
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 ALICIA ANNE MCKINNON FOR THE MINISTER
FOR OCEANS AND FISHERIES (s274 party)

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 Alicia Anne McKinnon. I am employed as a Principal Analyst in the Inshore Fisheries Management Team at Fisheries New Zealand (**FNZ**) within the Ministry for Primary Industries (**MPI**).
2. I have been asked to provide fisheries management evidence on behalf of the Minister for Oceans and Fisheries (**Minister**) on appeals by the Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**) and the Bay of Islands Maritime Park Incorporated (**BOIMP**), and supporting parties, in relation to the Proposed Regional Plan for Northland. The Minister and MPI are responsible for administering the Fisheries Act 1996 (**Fisheries Act**).
3. I am authorised to give this evidence on behalf of MPI. My evidence is part of a combined appearance with the Minister of Conservation on the appeals.

Qualifications and expertise

4. I have worked for FNZ (and its predecessors) since 2003 and have held various roles.
5. Since January 2021, I've led a small Coastal Planning Team within Inshore Fisheries Management with a focus on working with councils and others on coastal planning processes as they relate to inshore fisheries. This is a newly formed team and involves establishing relationships with regional councils, sharing fisheries management advice and information to support robust marine management decisions, coordinating FNZ participation in council hearings and appeals, and encouraging councils to better consider the effects of land-based activities on inshore fisheries resources.
6. My other experience relates to:
 - 13 years' experience as the subject matter expert and lead fishery and relationship manager for the management of New Zealand's rock lobster fisheries;

- 10 years' experience in leading reviews of fisheries management controls, including Marlborough Sounds blue cod, Hauraki Gulf/Bay of Plenty rock lobster, bylaws for customary fishing reserves, establishment of voluntary fishing rules, and bottom trawl gear innovation projects;
 - Four years' experience in a data management role in Wellington, including leading the design of new commercial catch effort returns for the collection of inshore fisheries data.
7. I hold a Bachelor of Science degree with Honours in Marine Biology from Victoria University of Wellington, and a Post Graduate Diploma in Business and Administration in Economics from Massey University.
8. I have direct knowledge of the matters I discuss in this evidence. My job involves developing and implementing the types of Fisheries Act regulation I discuss.

Code of conduct

9. 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

10. In preparing my evidence, I have read and considered:
- a) The appellants' confirmed relief for Court from late December 2020;
 - b) The evidence of Mr Jacob Hore for the Minister;
 - 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 Hīkīhiki, and Mr James Griffin (planning) and Mr Philip Ross (ecology) for the Northland Regional Council.

11. 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

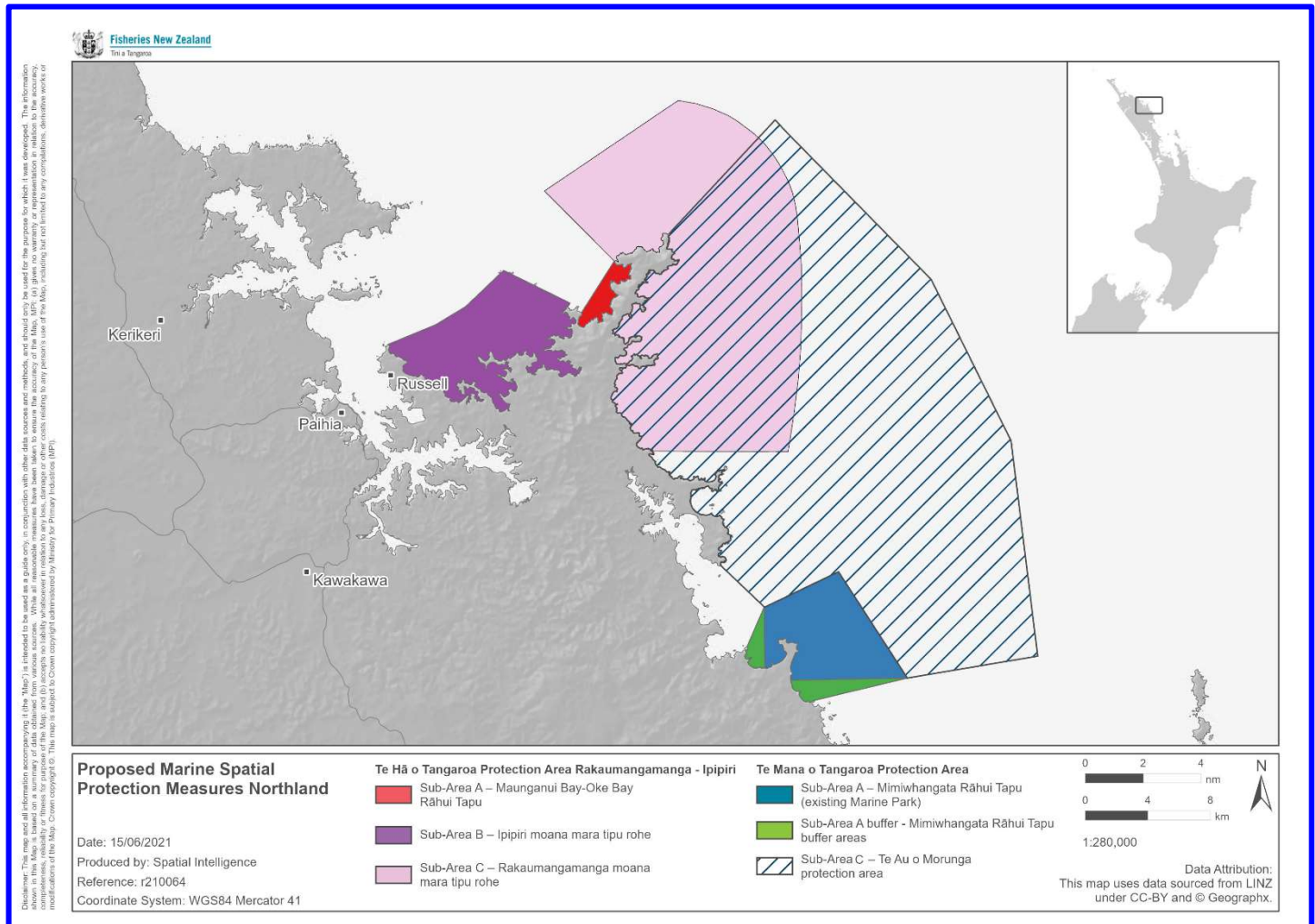
12. My evidence addresses “Topic 14” matters in relation to the Proposed Regional Plan for Northland. That is, the appellants and s 274 supporting parties’ proposals to introduce marine protected areas for the Bay of Islands and the coast between Cape Brett and Mimiwhangata regulating fishing activities under the Resource Management Act 1991 (**RMA**).
13. I consider the detailed existing regulations under the Fisheries Act that apply to fishing activities in the areas proposed for protection.¹ I put that alongside the rules and constraints proposed to be put in place under the RMA and consider the regulatory overlap. My evidence also considers issues that arise if the proposals were put in place.
14. I conclude that what is being proposed overlaps significantly with the complex fisheries regulation already in place under the Fisheries Act and related instruments. The consequent duplication is likely to cause confusion and potentially non-compliance with both regimes. Duplication does not of itself provide an additional environmental benefit.

BACKGROUND

15. The Northland Regional Council decided against including marine protection measures in its Proposed Regional Plan in May 2019. This decision was appealed to the Environment Court by Forest & Bird and BOIMP, who, with some supporting iwi and hapū, are seeking significant marine protection measures.

¹ Mr Hore’s brief of evidence (fisheries management) explains the broader framework of fisheries management under the Fisheries Act including Northland whereas mine focuses on existing regulation in the areas subject to appeal relative to what is proposed.

16. Two different geographical areas have been proposed for marine protection measures in eastern Northland, with some overlap between the two. **Figure 1** provides an overview of the proposed Protection Areas, with sub-areas identified for different levels of fishing restrictions based on differences in biodiversity, natural character and cultural values (as identified by the appellants).²



² I note that the naming protocols used for the Te Uri o Hikihiki Te Mana o Tangaroa Protection Area vary in the section 274 parties' evidence. In particular, Ms Lucas calls the Sub-Area A buffer, Sub-Area B and the Sub-Area B as Sub-Area C in her appendices, following the convention used in the proposed Te Hā o Tangaroa Protection Area by the appellants. Dr Bellingham calls the entire area the Te Hā o Tangaroa Management Area but I understand him to be referring to the proposed Te Mana o Tangaroa Protection Area in his evidence.

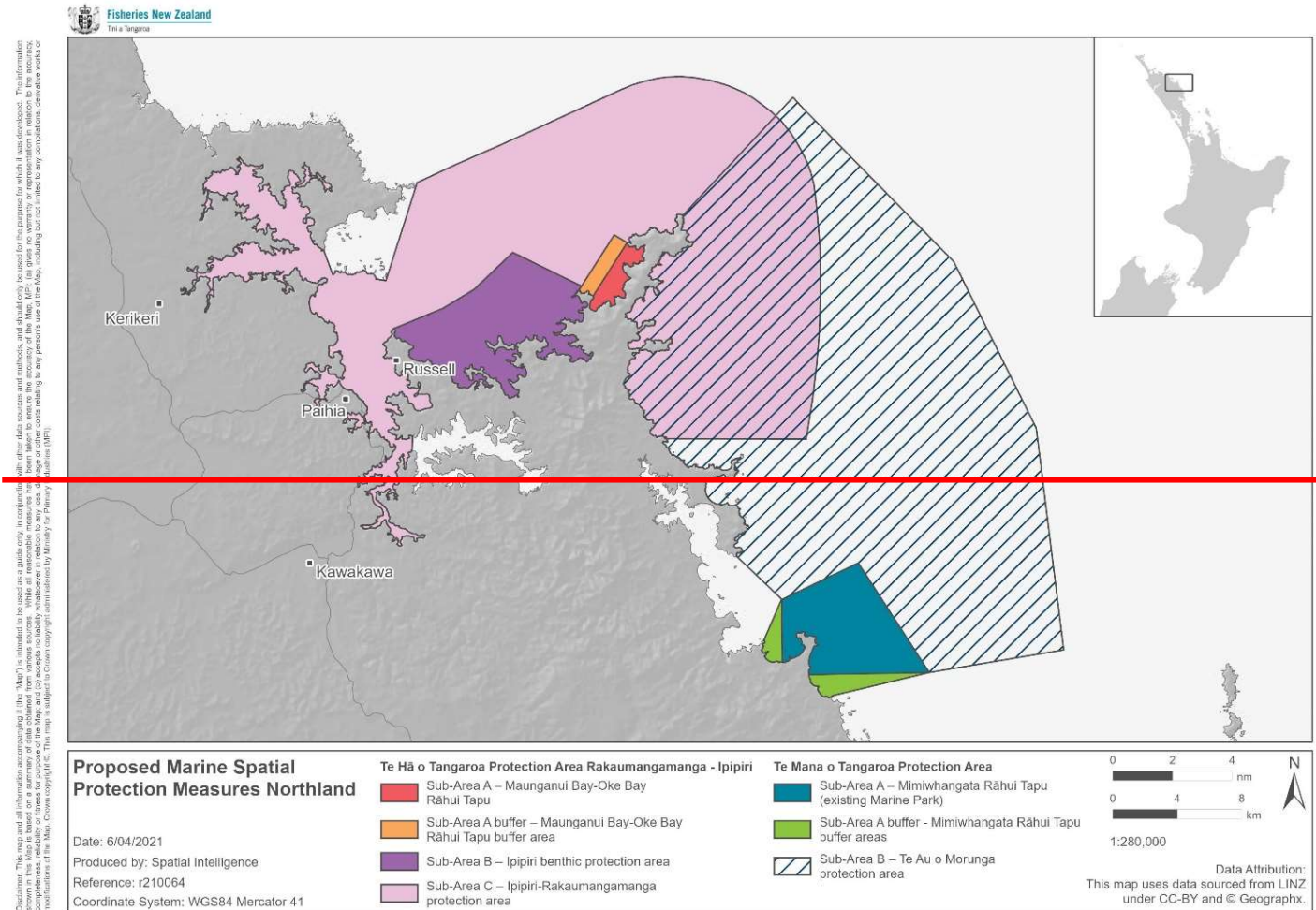


Figure 1: Proposed Protection Areas for Northland.³

Te Hā o Tangaroa Protection Area – Rakaumangamanga – Ipipiri

17. The proposed Te Hā o Tangaroa Protection Area – Rakaumangamanga-Ipipiri to the north⁴ has been primarily determined by Ngāti Kuta, in collaboration with and under the scope created by the appellants (**Figure 1**). Within this area, different protection measures are proposed for ~~three~~ ~~four~~ Sub-Areas:

16.1 Sub-Area A – Maunganui Bay-Oke Bay Rāhui Tapu;

~~16.2 Sub-Area A buffer – Maunganui Bay-Oke Bay Rāhui Tapu buffer area;~~

~~16.2-16.3~~ Sub-Area B – Ipipiri Moana Mara Tipu Rohe ~~benthic protection area~~;

³ Larger versions of my figures are attached to the back of my evidence.

⁴ Based on the Bay of Islands.

~~16.3-16.4~~ Sub-Area C – ~~Ipipiri~~-Rakaumangamanga Moana Mara Tipu Rohe ~~protection area~~.

Te Mana o Tangaroa Protection Area

18. The proposed Te Mana o Tangaroa Protection Area to the south has been proposed by Te Uri o Hikihiki. (**Figure 1**). Within this area, different protection measures are proposed for three different sub-areas (while noting different area names were used in the evidence of Ms Lucas and Dr Bellingham):

17.1 Sub-Area A – Mimiwhangata Rāhui Tapu;

17.2 Sub-Area A buffer – Mimiwhangata Rāhui Tapu buffer areas;

17.3 Sub-Area **CB** – Te Au o Morunga protection area.

19. There is overlap between the Sub-Area C – ~~Ipipiri~~-Rakaumangamanga Moana Mara Tipu Rohe ~~protection area~~ of Te Hā o Tangaroa and the Sub-Area **CB** – Te Au o Morunga protection area of Te Mana o Tangaroa.⁵

FISHERIES REGULATIONS THAT APPLY NATIONALLY AND TO THE NORTHLAND REGION

20. Within the proposed Protection Areas, there are existing fisheries controls that have been implemented under the Fisheries Act.⁶ These controls include minimum legal sizes, restrictions on certain fishing methods,⁷ seasonal and spatial closures, and recreational daily bag limits.

21. Many of the existing commercial and recreational regulations apply nationally and to the Northland region (including to the proposed Protection Areas). Some of these regulations are summarised in **Table 1**, noting this is not an exhaustive list of regulations that apply to commercial and recreational fishing given the complexity of existing controls.⁸

⁵ Different rules are proposed for these overlapping areas.

⁶ The framework of regulation under the Fisheries Act is discussed in the evidence of Mr Hore (fisheries management).

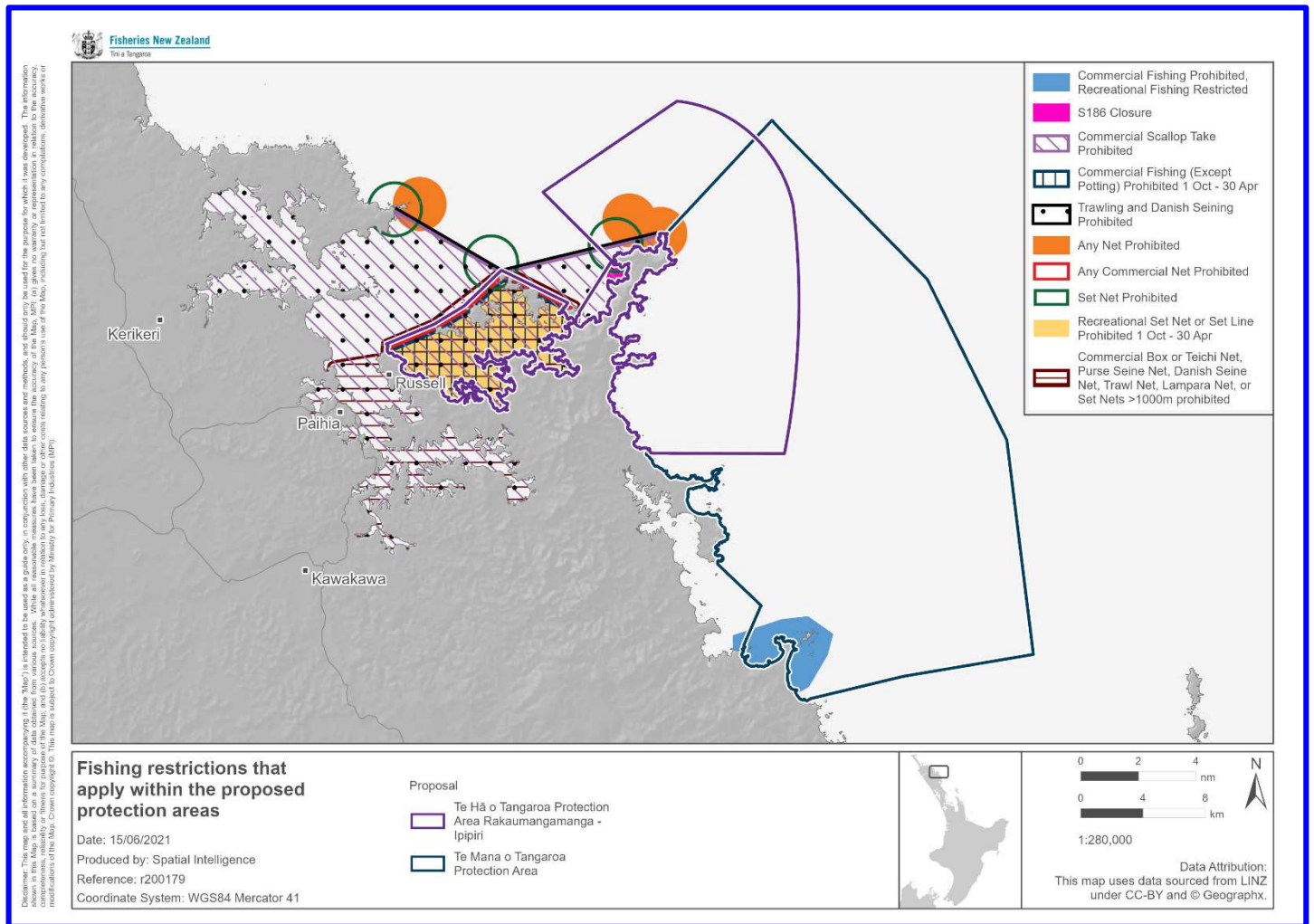
⁷ For a description of methods, see Appendix 1 of Mr Hore's evidence (impact of proposals on fisheries and fisheries resources).

⁸ The main regulations are contained in the Fisheries (Commercial Fishing) Regulations 2001, the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, and the Fisheries (Amateur Fishing) Regulations 2013.

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

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

22. There are also additional tightly confined regulations that apply to localised areas within the proposed Protection Areas. These localised regulations are summarised in **Figure 2**.



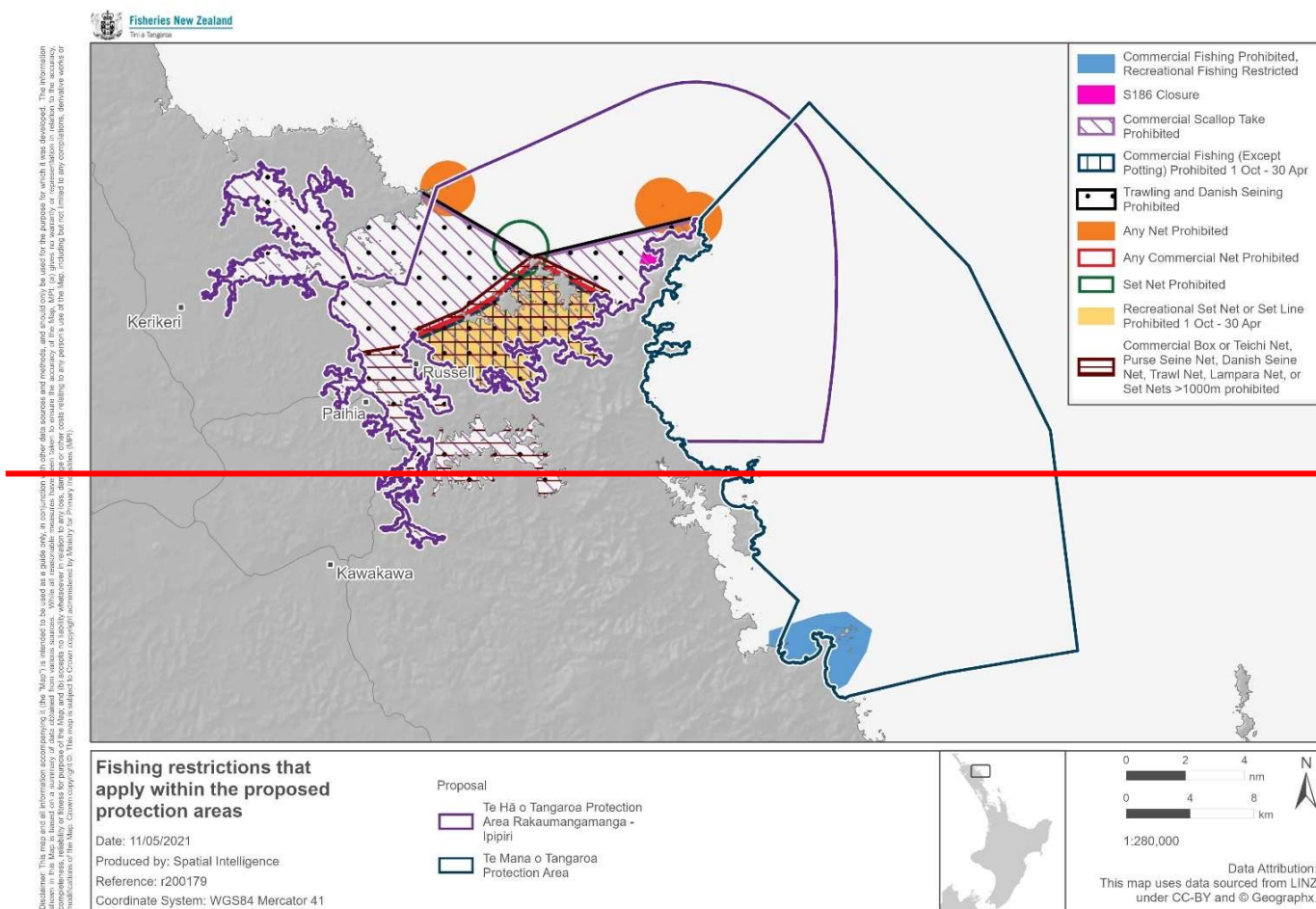


Figure 2: Existing fisheries regulations that apply to localised areas in the proposed Protection Areas.

23. In **Appendix 1** I have provided a further map that combines **Figure 2** with the national and Northland fisheries regulation affecting the proposed Protection Areas (including the trawl prohibition for vessels >46 m, the prohibition on trawl mesh size <125 mm) and also the Mātaitai Reserve, Taiapure, and Marine Reserve.
24. I turn now to a comparison of current rules for each specific sub-area against what is being proposed for the same sub-area. A summary of the proposed fisheries restrictions for each sub-area is provided in **Appendix 2**.

ASSESSMENT OF TE HĀ O TANGAROA PROTECTION AREAS

Sub-Area A – Maunganui Bay-Oke Bay Rāhui Tapu

25. In Sub-Area A it is proposed that there is no take of fish, aquatic life or seaweed (rule C.1.9.2(a)), other than kina/sea urchin harvest (rule C.1.9.1.(a)i).⁹
26. **Table 2** provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area A (in addition to the regulations summarised in **Table 1**), in comparison to controls proposed by the appellants.

Table 2: Summary of existing controls under the Fisheries Act in Sub-Area A, in comparison to the measures proposed.

	Fisheries Act	Measures proposed	Key comments
Prohibited	No take of any species (except kina) from Maunganui Bay ¹⁰ Commercial take of scallops ¹¹ Trawling and Danish seining ¹² All drift netting ¹³ Commercial and recreational set netting around Twins Rock ¹⁴	No take of any species from Sub-Area A except kina	Regulatory overlap Maunganui Bay Regulatory overlap for commercial scallop take, prohibited fishing methods, and seasonal closures (including no recreational take of scallops 1 April to 31 August).
Permitted		Kina harvest (Various monitoring, research emergency activities which are not opposed (C.1.9.1))	Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50)
Otherwise regulated	Kina harvest across area, subject to regulation ¹⁵ Take of many fish other than from Maunganui Bay and subject to commercial and recreational regulation, including rock lobster, finfish and shellfish take.		Fisheries Act enables take of fish outside of Maunganui Bay subject to regulation.

⁹ I have adopted the revised simpler rule numbering proposed in the planning evidence of Mr Raeburn (Appendix A).

¹⁰ Fisheries (Maunganui Bay Temporary Closure) Notice 2020 (MPI 1245).

¹¹ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(j).

¹² Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 4(e).

¹³ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

¹⁴ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 15A(b)(iii), Fisheries (Amateur Fishing) Regulations 2013, reg 76(1).

¹⁵ Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

27. Under the Fisheries Act there is a temporary section 186A closure in place in Maunganui Bay, other than for kina. The closure is in place at the request of Ngāti Kuta and Patukeha ki Te Rawhiti, the two resident hapū. It has been in place since December 2010 and has been renewed about every two years.¹⁶ Most recently, on 23 July 2020, the Minister of Fisheries renewed and approved the closure to the take of all fisheries resources (except kina). This temporary closure will end on 13 October 2022 (but will again be reviewed and is subject to renewal).
28. Since Maunganui Bay is already closed under the Fisheries Act, the proposed RMA closure would duplicate what is already in place.
29. The section 186A Fisheries Act approach responds to the wishes of the local hapū and, importantly, can be lifted in response to their wishes. Closure under the RMA narrows the hapū's options in the future as it cannot be changed other than through a Schedule 1 RMA public process which necessarily involves the wishes of far more parties than the hapū and gives hapū less control over the outcome.¹⁷ I acknowledge that Ngāti Kuta is supporting the closure of Maunganui Bay in the Regional Plan.
30. The Fisheries Act already prohibits commercial scallop take, and trawling and Danish seining in Sub-Area A. There are also species that commercial fishers cannot take (e.g. reef fish, **Table 1**). Therefore, the proposed RMA measures duplicate for these species and methods.

Kina harvest

31. A particular issue arises in relation to kina/sea urchin harvest.
32. It is proposed that kina/sea urchin harvest is a permitted activity in Sub-Area A and all other sub-areas. The issues discussed here also apply to the assessment of each sub-area in relation to kina.
33. The endemic sea urchin *Evechinus chloroticus*, more commonly associated as being kina, is subject to commercial catch limits under the Quota Management System (**QMS**) and is subject to other regulatory controls under the Fisheries Act, such as recreational daily bag limits.

¹⁶ A customary rāhui applied from March 2009, before a more formal rāhui/section 186A closure was implemented from 2010.

¹⁷ As discussed in the brief of evidence of Mr Hore (fisheries management), the Fisheries Act regime provides for customary values and management.

34. There is anecdotal evidence to suggest the purple urchin *Centrostephanus rodgersii* is increasing in northern New Zealand. This urchin species is not currently included within the QMS (i.e. there is no set Total Allowable Catch¹⁸) and may be taken by commercial fishers but must be reported. It is however explicitly included in the definition of kina in the Fisheries (Amateur Fishing) Regulations 2013 (**Amateur Regulations**) and thus within the daily bag limit of 50. As such, recreational fishers are restricted in their catch of the purple urchin.
35. The ecological evidence of the appellants suggests that they see the uncontrolled take of kina as ecologically beneficial and hence promote its taking as a permitted activity. However, both Acts must be complied with and restrictions under the Fisheries Act mean there can be no unrestricted taking under the Regional Plan as a permitted activity.
36. Achieving freer ability to take these species requires a change under the Fisheries Act such as, amendment to the Amateur Regulations to revoke the recreational daily bag limit of 50 to enable recreational fishers to take as many as they please. The endemic kina *Evechinus chloroticus* is subject to commercial catch limits under the QMS; therefore, if greater levels of commercial take is envisaged, a review of the Total Allowable Commercial Catch¹⁹ would need to be considered for this species in line with the Minister's obligations under the Fisheries Act.²⁰
37. Further, permitting under the Regional Plan what is regulated under the Fisheries Act may cause unintentional breaches of the Fisheries Act and confusion. Where there are already Fisheries Act controls in place, the potential for compliance with the RMA control to lead to a breach of the Fisheries Act is of concern. In this instance, fishers may think that because kina harvest is permitted they can take what they want and exceed the daily bag limit under the Fisheries Act.

¹⁸ An annual catch limit or Total Allowable Catch is set by the Minister for every stock managed under the QMS, discussed further in the evidence of Mr Hore (fisheries management).

¹⁹ Within the Total Allowable Catch, a commercial catch limit or Total Allowable Commercial Catch is set annually by the Minister for every stock managed under the QMS, discussed further in the evidence of Mr Hore (fisheries management).

²⁰ Fisheries Act 1996, sections 13, 20, & 21.

38. Even if compliance with the RMA control isn't a risk to Fisheries Act compliance, the confusion and therefore uncertainty for fishers and others is still an issue. Whether a proposed RMA control is necessary and the impact of such a control on other controls, needs to be considered so that there is certainty. Generally, more certainty will be achieved when there is less overlap.

~~Sub-Area A buffer – Maunganui Bay-Oke Bay Rāhui Tapu~~

- ~~39. In Sub-Area A buffer it is proposed that there is no take of fish, aquatic life or seaweed (rule C.1.9.2(b)), other than kina harvest (rule C.1.9.1.(a)i), and hand fishing with one line and hook per person and hand gathering that does not involve the use of scuba equipment or any implement (such as a knife, hook or spear) (rule C.1.9.1(b)).~~
40. ~~Table 3~~ provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area A buffer (in addition to the regulations summarised in ~~Table 1~~), in comparison to controls proposed by the appellants.

Table 3: Summary of existing controls under the Fisheries Act in Sub-Area A buffer, in comparison to the proposed measures.

	Fisheries Act	Proposed measures	Key comments
Prohibited	<p>Commercial take of scallops²¹</p> <p>Trawling and Danish-seining²²</p> <p>All drift netting²³</p> <p>Commercial and recreational set netting around Twins Rock²⁴</p> <p>Commercial take of fish from the Bay of Islands between 1 October and 30 April, except rock lobster potting²⁵ (applies to small area near Kohangaatara Point)</p> <p>Use of commercial 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 metres²⁶ (applies to small area near Kohangaatara Point)</p> <p>Use of recreational set net and set line in Bay of Islands, 1 October to 30 April (excludes nets used for targeting grey mullet or flatfish)²⁷ (applies to small area near Kohangaatara Point)</p>	<p>No take of any species from Sub-Area A buffer except kina</p> <p>Hand fishing with more than 1 line/1 hook per person</p> <p>Use of scuba equipment</p> <p>Use of any implement when hand-gathering</p>	<p>Regulatory overlap for commercial scallop take, prohibited fishing methods, and seasonal closures (including no recreational take of scallops 1 April to 31 August).</p> <p>Scuba (underwater breathing apparatus) regulated under Fisheries Act for certain species/circumstances²⁸</p> <p>Recreational restrictions for hand fishing and hand-gathering under Fisheries Act²⁹</p>
Permitted		<p>Kina harvest</p> <p>Hand fishing 1 line/1 hook per person</p> <p>Hand-gathering of aquatic life with no scuba equipment or implements (i.e. knife, hook or spear)</p> <p>(Various monitoring, research emergency activities which are not opposed (C.1.9.1))</p>	<p>Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50)</p> <p>Scuba, hand fishing and hand-gathering restrictions already apply under Fisheries Act (as per above).</p>
Otherwise regulated	<p>Kina harvest across area, subject to regulation³⁰</p> <p>Take of many fish subject to commercial and recreational regulation, including rock lobster, finfish and shellfish take.</p>		<p>Fisheries Act enables take of many fish subject to regulation.</p>

²¹ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(j).

²² Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 4(e).

²³ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

²⁴ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 15A(b)(iii), Fisheries (Amateur Fishing) Regulations 2013, reg 76(1).

²⁵ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 19A(2),(3).

²⁶ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 10A(1)(o).

²⁷ Fisheries (Amateur Fishing) Regulations 2013, reg 75.

²⁸ Fisheries (Commercial Fishing) Regulations 2001, reg 76, Fisheries (Amateur Fishing) Regulations 2013, reg 48.

²⁹ For example, restrictions on line fishing, Fisheries (Amateur Fishing) Regulations 2013, reg 42.

³⁰ Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

~~41. In Sub-Area A buffer, the Fisheries Act already prohibits and restricts commercial and recreational fishing, including no commercial scallop take, trawling and Danish seining, and, for example the recreational use of certain implements – loops or spears – for the take of rock lobster.³¹ Therefore, the proposed Regional Plan measures create duplication and can cause confusion by fishers and others, possibly not knowing to look for legal requirements in fisheries regulation and the Council’s Regional Plan and two different agencies monitoring for the same thing.~~

~~42. Also, based on my experience “buffers” are not an effective regulatory tool. People will always fish to the boundary and the boundary of any area for protection should be set appropriately in the first place. A buffer zone also adds unnecessary complexity to the rules, potentially creating confusion and limiting voluntary compliance.~~

~~The issue with kina discussed under Sub-Area A – Maunganni Bay Oke Bay Rahui Tapu will apply here also.~~

Sub-Area B - Ipipiri Moana Mara Tipu Rohe ~~benthic protection area~~

43. In Sub-Area B it is proposed that there is no bottom trawling, bottom pair trawling, Danish seining, purse seining, longlining without approved seabird mitigation devices, drift netting, or scallop/other dredging be allowed (rule C.1.9.2(c)). Kina harvest is specifically permitted (rule C.1.9.1(a)i).³²

44. **Table 3 4** provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area B (in addition to the regulations summarised in **Table 1**), in comparison to controls proposed by the appellants.

³¹ Fisheries (Amateur Fishing) Regulations 2013, reg 46.

³² Note that in respect of Sub-Area B, Mr Raeburn appears to be suggesting a different rule set than in the confirmed relief for Court provided in December 2020 which created a discretionary activity consent category for some activities that appear to be proposed as permitted by Mr Raeburn.

Table 3 4: Summary of existing controls under the Fisheries Act in Sub-Area B, in comparison to the proposed measures.

	Fisheries Act	Proposed measures	Key comments
Prohibited	Commercial take of scallops ³³ Trawling and Danish seining ³⁴ All drift netting ³⁵ Commercial and recreational set netting around Whale Rock ³⁶ Commercial take of fish from the Bay of Islands between 1 October and 30 April, except rock lobster potting ³⁷ Use of commercial 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 ³⁸ Use of recreational set net and set line in Bay of Islands, 1 October to 30 April (excludes nets used for targeting grey mullet or flatfish) ³⁹ .	Bottom trawling Bottom pair trawling Danish seining Purse seining Drift netting Scallop or other dredging Longlining without approved seabird mitigation devices	Regulatory overlap for prohibited fishing methods, commercial scallop take, and seasonal recreational take of scallops 1 April to 31 August. Use of approved seabird mitigation devices already regulated for commercial longlining, but not for recreational longlines.
Permitted		Kina harvest Longlining with approved seabird mitigation devices (Various monitoring, research emergency activities which are not opposed (C.1.9.1))	Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50)
Otherwise regulated	Kina harvest across area, subject to regulation ⁴⁰ Take of many fish subject to commercial and recreational regulation, including rock lobster, finfish and shellfish take.	There is a difference between the confirmed relief for Court (December 2020) and Mr Raeburn's proposed relief. Accordingly, it is not clear if the appellants intend that some activities may require resource consent and what they are.	Fisheries Act enables take of many fish subject to regulation.

45. There is obviously regulatory overlap proposed for trawling and seining, drift netting, commercial scallop take, and the seasonal recreational closure for scallops (1 April to 31 August).

³³ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(j).

³⁴ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 4(e).

³⁵ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

³⁶ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 15A(b)(ii), Fisheries (Amateur Fishing) Regulations 2013, reg 76(1).

³⁷ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 19A.

³⁸ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 10A(1)(o).

³⁹ Fisheries (Amateur Fishing) Regulations 2013, reg 75.

⁴⁰ Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

46. Seabird mitigation devices are also already required for commercial surface and bottom longlining under the Fisheries Act, including weighting of longlines and streamer line specifications.⁴¹ Therefore, the proposed measures directly duplicate fisheries regulation. It is also uncertain whether the intention is for the proposed mitigation measures to apply to recreational longlines (i.e. any line to which more than 7 hooks (whether baited or not) are attached). Seabird mitigation measures for recreational fishing are not regulated under the Fisheries Act, but recreational fishers are encouraged to use responsible seabird handling and mitigation techniques when fishing.
47. From 1 October 2020, the use of drift nets in all New Zealand waters has been prohibited. This is irrespective of size and irrespective of whether the net is attached or tethered to any vessel. The use of drift nets was not particularly common, but the risk these nets posed if lost, and the general indiscriminate nature of what they can catch (including many protected species), led to their prohibition.⁴²
48. The issue with kina discussed under *Sub-Area A – Maunganui Bay-Oke Bay Rahui Tapu* will apply here also.

Sub-Area C - ~~Ipipiri-Rakaumangamanga~~ **Moana Mara Tipu Rohe** ~~protection area~~

49. The proposed Sub-Area C protection area ~~covers~~ ~~consists of a large area of the inner Bay of Islands and~~ the outer Bay of Islands area. Sub-Area C overlaps with the Sub-Area ~~CB~~ - Te Au o Morunga protection area identified by Te Uri o Hikihiki hapū (as part of Te Mana o Tangaroa Protection Area).
50. The proposed provisions in the overlapping area are broadly consistent, with both parties wishing to prohibit bottom trawling, bottom pair trawling, Danish seining, purse seining and longlining without approved seabird mitigation devices. The appellants would add drift netting (rule C.1.9.2(d)f) for the proposed Te Hā o Tangaroa Protection Area.⁴³
51. However, there appears to be some conflict with the proposed rules with Te Uri o Hikihiki suggesting additional measures in the Sub-Area ~~CB~~ - Te Au o Morunga protection area (which overlaps), including no scallop dredging (rule C.1.9.3.2) and, as

⁴¹ Fisheries (Seabird Mitigation Measures—Surface Longlines) Circular 2019 (MPI 1104) and Fisheries (Seabird Mitigation Measures—Bottom Longlines) Circular 2020 (MPI 1174) issued pursuant to the Fisheries (Commercial Fishing) Regulations 2001, reg 58A.

⁴² The Driftnet Prohibition Act 1991 is specific to driftnets that are more than 1 km in length (as defined in the interpretation). It did not apply to use of drift nets <1 km in length that may have been used. The 2020 regulatory change prohibited this.

⁴³ Evidence of Mr Raeburn, Appendix A.

well as no longlining without approved seabird mitigation devices, would require longlining to use “other technology to avoid seabird capture, and on-board monitoring cameras and devices”(rule C.1.9.3.1) in the Te Mana o Tangaroa Protection Areas.⁴⁴ Also the status of drift netting is in doubt in these proposals given the appellants would prohibit it (rule C.1.9.2(d)f) and Te Uri o Hikihiki would not.

52. **Table 4 5** provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area C - [Rakaumangamanga Moana Mara Tipu Rohe](#) (in addition to the regulations summarised in **Table 1**), in comparison to controls proposed by the appellants and Te Uri o Hikihiki.

⁴⁴ As provided by Te Uri o HikiHiki as confirmed relief December 2020.

Table 4 5: Summary of existing controls under the Fisheries Act in Sub-Area C, in comparison to the proposed measures.

	Fisheries Act	Proposed measures	Key comments
Prohibited	<p>Commercial take of scallops in the inner waters of Sub-Area C⁴⁵</p> <p>Commercial take of scallops in the outer waters of Sub-Area C between 6 pm and 6am⁴⁶</p> <p>Trawling and Danish seining in the inner waters of Sub-Area C⁴⁷</p> <p>All drift netting⁴⁸</p> <p>Commercial and recreational set netting around Cape Wiwiki, Twins Rock, Whale Rock⁴⁹</p> <p>Use of commercial 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 in Port Russell⁵⁰</p> <p>Use of any commercial or recreational net around Cape Brett, Ninepin, or Bird Rock⁵¹</p> <p>Commercial take of scallops in a small portion of Sub-Area C⁵²</p> <p>Trawling and Danish seining in a small portion of Sub-Area C⁵³</p>	<p><u>Both areas</u></p> <p>Bottom trawling</p> <p>Bottom pair trawling</p> <p>Danish seining</p> <p>Purse seining</p> <p>Longlining without approved seabird mitigation devices</p> <p><u>Sub-Area CB – Te Au o Morunga only</u></p> <p>Scallop dredging</p> <p>Longlining without other technology to avoid seabird capture, and on-board monitoring cameras and devices.</p> <p>Sub-Area C of Te Hā o Tangaroa prohibits drift netting but Sub-Area CB (overlapping) of Te Mana o Tangaroa does not.</p>	<p>Regulatory overlap for prohibited fishing methods.</p> <p>Use of approved seabird mitigation devices already regulated for commercial longlining, but not for recreational longlines.</p> <p>In Sub-Area CB (Te Mana o Tangaroa), regulatory overlap with commercial scallop take, and seasonal recreational take of scallops 1 April to 31 August.</p>
Permitted		<p><u>Both areas</u></p> <p>Kina harvest</p> <p>Longlining with approved seabird mitigation devices</p> <p><u>Sub-Area CB – Te Au o Morunga only</u></p> <p>Longlining with other technology to avoid seabird capture, and on-board monitoring cameras and devices.</p> <p>(Various monitoring, research emergency activities which are not opposed (C.1.9.1))</p>	<p>Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50).</p>
Otherwise regulated	<p>Kina harvest across area, subject to regulation⁵⁴</p> <p>Take of many fish subject to commercial and recreational regulation, including rock lobster, finfish and shellfish take.</p>	<p>There is a difference between the confirmed relief for Court (December 2020) and Mr Raeburn's proposed relief. Accordingly, it is not clear if the appellants intend that some activities may require</p>	<p>Fisheries Act enables take of fish subject to regulation (i.e. rock lobster, finfish, shellfish).</p>

⁴⁵ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(j).

⁴⁶ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(5).

⁴⁷ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 4(e).

⁴⁸ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

⁴⁹ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 15A(b)(~~(i)~~ to (iii)), Fisheries (Amateur Fishing) Regulations 2013, reg 76(1).

⁵⁰ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 10A(1)(p).

⁵¹ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 19A(1)(b)(c), Fisheries (Amateur Fishing) Regulations 2013, reg 75(1).

⁵² Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(1)(j).

⁵³ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 4(e).

⁵⁴ Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

		resource consent and what they are. (confirmed relief rule C.1.9.3.4)	
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53. There is ~~obviously~~ overlap proposed in terms of ~~seining, trawling, and~~ drift netting; and commercial longlining must have seabird mitigation devices under Fisheries Act regulation.
54. In addition, commercial and recreational netting is already prohibited under the Fisheries Act in a one nautical mile radius from the northern most point of Cape Brett, and one nautical mile from the mean high-water mark of Mahenotapuku (Bird Rock), ~~and Tikitiki Rock (Nine Pin)~~. All commercial recreational set netting is prohibited within a one nautical mile radius from ~~the eastern most point of Cape Wiwiki and Te Nunuhe Rock (Whale Rock), and~~ Motutara (Twins Rock).
55. As noted, Te Uri o Hikihiki hapū also propose that longlining can occur with the use of approved seabird mitigation devices, other technology to avoid seabird capture, and on-board cameras and devices in the Sub-Area ~~CB~~ – Te Au o Morunga protection area. The specific details of this other technology and devices are not provided by Te Uri o Hikihiki. It is therefore uncertain how these measures would work in practice under the proposed Regional Plan measures, including the ability to enforce and monitor such provisions for commercial fishing. It is also not clear who would fund such measures and their cost is likely to be considerable.⁵⁵ It is also uncertain whether the intention is for the mitigation and other technology measures to apply to recreational longline.
56. The issue with kina discussed under *Sub-Area A – Maunganui Bay-Oke Bay Rāhui Tapu* will apply here also.

ASSESSMENT OF TE MANA O TANGAROA PROTECTION AREAS

Sub-Area A - Mimiwhangata Rāhui Tapu⁵⁶

57. In Sub-Area A, Te Uri o Hikihiki propose that there is no take of fish, aquatic life or seaweed (rule C.1.9.2.1) other than kina management (presumably meaning harvest) (rule C.1.9.1.1). It is also proposed that any activity involving the removal of mangō

⁵⁵ In the evidence of Mr Denne (Economics) he mentions compliance costs falling on fishers but doesn't appear to consider costs of other technology and devices being required for commercial fishers.

⁵⁶ Relief sought in confirmed position (December 2020) and also attached to Dr Bellingham's evidence as Attachment 2.

taniwha/great white shark, mako shark, thresher shark, blue shark, ururoa/hammerhead shark or bronze whaler shark is prohibited (rule C.1.9.2.2).

58. **Table 5 6** provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area A (in addition to the regulations summarised in **Table 1**), in comparison to controls proposed by the s 274 party Te Uri o Hikihiki.

Table 5 6: Summary of existing controls under the Fisheries Act in Sub-Area A, in comparison to the proposed measures.

	Fisheries Act	Proposed measures	Key comments
Prohibited	Commercial take of any fish or seaweed by any fishing method from the Mimiwhangata Peninsula (comprising the area of water adjacent to Paparahi Point and Rimariki Island) ⁵⁷ Commercial take of scallops between 6 pm and 6 am ⁵⁸ All drift netting ⁵⁹ Commercial take of beach cast seaweed in specified coastal areas ⁶⁰ Recreational take of specified species of finfish and shellfish from the Mimiwhangata Peninsula area (the waters adjacent to Paparahi Point and Rimariki Island) unless specific fishing methods are used ⁶¹ .	No take of any species from Sub-Area A except kina management No take of specified shark species	Regulatory overlap for Mimiwhangata Peninsula, prohibited fishing methods and temporal measures for scallops. Great white sharks have been protected under the Wildlife Act 1953 since 2007.
Permitted		Kina management (Various monitoring, research emergency activities which are not opposed (C.1.9.1))	Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50)
Otherwise regulated	Kina harvest across area, subject to regulation ⁶² Take of many fish subject to regulation (including outside the Mimiwhangata Peninsula for commercial).		Fisheries Act enables take of fish subject to regulation (i.e. rock lobster, finfish, shellfish).

⁵⁷ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 23.

⁵⁸ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(5).

⁵⁹ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

⁶⁰ In in the coastal area between Cape Brett and Pakiri River, excluding Whangaruru Harbour, Whananaki Estuary, Matapouri Bay, Whangarei Harbour, and any areas within 1 km of Ngunguru River, Horahora River, Pataua River, or Taiharuru River. Fisheries (Beach Cast Seaweed Area Prohibition) Notice 2002.

⁶¹ Fisheries (Amateur Fishing) Regulations 2013, reg 69.

⁶² Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

59. The majority of Sub-Area A is already designated as the Mimiwhangata Marine Park and is regulated under the commercial and amateur regulations administered by MPI.⁶³ The Department of Conservation also has an educational role. The area proposed for Sub-Area A as rāhui tapu thus expands an area that is already partly a rāhui given its partial closure.
60. The commercial take of any fish or seaweed by any fishing method from the Mimiwhangata Peninsula (comprising the area of water adjacent to Paparahi Point and Rimariki Island) is already prohibited. Although not within the proposed Sub-Area A protection area, trawling and Danish seining are prohibited nearby in Whangaruru Harbour, along with the commercial take of scallops.⁶⁴
61. In addition to the commercial ban on taking fish from the Mimiwhangata Peninsula, special rules apply to recreational fishing, which conflict with what is proposed. For example, the following recreational rules apply to this area:
- a. Recreational fishers may use the following methods: un-weighted, single hooked lines, trolling, spearing, hand picking;
 - b. Only those species of fish and shellfish listed in the “Permitted Species List” may be taken⁶⁵;
 - c. Potting is permitted providing that only one pot per person, party, or boat is used;
 - d. For permitted species normal regulations apply regarding daily bag limits, sizes, closed seasons, condition, shelling and pot escape gaps.
62. The proposed provisions target the recreational sector.
63. What is sought by Te Uri o Hikihiki appears to be more stringent than the current management regime. In addition, Te Uri o Hikihiki have identified specific species of shark for protection. I note that under the Wildlife Act, great white sharks have been protected in our waters since April 2007. Sharks are also an important part of marine

⁶³ Mimiwhangata Marine Park was created in 1983 utilising regulations under the Fisheries Act. It excludes commercial fishing and has some recreational fishing limitations. Each Marine Park has different rules. Marine Parks can no longer be created under the Fisheries Act (though Fisheries Act regulation may apply) but are created by special legislation.

⁶⁴ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 4(f) and 22(1)(k).

⁶⁵ Permitted species include: barracouta, billfish (all types), blue maomao, flatfish (all types), yellow eyed mullet, gurnard, kahawai, kingfish, mackerel (all types), piper (garfish), shark (all types), snapper, trevally, tarakihi, tuna (all types), kina, green lipped mussel, rock lobster, scallops, tuatua).

ecosystems and New Zealand's *National Plan of Action – Sharks* recognises this in terms of shark conservation and management.⁶⁶

64. The issue with kina discussed under *Sub-Area A – Maunganui Bay-Oke Bay Rāhui Tapu* will apply here.

Sub-Area A buffer - Mimiwhangata Rāhui Tapu buffer areas

65. In the Sub-Area A Mimiwhangata buffer areas (West and East) it is proposed that the main management tool will be hapū management plans and that activities not otherwise prohibited (bottom trawling, bottom pair trawling, Danish seining, purse seining, longlining without approved seabird mitigation devices and other technology to avoid seabird capture and monitoring cameras (rule C.1.9.3.1) or permitted (rule C.1.9.1) will be non-complying unless provided for in the management plan (rule C.1.9.3.4). Rule C.1.9.1.5 provides that the management plan will provide site specific rules for the matters in rule C.1.9.1.
66. The Northland Regional Council will be required to consult with Te Uri o Hikihiki and other parties in the preparation of hapū management plans for the buffer area (rule C.1.9.3.6) and customary management will be undertaken in accordance with the management plans reviewable every 10 years (rules C.1.9.3.7 and .8 and .9).
67. **Table 6 7** provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area A buffer areas (in addition to the regulations summarised in **Table 1**), in comparison to the known controls proposed by Te Uri o Hikihiki.

⁶⁶ The National Plan of Action for the Conservation and Management of Sharks is available on the MPI website here: www.mpi.govt.nz/fishing-aquaculture/sustainable-fisheries/protecting-marine-life/shark-conservation-and-management/ It is also discussed in the evidence of Mr Hore (Fisheries Management brief).

Table 6 7: Summary of existing controls under the Fisheries Act in Sub-Area A buffer areas, in comparison to the proposed measures.

	Fisheries Act	Proposed measures	Key comments
Prohibited	Commercial take of scallops between 6 pm and 6 am ⁶⁷ All drift netting ⁶⁸ Commercial take of beach cast seaweed in specified coastal areas ⁶⁹ <i>Within a small portion of the buffer areas</i> Commercial take of any fish or seaweed by any fishing method ⁷⁰ Recreational take of specified species of finfish and shellfish unless specific fishing methods are used ⁷¹ .	Bottom trawling Bottom pair trawling Danish seining Purse seining Longlining without approved seabird mitigation devices, other technology to avoid seabird capture, and on-board monitoring cameras and devices.	Regulatory overlap for prohibited or restricted fishing methods and temporal measures for scallops.
Permitted		Kina management Customary marine management as provided in management plans. Longlining with approved seabird mitigation devices, other technology to avoid seabird capture, and on-board monitoring cameras and devices. (Various monitoring, research emergency activities which are not opposed (C.1.9.1))	Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50)
Otherwise regulated	Kina harvest across area, subject to regulation ⁷² Take of many fish subject to regulation (including outside the Mimiwhangata Peninsula for commercial).	The s 274 party proposes to regulate the buffer areas via hapū management plans. Aside from the prohibited or permitted activities listed, anything not provided by the management plan is a non-complying activity.	Fisheries Act enables take of fish subject to regulation (i.e. rock lobster, finfish, shellfish).

68. The commercial and recreational regulations for Mimiwhangata Peninsula also apply to a portion of the Sub-Area A buffer areas. The protection measures sought by Te Uri o Hikihiki therefore conflict with the current management regime of the Mimiwhangata Marine Park (as discussed under Sub-Area A above).

69. I am unclear how the management plan sought by Te Uri o Hikihiki will co-exist with Fisheries Act regulation. It seems there is a high risk of uncertainty being created. In

⁶⁷ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(5).

⁶⁸ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

⁶⁹ In in the coastal area between Cape Brett and Pakiri River, excluding Whangaruru Harbour, Whananaki Estuary, Matapouri Bay, Whangarei Harbour, and any areas within 1 km of Ngunguru River, Horahora River, Pataua River, or Taiharuru River. Fisheries (Beach Cast Seaweed Area Prohibition) Notice 2002.

⁷⁰ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 23.

⁷¹ Fisheries (Amateur Fishing) Regulations 2013, reg 69.

⁷² Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

particular, the proposed rule C.1.9.3.5 provides that the proposed management plan will set site specific rules for the matters that are permitted under proposed rule C.1.9.1. These permitted matters include resource consent monitoring, wildlife rescue, monitoring and enforcement by a regulatory agency, scientific research undertaken by a number of agencies including MPI and the Department of Conservation, marine biosecurity incursion response. Many of these activities will have their own internal protocols and rules by which they are bound.

70. Further, Te Uri o Hikihiki are proposing that customary management of fishing in the buffer areas will be put in place through these hapū management plans. The customary management of fisheries under the Fisheries Act is discussed in the evidence of Mr Hore (fisheries management). An example of the implementation of customary management tools under the Fisheries Act can be seen near the proposed Te Au o Morunga protection area.
71. The Te Puna Mātaitai Reserve (**Appendix 1**, red shaded area) in the northern Bay of Islands was established by Ngā Hapū o Taiamai ki te Marangi in 2013. A mātaimai reserve⁷³ allows appointed tangata kaitiaki/tiaki to create bylaws for the sustainable management of fisheries resources within the reserve area. In 2019 a process was initiated to introduce a bylaw to restrict the take of mussels from within the Te Puna Mātaitai Reserve. This bylaw was approved by the Minister in early 2020 and the bylaw is now in place.⁷⁴
72. Finally, the issue with kina discussed under *Sub-Area A – Maunganni Bay-Oke Bay Rābui Tapu* will apply here also.

Sub-Area CB – Te Au o Morunga protection area

73. For the Sub-Area **CB** – Te Au o Morunga protection area,⁷⁵ it is proposed that bottom trawling, bottom pair trawling, Danish seining, purse seining, longlining without mitigation and technology to avoid seabird capture (rule C.1.9.3.1) and scallop dredging (rule C.1.9.3.2) are prohibited. Kina management or harvest (rule C.1.9.1.1) is permitted.
74. It seems that Te Uri o Hikihiki are also seeking that fishing activities in Sub-Area **CB** that are neither explicitly permitted nor prohibited are discretionary (rule C.1.9.3.3). In

⁷³ Discussed in the evidence of Mr Hore (fisheries management). Mātaitai reserves are established under the Fisheries (Kaimoana Fishing) Regulations 1998.

⁷⁴ Fisheries (Declaration of Te Puna Mataitai Reserve Bylaw) Notice 2020 (MPI 1120).

⁷⁵ Note in the evidence of Ms Di Lucas this area is called – Area C.

the evidence of Mr Griffin (planning) for the Council he considers this matter and suggests that this approach adds unnecessary complexity and prefers the approach of Te Hā o Tangaroa of providing permitted or prohibited fishing activities. Mr Raeburn's approach has the advantage of simplicity but the activities to be permitted or prohibited are not necessarily appropriate or necessary.

75. As already discussed, there is some overlap between Sub-Area C B proposed by Te Uri o Hikihiki and the Sub-Area C – ~~Ipipiri~~-Raukaumangamanga Moana Mara Tipu Rohe (Te Hā o Tangaroa) geographical area and protection measures. But also, some confusing differences in the measures proposed. Te Uri o Hikihiki are suggesting additional measures in Sub-Area C B (no scallop dredging and implementation of additional technology for longlining) and Te Uri o Hikihiki do not include drift netting on their list of prohibited activities.
76. Even putting the Fisheries Act controls aside, I am not at all sure how fishers are supposed to comply with different rules proposed under the RMA in the same regional plan for these overlapping areas. What is the status of drift netting? Is it prohibited or does it require a resource consent? How can a resource consent be required for the same activity under one set of rules, but that activity be permitted under another in the same place? ⁷⁶
77. I also do not understand how a regional council can grant a resource consent for a number of unspecified fishing activities that fall outside the permitted/prohibited lists. Given the lack of specificity or certainty a fisher is unlikely to know that a resource consent is even required.
78. **Table 7 8** provides a summary of some of the existing Fisheries Act controls that apply to Sub-Area C B – Te Au o Morunga protection area (in addition to the regulations summarised in **Table 1**), in comparison to controls proposed by the Te Uri o Hikihiki.

⁷⁶ The effect of Mr Raeburn's approach that what is not prohibited in Area C is permitted but Te Uri o Hikihiki's approach that what is not permitted or prohibited requires a resource consent.

Table 7 8: Summary of existing controls under the Fisheries Act in Sub-Area C B, in comparison to the proposed measures.

	Fisheries Act	Proposed measures	Key comments
Prohibited	Commercial take of scallops between 6 pm and 6 am ⁷⁷ All drift netting ⁷⁸ Use of any commercial or recreational net around Cape Brett Bird Rock ⁷⁹	<u>Both areas (Te Hā and Te Mana)</u> Bottom trawling Bottom pair trawling Danish seining Purse seining Longlining without approved seabird mitigation devices <u>Sub-Area C B – Te Au o Morunga only</u> Scallop dredging Longlining without other technology to avoid seabird capture, and on-board monitoring cameras and devices. Sub-Area C of Te Hā o Tangaroa prohibits drift netting. but Sub Area C B of Te Mana o Tangaroa does not.	Some regulatory overlap for prohibited fishing methods. Use of approved seabird mitigation devices already regulated for commercial longlining, but not for recreational longlines. In Sub-Area C B (Te Au o Morunga), regulatory overlap with commercial scallop restriction, and seasonal recreational take of scallops 1 April to 31 August.
Permitted		<u>Both areas (Te Hā and Te Mana)</u> Kina harvest/management Longlining with approved seabird mitigation devices (Various monitoring, research emergency activities which are not opposed (C.1.9.1)) <u>Sub-Area C B – Te Au o Morunga only</u> Longlining with other technology to avoid seabird capture, and on-board monitoring cameras and devices.	Kina harvest is already regulated under the Fisheries Act (i.e. commercial catch limit and by hand-gathering only, recreational daily bag limit of 50).
Otherwise regulated	Kina harvest across area, subject to regulation ⁸⁰ Take of many fish subject to commercial and recreational regulation, including rock lobster, finfish and shellfish take.	A discretionary resource consent is required for fishing activity that is neither prohibited nor permitted.	Fisheries Act enables take of many fish subject to regulation.

79. In terms of comparison with the existing Fisheries Act regulation, there is some regulatory overlap with existing seining and trawling regulations,⁸¹ the drift netting prohibition, and commercial longlining must have seabird mitigation devices under regulation. In addition, commercial and recreational netting is already prohibited under

⁷⁷ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 22(5).

⁷⁸ Fisheries (Commercial Fishing) Regulations 2001, reg 58D, Fisheries (Amateur Fishing) Regulations 2013, reg 41A.

⁷⁹ Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, reg 19A(1)(b), Fisheries (Amateur Fishing) Regulations 2013, reg 75(1).

⁸⁰ Includes *Evechinus chloroticus* (common sea urchin); and *Centrostephanus rodgersii* (purple urchin).

⁸¹ Fisheries (Commercial Fishing) Regulations 2001, including reg 24, 27, 29 & 72.

the Fisheries Act in a one nautical mile from the northernmost point of Cape Brett ~~mean high water mark of Mahenotapuku (Bird Rock).~~

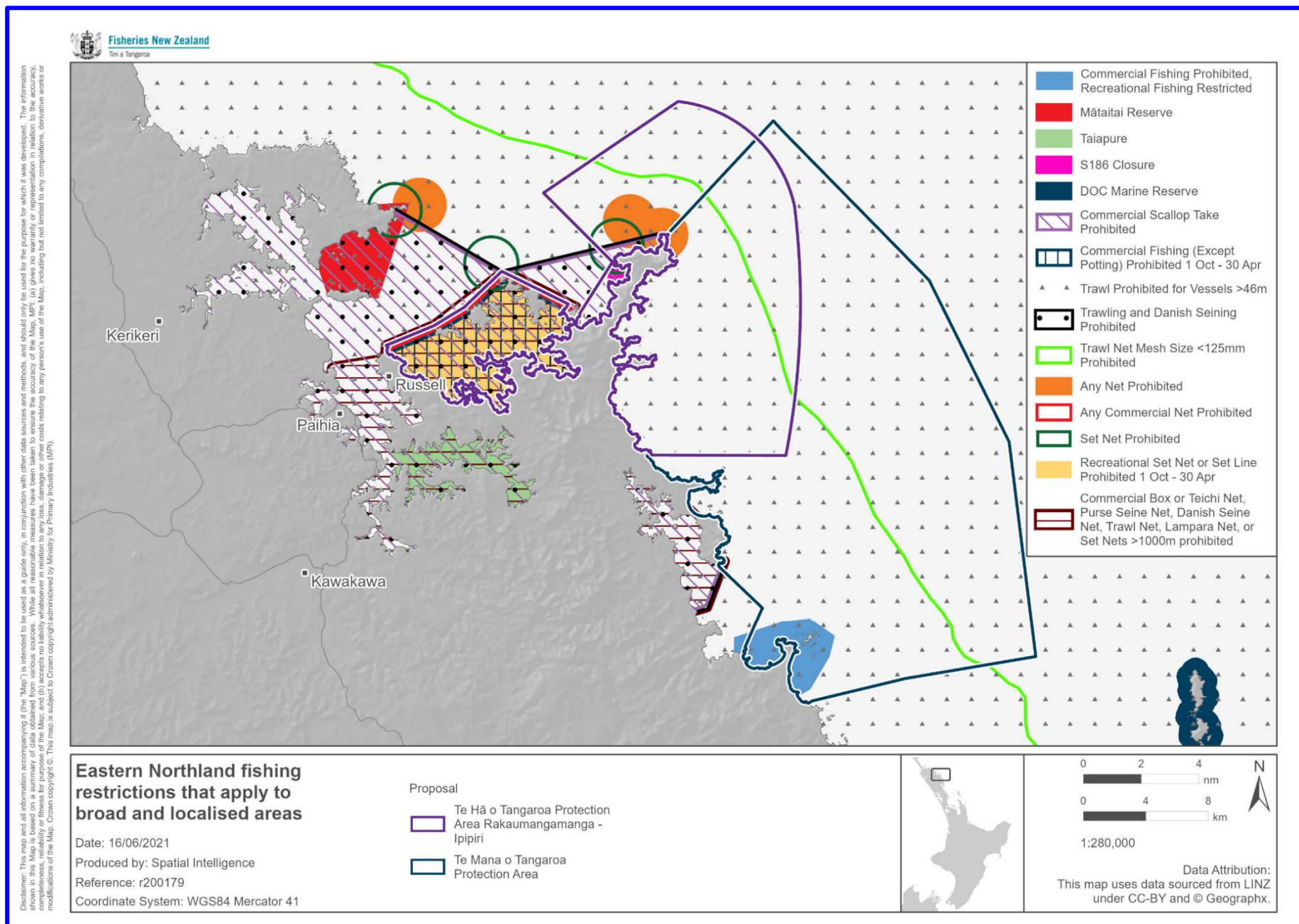
80. For commercial longlining, it is uncertain how measures such as technology to avoid seabird capture, and on-board cameras and devices would work in practice under RMA measures, including the ability to enforce and monitor such provisions. It is also uncertain whether the intention is for the mitigation and other technology measures to apply to recreational longline.
81. The issue with kina discussed under *Sub-Area A – Maunganui Bay-Oke Bay Rāhui Tapu* will apply here also.

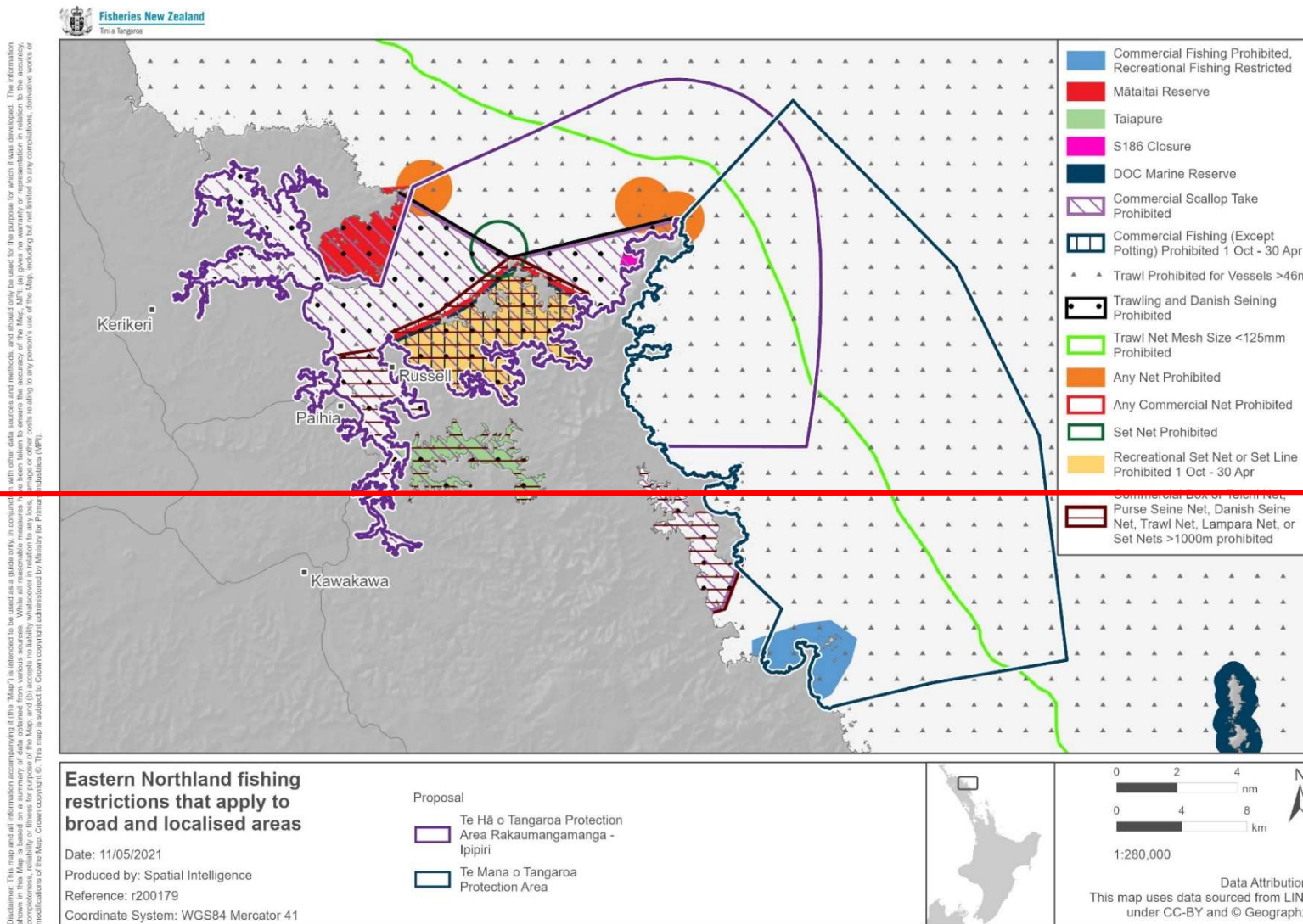
CONCLUSIONS

82. Many of the marine protection measures proposed by the appellants/s 274 party (i.e. bottom trawling, Danish Seining, dredging, drift netting and other prohibitions) overlap significantly with regulations already in place under the Fisheries Act to achieve its overall purpose of providing for utilisation whilst ensuring sustainability (which includes avoiding, remedying or mitigating adverse effects on the aquatic environment).
83. Existing Fisheries Act regulations in the Northland area range from controls over wide areas (for example, trawl vessels over 46 metres and foreign-owned skipjack tuna purse seiners must not fish in the territorial sea), to regulations over specific localised areas (for example, no trawling, Danish seining and commercial scallop take within the inner waters of the Bay of Islands, and no netting or set netting around feature rocks, such as Whale Rock and Bird Rock).⁸²
84. The duplication and fragmentation of fishing restrictions proposed may reduce operational certainty and stakeholder confidence, create confusion and make it more difficult for fishers to comply with the law, and make enforcement more complex without necessarily any additional environmental benefit.

⁸² The existing trawling and Danish seining prohibitions also limit high volume fishing methods being used to capture juvenile fish (e.g. snapper) in nearshore waters (maintaining the potential of fisheries resources) which seems to be a concern of Te Uri o Hikihiki.

Appendix 1: Map of existing fisheries regulations that apply nationally, to the Northland Region, and to localised areas in the proposed Protection Areas. (noting the green circles/set net prohibitions at Cape Wiwiki and Twins Rock have been added)





Appendix 2: Summary of proposed fisheries restrictions in each sub-area (as at 18 June 2021).

Proposed Protection Areas	Summary of proposed fisheries restrictions
Te Hā o Tangaroa Protection Area Rakaumangamanga - Ipipiri	
Sub-Area A – Maunganui Bay-Oke Bay rāhui tapu	No take of fish, aquatic life or seaweed <i>Except</i> kina harvest
Sub-Area A buffer – Maunganui Bay-Oke Bay rāhui tapu buffer area (1km)	No take of fish, aquatic life or seaweed <i>Except</i> kina harvest, hand fishing with one line/hook per person, hand gathering that does not involve the use of scuba or any implement (i.e. knife, hook or spear)
Sub-Area B – Ipipiri Moana Mara Tipu Rohe benthic protection area	No bottom trawling, bottom pair trawling, Danish seining, purse seining, drift netting or scallop/other dredging <i>Except</i> kina harvest, or longlining with approved seabird mitigation devices
Sub-Area C – Ipipiri- Rakaumangamanga Moana Mara Tipu Rohe protection area (with overlap with the Sub-Area C B – Te Au o Morunga protection area)	<u>Both sub-areas</u> No bottom trawling, bottom pair trawling, Danish seining, or purse seining <i>Except</i> kina harvest/management, or longlining with approved seabird mitigation devices. <u>Sub-Area C – Ipipiri-Rakaumangamanga Moana Mara Tipu Rohe only</u> No drift netting <u>Sub-Area C B – Te Au o Morunga only</u> No scallop dredging <i>Except</i> longlining with other technology to avoid seabird capture, and on-board monitoring cameras and devices.
Te Mana o Tangaroa Protection Area	
Sub-Area A – Mimiwhangata rāhui tapu	No take of fish, aquatic life or seaweed, including specified shark species <i>Except</i> kina management
Sub-Area A buffer - Mimiwhangata rāhui tapu buffer areas	No bottom trawling, bottom pair trawling, Danish seining, or purse seining <i>Except</i> kina management, customary marine management as provide in management plans, or longlining with approved seabird mitigation devices, other technology to avoid seabird capture, and on-board monitoring cameras and devices.
Sub-Area C B – Te Au o Morunga protection area (with overlap with Sub-Area C – Ipipiri- Rakaumangamanga Moana Mara Tipu Rohe protection area)	<u>Both sub-areas</u> No bottom trawling, bottom pair trawling, Danish seining, or purse seining <i>Except</i> kina harvest/management, or longlining with approved seabird mitigation devices. <u>Sub-Area C B – Te Au o Morunga only</u> No scallop dredging <i>Except</i> longlining with other technology to avoid seabird capture, and on-board monitoring cameras and devices. <u>Sub-Area C – Ipipiri-Rakaumangamanga Moana Mara Tipu Rohe protection area only</u> No drift netting