



By email: rmreview@mfe.govt.nz

Submission of New Zealand Sport Fishing Council and LegaSea to Resource Management Review Issues and Options Paper

Summary of submission

1. The New Zealand Sport Fishing Council ("**NZSFC**") and LegaSea (Collectively "**the Submitters**") appreciate the opportunity to submit on the Resource Management Review Issues and Options Paper.
2. While the focus of the review is primarily on the Resource Management Act 1991 ("**RMA**") itself, it also includes the interface of the RMA with other relevant legislation and the potential impact and alignment of proposals for reform with other relevant legislation, including the Fisheries Act 1996 ("**FA**") with which this submission engages. This submission also relates to Issue 13: Institutional roles and responsibilities.
3. This submission concerns the overlapping jurisdiction of the RMA and Fisheries Act 1996 ("**FA**") to control fisheries resources. In summary, the Submitters consider that:
 - a. Management of fisheries resources to maintain indigenous biodiversity should be the domain of the FA, given that this is the act which is regulating how much biomass is removed from the marine area and by what methods;
 - b. Regional councils lack the competency and capacity to administer marine protected areas under the RMA. Such a role for regional councils is likely to prove inefficient or administratively unworkable;
 - c. The creation of ad hoc marine reserves under the RMA is likely to create a 'halo effect' whereby fishing effort is targeted and concentrated on edge areas, which in turn will be counterproductive to enhancing marine biodiversity;
 - d. If management of fisheries resources under the FA is not maintaining indigenous biodiversity, the remedy lies with reform of the FA to ensure stronger environmental bottom lines, incentives and enforcement.

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4. The Submitters acknowledge that reform of the FA is beyond the scope of this review. However, the interface and interrelationship of the RMA with this legislation and issues of institutional roles are within scope.
5. The Submitters seek that the Review Panel consider the inefficiency of regulatory duplication in the area of fisheries management and assess whether this is properly an area for involvement of regional councils, given competing priorities, such that this issue is given due consideration in options for reform.

About the Submitters

6. The NZSFC is a recognised national sports organisation with over 36,200 affiliated members from 56 clubs nationwide. NZSFC supports the million or so New Zealanders that fish. A key role is to advocate for responsible and sustainable management of our marine environment to ensure future generations are able to enjoy the unique resource we have. The NZSFC conducts education programmes, commissions and funds fisheries research projects, and participates in fisheries management. Further information about NZSFC can be found on its website: <https://www.nzsportfishing.co.nz/>
7. LegaSea is a not for profit organisation established by the NZSFC in 2012. LegaSea's core roles are to elevate public awareness of the issues affecting our marine environment and to inspire public support to effect positive change. Further information about LegaSea can be found on its website: www.legasea.co.nz
8. The Submitters are committed to ensuring that sustainability measures and management controls are designed and implemented to achieve the Purpose and Principles, sections 8 to 10, of the Fisheries Act 1996. Section 8 of the FA provides:
 - (1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.
 - (2) In this Act,—
 - ensuring sustainability** means—
 - (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
 - (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment
 - utilisation** means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

Reasons for the submission - Overlap of Resource Management Act 1991 and Fisheries Act 1996

9. In *Attorney-General v The Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532 the Court of Appeal found Regional Councils have jurisdiction to control

fisheries resources, provided that they do not do so for FA purposes which would contravene s30(2) of the RMA¹ and be unlawful.

10. The Court's reasoning included² that the FA has a narrow purpose focused on utilisation of the marine environment as a resource for fishing.³ The RMA objective of maintaining and enhancing indigenous biodiversity is much broader than that of sustaining yields of quota management species under the FA. Regional councils were therefore found to have a very important role in maintaining marine indigenous biodiversity under the RMA.
11. The Court did not prescribe a test for determining when a RMA control on fisheries resources would contravene s 30(2) in any given factual setting. Instead, the Court endorsed the following "indicia" to provide objective guidance when assessing whether a given control is for a FA purpose:
 - a. *Necessity*: means whether the objective of the control is already being met through measures implemented under the Fisheries Act;
 - b. *Type*: refers to the type of control. Controls that set catch limits or allocate fisheries resources among fishing sectors or establish sustainability measures for fish stocks would likely amount to fisheries management;
 - c. *Scope*: a control aimed at indigenous biodiversity is likely not to discriminate among forms or species;
 - d. *Scale*: the larger the scale of the control the more likely it is to amount to fisheries management;
 - e. *Location*: the more specific the location and the more significant its biodiversity values, the less likely it is that a control will contravene s 30(2).
12. The Submitters support marine protection. However, the Submitters consider that these "indicia" result in a substantial uncertainty as to when a RMA control on fishing will be lawful. This will inevitably lead to a proliferation of jurisdictional disputes at a regional level as to whether particular controls on fishing are for a Fisheries Act purpose or not. At present:
 - a. The Court of Appeal's decision is currently being relied upon by the Motiti Rohe Moana Trust in the Environment Court to support a ban on fishing at reefs around Motiti Island. The submitters consider it is unclear whether this is for a FA or a RMA purpose.
 - b. Broad marine protected areas under the RMA are being pursued in Northland before the Environment Court under appeals brought by Bay of Islands Maritime Park Incorporated and Royal Forest and Bird Protection Society of New Zealand Incorporated. The Submitters consider that the spatial extent of

¹ S 30(2) RMA: "A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996."

² *Attorney-General v The Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532 paragraphs [44]-[50]

³ The Submitters were not a party before the Court but note that the FA definition of utilisation includes "conserving"

the marine protected areas sought in these appeals is such that this must amount to fisheries management and be *ultra vires* the RMA. It is likely that this issue will have to be dealt with by the Courts.

- c. Similar issues are likely to emerge in Taranaki and Waikato regions as they undertake coastal plan reviews.
13. The Submitters question whether regional councils have the budget, competency, and willingness to administer marine protected areas. Such work has not been the traditional remit of regional councils. In the Submitters' view, regional councils should be allowed to 'stick to their knitting' and address pressing terrestrial issues such as freshwater quality.
14. The Submitters also note that there is an existing framework for marine protected areas under the Marine Reserves Act 1971. While there may be deficiencies in this legislation, such deficiencies are better addressed through specific legislative reform in this area, rather than ad hoc marine protected areas under the RMA. The submitters note the legislative reform proposals in this area from 2016 and consider that these have merit in providing an enduring solution to the establishment of a network of marine protected areas.⁴
15. To the extent that effects on indigenous biodiversity are caused by excessive extraction of fish biomass, then the remedy must lie with reform of the FA to ensure that catch limits are set in a way that ensures abundance in the marine environment. Any other solution is misdirected.

Outcome sought by the Submitters

16. The Submitters acknowledge that reform of the Marine Reserves Act 1971 and the FA is beyond the scope of this review. However, the interface and interrelationship of the RMA with this legislation is within scope.
17. The Submitters seek that the Review Panel consider the inefficiency of regulatory duplication in the area of fisheries and marine management and assess whether this is properly an area for involvement of regional councils, given competing priorities, such that this issue is given due consideration in options for reform.
18. The Submitters acknowledge the scale of the Review Panel's task and have sought to be concise. If more information is sought concerning the matters raised, please do not hesitate to contact the Submitters.



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⁴ <https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2016/new-marine-protected-areas-act/>