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# Departmental Briefing



Department of Conservation  
*Te Papa Atawhai*



**Fisheries New Zealand**

Tini a Tangaroa

## In Confidence

DOCCM: 7202753  
DOC ref: 22-B-0741  
MPI ref: B22-0681

**To:** Minister for Oceans and Fisheries  
Minister of Conservation

**Date:** 24 November 2022

**Subject:** Final policy decisions for the *Revitalising the Gulf* marine protection proposals

**Action sought:** Agree to the final *Revitalising the Gulf* marine protection proposals and provide any feedback on the draft Cabinet Paper seeking Cabinet approval to commence legislative drafting

**Time Frame:** 28 November 2022 (to ensure Cabinet decisions can be obtained before the end of the year)

<b>Risk Assessment:</b>	Obtaining Ministers' feedback promptly on the final policy proposals and attached draft Cabinet paper will allow lodgement for Cabinet approval before the end of the year.	<b>Department's Priority:</b>	High
		<b>Level of Risk:</b>	Medium

### Contacts

Name and position	Cellphone	First contact	Principal author
Kayla Kingdon-Bebb, Director – Policy, Department of Conservation	s 9(2)(a)	✓	
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## Executive summary – Whakarāpopoto ā kaiwhakahaere

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1. The Minister for Oceans and Fisheries, Minister of Conservation, and Parliamentary Under-Secretary to the Minister for Oceans and Fisheries, met on Wednesday 16 November 2022. Ministers agreed to obtain Cabinet decisions in December on the marine protection proposals announced last year in *Revitalising the Gulf: Government action on the Sea Change Plan (Revitalising the Gulf)*.
2. This paper seeks final Ministerial decisions on the *Revitalising the Gulf* marine protection proposals. This paper is accompanied by a draft Cabinet paper seeking agreement to policy decisions and approval to begin drafting a new marine protection Bill for the new marine protection areas in the Hauraki Gulf Marine Park.
3. The marine protection proposals include 19 new marine protection areas: 12 High Protection Areas (HPAs), five Seafloor Protection Areas (SPAs), and two protected areas adjacent to existing marine reserves (as either HPAs or marine reserves).
4. On 8 June 2022, at an Oceans and Marine Ministers Group meeting, Ministers instructed officials to carry out six weeks of targeted engagement with mana whenua and key stakeholders to seek feedback on policy decisions for the marine protection proposals. The Department of Conservation (DOC), with the support of Fisheries New Zealand (FNZ), invited 28 mana whenua groups, including 63 te Takutai Moana Act<sup>1</sup> (takutai moana) applicants, and 17 stakeholder groups, to share their views on the marine protection proposals.
5. Engagement is now complete. To date, officials have received feedback from 13 mana whenua groups, 12 fisheries stakeholder groups and have received 7,550 emailed submissions.
6. Overall, mana whenua, stakeholders, and the public expressed strong support to better protect the marine environment in the Hauraki Gulf. However, some submitters and industry groups did not support the protection areas as proposed and preferred alternative forms of protection such as the proposed trawl corridors, or tools available under the Fisheries Act 1996. Mana whenua support was heavily qualified with a strong expectation to be significantly involved in developing the site-specific biodiversity objectives for the HPAs. A summary of feedback is attached (see **Attachment A**).
7. This briefing seeks agreement to the following policy decisions for establishing new marine protection areas in the Hauraki Gulf Marine Park:
  - How the exercise of customary practices within the proposed HPAs will be managed, specifically:
    - i. The definition that will provide for the exercise of customary practices within HPAs (see Item 1);
    - ii. The development of site-specific biodiversity objectives for the HPAs in partnership with mana whenua (see Item 2);
    - iii. The inclusion of a legislative mechanism whereby Ministers can apply additional management restrictions if customary practices conflict with biodiversity objectives (see Item 3);
  - What prohibitions will apply in SPAs (see Item 4);
  - What the agency powers will be for carrying out compliance and enforcement in HPAs (see Item 5);
  - If the Noises Islands HPA should be included in the final package of marine protection proposals (see Item 6); and

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<sup>1</sup> This refers to the Marine and Coastal Area Act 2011.

- Which marine protection tool will be applied to the areas adjacent to Cape Rodney – Okakari Point and Whanganui A Hei (Cathedral Cove) Marine Reserves (see Item 7).
  - If the proposed extension to Whanganui A Hei (Cathedral Cove) Marine Reserve should be modified to exclude Hahei beach (see Item 8).
8. Implementation of the marine protection proposals is estimated to cost \$10.54m over four years; s 9(2)(f)(iv) [REDACTED]. We propose requesting Cabinet approval to seek an invitation to seek new funding through Budget 23. Should this not be successful, we propose a reallocation of the multi-year funding received through Budget 2022. If no funding is approved, these marine protection proposals will need to be deferred for future government consideration.
9. We seek your feedback on the attached draft Cabinet Paper, with a view to lodging the final Cabinet paper for the Cabinet Environment Committee meeting on 15 December. Per your request, the Cabinet Paper has been drafted in line with the advice and recommendations of this briefing. The Regulatory Impact Statement for the Cabinet Paper is draft and with panel for approval. A final will be sent to Ministers by Monday 29 November 2022.

Proactively released by the Department of Conservation

## We recommend that you ... (Ngā tohutohu)

		Paragraph Reference	Decision
a)	<u>Agree</u> to retaining the definition of customary practices as proposed in the engagement materials [22-B-0537/ B22-0472 refers] (See Item 1).	19-21	Yes / No
b)	<u>Agree</u> that DOC develops biodiversity objectives with mana whenua during 2023 and early 2024, in parallel with the drafting and passage of the new Bill (see Item 2).	22-29	Yes / No
c)	<u>Agree</u> to recommend including a mechanism whereby Ministers can introduce further management measures if customary practices conflict with biodiversity objectives, drawing from existing fisheries regulations to design this. The details of this mechanism will be developed through the legislative drafting process (See Item 3).	30-34	Yes / No
d)	<u>Agree</u> to the following approach to managing activities in all five SPAs: <ul style="list-style-type: none"> <li>prohibiting bottom trawling, dredging, and Danish seining fishing methods in all SPAs as well as dumping, sand extraction, mining, and aquaculture; and</li> <li>allowing for habitat restoration activities within SPA areas to be considered and appropriately consented through the existing Resource Management Act (RMA) processes.</li> </ul>	35-49	Yes / No Yes / No
e)	<u>Agree</u> to additional restrictions within the Mokohīnau Islands SPA ( <b>Attachment B</b> ): <ul style="list-style-type: none"> <li>prohibiting all set netting within the entire SPA; and</li> <li>prohibition on potting and bottom longlining except for within specified areas that would have minimal impact on fragile and protected species.</li> </ul>	35-49	Yes / No Yes / No
f)	<u>Agree</u> that DOC Warranted Officers are empowered to inspect and collect customary permit details and other relevant evidence within HPAs to pass on to MPI Fishery Officers for investigation and enforcement action (see Item 5).	50-55	Yes / No
g)	<u>Agree</u> that MPI Fishery Officers are empowered to collect evidence of non-compliance within HPAs to pass on to DOC Warranted Officers for matters authorised under the new Bill e.g., the exclusion of commercial and recreational fishing (see Item 5).	50-55	Yes / No
h)	<u>Agree</u> to include the Ōtata / The Noises Islands HPA proposal in the final <i>Revitalising the Gulf</i> marine protection proposals (see Item 6).	56-59	Yes / No
i)	<u>Agree</u> to establish the areas adjacent to Whanganui A Hei (Cathedral Cove) and Cape Rodney – Okakari Point marine reserves as either: <ol style="list-style-type: none"> <li>marine reserves (Option 1); <u>or</u></li> <li>HPAs (Option 2).</li> </ol>	60-68	Option I /Option II

j)	<u>Agree</u> to modify the boundary of the proposed extension of Whanganui A Hei (Cathedral Cove) Marine Reserve to exclude Hahei beach (see Item 8, and <b>Attachment C</b> ).	69-72	Yes / No
l)	<u>Note</u> the final Cabinet paper will need to obtain approval for an identified funding source for the marine protection proposals or the initiative will be deferred for future consideration.		
m)	[Minister of Conservation] <u>Agree</u> to meet with officials next week (commencing 29 November) to discuss and agree to reprioritisation options, should no new Crown funding be obtained to implement the marine protection proposals.	81-86	Yes / No
o)	<u>Provide feedback</u> on the draft Cabinet paper seeking Cabinet approval of final policy decisions and approval to begin legislative drafting instructions for a new marine protection Bill (see <b>Attachment D</b> ).		
p)	<u>Approve</u> inter-agency consultation on the Cabinet paper to begin as soon as possible, and for this to occur parallel with Ministerial consultation to meet the lodging date of 8 December 2022.	89	Yes / No

**s 9(2)(a)**

Date: 24/11/2022

Date: / /

Kayla Kingdon-Bebb  
 Director, Policy  
 For Director-General of Conservation

Hon Poto Williams  
**Minister of Conservation**

**s 9(2)(a)**

Date: 24 /11/2022

Date: / /

Emma Taylor  
 Director, Fisheries Management

Hon David Parker  
**Minister for Oceans and Fisheries**

## **Purpose – Te aronga**

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10. This paper seeks your agreement on final policy decisions for the package of marine protection proposals for the Hauraki Gulf Marine Park included within *Revitalising the Gulf*. It also seeks feedback on a draft Cabinet Paper (**Attachment D**) seeking Cabinet agreement to final policy decisions and approval to begin drafting a new marine protection Bill.

## **Background and context – Te horopaki**

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11. *Revitalising the Gulf* was approved by Cabinet and released by Ministers in June 2021 [ENV-21-MIN-0032 refers]. It proposed establishing 18 new marine protection areas in the Hauraki Gulf Marine Park (the Gulf) and included a placeholder for an additional HPA at Ōtata / The Noises Islands.
12. The package proposes 19 new marine protection areas (including the placeholder HPA at the Ōtata / Noises Islands), and includes:
  - a. 12 HPAs to protect, enhance and restore the full range of marine communities and ecosystems, and outstanding, rare, distinctive or nationally important marine habitats, to protect the mauri of the Gulf. HPAs will provide for the exercise of customary practices by mana whenua;
  - b. five SPAs to maintain, restore and protect ecologically important habitats, while allowing for compatible uses. SPAs will protect seafloor habitats and communities susceptible to damage from activities such as bottom contact fishing, sand extraction and mining; and
  - c. two protected areas adjacent to Whanganui A Hei (Cathedral Cove) and Cape Rodney – Okakari Point Marine Reserves. These areas will be established as either HPAs under the new Bill or as marine reserve extensions under the Marine Reserves Act 1971.
13. On 8 June 2022, at an Oceans and Marine Ministers Group meeting, Ministers instructed officials to carry out six weeks of targeted engagement with mana whenua and key stakeholders [22-B-0220/B22-0276 and 22-B-0120/B22-2075 refer]. The aim of this engagement was to get feedback on:
  - the approach to providing for the exercise of customary practices in HPAs;
  - the inclusion of an additional HPA around the Ōtata / Noises Islands;
  - the marine protection tool to be used for extensions adjacent to two existing marine reserves, and
  - how the proposals will impact on mana whenua and key stakeholders.
14. Officials engaged with mana whenua groups, key stakeholders, and the public between September 2022 and November 2022. DOC and FNZ invited 28 iwi groups, 63 takutai moana applicants, and 17 stakeholder groups to share their views on the updated marine protection proposals.

## **Feedback from targeted engagement**

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15. As of 22 November 2022, we have received feedback from 13 mana whenua groups<sup>2</sup>, 12 fisheries stakeholders, and 7,550 email submissions.
16. Overall, mana whenua, stakeholders, and the public expressed strong support to better protect the marine environment. Approximately two thirds of individual submissions and

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<sup>2</sup> In addition to the 13 mana whenua groups that engaged, some mana whenua groups deferred to other iwi in the area that officials met with.

2,300 form submissions supported delivery of the proposals. Most industry groups preferred alternative forms of protection (such as reliance on the trawl corridors programme of work in the Gulf, or tools available under the Fisheries Act 1996).

17. Mana whenua support for the proposals was qualified, with a strong expectation to be significantly involved in developing the site-specific biodiversity objectives for the HPAs and being able to continue to exercise customary practices subject to those objectives.
18. Some groups and members of the public voiced concerns around the management of customary practices within the HPAs (submissions were often accompanied by misinterpreted views of the proposals). A summary of feedback is attached (**Attachment A**). Feedback pertinent to policy decisions is provided throughout this paper.

### **Item 1 – Management of customary practices within HPAs: The definition of customary practices**

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19. Ministers have agreed to the inclusion of a relatively broad definition of customary practices<sup>3</sup> in the proposed Bill, with the caveat that officials test this definition with mana whenua during targeted engagement [22-B-0120/B22-2075 refers].
20. Mana whenua largely accept the current draft definition. Mana whenua have expressed that this definition would allow them to protect historic cultural practices interlinked to their role as kaitiaki and recognises that customary practices vary between mana whenua.

#### Recommendation

21. We recommend retaining the definition of customary practices as proposed in the engagement materials [22-B-0537/ B22-0472 refers].

### **Item 2 – Management of customary practices within HPAs: Developing biodiversity objectives in partnership with mana whenua**

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22. Cabinet agreed to the provision of customary practices in alignment with biodiversity objectives in HPAs [ENV-21-MIN.0032 refers].
23. Ministers also agreed to DOC developing site-specific biodiversity objectives in partnership with mana whenua for the HPAs [22-B-0120/B22-2075 refers], with the caveat that officials seek feedback on this process with mana whenua during targeted engagement.
24. Customary fishing within HPAs will be managed through existing regulations made in accordance with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 [22-B-0120/B22-2075 refers]. Authorisation of customary fishing will be required to align with the site-specific biodiversity objectives; thus, the biodiversity objectives are crucial to the regulation of customary fishing.
25. Mana whenua have expressed comfort with the HPA proposals (including Ministerial powers to apply additional management actions if necessary), but this is heavily qualified with the expectation of an inclusive process to work in partnership to develop the site-specific HPA biodiversity objectives.
26. Officials are continuing to develop options for a process to produce biodiversity objectives in partnership with mana whenua. A process must balance the timely development of biodiversity objectives (to ensure the HPAs can be fully implemented by

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<sup>3</sup> The proposed definition of customary practices is: “*Customary activities undertaken by mana whenua in high protection areas which align with the purpose of high protection areas; and are consistent with tikanga, and/or support mana whenua to develop and express mātauranga and wananga; and do not include recreational or commercial fishing.*”

2024, when a new Bill is expected to pass), and mana whenua expectations of a considered and inclusive process.

27. s 9(2)(f)(iv)
- [Redacted]
  - [Redacted]
  - [Redacted]

28. s 9(2)(f)(iv)
- [Redacted]
  - [Redacted]
  - [Redacted]

Recommendation

29. We recommend that the biodiversity objectives are developed with mana whenua during 2023 and early 2024, in parallel with the drafting and passage of the new Bill. We consider they can be implemented through subsequent regulations, rather than through the Bill itself.

**Item 3 – Management of customary practices within HPAs: Ministerial powers to apply additional management actions**

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30. There is a risk, albeit low, that customary practices being carried out in HPAs and the biodiversity objectives for a site may not align.
31. Legislation could include a mechanism that enables Ministers to apply additional management actions in HPAs if customary fishing creates significant and substantive risk to achieving the biodiversity objectives.
32. Mana whenua were accepting of this proposal, though this was heavily qualified with the expectation of an inclusive process for the development of biodiversity objectives in HPAs, and dialogue prior to any Ministerial action.
33. We consider that existing, similar legislative mechanisms can be drawn upon to achieve this during the legislative drafting process. Regulation 34 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 allows for Ministers to take additional management actions in relation to customary fishing tools, and explicitly requires dialogue prior to any action being taken.

Recommendation

34. We recommend including a mechanism whereby Ministers can introduce further management measures if customary practices conflict with biodiversity objectives, drawing from existing fisheries regulations to design this. The details of this mechanism will be developed through the legislative drafting process.

**Item 4 – Specific prohibitions in Seafloor Protection Areas**

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35. The marine protection proposals include five Seafloor Protection Areas (SPAs). The purpose of SPAs is to maintain, restore and protect ecologically important habitats while allowing for compatible uses.
36. *Revitalising the Gulf* listed some mobile bottom-contact methods (dredging, bottom trawling, and Danish seining) which fell within scope of being prohibited within SPAs.



37. Decisions are required on the final list of prohibited activities. Officials have considered prohibitions of activities at each SPA site based on technical analysis and feedback received during engagement.

#### Activities to be prohibited in SPAs

38. To ensure the biodiversity values identified in the technical analysis of sites are protected, all SPAs would need to prohibit bottom trawling, dredging, and Danish seining fishing methods as well as dumping, sand extraction, and mining.
39. Aquaculture would also need to be prohibited in SPAs due to the impacts on the seafloor. These impacts can include localised organic pollution of the seabed, drop-off of biofouling and debris, smothering by bio-deposits, and increased biosecurity risks. We note there are no existing aquaculture consents and/or applications in the proposed areas, and that the original Sea Change Plan considered and recommended aquaculture zones separate from the protection areas.
40. Based on technical analysis, officials consider that prohibitions on set netting potting, and bottom longlining would not be required in SPAs, other than the proposed SPA at the Mokohīnau Islands. This is due to the presence of protected black corals and other sensitive marine life growing on deep reefs in this area requiring additional protection.
41. During hui and through submissions, officials heard from commercial fishers that a total prohibition on bottom longlining, potting, and set netting within SPAs, including the SPA at the Mokohīnau Islands, would incur substantial additional costs on the fishing industry and create concerns for business viability.
42. Officials consider there is a compromise that can be reached for the SPA at the Mokohīnau Islands whereby sensitive benthic habitats are protected and the impact to fishers is reduced.
43. The threat to sensitive benthic environments can be mitigated by restricting bottom longlining and potting to areas with a depth of less than 50 meters, as the sensitive species of concern occur primarily on deeper reefs. This would effectively enable potting and bottom longlining to occur around Fanal Island, Navire Rock, and Simpson Rock (**Attachment B**). Bottom longlining could also be provided for in the southwest section of the Mokohīnau Islands SPA (**Attachment B**).
44. We consider this approach would also respond to commercial fishers' concerns of displacement in the region.
45. Enforcing these restrictions would present certain complexities. To minimise these, officials will continue to refine the precise distance and areas at which bottom longlining and potting would be allowed to occur within the Mokohīnau Islands SPA during the drafting phase of the Bill. There will be an opportunity for interested parties to provide feedback on any refinements during the Select Committee phase of the Bill's passage.
46. There are existing commercial set netting prohibitions within 0.5 nautical miles of the Mokohīnau Islands. Prohibiting set netting across the entirety of the Mokohīnau Islands SPA would align with the biodiversity objectives. This prohibition will be less impactful to fishers than a prohibition on potting, as set netting targets mobile finfish which can move in and out of the SPA.
47. Feedback included concern from some groups that the prohibition on dumping within SPAs would preclude any habitat restoration activities, such as mussel dumping. These activities can aid in habitat recovery. The resource management system already provides an adequate consenting process. We propose continuing to regulate habitat restoration initiatives within SPAs through this mechanism.

### Recommendations:

48. We recommend:

- prohibiting bottom trawling, dredging, and Danish seining fishing methods in all SPAs as well as dumping, sand extraction, mining, and aquaculture; and
- allowing for habitat restoration activities within SPA areas to be considered and appropriately consented through the existing Resource Management Act (RMA) processes.

49. We recommend the following additional restrictions within the Mokohīnaui Islands SPA (see **Attachment B**):

- prohibiting all set netting within the entire SPA; and
- allowing for potting and bottom longlining within specified areas with minimal biodiversity risk.

### **Item 5 – Agency powers for carrying out compliance and enforcement in High Protected Areas**

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50. Activities within HPAs will be regulated by both provisions in the new Bill and the Fisheries Act 1996 (permitted customary fishing). This means DOC will be the administering agency for the Bill. DOC will have full compliance and enforcement powers relating to prohibited activities within the protection areas but will require special provisions for managing customary fishing.

51. To date, DOC Warranted Officers are not empowered to undertake compliance activities relating to customary fishing offences. These powers are only held by MPI Fishery Officers. However, it would be highly impractical for MPI Fisheries Officers to be the sole agency enforcing the relevant Fisheries Act provisions, and for DOC Warranted Officers to enforce certain activities but not others within HPAs.

52. Officials propose that DOC Warranted Officers are issued inspection powers relating to customary take within HPAs. While MPI would retain overall responsibility for enforcement of customary fisheries provisions, both DOC and MPI consider that it would be necessary for DOC Warranted Officers to also have appropriate powers to support gathering evidence in HPAs to support MPI fisheries enforcement actions.

53. DOC Warranted Officers would be empowered to stop and inspect individuals exercising customary fishing rights in an HPA. They would have authority to collect customary permit details and other relevant evidence to pass on to MPI for investigation. MPI would manage any subsequent enforcement action relating to breaches of customary fishing activities authorised under the Fisheries Act. A standard operating procedure will be developed between the agencies to determine how this works in practice. This agreement will also cover how agencies will work together to monitor and enforce activities within SPAs.

### Recommendation

54. We recommend that DOC Warranted Officers are empowered to inspect and collect customary permit details and other relevant evidence within HPAs to pass on to MPI Fishery Officers for investigation and enforcement action.

55. We recommend that MPI Fishery Officers are empowered to collect evidence of non-compliance within HPAs to pass on to DOC Warranted Officers for matters authorised under the new Bill e.g., the exclusion of commercial and recreational fishing.

## **Item 6 – Inclusion of the Ōtata / The Noises Islands HPA in the final policy proposals**

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56. The Minister for Oceans and Fisheries and the former Minister of Conservation agreed to include Ōtata / the Noises Islands as the twelfth HPA in the package of marine protection proposals [22-B-0220/B22-0276 refers] with the caveat that this was subject to feedback received during targeted engagement.
57. Feedback from iwi with an interest in the area and from the public was predominantly in support of the inclusion of the Ōtata / the Noises Islands HPA. Iwi comfort was premised on an inclusive process to develop the site-specific biodiversity objectives. Feedback from some recreational fishers indicated that they would be negatively impacted by the Ōtata / the Noises Islands HPA. These fishers tended to be in opposition to the protection package in general.
58. It is acknowledged that the proposed HPA is a popular recreational fishing area and that there will be impacts to local fishers. However, technical analysis indicates that the Noises would protect a regionally significant range of biogenic habitats and therefore warrants protection.

### Recommendation

59. We recommend that the Ōtata / The Noises Islands HPA proposal is included in the final *Revitalising the Gulf* marine protection proposals.

## **Item 7 – Extension to Cape Rodney – Okakari Point and Whanganui A Hei (Cathedral Cove) Marine Reserves**

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60. The *Revitalising the Gulf* marine protection proposals included extensions to Whanganui A Hei and Cape Rodney – Okakari Point (CROP) Marine Reserves in the form of HPAs or marine reserves (see **Attachment C** for maps of the proposed extensions).
61. Feedback on the preferred protection tool to be used for the extensions has been mixed. Mana whenua were generally in opposition of no-take marine reserves and supported the use of HPAs as this allows for the exercise of customary practices.
62. Some members of the public, environmental non-governmental organisations (eNGOs), and those in the scientific community, felt that the extensions should be marine reserves due to their proven effectiveness, ease of compliance, and public support. Some commercial and recreational fishers opposed the extensions entirely as they will exclude fishers from popular fishing sites.
63. Extending the marine reserves as HPAs would provide for customary practices and a process to develop the site biodiversity objectives with mana whenua. The proposed provisions of the HPA would allow for biodiversity objectives to be achieved while providing for customary practices.
64. However, creating two HPAs adjacent to existing marine reserves will create compliance challenges including:
  - ensuring the public, those issuing customary permits, and those using customary permits understand the different rules; and
  - inadvertent offending.<sup>4</sup>
65. Compliance challenges are likely to be most acute in the CROP Marine Reserve as the boundary of the marine reserve is curved. As such it will be challenging for users and compliance officers to distinguish the HPA from the abutting marine reserve. Officials

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<sup>4</sup> Officials' views on this issue are informed by experience in other areas where marine reserves are adjacent to other marine protection areas. Confusion is consistently observed in Taranaki between the Tapuae Marine Reserve and the adjacent Ngā Motu/Sugar Loaf Islands Marine Protected Area.

propose that if the extension is implemented as an HPA, the boundary of the CROP marine reserve is straightened (see **Attachment C**).

66. Extending the areas as marine reserves would provide full no-take zones, and therefore eliminate all extractive activities and negate the need to define the site biodiversity objectives. It would provide for simpler and less challenging compliance (notwithstanding any localised opposition).
67. However, marine reserve extensions will be opposed by mana whenua. It is unclear whether this would have wider impacts on discussions with mana whenua on further developing and implementing the HPAs.

#### Recommendation

68. Officials consider that both options are feasible and seek your final decision.

### **Item 8 – Boundary amendment to the proposed extension of Whanganui A Hei (Cathedral Cove) Marine Reserve**

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69. The marine reserve extension at Whanganui A Hei Marine Reserve was proposed in the original Sea Change Plan to include Hahei Beach. This is a popular holiday beach that experiences an influx of visitors during the summer period.
70. Officials received 45 individual submissions opposing the Hahei Beach extension adjacent to the Whanganui A Hei Marine Reserve. The key concerns raised related to educating visitors on the new restrictions and enforcing the new restrictions.
71. Officials consider that having an extension across Hahei Beach will create complex education and compliance challenges. This is particularly true if customary practices can occur within these areas. Officials consider that modifying the boundary to exclude Hahei Beach (see **Attachment C**) would mitigate these challenges and have a limited and manageable impact on the biodiversity objectives of the site, as the values protected are also protected by the existing marine reserve.

#### Recommendation

72. We recommend the proposed extension to Whanganui A Hei (Cathedral Cove) Marine Reserve is modified to exclude Hahei Beach.

### **Risk assessment – Aronga tūraru**

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73. Parts of the fishing industry may continue to oppose the proposals due to the impact on their fishing activities. The report 'Revitalising the Gulf Stage 1 – Impact of the Marine Protection Proposal on Commercial Fishers (Stage 1 EIA)' found that:
  - Commercial fishing in the proposed protection areas accounted for 1%-3% of the total greenweight<sup>5</sup> landed in all quota management areas (QMAs) that include the Hauraki Gulf. This means that 97%-99% of commercial fishing activity in these QMAs during the years covered by the report occurred outside of the areas proposed for protection.
  - Annual revenue from fish caught within the proposed protection areas was estimated at \$4.2-\$5.2 million over the two-year study period, based on market price. This was approximately 2%-3.5% of the revenue generated by catch across all QMAs that include some or all of the Hauraki Gulf during the period analysed.
  - There may be distributional impacts. The Stage 1 EIA found that the proportion of greenweight landed from within the proposed protection areas represented between 0.05% and 53.8% of individual permit holders' total catch. However, for

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<sup>5</sup> Greenweight is the weight of fish prior to any processing or removal of any part of the fish

the majority of fishers, catch landed from the proposed protected areas was less than 10% of their total catch.

74. Based on feedback received, rock lobster fishers based around the Mokohīnau Islands protection areas are expected to be significantly impacted. Officials consider that the proposed allowances around the Mokohīnau Islands mitigates some of this impact (Item 4 refers).
75. Parts of the fishing industry may also continue to voice concerns about the non-alignment between engagement on the marine protection proposals and the public consultation period for the MPI/FNZ-led Fisheries Plan component of the Revitalising the Gulf Strategy. Officials consider this risk is manageable. We have extended the period of engagement for several commercial fisheries stakeholders and have provided sufficient opportunity to engage. We consider the proposed approach to the SPAs responds to their more significant economic concerns.
76. Some members of the public are likely to strongly query the provision for customary practices within the HPAs, whilst excluding recreational fishing. Many submitters raising these concerns had misinterpreted the proposals and how they are intended to work. Officials consider a proactive communications plan will need to accompany any announcements around the final policy proposals.
77. Thirteen out of a potential 28 iwi have engaged on these proposals (noting some iwi did defer to others that we met with), so some iwi views may not be reflected in the proposed approach (see **Attachment A**). While Te Arawhiti considered our approach to be appropriate, iwi who have chosen not to engage may consider themselves uninvolved in the process to date, which may have implications when seeking their engagement during the biodiversity objectives phase.

#### **Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)**

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78. Officials have engaged with mana whenua throughout the development of the *Revitalising the Gulf* marine protection proposals. Officials have contacted 28 mana whenua groups over three rounds of engagement and have received feedback from a total of 13 mana whenua groups. Mana whenua feedback has informed key elements of the proposal including the provision for and definition of customary practices (Item 1) and will help determine the process for developing biodiversity objectives.
79. The engagement and proposal development process has been undertaken based on Te Tiriti principles of active participation and partnership. Officials have sought advice from Te Arawhiti and feedback from mana whenua to understand the areas of concern of the proposals and work through solutions to mitigate these. This process will continue throughout the legislative drafting as DOC and mana whenua work in partnership to develop biodiversity objectives for HPAs, enabling mana whenua to realise their aspirations as kaitiaki over these areas.

#### **Consultation – Kōrero whakawhiti**

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80. Te Arawhiti has been involved in the governance group for Revitalising the Gulf's marine protection proposals and has provided input into the engagement approach undertaken to develop the policy proposals contained in this briefing. Te Arawhiti supports the proposals included in this briefing and in particular endorses biodiversity objectives for HPAs being developed in partnership with mana whenua, noting options for how to do this are still under consideration.

## Financial implications

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81. Implementation of Revitalising the Gulf will have financial implications for DOC, related to:
  - a. Establishment of the new marine protection areas;
  - b. Active habitat restoration;
  - c. Protected species initiatives; and
  - d. Research, monitoring and reporting.
82. As previously advised, the Budget 22 allocation to the Revitalising the Gulf Strategy was insufficient and will not allow for delivery of this priority initiative [DOC-22-B-0669 refers].
83. The costs for DOC to implement the marine protected areas is \$10.54m over four years (\$4.26m of that for the first two years). This includes survey office plans, signage, boundary markers and baseline surveys. This will also provide for up to three marine rangers and one FTE focused on research, monitoring and reporting. Ongoing costs will include compliance, science, management, education, and awareness.
84. s 9(2)(g)(i)  
[REDACTED].
85. The Cabinet paper will need to obtain approval for an identified funding source. There are two options to address this:
  - a. Obtain new funding through Budget 23; or
  - b. Reprioritise resourcing within DOC, in the absence of new Crown funding.
86. The first option can only be progressed with the agreement of the Minister of Finance (MoF) and portfolio Ministers. The Cabinet process can be used to seek agreement to invite a bid for this from Cabinet colleagues including the MoF. You have recently written to the MoF seeking an invitation to participate in the Budget 23 process. If this is agreed, progressing this initiative will depend on being successful in Budget 23 before legislation is agreed to be introduced into the House.
87. However, we anticipate a strong expectation that reprioritisation will be used to manage cost pressures within baselines given that DOC is part of the Natural Resources cluster. If new Crown funding is not supported, the Minister of Conservation will need to decide whether to put forward a reprioritisation option for this initiative and what option she wishes to support.
88. If the Minister of Conservation decides not to reprioritise, the Cabinet paper will need to be clear that the marine protection initiatives cannot proceed if a Budget bid is unsuccessful.
89. DOC officials will discuss reprioritisation options further with the Minister of Conservation next week (commencing 28 November), and prior to the final Cabinet Paper being finalised and lodged. Options include reprioritising existing programmes and baselines where funding is not yet committed such as s 9 (2)(g)(i)  
[REDACTED], or reallocating multi-year funding received through Budget 2022 (for example, Predator Free 2050).
90. The draft Cabinet paper reflects all funding options, to be finalised following your feedback about which option(s) to include in the Cabinet paper, and a decision from the Minister of Conservation on reprioritisation proposals.

## **Legislative implications – Te hiraunga a ture**

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91. New legislation is required to implement the new marine protection areas described in *Revitalising the Gulf*. DOC submitted a legislative bid for consideration in the 2023 Legislation Programme with Category 4 priority. This reflects your shared intention to introduce the Bill before the end of term [21-B-0982 refers].

## **Next steps – Ngā tāwhaitanga**

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92. We seek your feedback on the attached draft Cabinet Paper with a view to lodging the final paper by 8 December 2022 for the 15 December 2022 ENV Cabinet Committee meeting. Per your request, the Cabinet Paper has been drafted in line with the advice and recommendations of this briefing.
93. Subject to your approval, officials will carry out inter-agency consultation on the draft Cabinet Paper in the week commencing 28 November 2022.

## **Attachments – Ngā tāpiritanga**

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- Attachment A: *Revitalising the Gulf* - Marine Protection - Summary of Feedback
- Attachment B: Proposed approach to managing activities within the Mokohīnau Islands SPA (SPA 8B)
- Attachment C: Amendments to proposed marine reserve boundaries
- Attachment D: Cabinet Paper

Proactively released by the Department of Conservation

## Attachment A: *Revitalising the Gulf* - Marine Protection - Summary of Feedback

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### Context

1. As part of the development of the *Revitalising the Gulf* marine protection package, officials from DOC with support from Fisheries New Zealand (**FNZ**) undertook targeted engagement with mana whenua and stakeholders between September and November 2022.
2. As of 22 November 2022, we have received feedback from 13 mana whenua groups, 12 fisheries/aquaculture industry groups, Auckland Council, Waikato Regional Council, 3 eNGOs, and 7,550 email submissions.
3. A full list of mana whenua and stakeholders that we have received feedback from can be found at the end of this attachment.
4. The Minister for Oceans and Fisheries and the former Minister of Conservation instructed officials to undertake targeted engagement with mana whenua and stakeholders [22-B-0537/B22-0472 refers]. These key policy decisions include:
  - The approach to providing for the exercise of customary practices in HPAs;
  - The inclusion of an additional HPA around the Ōtata / The Noises Islands;
  - The marine protection tool to be used for extensions adjacent to two existing marine reserves; and how the proposals will impact on mana whenua and stakeholders.
5. This summary provides an overview of the feedback officials received to inform the key policy decisions above. It also outlines key themes that arose during engagement, and summaries of other matters of interest to mana whenua, fishers, Councils, eNGOs, and the public.

### Feedback to inform policy decisions

#### Definition and management of customary fishing within HPAs

6. Mana whenua strongly expressed the **need to keep the definition of customary practices broad enough to be non-exclusive**, and were mostly in favour of using existing (Fisheries Act 1996) regulations to manage customary fishing.
7. Some mana whenua disagreed that customary fishing should be regulated (even under existing regimes), but stated the need to ensure existing rights are protected.
8. Generally, mana whenua **supported the development of biodiversity objectives in partnership** and showed a willingness to be involved in this.
  - Critical issues identified included how to build in te ao Māori when developing the biodiversity objectives (noting an HPA, as a protection tool, already has the parameters of its purpose largely set), the Crown's role in determining mana whenua and settling conflict, and remuneration during the process.
  - Mana whenua were accepting of Ministerial powers for additional management actions (and indeed the HPAs more generally), on the strongly conveyed condition that the biodiversity objective-setting process was inclusive, and that any Ministerial powers required clear dialogue and to strive for agreement prior to these powers being exercised.



9. Officials received feedback from Te Ohu Kaimoana and one mana whenua group **concerned that the protection proposals threaten the integrity of agreements set out under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992**. This was due to:
  - high protection areas excluding all commercial fishing (including Māori commercial fishing), and therefore causing displacement within the Hauraki Gulf; and
  - the intention of the proposed Bill to manage customary fishing.
10. We received approximately 3370 submissions from the **public opposing customary fishing in High Protection Areas** (44% of total submissions), calling for what is perceived as 'equal rights for all New Zealanders.'
  - **The majority (97%) were form submissions** that were organised by the Gulf Users Group who recently opposed the co-governance structure of the Hauraki Gulf Forum.
  - Some submissions from the public showed a clear misunderstanding of the proposals. Many expressed concern that customary fishing would undermine the integrity of the marine protection areas.
  - Some expressed concern that maintaining customary fishing within HPAs undermined the integrity of the marine protection areas. Others were confused about how customary fishing is authorised and thought anyone with Māori whakapapa could fish freely within HPAs.
  - In general, other submissions were either in support of customary fishing or made no reference to this.
  - Several mana whenua groups conveyed the importance of informative public communications on customary fishing to ensure wider community understanding.

#### Impact on fishers

11. Commercial fishers had **mixed views on the marine protection** package. This tended to correlate with the impact of the protection areas on their fishing activities, and the ability of fishers to displace their efforts elsewhere.
12. **Several small-scale commercial fishers felt that they would be disproportionately impacted** by the protection areas. Areas that will have the **most impact include the Mokohīnau, Little Barrier and Aldermen Islands HPAs**.
13. Rock lobster fishers are concerned that they do not have an opportunity to displace their fishing efforts due to limited species distribution and suitable fishing areas.
14. Commercial fishers voiced **concerns that prohibiting bottom longlining and potting within SPAs** would significantly impact on their activities. In addition, several commercial fishers also raised concerns around the need for clarity with regards to prohibiting activities in SPAs.
15. Many fishers including the NZ Sports Fishing Council and those who submitted through the LegaSea form submissions (1,650 in total) wanted **DOC to extend engagement to align with the FNZ Hauraki Gulf Fisheries Plan** engagement period to enable them to make informed decisions on marine protection.
16. Many commercial fishers felt that the proposals lacked transparency due to their perceived misalignment with the Hauraki Gulf Fisheries Plan and were concerned that an opportunity was missed for a more joined-up approach between DOC and FNZ.
17. There lacks consensus between commercial fishers and recreational fishers on what is the cause of the declining mauri of the Hauraki Gulf.
  - Sedimentation and land-based activities are considered to be key causes of environmental decline by some commercial and recreational fishers. Some felt that Government would see better results with focusing on land-based solutions.

- Commercial fishers, eNGOs, and the wider public see an immediate need for reporting requirements for recreational fishers. Some recreational fishers felt that all commercial fishing should be banned in the Hauraki Gulf.
18. **Many of the recreational fishers that submitted oppose the protection areas.** Some were in favour of protection in general but disagreed with the proposed areas that would impact their fishing areas significantly. It was noted by some submitters that those recreational fishers in favour of the proposals were less likely to submit through the engagement round.
  19. Kina Industry Council and Sea Urchin New Zealand (**SUNZ**) have interest in continuing commercial kina fishing within HPAs. SUNZ feels that this will enhance restoration and help manage the risk of kina barrens.

#### Displacement

20. Mana whenua, some stakeholders and public were concerned about the impact of displacement on ecosystems in adjacent areas, especially Aotea/Great Barrier Island. Mana whenua of Aotea want the means to protect Aotea from displacement

#### Extensions for Whanganui A Hei and Cape Rodney-Okakari Point Marine Reserves as marine reserves or HPAs

21. **Most iwi deferred to those with mana moana over the specific areas.**
22. **Of those iwi, some stated a preference for *neither* a marine reserve or an HPA, others a preference for an HPA.**
23. **Mana whenua of Whanganui A Hei expressed preference for the extension to be enacted as a High Protection Area** under the new legislation, as opposed to a marine reserve extension, enabling them to continue expressing customary fishing rights.
24. 45 individual submitters **opposed the Hahei Beach component of the Whanganui A Hei extension.** The key concerns were that Hahei Beach is a very popular beach and there would be challenges educating visitors on the new restrictions and enforcing the restrictions. The public felt there is already a compliance issue with the existing marine reserve.
25. Some commercial and recreational **fishers opposed the inclusion of Mahurangi Island** in the extension proposed for Whanganui A Hei Marine Reserve, citing it as a safe and abundant fishing spot.
26. Overall, the **public were in favour of extending the marine reserves.**
27. 74 submissions from the public, eNGOs, and the scientific community, felt that the extensions should be marine reserves due to their proven effectiveness, ease of compliance, and public interest. The majority of submitters had no preference.

#### Inclusion of an HPA at Ōtata / the Noises

28. **Most iwi deferred to those with mana moana over the area.** Of the iwi that we spoke to, they supported the inclusion of the HPA around The Noises.
  - Officials met with Ngāti Paoa Iwi Trust and Ngāti Paoa Trust Board who represent one of the iwi with mana moana over The Noises. **In general they were supportive of the Noises protection.** Ngāti Paoa Iwi Trust expressed preference for a mana whenua led process going forward, noting the community led process to date.
29. In general, **the majority of feedback we received on the Noises was positive.** Some public submissions from recreational fishers did not support the HPA at the Noises, but those were more broadly opposed to the whole marine protection package.

#### **Other general feedback on the *Revitalising the Gulf* marine protection proposals**

##### Support for marine protection

30. There was strong recognition for the need for greater marine protection from mana whenua, stakeholders and the public. Some had suggestions for different means of protection, but most acknowledged the need to better protect the Gulf.
- Of 418 individual submitters, 67% supported current proposed protection levels or wanted more. 12% wanted less protection.
31. We received significant feedback for more ambitious protection from mana whenua, the scientific community, eNGOs and the wider public. Many who have been involved or aware of the marine protection package since the start of the Sea Change process urged the Government to implement the protection areas with haste.

#### Concerns around legislation and implementation

32. Some mana whenua, members of the scientific community and members of the public requested the inclusion of a review clause to be built into the legislation, and flexibility to add to and adapt protected areas in the future.
33. **Concerns were raised by all groups around the funding and capacity of DOC to monitor and enforce restrictions within protection areas.** Iwi encouraged DOC to consider partnership with mana whenua on these elements.

#### **More detailed comments from stakeholders**

##### Councils

34. Waikato Regional Council were in support of the protection areas, but would like to see meaningful consultation with mana whenua on the management of customary fishing and inclusion of biosecurity implications in legislation.
35. Auckland Council were in support of marine protection but are keen to continue dialogue on how protection areas may interact with existing and planned wastewater infrastructure in the Hauraki Gulf.

##### Fisher groups

36. The New Zealand Sport Fishing Council, LegaSea and New Zealand Angling & Casting Association expressed they had no option but to oppose the marine protection proposals until consultation aligned with the FNZ Hauraki Gulf Fisheries Plan consultation period. Officials received 1650 form submissions through LegaSea, calling for 100% seafloor protection and an extension on consultation.
37. The NZ Rock Lobster Industry Council, CRA2 Rock Lobster Management Company Ltd, Pelagic Company of New Zealand (Pelco), and Kina Industry Council (KIC) are concerned about impacts on commercial operations, specifically if potting is prohibited throughout all SPAs. They felt the Economic Impact Analysis did not adequately capture how a complete potting prohibition will impact on small-scale fishers and some felt displacement could render their business unviable.
38. NZ Rock Lobster Industry Council (NZ RLIC), the Pāua Industry Council (PIC) and Fisheries Inshore New Zealand (FINZ) raised concerns that prohibiting bottom longlining, potting, and set netting within SPAs would incur substantial additional costs on the fishing industry. They also raised that impacts from anchoring on benthic biodiversity are likely to be equivalent to those from bottom-long lining, potting, or set netting and therefore should be prohibited in SPAs.

##### eNGOs and Conservation Boards

39. The Hauraki Gulf Forum are supportive of the marine protection proposals. This support comes with the caveat that HPAs must meet Te Tiriti o Waitangi obligations and that legislation is workable and enables active restoration and biosecurity initiatives.

40. The Hauraki Gulf Conservation Trust, Auckland Conservation Board and the New Zealand Conservation Authority are in favour of high protection areas, and feel that legislation should include a mechanism for additional protection in the future.
41. Forest and Bird and Revive Our Gulf urge the Government to progress with haste and increase ambition to 30% high protection within the Hauraki Gulf. Officials received 1700 form submissions through Forest and Bird and 500 form submissions through Revive Our Gulf in support of Revitalising the Gulf and further marine protection.
42. Good Fishing were in favour of the marine protection proposals but raised concerns about the potential impact of displaced fishing efforts on unprotected ecosystems. They wish to see further 'Special Management Areas' developed and applied in the Gulf, which prohibit certain harmful practices while managing activities such as recreational fishing. They encouraged the Government to create flexible legislation that would enable further protection in the future.
43. Foundation North were supportive of the marine protection proposals and the intention to work with mana whenua. They expect to see an inclusive and fulsome process for the development of biodiversity objectives with mana whenua.

#### Other

44. Hahei Rate Payers Association was opposed the extension of Whanganui A Hei marine reserve along Hahei Beach. Their submission was supported by approximately 45 individual submitters who were concerned about compliance and challenges to recreational fishers if the popular beach spot was protected.
45. Gulf Users Group was strongly opposed to customary fishing, accusing the Government of policies that are in breach of human rights and Te Tiriti o Waitangi.

#### **Groups that provided feedback**

Asterisks (\*) refer to groups that submitted feedback through hui.

MANA WHENUA	
Ngāti Maru*	Ngāti Hei*
Ngāti Paoa Iwi Trust*	Ngāi Tai ki Tāmaki
Ngāti Paoa Trust Board*	Ngāti Paoa ki Waiheke*
Te Uri o Hau*	Te Rūnanga o Ngāti Paoa ki Hauraki
Ngāti Manuhiri*	Ngāti Whātua o Ōrākei
Ngātiwai*	Ngāti Rehua-Ngātiwai Ki Aotea*
Ngāti Rongo o Mahurangi*	

Officials met with or received written feedback from 16 fisheries groups, two councils and 32 non-Government organisations. These are listed in the table below.

COMMERCIAL AND RECREATIONAL FISHER GROUPS	
Te Ohu Kaimoana*	Moana*
Sanford*	Seafood NZ*
Kina Industry Council	Sea Urchin NZ*

Good Fishing*	Coromandel Marine Farmers Association*
12 small-scale commercial fishers in Leigh*	CRAMAC 2 NZ Rock Lobster
Pelco NZ	New Zealand Sport Fishing Council
LegaSea	New Zealand Angling & Casting Assoc.
Fisheries Inshore*	Written submissions from 11 other small-scale commercial fishers

#### COUNCILS

Waikato Regional Council*	Auckland Council*
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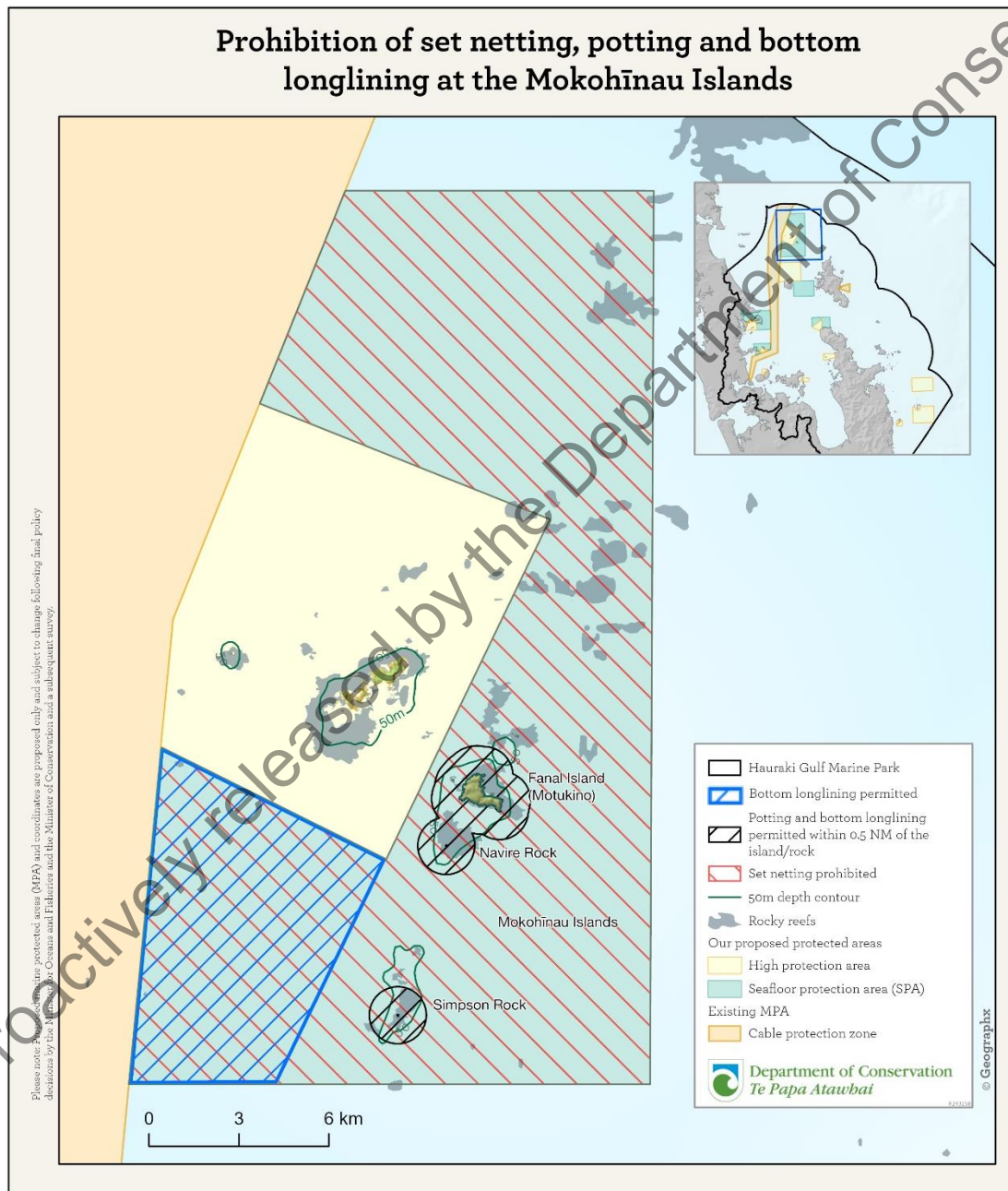
#### NON-GOVERNMENT ORGANISATIONS

Hauraki Gulf Forum	Foundation North*
The Noises Group*	Forest and Bird
Mussel Reef Restoration Trust: Revive Our Gulf	Hauraki Gulf Conservation Trust
Tamaki Estuary Protection Society	Motuora Restoration Society
Friends of Te Whanganui A Hei Trust	Hahei Rate Payers Association
Pest Free Kaipātiki	Takangaroa Island Landowners*
Hauturu Supporters	Coastal Custodians
Aldermen Islands Reserve Group	Pakiri Community Landcare Group
Friends of the Hauraki Gulf	Auckland City Centre Residents Group
Ports of Auckland	Auckland Museum
STET	Live Ocean Foundation
Leigh Penguin Project	Mountains to Sea Conservation Trust
Shakespeare Open Sanctuary Society	Friends of Taputeranga Marine Reserve
Supporters of Tiritiri Matangi	Environmental Defence Society
Auckland Conservation Board	NZ Conservation Authority
Waiheke Marine Project*	14 tourism businesses based in the area



## Attachment B: Proposed approach to managing activities within the Mokohīnau Islands SPA (SPA 8B)

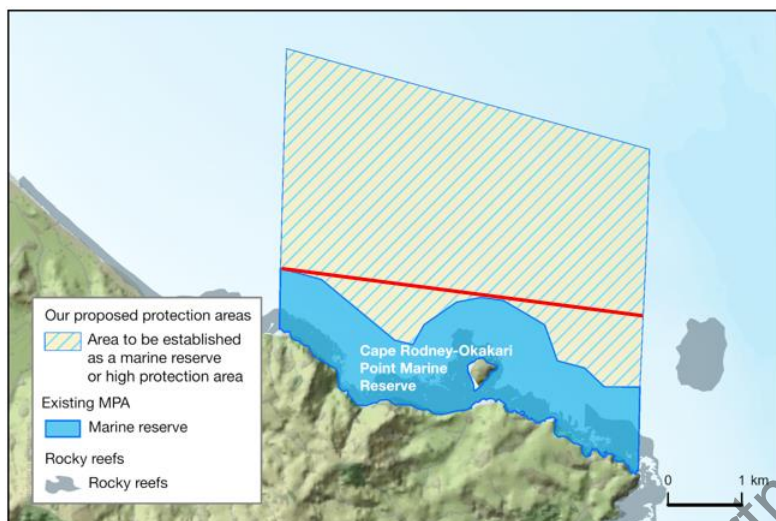
Figure 1: Shows the proposed additional restrictions within the Mokohīnau Islands SPA. This consists of prohibiting all set netting within the entire SPA and allowing for potting and bottom longlining to occur within specified areas with minimal biodiversity risk. Officials are continuing to refine the precise distance and areas at which bottom longlining, and potting would be allowed to occur within the Mokohīnau Islands SPA. Potting and bottom longlining are proposed to be permitted within a certain distance (e.g., 0.5nm) of Simpson Rock, Navire Rock, and Fanal Island. Bottom-long lining is proposed to be permitted within the southwestern section of the SPA.



## Attachment C: Amendments to proposed marine reserve boundaries

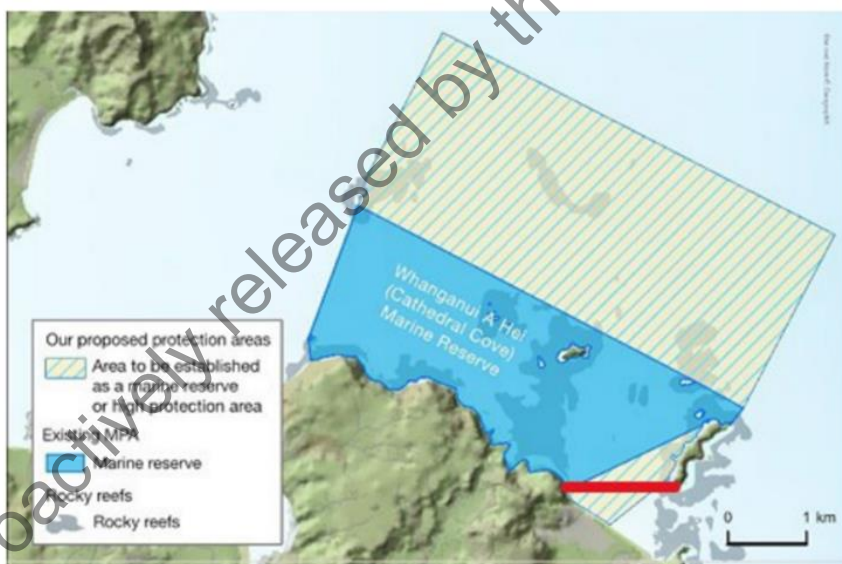
### Cape Rodney – Okakari Point (CROP)

Note: Red line is the proposed straightening of boundary if the extension is being applied as an HPA



### Whanganui A Hei (Cathedral Cove)

Note: The red line indicates the proposed amended boundary to withdraw the protection area from Hahei Beach



## Attachment D: Cabinet Paper

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The draft has not been released as the changes are small and administrative compared to the final version which is being released

Proactively released by the Department of Conservation

