

**I MUA I TE KOOTI TAIAO O AOTEAROA ENV-2019-AKL-117
TĀMAKI MAKAU RAU**

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

UNDER the Resource Management Act 1991 (the **RMA**)

AND

IN THE MATTER of an appeal under clause 14(1), Schedule 1 of
the RMA

AND

IN THE MATTER of section 274 of the RMA

BETWEEN **BAY OF ISLANDS MARITIME PARK
INCORPORATED V NORTHLAND REGIONAL
COUNCIL**

ENV-2019-AKL-117

**THE ROYAL FOREST AND BIRD PROTECTION
SOCIETY INCORPORATED V NORTHLAND
REGIONAL COUNCIL**

ENV-2019-1KL-127

Appellants

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

**REBUTTAL EVIDENCE OF KIM LAWRENCE DRUMMOND
ON BEHALF OF TE OHU KAI MOANA TRUSTEE LIMITED**

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INTRODUCTION

1. My name is Kim Lawrence Drummond.
2. I am the Kūrae Moana (Fisheries and Aquaculture Policy Manager) at Te Ohu Kai Moana Trust (**Te Ohu Kaimoana**).

Qualifications and Experience

3. I confirm the qualifications and experience set out in my 17 May 2021 Statement of Evidence in Chief.

SCOPE OF EVIDENCE

4. This rebuttal evidence is based on a review of evidence prepared by the following persons:
 - (a) Juliane Chetham (Patuharakeke Te Iwi Trust Board);
 - (b) Alicia McKinnon (Minister for Oceans and Fisheries);
 - (c) Simon West (Fishing Industry Parties);
 - (d) Kipa Munro (Ngāti Rēhia); and
 - (e) Nora Rameka (Ngāti Rēhia).
5. My rebuttal evidence focuses on:
 - (a) Fisheries Act management tools;
 - (b) Implementation;
 - (c) Land-based effects; and
 - (d) Climate change.

EVIDENCE

Fisheries Act management tools

6. Juliane Chetham states that, in her experience:¹

76 In comparison to the seemingly perpetual rounds of consulting, researching and preparing proposals to the Minister of Fisheries required to utilize tools under the Fisheries Act, the process for the Trust to get additional protection for biodiversity and cultural values into the Regional Plan by having our Mātaitai areas mapped as SSTW was far simpler. ...

77 In my experience therefore, in RMA section 32 terms the Fisheries Act customary management tools (rāhui, mātaimai and taiāpure) are significantly more costly and less efficient than Regional Plan provisions for the exercise of hapū kaitiakitanga in the protection and restoration of taonga species (including kaimoana, customary fisheries) and their habitat, particularly as the costs are almost entirely carried by hapū volunteers.

7. In accordance with the Fisheries Deed of Settlement, a regulatory framework to manage customary non-commercial fishing is provided for under the Fisheries Act 1996 (the **Act**), and the Act itself provides a range of tools that in the North Island are, in the main, available to tangata kaitiaki/tangata tiaki appointed under those regulations. In the South Island these tools are more generally available to tangata whenua as well as kaitiaki/tiaki.

8. The processes that are set in place to enable the additional fisheries management tools (such as taiāpure, mātaimai and

¹ Evidence in Chief of Juliane Chetham at paragraphs 76 and 77.

rāhui) are there to ensure that tangata whenua have an appropriate opportunity to either lead the application process, or be able to participate (as a submitter) to enable all impacts on customary rights to be taken into account. This is an important part of ensuring there are no unintended consequences that may arise when spatial management tools are put in place, including persons holding customary rights to fish there being inadvertently excluded – the exact situation that has occurred in this case.

9. This approach to fisheries management has been developed as part of giving effect to the Fisheries Deed of Settlement. In contrast, the process under the Resource Management Act (**RMA**) does not take into account the obligations in the Fisheries Deed of Settlement. This suggests to me that it was never intended to manage customary fishing rights in this way.
10. I note that the apparent appeal of operating under the RMA is that it is “relatively straight forward and less costly”.² In my view, that experience cannot be universally applied such that a conclusion can be drawn that the RMA is a better tool than the Fisheries Act. Whether an area of significance to tangata whenua proceeds unopposed in a plan will depend on a range of factors that are unique to location, circumstance, and the effect of the inclusion on others.
11. It is also a narrow lens that Ms Chetham is applying. Inclusion of sites of cultural significance in the plan does not equate to providing for customary marine management in the way available under the Fisheries Act. For example:

² Evidence in Chief of Juliane Chetham at paragraph 76.

- (a) Establishment of a taiāpure allows the *imposition of regulations* for the conservation and management of the fish, aquatic life or seaweed.
 - (b) Where a mātaimai reserve is established, kaitiaki/tiaki can *make bylaws* restricting or prohibiting the taking of fisheries resources for any purpose necessary for the sustainable utilisation of the fisheries resources.
 - (c) The regulations framework that supports Part 7 of the Fisheries Act enables kaitiaki/tiaki to provide input into and participate in the process of *setting or varying sustainability measures, or developing management measures* concerning the whole or any part of the customary gathering area / rohe moana for which they have been appointed.
12. In my view, the Fisheries Act doesn't have this apparent lacuna in the planning process with respect to participation of interested parties. An application for the use of customary tools is lodged and an invitation extended for specified parties to submit on that application. Only after all responses have been considered is a decision made on whether to approve the application. In my view, there is considerably more certainty, transparency, and logic (as well as a clear need for mandate) associated with that approach.
13. Ms Chetham notes that the RMA process allows a rule to be set in place for at least a decade without the need to return to it. In my view, in the context of managing fishing controls, this approach poses two risks that are much better managed through a process (such as that available under the Fisheries Act) that can be regularly updated and refined. The first of these risks is that protection is not ensured if the risks are incorrectly identified at the time the measure was introduced. The second risk is the unnecessary constraining of Māori

fishing in breach of customary fishing rights guaranteed under Article II of Te Tiriti o Waitangi, the Fisheries Deed of Settlement and section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

14. Chetham also states that, in 2021 only 12 mātaimai had been established, and:³

50 Based on my experience I consider that this is a reflection of the onerous process and information requirements, serious time delays, and lack of access to technical support. Hapū or iwi are required to demonstrate how they have engaged with the community, commercial and recreational sector, how they aim to address any issues raised by these groups, and meet tests to ensure they do not prevent existing quota holders from getting their entitlement. However, after all of that, it is the Minister that makes the final decision on whether to grant a Taiapure or Mātaimai.

15. Customary take is provided for within Total Allowable Catches set for each fish stock. The responsibilities for customary fishing rest largely with hapū and marae and are carried out under the authority of tangata kaitiaki/tangata tiaki. At the time that Te Ohu Kaimoana reported to the Primary production Select Committee in 2018, there had been eleven mātaimai established in the North Island and thirty-three in the South Island. In addition, ten taiāpure had been established nationally.
16. I cannot say whether that is too little or too many as this is a matter for iwi/hāpu/marae to decide on - as the tools are for them, not the general public. However, I do not agree with

³ Evidence in Chief of Juliane Chetham at paragraph 50.

the inference that the level of uptake of customary non-commercials is directly related to a lack of resourcing.

17. Following the passage of the customary fishing regulations, the Government funded and approved a Deed of Settlement Implementation Programme (**DOSIP**) to ensure that adequate resourcing was available to assist Māori to access the tools that were embedded in the Fisheries Act 1996 and its associated regulations. It is my understanding that the dedicated resources for this purpose were subsequently incorporated into the baseline funding for the (then) Ministry of Fisheries (now the Ministry for Primary Industries (**MPI**)). I further understand that this resourcing now supports the customary fisheries team within MPI. In addition, Te Ohu Kaimoana actively works with iwi (through Mandated Iwi Organisations (MIOs)) to advance customary fishing rights (both commercial and non-commercial) and this support is directly funded by iwi through proceeds of the Fisheries Settlement retained by Te Ohu and used for those purposes.
18. The activity of 'customary fishing' has existed in New Zealand for generations but was formalised with the affirmation of the Quota Management System (**QMS**) and the passing of the customary fishing regulations in 1998 and 1999 (well before the Māori Fisheries Act 2004 establishing MIOs was passed in 2004). This disjunct within the administrative arrangements for the commercial and customary aspects of the Fisheries Settlement can be challenging for iwi for several reasons. MIOs, nearly all of whom have received their commercial settlement assets, are developing their assets for the benefit of their people. However, MIOs are not necessarily responsible for managing customary fishing for an iwi as this typically rests with hapū and marae, as provided for under various fishing regulations.

19. So, the customary regulations can have the effect of undermining their efforts and the tribal structures that iwi are working to build. For example, the process for the Minister to appoint tangata kaitiaki/tangata tiaki in the North Island is carried out with no reference to relevant MIOs, despite them being part of the same tribal structures, and having interests in the same fisheries. This has caused tensions within iwi that need to be resolved by iwi themselves. Wittingly or not, agencies maintain and strengthen these divisions when they fail to work through MIOs. However, in my view the existence of these tensions should not be used as a reason for implementing customary fishing aspirations for some parties outside of the Fisheries Act 1996. To do so would risk denying opportunities for iwi/hāpu/marae to participate in the processes that have been set up for the purpose of both establishing mandate and putting the appropriate tool in place to manage aquatic life.
20. Ms Chetham also raises:
- 40 To separate species (under the Fisheries Act) from their habitat and whakapapa connections – connections which extend to all the children of Tangaroa and indeed to human beings – is “reductionist” and does not align with kaitiakitanga and a Te Ao Maori “ki uta ki tai” (mountains to sea) holistic approach.
21. This comment is similar to that of Dr Shears regarding his erroneous assumption that fisheries management in New Zealand is carried out under a “single species approach” according to “fishery rather than biodiversity values”, which I addressed in my evidence in chief.
22. To expand on that response, the Fisheries Act was enacted four years after the signing of the Fisheries Deed of Settlement and following an extensive consultation process

undertaken on behalf of the Crown by the Fisheries Taskforce. In this way both Parts 2 and 3 of the Fisheries Act were developed and given effect, in order to manage the harvesting of species in a sustainable manner. As a result, the purpose and principles of the Fisheries Act, which governs the management of all aquatic life (with few exceptions), echo *Te hā o Tangaroa kia ora ai tāua* ensuring conservation is an integral part of sustainable use.

23. I note that all persons exercising or performing functions, duties or powers under the Act in order to ensure sustainable utilisation, are required to take into account the environmental principles (section 9 within Part 2 of the Act). This involves maintaining biodiversity, consideration of trophic effects and protecting important habitat. Thus, these considerations are woven into every decision that relates to the authorisation of harvesting. Much of the regulatory framework that is either saved (from the 1908 or 1983 Fisheries Acts) or has been implemented under section 298 of the Act gives effect to those considerations. But importantly, the obligations of stewardship bind fisheries participants. There is no such obligation applying to non-fishing activities that impact on the aquatic environment. This is why the RMA is such a critical piece of legislation for the management of non-fishing effects on the marine environment.

Implementation

24. Alicia McKinnon considers that:

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.

25. My background includes eight years with responsibility for the regulatory functions of New Zealand's largest regional council (Environment Canterbury). In this role I had responsibility for a number of areas that had an overlap or interface with government agencies operating under related legislation. Examples included an interface with biosecurity (with MPI) and an overlap with navigation safety (with Maritime NZ). My experience was that it was problematic where there was an overlap.
26. In terms of achieving compliance, I can envisage real issues with holding people to account for their fishing behaviour within the coastal marine area if they are expected to respond to two quite different rule-setting and penalty systems. This would serve to confuse the majority whom want to comply, and create an out for those who seek to ignore stewardship responsibilities. The latter are often the ones who claim ignorance of the rule they are breaking and offer a defence available under the alternative legislation. I am also concerned about the inefficiency of one water space being subject to two sets of rules from local and central government and who would be responsible for enforcement.

Land-Based Effects

27. Simon West states that the other outstanding threat to biodiversity has been sedimentation and that he agrees with the statement that "sedimentation is probably a far-greater overall threat to the biodiversity of the Bay of Islands than are the physical impacts of fishing."⁴
28. Mr West suspects that if controls are not also placed on sedimentation into the inner Bay of Islands then the fishing controls alone will fail to protect biogenic habitats.⁵

⁴ Evidence in Chief of Simon West at paragraph 80.

⁵ Evidence in Chief of Simon West at paragraph 86.

29. Kipa Munro also states that, as kaitiaki, Ngāti Rehia see surrounding farmlands and the sedimentation from those farm lands which is not blocked from running off into the moana. He also notes large tracts of pine forests surrounding the area and that the cutting down of these forests have poured toxins into their inlet.⁶
30. Nora Rameka also refers to effects from sewage, pollution and farming.⁷
31. I have first-hand experience of land-based effects, particularly sedimentation, being the true risk to the ecology around New Zealand's coastline where fishing was otherwise conveniently considered to be the culprit. I set out some examples below.

Southern Scallop Fishery

32. One of my areas of responsibility at the Ministry of Agriculture and Fisheries was providing management advice to the Minister of Fisheries and the Southern Scallop Fishery Advisory Committee on the management of the Southern Scallop Fishery and responsibility for the implementation of its associated Enhancement Programme. These responsibilities included ensuring that the fishing grounds in areas like the Marlborough Sounds were established after careful consideration of all the available information on habitats of ecological significance.
33. This involved close scrutiny of the Unitary Council's policy and planning framework to ensure that I was aware of all the information collected and made publicly available by the Marlborough District Council. In this way areas containing significant biodiversity such as horse mussel beds, elephant

⁶ Evidence in Chief of Kipa Munro at paragraph 128.

⁷ Evidence in Chief of Nora Rameka at paragraphs 28 - 42 .

fish eggs, and tubeworm mounds we identified and overlaid against regulated closures. In situations where there was no statutory protection the industry participants explicitly agreed not to fish in those areas and complied with that undertaking. This is an example of how the RMA and Fisheries Act processes can operate in harmony.

34. Despite best efforts, the demise of the southern scallop fishery occurred through a deterioration of the habitat in areas within the reach of high sediment flow. The fishery is now closed and scallop populations are confined to the outer areas of the Marlborough Sounds where currents are high and sediment impact is negligible.

Separation Point

35. I am aware of a situation where measures were taken under the Fisheries Act to protect an ecologically significant area of extensive bryozoan mound fields within 140 km² off Separation Point, which lies between Tasman and Golden Bays at the top of the South Island. This area was thought to provide key nursery habitat for species like snapper and tarakihi and so was protected from dredging and trawling in 1981. This year the National Institute of Water and Atmospheric Research (**NIWA**) provided a range of sampling techniques to systematically assess the status of the area. According to a NIWA report from a fish-habitat survey of the Separation Point area closed to fishing (bryozoan fields), "a very troubling picture emerged".
36. NIWA consider the 140km² closed to dredging and trawling to now be a "barren desert in terms of biogenic habitats and juvenile fish assemblages".⁸ They found that the likely

⁸ Dr Mark Morrison (2021), Informal news blurb item from National Institute of Water and Atmospheric Research on Juvenile Fish Habitat Bottlenecks research programme to Technical Advisory Group members.

“smoking gun”⁹ on “top of years of environmental decline caused by land-derived sedimentation”¹⁰ is Cyclone Gita. A take home message was that “addressing one potential stressor to an area without addressing others is very likely to end in failure, and large losses in economic, environmental and social value”.¹¹ A copy of this information is attached as **Appendix A.**

Climate Change

37. Simon West also notes that climate change has the potential to alter the normal natural environmental conditions. The degree to which this may be of effect is not fully known.¹²
38. In my view, climate change and the associated impacts from ocean acidification sit alongside sedimentation as the major areas of risk to maintaining biodiversity in the coastal marine area over the near term. In comparison, the framework to manage the impact of fishing is in place and can be expected to benefit from further refinement.
39. MPI’s Aquatic Environment and Biodiversity Annual Review 2019/2020 notes that:¹³

“Like the rest of the world, our ocean is showing measurable effects of climate change and global warming. Sea temperatures are increasing, ocean acidification is increasing, storm frequencies are higher and more intense, and the knock-on effects to fish and biodiversity are evident in some areas. Extreme events such as marine heatwaves are likely to occur more often”.

⁹ Above

¹⁰ Above

¹¹ Above.

¹² Evidence in Chief of Simon West at paragraph 82.

¹³ Ministry for Primary Industries, Aquatic Environment and Biodiversity Annual Review 2019/2020, Ch 12, available at <https://www.mpi.govt.nz/dmsdocument/42141-Chapter-12-NZ-Climate-and-Ocean-Aquatic-environment-and-biodiversity-annual-review-AEBAR-201920>

40. Evaluation of the likely impacts of climate change is a high priority for the Board of Te Ohu Kaimoana. The cumulative effects of climate change and other anthropogenic stressors on the oceans and aquatic ecosystems are likely to be significant. The 58 Mandated Iwi Organisations, who represent all iwi throughout Aotearoa, have directed Te Ohu Kaimoana to lead development of national and regional fisheries policy based on Māori values and principles in light of their rights. This involves careful consideration of how best to achieve these objectives in the context of climate change. We endorse the incorporation of Te Ao Māori views in measures to increase Aotearoa's resilience to climate change and have recommended that Treaty of Waitangi settlements be a matter to be included in preparation of future risk assessments.
41. Further to the above, our involvement in climate change policy includes:
- a) Providing submissions to the Environment Select Committee on Climate Change Response (Emissions Trading Reform) Amendment Bill;
 - b) Providing submissions to the Environment Select Committee on Climate Change Response (Zero Carbon) Amendment Bill;
 - c) Provided input into the Aotearoa Circle's Marine Scenarios report which presented climate related risk scenarios; and
 - d) Provided early input into the Ministry for the Environment's draft action plan for ocean acidification.



K L Drummond
22 June 2021

Troubling findings from fish-habitat survey of the Separation Point area closed to fishing (bryozoan fields)

In 1980 a 140 km² seafloor area off Separation Point was closed to all commercial fishing bottom contact methods, to protect the extensive bryozoan mound fields found there. These were thought to provide key nursery habitat for many fisheries species including tarakihi, snapper, red and blue cod, leatherjackets and others. Late last year, as part of the MBIE Research Programme 'Juvenile Fish Habitat Bottlenecks', this closed area along with a 1 km buffer was mapped using multibeam sonar. The resulting high-resolution seafloor map showed a wide range of features, including hundreds of harder material patches/rings likely to be bryozoan mounds. This February past, towed camera systems (primarily CoastCam) as well as baited fine mesh fish traps with Go-Pro cameras, and a sediment grab sampler, were systematically deployed across more than 50 sites in the mapped area. A very troubling picture emerged. Very few bryozoan colonies or other biogenic habitats were observed, and the few species seen in low numbers were dominated by ascidian species that appear resilient to high sedimentation levels (also seen in other sediment-stressed areas, e.g., Pelorus Sound). Many large patches of dead carbonate material (shells, bryozoan fragment and other debris) were observed, matching the positions and spatial scale of the harder seafloor patches with multibeam. These patch mosaics were surrounded by soft featureless muds which formed the dominant habitat. Close to shore, a few low-density horse mussel areas were located, as well as zones of 100%-cover dead turret/screw shells. Few fish were seen on the towed videos, with no juvenile blue cod present. Similarly, the baited traps had very low catch rates, mainly of larger older blue cod (catch rates of <0.5 fish per pot), with no juvenile snapper being caught (or seen with Go-Pros). The underwater visibility was also poor, although we were fortunate to experience calm settled weather and better visibility than normal for the area, allowing us to use video methods. In summary, the area is now a barren desert in terms of biogenic habitats and juvenile fish assemblages. A likely smoking gun, on top of years of environmental decline from land-derived sedimentation, is Cyclone Gita, which swept directly across the area in 2018 with great force and caused widespread destruction. Work will now focus on analysing the samples collected and placing the survey at the end of a timeline of decline and change. A key take-home message is that multiple stressors are acting on these kinds of high value areas, and addressing one stressor in isolation without addressing others is very likely to end in failure, and large losses in economic, environmental and social value [Morrison, Dalbeth, Robinson, Leppard, Olsen]



Left: Dead carbonate material and ascidians (pale yellow) at site that previously supported bryozoan colonies (Hippomenella) (lasers are 10 cm apart);



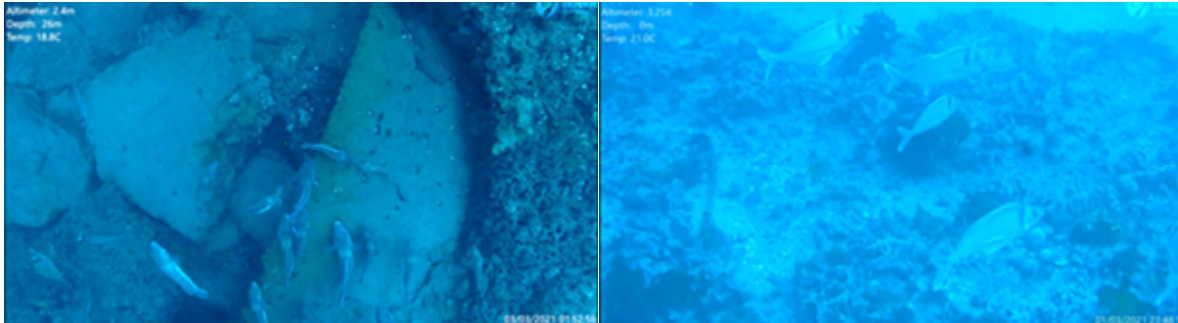
right: two adult tarakihi check out baited trap, where a 35 cm snapper is already inside the trap.

Remote rocky reef biodiversity (20–43 m water depth) of Patea Bank revealed

Last year the Kaharoa spend over a day multibeam sonar transect mapping many small scattered rocky reefs on the Patea Banks (South Taranaki), using a series of closely guarded coordinates kindly provided by local fishers and divers, facilitated by the local 'Project Reef' citizen science group. This solved our 'looking for needles in a haystack' type problem.

In February this year, the MBIE Research Programme 'Juvenile fish habitat bottlenecks' returned to the Bank, spending 3 days on the R.V. Ikatere sampling a subset of these reefs in depths of 20–43 metres, for their juvenile fish habitats and (visual) biodiversity. Sampling tools included CoastCam (towed array of 3 video cameras plus a HD still camera), and fine-mesh fish traps with Go-Pro cameras. Several observers from Project Reef and the Taranaki Regional Council (TRC) accompanied us across the three days. Around a dozen reefs were investigated, including a series of closely spaced CoastCam transects run over the Project Reef, to assist the Project Reef team with their ongoing citizen science research and education work. Collectively, the reefs came in a variety of different geologies and topologies, including boulder fields, low rock outcrops with many fingers and guts, flat platforms, and long narrow terraces, some of which extended for several kilometres.

Low dense *Ecklonia* kelp forests were widespread on some shallower reefs, indicative of no recent major storms; with the green algae *Caulerpa* forming extensive 'meadows' in some areas. Various patchy biogenic habitat covers of red macroalgae, sponges, hydroids, and bryozoans also contributed to rich reef covers. Blue cod of all sizes were ubiquitous and very inquisitive of the CoastCam lasers; with juvenile blue cod abundant in areas of biogenic rubble on reef edges, a key nursery habitat. Larger juvenile tarakihi were abundant at the deepest reef, but were probably 2 to 3 years old in age based on their size, suggesting that these are secondary juvenile tarakihi nurseries, with the fish having migrated in from primary nurseries somewhere else (possibly hundreds of kilometres to the south). No juvenile snapper were seen, but adult snapper were common, along with trevally, scarlet wrasse, leatherjackets, butterfly perch, and others. Rarer species seen included red moki, magpie perch (a well-known resident pair on the Project Reef), and boarfish. Collectively, these samples will be analysed and used to describe the reef systems of this little-known coast that has received scant scientific attention, as well as providing resource managers with better spatial information on where high value habitats occur. These reef systems and their fish and biogenic habitats remain in very good ecological condition, being protected by their remote location and the high energy nature of South Taranaki coast [Morrison, Dalbeth, Robinson, Leppard]



Left) Blue cod and small tarakihi chasing the CoastCam lasers along the edge of a narrow terrace reef that runs for around 4 kilometres, made of erodible rock full of pits and burrows. Abundant fish life was encountered along the reef edge, falling away to nothing on either side where sand habitats takes over; Right) tarakihi forming part of a large school/s on the deepest reef surveyed, in a sponge garden dominated habitat (43 metres). See also a short video clip at <https://vimeo.com/534612197/abf127598a>, from the deep 43 m reef. Juvenile 0+ blue cod, juvenile tarakihi, and a range of other species.