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# Departmental Briefing



Department of  
Conservation  
*Te Papa Atawhai*

## In Confidence

GS ref: 21-B-0799  
DOCCM: 6738073

To: Minister of Conservation

Date: 18 October 2021

**Subject:** Marine Mammal Sanctuary Proposal for Te Pēwhairangi (The Bay of Islands): advice following public consultation

**Action sought:** To consider submissions received and decide whether to declare an amended Te Pēwhairangi marine mammal sanctuary proposal

**Time Frame:** 1 November 2021

**Risk Assessment:** Not taking further action to address known detrimental impacts on marine mammals in Te Pēwhairangi will likely see the further detrimental impacts on bottlenose dolphins in Te Pēwhairangi. **Department's Priority:** High **Level of Risk:** Medium

If you decide to declare a marine mammal sanctuary, there is a risk of legal challenge from individuals in the research and science community, due to differing opinions on the necessity of a sanctuary.

## Contacts

Name and position	Cellphone	First contact	Principal author
Natasha Ryburn, Director – Permissions, Planning & Land	9(2)(a)	✓	
Philip Duffey – Management Planner – Permissions, Planning & Land	9(2)(a)		✓
Kerri-Anne Edge – Lead Independent Contractor	9(2)(a)		✓

## **Executive summary – Whakarāpopoto ā kaiwhakahaere**

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1. On 20 April 2021, the Acting Minister of Conservation publicly notified her intention to establish a marine mammal sanctuary (MMS) to better protect bottlenose dolphins and other marine mammals in Te Pēwhairangi.
2. The 28 day public submission period concluded on 18 May 2021. There were 645 submissions, including 458 unique submissions from individuals and groups. Thirteen submitters have been identified as whānau, hapū or iwi who exercise kaitiakitanga in the proposed sanctuary area. A summary of the submissions is in **Attachment A**. We will also deliver copies of each submission received to your office.
3. Evaluation of the public submissions and further consultation with Ngā Hapū o te Pēwhairangi<sup>1</sup> broadly supports our position that interactions with vessels remain a significant issue for bottlenose dolphins in Te Pēwhairangi and action to reduce those interactions is appropriate. However, there has also been notable opposition from some members of the science and research community, some local commercial operators, and some local residents. Substantive issues raised include the workability of the proposal, the robustness of the scientific justification for specific restrictions within the MMS proposal, and how the overarching problem has been represented in consultation material. Submitters who were opposed to the proposal did so largely because education and enforcement of current regulations was preferred over an MMS.
4. Our analysis of issues raised by the science and research community suggests that further research in Te Pēwhairangi on underwater noise and impacts on marine mammals, prey availability, and local population dynamics of key species is recommended, but that the evidentiary basis for the proposed measures is robust. General scientific opinion remains that interactions with vessels is a significant issue for bottlenose dolphins in Te Pēwhairangi and action to reduce those interactions is appropriate (and required under Te Papa Atawhai's statutory and policy obligations).
5. Having considered issues raised through submissions on the workability of the MMS proposal, we recommend that the original proposal is amended as follows:
  - reducing the 400m minimum distance for people in the water and vessels to stay away from marine mammals to 300m (the “approach distance”)
  - altering the boundaries of the proposed MMS to exclude key harbours, ports, landings and anchorages from the proposed MMS
  - providing an explicit caveat to the restrictions, being “lawful authority or reasonable excuse”. Proposed exemptions will be described in a non-exhaustive list of what is considered a “lawful authority or reasonable excuse”
  - providing additional specific exemptions for:
    - a. vessels restricted in their ability to manoeuvre; constrained by their draught; or over 500GT
    - b. any vessel or person actively participating in and registered in an organised event that has the prior approval of the Te Papa Atawhai
    - c. any person undertaking an aquaculture activity in the intertidal zone and
  - removing wording around using ‘all reasonable means’ to stop vessels if a marine mammal is within the approach distance, thereby removing ambiguity in the application of this restriction.

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<sup>1</sup> This term is used to describe the coastal hapū around te Pēwhairangi, and included Ngāti Manu, Ngā Hapū ki Waitangi, Te Uri Taniwha, Ngāti Kuta, Ngāti Torehina, Ngāti Rēhia, Patukeha.

**(the Amended Proposal)**

6. We are satisfied the Amended Proposal meets the original objectives set out in the public consultation document, most critically to reduce vessel interactions with marine mammals, and that it also responds to key workability concerns raised in submissions.
7. The Amended Proposal is also supported by Te Pēwhairangi Marine Mammal Kaitiaki Rōpū<sup>2</sup> (the Rōpū).
8. There remains a risk that individuals will legally challenge any declaration of a MMS, primarily on the basis of an error of facts - that they disagree with the justification for the proposed MMS.
9. There is risk associated with not taking further action to address known impacts on marine mammals in Te Pēwhairangi. This will likely see the further detrimental impacts on bottlenose dolphin in Te Pēwhairangi, a taonga species for local hapū. Te Papa Atawhai and the New Zealand Government would be criticised for inaction, and individuals may attempt to legally or otherwise challenge any decision not to proceed with a MMS.
10. Should you decide to declare a MMS, this is also subject to the consent of the Minister of Energy and Resources and the Minister for Oceans and Fisheries<sup>3</sup>. You may consider matters relevant to the portfolio responsibilities of those Ministers. While in the past, we have sought and obtained the consent of the Minister of Transport for MMS proposals (on the basis of the Minister of Transport having control of seabed or waters), recent  
9(2)(h)  


**We recommend that you (Nga Tohutohu) –**

	<b>Decision</b>
<b>Overarching framing to inform your decision making</b>	
(a) <b>Note</b> your decision on the MMS must be in accordance with the <i>Marine Mammals Protection Act 1978</i> (MMPA), and should align with the <i>Conservation General Policy 2005</i> (CGP), and Northland <i>Conservation Management Strategy 2014</i> (Northland CMS).	Noted
(b) <b>Note</b> your decisions on the MMS must be consistent with your obligations in relation to the Treaty of Waitangi, section 4 of the <i>Conservation Act 1987</i> ( <i>Conservation Act</i> ) and <i>te Takutai Moana Act 2011</i> (TM Act).	Noted
(c) <b>Note</b> you must have particular regard to the views received from iwi, hapū, or whānau that exercise kaitiakitanga in part of the common marine and coastal area affected by the proposed MMS when making your decision.	Noted
(d) <b>Note</b> that to declare the MMS proposal you must have the consent of the Minister for Oceans and Fisheries and Minister of Energy and Resources. While the Minister of Transport has given consent for previous MMS processes, their consent is not required here.	Noted
(e) <b>Note</b> that in making your decision on the MMS, you must consider submissions received on the proposal.	Noted

<sup>2</sup> a rōpū established between Ngā Hapū o te Pēwhairangi and Te Papa Atawhai to progress development of a marine mammal sanctuary.

<sup>3</sup> s22(2) Marine Mammals Protection Act 1978. Note the Minister for Oceans and Fisheries is referred to in the legislation as the Minister of Fisheries.

## Declaring the proposed Te Pēwhairangi Marine Mammal Sanctuary

(f)	<b>Agree</b> to declare the Amended MMS as described in this briefing (subject to consent from the Ministers for Oceans and Fisheries and Energy and Resources).	Yes / No
(g)	<b>Sign</b> the attached letters to the Ministers for Oceans and Fisheries and Energy and Resources seeking their consent, and to the Minister of Transport for noting.	Signed / Not signed
(h)	<b>Agree</b> to the proposed Gazette Notice at <b>Attachment H</b> being lodged in the New Zealand Gazette on your behalf if consent is received from the Ministers for Oceans and Fisheries, and Energy and Resources.	Yes / No
(i)	<b>Authorise</b> Te Papa Atawhai to make minor and/or technical amendments to the Gazette notice, should such amendments be required.	Agreed / Not agreed

### Comments:

Michael Slater  
**Deputy Director General, Operations**  
**For Director-General of**  
**Conservation**

Hon Kiritapu Allan  
**Minister of Conservation**

20/10/2021

### Purpose – Te aronga

#### 11. This briefing:

- summarises the outcomes of public consultation for Te Pēwhairangi MMS, our partnership with Māori, and provides a departmental response to issues raised; and
- seeks your decision on whether or not to declare the amended MMS proposal that takes into consideration issues raised in public consultation and by our Treaty partners.

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

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**The problem – The bottlenose dolphin local population<sup>4</sup> is declining in Te Pēwhairangi, where uniquely high levels of vessel interactions are affecting all marine mammals**

12. The bottlenose dolphin local population is declining in Te Pēwhairangi, with consistently fewer individuals visiting and high calf mortality.
  - Findings from research<sup>5</sup> into the bottlenose dolphin local population in Te Pēwhairangi include:
    - a. the bottlenose dolphin local population has declined significantly over several study periods, from 278 identifiable individuals in 1997, to 96 by 2015
    - b. calf mortality is high with between 56% (1994-2006) and 75% (2012-2015) of all calves dying before reaching adulthood.
  - Additionally, the latest update from research (currently underway) indicates the local bottlenose dolphin population context for this proposal is still applicable. Preliminary findings suggest:
    - a. the decline in identifiable individuals has not been rectified by previous management actions with a further reduction in individuals visiting Te Pēwhairangi. Only 26 individually identifiable bottlenose dolphin were documented between 2017-2020 and
    - b. of these 26 individuals, only 16 are defined as frequent users of Te Pēwhairangi waters (2020)<sup>6</sup> and
    - c. no new calves were born during peak calving season (December to February) in 2019/20<sup>7</sup>.
13. This area has uniquely high levels of vessel interactions affecting all marine mammals. The near-constant presence of people and vessels disrupts normal behaviours critical for survival, such as resting and feeding<sup>5</sup>. This is a globally well-studied problem that effects all marine mammals and can cause:
  - stress
  - reduce reproductive success and
  - increase susceptibility to illness.
14. In Te Pēwhairangi, bottlenose dolphins spend on average 86% of daylight hours in the presence of at least one vessel. After interacting with people and vessels, the dolphins take up to 6 hours to return to normal behaviour in 2021-2015.
15. With decreasing numbers of bottlenose dolphins, other marine mammals visiting Te Pēwhairangi now face the same pressures as the focus shifts to them.

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<sup>4</sup> The term local population refers to the number of uniquely identifiable individual bottlenose dolphin visiting Te Pēwhairangi waters.

<sup>5</sup> R. Constantine 1995, R. Constantine 2001, R. Constantine 2002, R. Constantine et al 2004, G. Tezanos-Pinto 2009, G. Tezanos-Pinto et al 2009, G. Tezanos-Pinto et al 2013, G. Tezanos-Pinto et al 2015, C. Peters & K.A. Stockin 2013, C. Peters & K.A. Stockin 2014, E. Hartel et al 2014, C. Peters & K.A. Stockin 2016, C. Peters 2018, T. Guerin 2019, T. Guerin 2020, C. Peters et al (in press)

<sup>6</sup> T. Guerin 2020. The Bay of Islands has no resident bottlenose dolphins, instead they visit at varying intervals. The three classes applied to the Bay of Islands bottlenose dolphin catalogue are – frequent user, occasional visitor, and infrequent user

<sup>7</sup> A single calf was born outside of peak calving season

### ***The statutory process so far***

16. On 10 February 2021, you agreed to progress to public consultation for an MMS proposal in the coastal area of Te Pēwhairangi.
17. On 15 April 2021, the Environment Committee noted your Cabinet paper and accompanying public consultation document proposing establishment of the MMS. This was confirmed by Cabinet on 19 April 2021.
18. On 20 April 2021, the Acting Minister of Conservation, Dr Ayesha Verrall, notified her intention to establish the MMS in the New Zealand Gazette (**the Gazette**) under section 22 of the MMPA. This began a 28-day statutory consultation period.
19. The proposed MMS covered all marine mammal species. Proposed restrictions within the proposed MMS included:
  - a prohibition on being in the water within 400m of a marine mammal
  - a speed restriction of 5 knots within two designated marine mammal safe zones
  - a requirement for every vessel operator within the sanctuary to keep 400m from any marine mammal and to use all reasonable means to stop if a marine mammal moves within 400m of their vessel
  - Certain types of vessels would be exempt from all restrictions in the proposed sanctuary.
20. The 28 day statutory consultation period concluded at 5pm on 18 May 2021.
21. On 21 July 2021, Te Papa Atawhai publicly released all submissions (with appropriate redactions) on the MMS proposal.

### ***Structure of this advice***

22. The following advice provides you with the necessary analysis and information to enable your decision on the MMS proposal. It is structured as follows:
  - **Part A – Framework for your decision making:** the legal parameters and relevant considerations for your decision
  - **Part B –The Treaty of Waitangi:** details of our partnership with Māori in developing the MMS, analysis of submissions from Māori, and the interaction of the proposal with Māori rights and interests
  - **Part C – Key issues raised in public submissions:** a qualitative analysis of submissions received, with our response, and development of recommendations
  - **Part D – Our recommendation - the Amended MMS Proposal:** details of the Amended Proposal and an assessment of it against the framework for your decision making.

### ***Development of this advice (including consultation - Kōrero whakawhiti)***

23. In order to implement a robust and transparent process to develop advice for you on the MMS proposal, this advice has been developed using the following process:
  - an independent contractor has led analysis of submissions received, issues raised, and development of recommendations to you in line with the appropriate framework for your decision. Assistance has been provided by the core project team where required
  - the advice and recommendations were then peer reviewed through a panel with representation from the Marine Policy Team, Marine Species Team, Marine Protected Area Team, Northern North Island Operations Team & our National Treaty Advisor

- The advice and our recommendations have been discussed and shared with MBIE, MPI, MoT, Te Arawhiti, and the Rōpū and
- The proposed recommendations have been discussed directly with Northland Regional Council (NRC), who have local delegation for navigational safety matters under the *Maritime Transport Act 1994*.

***Public consultation and engagement (outside of the public submission process)***

24. Public consultation has been an important part of developing and refining options for the MMS to develop a proposed solution to address the problem of declining bottlenose dolphins in Te Pēwhairangi.
25. Details of all communications and public engagement on the proposal are provided in **Attachment B**.

***Submissions received following notification in the New Zealand Gazette***

26. We received 645 submissions on the proposal. We will deliver copies of each submission received to your office because the Marine Mammals Protection Act 1978 (MMPA) requires you to consider these written submissions.
27. Nine submissions were received after 5:00 pm, 18th of May and before 5:00 p.m. 21st of May 2021, being three days after consultation officially closed. Te Papa Atawhai accepted submissions for a further three working days following requests to do so, with extenuating circumstances. This is standard practice when Te Papa Atawhai engages in statutory consultation. As these submissions were received late, you are not required to consider them, but you are able to. They have been included in this analysis of submissions for completeness.
28. The summary of submissions document (**Attachment A**) provides a quantitative analysis of the submissions received. Of note:
  - 424 submissions (66 percent) indicated support for the proposed marine mammal sanctuary, 170 (26 percent) opposed it, and 51 (8 percent) indicated they neither supported nor opposed the proposal.
  - We received 13 submissions from individuals and groups who are whānau, hapū or iwi who exercise kaitiakitanga in the proposed MMS area, with 10 of these in support of the MMS proposal (77 percent).
  - Submitters could identify as belonging to more than one interest group.
  - Interest groups which most supported the MMS proposal included: environmental groups (214), New Zealand general public (99), whānau, hapū or iwi that exercises kaitiakitanga in the sanctuary area (10), the science and research community (23), local community groups (14), and Northland / Te Pēwhairangi (Bay of Islands) community members (113).
  - Interest groups which most opposed the MMS proposal included: recreational maritime vessel operators (79), local business owners (23), commercial maritime vessel operators (22), and the science and research community (13).
  - Many submissions (both in support or opposition to the MMS) suggested changes or amendments. These included:
    - a. to have broader, more comprehensive marine protection and management (194)
    - b. to change the location, area or type of protection (112) or
    - c. to decrease the restrictions associated with the MMS (111).
  - We received 187 submissions that used an online form developed by Forest and Bird, 25 of which included individual comments.

## **Part A: Framework for decision-making**

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### ***Marine Mammals Protection Act 1978 (MMPA)***

29. Your decision to establish an MMS must be made in accordance with section 22 of the MMPA.
30. Section 22 requires you to consider any submissions received in writing within 28 days after the date of publication of a notice in the Gazette indicating your intention to declare the MMS.
31. Your decision on the MMS proposal must be made in accordance with the functions and purpose of the MMPA. The MMPA does not include a “purpose” section. However, the long title of the MMPA states that the Act provides for the “protection, conservation and management of marine mammals within New Zealand and within New Zealand fisheries waters.”
32. Te Papa Atawhai must administer and manage an MMS in accordance with the Conservation General Policy (CGP) and Northland Conservation Management Strategy (CMS). Therefore it is prudent to consider the alignment of the MMS proposal with these statutory documents.

### ***The Treaty of Waitangi***

33. Your decisions on the proposed MMS must be made in accordance with your obligations in relation to Māori and the Treaty of Waitangi as follows:
  - section 4 of the Conservation Act, which requires that the Conservation Act, and by extension all Acts that we administer listed in Schedule 1<sup>5</sup>, are interpreted to give effect to the principles of the Treaty of Waitangi
  - subpart 1 of the TM Act in relation to the participation of affected iwi, hapū and whānau in conservation processes in the common marine and coastal area and
  - commitments made in relevant Treaty settlements.

### ***Section 4 of the Conservation Act***

34. Your decision under section 22 of the MMPA is subject to section 4 of the Conservation Act: the requirement to give effect to the principles of the Treaty of Waitangi<sup>8</sup>. The principles of the Treaty of Waitangi most relevant to Te Papa Atawhai’s work include the following:
  - Partnership
  - Informed decision-making
  - Active protection and
  - Redress and reconciliation.

### ***Te Takutai Moana Act 2011***

35. Te Takutai Moana Act<sup>9</sup> (TM Act) recognises, and promotes the exercise of, customary interests of Māori in the common marine and coastal area, including by providing for participation of “affected iwi, hapū, or whānau” in specified conservation processes relating to the common marine and coastal area.

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<sup>8</sup> *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 “The Whales Case”

<sup>9</sup> te Takutai Moana Act 2011 is also referred to as the *Marine and Coastal Area (Takutai Moana) Act 2011*. Both titles are recognised citations of the legislation, see section 1 of TM Act.

36. Under the TM Act, “affected iwi, hapū, or whānau” means iwi, hapū and whānau who exercise kaitiakitanga<sup>10</sup> in a part of the common marine and coastal area where a ‘conservation process’ is being considered (such as a MMS proposal). They have a right to participate in the process and provide their views.
37. When making a decision on the MMS proposal, you are required to have particular regard to the views of those affected iwi, hapū, or whānau<sup>11</sup>.

### **Treaty settlements**

38. There are currently no individual Treaty Settlements with particular iwi covering the proposed MMS area.
39. Ngāpuhi (which Ngā Hapū o te Pēwhairangi are a part of) are currently involved in Treaty settlement negotiations with the Crown. These negotiations are ongoing.
40. The *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and 1992 Deed of Settlement* relating to customary and commercial fishing rights and interests apply to the common marine area throughout New Zealand. The restrictions imposed by the proposed MMS will not prevent the exercise of customary and commercial fishing rights, however these rights will be required to be exercised in accordance with the proposed regulations of the MMS.

## **Part B: The Treaty of Waitangi**

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### **Partnership with hapū in developing Te Pēwhairangi MMS proposal**

41. In accordance with our obligation to give effect to the Treaty principle of partnership, the MMS proposal was developed in partnership with Ngā Hapū o te Pēwhairangi. Te Papa Atawhai has been working closely with Ngā Hapū o te Pēwhairangi informally on marine mammal management since 2019, when the existing marine mammal viewing permits were reviewed.
42. When it was decided to progress the statutory process for the MMS proposal, we moved to structured engagement by forming Te Pēwhairangi Marine Mammal Kaitiaki Rōpū to further formalise the Hapū – Te Papa Atawhai partnership for this process.
43. Ensuring the proposal interacts with the rights and interests of iwi, hapū, or whānau in an acceptable manner and ensuring Ngā Hapū have been well informed on the proposal and how it interacts with their interests has been a key role of the Rōpū.
44. The Rōpū endorsed the MMS proposal that was publicly notified and support the Amended Proposal in line with recommendations in this advice.
45. In accordance with our obligation to give effect to the Treaty principle of informed decision making, Te Papa Atawhai engaged in regular hui with our Rōpū. Details of our partnership process through the Rōpū and engagement with Māori are outlined in **Attachment C**.
46. Te Papa Atawhai has also committed to continue marine mammal management in partnership with Ngā Hapū o te Pēwhairangi, whether this is under a new MMS or the existing regulatory regime. Terms of reference have been agreed in principle

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<sup>10</sup> s2 TM Act: kaitiakitanga has the meaning given in section 2(1) of the *Resource Management Act 1991*. s2 *Resource Management Act*: kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

<sup>11</sup> s47 and 48 TM Act

between Te Papa Atawhai and Ngā Hapū outlining our agreed co-governance and co-management approach, in a manner that aligns with the MMPA.

### **How the proposal interacts with Māori rights and interests**

47. Through the partnership process in developing the MMS proposal, hapū representatives on the Rōpū were the primary conduit for Te Papa Atawhai to ensure the MMS interacted with Māori rights and interests in an acceptable manner, a key consideration with our obligation to give effect to the Treaty principle of active protection of Māori rights and interests. This included ensuring:
- that proposed protective measures uphold the mauri and mana of Te Pēwhairangi by providing protection to the bottlenose dolphins, a taonga species for hapū and the broader Pēwhairangi community
  - that the process to develop the MMS proposal and future management is done in a way that acknowledges and gives effect to Māori kaitiakitanga and rangatiratanga
  - that proposed protective measures interact with Māori rights and interests in an acceptable manner, including:
    - a. customary marine title applications under the TM Act
    - b. customary and commercial fishing rights and interests stemming from the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992* and
    - c. Treaty settlement negotiations between the Crown and Ngāpuhi.

### **Customary marine title applications and protected customary rights**

48. There are currently 57 applications for recognition of customary marine title in Te Pēwhairangi, and there have been no determinations of TM Act rights to date.
49. If an MMS were to be established in Te Pēwhairangi, the sanctuary area would remain part of the common marine and coastal area. Any applications for recognition of customary marine title and/or protected customary rights would still be able to proceed.

### **Customary fishing rights and interests**

50. Customary fishing rights are protected in law by the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992* and *1992 Deed of Settlement*. They include customary fishery management and the exercise of other customary rights. The following customary fisheries exist in Te Pēwhairangi:
- Ngāti Kuta/Patukeha Rohe Moana & Ngā Hapū o Taiamai Ki Te-Marangi Rohe Moana;
  - Te Puna Mātaitai Reserve;
  - Waikare Inlet Taiāpure; and
  - Maunganui Bay Rahui.
51. The MMS proposal does not prevent existing rohe moana, mātaitai, rāhui and taiāpure from operating, nor does it prevent or impact new ones being declared. The MMS Proposal will, however, require customary fishing to occur in a manner that aligns with the MMS Proposal.
52. Under the MMPA, an MMS introduces additional management tools for managing taonga marine mammal species, such as dolphins, that are not available under the *Fisheries Act 1996* and its regulations, including the *Fisheries (Kaimoana Customary Fishing) Regulations 1998*.

***Submissions from iwi, hapū or whānau who exercise kaitiakitanga within the proposed sanctuary area***

53. In making your decision on the MMS proposal, you are required to have particular regard to all views of affected iwi, hapū, or whānau<sup>12</sup>.
54. Te Papa Atawhai developed the MMS proposal with the Rōpū, and discussed it with Te Rūnanga-Ā-Iwi-O-Ngāpuhi, giving effect to the principles of the Treaty as required by section 4 Conservation Act, and ensuring the views of affected iwi, hapū, or whānau were incorporated.
55. Both supporting and opposing submissions from whānau, hapū or iwi who exercise kaitiakitanga within the proposed sanctuary area referred to the need for a tikanga approach for a healthy moana, including recovering fish and marine mammal local populations.
56. Supporting submissions emphasised requirements for:
  - appropriate co-governance
  - an appropriate kaitiaki component
  - adequate resourcing (including co-governance, kaitiakitanga, mātauranga Māori)
  - a desire for individuals and groups opposed to the MMS to offer solutions and
  - withdrawal of current permits for dolphin viewing.
57. Two submissions gave partial support for the proposal. They did not support the marine mammal safe zone speed restriction of 5 knots for the north side of Motuarohia and Moturua.
58. Two opposing submissions asked for more research to address the wider issues relating to the health of the Bay of Islands and the outer coast. One submission expressed concerns about reduced vessel speeds and requirement for a 400m distance from all marine mammals impacting the safety and feasibility of aquaculture operations. Te Papa Atawhai's response to these matters is detailed in Part C.

**Part C: Key issues raised in public submissions**

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***Qualitative assessment of public submissions***

59. The comments and depth in many public submissions provided valuable feedback on the workability of the proposed MMS. Moreover, they offered insight into the various supporting pou essential for effective implementation (e.g, co-governance, guidance in interpreting the Marine Mammals Protection Regulations 1997 (MMPR) and any new MMS restrictions, monitoring and compliance, research to determine effectiveness, and review).
60. Each public submission was assessed by two independent contractors and Te Papa Atawhai's project team. Our qualitative assessment of the submissions allowed us to ask more nuanced questions using the quantitative data and identify universal themes using both approaches.
61. As part of our evaluation, we noted the framing of the questions in the consultation document resulted in more detailed responses from individuals/groups seeking changes to specific restrictions rather than those who supported the proposal in its entirety. Submitters were encouraged to answer three questions:
  1. *Do you support or oppose the proposed marine mammal sanctuary? If so, why, or why not?*

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<sup>12</sup> s47 and 48 TM Act

2. *Do you believe the proposal should be changed or amended? If so, what changes would you propose, and why?*
  3. *Do you agree with how we have characterised the problem, objectives, and impacts? If not, how would you change it?*
62. Submitters who supported the proposed MMS may or may not have commented on why they agreed with the specific restrictions as part of the first question. But they were not prompted to do so in the same way as submitters who responded that the proposal should be 'changed or amended'. This meant that our qualitative assessment of the submissions has rested more heavily on matters of concern rather than supportive comments made by submitters. Strong support for the proposed MMS and indeed support for more comprehensive marine protection and management measures in Te Pēwhairangi is evident based on our reading of individual submissions and the data presented in **Attachment A**.
63. Our reading of the public submissions gave us:
- five overarching themes that relate to the proposed MMS, but not to the specific components of the proposed restrictions
  - six themes related to specific components of the proposed restrictions and
  - two themes unrelated to the MMS proposal, regarding the process for public consultation and research.
64. **Attachment D** provides a detailed qualitative analysis table of key issues raised, Te Papa Atawhai's response, options considered to address the issue (if any) and outcomes in relation the Amended Proposal (if any).
65. The tables below identify the key themes and Te Papa Atawhai comment.

Overarching Themes	
Theme	Te Papa Atawhai comment
<b>More comprehensive marine protection measures are needed for Te Pēwhairangi</b>	We acknowledge the widespread concern regarding the state of the local marine environment and ecosystem. We also acknowledge that there are likely multiple risks to marine mammals.
	The MMS proposal mitigates a known threat to marine mammals (vessel interactions).
	Alleviating the pressure of vessel interactions may make dolphins, and other marine mammals more resilient to other possible environmental challenges.
	Other measures, led by multiple agencies, and hapū through customary management tools, are needed to address physical and ecological risks to the marine area. Te Papa Atawhai and Ngā Hapū have agreed to work collaboratively, and with other agencies where possible, to achieve integrated marine management outcomes for Te Pēwhairangi.
	A tikanga approach will be achieved through an ongoing co-governance approach to MMS management.

<b>Theme</b>	<b>Te Papa Atawhai comment</b>
<b>The cause of bottlenose dolphin decline is unresolved</b>	The proposal does not draw exclusive causal links between the decline of dolphin numbers and vessel interaction.
	We acknowledge that there are likely to be multiple impacts causing a decline of bottlenose dolphins.
	The proposal is informed by a body of peer-reviewed and published scientific research.
	Scientific research demonstrates the adverse effects of vessel/human interaction on marine mammals.
	The proposal addresses the known impact of human and vessel interaction with marine mammals quickly and effectively. It aims to provide respite to marine mammals while the issues of environmental and ecosystem health are addressed over the long term.
<b>Confusion about the practical interpretation of the proposed restrictions</b>	This matter is addressed in detail in <b>Attachment E – Response to key points raised in submissions from the Science and Research Community</b> .
	We acknowledge that clear guidance is essential to aid interpretation of the MMS restrictions.
	We will develop guidelines to help vessel operators, swimmers, and divers interpret the restrictions, should a decision be made to declare a MMS.
	Maritime Safety Rules override the restrictions of the sanctuary. We will emphasise this point in the guidelines.
	There was some confusion about how the MMS and its restrictions would be enforced and what penalties would apply. This is covered in the MMPA.
<b>Education, monitoring &amp; enforcement are essential for success</b>	The MMPR in their current form do not adequately address issues specific to marine mammals in Te Pēwhairangi (i.e. very high level of marine mammal/vessel interaction is likely to have negative effects on dolphins even if all vessels abide by the MMPR).
	Implementation of the proposed MMS should include comprehensive education/outreach and communications.
	Implementation of the proposed MMS should include comprehensive education, outreach and communications, building on the already established annual campaign that Te Papa Atawhai undertakes in Te Pēwhairangi. The proposed timeframe for review of the MMS is three years.
	Permitted and non-permitted commercial operators will continue to be engaged on an annual basis on MMPA compliance.

Theme	Te Papa Atawhai comment
<b>Co-governance and co-management are vital components of the proposed MMS and must be well resourced</b>	<p>Securing resources to implement a co-governance and co-management regime is part of our proposed implementation approach. Terms of reference for a future co-governance rōpū are agreed in principle.</p>
	<p>Our substantive response to these matters is listed in paragraphs 53-58.</p>

Themes relating to specific components of the proposed restrictions	
Theme	Te Papa Atawhai comment
<b>The “stopping rule” is impractical and unsafe</b>	<p>The proposed requirement to "...take all reasonable measures to stop and allow animals to pass..." has created ambiguity, and has been removed. Comprehensive guidelines to help operators/swimmers and divers interpret the restrictions should be developed.</p>
	<p>Enough wake is created at 5 knots to attract dolphins and disrupt their normal behaviour, hence the direction to stop.</p>
	<p>There is no requirement to stop the use of fishing gear (e.g. setting, placing and hauling gear) in the proximity of marine mammals. The MMS Proposal will, however, require fishing to occur in a manner that aligns with the MMS Proposal.</p>
	<p>It is impractical and unsafe for some (larger) vessels to turn engines off. Idling vessels emit less noise than those that are underway.</p>
	<p>Safety is paramount.</p>
Theme	Te Papa Atawhai comment
<b>The “400m rule” is excessive</b>	<p>We proposed the 400m distance restriction to clearly distinguish the proposed MMS from the existing MMPR and build a buffer for non-compliance.</p>
	<p>We agree that consistency with MMPR may reduce confusion.</p>
	<p>The proposed restrictions are not an extensive change to status quo: The MMPR restrict people swimming with bottlenose dolphin pods that contain juveniles and for no more than three vessels to move closer than 300m to dolphins.</p>
	<p>We acknowledge that clear guidance is essential to aid interpretation of the MMS restrictions.</p>

Theme	Te Papa Atawhai comment
<b>Safe Zones are unjustified and unfair to residents</b>	The provision of Safe Zones is intended to provide relatively quiet (underwater noise) havens for marine mammals. There is less chance of humans accidentally disturbing marine mammals in the Safe Zones (e.g. vessels travelling at speed through/over top of a group).
	The locations are based on high vessel activity, frequency of visits by marine mammals, and existing exemption areas for commercial viewing vessels.
	The proposed Safe Zones have a high level of support from the Rōpū and also received support from some residents.
	The proposed restrictions are on vessel speed; with no restriction on access (aside from exclusion of commercial marine mammal viewing).
	There is evidence to suggest frequency of use of Safe Zones by marine mammals may increase as underwater noise decreases.
	Should an MMS be declared, Te Papa Atawhai should also ensure its ongoing monitoring programme assesses the effectiveness of safe zones.
Theme	Te Papa Atawhai comment
<b>Fur seals should be excluded</b>	The boundary of the MMS is on the mean high water mark. Seals hauled out on the shore are not within the sanctuary, so the MMS restrictions would not apply (the existing MMPR will still apply, however).
	Clear unambiguous restrictions are important for enforcement, addressing issues with MMPR.
	Vessel operators frequently misidentify marine mammal species, including seals.
	We need to avoid the transfer of vessel pressure from one marine mammal species to another.
	Recovering local populations require future-proofed management.
	We acknowledge potential impacts on the practical operation of vessels around ports and anchorages. Practical alternatives for these areas could be considered.
	Guidelines will be developed to help vessel operators, swimmers, and divers interpret the restrictions, should a MMS be declared.

Theme	Te Papa Atawhai comment
<b>It is problematic to exempt commercial operators with viewing permits from the requirement to keep 400m from marine mammals</b>	Existing permits expire in 2022 and it is Te Papa Atawhai's advice that this will be the appropriate time to assess whether they should be allowed to continue.
	9(2)(h)
	Permits were reviewed and substantially restricted in 2019 with additional conditions.
	We have put in place a moratorium on issuing new permits.
Theme	Te Papa Atawhai comment
<b>Large scale on-and-in the water events such as sailing regattas and waka ama cultural flotillas may not be able to occur if MMS created</b>	We agree that a small number of events would be difficult to operate under the restrictions of MMS. However, we believe that the risks and impacts of large events could be mitigated with good planning. Many small events are situated in ports and harbours.

General themes	
Theme	Te Papa Atawhai comment
<b>More research is required</b>	A wide range of research is underway in Te Pēwhairangi, wider New Zealand, and internationally to examine these issues.
	We will keep up to date with relevant research findings nationally and internationally and continue to support local research in line with Departmental responsibilities.
	Regulations and MMS restrictions should adapt and be amended to reflect future developments in research nationally and internationally.
Theme	Te Papa Atawhai comment
<b>The process of consultation was lacking</b>	We acknowledge that particular stakeholder groups believed they should have been engaged with individually on the MMS proposal.
	We consulted widely on the proposal through a series of pre-statutory engagement (on-line and in-person events) and responded to enquiries from members of the public via email, phone and newsletters.
	Details of our public engagement on the proposal are provided in <b>Attachment B</b> .

**Evaluation of themes and issues raised and development of recommendations for the Amended Proposal**

**Broader considerations for possible amendments**

66. In evaluating the themes and issues raised in the public submissions and whether a particular amendment might be reasonable and still meet the objectives of the proposed MMS, we also considered:
- the legal and policy context, including the existing MMPR
  - submissions of affected iwi, hapū, or whānau that exercise kaitiakitanga in the proposed MMS area, and the views of the Rōpū
  - whether marine markers would need to be deployed and the practicality/risks of doing so
  - whether the effectiveness of an amended MMS was likely to compromise the objectives of the MMS being met and
  - the underlying basis of evidence that would support the option under consideration (e.g. we discussed adding a transition area into the larger Safe Zone and concluded that the wake created by vessels using the transition area would, in all likelihood, entice dolphins to leave the Safe Zone).

**Interpretation and enforcement of the “stopping rule”**

67. [REDACTED] 9(2)(h)

**400m versus 300m minimum approach distance**

68. Submitters commented that a 400m minimum approach distance to marine mammals was excessive, and at times impractical. In response, we considered the implications of retaining a 300m distance within the proposed MMS against the 400m distance as set out in the table above. We have proceeded with a 300m distance as we consider it will provide sufficient protection.

**Movement of vessels in high-traffic areas - excluding marinas, wharves and landings from the MMS area**

69. In response to concerns about the movement of vessels in high-traffic areas (including port operations, landing areas and having to maintain a 400m distance from marine mammals), we looked at two options for modifying the boundary of the proposed MMS in addition to reducing the distance to 300m. One option was to exclude marinas, wharves, landings from the sanctuary area. Whilst this exclusion will slightly reduce the effectiveness of the MMS in keeping vessels and humans a consistent 300m from marine mammals, these areas are already subject to local marine by-laws which restrict vessel movement to 5 knots, and will remain subject to the existing MMPR, which includes species specific requirements to maintain vessel and human distance from particular marine mammals, including dolphins. Another option excluded these areas plus the inner reaches of the harbour including Waikare Inlet. We noted that the inner reaches are night-time feeding grounds for orca. We presented three options for the boundary of the proposed MMS to the Rōpū. They agreed unanimously to a boundary that excludes marinas, wharves, landings from the sanctuary area but retains the inner reaches of the harbour. We have proceeded with this option.

### ***Marine Mammal Safe Zones***

70. Regarding the boundaries of the Safe Zones and concerns that they are unjustified and unfair to residents:
- we considered options for modifying the shape and size of the larger Safe Zone (Tapeka Point to Motukauri Island) to create a more workable solution for residents. Alternatives required a significantly reduced size of the Safe Zone, therefore compromising the objective.
  - we also considered adding a “transition lane” in the larger safe zone to increase ease of access. However, we concluded it was likely that vessels travelling at high speed through this lane would attract dolphins and encourage them to leave the Safe Zone.
  - we presented three options for the larger Safe Zone to the Rōpū, including the one that went out for public consultation. They agreed unanimously to retain the larger Safe Zone as per the proposal.
  - We recommend retaining both Safe Zones as per the original proposal.

### ***Retaining seals within the proposal***

71. We agreed seals should be retained within the proposal and that these concerns raised by submitters could be adequately addressed through other means, such as excluding high traffic areas, including marinas, wharves and landings from the MMS proposal area. We considered the importance of supporting guidance regarding seals above the high water mark being outside the proposed sanctuary, and guidance for divers and the messaging around sticking to their dive plan and the exiting the water. This was also a key consideration in regard to a modified boundary for the proposed MMS.

### ***Overarching caveat “without lawful authority or reasonable excuse”***

72. Providing an overarching caveat for the proposed MMS: “without lawful authority or reasonable excuse” ensures the MMS aligns with lawful authorisations and activities and does not require compliance where it would not be reasonable. This amendment also makes existing and proposed exemptions part of a non-exhaustive list of what is deemed to be a lawful authority or reasonable excuse for the purposes of the MMS, and the gazette notice. One option that was considered was to only proceed with this overarching caveat, without listing each of the proposed exemptions that are deemed to be a lawful authority or reasonable excuse. However it was considered that the proposed exemptions that are listed provides the required level of certainty of how these activities can proceed in relation to the MMS. NRC’s Harbourmaster was particularly interested in gaining this improved level of certainty.

### ***Exemption for on-water events***

73. Submitters were concerned about the impact the proposed MMS would have on organised on-water events, (such as sailing regattas and waka ama cultural flotillas) within Te Pēwhairangi which occur at least annually in the bay. We considered how to accommodate these events within the proposal whilst still achieving the objectives of the MMS. It was agreed that participants involved in an on-water event that has a mitigation plan for dealing with marine mammals, and that mitigation plan has been approved by Te Papa Atawhai, would be exempt from the proposed MMS restrictions whilst competing in that event.

### ***Exemptions for vessels unable to manoeuvre, constrained by their draught; or over 500GT***

74. As the delegated authority for navigational safety in Te Pēwhairangi, NRC proposed an exemption to the MMS to address navigational safety matters and alignment with local navigational safety bylaws. Te Papa Atawhai has further tailored the proposed wording with NRC to ensure it both addresses these matters, but also aligns with our objective

of having clear enforceable restrictions we are able to pursue prosecutions on. NRC is comfortable with our final wording of this exemption.

#### ***Exemption for persons involved in aquaculture in the intertidal zone***

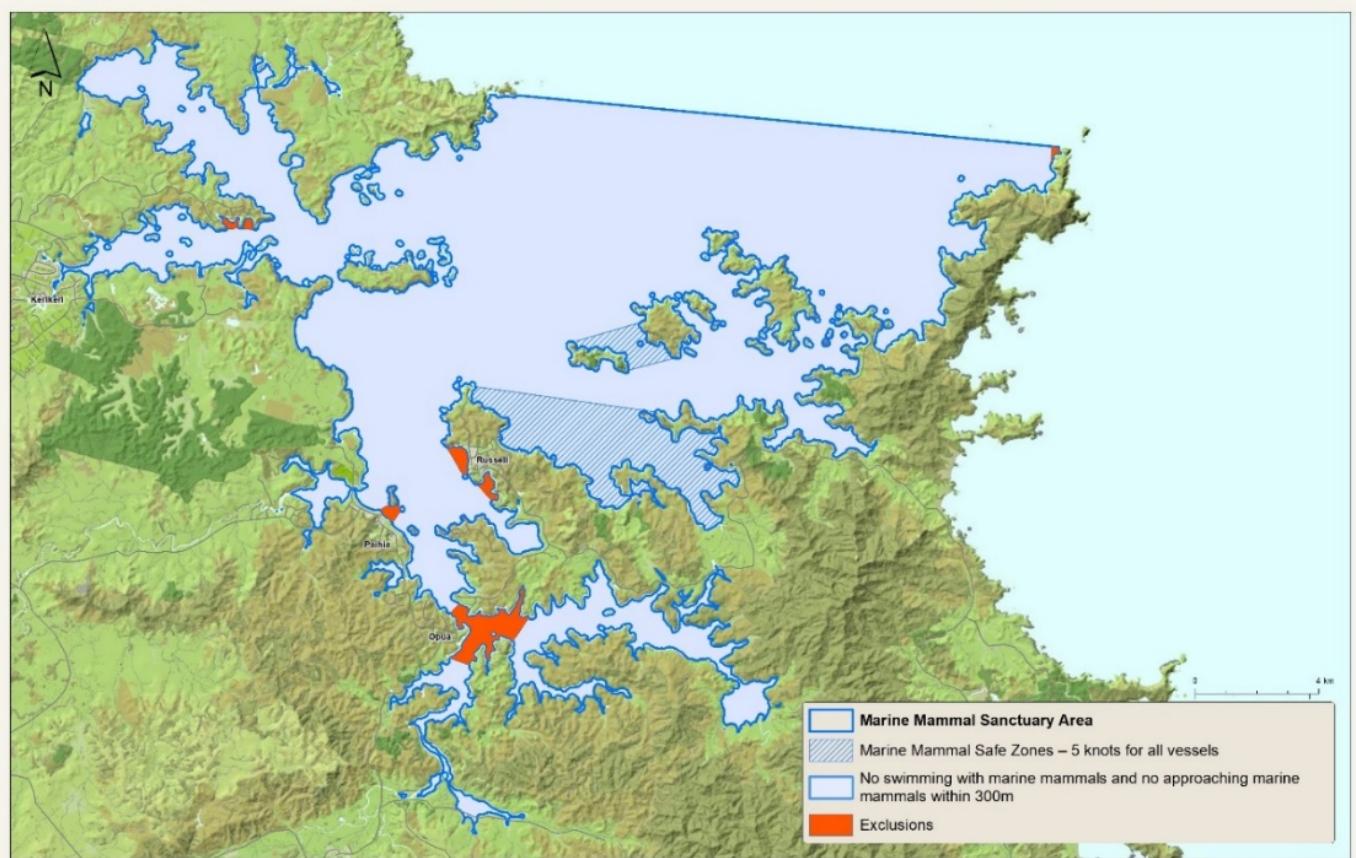
75. Specific concerns were raised by FNZ, and through submissions, about the interaction of the MMS with existing marine farms operating in the intertidal zone, specifically the requirement for people to maintain a 300m distance from marine mammals. FNZ and Te Papa Atawhai's advice is that farm workers or barges working at the water's edge will have minimal effect on marine mammals, and that providing a specific exception for these activities will ensure they are able to proceed lawfully. It is our advice that placing a specific exemption for aquaculture farm operators working within the inter-tidal zone will not affect the overall aim of the MMS.

#### **Part D: Our recommendation – the Amended MMS Proposal (Proposed solution - Ngā whakataunga)**

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76. In developing our proposed recommendation for the Amended Proposal, we focused on key themes identified in Part C and how each recommended change would interact to ensure the original purpose of the MMS was maintained (see paragraphs 66 – 75). Each individual recommendation was considered in its own right. The final suite of proposed recommended changes to the MMS have been assessed as addressing key issues raised in submissions in a manner that still allows the MMS to achieve its objective of reducing the high levels of vessel and human interactions with marine mammals in Te Pēwhairangi.
77. We, therefore, suggest five amendments to the proposed MMS as publicly notified on 20 April 2021. These are:
- reducing the 400m minimum distance for people in the water and vessels to stay away from marine mammals to 300m (the “approach distance”)
  - altering the boundaries of the proposed MMS to exclude key harbours, ports, landings and anchorages from the proposed MMS
  - providing an explicit caveat to the restrictions, being “lawful authority or reasonable excuse”. Proposed exemptions will be described in a non-exhaustive list of what is considered a “lawful authority or reasonable excuse”
  - providing additional specific exemptions for:
    - a. vessels restricted in their ability to manoeuvre; constrained by their draught; or over 500GT
    - b. any vessel or person actively participating in and registered in an organised event that has the prior approval of the Te Papa Atawhai and
    - c. any person undertaking an aquaculture activity in the intertidal zone
  - removing wording around using ‘reasonable means’ to stop vessels if a marine mammal is within the approach distance, thereby removing ambiguity in the application of this restriction.

## Map of Amended Proposal



Marine Mammal Sanctuary Proposal - Te Pēwhairangi (Bay of Islands)



Department of  
Conservation  
Te Papa Atawhai

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New Zealand Government

### **Description of Amended Proposal**

The Minister of Conservation declares a marine mammal sanctuary in Te Pēwhairangi (Bay of Islands), with the following **Restrictions**:

1. Every person commits an offence who, without lawful authority or reasonable excuse, remains in the water within 300m of any marine mammal in the marine mammal sanctuary and marine mammal safe zones.
2. Every person in charge of a vessel commits an offence who, without lawful authority or reasonable excuse, fails to ensure their vessel:
  - a. maintains a minimum 300m distance from any marine mammal in the marine mammal sanctuary and marine mammal safe zones;
  - b. stops if the person in charge becomes aware of any marine mammal less than 300m distance in the marine mammal sanctuary and marine mammal safe zones;
  - c. remains stopped until any marine mammal is more than 300m away in the marine mammal sanctuary and marine mammal safe zones; and
  - d. travels at 5 knots or slower while in a marine mammal safe zone.
3. For the purposes of this Notice, a person with "lawful authority or reasonable excuse" includes:
  - a. any person involved in a maritime emergency or undertaking a maritime emergency role;
  - b. any person in charge of a vessel that is restricted in their ability to manoeuvre and exhibiting the appropriate signals;
  - c. any person in charge of a vessel greater than 500GRT;
  - d. any person not able to comply due to an imminent or serious threat to person or property;
  - e. any person undertaking research under the Marine Mammals Protection Act 1978;
  - f. any person undertaking a compliance role (including the Department of Conservation under the Marine Mammals Protection Act 1978, Maritime Police, Customs, Ministry for Primary Industries, Northland Regional Council);
  - g. any person in charge of, or crew on board of, a Harbourmaster vessel;
  - h. any person in charge of, or crew on board of, a Navy vessel;
  - i. any person in charge of, or crew on board of, a vessel; or any person in the water; actively participating in and registered in an organised event which has the prior approval of the Department of Conservation; and
  - j. Any person undertaking a lawfully established aquaculture activity between mean low and high water springs.
4. Any person in charge of a vessel with an existing marine mammal viewing permit under the Marine Mammals Protection Act 1978 is exempt from subclause 2.

## ***The Amended Proposal and your framework for decision making***

### ***The MMPA***

78. Bottlenose dolphins are classified as nationally endangered in New Zealand. Extensive study and research<sup>13</sup> suggests the near-constant presence of people and vessels in Te Pēwhairangi is disrupting normal behaviours critical for survival, such as resting and feeding. This can cause stress, reduces reproductive success and makes them prone to illness, which may significantly contribute to high calf mortality and the decline in numbers.
79. With the decreasing numbers of bottlenose dolphins, other marine mammals visiting Te Pēwhairangi are facing the same pressures as people's focus shifts to them.
80. The Amended Proposal addresses vessel interaction with marine mammals which has led to the deterioration in survival-critical behaviour, and addresses key concerns of workability and impact raised through the submission process.
81. It is Te Papa Atawhai's advice that agreeing to declare the Amended Proposal is consistent with the functions and purpose of the MMPA. The MMS will support the maintenance of, or increases in, local dolphin numbers, and provide protection to all local marine mammals.

### ***Management Planning analysis***

82. A full management planning analysis of the Amended Proposal is at **Attachment F**. It is Te Papa Atawhai's advice that the Amended Proposal, its proposed objectives and proposed measures for increased protection of marine mammals in Te Pēwhairangi, is consistent with the CGP and the Northland CMS.

### ***Treaty of Waitangi considerations***

83. As explained in detail in Part B of this advice, the MMS proposal:
  - was developed jointly with Ngā Hapū o te Pēwhairangi
  - interacts with Māori rights and interests in an acceptable manner and
  - will be implemented through a co-governance and co-management model.
84. It is Te Papa Atawhai's advice that the process undertaken in developing this proposal, and your decision to proceed with the Amended Proposal as described, would give effect to the principles of the Treaty of Waitangi<sup>14</sup>.
85. You are also required to have particular regard to all views of affected iwi, hapū, or whānau in making a decision on the marine mammal sanctuary proposal<sup>15</sup>. These are outlined in paragraphs 53 – 58 and have been given particular regard in developing the Amended Proposal.

### ***Consent of other Ministers***

86. Section 22(2) of the MMPA requires you to secure the consent of any Minister of the Crown who has the control of any Crown-owned land, foreshore, seabed, or waters of the sea which is declared to be a marine mammal sanctuary.
87. Te Papa Atawhai's position on which Ministers this encompasses has historically been:
  - the Minister of Energy and Resources

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<sup>13</sup> R. Constantine 1995, R. Constantine 2001, R. Constantine 2002, R. Constantine et al 2004, G. Tezanos-Pinto 2009, G. Tezanos-Pinto et al 2009, G. Tezanos-Pinto et al 2013, G. Tezanos-Pinto et al 2015, C. Peters & K.A. Stockin 2013, C. Peters & K.A. Stockin 2014, E. Hartel et al 2014, C. Peters & K.A. Stockin 2016, C. Peters 2018, T. Guerin 2019, T. Guerin 2020, C. Peters et al (in review).

<sup>14</sup> s4 Conservation Act

<sup>15</sup> s47 and 48 TM Act

- the Minister of Oceans and Fisheries and
  - the Minister of Transport.
88. All previous declarations of an MMS in New Zealand have included consent of these Ministers. Te Papa Atawhai has engaged with the agencies that support these Ministers prior to public consultation and during the development of this advice.

9(2)(h)

9(2)(h)

89. 9(2)(h)

90. 9(2)(h)

***we recommend that you seek the consent of the Ministers for Oceans and Fisheries and Energy and Resources.***

91. Te Papa Atawhai still recommends you seek the consent of the Minister for Oceans and Fisheries and Energy and Resources, given they have some control over the area. Your proposal to establish the MMS does not significantly affect the portfolio interests of these Ministers. Letters to those Ministers for your signature are at **Attachment H**.

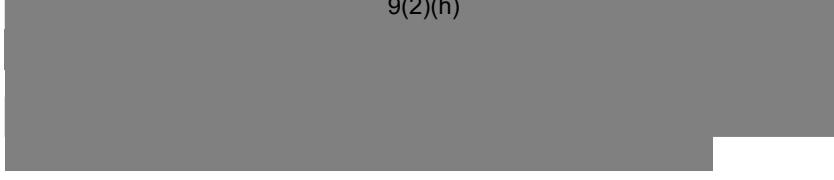
### **Risk assessment – Aronga tūraru**

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92. Not taking timely action to protect bottlenose dolphins and other marine mammals in Te Pēwhairangi could result in continued detrimental impacts and local population decline. There would also be risk of legal challenge to the process from key supporters of the MMS proposal, and Te Papa Atawhai would be criticised for inaction.
93. There are also risks associated with a decision to declare the Amended MMS Proposal for Te Pēwhairangi. They are identified in the tables below, along with mitigation measures in place or proposed.

#### ***Risk of potential legal challenges to deciding to declare the Amended MMS Proposal***

<b>Risk</b>	<b>Mitigation</b>
That the Amended MMS Proposal will be challenged on the basis of perceived lack of scientific rigour, or a solid basis of evidence.	A detailed summary of issues raised by members of the Science and Research community through submissions, and Te Papa Atawhai's response to these issues, is at <b>Attachment E</b> . We consider there is general scientific opinion that human and vessel interactions are impacting marine mammals in Te Pēwhairangi and management action is required.

	<p>All substantive reports upon which the MMS proposal is based upon have been peer reviewed.</p> <p>Development of this advice, including analysis of submissions from the science and research community, has been led by independent marine scientists who have specifically considered issues raised by members of the scientific community.</p>
That the Amended MMS Proposal will be challenged on the basis that freedom of movement rights have been breached	<p>We consider that the proposed MMS does not breach rights of freedom of movement.</p> <p style="text-align: right;">9(2)(h)</p> 
That the Amended MMS Proposal will be challenged on the basis that the amendments should be re-notified for further public feedback.	<p style="text-align: right;">9(2)(h)</p>  <p>Section 22 of the MMPA identifies a process whereby you are empowered to:</p> <ul style="list-style-type: none"> <li>• notify your intention to declare a MMS,</li> <li>• seek public comment and feedback for a 28-day period; and</li> <li>• subsequently decide to declare the MMS as proposed, declare an varied or redefined MMS or abolish the proposal.</li> </ul> <p>Agreeing to declare the Amended Proposal is in line with this process, and the proposed amendments do not significantly alter the proposed MMS from the 20 April 2021 Gazette notice.</p>
That the Amended MMS Proposal will be challenged on the basis that its effectiveness has been reduced with the additional amendments proposed to the MMS proposal.  Submitters who supported the MMS proposal in its current form and/or asked for stronger restrictions may feel the proposed amendments do not provide the level of protection they would like to see.	<p>The changes proposed in the Amended Proposal have been considered with the functions and purpose of the MMPA at the forefront, and with the proposed objectives of the MMS proposal. Based on expert advice, Te Papa Atawhai believes the proposal will still meet its proposed objectives.</p>

<p>That exempting existing marine mammal permit holders from the requirement to maintain 300m from marine mammals in restriction 2 will be perceived as double standards and undermine the objectives of the MMS.</p>	<p>9(2)(h)</p> <p>Specifically:</p> <ul style="list-style-type: none"> <li>• these permits were reviewed and issued for 3 year terms in 2019;</li> <li>• making existing permittees subject to restriction 2 would prevent them from running dolphin viewing trips and make their permits null and void;</li> <li>• permittees have developed their business on the expectation they are able to run dolphin viewing for the 3 year term of their permit; and</li> <li>• 9(2)(h)</li> </ul> <p>Permittees had their permits reviewed with new restrictions added in 2019. We consider this mitigates the impact of these permits continuing until 2022:</p> <ul style="list-style-type: none"> <li>• No swimming with bottlenose dolphins</li> <li>• Viewing of bottlenose for only 20 minutes a day beyond 12pm</li> <li>• No interactions with marine mammals zones consistent with the proposed safe zones</li> </ul> <p>A moratorium on issuing new permits is in place until 2026.</p>
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***Risks associated with the next steps – finalising statutory process and implementation of the Amended Proposal***

Risk	Mitigation
<p>That the Ministers for Oceans and Fisheries and Energy and Resources don't provide consent.</p>	<p>The Ministers for Oceans and Fisheries and Energy and Resources will have considerations under their respective portfolios in providing consent to the Amended Proposal.</p> <p>Te Papa Atawhai has had ongoing contact with the Agencies that support these Ministers throughout the statutory process to ensure they have had the information necessary to keep their Ministers informed of this mahi.</p> <p>Representatives from these Agencies have also attended Rōpū hui, been provided with access to submissions received, and received an early copy of this briefing.</p>
<p>That not seeking the Minister of Transport's consent will risk integrity of the statutory process.</p>	<p>9(2)(h)</p> <p>This risk is minimal and it is outweighed by the risk of seeking consent from a Minister who does not have the requisite control to provide consent. The entity that does have control, being NRC, has been engaged.</p>

<p>That the Amended Proposal will not be adequately resourced to be implemented effectively.</p>	<p>Declaring an MMS will not establish a new marine mammal regulatory regime, but implement a tool under an existing regime, within existing resourcing constraints.</p> <p>Ensuring adequate resourcing of MMS implementation was a key theme raised in the public submission process. Ensuring there is an adequately resourced co-management regime for the MMS is also a key aspect of Ngā Hapū's support for the proposal.</p> <p>Te Papa Atawhai has scoped requirements for MMS implementation and developed an assessment of resources required for the next three years of MMS implementation.</p> <p>If declared, resources have been secured to implement the proposed MMS in 2021/22 in line with these requirements. Funding will be sought for future financial years in business planning cycles, in accordance with these implementation requirements.</p>
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### Implementation of an MMS and financial implications – Te hīraunga pūtea

94. Establishing an MMS alters the existing regulatory regime with pre-existing financial obligations for its management. Whilst the declaration of a MMS itself does not create immediate financial implications, implementing the suite of recommendations for MMS implementation will.
95. Implementation requirements for the MMS have been scoped and planned for should you decide to declare one. Key aspects of Te Papa Atawhai's approach to MMS implementation include:
  - **Co-governance and co-management** – having personnel and financial resources allocated to implement a co-governance regime with Ngā Hapū o te Pēwhairangi
  - **Communication and engagement** – proactive communication and engagement to ensure people are aware of and understand a new MMS. Te Papa Atawhai will prepare new material quickly if the announcements are before the summer season, including:
    - a. clear guidance on new restrictions for relevant audiences and water users (permit holders, recreational and other vessels, powerboats, kayaks, swimmers, snorkellers, SCUBA divers)
    - b. signs and on the water markers (if required)
    - c. communications channels used by boaters and other marine users such as the LINZ Charts and the Marine Mate app and
    - d. other geospatial messaging tools to supplement other messaging.
  - **Staffing and equipment for on-water patrols** – Implementing a new MMS will require an active on-water presence in the peak summer and shoulder seasons to promote and monitor restrictions and to enforce compliance where necessary.

### Next steps – Ngā tāwhaitanga

96. Should you agree to declare the Amended Proposal, section 22(2) of the MMPA requires you to gain consent from any other Minister of the Crown having control of any Crown-owned land, foreshore, seabed, or waters of the sea which is to be declared an MMS. These are the Ministers of Energy and Resources, and for Oceans and Fisheries. Therefore the next steps in the statutory process will be as follows:

- We recommend that you share a copy of this briefing with the Minister of Energy and Resources, Minister for Oceans and Fisheries (for consent) and Minister of Transport (for noting only), along with the accompanying letters at **Attachment G**.
- We will then await confirmation from the Minister of Energy and Resources, Minister for Oceans and Fisheries on their decision. We expect this decision by 12 November 2021 (noting the letter also requests this by this date).
- If consent from the Ministers of Energy and Resources and Minister for Oceans and Fisheries is confirmed, Te Papa Atawhai will notify the Proposed Gazette Notice (**Attachment H**) in the Gazette, officially declaring the new MMS. It will also be published on Te Papa Atawhai's website. The MMS will come into effect 28 days after gazettal.

## Attachments – Ngā tāpiritanga

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- Attachment A:** Summary of public submissions report ([DOC-6722676](#))
- Attachment B:** Te Pēwhairangi MMS public engagement log ([DOC-6747880](#))
- Attachment C:** Te Pēwhairangi Marine Mammal Kaitiaki Rōpū Partnership and engagement with Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi ([DOC-6758639](#))
- Attachment D:** Qualitative analysis of public submissions table ([DOC-6759829](#))
- Attachment E:** Responses to key issues raised in submissions from the Science and Research Community ([DOC-6763830](#))
- Attachment F:** Statutory document assessment of the Amended Proposal (management planning advice) ([DOC-6730613](#))
- Attachment G:** Letters to the Ministers of Energy & Resources, Oceans and Fisheries and Transport and Ministry of Transport ([DOC-6801570](#))
- Attachment H:** Proposed Gazette Notice declaring Te Pēwhairangi MMS ([DOC-6481666](#))

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**ENDS**

**ATTACHMENT A**

# **Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands)**

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## **Summary of submissions**

**August 2021**

## About PublicVoice

PublicVoice Limited is a research and engagement consultancy located in Wellington, New Zealand. We specialise in research and engagement activities related to public policy and public consultation. PublicVoice works for a range of New Zealand local and central government agencies. You can find out more about our work at [www.publicvoice.co.nz](http://www.publicvoice.co.nz).

Document status:	Final
Version:	0.3
Date:	16/08/2021
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## 1. Executive summary

The purpose of this document is to provide a high-level summary of the submissions received during the public consultation on the proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands).<sup>1</sup> This summary includes public submissions made via the PublicVoice online survey interface, as well as submissions emailed or posted to the Department of Conservation. The consultation period began at 9:00 a.m. on the 20<sup>th</sup> of April 2021 and closed at 5:00 p.m. on the 18<sup>th</sup> of May 2021. A total of 645 submissions were received.

This report is intended to be a summary of submissions only and does not provide an analysis of feedback or any recommendations. Any recommendations in response to submissions received will be made through agency advice to the Minister of Conservation.

### 1.1 Background to the consultation process

Te Pēwhairangi (Bay of Islands) is a marine mammal mecca, with prominent tourism, seasonal visitors, and cultural ties. Both iconic and lesser-known species frequently visit the area. The bottlenose dolphin subpopulation is declining in Te Pēwhairangi (Bay of Islands), where uniquely high levels of interactions with people and vessels are affecting all marine mammals. Marine Mammals Protection Regulations 1992 do not adequately address people and vessel interactions with marine mammals in Te Pēwhairangi (Bay of Islands). The Minister of Conservation proposes a new marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) to address these problems.

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<sup>1</sup> Department of Conservation, Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands). Consultation document. April 2021 <https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2021/bay-of-islands-mms-proposal/consultation-document-boimms.pdf>

## 1.2 Key findings

### Support for the proposed marine mammal sanctuary



Of the 645 submissions received, 424 (66%) indicated support for the proposed marine mammal sanctuary.

The interest groups which most supported the implementation of the proposed marine mammal sanctuary were:

- Environmental groups (98%, n=214)
- Whānau, hapū or iwi that exercises kaitiakitanga in the sanctuary area (77%, n=10)
- NZ general public (68%, n=99)
- Science and research (62%, n=23)
- Local community group (52%, n=14)
- 'Northland / Te Pēwhairangi (Bay of Islands) community member (47%, n=113)

Submissions that provided a rationale for their support provided the following reasons:

- Bottlenose dolphin populations are declining and in need of protection (n=289)
- Vessels are the cause of declining dolphin populations (n=239)
- Interaction with people is causing the decline (n=190)

### Opposition to the proposed marine mammal sanctuary



Of the 645 submissions received, 170 (26%) were opposed to the proposed marine mammal sanctuary.

The interest groups which most opposed the implementation of the proposed marine mammal sanctuary were:

- Recreational maritime vessel operators (62%, n=79)
- Local business owners (62%, n=23)
- Commercial maritime vessel operators (59%, n=22)

Submissions that provided a rationale for their opposition provided the following reasons:

- The research and evidence used in the proposal (n=145). It was suggested that the research used to develop the proposal had not identified all the possible causes of dolphin decline and therefore unfairly restricted boat usage.
- Opposition based on the restrictions of the sanctuary (n=133)
- Locals are responsible in the area - sanctuary is unnecessary (n=41)

## Preference for another option



Of the 645 submissions received, 51 (8%) indicated that they preferred another option.

Submissions which provided reasons for choosing another option, mostly suggested that amendments need to be made (n=19).

## Suggested changes or amendments



Many submissions who supported, opposed, or chose another option for the sanctuary suggested changes or amendments. Suggestions for changes or amendments include:

- To have broader, more comprehensive marine protection and management (n=194)
- To change the location, area or type of sanctuary (n=112)
- To decrease the rules and regulations associated with the sanctuary (n=111)

## Whānau, hapū or iwi that exercise kaitiakitanga



A total of 13 submissions indicated that they were whānau, hapū or iwi that exercise kaitiakitanga in the proposed sanctuary. Of these submissions:

- 77% (n=10) indicated their support
- 8% (n=1) indicated their opposition
- 15% (n=2) indicated their preference for another option to the proposed marine mammal sanctuary

## 2. The consultation process and submissions

A consultation document<sup>2</sup> was made available to the public through a variety of channels. The document outlined the problem, the objectives, as well as the impacts of the proposed sanctuary. The public was invited to submit feedback on the proposed sanctuary. Submissions were received through the PublicVoice online survey interface, by email, or in hardcopy. A total of 645 submissions were received during the consultation process.

### 2.1 Where did submissions come from?

Submissions were received via the following channels:

*Table 1: Submission type/channel*

Submission type/channel	Count
Survey responses received via the PublicVoice online survey interface	329
Forest & Bird online form submissions	187
Written submissions received via post or email	129
<b>Total</b>	<b>645</b>

#### 2.1.1 PublicVoice online survey interface

329 submissions were received via the online survey interface developed by PublicVoice. It was not mandatory for every question in the survey to be answered. An open-ended question was included where submitters could communicate their views on the proposed sanctuary. The questions asked via the PublicVoice online survey interface are listed in Appendix 1 — PublicVoice online survey interface questions.

#### 2.1.2 Forest & Bird online form submissions

187 individual submissions that used an online form developed by Forest & Bird were received. All these submissions followed the same structure. Individuals could also add their own comments. 25 of the Forest & Bird online form submissions included individual comments. An example of the Forest & Bird online form submission can be found in Appendix 2 — Forest & Bird template.

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<sup>2</sup> Department of Conservation, Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands). Consultation document. April 2021 <https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2021/bay-of-islands-mms-proposal/consultation-document-boimms.pdf>

### **2.1.3 Written submissions received in person, via post or email**

Written submissions were also received in person, via post or email. These submissions often followed no set structure and were processed and categorised as per the PublicVoice online survey interface submissions.

### **2.1.4 Late submissions**

11 submissions were received after 5:00 p.m. 18th of May and before 5:00 p.m. 21<sup>st</sup> of May 2021, being 3 days after the consultation officially closed. These submissions were accepted and are included in this report.

## 3. Data analysis methodology

### 3.1 Framework of analysis

An online survey interface was built for the collection of submissions. 329 submissions were received via the interface. The interface questions (see Appendix 1 — PublicVoice online survey interface questions) formed the framework of analysis for all submissions.

#### 3.1.1 Statistical analysis

All submissions were analysed and, where necessary, were categorised using the questions asked in the PublicVoice online survey interface (see Appendix 1 — PublicVoice online survey interface questions). Table 2 provides an example of how the statistical data is reported for questions where submitters were given a list of answers to choose from. Shading in tables indicates the proportionality of responses relative to each row.

The interest groups submitters could choose from are listed below:

- Northland / Te Pēwhairangi (Bay of Islands) community member
- Whānau, hapū or iwi that exercises kaitiakitanga in Sanctuary area
- Recreational maritime vessel operator
- Commercial maritime vessel operator
- Local business owner
- Local community group
- NZ general public
- Science and research
- Environment group
- Other

In Table 2 the heading ‘Interest group(s)’ refers to the group or groups of interest the submitter associates with. ‘Total’ includes all submissions received that were relevant to the question.

*Table 2: Example of statistical analysis table*

Interest group	Support	Oppose	Other
Environment group, n=219	98% 214	1% 2	1% 3
Whānau, hapū or iwi that exercises kaitiakitanga in Sanctuary area, n=13	77% 10	8% 1	15% 2
NZ general public, n=146	68% 99	27% 39	5% 8

Interest group	Support	Oppose	Other
Science and research, n=37	62% 23	32% 12	5% 2
Local community group, n=27	52% 14	37% 10	11% 3
Northland / Te Pēwhairangi (Bay of Islands) community member, n=239	47% 113	41% 99	11% 27
Other, n=57	39% 22	54% 31	7% 4
Recreational maritime vessel operator, n=128	25% 32	62% 79	13% 17
Local business owner, n=37	22% 8	62% 23	16% 6
Commercial maritime vessel operator, n=37	16% 6	59% 22	24% 9
<b>Total</b>	<b>66%</b> <b>424</b>	<b>26%</b> <b>170</b>	<b>8%</b> <b>51</b>

### 3.1.2 Thematic analysis

The analysis of responses to the open-ended interface question and written submissions was undertaken by PublicVoice. Themes were extracted from the text data by having a team of research analysts identify, analyse and interpret patterns of meaning within the open-ended responses. Each theme was then analysed for frequency. Results are presented in table format. Frequency tables are a representation of the number of times a code is mentioned in all submissions. Of importance to note is that the same submission may be coded multiple times under the same themes or sub-themes as submitters may allude to more than one theme in a single submission or answer. The foundation for the thematic analysis used by PublicVoice is the methodology developed by Braun and Clarke (2006).<sup>3</sup>

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<sup>3</sup> Braun & Clarke (2006), 'Using thematic analysis in psychology'. *Qualitative Research in Psychology*, 3(2), 77-101.

## Classification of themes

To aid interpretation, the results from the thematic analysis were organised into the following top-level categories where applicable.

- **Changes to location/area/type of sanctuary** — responses proposing alternate locations, changes in the area covered by the sanctuary, and who preferred a reserve were grouped under this top-level category.
- **Concern about health of marine ecosystems and abundance of dolphins' prey** — responses indicating concerns in general for the marine ecosystem and the impact of a declining food source on dolphin numbers.
- **Concerns about water quality and physical degradation of the bay** — responses indicating concern at the quality of the water in the bay and the impact that this is having on dolphin numbers.
- **Decrease rules and regulations** — responses mentioning a preference for decreasing the proposed rules and regulations were grouped under this top-level category.
- **General support** — includes responses where the support of the sanctuary was indicated without providing specific reasons for doing so.
- **Opposition based on the economic impacts** — responses that included potential impacts on the economy of the local area were captured under this top-level category.
- **Opposition based on the research/evidence for the proposal** — includes responses where concerns were expressed with the evidence put forward in the proposal, including responses that indicated that various causal factors have been omitted from the proposal.
- **Opposition based on the restrictions of the sanctuary** — responses indicating potential impacts on vessel movements were captured under this top-level category.
- **Requires community involvement** — responses indicating the role of the community in the sanctuary were captured under this top-level category.
- **Strengthen rules and regulations** — responses that mentioned strengthening the proposed rules and regulations were grouped under this top-level category.

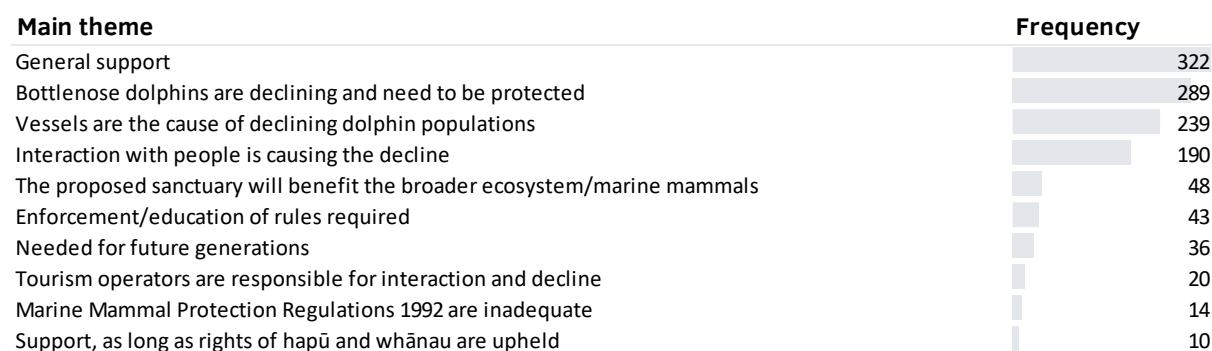
## Further categorisation

Where appropriate, submissions were further categorised into sub-themes under each of these top-level categories.

### 3.2 Reporting

Tables illustrating the frequency of codes associated with each theme have been included to demonstrate the significance of each theme. Of importance to note is that the same submission may be coded multiple times under the same themes or sub-themes as submitters may allude to more than one theme in a single submission or answer.

*Table 3: Example of thematic analysis table*



## 4. Who we heard from

### 4.1 Overview of submissions

This section provides an overview of the submissions received.

#### 4.1.1 Organisation

105 submissions were received from individuals who indicated that they are part of an organisation. A list of participating organisations is available in Appendix 3 — Participating organisations.

#### 4.1.2 Whānau, hapū or iwi that exercise kaitiakitanga in the proposed sanctuary

2% (13) of submissions received indicated that they are whānau, hapū or iwi who exercise kaitiakitanga in the proposed sanctuary.

**Are you whānau, hapū or iwi that exercises kaitiakitanga in the proposed sanctuary?**

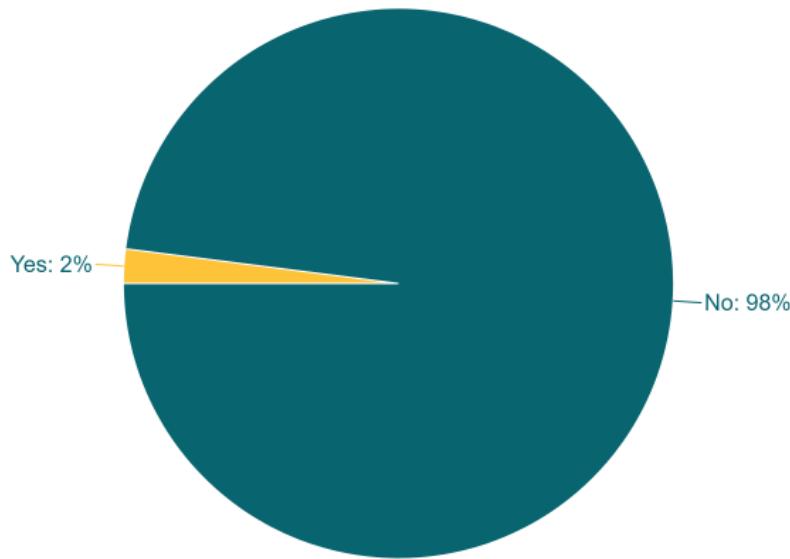


Figure 1: Are you Whānau, hapū or iwi that exercises kaitiakitanga in the proposed sanctuary?

13 submissions provided more details on their affiliation and practice of kaitiakitanga in the proposed sanctuary (Table 4).

Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

*Table 4: Whānau, hapū or iwi that exercises kaitiakitanga — additional details*

Affiliation	Count
Ngāti Kuta	5
Te NHK Waitangi	2
Patukeha	2
Ngāti Tautahi	1
Ngāti Rēhia	1
Ngāti Kawa	1
Ngāti-Manu	1
Hapū o Taiamai	1
Te whiu Hapū	1
Te matarahurahu Hapū	1

### 4.1.3 Interest group(s)

Submissions were classified according to interest groups outlined in the PublicVoice online survey interface. Submitters using the PublicVoice online survey interface were able to select their own interest group(s). Interest groups were allocated to submissions not received through the PublicVoice online survey interface. The interest group(s) allocated was based on the content of the submission. If no clear interest group could be ascertained, the submitter was allocated to the category 'other'. The breakdown of interest groups is detailed in Table 5.

*Table 5: Submissions classified by interest group*

Interest group	Count
Northland / Te Pēwhairangi (Bay of Islands) community member	239
Environment group	219
NZ general public	146
Recreational maritime vessel operator	128
Other	57
Commercial maritime vessel operator	37
Local business owner	37
Science and research	37
Local community group	27
Whānau, hapū or iwi that exercises kaitiakitanga in Sanctuary area	13

## Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

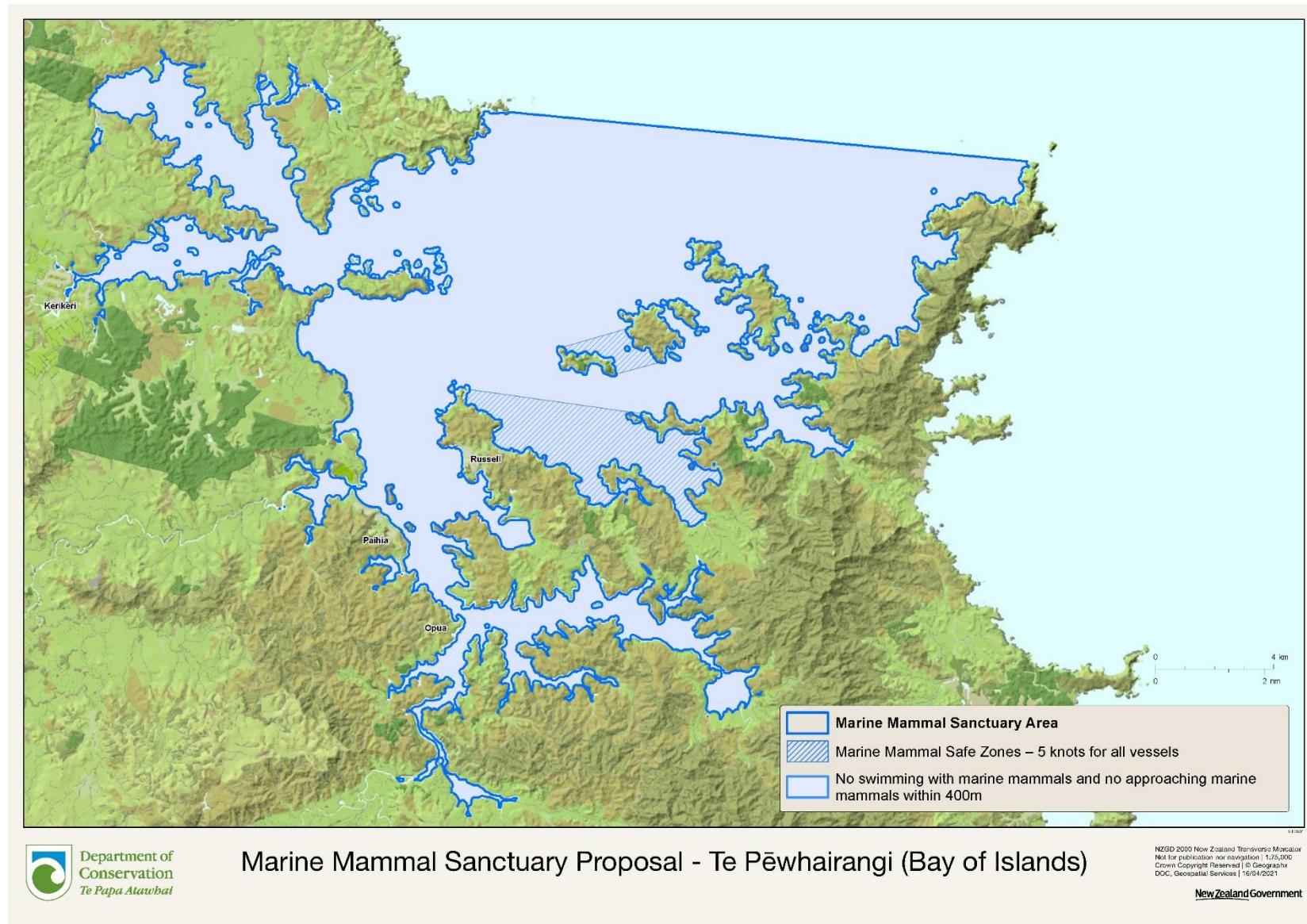


Figure 2. Location of the proposed marine mammal sanctuary

## 5. Results

### 5.1 Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) level of support

#### 5.1.1 Level of support across all submissions

Submissions indicating a preferred option regarding the marine mammal sanctuary could choose between the following options:

- Support
- Oppose
- Other

A preferred option was allocated to submissions not received through the PublicVoice online survey interface. The preferred option allocated was based on the content of the submission. Each submission was reviewed based on the three preferred options, and the option most strongly alluded to in the submission was allocated.

A total of 645 submissions indicated their preferred option regarding the proposal (Table 6):

- 66% (n=424) of submissions indicated their preference as support for the implementation of the marine mammal reserve
- 26% (n=170) indicated their preference as opposed to the proposed marine mammal sanctuary being implemented
- 8% (n=51) prefer another option to the proposed marine mammal sanctuary

Northland / Te Pēwhairangi (Bay of Islands) community members provided the greatest number of submissions from any group (239 out of 645 submissions)

Table 6: Level of support across all submissions<sup>4</sup>

Interest group	Support	Oppose	Other
Environment group, n=219	98% 214	1% 2	1% 3
Whānau, hapū or iwi that exercises kaitiakitanga in Sanctuary area, n=13	77% 10	8% 1	15% 2
NZ general public, n=146	68% 99	27% 39	5% 8

<sup>4</sup> Interest group was a pick multi question.

Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

Interest group	Support	Oppose	Other
Science and research, n=37	62% 23	32% 12	5% 2
Local community group, n=27	52% 14	37% 10	11% 3
Northland / Te Pēwhairangi (Bay of Islands) community member, n=239	47% 113	41% 99	11% 27
Other, n=57	39% 22	54% 31	7% 4
Recreational maritime vessel operator, n=128	25% 32	62% 79	13% 17
Local business owner, n=37	22% 8	62% 23	16% 6
Commercial maritime vessel operator, n=37	16% 6	59% 22	24% 9
<b>Total</b>	<b>66%</b> <b>424</b>	<b>26%</b> <b>170</b>	<b>8%</b> <b>51</b>

**Are you whānau, hapū or iwi that exercises kaitiakitanga in the proposed Sanctuary area?**

Yes, n=13	77% 10	8% 1	15% 2
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### 5.1.2 Level of support by whānau, hapū or iwi that exercises kaitiakitanga in the proposed sanctuary

A total of 13 submissions indicated that they were whānau, hapū or iwi that exercise kaitiakitanga in the proposed sanctuary (Table 7). Of these submissions:

- 77% (n=10) indicated their support
- 8% (n=1) indicated their opposition
- 15% (n=2) indicated their preference for another option to the proposed marine mammal sanctuary

Table 7: Level of support by whānau, hapū or iwi that exercise kaitiakitanga in the proposed sanctuary.

Are you whānau, hapū or iwi that exercises kaitiakitanga in the proposed Sanctuary area?	Support	Oppose	Other
Yes, n=13	77% 10	8% 1	15% 2

### 5.1.3 Level of support by interest groups

The interest groups which most supported the implementation of the proposed marine mammal sanctuary were:

- Environmental groups (98%, n=214)
- Whānau, hapū or iwi that exercises kaitiakitanga in the sanctuary area (77%, n=10)
- NZ general public (68%, n=99)
- Science and research (62%, n=23)
- Local community group (52%, n=14)
- Northland / Te Pēwhairangi (Bay of Islands) community member (47%, n=113)

The interest groups which most opposed the implementation of the proposed marine mammal sanctuary were:

- Recreational maritime vessel operators (62%, n=79)
- Local business owners (62%, n=23)
- Commercial maritime vessel operators (59%, n=22)

Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

*Table 8: Level of support by interest groups<sup>5</sup>*

Interest group	Support	Oppose	Other
Environment group, n=219	98% 214	1% 2	1% 3
Whānau, hapū or iwi that exercises kaitiakitanga in Sanctuary area, n=13	77% 10	8% 1	15% 2
NZ general public, n=146	68% 99	27% 39	5% 8
Science and research, n=37	62% 23	32% 12	5% 2
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<b>Total</b>	<b>66%</b> <b>424</b>	<b>26%</b> <b>170</b>	<b>8%</b> <b>51</b>

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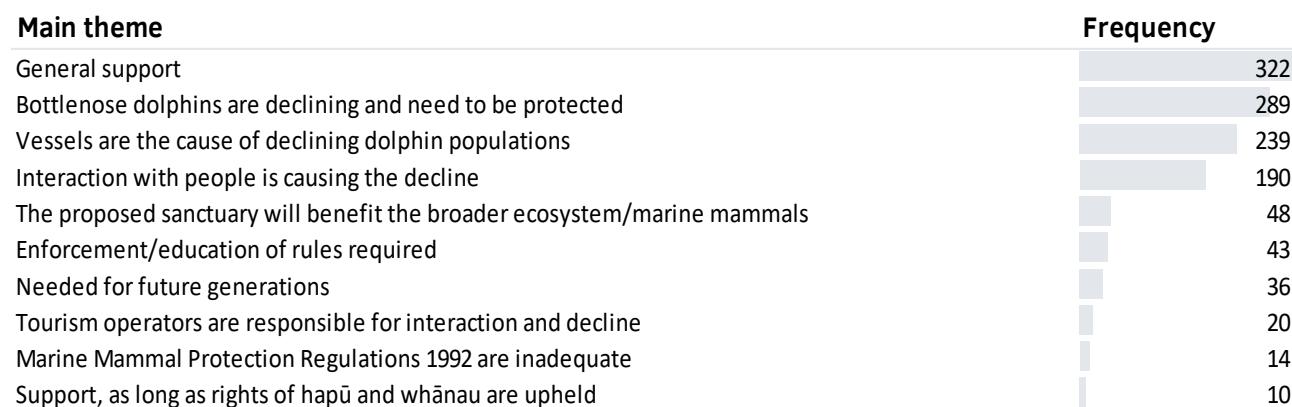
<sup>5</sup> Interest group was a pick multi question. Therefore, totals equal the number of unique submissions.

### 5.1.4 Reasons for supporting the proposed marine mammal sanctuary

Table 9 shows the different reasons why submissions supported the proposed marine mammal sanctuary. Submissions that provided a rationale for support provided the following reasons:

- Bottlenose dolphin populations are declining and in need of protection (n=289)
- Vessels are the cause of declining dolphin populations (n=239)
- Interaction with people is causing the decline (n=190)

Table 9: Reasons submissions supported the proposed marine mammal sanctuary



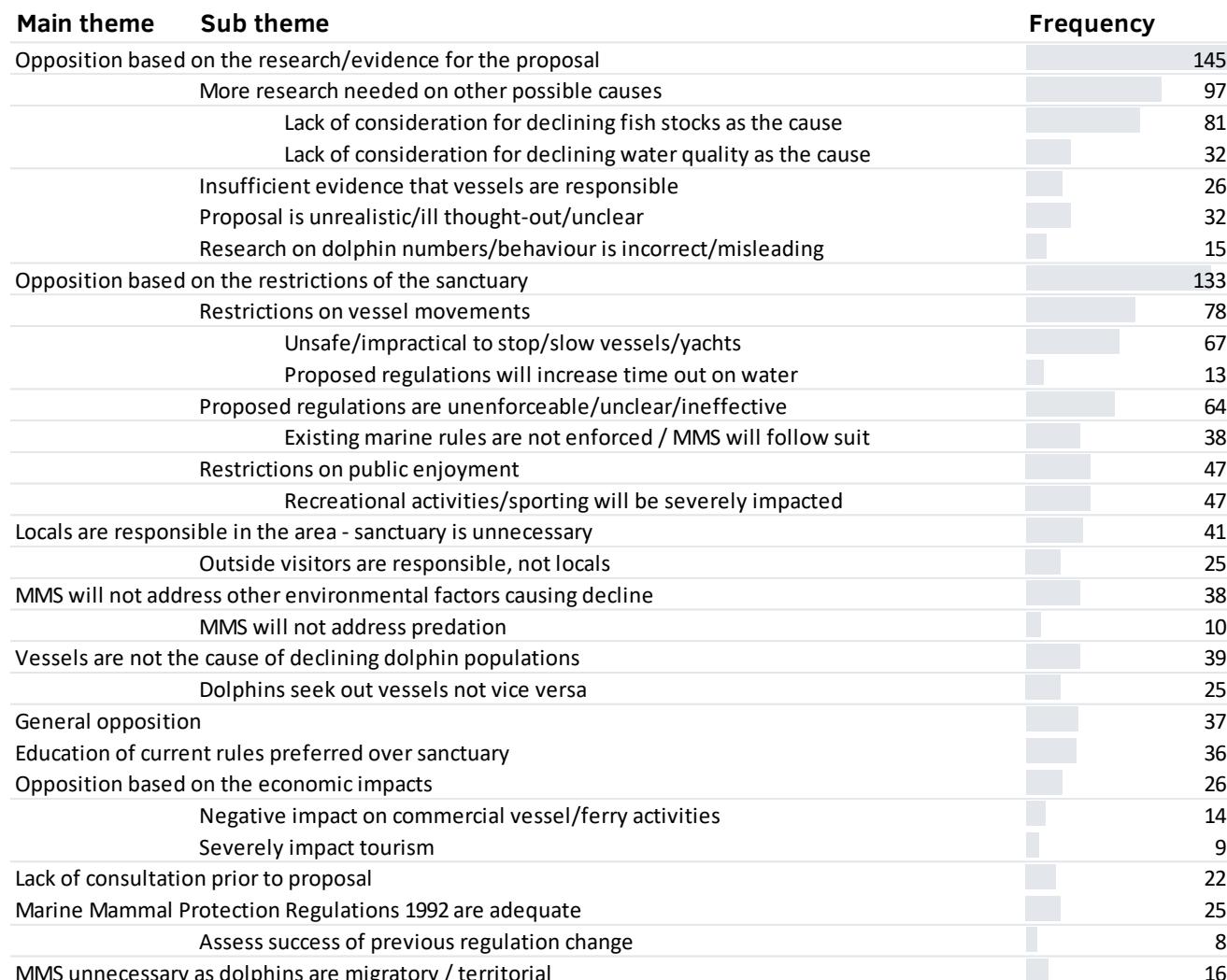
### 5.1.5 Reasons for opposing the proposed marine mammal

Table 10 shows the different reasons why submitters preferred to oppose the proposed marine mammal sanctuary. Submissions, with comments that indicated a reason for opposition, were mainly opposed to the sanctuary based on:

- The research and evidence used in the proposal (n=145). It was suggested that the research used to develop the proposal had not identified all the possible causes of dolphin decline and therefore unfairly restricted boat usage.
- Opposition based on the restrictions of the sanctuary (n=133)

## Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

*Table 10: Reasons submissions opposed the marine mammal sanctuary (MMS)*



### 5.1.6 Reasons for choosing another option

Submitter comments that provided reasons for choosing another option mostly suggested that amendments need to be made (n=19, Table 11).

*Table 11: Reasons submitters chose another option*



### 5.1.7 Suggested changes or amendments to the proposed marine mammal sanctuary

Many submissions who supported, opposed, or chose another option for the sanctuary suggested changes or amendments. Table 12 shows the suggested changes or amendments proposed. Suggestions for change, in submitter comments were mainly:

- To have broader, more comprehensive marine protection and management (n=194)
- To change the location, area or type of sanctuary (n=112)
- To decrease the rules and regulations associated with the sanctuary (n=111)

*Table 12: Suggested changes to the marine mammal sanctuary*



## 6. Appendices

### 6.1 Appendix 1 — PublicVoice online survey interface questions

Below is the list of questions that appeared on the online survey interface. These questions were taken from the consultation document.

#### Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary Proposal

##### 1) Your details

- First name
- Last Name
- Organisation (if applicable)
- Street address
- Suburb
- City
- Region
- Email address
- Phone number

##### 2) Are you tangata whenua, whānau, hapū or iwi that exercises kaitiakitanga in the proposed Sanctuary area?

- ( ) Yes  
( ) No

##### 3) Please provide more detail about your connection:

##### 4) Which group(s) best describes your interest:

- ( ) Northland / Te Pēwhairangi (Bay of Islands) community member  
( ) Whānau, hapū or iwi that exercises kaitiakitanga in Sanctuary area  
( ) Recreational maritime vessel operator  
( ) Commercial maritime vessel operator  
( ) Local business owner  
( ) Local community group  
( ) NZ general public  
( ) Science and research  
( ) Environment Groups  
( ) Other (please specify):

#### Your submission

**5) Do you support or oppose the proposed marine mammal sanctuary?**

( ) Support

( ) Oppose

( ) Other (please specify):

**6) We welcome your feedback on the proposed mammal sanctuary. This could include any of the following:**

- Why do you support or oppose the marine mammal sanctuary or prefer another option?
- Do you believe the proposal should be changed or amended? If so, what changes would you propose, and why?
- Do you agree with how we have characterised the problem, objectives, and impacts? If not, how would you change it?

## 6.2 Appendix 2 — Forest & Bird template

I support the proposed Marine Mammal Sanctuary for Te Pēwhairangi/the Bay of Islands. Dolphins are apex predators at the top of the food chain and their decline warns us that things are going wrong. Studies over decades have shown there have been drastic changes in the Bay of Islands' bottlenose dolphins both in their population and behaviour. Bottlenose dolphins' numbers dropped from 278 in 1999 to just 26 in 2020, only 16 now frequently in the Bay. That's a 91% decline in bottle-nosed dolphins! Research focused on the impacts of dolphin tourism where people swim or view dolphins and general public boating contact has shown that there's too much harassment and distraction and this has changed dolphin behaviour. Please create a Marine Mammal Sanctuary in the Te Pēwhairangi/the Bay of Islands to protect the dolphins.

### 6.3 Appendix 3 — Participating organisations

- Auckland Conservation Board
- Auckland Yacht & Boating Assn. (AYBA)
- AUT
- Barefoot Sailing Adventures
- Bay Beach Hire
- Bay of Islands International Academy School
- Bay of Islands Parasail
- Bay of Islands Rock Cruises Ltd
- Bay of Islands Sailing Week
- Bay of Islands Snorkeling Ltd
- Bay of Islands Yacht Club
- BOI SAILING
- Business Paihia
- Crockers Property Group
- Carino Wildlife Cruises
- CEDTM
- Changing Tide Tours
- Charter Boat owner
- Cool Change Charters Ltd
- Craicor Accommodation
- Crockers Property Group
- Dive Zone Bay of Islands
- Doug's Opua Boatyard
- Earl Grey Fishing Charters
- Eastern Bay of Islands Preservation Organisation
- Ecocruz Bay of Islands
- Ecosolutions
- Entrada Travel Group
- Envirogroup-B.O.I.I.A
- Environmental Defence Society
- Explore Group
- Faculty of Health and Environmental Sciences, Auckland University of Technology
- Fish Forever Working Group of Bay of Islands Maritime Park, Inc
- Fisheries inshore New Zealand
- Flying Kiwi Parasail
- Friends of Rangitane Stream community group
- Fullers Great Sights
- Great Escape Sailing
- Guardians of the Bay of Islands Inc.
- Guardians of the Sounds
- HBC Group Ltd
- JAA
- Kaikoura Marine Mammal Foundation
- Kerikeri cruising club
- Kororareka Builders LTD
- Map.Science
- Marine Mammal Alliance Nantucket
- marine-wildlife.org
- Maritime Research Group (NZ)
- Ministry for Primary Industries
- New Zealand Conservation Authority
- New Zealand Marine Sciences Society
- New Zealand Multihull Yacht Club
- Ngati Kawa
- Ngati Kuta Hapu ki Te Rawhiti
- NHK - Waitangi
- Northland CDEM Group
- Northland Dive Ltd
- Northland Inc
- Northland Regional Council
- NZ Marine Industry Association
- O nga Hapu o Taiamai ki te Marangai
- Oceania & Eastern
- Opua Business Association

Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

- Orca Research Trust
- Paihia Dive
- Phantom Yacht charters
- Private landowner Opunga Cove
- Project Jonah
- Raggy Charters Marine Eco Cruises
- Royal Akarana Yacht Club
- Screaming Reels
- Sea Shuttle Bay of Islands
- SpotX Fishing Charters
- Swallows Nest accommodation
- Te Rūnanga o Ngāti Rēhia
- Teacher Okaihau College
- Tourism Industry Aotearoa
- Trans Marine
- TriOceans
- Wai Knot 2018
- Western Gas
- Whale and Dolphin Tours Durban
- Whale Watch West Cork
- Whale-Rescue.Org co-founder & Dolphin Guide
- WildBlue Adventures Limited
- World Cetacean Alliance
- Wyborn Trust
- Yachting New Zealand

Proposed marine mammal sanctuary in Te Pēwhairangi (Bay of Islands) — summary of submissions

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## **ATTACHMENT B**

### **Te Pēwhairangi / Bay of Islands marine mammal sanctuary engagement log**

#### ***Objectives***

- Achieve a high level of awareness of the critical challenges faced by bottlenose dolphins in Te Pēwhairangi / Bay of Islands
- Share options available in an open and transparent way
- Gain a high level of understanding of the benefits of a Marine Mammal Sanctuary
- Encourage participation and involvement in consultation
- Listen, collate and share views and feedback
- Champion community buy in
- Update stakeholders regularly
- Achieve successful level of engagement through public consultation
- Provide information post consultation period on next steps
- Announce decision

#### ***Communications approach***

1. The communications approach to the consultation was targeted, proactive and focused on engagement.
2. The majority of communications with high interest stakeholders was to be conducted face to face, (where feasible considering COVID levels and budget allows) and be discussion based.
3. Messaging was to be clear, consistent and timely using facts and scientific research to evidence the current problems facing the dolphin population and why the sanctuary is the most effective statutory tool to address the current issues facing the dolphins.
4. Supplementary materials were developed to assist with delivery of messages, including a video (for social media), infographics and consultation pack (web and print).
5. The communication toolkit developed included:
  - A short video for social media outlining the decline of the bottlenose dolphin
  - Sanctuary name / theme / brand for consistent use across comms materials
  - Associated templates
  - Collateral for use in onsite presentations eg. pop up banners
  - Discussion document (print and web)
  - Brochures for summer boating bag campaign and other relevant events
  - Sanctuary website
  - Frequently asked questions sheet
  - Media stories
  - Social media campaign – using the other tools
  - Timeline / action plan of communications
  - Internal comms – intranet stories

## Communication Log

30 MAY 2020 – Minister of Conservation sign off received to proceed with the statutory process and prepare for public consultation – communications log commences (previous engagement has occurred but is not reflected in this document)

<b>Date (When)</b>	<b>Audience</b>	<b>Event/action (including communications channels and tools) (What /How)</b>
23 July 2020	Permitted Operators	Roundtable discussion @ Waitangi Treaty grounds – discuss proposed sanctuary
26 August 2020	MBIE	Meeting – video conference
4 September 2020	MfE	Meeting – video conference
7 September 2020	TPK	Meeting – video conference
23 September 2020	Ministry of Transport	Meeting – video conference
24 September 2020	MPI	Meeting – video conference
14 October 2020	Living Waters / Fish Forever AGM	Guest speaker
16 October 2020	Inshore Fisheries New Zealand	Meeting – video conference
19 October 2020	University of the 3 <sup>rd</sup> Age	Keynote presentation at annual meeting
21 October 2020	FNDC / NRC	Briefing – face to face
Throughout November / December	Wider Public	Press push - Radio interview – More FM TVNZ Seven sharp The project
3 November 2020	MPI	Meeting – video conference
10 November 2020	Local Fishing Federation + Carino Tours	Face to face with representatives
17 November 2020	National	Newshub interview (pre-season interview, summer messages)
27 November 2020	Project Island Song	Meeting regarding proposed sanctuary
27 November 2020	DOC staff	Intranet story sharing formalisation of the Ropu
w/c 30 November 2020	Coastguard	Pre-season presentation and MMS update
1, 2, 7, 9, 11, 17 December 2020	Wider public	iSite familiarisation meetings
3 December 2020	Conservation Board	Conservation Board meeting - presentation
8 December 2020	Permitted operators - Explore, Fullers, Carino	Pre-season + share public consultation document
15 December 2020	Commercial / Tourism operators (unpermitted)	Evening zoom presentation – pre-season briefing including sanctuary update
15 December 2020	Wider public	Conservation centre opens on Urupukapuka (Otehei Bay) – MMS display
21 December 2020	Public	Website launched.

<b>Date (When)</b>	<b>Audience</b>	<b>Event/action (including communications channels and tools) (What /How)</b>
21 December 2020	Wider public	<a href="#">Press release for video:</a> DOC concerns for iconic Bay of Islands dolphin
26 December 2020– through to end of February 2021	Boating public	<p>Various channels:</p> <ul style="list-style-type: none"> <li>- Daily Patrols (including Ropu) – 26 December through to 16 January</li> <li>- On water patrols 2 days p/week until end of February</li> <li>- Boatie bags handed out to boaties</li> <li>- Conservation centre display at Otehei Bay</li> <li>- video playing on isite screens and conservation kiosk screens</li> <li>- Media</li> </ul>
6 January 2021	Eastern Bay of Islands preservation society	AGM keynote presentation
9 January 2021	Tall Ship Regatta participants	Brochure handed out at registration and bar area
12 January 2021	Wider public	Media: TVNZ One News
21-31 January 2021	Wider public	Library display at Proctor library
Mid-January 2021	Project Island Song volunteers	Article in quarterly newsletter
29 January 2021	Wider public	Marine Mammal display @ Conservation centre at Otehei Bay
4 February 2021	Northland Inc	Meeting to discuss proposal
7 February 2021	Minister of Conservation	Boat visit to view proposed safe zones - Cat,Tiwai and Clare
17 February 2021	Government agencies	Email draft cabinet paper for comment (and the discussion document / gazette notice if any changes to proposal). All comments to be received by 26 February.
25 February 2021	Press conference + release	MOC to make announcement of intention to take the proposal to Public Consultation. Paihia wharf.
25 February 2021	Local stakeholders / businesses who have been involved in discussions to date or identified in comms plan	Minister to attend and take part in a face-to-face meeting at Pacific Paihia hotel to share the details of the proposal prior to consultation
26 February 2021	Those who have registered interest in the MMS website or via the BOI MMS inbox	Email update on progress and timelines
3 March 2021	National agencies and research bodies	Zoom presentation – MMS briefing
9 March 2021	DOC staff	Intranet story about MOC announcing her intention to consult on the sanctuary proposal
5-26 March 2021	isites and libraries	Displays in isites and libraries (Kerikeri)
6 March 2021	Wider Public	Seaweed event and drop in session in Paihia (Townhall)
26 March 2021	Wider Public	Drop in session @ Proctor Library Kerikeri
9 April 2021	Stakeholders who have been engaged with to date and those who have registered interest via the MMS website	Email update on progress and timeline including new date for public consultation – 20 <sup>th</sup> April and new MOC

20 APRIL - 28 DAY PUBLIC CONSULTATION BEGINS

<b>Date (When)</b>	<b>Audience</b>	<b>Event/action (including communications channels and tools) (What /How)</b>
20 April 2021	Wider Public	Submissions open and proposal shared on DOC website
20 April 2021	Media (Press release)	Release announcing commencement of public consultation: - All media channels including social media
20 April 2021	Wider Public	Gazette notice published on Gazette.govt.nz
20 & 22 April 2021	Wider Public	Print advert announcing public consultation in the public notices section: NZ Herald – 20 April Northern Advocate – 20 April Bay Chronicle – 22 April
20 April 2021	Stakeholders who have been engaged with to date and those who have registered interest via the MMS website	Email update announcing commencement of public consultation
20 April 2021	DOC staff	Intranet story announcing commencement of consultation
21 April 2021	Wider Public	Drop-in session @ Townhall Paihia (evening)
30 April 2021	Wider Public	Drop-in session @ Proctor Library Kerikeri (daytime)
1 May 2021	Wider Public	Drop-in session @ Townhall Paihia (daytime)
1 May 2021	Wider Public	Drop-in session @ Haratu Kororareka Marae, Russell (daytime)
<b>18 MAY PUBLIC CONSULTATION CLOSES</b>		
01/01/21 – 18/05/21	Wider Public	Media summary of articles published about the proposed sanctuary
May/ June	Concessionaires	Update in the concessionaire newsletter 'In the Green'
22 July 2021	Public consultation submissions released online	Submissions placed on DOC website

## **ATTACHMENT C**

### **Te Pēwhairangi Marine Mammal Kaitiaki Rōpū Partnership and engagement with Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi**

#### ***Larger group hui with hapū in June and July 2020***

1. Following approval from the Minister of Conservation to progress with the statutory process for a proposed MMS in Te Pēwhairangi, Te Papa Atawhai held a series of open hui for any local hapū members to attend. These hui were held on 25 June and 23 July 2020.
2. Feedback from hapū at these hui confirmed that progressing the MMS mahi in a structured partnership with appointed representatives from each hapū would be the most effective way to partner in a meaningful and effective way.

#### ***Te Pēwhairangi Marine Mammal Kaitiaki Rōpū***

3. Te Papa Atawhai then developed a draft Terms of Reference for a proposed Rōpū and called for nominations from each Hapū o te Pēwhairangi. The Terms of Reference were negotiated, and the Rōpū had the following characteristics:
  - a) Hapū representation on the Rōpū was self-determined by hapū, and included one representative and proxy from Ngāti Manu, Ngā Hapū ki Waitangi, Te Uri Taniwha, Ngāti Kuta, Ngāti Torehina, Ngāti Rēhia, Patukeha. The Terms of Reference allowed additional hapū representatives to be appointed if the hapū representatives collectively decided that should be necessary.
  - b) Each representative and their proxy was appointed by their own hapū and came to engage in Rōpū mahi with the mandate of their hapū to do so. The role of each hapū representative was to co-design the proposal and be the conduit between Te Papa Atawhai and the broader hapū on MMS matters.
  - c) Ensuring the MMS mahi interacted with hapū rights and interests in an acceptable way and providing advice to Te Papa Atawhai on tikanga and mātauranga Māori.
  - d) In a manner consistent with the MMPA legislative regime, decisions on MMS mahi would be made jointly where possible, through formal resolutions, under formal hui with quorum requirements from both hapū and Te Papa Atawhai representatives.
4. The Rōpū held the following hui when preparing the MMS proposal:
  - a) 21 September 2020, reviewing terms of reference;
  - b) 28 October 2020, reviewing terms of reference and agreeing on next steps with developing the MMS proposal;
  - c) 20 November 2020 – terms of reference formally adopted, working through details of the MMS proposal, and interaction with hapū rights and interests;
  - d) 14 December 2020 – working through details of the MMS proposal, developing content for the consultation document;
  - e) 6/7 February 2021 – meeting with Minister of Conservation to discuss the proposal over Waitangi Day celebrations;
  - f) 25 February 2021 – partnering in presenting the MMS proposal to larger key stakeholder hui; and

- g) 9 and 22 April 2021 – finalising work on the Gazette notice for the MMS proposal.

#### ***Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi***

- 5. On 14 December 2020 hui was held with Taiāmai ki te Marangi, one of the 10 takiwā under Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi, and within the MMS proposal area.
- 6. On 14 April 2021, the Rōpū (representatives from both Te Papa Atawhai and Ngā Hapū) met with the Board of Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi to discuss the MMS proposal. The Board indicated a desire for the proposal to be cognisant of iwi rights and interests and requested to be kept informed on the progress of developing the proposal and the Hapū – Te Papa Atawhai Partnership.

## ATTACHMENT D

### Qualitative analysis of submissions on the proposed MMS for Te Pēwhairangi / Bay of Islands

1. The following provides a summary of themes arising from the public submissions, our response to these concerns and the options for amendments to the proposal that we considered following public consultation. Under the “Options for Amendments” column, we have focused on key aspects of the proposal where we believe changes would enhance the proposal’s workability and further increase public support whilst not compromising the objectives of the sanctuary. We have not included all the options considered in the development of the original proposal as these are detailed in the consultation documentation.
2. Under proposed amendments we identify the amendments carried through to the Briefing in **Part D: Our recommendation – the Amended Proposal** (Proposed solution – Ngā whakataunga).
3. Under implementation requirements we have highlighted the essential supporting pou for the amended proposal. Each are vital to the success of the proposed MMS.

OVERARCHING THEMES				
More comprehensive marine protection measures are needed for Te Pēwhairangi				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
Widespread concern about the state of the local marine environment and ecosystem.  Support for marine protected area(s) and/or greater fishing restrictions.  Calls for water quality and	We acknowledge the widespread concern regarding the state of the local marine environment and ecosystem. We also acknowledge that there are likely multiple risks to marine mammals.	Other risks to marine mammals were not considered as part of this process as they are either: <ul style="list-style-type: none"><li>• out of scope of the MMPA; or</li></ul>	No change to proposal.	Alongside the proposed MMS, Te Pēwhairangi community will need to see progress towards a more holistic approach to active management and protection for the area. Te Papa Atawhai needs to be engaged in this mahi and work collaboratively with other key agencies and mana whenua/mana

<p>physical degradation to be addressed.</p> <p>Concern about marine noise from cruise ships and industry.</p> <p>The need for a tikanga approach to supporting a healthy moana, including recovering fish and marine mammal populations.</p>	<p>The MMS proposal mitigates a known threat to marine mammals (vessel interactions). Alleviating the pressure of vessel interactions may make dolphins, and other marine mammals more resilient to other possible environmental challenges.</p> <p>Other measures, led by multiple agencies, and hapū through customary management tools, are needed to address physical and ecological risks to the marine area. Te Papa Atawhai and Ngā Hapū have agreed to work collaboratively, and with other agencies where possible, to achieve integrated marine management outcomes for Te Pēwhairangi.</p> <p>A tikanga approach will be achieved through an ongoing co-governance approach to MMS management.</p>	<ul style="list-style-type: none"> <li>• there was not sufficient evidence or data to base additional restrictions.</li> </ul> <p>Other marine protection initiatives are in place and/or being actively considered.</p> <p>Future research will look to build a stronger evidence base for future management decisions.</p>		<p>moana: iwi, hapū and whānau.</p> <p>Co-governance and co-management arrangements for the proposed MMS will instil a tikanga approach to solving the problem/s, increase our collective knowledge and understanding, and strengthen relations between groups.</p>
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Cause of bottlenose dolphin decline unresolved				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>Likely to be multiple impacts causing dolphin decline.</p> <p>Lack of evidence that vessel/human interactions impact marine mammals.</p> <p>Data presented to support the proposal did not accurately characterise the problem.</p> <p>Concerns about the robustness of scientific evidence base behind the proposal.</p> <p>The proposal doesn't consider the seasonality of marine mammal presence or vessel traffic.</p>	<p>The proposal does not draw exclusive causal links between the decline of dolphin numbers and vessel interaction.</p> <p>We acknowledge that there are likely to be multiple impacts causing a decline of bottlenose dolphins.</p> <p>The proposal is informed by a body of peer-reviewed and published scientific research.</p> <p>Scientific research demonstrates the adverse effects of vessel/human interaction on marine mammals.</p> <p>The proposal addresses the known impact of human and vessel interaction with marine</p>	No variations considered.	No change to proposal.	

	mammals quickly and effectively. It aims to provide respite to marine mammals while the issues of environmental and ecosystem health are addressed over the long term.			
<b>Confusion about the practical interpretation of the proposed restrictions</b>				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
The workability and safety of restrictions for different vessel types, scenarios (e.g., sailing regattas), and in-water activities (e.g., swimming and diving), particularly in adverse weather/sea states was questioned.  Calls for clarification about what "take all reasonable measures to stop" means.  Concern people will be prosecuted for unwittingly	We acknowledge that clear guidance is essential to aid interpretation of the MMS restrictions.  Te Papa Atawhai will develop guidelines to help vessel operators, swimmers, and divers interpret the restrictions, should a decision be made to declare a MMS.  Maritime Safety Rules override the restrictions of the sanctuary. We will emphasise this point in	We considered the enforceability of the "stopping rule" in the context of "take all reasonable measures".  Prosecutions for breaches of this rule inclusive of the above wording would be difficult to achieve.  We considered how to address concern about the MMS being enforced reasonably.	Simplify the wording in the proposed MMS.  Remove "take all reasonable measures" from the proposed restrictions and include interpretation of section 26(3) in the guidance.  Introduce an overarching caveat "without reasonable excuse or lawful authority" for the proposed restrictions.	Comprehensive guidelines to help vessel operators, swimmers, and divers interpret the restrictions.  Clear communications and education to bring everyone up to speed with the new restrictions as quickly as possible. This work needs to be ongoing, measurable and able to be reviewed.

<p>breaking the restrictions.</p> <p>Concern that people will need to maintain 400m from seals above the mean high water mark.</p> <p>Lack of information about how the restrictions will be enforced and the penalties.</p>	<p>the guidelines.</p> <p>The boundary of the MMS is on the mean high water mark. Seals hauled out on the shore are not within the sanctuary, so the MMS restrictions would not apply (the existing MMPR will still apply, however).</p> <p>Enforcement and penalties are covered in the MMPA.</p>	<p>Safety is already covered within section 26(3) of the MMPA. An overarching caveat of “without reasonable excuse or lawful authority” would provide assurances that the, where a reasonable excuse for non-compliance exists, the restrictions would not apply.</p> <p>We considered how to accommodate organised events within Te Pēwhairangi in the context of the proposed MMS. We felt that participants, rather than the ‘event’ per se, should hold the exemption. People/vessels that have withdrawn or are involved as bystanders would not be covered by the exemption.</p>	<p>Introduce exemption for organised events with prior approval of Te Papa Atawhai.</p>	
<p><b>Education, monitoring &amp; enforcement are essential for success</b></p>				

<b>Matters raised in submissions</b>	<b>Our response</b>	<b>Options for amendments following public consultation</b>	<b>Proposed amendments</b>	<b>Implementation requirements</b>
<p>Education and enforcement of the existing MMPR has been inadequate and under-resourced (e.g., signage lacking).</p> <p>Education, engagement, and enforcement of the existing MMPR will be more effective than the proposed restrictions/MMS.</p> <p>There must be clear goals/outcomes for new restrictions, and Te Papa Atawhai needs to monitor the effectiveness of MMS against these.</p> <p>Opportunity to improve/increase marine mammal interaction training for commercial operators.</p> <p>A kaitiaki component is essential in the delivery of the</p>	<p>The MMPR in their current form do not adequately address issues specific to marine mammals in Te Pēwhairangi (i.e. very high level of marine mammal/vessel interaction is likely to have negative effects on dolphins even if all vessels abide by the MMPR).</p> <p>The proposed MMS should include comprehensive education/outreach and communications.</p> <p>Implementation of the proposed MMS should include comprehensive education, outreach and communications, building on the already established annual campaign that Te Papa Atawhai undertakes in Te Pēwhairangi. The proposed timeframe for review of the MMS is three</p>	<p>No variations considered</p>	<p>No change to proposal</p>	<p>Clear communications and education to bring everyone up to speed with the new restrictions as quickly as possible. This work needs to be ongoing, measurable and able to be reviewed.</p> <p>Update the research and monitoring programme to bring it in line with the proposed changes. Ensure the effectiveness of the new MMS can be monitored and assessed to support the 3 year review.</p>

proposal.	years.  Permitted and non-permitted commercial operators will continue to be engaged on an annual basis on MMPA compliance.			
<b>Co-governance and co-management are essential components of the proposed MMS and should be well resourced</b>				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
Appropriate co-governance and a kaitiaki component are essential.  These aspects must be adequately resourced (including co-governance, kaitiakitanga, mātauranga Māori).	The MMS proposal was developed in partnership with Ngā Hapū o te Pēwhairangi.  Ensuring the proposal interacts with the rights and interests and iwi, hapū, or whanau in an acceptable manner and ensuring Ngā hapū have been well informed on the proposal and how it interacts with their interests has been a key role of the Hapū – Te Papa Atawhai Rōpū that has been developed to give effect to the Crown – Māori partnership for this	No variations considered	No change to proposal	Hapū members of the Hapū – Te Papa Atawhai Rōpū should be appropriately resourced and supported in their roles.  A budget is required for the Rōpū, and the various threads of kaitiakitanga, mātauranga Māori.

	<p>process.</p> <p>Rōpū hapū representatives have indicated that the Rōpū process will be beneficial to customary title claim resolution in Te Pēwhairangi by demonstrating a real example of the concurrent exercise of rangatiratanga/kaitiakitanga over their respective rohe.</p>			
<b>Themes relating to specific components of MMS</b>				
<b>The "stopping rule" is impractical and unsafe</b>				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>Stopping vessels, particularly sailboats in proximity to marine mammals, will be unsafe (loss of steering, risk of collision), particularly in adverse weather/sea state.</p> <p>Reducing speed to 5 knots would be more practical than stopping.</p>	<p>The proposed requirement to "...take all reasonable measures to stop and allow animals to pass..." has created ambiguity and has been removed.</p> <p>Should a MMS be declared, comprehensive guidelines to help operators/swimmers and divers interpret the restrictions</p>	<p>We considered the enforceability of the "stopping rule" in the context of "take all reasonable measures". Prosecutions for breaches of this rule inclusive of the above wording would be difficult to achieve.</p>	<p>Simplify the wording in the MMS.</p> <p>Remove "take all reasonable measures" from the restrictions and include interpretation of Section 26(3) in the guidance.</p> <p>Introduce an</p>	<p>Clear communications and education to bring everyone up to speed with the new restrictions as quickly as possible. This work needs to be ongoing, measurable and able to be reviewed.</p> <p>Update the research and monitoring programme to bring it in line with the proposed changes.</p>

<p>Stopping is impractical for commercial fishing vessels that have gear deployed.</p> <p>Vessels under power should also turn off engines within proximity of marine mammals to minimise acoustic disturbance.</p>	<p>should be developed.</p> <p>Safety is paramount.</p> <p>Enough wake is created at 5 knots to attract dolphins and disrupt their normal behaviour hence the direction to stop.</p> <p>There is no requirement to stop the use of fishing gear (e.g. setting and hauling gear) in the proximity of marine mammals.</p> <p>Impractical and unsafe for some (larger) vessels to turn engines off. Idling vessels emit less noise than those that are underway.</p>	<p>Safety is already covered within section 26(3) of the MMPA. An overarching caveat of "without reasonable excuse or lawful authority" would provide assurances that the, where a reasonable excuse for non-compliance exists, the restrictions would not apply.</p> <p>We considered how to accommodate organised events within Te Pēwhairangi in the context of the proposed MMS. We felt that participants, rather than the 'event' per se, should hold the exemption.</p> <p>People/vessels that have withdrawn or are involved as bystanders would not be covered by the exemption.</p>	<p>overarching caveat "without reasonable excuse or lawful authority" for the proposed restrictions.</p> <p>Introduce exemption for organised events with prior approval of Te Papa Atawhai.</p>	<p>Ensure the effectiveness of the new MMS can be monitored and assessed to support the 3 year review.</p>
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The "400m rule" is excessive				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>A suggestion that there is no evidential basis for the proposed 400m distance.</p> <p>No compelling reason given why the proposed distance (400m) differs from MMPR (300m if 3+ vessels).</p> <p>Difficult for swimmers and vessel operators to see marine mammals from 400m if the sea state is poor – potential for unwitting rule breaches.</p> <p>Impractical for swimmers to leave the water if approached by marine mammals.</p> <p>Makes key water-based events impractical (e.g., sailing regattas).</p> <p>Potential to be very disruptive to water-based services like</p>	<p>We proposed the 400m distance rule to clearly distinguish the proposed MMS from the existing MMPR and build a buffer for non-compliance.</p> <p>We agree that consistency with MMPR may reduce confusion.</p> <p>The proposed rule is not a significant change to status quo: The MMPR restrict people swimming with bottlenose dolphin pods that contain juveniles and for no more than three vessels to move closer than 300m to dolphins.</p> <p>We will develop guidelines to help operators/swimmers and divers interpret the restrictions, should a decision be made to declare a MMS.</p>	<p>We considered the implications of retaining a 300m distance within the proposed MMS vs the 400m distance.</p> <p>We considered how to accommodate organised events within Te Pēwhairangi in the context of the proposed MMS. We felt that participants, rather than the 'event' per se, should hold the exemption.</p> <p>People/vessels that have withdrawn or are involved as bystanders would not be covered by the exemption.</p> <p>We looked at two</p>	<p>Use a distance of 300m rather than 400m.</p> <p>Introduce exemption for organised events with prior approval of Te Papa Atawhai.</p> <p>Modify boundary of MMS to remove marinas, wharves, landings from the sanctuary area:</p> <ul style="list-style-type: none"> <li>- Addresses ferry, port operations and boat launching issue.</li> <li>- Provides protection in key areas whilst allowing ease of movement for vessels in high traffic areas.</li> </ul>	<p>Clear communications and education to bring everyone up to speed with the new restrictions as quickly as possible. This work needs to be ongoing, measurable and able to be reviewed.</p> <p>Update the research and monitoring programme to bring it in line with the proposed changes. Ensure the effectiveness of the new MMS can be monitored and assessed to support the 3 year review.</p>

<p>ferries, port operations if a marine mammal is present.</p> <p>Several passages in bay narrower than 400m will become impassable if marine mammals are present.</p> <p>Subadult groups of dolphins common at anchorages and offshore from campsites – will prevent swimming.</p> <p>Potential to disrupt in-water maintenance of aquaculture facilities.</p>		<p>options for modifying the boundary of the proposed MMS. One that would exclude marinas, wharves, landings from the sanctuary area.</p> <p>Another that excluded these areas plus the inner reaches of the harbour including Waikare Inlet. We noted that the inner reaches are night-time feeding grounds for orca.</p>		
<b>Safe Zones are unjustified and are unfair to residents</b>				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>Unlikely to be effective as dolphins change distribution patterns over time.</p> <p>Unlikely to be effective as vessels still create wake at 5 knots and will therefore attract</p>	<p>The provision of Safe Zones is intended to provide relatively quiet (underwater noise) havens for marine mammals. There is less chance of humans accidentally disturbing marine</p>	<p>We considered options for modifying the shape and size of the larger Safe Zone (Tapeka Point to Motukauri Island) to create a more workable solution for</p>	<p>No change to Safe</p>	<p>Clear communications and education to bring everyone up to speed with the new restrictions as quickly as possible. This work needs to be ongoing, measurable and able to be reviewed.</p>

<p>dolphins.</p> <p>Poor scientific basis of evidence for safe zones.</p> <p>Rationale for location of safe zones unclear.</p> <p>Unfair for locals; will impede recreational activities and ease of access both for private and commercial operators servicing these areas.</p> <p>Reduced speed will have economic impacts (e.g., water taxi services, commercial fishing) and cause congestion.</p> <p>Not enough time has passed to assess the effectiveness of commercial exclusion zones.</p>	<p>mammals in the Safe Zones (e.g. vessels travelling at speed through/over top of a group).</p> <p>The locations are based on high vessel activity, frequency of visits by marine mammals, and existing exemption areas for commercial viewing vessels.</p> <p>The proposed Safe Zones have a high level of support from the Rōpū.</p> <p>The proposed Safe Zone also received support from some residents.</p> <p>Restrictions only on vessel speed; no restriction on access (aside from exclusion of commercial marine mammal viewing).</p> <p>There is evidence to suggest frequency of use of Safe Zones by marine mammals may increase as underwater noise decreases.</p> <p>Should a MMS be declared, Te Papa Atawhai should also</p>	<p>residents. Alternatives required either the extensive use of marine markers or a significantly reduced size of the Safe Zone, compromising the objective.</p> <p>We considered adding a “transition lane” in the larger safe zone to increase ease of access. We believed it was likely that vessels travelling at high speed through this lane would attract dolphins and encourage them to leave the Safe Zone.</p> <p>We presented three options for the larger Safe Zone to the Rōpū, including the one that went out for public consultation. They agreed unanimously to retain the larger Safe Zone as per the</p>	<p>Zones.</p> <p>Introduce an overarching caveat “without reasonable excuse or lawful authority” for the proposed restrictions.</p>	<p>Update the research and monitoring programme to bring it in line with the proposed changes. Ensure the effectiveness of the new MMS can be monitored and assessed to support the 3 year review.</p>
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	<p>ensure its ongoing monitoring programme assesses the effectiveness of safe zones.</p>	<p>proposal.</p> <p>An overarching caveat of “without reasonable excuse or lawful authority” would provide assurances that the, where there is a reasonable excuse for non-compliance with the 5 knot safe zones exist, the restrictions would not apply.</p>		
<b>Kekeno/fur seals should be excluded</b>				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>No evidential basis to include all marine mammal species.</p> <p>Numbers of seals are increasing, so they don't need further protection.</p> <p>Including seals will cause practical operational and navigational issues as frequent harbours/marinas, wharves</p>	<p>Clear unambiguous restrictions are important for enforcement, addressing issues with MMPR.</p> <p>Vessel operators frequently misidentify marine mammal species, including seals.</p> <p>We need to avoid the transfer of</p>	<p>We agreed that seals should be retained within the proposal and that these concerns raised by submitters could be adequately addressed through other means.</p> <p>We considered the</p>	<p>No change to species included in MMS.</p> <p>Introduce an overarching caveat “without reasonable excuse or lawful authority” for the proposed restrictions.</p> <p>Introduce specific</p>	<p>Clear communications and education to bring everyone up to speed with the new MMS restrictions as quickly as possible. This work will need to be ongoing, and its effectiveness measured.</p> <p>Update the research and monitoring programme to bring it in line with the proposed changes.</p>

etc.  Concern that seals hauled out on rocks will be included.	vessel pressure from one marine mammal species to another.  Recovering populations require future-proofed management.  We acknowledge potential impacts on the practical operation of vessels around ports and anchorages.  The boundary of the MMS is the mean high water mark, so seals hauled out on the shore are outside the sanctuary. The proposed restrictions would not apply.  Guidelines will be developed to help vessel operators, swimmers, and divers interpret the restrictions, should a MMS be declared.	importance of supporting guidance regarding:  - seals above the high water mark being outside the proposed sanctuary - guidance for divers and the messaging around sticking to their dive plan and the exiting the water.  We considered exclusion areas in high traffic areas including port operations and landing areas.	exemptions for vessels restricted in their ability to manoeuvre; constrained by their draught; or over 500GT.  Modify boundary of MMS to remove marinas, wharfs, landings from the sanctuary area.  - Addresses ferry, port operations and landing issue - Provides protection in key areas whilst allowing ease of movement for vessels in high traffic areas	Ensure the effectiveness of the new restrictions can be monitored and assessed to support the 3 year review.  Ensure that seals are included in the above.
<b>It is problematic to exempt commercial operators with viewing permits from the requirements to keep 400m from marine mammals</b>				
Matters raised in submissions	Our response	Options for amendments	Proposed amendments	Implementation requirements

		<b>following public consultation</b>		
<p>Allowing commercial marine mammal viewing is contrary to the goals of MMS.</p> <p>Operators with viewing permits should not be exempt from MMS restrictions.</p> <p>Current permits should be revoked.</p> <p>The viewing fleet should have to operate in a manner that generates less noise.</p>	<p>Existing permits expire in 2022 and it is Te Papa Atawhai's advice that this will be the appropriate time to assess whether they should be allowed to continue.</p> <p>9(2)(h) [REDACTED]</p> <p>Permits were reviewed and substantially restricted in 2019 with additional conditions:</p> <ul style="list-style-type: none"> <li>• no swimming with bottlenose dolphins;</li> <li>• viewing of bottlenose for only 20 minutes a day and only in the afternoon; and</li> <li>• no interaction zones with bottlenose dolphins consistent with proposed</li> </ul>	<p>No variations considered</p>	<p>No change to proposal</p>	<p>Clear communications and education to bring everyone up to speed with the new MMS restrictions as quickly as possible. This work will need to be ongoing, and its effectiveness measured.</p> <p>Update the research and monitoring programme to bring it in line with the proposed changes. Ensure the effectiveness of the new restrictions can be monitored and assessed to support the 3 year review.</p>

	<p>safe zones</p> <p>We have put in place a moratorium on issuing new permits.</p>			
<b>Large scale on-and-in the water events such as sailing regattas and waka ama cultural flotillas may not be able to occur if MMS created</b>				
Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>The impracticality of running large water-based events in Te Pēwhairangi under proposed MMS.</p> <p>Changing the boundary of MMS (to exclude key areas) would enable large events to occur.</p> <p>Events should be exempt from MMS restrictions.</p>				

<b>More research is required</b>				
<b>Matters raised in submissions</b>	<b>Our response</b>	<b>Options for amendments following public consultation</b>	<b>Proposed amendments</b>	<b>Implementation requirements</b>
Queries about research relating to: <ul style="list-style-type: none"><li>- impact of underwater noise on marine mammals and level of noise in Te Pēwhairangi;</li><li>- interaction between cruise ships, other vessels and marine mammals;</li><li>- impact of environmental degradation (e.g., water quality) on marine mammals; and</li><li>- availability of food for marine mammals.</li></ul>	A wide range of research is underway in Te Pēwhairangi, wider New Zealand, and internationally to examine these issues.  Te Papa Atawahi will keep up to date with relevant research findings nationally and internationally and continue to support local research in line with Departmental responsibilities.  Regulations and MMS restrictions should adapt and be amended to reflect future developments in research nationally and internationally.	No variations considered	No change to proposal	
<b>Process of consultation was lacking</b>				

Matters raised in submissions	Our response	Options for amendments following public consultation	Proposed amendments	Implementation requirements
<p>Submitters felt excluded from consultation process, including:</p> <ul style="list-style-type: none"> <li>- some landowners neighbouring proposed safe zones; and</li> <li>- some members of marine science community.</li> </ul> <p>Concerns about messaging in public consultation document</p> <p>Request for review of science underpinning proposal.</p>	<p>Te Papa Atawhai acknowledges that particular stakeholder groups believed they should have been engaged with individually on the MMS proposal.</p> <p>We consulted widely on the proposal through a series of pre-statutory engagement (on-line and in-person events) and responded to enquiries from members of the public via email, phone and regular newsletters.</p> <p>Details of public engagement that Te Papa Atawhai undertook on the proposal is in <b>Attachment B</b>.</p>	<p>No variations considered</p>	<p>No change to proposal</p>	

## **ATTACHMENT E**

### **Key points raised in science submissions and Te Papa Atawhai's response**

#### **A note about those identifying as “science and research”**

1. All submissions identified as “science and research” have been treated as views expressed by those appropriately qualified although many of the submitters under this category did not provide an overview of their expertise and training in science and research.

#### **Problem definition**

#### ***Concerns raised***

2. Some submitters queried the characterisation of the problem that was communicated in the public consultation document. Specific concerns were raised about the following points:

- *Scientific communication products*  
Interpretation that the size of the bottlenose dolphin local population<sup>1</sup> in te Pēwhairangi is on a consistent downwards trajectory and may be “locally extinct by 2022”. Important data points may have been left out of figures portraying changes in the size of the local population over time
- *Management unit of the proposed marine mammal sanctuary / bottlenose dolphin local population definition*  
Managing te Pēwhairangi bottlenose dolphin local population separately from the rest of the North East coast population (biological management unit). Recent estimates of local population size, birth and calf mortality rates don't include the whole population
- *Peer review and publication*  
Use of data that hasn't gone through peer review and publication in the scientific literature (i.e. the TriOceans report) and that recent studies did not use robust methodology that was consistent with that of earlier studies. Recent estimates of local population size, birth and calf mortality rates may not be robust/reliable

#### ***Response and clarification:***

- *Scientific communication products*
3. The public consultation document and the associated communication materials were designed for a general public audience. Efforts were made to ensure the message was clear and concise. It is a fair assessment that the scientific base of evidence was simplified during this process, and in that process some nuance may have been lost. Whilst links to associated papers/reports/presentations were published online and linked from the [public consultation page](#), and details on the science/local population interpretation placed on the Department's website, not all submitters may have accessed them. In the consultation document the Department refers specifically to:

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<sup>1</sup> Technically this refers to individual dolphins visiting and utilising te Pēwhairangi waters (a local sub-population). The te Pēwhairangi bottlenose dolphins are part of a wider north eastern North Island population that is by all accounts in good shape/genetically robust, whilst still being scientifically investigated(Constantine 2002, Tezanos-Pinto et al. 2009, Tezanos-Pinto et al. 2013, Hamilton 2013, Peters & stockin 2016, TriOceans 2020).

- “There are multiple sub-populations of bottlenose dolphins in New Zealand waters. Te Pēwhairangi (Bay of Islands) sub-population is declining at a higher rate than any other sub-population in the country”
  - “There has been extensive study and research into the declining bottlenose dolphin local population in Te Pēwhairangi (Bay of Islands).”
  - “In Te Pēwhairangi (Bay of Islands), bottlenose dolphins spend on average 86% of daylight hours in the presence of at least one vessel. After interacting with people and vessels, the dolphins take up to 6 hours to return to normal behaviour.”
  - “The near-constant presence of people and vessels around bottlenose dolphins in Te Pēwhairangi (Bay of Islands) disrupts normal behaviours critical for survival, such as resting and feeding.”
  - “With decreasing numbers of bottlenose dolphins, other marine mammals visiting Te Pēwhairangi (Bay of Islands) now face the same pressures as the focus shifts to them.”
4. Whilst nuances may have been lost in the consultation document, the statements remain an appropriate summary of research findings for the management unit of the proposed marine mammal sanctuary. This is due to there being a documented high level of vessel interactions and critical behaviours being disrupted. This is in the context of a historical decline in bottlenose dolphin numbers and evidence that this is ongoing with only a small number of animals using the area.
- *Management unit of the proposed marine mammal sanctuary/bottlenose dolphin local population definition*
- Management unit*
5. The Department is tasked with the management, protection and conservation of marine mammals under the Marine Mammals Protection Act 1978 (MMPA, 1978), primarily achieved through the Marine Mammals Protection Regulations 1992 (MMPR, 1992). These tools can be applied at varying scales, from specific local populations/locations to genetically distinct populations or species as a whole. Management units provide an indication of the spatial scales at which the impacts of plans and projects (alone, cumulatively and in-combination) need to be assessed for the key marine mammal species in New Zealand waters. Throughout New Zealand, scientific studies and management have previously been applied to discrete areas of wider ranging genetic populations in order to address locally specific observations and threats with the greatest concern.
6. During a 2019 feasibility assessment for te Pēwhairangi (Bay of Islands), which considered a range of management tools available, it was identified that marine mammals visiting the local area face uniquely high levels of vessel disturbance, not seen in other areas. Te Pēwhairangi (Bay of Islands) marine mammal sanctuary proposal treats marine mammals in the geographical area as distinct management units separate from wider ranging populations of these species, due to unique local environmental pressures faced (high/persistent vessel interactions and poor compliance with current regulations). This remains the framework under which all advice on the proposal is considered.
- Bottlenose dolphin local population definition*
7. References throughout consultation materials to the bottlenose dolphin local population have been prioritised, as this is the most encountered species in te Pēwhairangi (Bay of Islands) and as such an indicator species for local habitat pressures. Defining te Pēwhairangi (Bay of Islands) as a management unit and referring to te Pēwhairangi (Bay of Islands) local population of bottlenose dolphins throughout consultation documents does not prevent them from also being part of a wider genetically connected population, nor does it mean they don't use areas outside of te Pēwhairangi (Bay of Islands). The

Department acknowledges the wider context is important when considering broader issues around the status of bottlenose dolphins across their full range. The context provided in the public consultation documents and associated communications was shortened intentionally, in order to focus on the area of interest.

8. Bottlenose dolphins visiting te Pēwhairangi (Bay of Islands) are of economic and cultural importance to the community. The Department's use of the term "local population" follows on from the use of this term in scientific literature for the area. A good example of the Department's description of the local population can be found [in MMS associated communications](#): "Around 450 bottlenose dolphin live in the North Island area, ranging from Doubtless Bay in Northland to Tauranga. Of these 450 we know 278 identifiable individuals used to visit the Bay of Islands, with multiple groups in a single day. However, the local Bay of Islands population has been consistently declining, with fewer individuals visiting every year. There are currently 26 identifiable individual dolphins visiting the Bay of Islands area." The department has compared only identifiable individuals (comparing like for like) from studies with comparable methodologies and effort taken to obtain these numbers, as summarised in the below table (Table 1):
  
9. *Table 1. Summary of photo-identification (photo-ID) effort conducted in te Pēwhairangi (Bay of Islands) using similar methodologies during 1997–1999, 2003–2006, 2012-2016 and 2017-2020 including surveys from an independent research vessel (IRV) and tour boats (TB).*

	1997-1999	2003-2006	2012-2016	2017-2020
Photo-ID Surveys	246 (TB and IRV)	205 (TB and IRV)	1,472 (TB & IRV)	232 (IRV only)
Type of survey	Opportunistic	Opportunistic	Systematic & Opportunistic	Systematic & Opportunistic
Survey span	Year round	Year round	Year round	Year round
Groups encountered	198	265	222	125
ID dolphins	278 <sup>2</sup>	159	96	26

10. However, use of the phrase "locally extinct" is arguably misleading from a western science perspective without providing additional context regarding the origin/scope of the term<sup>3</sup>. This phrase was first used by the science community in 2016 to describe the local population that would no longer function in the Bay of Islands if they continued to visit less and change their survival critical behaviours whilst in the area. The Department continued the use of this term as it was originally used.
  - *Peer review and publication*
  
11. The data that substantially supports the MMS proposal has all been peer reviewed or published (and is available online, including vessel impacts, behaviour change, calf mortality and local decline). The decision to proceed with the statutory process and public consultation was based on this peer reviewed and published data prior to receiving the TriOceans interim progress report in 2021. The TriOceans interim progress report is the only data that was used that has not yet been peer reviewed, it was included in the public interest of providing the latest information the Department had at hand. DOC does not

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<sup>2</sup> Tezanos-Pinto et al., 2013 document the number of individuals identified from the same survey period and effort as 256 after catalogue and identification review.

<sup>3</sup> Could be interpreted that dolphins are a discrete population that is facing extinction through mortality, rather than part of a wider population whose range has been reduced to exclude the Bay of Islands as key habitat.

normally peer review interim progress reports where a final report is a deliverable on the contract. Additionally, it only has updated context outputs included (e.g. 26 individuals, which builds from other data rather than providing novel findings) in the MMS proposal, therefore we do not view it as substantially supporting the proposal. That being said the one output included (identifiable individuals) was checked for protocol and human error before inclusion, ensuring consistency and confidence in its inclusion. The TriOceans full report on the multi-year study will be peer reviewed and submitted for publication on completion of the contract in 2022. This is already being prepared (as per contract objectives) to include abundance and population modelling. Feedback provided through the public submissions will be additionally considered for inclusion in the final report.

12. Regardless of modelling outcomes regarding the decline of this local population<sup>4</sup>, consensus remains and data indicates that bottlenose dolphins are seen less frequently and in smaller numbers in the bay than they have in the past, and environmental decline needs to be addressed<sup>5</sup>. This includes the frequency and nature of human/vessel interactions<sup>6</sup>, which has been shown to affect survival critical behaviours.

### **Scope of species included in MMS**

#### ***Concerns raised***

13. Submitters queried the scientific basis for including all marine mammals in the MMS proposal, when the majority of the scientific evidence presented in the consultation document is focused on bottlenose dolphins.

#### ***Response and clarification:***

14. A wide range of marine mammals visit te Pēwhairangi (Bay of Islands), including iconic and lesser known species of dolphins, whales and seals. This includes a number of threatened and at risk species. Several of these species are recovering in response to historical harvest pressure having been removed and/or displaced. The most continuous and longest data sets collected by western science relate to bottlenose dolphins, and they have certainly received the highest research focus in te Pēwhairangi (Bay of Islands). Data sets have been curated opportunistically by researchers on seals, dolphins and whales, although these are not as comprehensive as the bottlenose dolphin data sets. Hāpu and permitted marine mammal watch operators have noted changes marine mammal occurrence for several species in recent years<sup>7</sup>.
15. The main justification for including all marine mammals in the sanctuary proposal is that pressure from vessel traffic is not species specific and has been shown to affect a variety of species both nationally and internationally<sup>8</sup>.

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<sup>4</sup> displacement vs. mortality and low birth rates

<sup>5</sup> A broad category that could include for example wider ecosystem effects, and changes to the physical, acoustic and biological environment.

<sup>6</sup> "Recent work has shown that the number of dolphins using the Bay of Islands declined at a rate of 7.5% per annum between 1997 and 2006 (Tezanos-Pinto et al., 2013) and the population has not increased recently (Hamilton, 2013). Although the cause of this decline is of concern and remains unresolved, previous studies have documented effects on dolphin behaviour caused by the presence of recreational and commercial vessel activity in the Bay, in particular swim-with-dolphin tour vessels and swimmers (Constantine, 2001; Constantine et al., 2004)." Hartel et al. 2014 *Aquatic Conserv: Mar. Freshw. Ecosyst.*

<sup>7</sup> Interaction data from permitted trips

<sup>8</sup> Marley et al., 2017; Guerra et al., 2014; New et al., 2020; Lundquist et al., 2021; Currie et al., 2021; New et al., 2015; Jones et al., 2017

16. Additionally, local rangers report mis-identification of species by vessel operators occurring frequently, resulting in non-compliance with the MMPR. This includes multiple examples of operators confusing dolphins for seals, whales for dolphins and such like. It is imperative that the rules of the proposed MMS are enforceable and effective, to ensure long term protection for all marine mammals visiting te Pēwhairangi (Bay of Islands). One way to achieve this is by ensuring the rules apply to all species, eliminating the use of mis-identification of species as justification for not following the rules.

### **Efficacy of safe zones**

#### **Concerns raised**

17. Submitters expressed concern that there does not appear to be a strong scientific basis for the location, size and existence of the proposed marine mammal safe zones. There is not an obvious alignment between recent patterns of frequent dolphin activity and the proposed sites, and studies over time have shown that the dolphins change their patterns of use of parts of the Bay of Islands<sup>9</sup>, which implies that static management areas like the proposed safe zones may not be effective.

#### **Response and clarification:**

18. The rationale for the creation of safe zones is to provide large spaces in the bay where mammals are not at risk of being inadvertently disrupted by vessels in very close proximity (e.g. vessels travelling at speed through/over top of a group), and to provide a space where the underwater acoustic environment is quieter than the rest of the bay. These areas were selected due to a combination of high vessel interactions with marine mammals, habitat variety, practical considerations (such as vessel transit routes) and hapū recommendations on significant areas.
19. If the safe zones are established, monitoring of marine mammal use of these safe zones, and measurements of the underwater acoustic environment will continue. This monitoring will allow researchers to determine if safe zones become a more desirable habitat for marine mammals, and whether or not the new rules result in the safe zones having a quieter acoustic environment than other parts of the bay.

### **Inadequate hypothesis testing**

#### **Concerns raised**

20. Multiple submitters were not satisfied that science rigour had been applied to hypothesis forming and testing. They believe a number of other factors could be causing localised decline – e.g. environmental degradation, reduced food supply, etc. and to base the whole sanctuary on vessel interactions is likely not going to be effective as other factors will be having large contributions.

#### **Response and clarification:**

21. The Department has acknowledged the fact there may be many reasons for the localised decline and calf mortality detected in bottlenose dolphins, as noted in its communications

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<sup>9</sup> Hartel et al. 2014. Aquatic Conservation.

products i.e. through publicly available presentations. Vessel interactions are a known issue, but are unlikely to be the only one. The Department does not draw an exclusive or causal link. Consultation documents refer to behavioural changes in the context of a declining local population, with uniquely high vessel interactions affecting all marine mammals.

22. The Department acknowledges knowledge gaps in the scientific literature, particularly in cases where long-term data-sets would need to be collected to test hypotheses e.g environmental degradation and reduced food supply. The converse is true for evidence pertaining to vessel interaction effect, where the scientific rationale for managing this factor is extensive.
23. Vessel interactions are a stand-alone issue that cause detrimental impacts on marine mammals. Research has been undertaken throughout NZ and internationally that demonstrates negative outcomes for marine mammals due to intensive vessel interactions. For example, in New Zealand bottlenose dolphin research in Fiordland has identified changes in dive behaviour and habitat displacement (Lusseau 2003, 2004) as a result of tour activities, as well as changes in residency patterns (Lusseau 2005). For the North-East coast population, the local te Pēwhairangi (Bay of Islands) dolphins have shown similar changes, with reductions in resting in the presence of permitted vessels documented two decades ago (Constantine 2002). In 2016 a disruption in critical behaviours by all vessel types and increased sensitisation to vessel interactions was demonstrated (Peters & Stockin 2016). Any other environmental factors e.g. reduced fish stocks would not negate the identified issues of vessel interactions. Additionally, vessel interactions have the potential to negatively impact marine mammals' ability to cope with these other potential environmental factors. The Department has an obligation to ensure known issues are managed and local population effects are mitigated. That being said the Department is committed to ongoing monitoring and research to fill any current knowledge gaps and ensure any new findings are included as the cornerstones of the proposed 3 year review cycle.

### **Inadequate consultation with science community**

#### **Concerns raised**

24. Some submitters feel like they haven't been included in the process. They believe that the science and decision making has been inhouse in the Department and there is a reluctance to engage with the NZ marine mammal science community.

#### **Response and clarification:**

25. The Department's statutory process does not reflect a reluctance to engage with the NZ marine mammal science community. The scientific evidence that underpins the proposal has all been undertaken by the marine mammal science community (from several institutions) and recommendations provided to the Department. The Department has undertaken its role in compliance, advocacy and stakeholder feedback collation. The "pillars" of the proposal will continue to be assessed based on its foundations in western science, mātauranga Māori, and user perspectives/workability. Throughout the statutory process the science community has been included where possible whilst still seeking feedback from all stakeholders through public consultation submissions. Prior to public consultation the proposal was discussed in face-to-face meetings with Bay of Islands based scientific NGOs/organisations (including presentations at AGMs for members) and an online meeting hosted with the national marine mammal science community.

Additionally offers have been made to meet with key individuals, including some of those offering submissions critical of the process, but these have not been taken up to date.

26. On reflection, the Department could have developed a forum to hear scientific views at different stages of the process, though this would have needed to be considered in the statutory framework and would unlikely capture all marine mammal scientists in New Zealand. Scientists would still have been encouraged to capture their views in public consultation submissions, as has occurred through the current process.
27. The final advice paper has been prepared by two independent scientists (including considering all scientific submissions) and this has been additionally peer reviewed by a Departmental review panel that includes marine mammal scientists. The Department believe the process of engagement has been robust and extensive.

## **ATTACHMENT F**

### **Management Planning Review of the Proposed Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary**

#### **Purpose**

1. To provide an analysis of the statutory documents relevant to the amended proposal for a *Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary* (MMS) and to determine whether the proposed MMS and its associated restrictions are in accordance with these documents.

#### **Summary**

2. A marine mammal sanctuary is being proposed in Te Pēwhairangi (Bay of Islands) to protect marine mammals from high levels of human/vessel interactions.
3. The MMS is being proposed in accordance with the Marine Mammals Protection Act 1978, which requires that marine mammal sanctuaries are managed in accordance with statements of general policy and any conservation management strategy.
4. The statutory documents relevant to the proposed MMS are the Conservation General Policy 2005 and the Northland Conservation Management Strategy 2014.
5. The CGP and CMS do not preclude the establishment of the proposed MMS, or any of its associated restrictions, in Te Pēwhairangi (Bay of Islands). Moreover, these documents support increased protection of marine species and environments, and therefore the establishment of the proposed MMS aligns and is in accordance with the relevant statutory documents.
6. The MMS proposal has been co-developed with tangata whenua, and comprehensive engagement and consultation has occurred with stakeholders, the local community, marine mammal tourism operators and the public.

#### **Context**

7. The Minister of Conservation is proposing to declare a marine mammal sanctuary in Te Pēwhairangi (Bay of Islands).
8. The MMS is proposed under Section 22 of the Marine Mammals Protection Act 1978.
9. Section 3A of the MMPA states the Department of Conservation (the Department) must manage marine mammals and marine mammal sanctuaries in accordance with:
  - Statements of general policy
  - Any conservation management strategy
10. The MMS is being proposed in response to a declining bottlenose dolphin population in Te Pēwhairangi (Bay of Islands). This area has uniquely high levels of vessel interactions with marine mammals. As such, the remaining bottlenose dolphin population in Te Pēwhairangi (Bay of Islands) face a near-constant presence of people and vessels, which disrupts the dolphin's survival critical behaviour.
11. The MMS is made up of a number of proposed restrictions, which seek to provide better protection for all marine mammals in Te Pēwhairangi (Bay of Islands), including bottlenose dolphins. The proposed restrictions are as follows:
  - a. No person is allowed to be in the water within 300m of a marine mammal.

- b. Every vessel must be kept 300m away from any marine mammal, with the vessel being stopped if there is a marine mammal within 300m.
- c. Two marine mammal safe zones within the boundaries of the MMS where vessels are not allowed to travel above 5 knots.

Note a number of exemptions to the restrictions are proposed, including:

- i. certain types of vessels;
- ii. vessel activity as part of a registered organised event; and
- iii. vessels with existing marine mammal viewing permits.

12. Ngā hapū o te Pēwhairangi (hapū from the Bay of Islands) representatives and Department of Conservation representatives have co-designed the marine mammal sanctuary proposal through a joint project team.

### ***Relevant Statutory Documents***

13. The following two documents (and sections of the documents) are relevant to the MMS proposal:
- a. Conservation General Policy 2005
    - i. *Section 2 – Treaty of Waitangi Responsibilities*
    - ii. *Section 3 – Public Participation in Conservation Management*
    - iii. *Section 4.4 – Marine Species, Habitats and Ecosystems*
  - b. Northland Conservation Management Strategy 2014
    - i. Section 4.3 - Treaty of Waitangi Objectives
    - ii. Section 5.1 – Natural Heritage
    - iii. Section 11 – Bay of Islands Place
    - iv. Section 16.7 – Marine Mammal Viewing
14. The following assessment identifies the relevant provisions in these documents and whether the MMS proposal is in accordance with these documents.

### **Conservation General Policy 2005 (CGP)**

15. Section 4.4 of the CGP sets out policies for marine species, habitats and ecosystems, including the following policies which are relevant to the MMS proposal:
- 4.4.(e) The Department should work with other agencies and interests to promote and develop a marine protected areas network, including marine reserves, wildlife reserves, sanctuaries and other protective mechanisms.*
  - 4.4(f) Marine protected species should be managed for their long-term viability and recovery throughout their natural range.*
  - 4.4 (j) Human interactions with marine mammals and other marine protected species should be managed to avoid or minimise adverse effects on populations and individuals.*
  - 4.4(l) The Department should work with other agencies and interests to protect marine species.*

16. These policies provide a clear directive for the protection of marine mammals, specifically through the promotion and development of marine mammal sanctuaries. Policy 4.4(J) specifically identifies human interactions with marine mammals should be managed to avoid or minimise adverse effects on populations and individuals.
17. The MMS is proposed for the purpose of minimising adverse effects of human interactions on bottlenose dolphins in Te Pēwhairangi (Bay of Islands), with the

intention of managing the long-term viability and recovery of the local population (as well as providing protection to all other marine mammals in Te Pēwhairangi (Bay of Islands)).

18. The MMS proposal and its associated restrictions are considered to be aligned and in accordance with the CGP Section 4.4 policies.

19. Section 2 of the CGP outlines policies in relation to meeting Treaty of Waitangi responsibilities, including:

*2(e) Tangata whenua will be consulted on specific proposals that involve places or resources of spiritual or historical or cultural significance to them.*

*2(f) Tangata whenua involvement and participation in conservation on public conservation lands and waters will be encouraged and may be supported with information and technical advice.*

20. The Department has worked closely with Ngā hapū o te Pēwhairangi on the MMS proposal, through co-designing the MMS proposal as a joint project team. Should the MMS be declared, co-management of the MMS is also proposed.

21. The MMS proposal is considered to be in accordance with these CGP Section 2 policies. (Also see the broader assessment of the MMS Treaty of Waitangi considerations, which is attached to the MMS Departmental Advice).

22. In Section 3, the CGP also promotes the importance of public participation in conservation management, including:

*3(e) People and organisations interested in public conservation lands and waters should be consulted on specific proposals that have significance for them.*

23. Public consultation on the MMS proposal was undertaken, with feedback on the MMS proposal being sought for a period of 28 days (in accordance with the MMPA). This consultation occurred in addition to pre-consultation engagement with stakeholders and the local community.

24. The MMS proposal is considered to be in accordance with this CGP Section 3 policy. (Also see the broader assessment of the MMS proposal public engagement process, which is attached to the MMS Departmental Advice).

#### **Northland Conservation Management Strategy 2014 (CMS)**

25. The proposed MMS falls within the area of the Northland CMS. The CMS provides an overview of conservation issues and gives direction for the management of public conservation lands and waters, and species for which the Department has responsibility.

26. Descriptive text in Section 3.5 describes Northland as having the greatest marine biodiversity in New Zealand, then goes on to identify that marine environments in the region have limited protection.

27. The relevant CMS policies, objectives and outcomes for the MMS proposal are outlined as follows.

### **Section 4.3 - Treaty of Waitangi Objectives**

28. Objectives 3 and 5 cover the requirements for actively consulting and engaging with tangata whenua.
  - (3) *Actively consult and work with tangata whenua, ensuring consultation is early, ongoing, informed and effective.*
  - (5) *Encourage tangata whenua involvement and participation in conservation management on public conservation lands and waters.*
29. As outlined in the CGP section above, the Department is working closely with Ngā hapū o te Pēwhairangi on the MMS proposal and as such, the MMS proposal is considered to be in accordance with these objectives. (Also see the broader assessment of the MMS Treaty of Waitangi considerations, which is attached to the MMS Departmental Advice).

### **Section 5.1 – Natural Heritage**

30. Section 5.1 outlines the objectives for natural heritage within the Northland region. The following objective is relevant to the MMS proposal:

*(5.1.1.5) Engage in collaborative processes to build a nationally representative network of marine reserves and other marine protected areas, taking into account the marine ecosystems listed in Appendix 8.*
31. Appendix 8 acknowledges there is a semi-resident bottlenose dolphin population in Te Pēwhairangi (Bay of Islands).
32. The MMS proposal seeks to provide a protected marine area for marine mammals and has arisen out of a collaborative process with tangata whenua and in consultation with stakeholders and the public. The MMS proposal is therefore considered to be aligned and in accordance with this objective.

### **Section 11 – Bay of Islands Place**

33. Map 5.6 (in Volume 2 of the CMS) shows the area proposed for the MMS is within the ‘Bay of Islands Place’. The CMS describes this Place as having very high marine values, with marine protection being a long-term challenge for biodiversity. It notes the presence of a number of marine mammals, including bottlenose dolphins, common dolphins, New Zealand fur seals and whales, and identifies community-driven initiative for protected marine areas in Te Pēwhairangi (Bay of Islands).
34. The CMS goes on to describe Te Pēwhairangi (Bay of Islands) as one of the most popular tourism destinations in New Zealand, with the sheltered bays offering a year-round haven for boats. Visitors to Te Pēwhairangi (Bay of Islands) include an international fleet gathering annually, boating visitors from Auckland and further afield, along with an increasing number of large cruise ships stopping over during summer months. Several local tourism operators offer marine mammal viewing within Te Pēwhairangi (Bay of Islands).
35. Sub-section 11.2.1 details the outcomes for ‘Bay of Islands Place’. The outcomes of relevance to the MMS proposal are as follows:

*The Department, and commercial and tourism operators are working with communities, including tangata whenua and others, to protect, enhance and*

*showcase the Bay of Islands' attractive coastal setting, including its threatened species, marine mammals and natural habitats. Its historic and cultural sites associated with early New Zealand history are protected, respected and understood.*

*The marine environment is protected by a tangata whenua and community initiative across a range of habitats.*

36. Sub-section 11.2.2 details the policies for 'Bay of Islands Place'. The following policy is relevant to the MMS proposal:

*(11.2.2.1) Actively engage with tangata whenua and the community in conservation management of the Bay of Islands and the Kerikeri area by:*

- a) encouraging participation and planning input into ecological restoration work, including pest control, on public conservation lands and waters; and*
- b) encouraging participation in the protection, promotion and interpretation of places of historic and cultural significance.*

37. As previously discussed, the Department has worked closely with tangata whenua, stakeholders, local community and the public to develop a MMS proposal which seeks to protect marine mammals within Te Pēwhairangi (Bay of Islands). Therefore, the MMS proposal is considered to be in accordance with the relevant outcomes and policy for 'Bay of Islands Place'.

## **Section 16.7 – Marine Mammal Viewing**

38. The CMS identifies that marine mammal tourism research (carried out in Northland since 1994) has conclusively demonstrated that marine mammal tourism impacts on bottlenose dolphins, with the amount of resting behaviour decreasing in the presence of marine mammal tourism vessels.

39. The CMS goes on to describe that as this could lead to long-term detrimental effects on the dolphins at a population level, the Department has implemented measures to limit the interaction of marine mammal tourism vessels with bottlenose dolphins, including introducing (and subsequently extending) a moratorium on the issuing of any new permits for the interaction with whales and dolphins in Northland.

40. It should also be noted that since the CMS became operative, the ability to swim with marine mammals has been removed from all marine mammal viewing permits.

41. Policy 16.7.1.1 outlines the desire for continued research and monitoring of the impacts of human interactions with marine mammals.

*(16.7.1.1) Support research into and require monitoring of the impacts of human interactions with marine mammals.*

42. Policies 16.7.1.2 – 16.7.1.5 direct taking a precautionary approach to the number of marine mammal viewing commercial operators and reviewing the management of marine mammal viewing within Te Pēwhairangi (Bay of Islands).

*(16.7.1.2) Take a precautionary approach to the number of commercial operators involved in marine mammal operations, including seeking a moratorium on the issuing of new permits if research and monitoring indicates that such a step is required.*

*(16.7.1.3) Ensure all commercial operators viewing marine mammals are authorised to undertake that activity, and that they understand their responsibilities under marine mammal protection legislation and regulations.*

*(16.7.1.4) Require commercial operators viewing marine mammals to provide a high standard of education and interpretation.*

*(16.7.1.5) Review at regular intervals, and implement, a marine mammal tourism site plan for Northland, which sets out desired objectives for management of the marine mammal tourism industry.*

43. The MMS proposal has arisen from research indicating that regular interactions with humans/vessels are adversely affecting the Te Pēwhairangi (Bay of Islands) bottlenose dolphin population. The MMS is considered to align and be in accordance with the CMS policies relating to marine mammal viewing. The MMS also compliments the existing actions that have been put in place to manage marine mammal tourism within Te Pēwhairangi (Bay of Islands).

### **Conclusion**

44. The CGP and CMS do not preclude the establishment of the proposed MMS, or any of its associated restrictions, in Te Pēwhairangi (Bay of Islands). Moreover, these documents support increased protection of marine species and environments, and therefore the establishment of the proposed MMS aligns and is in accordance with the relevant statutory documents.
45. The MMS proposal has been co-developed with tangata whenua, and comprehensive engagement and consultation has occurred with stakeholders, the local community, marine mammal tourism operators and the public.
46. It is noted that the proposed MMS is not currently referenced in the CMS. Should the MMS be declared, future versions of the Northland Conservation Management Strategy will undoubtedly acknowledge the MMS and include management directives for the MMS.

DOC-6730613

## **ATTACHMENT G**

### **PROPOSED LETTER TO THE MINISTER OF ENERGY AND RESOURCES SEEKING CONSENT TO THE MARINE MAMMAL SANCTUARY**

Hon. Dr Megan Woods  
Minister of Energy and Resources

Dear Megan

#### **Request for your consent to establish Te Pēwhairangi Marine Mammal Sanctuary**

On 20 April 2021, the Acting Minister of Conservation, Dr Ayesha Verrall, notified her intention in the New Zealand Gazette, to establish a marine mammal sanctuary (**MMS**) in the coastal waters of Te Pēwhairangi / Bay of Islands under section 22 of the Marine Mammals Protection Act 1978 (**MMPA**). The MMS was proposed to address the declining bottlenose dolphin population in Te Pēwhairangi, where uniquely high levels of vessel interactions are affecting all marine mammals.

The proposed MMS covered all marine mammal species, and included the following proposed restrictions:

- a prohibition on people being in the water within 400m of a marine mammal;
- a speed restriction of 5 knots within two designated marine mammal safe zones; and
- a requirement for every vessel operator within the sanctuary to keep 400m from any marine mammal and to use all reasonable means to stop if a marine mammal moves within 400m of their vessel.

The 28-day statutory consultation period concluded on 18 May 2021. Following this, I have received advice from the Department of Conservation and considered submissions received during the consultation period, including those from whānau, hapū or iwi who exercise kaitiakitanga in the proposed sanctuary area.

In accordance with the framework for my decision making under section 22 of the MMPA, I have agreed, subject to your consent and the consent of the Minister of Oceans and Fisheries, to declare the MMS, with the following amendments to what was notified on 20 April 2021:

- reducing the 400m minimum distance for people in the water and vessels to stay away from marine mammals to 300m (the “approach distance”);
- altering the boundaries of the proposed MMS to exclude key harbours, ports, landings and anchorages from the proposed MMS;
- providing an explicit caveat to the restrictions, being “lawful authority or reasonable excuse”. Proposed exemptions will be described in a non-exhaustive list of what is considered a “lawful authority or reasonable excuse”;
- providing additional specific exemptions for:
  - a. vessels restricted in their ability to manoeuvre; constrained by their draught; or over 500GT;

- b. any vessel or person actively participating in and registered in an organised event that has the prior approval of the Department of Conservation; and
- c. any person undertaking an aquaculture activity in the intertidal zone; and
- removing wording around using ‘reasonable means’ to stop vessels if a marine mammal is within the approach distance, thereby removing ambiguity in the application of this restriction.
- A copy of the proposed Gazette notice is at **Attachment A**.

In accordance with section 22(2) of the MMPA, you are required to provide your consent to establish an MMS under the MMPA.

If you consent to this MMS proposal, I have attached a letter (**Attachment B**) for you to sign and return to me, indicating your consent to the declaration of Te Pēwhairangi Marine Mammal Sanctuary.

If you, and the Minister of Oceans and Fisheries consent to the proposed MMS, the proposed Gazette notice will then be published in the New Zealand Gazette. The MMS will come into effect 28 days later.

In order to have the MMS in place before Christmas holidays, should you consent, I request your response by 12 November 2021.

Yours sincerely,



Hon. Kiritapu Allan

**Minister of Conservation**

**PROPOSED RESPONSE FROM THE MINISTER OF ENERGY AND RESOURCES  
PROVIDING CONSENT TO THE MARINE MAMMAL SANCTUARY**

**ATTACHMENT B**

**Consent to Minister of Conservation to establish Te Pēwhairangi Marine Mammal Sanctuary**

I have been briefed on the Minister of Conservation's proposal to establish a marine mammal sanctuary to protect bottlenose dolphins and all marine mammals in Te Pēwhairangi / Bay of Islands.

As the Minister of Energy and Resources, and pursuant to section 22(2) of the Marine Mammals Protection Act 1978, I give my consent to the Minister of Conservation to declare Te Pēwhairangi Marine Mammal Sanctuary in accordance with the proposed Gazette notice in **Attachment A**, and for the Gazette notice to be published in the New Zealand Gazette to legally declare the proposed marine mammal sanctuary.

Hon. Dr Megan Woods

Minister of Energy and Resources

**PROPOSED LETTER TO THE MINISTER OF OCEANS AND FISHERIES SEEKING  
CONSENT TO THE MARINE MAMMAL SANCTUARY**

Hon. David Parker  
Minister of Oceans and Fisheries

Dear David

**Request for your consent to establish Te Pēwhairangi Marine Mammal Sanctuary**

On 20 April 2021, the Acting Minister of Conservation, Dr Ayesha Verrall, notified her intention in the New Zealand Gazette, to establish a marine mammal sanctuary (**MMS**) in coastal waters of Te Pēwhairangi / Bay of Islands under section 22 of the Marine Mammals Protection Act 1978 (**MMPA**). The MMS was proposed to address the declining bottlenose dolphin population in Te Pēwhairangi, where uniquely high levels of vessel interactions are affecting all marine mammals.

The proposed MMS covered all marine mammal species, and included the following proposed restrictions:

- a prohibition on people being in the water within 400m of a marine mammal;
- a speed restriction of 5 knots within two designated marine mammal safe zones; and
- a requirement for every vessel operator within the sanctuary to keep 400m from any marine mammal and to use all reasonable means to stop if a marine mammal moves within 400m of their vessel.

The 28-day statutory consultation period concluded on 18 May 2021. Following this, I have received advice from the Department of Conservation and considered submissions received during the consultation period, including those from whānau, hapū or iwi who exercise kaitiakitanga in the proposed sanctuary area.

In accordance with the framework for my decision making under section 22 of the MMPA, I have agreed, subject to your consent and the consent of the Minister of Energy and Resources, to declare the MMS, with the following amendments to what was notified on 20 April 2021:

- reducing the 400m minimum distance for people in the water and vessels to stay away from marine mammals to 300m (the “approach distance”);
- altering the boundaries of the proposed MMS to exclude key harbours, ports, landings and anchorages from the proposed MMS;
- providing an explicit caveat to the restrictions, being “lawful authority or reasonable excuse”. Proposed exemptions will be described in a non-exhaustive list of what is considered a “lawful authority or reasonable excuse”;
- providing additional specific exemptions for:
  - a. vessels restricted in their ability to manoeuvre; constrained by their draught; or over 500GT; and

- b. any vessel or person actively participating in and registered in an organised event that has the prior approval of the Department of Conservation; and
  - c. any person undertaking an aquaculture activity in the intertidal zone; and
- removing wording around using ‘reasonable means’ to stop vessels if a marine mammal is within the approach distance, thereby removing ambiguity in the application of this restriction.

A copy of the proposed Gazette notice is at **Attachment A**.

In accordance with section 22(2) of the MMPA, you are required to provide your consent to establish an MMS under the MMPA.

If you consent to this MMS proposal, I have attached a letter (**Attachment B**) for you to sign and return to me, indicating your consent to the declaration of Te Pēwhairangi Marine Mammal Sanctuary.

If you, and the Minister of Energy and Resources consent to the proposed MMS, the proposed Gazette notice will then be published in the New Zealand Gazette. The MMS will come into effect 28 days later.

In order to have the MMS in place before Christmas holidays, should you consent, I request your response by 12 November 2021.

Yours sincerely,



Hon. Kiritapu Allan

**Minister of Conservation**

**PROPOSED RESPONSE FROM THE MINISTER OF OCEANS AND FISHERIES  
PROVIDING CONSENT TO THE MARINE MAMMAL SANCTUARY**

**ATTACHMENT B**

**Consent to Minister of Conservation to establish Te Pēwhairangi Marine Mammal Sanctuary**

I have been briefed on the Minister of Conservation's proposal to establish a marine mammal sanctuary to protect bottlenose dolphins and all marine mammals in Te Pēwhairangi / Bay of Islands.

As the Minister of Oceans and Fisheries, and pursuant to section 22(2) of the Marine Mammals Protection Act 1978, I give my consent to the Minister of Conservation to declare Te Pēwhairangi Marine Mammal Sanctuary in accordance with the proposed Gazette notice in **Attachment A**, and for the Gazette notice to be published in the New Zealand Gazette to legally declare the proposed marine mammal sanctuary.

Hon. David Parker

Minister of Oceans and Fisheries

**PROPOSED LETTER TO THE MINISTER OF TRANSPORT, FOR INFORMATION ONLY.**

Hon. Michael Wood

Minister of Transport

Dear Michael

**Informing you of my intent to establish a Te Pēwhairangi Marine Mammal Sanctuary**

On 20 April 2021, the Acting Minister of Conservation, Dr Ayesha Verrall, notified her intention in the New Zealand Gazette, to establish a marine mammal sanctuary (**MMS**) in the coastal waters of Te Pēwhairangi / Bay of Islands under section 22 of the Marine Mammals Protection Act 1978 (**MMPA**). The MMS was proposed to address the declining bottlenose dolphin population in Te Pēwhairangi, where uniquely high levels of vessel interactions are affecting all marine mammals.

The proposed MMS covered all marine mammal species, and included the following proposed restrictions:

- a prohibition on people being in the water within 400m of a marine mammal;
- a speed restriction of 5 knots within two designated marine mammal safe zones; and
- a requirement for every vessel operator within the sanctuary to keep 400m from any marine mammal and to use all reasonable means to stop if a marine mammal moves within 400m of their vessel.

The 28-day statutory consultation period concluded on 18 May 2021. Following this, I have received advice from the Department of Conservation and considered submissions received during the consultation period, including those from whānau, hapū or iwi who exercise kaitiakitanga in the proposed sanctuary area.

In accordance with the framework for my decision making under section 22 of the MMPA, I have agreed to declare the MMS with the following amendments to what was notified on 20 April 2021:

- reducing the 400m minimum distance for people in the water and vessels to stay away from marine mammals to 300m (the “approach distance”);
- altering the boundaries of the proposed MMS to exclude key harbours, ports, landings and anchorages from the proposed MMS;
- providing an explicit caveat to the restrictions, being “lawful authority or reasonable excuse”. Proposed exemptions will be described in a non-exhaustive list of what is considered a “lawful authority or reasonable excuse”;
- providing additional specific exemptions for:
  - a. vessels restricted in their ability to manoeuvre; constrained by their draught; or over 500GT;
  - b. any vessel or person actively participating in and registered in an organised event that has the prior approval of the Department of Conservation; and
  - c. any person undertaking an aquaculture activity in the intertidal zone; and

- removing wording around using ‘reasonable means’ to stop vessels if a marine mammal is within the approach distance, thereby removing ambiguity in the application of this restriction.
- A copy of the proposed Gazette notice is at **Attachment A**.

In accordance with section 22(2) of the MMPA, before declaring a MMS, I am required to seek the consent of any other Minister of the Crown who has the control of any Crown-owned land, foreshore, seabed, or waters of the sea proposed to be a MMS. I have therefore sent letters requesting consent to the Minister of Oceans and Fisheries and Energy and Resources.

I am providing you with this notice, for your information.

Yours sincerely,



Hon. Kiritapu Allan

**Minister of Conservation**

# Marine Mammals Protection (Te Pēwhairangi (Bay of Islands) Sanctuary) Notice 2021

Pursuant to [section 22](#) of the Marine Mammals Protection Act 1978, the Minister of Conservation gives the following notice, and the Minister of Energy and Resources, and the Minister for Oceans and Fisheries consent to the declaration in [clause 4](#).

## Contents

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- [1 Title](#)
- [2 Commencement](#)
- [3 Interpretation](#)
- [4 Places defined and declared to be marine mammal sanctuary and marine mammal safe zones](#)
- [5 Restrictions in the marine mammal sanctuary and marine mammal safe zones](#)

### Schedule 1

#### Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary

##### Schedule 1A

#### Te Pēwhairangi (Bay of Islands) Marine Mammal Safe Zones

##### Schedule 2

#### Map of Marine Mammal Sanctuary and Marine Mammal Safe Zones

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## Notice

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### 1 Title

This notice is the Marine Mammals Protection (Te Pēwhairangi (Bay of Islands) Sanctuary) Notice 2021.

### 2 Commencement

This notice comes into force on the 28th day after the date of its notification in the *Gazette*.

### 3 Interpretation

(1) In this notice, unless the context otherwise requires,—

**marine mammal safe zone** has the meaning in clause 4(4) of this Notice.

**Marine mammal sanctuary** has the meaning in clause 4(2) of this Notice.

**internal waters** has the meaning given by [section 4](#) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

**Vessel** means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes:

- (a) a barge, lighter, or other like vessel;
  - (b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
  - (c) a submarine or other submersible;
  - (d) a seaplane while it is on the surface of the water.
- (2) All co-ordinates stated in this notice are expressed in accordance with the World Geodetic System (WGS 84).

## **4 Places defined and declared to be marine mammal sanctuary and marine mammal safe zones**

- (1) All the place described in **Schedule 1** is defined for the purpose of subclause (2).
- (2) The place defined by subclause (1) is a marine mammal sanctuary, to be called Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary.
- (3) All the places described in **Schedule 1A** are defined for the purpose of subclause (4).
- (4) The places defined by subclause (3) are marine mammal safe zones, situated within the marine mammal sanctuary.
- (5) A map of the marine mammal sanctuary and marine mammal safe zones is set out in **Schedule 2**.
- (6) The map set out in **Schedule 2** is indicative only. If there is a conflict between it (or the maps of the marine mammal sanctuary provided by the Department of Conservation) and the verbal description in each of **Schedules 1 and 1A**, the verbal description prevails.

## **5 Restrictions in the marine mammal sanctuary and marine mammal safe zones**

- (1) Every person commits an offence who, without lawful authority or reasonable excuse, is in the water within 300m of any marine mammal in the marine mammal sanctuary, including marine mammal safe zones.
- (2) Every person in charge of a vessel commits an offence who, without lawful authority or reasonable excuse, fails to ensure their vessel:
  - (a) maintains a minimum 300m distance from any marine mammal in the marine mammal sanctuary, including marine mammal safe zones; and
  - (b) stops if the person in charge becomes aware of any marine mammal less than 300m distance in the marine mammal sanctuary, including marine mammal safe zones; and
  - (c) remains stopped until any marine mammal is more than 300m away in the marine mammal sanctuary, including marine mammal safe zones.

- (3) Every person in charge of a vessel commits an offence who, without lawful authority or reasonable excuse, fails to ensure their vessel travels at 5 knots or slower while in a marine mammal safe zone.
- (4) For the purposes of this Notice, a person with “lawful authority or reasonable excuse” includes:
  - (a) any person involved in a maritime emergency or undertaking a maritime emergency role;
  - (b) any person in charge of a vessel that is restricted in its ability to manoeuvre and exhibiting the appropriate signals;
  - (c) any person in charge of a vessel greater than 500GRT;
  - (d) any person not able to comply due to an imminent or serious threat to person or property;
  - (e) any person undertaking research permitted under the Marine Mammals Protection Act 1978;
  - (f) any person undertaking a compliance role (including the Department of Conservation under the Marine Mammals Protection Act 1978, Maritime Police, Customs, Ministry for Primary Industries, Northland Regional Council);
  - (g) any person in charge of, or crew on board of, a Harbourmaster vessel;
  - (h) any person in charge of, or crew on board of, a Navy vessel;
  - (i) any person in charge of, or crew on board of, a vessel; or any person in the water; actively participating in and registered in an organised event which has the prior approval of the Department of Conservation; and
  - (j) Any person in the water undertaking a lawfully established aquaculture activity between mean low and high water springs.
- (5) Any person in charge of a vessel with an existing marine mammal viewing permit under the Marine Mammals Protection Act 1978 is exempt from subclause (2).

**Schedule 1**  
**Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary**

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All the areas of the sea enclosed by a line—

- a) commencing at a point on the mean high-water mark at Cape Wiwiki (approximately  $174^{\circ} 8.210'$  E,  $35^{\circ} 9.383'$  S) and running in a straight line in an easterly direction towards a point off Cape Brett Lighthouse (approximately  $174^{\circ} 19.681'$  E,  $35^{\circ} 10.166'$  S), then running in a southerly direction to the closest point at mean high water springs to the south of Cape Brett (approximately  $174^{\circ} 19.675'$  E,  $35^{\circ} 10.483'$  S); then
- b) proceeding along the line of mean high water springs around the shore of Te Pēwhairangi (Bay of Islands) to the point of commencement;
- c) including all the areas of the sea contained in the internal waters within the west to east extent of the marine mammal sanctuary between a point at South Cape Brett (approximately  $174^{\circ} 19.675'$  E,  $35^{\circ} 10.483'$  S); and Cape Wiwiki (approximately  $174^{\circ} 8.210'$  E,  $35^{\circ} 9.383'$  S) (Bay of Islands Harbour limits),

**other than:**

- i. Kororareka/Tahapuke Bays area bounded by mean high water springs and commencing at a point approx.  $174^{\circ} 6.810'$  E,  $35^{\circ} 15.546'$  S (South of Kororareka Point) and running in a straight line in a south-easterly direction to approx.  $174^{\circ} 7.271'$  E,  $35^{\circ} 15.991'$  S (Tahapuke Bay southern point);
- ii. Matauwhi Bay area bounded by mean high water springs and commencing at a point approximately  $174^{\circ} 7.434'$  E,  $35^{\circ} 16.189'$  S and running in a straight line in a south-easterly direction at approximately  $174^{\circ} 7.791'$  E,  $35^{\circ} 16.509'$  S;
- iii. Opua area bounded by mean high water springs and four limits being:
  - i. approximately  $174^{\circ} 6.953'$  E,  $35^{\circ} 18.205'$  S (Okiato Point) and running in a straight line in a generally southerly direction to approximately  $174^{\circ} 6.899'$  E,  $35^{\circ} 18.509'$  S;
  - ii. approximately  $174^{\circ} 6.859'$  E,  $35^{\circ} 19.335'$  S (southwest of Opua boatyard) and running in a straight line in an easterly direction to approximately  $174^{\circ} 7.378'$  E,  $35^{\circ} 19.330'$  S;
  - iii. approximately  $174^{\circ} 7.888'$  E,  $35^{\circ} 18.958'$  S and running in a straight line in a northerly direction to approximately  $174^{\circ} 7.836'$  E,  $35^{\circ} 18.842'$  S (southern side of Motutokape Island); and

- iv. approximately  $174^{\circ} 7.844'$  E,  $35^{\circ} 18.830'$  S (northern side of Motutokape Island) and running in a straight line in a north-easterly direction to approximately  $174^{\circ} 8.143'$  E,  $35^{\circ} 18.461'$  S.
- iv. Paihia area bounded by mean high water springs and three limits being:
  - i. approximately  $174^{\circ} 5.615'$  E,  $35^{\circ} 16.917'$  S (Paihia helipad) and running in a straight line in a north-easterly direction to approximately  $174^{\circ} 5.857'$  E,  $35^{\circ} 16.675'$  S (Taylor Island);
  - ii. approximately  $174^{\circ} 5.845'$  E,  $35^{\circ} 16.643'$  S (Taylor Island) and running in a straight line in a north-westerly direction to approximately  $174^{\circ} 5.729'$  E,  $35^{\circ} 16.565'$  S (Motumaire Island); and
  - iii. approximately  $174^{\circ} 5.603'$  E,  $35^{\circ} 16.575'$  S (Motumaire Island) and running in a straight line in a generally south-westerly direction to approximately  $174^{\circ} 5.378'$  E,  $35^{\circ} 16.709'$  S (Nihinui Point).
- v. Doves Bay and Opito Bay area, bounded by mean high water springs and commencing at a point approximately  $174^{\circ} 1.985'$  E,  $35^{\circ} 11.783'$  S (Doves Bay) and running in a straight line in an easterly direction to approximately  $174^{\circ} 2.631'$  E,  $35^{\circ} 11.765'$  S (Tikorangi Island).

**Schedule 1A**  
**Te Pēwhairangi (Bay of Islands) Marine Mammal Safe Zones**

cl. 3  
and 4(1)

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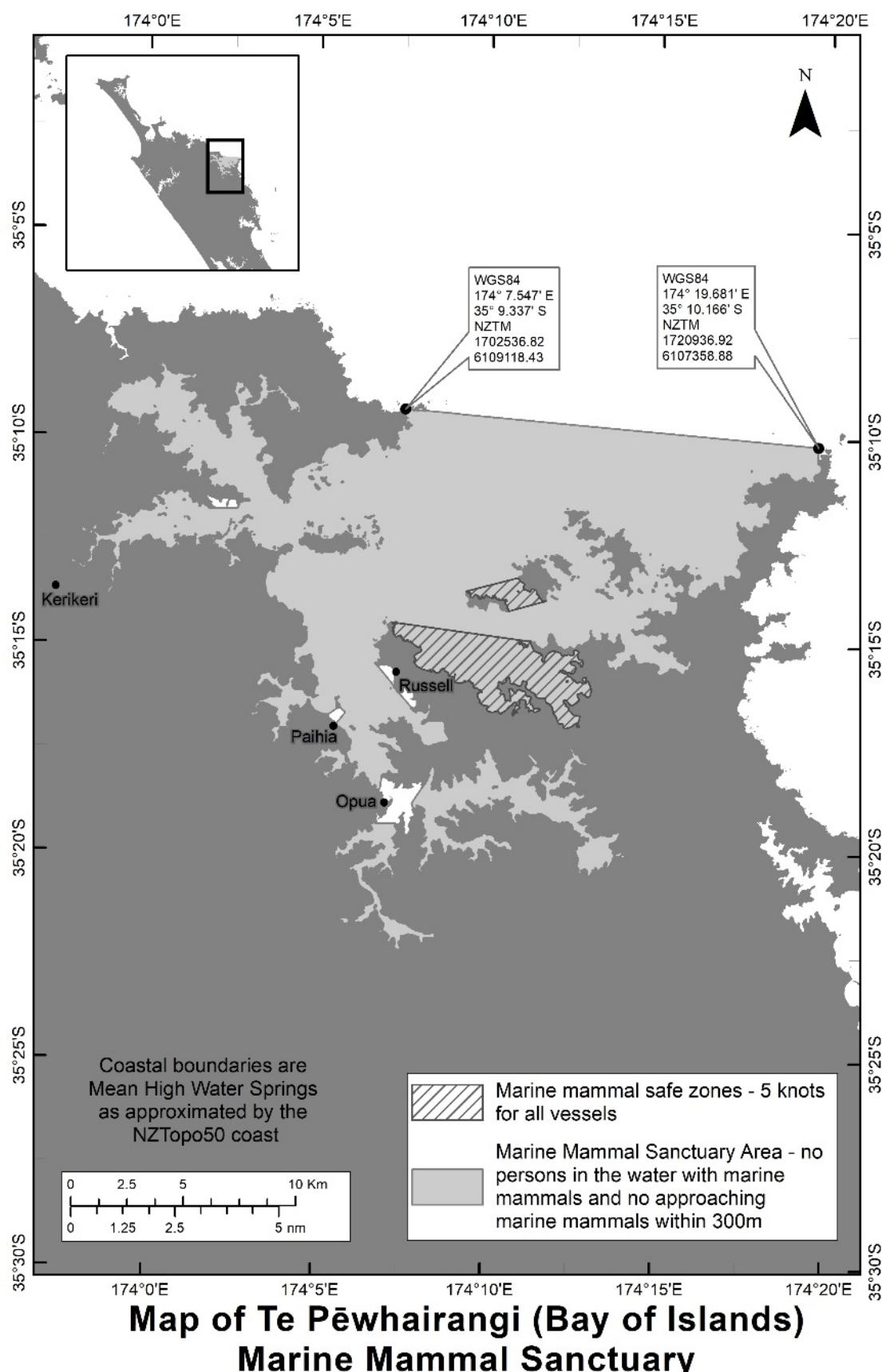
Within the marine mammal sanctuary are two **Marine Mammal Safe Zones** with the following outward facing boundaries in the sea area:

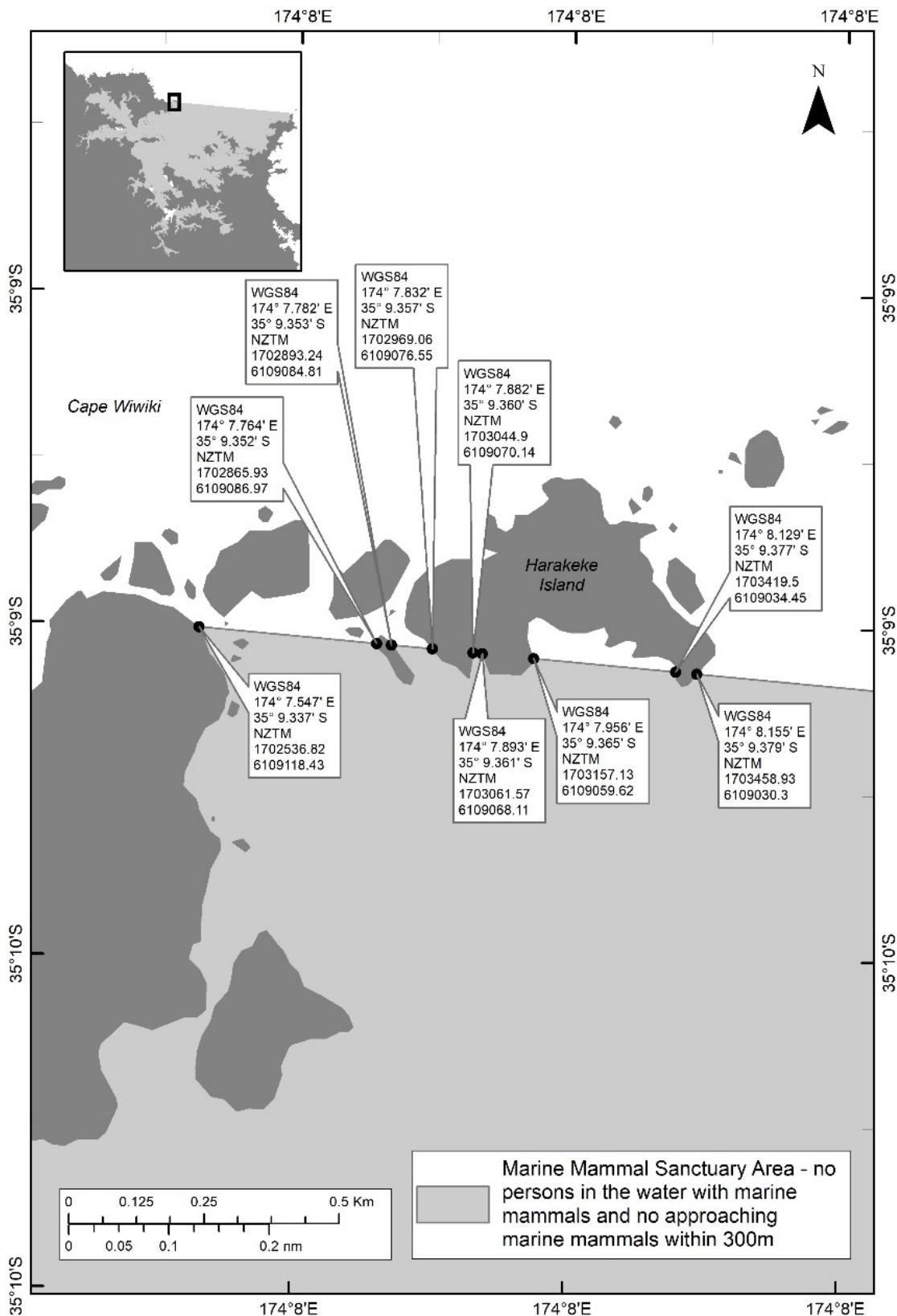
- (a) The first zone being between Motuarohia Island (Roberton Island) and Moturua Island, following mean high water springs and bound by two limits:
  - a. commencing at approximately  $174^{\circ} 9.384'$  E,  $35^{\circ} 13.716'$  S (norther point of Motuarohia Island) running in a straight line in a generally easterly direction to approximately  $174^{\circ} 10.907'$  E,  $35^{\circ} 13.380'$  S (southern point of Mangahawea Bay on Moturua Island); and

- b. commencing at approximately 174° 11.726' E, 35° 13.932' S (Pupuha Point, southern Moturua Island) running in a straight line in a generally westerly direction to approximately 174° 10.631' E, 35° 14.181' S (southeaster point of Motuarohia Island);
- (b) The second zone being sea area between Tapeka Point and Whangaiwahine Point following mean high water springs and bound from approximately 174° 7.200' E, 35° 14.479' S (Tapeka Point) running in a straight line in an easterly direction to approximately 174° 11.276' E, 35° 14.908' S (Whangaiwahine Point).
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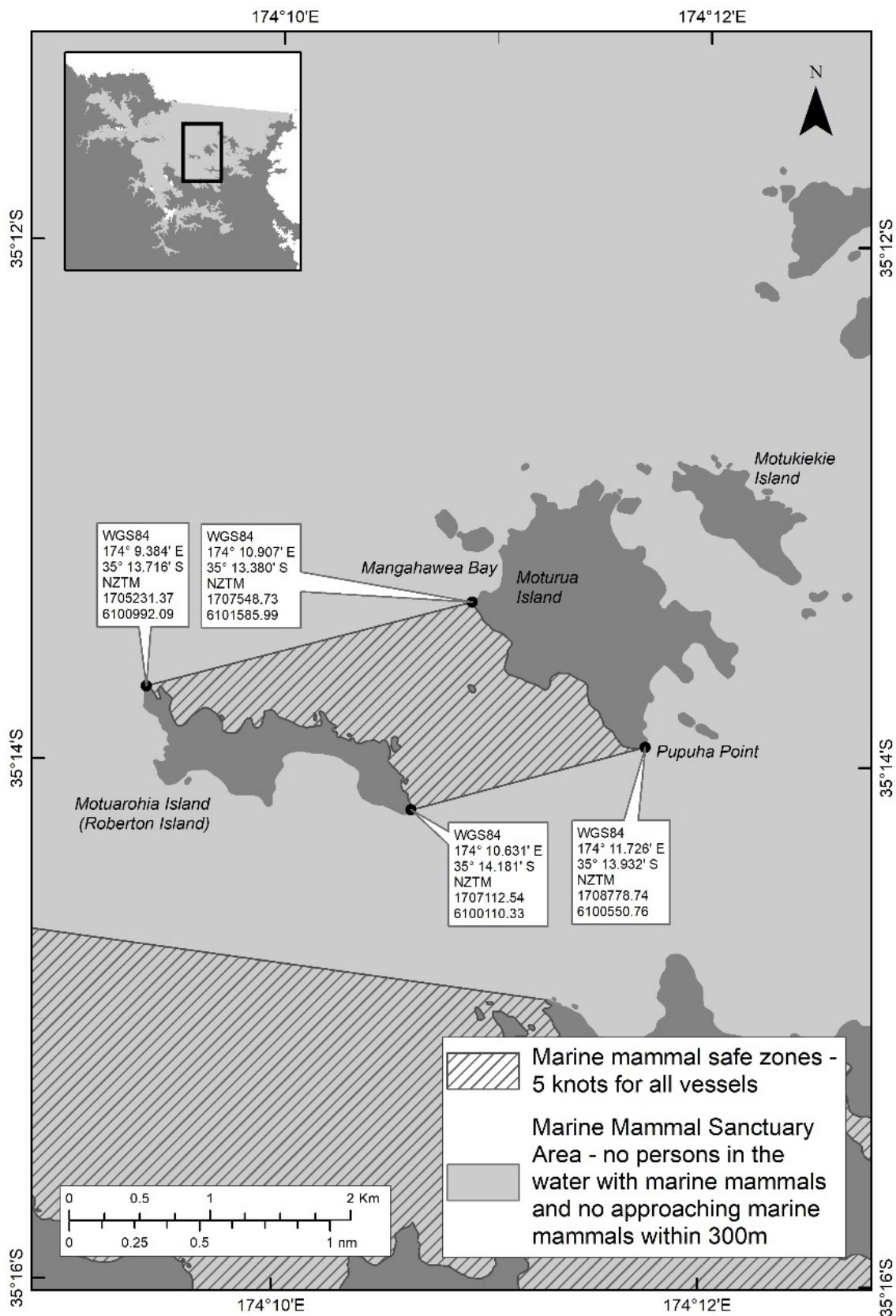
**Schedule 2  
Maps of sanctuary**

cl.4(2)  
and (3)

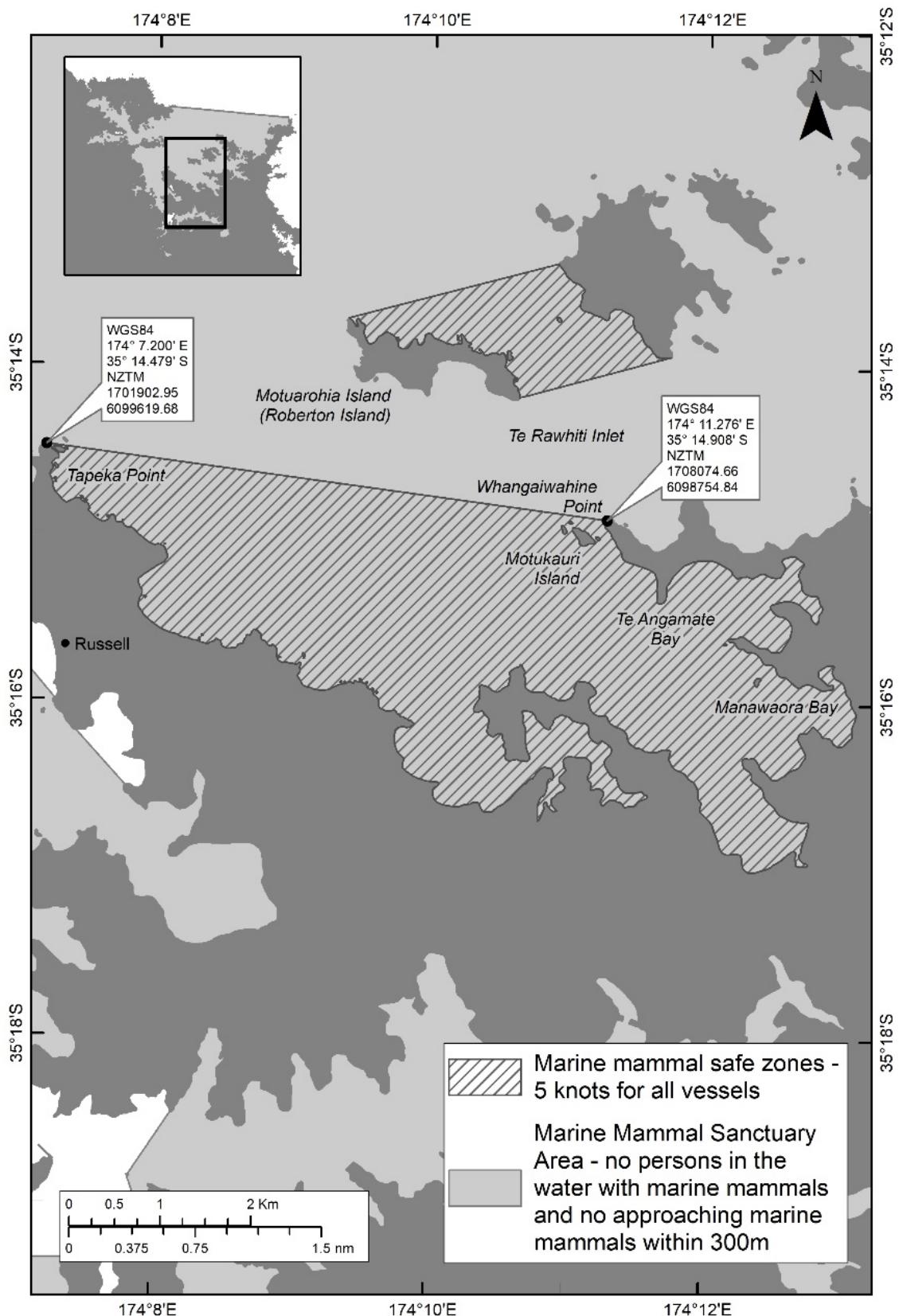




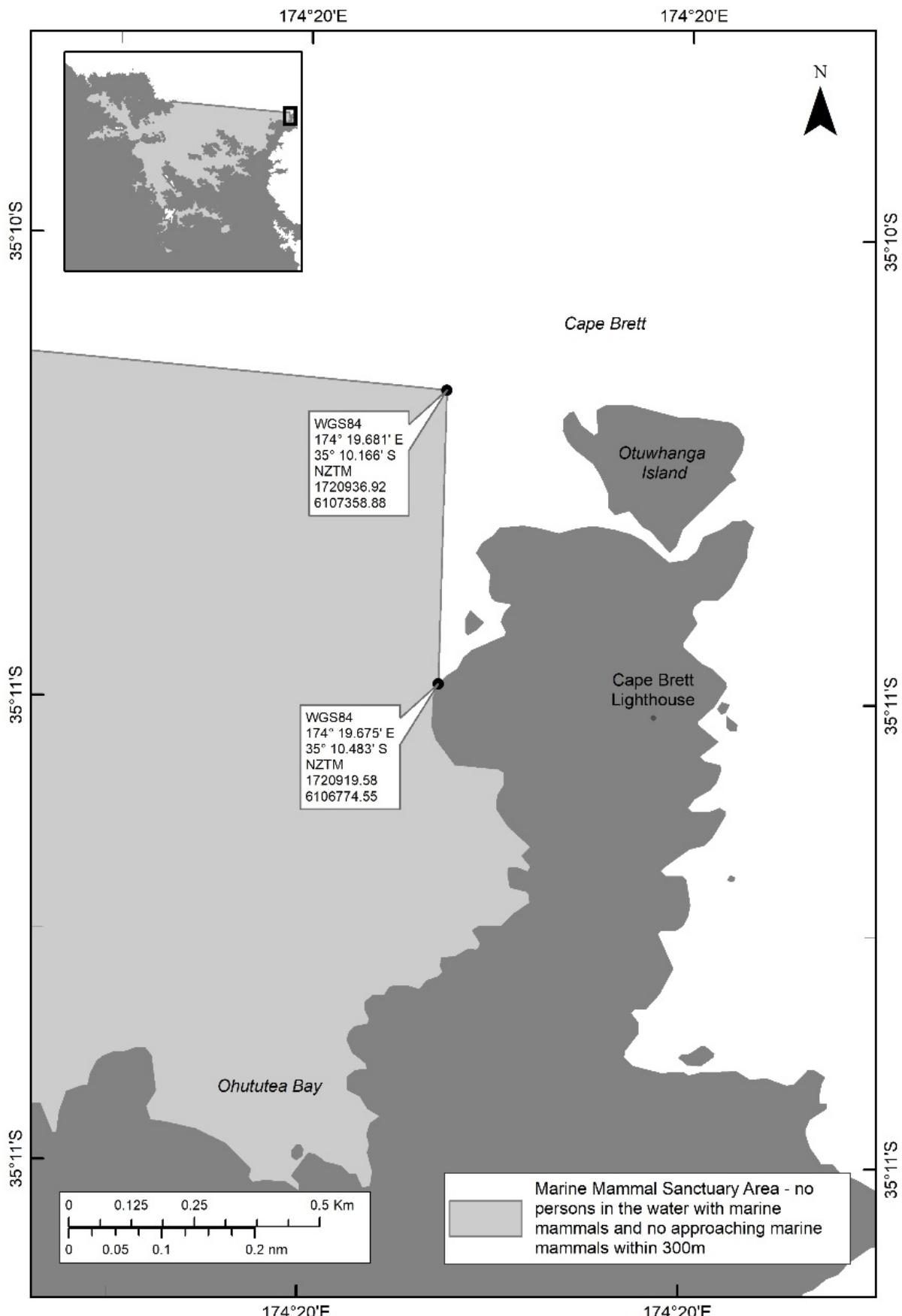
**Map of North West Corner of the  
Te Pēwhairangi (Bay of Islands) Sanctuary**



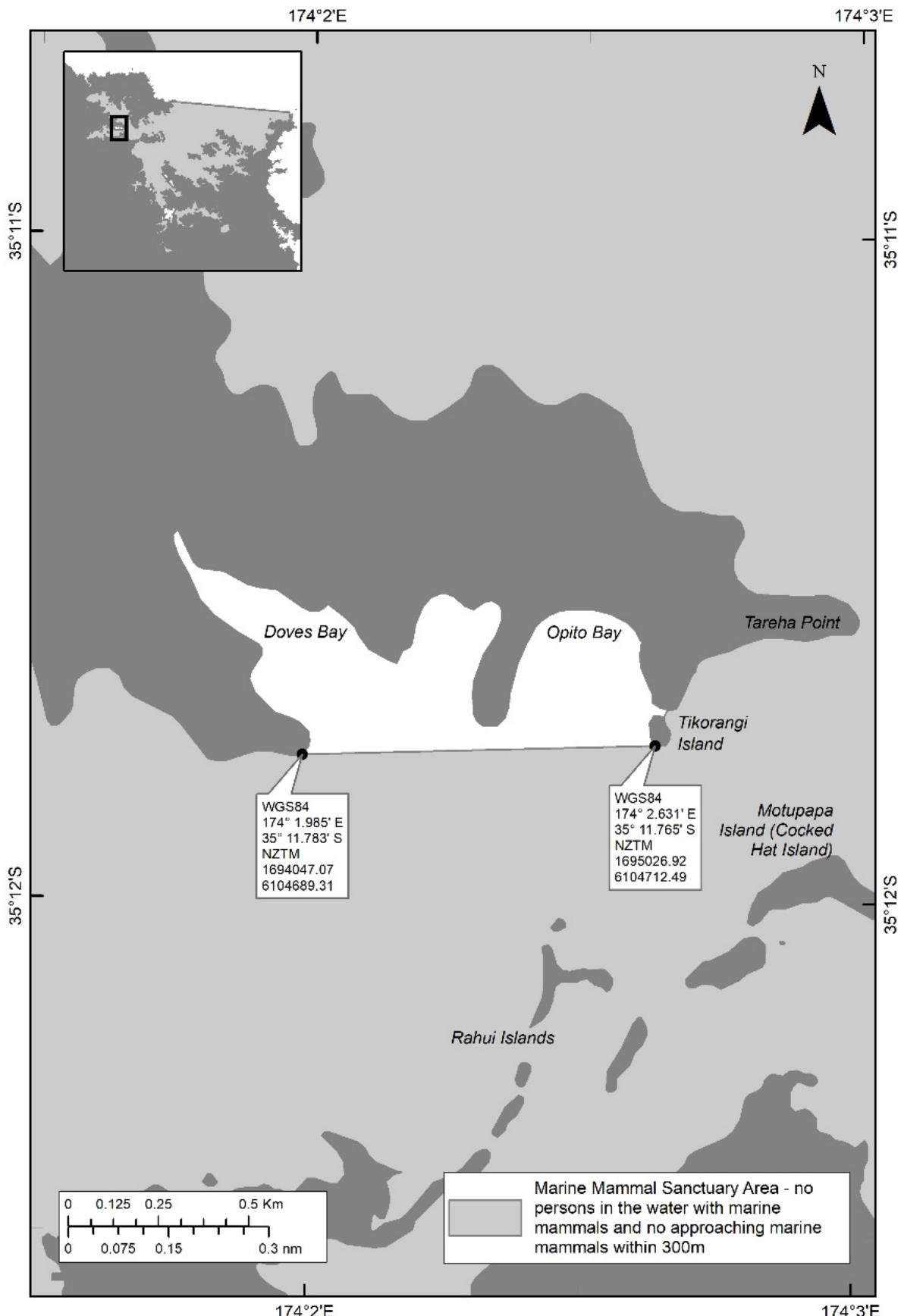
**Map of safe zone between Motuarohia Island  
(Roberton Island) and Moturua Island**



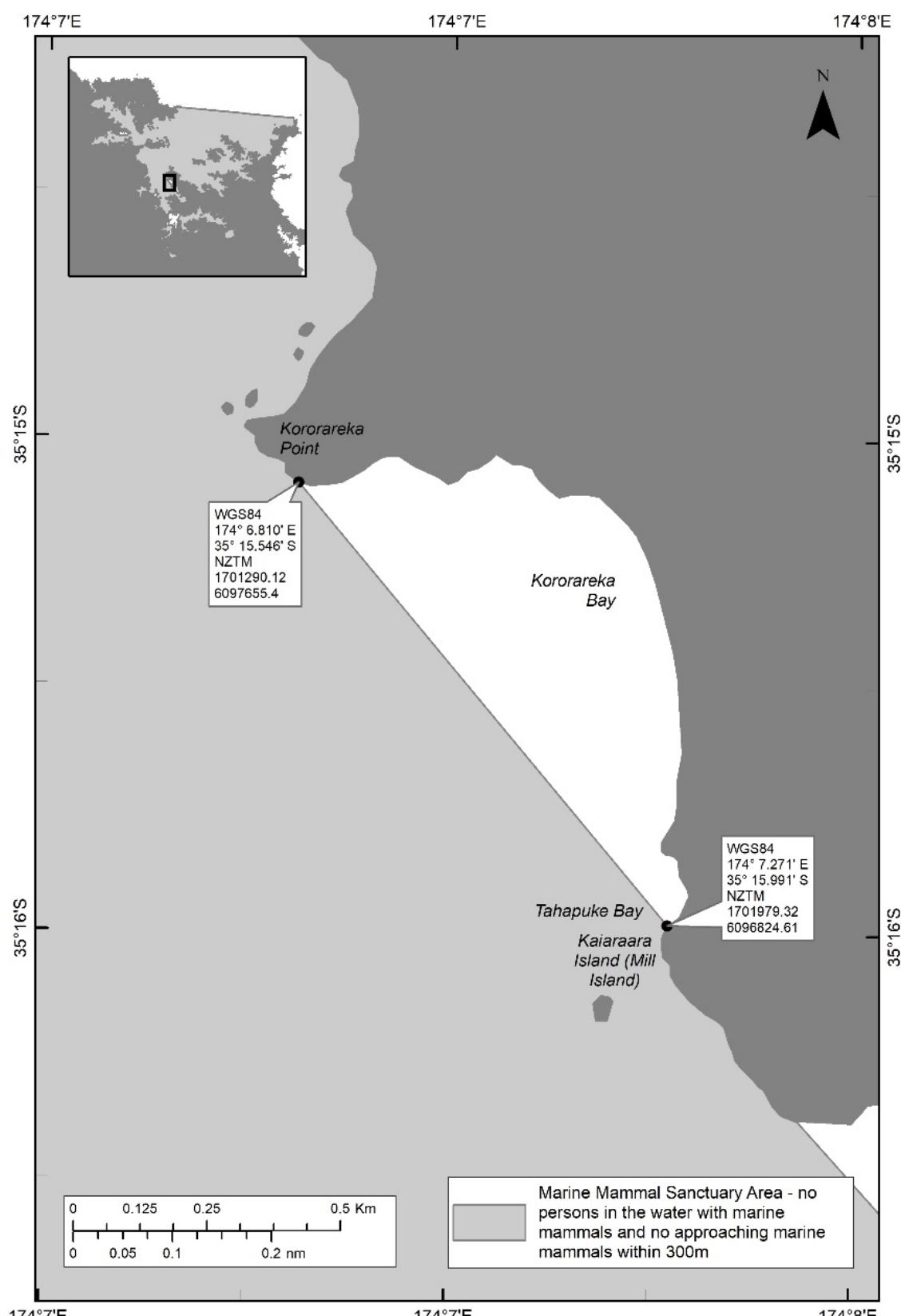
**Map of marine mammal safe zone from Tapeka Point to Whangaiwahine Point**



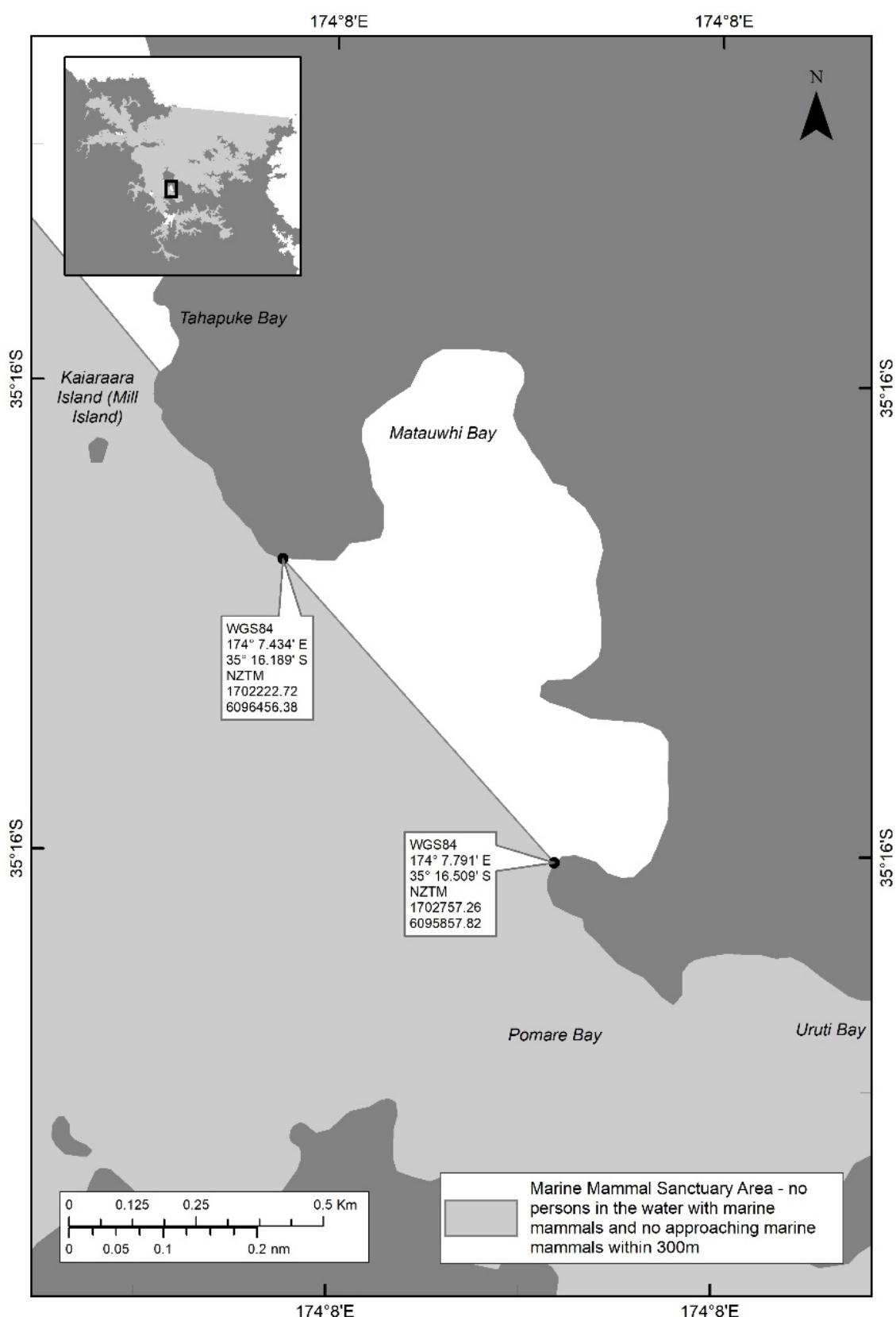
**Map of Cape Brett boundary area**



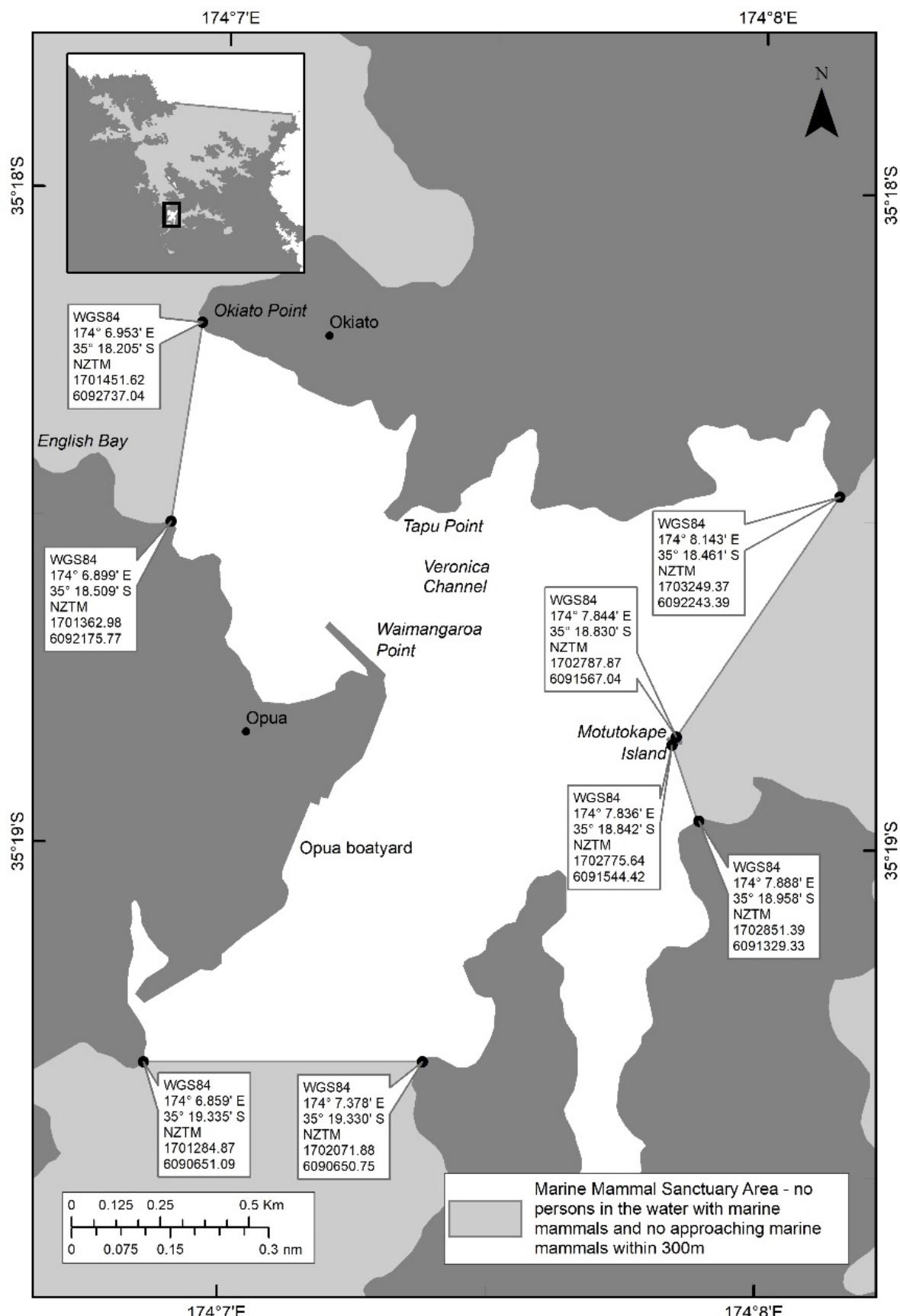
**Map of Doves Bay and  
Opito Bay boundary area**



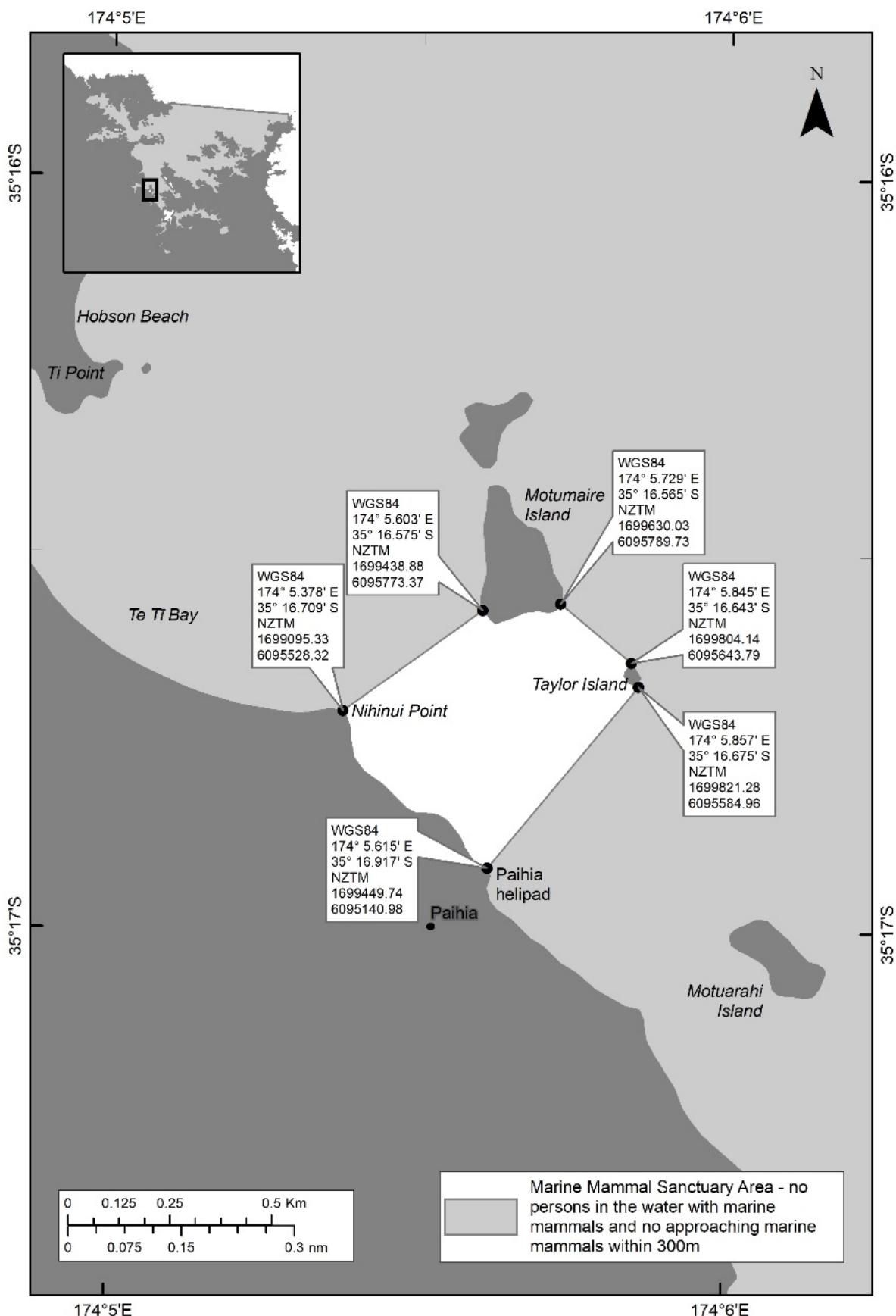
**Map of Kororareka Point to  
Tahapuke Bay boundary area**



**Map of Matauwhi Bay boundary area**



**Map of Opua boundary area**



**Map of Paihia boundary area**

Dated at Wellington this 20 day of October 2021.

Kiritapu Allan,  
Minister of Conservation.

A handwritten signature in blue ink, appearing to read "Kiritapu Allan".

Date of notification in *Gazette*:  
This notice is administered by the Department of Conservation.