



Fisheries New Zealand

Tini a Tangaroa

Review of commercial fishing sustainability measures for the Cape Brett to Mimiwhangata area, Northland

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1 Summary

- 1 Fisheries New Zealand proposes that commercial bottom trawling and Danish seining are prohibited in the Cape Brett to Mimiwhangata area on the eastern Northland coastline (see Figure 1) under the Fisheries Act 1996 (**Fisheries Act**). This prohibition is intended to avoid, remedy, or mitigate any adverse effects of these fishing methods on the aquatic environment, and to maintain biological diversity in the area.
- 2 The rocky reefs and soft sediment areas in the Cape Brett to Mimiwhangata area support significant benthic (seabed) marine communities, including sponges and bryozoans, and legally protected black, gorgonian, and stony corals. These communities provide shelter, protection, and resources for other marine flora (plants) and fauna (animals), including for many fishery and taonga species.
- 3 Commercial fishing with mobile bottom-contact gear (bottom trawling and Danish seining) is considered to be the main potential threat to benthic community biodiversity in the area.
- 4 Fisheries New Zealand welcomes your feedback and submissions on two proposed consultation options to prohibit bottom trawling and Danish seining (Table 1), or any other alternatives. Figure 2 (further below in the document) shows a map of the proposed prohibition areas for each option. The use of the term “Cape Brett and Mimiwhangata area” throughout the rest of the document refers to the Option 1 prohibition area.

Table 1: Proposed commercial fishing prohibitions around Cape Brett and the Mimiwhangata coastline.

Option	Description
Option 1	Prohibit commercial bottom trawling and Danish seining on the rocky reefs and surrounding soft sediments
Option 2	Prohibit commercial bottom trawling and Danish seining on the rocky reefs

- 5 The consultation options originated from multiple party discussions over the past year as part of Environment Court proceedings on the proposed Northland Regional Plan under the Resource Management Act (**RMA**).
- 6 The commercial method prohibitions are proposed to be in place indefinitely, to protect the ongoing vulnerability of the benthic community biodiversity to mobile bottom-contact fishing gear.
- 7 Customary non-commercial and recreational fishing would not be impacted by these proposals.

2 Background

- 8 In November 2019, the Court of Appeal released the Motiti decision - *Attorney-General v Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532.¹ The Court of Appeal decision confirmed that regional councils can control fishing activities under the RMA for the purpose of protecting biodiversity, so long as those controls are not for Fisheries Act purposes (i.e. core functions such as allocations and catch settings).

¹ The Court of Appeal judgement is available [here](#).

2.1 Proposed Northland Regional Plan

- 9 Under the RMA, regional councils are required to have a regional coastal plan in place (which can be part of a broader regional plan). Regional plans include objectives for the region; policies to implement the objectives; and the rules (if any) to implement the policies, such as marine spatial protection measures.
- 10 The proposed Northland Regional Plan was notified in September 2017 and did not include marine spatial protection measures controlling fishing activities. However, several submitters on the proposed plan sought for such measures to be included.
- 11 The Northland Regional Council decided against including spatial protection measures in its plan. Forest and Bird and the Bay of Islands Maritime Park Inc. appealed the Council's decision to the Environment Court, seeking measures to protect marine biodiversity in some parts of the Bay of Islands and Mimiwhangata coastline. These appellants are supported by Ngati Kuri Trust Board, Ngāti Kuta Ki Te Rāwhiti hapū, Manuhiri Kaitiaki Charitable Trust, Te Uri o Hikihiki hapū, and Patuharakeke Te Iwi Trust Board.
- 12 The prohibited activities the appellants are seeking for Cape Brett to Mimiwhangata (i.e. the Te Hā o Tangaroa Protection Area Rakaumangamanga – Ipipiri, and the Te Mana o Tangaroa Protection Area) are no bottom trawling, bottom pair trawling, Danish seining or purse seining. A map of the appellant's protection areas for Cape Brett to Mimiwhangata is provided in Appendix 1.
- 13 The Environment Court hearing on the proposed spatial protection measures occurred over three weeks in July and August 2021. At the conclusion of the hearing, the Court encouraged all parties to work together collaboratively to discuss possible tools (including Fisheries Act tools) to address the threats to the biodiversity values identified.

2.2 Post-hearing discussions

- 14 Fisheries New Zealand, along with the Department of Conservation (**DOC**), have engaged with multiple parties since the conclusion of the Environment Court hearing in August 2021. This includes iwi and hapū, Te Ohu Kaimoana, environmental interests, New Zealand Rock Lobster Industry Council, Fisheries Inshore New Zealand, and New Zealand Sport Fishing Council.
- 15 Iwi and hapū have also engaged separately in a series of hui to see if they could come to agreement on spatial protection measures for each area.
- 16 Unfortunately the hui and wider discussions have been unsuccessful at reaching a consensus resolution.
- 17 Fisheries Act measures were discussed in the Environment Court hearing as a mechanism to protect the biodiversity values identified in the Cape Brett and Mimiwhangata area. Some parties have expressed support for Fisheries Act measures in post-hearing discussions.
- 18 Fisheries New Zealand chose not to progress section 11 sustainability measures under the Fisheries Act for the Cape Brett and Mimiwhangata area out of respect for iwi and hapū engagement and broader discussions that were, until recently occurring among the parties following the hearing. We now consider that we are at a stage in the process where Fisheries Act sustainability measures for Cape Brett to Mimiwhangata are publicly consulted on.
- 19 The Environment Court is being kept advised of this consultation on section 11 sustainability measures. It is still considering its decision on the appeals it heard in 2021.

3 Why the need for change?

20 The primary objective of this consultation is to protect sessile benthic communities² from any adverse effects of fishing with mobile bottom-contact gear. These benthic communities provide shelter, protection and resources for other marine flora (plants) and fauna (animals), including for many fishery and taonga species.

3.1 Benthic biodiversity of the Cape Brett to Mimiwhangata area

21 The reef systems around Rakaumangamanga/Cape Brett to Mimiwhangata support significant benthic marine biodiversity. There are extensive shallow reefs connected to deeper reef systems extending offshore to more than 13 kilometres. The shallow reefs support a high diversity of algal communities (for example, *Carpophyllum* and *Ecklonia* kelp forests) which host a high diversity of reef fish species. As the reefs drop to greater depths they become dominated by diverse suspension-feeding invertebrate communities, which include corals and the highest known diversity of sponges in Northland (after North Cape).

22 The East Auckland Current brings a unique subtropical water flow to this part of the New Zealand coast that enhances local species diversity in the area, particularly around Cape Brett. A range of tropical and subtropical fish and invertebrate larvae are carried along this current from northern latitudes to settle in the area (such as the legally protected spotted black grouper).

23 The National Institute of Water and Atmospheric Research (NIWA), in association with Land Information New Zealand, undertook an extensive bathymetric and biological survey of East Northland between 2008 and 2012 (the Ocean Survey 2020, or Oceans 2020). NIWA's Deep Towed Imaging System (DTIS) was used in the survey to collect high-definition digital video and still images of the seabed, including at sampling sites close to Cape Brett and Mimiwhangata (Bowden et al. 2010).

24 Results from the DTIS surveys show areas with high species diversity on some rocky reefs around Cape Brett and Mimiwhangata, and diverse sponge and bryozoan assemblages, along with other benthic invertebrate species such as Hydrozoa (hydroids) and Anthozoa species such as sea anemones, sea-pens, and black, stony, and gorgonian corals. The species identified in the surveys from the orders Antipatharia (black corals), Gorgonacea (gorgonian corals), Scleractinia (stony corals) are legally protected under the *Wildlife Act 1953*.³ Figure 1 shows where black and hard corals have been identified from the DTIS surveys in relation to the proposed Fisheries New Zealand prohibition areas (noting the corals identified in the inner Bay of Islands are already protected by existing commercial bottom trawling and Danish seining prohibitions⁴ (refer to Appendix 1 for a map)).

25 The sedimentary environments are composed of fine sediment and sandy areas. The Ocean Survey 2020 identified several benthic invertebrate species at sampling sites on these soft sediment habitats, including sponges and Anthozoa (for example, sea-pens). Sedimentary areas have been recognised as ecologically important for their role in the life stages of mobile species such as crustaceans; the rich fauna living in the sediment also play an important function at the lower levels of the trophic chain.

26 In 2021, DOC surveyed some of the Oceans 2020 sampling sites with drop cameras, which confirmed high species diversity and rich benthic communities in the areas previously surveyed by NIWA.

² Sessile benthic communities include species that live on the seafloor and do not move around as adults (e.g. sponges, corals, gorgonians, bryozoans, mussels, oysters, and barnacles).

³ It is not an offence to accidentally catch any of these species if they are released immediately and the capture is reported as soon as possible to the Department of Conservation.

⁴ [Fisheries \(Auckland and Kermadec Areas Commercial Fishing\) Regulations 1986, reg 4\(e\)](#)

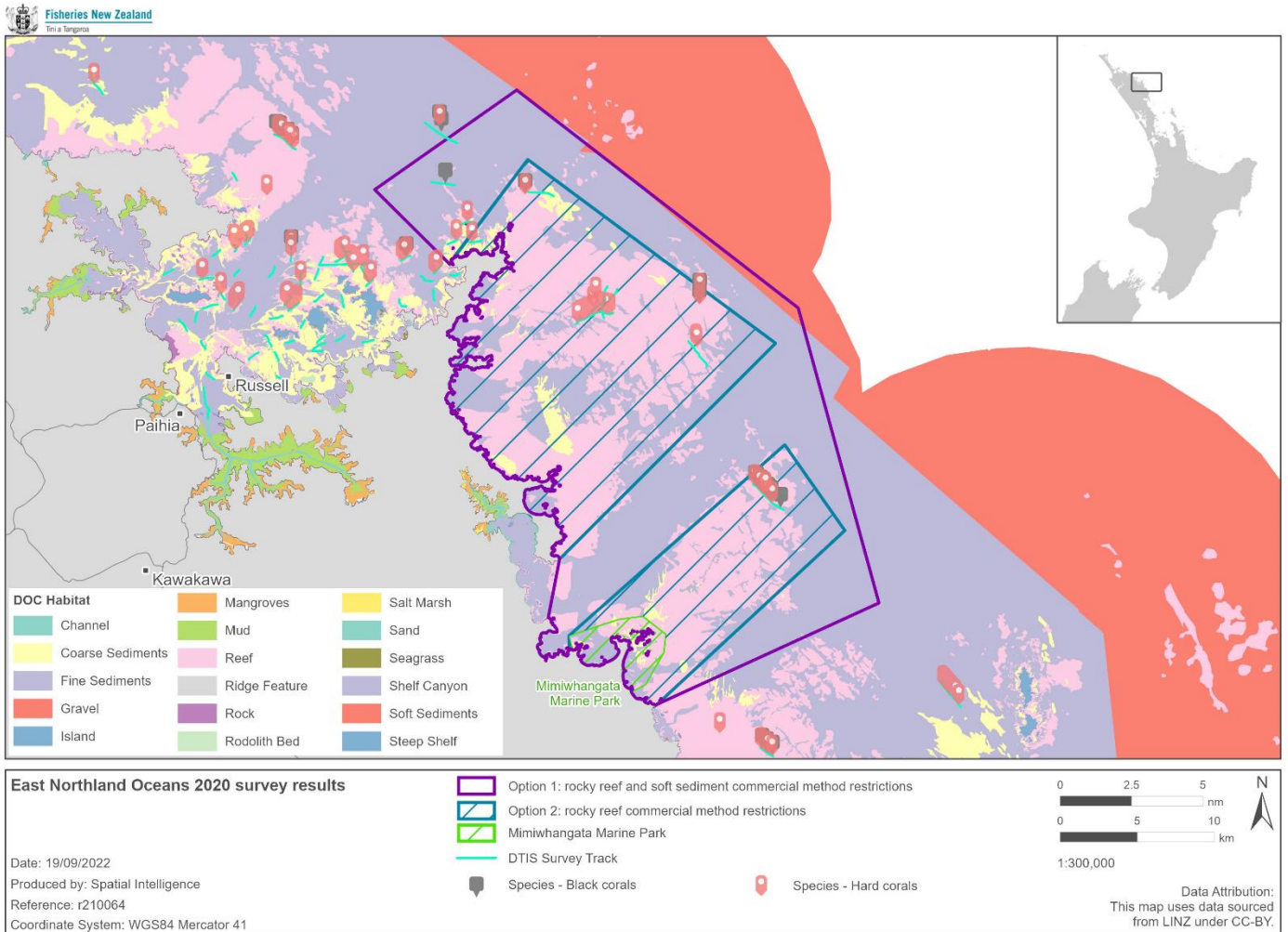


Figure 1: Results from the Oceans 2020 DTIS surveys where black and hard corals have been identified in East Northland.

3.2 Effects of mobile bottom-contact gear on benthic biodiversity

- 27 Fisheries New Zealand considers that commercial fishing with mobile bottom-contact gear is the main potential threat to benthic marine biodiversity in the Cape Brett to Mimiwhangata area. Larger, long-lived, slow-growing, fragile, erect, and sedentary species such as sponges, and coral species (including legally protected species) are particularly vulnerable to adverse effects of fishing on the seabed.
- 28 It is well known that fishing with mobile bottom-contact gear, such as bottom trawling, has adverse effects on benthic communities and their habitat (Rice 2006, Kaiser et al. 2006). These effects consist of destruction of organisms by crushing, or their removal as bycatch, and physical disturbance to the habitat as fishing gear is dragged across the seafloor.
- 29 On soft sediments, bottom trawling can not only displace sediment and associated species, but also suspend sediment into the water column. Plumes of suspended sediment within the turbulent wake of trawl gear can take days to settle, and may be significant, relative to natural levels of suspension in areas with little seabed disturbance by currents or waves (Durrieu de Madron et al. 2005). There is a risk that bottom trawling on soft sediments near rocky reef systems could lead to suspended sediment deposition onto sensitive benthic species and affect their abundance, or health and condition.

30 Recent studies have also identified the effect of bottom trawling in the resuspension of stored carbon (as organic matter) in the sediment to the marine environment (e.g. Luisetti et al. 2020); however, the net effect on carbon stocks is highly uncertain, and likely depends on several local as well as broader scale conditions, such as sediment type, gear type, currents, and seasonal timing of the events (Legge et al. 2020).

4 Commercial fisheries information

4.1 Current levels of commercial bottom trawling and Danish seining

31 Table 2 provides a summary of the commercial bottom trawl and Danish seine fishing events (an individual shot) and the number of vessels using these methods in the Cape Brett and Mimiwhangata area over the past three October (1 October to 30 September) fishing years. This is based on the information Fisheries New Zealand holds on commercial fishing and recorded fishing event start positions.

32 Minimal levels of bottom trawling have occurred in the Cape Brett and Mimiwhangata area over the past three fishing years. This relates to the presence of volcanic rocky reefs in the area and the fact that trawling on them would result in the fishing gear being damaged or lost. The bottom trawling that has occurred in the area has generally been on the deeper soft sediments. Little to no Danish seining occurs (near the entrance to Whangaruru Harbour).

Table 2: Summary of bottom trawl and Danish seine events in the Cape Brett and Mimiwhangata area from October 2018 to September 2021.

Fishing method	Number of:	2018-19	2019-20	2020-21	Average
Bottom trawl	Fishing events	3	17	15	12
	Vessels	2	3	1	2
Precision bottom trawl	Fishing events	2	7	5	5
	Vessels	1	3	2	2
Danish seine	Fishing events	-	1	1	1
	Vessels	-	1	1	1

4.2 Existing commercial fisheries regulations

33 Within the Cape Brett and Mimiwhangata area there are existing commercial fisheries regulations that have been implemented under the Fisheries Act. These controls include minimum legal fish sizes, restrictions on certain fishing methods, and seasonal and spatial closures.

34 Existing commercial regulations for trawl and Danish seine that apply in the Cape Brett and Mimiwhangata area are summarised in Table 3, noting this is not an exhaustive list of regulations that apply to commercial fishing.

Table 3: Existing commercial trawl and Danish seine fisheries regulations.

Trawling by vessels over 46 metre long prohibited in territorial sea (area of sea that extends 12 nautical miles off the coast)
Use of any commercial net is prohibited around Cape Brett and Bird Rock ⁵
Trawling and Danish seining is prohibited in an area near Rawhiti ⁶
Commercial take of any fish or seaweed by any fishing method from the Mimiwhangata Peninsula (comprising the area of water adjacent to Paparahi Point and Rimariki Island) ⁷
Trawl net with a mesh size of less than 125 mm in the cod end cannot be used (unless authorised)
The Precision Seafood Harvesting Modular Harvest System trawl net is authorised for use only when targeting hake and hoki, fishing in HAK 1 and HOK 1, using bottom trawl or midwater trawl methods and at a water depth greater than 250m

5. Input and participation of tangata whenua

- 35 Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 requires the Minister for Oceans and Fisheries (**the Minister**) to develop policies and programmes to give effect to the use and management practices of tangata whenua.
- 36 Fisheries New Zealand has worked with iwi to develop engagement processes that enable iwi to work together to reach a consensus where possible and to inform Fisheries New Zealand on how tangata whenua wish to exercise kaitiakitanga in respect of fish stocks in which they share rights and interests and how those rights and interests may be affected by sustainability measures proposed.
- 37 Section 12(1)(b) of the Fisheries Act requires that before undertaking any sustainability process the Minister shall provide for the input and participation of tangata whenua who have a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned. In considering the views of tangata whenua, the Minister is required to have particular regard to kaitiakitanga.
- 38 Input and participation of tangata whenua into the sustainability decision-making process is provided mainly through Iwi Fisheries Forums, which have been established for that purpose.
- 39 Each Iwi Fisheries Forum can develop an Iwi Fisheries Forum Plan that describes how the iwi in the Forum exercise kaitiakitanga over the fisheries of importance to them, and their objectives for the management of their interest in fisheries. Iwi Fisheries Forums may also be used as entities to consult iwi with an interest in fisheries⁸.
- 40 The proposed commercial fishing method prohibitions are relevant to the rohe of the Te Hiku o Te Ika and the Mid-North Iwi Fisheries Forums. Fisheries New Zealand considers that the proposed fishing method prohibitions are in keeping with the objectives of the Te Hiku o Te Ika Iwi Fisheries Forum Plan which generally relate to a healthy fisheries environment. The Mid-North forum does not currently have an Iwi Fisheries Forum Plan.
- 41 The scheduled hui for the Te Hiku o Te Ika and the Mid-North Iwi Fisheries Forums at the end of August 2022 were unfortunately cancelled. Fisheries New Zealand has instead provided opportunities for input and participation on the proposals via direct contact with some iwi and hapū representatives.

⁵ [Fisheries \(Auckland and Kermadec Areas Commercial Fishing\) Regulations 1986, reg 19A\(1\)\(b\)\(c\)](#)

⁶ [Fisheries \(Auckland and Kermadec Areas Commercial Fishing\) Regulations 1986, reg 4\(e\)](#)

⁷ [Fisheries \(Auckland and Kermadec Areas Commercial Fishing\) Regulations 1986, reg 23](#)

⁸ However, Fisheries New Zealand also engages directly with iwi (outside of Forums) on matters that affect their fisheries interests in their takiwa and consults with any affected Mandated Iwi Organisations and Iwi Governance Entities where needed.

- 42 In addition, Te Uri o Hikihiki hapū, Patuharakeke Te Iwi Trust Board, Ngati Kuri Trust Board, Ngāti Kuta Trust Board, Manuhiri Kaitiaki Charitable Trust, Ngatiwai Trust Board, and Te Rūnanga-Ā-Iwi O Ngāpuhi are party to the Environment Court proceedings and are likely be aware that Fisheries New Zealand was considering section 11 sustainability measures for the Cape Brett and Mimiwhangata area.
- 43 Fisheries New Zealand welcomes any input and submissions on the options from tangata whenua outside of the engagement that has already occurred.

6 Legislative considerations

6.1 Environmental principles (section 9 of the Fisheries Act)

- 44 There are three environmental principles under section 9 of the Fisheries Act that must be taken into account by the Minister when considering sustainability measures, such as fishing method prohibitions. These are:
- Associated or dependent species should be maintained above a level that ensures their long-term viability;
 - Biological diversity of the aquatic environment should be maintained; and
 - Habitats of particular significance for fisheries management should be protected.
- 45 Overall, Fisheries New Zealand considers that the proposed bottom trawl and Danish seine prohibitions align with the environmental principles in the Fisheries Act. This is because any potential adverse effects of these fishing methods on the aquatic environment will be avoided in the Cape Brett and Mimiwhangata area through the proposed prohibitions.

6.1.1 Protected species interactions

- 46 Fisheries New Zealand gathers information on protected species (such as seabirds, some coral species, and marine mammals) interactions with fishing gear through Fisheries Observers who work on commercial fishing vessels, and through commercial fishers who are required to report on captures of protected species.
- 47 Sometimes protected species are accidentally caught during commercial fishing with mobile bottom-contact gear (namely bottom trawling). Table 4 provides a summary of protected species interactions from observed trawl fishing events in the Cape Brett to Mimiwhangata area over the past three October fishing years (no Danish seine events were observed). Little observer coverage has occurred on the small number of vessels fishing in this localised area (see Table 2), with one protected species interaction observed in the 2020-21 fishing year.

Table 4: Summary of observed protected species interactions on trawl vessels in the Cape Brett and Mimiwhangata area from October 2018 to September 2021.

Fishing method	Number of:	2018-19	2019-20	2020-21
Trawl	Events observed	-	1	16
	Non-fish bycatch observed	-	-	1x flesh-footed shearwater caught, returned alive uninjured

- 48 Over the past three October fishing years, there has been one report from a commercial bottom trawl operator on a protected species interaction in the Cape Brett to Mimiwhangata area. A black-bellied storm petrel was reported to be caught and returned alive uninjured in the 2020-21 fishing year.

49 In addition, a number of broader initiatives are underway to reduce protected species interactions with commercial fisheries, including the National Plan of Action (NPOA) - Seabirds 2020 and the development of Protected Species Risk Management Plan for each vessel to reduce the risk of seabird captures.

6.1.2 Fish bycatch

50 Based on the information Fisheries New Zealand holds on commercial fishing in the Cape Brett and Mimiwhangata area, snapper was the top species targeted by bottom trawling in the past three fishing years. The top five reported bycatch species associated with target snapper catch include trevally, john dory, gurnard, eagle ray and frostfish. The proposed fishing method prohibitions would mean that these species are no longer caught as bycatch in the area, but could be caught outside given their mobile nature.

51 As mentioned previously, little Danish seining has occurred in the area in the past three fishing years.

6.1.3 Habitats of particular significance for fisheries management

52 Although no specific habitats of particular significance for fisheries management have been identified in the area at this time, the proposed method prohibitions will help to protect significant benthic communities which provide shelter, protection and resources for many marine species (whether they are fished or not).

53 Fisheries New Zealand is currently undertaking consultation on guidance for defining, identifying and managing habitats of particular significance for fisheries management (ends mid-November 2022) and for how Fisheries New Zealand takes into account that these habitats should be protected when preparing fisheries management advice.⁹

6.2 Sustainability measures (section 11 of the Fisheries Act)

54 It is proposed that the commercial fishing method prohibitions discussed in this document would be progressed using section 11 sustainability measures.¹⁰

55 Section 11 of the Act sets out various matters that the Minister must take into account or have regard to when setting of varying any sustainability measures. This includes any effects of fishing on the aquatic environment (as outlined in the sections above), any existing controls under the Act that apply to the area concerned (see section 4.2), and any relevant planning instruments, strategies, or services.¹¹

56 The following plans and strategies are considered relevant to the proposed commercial fishing method prohibitions.

6.2.1 Proposed Regional Plan for Northland

57 The proposed Regional Plan for Northland is relevant to the proposals presented to prohibit bottom trawling and Danish seining in the Cape Brett and Mimiwhangata area (see section 2.1 for background information).

58 RMA objectives, policies and rules are being sought as part of the proposed Northland Regional Plan to provide marine spatial protection measures, prevent damage to the seafloor and prohibit the temporary or permanent damage or destruction or removal of fish, aquatic life, or seaweed.

⁹ The habitat of particular significance for fisheries management consultation material is available [here](#).

¹⁰ Under section 11(3)(d) of the Fisheries Act the Minister may set or vary the fishing methods that may be used in any area

¹¹ Sections 11(2) and (2A) of the Fisheries Act.

59 Fisheries New Zealand is awaiting the Court's decision on whether rules will be made in the RMA plan to introduce spatial protection measures to address the effects of particular commercial fishing methods on the benthic ecological values identified by the appellants. In the meantime, Fisheries New Zealand has decided to progress consultation on commercial fishing method prohibitions for the Cape Brett and Mimiwhangata area.

6.2.2 Northland Conservation Management Strategy

60 The [Northland Conservation Management Strategy 2014-2024](#) is a 10 year plan that provides direction for the management of public conservation land and waters, and species for which DOC has responsibility.¹² The Strategy provides guidance for DOC's work in the form of a vision, objectives, outcomes for places, policies, and milestones; translating DOC's strategic outcomes to Northland. The Cape Brett and Mimiwhangata coastline is recognised as place of rich cultural and marine values in the strategy.

61 Policy 14.2.2.20 in the strategy is specifically relevant to the proposals in this document:

“Contribute to any investigation by the Northland Regional Council for the establishment of a marine recreational park between Cape Brett, Poor Knights Islands Marine Reserve and Bream Head to achieve enhanced protection for marine mammals, the Poor Knights Islands and marine reserve, and wildlife”.

62 While not a proposal for the establishment of a marine recreational park as such, Fisheries New Zealand considers that the proposed bottom trawling and Danish seining prohibitions for the Cape Brett and Mimiwhangata area will nevertheless contribute to enhanced protection for the significant marine biodiversity present.

6.3 Other legislative requirements and considerations

63 The Fisheries Act provides the legal basis for managing fisheries in New Zealand, including the Minister's responsibilities for setting and varying sustainability measures. See Appendix 2 for an overview of other legislative requirements and considerations.

6.4 Te Mana o te Taiao (Aotearoa New Zealand Biodiversity Strategy)

64 The [Te Mana o te Taiao – the Aotearoa New Zealand Biodiversity Strategy](#) is also relevant to the proposals in this document. Te Mana o te Taiao sets a strategic direction for the protection, restoration and sustainable use of biodiversity, particularly indigenous biodiversity in Aotearoa New Zealand. The Strategy sets several objectives and goals across three timeframes. The most relevant to setting sustainability measures for Cape Brett and Mimiwhangata are objectives 10 and 12:

Objective 10: Ecosystems and species are protected, restored, resilient and connected from mountain tops to ocean depths.

Objective 12: Natural resources are managed sustainably.

65 The [Te Mana o Te Taio – Aotearoa New Zealand Biodiversity Strategy Implementation Plan](#) sets out a pathway for achieving the outcomes of Te Mana o te Taiao over the next 30 years. As part of this plan, we will identify areas of focus for Fisheries New Zealand in delivering Government biodiversity objectives including progression to a more integrated ecosystem-based approach to managing fisheries. The proposed commercial method prohibitions are a practical demonstration of embracing a move towards an ecosystem-based approach.

¹² A relevant management strategy under section 11(2)(b) of the Fisheries Act.

7 Proposed options

- 66 Fisheries New Zealand welcomes feedback and submissions on two options to prohibit commercial bottom trawling and Danish seining in all or part of the Cape Brett to Mimiwhangata area under section 11 of the Fisheries Act to avoid, remedy or mitigate any adverse effects¹³ of these fishing methods on the aquatic environment¹⁴, and to maintain biological diversity.¹⁵
- 67 Fisheries New Zealand recognises that the adverse effects of Danish seine are likely to be less than bottom trawling (for example, because of lighter gear and no trawl doors); however, there is the potential for this method to impact vulnerable benthic communities in the area.
- 68 A map of the proposed prohibition areas under each option is shown in Figure 2. The boundary lines proposed for marine spatial protection measures by the appellants under the proposed RMA plan differ slightly from the proposed Fisheries New Zealand boundary lines. The lines have been modified to assist with fisheries compliance and enforcement, for example to include straight lines not curved lines (see Appendix 1 for a comparison of the appellants areas to the proposed Fisheries New Zealand prohibition areas for each option). Fisheries New Zealand also welcomes feedback and submissions on any other alternative boundary lines.
- 69 The method prohibitions are proposed to be in place indefinitely, to protect the benthic communities against their ongoing vulnerability to mobile bottom-contact fishing gear.
- 70 Customary non-commercial and recreational fishing would not be impacted by the proposals.

¹³ Section 2(1), effect means the direct or indirect effect of fishing; and includes any past, present, or future effect; and any cumulative effect which arises over time or in combination with other effects.

¹⁴ Section 2(1), aquatic environment – (a) means the natural and biological resources comprising any aquatic ecosystem; and (b) includes all aquatic life and the oceans, seas, coastal areas, inter-tidal areas, estuaries, rivers, lakes, and other places where aquatic life exists.

¹⁵ Section 2(1), biological diversity means the variability among living organisms, including diversity within species, between species, and of ecosystems.

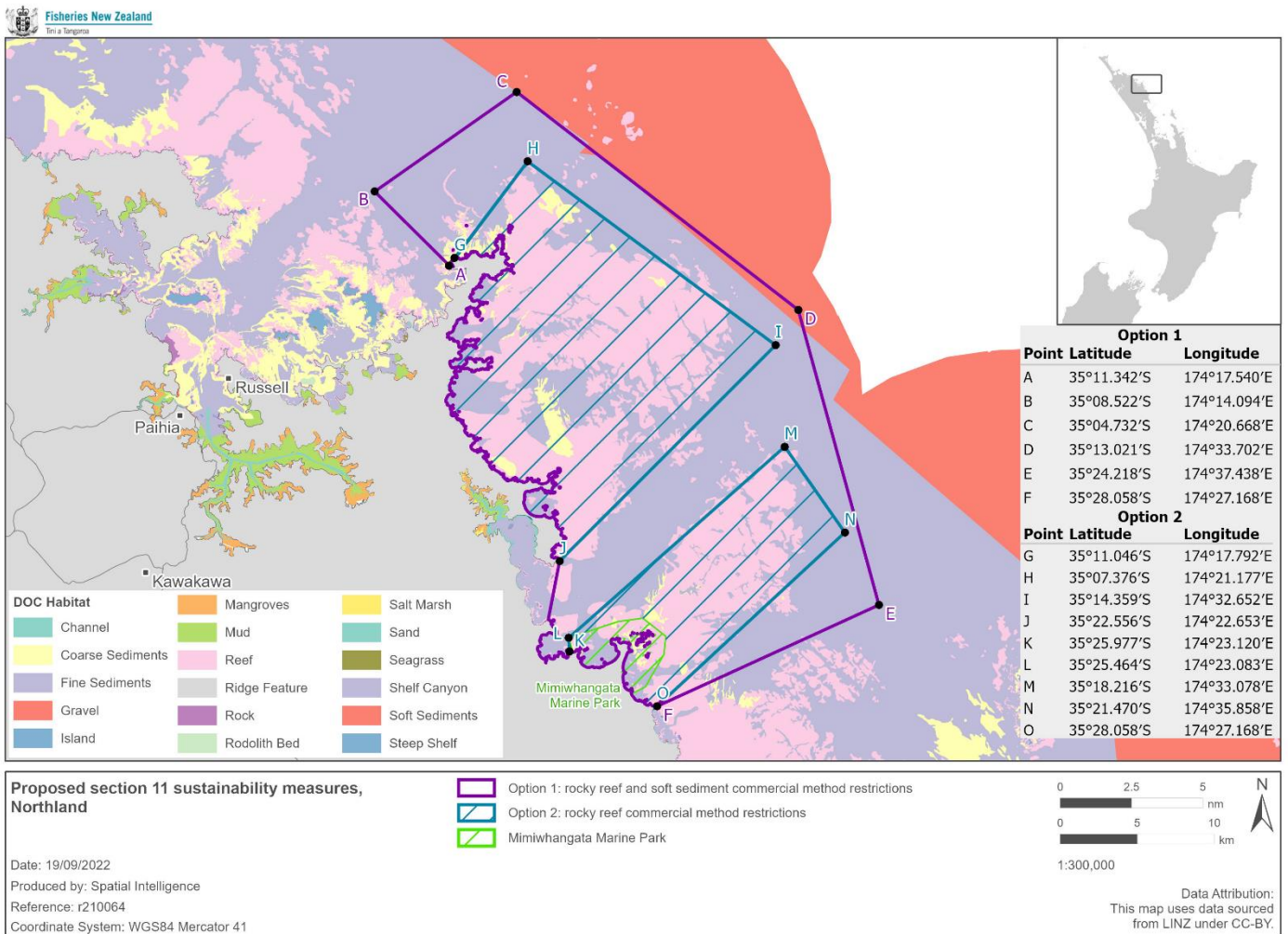


Figure 2: Map of the proposed bottom trawling and Danish seining prohibition areas under Option 1 and Option 2.

7.1 Option 1

Option 1

Prohibit commercial bottom trawling and Danish seining on the rocky reefs and surrounding soft sediments (bounded by the purple line in Figure 2 and including the existing Mimiwhangata Marine Park where commercial fishing is already prohibited).

- 71 The proposed bottom trawling and Danish seining prohibitions on the rocky reefs and surrounding soft sediments under Option 1 recognises the significant marine biodiversity identified in the area by the Ocean Survey 2020, but also the high species diversity and the rich benthic communities identified on the reef habitats particularly on the northern reef area extending off Cape Brett.

Impacts and benefits

- 72 Option 1 could have greater impacts on commercial fishers in comparison to Option 2. Bottom trawl and Danish seine operators wouldn't be able to fish on the soft sediments near the reef areas, including a winter fishing ground on soft sediment between the two reefs at the entrance to Whangaruru Harbour.
- 73 Some commercial fishing effort could be displaced into other areas because of Option 1, but Fisheries New Zealand considers that this would be minimal. This is because there has been on average 12 bottom trawling events per year in the past three fishing years, with one Danish seine event in each of the 2019-20 and 2020-21 fishing years within the purple bounded area.

- 74 While the current levels of bottom trawl and Danish seine fishing is low in the area, there is a potential future risk that trawl and Danish seine operators may modify their gear to fish some of the reefs (particularly the deeper lower relief reefs) which could result in significant adverse effects on vulnerable benthic communities.
- 75 Option 1 would protect the soft sediment communities in addition to the rocky reef communities. This option also creates a buffer between the rocky reefs and surrounding soft sediments from mobile bottom-contact fishing gear to minimise any risk of resuspended sediment settling on sensitive benthic communities and affecting their abundance, or health and condition.

7.2 Option 2

Option 2	Prohibit commercial bottom trawling and Danish seining on the rocky reefs (bounded by the blue line in Figure 2 and including the existing Mimiwhangata Marine Park where commercial fishing is already prohibited).
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- 76 The proposed bottom trawling and Danish seining prohibitions on the rocky reefs only under Option 2 recognises the significant biodiversity identified by the Ocean Survey 2020 and the high species diversity and rich benthic communities identified off Cape Brett (like Option 1).

Impacts and benefits

- 77 Option 2 would have less impact on commercial fishers compared to Option 1 and is unlikely to cause much fishing effort displacement into other areas. Based on the information Fisheries New Zealand holds on commercial fishing for this area, over the past three fishing years there has been on average four bottom trawling events per year and no Danish seine events in the blue bounded area.
- 78 Under this option, bottom trawl operators in particular would retain the ability to fish on the soft sediments near the reef areas. However, continuing to allow bottom trawling and Danish seining on soft sediments under this option means there remains a risk of resuspended sediment from these methods settling on sensitive benthic communities both on the soft sediments and the adjacent reef areas. The boundary lines for this option do in places cut across reef and soft sediment margins; therefore, risks of fishing to some reef-associated communities remain.

8 Other fishing method considerations

8.1 Purse seining

- 79 As part of the proposed Northland Regional Plan, the appellants (Forest and Bird and the Bay of Islands Maritime Park inc.) are also seeking for purse seining to be a prohibited activity from Cape Brett to Mimiwhangata, in addition to bottom trawling and Danish seining.
- 80 We understand from the evidence presented at the hearing that the prohibition is proposed to restore shoaling/workups of fish schools because they provide a critical mechanism by which seabirds (for example, fluttering, Buller's and flesh-footed shearwaters, and red billed gulls) access plankton and krill for food, and to avoid any adverse effects of fishing on threatened marine species such as spine-tailed devil and manta rays.
- 81 Based on the information Fisheries New Zealand holds on purse seining for the Cape Brett and Mimiwhangata area, over the past three fishing years there has been between one and four fishing events per year. We are aware that there has been a shift in purse seine operations south to the Bay of Plenty.
- 82 Fisheries New Zealand considers that protecting a very local area from purse seining is unlikely to be effective in restoring pelagic fish and workups because the fish shoals could be fished

outside the area (for example, blue mackerel are a mobile species and are not confined to the boundaries of the proposed protection area).

- 83 If, in the future, science and monitoring information identifies that purse seining poses a risk to sustainability (including risks to the broader aquatic environment), a review of Total Allowable Catch settings for species such as blue mackerel could be the more appropriate mechanism to consider, along with consideration of additional protected species mitigation measures.
- 84 Fisheries New Zealand welcomes feedback from the fishing industry on whether there could be an opportunity to implement a voluntary agreement to exclude purse seining from the eastern Northland coastline.

9 Questions for submitters

- Which option do you support for prohibiting bottom trawling and Danish seining in the Cape Brett and Mimiwhangata area? Why?
 - If you do not support any of the options listed, what alternative(s) should be considered for the Cape Brett and Mimiwhangata area? Why?
 - Do you think these options adequately avoid, remedy or mitigate any adverse effects of fishing on the aquatic environment for the Cape Brett and Mimiwhangata area?
- 85 We welcome your views on these proposals. Please provide detailed information and sources to support your views where possible.

10 How to get more information and have your say

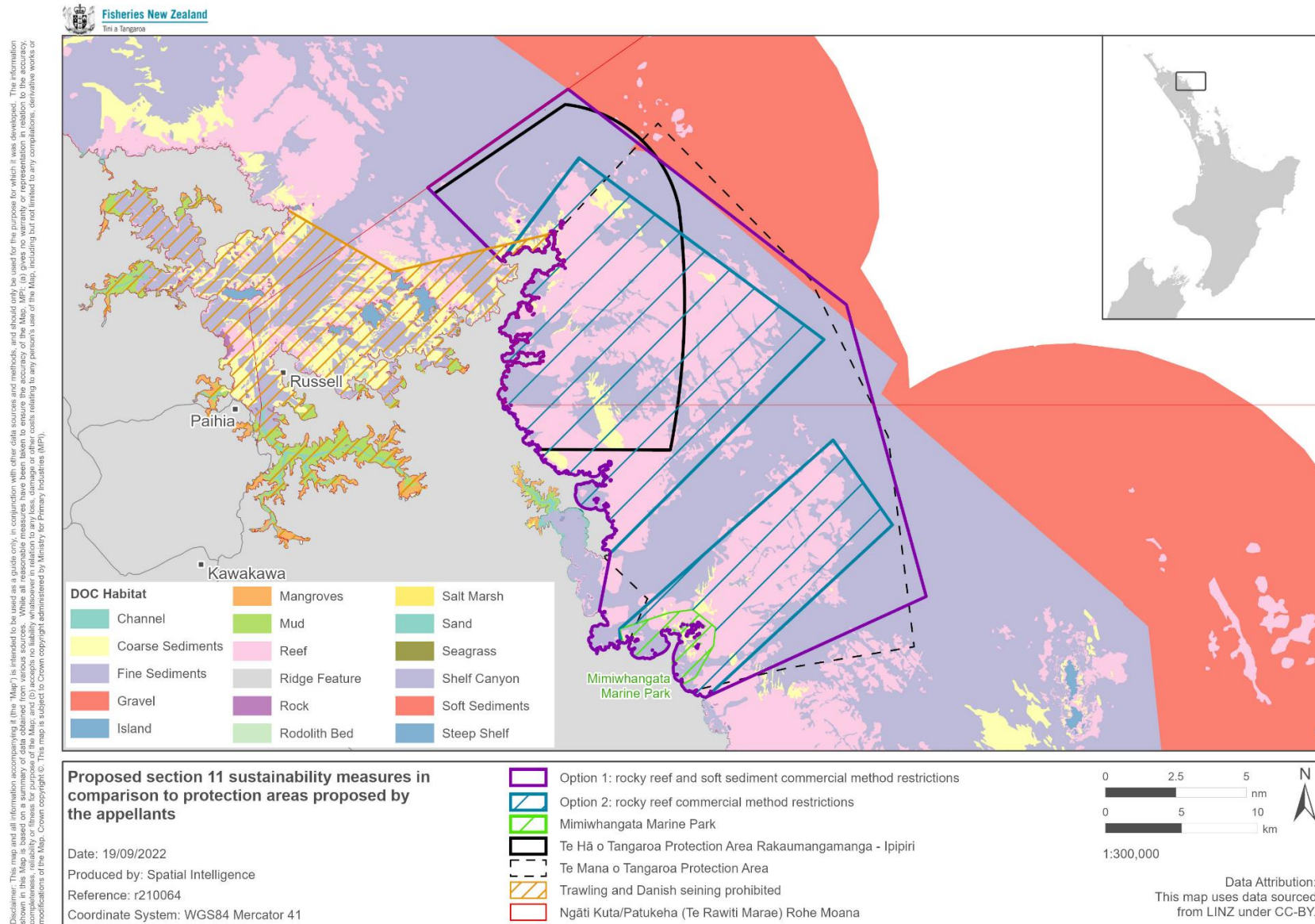
- 86 Fisheries New Zealand invites you to make a submission on the proposals set out in this discussion document. Consultation closes at 5pm on 18 October 2022.
- 87 Please see Fisheries New Zealand's sustainability consultation webpage www.mpi.govt.nz/review-of-commercial-fishing-sustainability-measures-for-northland for related information, a helpful submissions template, and information on how to submit your feedback. If you cannot access the webpage or require hard copies of documents or any other information, please email FMSubmissions@mpi.govt.nz

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Appendix 1: Map comparing the commercial fishing method prohibition areas proposed by the appellants (Te Hā and Te Mana o Tangaroa) and that of Fisheries New Zealand (Options 1 & 2)



Appendix 2: Overview of legislative requirements

1. An overview of key legal requirements as they relate to decision-making on section 11 sustainability measures under the Fisheries Act 1996 is provided as follows. You can access the full version the Act at www.legislation.govt.nz

The Fisheries Act 1996

2. The Fisheries Act gives the Minister the power to set or vary sustainability measures and defines the objectives of such measures and things that the Minister must consider when making decisions.

Section 8 – Purpose of the Act

3. The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Ensuring sustainability means maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations while avoiding, remedying or mitigating the adverse effects of fishing on the aquatic environment.

Section 5 – Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

4. The Act must be interpreted, and decisions made, consistent with our obligations under international agreements related to fishing and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
5. Our international obligations arise from our being a party to the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and the United Nations Convention on Biological Diversity 1992. New Zealand is also a signatory to a number of international conventions, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Convention on Migratory Species. We are also a member of three regional fisheries management organisations (South Pacific Regional Fisheries Management Organisation, Western and Central Pacific Fisheries Commission, and Commission for the Conservation of Southern Bluefin Tuna).

Section 9 – Environmental principles

6. Decision-makers must take into account that:
 - (a) associated or dependent species¹⁶ should be maintained above a level that ensures their long-term viability:
 - (b) biological diversity of the aquatic environment should be maintained:
 - (c) habitat of particular significance for fisheries management should be protected.

Section 10 – Information principles

7. Decision-makers must take into account that:
 - (a) decisions should be based on the best available information:
 - (b) decision-makers should consider any uncertainty in the information available in any case:
 - (c) decision-makers should be cautious when information is uncertain, unreliable, or inadequate:

¹⁶ Non-harvested species taken or affected by the taking of a harvested species.

- (d) the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.
8. The High Court, reflecting on the challenges in obtaining full information about fisheries, has noted that:¹⁷
- The fact that a dispute exists as to the basic material upon which the decision must rest, does not mean that necessarily the most conservative approach must be adopted. The obligation is to consider the material and decide upon the weight which can be given it with such care as the situation requires.

Section 11 – Sustainability measures

9. The Minister may set or vary sustainability measures¹⁸, after taking into account:
- (a) any effects of fishing on any stock and the aquatic environment;
 - (b) any existing controls under the Act that apply to the stock or area concerned; and
 - (c) the natural variability of the stock concerned.
10. Before making decisions on sustainability measures, the Minister must have regard to any of the following that he or she considers to be relevant:
- (a) any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991;
 - (b) any management strategy or management plan under the Conservation Act 1987;
 - (c) sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000;
 - (ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
 - (d) a planning document lodged with the Minister of Fisheries by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011.
11. The Minister must also take into account:
- (a) any conservation services or fisheries services (such as research into stock abundance);
 - (b) any relevant fisheries plan approved under Part 3 of the Act (see Section 11A, below); and
 - (c) any decisions not to require conservation services or fisheries services.
12. Sustainability measures may relate to:
- (a) the catch limit (including a commercial catch limit) for any stock or, in the case of a quota management stock that is subject to section 13 or section 14, any total allowable catch for that stock;
 - (b) the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken;
 - (c) the areas from which any fish, aquatic life, or seaweed of any stock may be taken;
 - (d) the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area;
 - (e) the fishing season for any stock, area, fishing method, or fishing vessels.

¹⁷ *Greenpeace New Zealand Inc v Minister of Fisheries* HC Wellington CP 492/93, 27 November 1995 at 32.

¹⁸ Sustainability measure means any measure set or varied under Part 3 of the Fisheries Act for the purpose of ensuring sustainability. Ensuring sustainability is defined in section 8 above.

Section 11A – Fisheries plans

13. The Minister may approve, amend, or revoke fisheries plans, which may include:
 - (a) fisheries management objectives to support the purpose and principles of the Fisheries Act:
 - (b) strategies to achieve fisheries management objectives:
 - (c) performance criteria to measure achievement of the objectives and strategies:
 - (d) conservation services or fisheries services:
 - (e) contingency strategies to deal with foreseeable variations in circumstances.
14. To date national fisheries plans have been approved only for deepwater, highly migratory species and pāua.
15. The Minister must take these plans into account when making decision on sustainability measures.

Section 12 – Consultation

16. Before making decisions, the Minister must consult with people or organisations he or she considers represent those classes of people who have an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Māori, environmental, commercial, and recreational interests.
17. The Minister must also provide for the input and participation of tangata whenua that have:
 - (a) a non-commercial interest in the stock concerned; or
 - (b) an interest in the effects of fishing on the aquatic environment in the area concerned—
and have particular regard to kaitiakitanga.
18. After making decisions, the Minister must provide the reasons for his or her decisions to the people consulted.