitoring and oversight programmes under fisheries legislation.

~~31~~29 At present, commercial vessels must report their spatial position to MPI every ten minutes at a minimum. The catch and spatial location of all fishing activity is reported electronically in near real time. Catches of protected species are reported daily. The costs of that finescale reporting amount to an estimated $5,000 cost per vessel per annum. This cost is borne by the operators.

~~32~~30 The appellants make reference to the need for observers and cameras on vessels fishing within the areas. I explain below the way that observers and cameras are deployed on fishing vessels through national regulatory processes.

~~33~~31 Under Part 12 of the FA96, the Chief Executive of the Ministry for Primary Industries (MPI) has the power to require a vessel to take an observer, including for the purpose of collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement.

~~34~~32 Fisheries New Zealand has a small number of observers who are deployed to observe fishing activity. They complete a total of around 10,000 days per annum. Their placement is prioritised by FNZ. Of the days, 2,500 days are commonly used to observe inshore fishing, where the primary function is to observe protected species interactions. Coverage in an area depends on the species under threat from commercial fishing. In the inshore sector, observers are prioritised:

~~34.1~~32.1 in the inshore trawl and setnet fleets to observe interactions with Maui and Hector's dolphins;

~~34.2~~32.2 in the northern trawl and bottom long line fleets to observe interactions with seabirds, primarily black petrels; and

~~34.3~~32.3 in the surface longline fleet to observe interactions with seabirds, both petrels and albatross.

~~35~~33 While there are many calls to increase the level of observers on inshore vessels, observer days currently cost around $1,500 per sea day; many vessels have no capacity to take an observer without impacting on maritime safety and, for a range of reasons, many observers are reluctant to take such assignments.

~~36~~34 Under section 297 of the FA96, the Chief Executive has the power to prescribe requirements or matters relating to the installation and maintenance of equipment (including electronic equipment) to observe fishing or transportation on vessels. This regulation is used to require fishers to take cameras. But their use is limited to the regulated provisions.

~~37~~35 The Government has previously announced its intention to have cameras on some 345 fishing vessels by 2024. Priority areas are those where observers are currently placed. With COVID problems, cost blow-outs and technical difficulties to

overcome, the roll-out has been slower than expected. The cost of placing a camera on a vessel is in excess of $20,000, the cost of scanning the footage is presently in the vicinity of $20,000 per vessel per annum. One vessel footage can amount to over 700GB of imagery per vessel per month. It is one thing to simply state that cameras should be used, but another thing to manage the regulatory burden of this type of measure on both industry and the regulator.

~~38~~36 The councils could not have access to the information collected by FNZ using its statutory powers or for reasons other than for which it was collected by the Crown. As I understand it, a regional council would not have the capability to obtain, scan and interpret camera imagery, and this would duplicate a task that will be done by FNZ.

Fisher compliance

~~39~~37 Programmes and systems exist to acquaint fishers with the rules and regulations that apply to where and how they fish. There are an estimated 8,000 regulated provisions, numerous other documents, and computer aids to assist fishers with their knowledge of fishing regulations.

~~40~~38 New information systems are coming on stream to assist fishers with awareness of the regulations that apply to the areas and the methods they fish. This is replacing the "word of mouth" systems that have operated historically. For example, the MPI GIS portal contains all the regulated provisions impacting on an area, industry and system providers are looking to have that information incorporated into the GIS location systems which form the basis of location reporting to MPI.

~~41~~39 In terms of monitoring for compliance objectives, the real time provision of detailed GPS locations enables MPI to be aware of current fishing activity in an area.

~~42~~40 Compliance and enforcement services are provided by the Ministry for Primary Industries. These are independent of FNZ's fisheries management functions. Compliance activity is wide-ranging but includes:

~~42.1~~40.1 Verification of fishing localities

~~42.2~~40.2 Verification of catch volumes and landings

~~42.3~~40.3 Dockside inspection of permits, safety systems

~~42.4~~40.4 Auditing of licenced fish processor activity

~~42.5~~40.5 On shore and at sea inspections and surveillance, and

~~42.6~~40.6 Catch comparisons between fishers.

~~43~~41 Not only has the range of compliance activities increased in recent year but the number of tools available to the regulator has also increased, for example, cameras, electronic position reporting and electronic activity reporting. The performance level of compliance has been improving progressively in recent years with over 90% of all fishers inspected found to be voluntarily compliant with the regulatory framework.

~~44~~42 If fishers do not comply with the regulations discussed above, they face enforcement action and prosecution by FNZ. Potential punishment ranges from fines of between $5,000 for administrative offences to $250,000 for breaches of sustainability measures and up to $500,000 for foreign vessel licencing breaches, forfeiture of vessels, and even imprisonment. The courts have discretion to set the fines depending on the seriousness of the offending and the frequency of offending. Forfeiture of the vessel, catch and fishing gear automatically applies where a fisher is convicted of a crime with a maximum fine exceeding $10,000. Fishers may apply to the court for relief from the effects of forfeiture.

~~45~~43 This enforcement and compliance activity applies to fishers throughout the country, including in the Bay of Islands and Mimiwhangata areas that have been identified in this appeal process.

Protected species risk mitigation plans

~~46~~44 In 2017, the industry committed to the development of vessel specific Protected Species Risk Mitigation Plans (PSRMPs) for all inshore vessels. These plans specify the mitigation measures a vessel will use when fishing. The measures include the regulated measures and the measures used voluntarily in addition to regulated measures or used voluntarily where no regulated measures exist.

~~47~~45 Liaison Officers, employed by the Department of Conservation, work with fishers to prepare vessel plans, review capture events and amend the mitigation plans as appropriate. The programme costs in the order of $600k per annum, financed in part by the commercial fishing industry and the Department of Conservation.

4846 At present, over 90% of inshore vessels have a PSRMP. All vessels operating in the areas under appeal have PSRMPs.

4947 As well as containing mitigation measures, the PSRMPs have capture triggers which require a fisher to contact their Liaison Officer to discuss the capture event and how the level of mitigation might be improved.

REGULATIONS AND CONTROLS ALREADY IN PLACE IN THE AREAS SUBJECT TO THIS APPEAL

5048 There are many regulatory controls which apply to commercial fishing in the Bay of Islands, Mimiwhangata, and surrounding areas. These controls are imposed primarily under the Fisheries Act provisions and related regulations.

5149 I understand that the existing regulations will also be discussed by witnesses for the Minister for Oceans and Fisheries. I have focused below on the key regulations that are relevant for commercial fishing but anticipate that the Minister's witnesses will more comprehensively cover the regulations in place, including those relevant to recreational fishing and customary fishing.

Regulations and controls that apply to all areas in the appeal

5250 The Fisheries (Commercial Fishing) Regulations 2001 contain a number of provisions which apply to all commercial fishing in New Zealand. Inter alia, the more significant provisions relevant to these proceedings are:

52.150.1 Restrictions on the use of trawlers in excess of 46m in length

52.250.2 Restrictions on the configuration of any trawl nets including a minimum codend mesh size of at least 100mm, unless otherwise authorised (this exemption provision was introduced to allow for the use of the nets developed by the Precision Harvesting initiative).

52.350.3 Drift netting is entirely prohibited (it is banned throughout the country, under the Driftnet Prohibition Act 1991 and Fisheries (Commercial Fishing) Regulations 2001, reg 58D).

52.450.4 Prohibition on the use of wire traces in any form of longlining.

~~52.5~~50.5 Minimum length and minimum net mesh size are specified for a number of finfish species.

~~52.6~~50.6 Prohibition of shark finning, that is the removal of fins and the discarding of the trunk and requires trunks must be landed with fins.

~~52.7~~50.7 Specification for the size, soak times and setting of setnets.

~~53~~51 In addition to these nationwide regulations, more specific regulations exist for each fishery region. Commercial fishing in the appeal areas is subject to the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986. These tend to be location specific and are discussed below in each of the appeal areas.

~~54~~52 All bottom longlining (BLL) in New Zealand waters is subject to the fisher operating seabird mitigation in accordance with the Fisheries (Seabird Mitigation Measures – Bottom Longlines) Circular 2020 (*BLL Circular*).[2] Mandatory mitigation measures for bottom longline vessels were first introduced in 2008. Although there have been some minor changes since this time (including one made in 2020), the specifications of the BLL Circular have remained essentially unchanged since 2008. In summary, the BLL Circular requires all fishers utilising the method of bottom longlining to:

~~54.1~~52.1 Deploy a streamer (tori) line for the entirety of all sets. The streamer line must be configured in accordance with the specifications prescribed in the BLL Circular;

~~54.2~~52.2 Set lines at night or weight lines in accordance with the specifications prescribed in the BLL Circular; and

~~54.3~~52.3 Restrict the discharge of fish waste during setting, and only discharge fish waste during hauling from the opposite side of the vessel to the side on which the hauling station is located.

~~55~~53 All surface longlining is subject to fisher operating seabird mitigation in accordance with the Fisheries (Seabird Mitigation

[2] Fisheries (Seabird Mitigation Measures – Bottom Longlines) Circular 2020 (Notice No. MPI 1174).

Measures – Bottom Longlines) Circular 2019 (*SLL Circular*).[3] Mandatory mitigation measures for surface longline vessels were first introduced in 2008. Although there have been some minor changes since this time, the specifications of the SLL Circular have remained essentially unchanged since 2008. In summary, the SLL Circular requires all fishers utilising the method of surface longlining to use either:

~~55.1~~53.1 a hookpod (an attachment to the line which covers the hook until the line sinks below seabird diving depth);

~~55.2~~53.2 or:

(a) Deploy a streamer (tori) line for the entirety of all sets. The streamer line must be configured in accordance with the specifications prescribed in the SLL Circular; and

(b) Set lines at night or weight lines in accordance with the specifications prescribed in the BLL Circular.

~~56~~54 There are no regulations which apply to other segments of the inshore coastal fleet in respect of protected species.

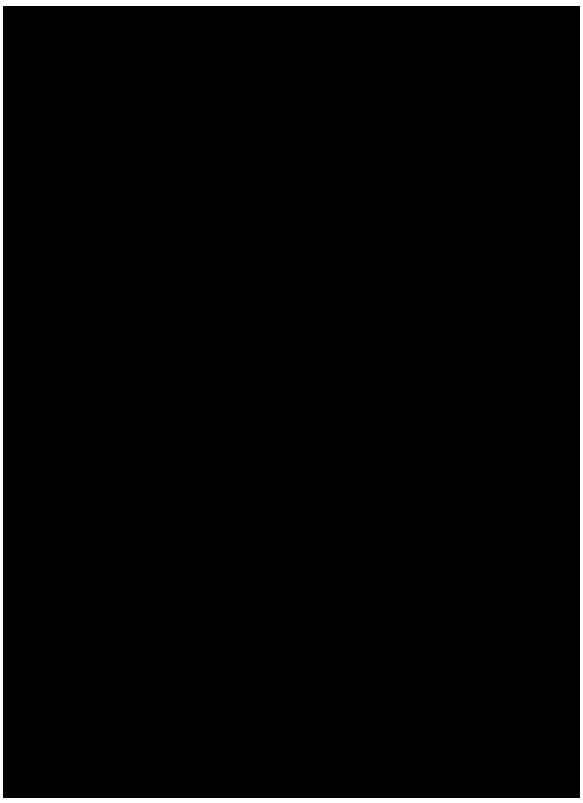
Additional regulations and controls that apply in Te Hā o Tangaroa Protection Areas

~~57~~55 I detail below the existing commercial fishing regulations in the areas in and around the Bay of Islands which are specific to the areas covered by the proposed relief sought by BOIMP, F&B and Ngāti Kuta on appeal.

~~58~~56 In ~~Sub~~ Area A:

~~58.1~~56.1 In 2010, the Minister of Fisheries decided to temporarily close Maunganui Bay to the take of all fisheries resources (except kina) for two year period to allow fishstocks in the area to recover. That restriction, approved under s186A of the Fisheries Act, applies to commercial and recreational fishing. The closure has been rolled over every two years since then. The current closure expires on 13 October 2022. The area closed is shown below labelled in the legend as the "proposed Maunganui Bay temporary closure".

[3] Fisheries (Seabird Mitigation Measures—Surface Longlines) Circular 2019 (Notice No. MPI 1104).



~~58.2~~56.2 In all of ~~Sub-~~Area A, trawling and danish seining is currently prohibited and has been prohibited since at least 1986.

~~58.3~~56.3 No commercial fisher may take scallops from the area.

~~58.4~~56.4 Bottom longlining is subject to the mitigation requirements which I explain above.

~~59~~57 In ~~the inner Bay of Islands (the area known as Sub-~~Area B ~~in the appellants' relief and extending through to the rest of the inner Bay of Islands – which includes some of the area known as Area C)~~:

~~59.1~~57.1 Under regulation 4(e) of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, trawling and danish seining is prohibited within the waters lying inside a line commencing at the easternmost point of Cape Wiwiki (at 35°09.403'S and 174°07.584'E); then in a straight line to the northern extremity of Red Head (at 35°11.750'S and 174°12.483'E); then in a straight line in a north-easterly direction to the northern extremity of Cape

Brett (at 35°10.311’S and 174°19.783’E), - I refer to this area as the inner Bay of Islands.

~~59.2~~57.2 Under regulation 19A, restrictions on fishing in the Bay of Islands under the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 include:

(1) No commercial fisher shall use any net in the following waters

(a) Ninepin: the waters lying inside a line, every point of which is 1 nautical mile from the mean high-water mark of Ninepin (at 35°09.13’S and 174°08.737’E):

(b) Cape Brett: the waters lying inside a line, every point of which is 1 nautical mile from the northernmost point of Cape Brett (at 35°10.311’S and 174°19.783’E):

(c) Bird Rock: the waters lying inside a line, every point of which is 1 nautical mile from the mean high-water mark of Bird Rock (at 35°09.821’S and 174°18.342’E).

(2) No commercial fisher shall take fish from the waters of the Bay of Islands inside a line drawn from Tapeka Point (at 35°14.476’S and 174°07.192’E) then to the north-western extremity of Motuarohia (Roberton) Island (35°13.718’S and 174°09.384’E); then to the north-western extremity of the outermost unnamed islet (35°13.053’S and 174°10.731’E) immediately to the north-west of Moturua Island; then to the north-western extremity of Okahu Island (Red Head) (35°11.824’S and 174°12.376’E); then by mean high-water mark along the northern side of Okahu Island to the eastern extremity of Okahu Island (35°11.803’S and 174°12.873’E); then by straight line to the northern extremity of Kohangaatara Point (35°13.036’S and 174°15.865’E) on the eastern side of the Albert Channel, at any time between 1 October in any year and 30 April in the following year (both days inclusive).

(3) Notwithstanding subclause (2), a commercial fisher may take rock lobster from the waters described in that subclause, by the method of potting, if that commercial fisher holds a current permit authorising the commercial fisher to take rock lobster from those waters by that method.

~~60~~58 In effect:

~~60.1~~58.1 no trawling or danish seining is allowed within the Bay of Islands ~~as per the map below~~;

~~60.2~~58.2 Purse seining is prohibited in the inner Bay of Islands at all times;[4]

~~60.3~~58.3 Set nets over 1000m in length are prohibited in the inner Bay of Islands at all times;[5]

~~60.4~~58.4 Commercial scallop take is prohibited in the inner ~~bay~~ Bay of ~~islands~~Islands;[6]

~~60.5~~58.5 no fisher may take fish from the area known as Sub-Area B in the appellants' relief between 1 October and 30 April in the following year.

~~61~~59 In respect of ~~the remaining areas to which the appellant's relief relates (the outer Bay of Islands – that is, the seaward part of Sub-~~Area C~~),~~ the specific restrictions that apply to commercial fishing are:

~~61.1~~59.1 All commercial set netting is prohibited within 1 nautical mile radius from the eastern most point of Cape Wiwiki and Te Nunuhe Rock and Motutara under regulation 10A Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986.

Additional regulations and controls that apply in Te Mana o Tangaroa Protection Areas

~~62~~60 Under regulation 23(1) of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, no commercial fisher may take fish or seaweed by any fishing method or be in possession of fish or seaweed taken from the Mimiwhangata Reserve. It should be noted that ~~Sub-~~Area A is larger in spatial extent than the existing Mimiwhangata Reserve.

~~63~~61 Within ~~Sub-~~Area C ~~B~~, under regulation 10A of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, no commercial fisher can use a box or teichi net, purse seine net, Danish seine net, trawl net, or lampara net, or set nets of a total length exceeding 1 000 metres, within the waters of Whangaruru Harbour.

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4 Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, regulation 10A.

5 Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, regulation 10A.

6 Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(j).

~~64~~62 The other restrictions that apply specifically to commercial fishing in ~~Sub~~ Area ~~B~~ C are:

~~64.1~~62.1 All commercial set netting is prohibited within 1 nautical mile radius from the eastern most point of Cape Wikiki and Te Nunuhe Rock and Motutara under regulation 10A Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986.

~~64.2~~62.2 Commercial scallop take is prohibited in Whangaruru Harbour.[7]

COMMERCIAL FISHING ACTIVITY IN THE AREAS SUBJECT TO THIS APPEAL

~~65~~63 In this section I will explain the commercial fishing activity that takes place in the proposed Te Hā o Tangaroa Protection Areas sought by BOIMP, Forest & Bird, and Ngati Kuta and in the proposed Te Mana o Tangaroa Protection Areas sought by Te Uri o Hikihiki.

~~66~~64 First I discuss the nature of the fishing methods at issue.

Bottom trawl fishing

~~67~~65 Bottom trawling involves the hauling of a net across the seafloor by a vessel under power. The net is held open by trawl doors which are set to drag across the seafloor. The net is attached to the doors by a sweep and bridles. These have the effect of herding fish towards the net. A ground rope or chain holds the net to the seafloor. It is held open by floats attached to the headline. The wings guide the fish to the codend, the mesh size of which is commonly between 100 and 150mm2 to allow small fish to exit the net. The nets are commonly between 10 and 30m wide at the wing end.

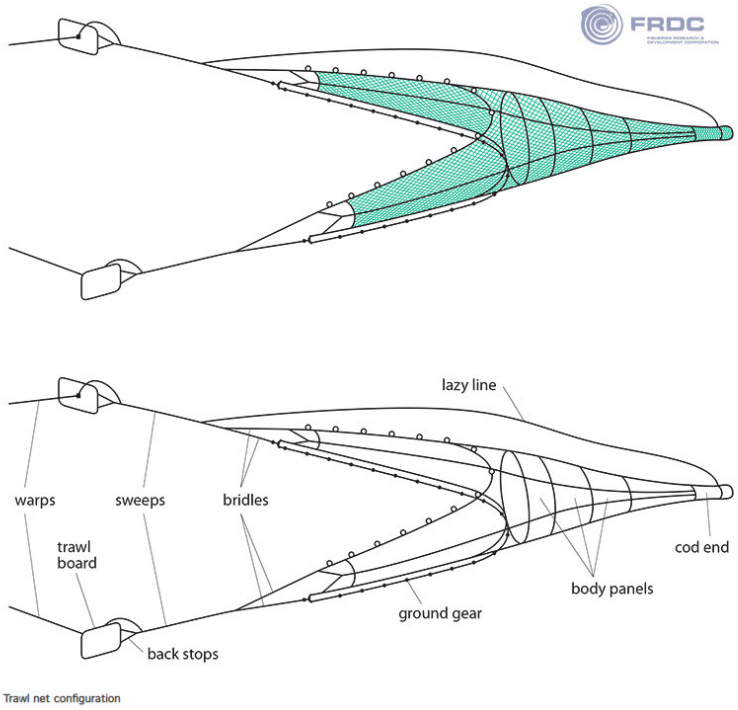
~~68~~66 Nets vary according to the species targeted and the fisher operating the net. The height of the net will vary on the fish species being targeted. For example, a net targeting gurnard or flatfish but seeking to avoid snapper will have a height of up to 1m and will commonly be cut back at the top to allow snapper and other fish to fly over the net. A net seeking to catch snapper, trevally, tarakihi will tend to have a greater height and no cutback. Tow speeds will again vary according to the species being targeted. They would commonly be less

[7] Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(k).

than 3.5 knots but may be towed faster if (for example) rig or school sharks, or trevally, are being targeted.

~~69~~67 Bottom trawling predominantly takes place on sand or mud bottoms where the risk of the gear becoming hooked on a reef or rocks is minimised. The replacement cost of a trawl net for an inshore vessel would be in the order of $7,000-$10,000 dependent on what was lost.

~~70~~68 I have included some diagrams of this fishing method below.



Trawl net configuration

~~71~~69 Some fishers employ mitigation devices such as rollers, lighter doors, lighter warps and different door settings to reduce the impact on the seafloor.

~~72~~70 Some fishers use nets with codends of different mesh size or of a different orientation to selectively target the fish they want and let unwanted species and sizes to escape the net.

~~73~~71 Tow duration will vary according to the density of the schools caught and the quality of the fish wanted.

~~74~~72 The selection and setting of trawl nets is a complex operation with each fisher having his preferred settings depending on, inter alia, the fish he wants to catch, the fish he doesn't want

to catch, the seafloor, sea conditions, vessel characteristics and the abundance of fish.

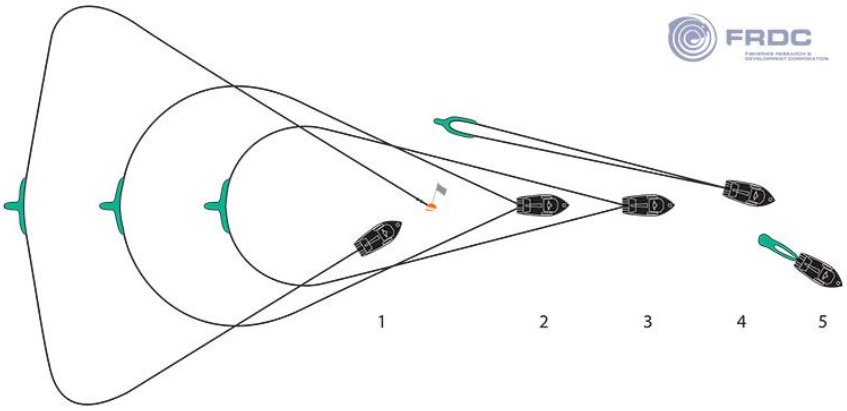
~~75~~73 Trawling remains the mainstay method of most commercial fishing in the world.

Danish Seining

~~76~~74 Danish seining is similar to trawling but does not involve the use of doors to keep the net open and the net will be set to target a particular school of fish. Since the vessel does not drag the net as with bottom trawling, the bottom impact is lighter. The net will be hauled to the vessel across the seafloor, closing the mouth of the net as the net comes under pressure.

~~77~~75 As with bottom trawling, Danish seining does not take place on reefs because that would damage the nets or could result in entanglement with rocks. Activity is focused on soft bottoms.

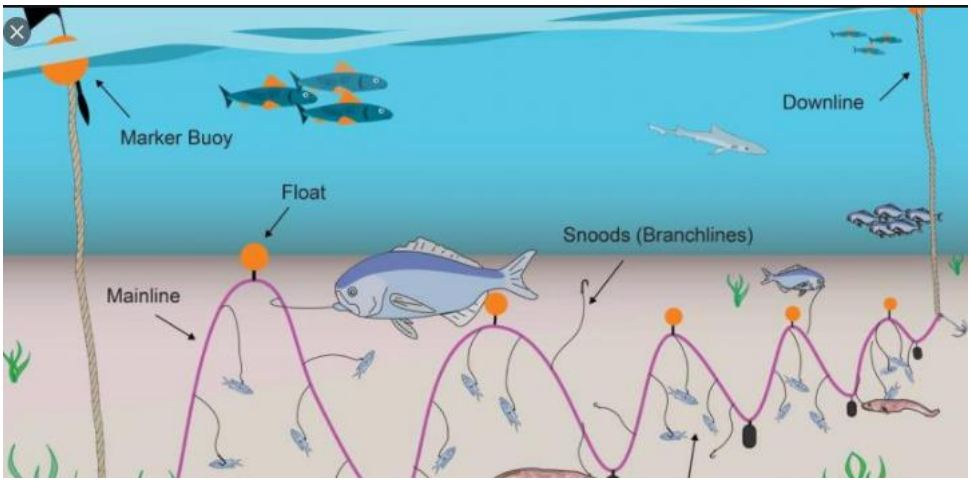
~~78~~76 Danish seining generally provides fish of a better quality than trawling as fish spent less time in the net, suffer less bruising and are generally alive at the time of being hauled on deck.



A Danish-seine net

Bottom Longlining

~~79~~77 Bottom longlining can vary according to the fish being targeted and the nature of the seafloor. Generally, the line consists of anchors at both end of the spine or mainline. Floats are attached to indicate the location of the line.



~~80~~78 Baited hook-bearing branchlines or snoods (or what a recreational fisher might call a trace) are attached at intervals to the mainline. Weights and floats and snoods will be attached to the mainline to achieve the pattern of hooks the fisher seeks to achieve, usually an undulating pattern through the depth range that the target fish use. Where the seafloor is loose sand and mud, the fisher may set the longline directly on the seafloor. Where the seafloor is a reef or hard structure, the fisher will commonly attach floats to the mainline to suspend it above the seafloor and reduce the risk of the line becoming entangled in the reef. The longlines range in length according to the fisher's preference the longlines may contain up to 10,000 hooks dependent on the fisher's preference and the habitat being fished. Soak times of hooks are commonly between 2 and 8 hours.

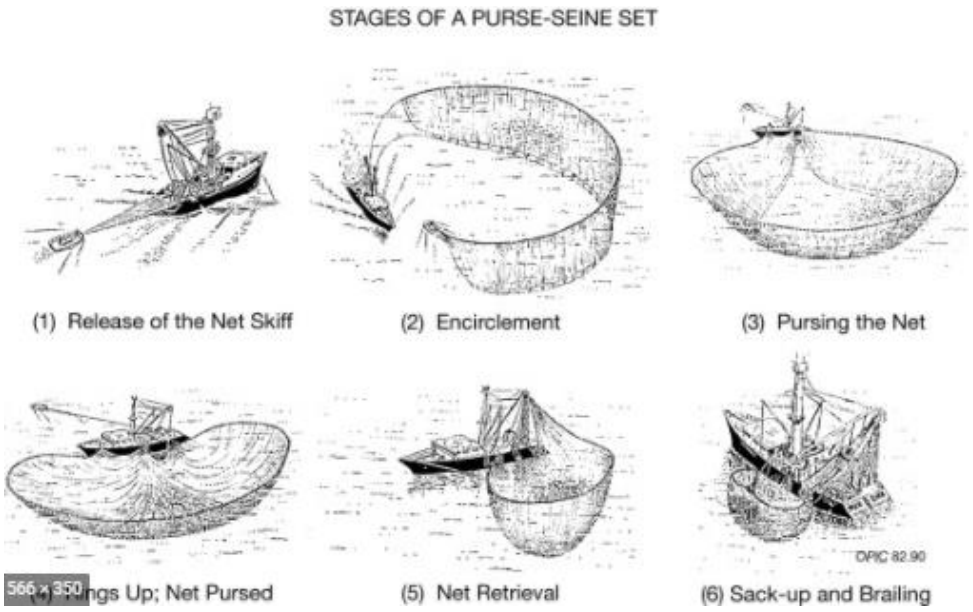
~~81~~79 The fishery is relatively clean and targeted with little bycatch of unwanted species. Lines will be set where the target fish species is known from previous fishing to aggregate. The fish caught by longlines is generally of higher quality than trawl caught fish, with lower bruising and generally alive at the time of hauling the line on board.

Purse Seining

~~82~~80 Purse seining is used to target schools of fish swimming at or near the surface. Schools may be spotted from aircraft and the vessels directed to the school or may be identified on the water by feeding flocks of birds.

~~83~~81 In essence, the vessel will run a curtain of net around the school, draw up the bottom rope to create a purse which contains the school and progressively reduce the size of the purse, compressing the fish into a smaller area beside the vessel. If the catch is to be retained, it will be removed from

the net by either using small nets or pumping the fish out into the hold of the seiner.

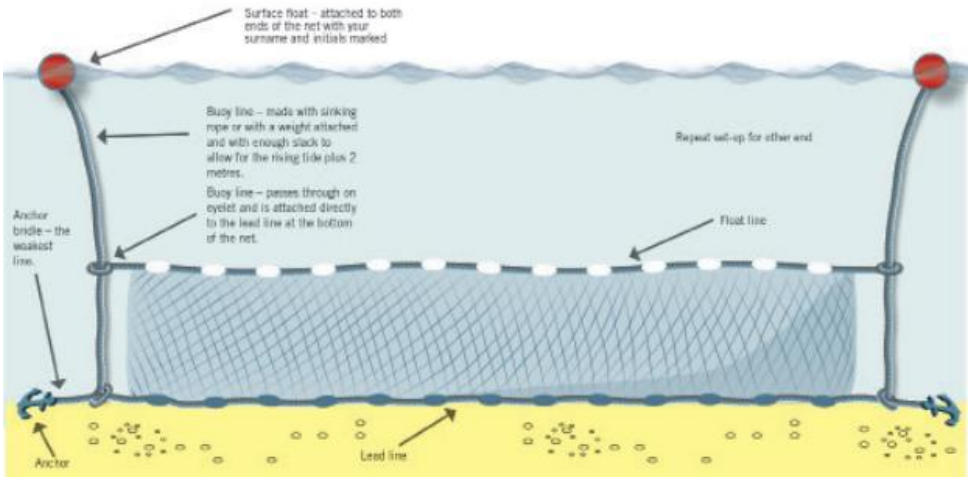


8482 As a fishery option, the method can be considered relatively clean with low by-catch of unwanted fish species and low by-catch of non-fish marine species. Some captures of predators targeting the same school are taken. Generally the fish species predators – kahawai, trevally and kingfish – are wanted QMS species. Captures of non-fish marine species, such as seabirds, marine mammals or chondrichthyans (sharks and rays) are minimal and can readily be released alive by leaving them in the net until the required species are removed.

Setnetting

8583 Setnetting is used to target demersal fish species such as flatfish, rig and school shark. The nets set are small in length, weighted to sit on the seafloor with floats to hold the net open, often no more than a meter high. The nets are unbaited and are set in positions of fish traffic to catch swimming fish. Nets in

8684 Set nets in New Zealand cannot be set across a channel, they cannot be left to be exposed at low tide and must be retrieved within 18 hours of being set.



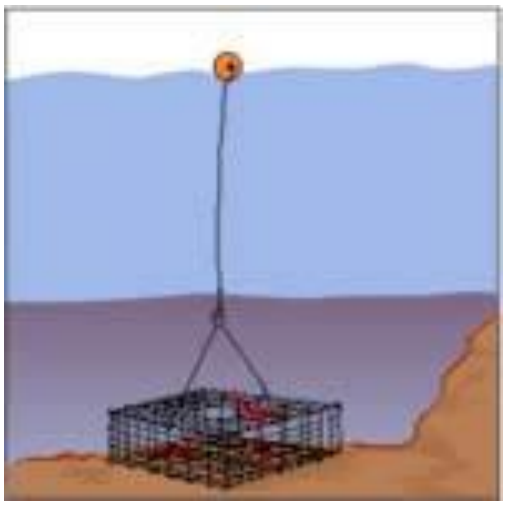
Rock Lobster potting

~~87~~85 Lobster potting operates by setting a baited pot, usually overnight. The bait attracts lobsters into the pot, where they remain trapped (depending on their size) as a result of the design of the pots. This method is not only effective for catching lobsters for fisheries purposes, but also provides an opportunity to gather data on the relative abundance and population structure of these species.

~~88~~86 Pots used by commercial fishermen in CRA 1 are usually of steel framed construction, covered in trawl mesh, fitted with one or more 'necks' and regulation escape gaps and each pot is bridled to a rope, with the rope suitable for the depth fished, and one or more surface floats. Pot sizes range from one to one and a half metre square.

~~89~~87 Pots are 'set' over rocky reef seabed or hard substrate to various depths depending upon the time of the season. Pots are individually set some distance apart from each other, often in 'lines' of ten or more according to the size of the vessel and the size of the reef being fished. Pots are moved regularly as fishermen try to anticipate lobster movements or locate concentrations of lobsters.

~~90~~88 Pots are hauled vertically from the seabed to the vessel on the surface above using a pot hauler. Rock lobsters are harvested throughout the year. In general, the lowest catches occur when rock lobsters are moulting and mating (usually between February and May). The highest catches usually occur from June to November, with regional variations.



Commercial Fishing in Te Hā o Tangaroa Protection Areas

~~91~~89 [redacted]

[redacted]

~~92~~90 [redacted]

~~93~~91 [redacted]

[redacted]

~~94~~92 The value figures given relate to the port price for each species (which is the average price paid by licensed fish receivers to independent fishers for fish landed to those licensed fish receivers).

~~95~~93 [redacted]

~~96~~94 [redacted]

~~97~~95 [redacted]

~~98~~96 [redacted]

[redacted]

9997 [redacted]

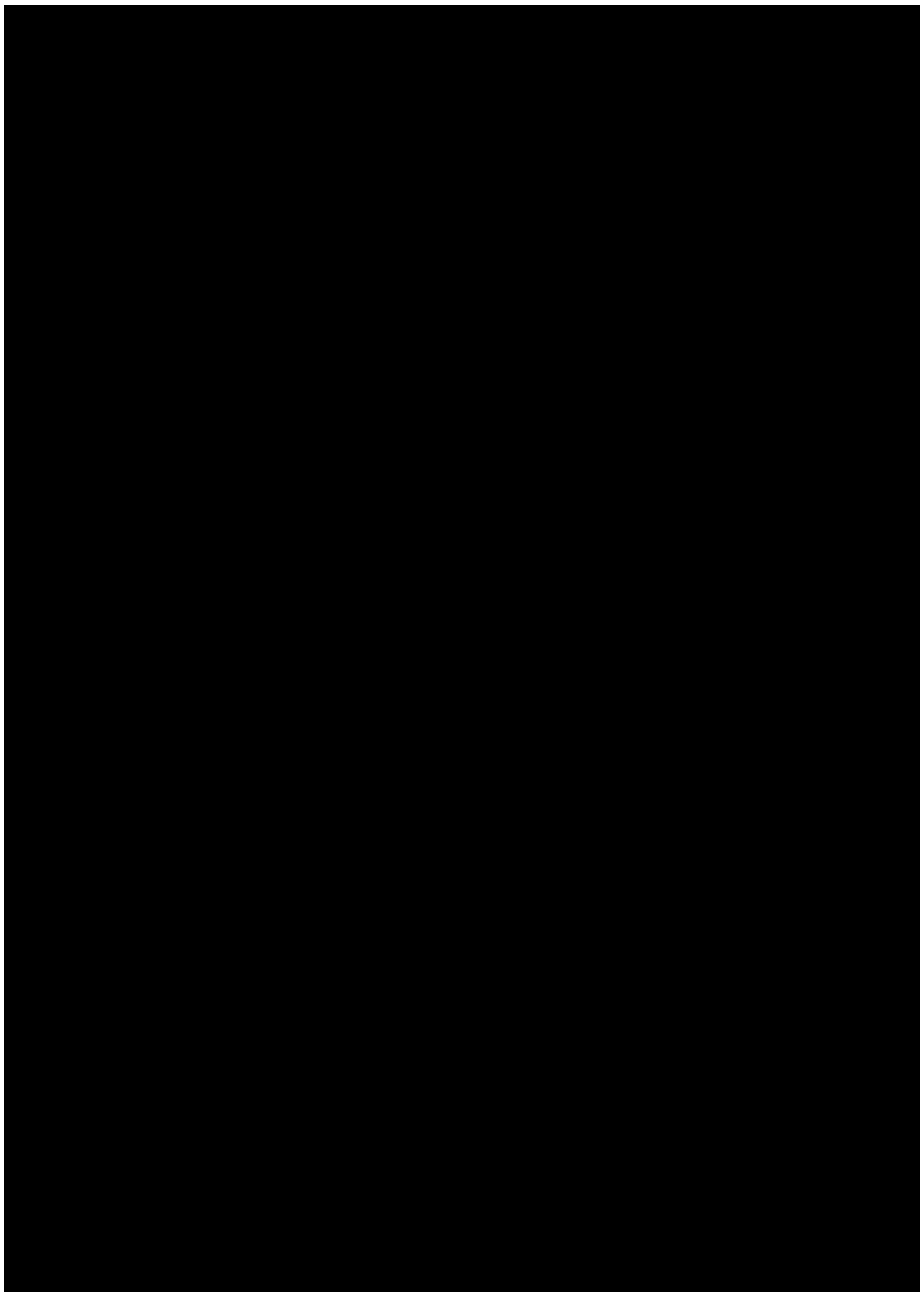
[redacted]


[redacted]

[redacted]

~~100~~98 [redacted]

~~101~~99 [redacted]



~~102~~100

[redacted]

~~103~~101 [redacted]

~~104~~102 [redacted]

~~105~~103 [redacted]

[redacted]

[redacted]

~~106~~104 As above, the value figures are expressed in relation to the port price for each species.

~~107~~105 [redacted]

~~108~~106 [redacted]

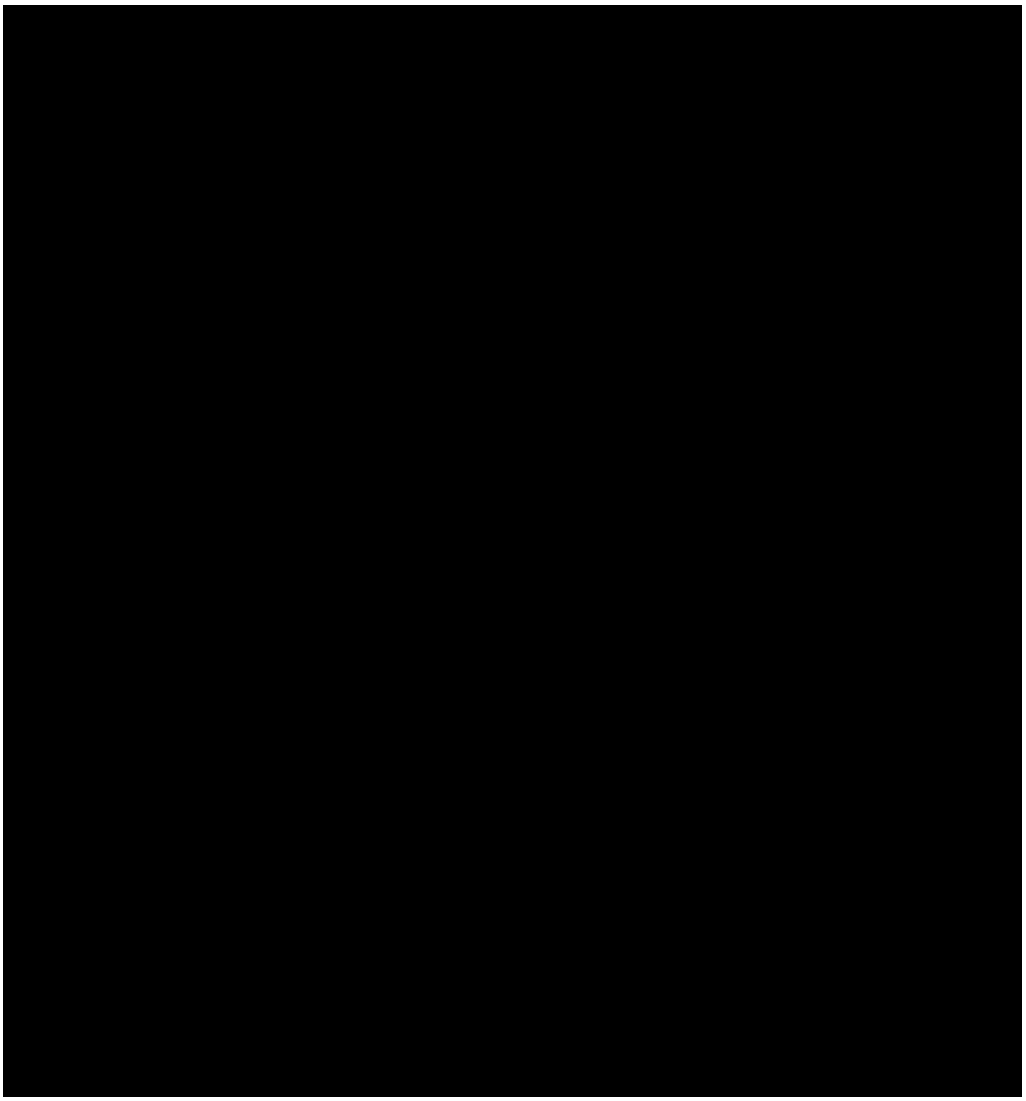
[redacted]

~~109~~107 [redacted]

[redacted]

Craypotting in the Affected Areas

~~110~~108 Until 2019/20, statutory reporting for rock lobster potting was at the level of statistical areas as shown in the diagram below. This reporting therefore does not identify commercial potting at the scale of the proposed Te Hā o Tangaroa Protection Area or Te Mana o Tangaroa Protection Area. I have therefore had to discuss craypotting without reference to the specific areas.



~~111~~109 [redacted]

~~112~~110 Information suggests that rock lobster potting has very little direct effect on non-target species and the aquatic

environment. Potting will take place on areas of hard substrate and reef, with almost all activity inside the 100m depth contour. The levels of incidental catch from rock lobster potting the CRA 1 area are low (5-8% of lobster catch in three most recent years of data) and the main species are carpet shark, blue cod, moray eel and tarakihi. The species are taken alive and are generally immediately returned to the sea. Entanglement of cetaceans in commercial pot lines is rare in New Zealand with only a handful in incidences throughout the country in recent years.

~~113~~111 A recent analysis of published literature from a number of jurisdictions confirmed the impact of potting on the benthic environment is minimal. Most studies reported no detectable effects after pot deployment and retrieval and habitats appeared to be physically unaffected. Movement of the heavy pots now deployed in New Zealand is rare. No significant differences were found with pot design or soak time. The exception could occur during careless pot retrieval where a pot was dragged across the seafloor rather than hauled vertically. Operators will generally be careful to avoid dragging because of the potential to snag and lose a pot.

~~114~~112 It has been suggested that decreased predation by reef predators, including rock lobster and snapper, is responsible for population increases of sea urchins and loss of kelp cover. I understand **Mr West** will discuss this in his evidence. I understand that there is research suggesting that this phenomenon has not occurred in all reserves and there are kelp forest in areas outside reserves where urchins could form barrens, but have not done so. There seem to be a range of other factors that affect the abundance of urchins (e.g. temperature, recruitment, disease), and the prevalence of kelp forests (e.g. exposure, sedimentation, nutrients).

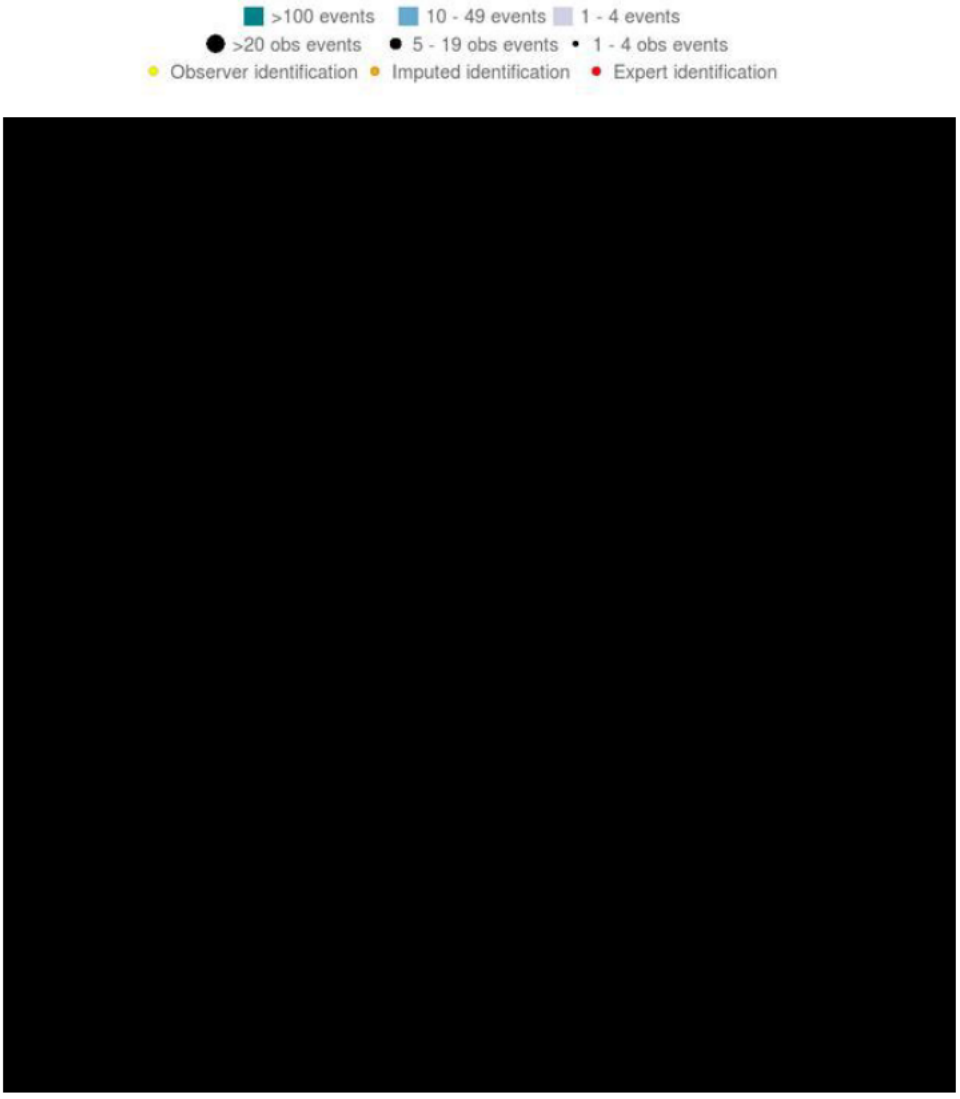
Protected Species Interactions

~~115~~113 As well as the current fishing activity occurring in this area, it is important to consider protected species interactions. As noted earlier, observers are placed on inshore vessels for the primary purpose of observing protected species interactions. It is not known how much observer activity has taken place in the areas defined by the appellants.

~~116~~114 The following map from the Dragonfly website (https://psc.dragonfly.co.nz/2019v1/released/explore/) indicates that there has been some observer monitoring of trawl activity in the area. Similar maps for the bottom and

surface longline sectors show lower levels of observer activity. The low level of observer activity signifies that FNZ do not consider that the area constitutes a high risk area for protected species.

Map of protected species interactions



Map of fishing effort and observed captures, 2002–03 to 2017–18. Fishing effort is mapped into 0.2-degree cells, with the colour of each cell being related to the amount of effort. Observed fishing events are indicated by black dots. Fishing is only shown if the effort could be assigned a latitude and longitude, and if there were three or more vessels and three or more companies or persons fishing within a cell. In this case, 98.8% of the effort is shown.

~~117~~115 The only captures observed in all observer monitoring in the appellant's areas since 2002/03 included two flesh-

footed shearwaters, one black petrel, one fluttering shearwater, one giant petrel, one diving petrel and one black-backed gull – all were released alive.

~~118~~116 While the information is limited, there is no reason to consider that commercial fishing in the area under the current level of regulated mitigation constitutes a threat to protected species.

Future fishing activity

~~119~~117 As well as the current fishing activity occurring in this area, it is important to consider future fishing activity. The proposed controls will limit future use of these areas for commercial fishing.

~~120~~118 [redacted]

~~121~~119 I understand that the appellants have suggested that this process could become a 'model' for future rollout of similar types of fisheries controls across the region.

~~122~~120 As an example of the potential impact, the map below shows all of the areas of SEA mapped in the Northland Regional Plan. The presence of SEAs is also just one component of the basis of the relief that has been sought by the appellants.

Significant Ecological Areas identified by the Northland Regional Council

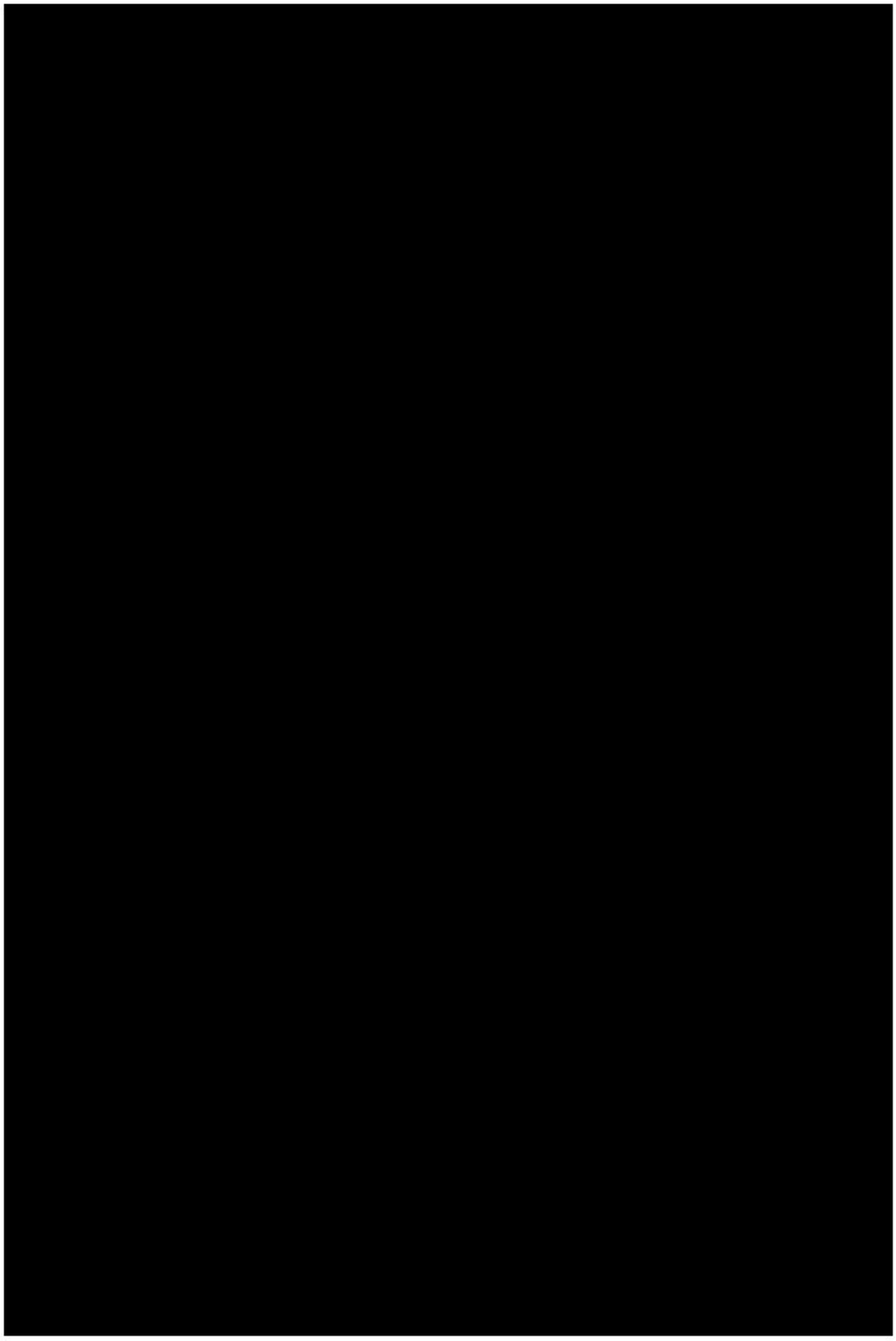
~~123~~121 While I acknowledge that any future proposed controls would be subject to their own hearing and evidence process, I note that if a similar approach to that sought here were rolled out across the entire Northland coastline, then it is estimated that could affect fishing activity to the value of $32 million and impact the livelihoods of some 210 people.

EFFECTS OF THE RELIEF ON APPEAL ON COMMERCIAL FISHING

~~124~~122 In this section I will explain my understanding of the relief sought and the effects of this relief on commercial fishing activity.

Te Hā o Tangaroa Protection Areas

~~125~~123 I understand the rules sought to be the following:



~~126~~124 In ~~Sub-area~~Area A, Maunganui Bay is already closed to commercial fishing by a FA96 s186A regulation. No commercial fishing takes place in ~~either~~ the area to Oke Bay ~~or the buffer area~~.

~~127~~125 ~~Sub~~ Area B is already closed to bottom trawling, danish seining, purse seining, commercial dredging for the full year and bottom longlining for the period from October to March.

~~128~~126 [redacted]

~~129~~127 In ~~Sub~~ Area C, bottom trawling, bottom pair trawling, Danish seining, purse seining, longlining without mitigation will be prohibited and all other commercial fishing will require a consent. I noted earlier that bottom trawling, bottom pair trawling, Danish seining, purse seining is already prohibited within the inner Bay of Islands.

~~130~~128 The ~~490~~ ~~461~~ tonnes of fish caught in the Te Hā o Tangaroa areas by the methods that would be affected by the appellants' propositions has a revenue value of $~~520,000~~364,100 each year. The wider economic activity generated by fishing activity includes crew salaries, vessel supplies, vessel and gear maintenance, fuel and other ancillary costs. Applying a value add multiplier to the value of fishing impacted indicates the value of the fishing affected to the local economy could be as high as $~~1.2~~1.0 million annually.

~~131~~ ~~In addition to those effects, if fishers were required to seek consents for other forms of fishing, further costs would be incurred. There is no indication in the appellant's material as to the basis of identifying the "activity" for a consent. For example, would a consent be required for each fishing event, the event being in a different area at differing times of the year and taking different amounts and species of fish? Or would a consent cover a year's fishing anywhere in a specified area such as Te Hā o Tangaroa? Or would a consent be provided for the maximum possible term of 35 years?~~

~~132~~ ~~A consent application and processing costs could be in the region of $150,000 or more (if the application required~~

~~extensive assessment of effects, expert consultants, was notified to the public and involved a hearing, which I understand is paid for by the applicant). This would be prohibitively expensive on a per event or yearly basis. Seeking consent for a 35 year term would have a lower cost when spread over the life of the consent, but the upfront cost of getting that consent would still be high, particularly in comparison to the annual income and profits made by an average inshore fisher. I understand that all fishing activity would have to stop while consent was obtained. If this was a lengthy process, that could have significant financial implications for fishers as they would have to avoid the area in question until consent is granted.~~

~~1331.~~ ~~To obtain a resource consent, fishers will be required to prepare an application. It could involve a public hearing. I understand that provided the applicant can show that any adverse effects will be appropriately managed, consent will usually be granted. But obtaining consent can take several months and is expensive. Councils can also impose conditions on resource consents. The imposition of such bureaucratic processes and the costs involved could indirectly put some fishers under significant financial pressure and may have a major impact on individual profits or ability to continue to operate.~~

~~134~~129 While it may be possible to relocate fishing activity so that it occurs outside of the areas under appeal, the displaced catch will put pressure on the remaining space available to catch the total allowable commercial catch tonnage. As the area available to fishing is compressed, the intensity of fishing in those remaining areas and, more particularly, the adjacent areas surrounding a closure increases. Whereas fishers would previously have had the ability to spread their catch spatially and lessen their impact on any particular area, their ability to continue that spreading practice is diminished.

~~135~~130 For the locally based fishers, moving away to other areas is not necessarily economically viable and comes with a transition period during which new fishing spaces need to be established and tension is caused in the fleet as the displaced fishers collide with the incumbent fishers in the areas to which they are displaced.

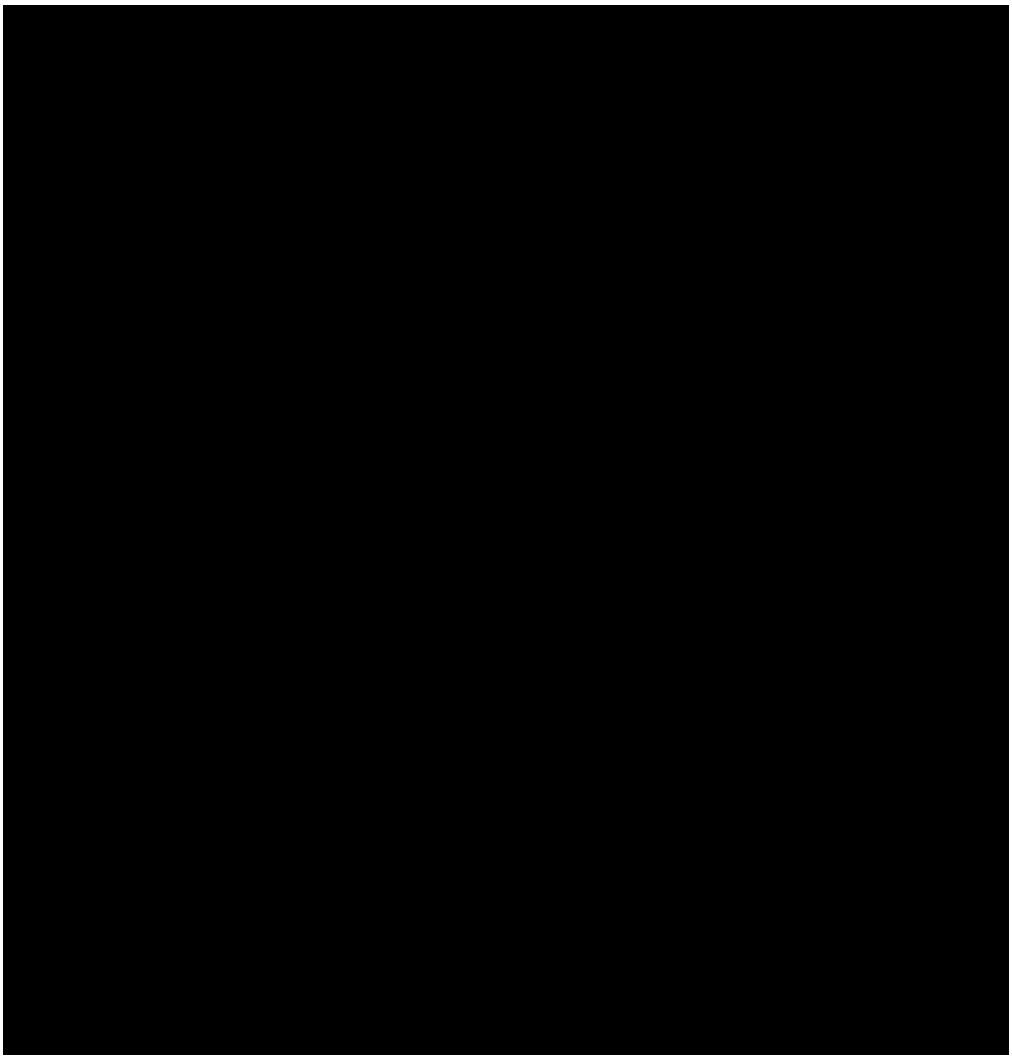
~~136~~131 For the smaller vessels, in times of bad weather the areas to be closed constitute a safer winter fishing area. In the lee of the coast, the seas are calmer and the winds less strong, allowing for small vessels to be operated safely.

~~137~~132 An example of the real-world impact of these types of closures is that of the recent Maui and Hector's dolphin closures. In response to those closures, a number of fishers sought to transition to an alternative form of fishing. However, a good trawlerman does not make a good longline fisher without changing the gear and layout of the vessel, purchasing all new gear to a cost in excess of $100,000, learning a new trade and accessing an appropriate portfolio of ACE. A number of fishers left the industry when faced with the closures, others are trialling alternative gear types.

~~138~~133 In essence, it cannot be assumed that catch can be displaced to other localities without impacting on the finances of operators and the composition of the fleet.

Te Mana o Tangaroa Protection Areas

~~139~~134 I understand the rules sought to be the following:



~~140~~135 [redacted]

~~141~~136 [redacted]

137 In addition to those effects, if fishers were required to seek consents for other forms of fishing, further costs would be incurred. There is no indication in the appellant's material as to the basis of identifying the "activity" for a consent. For example, would a consent be required for each fishing event, the event being in a different area at differing times of the year and taking different amounts and species of fish? Or would a consent cover a year's fishing anywhere in a specified area such as Te Au o Morunga Protection Area~~Hā o Tangaroa~~? Or would a consent be provided for the maximum possible term of 35 years?

138 A consent application and processing costs could be in the region of $150,000 or more (if the application required extensive assessment of effects, expert consultants, was notified to the public and involved a hearing, which I understand is paid for by the applicant). This would be prohibitively expensive on a per-event or yearly basis.

Seeking consent for a 35 year term would have a lower cost when spread over the life of the consent, but the upfront cost of getting that consent would still be high, particularly in comparison to the annual income and profits made by an average inshore fisher. I understand that all fishing activity would have to stop while consent was obtained. If this was a lengthy process, that could have significant financial implications for fishers as they would have to avoid the area in question until consent is granted.

139 To obtain a resource consent, fishers will be required to prepare an application. It could involve a public hearing. I understand that provided the applicant can show that any adverse effects will be appropriately managed, consent will usually be granted. But obtaining consent can take several months and is expensive. Councils can also impose conditions on resource consents. The imposition of such bureaucratic processes and the costs involved could indirectly put some fishers under significant financial pressure and may have a major impact on individual profits or ability to continue to operate.

~~142~~140 For those activities which require a consent permit, additional costs of over $100,000 will be required.

~~143~~141 The comments in paragraphs ~~130~~ 137~~129~~ to ~~137~~ 133 above apply equally to the affected fishing activity in this area.

Impact on communities

~~144~~142 In Northland these fishing and support businesses are in smaller regional towns and communities along the coastline. These economic impacts would affect a regional economy still reeling from the impacts of COVID-19.

~~145~~143 The small communities of New Zealand have been significantly and detrimentally impacted by the withdrawal of community, retailing and financial services in the last decade in particular. They remain the last settlement areas with close connections to our primary industries. Any initiatives that serve to limit coastal fishing further erode the linkages and prospects for those small communities.

Response to Mr Denne's economic evidence

~~146~~144 I have read the evidence of Mr Denne. He makes various comments about the economic costs and benefits of the proposed relief but does not provide any quantification of

the costs of the proposed measures. His comments are simply speculative and qualitative.

~~147~~145 The impacts are not spread evenly between fishers. Mr Denne has not attempted to assess the costs to individual operators who might be disproportionately affected either by having access to their fishing grounds entirely removed or by being required to obtain a resource consent at significant expense.

~~148~~146 Mr Denne comments that the main constraining factor for commercial fishing is availability of ACE, not available area. That is overly simplistic. While the volume of catch is indeed limited by the Minister's Total Allowable Catch decision as discussed earlier in this brief, how and where that fish is caught has significant impacts on the profitability of the sector and the livelihoods of fishers.

~~149~~147 [redacted]

~~150~~148 Displacement also brings indirect effects that might see localised depletion or additional distributional effects from the changing distribution of effort. These do not appear to have been factored into Mr Denne's analyses.

Impact on biodiversity

~~151~~149 The maps provided earlier clearly indicate that no bottom contacting fishing takes place on the rocky reefs in the areas, which are identified as Significant Ecological Areas (SEAs). Bottom trawling and danish seining occur on the soft sandy and muddy habitats, not on hard reef or foul ground where there is a risk of loss of gear. Because of the spatial separation, there is no risk of damage to the SEAs and the reef structures that remain in them. Purse seining has no bottom contact.

~~152~~150 Fishers have observed, and indicated to me, that the reefs have become heavily silted and the majority of the habitat is now mud overlying the reef – a phenomenon that our members have been aware of for some time now as it has been occurring gradually for the past several decades due to runoff from the land. Terrestrial impacts on these inshore

areas can be far more extensive and comprehensive that fishing impacts.

~~153~~151 I have reviewed the information available on protected species captures by commercial fishing. While observer activity levels in the area are low, observed interactions in the area are low and no seabird mortalities have been recorded. In the wider context, Fisheries New Zealand commissions an assessment of the risk to seabird populations from commercial fishing on a frequent basis. The most recent risk assessment[8] identified only one species – black petrel – to be at confirmed risk from fishing.

~~154~~152 In the light of the information presented on fishing effort and the existing suite of FA96 measures, the marine biodiversity identified by the appellants appears to be protected under the existing FA96 regulatory framework. Duplicating those safeguards with regional council provisions would appear to be both inappropriate and unnecessary when the FA96 has the capability to achieve the same desired outcomes.

Council's ability to monitor and enforce fishing activity

~~155~~153 I am concerned that a regional council which lacks fisheries management expertise should want to become engaged in the control of fishing activity. That is a highly specialised regulatory area and there are national agencies which currently carry out this role. Doubtless, the costs to the council will also become significant if resource consent applications are contested.

~~156~~154 The Council will need to monitor and enforce the prohibitions that are proposed. And for the fishing methods for which it proposed that coastal permits are granted, the Council will need to take on a monitoring and compliance role. The Regional Council will not be able to use Fisheries New Zealand resources, facilities and capabilities to undertake that role. The FNZ resources are limited under law to matters of fisheries management, information as to location and catch and fishing activity in general is statutory information collected for the purposes of the FA96 and not generally available for other purposes such as Council monitoring.

[8] https://www.mpi.govt.nz/dmsdocument/39407/direct.

Thomas Charles Clark

~~14 May 2021~~

22 June 2021