

## 9 Assessment of proposed Papanui marine reserve

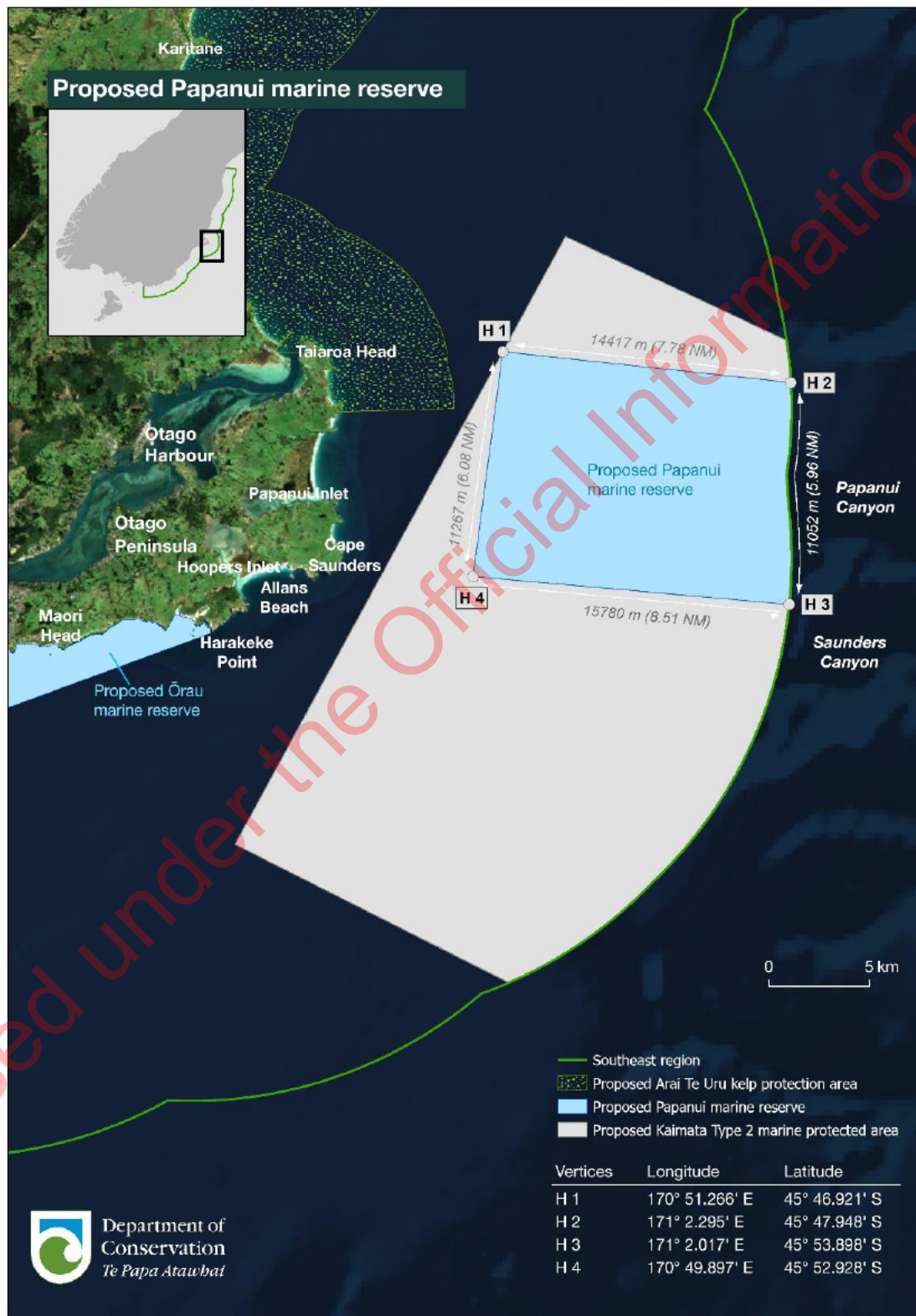


Figure 9-1: Location of the proposed Papanui marine reserve

## 9.1 Introduction

1464. The Application for this proposed marine reserve is presented on pages 92–96 of the Consultation Document<sup>308</sup> (see Appendix 1).

### 9.1.1 Site description

1465. The boundaries of the proposed marine reserve would start approximately 6 km offshore from Kaimata/Cape Saunders on Otago Peninsula and extend 12 nautical miles to the limit of the territorial sea<sup>309</sup> (Figure 9-1). The proposed site is approximately 11 x 15 km and 173 km<sup>2</sup>.

### 9.1.2 Forum recommendations

1466. The proposed marine reserve corresponds to Site H1 as identified by the Forum. As outlined in the Forum's Recommendations Report<sup>310</sup>, the site was recommended due to the following features:

- the particularly diverse oceanographic characteristics of this area, created by the pattern of water movement between the Otago Peninsula and the nearshore canyons (including Papanui Canyon and Saunders Canyon)
- the walls and head of the canyon, and deep-water soft sediment habitats
- the biogenic bryozoan habitat (bryozoans are tiny colony-forming animals)
- the national and internationally significant marine communities associated with this high-flow area.

1467. The proposed site includes the head of Papanui Canyon. Some Forum members believed a marine reserve in the Saunders Canyon area would have more benefits for biodiversity than the proposed marine reserve at Papanui Canyon, mainly by more canyon extending into the territorial sea. However, the Papanui Canyon marine reserve was recommended by the Forum as a compromise between biodiversity benefits and commercial, recreational and Kāi Tahu fishing interests.

### 9.1.3 Activities proposed to be authorised to continue

1468. The Application did not propose the continuation of any specific activities in this proposed marine reserve that would ordinarily be prohibited by the declaration of a marine reserve.

### 9.1.4 Chapter outline

1469. This chapter:

- outlines our assessment of the benefits of the proposed marine reserve
- outlines matters discussed during Treaty partner engagement
- presents the numbers of submissions that were received through statutory consultation
- describes the issues raised in these submissions

<sup>308</sup> Department of Conservation and Fisheries New Zealand 2020. Proposed southeast marine protected areas: Appendices to consultation document (including marine reserve applications) June 2020. 126 p.

<sup>309</sup> The territorial sea is an area of water not exceeding 12 nautical miles in width, measured seaward from the territorial sea baseline. <https://www.lin.govt.nz/sea/nautical-information/maritime-boundaries/maritime-boundary-definitions#ts>.

<sup>310</sup> South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

- provides our advice in relation to the tests under section 5(6) and section 5(9) of the Marine Reserves Act.

## 9.2 Assessment of the benefits of the proposed Papanui marine reserve

1470. Sections 3.2.4 and 3.2.5 set out the framework for assessing whether any objections related to this proposed marine reserve should be upheld pursuant to the ‘interfere unduly’ and ‘otherwise contrary to the public interest’ tests in section 5(6) of the Marine Reserves Act.

1471. You should assess the objections in light of the purpose of the Marine Reserves Act and the benefits of the proposed site in terms of achieving that purpose. You also need to assess the values of the proposed marine reserve and the ‘overall public advantages’<sup>311</sup> that would come from this area being declared a marine reserve. This includes the site’s contribution to the proposed Network and the assessment provided in 6.2 of the values and benefits of the proposed Network overall.

1472. The following section is a summary of our assessment of those benefits in relation to the proposed marine reserve. Much of this assessment is also relevant to your decision-making under section 5(9) as discussed further in 9.8, which includes an assessment of your obligations under the Treaty of Waitangi (as set out in 3.3). More detail is also available in section 4.2 of the Application.

### 9.2.1 Achieving the purpose of the Marine Reserves Act

1473. As described in 3.2.1, the general purpose of the Marine Reserves Act is:

‘...preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.’

1474. A full assessment of the proposed marine reserve against these criteria is set out in section 4.3.2 of the Application.

#### 9.2.1.1 Underwater scenery, natural features, and marine life

1475. The proposed marine reserve covers part of a submarine canyon, one of only two such canyons in the Forum region<sup>312</sup> and one of only a few on the east coast of the South Island which extend substantially into the territorial sea. The habitats associated with this canyon are considered to be typical of the canyon habitats of the east coast of the South Island. If established, this site would be the only marine reserve to include these habitats in the southern South Island.

1476. Bryozoan thickets (dense groups of bryozoan colonies) that occur at 70 m depth or more are a significant natural feature that has been identified off the Otago Peninsula. This is the only location on the east coast of the South Island where these thickets are known to occur, thus making them unique here. These biogenic habitat-forming structures on the seafloor provide habitat for a diverse community of invertebrates (e.g. sponges, anemones, worms, crabs, snails, sea stars and sea squirts) and many species of fish, along with being a foraging

<sup>311</sup> *CRA3 Industry Association Inc v Minister of Fisheries* HC Wellington CP317/99, 24 May 2000, at [36].

<sup>312</sup> The term used by the Forum to describe the area within which the Forum was tasked with providing recommendations for marine protection. Specifically: “...the marine coastal area (mean high water spring out to 12 nautical miles (NM) from Timaru in South Canterbury to Waipapa Point in Southland.” Page 17, Forum Recommendations Report.

ground for rāpoka/New Zealand sea lion and hoiho/yellow-eyed penguin. Bryozoans are also referred to as lace corals due to their intricate structure and formations and are a natural feature of the area considered to be beautiful and of distinctive quality. There are reportedly over 100 bryozoan species occurring on the Otago Shelf, with seven structure-forming species being abundant and another five present. This is a high number of species compared to similar bryozoan grounds in Foveaux Strait and Separation Point where only two frame-building species have been recorded as structurally important<sup>313</sup>.

1477. The bryozoan thickets are considered to meet the criteria outlined in the *Marine Protected Areas Policy and Implementation Plan*<sup>314</sup> (MPA Policy) of being 'outstanding, rare, distinctive or internationally or nationally important marine habitat and ecosystems'. This proposed marine reserve would protect 30% of the known distribution of habitat-forming bryozoans off the Otago Peninsula.

#### 9.2.1.2 Opportunities for scientific study

1478. The features described above would provide different opportunities for scientific study than any of the other proposed marine reserves in the proposed Network. The proposed site would also be rare among Aotearoa New Zealand's existing marine reserves in providing scientific study opportunities in a submarine canyon and bryozoan thicket habitat. Studying these habitats, and how they respond to marine reserve protection, would contribute to New Zealand's understanding of the ecological links and processes operating within them.

#### 9.2.2 Other values and advantages to the public

1479. Despite the proposed site being offshore and accessible only by boat, it is close to the city of Dunedin and will provide public engagement and education opportunities. Its distinctive natural features would provide educational opportunities that have not been possible at other marine reserves and engagement activities could also focus on the features that are uncommon in New Zealand's inshore coastal areas. These activities would contribute to a greater understanding of how protecting the variety of New Zealand's marine species and habitats is important.

1480. It is also anticipated that enhancing protection of the foraging area of the region's significant wildlife populations would improve ecotourism opportunities in the region. This would benefit the region's economy and may create job opportunities.

1481. Benefits of establishing long-term protection of these distinctive and representative habitats would also include enhanced ecosystem services and coastal health, both important for ongoing public wellbeing to the New Zealand public.

#### 9.2.3 Contribution to the proposed Network of marine protected areas

1482. The proposed marine reserve would protect three deep, soft-sediment habitat types (deepwater sand, deep gravel, deep sand) and one biogenic habitat (bryozoan thickets). Deepwater sand and bryozoan thicket habitats would not be represented in any other proposed marine reserves (but would be replicated in the proposed Kaimata Type 2 marine protected area).

1483. This area is one of only a few on the east coast of the South Island, and one of only two in the southeast region, where submarine canyons extend substantially within the territorial sea. The biodiversity of this area is strongly influenced by the Southland Current (a northward

<sup>313</sup> Batson, P.B., Probert, P. K., 2000. Bryozoan thickets off Otago Peninsula. New Zealand Fisheries Assessment Report 2000/46. Published by the Ministry of Fisheries, Wellington 2000. 31 p.

<sup>314</sup> Department of Conservation, Ministry of Fisheries, 2005: Marine Protected Areas: policy and implementation plan. Department of Conservation and Ministry of Fisheries, Wellington. 25 p.

flow of water along the southeast coast of New Zealand), the Otago Peninsula and the undersea canyons.

1484. The bryozoan thickets at 70–100 m depth are a significant natural feature of the proposed site, along with the canyon, and provide habitat for a diverse community of invertebrates and fish. This proposed marine reserve would protect 30% of the known distribution of habitat-forming bryozoans off the Otago Peninsula.
1485. Protecting both the typical and less common habitats, and their associated species, in this marine reserve would make a significant contribution to meeting the objectives of the MPA Policy for this region and nationally.

### 9.3 Consideration of Kāi Tahu views on the proposed marine reserve as heard through engagement

1486. As outlined in 2.6.2, Te Papa Atawhai, Tini a Tangaroa and Kāi Tahu held a number of hui between July 2020 and July 2021. Further engagement has continued, including directly with Ministers. The purpose of this engagement has been to further understand Kāi Tahu rights and interests and views (including concerns) in relation to the establishment and management of the proposed southeast marine protected areas and to understand and work through the issues raised, including the measures proposed by Kāi Tahu to address their concerns. These views, proposed measures, our advice and recommendations are each set out in 6.3. Sections 9.8.1.1 and 9.8.2 list the recommendations that apply to the proposed Papanui marine reserve.

### 9.4 Submissions received on the proposed Papanui marine reserve

1487. In total, 4,069 submissions on the proposed Papanui marine reserve were received, with 89% in support of its establishment as proposed<sup>315</sup>. This included submissions on the proposed Network<sup>316</sup> and on the proposed Papanui marine reserve specifically. There were 161 submissions specifically on this proposed marine reserve with 64 (40%) objections (either outright objections or expressing partial support), 92 (57%) in support and 5 (3%) did not give a preference.
1488. Of the 161 submissions, 8 were from submitters identified as affected iwi, hapū or whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act). Two supported implementing the proposed marine reserve and six objected. A further six submissions (one in support, four in objection and one not indicating a position) were from other Māori submitters (i.e. those who do not whakapapa to the Kāi Tahu rohe<sup>317</sup> and were therefore not identified as affected iwi, hapū or whānau under te Takutai Moana Act, as set out in 5.2).

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<sup>315</sup> This included submitters who qualified their support by suggesting changes but whose support was not conditional on the changes.

<sup>316</sup> See chapter 5 for detail on how submissions were classified, assigned and analysed.

<sup>317</sup> To descend from the Kāi Tahu (Ngāi Tahu) tribal group.

1489. Submitters in support of the proposed marine reserve being established gave the following main reasons<sup>318</sup>:

- the benefits of the proposed protection for marine species, habitats and ecosystems
- the long-term ecological benefits of marine reserves for ecosystem and biodiversity recovery
- an understanding that marine protected areas are important for maintaining the stability of fisheries
- an understanding that the scientific benefits would outweigh the costs.

1490. Submitters who did not support the proposed marine reserve being established or wanted changes before it was established, gave the following main reasons<sup>319</sup>:

- impacts on recreational fishing
- that the status quo is sustainable
- effects on commercial fishing.

## 9.5 Stage 1 assessment – objections from affected iwi, hapū or whānau

### 9.5.1 Obligations in relation to the Treaty of Waitangi

1491. As set out in 3.2.7, as part of your assessment of objections under section 5(6) of the Marine Reserves Act, you have obligations relating to the Treaty of Waitangi, including those under section 49 of the Takutai Moana Act and section 4 of the Conservation Act.

1492. Under section 49 of the Takutai Moana Act, you, as the decision-maker, ‘must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application’ (see 3.3.2 for more information). To allow you to do so, the objections received from submitters who are affected iwi, hapū or whānau are set out below, along with our advice on these objections under section 5(6)(a)–(e) of the Marine Reserves Act. As described in 5.2, Te Papa Atawhai has proceeded on the basis that any submissions (including objections) received from submitters affiliated with Kāi Tahu are considered as being from ‘affected iwi, hapū, or whānau’ for the purpose of the Takutai Moana Act.

1493. The obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act is also relevant to your assessment of objections from submitters identified as affected iwi, hapū, or whānau. In order to give effect to the principle of informed decision-making, all objections received from these submitters are identified and analysed below. In addition to the principle of informed decision-making, the principles of partnership and active protection are also relevant. For the proposed Papanui marine reserve, these principles are primarily relevant to your assessment of the objections that relate to impacts on non-commercial fishing activities (including the ability to continue the customary harvest of seafood), the take of cultural materials and other resources for wānaka and the transfer of mātauraka Māori, preferential access to commercial development opportunities and a desire for co-management and generational reviews of the proposed marine reserve. Te Papa Atawhai

<sup>318</sup> Bothwell, J., Long, D., Daddy, N., Hing, Z. 2020. Proposed southeast marine protected areas: Summary of submissions September 2020. Published by PublicVoice. 209 p.

<sup>319</sup> Bothwell, J., Long, D., Daddy, N., Hing, Z. 2020. Proposed southeast marine protected areas: Summary of submissions September 2020. Published by PublicVoice. 209 p.

considers these issues relate to the protection of Kāi Tahu non-commercial customary fishing rights (noting the relevance of the Treaty of Waitangi (Fisheries Claims) Settlement Act to this matter – see 3.3.4.3), and the ability of Kāi Tahu to exercise tino rangatiratanga and kaitiakitanga over the areas covered by the proposed marine reserves and taonga present (including those taonga and taonga fish species identified under the Ngāi Tahu Claims Settlement Act, see 3.3.3). In considering whether or not to uphold the objections relating to these matters, therefore, you must consider whether to do so would give effect to the Treaty principles of informed decision-making, partnership, and active protection.

1494. In considering your Treaty obligations in relation to these objections, the direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement are directly relevant. Our advice in relation to the direct engagement with Kāi Tahu, including our consideration of each of the proposed measures proposed by Kāi Tahu to mitigate what Kāi Tahu consider to be the impacts of the proposed marine protected areas (including the proposed marine reserves) on Kāi Tahu rights and interests and our recommendations are set out in 6.3. As set out in 6.3.10, our assessment, prior to considering any objections received, is that to declare each of the proposed marine reserves (including Papanui) on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. In assessing the relevant objections below, therefore, we have considered whether there is anything additional that has been raised that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required. For this assessment, we have proceeded on the basis that our recommendations in relation to the direct Kāi Tahu engagement will be progressed.

1495. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of these objections would also be consistent with your obligations under section 4 and other Treaty obligations, and would therefore fulfil the Crown's obligations in relation to the Treaty.

#### **9.5.2 Section 5(6)(a) estate or interest in land**

1496. No objections that raised issues relating to any estate or interest in land in or adjoining the proposed reserve were received from submitters identified as affected iwi, hapū or whānau.

#### **9.5.3 Section 5(6)(b) navigation**

1497. No objections that raised issues relating to any existing right of navigation were received from submitters identified as affected iwi, hapū or whānau.

#### **9.5.4 Section 5(6)(c) commercial fishing**

1498. No objections that raised issues relating to commercial fishing were received from submitters identified as affected iwi, hapū or whānau.

#### **9.5.5 Section 5(6)(d) recreational usage**

##### **9.5.5.1 Objection related to safety risks**

1499. One objection from a submitter identified as affected iwi, hapū or whānau raised concern about the safety of recreational fishers. It stated that fishers would be "forced further out to sea" to fish if the proposed marine reserve was established.

### **Te Papa Atawhai advice**

1500. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1501. The safety of boat-based fishers is an important consideration for this community, particularly given the prevailing weather and sea conditions in the region. As the proposed marine reserve is offshore, fishers using this area already need to pay close attention to the weather and sea conditions, and would need to do so whether they were fishing in the area of the proposed marine reserve or adjacent to it. We therefore disagree that fishers would be "forced" into an unsafe situation, as ultimately this is a matter of personal responsibility.

1502. The adjacent Saunders Canyon area would remain available for recreational fishers. This is the same distance from the entrance to Ōtākou/Otago Harbour (approximately 20 km) as the proposed marine reserve and no further for boats launching from there.

## **9.5.6 Section 5(6)(e) public interest**

### **9.5.6.1 Objections related to impacts on customary interests**

1503. A submission in partial support was received from Te Rūnanga o Ōtākou<sup>320</sup>, identified as affected iwi, hapū or whānau. The rūnanga stated that the proposed marine reserve was "at the maximum extent to which it can agree" and requested the inclusion of a number of provisions:

- to be "well-represented" in the governance of the proposed marine reserve with effective co-management undertaken in the "spirit of partnership, co-design, and informed decision-making"
- that regular monitoring was undertaken, which would inform 20 to 25-year generational reviews
- to retain the ability to retrieve cultural materials from the proposed site and take other resources for the purposes of wānaka<sup>321</sup> and transfer of mātauraka<sup>322</sup>
- preferential access to commercial development opportunities within the proposed marine reserve<sup>323</sup>

### **Te Papa Atawhai advice**

1504. As recorded in the Kāi Tahu cultural assessment in the Forum's Recommendations Report (on page 155), Te Papa Atawhai acknowledges that the fishery and associated ecosystems of the Cape Saunders area are of high importance to Kāi Tahu, local rūnanga, and their associated customary, commercial and recreational fishers. As noted above in 9.1.2, the Forum recommended a marine reserve including part of the Papanui Canyon as a compromise between biodiversity benefits and other interests, including Kāi Tahu fishing interests. Specifically, the inclusion of Saunders Canyon within a marine reserve was not

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<sup>320</sup> Te Rūnanga o Ōtākou is the organisational structure of the hapū of Ōtākou marae on the Otago Peninsula whose rohe moana extends from Pūrehurehu (Heyward's Point) in the north to Mataāu (Clutha River) in the south.

<sup>321</sup> Intergenerational sharing of knowledge.

<sup>322</sup> The traditional knowledge accumulated by generations of Kāi Tahu whānau and hapū through co-existence with and use and protection of their natural resources.

<sup>323</sup> Note that the submission used the example of the harvest of the introduced kelp *Undaria pinnatifida*. This example is not relevant in the context of the proposed Papanui marine reserve because it is offshore and therefore *Undaria* does not grow within the boundaries. Full discussion of *Undaria* harvest as one of the measures put forward during direct engagement with Kāi Tahu is set out in 6.3.6.7.



recommended or progressed. This recommendation is reflected in the Papanui marine reserve as proposed in the Application.

1505. The submission from Te Rūnanga o Ōtākou aligns closely with the views expressed in the engagement between Agencies and Kāi Tahu (see 6.3). As set out in our detailed advice in 6.3, we support the proposals in accordance with the Crown's Treaty obligations, and consider the proposed measures can be implemented consistently with the purpose of the Marine Reserves Act. Te Papa Atawhai considers that our recommendations in 6.3, if implemented, would mitigate the issues raised above.

#### 9.5.6.2 Objections questioning the need or benefit of the proposed marine reserve

1506. One individual identified as affected iwi, hapū or whānau stated the proposed site would not lead to any benefits for fish stocks as "*the canyons do not hold breeding stocks of commercial fish in any number because the environment is too harsh*". The submitter also stated that the suggestion (in the Application) that marine mammals frequented the area was incorrect, based on their observations.

##### Te Papa Atawhai advice

1507. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1508. As acknowledged in 6.2.2.2, the proposed marine reserves generally may create benefits to fisheries by supporting higher populations of fished species and their spillover to adjacent areas. However, this is a corollary benefit because increasing commercial fisheries opportunities is not the purpose of establishing the area under the Marine Reserves Act. As such, the lack of direct benefit to commercial fishing opportunities arising from the proposed marine reserve would not in itself be determinative. We note, however, that the spawning grounds for many species are unknown and therefore it is possible that those species may benefit from the proposed marine reserve.

1509. In terms of marine mammals, research has shown that kekeno/New Zealand fur seals and rāpoka forage in the canyon area or on the bryozoan thickets at the proposed site. Recent University of Otago research also recorded the year-round presence of several whale species in the canyon area, including parāoa/sperm whales and beaked whales.

##### Submission in support

1510. Two submissions in support from individuals identified as affected iwi, hapū or whānau highlighted the benefits of marine protected areas. One stated their importance for maintaining the stability of fisheries and tourism as well as benefitting endangered species, which are in "*extreme danger*". The other submitter raised the importance of investing now to ensure the survival of marine species, stating that delay would be "*risking the vulnerability and ability of organisms to survive and thrive in the future*".

## 9.6 Stage 1 assessment – objections from all other submitters

### 9.6.1 Obligations in relation to the Treaty of Waitangi

1511. Section 9.5 sets out the views of submitters identified as affected iwi, hapū, or whānau. The following section sets out the objections received from all other submitters and provides our advice on the assessment of these objections in terms of the tests in section 5(6)(a)–(e) of the Marine Reserves Act.

1512. The objections considered include objections received from Māori submitters who were not identified as affected iwi, hapū, or whānau on the basis that they were not affiliated with Kāi Tahu (see 5.2). The requirement under section 49 of the Takutai Moana Act to 'have particular regard' therefore does not apply to these views.

1513. As set out in 5.2, however, the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act may still be relevant to your consideration of objections received from these submitters. In order to give effect to the principle of informed decision-making, Te Papa Atawhai has identified the three objections received from other Māori submitters. As set out below, two of these objections referred to customary rights and Treaty rights. We have understood the comment referring to customary rights as relating to impacts on non-commercial customary fishing activities. The comment relating to 'Treaty rights' is very broadly worded but could encompass impacts on commercial fishing in the context of the Treaty of Waitangi (Fisheries Claim) Settlement Act in addition to impacts on wider customary interests. These objections should therefore be considered in terms of the principles of active protection and partnership. As with objections received from affected iwi, hapū and whānau (see 9.5.1), our consideration of these objections in relation to section 4 obligations is made in the context of our direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement. As set out in 6.3.10, our assessment prior to considering any objections received, is that to declare each of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. We are therefore considering whether there is anything additional that has been raised in the objections received from other Māori submitters that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required.

1514. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. We have also considered the fact that these views are received from Māori submitters who are not affiliated with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of the objections received from other Māori submitters would also be consistent with your obligations under section 4, and would therefore fulfil the Crown's obligations in relation to the Treaty of Waitangi.

#### 9.6.2 Section 5(6)(a) estate or interest in land

1515. The proposed marine reserve is offshore so there were no adjoining landowners to notify under section 5(1)(d)(i) of the Marine Reserves Act.

1516. The Application stated that a small proportion (0.1%) of a current petroleum exploration permit overlapped the area of the proposed marine reserve and had an expiry date of 2021. On further investigation, this permit was found to no longer overlap the proposed marine reserve as the permit's inshore boundary was altered in 2019. The permit has since been surrendered entirely. There are currently no active permits or applications relating to mining interests in the proposed marine reserve area<sup>324</sup>.

1517. Further, no submissions raising issues relating to any estate or interest in land in or adjoining the proposed reserve were received.

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<sup>324</sup> <https://data.nzpam.govt.nz/permitwebmaps/?commodity=petroleum>.

### 9.6.3 Section 5(6)(b) navigation

1518. No objections that raised issues relating to any existing right of navigation were received.

### 9.6.4 Section 5(6)(c) commercial fishing

#### 9.6.4.1 Objections relating to impacts on the finfish industry

1519. One individual raised issues related to the economic impacts of the proposed marine reserve on their commercial fishing operation and the industry more broadly. They stated that approximately 9(2)(b)(ii) of their income came from catching mako/school shark in the proposed marine reserve area. They said the loss of this and other areas (presumably those in the proposed Network) and increased costs from having to fish further away, would make the industry unviable.

1520. An objection from Harbour Fish South Island Seafood<sup>325</sup> concerned the commercial value of fish that is caught in the proposed marine reserve area and landed with this company. They stated that “the setnet catch from H1 [this proposed marine reserve] currently constitutes 9(2)(b)(ii) of the total finfish catch landed to Harbour Fish from coastal setnet fishers. We have 2 setnetters who fish in this proposed marine reserve with a catch of 9(2)(b)(ii) per year worth over 9(2)(b)(ii). They also stated, “Rig caught by the two setnetters account for 9(2)(b)(ii) of the SPO3 landed to Harbour Fish”, indicating the two fishers are significant contributors to the company’s mako/rig landings. The estimate used in the Application for potentially displaced catch from this site was also questioned as it did not match their own figures.

1521. Southern Inshore Fisheries Management Company Limited<sup>326</sup> stated that three fishers currently use the proposed marine reserve area regularly:

- One fisher catches 9(2)(b)(ii) of their total set net catch and 9(2)(b)(ii) of potted rāwaru/blue cod per year.
- The second fisher catches 9(2)(b)(ii) and 9(2)(b)(ii) of their 9(2)(b)(ii)
- The third fisher gains 20% of their revenue by potting for rari in this area but would also be affected by the displacement of set net effort into other areas.

1522. The submission also described that the amount of catch taken from the proposed marine reserve has increased from that stated in the Application (approximately 20 tonnes per annum) to approximately 9(2)(b)(ii) per annum. The submission also described the potential effect of the adjacent proposed Type 2 marine protected area and the cumulative effects that both areas would have on commercial fishers.

1523. The combined submission from the New Zealand Rock Lobster Industry Council<sup>327</sup>, Paua Industry Council<sup>328</sup> and Fisheries Inshore New Zealand<sup>329</sup> stated that “cumulative impacts on affected finfish fisheries will arise” if both the proposed marine reserve and the adjacent proposed Kaimata Type 2 marine protected area are established. This includes impacts on mako/school shark and mako/rig set net fisheries, line fisheries and cod potting. In their

<sup>325</sup> A seafood company operating along the Otago-Southland coast, harvesting, processing and distributing wild-caught fish.

<sup>326</sup> A commercial stakeholder organisation that has a mandate to represent a range of fish stocks occurring primarily in the South Island. This includes operational and stock-specific matters such as setting total allowable commercial catch limits and deemed values.

<sup>327</sup> The national representative organisation for the New Zealand rock lobster industry and the umbrella organisation for nine commercial stakeholder organisations operating in each of the rock lobster management areas in New Zealand.

<sup>328</sup> The national agency for five commercial stakeholder groups that represent commercial pāua fishery interests.

<sup>329</sup> A commercial fisheries stakeholder organisation.

view, small fishing vessels that operate from Karitane and Dunedin would be significantly affected by establishing two adjacent marine protected areas because these vessels have a limited range and therefore a limited choice of alternative fishing grounds.

#### **Te Papa Atawhai advice**

1524. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.
1525. There are significant differences between the data provided by Tini a Tangaroa based on electronic reporting and some of the information provided by the submitters.
1526. Five set net fishers are recorded as taking a proportion of their landings from this site over the past three fishing years. The proportion of set net catch by fisher is estimated as 9(2)(b)(ii) (annual average of landings solely in the setnet fishery across all species). Noting that the largest displaced setnet catch of 9(2)(b)(ii) equates to a small proportion of their overall catch (over all methods catch equates to 9(2)(b)(ii) and only during one fishing year. The most affected fisher by overall catch displacement (all methods) has an average annual displacement of 9(2)(b)(ii) from this site, with the majority of that in the set net fishery 9(2)(b)(ii) out of 9(2)(b)(ii) annual average).
1527. Estimated catch over the last three years, across all catch from the site (all five fishers), indicates that 13.6% of their combined setnet catch came from this site. Harbour Fish South Island Seafood stated that the set net catch from this area made up 9(2)(b)(ii) of the total finfish catch landed to their company from coastal set net fishers. The company did not, however, provide the actual tonnage landed, detail on how this was calculated, or how fishers recorded their fishing locations. Given the overall estimated set net fishery displacement (from affected fishers, across all species) ranges from less than 1% to 62% (noting the 62% equates to only 9(2)(b)(ii) for that fisher), it is not possible to align these figures with the figures provided by Harbour Fish South Island Seafood, which indicates much higher landings.
1528. Southern Inshore Fisheries Management Company Limited described that the amount of catch from this site had increased to approximately 9(2)(b)(ii). While there appeared to have been an increase in catch overall in 2019/20, we are unable to resolve the discrepancy between the figures provided by these submitters and those Tini a Tangaroa hold for this site (which estimates 82, 71 and 58 tonnes in 2019/20, 2020/21 and 2021/22 respectively, across all species and methods). The annual average of rāwaru/blue cod landings from the site based on electronic reporting data is estimated as 9(2)(b)(ii), with the majority of that catch coming from one fisher.
1529. At the scale of the quota management area, electronic reporting data estimates the catch from this site for the 2019/20, 2020/21 and 2021/22 fishing seasons as being 4.6%, 4.9% and 4.6% respectively for mako/rig. For mako/school shark this is 3.0%, 3.1% and 1.9%. While the electronic reporting data indicate that there has been an increase in catch for mako/rig at this site since 2019, it remains a relatively small proportion over the fishery as a whole (less than 5%).
1530. Submitters raised additional impacts from the proposed marine reserve in combination with the surrounding proposed Type 2 marine protected area. The proposed Type 2 marine protected area would further displace 21.8, 6.2 and 8.3 tonnes of mako/school shark and mako/rig combined (2019/20, 2020/21 and 2021/22 respectively). This is further described in the Network chapter (see 6.6.4.1). The most affected fisher overall would have approximately 9(2)(b)(ii) displaced from both areas combined (up from 9(2)(b)(ii) from the proposed Papanui marine reserve only).

1531. We note that establishing the proposed marine reserve would not remove displaced catch from the fishery, particularly so for motile species such as mako/school shark and mako/rig. If the proposed marine reserve is established, some fishers who currently fish preferentially in this area may need to travel further to a fishing location. We acknowledge the financial impact this would have on some fishers, but the extent of the impact is very unclear because of the uncertainty in the catch information provided in submissions. Robust data to allow an assessment as to whether the current annual allocated catch entitlement could still be caught is not available, although it is acknowledged that if it can be caught it would potentially incur higher operating costs on the fisher. That is, if fishers are displaced from preferred fishing grounds the catch per unit effort may decline.

#### **Submission in support**

1532. A submission from Southern Clams Ltd<sup>330</sup> highlighted the historical catch of tupa/queen scallops in this area. The submitter noted that this fishery had not been economic for some time so the proposed marine reserve was unlikely to have an effect at present.

#### **9.6.4.2 Objections related to future aquaculture**

1533. A submission from Sanford Limited<sup>331</sup> was received in relation to the company's *Project East* aquaculture proposal, for which it has lodged a resource consent application with the Otago Regional Council. The company pointed out that this project did not exist in 2016 and therefore, they asked "*that Ministers when deciding on the South-East Marine Protection Forum's recommendations not only consider the views of current users in an area but also consider future uses that were not part of the stakeholder considerations back in 2016, such as aquaculture and in particular the potential for salmon farming in Otago waters*". The proposal consists of a series of open ocean salmon farms offshore, which the submitter stated could operate alongside the proposed marine reserve (and other proposed marine protected areas) and "*will not put at risk any of the special values that have been recognised within the reserve network*".

#### **Te Papa Atawhai advice**

1534. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would interfere unduly with the proposal for future aquaculture development.

1535. Any future aquaculture application will be completed under the Resource Management Act process regardless of the establishment of the proposed marine reserve. The proposed marine farm sites do not currently overlap with the proposed marine reserve nor are they in close proximity (the closest is more than 7 km away). As set out in 8.6.4.7, modelling described in the application for this aquaculture activity estimates the depositional footprint extending to a maximum of 1.6 km from the farm sites, but that generally deposition will remain within the farming area boundary. The ecological changes to the seafloor expected from establishing salmon farms would therefore be unlikely to have any direct effect on the proposed marine reserve. We are unable to assess any other effects of the proposed marine reserve on future development of these marine farms.

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<sup>330</sup> Otago-based harvesting and supply company for Littleneck Clams.

<sup>331</sup> A fishing company devoted to harvesting, farming, processing, storage and marketing of seafood.

## 9.6.5 Section 5(6)(d) recreational usage

### 9.6.5.1 Objections related to impacts on recreational fishing

1536. An individual submitter stated that the safety of recreational fishers would be jeopardised by the establishment of the marine reserve as fishers would be forced to use areas further from land and therefore shelter. The proximity of this site to land was also noted a number of times in relation to its accessibility for recreational fishers with small boats, saying that the area provided a “*deep sea fishing experience close to land which is rare*”. Some submitters said that fishing effort would be concentrated in remaining areas if the proposed marine reserve was established. Others urged against “*closing*” or “*locking up*” this area and the negative flow-on effects on the local community “*culture*” and domestic tourism related to recreational fishing.

1537. One individual submitter stated that due to its size and location, this proposed marine reserve would affect fishing activity in the surrounding area. The submitter believed it would not be possible to transit through the proposed marine reserve with fish caught in adjacent areas.

1538. The combined objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand noted a lack of information about recreational fishing in the Application. Further, they disagreed with the statement that there is no undue effect because of the preferred alternate location available at Saunders Canyon. They stated that it was “*contrary to MRA s.5(6)(d) which requires that an objection must be upheld if there are adverse effects on existing recreational usage of the area. The alternative nearby destination of Saunders Canyon is irrelevant to the consideration of whether there are adverse effects on existing recreational fishing in the area of the proposed marine reserve*” [submitter’s emphasis].

#### **Te Papa Atawhai advice**

1539. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1540. Recreational fishing is currently the recreational activity undertaken most frequently in the proposed marine reserve area. As for other proposed marine reserve sites, however, there is little information about the level of recreational fishing activity in the area (as set out in 5.3.2).

1541. The Forum’s Recommendations Report stated that this area was used by a subset of the recreational sports fishing community and by charter boat fishers. Given the Marine Reserves Act generally prohibits all forms of ‘take’, it would not be possible to establish a marine reserve in this area without affecting recreational fishing. We consider that this effect or interference would not be significant, given the adjacent Saunders Canyon area would remain available for similar deep-sea fishing experiences, and is no further from the entrance to Ōtākou/Otago Harbour (approximately 20 km). We also consider that adverse effects from displaced fishing effort are unlikely, given the large adjacent areas that would remain available.

1542. In terms of the assertion that the establishment of this proposed marine reserve would be “*locking up*” an area, no information as to how this would lead to undue interference or an adverse effect was provided. This view is held by one part of the community, while others offered a positive view of the potential value of the marine reserve. A number of submissions in support cited the benefits to the community from scientific activities and public engagement and education if the proposed marine reserve was established.

1543. The safety of boat-based fishers is an important consideration for this community, particularly given the prevailing weather and sea conditions in the region. Safety should be the paramount concern for the skipper of any vessel. We consider that, regardless of the establishment of the proposed marine reserve, the onus remains on a skipper to ensure conditions are suitable for their vessel and its occupants. This is particularly the case for an area such as this proposed marine reserve given its distance from shore.

1544. It is a common misconception that marine reserves prohibit the transit or shelter of vessels. This is not the case. Similarly, vessels are allowed to travel through a marine reserve with catch taken from adjacent areas. If the proposed marine reserve is implemented, Te Papa Atawhai would ensure that information is available for all boat users to increase awareness of the rules.

1545. Te Papa Atawhai disagrees with the assertion made in the combined industry submission that the existence of other suitable locations nearby is “irrelevant” to the assessment under section 5(6)(d). Firstly, we note the submission refers to “adverse effects” on recreational fishing. As noted in 3.2.4, the High Court in *Akaroa Marine Protection Society Incorporated v The Minister of Conservation* [2012] NZHC 933 confirmed that the approach to ‘adverse effect’ in section 5(6)(d) must be approached on the same basis as ‘undue interference’. Therefore, it is not the case that an objection must be upheld if there is any scale of adverse effect on existing recreational users. The Minister must be satisfied that the adverse effect must be both ‘excessive and unjustified’<sup>332</sup>.

1546. Secondly, as a matter of logic, the availability of nearby locations must be relevant to the assessment of whether that adverse effect/undue interference threshold is met. It is part of the factual context in which the assessment must be made. If no other locations for similar recreational uses were available nearby, this would likewise need to be taken into account in assessing the severity of the effects of a proposed marine reserve. The Akaroa case also confirms that in making the assessment under section 5(6)(d), it is appropriate to consider the merits of the proposal, including the wider public interest, and that the benefits may extend beyond the area of the proposed marine reserve.<sup>333</sup>

## 9.6.6 Section 5(6)(e) public interest

### 9.6.6.1 Objections related to impacts on customary interests

1547. Two objections received from Māori who were not identified as affected iwi, hapū or whānau, raised issues relating to impacts on their customary interests. One submitter described how establishing the proposed marine reserve “breaches treaty rights” while the other stated that it was their “customary right”, which we infer relates to the ability to harvest kaimoana (seafood) from the area.

#### Te Papa Atawhai advice

1548. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1549. We have understood the comment relating to ‘customary rights’ as referring to impacts on non-commercial customary fishing activities. It is acknowledged that the declaration of a marine reserve will prevent extractive fishing activities, including non-commercial customary fishing activities currently undertaken. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area, as suggested by

<sup>332</sup> *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [53].

<sup>333</sup> *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [57].

the submitters. Rather, there are already a range of regulatory measures that govern such activities. This includes the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. Moreover, the objections did not provide any specific detail to support the submissions, such as information about the proposed site being particularly important for mahinga kai (food gathering) or customary use. As noted above, the boundary of the proposed marine reserve was recommended by the Forum as a compromise between biodiversity benefits and other interests, including Kāi Tahu fishing interests. Specifically, the inclusion of Saunders Canyon within a marine reserve was not recommended or progressed. The boundary of the site as proposed in the Application reflects this recommendation. Te Papa Atawhai also notes that non-commercial customary harvest will still be possible in areas adjacent to the proposed marine reserve.

1550. The statement that the proposed marine reserve would breach 'Treaty rights' is very broad and does not provide any detail as to how the proposed marine reserve would breach Treaty rights. We note, however, that in our advice relating to our direct engagement with Kāi Tahu (see 6.3) we provided a thorough analysis of the Crown's Treaty obligations and concluded that a decision to declare each of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi. This objection does not raise anything additional that causes us to reconsider that conclusion.

#### 9.6.6.2 Objections questioning the management of non-fishing threats

1551. The combined objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand said there were many "threats" to this site that would not be managed by the marine reserve protection including: increased sedimentation from Port Otago dredging operations, potentially elevated sedimentation from the Matau-  
au/Clutha and Taieri rivers further south, and the introduction of exotic pests from Port Otago. They argued this meant the "marine reserve cannot be 'preserved as far as possible in [its] natural state'".

##### Te Papa Atawhai advice

1552. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1553. We agree that multiple stressors affect the proposed marine reserve area, including those described above. The protection afforded by a marine reserve does not immediately mitigate these stressors, however this does not mean that it would be contrary to the public interest to declare a marine reserve. The Marine Reserves Act does not require all threats to be eliminated, rather it requires that an area be preserved 'as far as possible' in its natural state. Moreover, other management measures via the Resource Management Act are either in place or being developed to manage or mitigate the effect of land-based stressors. These include:

- Regional council responsibility, under the Resource Management Act, for developing and enforcing regional freshwater and coastal plans. These plans set rules to control discharges to coastal waters and improve land-use practices that release sediment or contaminated runoff in river catchments.



- Policy 5 of the New Zealand Coastal Policy Statement<sup>334</sup> directs regional councils to consider the effects on waters in the coastal environment that are held or managed under other acts such as the Marine Reserves Act. It also directs regional councils to avoid the adverse effects of activities that are significant in relation to the purpose of the marine reserve.
- The National Policy Statement for Freshwater Management 2020<sup>335</sup> will influence activities that may affect the proposed marine reserve by setting freshwater limits and land-use regulations.
- Otago Regional Council and Biosecurity New Zealand have a role in managing the risk of marine pest species under the Biosecurity Act.

1554. As with all of New Zealand's marine environment, the area of the proposed marine reserve is unlikely to be 'in a natural state'. However, we do not agree with the submitter's argument that because the Marine Reserves Act does not manage all the potential threats to an area, it would not be possible to preserve it 'as far as possible' in a natural state. The additional protection provided by marine reserve status would create a valuable reference area for research into existing and potential future stressors (e.g. habitat disturbance from some fishing methods) and resilience to existing or future stressors (e.g. increased sedimentation and sea-surface temperature).

### 9.6.6.3 Objections questioning the need or benefit of the proposed marine reserve

1555. A number of objections questioned the need for, or benefit of, the proposed marine reserve. Te Papa Atawhai considers these statements imply that if the proposed marine reserve was established it would be unjustified and therefore contrary to the public interest.

1556. Several objections from individuals stated the fishery in this area was strong and naturally protected by the weather. The submitters believed the area should be left under the existing management arrangements because there was no problem with the status quo. Others questioned the benefit of the proposed marine reserve, contending the area was unlikely to be a major research or tourism site based on past use and relative inaccessibility.

1557. The combined objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand said it was only necessary to prohibit fishing methods that interacted with the benthic environment. The objection argued that all the values identified for this site related to benthic features and associated biodiversity. It also stated that as the proposed site was entirely offshore, "*only people with access to a boat will be able to visit it, and therefore that the public will not be able to 'enjoy in full measure the opportunity to study, observe, and record marine life in its natural habitat'.*"

1558. The Southern Inshore Fisheries Management Company objection said the bryozoan habitats were already protected by a voluntary industry agreement (that had good compliance from the fishing community) and that the current levels of commercial fishing activity "*do not pose an adverse effect*". They stated that no further protection would be offered by a marine reserve being established.

<sup>334</sup> Department of Conservation, 2010. New Zealand Coastal Policy Statement 2010. Department of Conservation. 30 p.

<sup>335</sup> Ministry for the Environment, 2020. National Policy Statement for Freshwater Management 2020. Ministry for the Environment. 70 p.

### **Te Papa Atawhai advice**

1559. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.
1560. The purpose of establishing the proposed marine reserve is to preserve the area for scientific study (section 3(1) of the Marine Reserves Act) and contribute to protecting marine biodiversity through a comprehensive and representative marine protected area network (as in the MPA Policy).
1561. Some objections said recreational fishing had a very small impact on marine habitats, so it would be contrary to the public interest to implement a marine reserve to achieve protection. They considered a ban on commercial fishing would be a more appropriate management approach.
1562. Marine reserves, however, are not about fisheries management. Rather, marine reserves prohibit a wide range of activities to ensure the full range of biodiversity is adequately protected and that ecosystem functions are more resilient to environmental change. Fishing can cause cumulative changes in species abundance and community composition, and the ecosystem level effects of these changes are complex and poorly understood. Establishing marine reserves as reference sites where no fishing occurs is an important step in improving our understanding of cumulative pressures. Also, maintaining ecosystem functioning is important for science, as it provides a baseline for research and ecological monitoring. The proposed marine reserve was recommended by the Forum to protect examples of the region's habitats and the significant biodiversity values of the area.
1563. We acknowledge that weather and sea conditions in the southeast region restrict recreational fishing activity. As described in 5.3.2, there is limited information about the level of recreational fishing in the general area and at this proposed site. According to the 2019 Tini a Tangaroa fisheries assessment<sup>336</sup> (Tables 3 and 6), approximately 100 tonnes of rāwaru is harvested annually by recreational fishers in the BCO3 quota management area compared to approximately 170 tonnes harvested by commercial fishers. The assessment also estimated the recreational catch of hāpuku in the HBP3 quota management area as 37.4 tonnes and 50.5 tonnes for the 2011/12 and 2017/18 fishing years respectively. This was 11% and 15% respectively of the amount caught by commercial fishers in those years. Note that although these figures represent catch over the entire quota management area rather than this site specifically (more specific information is not available), they indicate the potential for recreational take to be significant in this region.
1564. Regardless of the level of recreational fishing activity, marine reserves are to be 'preserved as far as possible in their natural state' and continued recreational fishing would not be consistent with this purpose. Therefore, we do not consider the weather-induced limitations on recreational fishing activity are sufficient reason not to establish the proposed marine reserve.
1565. The voluntary industry agreement to protect the bryozoan thickets in this area is a worthy proactive measure to protect this important habitat and its species. The measure, however, offers no certainty of protection from future threats, through changes in fishing methods or behaviour for example. The thickets are also not protected from other fishing methods.
1566. Bryozoan habitat is particularly sensitive to physical disturbance, given its fragility and slow recovery rate (which is thought to be decades for some species). Therefore, a change in

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<sup>336</sup> Fisheries New Zealand, 2019. Fisheries Assessment Plenary, May 2019: stock assessments and stock status Vol 1. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand. 1,641 p  
<https://fs.fish.govt.nz/Doc/24726/May-Plenary-2019-Vol1.pdf.ashx>

fishing behaviour, even by a single operator, could have long-lasting effects. Even local disturbance from potting or bottom netting could have negative effects in the long term. Bryozoan thickets are also part of a wider ecosystem, and just managing direct physical disturbance does not necessarily enable healthy ecosystem function to be restored and maintained.

1567. We acknowledge that because the proposed marine reserve is entirely offshore, access to the site is limited. However, a certain level of public access is not a prerequisite for establishment under the Marine Reserves Act. Section 3(2)(d) of the Act is permissive and says public access should not be restricted unless this is required for the 'preservation of marine life or welfare in general' of the area. We note that access would not be further restricted than it is currently by creating a marine reserve.

1568. Further, and as noted above in 9.2.2, the proposed marine reserve is close to the city of Dunedin. Notwithstanding its offshore location, therefore, it is anticipated that the marine reserve will provide public engagement and education opportunities for local and regional communities. It would also stimulate research and contribute to our knowledge of marine ecosystems in New Zealand. This includes acting as a reference site for environmental and fisheries management, and for studying predator-prey interactions and ecosystem dynamics<sup>337</sup>. Te Papa Atawhai notes that the University of Otago has carried out research in this area and the protection offered by the proposed marine reserve is likely to enhance the research opportunities.

#### **Submissions in support**

1569. Several submissions in support emphasised the need for, or benefit of, the proposed marine reserve. One submission from a recreational fisher noted the systematic damage caused by trawling. Another submitter noted the benefits of establishing a marine reserve over the bryozoan habitat because it acts as a nursery ground for juvenile fish, including tarakihi and rāwaru. Many individual submitters commented on the importance of the biodiversity features of this site and its role in the ecological functioning of the region.

#### **9.6.6.4 Objections related to amendment of the marine reserve**

1570. Four submitters including the New Zealand Sea Lion Trust<sup>338</sup> and Christchurch Penguin Rehabilitation<sup>339</sup> would not support the proposed marine reserve unless the boundaries were amended. Many suggested amendments were to enhance the benefits for wildlife, such as:

- extending the boundary towards the shore to include rāpoka haulout and breeding areas at Hooper's Inlet and Allan's Beach (this would also protect a nationally and locally significant saltmarsh and flatfish nursery area)
- including underwater plateaus around the canyon, as these have been identified as important foraging grounds for hoiho
- encompassing Saunders Canyon instead of Papanui Canyon
- designating the area proposed as a Type 2 marine protected area (Kaimata) as a marine reserve, so Saunders Canyon would also be in the proposed marine reserve.

<sup>337</sup> Willis, T.J. 2013: Scientific and biodiversity values of marine reserves: a review. DOC Research and Development Series 340. Department of Conservation, Wellington. 70 p <https://www.doc.govt.nz/globalassets/documents/science-and-technical/drds340entire.pdf>.

<sup>338</sup> A trust established in Dunedin in 2003 with a mission and activities focused on the conservation of New Zealand sea lion by supporting ongoing research and education.

<sup>339</sup> Provides a rehabilitation service for sick and injured penguins in Canterbury.

1571. Eleven submissions in support qualified their support by recommending an extension. Suggested amendments were similar to those listed above, such as:

- providing greater coverage of the head of the canyon and greater representation of the deep gravel habitat type
- including a larger area of tupa/queen scallop habitat and ensuring the “*unique chimney habitats*” were protected (Forest & Bird<sup>340</sup>)
- extending the site 5-10 km south of Cape Saunders in a strip defined by the 70-105 m depth contours to better protect the core area of the bryozoan beds (International Bryozoology Association<sup>341</sup>)
- aligning the boundaries with the western boundary of the adjacent proposed Type 2 marine protected area to make compliance easier; prohibiting seismic surveying in the area; and forfeiting existing petroleum exploration permits to the Crown if a marine reserve was established (WWF-New Zealand<sup>342</sup>).

#### **Te Papa Atawhai advice**

1572. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1573. The work of the Forum was guided by the MPA Policy. It sought a balance between establishing marine protection for representative habitats and unique or nationally important features, and minimising effects on existing users. As a result, part of the bryozoan thicket area was included in this proposed marine reserve, with most of the remainder in the proposed Kaimata Type 2 marine protected area.

1574. While Type 2 marine protected areas offer less protection than a marine reserve, this would eliminate the greatest fishing-based threats to the bryozoan thickets (from bottom trawling and dredging). Finfish potting occurs in the area but is less likely to have significant impacts on the bryozoan habitat. We recommend establishing research and monitoring in this area to study the effects of protection on this habitat.

1575. The proposed marine protected areas are not specifically designed to protect threatened or more mobile species such as hoiho. There are, however, likely to be some indirect benefits to these species from establishing the proposed Network, including this proposed marine reserve. Other management activities are in place for hoiho. For example, Te Kaweka Takohaka mō te Hoiho<sup>343</sup> and Te Mahere Rima Tau<sup>344</sup> were finalised in June 2020, to better manage threats to hoiho.

1576. In their submission, WWF-New Zealand said amending the proposed marine reserve boundaries would simplify compliance. Given the surrounding area is a proposed Type 2 marine protected area where recreational fishing would be allowed, the difference between the Type 2 marine protected area and surrounding area would be immaterial for recreational fishers. They would only need to know where the boundaries of the marine reserve are and

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<sup>340</sup> An independent conservation charity that advocates to protect New Zealand’s wildlife and wild places, to city, district and regional councils, central government and in courts.

<sup>341</sup> A professional body dedicated to supporting and disseminating scientific research about bryozoans.

<sup>342</sup> A branch of an independent conservation organisation dedicated to protecting nature and looking after the planet.

<sup>343</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-kaweka-takohaka-mo-te-hoiho-2020.pdf>.

<sup>344</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-mahere-rima-tau-2020.pdf>.

so there would be no advantage to having these align with the proposed Type 2 marine protected area boundaries.

1577. Since the proposed Type 2 marine protected area would prohibit commercial trawling and set netting, only commercial fishers carrying out potting or line fishing would need to distinguish the proposed marine reserve's boundaries from the proposed Type 2 marine protected area. Such boundaries would be easy to distinguish on a commercial vessel's navigation equipment. Real-time electronic reporting that occurs on these vessels will make compliance monitoring of these vessels by Tini a Tangaroa more straightforward.

1578. WWF-New Zealand's submission stated that seismic surveying should be prohibited. Given the effects of seismic surveying, prima facie this activity would amount to an offence under the Marine Reserves Act and therefore would be prohibited within a marine reserve. However due to the interplay with the Crown Minerals Act 1991, this activity cannot be categorically prohibited using the current process under the Marine Reserves Act.

1579. Despite this, in practical terms the likelihood of seismic surveying being carried out for exploitive purposes within a marine reserve is significantly reduced. The effect of an area being declared a marine reserve is that the area is placed in Schedule 4 of the Crown Minerals Act. This prohibits all mining and petroleum exploration with the possible exception of the activities listed in section 61(1A) of the Crown Minerals Act, including 'minimum impact activities'. Although it is possible seismic surveying could be allowed as a minimum impact activity, it would be unlikely for a mining or petroleum company to apply to carry out seismic surveying in the proposed marine reserve area. This is because even if petroleum or mineral deposits were found, permission to exploit the area could not be granted so long as the marine reserve was listed in Schedule 4.

1580. We therefore consider that seismic surveying is appropriately managed within the existing legislation. Seismic surveying for scientific purposes (i.e. unrelated to mining interests governed by the Crown Minerals Act) may still be desirable, but it could be managed using the research permitting regime provided for in the Marine Reserves Regulations.

1581. WWF-New Zealand further raised that existing petroleum exploration permits should be forfeited to the Crown. As noted in 9.6.2, no exploration permits now overlap the proposed marine reserve.

1582. The Application for the proposed site must be considered on its merits, and the matters raised in these submissions do not demonstrate that to establish the marine reserve as proposed in the Application would be contrary to the public interest.

#### 9.6.6.5 Objections related to alternate management options

1583. A number of objections suggested better ways to manage the area than the proposed marine reserve. These included:

- restricting commercial fishing activity (including by one Māori submitter not identified as affected iwi, hapū or whānau), with particularly damaging methods such as bottom trawling highlighted
- imposing lower limits on take
- a temporary closure to allow for monitoring before further decision-making
- increasing education and compliance.

1584. We have considered these objections as arguments for it being contrary to the public interest to declare a marine reserve if these management options could be used instead.

### **Te Papa Atawhai advice**

1585. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1586. The suggestions provided by submitters are likely to be appropriate when fisheries management at a fine spatial scale is the goal. However, the purpose of the Forum's work since 2014 has been to recommend a network of marine protected areas (including this site) to protect biodiversity and establish areas to be preserved as far as possible in their natural state, for scientific study. We do not consider the above suggestions are consistent with this purpose.

1587. Regarding the suggestion of a temporary closure, we note that ecosystem changes following marine protection can take 7–15 years, which may not be regarded as "*temporary*" by the submitter. Also, opening an area that was previously closed to fishing is likely to result in rapid depletion and negate the benefits of closure.

#### **9.6.6.6 Objections questioning the integrity of Forum or statutory consultation processes**

1588. Two submitters objected to the proposed marine reserve, stating that inadequate consultation with local fisherman had been carried out, including a lack of face-to-face consultation.

1589. An objection from the New Zealand Sport Fishing Council<sup>345</sup> questioned why there was a "*56% increase*" to the area they supported in 2016 (which we understand to relate to the Forum's consultation). They also said the costs to recreational fishers had not been "*adequately identified*".

### **Te Papa Atawhai advice**

1590. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1591. Extensive consultation with stakeholders, the public and community at place was carried out by the Forum and by Agencies during the Forum and subsequent statutory processes. This included a formal non-statutory consultation and ongoing public engagement by the Forum and the recent statutory consultation under the Marine Reserves Act process.

1592. From 2014 to 2017, the Forum carried out face-to-face consultation at place, with a focus on representing communities and stakeholders. During this time, Forum members and agency officials took part in a road show at various locations in the region from Invercargill to Christchurch to Cromwell (see Appendix 3 of the Recommendations Report). A website and an email contact were also available during the entire Forum process. One meeting was held at the Tautuku Fishing Club in Dunedin, which has representation in the New Zealand Sport Fishing Council. In addition, recreational and commercial fishing representatives on the Forum attended several meetings with recreational fishers, including at least one that was reported in the Otago Daily Times.

1593. As noted by the New Zealand Sport Fishing Council, the proposed site did change following the Forum's public consultation in 2016. This was in response to submissions received during that consultation and resulted in the proposed site being included in the Forum's recommendation to Ministers in 2018. The Recommendations Report explained the rationale for the site as follows:

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<sup>345</sup> A not-for-profit organisation with 55 affiliated member clubs. It advocates for responsible and sustainable management of the marine environment.

'In recommending the protection of Papanui Canyon instead of Saunders Canyon as a Marine Reserve, it was considered necessary to alter the boundaries to include habitats that would otherwise be underrepresented in terms of replication in Network 1. Site H1 [Papanui] is larger than the original Site H that was consulted but falls entirely within the original consultation sites of E, F and H'.

1594. In terms of biodiversity and habitat protection, Saunders Canyon was the preferable canyon to include in the proposed Network. However, this was not recommended by the Forum because the potential effects on recreational and commercial fishers were considered greater than at the proposed Papanui site. The Papanui Canyon was then amended to better represent some habitats that otherwise would have been under-represented in the proposed Network. Although this context is important, the objection does not in itself raise a compelling argument that would make establishing the proposed marine reserve contrary to public interest.
1595. While it is acknowledged that information on recreational use of the area is limited, the best available information was used in developing the Application, and this is based on the work of the Forum. The available information allowed the Forum to consider and make recommendations as far as practicable, on minimising areas of high recreational use while still providing adequate protection.

## **9.7 Stage 1 assessment – Conclusion in relation to s5(6) of the Marine Reserves Act**

1596. Te Papa Atawhai has considered all objections made in relation to the proposed Papanui marine reserve against the criteria of section 5(6) of the Marine Reserves Act. This includes objections to the proposed Network (these are relevant to your decision-making, as set out in 6.1.3) and objections to the proposed marine reserve.
1597. We conclude that while there would be some interference with the existing uses and interests specified in section 5(6) of the Marine Reserves Act if the proposed marine reserve was established, the nature and magnitude of the interference would not be undue, nor contrary to the public interest. In reaching this conclusion we have considered the values of the proposed marine reserve and its value as part of the proposed Network, and the extent to which it is expected to fulfil the purpose of the Marine Reserves Act.
1598. We have also considered whether a decision to not uphold any objections received on the proposed Papanui marine reserve would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including under section 4 of the Conservation Act. This is considered in light of our assessment (as set out in 6.3.10) that to declare the proposed marine reserves with the recommendations resulting from the direct Kāi Tahu engagement to date would fulfil the Crown's obligation in relation to the Treaty of Waitangi. As recorded above in 9.5.1 and 9.6.1, Te Papa Atawhai considers that no additional matters have been raised in objections from submitters identified as affected iwi, hapū, or whānau or other Māori submitters that would change that assessment.
1599. We therefore consider that no objection should be upheld for the purposes of section 5(6) of the Marine Reserves Act. If you agree, you should proceed to the second stage of decision-making under section 5(9) of the Marine Reserves Act.

## 9.8 Stage 2 assessment – Statutory considerations section 5(9) of the Marine Reserves Act

1600. Section 5(9) provides that your recommendation to the Governor-General on the proposed marine reserve can be made unconditionally or subject to conditions. Our recommended conditions for the proposed Order in Council are set out in 9.8.1. We also recommend other measures as a result of Treaty partner engagement (outlined in 6.3). Our advice on these is set out in 9.8.2.

1601. We have provided our assessment of the Application, including any recommended conditions and other measures, against the statutory criteria in section 5(9). As part of this assessment, we have considered the relevant obligations under the Treaty of Waitangi (as set out in 3.3). The information available to formulate this advice includes content in the Application, Consultation Document, Forum's Recommendations Report and new information provided by Kāi Tahu, Tini a Tangaroa and in submissions from the statutory consultation. Where submissions in support were made in relation to the proposed marine reserve and provide information in relation to the section 5(9) criteria, we also describe this below.

1602. As set out in 6.8, in considering the s5(9) criteria, you will need to consider the advice provided in the Network chapter in relation to these criteria, in addition to the advice below.

### 9.8.1 Recommendation for Order in Council conditions for the proposed marine reserve

1603. We recommend the conditions described below if the proposed marine reserve is established. These would be set out in the Order in Council creating the marine reserve and fall into the following categories:

- conditions arising from Treaty partner engagement
- condition arising from engagement with the Ministry of Transport.

#### 9.8.1.1 Conditions arising from Treaty partner engagement

1604. As described in 6.8.1, as a result of Treaty partner engagement Te Papa Atawhai recommends the following provisions be set out in the Order in Council creating the marine reserve.

- (a) *Condition for continued enhancement of mātauraka Māori and wānaka*
- (b) *Condition to require generational reviews*

#### 9.8.1.2 Condition arising from engagement with the Ministry of Transport

- (c) *Condition for pollution response*

1605. Te Papa Atawhai recommends a condition to allow responses to emergency oil spill or pollution incidents. We have engaged with the Ministry of Transport to inform the following advice on this matter.

1606. In certain emergency situations, vessel users or operators may be required to respond to an emergency oil spill or pollution incident. Action may also be required by the local authority or other central government agencies. Our position is that in such a situation, any action would likely to be considered a 'reasonable excuse' under section 18I(3) and/or would not result in Te Papa Atawhai exercising its direction to take enforcement action in respect of either section 18I(3) (offence for certain discharges) or section 21(a) (infringement offence for certain discharges).



1607. In recent marine reserve Orders in Council, however, a provision has been included to confirm 'for avoidance of doubt' that action can be taken in these circumstances, and that the declaration of the marine reserve does not affect or limit the powers of any person under the Maritime Transport Act 1994 in response to these events or the risk of an event. For consistency, we recommend the inclusion of a similar provision in the Order in Council.

### 9.8.2 Recommendations for other measures arising from Treaty partner engagement

1608. As described in 6.8.2, as a result of Treaty partner engagement Te Papa Atawhai recommends the following measures for the proposed marine reserve.

- (d) *Recommendation for establishing formal co-management with Kāi Tahu*
- (e) *Recommendation for the establishment and support of Kāi Tahu rangers*
- (f) *Recommendation for periodic reviews*
- (g) *Recommendation to use te reo Māori name confirmed by Kāi Tahu*
- (h) *Recommendation to record that marine reserve declaration is unlikely, and not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title*

### 9.8.3 Section 5(9) criteria – in the best interests of scientific study, for the benefit of the public and expedient

1609. As set out in 3.2.3, under section 5(9) you must decide whether declaring each of the marine reserves will be in the best interests of scientific study, for the benefit of the public and expedient. Our advice on these criteria as relevant to the proposed marine reserve is described below. As part of this advice, we have included reference to additional information raised in submissions of support that is relevant to each of the section 5(9) criteria. Note that objections are not considered at this stage, as these views have already been considered in our advice on section 5(6) in accordance with the statutory framework.

#### 9.8.3.1 Obligations in relation to the Treaty of Waitangi

1610. In considering whether the declaration of the proposed marine reserve would be in the best interests of scientific study, for the benefit of the public and expedient, you must consider your obligations in relation to the Treaty of Waitangi.

1611. As set out in 3.2.7, in accordance with your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi, you must consider the views provided by Kāi Tahu in respect of the proposals received through direct engagement in making your assessment under section 5(9). The obligation to have 'particular regard' to these views in accordance with section 49 of the Takutai Moana Act also applies to these views. Our advice and conclusions in respect of the Crown engagement with Kāi Tahu and the corresponding obligations under the Treaty of Waitangi is set out in the Network chapter in 6.3.10. While this advice is provided in the context of the proposed Network, it applies equally to each of the proposed marine reserves, including Papanui, on the basis that the recommendations arising from the engagement apply to this site. Based on this assessment, Te Papa Atawhai considers that the declaration of the proposed marine reserves (therefore including Papanui) on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

1612. In addition to the engagement with Kāi Tahu, as set out in 5.2, submissions in relation to the proposed marine reserve (including objections and submissions in support) were made through the statutory process by submitters who are 'affected iwi, hapū, and whānau' for the

purposes of the Takutai Moana Act and from other Māori submitters (i.e. those not affiliated with Kāi Tahu).

1613. In terms of your decision under section 5(9), the obligation to have ‘particular regard’ applies to the views received from affected iwi, hapū or whānau through the statutory consultation process. The obligation in section 4 of the Conservation Act also applies to your consideration of these views, and may still be relevant to submissions from other Māori (although the obligation to have particular regard does not apply to the views from other Māori). In order to allow you to have ‘particular regard’ to the relevant submissions, and in accordance with the principle of informed decision-making, in our advice below we have therefore identified where submissions have been made from affected iwi, hapū or whānau and/or other Māori submitters that are relevant to the specific section 5(9) criteria. None of the submissions identified raise matters that are inconsistent with our conclusion set out above at paragraph 1611 - that the declaration of the proposed marine reserves (including Papanui) on the basis of the recommendations made in relation to the engagement with Kāi Tahu would fulfil the Crown’s obligations in relation to the Treaty of Waitangi, including the obligation under section 4 to give effect to the principles of the Treaty.

1614. Te Papa Atawhai therefore considers that to declare the proposed marine reserve would fulfil the Crown’s obligations in relation to the Treaty of Waitangi.

#### 9.8.3.2 Consistency with statutory planning instruments

1615. As set out in 3.2.8, also relevant to your assessment as to whether the declaration of the proposed marine reserves cumulatively and as part of the proposed Network would be in the best interests of scientific study, for the benefit of the public and expedient, is whether to do so would be consistent with the relevant provisions of any relevant statutory planning instruments. The relevant statutory planning instruments are the Conservation General Policy and the Otago Conservation Management Strategy. Our full assessment of which provisions are relevant to your assessment, and how a decision to declare each of the proposed marine reserves with the recommendations listed in 6.8.1 and 6.8.2 and the subsequent site chapters (for the purposes of the proposed Papanui marine reserve, therefore, the recommendations listed in 9.8.1 and 9.8.2) would be consistent with those provisions, is set out in Appendix 12.

1616. In summary, Te Papa Atawhai considers a decision to declare the proposed Papanui marine reserve with the recommendations listed would be consistent with all relevant provisions of these statutory planning instruments.

#### 9.8.3.3 In the best interests of scientific study

1617. For the reasons set out below and in light of our conclusions in 9.8.3.1 and 9.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 9.8.1 and 9.8.2 would be in the best interests of scientific study.

1618. In considering whether a marine reserve would be ‘in the best interest of scientific study’, it is appropriate to assess the area that is recommended for marine reserve status against the criteria in section 3(1) of the Marine Reserves Act<sup>346</sup>. This is described in 9.2.1.

1619. The diverse and iconic natural features of the canyon, plateau, and associated geological and oceanographic characteristics, make this area unarguably of distinctive quality, typical and beautiful. The marine life associated with these habitats, including the biogenic bryozoan

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<sup>346</sup> See chapter 3, Section 3(1): It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life of such distinctive quality, or so typical or beautiful or unique that their continued preservation is in the natural interest.

habitat add to this distinction. We consider that protecting the underwater scenery and natural features at this site is consistent with section 3(1) in that they are so typical, or beautiful, or unique that their continued preservation is in the national interest.

1620.

Further information supporting a conclusion that the proposed marine reserve is in the best interests of scientific study is evident from points raised in submissions of support. For example:

- A number of submitters noted the distinctive geological and oceanographic features of this area, with likely upwelling and mixing occurring as a result of the Southland Current and the underwater topography of canyons and ridges. One submitter noted the fact that these canyons in this region are distinctive in that they have not formed adjacent to major rivers.
- Forest & Bird noted the presence of dolomite chimneys that are believed to be within the boundary of the proposed marine reserve. This is likely a unique feature amongst the proposed marine reserves in the proposed Network.
- The International Bryozoology Association stated that this site “*contain[s] one of the largest and most diverse bryozoan-dominated habitats in the world*”. They consider this site to be of “*special scientific significance*” due to the bryozoan beds providing a “*unique and unparalleled window on the past*”, as geologists can directly observe how the rocks and sediment (which is partly formed of calcified skeletons of past bryozoan colonies) formed hundreds of millions of years ago. They also highlighted the importance of the area for long-term monitoring of environmental change (such as climate change effects) given the relatively high level of past research effort in the area on the bryozoan beds and associated fauna, and seabed habitat mapping and photographic surveys.
- The Yellow-eyed Penguin Trust<sup>347</sup> noted the scientific importance of this area for ongoing seabird and marine mammal surveys, and for research on the bryozoan beds. They and other submitters note that previous surveys in the area have uncovered important findings, such as that the canyons are used year-round by parāoa and are also at least temporary habitat for the rare Shephard’s beaked whale.
- WWF-New Zealand and Forest & Bird highlighted the importance of this area for protecting representative habitats. They noted that protecting part of the plateau between Papanui and Saunders Canyon encompasses an area of tupa/Queen scallop habitat, the only proposed marine reserve to do so.
- Several submissions from marine scientists also noted the significance of this site for representativeness due to there being very limited outer shelf or upper slope habitat (which this site contains) within New Zealand’s territorial sea (the area to which the Marine Reserve Act applies), simply due to the shape of the continental shelf.

#### 9.8.3.4

#### **For the benefit of the public**

1621.

For the reasons set out below and in light of our conclusions in 9.8.3.1 and 9.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 9.8.1 and 9.8.2 would be for the benefit of the public.

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<sup>347</sup> A non-governmental organisation with a focus on the conservation of hoiho via managing birds and their habitat.

1622. These benefits are described above in 9.2.2 and include public engagement and education, and enhancing the region's ecotourism opportunities through benefits for wildlife populations.

1623. Further information supporting a conclusion that the proposed marine reserve is for the benefit of the public is evident from points raised in submissions of support. For example:

- WWF-New Zealand highlighted the species and ecosystem services benefits likely to arise from establishing marine reserve protection.
- Seventeen submitters also noted the likely benefits to the region's wildlife and protected species populations of this site.
- The International Bryozoology Association further notes that "bryozoan beds are known to be of direct importance as foraging and/or nursery grounds for other groups of invertebrates, fishes, seabirds and marine mammals. Economically-important species, including blue cod and tarakihi, use bryozoans as habitat and nursery grounds".

### 9.8.3.5 It is expedient

1624. For the reasons set out below and in light of our conclusions in 9.8.3.1 and 9.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 9.8.1 and 9.8.2 would be expedient.

1625. This proposed marine reserve would contribute to protecting the full range of the region's and New Zealand's broad habitat types, by encompassing three soft-sediment habitats and one biogenic habitat (the bryozoan thickets). The site would also importantly contribute to representation of mid to outer continental shelf habitats which are currently under-represented in New Zealand's existing marine protected area network.

1626. As described above, the bryozoan thickets off the Otago Peninsula are considered to meet the criteria in the MPA Policy of being 'outstanding, rare, distinctive or internationally or nationally important marine habitat and ecosystems'. This proposed marine reserve would afford full protection to 30% of the known distribution of habitat-forming bryozoans (bryozoan thickets) off the Otago Peninsula.

1627. The Papanui Canyon is biologically diverse, providing habitats for brittle stars, sea stars, gastropods, bivalves, shrimps, hermit crabs, bryozoans, sponges and quill worms, among others.

1628. The establishment of this proposed marine reserve is likely to be expedient in terms of broader benefits to protected species also. This area is a hotspot for seabirds and marine mammals, including parāoa, upokohue/long-finned pilot whale, kekeno, rāpoka and hoiho.

1629. Further information supporting a conclusion that establishment of the proposed marine reserve is expedient is evident from points raised in submissions of support. For example:

- A submission from an individual identified as affected iwi, hapū or whānau highlighted the importance of the canyons and bryozoan beds in this area, stating they contain a "rich diversity of habitats important for protecting and maintaining many of Otago's iconic species". This submitter also described the importance of "investing now" in marine reserve protection and that to delay is "risking the vulnerability and ability of organisms to survive and thrive in the future".
- A submission from an ecotourism operator stated that "Otago has lagged far behind other areas of NZ" in terms of marine protection, despite being home to "a unique assemblage of marine habitats and species".

- A number of submitters recognised the site’s importance as habitat for benthic invertebrates, demersal fish, seabirds and marine mammals.
- Several submitters noted the importance of protecting these bryozoan habitats. One bryozoan scientist described that the Otago bryozoan beds are “*some of the last off-shore shelf bryozoan beds left around southern New Zealand*”, that they consider these to be the best areas left in southern New Zealand, and that they are a remnant of this life-supporting habitat type that was once much more widespread. They further noted that this kind of hard-substrate habitat provides multiple benefits, including carbon sequestration, nursery grounds and shelter for supporting recruitment, and support for marine foodwebs.
- The International Bryozoology Association further noted that “*habitat-forming bryozoan communities are vulnerable, and do not always recover once impacted*”. They describe how research from elsewhere has shown bryozoan beds do not benefit from the voluntary protection measures of the kind that currently exists in this area. They also highlighted the carbon sequestration benefits of bryozoan habitats, with carbon being drawn down and stored in bryozoan skeletons, and that broader ecosystem function is required for this role to continue.
- One submitter provided information on their observations of protected seabirds using the area, noting the importance of this habitat as foraging grounds. The submitter noted that most of the 53 species of seabird they have observed in this area are “*threatened or at risk of extinction*”.
- The Otago Branch of the Ornithological Society of New Zealand Inc.<sup>348</sup> also noted that the upwelling occurring here attracts “*feeding aggregations of fish, marine mammals and seabirds*”.

## 9.9 Naming of the proposed marine reserve

1630. The proposed marine reserve would be named in accordance with the requirements of the New Zealand Geographic Board. Te Papa Atawhai has discussed the naming of this proposed site with Kāi Tahu. Kāi Tahu have endorsed the name to be taken forward for review by the New Zealand Geographic Board as ‘Papanui Marine Reserve’.

## 9.10 Conclusion – proposed Papanui marine reserve

1631. Our overall assessment in relation to the proposed Papanui marine reserve is that:

- the procedural requirements of section 4 and section 5 of the Marine Reserves Act have been met
- we do not recommend upholding any objections received under section 5(6) of the Marine Reserves Act
- to declare the area a marine reserve will be in the best interests of scientific study, will be for the benefit of the public and will be expedient (in accordance with section 5(9) of the Marine Reserves Act), including with our recommended conditions to be included in the Order in Council [(a)–(c) as set out in 9.8.1] and our

<sup>348</sup> The primary organisation concerned with the study of birds in New Zealand and the dissemination of this knowledge to assist the conservation and management of birds.

recommendations for other measures arising from Treaty partner engagement [(d)-(h) as set out in 9.8.2]

- to declare the proposed marine reserve on the basis of the recommendations listed above would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

### 9.11 Recommendation – Papanui proposed marine reserve

<sup>1632</sup> We recommend that you proceed to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport<sup>349</sup> to recommend to the Governor-General the making of an Order in Council (subject to conditions) to declare the proposed area a marine reserve.

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<sup>349</sup> As under section 5(9) of the Marine Reserves Act.

# 10 Assessment of proposed Ōrau marine reserve



Figure 10-1: Location of the proposed Ōrau marine reserve

## 10.1 Introduction

1633. The Application for this proposed marine reserve is presented on pages 100–104 of the Consultation Document<sup>350</sup> (see Appendix 1).

### 10.1.1 Site description

1634. The proposed Ōrau marine reserve is situated on the southern side of Otago Peninsula, from Harakeke Point to the western end of St Clair beach. The boundary is from mean high water springs<sup>351</sup> to a maximum of 3.1 km offshore.<sup>352</sup> It bisects a reef to the west of Poniuahine/White Island (Figure 10-1). The site would cover approximately 20 km of coastline and an area of 29 km<sup>2</sup>.

### 10.1.2 Forum recommendations

1635. This site corresponds to site I1 as identified by the Forum. In their Recommendations Report<sup>353</sup>, the Forum proposed this site because it included a significant area of coast and a variety of habitats. They considered it was likely to become an iconic example of a marine reserve given its proximity to Dunedin city and excellent public access.

1636. This proposed marine reserve is considered the most accessible of all the proposed Network sites and would therefore have particularly important educational values.

### 10.1.3 Activities proposed to be authorised to continue

1637. The Application proposes that some activities be allowed to continue if the proposed marine reserve is established. These are:

- activities operating under existing resource consents (primarily comprising of activities related to Dunedin City Council municipal infrastructure)
- fossicking of beach materials
- retrieval of kōiwi tākata<sup>354</sup>
- vehicle access to the foreshore (in limited circumstances).

1638. Our advice on providing for these activities is set out in 10.8.1 and 10.8.2.

### 10.1.4 Chapter outline

1639. This chapter:

- outlines our assessment of the benefits of the proposed marine reserve
- outlines matters discussed during Treaty partner engagement
- presents the numbers of submissions that were received through statutory consultation

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<sup>350</sup> Department of Conservation and Fisheries New Zealand 2020. Proposed southeast marine protected areas: Appendices to consultation document (including marine reserve applications) June 2020. 126 p.

<sup>351</sup> Average of each pair of successive high waters when the range of the tide is greatest.  
<https://www.lin.govt.nz/sea/tides/introduction-tides/definitions-tidal-terms>.

<sup>352</sup> As can be seen from Figure 10-1, where rivers such as the Tomahawk Creek enter the proposed marine reserve, the proposed boundary follows the coastal marine area boundary as defined in the Regional Plan: Coast for Otago. This follows the approach taken by the Forum.

<sup>353</sup> South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

<sup>354</sup> Unidentified (Māori) human remains.



- describes the issues raised in these submissions
- provides our advice in relation to the tests under section 5(6) and section 5(9) of the Marine Reserves Act.

## 10.2 Assessment of the benefits of the proposed Ōrau marine reserve

1640. Sections 3.2.4 and 3.2.5 set out the framework for assessing whether any objections related to this proposed marine reserve should be upheld pursuant to the ‘interfere unduly’ and ‘otherwise contrary to the public interest’ tests in section 5(6) of the Marine Reserves Act.

1641. You should assess the objections in light of the purpose of the Marine Reserves Act and the benefits of the proposed site in terms of achieving that purpose. You also need to assess the values of the proposed marine reserve and the ‘overall public advantages’<sup>355</sup> that would come from this area being declared a marine reserve. This includes the site’s contribution to the proposed Network and the assessment provided in 6.2 of the values and benefits of the proposed Network overall.

1642. The following section is a summary of our assessment of those benefits in relation to the proposed marine reserve. Much of this assessment is also relevant to your decision-making under section 5(9) as discussed further in 10.8, which includes an assessment of your obligations under the Treaty of Waitangi (as set out in 3.3). More detail is also available in section 4.4 of the Application.

### 10.2.1 Achieving the purpose of the Marine Reserves Act

1643. As described in 3.2.1, the general purpose of the Marine Reserves Act is:

‘...preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.’

1644. A full assessment of the proposed marine reserve against these criteria is set out in section 4.4.2 of the Application.

#### 10.2.1.1 Underwater scenery, natural features, and marine life

1645. This site contains representative examples of the habitats that occur from Taiaroa Head to The Catlins. Its natural features include exposed shorelines of volcanic rock where cliffs and wave-washed platforms are interspersed with sandy or boulder beaches. Small rocky islets and offshore rock stacks create unique habitats beyond the surf. Lion Rock, situated off Sandfly Bay, has a dive-through cave.

1646. The area’s shallow rocky reefs are covered by forests of rimurapa/bull kelp with a diverse understory of other seaweeds. Kōura/rock lobster and a range of reef fish, including blue moki, kohikohi/trumpeter and matahoe/greenbone (butterfish) are found here. At the northern end of the proposed marine reserve, shallow reefs extend through to deeper reef habitats<sup>356</sup>. Strong currents in this area support communities of filter-feeding invertebrates

<sup>355</sup> *CRA3 Industry Association Inc v Minister of Fisheries HC Wellington CP317/99*, 24 May 2000, at [36].

<sup>356</sup> Note, the reef habitats found in this part of the proposed marine reserve are classified as ‘exposed shallow reef’ under the *Marine Protected Areas Classification, Protection Standard and Implementation Guidelines*, as shown in Table A4.1 of the Application (page 119).

(such as sponges and sea squirts) that cover the rocks and create beautiful underwater scenery.

#### **10.2.1.2 Opportunities for scientific study**

1647. The natural features and marine life at this site would allow a variety of scientific studies to take place in an area where activities that can have negative effects are prohibited.

1648. The proximity of the proposed marine reserve to Dunedin city would make access for science and research activities straightforward. The site is also close to the University of Otago, schools and other educational institutions and would provide opportunities for a range of scientific studies to be focussed there. This location would also provide opportunities for studies with a social element as the beaches are very popular with visitors for various kinds of recreation.

#### **10.2.2 Other values and advantages to the public**

1649. The proposed marine reserve would be one of a few in New Zealand that are very close to urban centres. It would offer valuable opportunities for the public to experience an area that is recovering to a more natural state. These experiences could be through different types of recreation such as kayaking, snorkelling, diving and beach walks.

1650. The site's location, diversity of habitats and proximity to an urban centre would create excellent educational opportunities for students and communities. This opportunity would contribute to a greater understanding of the benefits of managing the marine environment sustainably, to ensure its benefits to people can continue for future generations.

1651. The Otago region is well-known for its wildlife, particularly rāpoka/New Zealand sea lion and hoiho/yellow-eyed penguin. This site is expected to indirectly benefit the populations of wildlife in the area, which the strong ecotourism industry in the area relies on. A marine reserve is expected to enhance ecotourism and make it more attractive because visitors could enjoy a richer experience with potentially more wildlife being encountered. Visitors could also learn about the value of marine protection in a hands-on way.

#### **10.2.3 Contribution to the proposed Network of marine protected areas**

1652. This site is important for adequately representing exposed shallow sand, boulder beach and rocky reef habitats in the proposed Network, which are representative and typical of an exposed southern rocky shoreline. The proposed marine reserve would protect six broad-scale habitat types including intertidal and subtidal rocky reef and soft-sediment habitats. The site is also one of only two boulder beaches in the region and the only one included in the proposed Network.

1653. Protecting the diverse habitats at this site also protects the ecosystem processes associated with them. This adds to its value as part of the proposed Network.

### **10.3 Consideration of Kāi Tahu views on the proposed marine reserve as heard through engagement**

1654. As outlined in 2.6.2, Te Papa Atawhai, Tini a Tangaroa and Kāi Tahu held a number of hui between July 2020 and July 2021. Further engagement has continued, including directly with Ministers. The purpose of this engagement has been to further understand Kāi Tahu rights and interests and views (including concerns) in relation to the establishment and management of the proposed southeast marine protected areas and to understand and work through the issues raised, including the measures proposed by Kāi Tahu to address their

concerns. These views, proposed measures, our advice and recommendations are each set out in 6.3. Sections 10.8.1.1 and 10.8.3 list the recommendations that apply to the proposed Ōrau marine reserve.

## 10.4 Submissions received on the proposed Ōrau marine reserve

<sup>1655.</sup> In total 4,189 submissions on the proposed Ōrau marine reserve were received, with 86% in support of its establishment as proposed<sup>357</sup>. This included submissions received on the proposed Network<sup>358</sup> and on the proposed Ōrau marine reserve specifically. There were 281 submissions specifically on this proposed marine reserve with 188 (67%) objections (either outright objections or expressing partial support), 89 (32%) in support and 4 (1%) did not give a preference.

<sup>1656.</sup> Of the 281 submissions, 12 were from submitters identified as affected iwi, hapū or whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act). Two supported implementing the proposed marine reserve and 10 objected. A further 11 submissions (1 in support, 10 in objection) were from other Māori submitters (i.e. those who do not whakapapa to the Kāi Tahu rohe<sup>359</sup> and were therefore not identified as affected iwi hapū or whānau under te Takutai Moana Act, as set out in 5.2).

<sup>1657.</sup> Submitters in support of the proposed marine reserve being established gave the following main reasons<sup>360</sup>:

- the benefits of the proposed protection for marine species, habitats and ecosystems
- the long-term ecological benefits of marine reserves for ecosystem and biodiversity recovery
- the recreation opportunities the marine reserve will provide
- that the scientific benefits will outweigh the costs.

<sup>1658.</sup> Submitters who did not support the proposed marine reserve being established or wanted changes before it was established, gave the following main reasons<sup>361</sup>:

- negative impacts on recreational fishers by unfairly prohibiting fishing
- the prohibition on shellfish and driftwood gathering
- increased risks to recreational fishers' safety
- that the status quo is sustainable because the area is not overfished
- negative impacts on commercial fishing.

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<sup>357</sup> This included submitters who qualified their support by suggesting changes but whose support was not conditional on the changes.

<sup>358</sup> See chapter 5 for detail on how submissions were classified, assigned and analysed.

<sup>359</sup> To descend from the Kāi Tahu (Ngāi Tahu) tribal group.

<sup>360</sup> Bothwell, J., Long, D., Daddy, N., Hing, Z. 2020. Proposed southeast marine protected areas: Summary of submissions September 2020. Published by PublicVoice. 209 p.

<sup>361</sup> Ibid.

## 10.5 Stage 1 assessment – objections from affected iwi, hapū or whānau

### 10.5.1 Obligations in relation to the Treaty of Waitangi

1659. As set out in 3.2.7, as part of your assessment of objections under section 5(6) of the Marine Reserves Act, you have obligations relating to the Treaty of Waitangi, including those under section 49 of the Takutai Moana Act and section 4 of the Conservation Act.
1660. Under section 49 of the Takutai Moana Act, you, as the decision-maker, ‘must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application’ (see 3.3.2 for more information). To allow you to do so, the objections received from submitters who are affected iwi, hapū or whānau are set out below, along with our advice on these objections under section 5(6)(a)–(e) of the Marine Reserves Act. As described in 5.2, Te Papa Atawhai has proceeded on the basis that any submissions (including objections) received from submitters affiliated with Kāi Tahu are considered as being from ‘affected iwi, hapū, or whānau’ for the purpose of the Takutai Moana Act.
1661. The obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act is also relevant to your assessment of objections from submitters identified as affected iwi, hapū, or whānau. In order to give effect to the principle of informed decision-making, all objections received from these submitters are identified and analysed below. In addition to the principle of informed decision-making, the principles of partnership and active protection are also relevant. For the proposed Ōrau marine reserve, these principles are primarily relevant to your assessment of the objections that relate to impacts on commercial and non-commercial fishing activities (including the ability to continue the customary harvest of seafood), the take of cultural materials and other resources for wānaka and the transfer of mātauraka Māori, preferential access to commercial development opportunities and a desire for co-management and generational reviews of the proposed marine reserve. Te Papa Atawhai considers these issues relate to the protection of Kāi Tahu fishing rights and interests, both in terms of their commercial interests and non-commercial customary rights (noting the relevance of the Treaty of Waitangi (Fisheries Claims) Settlement Act to these matters – see 3.3.4.3), and the ability of Kāi Tahu to exercise tino rangatiratanga and kaitiakitanga over the areas covered by the proposed marine reserves and taonga present (including those taonga and taonga fish species identified under the Ngāi Tahu Claims Settlement Act, see 3.3.3). In considering whether or not to uphold the objections relating to these matters, therefore, you must consider whether to do so would give effect to the Treaty principles of partnership, active protection and informed decision-making.
1662. In considering your Treaty obligations in relation to these objections, the direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement are directly relevant. Our advice in relation to the direct engagement with Kāi Tahu, including our consideration of each of the measures proposed by Kāi Tahu to mitigate what Kāi Tahu consider to be the impacts of the proposed marine protected areas (including the proposed marine reserves) on Kāi Tahu rights and interests and our recommendations are set out at 6.3. As set out in 6.3.10, our assessment, prior to considering any objections received, is that to declare each of the proposed marine reserves (including Ōrau) on the basis of the recommendations made would fulfil the Crown’s obligations in relation to the Treaty. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. In assessing the relevant objections below, therefore, we have considered whether there is anything additional that has been raised that means, in order to

be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required. For this assessment, we have proceeded on the basis that our recommendations in relation to the direct Kāi Tahu engagement will be progressed.

1663. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of these objections would also be consistent with your obligations under section 4 and other Treaty obligations, and would therefore fulfil the Crown's obligations in relation to the Treaty.

#### 10.5.2 Section 5(6)(a) estate or interest in land

1664. No objections that raised issues relating to any estate or interest in land in or adjoining the proposed reserve were received from submitters identified as affected iwi, hapū or whānau.

#### 10.5.3 Section 5(6)(b) navigation

1665. No objections that raised issues relating to any existing right of navigation were received from submitters identified as affected iwi, hapū or whānau.

#### 10.5.4 Section 5(6)(c) commercial fishing

##### 10.5.4.1 Objections related to impacts on charter fishing operation

1666. The objection from Ezifish Charters Ltd<sup>362</sup>, identified as affected iwi, hapū or whānau stated that adding further restrictions to an already heavily regulated industry "*is not in anyone's best interests*". It said the proposed site was 9(2)(b)(ii)

#### Te Papa Atawhai advice

1667. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.

1668. The first issue raised in this objection relates to the management of fisheries resources. We acknowledge that the proposed marine reserve would put further restrictions on commercial fishing activity besides those in place under the quota management system. We note, however, that the purpose of a marine reserve is not to manage fisheries. The submitter did not provide further detail to enable an assessment of how the issue would cause undue interference with commercial fishing.

1669. The second issue relates to the submitter's charter operation. The proposed marine reserve includes approximately 20 km of coastline and extends 3 km offshore at its widest. While the operator may use this site at times, there are many other areas available to continue with their business, particularly to the north. In addition, this site does not include Tow Rock, which was explicitly excluded from the proposed Network by the Forum. We note that, based on feedback from its public consultation, the Forum reduced the size of this site to the current proposed size (i.e. the site as proposed by the Application) and excluded Tow Rock in order to reduce its potential impact on the interests of Kāi Tahu and recreational and commercial fishers.

<sup>362</sup> A Dunedin-based charter fishing company.

## 10.5.5 Section 5(6)(d) recreational usage

### 10.5.5.1 Objections related to impacts on recreational fishing

1670. Five objections from affected iwi, hapū or whānau raised issues related to recreational use.

1671. One submitter suggested reducing catch limits instead of establishing the proposed marine reserve, as well as noting the need to carry out more research and have more rangers in the area. The submitter also said there were better sites in Ōtākou/Otago Harbour, specifically Aramoana or Wellers Rock as *“they are safe place[s] to fish and dive where beginners are able to experience the ocean in pool like conditions”*.

1672. In their objection, Ezifish Charters Ltd said adding further restrictions to an already heavily regulated industry (including recreational fishing) *“is not in anyone’s best interests”*.

1673. Three submitters using fishing club templates noted these main issues:

- Establishing the proposed marine reserve would be a *“huge loss”* for recreational fishers and divers as it is an important area for gathering pāua, kōura/rock lobster and rāwaru/blue cod.
- A concern that this was the *“only”* area for people with small craft to fish and dive safely.
- No longer having the opportunity to gather shells and driftwood along the beach would be a loss.

1674. One submitter added a comment to the template submission stating that their practice of fishing between Tow Rock and Okaihae/Green Island was highly valued as a bonding experience with their children. The submission also noted that small boats were limited in where they could launch and how far they could travel to fishing spots.

#### **Te Papa Atawhai advice**

1675. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1676. Reduced recreational and commercial catch limits were often suggested by submitters as alternative management options. We note, however, that these and other suggested measures do not offer the same protection as marine reserves. Marine reserves are a core part of the *Marine Protected Areas Policy and Implementation Plan*<sup>363</sup> (MPA Policy) objective for marine protection in Aotearoa New Zealand. They are not for fisheries management but a means to ensure the full range of biodiversity and ecosystem functioning is protected and more resilient to environmental change. Maintaining ecosystem functioning has high value for science as it provides a baseline for research and ecological monitoring.

1677. As noted above, the Forum reduced the size of this site and excluded Tow Rock to lessen the potential impacts on recreational fishers and divers.

1678. The submission from Ezifish Charters Ltd relates to the management of recreational (and commercial) fishing activity. We acknowledge that the proposed marine reserve would place a further restriction on recreational fishing activity, alongside those routinely implemented under the Fisheries Act. However, marine reserves are established for a different purpose than to manage recreational fishing activity. Also, the submitter did not provide any further

<sup>363</sup> Department of Conservation; Ministry of Fisheries 2005: Marine Protected Areas: policy and implementation plan. Department of Conservation and Ministry of Fisheries, Wellington. 25 p.

detail to allow an assessment of how the proposed marine reserve would cause undue interference or adversely affect recreational use.

1679. The suggested alternate sites at Aramoana and Wellers Rock are likely be ineffective marine reserves as their small size would not allow the ecological values to recover and be maintained. Part of Ōtākou/Otago Harbour was considered as a marine reserve site by the Forum but there was a mātaītai<sup>364</sup> reserve application over the entire harbour at that time so it was not considered further. The mātaītai reserve was subsequently established over a smaller area but by that time the Forum had already progressed other options and did not reconsider the harbour site.

1680. We acknowledge that establishing the proposed marine reserve would create some inconvenience for people who currently gather seafood recreationally in the area. However, as noted above, the Forum aimed to reduce such impacts by excluding some of the more popular recreational fishing spots. Also, locations to the north and south of the proposed marine reserve would remain open to recreational fishing. As highlighted by the Forum, this site has strong educational and public access values. On balance, we consider the expected benefits to the public would outweigh the potential impacts.

1681. The submissions using fishing club templates also highlighted concerns around the ability of small boats to access this area, and to do so safely. The importance of this site for launching boats was, however, recognised in the Application (Table A1.9, page 100) as detailed below:

‘The use of vehicles over the intertidal area of the marine reserve would be an offence, with some exceptions for vessel launching, emergency services or management. Consistency with Dunedin City Council’s Reserves and Beaches Bylaw 2017 is intended.’

1682. Under the Marine Reserves Act, driving vehicles on the foreshore is prohibited so a condition in the Order in Council would be required to allow this activity to continue. While we recommend including such a condition in the Order in Council (see 10.8.1.2), we note that vehicle access can damage biodiversity. Therefore, to ensure the purpose of the Marine Reserves Act is met, we recommend limiting the condition authorising vehicular access to access for boat launching and retrieval, requiring that access must be by the most direct route across the foreshore to the nearest feasible vessel launch or retrieval site. This measure would minimise disturbance caused by vehicles and if implemented, would prevent the undue interference with access raised in submissions.

1683. Regarding the disruption of shell and driftwood gathering, establishing the proposed marine reserve would not affect the collection of shells and driftwood above mean high water springs. While driftwood does not occur commonly or in large volumes in the proposed marine reserve, where it does occur is usually above mean high water springs and therefore outside the proposed marine reserve.

1684. Taking these materials from a marine reserve is prohibited under section 18I(3)(d) of the Marine Reserves Act<sup>365</sup>. However, the Application proposed (Table A1.10, page 101) that fossicking – defined as the non-commercial gathering of beach stones, non-living shells and driftwood using hand-held (non-mechanical) methods – would be permitted on the foreshore of the proposed marine reserve. This provision was proposed on the basis that fossicking these materials by hand and in small quantities would not affect the values of the proposed

<sup>364</sup> Mātaītai are identified traditional fishing areas for tangata whenua. The kaitiaki (guardians) sustainably manage fisheries there through bylaws. They are now established under the Fisheries Act 1996.

<sup>365</sup> Marine Reserves Act Section 18I(3)(d) Offences: Every person commits an offence against this Act and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both, who, without lawful authority or reasonable excuse – (d) takes or removes from a marine reserve any marine life, mineral, sand, shingle, or other natural material or thing of any kind.

marine reserve. Allowing these activities to take place could in fact enhance the educational and public awareness value of this site given its proximity to an urban area.

1685. Therefore, in accordance with the Application we recommend that provision is made in the Order in Council to allow this activity to occur if the proposed marine reserve is established (see 10.8.1.2). Provision for these activities would, however, be subject to other legal requirements, which may affect some activities in some areas. The beaches from St Clair to Lawyers Head are a Local Purpose Reserve under the Reserves Act 1977 and Dunedin City Council Reserves and Beaches Bylaws 2017<sup>366</sup> also apply to all beaches in the region. The recommendation for this condition therefore alleviates the interference identified by the submitters.

1686. Note that this issue was also raised by other submitters (see 10.6.5.4).

## 10.5.6 Section 5(6)(e) public interest

### 10.5.6.1 Objections related to impacts on customary interests

1687. Three of the objections from those identified as affected iwi, hapū or whānau said their ability and freedom to customarily harvest fish would be restricted by the proposed marine reserve. One stated, “*it is my families [sic] customary rights to fish where ever [sic] and when we choose*”, another stated, “*this is a key area to customarily take crayfish and blue cod*”. A third suggested that a taiāpure<sup>367</sup> and co-management would be preferable to a marine reserve, stating the belief that it was a right to be able to gather kaimoana (seafood) where their ancestors did.

1688. A submission in partial support was received from Te Rūnanga o Ōtākou<sup>368</sup>, identified as affected iwi, hapū or whānau. The rūnanga stated that the proposed marine reserve was “*at the maximum extent to which it can agree*” and requested the inclusion of a number of provisions:

- to be “*well-represented*” in the governance of the proposed marine reserve with effective co-management undertaken in the “*spirit of partnership, co-design, and informed decision-making*”
- that regular monitoring was undertaken, which would inform 20 to 25-year generational reviews
- to retain the ability to retrieve cultural materials from the proposed site and take other resources for the purposes of wānaka<sup>369</sup> and transfer of mātauraka<sup>370</sup>
- 9(2)(g)(i) access to commercial development opportunities within the proposed marine reserve, such as the harvest of the introduced kelp *Undaria pinnatifida*.

<sup>366</sup> [https://www.dunedin.govt.nz/\\_data/assets/pdf\\_file/0020/132581/10-Reserves-and-Beaches-Bylaw-2017-and-Maps.pdf](https://www.dunedin.govt.nz/_data/assets/pdf_file/0020/132581/10-Reserves-and-Beaches-Bylaw-2017-and-Maps.pdf).

<sup>367</sup> Taiāpure are areas that have customarily been of special significance to iwi or hapū, as a source of food, or for spiritual or cultural reasons, and are now established under the Fisheries Act 1996.

<sup>368</sup> Te Rūnanga o Ōtākou is the organisational structure of the hapū of Ōtākou marae on the Otago Peninsula whose rohe moana extends from Pūrehurehu (Heyward's Point) in the north to Mataāu (Clutha River) in the south.

<sup>369</sup> Intergenerational sharing of knowledge.

<sup>370</sup> The traditional knowledge accumulated by generations of Kāi Tahu whānau and hapū through co-existence with and use and protection of their natural resources.



### **Te Papa Atawhai advice**

1689. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1690. In terms of the objections concerning the submitters' rights to the customary harvest of seafood, it is acknowledged that the declaration of a marine reserve will prevent extractive fishing activities, including customary fishing activities (commercial and non-commercial) currently undertaken by affected iwi, hapū and whānau. The Kāi Tahu cultural assessment in the Forum's Recommendations Report (on page 174) stated:

'The fishery and kaimoana that were available in this coastal area represented an important traditional resource. There remains a high customary fisheries interest along this coastal area from Harakeke Point south toward Māori Head, which includes diving and kaimoana gathering. Although this is limited in some instances due to an offshore sewage discharge south of Te Ika-a-paraheke (Lawyers Head), it is otherwise a 'reliable' kaimoana source located close to Dunedin City.'

1691. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area<sup>371</sup> 'where and when ever', as suggested by a submitter. Rather, there are already a range of regulatory measures that govern such activities. This includes the quota management system which applies to commercial fishing generally and also the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. While acknowledging the cultural importance and customary use of the proposed site, and the fact that the proposed marine reserve would prohibit the take of marine life, areas surrounding it would remain available for customary fishing activities. Also, as mentioned above, the Forum amended the original proposal for this site to avoid the area around Tow Rock because of its particular significance for Māori. As set out in the Application (on page 60), the Ministers' decision to proceed with statutory consultation processes to implement 'Network 1' took into account the Forum's recommendations and subsequent agency advice on those recommendations. The proposed sites in the Application (including Ōrau) therefore reflect these considerations.

1692. The submission from Te Rūnanga o Ōtākou aligns closely with the views expressed in the engagement between Agencies and Kāi Tahu (see 6.3). As set out in our detailed advice in 6.3, we support the proposals in accordance with the Crown's Treaty obligations, and consider the proposed measures can be implemented consistently with the purpose of the Marine Reserves Act. Te Papa Atawhai considers that our recommendations in 6.3, if implemented, would mitigate the issues raised above.

## **10.6 Stage 1 assessment – objections from all other submitters**

### **10.6.1 Obligations in relation to the Treaty of Waitangi**

1693. Section 10.5 sets out the views of submitters identified as affected iwi, hapū, or whānau. The following section sets out the objections received from all other submitters and provides our advice on the assessment of these objections in terms of the tests in section 5(6)(a)–(e) of the Marine Reserves Act.

1694. The objections considered include objections received from Māori submitters who were not identified as affected iwi, hapū, or whānau on the basis that they were not affiliated with Kāi

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<sup>371</sup> As defined in section 2 of the Resource Management Act 1991.

Tahu (see 5.2). The requirement under section 49 of the Takutai Moana Act to 'have particular regard' therefore does not apply to these views.

1695. As set out in 5.2, however, the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act may still be relevant to your consideration of objections received from these submitters. In order to give effect to the principle of informed decision-making, Te Papa Atawhai has identified all objections received from other Māori submitters. Of these, we consider that objections relating to non-commercial customary fishing activities, including the ability to continue the customary harvest of seafood for nourishment, for maintaining wellbeing, for teaching tikanga and for tangihanga, should be considered in terms of the principles of active protection and partnership. As with objections received from affected iwi, hapū and whānau (see 10.5.1), our consideration of these objections in relation to section 4 obligations is made in the context of our direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement. As set out in 6.3.10, our assessment prior to considering any objections received, is that to declare each of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. We are therefore considering whether there is anything additional that has been raised in the objections received from other Māori submitters that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required.

1696. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. We have also considered the fact that these views are received from Māori submitters who are not affiliated with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of the objections received from other Māori submitters would also be consistent with your obligations under section 4, and would therefore fulfil the Crown's obligations in relation to the Treaty of Waitangi.

## 10.6.2 Section 5(6)(a) estate or interest in land

### 10.6.2.1 Objections related to the continuation of Dunedin city's municipal services

1697. Dunedin City Council<sup>372</sup> (DCC) partially supported the proposed marine reserve but requested that conditions be included in the Order in Council (or through other means as appropriate) before they would fully support it. DCC sought conditions to provide for the continuation of their existing discharges associated with stormwater and wastewater management (to water and air) and associated monitoring, and to provide for their existing consented outfall structures, including disturbance of the seabed associated with the maintenance of these.

1698. In addition to these requested conditions, DCC raised the issue of potential changes to wastewater discharge consents and the possibility of new stormwater discharges to the coast. DCC also requested further discussion with Te Papa Atawhai to reach agreement in relation to unplanned and infrequent discharges of partially treated wastewater associated with the Tahuna Wastewater Treatment Plant which may require resource consents in order to be compliant with the Resource Management Act. DCC sought to ensure these discharges would not be an offence under the Marine Reserves Act should the proposed

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<sup>372</sup> The Territorial Authority for the city of Dunedin.

marine reserve be established before the discharges are consented, in the event that discussions with Otago Regional Council indicate that consents are required. On requesting further information about these activities to inform our advice, DCC provided an additional memorandum on 12 February 2021 which we have considered as part of their submission. Te Papa Atawhai and DCC have also met a number of times since February 2021 to clarify issues that may arise for the Council's provision of municipal services if the proposed marine reserve is established. These issues fall into six broad categories and are described below with our associated advice.

### **Te Papa Atawhai advice**

#### *Existing consented activities - as listed in the Application*

1699. The Application document (Table A.10, page 101) lists all existing consented activities within and adjacent to the proposed marine reserve and states that these are unlikely to be affected by the establishment of the marine reserve. The Application states that this is on the basis that the activities are not considered to be inconsistent with the purpose of the proposed marine reserve at their current level of intensity.

1700. With the exception of two resource consents, all listed consented activities are authorised by existing resource consents held by DCC and relate to municipal infrastructure and services. Broadly speaking, these activities relate to stormwater and wastewater discharges, erosion protection and the St Clair saltwater baths.

1701. To the extent, therefore, that DCC's submission relates to existing consented activities listed in the Application, our advice is to confirm the position stated in the Application document - provision should be made in the Order in Council for these activities to continue (see 10.8.1.2), subject to compliance with the Resource Management Act and any other legal requirements. Appendix 13 lists these consented activities that we recommend allowing to continue (Table A13.4), and our reasoning. Table A13.5 also lists those consented activities that were listed in the Application but that do not need to be provided for in the Order in Council. This is on the basis that these activities would not constitute an offence under the Marine Reserves Act (Table A13.5).

#### *Existing consented activities - not listed in the Application*

1702. DCC have identified one additional consented activity that is not listed in the Application: stormwater from residential properties discharging to land which then enters Tomahawk Lagoon and in turn the coastal marine area. This is authorised under the relevant permitted activity rule and resource consent (consent RM19.261.01). This consent was granted after the Consultation Document was published.

1703. The Application proposes that all other existing discharges be allowed to continue, subject to compliance with the Resource Management Act and any other legal requirements. There is no basis for treating this discharge any differently from the other existing discharges. We therefore recommend providing for this discharge to continue via the proposed condition for other existing discharges (see 10.8.1.2).

1704. Subsequent to the Application, consents to construct access steps at the western end of St Clair beach (within the proposed marine reserve) were granted in May 2022. These consents provide for disturbance (RM22.136.01) and sediment discharge (RM22.136.02) into the common marine and coastal marine area during the construction of the steps, and the structure's ongoing occupation of the common marine and coastal marine area (RM22.136.03). The steps were constructed in late 2022. Due to the structure already being in place, we consider any future disturbance to the foreshore or seabed would arise only from the maintenance, alteration or replacement, which is likely to be relatively minor in nature. We therefore recommend providing for this structure, and any activities associated with

replacement or maintenance, to continue via the proposed condition for other existing structures (see 10.8.1.3).

*Existing activities that do not require resource consent*

1705. Te Papa Atawhai notes that there will be some existing activities (discharges or structures) that do not require resource consent (and are therefore not listed in Appendix 13) but that are nonetheless compliant with the Resource Management Act and any other legal requirements. Those activities would be accommodated by the recommended conditions for existing activities. For the avoidance of doubt, and at the request of DCC, Appendix 13 includes the existing wooden pole and plank groynes at St Clair Beach.

*Existing activities - variation and replacement of consents, and replacement of existing structures*

1706. DCC have stated<sup>373</sup> that they are planning to seek variations to some existing consent conditions, including the Tahuna wastewater outfall (consent 2002.623) and coastal stormwater discharge (consent RM11.313.10). They have also stated that the existing resource consents associated with wastewater and stormwater disposal that they hold will need renewing when they expire. DCC also proposed that any condition allowing for existing structures should also include the authorisation for those structures to be replaced.

1707. In terms of the issue of existing consents expiring, the recommendation for these proposed conditions would be to allow existing activities to continue, subject to compliance with the Resource Management Act and any other legal requirements. This means that the activities would be able to continue when existing resource consents expire, provided that those consents are replaced by new consents.

1708. In terms of variations to existing resource consents, our recommendation is that variations would fall within the scope of the proposed conditions allowing for existing activities, provided any variation did not substantially change the nature and adverse effects of the activity from the point at which the marine reserve is declared. If the variation did substantially change the nature and adverse effects of the activity it would be considered a new activity and therefore would no longer be covered by the proposed condition allowing for existing activities. The process described below at paragraph 1720 would need to be followed.

1709. In terms of the proposal to allow for replacement of existing structures, we recommend that this is also provided for within the proposed conditions allowing these structures. This should be on the basis that any replacement structure is not substantially different from the existing structure in terms of nature and adverse effects (i.e. like for like).

*Existing activities - potentially unconsented discharges*

1710. DCC have confirmed that on an infrequent basis, discharges of partially treated wastewater have occurred from the offshore outfall associated with the Tahuna Wastewater Treatment Plant and the twin outfalls at Lawyers Head. Similar discharges may occur in the future. These discharges may require resource consents in order to be compliant with the Resource Management Act. These discharges are unplanned or emergency in nature and have occurred due to heavy weather events, breakdown or failure at the Tahuna Wastewater Treatment Plant, resulting in partially treated wastewater being discharged. Information provided by DCC shows that there have been five such unplanned emergency discharges from the outfalls over the last 5 years (September 2016 – August 2021).

1711. DCC is currently working with the Otago Regional Council to ascertain whether or not further consents are required in relation to these discharges. DCC have advised that if

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<sup>373</sup> Memorandum from Dunedin City Council to Te Papa Atawhai, dated 12 February 2021.

resource consents are required, any applications for these consents would need to be made after the completion of their wastewater system plan which is currently in development. They anticipate it could take up to 10 years to complete these processes.

1712. DCC have stated their system planning work is underway and will allow them to better understand the performance of the current wastewater management system, and inform planning for future investment in wastewater infrastructure, including the Tahuna Wastewater Treatment Plant and associated outfalls at Tahuna and Lawyers Head. This planning work will take into account a wide number of variables, including climate change, so that the system remains resilient.
1713. The proposed condition for existing discharges discussed above (and see also 10.8.1.2) would be subject to those discharges being compliant with Resource Management Act. Until the consenting issues with the infrequent discharges identified above are assessed and (if necessary) rectified through new resource consents, these discharges may not fall within the scope of this condition and therefore would be in breach of the Marine Reserves Act. In our view, it is appropriate that these infrequent discharges should be regularised under the Resource Management Act. It would not be consistent with the purpose of the Marine Reserves Act to allow these discharges to continue indefinitely without confirmation that the discharges are compliant with the Resource Management Act.
1714. Te Papa Atawhai has assessed information provided on the frequency and cause of the unconsented discharges, and results from regular ecological and water quality monitoring occurring in relation to the regular consented discharges in the same area. Monitoring results show that there is no observable effect on ecosystem health from the discharges. We consider that in the immediate term, there is sufficient information to conclude that allowing the discharges to continue for a finite term, notwithstanding potential non-compliance with the Resource Management Act, would not adversely affect the values of the proposed marine reserve and would not preclude it from being preserved as far as possible in its natural state. The information provided by DCC in relation to their system planning work for current and future wastewater management provides further assurance that these issues are being appropriately managed.
1715. Te Papa Atawhai accepts that if a condition is not included in the Order in Council, the only way DCC could ensure these infrequent discharges do not occur at all following the declaration of the proposed marine reserve would be to stop the operation of the wastewater plant until such time as an assessment can be made as to whether resource consents are required, and if so, granted. In light of the conclusions reached above in relation to the nature, frequency and effects of the discharges, Te Papa Atawhai considers that this would interfere unduly with DCC's interest in land in or adjoining the proposed reserve (specifically DCC's role in providing municipal wastewater services) and/or would otherwise be contrary to the public interest<sup>374</sup>.
1716. Therefore, we recommend a specific condition be included, in addition to the general condition for existing discharges, that would provide for these infrequent discharges to continue for a finite period. Unlike the general condition, the specific condition for infrequent discharges would not include the requirement for compliance with the Resource Management Act. At the end of that finite period, the general condition for existing discharges would apply. That would mean that if the discharges were non-compliant with the Resource Management Act at that point, the discharges would constitute an offence under the Marine Reserves Act. We recommend the finite period is set at 10 years from the date of establishment of the proposed marine reserve, in accordance with the advice

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<sup>374</sup> Section 5(6)(e), Marine Reserves Act 1971.

provided by DCC. Our recommendation for providing for these infrequent discharges via an Order in Council condition is set out in 10.8.1.3. We note that the effect of this condition would only authorise the discharges for the purposes of the Marine Reserves Act. It would not alleviate any compliance requirements under the Resource Management Act itself.

#### *Future activities*

1717. The activities raised above relate to existing activities.<sup>375</sup> In its submission, and through the engagement with Te Papa Atawhai, however, DCC have raised issues relating to entirely 'future' activities within or adjacent to the proposed marine reserves.
1718. The Marine Reserves Act does not readily provide for future activities. Section 5(9) of the Marine Reserves Act allows you as the Minister of Conservation to recommend the declaration of a marine reserve either unconditionally or subject to conditions. As noted in 3.2.3, in considering objections to a proposed marine reserve, you may consider whether the imposition of a condition in the Order in Council or other mitigation would be appropriate to respond to any objection raised, so that the objection does not need to be upheld. There are a number of examples of conditions being included in Orders in Councils to allow for *existing* activities to continue that would otherwise constitute an offence on the declaration of a marine reserve<sup>376</sup>. As set out above, we recommend conditions to allow for the identified existing activities to continue. Any condition, however, must be consistent with the purpose of the Marine Reserves Act. The issue with future activities is that unless the nature and effects of such activities are known and identifiable with sufficient clarity at the point the recommendation is made, it would not be possible for an assessment to be made that a future activity would be consistent with the purpose of the Marine Reserves Act.
1719. There are no other specific provisions in the Marine Reserves Act that could authorise future works carried out by a local authority. Section 4(3) of the Marine Reserves Act provides a process whereby the Minister of Conservation and the 'Minister in charge of the department in control of the work' may authorise public works within a marine reserve. However, because there is no Minister or department in charge of 'local works' carried out by a local authority, this provision is implicitly limited to the authorisation of 'Government works'.
1720. The position of Te Papa Atawhai, therefore, is that for future activities that cannot be identified with sufficient clarity at the point of recommendation to enable assessment of the nature and effects of such activities, the only available mechanism is for the Order in Council establishing the marine reserve to be varied at such time that the nature of those activities becomes clear.
1721. The advice below considers the specific matters raised by DCC in relation to future activities.

#### *Stormwater discharges and associated structures*

1722. Currently, DCC hold resource consents issued by Otago Regional Council authorising the discharge of stormwater from ten stormwater catchments to the coastal receiving environments adjoining Dunedin (Figure 10-2).

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<sup>375</sup> The one exception is the activities authorised under the suite of consents RM13.428.01 – 05. These consents relate to erosion protection measures at Oceans Beach. Within the consent area, consents RM13.428.01 and 04 allow for the placement of future structures, specifically Reno mattresses and sand sausages, in addition to such structures that are already in place. We recommend providing for these future structures. Our reasoning is set out in Appendix 13.

<sup>376</sup> For example, the Taputeranga Marine Reserve Order in Council 2008, clauses 4 and 5, <https://legislation.govt.nz/regulation/public/2008/0226/latest/DLM1329701.html?src=qs>.

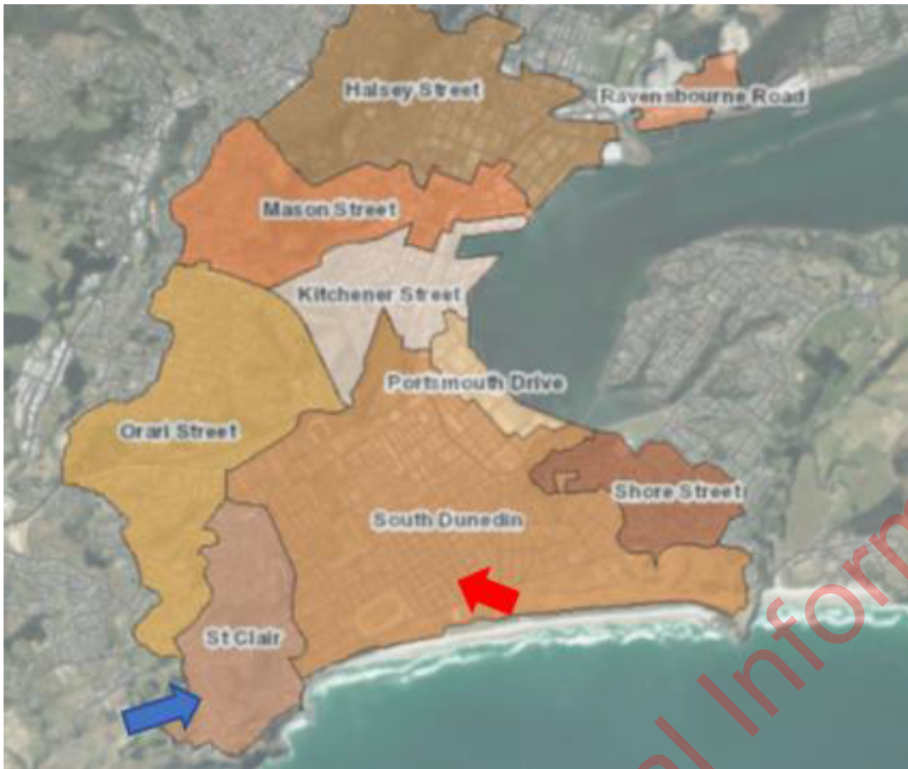


Figure 10-2: Stormwater catchments of Dunedin city (note Port Chalmers catchment is not shown). St Clair catchment shown by blue arrow, South Dunedin by red arrow

1723.

Pursuant to these consents, DCC has 14 large outfalls and many smaller outfalls that either discharge into the Otago Harbour or the coast near St Clair. One outfall is within the proposed marine reserve area (shown in Figure 10-3 as 2) and another is immediately adjacent (shown as 1).



Figure 10-3: Two outfalls are located in the St Clair area, 1. outfall at Second Beach, 2. outfall at St Clair Beach

1724. The two St Clair outfalls only receive stormwater from the St Clair catchment. Modelling undertaken by DCC estimates that discharge volumes from the South Dunedin catchment within a 24-hour period range from 50,000 to 248,000m<sup>3</sup>, and 2,956 to 15,891m<sup>3</sup> from the St Clair catchment, depending on severity of the rainfall event. This represents up to approximately 15 times more discharge from South Dunedin compared to St Clair.

1725. Conditions of the consents require monitoring of stormwater quality during dry and wet weather conditions, harbour water quality during dry and wet weather conditions, harbour sediments and on a 2-yearly basis, harbour biological communities. Based on sampling from the consent monitoring, differences in stormwater quality (metals, enterococci) between these two catchments are highly variable across sites and through time.

1726. DCC have stated that there will likely be a need for changes to the city's stormwater infrastructure in the future. This is due to the expected effects of sea-level rise on stormwater management and the need to service new urban development. While the exact nature of this work is not yet known, DCC have described the future activities that may arise as being:

- Scenario A: Upgrades to the existing stormwater infrastructure in the St Clair catchment which would allow higher volumes of stormwater from the St Clair catchment to be discharged at the St Clair Beach and Second Beach outfalls (within/adjacent to the proposed marine reserve) during heavy rainfall events. Currently, these additional stormwater flows flow overland into the South Dunedin catchment and are therefore discharged to the Otago Harbour. This is unlikely to require new outfall structures.
- Scenario B: Redirection of stormwater flows from the South Dunedin catchment to the outfalls in the proposed marine reserve to ease pressure on infrastructure in other catchments. This could involve new outfall(s) at Oceans Beach (within the proposed marine reserve).

1727. As discussed above, any variation to existing consented discharges or structures would be covered by the conditions proposed, provided the variation did not substantially change the nature and adverse effects of the activity from the point at which the marine reserve is declared. However, the scenarios identified by DCC relate to activities that would likely be sufficiently different to the existing activities that they would fall beyond the scope of the proposed conditions.

1728. In order to provide for these future scenarios, DCC have proposed a condition in the Order in Council that would allow the DCC to establish and carry out future stormwater discharges, associated structures, monitoring and maintenance, subject to compliance with the Resource Management Act and any other legal requirements.

1729. As noted above, the position of Te Papa Atawhai is that in order to be provided for through an Order in Council condition, any future activities need to be known and identifiable with sufficient clarity at the point of recommendation to enable assessment of the nature and effects of such activities.

1730. To inform our assessment of the identified future stormwater management activities, we have assessed information available from two existing monitoring programmes. Both monitoring programmes are requirements under existing resource consents held by DCC in relation to its stormwater and wastewater activities:

- The first is biological monitoring carried out at sites within Otago Harbour for existing stormwater discharges. Monitoring is required every two years. This monitoring shows no significant differences in the species monitored in relation to



distance from the existing stormwater discharges in that environment. Based on the modelling carried out by DCC, it is clear that significantly greater volumes of stormwater discharges to the Otago Harbour compared to the coast at St Clair (noting the comparative figures referred to above which suggest a 15-fold difference between the St Clair catchment and South Dunedin catchment – another 8 catchments also discharge to the Otago Harbour).

- The second is biological monitoring pursuant to the consents relating to wastewater discharges, where one of the sites (at Second Beach) is immediately adjacent to one of the two stormwater discharges shown above at Figure 10-3. This biological monitoring is therefore relevant to assessing the effect of existing stormwater discharges from the Second Beach outfall. The wastewater discharge monitoring has not shown any pattern in the abundance or diversity of the species monitored since 2005, so it can reasonably be concluded that the existing stormwater discharge is not having a significant ecological effect.

1731. The monitoring programmes give a sufficient degree of certainty that the existing discharges would not undermine the purpose of the proposed marine reserve. This supports our recommendation to provide for a condition for existing discharges (see Appendix 13).

1732. The monitoring is, however, also relevant to assessing the nature and effect of future stormwater management activities as proposed by DCC.

1733. Scenario A would see an increase in stormwater discharge through the St Clair outfalls based on greater capacity of the network to cope with water in the St Clair catchment. The increase in discharge would be limited largely to the catchment and therefore the increase is not likely to be high relative to the current rate of discharge, and only during high rainfall events. Based on current information presented in the monitoring reports, it seems unlikely that an increase at the scale of this option would have a significant effect on the site's ecological values.

1734. Scenario B as presented could result in a substantial increase in discharge to the coastal area in or adjacent to the proposed marine reserve. The actual future discharge volume that this option would involve is unclear as it would depend on how much of the South Dunedin catchment was diverted to the coastal outfalls, whether an additional outfall would be developed at Ocean Beach, and the frequency of high rainfall events under future climate scenarios. Therefore, increasing discharge to drain the South Dunedin catchment carries the greatest uncertainty.

1735. The monitoring reports from the harbour sites, however, show no trends occurring in relation to the stormwater discharges. Given the highly energetic environment at the coast, this receiving environment is likely to withstand a higher degree of discharge than the harbour, before significant ecological effects would be observed. There would be the potential for localised effects (10's to 100's of metres), but these are likely to be temporary and only occur after significant rainfall events. Based on current monitoring, it appears that these effects are unlikely to be widespread and the footprint of any effects (should they occur) would be small compared to the extent of the habitats contained within the proposed marine reserve.

1736. It is also relevant that the proposed condition would require any discharges and associated activities to be compliant with the Resource Management Act and any other legal requirements. This gives additional confidence that these activities will not be at a level that is likely to cause significant impacts on the proposed marine reserve.

1737. Te Papa Atawhai accepts that the provision of stormwater services is an important municipal function and that needs are likely to change over time. Overall, and recognising

that there remains some uncertainty about the effects of these proposed future activities, Te Papa Atawhai considers that there is sufficient certainty about the nature and likely effects of the future stormwater management activities identified by DCC that to provide for these activities as proposed by DCC would not be inconsistent with the purpose of the Marine Reserves Act. In those circumstances, we consider prohibiting these future activities through the declaration of the proposed marine reserve (or at least, requiring the Order in Council to be varied at a later date) would unduly interfere with DCC's interest in land in or adjoining the proposed marine reserve (the provision of stormwater services) or would otherwise be contrary to the public interest<sup>377</sup>. We therefore recommend making provision for these future activities via a condition in the Order in Council (as set out at (r) in 10.8.1.3).

*Flood mitigation and coastal erosion protection works*

1738. During the course of engagement with DCC, Te Papa Atawhai was made aware that DCC is working on an extensive coastal planning project known as the St Clair to St Kilda Coastal Plan – Whakahekerau – Rakiātea (the Coastal Plan). The Coastal Plan will direct the long-term management of this coastal area, to achieve enhancement of natural character, benefits for wildlife, public amenities, and coastal hazard protection. The area to which the Coastal Plan relates is within the area of the proposed marine reserve. The draft Coastal Plan was released for public feedback from 29 November 2021. The Coastal Plan was adopted without amendment by the Council and finalised on 22 February 2022<sup>378</sup>.
1739. The Coastal Plan sets out a series of 5 management objectives derived from community engagement. This includes ensuring that the coast and inland areas are resilient to the effects of coastal hazards and climate change and that resilience is achieved through sustainable practices (Objective 1) and working with nature to create a long-term solution that benefits natural landscapes and wildlife – fostering a culture of care (Objective 2). The Coastal Plan identifies 6 'high level' management options for the area: Option 1 – Maintain existing defence; Option 2 – New or upgraded seawall (rock or concrete); Option 3 – Offshore structure; Option 4 – Groynes/beach nourishment; Option 5 – Enhanced dunes; Option 6 – Coastal setback. Decisions on implementation of the various options will be made over subsequent years. The Coastal Plan envisages 'management pathways', meaning that management options may be implemented in conjunction with other options, and that the approach may change over time.
1740. Based on the information available, it is clear that some, albeit not all, activities that are identified as possible management options as part of the Coastal Plan would constitute an offence under the Marine Reserves Act if not otherwise provided for. DCC have therefore raised the concern that establishment of the proposed marine reserve would present a risk to their ability to undertake future coastal erosion activities in accordance with the Coastal Plan, including steps to manage climate change issues that South Dunedin faces.
1741. DCC recognises that the nature of the Coastal Plan means there is a degree of uncertainty about the future activities that will be undertaken. During the course of engagement DCC confirmed that the option of amending the Order in Council to provide for future coastal erosion protection activities at the point that the nature and effects of those activities can be determined would be unworkable. In particular, DCC highlighted the fact that further public consultation will be required prior to the finalisation of any of the management options identified in the Coastal Plan. This is to inform funding plans. Public consultation would also be required for the resource consent processes under the Resource Management Act. DCC

<sup>377</sup> Section 5(6)(e), Marine Reserves Act 1971.

<sup>378</sup> The Coastal Plan: <https://www.dunedin.govt.nz/council/council-projects/south-dunedin-future/st-clair-to-st-kilda-coastal-plan#:~:text=The%20St%20Clair%20%E2%80%93%20St%20Kilda.coastal%20hazards%20and%20climate%20change>.

would face substantial difficulties undertaking such consultation if it remained unclear whether or not the Order in Council would be amended to accommodate the final proposal and therefore whether the activities would be 'lawful' under the Marine Reserves Act. This would create a 'catch 22' situation if the position of Te Papa Atawhai for the purposes of the Marine Reserves Act is that the nature and effect of the activities could not be assessed until the details of any proposal had been finalised.

1742. To address this situation, DCC has proposed that a condition is included in the Order in Council along the following lines:

An exemption for coastal protection work within 150 metres of the line of mean high water springs at St Clair St Kilda beaches as contemplated by the Our Coast Our Community St Clair – St Kilda Coastal Plan: Whakahekerau – Rakiātea Rautaki Tai.

This would provide a 'buffer zone', within which DCC could progress any of the management options identified in the Coastal Plan on the basis that those activities would be permitted for the purposes of the Marine Reserves Act within the marine reserve (if established).

1743. Te Papa Atawhai has carefully considered DCC's proposal. Te Papa Atawhai acknowledges the importance of DCC's role in ensuring coastal protection for the South Dunedin community. Te Papa Atawhai accepts that for the reasons put forward by DCC, the option of varying the Order in Council at the point where the nature of the future erosion protection activities anticipated by the Coastal Plan can be identified is not practicable. On that basis, Te Papa Atawhai considers that to the extent the declaration of the proposed marine reserve would prohibit DCC from progressing the management options identified in the Coastal Plan, this would unduly interfere with DCC's interest in land in or adjoining the proposed marine reserve, and/or would be contrary to the public interest<sup>379</sup>.

1744. Te Papa Atawhai acknowledges that there remains a relatively high degree of uncertainty about what management options will ultimately be progressed under the Coastal Plan. At this early stage, therefore, there is not (and nor can there be) any comprehensive assessment of what the effects of each of these options would be. Those assessments will only be carried out at a later date, presumably as part of any subsequent resource consent processes. That said, the proposal is for the condition to explicitly refer to the Coastal Plan. Therefore, the nature of potential future activities is at least broadly known, given that any activities would be limited to the 6 high level management options identified. This means it is possible to make a broad assessment as to whether the nature and effect of these activities would be consistent with the Marine Reserves Act. The coastline to which the buffer zone would apply is already modified given the range of existing activities carried out by DCC. As set out above, Te Papa Atawhai has recommended providing for these activities pursuant to recommendations (i)-(m) and (o)-(q), as set out in 10.8.1.2 and 10.8.1.3. The proposed management options are broadly consistent with these existing measures. The only exception to this is management Option 3 (Offshore structure) and Option 4 (to the extent that it envisages groynes). However, based on the information available, our assessment is that even these options (both installation and operation) are unlikely to have significant effects on marine reserve values. The Coastal Plan also notes that these options are 'contrary to the New Zealand Coastal Policy Statement and the management objectives in this plan and therefore difficult to obtain consent and potentially costly to construct'. There is therefore less likelihood of these options being progressed. In addition, while coastal erosion

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<sup>379</sup> Section 5(6)(e), Marine Reserves Act 1971.

protection measures would be ongoing in nature, the activities themselves in terms of disruption to the marine reserve would likely be of relatively short duration.

1745. Te Papa Atawhai also acknowledges:

- The condition would apply within a defined area, which is a small percentage of the overall area of the marine reserve (0.52 km<sup>2</sup>, or 1.8%).
- The condition would be made subject to compliance with the Resource Management Act and any other legal requirements. This gives an additional assurance that adverse effects would be avoided, mitigated or remedied. Te Papa Atawhai would be able to engage in any subsequent Resource Management Act processes and would not be obliged to support any proposed measures through that process.

1746. The only other option to alleviate what would otherwise be undue interference with DCC's interest in land in or adjoining the proposed marine reserve and/or otherwise contrary to the public interest would be to vary the landward boundary of the marine reserve to a position off-shore – i.e. for the marine reserve to start 150 m off-shore along the length of the St Clair/St Kilda beaches (150 m being consistent with the furthest seaward extent of the 6 'high level' management options identified in the Coastal Plan, as proposed by DCC for the buffer zone). Te Papa Atawhai considers that there would be significant disadvantages to a boundary shift. Under the 'buffer zone' proposal, only a very limited number of activities would be allowed within the zone. All other activities, including extractive activities, would remain prohibited. A boundary change would remove the proposed buffer zone from the marine reserve entirely. Te Papa Atawhai considers this would go beyond what is needed to alleviate the undue interference we consider would be caused to DCC. There would also be practical difficulties from an enforcement perspective as an offshore boundary would be more difficult to ascertain and monitor.

1747. Overall, Te Papa Atawhai considers it is appropriate to provide for a condition as proposed by DCC in the Order in Council. For ease of implementation, Te Papa Atawhai recommends that the buffer zone should apply between the western boundary of the proposed marine reserve (identified as vertex I4 in the Application) and Lawyer's Head. The condition would be subject to compliance with the Resource Management Act and any other legal requirements and would be limited to works undertaken by or on behalf of the DCC or other local authority. Our recommended condition is set out at (s) in 10.8.1.3.

### 10.6.3 Section 5(6)(b) navigation

#### 10.6.3.1 Objections related to safe boat launching

1748. Objections from the Tautuku Fishing Club Dunedin and Haast Incorporated's<sup>380</sup> and several individuals (including one Māori submitter not identified as affected iwi, hapū or whānau) noted that Tomahawk Beach was the "safest eastern beach to launch" and was used extensively by recreational fishers to launch and retrieve small trailer boats using trucks or tractors. The objectors raised concerns that if the proposed marine reserve was established, they would not be able to launch boats safely from local sites, including Tomahawk Beach.

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<sup>380</sup> A club based in Dunedin and Haast that was formed in 1970 for bringing the community together to fish recreationally, is affiliated with the New Zealand Sport Fishing Council, and has 75 members.

### **Te Papa Atawhai advice**

1749. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with navigation.
1750. These objections raise two issues. The first is that launching boats from Tomahawk Beach should remain an authorised activity from a safety perspective. The second is the belief that travelling through the proposed marine reserve with fish onboard would not be permitted so this site could not be used to retrieve boats.
1751. As outlined in 10.5.5.1, we recommend a condition in the Order in Council to provide for vehicle use over the foreshore to allow vessels to be launched and retrieved, as proposed in the Application (see 10.8.1.2). If this recommendation was implemented, it would ensure there was no undue interference with access.
1752. It is evident from views raised in some submissions that there is a misconception that travel through the proposed marine reserve would be prohibited for boats with fish on board. The Marine Reserves Act prohibits the taking of marine life from within a marine reserve but does not prohibit the transport of marine life through a marine reserve. Recreational fishers would still be permitted to return to shore via the proposed marine reserve to the site where they launched. This issue can therefore be disregarded as a misunderstanding rather than an objection. If the proposed marine reserve was implemented, Te Papa Atawhai would ensure that information was available for all boat-users to increase awareness of the rules.

#### **10.6.4 Section 5(6)(c) commercial fishing**

##### **10.6.4.1 Objections related to displacement of fishing**

1753. The combined industry objection from the New Zealand Rock Lobster Industry Council<sup>381</sup>, Paua Industry Council<sup>382</sup> and Fisheries Inshore New Zealand<sup>383</sup> argued that displacing recreational pāua fishing would undermine the efforts of the industry to rebuild stocks. The submission said the proposed site supported an abundant pāua population and was valued by recreational pāua divers. It acknowledged the level of displacement was an "*unknown but potentially very significant amount of recreational fishing effort for pāua*". The submitters said the displaced fishing effort would interfere with commercial fishing and would be "*increasing the risk of local and serial depletion*" therefore "*threatening the rate of rebuild of PAU5D*"<sup>384</sup>. They concluded that the current fishery management target would not be achievable if displacement from the proposed marine reserve occurred, despite previous and current fishing management measures. They said the cumulative impacts of establishing this and the proposed Okaihā and Hākinikini marine reserves would be "*even more significant*".
1754. The submission raised concern about the risk of "*inter-sectorial spatial conflict*" saying that establishing the proposed marine reserve is likely to create tensions between commercial and recreational fishers. They gave an example of these tensions from the 2013 'Pāua to the People' campaign, which led to the prohibition of commercial pāua fishing in an area around Otago Peninsula.

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<sup>381</sup> The national representative organisation for the New Zealand rock lobster industry and the umbrella organisation for nine commercial stakeholder organisations operating in each of the rock lobster management areas in New Zealand.

<sup>382</sup> The national agency for five commercial stakeholder groups that represent commercial pāua fishery interests.

<sup>383</sup> A commercial fisheries stakeholder organisation.

<sup>384</sup> PAU5D is the quota management area for pāua from the Waitaki River in the north to Te Waewae Bay in the south.

1755. The Otago Rock Lobster Industry Association<sup>385</sup> and two individuals with a commercial fishing interest raised similar issues about the effects of displacement and spatial conflicts.

#### **Te Papa Atawhai advice**

1756. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.

1757. The coastline in the proposed marine reserve area is effectively a recreational fishery as commercial pāua fishing is currently prohibited along this coast. There is, however, very little quantitative or spatial information about recreational pāua fishing effort that could be used to assess this objection. Estimates of the level of recreational take have been made for the PAU5D quota management area (from the Waitaki River to Te Waewae Bay) but this information does not allow assessment of the level of catch at the finer spatial scale of the proposed marine reserve areas mentioned in the objection. Approximately half of the commercial prohibition area is included in the proposed marine reserve.

1758. The three proposed marine reserves mentioned by the submitter may cause some displacement of recreational fishing into adjacent areas currently used by commercial pāua fishers. However, for both Ōrau and Okaihae, the recreational effort would most likely be displaced to areas within the remaining commercial prohibition area. The area of the proposed Hākinikini marine reserve is not known as particularly valuable area for pāua due to it being generally difficult to access, and we consider this displacement is unlikely to be significant.

#### **10.6.4.2 Objections related to the commercial kōura fishery**

1759. A combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that the proposed marine reserve would "*adversely affect the Otago rock lobster industry and the application significantly under-estimates the proportion of CRA7 rock lobster catch that is taken from the site*".

1760. The Otago Rock Lobster Industry Association's objection said its fishers currently use the proposed marine reserve area as well as the proposed Te Umu Koau and Okaihae marine reserves. The submission stated that the proposed marine reserves would have "*significant economic impacts*" on the industry.

#### **Te Papa Atawhai advice**

1761. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.

1762. The Application stated that this proposed marine reserve area was estimated to account for 0.08% of the kōura quota management area landings (Table A1.2, page 72). The combined industry submission regarded this as a significant underestimate but did not provide an alternative estimate. We acknowledge that the estimates derived from previous fisheries data reporting methodology (CatchMapper) are generally poor for potting methods of fishing, however, new methods utilising electronic reporting are far better in spatial accuracy. Electronic reporting data for the 2020/21 to 2022/23 fishing years show that two fishers used this site with an estimated combined catch of 9(2)(b)(ii) over the three years. The catch from one fisher equates to 9(2)(b)(ii) their CRA7 landings, while the

<sup>385</sup> A fully constituted and incorporated society which is recognised as the commercial stakeholder organisation representing the interests of the commercial kōura/rock lobster industry on the Otago Coast, the CRAMAC7 (CRA7) fishery.

other fisher's landings equate to 9(2)(b)(ii). Overall, the commercial kōura catch from this site is estimated at 9(2)(b)(ii) of the quota management area landings.

1763. Information in the fishers' statutory declarations provided with the Otago Rock Lobster Industry Association submission suggest that four of the nine CRA7 fishers used this area to some degree. Many of these fishers also used other nearby sites including Tow Rock. Tow Rock was specifically excluded from the Forum's recommendation due to its importance to commercial and other fishers.

1764. We consider the economic impact of establishing this marine reserve on the commercial kōura industry would not be significant. The low proportion of catch taken from this site as part of the quota management area suggest that the limited catch is likely to be able to be taken from elsewhere. The cumulative economic impact of this and the other proposed marine reserves, as raised by the submitter, is discussed in 6.6.4.1.

## 10.6.5 Section 5(6)(d) recreational usage

### 10.6.5.1 Objections related to recreational fishing locations

1765. Four objections from individuals (including two from Māori submitters not identified as affected iwi, hapū or whānau) disagreed with a statement made in the Application that the effects on recreational fishing would be moderated by alternative areas nearby being available. The objections noted in particular that fishers with small boats would have limited access to other areas.

1766. DiveNation<sup>386</sup> partially supported the proposed marine reserve but noted that "*there are no nearby locations for pāua from this area*". The submission also requested changes to the boundaries of the proposed site.

1767. Fishing club templates were used by 95 submitters (including one Māori submitter not identified as affected iwi, hapū or whānau) to object to the proposed marine reserve. These included issues related to recreational fishing. The submissions stated that fishers living in Dunedin who did not have access to vehicles would no longer be able to fish because the proposed marine reserve would cover all the coastline within walkable distance. One submitter noted that the "*only other place to dive and fish is Cape Saunders*". Other comments added to the templates included:

- "The cost of fuel going out beyond the reserve would make it too expensive for me to go out"
- "Fishing in deeper water [...] is more challenging 'physically' and to a lesser degree financially, unable to afford an electric reel"
- "I don't have access to a boat so I can't go elsewhere easily".

1768. An objection from the Tautuku Fishing Club Dunedin and Haast Incorporated said the nearest viable alternative was to "*launch into the Dunedin Harbour or drive for 40 minutes to Taieri Mouth*".

1769. The combined industry objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand expressed concern for the recreational fishing community. It said that if this and the proposed Okaihae marine reserves were established, only a very small area of coast near Dunedin (at Blackhead) would remain available therefore "*placing incredible pressure*" on this area. The objection cited the number of submissions (stated as 2,740) received by the Ministry for Primary Industries during its

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<sup>386</sup> An Otago-based spearfishing club.

2013 consultation on removing commercial pāua diving closures, to assert that the proposed marine reserve would unduly interfere with recreational fishing because of the high level of public interest.

1770. A submitter in partial support said they would support the proposed marine reserve only if the boundaries were altered to provide some shore-based fishing, particularly for people who did not have a boat. They noted that *“this section of coastline provides some unique fishing opportunities within close proximity to Dunedin”*.
1771. An objection from the Tautuku Fishing Club Dunedin and Haast Incorporated noted that its members had popular fishing spots in the proposed marine reserve and establishing it would be a *“great loss”* to the diving community. The objection also stated that *“diving spots along the south coast area are plentiful”* and acknowledged that the weather and sea conditions limit opportunities.
1772. Dive Otago<sup>387</sup> partially supported the proposed marine reserve but noted that *“there are other sites [for diving or recreational fishing] but they are not as accessible and require longer travel time for people who live in this area”*. Dive Otago considered that the *“lost opportunity is not moderated sufficiently”*.
1773. An objection from the St Clair Surf Life Saving Club<sup>388</sup> said it did not want Ponuahine to be included in the proposed marine reserve because of its recreational fishing values.
1774. Many individual objections (including four from Māori submitters not identified as affected iwi, hapū or whānau) said they used the area to gather seafood for their families and would therefore be affected. Statements included: *“my family and I access this area regularly for the collection of kaimoana”* and *“living off the land and sea is very important to us and has been an essential part of my upbringing and that of my children”*.
1775. The combined objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand disagreed with a statement in the Application that the adverse effects on overall recreational opportunities would be moderated by the availability of alternate fishing locations. It said it was *“contrary to MRA s5(6)(d) which requires that an objection must be upheld if there are adverse effects on existing recreational usage of the area. The reported existence of other suitable locations nearby (which the applicant has not identified) is irrelevant to the consideration of whether there are adverse effects on existing recreational fishing in the area of MPA I1”* [submitter’s emphasis].

#### **Te Papa Atawhai advice**

1776. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.
1777. We consider this statement in the Application remains a reasonable summary of the interference the proposed marine reserve is likely to create:

‘While there would be an effect on some types of fishing (particularly shore-based fishing), the adverse effects on overall recreational opportunities would likely be moderated by the availability of other suitable locations nearby.’

<sup>387</sup> A Dunedin-based company providing diving training and equipment.

<sup>388</sup> A volunteer club providing a service focussed on saving lives and preventing injury for St Clair beach users and the wider community.



1778.

In our view there are many locations in adjacent areas where recreational fishing would be possible for most fishers. This is because:

- For vessels launched from Tomahawk Beach, the closest reefs outside the proposed site are 4 km to the west and 10 km to the east.
- Most boats are trailer boats, which can be launched from a number of other sites within an hour's drive from Tomahawk Beach, such as Taieri Mouth (40 min), Brighton Beach (30 min), Port Chalmers (30 min), Karitane (45 min) and Shag Point (60 min).
- Part of the reef at Ponuiahine would remain open for boat-based fishing.
- Alternative fishing sites are accessible by small boats from the current launching sites. One submitter (in partial support) stated that they launch their vessel from Tomahawk Beach and that *"for the past 10 years [they] have fished exclusively West of Ponuiahine/White Island and East of Blackhead to a range of not more than two and a half nautical miles from shore. The journeys to [their] fishing locations within this area take no longer than 15 minutes and is outside the proposed marine reserve"*.
- Shore-based fishing would remain possible within a few kilometres of the proposed marine reserve at Second Beach (St Clair), Blackhead, Tunnel Beach or Ōtākou/Otago Harbour. Public transport to some of these sites is available for people who do not drive or have access to a vehicle.
- The area west of St Clair, which is outside the proposed marine reserve but within the commercial pāua prohibition area, can be accessed by foot. Similarly, Allans Beach is within a 20-minute drive from Dunedin.
- Several other locations around Cape Saunders, the southern coast of Dunedin and the north of Otago Peninsula are equally accessible by boat, but these also are available to commercial fishers.

1779.

For diving, the locations just east of Smalls Beach, within the proposed marine reserve, are likely to be some of the most currently utilised parts of the coast by spearfishers and pāua fishers in close proximity to Dunedin City. As above, other areas for both shore-based and boat-based diving would remain available.

1780.

Some fishing displacement is inevitable when marine reserves are established. We expect the main interference would be for fishers who access the coast at this site and are unable to travel to another location. This would include those who live within walking distance of the coast, do not own a vehicle or are unable to use one, or are unable to use public transport. Fishers without a boat trailer would also be affected. However, we consider that the benefits for scientific study, education and biodiversity that are likely to arise from establishing this proposed marine reserve are high and would outweigh this interference.

1781.

Te Papa Atawhai disagrees with the assertion made in the combined industry submission that the existence of other suitable locations nearby is *"irrelevant"* to the assessment under section 5(6)(d). Firstly, we note the submission refers to *"adverse effects"* on recreational fishing. As noted in 3.2.4, the High Court in *Akaroa Marine Protection Society Incorporated v The Minister of Conservation* [2012] NZHC 933 confirmed that the approach to 'adverse effect' in section 5(6)(d) must be approached on the same basis as 'undue interference'. Therefore, it is not the case that an objection must be upheld if there is any scale of adverse

effect on existing recreational users. The Minister must be satisfied that the adverse effect must be both ‘excessive and unjustified’<sup>389</sup>.

1782. Secondly, as a matter of logic, the availability of nearby locations must be relevant to the assessment of whether that adverse effect/undue interference threshold is met. It forms part of the factual context in which the assessment must be made. If *no* other locations for similar recreational uses were available nearby, this would likewise need to be taken into account in assessing the severity of the effects of a proposed marine reserve. The *Akaroa* case also confirms that in making the assessment under section 5(6)(d), it is appropriate to consider the merits of the proposal, including the wider public interest, and that the benefits may extend beyond the area of the proposed marine reserve.<sup>390</sup>

#### 10.6.5.2 Objections related to recreational fishers’ safety

1783. The templated fishing club submissions (including one from a Māori submitter not identified as affected iwi, hapū or whānau) objected that recreational fishers’ safety would be compromised, including, “*it is the only area for small craft to fish and dive safely*”, and “*I have huge safety concerns for everyone. The only other place to dive and fish is Cape Saunders which has dangerous currents and sea conditions putting people's lives at huge risk*”. Twelve individual submitters (including two Māori submitters not identified as affected iwi, hapū or whānau) and Dive Otago raised a similar issue.

1784. The objection from the Tautuku Fishing Club Dunedin and Haast Incorporated said shore-based fishers would be likely to venture to more precarious fishing spots such as Cape Saunders. It noted, “*fishing areas must be maintained that are close to the coast, and in areas that provide an easy retreat when the weather turns bad*”. The objection expressed concern regarding the safety of boat-based recreational fishers by having to “*travel well offshore*” because “*fishing opportunities in sheltered areas, or close to shelter are removed*” and “*long distances need to be travelled in to shore when weather conditions deteriorate*”.

#### **Te Papa Atawhai advice**

1785. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1786. The availability of nearby sites that would remain open to all types of fishing was demonstrated in 10.6.5.1. While some sites outside of the proposed marine reserve may be less safe in certain conditions than the current preferred fishing spots, it is our view that safe fishing locations would still exist. This view is supported by several submissions that noted alternate fishing sites, for example Blackhead, Tow Rock, the area around Ponuihahine, and Ōtakou/Otago Harbour which has numerous boat ramps available.

1787. Safety should be the paramount concern for individuals undertaking shore-based fishing and diving and for the skipper of any vessel. We consider that, regardless of the establishment of the proposed marine reserve, the onus remains on individuals or vessel skippers to ensure conditions are suitable. Establishing the proposed marine reserve may mean that it is not possible to fish at certain locations on some additional days per year.

1788. Te Papa Atawhai recognises that establishing this proposed marine reserve would cause Dunedin-based recreational fishers to adjust their activities and find new fishing spots. However, the proposed marine reserve’s expected scientific, educational and biodiversity benefits are considered to outweigh the social cost of these changes. We note that the

<sup>389</sup> *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [53].

<sup>390</sup> *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [57].

recovery of exploited species within the proposed marine reserve is likely to enhance fishing adjacent to the site. Evidence of this effect is seen at many marine reserves where 'fishing the line' (fishing along a marine reserve boundary) is observed.

#### 10.6.5.3 Objections related to recreational pāua fishing

1789. One objection said the area from "*St Clair to Rodney Cliffs* [should] *be excluded*" from the proposed marine reserve, arguing that "*this area is one of Otago's best pāua diving spots*". In its objection, PauaMac 5 Incorporated<sup>391</sup> said the proposed marine reserve "*will interfere with and adversely affect recreational pāua fishing*".

1790. One submission in partial support raised concern about the loss of sites within the proposed marine reserve area that were important for recreational pāua fishers.

#### **Te Papa Atawhai advice**

1791. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1792. We acknowledge that this area is particularly valuable for recreational pāua fishers because there is no commercial pāua take. However, the proposed marine reserve only covers about half of the area that is closed to commercial pāua fishing – a large area would remain where recreational pāua fishing could take place in the absence of commercial harvest.

#### 10.6.5.4 Objections related to collecting beach materials

1793. Objections using the fishing club templates described the potential effects of the proposed marine reserve on traditional beach activities, particularly the sandy beaches near the city. The submissions stated, "*people take their children and grandchildren along to the beaches in this area [...] gathering shells and pieces of driftwood*" and said that establishing the proposed marine reserve would prevent people from continuing these activities.

1794. The templates also stated that the residents of St Kilda, St Clair and South Dunedin would no longer be able to take sand from the beach to make sandbags for flood protection. The Tautuku Fishing Club Dunedin and Haast Incorporated's objection also said the proposed marine reserve would prevent struggling families from collecting driftwood for heating and making sandbags for flood protection. It added that "*any restriction on access to sand on nearby beaches for flood control would be a serious oversight*". (This is assumed to refer to those living in the southern suburbs of Dunedin.)

#### **Te Papa Atawhai advice**

1795. The issue of collecting beach materials was raised by submitters identified as affected iwi, hapū or whānau as well as in the objections summarised above. Our advice in 10.5.5.1 applies to both groups of objections. We recommend providing for small scale fossicking activities as proposed in the Application and consider that this would mitigate the interference raised in these objections.

1796. Te Papa Atawhai notes that collecting sand from the beach (Ocean Beach is the beach beside the suburbs mentioned) is currently prohibited under the Regional Plan: Coast for Otago<sup>392</sup>, as this area is listed as a 'Coastal Hazard Area' under Schedule 3.3. It is therefore

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<sup>391</sup> The regional commercial stakeholder group for Fiordland (PAU 5A), Stewart Island (PAU 5B) and Southland/Otago (PAU 5D). Members include owners of pāua quota and Annual Catch Entitlement, as well as fishing vessel operators, processors, fish dealers and harvesters.

<sup>392</sup> <https://www.orc.govt.nz/media/1458/regional-plan-coast-for-otago.pdf>.

questionable whether the taking of sand by residents for flood protection has been lawful in the past.

1797. We note that these Coastal Plan provisions would apply to the site if the proposed marine reserve was established because in this instance they would be stricter than the proposed Order in Council condition described above.

#### 10.6.5.5 Objections related to fishing competitions

1798. An individual submitter using a fishing club template added a comment about an annual fishing competition off Smaills Beach that *“will be lost to the community [...] has been fished since 1981”*. The Tautuku Fishing Club Dunedin and Haast Incorporated’s objection also raised this issue stating that this competition and others (*“the Easter Classic and the Ken Wyber Cup”*) would be prevented at *“a great loss to our communities, and their sense of community spirit. It may also lead to a reduction in tourism”*.

##### **Te Papa Atawhai advice**

1799. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1800. Despite an extensive online search, little information could be found about the named fishing competitions, or any fishing competitions organised by the Tautuku Fishing Club Dunedin and Haast Incorporated. The information that was found appeared to indicate that the competitions took place over a larger area than the proposed marine reserve site (e.g. also in the Ōtākou/Otago Harbour). Therefore, we assume the competition could continue without the impacts described by the submitters. We also note that these submitters may have misunderstood that boats would not be able to travel through a marine reserve with fish caught elsewhere onboard (as discussed in 10.6.3.1).

#### 10.6.6 Section 5(6)(e) public interest

##### 10.6.6.1 Objections related to impacts on customary interests

1801. Three objections from Māori not identified as affected iwi, hapū or whānau, raised issues related to their customary interests. One described how the proposed marine reserve would take away from their *“right as tangata whenua”* to be able to provide kaimoana. The submitter described the importance of this ability to maintain wellbeing, *“being able to keep our tapa wha intact”, “to keep our pou well”, “especially our wairua, hinengaro and tinana”*, as well as links with *“tangaroa”*.

1802. A second submitter highlighted the importance of being able to harvest kaimoana for teaching tikanga (protocols) to younger generations and for tangihanga (funerals). A third said they would prefer *“rahui Tikanga as this can be lifted when appropriate”*.

##### **Te Papa Atawhai advice**

1803. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1804. As set out in 10.5.6.1, it is acknowledged that the declaration of a marine reserve will prevent extractive fishing activities, including those customary fishing activities currently undertaken as described by the submitters above. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area, as suggested by the submitters. Rather, there are already a range of regulatory measures that govern such activities. This includes the quota management system which applies to commercial fishing

generally and also the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities.

1805. We acknowledge the importance of this coastal region for providing kaimoana to local whānau and communities. However, we note that establishing the proposed marine reserve would not prevent the customary or recreational harvest of seafood within the wider area entirely, although it would no longer be possible within the specified area. Other areas would remain available for fishing, including those mentioned above in 10.6.5.1. Also, as mentioned above, the Forum amended the original proposal for this site to avoid the area around Tow Rock because of its particular significance for Māori.

1806. As an additional point, as a result of the direct Kāi Tahu engagement (see 6.3), Te Papa Atawhai recommends making provision for activities to continue that would enable mātauraka Māori to be enhanced and allow for certain activities associated with wānaka. These recommendations will alleviate, at least to some extent, impacts on cultural values and interests associated with the site. We do acknowledge, however, that the recommended condition would be limited to members of Ngāi Tahu Whānui, and therefore would not authorise these specific submitters to continue carrying out such activities within the proposed site.

#### 10.6.6.2 Objections related to amending the marine reserve

1807. Five individual submissions and two submissions from organisations (the New Zealand Sea Lion Trust<sup>393</sup> and Christchurch Penguin Rehabilitation<sup>394</sup>) would only support establishing the proposed marine reserve if it was extended. The most common extension was to add additional deep reef habitat by including the reef at Tow Rock and all of the Ponuihine reef.

1808. Submitters noted that deep reef was poorly represented in the proposed Network, particularly that “*Tow Rock [would add] some of the richest high current biodiversity in the entire network*”. The submitters also sought an extension to reduce potential edge effects. Edge effects are where the edges of a protected area experience increased fishing pressure. One objector stated, “*the boundaries of this marine reserve currently bisect the Gull Rocks/Lion Rock/Tow Rock reef system, primarily due to concessions made to commercial interests. A fundamental marine reserve design principle is that reef systems must not be bisected*”.

1809. The New Zealand Sea Lion Trust also sought an extension so the proposed marine reserve was contiguous with the proposed Papanui marine reserve, and included Hoopers Inlet to protect more sites for rāpoka.

1810. Three submissions wanted the proposed marine reserve to be moved to an adjacent or nearby alternative area (these were an individual objection and two submissions in partial support – one from an individual and one from DiveNation). One stated, “*the area north of this (Otowhata to Matakītati) is known locally as a nursery area for many fish species*”. It described that the area was heavily targeted by recreational and commercial fishers “*to the detriment of the fishery*”, concluding that “*protection of this area (out to 1 km) would have much more of an impact on protecting fish numbers than any other proposal*”. Another objection suggested an alternative marine reserve from Taiaroa Head south to Seal Point because that would have a lower impact on recreational fishers.

<sup>393</sup> A trust established in Dunedin in 2003 with a mission and activities focused on the conservation of New Zealand sea lion by supporting ongoing research and education.

<sup>394</sup> Provides a rehabilitation service for sick and injured penguins in Canterbury.

1811. Fishing club templates (used by 48 objectors) suggested the area of the Mole (Aramoana) and the entrance to Ōtākou/Otago Harbour as suitable marine protected areas because of their biodiversity and public access values. Seal Point (with a radius of 300 m) was also suggested as a good marine protected area.

#### **Te Papa Atawhai advice**

1812. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1813. Deep reef habitat is relatively uncommon in the nearshore of Otago and places where this habitat type could be included in a marine protected area are limited. The Forum's process identified Tow Rock as a highly significant area for cultural, recreational and commercial reasons. The submitters are correct that including the Tow Rock reefs in the proposed marine reserve would reduce edge effects and that bisecting a reef is not best practice design. However, in terms of biodiversity protection, we consider the marine reserve would be viable as currently proposed.

1814. During Forum discussions and its public consultation, feedback from users of the area was that including Tow Rock would be untenable, so it was removed from the Forum's recommendations. This was carried through to the proposed boundary for this site as progressed in the Application. An alternate area of deep reef habitat was selected by the Forum and included in the proposed Network at site D1 (the proposed Te Umu Koau marine reserve), consistent with the MPA Policy on site selection. As described in 8.6.4.2, Te Papa Atawhai recommends a boundary amendment to this site to reduce the level of interference with the commercial kōura fishery, however a representative example of deep reef habitat would remain.

1815. Gull Rock is included in the proposed marine reserve, but to mitigate the impact on fishing activities, not all of its surrounding reef is included. Minimising the extent to which a marine reserve boundary crosses a reef is well acknowledged as good design and is noted in the *Marine Protected Areas Classification, Protection Standard and Implementation Guidelines*<sup>395</sup>. In this case there was a need for compromise to balance the biodiversity objectives with impacts on existing users. This led to the Forum's recommendation for the boundary to bisect the reef. The proposed marine reserve is still expected to provide ecological benefits because the site is large enough to reduce the impacts from edge effects<sup>396</sup>.

1816. Including all of the Ponuihine reef system would be beneficial, as it would reduce edge effects on the proposed marine reserve. This option was not proposed by the Forum and therefore not extended in the Application. Adding this area would increase the impacts on existing users, and recreational users in particular.

1817. Joining the proposed Ōrau and Papanui marine reserves (either as a marine reserve or with a new Type 2 marine protected area) would be significantly larger. This suggestion was considered by the Forum. Given the potential for high adverse effects on current users it was considered unlikely to be agreed upon at the Forum and was therefore not recommended. Hoopers Inlet was included in early discussions but was not progressed. These two extensions would cover more areas that appear to be important for rāpoka in particular. We note, however, that neither the MPA Policy nor the Marine Reserves Act has the protection

<sup>395</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/marine-protected-areas/mpa-classification-protection-standard.pdf>.

<sup>396</sup> Gaines, S. D., White, C., Carr, M. H., & Palumbi, S. R., 2010. Designing marine reserve networks for both conservation and fisheries management. *Proceedings of the National Academy of Sciences of the United States of America*, 107: 18,286-18,293.

of protected species as its primary purpose. Other management measures are in place for these species, such as the Wildlife Act and Marine Mammals Protection Act.

1818. The suggested marine reserves at The Mole, Wellers Rock or Seal Point, would be ineffective as their size would not enable ecological values to be maintained or recover. Part of Ōtākou/Otago Harbour was considered as a marine reserve site by the Forum but there was a mātaihai reserve application over the entire harbour at that time so it was not considered further. The mātaihai reserve was subsequently established over a smaller area but by that time the Forum had already progressed other options and did not reconsider the harbour site.

1819. Overall, we acknowledge the various suggestions by submitters for alternative sites but consider that the Forum undertook a thorough process with much public input to assess the merits of many sites in the region to ultimately arrive at its proposal for a marine reserve at Ōrau. The Application for the proposed site must be considered on its merits, and the matters raised in these submissions do not demonstrate that to establish the marine reserve as proposed in the Application would be contrary to the public interest.

#### **Submissions in support**

1820. A submission from Forest & Bird<sup>397</sup> qualified its support by recommending that Tow Rock and Ponuahine be fully included to provide better biodiversity outcomes. The Forest & Bird template used by 3,271 submitters to support the proposed marine reserve also recommended including Tow Rock.

1821. Twenty-four other submissions also offered qualified support, stating a preference for some of the same extensions as mentioned by objectors above. These submissions included those from WWF-New Zealand<sup>398</sup>, the New Zealand Marine Sciences Society<sup>399</sup>, Yellow-eyed Penguin Trust<sup>400</sup>, Environment and Conservation Organisations of NZ<sup>401</sup>, The Friends of Taputeranga Marine Reserve Trust<sup>402</sup> and Sea Shepherd New Zealand<sup>403</sup>.

1822. Extensions were suggested to encompass hoiho foraging grounds that were not included in the proposed site. The New Zealand Marine Sciences Society submission offered “*Support, with the recommendation that the reserve’s eastern boundary is extended offshore [...] The eastern boundary is not in accordance with MPA Policy guidelines and international best-practice*”.

1823. An individual submitter qualified their support by stating a desire for the proposed marine reserve to be extended with a Type 2 marine protected area to “*ban destructive fisheries including set netting and bottom trawling around the Otago Peninsula*”.

#### **10.6.6.3 Objections questioning the need or benefit of the proposed marine reserve**

1824. Four objections, including two from Māori submitters not identified as affected iwi, hapū or whānau, said fishing currently had no negative impact on the area, and scientific evidence to

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<sup>397</sup> An independent conservation charity that advocates to protect New Zealand's wildlife and wild places, to city, district and regional councils, central government and in courts.

<sup>398</sup> A branch of an independent conservation organisation dedicated to protecting nature and looking after the planet.

<sup>399</sup> NZMSS is a professional society with approximately 200 members. It provides access to and within the marine science community, and identifies emerging issues through annual conferences, annual reviews, a list serve and a website.

<sup>400</sup> A non-governmental organisation with a focus on the conservation of hoiho via managing birds and their habitat.

<sup>401</sup> An umbrella group for environment and conservation organisations in New Zealand.

<sup>402</sup> A trust formed to foster understanding and appreciation of the marine reserve and Wellington's marine environment, to support the Department of Conservation in its management functions and to give the community a voice and involvement in its stewardship.

<sup>403</sup> An international non-profit marine conservation organisation.

support the need for the proposed marine reserve was lacking or not presented. One of the objections from a Māori submitter not identified as affected iwi, hapū or whānau, noted a “*lack of research including historical data on the fisheries in this area, i.e how are the Paua beds holding up, I see no change in stock numbers and only a small reduction of about 7% in 35 years*”. Two others said they had monitored the health of fish stocks for 20 years and 30 years respectively and seen no change in abundance. They therefore concluded that this marine reserve was not needed as no decline had been observed.

1825. Nineteen individual submissions (including four in partial support and one with no stated position) (including four from Māori submitters not identified as affected iwi, hapū or whānau) commented that poor weather conditions such as high winds and large swells were usual along the southeast coast. These conditions already limited the amount of recreational fishing that could be undertaken in the area. Fishing club template objections (used by 95 submitters, including one Māori submitter not identified as affected iwi, hapū or whānau) raised this same issue, as did the St Clair Surf Life Saving Club<sup>404</sup>. These submitters concluded that recreational fishing had no detrimental effects and the proposed marine reserve was therefore not needed.

1826. Four objections from individuals (including two from Māori submitters not identified as affected iwi, hapū or whānau) said recreational fishing had no effect and that commercial fishing should be better managed. One of the Māori submitters wrote, “*keep the commercial fishing boats out, they are responsible for the low numbers of fish and damage to the sea floor, the average New Zealander can’t afford to pay the high prices for the fish so it’s no benefit to us*”. Others said that banning recreational fishing was not an appropriate management method. Lower bag limits were preferred by some objectors because they considered the limit for “*blue cod is too high*”.

1827. An individual submitter who chose ‘partial support’ stated that “*an analysis of recreational take would have been useful as there is not science or facts backed up by numbers*”. The submission said only commercial fishing should be banned and a 5-year study of recreational fishing impact should be undertaken. Another individual objector suggested using a temporary closure with continued monitoring instead of the proposed marine reserve.

1828. The New Zealand Sport Fishing Council<sup>405</sup> objected to the proposed marine reserve and suggested “*considering a more community-based fisheries management tool*”.

#### **Te Papa Atawhai advice**

1829. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1830. The main issue raised in these objections is whether the benefits would justify establishing the proposed marine reserve.

1831. Some submitters pointed to a lack of research on the status or health of fish stocks and that they had noticed no change in the last 20–30 years. However, there is clear scientific evidence that New Zealand’s marine environment has not been in a natural state for a long time. Marine ecosystems have been altered by more than 100 years of extensive commercial and recreational fishing. This has caused substantial changes in the abundance of most

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<sup>404</sup> A volunteer club providing a service focussed on saving lives and preventing injury for St Clair beach users and the wider community.

<sup>405</sup> A not-for-profit organisation with 55 affiliated member clubs. It advocates for responsible and sustainable management of the marine environment.



exploited species with a decline in virtually all commercially fished species. (The Fisheries Assessment 2019<sup>406</sup> describes changes for individual fish stocks).

1832. The ecological significance of these changes is largely unknown and unaccounted for by the public due to a concept known as 'shifting baselines':

'...each generation comes to view the environment into which it was born as natural, or normal. Shifting environmental baselines cause a collective societal amnesia in which gradual deterioration of the environment and depletion of wildlife populations pass almost unnoticed. Our expectations diminish with time, and with them goes our will to do something about the losses.'<sup>407</sup>

1833. Therefore, the public does not often acknowledge the current altered state of the environment because individuals may not have witnessed noticeable changes in their lifetimes.

1834. A 2016 report<sup>408</sup> detailed the changes in the marine environment on The Catlins coast. It also highlighted the value of establishing marine reserves for scientific study:

'The historical records collated, reviewed, and interpreted in this report indicate that over the period from Cook's 1769 voyage to New Zealand to 1950, marine environments [...] in Otago-Catlins study sites underwent a profound change.'

1835. Te Papa Atawhai notes that while one submitter said "*I see no change*" they did note a 7% decline in pāua abundance (although no basis for the calculation was provided). The 2018 pāua spawning stock biomass was estimated to be 40% of the estimated unfished spawning stock biomass. Models indicate that this biomass has been stable for the last 20 years<sup>409</sup>, which is largely consistent with the submitters' view.

1836. The marine ecosystem is clearly in a modified state, but the implications of this change for the ecology of the area are unknown. While data for the proposed marine reserve site is limited, a wide range of scientific publications attest to the long-term changes in the abundance of harvested species and marine ecosystems throughout New Zealand and globally due to fishing pressures.

1837. Some objectors considered that recreational fishing had a very low impact on marine habitats. Their view was therefore that it was contrary to the public interest to establish a marine reserve to achieve protection. Marine reserves, however, are not about fisheries management but a means to ensure the full range of biodiversity is adequately protected and the ecosystem processes are resilient to environmental change. Ensuring ecosystem health has a high value for science, as it provides a baseline for research and ecological monitoring. Marine reserves offer an opportunity to better understand natural processes in the absence of significant pressures. They act as control areas, allowing a more natural ecosystem to recover and become an example of how these ecosystems operate.

1838. While fisheries management measures may achieve some biodiversity outcomes, they are unlikely to provide the benefits of the higher level of protection offered by marine reserve status. This proposed marine reserve was recommended by the Forum for its contribution to

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<sup>406</sup> Fisheries New Zealand, 2019. Fisheries Assessment Plenary, May 2019: stock assessments and stock status. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand. 1,641 p. <https://fs.fish.govt.nz/Doc/24726/May-Plenary-2019-Vol1.pdf.ashx>.

<sup>407</sup> Callum C., 2007. The Unnatural History of the Sea. Island Press.

<sup>408</sup> MacDiarmid et al., 2016. Taking Stock - the changes to New Zealand marine ecosystems since first human settlement: synthesis of major findings, and policy and management implications. <https://fs.fish.govt.nz/Page.aspx?pk=113&dk=24058>.

<sup>409</sup> Fisheries New Zealand, 2019. Fisheries Assessment Plenary, May 2019: stock assessments and stock status. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand.

protecting representative regional habitats and the biodiversity values that are contained within it.

1839. We acknowledge that weather and sea conditions in the southeast region restrict recreational fishing activity. As described in 5.3.2, there is limited information about the level of recreational fishing in the general area and at this proposed site. According to the 2019 Tini a Tangaroa fisheries assessment<sup>410</sup> (Tables 3 and 6), approximately 100 tonnes of rāwaru is harvested annually by recreational fishers in the BCO3 quota management area compared to approximately 170 tonnes harvested by commercial fishers. The assessment also estimated the recreational catch of hāpuku in the HBP3 quota management area as 37.4 tonnes and 50.5 tonnes for the 2011/12 and 2017/18 fishing years respectively. This was 11% and 15% respectively of the amount caught by commercial fishers in those years. Note that although these figures represent catch over the entire quota management area rather than this site specifically (more specific information is not available), they indicate the potential for recreational take to be significant in this region.

1840. Regardless of the level of recreational fishing activity, marine reserves are to be 'preserved as far as possible in their natural state' and continued recreational fishing would not be consistent with this purpose. Therefore, we do not consider that the weather-induced limitations on recreational fishing activity are sufficient reason not to establish the proposed marine reserve.

#### 10.6.6.4 Objections questioning the integrity of Forum or statutory consultation processes

1841. One submitter whose stated main interest was recreational fishing, objected to the proposed marine reserve. They said they were not consulted about the process at all and there was "no face to face consultation" with local fishers. An objection from the Tautuku Fishing Club Dunedin and Haast Incorporated said the Forum did not have enough information about recreational fishing to understand the impact of the proposed marine reserve. According to the submitters, missing information included favoured launching sites, the most popular fishing spots, counts of recreational takes and safety considerations for smaller boats. The submission inferred that more or better engagement with recreational fishers during the Forum process would have provided this information.

##### **Te Papa Atawhai advice**

1842. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1843. Extensive consultation with stakeholders, the public and community at place was carried out by the Forum and by Agencies during the Forum and subsequent statutory processes. This included a formal non-statutory consultation and ongoing public engagement by the Forum and the recent statutory consultation under the Marine Reserves Act process.

1844. From 2014 to 2017, the Forum carried out face-to-face consultation at place, with a focus on representing communities and stakeholders. During this time, Forum members and agency officials took part in a road show at various locations in the region from Invercargill to Christchurch to Cromwell (see Appendix 3 of the Forum's Recommendations Report). A website and an email contact were also available during the entire Forum process. One meeting was held at the Tautuku Fishing Club in Dunedin. In addition, recreational and

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<sup>410</sup> Fisheries New Zealand (2019). Fisheries Assessment Plenary, May 2019: stock assessments and stock status Vol 1. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand. 1,641 p  
<https://fs.fish.govt.nz/Doc/24726/May-Plenary-2019-Vol1.pdf.ashx>

commercial fishing representatives on the Forum attended several meetings with recreational fishers, including at least one that was reported in the Otago Daily Times.

1845. Following from the Forum's foundational work, Te Papa Atawhai completed the statutory consultation process under the Marine Reserves Act in respect of the Application.

1846. We conclude that there have been many opportunities for recreational fishers to engage in the process either face-to-face or in writing, and to provide information on recreational fishing activity, and that the Forum used the best information available on recreational fishing to make their recommendations.

#### 10.6.6.5 Objections questioning the management of non-fishing threats

1847. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that "*no management measures are proposed for known identified threats such as coastal structures and sewage and stormwater discharges on land and offshore within the proposed marine reserve*". It also said "*the risk arising from exotic marine pests that may be introduced from the nearby Port Otago (categorised by Biosecurity NZ as a "High Risk Site" for transmission of invasive non-indigenous marine species) will not be managed by establishing a marine reserve*". The submission inferred that it would be contrary to the public interest to establish this marine reserve if these threats were not managed.

1848. An objection from the Tautuku Fishing Club Dunedin and Haast Incorporated said the marine environment would not be protected from a number of discharges including "*the raw sewage off Lawyer's Head, which is in the middle of the proposed [marine reserve]*". It noted that the proposed marine reserve has "*an ongoing serious pollution source*" and is therefore "*unlikely to offer any particular benefit in terms of habitat protection*". An individual submitter in support also highlighted the need to manage land-based pollution, stating that the proposed marine reserve "*will be famously protecting Dunedin City's sewage plume*".

#### Te Papa Atawhai advice

1849. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1850. We agree that multiple stressors affect the proposed marine reserve area, including sewage discharges from Dunedin city. The protection afforded by a marine reserve does not immediately mitigate the effects of land-based stressors, however this does not mean that it would be contrary to the public interest to declare a marine reserve. The Marine Reserves Act does not require all threats to be eliminated, rather it requires that an area be preserved 'as far as possible' in its natural state. Moreover, other management measures via the Resource Management Act are either in place or being developed to manage or mitigate the effect of land-based stressors. These include:

- Regional council responsibility for developing and enforcing regional freshwater plans and regional coastal plans. These plans set rules to control discharges to coastal waters and improve land-use practices that release sediment or contaminated runoff in river catchments.
- Policy 5 of the New Zealand Coastal Policy Statement<sup>411</sup> directs regional councils to consider the effects on waters in the coastal environment that are held or managed under other acts such as the Marine Reserves Act. It also directs regional councils to

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<sup>411</sup> Department of Conservation, 2010. New Zealand Coastal Policy Statement 2010. Department of Conservation. 30 p.

avoid the adverse effects of activities that are significant in relation to the purpose of the marine reserve.

- The National Policy Statement for Freshwater Management 2020<sup>412</sup> will influence activities that may affect the proposed marine reserve by setting freshwater limits and land-use regulations.

1851. Te Papa Atawhai notes the submission from the DCC that expressly described the water quality improvements it has made and is committed to making. It stated, “*The DCC’s 3 Waters Strategic Direction Statement identifies improving the quality of discharges to the environment as a key priority*” and “*The DCC has made substantial investments in wastewater management since 2000. More recently, the DCC has commenced wastewater system planning which looks holistically and strategically at whole of system performance and drivers for change and aligns those needs with financial planning cycles for any future upgrades that may be required. Stormwater system planning is also being considered*”.

1852. Discharges from wastewater treatment operations may have a localised effect at the discharge location but are unlikely to affect the entire proposed marine reserve. In reference to their ongoing ecological monitoring, DCC stated, “*The sandy and rocky shore communities we examine are healthy and show no changes beyond what happens naturally*”<sup>413</sup>.

1853. Marine biosecurity (the management of marine pests) is an integral part of marine reserve management. All international ports such as Port Otago are listed as high-risk sites by the Ministry for Primary Industries Manatū Ahu Matua. Manatū Ahu Matua has an extensive marine biosecurity programme at these sites, which includes regular surveys of port structures and surrounding areas to detect invasion by new marine pests, or an expansion of the range of existing pests.

1854. Manatū Ahu Matua and regional councils are responsible for controlling marine pests as required. Port Otago is not adjacent to the proposed marine reserve, but these existing monitoring and control actions would reduce the chance of an incursion and assist Te Papa Atawhai in managing the risks of marine pests in the proposed marine reserve.

#### 10.6.6.6 Objections related to impacts of the pandemic

1855. One of the fishing club templates used by 48 submitters said the proposed marine reserve should not be established while the economic impacts of the COVID-19 pandemic were present. The template stated that establishing the marine reserve would have further negative effects on people’s livelihoods and compromise their ability to find food.

##### **Te Papa Atawhai advice**

1856. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1857. We acknowledge the disruption and economic impacts of the COVID-19 pandemic on a range of industries, businesses and individuals. We note, however, that the Treasury’s Budget Economic and Fiscal Update 2022<sup>414</sup> outlook stated that ‘the New Zealand economy has overall been resilient to the transmission of the Delta and Omicron variants [of COVID-19] across the motu, although some businesses and households have been more impacted

<sup>412</sup> Ministry for the Environment, 2020. National Policy Statement for Freshwater Management 2020. Ministry for the Environment. 70 p.

<sup>413</sup> <https://www.dunedin.govt.nz/services/wastewater/environmental-monitoring>.

<sup>414</sup> New Zealand Government: Budget Economic and Fiscal Update 2022. 19 May 2022, The Treasury. p162.

than others'. Te Papa Atawhai also acknowledges that New Zealand's response to the pandemic has changed since the submitter raised these issues in June 2020.

1858. However, we consider that the proposed marine reserve would not, for the most part, prevent people being able to harvest seafood as suggested, since this activity is still possible outside the area.

## **10.7 Stage 1 Assessment – Conclusion in relation to section 5(6) of the Marine Reserves Act**

1859. Te Papa Atawhai has considered all objections made in relation to the proposed Ōrau marine reserve against the criteria of section 5(6) of the Marine Reserves Act. This includes objections to the proposed Network (these are relevant to your decision-making, as set out in 6.1.3) and objections to the proposed marine reserve.

1860. For the reasons set out in 10.6.2.1, our advice is that preventing the range of DCC's municipal services from continuing would be likely to constitute undue interference in accordance with section 5(6)(a). In order to address this, we propose that provision is made in the Order in Council for these activities to continue as set out in 10.8.1.3.

1861. In all other respects, we conclude that while there would be some interference with other existing uses and interests specified in section 5(6) of the Marine Reserves Act if the proposed marine reserve was established, the nature and magnitude of the interference would not be undue, nor contrary to the public interest. In reaching this conclusion we have considered the values of the proposed marine reserve and its value as part of the proposed Network, and the extent to which it is expected to fulfil the purpose of the Marine Reserves Act.

1862. We have also considered whether a decision to not uphold any objections received on the proposed Ōrau marine reserve would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including under section 4 of the Conservation Act. This is considered in light of our assessment (as set out in 6.3.10) that to declare the proposed marine reserves with the recommendations resulting from the direct Kāi Tahu engagement to date would fulfil the Crown's obligation in relation to the Treaty of Waitangi. As recorded above in 10.5.1 and 10.6.1, Te Papa Atawhai considers that no additional matters have been raised in objections from submitters identified as affected iwi, hapū, or whānau or other Māori submitters that would change that assessment.

1863. We therefore consider that no objection should be upheld for the purposes of section 5(6) of the Marine Reserves Act. If you agree, you should proceed to the second stage of decision-making under section 5(9) of the Marine Reserves Act.

## **10.8 Stage 2 Assessment – Statutory considerations section 5(9) of the Marine Reserves Act**

1864. Section 5(9) provides that your recommendation to the Governor-General on the proposed marine reserve can be made unconditionally or subject to conditions. Our recommended conditions for the proposed Order in Council are set out in 10.8.1. We also recommend other measures to provide for activities identified in the Application (as set out in 10.8.2) and as a result of the Treaty partner engagement outlined in 6.3 (as set out in 10.8.3).

1865. We have provided our assessment of the Application, including any recommended conditions and other measures, against the statutory criteria in section 5(9). As part of this assessment, we have considered the relevant obligations under the Treaty of Waitangi (as set out in 3.3). The information available to formulate this advice includes content in the Application, Consultation Document, Forum's Recommendations Report and new information provided by Kāi Tahu, Tini a Tangaroa and in submissions from the statutory consultation. Where submissions in support were made in relation to the proposed marine reserve and provide information in relation to the section 5(9) criteria, we also describe this below.

1866. As set out in 6.8, in considering the section 5(9) criteria, you will need to consider the advice provided in the Network chapter in relation to these criteria, in addition to the advice below.

### 10.8.1 Recommendation for Order in Council conditions for the proposed marine reserve

1867. We recommend the conditions described below if the proposed marine reserve is established. These would be set out in the Order in Council creating the marine reserve and fall into the following categories:

- conditions arising from Treaty partner engagement
- conditions to provide for other activities that were identified in the Application
- conditions to mitigate interference with the criteria listed in section 5(6), in response to objections
- condition arising from engagement with the Ministry of Transport.

#### 10.8.1.1 Conditions arising from Treaty partner engagement

1868. As described in 6.8.1, as a result of Treaty partner engagement Te Papa Atawhai recommends the following provisions be set out in the Order in Council creating the marine reserve.

- (a) Condition for continued enhancement of mātauraka Māori and wānaka
- (b) Condition for the retrieval of kōiwi tākata and archaeological artefacts
- (c) Condition for retrieval of dead marine mammals and marine mammal parts
- (d) Condition to allow the removal of *Undaria pinnatifida*
- (e) Condition to require generational reviews

#### 10.8.1.2 Conditions to provide for other activities identified in the Application

1869. The Application proposes that a number of activities are allowed to continue if the proposed marine reserve is established. We recommend allowing for these through Order in Council conditions pursuant to your power under section 5(9). The activities are:

- fossicking of beach materials
- vehicle access over the foreshore in limited circumstances (as set out in 10.5.5.1)
- activities operating under existing resource consents.

1870. The Application also lists retrieval of kōiwi tākata. This was discussed through engagement with Kāi Tahu, and the recommendation in respect of this activity is described in 6.8.1.

1871. In addition to general vehicle access over the foreshore (see below), the Application stated that driving on the foreshore for access by emergency services would be permitted. This activity does not need specific provision in the Order in Council as the 'reasonable excuse'

aspect of section 18I of the Marine Reserves Act would apply and/or Te Papa Atawhai would not exercise its discretion to take enforcement action under either section 18I or section 21.

1872. In terms of the activities operating under existing resource consents, Appendix 13 sets out those activities listed in the Application that we recommend providing for through Order in Council conditions. The proposed conditions are set out below. As noted above in 10.6.2.1, our intention is that all existing activities to be provided for through conditions would continue to be exempt from the operation of the Marine Reserves Act in the event of variation and/or replacements of the existing resource consents, so long as any variation or replacement did not substantially change the nature or adverse effects of the activity from the point at which the marine reserve is declared.

1873. The Application also listed activities operating under existing resource consents that we do not propose making provision for through Order in Council conditions (see Appendix 13). Our position is that these activities would not constitute an offence under the Marine Reserves Act and could therefore continue to occur if the proposed marine reserve was established.

*(f) Condition for fossicking of beach materials*

1874. Te Papa Atawhai recommends a condition to allow for the non-commercial gathering of beach stones, non-living shells and driftwood on the foreshore of the proposed marine reserve using only hand-held (non-mechanical) methods (as described in the Application, Table A1.10, page 101).

1875. To ensure any fossicking activity would not be carried out in a manner that may interfere with the purpose of the Marine Reserves Act, the condition should also be drafted to include these aspects (similar to those in the Marine Reserve (Kahurangi) Order 2014):

- A person who removes beach stones, non-living shell, or driftwood must not use a method of collection that involves the use of machinery or cutting equipment.
- A person who removes beach stones, non-living shell, or driftwood must not, in any 1 day, remove a greater weight than they can carry on their own in one trip.
- Beach stones are defined as stones that are no more than 256 mm in intermediate diameter including gravel and sand.

1876. The condition should be drafted as subject to all other legal requirements.

*(g) Condition for vehicle access over the foreshore for launching or retrieving a vessel*

1877. Te Papa Atawhai recommends a condition to allow for vehicle access over the foreshore of the proposed marine reserve for the purpose of launching and retrieving vessels.

1878. For the reasons set out in 10.5.5.1, the condition should specify that vehicular access for this purpose must be by the most direct route across the foreshore to the nearest feasible vessel launch or retrieval site.

*(h) Condition for vehicle access over the foreshore for lifeguard duties*

1879. Te Papa Atawhai recommends a condition to allow for vehicle access over the foreshore of the proposed marine reserve for the purpose of providing for the activities of lifeguards acting in the course of their duties (including monitoring swim areas, training, and emergency responses).

*(i) Condition for existing discharges of contaminants and associated monitoring*

1880. This condition would allow for the continuation of existing discharges of contaminants within or adjacent to the proposed marine reserve associated with DCC municipal services, including stormwater, wastewater and St Clair Saltwater Pool operation.

1881. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements relating to the discharge of the contaminant. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

1882. 'Discharge' and 'contaminant' should be defined in accordance with s2(1) of the Resource Management Act.

1883. The condition should make provision for any associated monitoring and sampling (i.e. as required by the conditions of the resource consent). This means that no permits will be required under the Marine Reserves Regulations in order to undertake sampling or monitoring associated with discharges covered by this condition.

*(j) Condition for existing structures, replacement of existing structures and associated maintenance*

1884. This condition would confirm that any existing structures can remain in the marine reserve once declared. This would apply to structures associated with wastewater and stormwater services (outfalls), the St Clair Saltwater Pool, the St Clair seawall and the other erosion protection structures in place at Oceans Beach (rubble wall, Reno mattresses and sand sausages). As noted above at paragraph 1705 (for the avoidance of doubt), this condition would apply to the existing wooden pole and plank groynes at St Clair Beach. The condition should allow for replacement of any existing structures by a 'like for like' structure.

1885. The condition should include any associated maintenance. Maintenance of existing structures will often involve disturbance to the foreshore or seabed and therefore would otherwise be prohibited under the Marine Reserves Act.

1886. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

*(k) Condition for future structures at Oceans Beach, specifically sand sausages and Reno mattresses, including maintenance and replacement by 'like for like' structures*

1887. The consents relating to erosion protection activities at Oceans Beach authorise the placement and occupation of future structures made from sand sausages and Reno mattresses if required. This condition would allow this to occur if required.

1888. As with the proposed condition for existing structures, associated maintenance should be provided for, as well as replacement by 'like for like' structures.

1889. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

*(l) Condition for existing remedial activities associated with the historic landfill at Kettle Park, including any associated monitoring*

1890. DCC holds consents authorising ongoing remedial works associated with the historic landfill site at Kettle Park. The majority of these activities occur above mean high water springs and therefore would not constitute an offence. However, it is possible that some of the activities will occur within the proposed marine reserve boundary and would otherwise constitute an offence under the Marine Reserves Act, as it results in disturbance to the foreshore or seabed of the area of the proposed marine reserve.



1891. This condition would allow these activities to continue.

1892. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

1893. The condition should make provision for any associated monitoring and sampling (i.e. as required by the conditions of the resource consent). This means that no permits will be required under the Marine Reserves Regulations in order to undertake sampling or monitoring associated with these activities.

*(m) Condition for existing deposition of sand at Oceans Beach*

1894. DCC holds consents authorising works associated with the ongoing remediation and maintenance of the sand dunes at Oceans Beach. This includes the deposition of sand for the purpose of replenishing the beach. The majority of the activity occurs above mean high water springs and therefore would not constitute an offence. However, it is possible that some of the activities associated with this consent would occur within the proposed marine reserve and would otherwise constitute an offence under the Marine Reserves Act as it results in disturbance to the foreshore or seabed of the area of the proposed marine reserve.

1895. This condition would allow these activities to continue.

1896. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

*(n) Condition for disturbance of the foreshore at the Tomahawk Creek river mouth for the purposes of flood protection*

1897. Two of the resource consents listed in the Application as being activities that were unlikely to be affected by the establishment of the proposed marine reserve are for sand extraction activities at the Tomahawk Creek river mouth, Tomahawk Beach, within the proposed marine reserve (Table A1.10, page 101). One consent authorises the extraction of sand and associated disturbance to the coastal marine area, for the purposes of flood protection and commercial use. The other consent authorises the consent holder to occupy the coastal marine area to undertake the sand extraction activity above (see Table A13.4, Appendix 13). These consents are held by a private commercial company, Nash & Ross Ltd.

1898. In preparing this advice, Te Papa Atawhai identified that there was a potential discrepancy in the Application in relation to the activities undertaken pursuant to these consents. While the Application listed the two consents in Table A1.10 as activities that were 'unlikely to be affected by establishment of the proposed Ōrau Marine Reserve', at Table A1.9, the Application lists that 'All commercial extractive activities would be prohibited'. Given the commercial nature of the extractive activities authorised by the aforementioned two consents, it was unclear on the face of the Application whether these activities were able to continue or would be prohibited.

1899. While no objection was received from the consent holder, Te Papa Atawhai undertook engagement with them and with the Otago Regional Council (ORC) to further understand the nature of the activities undertaken at the Tomahawk Creek river mouth. From this engagement, Te Papa Atawhai was able to conclude that:

- The works undertaken by the consent holder in so far as they are for flood protection purposes are linked to ensuring that the river mouth does not block, therefore affecting the adjoining Tomahawk Lagoon and some surrounding

residential areas. Sand that is extracted as part of the consented activities is used by the consent holder for commercial purposes.

- The majority of the works undertaken (95%) occur within the coastal marine area (as defined by the Regional Plan: Coast for Otago) above a straight line at the level of mean high water springs across the river mouth – i.e. the majority of the works occur landward of this level, in the area between the Tomahawk Road Bridge and the coast.
- The Regional Plan: Coast for Otago provides for opening of blocked river mouths as a permitted activity in certain circumstances (Rule 9.5.3.1). However, the permitted activity rule does not allow for any material to be removed (i.e. extracted) from the foreshore or seabed and the disturbance must be limited to the extent necessary to clear the blockage.

1900. Te Papa Atawhai sought further technical advice on the area between a straight line at mean high water springs and the coastal marine area boundary (i.e. the boundary of the marine reserve as proposed in the Application). This area is approximately 0.01 km<sup>2</sup> (see Figure 10-4). The technical advice confirmed that there were no significant values within this discrete area in terms of the purpose of the Marine Reserves Act. In addition, the technical advice noted that this area is a primary vehicular access route used for vessel launching. As set out in (g) above, Te Papa Atawhai recommends a condition allowing vehicular access across the foreshore for the purpose of vessel launching. Therefore, vehicular access through this area will be allowed to continue.

1901. As set out below in 10.8.2, Te Papa Atawhai recommends amending the boundary at the Tomahawk Creek river mouth to a straight line across the river mouth at the level of mean high water springs. This will allow the existing activities within this area to continue, including for flood protection purposes, without compromising the values or integrity of the proposed marine reserve.

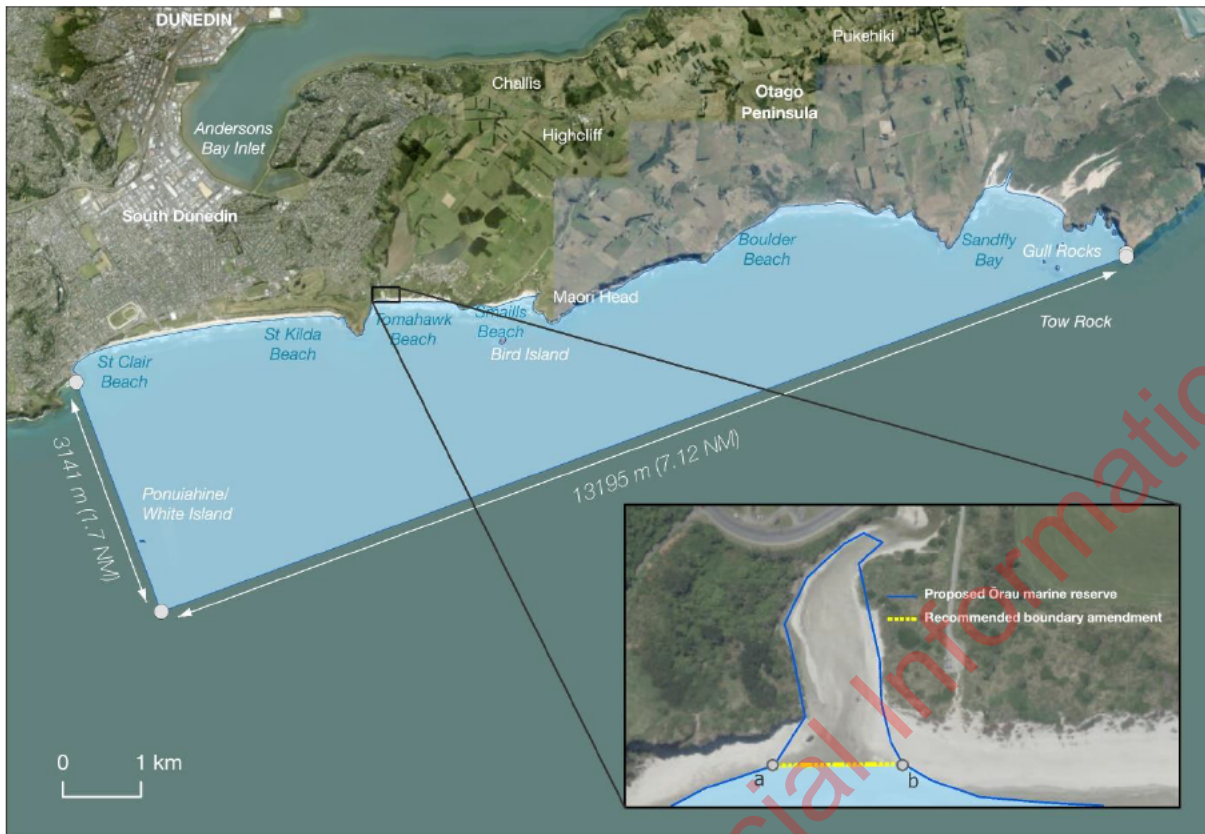


Figure 10-4: The proposed Ōrau marine reserve with inset showing the recommended boundary change at the Tomahawk Creek river mouth between a and b.

1902. Through engagement with the consent holder and ORC, however, ORC confirmed that some disturbance of the foreshore below mean high water springs may be required for flood protection purposes. ORC confirmed that extraction of sand would not be required. In order to allow such activities to continue, therefore, Te Papa Atawhai recommends a condition allowing for disturbance of the foreshore at the Tomahawk Creek river mouth for the purposes of flood protection. The condition would not allow for extraction of material.

1903. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements. That means that a breach of any of the conditions of consent (or the permitted activity standards) would also constitute a breach of the condition in the Order in Council.

#### 10.8.1.3 Conditions to mitigate interference with the criteria listed in section 5(6) of the Marine Reserves Act

1904. The following conditions are recommended to mitigate interference with the criteria listed in section 5(6), in response to objections received.

(o) Condition for existing discharges of contaminants and associated monitoring

1905. As discussed in 10.6.2.1, we recommend providing for the discharge of stormwater from residential properties discharging into Tomahawk Lagoon and then into the coastal marine area, so that this activity would not constitute an offence under the Marine Reserves Act if the proposed marine reserve is established. The condition described above in (i) would cover this activity.

(p) Condition for existing structures, replacement of existing structures and associated maintenance

1906. As discussed in 10.6.2.1, we recommend providing for the existing access steps at the western end of St Clair beach. The condition described above in (j) would cover this activity.

*(q) Condition for specific infrequent discharges for a finite period*

1907. As set out in 10.6.2.1, we recommend a specific condition to provide for the existing infrequent unplanned discharges of partially treated wastewater from the offshore outfall associated with the Tahuna Wastewater Treatment Plant and the twin outfalls at Lawyers Head. This would be in addition to the general condition for the discharge of contaminants recommended at (i) above.

1908. This condition would identify those discharges (in accordance with the description above) and would allow them to continue for a 10-year period from the date of establishment without requiring compliance with the Resource Management Act. The condition should be drafted so that on the expiry of the 10-year period, the general condition for the discharge of contaminants will apply (as recommended above at (i)).

This condition should be drafted so as to require compliance with any other legal requirements.

*(r) Condition for future stormwater discharges and associated structures*

1909. As set out in 10.6.2.1, we recommend a condition in the Order in Council to provide for future stormwater activities, by allowing DCC to establish and/or carry out stormwater discharges, associated structures, monitoring and maintenance.

1910. This condition would be subject to compliance with the Resource Management Act and any other legal requirements.

*(s) Condition for future erosion protection measures at St Clair and St Kilda beaches*

1911. As set out in 10.6.2.1, we recommend a condition to enable DCC (or other local authority) to undertake future erosion protection activities in accordance with the management options identified in the St Clair – St Kilda Coastal Plan Whakahekerau – Rakiātea Rautaki Tai. The area within which these activities can take place would be between the western boundary of the proposed marine reserve (identified as vertex I4 in the Application and Figure 10-1) (western limit) and Lawyer's Head (eastern limit) to a distance of 150 m from mean high water springs. This condition would be subject to compliance with the Resource Management Act and any other legal requirements. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

**10.8.1.4 Condition arising from engagement with the Ministry of Transport**

*(t) Condition for pollution response*

1912. Te Papa Atawhai recommends a condition to allow responses to emergency oil spill or pollution incidents. We have engaged with the Ministry of Transport to inform the following advice on this matter.

1913. In certain emergency situations, vessel users or operators may be required to respond to an emergency oil spill or pollution incident. Action may also be required by the local authority or other central government agencies. Our position is that in such a situation, any action would likely to be considered a 'reasonable excuse' under section 18I(3) and/or would not result in Te Papa Atawhai exercising its direction to take enforcement action in respect of either section 18I(3) (offence for certain discharges) or section 21(a) (infringement offence for certain discharges).

1914. In recent marine reserve Orders in Council, however, a provision has been included to confirm 'for avoidance of doubt' that action can be taken in these circumstances, and that the declaration of the marine reserve does not affect or limit the powers of any person under the Maritime Transport Act 1994 in response to these events or the risk of an event. For consistency, we recommend the inclusion of a similar provision in the Order in Council.

#### 10.8.2 Recommendations for other measures to provide for activities identified in the Application

(u) *Recommendation to amend the boundary of the proposed marine reserve*

1915. As set out in (n) above, we recommend a condition in the Order in Council creating the marine reserve to allow disturbance of the foreshore of the Tomahawk Creek river mouth for the purposes of flood protection.

1916. Related to this, we recommend the boundary of the proposed marine reserve be amended from that in the Application.

1917. Our recommendation is that the landward boundary of the proposed marine reserve at the Tomahawk Creek river mouth be set as a straight line level with mean high water springs at either side of the river mouth (see Figure 10-4). That is, the boundary would not follow the coastal marine area boundary as described in the Regional Plan: Coast for Otago, as was proposed in the Application, under which the boundary at the river mouth is set further inland. Otherwise, for the remainder of Tomahawk Beach, the boundary would stay at mean high water springs as currently proposed.

1918. As set out in (n) above, our basis for this recommendation is that this will allow the existing activities within this area to continue, including for flood protection purposes, without compromising the values or integrity of the proposed marine reserve. The recommended amendment will mean that any activities carried out above mean high water springs, including those related to sand extraction for commercial use, flood protection and any additional activities undertaken by ORC, would be unaffected by the establishment of the proposed marine reserve.

#### 10.8.3 Recommendations for other measures arising from Treaty partner engagement

1919. As described in 6.8.2, as a result of Treaty partner engagement Te Papa Atawhai recommends the following measures for the proposed marine reserve.

(v) *Recommendation for establishing formal co-management with Kāi Tahu*

(w) *Recommendation for the establishment and support of Kāi Tahu rangers*

(x) *Recommendation for periodic reviews*

(y) *Recommendation to use te reo Māori name confirmed by Kāi Tahu*

(z) *Recommendation that pou whenua be established for any new marine reserves*

(aa) *Recommendation to record that marine reserve declaration is unlikely, and not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title*

#### 10.8.4 Section 5(9) criteria – in the best interests of scientific study, for the benefit of the public and expedient

1920. As set out in 3.2.3, under section 5(9) you must decide whether declaring each of the marine reserves will be in the best interests of scientific study, for the benefit of the public and expedient. Our advice on these criteria as relevant to the proposed marine reserve is described below. As part of this advice, we have included reference to additional information

raised in submissions of support that is relevant to each of the section 5(9) criteria. Note that objections are not considered at this stage, as these views have already been considered in our advice on section 5(6) in accordance with the statutory framework.

#### 10.8.4.1 Obligations in relation to the Treaty of Waitangi

1921. In considering whether the declaration of the proposed marine reserve would be in the best interests of scientific study, for the benefit of the public and expedient, you must consider your obligations in relation to the Treaty of Waitangi.

1922. As set out in 3.2.7, in accordance with your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi, you must consider the views provided by Kāi Tahu in respect of the proposals received through direct engagement in making your assessment under section 5(9). The obligation to have 'particular regard' to these views in accordance with section 49 of the Takutai Moana Act also applies to these views. Our advice and conclusions in respect of the Crown engagement with Kāi Tahu and the corresponding obligations under the Treaty of Waitangi is set out in the Network chapter in 6.3.10. While this advice is provided in the context of the proposed Network, it applies equally to each of the proposed marine reserves, including Ōrau, on the basis that the recommendations arising from the engagement apply to this site. Based on this assessment, Te Papa Atawhai considers that the declaration of the proposed marine reserves (therefore including Ōrau) on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

1923. In addition to the engagement with Kāi Tahu, as set out in 5.2, submissions in relation to the proposed marine reserve (including objections and submissions in support) were made through the statutory process by submitters who are 'affected iwi, hapū, and whānau' for the purposes of the Takutai Moana Act and from other Māori submitters (i.e. those not affiliated with Kāi Tahu).

1924. In terms of your decision under section 5(9), the obligation to have 'particular regard' applies to the views received from affected iwi, hapū or whānau through the statutory consultation process. The obligation in section 4 of the Conservation Act also applies to your consideration of these views, and may still be relevant to submissions from other Māori (although the obligation to have particular regard does not apply to the views from other Māori). In order to allow you to have 'particular regard' to the relevant submissions, and in accordance with the principle of informed decision-making, in our advice below we have therefore identified where submissions have been made from affected iwi, hapū or whānau and/or other Māori submitters that are relevant to the specific section 5(9) criteria. None of the submissions identified raise matters that are inconsistent with our conclusion set out above at paragraph 1922 - that the declaration of the proposed marine reserves (including Ōrau) on the basis of the recommendations made in relation to the engagement with Kāi Tahu would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including the obligation under section 4 to give effect to the principles of the Treaty.

1925. Te Papa Atawhai therefore considers that to declare the proposed marine reserve would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

#### 10.8.4.2 Consistency with statutory planning instruments

1926. As set out in 3.2.8, also relevant to your assessment as to whether the declaration of the proposed marine reserves cumulatively and as part of the proposed Network would be in the best interests of scientific study, for the benefit of the public and expedient, is whether to do so would be consistent with the relevant provisions of any relevant statutory planning instruments. The relevant statutory planning instruments are the Conservation General

Policy and the Otago Conservation Management Strategy. Our full assessment of which provisions are relevant to your assessment, and how a decision to declare each of the proposed marine reserves with the recommendations listed in 6.8.1 and 6.8.2 and the subsequent site chapters (for the purposes of the proposed Ōrau marine reserve, therefore, the recommendations listed in 10.8.1–10.8.3) would be consistent with those provisions, is set out in Appendix 12.

1927. In summary, Te Papa Atawhai considers a decision to declare the proposed Ōrau marine reserve with the recommendations listed would be consistent with all relevant provisions of these statutory planning instruments.

#### 10.8.4.3 In the best interests of scientific study

1928. For the reasons set out below and in light of our conclusions in 10.8.4.1 and 10.8.4.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 10.8.1–10.8.3 would be in the best interests of scientific study.

1929. In considering whether a marine reserve would be ‘in the best interest of scientific study’, it is appropriate to assess the area that is recommended for marine reserve status against the criteria in section 3(1) of the Marine Reserves Act<sup>415</sup>. This is described in 10.2.1.

1930. The natural features and marine life associated with the coastline make this area unquestionably of distinctive quality, typical and beautiful. We consider that protecting the underwater scenery and natural features at this site is consistent with section 3(1) in that they are so typical, or beautiful, or unique that their continued preservation is in the national interest.

1931. Further information supporting a conclusion that the proposed marine reserve would be in the best interests of scientific study is evident from points raised in submissions of support. For example:

- An individual submitter identified as affected iwi, hapū or whānau said this area would protect “important rocky reefs home to a diverse array of seaweeds”.
- An individual submitter stated, “by protecting a range of representative habitats and unique features, this site would [...] provide an important representative area for research and scientific study immediately adjacent to an internationally recognised Department of Marine Biology at the University of Otago”.
- The New Zealand Marine Sciences Society noted that “the site will allow for valuable scientific research into the effects of protection on a stretch of urban coastline”.
- The Otago Branch of the Ornithological Society of New Zealand Inc.<sup>416</sup> said “this is the only proposal with good access for students” and it “presents the greatest opportunity for ‘citizen science’”.
- Several submissions in support or partial support described some unique and notable features of the reef around Ponuahine. One said, “there is a wonderful underwater amphitheatre of columns on the west corner of the island”. Another stated “this system includes some spectacular stacked boulder features”. Forest &

<sup>415</sup> See chapter 3. Section 3(1): It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life of such distinctive quality, or so typical or beautiful or unique that their continued preservation is in the natural interest.

<sup>416</sup> The primary organisation concerned with the study of birds in New Zealand and the dissemination of this knowledge to assist the conservation and management of birds.

Bird noted that “a special feature of this reserve is the inclusion of two islands with offshore exposed rocky reef habitat”.

#### 10.8.4.4 For the benefit of the public

1932. For the reasons set out below and in light of our conclusions in 10.8.4.1 and 10.8.4.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 10.8.1–10.8.3 would be for the benefit of the public.

1933. These benefits are described in 10.2.2. Te Papa Atawhai considers the benefits of establishing long-term protection for the representative habitats found in this area, and the educational and recreational opportunities that would arise from this protection, would benefit the public.

1934. Further information supporting a conclusion that the proposed marine reserve would be for the benefit of the public is evident from points raised in submissions of support. For example:

- “Extensive reserves close to Dunedin are particularly important for public engagement and education”.
- “Proximity to Dunedin city means that the marine reserve would be accessible to a large number of people, and therefore has the potential to play an important educational and advocacy role” (New Zealand Marine Sciences Society).
- A submitter in partial support said there would be adverse effects on commercial, customary and recreational fisheries by not establishing the proposed reserve, arguing that the protection of “fish populations and their habitats are critical for the long-term health of their fisheries” and would benefit future generations.
- The DCC highlighted the iconic wildlife inhabiting Otago Peninsula (rāpoka, kekeno/New Zealand fur seal, hoiho and toroa/Northern royal albatross). Its submission said this has led to Dunedin being dubbed the ‘wildlife capital’ of New Zealand and brought “significant local economic benefits”. It also noted that additional protection for marine biodiversity was consistent with DCC’s strategic direction and highlighted “the economic and social benefits that MPAs can confer when located close to urban centres (e.g., Cape Rodney-Okakari Point Marine Reserve Goat Island near Auckland, and Taputeranga Marine Reserve in Wellington)”.
- The Otago Branch of the Ornithological Society of New Zealand Inc. stated that this area was the “most visited by our members” and “has the highest benefits to the general public”. Its accessibility via public transport was also noted.

#### 10.8.4.5 It is expedient

1935. For the reasons set out below and in light of our conclusions in 10.8.4.1 and 10.8.4.2, we consider that to establish the proposed marine reserve with the recommended conditions and measures set out in 10.8.1–10.8.3 would be expedient.

1936. Te Papa Atawhai considers that because of the educational, public engagement and scientific opportunities that are likely to arise from this proposed marine reserve, as well as its contribution to protecting representative habitats within the proposed Network, that its establishment would be expedient.

1937. Enhancing protection for marine mammals and seabirds is not the primary goal of marine reserve protection because of the nature of threats to these species and the larger spatial scale where management needs to apply. However, there are likely to be partial and indirect benefits to these species by enhancing protection in part of their habitat. Given that many



species have a threat classification status of At Risk or Threatened, in our view, any additional benefits offered by a marine reserve would be expedient.

1938. Further information supporting a conclusion that establishing the proposed marine reserve would be expedient is evident from points raised in submissions of support. For example:

- An individual submitter identified as affected iwi, hapū or whānau described the importance of “investing now” in marine reserve protection to ensure the survival of marine species.
- Individual submitters said, “I have done many dives and much snorkelling in this area. What were once wonderful pāua beds are now greatly depleted because of the pressure of recreational take, and old land-based fishing sites are no longer used because there is too much pressure on the blue cod. No point in continuing this over exploitation” and “The biodiversity in this area is under constant threat from an increasing population in Dunedin”.
- The Otago Branch of the Ornithological Society of New Zealand Inc. highlighted the importance of the coastline for seabirds and shorebirds. Its submission noted the presence of high-value shore habitat for tōrea pango/oystercatchers and colonies of kōau/spotted shags, tarāpunga/red-billed gulls, tara/white-fronted terns, and karoro/southern black-backed gulls. The presence of good foraging habitat from currents around islets and rock stacks was also mentioned.
- The New Zealand Marine Sciences Society said the site “would protect the nearshore habitat of endangered, endemic species such as New Zealand sea lions” and “includes Boulder Beach, which has the largest yellow-eyed penguin colony on the Otago Peninsula”.

## 10.9 Naming of the proposed marine reserve

1939. The proposed marine reserve would be named in accordance with the requirements of the New Zealand Geographic Board. Te Papa Atawhai has discussed the naming of this proposed site with Kāi Tahu. Kāi Tahu have endorsed the name to be taken forward for review by the New Zealand Geographic Board as ‘Ōrau Marine Reserve’.

## 10.10 Conclusion – proposed Ōrau marine reserve

1940. Our overall assessment in relation to the proposed Ōrau marine reserve is that:

- the procedural requirements of section 4 and section 5 of the Marine Reserves Act have been met
- we do not recommend upholding any objections received under section 5(6) of the Marine Reserves Act on the proviso that the recommended conditions listed below are implemented
- to declare the area a marine reserve will be in the best interests of scientific study, will be for the benefit of the public and will be expedient (in accordance with section 5(9) of the Marine Reserves Act), including with our recommended conditions to be included in the Order in Council [(a)-(t) as set out in 10.8.1] and our recommendations for other measures [(u)-(aa) as set out in 10.8.2 and 10.8.3]
- to declare the proposed marine reserve on the basis of the recommendations listed above would fulfil the Crown’s obligations in relation to the Treaty of Waitangi.

## 10.11 Recommendation – proposed Ōrau marine reserve

<sup>1941</sup> We recommend that you proceed to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport<sup>417</sup> to recommend to the Governor-General the making of an Order in Council (subject to conditions) to declare the proposed area, with an amended boundary at the Tomahawk Creek river mouth, a marine reserve.

Released under the Official Information Act

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<sup>417</sup> As under section 5(9) of the Marine Reserves Act.

# 11 Assessment of proposed Okaihae marine reserve

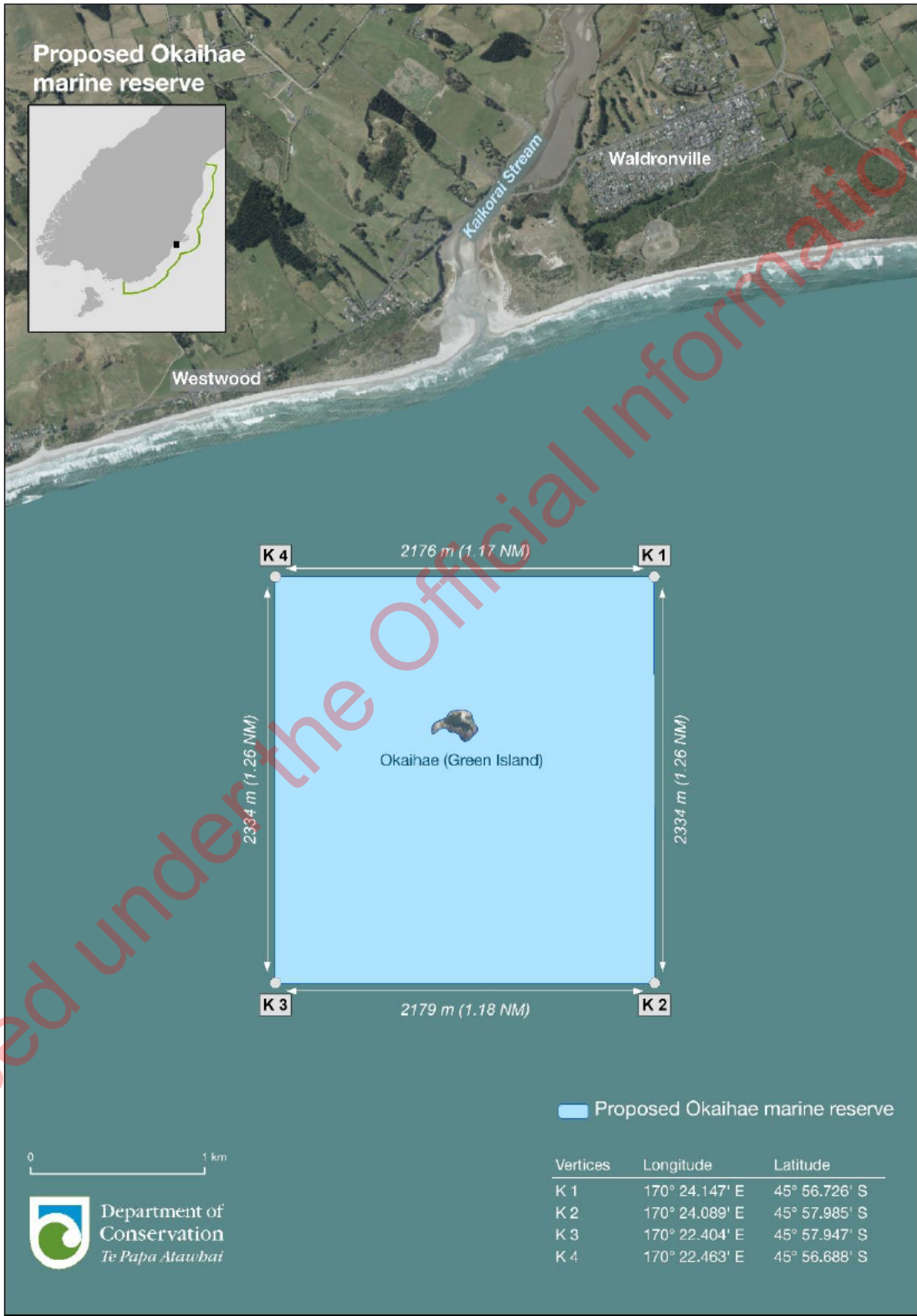


Figure 11-1: Location of the proposed Okaihae marine reserve

## 11.1 Introduction

1942. The Application for this proposed marine reserve is presented on pages 103–107 of the Consultation Document<sup>418</sup> (see Appendix 1).

### 11.1.1 Site description

1943. The proposed marine reserve boundary would start at mean low water springs<sup>419</sup> on Okaihae (Green Island) and extend seawards approximately 1 km to the north, west and east, and 1.3 km to the south (Figure 11-1). The proposed site would cover approximately 5 km<sup>2</sup>.

1944. Okaihae itself is declared a nature reserve under the Reserves Act 1977. The Application stated that the boundary of the proposed marine reserve would be from mean high water springs<sup>420</sup> or from the boundary of the nature reserve. Under the Reserves Act, the area between mean high water springs and mean low water springs (the foreshore) is deemed to be part of the nature reserve for the purposes of entry to the island<sup>421</sup>. To avoid overlap with the nature reserve the landward boundary of the proposed marine reserve should be mean low water springs.

### 11.1.2 Forum recommendations

1945. The proposed marine reserve corresponds to Site K1 as identified by the Forum. Okaihae is one of only a few vegetated predator-free islands in the southeast region. In its Recommendations Report<sup>422</sup>, the Forum emphasised the opportunity this marine reserve would provide to create contiguous protection with the island. They also noted anecdotal reports that the health of the marine environment in this area had declined significantly in the last few decades. It could therefore respond well to protection as a marine reserve. This site is recognised as a popular location for diving and could become an important area for tourism and research.

### 11.1.3 Activities proposed to be authorised to continue

1946. The Application proposes that the retrieval of kōiwi tākata<sup>423</sup> be allowed to continue if the proposed marine reserve is established. Our advice on providing for this activity through an Order in Council condition is set out in 11.8.1.1.

### 11.1.4 Chapter outline

1947. This chapter:

- outlines our assessment of the benefits of the proposed marine reserve
- outlines matters discussed during Treaty partner engagement
- presents the numbers of submissions that were received through statutory consultation

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<sup>418</sup> Department of Conservation and Fisheries New Zealand 2020. Proposed southeast marine protected areas: Appendices to consultation document (including marine reserve applications) June 2020. 126 p.

<sup>419</sup> Average of each pair of successive low waters when the range of the tide is greatest.  
<https://www.linz.govt.nz/sea/tides/introduction-tides/definitions-tidal-terms>.

<sup>420</sup> Average of each pair of successive high waters when the range of the tide is greatest.  
<https://www.linz.govt.nz/sea/tides/introduction-tides/definitions-tidal-terms>.

<sup>421</sup> Section 20(3) of the Reserves Act 1977.

<sup>422</sup> South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

<sup>423</sup> Unidentified (Māori) human remains.

- describes the issues raised in these submissions
- provides our advice in relation to the tests under section 5(6) and section 5(9) of the Marine Reserves Act.

## 11.2 Assessment of the benefits of the proposed Okaihae marine reserve

1948. Sections 3.2.4 and 3.2.5 set out the framework for assessing whether any objections related to this proposed marine reserve should be upheld pursuant to the ‘interfere unduly’ and ‘otherwise contrary to the public interest’ tests in section 5(6) of the Marine Reserves Act.

1949. You should assess the objections in light of the purpose of the Marine Reserves Act and the benefits of the proposed site in terms of achieving that purpose. You also need to assess the values of the proposed marine reserve and the ‘overall public advantages’<sup>424</sup> that would come from this area being declared a marine reserve. This includes the site’s contribution to the proposed Network and the assessment provided in 6.2 of the values and benefits of the proposed Network overall.

1950. The following section is a summary of our assessment of those benefits in relation to the proposed marine reserve. Much of this assessment is also relevant to your decision-making under section 5(9) as discussed further in 11.8, which includes an assessment of your obligations under the Treaty of Waitangi (as set out in 3.3). More detail is also available in section 4.2 of the Application.

### 11.2.1 Achieving the purpose of the Marine Reserves Act

1951. As described in 3.2.1, the general purpose of the Marine Reserves Act is:

‘...preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest’.

1952. A full assessment of the proposed marine reserve against these criteria is set out in section 4.5.2 of the Application.

#### 11.2.1.1 Underwater scenery, natural features, and marine life

1953. This site features rocky reef that is typical of the region. In the shallower reef areas, rimurapa/bull kelp grows above an understory of other seaweed species. This habitat provides for populations of kōura/rock lobster and many reef fish species such as moki, kohikohi/trumpeter and matahoe/greenbone (butterfish).

1954. Okaihae itself is conservation land – the Green Island Nature Reserve. Having a marine reserve adjacent to this conservation land would provide an uncommon instance of contiguous land and sea protection in the region. This is also unique in the proposed Network.

#### 11.2.1.2 Opportunities for scientific study

1955. The site’s natural features would provide opportunities to study the species and processes associated with these habitats. It is also reasonably easy to access from Dunedin, a large population centre.

<sup>424</sup> *CRA3 Industry Association Inc v Minister of Fisheries* HC Wellington CP317/99, 24 May 2000, at [36].

1956. Adding marine reserve protection at this site would be particularly valuable for scientific study because the contiguous protection of land and marine habitats is uncommon on the east coast of the South Island.

1957. As mentioned above, the Forum noted anecdotal reports of a decline in the health of the marine ecosystem at this site. There would be high value in scientific investigation into any recovery of marine life following the establishment of the marine reserve. This could also help to increase the public awareness of the site and of the benefits that can arise from establishing marine protection.

### 11.2.2 Other values and advantages to the public

1958. Establishing marine reserve protection at this site would provide additional educational opportunities relating to the changes or recovery that may occur, especially because of the anecdotal decline in ecosystem health mentioned above. It would also enable people to learn about their local marine ecosystems and the connections between terrestrial and marine systems. They could also study the role of intact, fully functioning marine environments in human health and wellbeing.

1959. Despite being offshore, the site is accessible by boat or by kayak in the right conditions. Establishing a marine reserve here is likely to increase interest of the public and may provide additional ecotourism opportunities.

1960. The area's recovery would also enhance the recreational diving and snorkelling experience and add to the highly regarded underwater landscapes at the site. If fish size and abundance respond positively to protection (as expected based on observations at other sites including Cape Rodney-Okakari Point Marine Reserve), this site could become an iconic location for recreation and education in the southeast region.

### 11.2.3 Contribution to the proposed Network of marine protected areas

1961. The proposed marine reserve contains exposed intertidal and shallow subtidal reefs, exposed shallow sand and deep sand habitats. As described above, this site is unique in the proposed Network because of the connection with protected land on Okaihae.

1962. This island is a rare physical feature of the region. It is likely to feature biodiversity that is not fully represented at any other site in the proposed Network. The region's only other island with a significant separation from the mainland is Ponuihine/White Island.

1963. Protecting typical and less common habitats and associated species in this marine reserve would contribute to meeting the objectives of the MPA Policy for this region and nationally.

## 11.3 Consideration of Kāi Tahu views on the proposed marine reserve as heard through engagement

1964. As outlined in 2.6.2, Te Papa Atawhai, Tini a Tangaroa and Kāi Tahu held a number of hui between July 2020 and July 2021. Further engagement has continued, including directly with Ministers. The purpose of this engagement has been to further understand Kāi Tahu rights and interests and views (including concerns) in relation to the establishment and management of the proposed southeast marine protected areas and to understand and work through the issues raised, including the measures proposed by Kāi Tahu to address their concerns. These views, proposed measures, our advice and recommendations are each set out in 6.3. Sections 11.8.1.1 and 11.8.2 list the recommendations that apply to the proposed Okaihae marine reserve.

## 11.4 Submissions received on the proposed Okaihae marine reserves

1965. In total 4,157 submissions on the proposed Okaihae marine reserve were received, with 87% in supported its establishment as proposed<sup>425</sup>. This included submissions received on the proposed Network<sup>426</sup> and on the proposed Okaihae marine reserve specifically. There were 249 submissions specifically on this proposed marine reserve with 158 (64%) objections (either outright objections or expressing partial support), 88 (35%) in support and 3 (1%) did not give a preference.
1966. Of the 249 submissions, 11 were from submitters identified as affected iwi, hapū or whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act). Two supported implementing the proposed marine reserve and nine objected. A further seven submissions (one in support, six in objection) were from other Māori submitters (i.e. those who do not whakapapa to the Kāi Tahu rohe<sup>427</sup> and were therefore not identified as affected iwi hapū or whānau under te Takutai Moana Act, as set out in 5.2).
1967. Submitters in support of the proposed marine reserve being established gave the following main reasons<sup>428</sup>:
- the benefits of the proposed protection for marine species, habitats and ecosystems
  - the long-term ecological benefits for ecosystem and biodiversity recovery
  - that the community and scientific benefits would outweigh the costs.
1968. Submitters who did not support the proposed marine reserve being established or wanted changes before it was established, gave the following main reasons<sup>429</sup>:
- increased risks to the safety of recreational fishers
  - the importance of this particular site to the recreational fishing community
  - that the status quo was sustainable and the area was not overfished
  - impacts on commercial fishing.

## 11.5 Stage 1 assessment – objections from affected iwi, hapū or whānau

### 11.5.1 Obligations in relation to the Treaty of Waitangi

1969. As set out in 3.2.7, as part of your assessment of objections under section 5(6) of the Marine Reserves Act, you have obligations relating to the Treaty of Waitangi, including those under section 49 of te Takutai Moana Act and section 4 of the Conservation Act.

1970. Under section 49 of te Takutai Moana Act, you, as the decision-maker, ‘must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application’ (see 3.3.2 for more information). To allow you to do so, the objections received from submitters

<sup>425</sup> This included submitters who qualified their support by suggesting changes but whose support was not conditional on the changes.

<sup>426</sup> See chapter 5 for detail on how submissions were classified, assigned and analysed.

<sup>427</sup> To descend from the Kāi Tahu (Ngāi Tahu) tribal group.

<sup>428</sup> Bothwell, J., Long, D., Daddy, N., Hing, Z., 2020. Proposed southeast marine protected areas: Summary of submissions September 2020. Published by PublicVoice. 209 p.

<sup>429</sup> Ibid.

who are affected iwi, hapū or whānau are set out below, along with our advice on these objections under section 5(6)(a)–(e) of the Marine Reserves Act. As described in 5.2, Te Papa Atawhai has proceeded on the basis that any submissions (including objections) received from submitters affiliated with Kāi Tahu are considered as being from ‘affected iwi, hapū, or whānau’ for the purpose of the Takutai Moana Act.

1971. The obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act is also relevant to your assessment of objections from submitters identified as affected iwi, hapū, or whānau. In order to give effect to the principle of informed decision-making, all objections received from these submitters are identified and analysed below. In addition to the principle of informed decision-making, the principles of partnership and active protection are also relevant. For the proposed Okaihae marine reserve, these principles are primarily relevant to your assessment of the objections that relate to impacts on non-commercial fishing activities (including the ability to continue the customary harvest of seafood), the take of cultural materials and other resources for wānaka and the transfer of mātauraka Māori, preferential access to commercial development opportunities and a desire for co-management and generational reviews of the proposed marine reserve. Te Papa Atawhai considers these issues relate to the protection of Kāi Tahu non-commercial customary fishing rights (noting the relevance of the Treaty of Waitangi (Fisheries Claims) Settlement Act to this matter – see 3.3.4.3), and the ability of Kāi Tahu to exercise tino rangatiratanga and kaitiakitanga over the areas covered by the proposed marine reserves and taonga present (including those taonga and taonga fish species identified under the Ngāi Tahu Claims Settlement Act, see 3.3.3). In considering whether or not to uphold the objections relating to these matters, therefore, you must consider whether to do so would give effect to the Treaty principles of partnership, active protection and informed decision-making.

1972. In considering your Treaty obligations in relation to these objections, the direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement are directly relevant. Our advice in relation to the direct engagement with Kāi Tahu, including our consideration of each of the measures proposed by Kāi Tahu to mitigate what Kāi Tahu consider to be the impacts of the proposed marine protected areas (including the proposed marine reserves) on Kāi Tahu rights and interests and our recommendations are set out at 6.3. As set out in 6.3.10, our assessment, prior to considering any objections received, is that to declare each of the proposed marine reserves (including Okaihae) on the basis of the recommendations made would fulfil the Crown’s obligations in relation to the Treaty. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. In assessing the relevant objections below, therefore, we have considered whether there is anything additional that has been raised that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required. For this assessment, we have proceeded on the basis that our recommendations in relation to the direct Kāi Tahu engagement will be progressed.

1973. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of these objections would also be consistent with your obligations under section 4 and other Treaty obligations, and would therefore fulfil the Crown’s obligations in relation to the Treaty.



### 11.5.2 Section 5(6)(a) estate or interest in land

1974. No objections that raised issues relating to any estate or interest in land in or adjoining the proposed reserve were received from submitters identified as affected iwi, hapū or whānau.

### 11.5.3 Section 5(6)(b) navigation

1975. No objections that raised issues relating to any existing right of navigation were received from submitters identified as affected iwi, hapū or whānau.

### 11.5.4 Section 5(6)(c) commercial fishing

1976. No objections that raised issues relating to commercial fishing were received from submitters identified as affected iwi, hapū or whānau.

### 11.5.5 Section 5(6)(d) recreational usage

#### 11.5.5.1 Objections related to favoured recreational fishing and spearfishing locations

1977. Three objections from those identified as affected iwi, hapū or whānau raised issues related to recreational use.

1978. One said their recreational fishing would be affected because this site was part of their usual fishing area "*between Tow Rock and Green Island*". They also said fishers with small boats were restricted in how far they could travel from particular beaches – presumably arguing that this proposed site would affect those fishers.

1979. Two other submitters said this was a favoured place to take novices to spearfish and gather kōura, and was accessible from Brighton Beach by small boats.

#### Te Papa Atawhai advice

1980. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

1981. The Forum recommended restricting the extent of this proposed marine reserve so recreational fishing could still occur in the vicinity of Okaihae, including on nearby reefs. This recommendation has been reflected in the marine reserve as proposed in the Application. At the greatest extent, the boundary of the reserve would be 1.3 km from the island. We do not consider this distance would significantly affect these fishers, and that the fishing activity could continue, albeit in a different location.

1982. The value of this site to the local fishing and diving community is evident from submitters' statements, particularly its proximity to Dunedin and suitability for beginner and intermediate SCUBA or free-divers. The reefs around Okaihae that would be within the boundary of the proposed marine reserve offer spearfishers an opportunity to dive in areas where the reef rises to the surface. Other similar reefs are located relatively nearby between Blackhead and St Clair, and to the west of Ponuihine. While these reefs are located further away from Brighton (the location referred to by the submitter), the existence of these alternate sites would enable recreational fishing and spearfishing to occur, perhaps with less convenience for some users.

1983. The recovery of exploited species within the proposed marine reserve is likely to enhance fishing adjacent to the site. Evidence of this effect is seen at many marine reserves where 'fishing the line' (fishing along a marine reserve boundary) is observed. Non-extractive diving activities would still be possible if the proposed marine reserve was established and would enable people to experience a protected marine environment at a safe dive site close to Dunedin.

## 11.5.6 Section 5(6)(e) public interest

### 11.5.6.1 Objections related to impacts on customary interests

1984. Two objections from submitters identified as affected iwi, hapū or whānau said the proposed marine reserve would restrict their ability and freedom to harvest fish customarily. One stated, “*it is my families customary rights to fish where ever and when we choose*”. This submitter made the same submission in relation to each of the proposed marine reserves except for Papanui. A second submitter stated it was his “*right as tangata whenua to be able to harvest kaimoana where his ancestors did*”. He suggested a taiāpure<sup>430</sup> would be a preferable management measure, and also wanted to see a reduction in recreational and commercial take and an increase in research in the area.

1985. A submission in partial support was received from Te Rūnanga o Ōtākou<sup>431</sup>, identified as affected iwi, hapū or whānau. The rūnanga stated that the proposed marine reserve was “*at the maximum extent to which it can agree*” and requested the inclusion of a number of provisions:

- to be “*well-represented*” in the governance of the proposed marine reserve with effective co-management undertaken in the “*spirit of partnership, co-design, and informed decision-making*”
- that regular monitoring was undertaken, which would inform 20 to 25-year generational reviews
- to retain the ability to retrieve cultural materials from the proposed site and take other resources for the purposes of wānaka<sup>432</sup> and transfer of mātauraka<sup>433</sup>
- 9(2)(g)(i) access to commercial development opportunities within the proposed marine reserve, such as the harvest of the introduced kelp *Undaria pinnatifida*.

#### Te Papa Atawhai advice

1986. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

1987. In terms of the objections concerning the submitters’ rights to the customary harvest of seafood, it is acknowledged that the area has a history of customary use, and that the declaration of a marine reserve will prevent extractive fishing activities, including non-commercial customary fishing activities currently undertaken by affected iwi, hapū and whānau. The Kāi Tahu cultural assessment in the Forum’s Recommendations Report (on page 182) stated:

‘The relative proximity of Okaihae (Green Island) to traditional settlements located at the mouths of the Kaikarae (Kaikorai Stream) and Otokia Creek (Brighton), and at Rakiatea (St Clair Beach) ensured that it was part of the mahika kai network. Okaihae (Green Island) traditionally supported customary fishing and birding activity.’

<sup>430</sup> Taiāpure are areas that have customarily been of special significance to iwi or hapū, as a source of food, or for spiritual or cultural reasons, and are now established under the Fisheries Act 1996.

<sup>431</sup> Te Rūnanga o Ōtākou is the organisational structure of the hapū of Ōtākou marae on the Otago Peninsula whose rohe moana extends from Pūrehurehu (Heyward’s Point) in the north to Mataāu (Clutha River) in the south.

<sup>432</sup> Intergenerational sharing of knowledge.

<sup>433</sup> The traditional knowledge accumulated by generations of Kāi Tahu whānau and hapū through co-existence with and use and protection of their natural resources.

1988. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area 'where and when ever', as suggested by a submitter. Rather, there are already a range of regulatory measures that govern such activities. This includes the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. While acknowledging the customary use of the coastal area generally, and the fact that the proposed marine reserve would prohibit the take of marine life, the area of the proposed marine reserve is relatively small (approximately 5 km<sup>2</sup>) and the areas surrounding it would remain available for customary fishing activities.
1989. The alternate management measures suggested by the submitter are appropriate tools to meet certain objectives. However, the objective of the Forum was to propose areas to protect marine biodiversity and achieve habitat representation while minimising the effects on users. We consider this balance was achieved in the recommendations leading to this proposed Network and this proposed marine reserve. In addition, the purpose of marine reserves under the Marine Reserves Act is not fisheries management but to preserve areas 'as far as possible in their natural state' to provide opportunities for scientific study.
1990. The submission from Te Rūnanga o Ōtākou aligns closely with the views expressed in the engagement between Agencies and Kāi Tahu (see 6.3). As set out in our detailed advice in 6.3, we support the proposals in accordance with the Crown's Treaty obligations, and consider the proposed measures can be implemented consistently with the purpose of the Marine Reserves Act. Te Papa Atawhai considers that our recommendations in 6.3, if implemented, would mitigate the issues raised above.

## 11.6 Stage 1 assessment – objections from all other submitters

### 11.6.1 Obligations in relation to the Treaty of Waitangi

1991. Section 11.5 sets out the views of submitters identified as affected iwi, hapū, or whānau. The following section sets out the objections received from all other submitters and provides our advice on the assessment of these objections in terms of the tests in section 5(6)(a)-(e) of the Marine Reserves Act.
1992. The objections considered include objections received from Māori submitters who were not identified as affected iwi, hapū, or whānau on the basis that they were not affiliated with Kāi Tahu (see 5.2). The requirement under section 49 of the Takutai Moana Act to 'have particular regard' therefore does not apply to these views.
1993. As set out in 5.2, however, the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act may still be relevant to your consideration of objections received from these submitters. In order to give effect to the principle of informed decision-making, Te Papa Atawhai has identified all objections received from other Māori submitters. Of these, we consider that objections relating to non-commercial customary fishing activities, (including the ability to continue the customary harvest of seafood for nourishment, for maintaining wellbeing, for teaching tikanga and for tangihanga) and in relation to a preference for using rahui rather than marine reserve status should be considered in terms of the principles of active protection and partnership. As with objections received from affected iwi, hapū and whānau (see 11.5.1), our consideration of these objections in relation to section 4 obligations is made in the context of our direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement. As set out in 6.3.10, our assessment prior to considering any objections received, is that to declare each of the

proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. We are therefore considering whether there is anything additional that has been raised in the objections received from other Māori submitters that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required.

1994. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. We have also considered the fact that these views are received from Māori submitters who are not affiliated with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of the objections received from other Māori submitters would also be consistent with your obligations under section 4, and would therefore fulfil the Crown's obligations in relation to the Treaty of Waitangi.

## 11.6.2 Section 5(6)(a) estate or interest in land

### 11.6.2.1 Objections related to the continuation of Dunedin city's municipal services

1995. Dunedin City Council<sup>434</sup> (DCC) partially supported the proposed marine reserve. They requested acknowledgement of their existing consented wastewater discharge associated with the Green Island wastewater treatment operation (Consent No. 97530.V1) and seek provision for appropriate inclusion of conditions to allow this operation to continue if the proposed marine reserve is established. They noted that the outfall pipe does not enter the site of the proposed marine reserve, however that there is a "low probability" that the plume from the wastewater outfall could discharge indirectly into the proposed marine reserve. Further information sought from DCC in relation to their consented activities describes a second consented outfall (used only during planned maintenance on the main outfall) that should also be considered as part of this operation (Consent No.97551). DCC's submission also highlighted the requirements for environmental sampling associated with this resource consent and requested that provision be made to permit this monitoring to continue.

#### Te Papa Atawhai advice

1996. The consented activities described above were not listed in the Application among the activities that take place at the site but which were not inconsistent with the purpose of the reserve. This is due to the fact that the discharges are not directly into the proposed site, and therefore were not identified as activities that may be affected by the proposal.

1997. The Marine Reserves Act, however, prohibits the discharges of certain substances either directly or indirectly into a marine reserve. Based on the information provided by DCC as to the possibility of the plume of wastewater entering the marine reserve, there is a corresponding possibility of this constituting a breach of the Marine Reserves Act as an 'indirect discharge' if not otherwise provided for.

1998. We consider that prohibiting these indirect discharges through the declaration of the marine reserve would interfere unduly with DCC's interest in land in or adjoining the marine reserve (specifically, DCC's ability to provide this municipal wastewater service to the city of Dunedin) and/or would otherwise be contrary to the public interest<sup>435</sup>. From the information available, we agree there is a low likelihood of the wastewater plume entering the proposed

<sup>434</sup> The Territorial Authority for the city of Dunedin.

<sup>435</sup> Section 5(6)€, Marine Reserves Act 1971.

marine reserve and we note the information provided in DCC's submission as to the high dilution and dispersion achieved from the outfall, reducing the likelihood of nutrient enrichment affecting the marine reserve. We consider these discharges would therefore not interfere with the proposed marine reserve achieving the purpose of the Marine Reserves Act, on the proviso that the discharges would continue to be subject to the Resource Management Act and any other legal requirements. We therefore recommend providing for these discharges to continue through a condition in the Order in Council establishing the marine reserve, subject to compliance with the Resource Management Act and any other legal requirements. We also agree that the existing environmental sampling carried out as part of the conditions of consent related to these discharges should be provided for in the Order in Council, to avoid duplication with permitting under Marine Reserves Regulations (see 11.8.1.2). The proposed condition would allow the activities to continue in the event of variation and/or replacement of the existing resource consents, so long as any variation or replacement did not substantially change the nature or adverse effects of the activity from the point at which the marine reserve is declared.

### 11.6.3 Section 5(6)(b) navigation

1999. No objections that raised issues relating to any existing right of navigation were received.

### 11.6.4 Section 5(6)(c) commercial fishing

#### 11.6.4.1 Objections related to displacement of fishing

2000. Two individual submitters noted that establishing the proposed marine reserve would affect commercial fishing activities by displacing recreational fishing to other areas. No detail about how or to what extent it was expected to occur was provided by these submitters.

2001. The combined submission from the New Zealand Rock Lobster Industry Council<sup>436</sup>, Paua Industry Council<sup>437</sup> and Fisheries Inshore New Zealand<sup>438</sup> stated that the proposed site was important for "*maintaining the stable and sustainable pattern of fishing in CRA7*". The submission acknowledged that the affected kōura catch from this site was "*not large*". For pāua, it stated that the proposed Okaihae and Ōrau marine reserves would "*increase the risk of local depletion*" because "*recreational pāua catch displaced from marine reserves [...] will rapidly deplete the few remaining pāua reefs that are accessible to recreational fishers near Dunedin*".

2002. A similar issue was described in the PauaMac 5 Incorporated<sup>439</sup> submission. It raised concerns about the commercial, recreational and customary displacement of pāua fishing and the negative effect this would have on the PAU5D<sup>440</sup> fishery. The submission said displacement could lead to localised depletion and jeopardise the rebuilding of the fishery. It also stated that spatial conflict between fishing sectors could arise because the site was close to Dunedin and creating the proposed Network would leave only a small area of coast near the city for recreational fishing.

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<sup>436</sup> The national representative organisation for the New Zealand rock lobster industry and the umbrella organisation for nine commercial stakeholder organisations operating in each of the rock lobster management areas in New Zealand.

<sup>437</sup> The national agency for five commercial stakeholder groups that represent commercial pāua fishery interests.

<sup>438</sup> A commercial fisheries stakeholder organisation.

<sup>439</sup> The regional commercial stakeholder group for Fiordland (PAU 5A), Stewart Island (PAU 5B) and Southland/Otago (PAU 5D). Members include owners of pāua quota and Annual Catch Entitlement, as well as fishing vessel operators, processors, fish dealers and harvesters.

<sup>440</sup> The pāua fishery management area from the Taieri River in the north to Slope Point in the south.

2003. The objection from the Otago Rock Lobster Industry Association<sup>441</sup> said the displacement of kōura catch from the proposed site would be “*significant*” and increase the risk of localised depletion and threaten the sustainability of the CRA7<sup>442</sup> fishery. They also stated that because only a small area of coast would remain available for recreational fishers if the proposed Network was established, spatial conflict was likely to increase. In addition, they noted that tangata whenua may wish to establish more customary protected areas, which would further exacerbate the effects on commercial fishers.

#### **Te Papa Atawhai advice**

2004. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.

2005. A direct consequence of establishing a marine reserve is that fishing activity in the area would cease. Te Papa Atawhai acknowledges that there is existing recreational fishing activity within the proposed site, and therefore a similar level of fishing activity is likely to be displaced to other areas. Although this issue was raised frequently by submitters, the question for the purpose of assessing these submissions is whether the interference on commercial fishing caused by that displacement would be ‘undue’.

2006. Okaihae is the smallest of the six proposed marine reserves at 5 km<sup>2</sup> or 0.1% of the Forum region<sup>443</sup>. Displacement of fishing activity from such a small area is unlikely to cause localised depletion in other areas. We also consider that significant localised depletion would be unlikely to occur if the cumulative effects of the proposed Okaihae and Ōrau marine reserves were considered. The final form of the proposed Ōrau marine reserve was recommended by the Forum to exclude some areas that were valued more highly for recreational fishing, particularly Tow Rock. Ōrau would cover about half of a current commercial pāua prohibition area. We expect any recreational pāua fishing displaced by the proposed Ōrau and/or Okaihae marine reserves would mostly be carried out on the reefs in the remainder of the commercial prohibition area.

2007. The limited information on recreational fishing effort and the imprecision of some commercial fishing data makes it difficult to predict how fishing patterns may change. While displacement may affect the numbers of harvested species in some areas, this is expected to be minor and short-term.

2008. Fisheries management under the Fisheries Act is designed to ensure that commercially harvested species are harvested sustainably with catch levels adjusted if required. We also note that the recovery of harvested species within a marine reserve can benefit fishers in the medium to long term by enhancing populations adjacent to the site.

2009. The combined industry objection and the Otago Rock Lobster Industry Association objection raised issues about the proposed marine reserve’s effect on the commercial kōura fishery. A detailed economic analysis commissioned by the Otago Rock Lobster Industry Association stated that geographic information provided by individual fishers was used to estimate the proportion of their catch taken from the proposed marine reserve areas in the previous five years. Despite stating this work had been carried out, no specific information was provided to substantiate the claim that catch displacement from this proposed site

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<sup>441</sup> A fully constituted and incorporated society which is recognised as the commercial stakeholder organisation representing the interests of the commercial kōura/rock lobster industry on the Otago Coast, the CRAMAC7 (CRA7) fishery.

<sup>442</sup> The kōura/rock lobster quota management area from the Waitaki River to Long Point.

<sup>443</sup> The term used by the Forum to describe the area within which the Forum was tasked with providing recommendations for marine protection. Specifically: “...the marine coastal area (mean high water spring out to 12 nautical miles (NM) from Timaru in South Canterbury to Waipapa Point in Southland.” Page 17, Forum Recommendations Report.

would be “*significant*”. From the submission’s written statements and maps provided by fishers, we were unable to reconcile how this very small part of the CRA7 fishery could be considered “*significant*”.

2010. Also, this statement does not match the combined industry’s submission, which stated that the level of kōura catch in this area was “*not large*”. Neither does the statement match the Tini a Tangaroa estimate for the last three fishing years (2020/21 to 2022/23), that shows one fisher used the area, taking an average of [REDACTED] 9(2)(b)(ii) [REDACTED]. Over the quota management area, this level of catch accounts for [REDACTED] 9(2)(b)(ii) [REDACTED] of the CRA7 catch.

2011. While there would be some effect on individual fishers who use the proposed marine reserve area, we conclude that establishing this marine reserve is unlikely to have a significant effect on commercial kōura fishing.

2012. In response to the objection raised by PauaMac 5 Incorporated, we note that given the spatial distribution of pāua habitat, it would not be possible to establish coastal marine reserves without displacing some pāua fishing activity. This proposed marine reserve, however, avoids the areas in the region where pāua fishing occurs at higher intensities.

2013. Fisheries data from the fine-scale statistical area P5DH33, within which this site is located, has reported pāua catches for just 2 years from 2007 to 2019. These were 30 kg in 2010 and 100 kg in 2012. Tini a Tangaroa electronic reporting data indicates that for the 2019/20 fishing year catch was reported in only one of the proposed marine reserves (Te Umu Koau) where [REDACTED] 9(2)(b)(ii) [REDACTED] of the quota management area catch was taken; that is, no catch was reported from this site. There was no reported catch from any site within any of the proposed marine reserves in 2020/21 or 2021/22 fishing years. We do not consider the interference with commercial pāua fishing would be undue if this proposed marine reserve was established.

#### 11.6.4.2 Objections related to the commercial kina fishery

2014. The objection from the Kina Industry Council<sup>444</sup> said there were not many areas “*suitable for kina harvest*” outside the proposed Te Umu Koau marine reserve and this proposed marine reserve. They stated that “*other areas either do not have sufficient kina present, have poor water visibility, or are not safe to free-dive*”. They also noted if this and the Te Umu Koau marine reserves were established “*the entire fishery will be lost*” because alternate areas were considered uneconomic to fish.

##### Te Papa Atawhai advice

2015. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.

2016. Data from the 2019/20 to 2021/22 fishing years show kina catch was reported at this site in 2020/21, with a total of [REDACTED] 9(2)(b)(ii) [REDACTED]. This equates to an annual average of [REDACTED] 9(2)(b)(ii) [REDACTED] of the quota management area for kina over these three fishing years. While the submitter emphasised the importance of the proposed Okaihae and Te Umu Koau marine reserve sites to the fishery, the fisheries data suggests that most commercial kina fishing is likely to occur outside the proposed marine reserve sites, with a variable amount taken from the proposed Te Umu Koau marine reserve (range of 0 to [REDACTED] 9(2)(b)(ii) [REDACTED] with an average of [REDACTED] 9(2)(b)(ii) [REDACTED] of the quota management area). While in some years fishing for kina may occur within the proposed Okaihae marine reserve, there is no evidence that the site is particularly important given the lack of fishing for two of the three years that Tini a Tangaroa has detailed information for.

<sup>444</sup> A national body representing commercial kina fishers.

2017. There may be more kina in the proposed marine reserve area at present because their predators, such as kōura, are harvested. This issue was also raised by several submitters. We note the limited information about interactions between kina and other species in this region, and that the proposed marine reserve would allow species interactions like these to be studied.

## 11.6.5 Section 5(6)(d) recreational usage

### 11.6.5.1 Objections related to recreational fishing and safety

2018. Several objectors raised concerns about the safety of recreational fishers and freedivers. These were related to being “forced” to use areas further from shore or dive in deeper areas.

2019. One submitter said establishing this marine reserve would concentrate fishing effort in fewer remaining areas. Some submitters disagreed with a statement in the Application that alternate recreational fishing locations were available nearby.

2020. The combined submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that if the proposed marine reserves at Okaihae and Ōrau were established, the only remaining area for recreational fishers would be a small area of coast at Blackhead, “placing incredible pressure” on this site.

2021. Other submitters noted the significance of this site as a “unique” and highly rated freediving and scuba diving spot, particularly for teaching young or novice freedivers. Its significance for boat-based fishing was also noted. The submissions described the potential community and social impacts, including on wellbeing, of this area being closed to such recreational activities. The “loss of culture” associated with people’s ability to carry out the activities close to shore and holiday settlements was also mentioned.

2022. One of the fishing club templates used by 95 submitters noted that this was a “great place to take novice divers spearfishing and gathering crayfish” and that fish could be caught close to shore by launching a boat from Brighton Beach. The template also stated that there were limited launching sites for bigger boats along the coast, but this area could be accessed from the current launching sites. We have interpreted this as meaning that establishing the proposed marine reserve would preclude this access and negatively affect fishers using larger vessels.

2023. An objection from the Tautuku Fishing Club Dunedin and Haast Incorporated<sup>445</sup> said the safety of fishers would be compromised by forcing them further away from areas of shelter. It also said establishing this marine reserve would take away an “invaluable” area of shelter for recreational fishers. These issues were mentioned by other submitters. In addition, the objection stated that the culture and wellbeing of the recreational fishing, diving and spearfishing community would be affected.

2024. The combined objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand disagreed with a statement in the Application that the adverse effects on overall recreational opportunities would be moderated by the availability of alternate fishing locations. They stated that it is “contrary to [the Marine Reserves Act] s.5(6)(d) which requires that an objection must be upheld if there are adverse effects on existing recreational usage of the area. The reported existence of other suitable locations nearby (which the applicant has not identified) is irrelevant to the

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<sup>445</sup> A club based in Dunedin and Haast that was formed in 1970 for bringing the community together to fish recreationally, is affiliated with the New Zealand Sport Fishing Council, and has 75 members.



consideration of whether there are adverse effects on existing recreational fishing in the area of MPA Ki” [submitter’s emphasis].

#### **Te Papa Atawhai advice**

2025. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.
2026. The safety of boat-based fishers and freedivers is an important consideration for this community, particularly given the prevailing weather and sea conditions. No information was provided by the submitters about how much further recreational fishers would have to travel or the freedive depth ranges. This has made it difficult to assess the issue.
2027. Safety should be the paramount concern for the skipper of any vessel. We consider that regardless of the establishment of the proposed marine reserve, the onus remains on a skipper to ensure conditions are suitable for their vessel and its occupants. Establishing the proposed marine reserve may mean that it is not possible to fish or dive at certain locations on some additional days per year. However, we disagree that fishers or freedivers would be “forced” into an unsafe situation, as ultimately this is a matter of personal responsibility.
2028. The shelter or transit of vessels would not be affected by the proposed marine reserve being established as these activities are not prohibited by the Marine Reserves Act. In addition to the references to freedom of entry and access to reserves in section 3(2)(d)<sup>446</sup>, section 23(1) of the Marine Reserves Act, ‘Rights of access and navigation’, provides:
- ‘(1) Subject to any regulations made under this Act, any right of access to or upon any foreshore or part of the foreshore comprised in any marine reserve or any right of navigation (other than anchorage) through or across any water at any material time comprised in any marine reserve shall remain unaffected.’
2029. The proposed marine reserve would also not prevent anchoring, provided damage is kept to a minimum practicable level<sup>447</sup>. Section 23(2) of the Marine Reserves Act also confirms that the ability to anchor within a marine reserve in times of ‘stress or emergency’ is preserved.
2030. We do not consider the displacement of fishing effort from this or the proposed Ōrau marine reserve would have significant adverse effects. This is because a small area (about 0.2 km<sup>2</sup>) of rocky reef habitat supports most of the recreational fishing activity, and other suitable areas remain available to fishers (described below). As noted above, the recovery of exploited species within the proposed marine reserve is likely to enhance fishing adjacent to the site.
2031. As described in 5.3.2, information on the recreational use of specific areas is limited. As part of the Forum process, however, information was gathered through multiple meetings with recreational fishers, knowledgeable fishers and fisheries officers. In many cases, conflicting information was received about how much fishing occurred at this site compared to reef areas outside the proposed boundaries. The Forum proposed a small size for this site so that recreational fishing activity could still occur near the island.
2032. The Recommendations Report (page 80) identified 26 areas in the Forum region known to be used for boat-based recreational fishing. Of the four within the Network’s proposed marine reserves, one is the proposed marine reserve area. A number of other identified areas were near this site including the area from Ponuiahine to Blackhead and the area between

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<sup>446</sup> See section 3.2.1.

<sup>447</sup> Regulation 5 (Anchoring), Marine Reserves Regulations 1993, <https://legislation.govt.nz/regulation/public/1993/0230/latest/DLM179649.html?src=qs>.

Brighton and Taieri Mouth. We therefore consider that alternate fishing areas would remain available if the proposed marine reserve was established.

2033. Te Papa Atawhai disagrees with the assertion made in the combined industry submission that the existence of other suitable locations nearby is “irrelevant” to the assessment under section 5(6)(d). Firstly, we note the submission refers to “adverse effects” on recreational fishing. As noted in 3.2.4, the High Court in *Akaroa Marine Protection Society Incorporated v The Minister of Conservation* [2012] NZHC 933 confirmed that the approach to ‘adverse effect’ in section 5(6)(d) must be approached on the same basis as ‘undue interference’. Therefore, it is not the case that an objection must be upheld if there is any scale of adverse effect on existing recreational users. The Minister must be satisfied that the adverse effect must be both ‘excessive and unjustified’<sup>448</sup>.

2034. Secondly, as a matter of logic, the availability of nearby locations must be relevant to the assessment of whether that adverse effect/undue interference threshold is met. It forms part of the factual context in which the assessment must be made. If *no* other locations for similar recreational uses were available nearby, this would likewise need to be taken into account in assessing the severity of the effects of a proposed marine reserve. The *Akaroa* case also confirms that in making the assessment under section 5(6)(d), it is appropriate to consider the merits of the proposal, including the wider public interest, and that the benefits may extend beyond the area of the proposed marine reserve.<sup>449</sup>

#### Submissions in support

2035. We note a submission in support from an individual. It acknowledged the benefits of creating a marine reserve at this site despite the importance of the area to them for harvesting seafood.

### 11.6.6 Section 5(6)(e) public interest

#### 11.6.6.1 Objections related to impacts on customary interests

2036. Three objections from Māori not identified as affected iwi, hapū or whānau, raised issues related to their customary interests. One described how the proposed marine reserve would take away from their “right as tangata whenua” to be able to provide kaimoana. The submitter described the importance of this ability to maintain wellbeing, “being able to keep our *tapa wha intact*”, “to keep our pou well”, “especially our wairua, hinengaro and tinana”, as well as links with “tangaroa”.

2037. The second submitter highlighted the importance of being able to harvest kaimoana for teaching tikanga (protocols) to younger generations and for tangihanga (funerals). A third objector said they would prefer “*rahui Tikanga as this can be lifted when appropriate*”.

#### Te Papa Atawhai advice

2038. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2039. As set out in 11.5.6.1, it is acknowledged that the area has a history of customary use and that the declaration of a marine reserve will prevent extractive fishing activities, including those non-commercial customary fishing activities currently undertaken as described by the submitters above. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area, as suggested by a submitter. Rather, there are

<sup>448</sup> *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [53].

<sup>449</sup> *Ibid.* at [57].

already a range of regulatory measures that govern such activities, including the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. Te Papa Atawhai notes that customary harvest will still be possible in other areas adjacent to the marine reserve, including those mentioned above in 11.6.5.1. Also, because this site is entirely offshore, it is not as accessible as mainland coastal areas and may be used less often.

2040. Regarding the suggestion by a submitter for placing a “*rāhui tikanga*” (which we take to mean an iwi imposed *rāhui*) as appropriate instead of the proposed marine reserve, Te Papa Atawhai acknowledges the role that *rāhui* can play in managing the marine environment. However, as with other suggestions made by submitters for alternative management options (see 11.6.6.6), we note that the temporary and non-statutory nature of a *rāhui* means that relying on this process alone would not be consistent with the intended purpose of establishing an area to be preserved as far as possible in its natural state for scientific study. In the event that a marine reserve is declared, Te Papa Atawhai would continue to support the use of and adherence to *rāhui* (in conjunction with the statutory measures) through advocacy and education.

2041. As an additional point, as a result of the direct Kāi Tahu engagement (see 6.3), Te Papa Atawhai recommends making provision for activities to continue that would enable mātauraka Māori to be enhanced and allow for certain activities associated with wānaka. These recommendations will alleviate, at least to some extent, impacts on cultural values and interests associated with the site. We do acknowledge, however, that the recommended condition would be limited to members of Ngāi Tahu Whānui, and therefore would not authorise these specific submitters to continue carrying out such activities within the proposed site.

#### 11.6.6.2 Objections related to the benefits of kina harvesting

2042. An objection from the Kina Industry Council described how the commercial harvest of kina keeps the population at a lower level and prevents kina barrens. Barrens are areas of bare rock, caused by the presence of high numbers of kina that denude the area of the usual algae, particularly kelp.

2043. The objection from Dive Nation<sup>450</sup> also highlighted issues with what they said was an over-abundance of kina on the reefs around Okaihae. They also described the group’s efforts to reduce the kina population with the aim of helping the recovery of reefs and other marine life.

2044. Many other submissions, particularly from the recreational fishing sector, also raised concern about effects on the ecosystem and the area becoming a kina barren if kina harvesting was prevented by the marine reserve.

#### Te Papa Atawhai advice

2045. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2046. Kina barrens are areas where kina take over and denude a reef. This can happen when their predators - namely large predatory fish and kōura - are removed. Kina barrens occur extensively in the Hauraki Gulf and further north. Studies in these areas have shown that implementing protection measures allowed predators of kina to recover and naturally resulted in a decrease in kina numbers and a return to a more natural ecosystem.

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<sup>450</sup> An Otago-based spearfishing club.

2047. However, the importance of kina in controlling kelp biomass has been shown to vary at local and regional scales in relation to factors such as water clarity, wave exposure, and sediment levels, which are poorly understood<sup>451</sup>. The value of marine reserves in improving our understanding of ecological processes, and the influence of external pressures on the marine environment, is highlighted by the research conducted in marine reserves in the north-east of the North Island. While kina barrens do occur in the South Island, they have not been as well studied in the southeast region and this proposed marine reserve would provide a valuable opportunity to study similar ecological questions.

### 11.6.6.3 Objection questioning the management of land-based threats

2048. The combined objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand said there were many “*threats*” to this site that would not be managed by the designation of a marine reserve. These included discharges from the Green Island Wastewater Treatment Plant and “*degraded freshwater*” with potentially elevated levels of sediment from the adjacent Kaikorai Stream estuary and the Clutha and Taieri Rivers further south.

#### Te Papa Atawhai advice

2049. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2050. We agree that multiple stressors affect the proposed marine reserve area, including pollution from land-based activities via discharges and in runoff. The protection afforded by a marine reserve does not immediately mitigate the effects of land-based stressors, however this does not mean that it would be contrary to the public interest to declare a marine reserve. The Marine Reserves Act does not require all threats to be eliminated, rather it requires that an area be preserved ‘as far as possible’ in its natural state. Moreover, other management measures via the Resource Management Act are either in place or being developed to manage or mitigate the effect of land-based stressors. These include:

- Regional council responsibility for developing and enforcing regional freshwater plans and regional coastal plans. These plans set rules to control discharges to coastal waters and improve land-use practices that release sediment or contaminated runoff in river catchments.
- Policy 5 of the New Zealand Coastal Policy Statement<sup>452</sup> directs regional councils to consider the effects on waters in the coastal environment that are held or managed under other acts such as the Marine Reserves Act. It also directs regional councils to avoid the adverse effects of activities that are significant in relation to the purpose of the marine reserve.
- The National Policy Statement for Freshwater Management 2020<sup>453</sup> will influence activities that may affect the proposed marine reserve by setting freshwater limits and land-use regulations.

2051. A submitter in support said, “*a new East Otago Catchment Group has been established which will help restore the upper reaches of the waterway*”, which indicates that efforts to reduce

<sup>451</sup> Shears, N. T., Babcock, R. C., & Salomon, A. K., 2008. Context-dependent effects of fishing: variation in trophic cascades across environmental gradients. *Ecological Applications*: 1,860–1,873.

<sup>452</sup> Department of Conservation, 2010. *New Zealand Coastal Policy Statement 2010*. Department of Conservation. 30 p.

<sup>453</sup> Ministry for the Environment, 2020. *National Policy Statement for Freshwater Management 2020*. Ministry for the Environment. 70 p.

land-based pollution are already underway. A submission from the DCC said their “3 Waters Strategic Direction Statement identifies improving the quality of discharges to the environment as a key priority” and that “improvements to Dunedin City’s wastewater and stormwater systems are ongoing”.

2052. Marine reserve protection allows some pressures (such as extractive activities) to be managed directly. This is likely to increase the area’s resilience to other stressors, such as the land-based stressors raised by the submitter, as well as the cumulative effect of multiple stressors including climate change. Studies of the effects of these stressors on the marine environment would be advantageous in a marine reserve as they would be able to be carried out in the absence of other pressures (i.e. those that are managed within a marine reserve).

#### 11.6.6.4 Objections questioning the need or benefit of the proposed marine reserve

2053. A number of submitters raised objections relating to the lack of need for, or benefit from, establishing the proposed marine reserve. We have assumed the submitters consider that it would be contrary to the public interest to declare the area a marine reserve if there is no demonstrated need for or benefit from it.

2054. Many objections, including 49 made using fishing club templates, emphasised the strength of the fishery in this area and said it was naturally protected by the weather. They suggested the area should remain under the existing management arrangements as they saw no problem with the status quo. The objection from the Tautuku Fishing Club Dunedin and Haast Incorporated said recreational fishing had a “limited impact on marine biodiversity in these areas at present” and alternate management measures could be employed.

2055. Another argument was that the area was unlikely to become a major research or tourism site because of its relative inaccessibility and past patterns of use.

2056. The combined objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that because of limited access, the public would not be able to gain the full benefit from the site. It noted that the identified values of the site were all related to the island itself rather than the proposed marine area. The submission also said the habitats at the site were already “degraded” and the proposed site was too small to achieve any biodiversity protection.

#### Te Papa Atawhai advice

2057. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2058. Some objectors said recreational fishing had a very small impact on marine habitats and thought it would be more appropriate to ban or better manage commercial fishing. The purpose of establishing the proposed marine reserve, however, is to preserve the area for scientific study (section 3(1) of the Marine Reserves Act) and to contribute to the protection of marine biodiversity through a comprehensive and representative marine protected area network (as in the *Marine Protected Areas Policy and Implementation Plan*<sup>454</sup> (MPA Policy)).

2059. Marine reserves are not for fisheries management but a means to ensure the full range of biodiversity and ecosystem functioning is protected and more resilient to environmental change. Ensuring ecosystem health has high value for science as it provides a baseline for research and ecological monitoring. While existing fisheries management or a Type 2 marine protected area may achieve some biodiversity outcomes, these measures are

<sup>454</sup> Department of Conservation, Ministry of Fisheries, 2005: Marine Protected Areas: policy and implementation plan. Department of Conservation and Ministry of Fisheries, Wellington. 25 p.

unlikely to achieve the benefits that occur with the higher level of protection a marine reserve offers.

2060. We acknowledge that weather and sea conditions in the southeast region restrict recreational fishing activity. As described in 5.3.2, there is limited information about the level of recreational fishing in the general area and at this proposed site. According to the 2019 Tini a Tangaroa fisheries assessment<sup>455</sup> (Tables 3 and 6), approximately 100 tonnes of rāwaru/blue cod is harvested annually by recreational fishers in the BCO3 quota management area compared to approximately 170 tonnes harvested by commercial fishers. Note that although these figures represent catch over the entire quota management area rather than this site specifically (more specific information is not available), they indicate the potential for recreational take of rāwaru to be significant in this region.

2061. Regardless of the level of recreational fishing activity, marine reserves are to be 'preserved as far as possible in their natural state' and continued recreational fishing would not be consistent with this purpose. Therefore, we do not consider the weather-induced limitations on recreational fishing activity are sufficient reason not to establish the proposed marine reserve.

2062. We acknowledge that because the proposed marine reserve does not adjoin the mainland, access to the site would be more limited than for other sites. However, a certain level of public access is not a prerequisite for establishment under the Marine Reserves Act. Section 3(2)(d) of the Act is permissive and says public access should not be restricted unless this is required for the 'preservation of marine life or welfare in general' of the area. We note that access would not be further restricted than it is currently by creating a marine reserve, with close vessel launching locations or access by kayak in the right weather conditions.

2063. Further, the proposed marine reserve is close to the city of Dunedin, and therefore it is anticipated that it would provide increased interest for tourism, as well as public engagement and education opportunities for local and regional communities. We expect there would also be new scientific opportunities, especially given the site's proximity to Dunedin City and to the University of Otago with its significant marine science facilities. This would stimulate research and contribute to our knowledge of marine ecosystems in New Zealand.

2064. Despite the small size of the proposed marine reserve, it would enclose an entire island and reef system. This is expected to allow the marine life associated with these habitats to be maintained and restored. If the habitats and marine life are degraded, as some submitters suggest, establishing marine reserve protection would serve to reverse that degradation to some extent. Establishing a monitoring programme could be used to investigate the causes of the degradation and allow for adding further management measures if necessary.

2065. While the Application did identify the site's value for species outside the proposed marine reserve (i.e. on the island), it also described the importance of the area's rocky reef habitats and associated species<sup>456</sup>. Many species that roost or haul out on the island also forage in the surrounding marine environment. The presence of a nature reserve on land adjacent to this proposed site is significant as it would provide contiguous high-level protection from land to sea, which is rare on the east coast of the South Island.

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<sup>455</sup> Fisheries New Zealand (2019). Fisheries Assessment Plenary, May 2019: stock assessments and stock status Vol 1. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand. 1,641 p. <https://fs.fish.govt.nz/Doc/24726/Mav-Plenary-2019-Vol1.pdf.ashx>

<sup>456</sup> Section 4.5, page 103 of Appendix 1.

### Submissions in support

2066. One submitter in support stated, “Despite being an offshore island, Okaihae is easily accessible by small boat and kayak and this benefit should be included”. Another said this area was heavily fished by recreational fishers. They concluded that marine reserve protection would enhance the fisheries, particularly for targeted species such as pāua, kōura and rāwaru, and improve the functioning of the ecosystem.

#### 11.6.6.5 Objections related to extending the marine reserve

2067. An objection from Christchurch Penguin Rehabilitation<sup>457</sup> said the proposed marine reserve should be enlarged to protect a larger area from bottom-trawling damage. It noted that the Network’s proposed marine protected areas would encompass less than 25% of hoiho/yellow-eyed penguin foraging areas, which the organisation regarded as inadequate to help ensure the survival of this species.

### Te Papa Atawhai advice

2068. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2069. We agree with submitters (both in objection and in support as described below) that in general, good marine protected area design would require individual sites to be larger than is proposed here. In this case, however, the proposed size is likely to be appropriate for protecting the habitats because an entire island and reef system would be encompassed.

2070. The proposed marine protected areas are not designed to specifically protect threatened or more mobile species such as hoiho. There are, however, likely to be some indirect benefits to these species from the proposed Network, including from the proposed marine reserve. Other more appropriate management measures exist for threatened species management. These include *Te Kaweka Takohaka mō te Hoiho*<sup>458</sup> and *Te Mahere Rima Tau*<sup>459</sup>, which were finalised in June 2020. They provide a framework to improve hoiho protection based on threat management.

2071. We consider that the proposed marine reserve will be large enough to lead to measurable changes in biodiversity over time. These changes have been observed at Cape Rodney-Okakari Point Marine Reserve in the Hauraki Gulf, which is a similar size.

2072. The work of the Forum which led to these proposals, guided by the MPA Policy, sought to strike a balance between establishing marine reserve protection over representative habitats and those that are unique or nationally important, while minimising effects on existing users. The Application for the proposed site must be considered on its merits, and the matters raised in these submissions do not demonstrate that to establish the marine reserve as proposed in the Application would be contrary to the public interest.

### Submissions in support

2073. The New Zealand Marine Sciences Society<sup>460</sup> qualified their support for the proposed marine reserve by recommending an increase in size to account for edge effects. (Edge

<sup>457</sup> Provides a rehabilitation service for sick and injured penguins in Canterbury.

<sup>458</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-kaweka-takohaka-mo-te-hoiho-2020.pdf>.

<sup>459</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-mahere-rima-tau-2020.pdf>.

<sup>460</sup> NZMSS is a professional society with approximately 200 members. It provides access to and within the marine science community, and identifies emerging issues through annual conferences, annual reviews, a list serve and a website.

effects are where the edges of a protected area experience increased fishing pressure.) It stated, “at 5km<sup>2</sup>, the proposed area is very small” and needed to be larger to increase the likelihood of the full benefits being realised. We note the issue raised about edge effects is valid. Survey work commissioned by Te Papa Atawhai established that the proposed marine reserve encompasses the whole reef system around the island and provides a buffer of sand between the reef and the site boundary that is a minimum of 500 m wide. This is likely to mitigate the potential for edge effects significantly.

2074. Submissions from four individuals in support also qualified their support by recommending its size be increased. One recommendation was to extend the reserve to the west and offshore, which would avoid the wahi tapu<sup>461</sup> of Kāi Tahu.

2075. A submission in support from the Yellow-eyed Penguin Trust<sup>462</sup> recommended an extension offshore to include areas of deep reef. These would increase the effectiveness of the proposed marine reserve and reduce the overlap between hoiho foraging area and trawl fishing activity.

#### 11.6.6.6 Objections related to alternate management options

2076. Many objecting submitters suggested alternative management options including:

- restricting commercial fishing (including by one Māori submitter not identified as affected iwi, hapū or whānau), including charter boats
- reducing recreational bag limits
- restricting recreational take in particular areas around the island
- undertaking more monitoring before deciding on appropriate restrictions for recreational fishing
- increasing education
- using alternate tools such as mātaītai<sup>463</sup> reserves or taiāpure.

#### Te Papa Atawhai advice

2077. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2078. The suggestions provided by submitters are likely to be appropriate when fisheries management at a fine spatial scale is the goal. However, the purpose of the Forum’s work since 2014 has been to recommend a network of marine protected areas (including this site) to protect biodiversity and establish areas to be preserved as far as possible in their natural state, for scientific study. We do not consider the above suggestions are consistent with this purpose.

#### 11.6.6.7 Objection questioning the integrity of Forum or statutory consultation processes

2079. One objection from an individual said that inadequate consultation with local fishers had been carried out, including a lack of face-to-face consultation.

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<sup>461</sup> Sacred place, sacred site - a place subject to long-term ritual restrictions on access or use e.g. a burial ground, a battle site or a place where tapu objects are placed.

<sup>462</sup> A non-governmental organisation with a focus on the conservation of hoiho via managing birds and their habitat.

<sup>463</sup> Mātaītai are identified traditional fishing areas for tangata whenua. The kaitiaki (guardians) sustainably manage fisheries there through bylaws. They are now established under the Fisheries Act 1996.



### **Te Papa Atawhai advice**

2080. For the reasons set out below, Te Papa Atawhai's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2081. Extensive consultation with stakeholders, the public and community at place was carried out by the Forum and by Agencies during the Forum and subsequent statutory processes. This included a formal non-statutory consultation and ongoing public engagement by the Forum and the recent period of statutory consultation under the Marine Reserves Act process.

2082. From 2014 to 2017, the Forum carried out face-to-face consultation at place, with a focus on representing communities and stakeholders. During this time, Forum members and agency officials took part in a road show at various locations in the region from Invercargill to Christchurch to Cromwell (see Appendix 3 of the Forum's Recommendations Report). A website and an email contact were also available during the entire Forum process. One meeting was held at the Tautuku Fishing Club in Dunedin. In addition, recreational and commercial fishing representatives on the Forum attended several meetings with recreational fishers, including at least one that was reported in the Otago Daily Times.

2083. Following from the Forum's foundational work, Te Papa Atawhai completed the statutory consultation process under the Marine Reserves Act in respect of the Application.

2084. We conclude that there have been many opportunities for recreational fishers to engage in the process either face-to-face or in writing, and to provide information on recreational fishing activity.

## **11.7 Stage 1 Assessment – Conclusion in relation to s5(6) of the Marine Reserves Act**

2085. Te Papa Atawhai has considered all objections made in relation to the proposed Okaihae marine reserve against the criteria of section 5(6) of the Marine Reserves Act. This includes objections to the proposed Network (these are relevant to your decision-making, as set out in 6.1.3) and objections to the proposed marine reserve.

2086. For the reasons set out in 11.6.2.1, our advice is that preventing the DCC's Green Island wastewater treatment plant discharges from continuing would be likely to constitute undue interference in accordance with section 5(6)(a). In order to address this, we propose that provision is made in the Order in Council for this activity to continue as set out in 11.8.1.2.

2087. In all other respects, we conclude that while there would be some interference with other existing uses and interests specified in section 5(6) of the Marine Reserves Act if the proposed marine reserve was established, the nature and magnitude of the interference would not be undue, nor contrary to the public interest. In reaching this conclusion we have considered the values of the proposed marine reserve and its value as part of the proposed Network, and the extent to which it is expected to fulfil the purpose of the Marine Reserves Act.

2088. We have also considered whether a decision to not uphold any objections received on the proposed Okaihae marine reserve would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including under section 4 of the Conservation Act. This is considered in light of our assessment (as set out in 6.3.10) that to declare the proposed marine reserves with the recommendations resulting from the direct Kāi Tahu engagement to date would fulfil the Crown's obligation in relation to the Treaty of Waitangi. As recorded above in 11.5.1 and 11.6.1, Te Papa Atawhai considers that no additional matters have been raised in

objections from submitters identified as affected iwi, hapū, or whānau or other Māori submitters that would change that assessment.

2089. We therefore consider that no objection should be upheld for the purposes of section 5(6) of the Marine Reserves Act. If you agree, you should proceed to the second stage of decision-making under section 5(9) of the Marine Reserves Act.

## 11.8 Stage 2 Assessment – Statutory considerations section 5(9) of the Marine Reserves Act

2090. Section 5(9) provides that your recommendation to the Governor-General on the proposed marine reserve can be made unconditionally or subject to conditions. Our recommended conditions for the proposed Order in Council are set out in 11.8.1. We also recommend other measures as a result of Treaty partner engagement (outlined in 6.3). Our advice on these is set out in 11.8.2.

2091. We have provided our assessment of the Application, including any recommended conditions and other measures, against the statutory criteria in section 5(9). As part of this assessment, we have considered the relevant obligations under the Treaty of Waitangi (as set out in 3.3). The information available to formulate this advice includes content in the Application, Consultation Document, Forum's Recommendations Report and new information provided by Kāi Tahu, Tini a Tangaroa and in submissions from the statutory consultation. Where submissions in support were made in relation to the proposed marine reserve and provide information in relation to the section 5(9) criteria, we also describe this below.

2092. As set out in 6.8, in considering the s5(9) criteria, you will need to consider the advice provided in the Network chapter in relation to these criteria, in addition to the advice below.

### 11.8.1 Recommendation for Order in Council conditions for the proposed marine reserve

2093. We recommend the conditions described below if the proposed marine reserve is established. These would be set out in the Order in Council creating the marine reserve and fall into the following categories:

- conditions arising from Treaty partner engagement
- conditions to mitigate interference with the criteria listed in section 5(6), in response to objections
- condition arising from engagement with the Ministry of Transport.

#### 11.8.1.1 Conditions arising from Treaty partner engagement

2094. As described in 6.8.1, as a result of Treaty partner engagement Te Papa Atawhai recommends the following provisions be set out in the Order in Council creating the marine reserve.

- (a) Condition for continued enhancement of mātauraka Māori and wānaka*
- (b) Condition for the retrieval of kōiwi tākata and archaeological artefacts*
- (c) Condition to allow the removal of Undaria pinnatifida*
- (d) Condition to require generational reviews*

2095. In terms of condition (b) (*Condition for retrieval of kōiwi tākata and archaeological artefacts*), the Application itself proposed that retrieval of kōiwi tākata be allowed to

continue if the proposed marine reserve is established. This was discussed through engagement with Kāi Tahu, therefore the recommendation in respect of this activity is described in 6.8.1. As noted in 6.3.6.6, because the boundary of the marine reserve will be mean low water springs rather than mean high water springs, this condition would only apply to the retrieval of kōiwi tākata and archaeological artefacts below mean low water springs. For retrieval of kōiwi tākata and archaeological artefacts above mean low water springs, i.e. within the Green Island Nature Reserve, existing provisions under the Reserves Act would apply.

2096. For the reasons explained in 6.3.6.6, no conditions are proposed for retrieval of marine mammals and marine mammal parts or fossicking.

#### **11.8.1.2 Conditions to mitigate interference with the criteria listed in section 5(6) of the Marine Reserves Act**

##### *(e) Condition for existing discharge of contaminants and associated monitoring*

2097. This condition would allow for the continuation of existing discharges of contaminants adjacent to the proposed marine reserve associated with DCC municipal services, specifically the Green Island wastewater treatment plant discharge (as discussed above at section 11.6.2.1).

2098. The condition should be drafted as subject to compliance with the Resource Management Act and any other legal requirements relating to the discharge of the contaminant. This means that a breach of any of the conditions of consent would also constitute a breach of the condition in the Order in Council.

2099. 'Discharge' and 'contaminant' should be defined in accordance with section 2(1) of the Resource Management Act.

2100. The condition should make provision for any associated monitoring and sampling (i.e. as required by the conditions of the resource consent). This means that no permits will be required under the Marine Reserves Regulations in order to undertake sampling or monitoring associated with discharges covered by this condition.

2101. Note that the intention would be to continue to exempt these activities from the operation of the Marine Reserves Act in the event of variation and/or replacements of the existing resource consents, so long as any variation or replacement did not substantially change the nature or adverse effects of the activity from the point at which the marine reserve is declared.

#### **11.8.1.3 Condition arising from engagement with the Ministry of Transport**

##### *(f) Condition for pollution response*

2102. Te Papa Atawhai recommends a condition to allow responses to emergency oil spill or pollution incidents. We have engaged with the Ministry of Transport to inform the following advice on this matter.

2103. In certain emergency situations, vessel users or operators may be required to respond to an emergency oil spill or pollution incident. Action may also be required by the local authority or other central government agencies. Our position is that in such a situation, any action would likely to be considered a 'reasonable excuse' under section 18I(3) and/or would not result in Te Papa Atawhai exercising its direction to take enforcement action in respect of either section 18I(3) (offence for certain discharges) or section 21(a) (infringement offence for certain discharges).

2104. In recent marine reserve Orders in Council, however, a provision has been included to confirm 'for avoidance of doubt' that action can be taken in these circumstances, and that the declaration of the marine reserve does not affect or limit the powers of any person under the Maritime Transport Act 1994 in response to these events or the risk of an event. For consistency, we recommend the inclusion of a similar provision in the Order in Council.

### **11.8.2 Recommendations for other measures arising from Treaty partner engagement**

2105. As described in 6.8.2, as a result of Treaty partner engagement Te Papa Atawhai recommends the following measures for the proposed marine reserve.

- (g) *Recommendation for establishing formal co-management with Kāi Tahu*
- (h) *Recommendation for the establishment and support of Kāi Tahu rangers*
- (i) *Recommendation for periodic reviews*
- (j) *Recommendation to use te reo Māori name confirmed by Kāi Tahu*
- (k) *Recommendation to record that marine reserve declaration is unlikely, and not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title*

2106. For the reasons explained in 6.3.6.8, there is no recommendation relating to pou whenua for this proposed marine reserve.

### **11.8.3 Section 5(9) criteria – in the best interests of scientific study, for the benefit of the public and expedient**

2107. As set out in 3.2.3, under section 5(9) you must decide whether declaring each of the marine reserves will be in the best interests of scientific study, for the benefit of the public and expedient. Our advice on these criteria as relevant to the proposed marine reserve is described below. As part of this advice, we have included reference to additional information raised in submissions of support that is relevant to each of the section 5(9) criteria. Note that objections are not considered at this stage, as these views have already been considered in our advice on section 5(6) in accordance with the statutory framework.

#### **11.8.3.1 Obligations in relation to the Treaty of Waitangi**

2108. In considering whether the declaration of the proposed marine reserve would be in the best interests of scientific study, for the benefit of the public and expedient, you must consider your obligations in relation to the Treaty of Waitangi.

2109. As set out in 3.2.7, in accordance with your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi, you must consider the views provided by Kāi Tahu in respect of the proposals received through direct engagement in making your assessment under section 5(9). The obligation to have 'particular regard' to these views in accordance with section 49 of the Takutai Moana Act also applies to these views. Our advice and conclusions in respect of the Crown engagement with Kāi Tahu and the corresponding obligations under the Treaty of Waitangi is set out in the Network chapter in 6.3.10. While this advice is provided in the context of the proposed Network, it applies equally to each of the proposed marine reserves, including Okaihae, on the basis that the recommendations arising from the engagement apply to this site. Based on this assessment, Te Papa Atawhai considers that the declaration of the proposed marine reserves (therefore including Okaihae) on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

2110. In addition to the engagement with Kāi Tahu, as set out in 5.2, submissions in relation to the proposed marine reserve (including objections and submissions in support) were made

through the statutory process by submitters who are 'affected iwi, hapū, and whānau' for the purposes of the Takutai Moana Act and from other Māori submitters (i.e. those not affiliated with Kāi Tahu).

2111. In terms of your decision under section 5(9), the obligation to have 'particular regard' applies to the views received from affected iwi, hapū or whānau through the statutory consultation process. The obligation in section 4 of the Conservation Act also applies to your consideration of these views, and may still be relevant to submissions from other Māori (although the obligation to have particular regard does not apply to the views from other Māori). In order to allow you to have 'particular regard' to the relevant submissions, and in accordance with the principle of informed decision-making, in our advice below we have therefore identified where submissions have been made from affected iwi, hapū or whānau and/or other Māori submitters that are relevant to the specific section 5(9) criteria. None of the submissions identified raise matters that are inconsistent with our conclusion set out above at paragraph 2109 - that the declaration of the proposed marine reserves (including Okaihae) on the basis of the recommendations made in relation to the engagement with Kāi Tahu would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including the obligation under section 4 to give effect to the principles of the Treaty.

2112. Te Papa Atawhai therefore considers that to declare the proposed marine reserve would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

#### 11.8.3.2 Consistency with statutory planning instruments

2113. As set out in 3.2.8, also relevant to your assessment as to whether the declaration of the proposed marine reserves cumulatively and as part of the proposed Network would be in the best interests of scientific study, for the benefit of the public and expedient, is whether to do so would be consistent with the relevant provisions of any relevant statutory planning instruments. The relevant statutory planning instruments are the Conservation General Policy and the Otago Conservation Management Strategy. Our full assessment of which provisions are relevant to your assessment, and how a decision to declare each of the proposed marine reserves with the recommendations listed in 6.8.1 and 6.8.2 and the subsequent site chapters (for the purposes of the proposed Okaihae marine reserve, therefore, the recommendations listed in 11.8.1 and 11.8.2) would be consistent with those provisions, is set out in Appendix 12.

2114. In summary, Te Papa Atawhai considers a decision to declare the proposed Okaihae marine reserve with the recommendations listed would be consistent with all relevant provisions of these statutory planning instruments.

#### 11.8.3.3 In the best interests of scientific study

2115. For the reasons set out below and in light of our conclusions in 11.8.3.1 and 11.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 11.8.1 and 11.8.2 would be in the best interests of scientific study.

2116. In considering whether a marine reserve would be 'in the best interest of scientific study', it is appropriate to assess the area that is recommended for marine reserve status against the criteria in section 3(1) of the Marine Reserves Act<sup>464</sup>. This is described in 11.2.1.

2117. The diverse and iconic natural features, marine life and species associated with the area surrounding Okaihae make this area unquestionably of distinctive quality, typical and

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<sup>464</sup> See chapter 3, Section 3(1): It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life of such distinctive quality, or so typical or beautiful or unique that their continued preservation is in the natural interest.

beautiful. We consider that protecting the underwater scenery and natural features at this site is consistent with section 3(1) in that they are so typical, or beautiful, or unique that their continued preservation is in the national interest.

2118. Further information supporting a conclusion that the proposed marine reserve is in the best interests of scientific study is evident from points raised in submissions of support. For example:

- The New Zealand Marine Sciences Society highlighted that “together with the Ōrau reserve, the site will allow for valuable scientific research into the effects of protection on a stretch of urban coastline”. An individual submitter also made a similar point.
- The Otago Branch of the Ornithological Society of New Zealand Inc.<sup>465</sup> highlighted the unique natural feature of the region created by the island “*in mixing currents and creating upwelling*”.

#### 11.8.3.4 For the benefit of the public

2119. For the reasons set out below and in light of our conclusions in 11.8.3.1 and 11.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 11.8.1 and 11.8.2 would be for the benefit of the public.

2120. These benefits are described in 11.2.2 and include those expected to arise from the educational and research opportunities, and benefits to wellbeing associated with recreational opportunities. Despite being offshore, the site’s proximity to the city of Dunedin is likely to provide opportunities for educational and recreational benefits to many people. Establishing the proposed marine reserve is also likely to increase public interest in the area, and ecotourism and transport opportunities may be enhanced as a result.

2121. Further information supporting a conclusion that the proposed marine reserve would be for the benefit of the public is evident from points raised in submissions of support. For example:

- Forest & Bird<sup>466</sup> identified that the “Beautiful underwater landscapes of cliffs and slots make snorkelling and diving here interesting”.
- WWF-New Zealand<sup>467</sup> noted that although this proposed marine reserve would not adjoin the mainland coast it was “*easily accessible*” by small boat and kayak, presumably indicating that the public would be able to access the area for activities that are consistent with the purpose of the Marine Reserves Act. They also noted the benefit of the contiguous land and sea protection.
- An individual submitter described the value of the site, noting the water was often clear so divers could “*appreciate*” large fish, as well as enjoy other experiences like swimming with hoiho.
- A number of submitters described the long-term benefits they expected from establishing a marine reserve at this site, which they considered would outweigh any shorter-term adverse effects on existing users.

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<sup>465</sup> The primary organisation concerned with the study of birds in New Zealand and the dissemination of this knowledge to assist the conservation and management of birds.

<sup>466</sup> An independent conservation charity that advocates to protect New Zealand’s wildlife and wild places, to city, district and regional councils, central government and in courts.

<sup>467</sup> A branch of an independent conservation organisation dedicated to protecting nature and looking after the planet.

### 11.8.3.5 It is expedient

2122. For the reasons set out below and in light of our conclusions in 11.8.3.1 and 11.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 11.8.1 and 11.8.2 would be expedient.
2123. We consider that establishing this marine reserve would be expedient due to the educational and recreational benefits likely to arise and the site's contribution to protecting representative habitats in the proposed Network.
2124. *Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020*<sup>468</sup> sets out a framework to ensure current and future New Zealanders can be healthy and prosper with the support of thriving biodiversity. Establishing a network of highly protected areas in the marine environment, as have been in place on land for decades, is a vital part of achieving this aim. This proposed marine reserve, as part of the proposed Network, would make an important contribution to achieving the strategy.
2125. While protected species conservation is not the primary goal of marine reserves, the wider habitat and biodiversity benefits that are likely to arise would enhance the protection of habitats used by protected species.
2126. Further information supporting a conclusion that the proposed marine reserve would be expedient is evident from points raised in submissions of support. For example:
- One individual highlighted that this site would contribute towards New Zealand's biodiversity commitments. We assume the submitter is referring to the national and international marine protection goals New Zealand is committed to.
  - Many submitters highlighted the importance of this site, particularly because it is contiguous with the nature reserve.
  - Submitters noted the importance of this area for seabirds which roost and nest on the island, including tītī/sooty shearwater, hoiho, kororā/little penguins, koau/Otago shags and little pied shags, tarapunga/red billed gulls and titiwainui/fairy prion.
  - The Yellow-Eyed Penguin Trust said the island already shows "relatively low impact from human disturbance and land-based predators".

## 11.9 Naming of the proposed marine reserve

2127. The proposed marine reserve would be named in accordance with the requirements of the New Zealand Geographic Board. Te Papa Atawhai has discussed the naming of this proposed site with Kāi Tahu. Kāi Tahu have endorsed the name to be taken forward for review by the New Zealand Geographic Board as 'Okaihae Marine Reserve'.

## 11.10 Conclusion – proposed Okaihae marine reserve

2128. Our overall assessment in relation to the proposed Okaihae marine reserve is that:
- the procedural requirements of section 4 and section 5 of the Marine Reserves Act have been met

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<sup>468</sup> New Zealand Government, 2020. *Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020*. Department of Conservation, Wellington, 73 p.

- we do not recommend upholding any objections received under section 5(6) of the Marine Reserves Act on the proviso that the recommended conditions listed below are implemented
- to declare the area a marine reserve will be in the best interests of scientific study, will be for the benefit of the public and will be expedient (in accordance with section 5(9) of the Marine Reserves Act), including with our recommended conditions to be included in the Order in Council [(a)-(f) as set out in 11.8.1] and our recommendations for other measures arising from Treaty partner engagement [(g)-(k) as set out in 11.8.2]
- to declare the proposed marine reserve on the basis of the recommendations listed above would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

### 11.11 Recommendation – proposed Okaihae marine reserve

2129.

We recommend that you proceed to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport<sup>469</sup> to recommend to the Governor-General the making of an Order in Council (subject to conditions) to declare the proposed area a marine reserve.

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<sup>469</sup> As under section 5(9) of the Marine Reserves Act.