Volume 1

Report to the Minister of Conservation on the Hākaimangō-Matiatia marine reserve application

Assessment of application and analysis of views received



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Department of Conservation
Te Papa Atawhai

Te Kāwanatanga o Aotearoa
New Zealand Government

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1 Purpose

1. The Friends of the Hauraki Gulf Society Incorporated have applied under the Marine Reserves Act 1971 for the declaration of a marine reserve off the northwest coast of Waiheke Island, Auckland; the proposed Hākaimangō-Matiatia marine reserve (the Application). The Application is provided at Volume 2, Appendix 1.

2. You, as Minister of Conservation, are the decision-maker under the Marine Reserves Act in respect of the Application. Your role is to decide whether or not to uphold any objection to the proposed marine reserve and, if you do not uphold any objection, whether to recommend that the Governor-General declare the marine reserve either unconditionally or subject to conditions. You must also obtain the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport in order to proceed with a recommendation.

3. This document provides you with the Department of Conservation Te Papa Atawhai advice to support that decision-making. It should be read in conjunction with decision briefing 24-B-0566.

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2 Application for a marine reserve off Waiheke Island

2.1 Introduction

On 23 April 2021, the Friends of the Hauraki Gulf Society Incorporated (the Applicant) notified the Director-General of Conservation of their intention to apply for an Order in Council declaring a marine reserve in the northwest of Waiheke Island; the proposed Hākaimangō-Matiatia marine reserve (the proposed reserve). The Applicant attached a draft application under the Marine Reserves Act 1971 (the Act). The boundary of the proposed reserve is from the northern point of Matiatia Bay to the western point of Oneroa Bay on Waiheke Island (Figure 2-1).



Figure 2-1: Proposed (and indicative) boundary for the proposed Hākaimangō-Matiatia marine reserve

In the months following their notification to the Director-General, the Applicant consulted with some tangata whenua, interested parties, community groups and the public on the proposed reserve.[1] The Application was formally notified by the Applicant on 20 January 2022, commencing a two-month public consultation period that closed on 20 March 2022.

2.2 About the Applicant

The Applicant is an incorporated society that was incorporated in 2013. When submitting an application, the Applicant is required to either be engaged in or have as one of its objects the scientific study of marine life or natural history, pursuant to section 5(1)(a)(iii) of the Act. The Applicant's website states that they are Waiheke-based and that their purposes include 'to

[1] As described by the Applicant in Appendix 5 of the Application (see Volume 2, Appendix 1 of this advice).

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research and advocate for the setting aside of marine protected areas, especially no take marine reserves...' and 'to encourage and facilitate the scientific study of marine life and the natural history of the Hauraki Gulf'.

7. The Applicant's website sets out that in early 2021, they refreshed and reorganised under a new management committee and commenced work on the application for a marine reserve. As at October 2024, their website describes the committee as:

- Mike Lee (Chair)
- Chris Curreen (Secretary)
- Sid Marsh (Treasurer)
- Dr Leith Duncan
- Alex Stone.

2.3 Summary of the Application

8. The Department has summarised the Application (2.3.1 to 2.3.5 below) and assessed it against the purpose of the Act (8.1 below). The full Application is provided at Volume 2, Appendix 1 to this advice.

2.3.1 Site and physical features

9. The proposed reserve is in the Hauraki Gulf / Tīkapa Moana and within the boundaries of the Hauraki Gulf Marine Park.

10. The proposed site was identified and chosen by the Applicant using a series of scientific surveys and two reports by Dr Tim Haggitt[2]. It covers 2,350 ha (23.5 km^2), from the northern point of Matiatia Bay to the northwestern point of Oneroa Bay (Hakaimango Point), with a landward boundary of mean high water springs[3] and a seaward boundary at varying distances offshore.

11. The area contains a range of intertidal and subtidal marine habitats, including rocky reef systems, gravel and sand beaches, soft sediment habitats and complex reef systems. One of the bays within the proposed reserve area also contains many marine fossil deposits in its cliffs and intertidal platforms.

2.3.2 Marine life

12. The Application describes the wide range of marine species present within the proposed reserve.[4]

13. Citing the work completed by Dr Tim Haggitt in 2017, the Applicant states that 22 different macroalgal species have been recorded in the area, ranging from large brown, canopy-forming kelps such as paddleweed (*Ecklonia radiata*) to fine filamentous turfing species.

14. Many marine invertebrates are noted in the Application as commonly present at different depths within the proposed reserve; from ngaeti/periwinkles and barnacle species in the

[2] Waiheke Island Marine Reserve Network – Gaps Analysis and Feasibility Study. A report prepared for Waiheke Local Board and Hauraki Gulf Conservation Trust. Sept 2016; and Ecological survey of Waiheke Island northwest coastline December 2016. Prepared for Auckland Council and Hauraki Gulf Conservation Trust. Dec 2016.

[3] Mean high water springs is the 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.

[4] More detailed information on the species reported can be found at pages 25-39 of the Application – see Volume 2, Appendix 1 of this advice.

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shallower waters, to beds of Auckland tio reperepe/rock oysters and tio/Pacific oysters, and, in deeper water, isolated patches of kūtai/green-lipped mussels (which, along with pāua, were reportedly historically much more populous in the area).

15. The Application describes that subtidal mobile invertebrates, including gastropods (e.g. snails, whelks), crabs, urchins and chitons, are also found in moderate to high diversity within the proposed reserve.

16. A range of sponges are described within the proposed reserve, including encrusting, sea, erect, grey, and orange golf ball sponges. Two coral species, *Culicea rubeola* and *Monomyces rubrum* are also described. The fine sand and mud habitats within the proposed reserve area are reported to contain abundant burrowing species including shrimps, worms and crabs.

17. Kōura/spiny rock lobster and pawharu/packhorse crayfish are noted as key predator species that used to be present in high abundance throughout the coastal reef systems of the Hauraki Gulf, including the proposed reserve area. A team of volunteer divers in June 2021 reported sightings of both species in the proposed reserve, however in lower numbers compared to other sites along the northern Waiheke coast.[5]

18. The Applicant reported that many fish species are found within the proposed reserve area. Cryptic reef fishes, such as spectacled triplefin, yellow and black triplefin, scorpion fish, slender roughy and the crested blenny, were more abundant at the proposed site compared to other reefs in the Hauraki Gulf. Fish species commonly targeted for recreational and commercial fishing, such as tāmure/snapper, haku/kingfish and kahawai, are present in the proposed reserve site. A range of other fish have also been reported within the site, such as red moki, silver drummer, and the endemic kōheru.

19. The Application states that other marine species found in the Hauraki Gulf are likely also to be found within the proposed reserve, including many shark species such as mako, mangōpare/hammerhead and mango ripi/thresher. In addition, the New Zealand whai repo/eagle ray is often spotted in Owhanake Bay and Matiatia feeding in the shallows.

20. The Application lists marine mammals that have been previously sighted in the surrounding area, and therefore are predicted to visit the proposed reserve site. These include: aihe/short-beaked common dolphin, terehu/bottlenose dolphin, kera wēra/orca, upokohue/long-finned pilot whale and kekeno/New Zealand fur seal.

21. The Applicant considers the area of the proposed reserve as an important feeding ground for many species of seabirds. The Applicant cites the *State of Our Gulf 2020* report, which noted a 67% decline in seabirds and shorebirds within the Hauraki Gulf since the arrival of humans.[6] The Application describes the many species of seabird that have been recorded as breeding within, or in the general area of, the proposed reserve, such as tara/white-fronted tern, tōrea pango/variable oystercatcher, kawaupaka/little shag and kororā/northern little penguin.[7]

22. A survey undertaken by the Auckland Council Te Kaunihera o Tāmaki Makaurau (Auckland Council) in 2016 and 2017 along part of Waiheke Island's coastline found many penguin burrows in the stretch from Owhanake Bay to Matiatia.[8] The Applicant suggests that the proposed site could help with the restoration of the pārekareka/spotted shag, which is classified as 'Threatened – Nationally Vulnerable'.

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[5] Thornburn, Craig. 2021. Unpublished report. Dive Survey for Koura/Crayfish Northern Waiheke Coast.

[6] State of our Gulf 2020, Figure 1: https://www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/harbour-forums/docsstateofgulf/state-gulf-full-report.pdf.

[7] A full list of seabird species can be found on page 32 of the Application – see Volume 2, Appendix 1 of this advice.

[8] Lovegrove, Tim. 2017. Report on coastal bird survey carried out during October 2016 for the Waiheke Local Board.

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2.3.3 Public access

23. The Applicant considers the proposed site is accessible to the public, students and scientific researchers, noting it is a 10-minute walk from the Matiatia ferry terminal (a 35-minute ferry ride from downtown Auckland), and is adjacent to many public walkways near the coastline, offering 'a splendid panorama of views overlooking the proposed reserve to almost all points of the compass'.

24. The Applicant sets out that much of the foreshore within the proposed site is accessible by land, with stretches only reached by sea, including by kayaks available for hire at Matiatia.

2.3.4 Economic benefits

25. Based on estimates for the Cape Rodney-Okakari Point Marine Reserve (Goat Island), near Leigh[9], the Applicant projects the proposed reserve has potential for 'Generating some $19 million per annum by enhancing the size and value of the commercial and recreational fishery of the Hauraki Gulf'.

26. The Applicant considers the proposed reserve 'would also have an economic benefit, enabling a unique opportunity for sustainable water-based eco-tourism and kayaking activities'.

2.3.5 Wider benefits

27. The Applicant also suggests that, if the proposed site acts as a 'significant biomass' generator akin the Cape Rodney-Okakari Point Marine Reserve, then it would result in a 'significant increase' in recruitment of snapper in the inner Hauraki Gulf. The Applicant considers this may also apply to other species, such as rock lobster.

[9] Qu, Zoe., Thrush, Simon, Parsons, Darren & Lewis, Nicolas 2021. Economic valuation of the snapper recruitment effect from a well-established temperate no-take marine reserve on adjacent fisheries. Marine Policy 134 1-8.

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3 Local context – marine protection in the Hauraki Gulf / Tīkapa Moana

28. This section describes the Hauraki Gulf Marine Park Act 2000 and other existing and proposed marine protection in the Hauraki Gulf / Tīkapa Moana.

3.1 Hauraki Gulf Marine Park Act 2000

29. The proposed reserve is within the boundaries of the Hauraki Gulf / Tīkapa Moana and therefore subject to the Hauraki Gulf Marine Park Act 2000 (the HGMPA). The HGMPA (amongst other matters) recognises the national significance of the Hauraki Gulf, including the interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the Hauraki Gulf, which includes providing for the relationships of tangata whenua, and the identified well-being interests of people and communities.[10]

30. The HGMPA establishes the Hauraki Gulf Marine Park, covering an area of 1,200,000 ha (120,000 km^2) along the east coast of the Auckland and Waikato regions and includes all conservation areas, wildlife refuges, wildlife sanctuaries, reserves, marine mammal sanctuaries, and marine reserves held, managed, or administered by the Crown within the Hauraki Gulf.[11]

31. The HGMPA also establishes the Hauraki Gulf Forum which is a statutory body charged with the promotion and facilitation of integrated management and the protection and enhancement of the Hauraki Gulf / Tīkapa Moana / Te Moananui-ā-Toi. The Forum has representation on behalf of the tangata whenua of the Hauraki Gulf and its islands, the Ministers of Conservation, Fisheries and Māori Development, and elected representatives from Auckland Council (including Aotea Great Barrier Island and Waiheke Island Local Boards), Waikato Regional Council, and the Waikato, Hauraki, Thames-Coromandel and Matamata-Piako District Councils.

32. Section 17(g) of the HGMPA requires the Hauraki Gulf Forum to publish a report, once every three years, on the state of the environment in the Hauraki Gulf. Successive reports raised concerns about environmental loss, degradation and inadequate responses to many of the issues impacting the Gulf.[12]

33. The HGMPA directly affects your decision-making, as set out in 5.1.7.

3.2 Existing marine reserves in the Hauraki Gulf / Tīkapa Moana

34. Currently, there are six marine reserves within the Hauraki Gulf / Tīkapa Moana (Figure 3-1). These are:

- Cape Rodney-Okakari Point Marine Reserve (Goat Island), near Leigh

[10] HMGPA, section 7.

[11] HGMPA, Section 33(2)(a).

[12] STATE OF THE GULF | Hauraki Gulf Forum STATE OF THE GULF (gulfjournal.org.nz).

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- Long Bay-Okura Marine Reserve, north of Auckland
- Motu Manawa-Pollen Island Marine Reserve, in the upper Waitematā Harbour
- Te Matuku Marine Reserve, off the southern end of Waiheke Island
- Te Whanganui-A-Hei Marine Reserve (Cathedral Cove), near Whitianga
- Tāwharanui Marine Reserve, approximately 90 km north of Auckland.

35. There is already a marine reserve located adjacent to Waiheke Island – Te Matuku Marine Reserve. This reserve is in the south-east corner of the island covering 7.6km of coastline, totalling 690 ha (6.9 km^2), including all of Te Matuku Bay (McLeods Bay) and extending into the deeper water across the Waiheke Channel. The reserve was applied for by the Royal Forest and Bird Protection Society of New Zealand on 26 November 1998 and was established in 2005. It protects an undisturbed estuary, unique in the Auckland region. Surrounded by native bush, the reserve is home to a wide variety of marine, fish and bird life.

3.3 Revitalising the Gulf: Government action to restore the Hauraki Gulf / Tīkapa Moana

36. The Sea Change – Tai Timu Tai Pari project (Sea Change) was established in 2013 to act to reverse the decline in the mauri, environmental quality and abundance of resources in the Hauraki Gulf / Tīkapa Moana. A stakeholder working group consulted and deliberated for three years before ultimately publishing the Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan[13] in 2017.

37. In response to this spatial plan, the Government released (2021) and then consulted on (2021-2022) Revitalising the Gulf. Revitalising the Gulf is a work programme led by the Department and the Ministry for Primary Industries. It aims to reverse the decline in the health and mauri of the Hauraki Gulf that has been caused by human activities on land and at sea.

38. Revitalising the Gulf has several workstreams. The workstream most relevant to your decision in this paper is the marine protection workstream. In December 2022, Cabinet agreed to increase marine protection in the Hauraki Gulf and for the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) to be drafted. Note that the marine protection workstream is separate to this Application, that Cabinet's decision was subsequent to the formal notification of this Application (in January 2022) and that these processes are being treated separately.

39. In August 2023, the Bill was introduced to the House of Representatives. If passed, the Bill will increase the area under marine protection in the Hauraki Gulf Marine Park from just over 6% to about 18%. The Bill includes:

- extending the country's first marine reserve, Cape Rodney-Okakari Point Marine Reserve (Goat Island) and Te Whanganui-o-Hei/Cathedral Cove Marine Reserve, on the Coromandel Peninsula
- creating 12 new 'high protection areas' to protect and restore marine ecosystems, while allowing for customary practices of tangata whenua
- creating five new 'seafloor protection areas' that would preserve sensitive seafloor habitats by prohibiting bottom-contact fishing methods and other activities which harm the seafloor.

[13] Sea Change - Tai Timu Tai Pari (aucklandcouncil.govt.nz).

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40. The proposals in Revitalising the Gulf are shown in Figure 3-1.

41. In October 2024, Cabinet agreed to progress the Bill in Parliament with amendments allowing limited ring-net fishing in some areas for local supply, with a review after three years. Several Parliamentary steps remain before the Bill, if it passes all readings, becomes law.

42. The Bill was raised in some objections received as part of statutory consultation on the proposed reserve. While the Bill does not yet have legal effect, it is important context when considering these objections. To the extent that the issues were raised, you must consider the potential impact of the marine protection proposals. How much weighting should be attributed to the issue raised will be issue-dependent and the Department provides advice in relation to each objection in chapter 9.

3.4 Previous and current rāhui / temporary closures around Waiheke Island

43. Ngāti Pāoa placed a traditional rāhui around Waiheke Island on 31 January 2021, in response to an observed decline of inshore fisheries species. In response to an application from Ngāti Pāoa Iwi Trust, the Minister for Oceans and Fisheries subsequently agreed to temporarily close the area to fishing, by notice under section 186A Fisheries Act 1996 – the Fisheries (Waiheke Island Temporary Closure) Notice 2021 (Notice No. MPI 1398) on 1 December 2021. The closure is to recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights.

44. The temporary closure covered four taonga species – tipa/scallops, pāua, mussels, and rock lobster – and aimed to restore abundance of these species. The closure area covered the sea and foreshore area from the mean high-water mark to one nautical mile offshore. It specifically excluded Te Matuku Marine Reserve. The closure period was for two years and ended on 20 November 2023.[14]

45. In November 2023, a collective[15] application for a further section 186A temporary closure Notice for the same taonga species was submitted.[16] Following public consultation, the Minister for Oceans and Fisheries issued notice for this closure on 6 August 2024, for pāua, mussels and rock lobster (but not scallops). The closure will expire on 6 August 2026. Note that a notice under section 186A may be in force for a period of not more than 2 years, but this does not prevent a further notice being issued.[17]

46. While the intent of a section 186A Notice is to protect tangata whenua non-commercial fishing rights, this does not of itself prevent the establishment of a marine reserve over all or part of the area covered by a section 186A Notice. If the proposed reserve is established and the section 186A temporary closure is still in force at the time, Fisheries New Zealand Tini a Tangaroa (Fisheries New Zealand) have advised they may consider, in discussion with Ngāti Pāoa, what action is required (for example, excluding the marine reserve from the closure area as has been done for the existing Te Matuku Marine Reserve).

47. The temporary closure that was in place at the time of the Application was a topic raised in several objections, as set out in 9.5.17.

[14] Fisheries (Waiheke Island Temporary Closure) Notice 2021 (Notice No. MPI 1398) – ended 30 November 2023.

[15] The application was made by Ngāi Tai ki Tāmaki, Ngāti Tamaterā Treaty Settlement Trust, Ngāti Pāoa Iwi Trust, Ngāti Hei and Ngāti Rehua Ngātiwai ki Aotea, and also included proposals for rāhui at Umupuia, Te Mātā, Waipatukahu, Opito Bay and Aotea.

[16] Extension request: 186A Fisheries Act (mpi.govt.nz).

[17] Section 186A(5)

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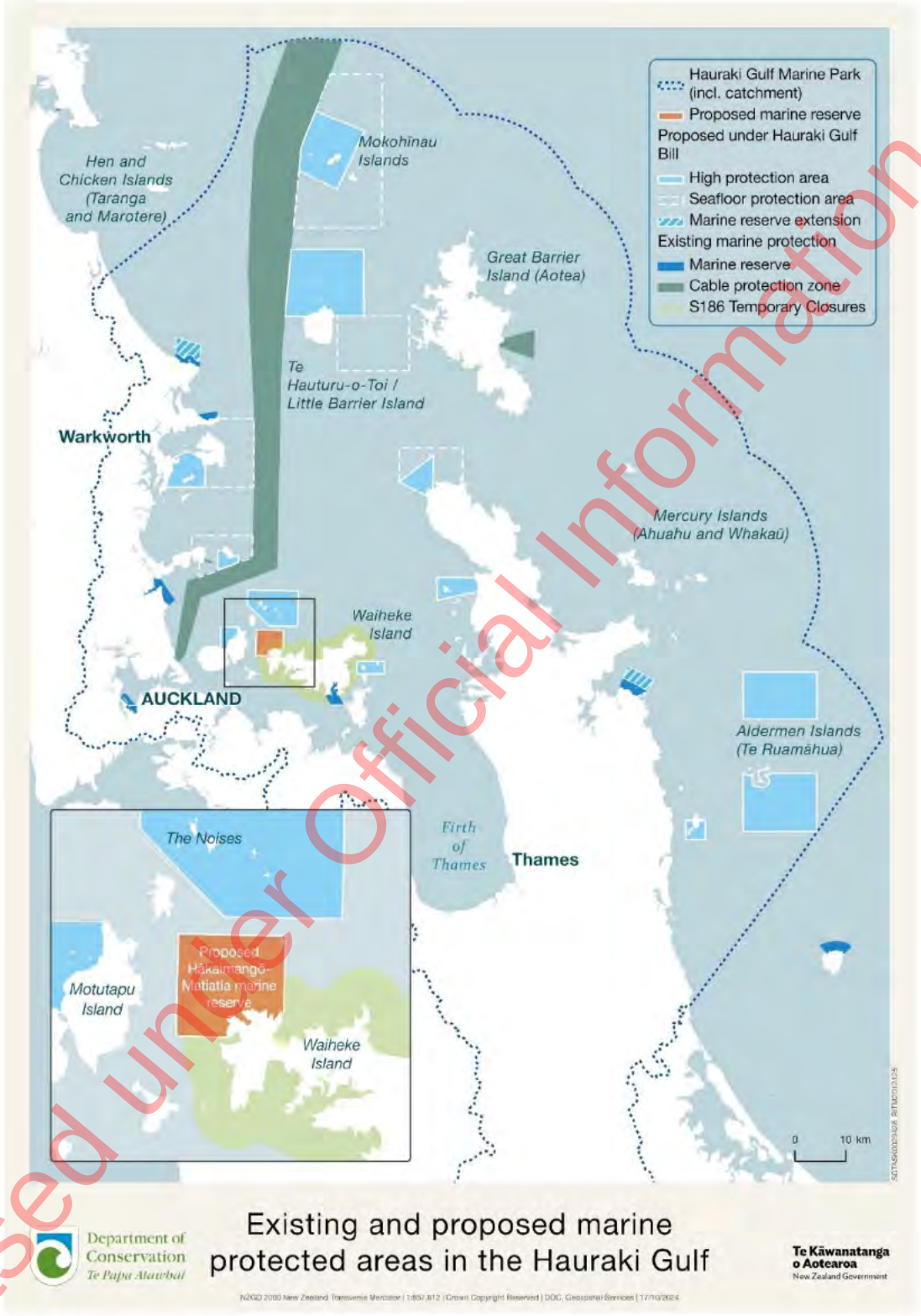

Figure 3-1: Map of the Hauraki Gulf / Tīkapa Moana showing existing and proposed marine protected areas

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4 Treaty partner engagement

48. The Hauraki Gulf / Tīkapa Moana is recognised as having very high spiritual, ancestral, cultural, customary and historical significance to the iwi and hapū of the Hauraki Gulf / Tīkapa Moana. Multiple groups have customary associations with the Application area.

49. As this is a third-party application, the decision of when to notify and any pre-notification engagement lay with the Applicant. The Applicant's engagement, including with tangata whenua, is set out in chapter 12 of the Application (Volume 2, Appendix 1).

50. The Department has undertaken targeted engagement (including pre-notification), additional and separate to the Applicant's engagement with tangata whenua, to ensure compliance with the obligation under section 4 of the Conservation Act 1987 to give effect to the principles of the Treaty of Waitangi (the Treaty) and the specific responsibilities under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act).

4.1 Ngāti Pāoa

51. Ngāti Pāoa has been acknowledged as holding mana whenua for Waiheke Island and its surrounding waters.[18] Other iwi also have interests, as described in section 4.3.

52. Internal tensions within Ngāti Pāoa manifest currently as two representative entities exercising mandates to represent Ngāti Pāoa interests: Ngāti Pāoa Trust Board (the Trust Board) and Ngāti Pāoa Iwi Trust (the Iwi Trust).

53. The Trust Board was established in November 2004 and incorporated as a charitable trust in December 2004. The Trust Board was established to represent the interests of Ngāti Pāoa, including in relation to Treaty settlements.

54. Under new protocols, the Trust Board as a charitable trust was not able to receive and manage Treaty settlement assets. A post-settlement governance entity was required for this purpose.[19]

55. In response, the Iwi Trust was established in 2013 and the Ngāti Pāoa claimant community ratified the Iwi Trust as the post-settlement governance entity to receive Treaty settlement redress. The Ministers at the time considered the ratification process and results (22% participation; 96% in favour) and agreed they showed sufficient support for the governance entity to be established.[20]

56. By 2015, the Trust Board appears to have become only partially active, including due to a lack of a quorum of trustees to be properly constituted. However, the question as to who held the mandate for negotiating the Treaty claims remained a contentious issue for many years. As the Māori Appellate Court and the Court of Appeal have observed in related proceedings, Ngāti Pāoa has been 'embroiled in a leadership struggle' that has played out over a number of years in multiple jurisdictions.[21]

57. The leadership struggles appear to have been instrumental in the re-establishment of the Trust Board, with the election of new trustees in 2017. However, compliance issues continued,

[18] *SKP Incorporated v Auckland Council* [2021] NZSC 35 [27 April 2021] fn 7.

[19] Ibid at [12].

[20] Ngāti Paoa Claims Settlement Bill: Approval for introduction – Te Arawhiti proactive release.

[21] *Ngāti Paoa Trust Board v Auckland Council* [2024] NZCA 481 at [6]; *Ngāti Paoa Trust Board v Ngāti Paoa Iwi Trust* [2020] Māori Appellate Court MB 318 (2018 APPEAL 24) [Māori Appellate Court decision] at [1].

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and the Trust Board was deregistered from the Charities Registrar for failing to file annual returns, before being subsequently re-registered as a charity on 27 February 2018.[22]

58. The Māori Appellate Court in a 2018 decision confirmed that, in accordance with their legal structures, both the Trust Board and Iwi Trust have support from some iwi members.[23] The Court also noted the political conflict and confusion within Ngāti Pāoa, affecting the clarity and effectiveness of representation.[24]

59. The Court of Appeal in its recent 2024 decision also recognised the Trust Board and the Iwi Trust as having different constituents, roles and responsibilities.[25] This case considered a 2009 Māori Land Court order made under section 30 of Te Ture Whenua Māori Act 1993, which recognised the Trust Board as the representative authority for Ngāti Pāoa for Resource Management Act 1991 and Local Government Act 2002. While the context of this case predates the conclusion of the Treaty settlement mandate dispute and the subsequent Treaty settlement between the Crown and Ngāti Pāoa and the Iwi Trust, it has relevance in recognising the two entities as continuing to have 'different constituents, roles and responsibilities' and recognises the Trust Board as being 'a representative of mana whenua... although no longer the sole representative, as the section 30 order had come to an end'.[26] Of relevance, the court confirmed that a section 30(1)(b) Māori Land Court order, which is intended to provide certainty as to the appropriate iwi representative, is binding everyone except the Crown.[27]

60. In March 2021, the Crown, Ngāti Pāoa and the Iwi Trust entered into a Deed of Settlement of the historical claims of Ngāti Pāoa. The Iwi Trust is the post-settlement governance entity for Ngāti Pāoa for Treaty settlement purposes.

61. The Treaty settlement includes an obligation on the Minister of Conservation, the Director-General of Conservation, and the Iwi Trust, as the post-settlement governance entity, to use reasonable endeavours to agree, and enter into, a conservation relationship agreement by the settlement date that will outline how the Department will engage with Ngāti Pāoa.[28] The Ngāti Pāoa Claims Settlement Bill, which gives legal effect to certain elements of the settlement, is currently before the Māori Affairs Select Committee and is not yet in force. The Relationship Agreement has not yet been finalised and the obligation to enter into this before the settlement date remains.

62. Despite the signing of the Deed of Settlement, the leadership struggles between the Trust Board and the Iwi Trust continue to play out today.

63. The Trust Board remains a validly constituted trust with charitable status and its own membership roll, roles and responsibilities. The Trust Board has support from some iwi members and continues to engage with the Department and submitted on the Application in its own right as a representative of Ngāti Pāoa interests.

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[22] Ibid at [25].

[23] *Ngāti Pāoa Trust Board v Ngāti Pāoa Iwi Trust* [2020] Māori Appellate Court MB 318 at [1]; and as referred to in SKP Incorporated v Auckland Council [2021] NZSC 35 [27 April 2021] at [5].

[24] At [57].

[25] *Ngāti Paoa Trust Board v Auckland Council* [2024] NZCA 481.

This case concerned a 2017 decision of the Auckland Council to grant resource consents for the construction of a marina at Pūtiki Bay, on Waiheke Island and a 2009 Māori Land Court order made under section 30 of Te Ture Whenua Māori Act 1993, which recognised the Trust Board as the representative authority for Resource Management Act 1991 and Local Government Act 2002.

[26] Ibid at [70].

[27] Ibid at [46].

[28] Ngāti Pāoa Deed of Settlement at 5.33.

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64. While there exist specific commitments under the Treaty settlement to engage with the Iwi Trust in conservation processes as the post settlement governance entity and representative of Ngāti Pāoa interests, the existence of a post settlement governance entity does not necessarily remove the responsibility to engage more widely with iwi or hapū to fulfil the broader section 4 responsibilities. This requires consideration as to what is reasonable for the Crown in the circumstances, acting in good faith.

65. As noted by the Waitangi Tribunal, in January 2021, in its decision on an interlocutory application concerning an urgent application related to the Crown's engagement with the Iwi Trust to settle the historical claims of Ngāti Pāoa:

> 'The dispute here is largely between the Trust Board and the Iwi Trust. They are merely representatives of Māori and acting in that capacity. Much more important are the Māori who they say they represent. It is those whom they represent who must have their interests, rights and Treaty protection focused upon, not their representatives. All too often a claim such as this, said to be against the Crown, is an internal dispute and a dispute between representatives.'[29]

66. For the purposes of the Application, the Department recognises the Iwi Trust as the post-settlement governance entity representing the interests of the Ngāti Pāoa iwi; and the Trust Board as being a validly constituted Ngāti Pāoa entity that continues to have support from some iwi members. Given the issues related to representation, which the Department considers is a matter best addressed by the respective bodies according to their own tikanga, the Department has determined it reasonable in the circumstances to engage in good faith with both entities as part of its section 4 Conservation Act obligations.

67. Navigating differences in view between these two entities requires careful consideration, including assessing the views on their own merits.

4.2 Acknowledgement of potential effects of marine reserves on tangata whenua

68. The Department acknowledges that the establishment of marine reserves has the potential to impact on a range of interests, rights and values held by the tangata whenua of an area.

69. Given the restrictive nature of marine reserves (as discussed in 5.1.1, the starting point is that the declaration of a marine reserve prohibits a range of activities, including extractive activities), their establishment in particular has the potential (by way of example) to impact on the rangatiratanga and kaitiaki responsibilities of Ngāti Pāoa and other customary interest groups, including by restricting customary use and management responsibilities and practices (including but not limited to customary fishing, including the purpose of the section 186A Fisheries Act Notice) and to limit the transfer of mātauranga Māori, coupled with the economic impacts that restrictions on fishing activities may entail, including effects of displaced fishing effort.

70. In light of these factors, the Crown has obligations to Ngāti Pāoa and to other tangata whenua groups to ensure their interests, rights and values are appropriately considered when establishing any marine protected areas in their takiwā. In terms of the current Application, the section 4 Conservation Act obligations apply both in terms of the engagement process undertaken and the substantive decisions on the proposals. Te Takutai Moana Act includes participation rights for affected iwi, hapū and whānau in the process to declare a marine

[29] WAI 2982 at [99].

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reserve and requires that the decision maker must have 'particular regard' to their views (discussed below in 5.2.2). Outlined below are the two phases of engagement the Department undertook with tangata whenua.

4.3 Pre-notification engagement

71. The following describes the approach taken by the Department to Treaty partner engagement about the proposed reserve prior to notification of the Application.

72. The cultural landscape in Tāmaki Makaurau, including Waiheke, is complex. While the Department recognises Ngāti Pāoa as the primary holder of customary interests for the Application area, Waiheke Island is within the rohe of 12 tangata whenua groups (the customary interest groups). As such, while the Department is recognising Ngāti Pāoa as mana whenua, this is not to the exclusion of other Treaty partners who each have customary interest rights and association with the Hauraki Gulf / Tīkapa Moana and the proposed reserve area.

73. The customary interest groups were identified as having interests in matters relating to Waiheke Island following advice from various Departmental Pou Tairangahau, the Te Puni Kokiri website and Treaty settlement documents. However, it is also acknowledged that concepts such as mana whenua and tangata whenua are best defined by the respective Treaty partners according to their own tikanga.

74. Eleven of the groups are at varying stages of Treaty settlement processes and represent a range of post-settlement governance entities and representative bodies (see Volume 2, Appendix 2). One of the groups is a marae committee who were engaged with due to existing relationships with the Department.

75. In September-2021, after receiving the draft application for the proposed reserve, the Department contacted the identified customary interest groups by phone and email about the draft application. While engagement on the proposal was made at this group level, the Department was open to and engaged with individuals from these groups throughout the process.

76. The customary interest groups identified were:

- Ngāti Pāoa Iwi Trust
- Ngāti Pāoa Trust Board
- Ngāi Tai ki Tāmaki
- Ngāti Tamaoho
- Te Patukirikiri
- Ngāti Maru
- Ngāti Tamaterā
- Ngaati Whanaunga
- Ngāti Hako
- Ngāti Te Ata
- Pare Hauraki Collective
- Piritahi Marae Committee.

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77. The Department has been engaging with each of these 12 customary interest groups in good faith on this Application. These groups have advised that they do have rights and responsibilities to exercise kaitiakitanga in accordance with their own tikanga. Some groups deferred to Ngāti Pāoa as mana whenua, however (discussed below).

4.3.1 Key engagement actions

78. The key actions the Department undertook to engage with the above customary interest groups prior to the Application being notified were:

- September 2021 – initial communications by phone to understand how they would like to be engaged with, providing options of discussing with the Applicant and the Department together or independently
- 9 December 2021 – email advising of the Applicant's intent to notify the Application on 20 January 2022, offering engagement with the Department on the Application via a collective online hui (due to the constraints of the Government's COVID-19 response settings at the time) or meeting with the Department separately. The email included a document summarising how the reserve proposal could potentially impact tangata whenua[30] rights and interests and included key questions and discussion points (see Volume 2, Appendix 3).

79. In addition to the actions taken above with the customary interest groups, the Department took the following action:

- 20 December 2021 – email sent to all applicants for customary marine title or protected customary rights under te Takutai Moana Act (te Takutai Moana Act applicants),[31] advising them that the Applicant for the proposed reserve would notify the Application on 20 January 2022. Te Takutai Moana applicants were offered engagement with the Department on the Application via a collective online hui (due to the constraints of the Government's COVID-19 response settings at the time) or meeting with the Department separately. The email included the summary document set out at Volume 2, Appendix 3.

4.4 Post-notification engagement

80. In addition to the statutory notification requirements for the Application (see 5.2.2), engagement was undertaken to further understand tangata whenua rights and interests and views (including concerns) in relation to the establishment and management of the proposed reserve and to understand and work through the issues raised.

81. The Department engaged with the customary interest groups identified above, te Takutai Moana Act applicants, and submitters identified as 'affected iwi, hapū, or whānau' according to section 47(1) of te Takutai Moana Act (see 5.2.2).

82. The Department undertook the following key actions to engage with these parties after the Application was notified on 20 January 2022:

- 24 January 2022 – email to the customary interest groups providing two times on 3 February 2022 for an 'online information sharing event' about the Application and

[30] For the purposes of this advice, the Department defines tangata whenua as: tangata whenua of the area, i.e. those whose rohe is overlapped by the area of the proposed reserve.

[31] Applicants for customary marine title or protected customary rights under te Takutai Moana Act are listed at Volume 2, Appendix 4.

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an offer to arrange a 'one-on-one' hui with the Department. No-one attended either time

- 28 January 2022 – email to te Takutai Moana Act applicants providing two times on 3 February 2022 for an 'online information sharing event' about the Application and an offer to arrange a 'one-on-one' hui with the Department. No-one attended either time
- 1 February 2022 – phone calls to any of the customary interest groups and te Takutai Moana Act applicants that had not responded to emails, to ensure they were aware of the Application
- 4 February 2022 – hui with the Iwi Trust
- 8 February 2022 – hui with Ngāi Tai ki Tāmaki
- 17 February 2022 – hui with the Trust Board
- 9 March 2022 – reminder email to te Takutai Moana Act applicants that the submission period was closing on 20 March
- 16 March 2022 – reminder email to the customary interest groups that the submission period was closing on 20 March
- 1 April and 16 May 2022 – email to the Iwi Trust making further offers of engagement with the Department
- 13 May 2022 – email to 'affected iwi, hapū, or whānau' submitters informing them of the upcoming release of submissions and offering an opportunity to meet with the Department to discuss their submission or any other views they have on the Application
- July–December 2022 – four individual hui with Ngāti Pāoa submitters (at their request) about their submissions and views
- 17 August 2022 – hui with the Iwi Trust discussing a range of Waiheke issues, including the Application and an offer for further discussion with the Department on the Application, if desired
- 13 September 2022 – shared notes from the hui on 17 August 2022 with the Iwi Trust and offered another opportunity to discuss the Application with the Department
- 1 February 2023 – email to the Iwi Trust offering a further meeting to ensure the Department was fully informed of their views and to explore any mitigation options that might address concerns raised. The offer was not taken up
- 18 April 2023 – following delays due to Cyclone Gabrielle, email to the customary interest groups offering engagement on potential options to mitigate some of the potential impacts raised in objections to the proposed reserve. No offers were taken up
- June–July 2024 – phone calls to the customary interest groups offering the opportunity to provide written feedback on potential management measures to inform recommendations
- 19 July 2024 – shared a discussion paper setting out potential management measures with the customary interest groups for written feedback by 5 August 2024. One written response was received from the Trust Board on 5 August 2024
- 30 July 2024 – hui with the Iwi Trust to discuss management measures and the Application. The Iwi Trust expressed no further desire for input or review.

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4.5 Summary of engagement

83. This advice considers the views expressed to the Department by the customary interest groups, te Takutai Moana Act applicants and 'affected iwi, hapū, or whānau' submitters following the public notification of the Application on 20 January 2022, and in engagement with the 12 customary interest groups (the details of which are in chapters 9 and 10).

84. Following the conclusion of the public notification process, the Department continued to attempt to engage with the customary interest groups, with limited uptake. The Department has continued to offer engagement opportunities throughout the process of preparing advice to Ministers (see 4.4), to further understand rights and interests and views and how these might be reconciled in relation to the establishment and management of the proposed reserve. The main views of the customary interest groups were captured through the public notification process. Some groups did not make a submission or take up any engagement opportunities.

85. Ngāti Pāoa were the main group to engage with the Department. Through the statutory public consultation process Ngāti Pāoa views were divergent, with the Trust Board in overall support of the Application and the Iwi Trust in opposition. The Iwi Trust's key concern is 'Crown interference with our rangatiratanga, including the potential impact of the proposed reserve on the ability to establish customary protection areas (rāhui) as provided for under section 186A of the Fisheries Act'. The Iwi Trust emphasised the negative impact this would have on their ability to act as kaitiaki. The Trust Board supported the proposal and acknowledged a wide range of benefits. As the engagement progressed, the Ngāti Pāoa groups did not substantially change from their initial positions.

86. During the development of advice, the Department became aware of new context for some concerns raised in submissions. Examples included the progress of the Bill (see 9.5.14), and exotic *Caulerpa* (an invasive seaweed) being discovered around Waiheke Island in August 2023 (see 9.5.22). The Department wanted to further understand rights, interests and views (including support and concerns) in this new context.

87. On multiple occasions, the Department contacted the customary interest groups for hui focussed on developing recommendations and considering the contemporary context. This was not initially taken up. The Department instead developed and provided the customary interest groups with a discussion paper for review (Volume 2, Appendix 5). Only the Iwi Trust and Trust Board provided feedback. The written response from the Trust Board is at Volume 2, Appendix 6, and the minutes from a hui between the Department and the Iwi Trust is in Volume 2, Appendix 7.

88. This feedback informed the development of recommendations in this advice, which are outlined in 10.1.

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5 Statutory framework for decision-making

89. This section identifies the relevant parts of the legislation that must be considered during decision-making. Your decision on the proposed reserve must be made in accordance with the Act, the HGMPA, te Takutai Moana Act and obligations in relation to the Treaty.

5.1 Marine Reserves Act 1971

5.1.1 Purpose of the Marine Reserves Act

90. The Act is administered by the Department and provides for the establishment of marine reserves. The long title states that it is an 'Act to provide for the setting up and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study'.

91. The general purpose of the Act is set out in section 3(1) as follows:

> '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 national interest.'

92. Further guidance is provided in section 3(2), which confirms that having regard to the general purpose in section 3(1), marine reserves shall be administered and maintained under the Act so that:

> '(a) they shall be preserved as far as possible in their natural state:
>
> (b) the marine life of the reserves shall as far as possible be protected and preserved:
>
> (c) the value of the marine reserves as the natural habitat of marine life shall as far as possible be maintained:
>
> (d) subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the marine life or for the welfare in general of the reserves, the public shall have freedom of access and entry to the reserves, so that they may enjoy in full measure the opportunity to study, observe and record marine life in its natural habitat.'

93. Under existing New Zealand legislation, the status of marine reserves is the strongest legal protection available to the marine environment. The Act prescribes an extensive list of activities in sections 18I and 21 that constitute an offence or an infringement offence in a marine reserve. This list includes activities such as depositing toxic substances or pollutants, introducing any living organism, erecting any structures and taking or removing any marine life, minerals or other natural things.

5.1.2 Overview of statutory process for establishment of a marine reserve

94. Marine reserves are created by way of an Order in Council made by the Governor-General, on the recommendation of the Minister of Conservation. The process starts with an application.

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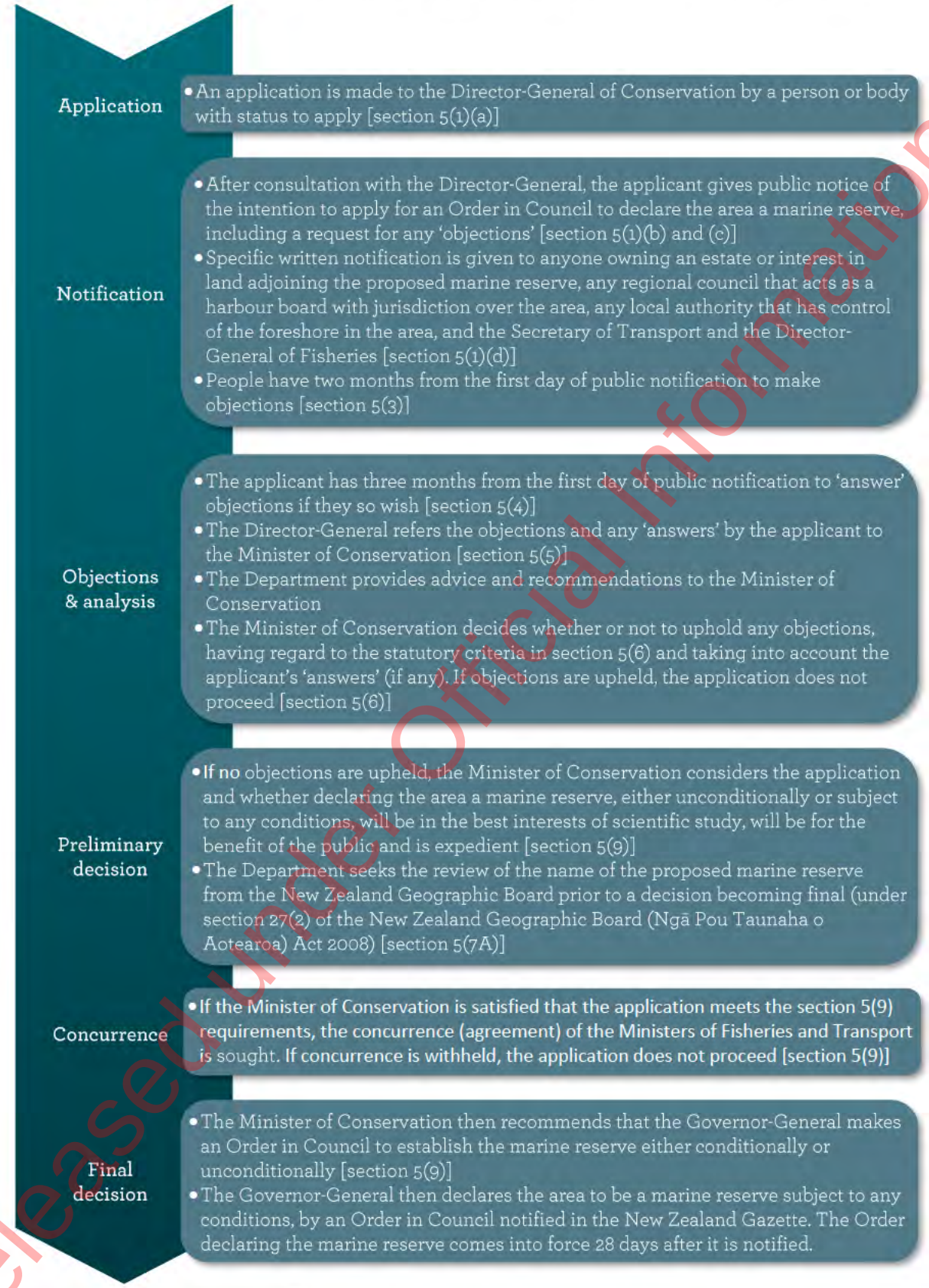
15. The process is set out in sections 4 and 5 of the Act. A high-level overview is below[32]:



[32] The process set out here is for applicants other than the Director-General of Conservation. It differs slightly from the process where the Director-General is the applicant, as was the case for the Otago marine reserves (as part of the Southeast Marine Protection process), which are the other most recent marine reserves to be applied for.

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96. An analysis of the compliance of the Department and the Applicant with the procedural requirements of sections 4 and 5 of the Act is set out in chapter 6.

5.1.3 Consideration of objections and decision on the marine reserve application

97. Sections 5(6) and 5(9) are central to your decision-making. These sections set out a two-stage process.

98. First, pursuant to section 5(6), you must decide whether to uphold any 'objections' to the proposed reserve. If an objection is upheld, the area shall not be declared a marine reserve. The Department's approach to the identification of 'objections' for this purpose is described in Volume 2, Appendix 8. You must uphold an objection if satisfied that declaring the area as a marine reserve would:

> '(a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve:
>
> (b) interfere unduly with any existing right of navigation:
>
> (c) interfere unduly with commercial fishing:
>
> (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes:
>
> (e) otherwise be contrary to the public interest.'

99. Section 5(6) requires that in deciding whether to uphold an objection, you must take into consideration any 'answer' made to the objection by the applicant. The Department has therefore included, in chapter 9, a summary of any relevant 'answer' the Applicant made to an objection after the description of the objection made. The Applicant's 'answers' are provided in full at Volume 2, Appendix 9. An electronic copy of all submissions will be provided to your office alongside this report.

100. When considering whether the proposed reserve would interfere unduly with those matters listed at section 5(6)(a)-(d) or otherwise be contrary to the public interest (section 5(6)(e)), you may also consider whether the imposition of conditions in the Order in Council (or other mitigation) would appropriately mitigate the interference to satisfy you that the objection does not need to be upheld.

101. Second, pursuant to section 5(9), if you decide not to uphold any of the objections, you then must make a broader assessment, and decide whether declaring the area a marine reserve will:

> '... be in the best interests of scientific study and will be for the benefit of the public, and it is expedient that the area should be declared a marine reserve, either unconditionally or subject to any conditions...'

5.1.4 Section 5(6)(a)–(d) – approach to assessment of 'interfere unduly'

102. An objection must only be upheld if you are satisfied that the proposed reserve would 'unduly' interfere with the relevant interest in sections 5(6)(a)–(d).

103. Several judicial decisions have determined what 'undue' means in this context. In summary, you should approach your assessment as to whether any issue raised amounts to 'undue' interference on the following basis:

- 'Unduly' implies 'Without due cause or justification...more than is warranted'.[33] In order to assess whether interference is 'more than what is warranted' or 'undue', the

[33] *CRA3 Industry Association Inc v Minister of Fisheries* [2001] 2 NZLR 345 (CA) at [30].

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overall public advantages that will flow from the proposed reserve need to be considered[34]

- the test is not whether the interference is 'significant' but whether it is 'undue'. The test implied by the word 'undue' requires a balancing of the effect against the other values involved[35]
- 'Undue' means not only excessive (i.e. in a quantitative sense) but means unjustified or unwarranted in a qualitative sense. Interference may not be warranted, even though the effect is small, if gains are likely to be small or speculative. Conversely, interference may be warranted even though severe in its effects, if the need is high – a value judgement is therefore required[36]
- 'Undue' must be interpreted in light of the purpose of the Act – i.e. whether the interference is justified in light of the Act's purpose. This does not require a final scientific conclusion about the benefits of the proposed reserve, but you must consider the extent to which the proposed reserve is likely to serve the statutory purpose, and then weigh that against the implications for the existing use or right in sections 5(6)(a)–(d)[37]
- the use of the word 'would' requires you to be satisfied with some certainty that there will be undue interference. It is not 'could' or 'might'
- note that the wording in section 5(6)(d) (recreational purposes) is slightly different to the other categories, in that it states: 'Interfere unduly with or adversely affect any existing usage of the area for recreational purposes'. The High Court has confirmed that the 'adversely affect' threshold in section 5(6)(d) does not establish a lower threshold for impacts on recreation interests and 'should be applied consistently with the 'interfere unduly' test'.[38]

5.1.5 Section 5(6)(e) - approach to assessment of 'contrary to the public interest'

104. An objection may be upheld under section 5(6)(e) where declaring a marine reserve would 'otherwise be contrary to the public interest'.

105. The term 'public interest' is broadly equivalent to the concept of the public good. It can cover a wide range of values and principles relating to the public good, or what is in the best interests of society, and its meaning when found in a statute 'must be determined from the context in which it is used'.[39] In this case, it provides a residual basis for upholding objections that raise issues related to what is in the best interests of society (noting that damage to individual interests might be damage to society as a whole) that fall outside the scope of section 5(6)(a)–(d).

106. Accordingly, the Department has applied this provision to include objections regarding the integrity of the statutory process, adequacy of the marine protection proposed, inadequacy of justification or information base, and other impacts on public interest matters other than those covered by section 5(6)(a)–(d), including objections related to customary interests (which are also captured as a consideration under section 4 Conservation Act).

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

[35] *CRA3 Industry Association Inc v Minister of Fisheries* [2001] 2 NZLR 345 (CA) at [30].

[36] *CRA3 Industry Association Inc v Minister of Fisheries* HC Wellington CP317/99, 24 May 2000, at [23] and [35].

[37] *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [53].

[38] Ibid. at [58].

[39] *Northern Action Group Incorporated v The Local Government Commission* [2015] NZHC 805 (23 April 2015) at [65] per Collins J.

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107. While there is no specific discussion of the section 5(6)(e) provision in the case law cited above, the Department considers that the High Court's reasoning in the approach to the 'undue interference' test under section 5(6)(a)–(d) applies also to the assessment of whether a proposal is 'contrary to the public interest'. Therefore, the overall advantages of the proposed reserve are relevant to your consideration under section 5(6)(e).

5.1.6 Section 5(6) – Obligations in relation to the Treaty of Waitangi

108. The Crown's obligations in respect of the proposed reserve and the Treaty are set out in 5.2. Of particular relevance to your assessment of objections under section 5(6)(a)–(e) are your obligations to have 'particular regard' to the views of 'affected iwi, hapū, or whānau' under section 49 of te Takutai Moana Act and your obligation under section 4 of the Conservation Act to interpret and administer the conservation legislation[40] so as to give effect to the principles of the Treaty. This is addressed in the advice where relevant.

5.1.7 Section 5(9) – second stage of assessment

109. Section 5(9) sets out the matters you must be satisfied of in order to recommend the declaration of a marine reserve if no objections are upheld. These matters are assessed in 10.2.

110. The following four matters are relevant to your decisions under section 5(9).

111. First, the Act allows your decision on a proposed marine reserve to be made 'unconditionally' or subject to conditions. The ability to declare a marine reserve conditionally allows certain impacts of the declaration of a marine reserve (such as the prohibitions set out in sections 18I and 21) to be mitigated, provided conditions are consistent with the purpose of the Act. The way this is done is by including conditions to allow activities that would otherwise be unauthorised in a marine reserve in the Order in Council to expressly authorise the relevant conduct. For example, clause 5 of the Marine Reserve (Taputeranga) Order 2008 includes a condition allowing for structures existing prior to the establishment of the marine reserve to remain and be maintained, provided this is in accordance with the Resource Management Act and all other legal requirements. Clause 7 of the Marine Reserve (Kahurangi) Order 2014 includes a condition to allow for removal of pounamu by Te Rūnanga o Ngāi Tahu or members of Ngāi Tahu Whānui acting with the permission of Te Rūnanga o Ngāi Tahu. As noted above, you may consider whether the imposition of any condition under section 5(9) is appropriate, including to mitigate any interference with those matters under section 5(6). You may also consider 'measures' alongside conditions, which are not conditions, but which will additionally mitigate the interference with matters under 5(6).

112. Secondly as part of your section 5(9) assessment, you must also consider the obligation to give effect to the principles of the Treaty pursuant to section 4 of the Conservation Act. This is a mandatory consideration. As discussed further in 5.2, the relevant Treaty principles include the principles of partnership, informed decision-making, active protection, and redress and reconciliation. You must also consider any other views received through the statutory consultation process that are relevant to your decision-making in relation to the Treaty for this step of the process. This is addressed in the advice where relevant.

113. Thirdly, in making your decision under section 5(9) of the Act, you must also consider three relevant sections of the HGMPA:

- consider whether your decision will 'recognise and give effect' to the purpose of the Hauraki Gulf Marine Park (as required by section 37 of the HGMPA)

[40] The Conservation Act 1987 and those Acts listed in its First Schedule, which includes the Marine Reserves Act 1971.

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- have 'particular regard' to the provisions of sections 7 and 8 of the HGMPA (as required by section 13 of the HGMPA)
- consider whether a decision to declare the proposed reserve would be consistent with sections 7 and 8 of the HGMPA (as required by section 11 of the HGMPA).

114. These requirements of the HGMPA and the Department's advice in relation to each are set out in 10.2.2.

115. Finally, relevant to your assessment under section 5(9) is whether the declaration of the proposed reserve would be consistent with the relevant provisions of any relevant statutory planning instruments. The relevant statutory planning instruments are the Conservation General Policy[41] (in accordance with section 6 of the Act) and the Auckland Conservation Management Strategy[42] (in accordance with section 7 of the Act). The Department's assessment regarding which provisions are relevant and the consistency of our recommendations with these provisions is set out in 10.2.3.

5.2 Obligations in relation to the Treaty of Waitangi

116. The obligations in relation to the Treaty are given statutory expression through various sources. For the purposes of this advice, references to the Crown's or your obligations in relation to the Treaty are the obligations identified in this section.

117. When making your decisions on the proposed reserve you must 'give effect to the principles of the Treaty of Waitangi', in accordance with the obligation at section 4 of the Conservation Act. You also have obligations under te Takutai Moana Act to take account of the Treaty through specific actions, as required by section 7 of that Act.

118. In particular, in order to take account of the Treaty, te Takutai Moana Act recognises and promotes the exercise of customary interests of Māori in the common marine and coastal area by providing for: the participation of affected iwi, hapū, and whānau in applications for marine reserves; and imposes the obligation on the decision-maker to have 'particular regard to the views of those affected iwi, hapū, or whānau in considering the application or proposal' (see Part 3 of te Takutai Moana Act, and specifically section 49).

119. The Department has identified three enacted individual or collective iwi Treaty settlements, which have obligations that require consideration. The Department has also identified a further eight settlements that are in various stages of negotiation but have not yet been enacted. The Department advises that any obligations arising out of these settlements should also be considered during decision-making. These settlements are outlined in Volume 2, Appendix 2.

120. The Crown also enacted the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992, which gives effect to the settlement of claims relating to Māori fishing rights, makes provision for Māori non-commercial traditional and customary fishing rights and interests, and provides for Māori participation in the management and conservation of New Zealand's fisheries.

121. These Treaty settlement obligations are additional to the Treaty considerations and are discussed in further detail in 5.2.3.

[41] Department of Conservation, 2005. Conservation General Policy. Revised edition published 2019, 70 p.

[42] Department of Conservation, 2014. Conservation Management Strategy: Auckland 2014-2024. 320 p.

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122. Also, as mentioned (see 3.1), the HGMPA affords statutory protections to the tangata whenua of the Hauraki Gulf, which are additional to the protections afforded by the section 4 Conservation Act obligation.

123. As discussed in subsequent chapters, the obligation to give effect to Treaty principles applies both in terms of the engagement process undertaken and your substantive decisions on the proposed reserve.

5.2.1 Section 4 of the Conservation Act

124. Section 4 of the Conservation Act states:

> **'Act to give effect to Treaty of Waitangi**
> This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.'

125. The obligation at section 4 of the Conservation Act to give effect to the principles of the Treaty in the administration and interpretation of the Conservation Act extends to those Acts listed in Schedule 1 of the Conservation Act.[43] The Marine Reserves Act is listed in Schedule 1. Accordingly, the section 4 obligation applies to the processing of and decision-making on the Application.

126. The following Treaty principles are considered the most relevant to the processing of, and your decisions on, the proposed reserve:

- **partnership** – the Crown and Māori must act towards each other reasonably and in good faith. These mutual duties of reasonableness and good faith describe the nature of the relationship between the Crown and Māori. They are the core of what has been described as the Treaty partnership. This principle is about how the Crown should behave to Māori and Māori to the Crown
- **informed decision-making** – both the Crown and Māori need to be well informed of the other's interests and views. When exercising the right to govern, Crown decision-makers need to be fully informed. For Māori, full information needs to be provided in order to contribute to the decision-making process. This is connected closely to the principles of good faith and active protection. Consultation is a means to achieve informed decision-making
- **active protection** – the Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the Crown's right to govern. This includes the promise to actively protect tino rangatiratanga and taonga. Active protection requires informed decision-making and judgement by the Crown as to what is reasonable in the circumstances
- **redress and reconciliation** – the Treaty relationship should include processes to address differences of view between the Crown and Māori. The Crown must preserve capacity to provide redress for proven grievances from not upholding the promises made in the Treaty. Māori and the Crown should demonstrate reconciliation as grievances are addressed.

127. Other principles may apply, depending on the circumstances. How these principles play out in practice is necessarily context dependent. Treaty principles do not dictate any particular result but require good faith and reasonable action by both Crown and Māori in the circumstances. Treaty principles also recognise the right of the Government, acting in good faith and reasonably, to follow its chosen policies and, importantly, the need for a balancing

[43] *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 533 (CA) at 557-558.

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of interests and values when the Crown is carrying out its core governmental responsibilities in the interests of all New Zealanders, of which conservation of New Zealand's natural and historic resources is one.

128. The Supreme Court considered section 4 in *Ngāi Tai Tamaki Tribal Trust v Minister of Conservation* (*Ngāi Tai*).[44] In its decision, the Supreme Court confirmed that 'section 4 is a "powerful" Treaty clause because it requires the decision-maker to give effect to the principles of the Treaty'.[45] The Court noted that section 4 requires more than procedural steps and substantive outcomes for iwi may be necessary in particular cases.[46] While the Supreme Court confirmed section 4 is a 'powerful' Treaty clause, the obligations are not absolute and unqualified, as this would be inconsistent with the Department's other statutory responsibilities. The Supreme Court recognised that other factors must be taken into account (in that case, in the context of a concession decision) and confirmed that: 'What is required is a process under which the meeting of other statutory or non-statutory objectives is achieved, to the extent that this can be done consistently with s 4, in a way that best gives effect to the relevant Treaty principles'.[47]

129. The Supreme Court's decision confirms and builds on previous jurisprudence, including the Court of Appeal's 1995 *Whales* decision.[48] While *Ngāi Tai* considered the application of section 4 in relation to a concession context, the decision nonetheless underscores the importance of section 4 in the statutory scheme of the Conservation Act and those Acts listed in its first schedule.

130. The Hauraki Gulf / Tīkapa Moana is recognised as having very high spiritual, ancestral, cultural, customary and historical significance to the iwi and hapū of the Hauraki Gulf / Tīkapa Moana. The Department has Treaty relationships with each of the iwi and hapū of the Hauraki Gulf and has been engaging with our Treaty partners on this Application reasonably and in good faith. Engaging with Treaty partners is a critical part of understanding their rights and interests, and to consider their interests in decision-making.

131. The section 4 obligation applies to the Crown's engagement with customary interest groups identified in chapter 4, both in terms of the statutory consultation process and direct engagement, and in the decision itself. Submissions from individuals with tribal affiliations to the identified iwi and that raise concerns related to impacts on tangata whenua interests may still be relevant in terms of a section 4 analysis. The primary Treaty partners at place, however, are the relevant iwi and hapū tribal bodies. The weighting you place on these individual submissions should reflect this. The views in submissions received from Māori individuals and groups not affiliated with tangata whenua may still attract a section 4 obligation. You should consider these views accordingly.

Partnership and informed decision-making

132. Making an informed decision requires the Crown to understand the interests and views of the relevant Treaty partners. Consultation is a means to achieving informed decision-making.

133. Engaging properly with iwi/hapū and undertaking Treaty due diligence enables the Crown to properly understand the nature of the rights or interests, as well as the relevant settlement legislation and Deeds of Settlement.

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[44] *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

[45] Ibid. at [52].

[46] Ibid. at [52].

[47] Ibid. at [54].

[48] *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 533 (CA).

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Active protection

134. Active protection is directly engaged here given the significance of the Hauraki Gulf / Tīkapa Moana to the cultural interest groups. The Hauraki Gulf / Tīkapa Moana is recognised as having very high spiritual, ancestral, cultural, customary and historical significance to the iwi and hapū of the Hauraki Gulf / Tīkapa Moana.

Redress and reconciliation

135. While the respective cultural interest groups are at different stages in their negotiations to settle their historic grievances with the Crown (as identified at 5.2.3), it is important to understand the obligations in the completed relevant Treaty settlements and what they require in relation to this Application. These obligations are considered at 6.13 and 10.2.1.

Giving effect to Treaty principles

136. In the following chapters, this advice will describe how the Department has considered and given effect to the principles of the Treaty and other statutory obligations that recognise and protect tangata whenua interests, both through its process to date and in terms of the recommendations. This includes setting out proposed conditions and other measures (see 10.1) that the Department considers to be sufficient to discharge the duty of active protection in the circumstances of this matter. This advice is intended to guide and support you in making your substantive decisions on the proposed reserve.

5.2.2 Marine and Coastal Area (Takutai Moana) Act 2011

137. In addition to the section 4 Conservation Act obligation, you have specific obligations to iwi, hapū, and whānau under te Takutai Moana Act.

138. Te Takutai Moana Act acknowledges the importance of the marine and coastal area to all New Zealanders and provides for the exercise of the customary interests of iwi, hapū, and whānau in the common marine and coastal area. It provides for participation of 'affected iwi, hapū, or whānau' in specified conservation processes relating to the common marine and coastal area.[49]

139. Under section 47 of te Takutai Moana Act, the proposed marine reserve application process is a 'conservation process', in which 'affected iwi, hapū, or whānau' have the right to participate. Section 48 sets out the specific notification requirements.

140. 'Affected iwi, hapū, or whānau' are defined (in section 47) as the iwi, hapū or whānau that exercise kaitiakitanga in a part of the common marine and coastal area where a conservation process is being considered. Kaitiakitanga is defined by cross-reference to the definition in the Resource Management Act. Section 2(1) of the Resource Management Act provides that kaitiakitanga means:

> '...the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship'.

141. This definition includes the terms 'tangata whenua' which in turn means those iwi or hapū that hold 'mana whenua' over that area. These terms are defined in the Resource Management Act as follows:

> '**Tangata whenua** in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area'

[49] Te Takutai Moana Act 2011 - Subpart 1 of Part 3 (Customary interests) – 'Participation in conservation processes in common marine and coastal area'.

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'**Mana whenua** means customary authority exercised by an iwi or hapū in an identified area.'

142. Note also that the High Court has observed that it is possible for mana whenua to be exclusive in accordance with one iwi's tikanga and shared in accordance with the tikanga of another iwi.[50] For the Application, the Department recognises the mana whenua of Ngāti Pāoa but not to the exclusion of the customary interest groups who each have customary interest rights and association with the Hauraki Gulf / Tīkapa Moana and Application area.

143. Section 49 of te Takutai Moana Act states:

'Obligation on decision maker

If the Director-General is advised by iwi, hapū, or whānau and accepts, or determines under section 48(4), that they are affected iwi, hapū, or whānau, the decision maker must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application or proposal.'

144. Where there is a dispute as to whether, or which, iwi, hapū, or whanau are affected by an application, there are evidential steps that must be satisfied before the Director-General makes any determination. While there are internal tensions within Ngāti Pāoa that manifest as two representative entities engaging on this process, there is no known dispute as to whether, or which, iwi, hapū, or whanau are affected by an application. In these circumstances, the Director-General must still undertake the process step of 'accepting' that the advised iwi, hapū, or whānau are affected.

145. Pursuant to section 49, you must have 'particular regard' to the views of affected iwi, hapū or whānau in considering the Application (where those views have been provided to the Director-General as part of the conservation process and the Director-General has accepted or determined those views as being from affected iwi, hapū or whānau as outlined in Volume 2, Appendix 8). This obligation is additional to, but not mutually exclusive of, the obligation under section 4 of the Conservation Act.

146. The duty to have 'particular regard' requires you to 'take the matter into account, recognising it as something important to the particular decision and therefore to be considered and carefully weighted in coming to a conclusion' whilst the weight to be accorded remains at the decision-maker's discretion.[51] It does not amount to 'give effect to', but it is a stronger direction than 'consider'. As such, you must fully inform yourself of the views of affected iwi, hapū and whānau and consider those views as important in determining the Application for the proposed reserve. To facilitate this, these views are set out separately from other submitters' views in chapters 9 and 10.

147. An analysis of the Department's compliance with the procedural requirements of sections 47 - 49 is set out in 6.11. Further detail of the Department's approach to identifying 'affected iwi, hapū, or whānau' is set out in Volume 2, Appendix 8.

148. Note that there are 24 pending applications under te Takutai Moana Act for customary marine title or protected customary rights in areas that are adjacent to or over the area of the proposed reserve (Volume 2, Appendix 4). Those applications are yet to be determined. The creation of a marine reserve in itself does not prevent recognition of customary marine title as it does not remove the reserve area from the common marine and coastal area.[52] In the event that customary marine title is established in an area that has been declared a marine

[50] *Ngāti Whātua Orakei Trust v Attorney-General* [2022] NZHC 843, at [47].

[51] *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC1991 at [66] – [67].

[52] See definition of 'common marine and coastal area' in section 9(1) of te Takutai Moana Act.

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reserve, most of the rights that would ordinarily attach to customary marine title under te Takutai Moana Act will not be affected. It will likely have some negative impact on the practical exercise of a customary marine title group's Resource Management Act permission right, as well as the group's conservation permission right under te Takutai Moana Act, although it would not mean the rights are unable to be exercised at all. A marine reserve may impact on protected customary rights and activities, but this will depend on the particular customary rights included in the applications.

5.2.3 Treaty settlements

5.2.3.1 Collective and individual iwi settlements

149. There are currently three enacted individual or collective iwi Treaty settlements that the Department has identified as having obligations requiring consideration during your decision-making:

- Nga Mana Whenua o Tamaki Makaurau Collective Redress 2014 (applies to a collective of 13 iwi)
- Ngāti Tamaoho Claims Settlement Act 2018
- Ngāi Tai Ki Tāmaki Claims Settlement Act 2018

150. The Department has also identified a further eight settlements that are in various stages of negotiation but have not yet been enacted, but we advise should also be considered during decision-making:

- Ngāti Pāoa (signed Deed of Settlement)
- Te Patukirikiri (signed Deed of Settlement)
- Pare Hauraki Collective Agreement (Signed Deed of Settlement) – applies to a collective of 12 iwi
- Ngāti Maru (initialled Deed of Settlement)
- Ngāti Tamaterā (initialled Deed of Settlement)
- Ngaati Whanaunga (initialled Deed of Settlement)
- Ngāti Hako (Agreement in Principle)
- Ngāti Te Ata (Deed of Mandate)

151. The respective provisions of the collective and individual settlements (including those not yet formalised through signing of a Deed and any subsequent settlement legislation) are included in Volume 2, Appendix 2.

152. The information and obligations contained within the listed Treaty settlements record the strength and connection of iwi with their culturally significant places. Noting, however, that while there are associations and aspirations for management of the Hauraki Gulf recorded in the settlements, harbours redress has been excluded from the settlements and is yet to be negotiated.

153. Note, Deeds of Settlement that are not yet finalised (i.e. not yet signed), are included in this advice because they may include relevant information and draft intentions/commitments. You will need to consider but be cautious of the weight placed on these yet to be finalised settlement obligations.

154. Our advice to inform your consideration of Treaty settlements is detailed in 6.13 (pre-decision) and 10.2.1 (during and post-decision).

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Figure 5-1: Map of the proposed Hākaimangō-Matiatia marine reserve showing iwi/iwi collectives' Treaty settlement areas of interest (bold denotes enacted settlements)

5.2.3.2 Treaty of Waitangi (Fisheries Claim) Settlement Act 1992

Following the introduction of the quota management system, Māori litigants claimed the quota management system was unlawful and in breach of the principles of the Treaty.

An interim settlement was reached in 1989, which broadly required the Crown to provide Māori with 10% of existing commercial quota or its cash equivalent.

A final (pan-Māori) settlement of the claims was reached on 23 September 1992. The Crown and Māori signed a Deed of Settlement settling Māori interests in commercial fishing and making provision for statutory recognition of Māori non-commercial fishing rights.

The Deed was given effect by the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 (the Fisheries Settlement Act).

Commercial Fishing

159. Under the Fisheries Settlement Act, the obligations of the Crown to Māori in respect of commercial fishing were discharged in return for the benefits provided by the settlement: $150 million to purchase a half share in Sealord Products Limited; and an agreement to transfer 20% of quota for all stocks in the quota management system (current and future, with the exception of those stocks covered by the interim settlement).

Section 9 of the Fisheries Settlement Act provides that all claims by Māori, including current and future claims in respect of, or directly or indirectly based on, rights and interests of Māori in commercial fishing, have been settled.

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Non-commercial fishing rights

161. Section 10 of the Fisheries Settlement Act recognises ongoing customary non-commercial fishing rights. The section places obligations on the Crown, including to develop policies to recognise the use and management practices of Māori in the exercise of these rights and to recommend to the Governor-General the making of regulations to recognise and provide for customary food gathering by Māori. Section 10 makes clear these rights continue to give rise to Treaty obligations on the Crown of relevance to decision-making under the Marine Reserves Act.

162. Despite the settlement and the limitations on bringing claims in the Fisheries Settlement Act, non-commercial fishing rights continue to give rise to Treaty obligations on the Crown and upholding the benefits of the settlement (both commercial and non-commercial) is an important consideration under the principles of redress and active protection. The impacts of the proposed reserve on the provisions of the settlement and customary non-commercial fishing rights are therefore relevant to your decision-making (including in terms of the section 4 obligation to give effect to the principles of the Treaty).

163. Further advice on the relevance of these matters to the objections and views of tangata whenua and to your decisions will be provided in the subsequent chapters.

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6 Assessment of compliance with statutory process requirements

6.1 Introduction

164. As described in chapter 5, an application for an Order in Council to establish a marine reserve must meet several process requirements under sections 4 and 5 of the Act, prior to the decision-making stage in sections 5(6) and 5(9).

165. In addition, as set out in 5.2, you have obligations in relation to the Treaty. Regarding what these obligations require *prior* to the decision-making stage:

- You should be satisfied that the process leading to this point gives effect to the principles of the Treaty as required by section 4 of the Conservation Act.
- Te Takutai Moana Act places requirements on you and the Director-General of Conservation in terms of how a 'conservation process' is to be carried out, and how customary interests are to be considered (see part 3 of te Takutai Moana Act and specifically, sections 47–49).
- The enacted individual or collective iwi Treaty settlements, as outlined in 5.2.3.1 and Appendix 2, also require you to advise, consult with and have particular regard to the views of identified individual or collective iwi.

166. Note that while the Fisheries Settlement Act provides relevant context, it does not impose any specific obligations as relevant prior to decision-making.

167. You should be satisfied that these requirements have been met, before proceeding to make decisions on objections received and decisions on the proposed reserve (section 5(6) and 5(9) of the Act).

6.2 Summary – assessment of compliance with statutory process requirements prior to decision-making

168. The Department considers that the Application, the steps taken in publicly notifying the Application, and the Department's development of advice to you:

- meet the statutory process requirements of sections 4 and 5 of the Act
- meet the requirements set out in sections 47–49 of te Takutai Moana Act
- meet the requirements set out in individual or collective iwi Treaty settlements
- give effect to the principles of the Treaty (in accordance with section 4 of the Conservation Act).

169. On that basis, the Department considers you can proceed to consider the objections to the proposed reserve in accordance with section 5(6), and if no objections are upheld consider the proposed reserve in accordance with section 5(9) of the Act. Detailed analysis on the rationale for this follows in the rest of this chapter.

170. Sections 6.3–6.13 contain the reasons for the conclusion set out above.

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6.3 Marine farms: Marine Reserves Act section 4(1)

171. Section 4(1) of the Act states:

> 'Subject to section 5 of this Act, the Governor-General may from time to time, by Order in Council, declare that any area described in the Order shall be a marine reserve subject to this Act...; but no area in respect of which any lease or licence under the Marine Farming Act 1971 is for the time being in force shall be declared a marine reserve.'

172. The Marine Farming Act was repealed and replaced by the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. Under section 10 of this Act, leases and licenses created under the previous Marine Farming Act are deemed to be coastal permits under the Resource Management Act.

173. Auckland Council has confirmed, as of 5 November 2024, that no coastal permits for marine farming activities have been issued for the area of the proposed reserve.

6.4 Harbour board: Marine Reserves Act section 4(2)

174. Section 4(2) of the Act states:

> 'No area within the jurisdiction of any harbour board shall be declared a marine reserve without the consent of the harbour board.'

175. Auckland Council holds the role of harbour board for the area in which the proposed reserve is located. Auckland Council's submission on the Application (received 17 March 2022), states that the Application 'presents no significant constraints on rights to navigation, existing aquaculture, or existing commercial fishing'. See Volume 2, Appendix 10.

176. If you decide to recommend the declaration of the proposed reserve, this formal consent will be sought from Auckland Council at that time.

6.5 Mining interests: Marine Reserves Act section 4(4)-(6)

177. Sections 4(4)–(6) of the Act deal with mining interests (both existing and future). As of November 2024, there are no active permits or applications relating to mining interests in the area of the proposed reserve.

6.6 Who may be an applicant: Marine Reserves Act section 5(1)(a)

178. Section 5(1)(a) of the Act states:

> '(1) No Order in Council shall be made under section 4 unless—
>
> (a) application for the Order in Council is made to the Director-General by 1 or more of the following:
>
> (i) any university within the meaning of the Universities Act 1961:
>
> (ii) any body appointed to administer land subject to the Reserves Act 1977 if such land has frontage to the seacoast:
>
> (iii) any body corporate or other organisation engaged in or having as one of its objects the scientific study of marine life or natural history:

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(iv) Maori iwi or hapu who have tangata whenua status over the area:

(v) the Director-General:'

179. The Applicant is the Friends of the Hauraki Gulf Society Inc. They meet the criteria under section 5(1)(a)(iii) of the Act as an incorporated society: 'engaged in [and] having as one of its objects the scientific study of marine life or natural history'. One of their purposes, as stated in their rules is 'to research and advocate for the preservation, conservation, protection, enhancement and sustainable management of the Hauraki Gulf environment, including without limitation marine ecosystems and their parts for their intrinsic value and the natural and physical resources they depend upon, and to encourage and facilitate the scientific study of marine life and the natural history of the Hauraki Gulf.'[53]

6.7 Publication of notice: Marine Reserves Act section 5(1)(b) and (c)

180. Section 5(1)(b) of the Act states:

'(1) No Order in Council shall be made under section 4 unless.

...

(b) notice of intention to apply for an Order in Council declaring the area a marine reserve has, after consultation with the Director-General, been published by the applicant for the order at least twice, with an interval of not less than 5 nor more than 10 days between each publication, in some newspaper circulating at or nearest to the place where the area is situated, and at least once in each of 4 daily newspapers, one of which shall be published in Auckland, one in Wellington, one in Christchurch, and one in Dunedin:'

181. Further, section 5(1)(c) of the Act requires:

'every notice published pursuant to paragraph (b) [of this subsection]—

(i) states the date of first publication of that notice:

(ii) states that place where the plan referred to in subsection (2) [of this section] may be inspected:

(iii) gives a general description of the area proposed to be declared a marine reserve:

(iiia) states the proposed name of the proposed marine reserve:

(iv) gives an address for service:

(v) calls upon all persons wishing to object to the making of the order to send their objections in writing, specifying the grounds thereof, to the Director-General within 2 months from the date of first publication of the notice ...'

182. On 23 April 2021, the Applicant notified the Director-General of Conservation of their intention to apply for an Order in Council declaring a marine reserve in the northwest of Waiheke Island – the proposed Hākaimangō-Matiatia marine reserve and attached their draft application (Volume 2, Appendix 11). Note, this was prior to publicly notifying their intention to apply for a marine reserve.

[53] Incorporated Societies Register. Home | Incorporated Societies (companiesoffice.govt.nz).

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183. On 5 May 2021, the Department replied to the Applicant acknowledging the notification of their intention to apply for the proposed reserve and outlining that consultation with the Director-General constitutes the first step in the statutory process set out under section s5(1)(b) of the Act (Volume 2, Appendix 12).

184. On 3 June 2021, the Director-General replied to the Applicant with formal acknowledgement of their consultation with the Director-General (Volume 2, Appendix 12). At the request of the Applicant, on 27 August 2021, the Department provided written and verbal feedback in the form of a preliminary review of the draft application.

185. The Applicant satisfied the 'consultation with the Director-General' part of section 5(1)(b) through its initial notification and by providing the opportunity for the Director-General to provide feedback on their draft application.

186. The Applicant then published their notice of intention to apply for a marine reserve in the following newspapers, in accordance with section 5(1)(b) (Table 6-1).

Table 6-1: Newspapers and dates where notice of intention to apply for an Order in Council were published

Newspaper	20 January 2022 (first) date of publication	27 January 2022 date of publication
The Gulf News	Yes	Yes
NZ Herald	Yes	Not required
Dominion Post	Yes	Not required
The Press	Yes	Not required
Otago Daily Times	Yes	Not required

187. Copies of these notices are at Volume 2, Appendix 13. Each of the notices satisfies the content requirements outlined above and under section 5(1)(c) of the Act.

6.8 Written notification to be given to certain parties: Marine Reserves Act section 5(1)(d)

188. Section 5(1)(d) of the Act states:

> '(1) No Order in Council shall be made under section 4 unless
>
> ...
>
> (d) notice in writing of the proposed marine reserve is given by the applicant to—
>
> (i) all persons owning any estate or interest in land in or adjoining the proposed reserve. For the purpose of this sub-paragraph, land shall be deemed to adjoin a proposed marine reserve notwithstanding that it is separated from it by the foreshore or by any road, or that is at a distance of not more than 100 metres from the proposed marine reserve if separated from it by any other reserve of any kind whatsoever or any marginal strip within the meaning of the Conservation Act 1987:
>
> (ii) any harbour board if the area or any part of the area proposed as a marine reserve is within the jurisdiction of that harbour board:

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(iii) any local authority or public body in which the foreshore or the control of the foreshore is vested if that foreshore or any part of it is within the area proposed as a marine reserve:

(iv) the Secretary of Transport:

(v) the Director-General of Agriculture and Fisheries [Primary Industries].'

189. In accordance with section 5(1)(d)(i), a letter was sent to the list of adjacent landowners by the Applicant (on 17 January 2022), informing them of the Application for a marine reserve and the upcoming public notification period. This letter followed a previous letter sent on 13 May 2021 advising of the Applicant's intention to make an application and a presentation held on 23 May 2021 to answer any questions and concerns. This letter and the list of recipients are at Volume 2, Appendix 14.

190. The Applicant wrote to Shane Ellison (Chief Executive of Auckland Transport) and Captain Andrew Hayton (the Auckland harbourmaster) as required under section 5(1)(d)(ii) above and section 5(1)(d)(iii). This letter is at Volume 2, Appendix 15, and was sent on 14 January 2021. The Applicant also wrote to the Waiheke Local Board. This letter is at Volume 2, Appendix 16, and was sent on 18 February 2022.

191. The Applicant wrote to Peter Mersi (Chief Executive of the Ministry of Transport) as required under section 5(1)(d)(iv) above. This letter is at Volume 2, Appendix 17, and was sent on 14 January 2022.

192. The Applicant wrote to Ray Smith (Director-General of the Ministry for Primary Industries) as required under section 5(1)(d)(v) above. The letter is at Volume 2, Appendix 18 and was sent on 14 January 2022.

6.9 Published plan available of area: Marine Reserves Act section 5(2)

193. Section 5(2) of the Act states:

> 'The Director-General [of Conservation] shall cause a plan to be prepared on a suitable scale showing all tidal waters coloured blue, and the boundaries and extent of the area sought to be declared a marine reserve. The plan shall be open for inspection free of charge during ordinary office hours by any person at the office of the Department nearest to the proposed reserve.'

194. A plan of the proposed reserve was prepared by the Department (Volume 2, Appendix 19). The tidal waters were coloured blue, and the boundaries and extent of the area sought were marked with latitude/longitude positions. This plan was included in the Applicant's Application document. A copy of the plan and the Application were available for inspection free of charge during ordinary office hours at the following locations throughout the consultation period:

- Department of Conservation Tāmaki Makaurau / Auckland Office, Bledisloe House, 24 Wellesley Street West, Auckland CBD, Auckland 1010 (building shared at the time with Auckland Council)
- the Waiheke Library, 133/131 Ocean View Road, Oneroa, Waiheke Island
- Waiheke Local Board Office, 10 Belgium Street, Ostend, Waiheke Island
- Citizens Advice Bureau, 141 Ocean View Road, Oneroa, Waiheke Island

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195. While the Department has an office at Devonport, North Head (which is the office 'nearest to the proposed reserve'), this office is not open to the public and so the Wellesley Street office was the nearest office for the public to view the plan. To ensure the plan and Application could be viewed at a location close to the proposed reserve, the Department also made these available at the Waiheke Island locations listed above.

196. The plan and Application were also placed on the Department's website.

6.10 Process for receiving submissions: Marine Reserves Act sections 5(3)-(5)

197. Sections 5(3)–5(5) of the Act state:

> '(3) All persons wishing to object to the making of the order shall, within 2 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1), send their objections in writing, specifying the grounds thereof, to the Director-General and shall serve a copy of their objections, specifying the grounds thereof, on the applicant within the same time.
>
> (4) The applicant may, on receiving any copy of objections under subsection (3), answer those objections in writing to the Director-General within 3 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1), and the Director-General shall send any such answer he may receive within that time to the Minister for consideration.
>
> (5) The Director-General shall refer to the Minister all such objections received within the said period of 2 months, and any answer received within the said period of 3 months.'

198. As required by section 5(3), the consultation period ran for 2 months from 20 January 2022 to 20 March 2022.

199. In accordance with the notifications described above, the public was invited to make submissions online, by email or in writing to the Department. The online survey was managed by the independent public research and engagement company PublicVoice.

200. The Department received 1,283 submissions by the consultation closing date, and 10 submissions were received late. A formal decision was made by the Director-General to accept those late submissions, due to them being received shortly after public consultation closed. The former Minister of Conservation was briefed on this decision.

201. Under section 5(4), an applicant *may* provide an answer to objections (within three months of notification) to the Director-General. The Director-General must then forward all objections, and any answers to objections, to the Minister of Conservation for consideration.

202. On 20 April 2022, the Applicant provided a 'Response to Objections' document (Volume 2, Appendix 9) to the Department. On the same day, the Department sent this document to the then Minister of Conservation as required by section 5(4) of the Act. The Applicant published the 'Response to Objections' document on their website. A summary of the Applicant's answers is incorporated into the analysis of objections in chapter 9.

203. In accordance with section 5(5), the Director-General provided the then Minister of Conservation with an electronic copy of all submissions received (those in objection and support) on 20 April 2022. An electronic copy of all submissions will be provided to your office alongside this report.

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6.11 Te Takutai Moana Act sections 47–49

204. As set out in 5.2.2, the Application for the proposed reserve is a 'conservation process' for the purposes of te Takutai Moana Act (as defined in section 47 of that Act). Affected iwi, hapū and whānau have the right to participate, and the notification requirements set out in section 48 apply.

205. The Director-General satisfied the requirement of section 48 by publishing alongside each of the Applicant's public notices of intention to apply for the marine reserve, a notice to 'Iwi, hapū, or whānau who exercise kaitiakitanga'. This notice informed them of their right to participate in the process, how to do so and where further information could be accessed, as required under section 48. A copy of each of the notices is at Volume 2, Appendix 20.

206. In addition, the Department contacted the customary interest groups directly about the Application (as set out in chapter 4). The 12 customary interest groups advised they do have rights and responsibilities to exercise kaitiakitanga in accordance with their own tikanga. Some groups deferred to Ngāti Pāoa as mana whenua, however. Pursuant to section 49, the Director-General has 'accepted' that the identified iwi are affected iwi, hapū or whānau. The Department has been engaging with each of these 12 customary interest groups in good faith on this Application.

207. Pursuant to section 49, this report has identified for you the submissions where submitters have advised that they are 'affected iwi, hapū or whānau'.

6.12 Giving effect to the principles of the Treaty of Waitangi (section 4 Conservation Act)

208. The Act is listed in Schedule 1 of the Conservation Act and the Courts have confirmed that the section 4 obligation in the Conservation Act extends to the first schedule Acts. As such, the Act must be interpreted and administered as to give effect to the principles of the Treaty (see 5.2.1).[54]

209. In applying section 4 to this decision, you must, in so far as possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty.[55] While the Treaty principles themselves do not dictate any particular result, they should not be narrowly construed and require good faith and reasonable action in the circumstances.

210. You should be satisfied that you are well informed of and understand the respective interests and views of tangata whenua.

211. Paragraphs 212-214 describe how the Department has given effect to the principles of the Treaty throughout the statutory process, through Treaty partner engagement and development of advice. Note that detailed analysis of the views provided by submitters through the statutory consultation process, together with the Department's advice as to how its recommendations in respect of whether the proposed reserve gives effect to the principles of the Treaty, is discussed in chapters 9 and 10.

212. **Partnership** – mutual good faith and reasonableness: The Crown and Māori must act towards each other reasonably and in good faith.

[54] *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 533 (CA).

[55] *Ngai Tai* at [53].

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The principle of partnership requires the Department to identify all interested/impacted iwi/hapū and for the parties to act reasonably, in good faith and act transparently with an open mind.[56] Acting fairly and reasonably includes honouring any previous commitments made to a group.[57]

The Department has identified the relevant Treaty partners and engaged reasonably and in good faith with them, both prior to public notification and during the subsequent statutory process.

As the Application is from a third-party (i.e. not from the Director-General), the Department was not in the position of consulting with tangata whenua on the 'merits' of the Application. Rather the Department's role as a Treaty partner (prior to public notification) was to ensure that tangata whenua were well informed of the process and how to have their views and interests considered regarding the Application, and to advise the Applicant to undertake sufficient pre-notification consultation with Māori. To give effect to the principle of partnership, the Department took active steps to facilitate tangata whenua awareness of, and participation in, the statutory process, including through further and targeted engagement. This is outlined in chapter 4.

Through the pre-notification engagement, the Department was able to hear and discuss the concerns raised about, and the support for, the Application, and the Act process in general. The Iwi Trust and Ngāi Tai ki Tāmaki raised concerns about the time available pre-notification to engage with the Department, the Applicant and their iwi members, in order to form a consensus on the Application. Further and ongoing engagement was offered to both groups, and the Department further met with the Iwi Trust in August 2022. All who were engaged with were encouraged to make a formal written submission on the proposed reserve and were provided with supporting information to assist with the submissions process.

In response to the Applicant consulting with the Director-General (as it is required to do), on 3 June 2021 the Department recommended to the Applicant, to 'engage and consult widely to ensure that any affected iwi, hapū and whānau [...] have had ample opportunity to provide input' on the Application before it was publicly notified. The Department also offered staff time to assist the Applicant with any engagement undertaken.

The Department offered further engagement post-notification to tangata whenua to ensure there was time to properly engage and input into the process if they wished.

Following the analysis of submissions and objections, the Department offered further engagement to tangata whenua in April 2023 (see 4.4). An intention of this engagement was to explore with tangata whenua whether there might be any mitigation options that might address the concerns raised in their objections. To be clear, this was not intended to undermine any objection made through the formal submission process, but rather to ensure that tangata whenua were aware of all options under the Act to protect their rights and interests. At that time, no tangata whenua contacted indicated that they wanted to undertake further engagement with the Department on the Application.

To ensure tangata whenua had opportunity to input into the advice and decision-making process, the Department shared with the customary interest groups a discussion document in July 2024 with examples of possible management conditions, which could be placed on the proposed reserve to protect tangata whenua rights and interests

[56] *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 (CA) at 664 per Cooke P, at 682–683 per Richardson J.

[57] *Hart v Director-General of Conservation* [2023] NZHC 1011.

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(Volume 2, Appendix 5). Feedback was received from the Iwi Trust and the Trust Board and informed the Department's recommendations (see 10.1).

213. **Informed decision-making** – both the Crown and Māori need to be well informed of the other's interests and views. When exercising the right to govern, Crown decision-makers need to be fully informed. For Māori, full information needs to be provided in order to contribute to the decision-making process.

The Treaty principle of informed decision-making requires the Department to be well informed of tangata whenua interests and views in relation to the Application.

Consultation and engagement with tangata whenua is a means to achieve informed decision-making. The engagement with tangata whenua and the recognition of iwi interests and customary connections through their Treaty settlements (noting that harbours redress remains outstanding) provides you with the information you need to be reasonably informed of tangata whenua interests in making your decision.

The Department made comprehensive efforts to ensure iwi understood the Application and that the Department in turn understands the position of iwi on the proposal.

The focus of the Department's communications and engagement undertaken pre-notification was to ensure tangata whenua were fully informed of the Application, the potential impacts on their rights and interests, and how to participate in the process to have their views considered. The Department reached out via email and follow up phone calls, to the customary interest groups and those with a claim under te Takutai Moana Act for customary marine title or protected customary rights that included the area of the proposed reserve (as set out in 4.3).

The Department offered to meet with the customary interest groups and submitters identified as 'affected iwi, hapū, or whānau' (see 4.4). The Department has approached hui openly, listening and recording the views expressed. During these conversations, the Department has also answered questions openly and transparently and has aimed to ensure the process is transparent and well understood.

In terms of the statutory consultation process, views received from 'affected iwi, hapū, or whānau', as well as submissions from other Māori submitters (i.e. Māori individuals and groups representing Māori interests that did not identify as whānau, hapū or iwi that exercises kaitiakitanga in the proposed reserve area), have been identified and analysed in the advice that follows in chapters 9 and 10. The purpose of this is to ensure that you are able to make an informed decision in light of those views expressed. While te Takutai Moana Act obligation to have 'particular regard' to the views of these other Māori submitters does not apply, the Crown's obligations under section 4 of the Conservation Act may still be relevant to your consideration depending on the nature of these views.

The Department has provided you with an electronic copy of each submission/objection to enable consideration of written views in full.

Through the analysis of submissions and objections, the Department has considered the impact of the proposed reserve in light of the tests outlined in the Act (for undue interference), and against the principles of the Treaty. Where appropriate, the Department has then considered any possible mitigations for addressing the impacts and concerns raised (as set out in 10.1).

214. **Active protection** – the Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the Crown's right to govern. This includes the promise to protect tino rangatiratanga and taonga. Active protection requires informed decision-making and judgement as to what is reasonable in the circumstances.

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The rights, interests and concerns identified by tangata whenua through direct engagement and submitters through the statutory consultation process are described and analysed in chapters 9 and 10.

Active protection requires you to properly understand the nature of the interest claimed and to weigh that material with any wider or competing rights or interests, and to make informed decisions that are reasonable in the circumstances. This obligation is not absolute and unqualified, as this would be inconsistent with the Department's other statutory responsibilities. Active protection requires informed decision-making and judgement as to what is reasonable in the circumstances. The challenge is how to apply the obligation in specific situations.

Prior to decision-making on the proposed reserve, one key consideration in terms of the principle of active protection is to ensure that the process undertaken facilitates informed decision-making – ensuring that the relevant rights, interests are able to be effectively communicated and understood in order to then be received and analysed will mean that the substantive decisions that follow can appropriately give effect to the principle of active protection in respect of those rights and interests. The Department considers that the statutory process and ongoing engagement with tangata whenua has been carried out in a manner that ensures the principle of active protection can be given effect to in your substantive decision-making.

Where appropriate, the Department has also considered active protection when making recommendations. This is outlined in recommendations section where relevant at 10.1.

6.13 Treaty settlement legislation

215. As described in 5.2.3, both the Minister of Conservation and the Director-General have obligations in relation to enacted individual or collective iwi Treaty settlements and considerations in relation to settlements that are in various stages of negotiation but have not yet been enacted. In addition, as also noted, harbours redress has yet to be negotiated for the Hauraki Gulf / Tīkapa Moana. The declaration of a marine reserve within this ocean space could impact upon these future negotiations.

216. Some of these obligations and considerations are process requirements, which apply prior to decision-making. Table 6-2 groups the relevant settlements by obligations and considerations and outlines how the Department has considered these throughout the statutory process, through Treaty partner engagement and development of advice. More detail is provided in Volume 2, Appendix 2.

Table 6-2 *Treaty settlement obligations and considerations and how the Department considered these prior to decision-making*

Treaty settlements	Obligations and considerations	How obligations and considerations were considered by the Department
Enacted – **Ngā Mana Whenua o Tāmaki Makaurau Collective Redress** – **Ngāti Tamaoho Treaty Settlement** – **Ngāi Tai ki Tāmaki Treaty Settlement** Signed Deed of Settlement	Clear cultural association with Tīkapa Moana	The Department acknowledges the clear and strong traditional, historical, cultural and spiritual significance of Tīkapa Moana to the listed collective and individual iwi, as well as identifying Waiheke Island as place with significant interests for the iwi

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Treaty settlements	Obligations and considerations	How obligations and considerations were considered by the Department
– Ngāti Pāoa – Te Patukirikiri Initialled Deed of Settlement – Ngāti Tamaterā – Ngaati Whanaunga Agreement in Principle – Ngāti Hako Deed of Mandate – Ngāti Te Ata		
Enacted **– Ngā Mana Whenua o Tāmaki Makaurau Collective Redress** **– Ngāti Tamaoho Treaty Settlement** **– Ngāi Tai ki Tāmaki Treaty Settlement** Signed Deed of Settlement – Ngāti Pāoa – Te Patukirikiri Initialled Deed of Settlement – Ngāti Tamaterā Agreement in Principle – Ngāti Hako	Partnership and shared aspirations	The Department acknowledges the desire for partnership and shared conservation aspirations. As the Application is from a third-party, the role of the Department as a Treaty partner prior to public notification was to ensure that tangata whenua were well informed of the process and how to have their views and interests considered in the application, and to advise the Applicant to undertake sufficient pre-notification consultation with Māori. To give effect to the principle of partnership, the Department took active steps to facilitate tangata whenua awareness of, and participation in, the statutory process, including through further and targeted engagement. This is outlined above in chapter 4.
Enacted **– Ngā Mana Whenua o Tāmaki Makaurau Collective Redress** **– Ngāti Tamaoho Treaty Settlement** **– Ngāi Tai ki Tāmaki Treaty Settlement** Signed Deed of Settlement – Te Patukirikiri	Consultation obligations	Prior to decision-making, the Department worked with and consulted collective and individual iwi, including communications to understand how iwi would like to be engaged with, providing options of discussing the Application with the Applicant and the Department together or independently (see chapter 4). Collective and individual iwi were invited to submit via the statutory consultation process. In addition, the Department facilitated further direct engagement with collective and individual iwi who wanted further engagement (see chapter 4).

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7 Submissions received on the proposed marine reserve

217. In total 1,293 submissions on the proposed reserve were received, with 91.0% in full support of its establishment as proposed. There were 117 submissions categorised as objections – either outright objection (88), partial objection (6) or submissions of partial support (23). Detail on how submissions were classified is set out in Volume 2, Appendix 8.

218. Of the 1,293 submissions, 30 were from submitters identified as affected iwi, hapū or whānau under te Takutai Moana Act. Twelve supported implementing the proposed reserve and 18 objected (one was a partial support, the rest were outright objections). A further 50 submissions were from Māori submitters (i.e. those who identified as Māori but did not identify as affected iwi, hapū or whānau under te Takutai Moana Act). Of the Māori submissions, 43 were in support of establishment the reserve as proposed and seven were objections – either outright objection (5), partial objection (1) or partial support (1).

219. Submissions in full support of the proposed reserve being established as described in the Application gave the following main reasons:

- urgent need for marine protection in the Hauraki Gulf
- declining health of the marine habitat around Waiheke Island
- positive experiences at other marine reserves
- complements the current rāhui/temporary closure (section 186A Fisheries Act) established around Waiheke Island
- good location in the transition zone between inner and outer Hauraki Gulf
- large size of the proposed reserve with prospects of good fishing along its edge, without damaging its benefits
- leadership from the Waiheke Island community
- ecological and species benefits.

220. Objections (either outright, partial or partial support) gave the following main reasons:

- negative impacts on recreational fishers
- prevention of kaitiakitanga activities for mana whenua
- impacts of the displacement of fishing effort to other areas
- further mana whenua engagement needed, and Treaty obligations not met
- better management available, including customary management tools
- existence of Sea Change Plan and the Revitalising the Gulf Strategy
- existing restoration initiatives for Waiheke Island (Waiheke Marine Project)
- expected ecological benefits described in the proposal not supported or realistic
- a larger marine reserve is needed.

221. Many of the objections acknowledged the poor state of the Hauraki Gulf and expressed the need for better management and protection of the Hauraki Gulf, but not in the form of this proposed reserve, or with more than just this proposed reserve.

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8 Assessment of the benefits of the proposed marine reserve

222. Sections 5.1.4-5.1.5 set out the framework for assessing whether any objections related to the proposed reserve should be upheld pursuant to the 'interfere unduly' and 'otherwise contrary to the public interest' tests in section 5(6) of the Act.

223. You will need to assess the objections in light of the purpose of the Act and the benefits of the proposed reserve in terms of achieving that purpose. You also need to assess the values of the proposed reserve and the 'overall public advantages'[58] that would come from this area being declared a marine reserve.

224. The following section firstly advises on whether the proposed reserve meets the 'purpose' of the Act. Next it assesses the benefits, values and 'advantages' of the proposed reserve. As noted, these are all relevant to your decisions under section 5(6). They are also relevant to your decision-making under section 5(9) as discussed further in chapter 10. An assessment of your obligations under the Treaty (as set out in 5.2) is also included in the following section.

8.1 Achieving the purpose of the Marine Reserves Act

225. As described in 5.1.1, the general purpose of the Act is set out in section 3(1) as:

> '...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.'

226. In the Application, the Applicant did not directly analyse the proposed reserve against the criteria listed in the purpose of the Act. However, they did highlight key features of the proposed reserve that relate to these, which are outlined below.

227. The Department undertook a full technical review of the Application, relevant scientific literature, fishing and diving reports, and citizen science observations (hereafter referred to as the Technical Report – Volume 2, Appendix 21). The Technical Report informed the summary below and the Department's assessment as to whether the proposed site meets the purpose of the Act.

228. In summary, the Department considers that the site meets the purpose of the Act because:

- the area of the proposed reserve contains marine life and underwater scenery that is typical of the Hauraki Gulf, and contains natural features that are unique or of distinctive quality
- protection of the area of the proposed reserve would provide new opportunities for the scientific study of marine life
- the area's continued preservation would be in the national interest.

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

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8.1.1 Underwater scenery, natural features, and marine life

8.1.1.1 The Applicant's view

229. The proposed reserve contains a diverse range of intertidal and subtidal marine habitats, notably rocky reef systems, gravel and sand beaches and soft sediment sea floors. The intertidal rocky reefs are a particularly notable feature of Waiheke Island's indented northwestern coastline, especially between Hakaimango Point and Owhanake Bay.

230. Marine life exists within the proposed reserve area that is 'typical' of the Hauraki Gulf, such as tāmure/snapper, kahawai, various triplefin, invertebrate and algal species.

231. The reefs and coastal cliffs in the area of the proposed reserve are remarkable for their geology, notably Double U Bay, which contains geologically significant fossil deposits from 20 million years ago.

8.1.1.2 Departmental advice

232. The Technical Report found that a minimum of 187 species of marine life have been recorded within the proposed reserve. It was noted that this is a conservative number as it excludes microorganisms, meiofauna and most planktonic, infaunal and cryptic species. The variety of marine species found within the proposed reserve area is 'typical' of that found within the Hauraki Gulf.

233. The 'typical' marine life found within the proposed reserve area includes species such as large brown algae, sponges and other common encrusting organisms, horse mussels, kelp, tangleweed, snapper, jack mackerel, sand flounder, gurnard, john dory, rig, trevally, and kahawai. A full list of the species recorded within the proposed reserve is contained in the Technical Report (Volume 2, Appendix 21).

234. A desktop analysis undertaken by the Department shows that soft sediments are the predominant substrate type within the proposed reserve, with some rocky reefs that are broken and varied. This underwater scenery is 'typical' of much of the inner Hauraki Gulf.

235. There are three natural features within the proposed reserve area that the Department considers to be natural features of 'distinctive quality' or 'unique'. These are the submarine volcanics (pillow lavas[59], chert[60]), fossil beds and Hakaimango Point.

236. The fossil beds located within the proposed reserve area were first reported in Double-U Bay in 1927 and contain fossilised wood and shell moulds.

237. The submarine volcanics (pillow lavas, chert) exposed in Island Bay and the fossil beds exposed in Double U Bay are both identified as Outstanding Natural Features in the Natural Heritage Overlay of the Auckland Unitary Plan.

238. Hakaimango Point and the area surrounding it is identified as an Outstanding Natural Landscape and area of High Natural Character in the Auckland Unitary Plan. This area has been classified as such because the bio-physical characteristics (e.g. landform features and ecological values) and the perceptual value (e.g. experiential attributes) were valued of relatively 'high' importance in the Auckland Unitary Plan.

239. The Auckland Unitary Plan states in the objectives of the Outstanding Natural Features and Outstanding Natural Landscapes Overlay that 'where practicable the restoration and enhancement of outstanding natural features and outstanding natural landscapes, including

[59] Pillow lavas are typically round volcanic rocks formed during a slow eruption underwater. The slow eruption rate allows time for the crust to cool on all sides of the 'pillow', forming the round, tubular or bulbous shape instead of creating a 'sheet'.

[60] Chert is a sedimentary rock composed of microcrystalline or cryptocrystalline quartz, the mineral form of silicon dioxide.

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in the Waitākare Ranges Heritage Area and the Hauraki Gulf / Te Moana-nui o Toi / Tīkapa Moana, is promoted'.

8.1.2 Opportunities for scientific study

8.1.2.1 The Applicant's view

240. The size and location of the proposed reserve would be adequate to protect the species that occur within it and potentially enable them and others to be restored to more natural levels.

241. The proposed reserve would protect a part of the Hauraki Gulf, which lies in a central transition zone between the inner and outer Gulf, and of which no other representative example is protected.

242. The proposed reserve is within an easy 10-minute walk from the Matiatia ferry terminal (35 minutes from downtown Auckland), and to bus services enabling public transport access and an easy walk to both coastal edges of the proposed reserve at Matiatia and Oneroa. This unique proximity of public transport services and good walking tracks makes the proposed reserve very convenient for scientific research and visits by students and educational groups with excellent accessibility for the general public.

8.1.2.2 Departmental advice

243. The proposed reserve is located near the Matiatia Ferry Terminal, making it easily accessible from Auckland City via a 35-minute ferry ride. The accessibility of the proposed reserve and its proximity to research institutions located in Auckland and Waikato means it is likely to be used for scientific research and education. Marine reserves have been described as real-world experiments that show the importance of species in food webs and the consequences of fishing on ecosystems[61]. Because ecosystem structure varies with environment, climate and species distributions, marine reserves need to be permanent and replicated geographically to maximise their scientific and ecological value.

244. The predominant habitat types within the proposed reserve are soft sediments. The Marine Protected Areas Guidelines[62] describes the main habitat type as 'high current shallow mud', a habitat type not well represented in existing and other proposed marine protected areas within the Hauraki Gulf Marine Park under the Bill[63]. While this habitat type may not necessarily be unique when compared across New Zealand's marine environment, its uniqueness in current and proposed areas for marine protection in the Hauraki Gulf increases the value of this site for scientific study.

8.1.3 National interest in the site's continued preservation

8.1.3.1 The Applicant's view

245. The national significance of the Hauraki Gulf is recognised in sections 7 and 8 of the HGMPA.

246. The state of decline and loss of species has been a concern for Aucklanders for many years and has been documented through the three-yearly State of the Environment reports[64].

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[61] Leleu, K., Remy-Zephir, B., Grace, R., Costello, M. J. 2012. Mapping habitats in a marine reserve showed how a 30-year trophic cascade altered ecosystem structure. Biological Conservation, 155: 193-201.

[62] Department of Conservation and Ministry of Fisheries. Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines (doc.govt.nz). February 2008.

[63] New marine protections in the Hauraki Gulf (doc.govt.nz). See **Error! Reference source not found.** and Figure 3-1 of this paper.

[64] State of our Gulf - Hauraki Gulf Forum: State of the Environment Reports - reports.

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8.1.3.2 Departmental advice

247. The Department considers that the continued preservation of the area of the proposed reserve and its features would be in the national interest.

248. The HGMPA recognises, amongst other considerations, the national significance of the life-supporting capacity of the Hauraki Gulf environment (section 7(1)-(2)). Declaration of the proposed reserve would enhance that life-supporting capacity (see also 10.2.2).

249. Although it is difficult to predict the short- and long-term changes that may occur within specific marine protected areas, positive effects of protection have been documented for snapper, red moki, rock lobster, butterfish, rāwaru/blue cod, john dory, silver drummer and large brown seaweeds within the existing Hauraki Gulf marine reserves. All these species occur within the proposed reserve, and as it is 1.4–5 times the size of any of the existing marine reserves in the Hauraki Gulf, it is highly likely that these species would respond positively to protection.

250. Furthermore, research trawls indicate that the area extending southeast from Rakino and Motutapu Islands to Onetangi Bay, Waiheke Island, and south to Motuihe Island, contains a regionally important snapper habitat (this area includes the proposed reserve).[65] A detailed towed video study of snapper habitat in the inner Hauraki Gulf found benthic diversity and predicted adult snapper density to be moderate to high off northwest Waiheke Island[66].

251. Two studies have also used conservation planning software Zonation to identify priority sites for biodiversity protection and inform the design of a network of representative marine protected areas within the Hauraki Gulf Marine Park[67]. These studies both identified parts within the proposed reserve area as habitats that should be prioritised for protection.

252. The proposed reserve would support New Zealand's marine protection commitments under the Convention on Biological Diversity (see 8.3).

8.2 Other values and advantages to the public

8.2.1 Benefits for marine life

8.2.1.1 Benefits identified by the Applicant

253. A summary of the key points identified by the Applicant in the Application:

Benefits relating to fish, shellfish, and crustaceans

- protecting all fish species within this area from line fishing, spear fishing, potting, netting and dredging
- protecting and enhancing an area of highly suitable habitat for the recovery of pāua, green-lipped mussel, scallop, and rock lobster, species presently subject to the rāhui (section 186A temporary closure)

[65] Morrison, M., Drury, J., Shankar, U., Middleton, C., Smith, M. 2003. A broad scale seafloor habitat assessment of the Hauraki Gulf. NIWA Client Report AKL2003-64. NIWA, Auckland. 62 p.

[66] Compton, T.J., Morrison, M.A., Leathwick, J.R., Carbines, G.D. 2012. Ontogenetic habitat associations of a demersal fish species, Pagrus auratus, identified using boosted regression trees. Marine Ecology Progress Series, 462: 219–230.

[67] Jackson, S.E. 2014. Prioritisation of areas in the Hauraki Gulf Marine Park for biodiversity conservation. MSc. thesis in Marine Science, The University of Auckland. 125 p.; Lundquist, C., Tablada, J., Watson, S. 2020. Evaluation of biodiversity protected by Sea Change Tai Timu Tai Pari – marine protected area proposals. NIWA Client Report No: 2020244HN. National Institute of Water & Atmospheric Research Ltd., Hamilton. 147 p.

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- protecting and enhancing one of the very few populations of packhorse lobster in the inner Hauraki Gulf
- protecting and enhancing an area involved in the spawning of snapper, significantly enhancing the productivity of the wider snapper population
- protecting and enhancing fish and invertebrate (including shellfish and rock lobster) larval export due to the strong tidal currents associated with the waters of the proposed reserve to the inner and outer Hauraki Gulf, thus facilitating the recovery of fish stocks and kai moana outside the proposed reserve
- helping to reverse trends in some species (e.g. longfin and giant boarfish, red moki, blue maomao) becoming locally extinct in or near the proposed reserve.

Benefits relating to marine mammals and seabirds

- protecting and enhancing an area of the Hauraki Gulf used by marine mammals, including short-beaked common dolphin, bottlenose dolphin, orca, long-finned pilot whale and a recovering population of New Zealand fur seals
- protecting and enhancing the marine feeding resources of at least 15 seabird species that have been recorded breeding and/or foraging in this area, including endangered endemic species
- protecting and enhancing seabird and shore bird nesting areas along the coastal fringe, especially at Island Bay and on nearby islets
- being adjacent to the ecologically significant North Auckland Seabird Flyway.[68]

Benefits relating to the protection of habitat

- protecting and enhancing highly productive, ecologically vital, kelp forest rocky reef systems
- protecting and enhancing a diverse range of sand and soft sediment habitats and associated biological communities
- protecting and enhancing an area of highly suitable habitat for the recovery of pāua, green-lipped mussel, scallop, and rock lobster species presently subject to the rāhui (section 186A temporary closure).

8.2.1.2 Departmental advice

254. The Department considers the benefits set out below for the proposed reserve build on the protections of the section 186A temporary closure currently in place around Waiheke Island (see 3.4). The purpose of the proposed reserve varies, however, as the section 186A notice is temporary, applies to a limited number of species and is intended to recognise customary use and management practices, and to improve and recognise customary fishing practices.

Benefits relating to fish, shellfish, and crustaceans

- *Species likely to benefit from the proposed reserve* – the following species are likely to respond positively, in terms of population abundance or size structure, to protection from the proposed reserve: snapper, john dory, red moki, butterfish, scallops, rock lobster, blue cod, silver drummer, and pāua. It is also possible that kina, leatherjacket and banded wrasse would benefit positively from protection

[68] This flyway is an ecologically significant corridor used by up to a third of the Hauraki Gulf's Cook's petrel population to move between nest sites on outer Gulf islands and foraging areas in the Tasman Sea. The grey-faced petrel and back petrel may also use the flyway.

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(existing research shows both positive and negative responses to marine protection for those species)

- *Protection of snapper habitat* – as set out in 8.1.3.2 the proposed reserve contains regionally important snapper habitat. As snapper are commonly targeted by both commercial and recreational fishing, they are likely to benefit from the protection afforded by the proposed reserve
- *Lack of evidence for likelihood of benefits to some species* – the Department considers there is little evidence to suggest the following species would benefit from the proposed reserve: longfin boarfish, splendid perch, conger eel, marblefish, blue maomao, Sandager's wrasse, hāpuku/groper. The reasons for this include: the species is not currently targeted by fishers; there is a lack of suitable habitat in the proposed reserve for these species; a positive response for these species has not been observed at other marine reserves; or populations are likely influenced by wider oceanographic processes
- *Positive impacts to populations outside the proposed reserve* – spillover effects of marine reserves depend on the responses of individual species to protection, can be difficult to predict and are also dependent on multiple factors including species biology, the location, size and configuration of the marine reserve, habitat availability in the surrounding area, local environmental gradients, local and regional hydrological processes, and large-scale climate phenomena. Positive spillover effects have, however, been observed in the Hauraki Gulf at Cape Rodney-Okakari Point Marine Reserve, and international research indicates these benefits are likely to be enhanced within networks of marine protected areas. There are currently six marine reserves in the Hauraki Gulf Marine Park and, in the vicinity of the proposed reserve, a Cable Protection Zone where all fishing is prohibited. Any additional marine protection established (such as through the Bill, see 3.3) would likely enhance any spillover effects

Benefits relating to the protection of habitat

- *Protection of biogenic habitats* – biogenic (living) structures occurring within the area of the proposed reserve are: beds of large brown algae on the subtidal rocky reefs; sponges and a variety of encrusting organisms below about 14 meters depth; and patches of low-density horse mussels and scallops. Benthic (seafloor) habitats within the proposed reserve are relatively undisturbed by mobile fishing gear. Despite early bans on trawling, Danish seining and dredging in the inner Hauraki Gulf, some effects of these activities appear to have been permanent. For example, there has been no reported recovery of the large bed of green-lipped mussels that used to occur off the northern tip of Hakaimango Point

Benefits relating to marine mammals and seabirds

- *Benefits for seabird species in and around the proposed reserve* – while the Application listed a large number of seabird species that would benefit from the proposed reserve, as set out in section 7 of Volume 2, Appendix 1, the Department considers only a few of these (kororā/northern little penguin, white-fronted tern, southern black-backed gull, red-billed gulls) may receive some benefit due to having adjoining breeding sites, while the remainder are unlikely to benefit from the proposed reserve. The area is not known to be important to these species for foraging and/or breeding, and the decline in some species is likely due to impacts on their prey which will not be addressed by establishing the proposed reserve (e.g.

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pollution, sedimentation, larger oceanographic changes) or due to terrestrial threats (e.g. introduced mammalian predators)

- *Benefits for New Zealand fur seals in and around the proposed reserve* – although the foraging ecology of fur seals has not been studied anywhere in the upper North Island, the Department does not agree with the suggestion in the Application that New Zealand fur seals are likely to forage in the proposed reserve area. Most of their prey species (anchovy, pilchard, jack mackerel, sprats and arrow squid) can be found in aggregations in open water east or well north of Waiheke Island, meaning it is likely that fur seals hauling out at The Noises island group will travel there, or out of the Hauraki Gulf, to feed, rather than in the area of the proposed reserve. The proposed reserve is also unlikely to positively impact populations of bait fish due to a lack of suitable habitat and other environmental factors driving population decline (e.g. climate change). The rocky coast within and immediately adjacent to the proposed reserve does, however, provide a suitable habitat for New Zealand fur seals. The shallow inshore area within the proposed reserve would also provide a relatively safe environment for juveniles to learn to forage should a haulout or rookery establish there. While this is a possibility, it seems unlikely to occur soon given fur seals currently prefer to haulout at The Noises island group
- *Benefits for other marine mammals in and around the proposed reserve* – the area of the proposed reserve represents a very small part of the known ranges for common and bottlenose dolphins, orca and pilot whales. Despite the considerable amount of research that has been conducted in the Hauraki Gulf, the area covered by the proposed reserve does not appear to be regularly used by any of those species. Regular sightings of distinctively marked individuals indicate the dolphins are largely present in parts of the outer Hauraki Gulf. While the species may therefore forage in the proposed reserve from time to time, it is unlikely to have a significant positive impact on those listed marine mammal species.

8.2.2 Benefits for community and economic wellbeing

8.2.2.1 Benefits identified by the Applicant

255. A summary of the key points identified by the Applicant in the Application:

- enabling ideal outdoor education opportunities for the young people of Waiheke and of Auckland via an easily accessible marine reserve, which would, for example, enhance Waiheke High School's Seasports Academy (snorkelling and scuba) integrating it with the sciences curriculum
- protecting and enhancing the conservation values of Tāmaki Makaurau and the strongly stated aspirations of the people of Auckland
- protecting and enhancing the traditional conservation values of Waiheke Island and the strongly stated aspirations of its people
- generating some $19 million per annum by enhancing the size and value of the commercial and recreational fishery of the Hauraki Gulf[69]
- protecting and enhancing the natural and physical resources of the Hauraki Gulf / Tīkapa Moana / Te Moananui-ā-Toi. Protecting and enhancing the life-supporting capacity of the coastal marine area of the Hauraki Gulf, which is considered nationally significant under the HGMPA

[69] Section 11.5, page 47 of the Application – see Volume 2, Appendix 1.

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- enhancing the resilience of the Hauraki Gulf to climate change impacts, particularly heatwaves, invasive species and ocean acidification
- protecting and enhancing an ecologically rich maritime transition zone between the inner and outer Hauraki Gulf
- protecting and enhancing marine ecosystems and biota of the Hauraki Gulf for their own intrinsic value.

8.2.2.2 Departmental advice

256. The proposed reserve is likely to increase human wellbeing, public enjoyment and prosperity, though the Department acknowledges it may impact upon tangata whenua undertaking particular cultural activities within the area. Protected areas are being increasingly recognised for their contribution to wellbeing and health and are included in the United Nations Sustainable Development Goals[70]. The proposed reserve is expected to contribute to wellbeing and enjoyment by creating opportunities for people to experience an area that is returning to a more natural state. This includes directly by undertaking recreational activities and indirectly through the intrinsic value of knowing that the habitats and species within are protected.

257. Another anticipated benefit would be enhanced tourism opportunities. Based on other marine reserves in New Zealand and international examples, benefits to the region's economy through enhanced tourism opportunities are likely. A 2008 report assessed the economic impact of activities associated with the Cape Rodney-Okakari Marine Reserve and found that in 2007 an estimated $18.6 m/year of the Rodney District's 'total output' was due to the marine reserve.[71] Likewise, the Poor Knights Islands Marine Reserve is one of New Zealand's premier dive spots, attracting domestic and international visitors. These tourists pass through the small town of Tutukaka, benefitting the local community.

258. The proposed reserve may create benefits to fisheries by supporting larger populations of fished species, or protecting habitat critical to certain life-stages, and the subsequent spillover to adjacent areas. Benefits and ecological changes associated with protection, however, can take time to occur. Research has shown that increases in exploited species abundance after fishing restrictions are put in place can occur after only a few years, whereas ecosystem changes can take 11–15 years to become evident.[72] The Department expects that the existence of other marine reserves in the region, along with other existing and proposed marine protection and fisheries measures, would enhance the expected benefits of this proposed reserve.

259. Marine protected areas can provide benefits through mitigation and adaptation against the effects of climate change. Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (Te Mana o te Taiao)[73] recognises the importance of restoring marine ecosystems to reducing New Zealand's emissions and building resilience in a changing climate. Maintaining or restoring the habitats in the proposed reserve would contribute to this, albeit at a small scale, and therefore contribute to public wellbeing.

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[70] https://sdgs.un.org/goals.

[71] Hunt, L., 2008. Economic Impact Analysis of the Cape Rodney Okakari Point (Leigh) Marine Reserve on the Rodney District. Department of Conservation. 43p.

[72] Babcock, R. C., et al., 2010. Decadal trends in marine reserves reveal differential rates of change in direct and indirect effects. Proceedings of the National Academy of Sciences of the United States of America, 107: 18,256–18,261.

[73] https://www.doc.govt.nz/nature/biodiversity/te-mana-o-te-taiao--aotearoa-new-zealand-biodiversity-strategy-2020/.

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8.2.3 Benefits for scientific study

8.2.3.1 Benefits identified by the Applicant

260. The Application described the benefit of protecting and enhancing the opportunity for the comparative scientific study of marine ecosystems, seabirds and marine mammals and their restoration, and other marine biota, in the Hauraki Gulf.

8.2.3.2 Departmental advice

261. The Department also considers the proposed reserve would provide good opportunities for scientific study and education, including mātauranga Māori and the sharing of knowledge.

262. Research and scientific study within the proposed reserve would directly benefit the public by improving our ability to understand, manage and sustainably use marine resources. We also expect this research to contribute to an increasing body of knowledge around the value and contributions of marine ecosystem services, i.e. the direct and indirect benefits that people receive from natural habitats.

8.3 Contribution to New Zealand's marine protected areas goals

263. Establishing the proposed reserve would contribute to New Zealand's international biodiversity commitments[74] and the objectives of New Zealand's Marine Protected Areas Policy and Implementation Plan 2005[75] (MPA Policy). Establishment would also contribute to goals in Te Mana o te Taiao. This contribution is advantageous for meeting the goals themselves and for supporting what the goals seek – to protect and restore biodiversity in light of increasing pressures on the marine environment and the resulting impacts on communities.

264. The proposed reserve would include 12 of the Northeastern bioregion's[76] 42 habitat types. Five[77] of these 12 habitat types are not found in any of the other ten marine reserves in this bioregion. If established as proposed, at 23.5 km², it would be the largest marine reserve in the Northeastern bioregion of New Zealand.

[74] Particularly those under the United Nations Convention on Biological Diversity, including the Kunming-Montreal Global Biodiversity Framework: https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222.

[75] Department of Conservation; Ministry of Fisheries 2005: Marine Protected Areas: Policy and Implementation plan. Department of Conservation and Ministry of Fisheries, Wellington. 25 p.

[76] New Zealand's 14 coastal marine biogeographic regions are shown in Figure 1, pg 8: https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/marine-protected-areas/mpa-classification-protection-standard.pdf.

[77] These habitat types are estuarine rocky shore, high current rocky shore, high current shallow gravel, high current shallow mud and high current shallow reef.

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9 Stage 1 assessment - section 5(6) of the Marine Reserves Act

265. The following section sets out the objections received from submitters and provides any response from the Applicant to the objections and the Department's advice on the assessment of these objections in terms of the undue interference and public interest tests in section 5(6)(a)–(e) of the Act. Relevant submissions in support are also included under each objection.

266. The submissions and objections in full are provided to your office alongside this report. The Applicant's answers to objections are provided at Volume 2, Appendix 9.

267. Through our engagement with tangata whenua, the Iwi Trust have requested that you read their submission in full in your decision-making process. This is provided at Volume 2, Appendix 22.

268. The relevant decision steps associated with the Stage 1 assessment are:

> If any objections are upheld under section 5(6) of the Act, the marine reserve cannot be declared.
>
> You must have particular regard to the views of affected iwi, hapū, or whānau, pursuant to section 49 of the Marine and Coastal Area (Takutai Moana) Act 2011.
>
> You must have regard to submissions made by or on behalf of objectors, and to the Applicant's 'answers', and either:
>
> Agree that, subject to your approval of the recommended Order in Council conditions and other measures, no objections be upheld under section 5(6) of the Act
>
> OR
>
> Specify the section(s) of the Act under which objection(s) should be upheld:
>
> (a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve
>
> (b) interfere unduly with any existing right of navigation
>
> (c) interfere unduly with commercial fishing
>
> (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes
>
> (e) otherwise be contrary to the public interest

9.1 Section 5(6)(a) estate or interest in land in or adjoining the proposed reserve

9.1.1 Objections related to visitor noise impacts on adjoining land interests

Objections from affected iwi, hapū, or whānau

269. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

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Objections from all other submitters

270. Coastal Custodians[78] objected to the proposed reserve stating that 'the noise pollution hundreds of thousands of tourists will generate will be catastrophic to the quiet way of life' that they currently enjoy.

Applicant's response

271. The Applicant disagreed that there would be significant noise pollution generated by visitors to the proposed reserve. They stated that marine reserves are not particularly noisy places and gave the experience at Cape Rodney-Okakari Point Marine Reserve where nesting kāruhiruhi/pied shags can be heard from the carpark. They also stated that 'people visiting marine reserves are coming to experience nature, not make a lot of noise' and that 47% of private helicopter landing pads on Waiheke Island are found in the Coastal Custodians' area (a map was provided) with helicopters regularly witnessed flying in this area. In their view, it is 'difficult to think of anything more noisy and intrusive than helicopters landing and taking off in the neighbourhood'. They added that helicopter traffic was unregulated and generated significant noise. The Applicant also stated that if the proposed reserve is established, Coastal Custodians would 'benefit from a drastic reduction of noisy fishing vessel activity, compliments of charter and recreational skippers shifting operations elsewhere'.

Departmental advice

272. For the reasons set out below, the Department's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed reserve would interfere unduly with any estate or interest in land in or adjoining the proposed reserve.

273. The objection stated that there might be 'hundreds of thousands of tourists' visiting the proposed reserve. This appears to be based on estimated visitor numbers at Cape Rodney-Okakari Point Marine Reserve (New Zealand's oldest and most visited marine reserve). The objection cites the proximity of the proposed reserve to downtown Auckland and estimates the site 'could receive over 500,000 visitors p.a and over 7,000 per day in peak times'.

274. For land-based noise, most of the properties adjacent to the proposed reserve are situated on large, elevated sections, with most of the boundary of the proposed reserve at the base of steep cliffs. These properties, therefore, have a buffer from areas where land-based visitors to the proposed reserve would most likely go. Several of the properties already have a well-used coastal walking track (the Matietie Walk that is adjacent to part of the proposed reserve) edging their land. Information from Auckland Council indicates they would not expect the proposed reserve to create any significant increase in noise that would affect the recreational values of the Owhanake Reserve that is adjacent to a section of the proposed reserve.

275. For marine-based noise, the general area of the proposed reserve is already one of the busiest boating areas in the Hauraki Gulf. The lack of vessel traffic observed in and around existing marine reserves in the Gulf (as shown by recent surveys of underwater noise in Hauraki Gulf[79]) indicates that boating activities may decrease if the marine reserve is established.

276. We consider that it is very unlikely that an increase in visitors to the proposed reserve would create noise levels that would be significantly higher than existing noise levels to which adjacent private properties are currently exposed.

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[78] The group's website describes them as a small group of conservation-minded Waiheke Island residents and landowners who are actively involved in land restoration in the area adjacent to the proposed reserve. They stated they include and represent 24 of the 30 adjacent landowners. https://coastalcustodians.org/.

[79] Kendall, L., 2019. Recreational vessels impacts on marine reserve soundscapes. University of Auckland. https://researchspace.auckland.ac.nz/handle/2292/47357.

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Submissions in support

One submitter (HMMR-773404) who stated they are an adjacent landowner Privacy of natural persons Privacy of natural persons Privacy of natural persons stated that they supported the proposed reserve despite the risk of potential impacts because 'there's a bigger picture at stake', notably that 'Our marine backyard is the equivalent of a clear cut forest that has never been replanted'.

9.1.2 Objections related to other visitor impacts on adjoining land interests

Objections from affected iwi, hapū, or whānau

No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

Three individual objections (HMMR-291622, WSHMMR-201019, WSHMMR-201013) and the objection from Coastal Custodians said the proposed reserve would create significant adverse impacts to adjacent lands and interests due to the visitors it will attract. Coastal Custodians stated that the increased number of visitors would create dangerous road conditions for them and an inability to park on the roads. Individual objections also raised this issue, one stating that 'It seems to be the general wish that this reserve becomes a tourist area which is going to result in increased dangerous traffic flow down Korora Road which is already too narrow to accommodate the Fossil Bay School traffic'. Another stated that they want measures in place 'to ensure that the land owners can have peaceful enjoyment of their properties'. The Coastal Custodians also expressed concerns that unsustainable growth in visitors would lead to damage to the private land adjoining the proposed reserve.

Applicant's response

The Applicant considered that 'future nature-loving marine-reserve inspired visitors are most likely to be interested in the sea and what lies beneath' and, therefore the suggestion that 'visitors drawn to the marine reserve will 'damage' the neighbouring land is unreasonable and even unfair'. They stated that most of the property owners already adjoin existing terrestrial reserves and that, all the adjoining landowners 'purchased their properties in the knowledge that there was a public walkway, Te Ara Hura, running in front of their properties above the coastline which was a condition of the original subdivision'. The Applicant also stated that some residents purchased their property 'after considerable publicity about a possible marine reserve in the general area'.

The Applicant commented that the 'Korora Road properties have significant off road parking'. They described Korora Road as 'a two lane road with room for road side parking' and having 'ample room for more parking if required' but that it was unclear where the extra cars would come from on an island. The Applicant therefore disagreed that the proposed reserve would interfere unduly with any estate or interest in land in or adjoining the proposed reserve and added 'more so when considered in light of the countervailing benefits of the marine reserve on the natural environment and therefore general wellbeing, especially for those living alongside'. They concluded that 'possible negative human impacts which may or may not eventuate can be adequately managed through other mechanisms, eg, level of Council promotion and education, local bylaws, reserve management plans etc'.

Departmental advice

For the reasons set out below, the Department's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed reserve would interfere unduly with any estate or interest in land in or adjoining the proposed reserve.

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283. Korora Road is the only road to access Owhanake Bay (in the middle of the proposed reserve), and where it is expected that most public access to the proposed reserve would occur. Auckland Council advised the Department that Korora Road is currently a very low volume (fewer than 500 vehicles per day) rural-class local road. Its average width is 6.1 m making it too narrow to provide sidewalks or facilitate the safe and efficient two-way flow of heavy vehicles such as buses or provide safe roadside parking (noting it is currently technically legal). Fossil Bay School is halfway down Korora Road, 550 m from the carpark at Owhanake Bay, and has its own internal road for drop-off and pick-up activities. Properties adjacent to the proposed reserve all have reasonable off-road car parking.

284. It is anticipated that a marine reserve would increase vehicle traffic on Korora Road to some extent, but the level of increase is hard to predict. It is also most likely that visitors would primarily access Owhanake Bay via the Matietie Walk from the ferry terminal, from the road (walking, cycling, or driving to a smaller extent as this is an island with limited vehicle numbers) or by public transport[80]. Auckland Council advised that an increase in traffic of regular buses and walkers would require modifications to the road surface and several other mechanisms to facilitate increased vehicle or pedestrian traffic should the need arise (e.g. speed restrictions, pedestrian 'bush-walk style' path, parking bays). Any increase in visitor numbers would likely be gradual (as it will take time for the marine life and ecosystem to respond to protection), allowing time to upgrade the facilities and infrastructure.

285. Coastal Custodians did not provide details of what damage they anticipate occurring to adjoining private land. The Department interpreted it as damage to the walking tracks and potential related impacts to areas close by (in particular private properties adjacent to the walking tracks and the reserves) such as littering and vegetation trampling. The coastal Matietie Walk follows the narrow Matietie Historic Reserve[81], surrounded by private land, and a few formal easements through privately-owned land parcels. It is acknowledged that there would likely be a gradual increase over time in visitor numbers to the area adjacent to the proposed reserve, namely the Matietie Walk and the Owhanake Reserve and that this may result in increase in littering and other disturbance to these areas or onto the adjacent private property. Auckland Council maintains the track and reserves and advised the Department that visitor numbers are monitored and that they would increase maintenance as required. This would mitigate any increase in littering or damage to these public areas, and at least to some extent, the adjoining private property.

286. In conclusion, the Department considers that the proposed reserve would not create detrimental interference with adjacent lands, with the potential exception of road safety if vehicle-based visitor numbers increase significantly. However, we are confident that all potential impacts on road safety (if they eventuate) could be mitigated by road planning modifications (Auckland Council expects to be able to deal with increased road use with the tools at their disposal).

Submissions in support

287. Three submissions in support raised points that are relevant to your decision-making on these objections.

288. An individual submitter (WSHMMR-741397) described how the area where the current adjoining landowners reside used to be a farm, and that the Matietie Historic Reserve where the coastal track now runs was gifted to the Department when the farm was sold and subdivided. They stated: 'The intent of the 'gifting' was twofold: to preserve historic Māori features of this coastal area [...] and to ensure that public access to, and enjoyment of this

[80] Based on local knowledge, DOC Auckland Operations staff advice and Auckland Council advice.

[81] Matietie Historic Reserve adjoins the proposed reserve and covers a coastal strip of land between Matiatia Bay and Owhanake Bay.

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area, would always be available'. They stated that the original owners were determined that the 'public would always have access to the wonderful views and features of this coastal area and its margins' and therefore the proposed reserve would be an excellent complement to this vision. They added that 'Concerns of property owners in the vicinity about the marine reserve proposal are of curious validity, for these people purchased their properties well after the establishment of the Matietie Reserve [...]. They were, of course, well aware of the public nature of the adjacent coastal reserve strip'.

289. Another individual submitter (HMMR-773899) who indicated they live in Owhanake Bay, adjacent to the proposed reserve, stated they considered the potential increase in visitor numbers would be 'outweighed by the educational value of having an accessible marine reserve so close to central Auckland'.

290. Auckland Council stated in their submission that 'The proposal has no anticipated impact on adjacent land uses in relation to the Auckland Council District Plan: Hauraki Gulf Island section or regional provisions of the Auckland Unitary Plan (Operative in Part)'.

9.1.3 Objections relating to impacts on shore fishing for coastal homeowners

Objections from affected iwi, hapū, or whānau

291. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

292. An objection from a non-adjacent landowner raised concerns that the adjacent coastal homeowners would not be able to 'row out and fish from their boat or walk out to a rocky point and catch a couple of snapper' (HMMR-562186) stating that the proposed reserve would take away this right from them.

Applicant's response

293. The Applicant did not provide a response to this matter.

Departmental advice

294. For the reasons set out below, the Department's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed reserve would interfere unduly with any estate or interest in land in or adjoining the proposed reserve.

295. Landowners with property adjacent to the proposed reserve may be affected more directly by its establishment than those living further away. They would need to travel outside the proposed reserve to catch fish, which would be less convenient. However, none of the adjacent landowners raised this issue in their submissions nor indicated that they frequently fish within the area of the proposed reserve. In addition, the area would remain accessible for non-extractive recreational activities.

9.2 Section 5(6)(b) navigation

9.2.1 Objections related to vessel access and safety

Objections from affected iwi, hapū, or whānau

296. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

297. An individual objection (HMMR-562186) and the objection from Coastal Custodians raised the matter that Owhanake Bay is a popular safe overnight anchorage for boats stating that 'it is one of the few harbours on the Waiheke northern coastline that can be a safe shelter in even gale-force winds, particularly easterlies', adding 'even if boats are allowed to anchor, it

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won't be long before potential anchor drag damage to the seabed is raised, made an issue, and boats potentially banned'. Coastal Custodians also raised the issue that the proposed reserve covers a main maritime highway for recreational boats and that 'there is a high potential for accidents with large numbers of recreational boats transiting through increasing numbers of dive boats and divers in the water'. They concluded that for these boating safety reasons, the proposed site is 'surely not the best place for a marine reserve'.

Applicant's response

298. The Applicant did not agree with the matters raised. They stated that there are no restrictions on anchoring in marine reserves and that high-speed boat traffic does not overlap snorkelling depths. They concluded that there will be no adverse impact on existing usage. They also wrote that 'Fishing boat traffic is likely to decrease in the area. Other traffic related to recreational activities experiencing marine life are only expected to increase once the area is showing signs of recovery'.

299. The Applicant stated that if damage due to anchoring was a relevant consideration in the future, there would be solutions to reduce the issue because 'New Zealand is leading the way on anchoring mechanisms with a low impact on the seafloor'. They said the proposed reserve will not represent an undue or adverse impact on navigation or recreational usage. They further stated that 'anchoring is permitted in all New Zealand marine reserves' but noted that there are 'anchoring restrictions within some marine reserves in Fiordland to protect fragile ecosystems. The particularly fragile species that could be damaged by an anchor or its swinging chain present in the Fiordland marine reserves are not present in the proposed marine reserve. The proposed marine reserve will not have undue effect on anchoring and, by extension, boating. The submitter's objection is unfounded. There are no known additional restrictions, than noted above, on anchoring or mooring in any of the existing 44 New Zealand marine reserves – apart from those already in place (for example restrictions on anchoring over underwater cables – as already exists in Owhanake Bay)'.

Departmental advice

300. For the reasons set out below, the Department's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed reserve would unduly interfere with any existing right of navigation.

301. The anchoring of boats within a marine reserve is not prohibited. Regulation 5 of the Marine Reserves Regulations requires damage from anchoring to be kept at the minimum practicable level, while section 23(2) of the Act means that this restriction does not apply in an emergency. The seafloor in Owhanake Bay is fine silty sand and sandy mud. No fragile epifaunal species or biological assemblages (e.g. subtidal seagrass beds, tubeworm reefs, dense horse mussel beds) have been described from this bay. For these reasons, it is unlikely that anchoring would cause more than minimal damage to the proposed reserve.

302. Regarding boating safety, the area covered by the proposed reserve is already heavily used by recreational and commercial vessels. As fishing would be prohibited in the proposed reserve, the Department considers that the overall number of these vessels anchoring or drifting in the offshore areas covered by the proposed reserve would decrease. In time, the number of vessels visiting the site for sightseeing (e.g. glass bottom boats) and recreational diving might increase. This potential increase is not expected to be so great that it would create an undue hazard to maritime navigation.

303. As set out in paragraph 275, the Department considers vessel traffic is more likely to decrease if the proposed reserve were established, and therefore that there would not be a greater risk of boating accidents if the proposed reserve was established.

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9.2.2 Objections related to the difficulty of determining where the marine reserve boundary is

Objections from affected iwi, hapū, or whānau

304. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

305. Three individual objections (HMMR-682531, HMMR-753140, HMMR-773626) expressed concerns that the boundaries of the proposed reserve would be difficult to navigate as they do not align with landmarks, and it would be difficult to know where they are. For example, 'This will make observing the boundaries difficult, leading to inadvertent breaches and creating conflict' or 'three of the corners are GPS points. Wouldn't it make more sense to have it between headlands on Motutapu and Rakino islands?'.

306. Three individual submissions (HMMR-784682, HMMR-773794, HMMR-512099) and Auckland Council supported the proposed reserve but identified similar issues as above.

Applicant's response

307. The Applicant expressed their disagreement with the matter raised because there are many marine reserves and other marine spatial features that require the use of buoys or GPS locations. They stated that 'Modern technology that is easily accessed via cell phone can show exactly where the boundaries are. The applicant recommends the submitter download the Marine Mate https://www.marinemate.co.nz/ app which will identify and alert the submitter to marine reserve areas using GPS. This is particularly useful for fishing on the borders of marine reserves. The cell phone coverage in the proposed area is fine if the submitter would prefer to use an online service or download maps'. The Applicant further stated that signage showing the location of local marine reserves is common and that suggestions of extending the reserve boundaries to Rakino Island and Motutapu to create visual boundaries are not possible because the location of the proposed reserve has already been modified to accommodate navigation concerns.

Departmental advice

308. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would interfere unduly with any existing right of navigation.

309. It is the responsibility of operators of any type of vessel to know where they are at all times. Marine reserve boundaries are depicted on paper and electronic charts, including those used in GPS navigational aids. Nowadays, many recreational vessels, including jet skis and kayaks, are equipped with GPS navigation systems that would show if the vessel was in or outside a marine reserve. The Applicant's response described other technology available to ensure boats can accurately determine their location. It is anticipated that markers would be used to mark the landward boundaries of the proposed reserve, as is done for the existing six marine reserves in the region (noting some of these also have seaward boundary markers). The seaward boundaries would not need to be marked with buoys. We note that navigation is not restricted in a marine reserve and, therefore, only people who want to fish (or carry out other extractive activities) close to a marine reserve must know the exact locations of the boundaries. Such people would presumably have planned to fish there, knowing they would need navigational aids to ensure they do not fish illegally inside the marine reserve. Therefore, we do not consider that the proposed boundaries would cause confusion or adversely affect navigation.

Released under Official Information Act

9.2.3 Objections related to navigational risks

Objections from affected iwi, hapū, or whānau

310. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

311. Nō te rere moana Aotearoa Maritime New Zealand[82] partially supported the proposal. They noted that Orders in Council for marine reserves may contain additional measures but that there was no provision made in the Application for the proposed reserve to include any condition. They requested the inclusion of a condition in the Order in Council to ensure that powers under the Maritime Transport Act 1994, in the event of marine incidents, are maintained. They recommended a similar condition to that of Clause 8 of the Marine Reserve (Kahurangi) Order 2014, noting that the absence of such a clause in any marine reserve order 'should not be interpreted as meaning those powers are not maintained'. They also asked to be notified and given adequate time to comment if any navigational issues raised require additional measures to be added in Order in Council if the proposed reserve is established.

312. One objection (HMMR-562186) raised concerns that buoys will be needed to mark the proposed reserve and will represent a safety issue in this area of high marine traffic. Auckland Council supported the proposed reserve but raised similar concerns if marine buoys are required.

313. An individual objection (WSHMMR-261046) stated that the proposal may cause navigational risks because boats will fish at the edge of the proposed reserve in Matiatia Bay where there is a lot of traffic entering and exiting the bay, including the ferry service. The submission urged to expand the proposed reserve to the south head of Matiatia Bay, so the bay is included, noting that it is currently seldomly used for fishing.

314. Two individual objections (HMMR-773503, HMMR-773578) raised the matter that the proposed reserve would require fishers from Auckland to travel further and would create more congestion in other areas, including in the area between Waiheke Island and Motutapu Island. They argued that this would lead to increased safety risks for these fishers.

Applicant's response

315. The Applicant provided a list of alternative fishing spots in the vicinity of the proposed reserve (see 9.4.4) that they consider demonstrated why Auckland fishers would not need to travel further. The Applicant did not provide a response to the other matters raised.

Departmental advice

316. For the reasons set out below, the Department recommends the addition of a condition in the Order in Council in relation to emergency pollution responses within the proposed reserve and advises that matters raised in these objections do not support a conclusion that declaring the proposed reserve would interfere unduly with any existing right of navigation.

317. In certain emergency situations, vessel users or operators may be required to respond to an emergency oil spill or pollution incident. Emergency action may also be required by the local authority or other central government agencies. The position of the Department is that in such situations, any action would likely be considered a 'reasonable excuse' under section 18I(3) of the Act and/or would not result in the Department exercising its direction to take enforcement action in respect of either section 18I(2) (offence for certain discharges) or section 21(1)(a) (infringement offence for certain discharges).

[82] A Crown entity that is the national regulatory, compliance and response agency for the safety, security and environmental protection of coastal and inland waterways.

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318. 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 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 for the proposed reserve, as per Maritime New Zealand's request (see recommendation (c), 10.1.1).

319. Regarding physical marking of boundaries, section 22 of the Act provides discretion for (but does not require) the Department to mark the boundaries by way of beacons, buoys and such like, where the Director-General considers this necessary. We do not anticipate that the seaward boundaries of the proposed reserve would be marked with buoys. If buoys are required, the Department is required to gain the Secretary for Transport's concurrence to any boundary marking, meaning safety concerns would be fully considered at that point.

320. Regarding safety at the edges of the proposed reserve, vessel operators are responsible to ensure the safety of their vessels and that of other marine users. While fishing along the boundaries of the proposed reserve would likely occur, it is unclear how this would increase danger to marine traffic. Many vessels already fish in the area outside and inside Matiatia Bay; it is part of a popular recreational fishing area in the Hauraki Gulf. The ferry service from Auckland approaches Matiatia Bay from the Motuihe Channel, meaning any vessels fishing along the proposed boundary would be in full view of the ferry operator, and not directly in its path. The ferry must also reduce speed as it enters Matiatia Bay and the fairway extending from the entrance of the bay to the ferry terminal is a 'no anchoring area' under Auckland Council Navigation Bylaw (Specific Areas and Conditions of Use) Control 2021[83]. Also, as stated above in paragraph 275, the Department considers vessel traffic is more likely to decrease if the proposed reserve were established.

321. Regarding the inclusion of Matiatia Bay, the Applicant stated in their response to another matter that Matiatia Bay was purposely excluded from the proposed reserve because it is a popular recreational fishing site, including from the wharf and in the inner bay. This bay also receives a significant amount of vessel traffic (notably ferries) and contains many marine and coastal human-made structures. The Department found no compelling reason for Matiatia Bay to be included in the proposed reserve for safety reasons.

322. There are numerous similarly sheltered alternative fishing spots around Waiheke Island, and along the Auckland mainland and inner Hauraki Gulf islands. All are similar or shorter distances from Auckland. As set out in 9.4.4, the proposed reserve does not cover the most popular fishing spots and there are also numerous more popular fishing spots closer to Auckland than the proposed reserve. In addition, most of the recreational fishing vessels observed around Waiheke Island are at least 5 m in length, including many larger launches and yachts, and can safely travel long distances. Many recreational fishers from Auckland already travel considerable distances offshore to fish in the central and outer Gulf.

323. Therefore, the Department considers that the proposed reserve would not increase any navigational risks.

9.3 Section 5(6)(c) commercial fishing

324. The Department's advice in this section draws from a variety of sources, including commercial fisheries summary data provided by Fisheries New Zealand (see Volume 2, Appendix 23).

[83] https://at.govt.nz/boating-marine/harbour-rules-regulations/#restrictedareas.

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9.3.1 Objections related to impacts on commercial set netting and ring netting

Objections from affected iwi, hapū, or whānau

No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

The combined industry objection from the New Zealand Rock Lobster Industry Council[84], Paua Industry Council[85] and Fisheries Inshore New Zealand[86] stated that 'small volumes of rig, mullet and trevally' are caught by three fishers in the area of the proposed reserve using set nets and ring nets over approximately '20 fishing events in total per year'. They also stated that this area is important to these fisheries during certain times of year and that these fishing methods are low-impact and have negligible effects on the biodiversity of the proposed site. They described the already existing fishing restrictions at the site and concluded that the direct effects of the proposed reserve on commercial fishing would be low. However, they stated that the cumulative effect of the proposed reserve and the proposed set net prohibitions in the '11 High Protection Areas (HPAs), one Seafloor Protection Area (Mokohinau SPA) and two marine reserve extensions in the Hauraki Gulf Marine Park' is likely to have a significant impact on commercial set netters.

Applicant's response

The Applicant noted, like the objection did, that there is relatively little commercial fishing in the proposed area. They pointed out that 'set netting has been opposed by conservationists for many years because of marine mammal entanglements, the possibility of ghost fishing following loss [of nets] and the addition of plastic waste'. They stated that the three targeted species mentioned (rig, mullet and trevally) can be caught elsewhere by other methods. They cited commercial fishery figures presented in the State of our Gulf 2020 report that indicated that set netters took only 8% of the commercial green weight[87] landed catch [from within the Hauraki Gulf Marine Park in the three years prior to its establishment].

Regarding the cumulative impacts, the Applicant stated that 'the Hauraki Gulf has been under the management of MPI, its predecessors and the Fishing Industry using the Fisheries Act and updates since 1986. The deplorable state of the Gulf is such that restoration will require massive efforts. Continuing with the present regime is short sighted and more likely to result in undue consequences.' The Applicant concluded that 'without such protection, generalised depletion and negative effects on sustainability will continue to the detriment of the fishing industry and other users of the Gulf'.

Departmental advice

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

Data provided by Fisheries New Zealand show that seven commercial fishing permit holders landed catch from the area of the proposed reserve between October 2019 and March 2024 (4-5 fishers per year). The landed catch of a given finfish species taken from the proposed reserve area was generally a low proportion Commercial information of the total landings taken across the broader quota management area.

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[84] 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.

[85] The national agency for five commercial stakeholder groups that represent commercial pāua fishery interests.

[86] A commercial fisheries stakeholder organisation.

[87] Unprocessed weight of caught fish.

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Of the three species mentioned in the combined industry objection, rig is the most caught based on weight. For the two main fishers catching rig over this period, the level of catch taken from the area of the proposed reserve was between Commercial information of their total individual catch (across all species) from the quota management area. A third fisher caught rig in one of the fishing years, comprising Commercial of their total catch. One fisher caught a small amount Commercial information of trevally from the area of the proposed reserve in the 2019/20 and 2022/23 fishing years, equating to Commercial information of the fisher's trevally catch from the quota management area, respectively (and another fisher caught Commercial in one fishing year). The Fisheries New Zealand data show that no mullet catch was reported in the area of the proposed reserve over the report period.

Snapper was caught by three fishers over the period of the data provided from the area of the proposed reserve. The maximum amount caught by any one fisher in any of the fishing years is Commercial and this was also the greatest proportion of an individual fisher's total catch of snapper over this time, at Commercial

The two finfish fishers who are likely to be most affected annually caught Commercial information (across the four fishing years) of their total catch, respectively, from the area of the proposed reserve. The annual port price value of the fisher's catch over the four fishing years was between Commercial information for the two fishers, respectively. For both fishers this catch was mostly made up of rig and school shark. While these are not insignificant proportions or value of catch for an individual, we note that this equates to 1.1% or less of the total quota management area catch of rig, and 0.04% or less for school shark, across all years. Rig and school shark are highly mobile and able to be caught over a large area, making the opportunity for that catch to be taken from elsewhere greater than less mobile or habitat-constrained species. We acknowledge, however, that there may be costs associated with moving fishing effort (for example, additional travel costs or reduced catch per unit effort). The Department concludes, therefore, that there is minimal commercial fishing in the area of the proposed reserve and that there would not be undue impacts on commercial fishing.

The general pattern of commercial ring net and set net fishing averaged over the last four fishing years within the area of the proposed reserve and around Waiheke Island is shown in Figure 9-1 and Figure 9-2 respectively (from Volume 2, Appendix 23).

Figure 9-1 indicates that, on average, around one commercial ring net fishing event per year would be affected by the proposed reserve. Across the last four fishing years, commercial set net fishing has occurred in several places within the proposed reserve, with average effort concentrated in the southwest corner (see Figure 9-2).

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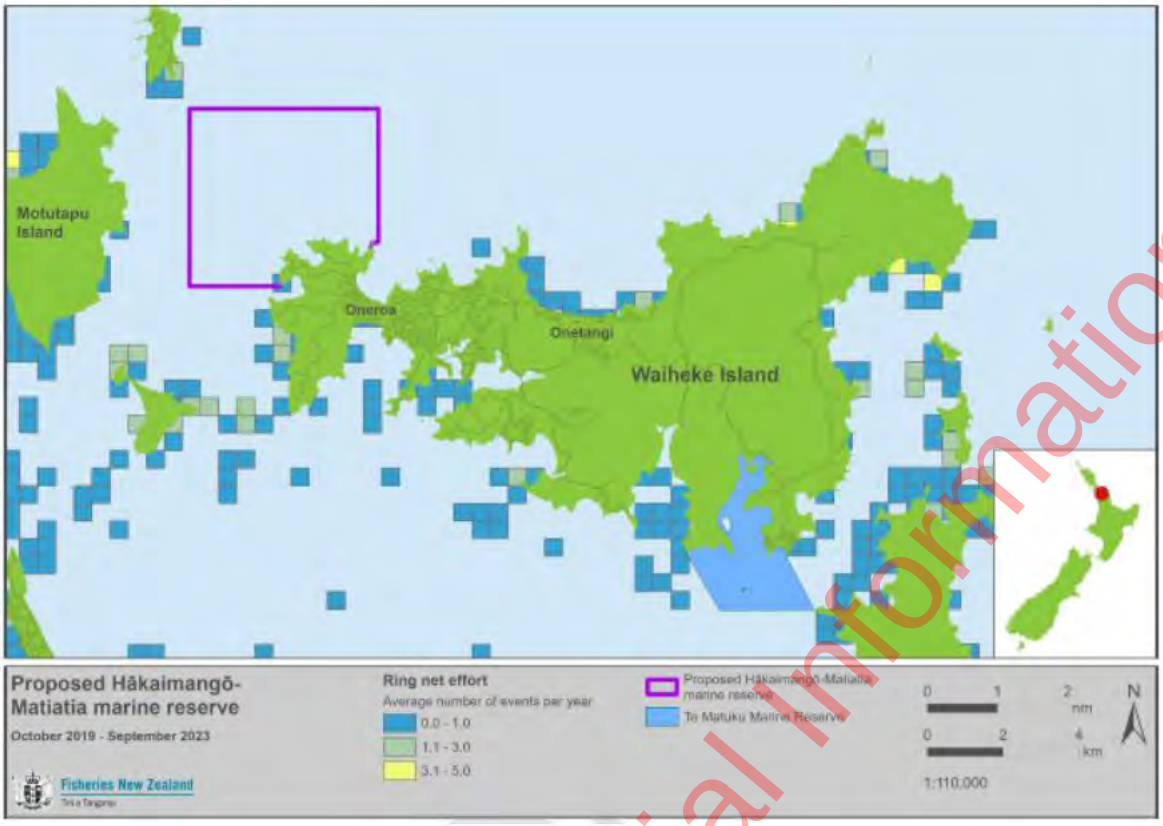

Figure 9-1: The general pattern of commercial ring net fishing effort in the vicinity of the proposed Hākaimangō-Matiatia marine reserve (data derived from electronic reporting 2019-2023 fishing years)

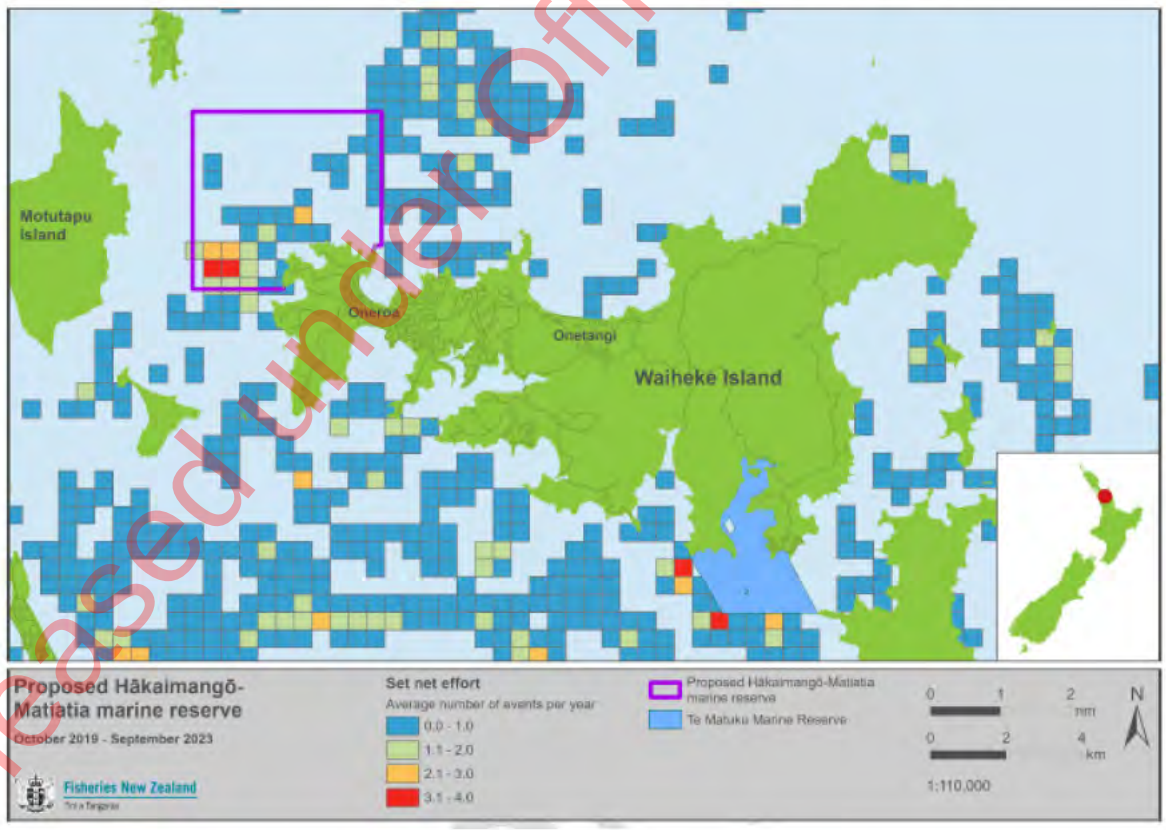

Figure 9-2: The general pattern of commercial set net fishing effort in the vicinity of the proposed Hākaimangō-Matiatia marine reserve (data derived from electronic reporting 2019-2023 fishing years)

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336. Regarding the potential cumulative impacts of the proposed reserve and the Revitalising the Gulf proposals (now in the Bill, see 3.3), the Department notes that fine-scale fisheries information was not available during the development of the Revitalising the Gulf proposals. Electronic catch and position reporting became mandatory for inshore fisheries during 2019, allowing for more spatially accurate data collection. A report describing the expected impact of the Revitalising the Gulf marine protection proposals on commercial fisheries[88] estimates that the affected proportion of the total quota management area catch for rig would be 2.3% for 2019/20 and 1.6% for 2020/21. Adding the proportion of catch expected to be displaced from the area of the proposed reserve for these two fishing years would increase this to 2.99% and 2.6% respectively. In addition, rig is a highly mobile species. A report indicated that rig movements are likely greater than the size of the proposed reserve (approximately 4 km wide) over the period of main catch intensity (August to November) [89]. Therefore, it is likely that a proportion of the rig catch would still be susceptible to capture in areas adjacent to the proposed reserve and other marine protected areas proposed through Revitalising the Gulf. We acknowledge, however, that there may be costs associated with moving fishing effort (for example, additional travel costs or reduced catch per unit effort).

337. The other main species caught in the area of the proposed reserve over the last four years is school shark. The proportion of quota management area catch of school shark from all areas proposed as marine protection under Revitalising the Gulf was 0.6% and 0.8% for the 2019/20 and 2020/21 fishing years respectively.

338. The Department concludes that, even if all suggested proposals in the Bill are implemented, the proposed reserve would not have undue impacts on commercial fisheries as a whole, albeit noting that some individual fishers will be more affected than others. Also, as set out in 3.3, Cabinet has agreed with amendments to the Bill allowing limited ring-net fishing in some proposed areas. There are several further Parliamentary steps, however, before the areas proposed in the Bill have legal status.

9.3.2 Objections related to impacts on commercial sea cucumber harvesting

Objections from affected iwi, hapū, or whānau

339. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

340. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that there was some commercial sea cucumber fishing at the proposed site in previous years but provided no further information of fishing effort or potential impacts of the proposal.

Applicant's response

341. The Applicant did not provide a response to this matter.

Departmental advice

342. For the reasons set out below, the Department's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed reserve would interfere unduly with commercial fishing.

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[88] Leung-Wai, J., Kulwant, R., 2022. Revitalising The Gulf Stage 1 – Impact of The Marine Protection Proposals on Commercial Fishers. Report prepared for the Department of Conservation by Martin Jenkins Associates Ltd, 45p. https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2022/revitalising-the-gulf-2223/revitalise-gulf-commercial-fishers-report.pdf.

[89] Lyon, W., 2015. Tracking the movements of rig sharks. Report prepared for the New Zealand Marine Research Foundation. https://www.nzmrf.org.nz/files/Tracking-the-movements-of-rig-sharks.pdf.

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Data provided by Fisheries New Zealand confirmed that there were two commercial sea cucumber fishers who utilised the area of the proposed reserve between the 2020/21 and 2023/24 fishing years. The general pattern of dive fishing effort, for sea cucumber and kina, in this area is shown in Figure 9-3 (from Volume 2, Appendix 23).

For sea cucumber, the proportion of quota management area catch taken from the area of the proposed reserve was Commercial information Commercial information

This information shows there is a high level of variability in the amount of sea cucumber harvested from this area from year to year. The 2023/24 fishing year showed the biggest potential impact on the total quota management area landings for this species. However, due to the value of sea cucumber being relatively low compared to other species, this level of catch equates to an estimated Commercial /annum of affected revenue (the maximum estimated annual affected revenue from the other three fishing years was Commercial. The Department considers that this level of impact would not amount to undue interference when considered against the expected benefits of the proposed reserve.

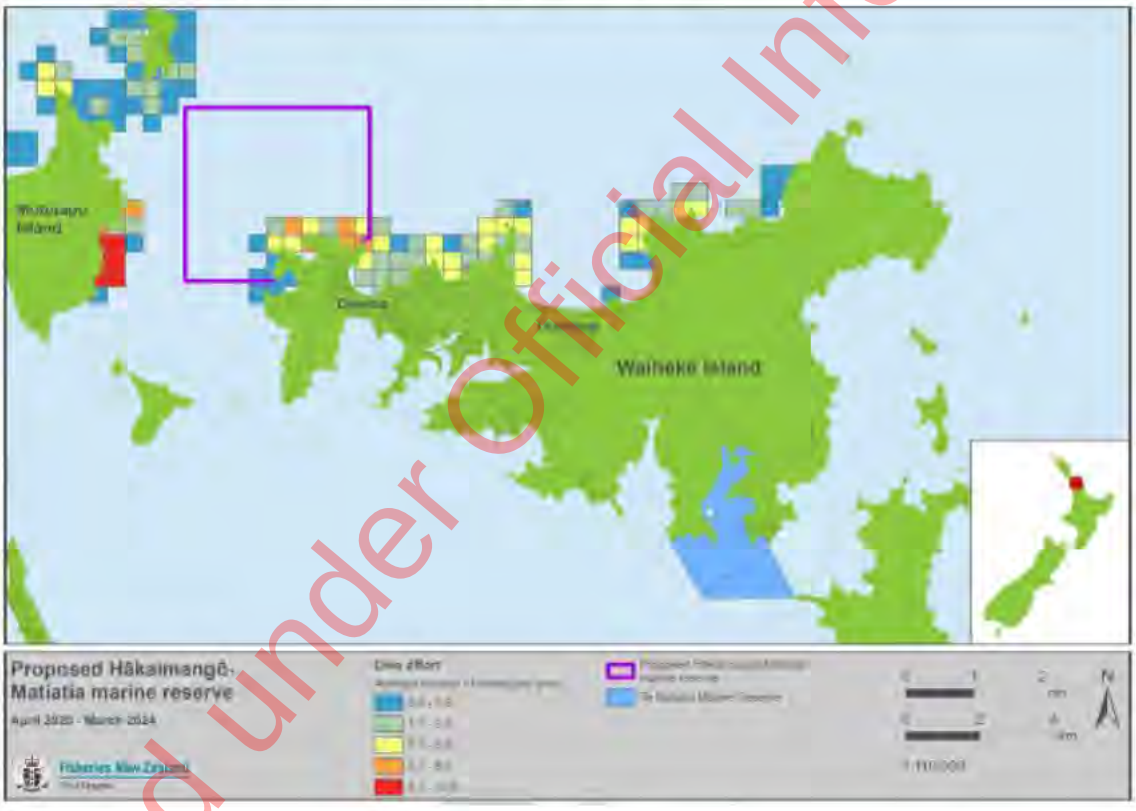

Figure 9-3: The general pattern of commercial dive effort in the vicinity of the proposed Hākaimangō-Matiatia marine reserve (data derived from electronic reporting 2020-2024 fishing years)

9.3.3 Objections related to impacts on commercial fishing from displacement of fishing

Objections from affected iwi, hapū, or whānau

No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that the proposed site

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currently has heavy recreational fishing activity and that the western and northwest areas of the Waiheke coastline experience very high fishing effort, in particular for snapper.

348. They argued that displacement of recreational fishing effort to other areas may interfere with commercial fishing. They also referenced proposed management measures under Revitalising the Gulf (see 3.3), stating that the cumulative impacts of displaced recreational and commercial fishing due to these potential other measures would compound the negative effects on commercial fisheries. They referenced research showing that displacement of fishing effort has a negative effect on abundance of surrounding fish populations and slows down stock rebuilding rates unless the Total Allowable Catch is reduced (noted, in particular, for snapper and rock lobster).

349. Referencing an unpublished PhD thesis[90], they further stated that spill-over effects of marine reserves 'often dissipate at distances greater than 1 km from a reserve border'. They further stated that spatial conflict between fishing sectors could be exacerbated, in particular for rock lobster.

350. They concluded that the proposed reserve, cumulatively with these other prospective measures, 'will jeopardise and be incompatible with sustainable fisheries management' in the Hauraki Gulf. They described how displacement of fishing effort to other areas would 'increase the risk of a cascade of future controls on fishing' (e.g. new mātaitai reserves or temporary closures) and create additional threats for fisheries sustainability. However, they did not provide data to sustain their objection and, instead, recommended that Fisheries New Zealand 'urgently: (a) undertake an analysis of cumulative impacts on set netters of this proposal and the Revitalising the Gulf MPAs; and (b) provide comprehensive information on recreational fishing at the site as soon as possible'.

351. Auckland Council supported the proposed reserve but stated it 'will likely shift this fishing effort to other adjacent areas and an assessment of these impacts requires further consideration by DOC and Fisheries New Zealand'.

Applicant's response

352. The Applicant stated that the proposed reserve would represent approximately 4% of the entire Waiheke coastline and that the combined area of all marine reserves in the Hauraki Gulf would still cover less than 1% of its area. They concluded that the displacement of fishing effort would be 'miniscule'.

353. They pointed out that the references used in the objection are not from New Zealand and include the caveat that they do not address total regional effects. The Applicant stated, therefore, that there are better references available from local data, notably one study[91] that estimated that the commercial fishery is boosted by $NZ 1.49 million per annum from the existence of Cape Rodney-Okakari Point Marine Reserve.

354. They further stated that the same study found that 10.6% of juvenile snapper originating from the marine reserve were found up to 55 km away. The Applicant also stated that 'at 2350 ha the proposed marine reserve is 0.59% of the 4,000 km^2 HGMP [Hauraki Gulf Marine Park] which itself is a tiny fraction of the Snapper 1 Fishery' and that any displacement of fishing activity is 'likely to be very localised and short term', pointing out that the reference used in the objection did not take into account the greater larval dispersal or the increased fecundity of larger adults that marine reserves provide.

[90] Ovando, D., 2018. Of Fish and Men: Using Human Behavior to Improve Marine Resource Management. PhD thesis. University of California Santa Barbara, Santa Barbara California.

[91] Qu, Z., Thrush, S., Parsons, D. & Lewis, N., 2021. Economic valuation of the snapper recruitment effect from a well-established temperate no-take marine reserve on adjacent fisheries. Marine Policy 134:104792. https://doi.org/10.1016/j.marpol.2021.104792.

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355. The Applicant also quoted a study[92] where modelling undertaken inside the Snapper 1 Fishery indicated that protected areas are 18-times more productive. They concluded that this 'will more than compensate for displaced effort and result in substantially higher abundances (better fishing) in the unprotected areas outside the proposed reserve. Any short-term negative impacts from 'displacement' would be more than offset by the countervailing benefits accruing from ecological restoration and species regeneration enabled by the proposed marine reserve'.

Departmental advice

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

357. Existing recreational and commercial fishing effort from the area of the proposed reserve would be displaced to other areas. The concerns raised in objections are that this displacement will adversely affect commercial fishing. They highlight three ways this is expected to happen: displacement will negatively affect fish stock abundance and rebuild rates, the management measures proposed under Revitalising the Gulf will compound the impacts, and spatial conflict between fishing sectors could be exacerbated if the proposed reserve is established.

358. Regarding the first point, to understand how displaced commercial and recreational fishing effort may affect fish stock abundance and rebuild rates, it is useful to understand the level of effort or catch that is expected to be displaced.

359. Commercial fishing data provided by Fisheries New Zealand shows a low level of current commercial fishing activity within the area proposed as a marine reserve (Volume 2, Appendix 23). For each species caught there, except sea cucumber, the proportion of catch from the area of the proposed reserve is [redacted] or less of the total catch across the quota management areas. As set out in 9.3.2, a larger proportion of sea cucumber total catch is taken from the area of the proposed reserve, however this catch does not equate to a high financial value. The Department considers the levels of affected catch are generally low and therefore unlikely to lead to the issues raised regarding stock abundance and rebuild rates.

360. For recreational fishing, Figure 9-4 shows the distribution of effort in 2017/18 based on aerial survey data (noting that the surveys did not include land-based fishing, fishing by local residents from very small craft, or dive-based harvesting). The map shows that recreational fishing does occur in the area of the proposed reserve, but that the majority of vessels visit other more popular recreational fishing areas. Fisheries New Zealand provided the Department with their analyses of the same aerial survey data, which concluded that, for snapper and kahawai, the estimated catch within the proposed reserve was less than 1% of the total estimated catch for the wider Hauraki Gulf for each species. Therefore, although there would be some displacement of recreational fishing effort from the area of the proposed reserve, it would be a relatively minor amount compared to the overall level of recreational fishing effort in the wider Hauraki Gulf or in areas adjacent to the proposed reserve.

[92] Denny, C., Willis, T. & Babcock, R., 2004. Rapid recolonisation of snapper *Pagrus auratus*: Sparidae within an offshore island marine reserve after implementation of no-take status. Marine Ecology Progress Series, 272: 183–190. https://www.int-res.com/articles/meps2004/272/m272p183.pdf.

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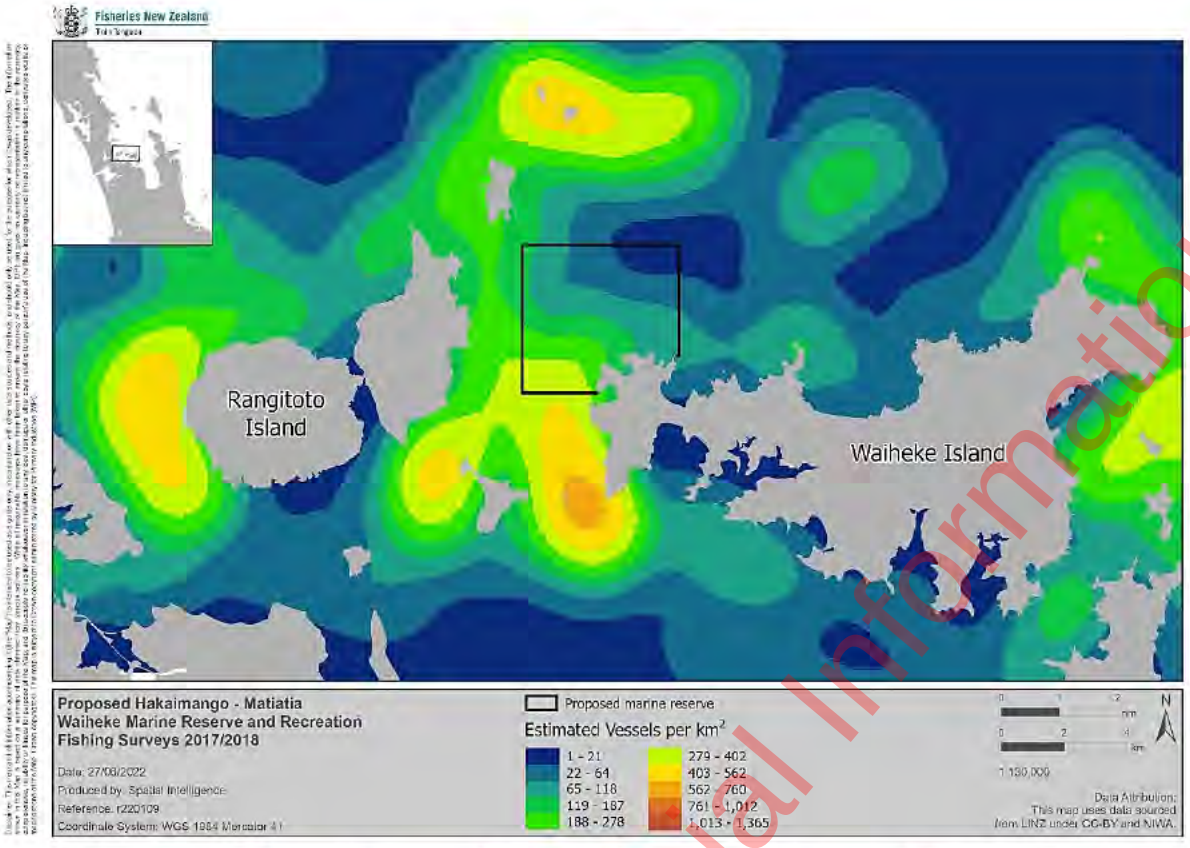

Figure 9-4: Estimated density of recreational fishing vessels in and around the proposed Hākaimangō-Matiatia marine reserve, 2017-2018. Provided by Fisheries New Zealand

The Department, thus, considers it highly unlikely that displacing catch of snapper and other species from either commercial or recreational fisheries will have long-term issues with stock sustainability beyond what is already occurring in the Hauraki Gulf. Long-term, the recovery and maintenance of the ecosystem services that are attributed to marine reserve establishment has the potential to benefit fisheries outside the proposed reserve.

In relation to the potential future cumulative impacts of this proposed reserve and the Revitalising the Gulf proposals, the Department notes that those proposals have no legal status until, and only if, the Bill is passed into law. As set out in paragraphs 336-338, if all proposed marine protection from Revitalising the Gulf is established, the proportion of total commercial catch from these and the proposed reserve is small. The Department considers the estimated impact of the proposed reserve alone (<1% of catch for most targeted species) or in combination with the Revitalising the Gulf proposals, is likely to have minor cumulative effects on fisheries displacement across the Hauraki Gulf.

Regarding the concerns raised relating to spatial conflict between fishing sectors, the amount of fishing activity expected to be displaced is low (as set out above) and therefore would not be expected to significantly change the existing pattern of usage outside the proposed reserve. If the proposed reserve did cause some change in the current pattern of fishing effort, the Department considers that existing strategies to manage conflict between fishers for space would be able to be maintained.

Released under Official Information Act

9.4 Section 5(6)(d) recreational usage

9.4.1 Objections related to the inability to collect beach material

Objections from affected iwi, hapū, or whānau

364. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

365. Objections related to cultural mahinga kai practices that could be considered a subset of collecting material (use of customary management tools and the exercise of customary rights) are addressed separately in 9.5.17 and 9.5.19.

Objections from all other submitters

366. An individual objection (WSHMMR-802378) raised concerns that collection of beach material such as shells for personal enjoyment and kids' play would be illegal on the beach if the marine reserve is established. They stated that a 'child [who] might be 3 or 4 [...] the first thing they are going do is pick up a shell' and questioned the appropriateness of this being unlawful.

367. An individual objection from a Māori submitter (HMMR-794826-Māori) raised the matter that the proposed reserve would prohibit the sourcing of 'raw material such as wood, bone, stone, shell and the likes to fashion into taonga' and ability 'to place such sculptures or other cultural artifacts into the marine space as we desire to be appropriate'.

Applicant's response

368. The Applicant did not provide a response to this matter.

Departmental advice

369. For the reasons set out below, the Department's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed reserve would interfere unduly with or adversely affect any existing usage of the area for recreational purposes.

370. Establishing the proposed reserve would not affect the collection of shells or other beach material above mean high water springs (that is, outside the marine reserve). Playing with sand or shells would also be unaffected. The taking of these materials from a marine reserve is, however, prohibited under section 18I(3)(d) of the Act[93], but prosecutorial discretion remains, and the activity could be considered de minimis or insignificant depending on the circumstances. The compliance function within the Department combines enforcement and education. While something may technically be an offence (such as removing a shell from a marine reserve), the Department would, in the circumstance outlined by the submitter, regard this as a low-level offence and would not likely take any action other than politely explaining why the material should not be taken from the marine reserve. The rest of the coastline of Waiheke Island would remain available for recreational collection of beach material, noting potential restrictions from local bylaws.

371. Regarding the sourcing of materials (wood, shell, stone) to fashion into taonga, the Department notes the area above mean high water springs would not be affected by the presence of a marine reserve, allowing this activity to continue in this area, where this is consistent with local bylaws or other relevant legislation.

[93] 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.

Released under Official Information Act

9.4.2 Objections related to the impacts on dog off leash areas

Objections from affected iwi, hapū, or whānau

372. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

373. Coastal Custodians objected stating that Owhanake Bay, adjacent to the proposed reserve, is one of the few dedicated off-leash dog areas in northern Waiheke Island and assessed it as 'highly valued by dog owners'. They expressed concerns that dogs would be banned if the proposed reserve is approved, or that on-leash rules would apply if the area became a busy entry point for the reserve.

Applicant's response

374. The Applicant provided a photo of dog walkers enjoying the coast along Long Bay-Okura Marine Reserve. They agreed that Owhanake Bay is a popular off-leash dog exercise area and stated that regulations are developed under the Dog Control Act. They stated that 'There has been no suggestion that the present regime will need to change as a consequence of this marine reserve application. In all of the 44 marine reserves established in New Zealand, regulations controlling dogs on the shore have not been changed in any one of them'.

Departmental advice

375. For the reasons set out below, the Department's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed reserve would interfere unduly with or adversely affect any existing usage of the area for recreational purposes.

376. Marine reserves only extend to mean high water springs and therefore the coastline above mean high water springs is not affected. The status of Owhanake Bay Reserve as an off-leash dog area would not be affected if the proposed reserve is established. The concern that dogs may be banned in the future is speculative. There are also other places where dogs can be walked off-leash within a few minutes' drive of the proposed reserve (e.g. Matiatia Bay where there is a year-round off-leash area and in Oneroa where dogs are allowed off leash during the winter months and at restricted times during the summer months). Therefore, the Department does not consider that establishing the proposed reserve would adversely affect off-leash dog walking activities in the area.

9.4.3 Objections related to impacts on non-fishing water-based recreational activities

Objections from affected iwi, hapū, or whānau

377. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

378. Three individual objections (WSHMMR-802270, WSHMMR-802177, WSHMMR-802378) raised concerns that they would not be able to conduct their marine-based recreational activities at the site if the proposed reserve is established. For example, they believe that they would no longer be able to enjoy sea-biscuiting and wakeboarding because they believe these activities would be prohibited in the proposed reserve.

Applicant's response

379. The Applicant did not provide a response to this matter.

Departmental advice

380. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would interfere unduly with or adversely affect any existing usage of the area for recreational purposes.

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381. The Marine Reserve Regulations 1993 (regulation 6) state that a person must not operate a vessel at over 5 knots in a marine reserve if the vessel is within 30 m of another vessel or a person in the water, 200 m of the shore, or 200 m of a vessel flying a dive flag. Sea-biscuiting and wake-boarding generally require a boat to travel faster than 5 knots, therefore, if the proposed reserve were created, these activities would come under those restrictions.

382. Auckland Council rules for the Hauraki Gulf[94] (which already apply to the area of the proposed reserve) contain similar restrictions: the speed of all vessels must be no more than 5 knots when the vessel is within 50 m of any other vessel, within 50 m of any person in the water, within 200 m of the shore, any structure or vessel flying a dive flag. Therefore, recreational activities requiring fast boats, such as those mentioned in the objections, are already subject to very similar restrictions to those which would apply if the proposed reserve were established.

9.4.4 Objections related to recreational fishing opportunities

Objections from affected iwi, hapū, or whānau

383. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

384. Thirty-four individual objections[95], including two from Māori submitters, and the objections of New Zealand Sport Fishing Council[96], Muriwai Sport Fishing Club[97] and Coastal Custodians raised the matter that the proposed reserve would significantly affect their opportunities to fish recreationally at the proposed site. Most objections gave no further details or indication of how much they fish in the area. Several objections indicated that they have been fishing there for several decades (e.g. 'I have been fishing there for over 40 years') or fish there regularly (e.g. 'I currently fish there at least once a week as do many other Waiheke locals', 'I fish here weekly it provides me and my family food for a few meals each week'). They expressed that they would be unhappy if they could no longer fish in the proposed area. Others said it was a prime fishing spot close to Auckland that can be accessed safely from there and stating that the proposed reserve would affect 'a large proportion of area available for small boat owners to access and fish out of Auckland'.

385. One of the individual objections expressed concerns that 'Creating the reserve in this area penalises those who fish off the rocks or in small vessels close to shore (dingys, kayaks)'. One of the individual objections stated that all the fish would go and stay inside the marine reserve to hide and that they and their family would not be able to catch any fish outside the reserve. Others pointed out that recreational fishing benefits their health and well-being. One individual objection stated that the proposed site is special with 'the tidal flows around Owhanake Bay headlands creating one of the best fishing areas close to the main residential area of Waiheke Island' and that it is in close proximity to two of the four trailer boat launching areas on Waiheke Island. One objection from a Māori submitter mentioned the lack of boat ramps around Waiheke Island, adding that with the rising fuel costs, 'getting to fish will be further dashed by this reserve'.

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[94] Auckland Council Ture ā-Rohe Urungi Āhuru Navigation Bylaw 2021 https://at.govt.nz/media/1986434/navigation-bylaw.pdf.

[95] HMMR-722792-Māori, HMMR-773689-Māori, HMMR-191391, HMMR-753053, HMMR-753140, HMMR-773434, HMMR-773464, HMMR-773494, HMMR-773500, HMMR-773503, HMMR-773506, HMMR-773518, HMMR-773533, HMMR-773542, HMMR-773578, HMMR-773620, HMMR-773701, HMMR-773728, HMMR-773749, HMMR-773923, HMMR-773929, HMMR-784670, HMMR-794844, HMMR-692636, HMMR-331826, HMMR-311688, HMMR-261589, WSHMMR-802270, WSHMMR-802177, WSHMMR-802378, WSHMMR-441142, WSHMMR-201013, WSHMMR-201019, WSHMMR-791829.

[96] A not-for-profit organisation founded in 1957 that currently has 54 affiliated member clubs throughout New Zealand. Its mission is to 'promote and develop the sport and recreational activity of fishing for all'.

[97] A local fishing club with boundaries including the Kaipara Harbour and nearby coastal area, not covering Waiheke Island.

Released under Official Information Act

386. Auckland Council supported the proposed reserve but noted 'there is high recreational fishing in the proposed area so there will be an impact on this existing recreational use which is not addressed in the application'.

Applicant's response

387. The Applicant recognised that the proposed reserve would impact recreational fishers but concluded that there are other popular fishing spots nearby that are closer to the existing Waiheke Island boat ramps. They gave the examples of Motuihe Channel and Sergeant's Channel from the Matiatia ramp, Tamaki Strait from Kennedy Point and Wharf Road ramps and the northern beaches from the Sandy Bay ramp. They stated that most of these areas 'stand to benefit from larvae distribution and spill-over effects'. They also stated that 'in planning this marine reserve application the applicant deliberately excluded Matiatia Harbour which was originally included as part of PMR1 (Haggitt 2017) because recreational fishing off the Matiatia wharf is a popular recreational pastime - especially for kids and people who do not own boats'.

388. In addition, the Applicant stated that 'In the Hauraki Gulf Marine Park, recreational fishers have access to more than 93% of the waters. The cable zones do not exclude drift-fishing or trolling and were not designed to increase biodiversity or abundance. Non-fishing recreators who appreciate unimpacted areas have access to only 0.5% of the Gulf' and that 'The Hauraki Gulf is in close proximity to Auckland's rapidly expanding population and the possibility of increased recreational fishing pressure increasing the pressure on an already seriously stressed marine environment. The applicant believes the proposed marine reserve would reduce only a comparatively minimal area of recreational fishing in Waiheke waters. Adjacent areas offer much easier access for subsistence fishing, noting the present rāhui on four seafood species all around the island'.

Departmental advice

389. For the reasons set out below, the Department's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed reserve would interfere unduly with or adversely affect any existing usage of the area for recreational purposes.

390. Our assessment of the amount and location of recreational fishing in the proposed reserve is based on data from an aerial survey in 2017-2018 and associated boat launching ramp creel surveys[98], and local knowledge. The Department recognises that there is limited information available, notably that the aerial surveys only include boat-based recreational fishing, however, Fisheries New Zealand consider these data to be the best available information. The data indicate that the area most heavily used by recreational fishers in the Hauraki Gulf is located immediately south of the proposed reserve, just north of Motuihe Island and Sergent and Motuihe Channels (Figure 9-4).

391. Fisheries New Zealand analysis of the aerial survey data estimates that 0.83% of the total number of recreational fishing boat trips observed throughout the Hauraki Gulf were from the area proposed as a marine reserve. Similarly, their estimates of the proportion of recreational snapper and kahawai catch from the area of the proposed reserve were 0.75% and 0.80%, respectively.

392. There are alternative fishing sites accessible to local boat-based recreational fishers, including near the existing boat ramps, from northwest Waiheke Island. Recreational fishers can fish from almost anywhere around the coast of the island and would also be able to fish

[98] Hartill, B., Rush, N., Armiger, H., & Bian, R., 2019. Aerial-access recreational harvest estimates for snapper, kahawai, red gurnard, tarakihi and trevally in FMA 1 in 2017–18. New Zealand Fisheries Assessment Report, 2019/23. https://www.mpi.govt.nz/dmsdocument/35619-FAR-201923-Aerial-access-recreational-harvest-estimates-for-snapper-kahawai-red-gurnard-tarakihi-and-trevally-in-FMA-1-in-201718.

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along the boundaries of the proposed reserve. The Applicant's response named boat ramps to access fishing areas closer to the ramps than the proposed reserve.

393. The concern that the proposed reserve would affect 'a large proportion of area available for small boat owners to access and fish out of Auckland' is unfounded, based on information on the most popular recreational fishing locations. Boat owners travelling from Auckland to fish in this area pass numerous recognised popular fishing spots before reaching the area of the proposed reserve. Therefore, they would have several alternative fishing sites without requiring further travel.

394. We understand that the proposed reserve currently receives some shore-based recreational fishing, however, there are no data available on where and how much this activity currently takes place. There is a range of suitable and accessible shore-based fishing areas near the proposed reserve that would remain available. While we acknowledge that some members of the public, particularly adjacent landowners and nearby residents, may be more affected by the proposed reserve than others, it would still be possible to carry out this activity in other nearby areas. Therefore, the Department considers that the level of impacts on this recreational usage would not be significant.

395. Fishing along the edge of the proposed reserve would likely become popular over time because large fish would move across the reserve's boundaries. This is a common fishing practice world-wide, including in New Zealand, where no-take areas are designated[99]. Fish inhabiting marine reserves spend differing amounts of time within them depending on their size, mobility, home range size and seasonal behaviour.

396. In conclusion, the Department acknowledges that the area of the proposed reserve currently receives some recreational fishing and that some fishers would need to find alternate areas for fishing, however, we consider that the level of impacts on recreational usage would not be significant.

9.4.5 Objections related to impacts on recreational fishing from displacement of recreational fishing

Objections from affected iwi, hapū, or whānau

397. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

398. Four individual objections (HMMR-763200, HMMR-773503, HMMR-773578, HMMR-773638) and those from New Zealand Sport Fishing Council and Muriwai Sport Fishing Club raised the matter that the proposed reserve would displace recreational fishing effort to other areas, leading to more recreational fishing pressure in other areas and significantly affecting recreational fishing activities in surrounding areas.

Applicant's response

399. The Applicant's response to this matter is like that described for commercial fishing in 9.3.3.

Departmental advice

400. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would interfere unduly with or adversely affect any existing usage of the area for recreational purposes.

[99] Kelly, S., Scott, D. & MacDiarmid, A.B., 2002. The value of a spillover fishery for spiny lobsters around a marine reserve in Northern New Zealand. Coastal Management 30:153–166; and McClanahan, T. R. & Kaunda-Arara, B., 1996. Fishery recovery in a coral-reef marine park and its effect on the adjacent fishery. Conservation Biology 10:1187–1199.

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401. The assessment of the Department regarding the impacts of displacement of fishing effort on commercial fishing (as set out in 9.3.3) also applies here. In summary, there will be some displacement of recreational fishing effort if the proposed reserve is established. However, the proposed site does not cover the current most popular areas for recreational fishing and recreational fishing effort at the site is very low. Therefore, the Department considers the level of displacement would not be large. Moreover, in time, recreational fishers may choose to fish along the edge of the reserve, which would reduce displacement to other areas. It is unlikely that the establishment of the proposed reserve would interfere with recreational fishing due to displacement of fishing effort, or exacerbate the current issues with recreational fish species being overfished in the Hauraki Gulf.

9.4.6 Objections related to impacts on charter fishing operations

Objections from affected iwi, hapū, or whānau

402. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

403. An individual objection from a Māori submitter (HMMR-773689-Māori) stated that charter fishing businesses operate in the proposed area ('thrive in that area') with their targets being 'migratory fish'. Another individual objection from a Māori submitter (HMMR-722792-Māori) mentioned that charter operators would be disadvantaged by the proposed reserve but provided no further details.

Applicant's response

404. The Applicant did not provide a response to this matter.

Departmental advice

405. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would interfere unduly with or adversely affect any existing usage of the area for recreational purposes.

406. The Department has considered these objections under section 5(6)(d) of the Act because charter vessels provide a platform for recreational fishing and other recreational activities.

407. There is very limited information on where fishing charters operate. To the knowledge of the Department, most charter fishing operations target areas in the central Hauraki Gulf or around the mussel farms in the Firth of Thames.

408. Some information on the social role of charter fishing on Waiheke Island is described in a PhD thesis[100] but it did not provide accurate information on where the activities occur.

409. Aerial surveys of recreational fishing effort[101], including charter vessels, indicated that the areas most heavily used by recreational fishers in the Hauraki Gulf are located immediately south of the proposed reserve, north of Motuihe Island and Sergent and Motuihe Channels (Figure 9-4).

[100] Duncan, L., 2011. The social implications of rights-based fisheries management in New Zealand for some Hauraki Gulf fishermen and their communities. Thesis submitted for the degree of PhD at the University of Waikato. https://researchcommons.waikato.ac.nz/bitstream/handle/10289/5318/thesis.pdf?sequence=3&isAllowed=y.

[101] Hartill, B., Rush, N., Armiger, H., & Bian, R., 2019. Aerial-access recreational harvest estimates for snapper, kahawai, red gurnard, tarakihi and trevally in FMA 1 in 2017–18. New Zealand Fisheries Assessment Report, 2019/23. https://www.mpi.govt.nz/dmsdocument/35619-FAR-201923-Aerial-access-recreational-harvest-estimates-for-snapper-kahawai-red-gurnard-tarakihi-and-trevally-in-FMA-1-in-201718.

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410. A study reported that all snapper sampled on charter boats from the Hauraki Gulf were caught between 10-29 m depth[102], which is consistent with the observed distribution of most recreational fishing effort in the Gulf, indicating that charter vessels likely operate in the same areas as recreational fishing vessels. There are many alternative fishing sites accessible to charter vessels from northwest Waiheke Island. We note that the recovery of exploited species within a 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. We, therefore, have no evidence to suggest the proposed marine reserve would significantly impact on charter operations.

9.5 Section 5(6)(e) public interest

9.5.1 Objections related to lack of management of land-based threats by a marine reserve

Objections from affected iwi, hapū, or whānau

411. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

412. An individual objection from a Māori submitter (HMMR-773689- Māori) raised the matter that the 'reserve will be in close proximity to run off'. An individual objection (HMMR-763353) noted that 'land use (including stormwater and wastewater) should be effectively monitored to ensure there is no further degradation of our coastal environment'. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand raised the matter that the existence of an outlet from the sewage treatment plant close to the boundary of the proposed site and septic tanks in the area create 'potential for Matiatia Bay to be negatively affected through nutrient enrichment and nuisance algal blooms in tandem with contamination of shellfish beds and reduced water quality'. They stated that these threats cannot be managed by a marine reserve and therefore that the proposed site cannot be preserved in its natural state as required under the Act.

413. The objections from the New Zealand Sport Fishing Council and Muriwai Sport Fishing Club raised the matter that land-based runoff and pollution cannot be addressed with a marine reserve and that these are a 'key driver' of the issues facing the Hauraki Gulf.

Applicant's response

414. The Applicant did not provide a response to this matter.

Departmental advice

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

416. Auckland Council confirmed that there is one wastewater treatment plant, owned by Watercare Services Limited and operating under a discharge consent, discharging in Matiatia Bay (Figure 9-5). This bay itself is not included in the proposed reserve, with the southern boundary of the proposed site aligning with the northern point of Matiatia Bay.

417. The outlet discharges UV-treated effluent (high quality) into a polishing wetland that then flows into the natural wetland system that drains into Matiatia Bay. The point where the

[102] Holdsworth, J.C.; Boyd, R.O., 2008. Size, condition, and estimated release mortality of snapper (*Pagrus auratus*) caught in the SNA 1 recreational fishery, 2006-07. New Zealand Fisheries Assessment Report 2008/53. https://fs.fish.govt.nz/Page.aspx?pk=113&dk=17186.

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natural wetland drains into Matiatia Bay is more than 500 m from the closest part of the proposed reserve boundary. Therefore, in the unlikely event that untreated wastewater is released by the plant, we consider that dilution and dispersion would reduce the likelihood of contaminants or nutrient enrichment affecting the proposed reserve. Auckland Council confirmed that there are currently no future plans to install any new wastewater treatment systems in or near the proposed site.



Figure 9-5: Map showing location of the Owhanake (Waiheke) Treatment Plant

Auckland Council indicated that there are a few private permitted wastewater assets (septic tanks) in the catchment that were recorded as having a 'minor issue' (i.e. the system is not failing but some issues were noted for the owners to remedy) but that they had limited up-to-date information on many others. Using the locations of all assets listed by Auckland Council as falling within the catchment that drains to the proposed reserve, the Department determined they are all situated over 1 km away from the shores of the proposed reserve. The esplanade reserve would also be likely to mitigate surface contamination in the unlikely event that contaminated water is released. We note that renewal of permits for these assets will require compliance, further mitigating the chance of possible contamination events.

Given the above information, the Department does not consider there to be significant risk of contaminated sewage entering the proposed reserve.

Regarding the lack of management of land-based runoff and pollution, the Department agrees that these and other stressors affect the proposed reserve area. 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 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 in place to manage or mitigate the effect of land-based stressors. These include:

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- Auckland Council's 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[103] 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.

Submissions in support

421. A submission from an individual identified as affected iwi, hapū, or whānau (WSHMMR-791958) stated that the proposed reserve 'also encompasses the whenua it surrounds' because of 'the additional protection it affords coastal wahi tapu, and more stringent protocols on land development activities'. They described their experience of living along the coast of Te Matuku Marine Reserve on Waiheke Island where they 'saw first hand how the local neighbourhood looked after the foreshore, picking up the rubbish that was left behind on the outgoing tide'.

9.5.2 Objections related to the lack of management of sedimentation threats by a marine reserve

Objections from affected iwi, hapū, or whānau

422. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

423. An individual objection from a Māori submitter (HMMR-722792- Māori) expressed concerns that Te Matuku Marine Reserve (that they stated has not provided the expected benefits) demonstrates that marine reserves do not provide biological benefits if sediment threats are not managed. They stated that sedimentation is the greatest problem in the Hauraki Gulf and should be the focus for management.

424. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand raised the same issue. They quoted research stating that turbidity is often very high in the area that includes the proposed site and referred to a Sea Change report from 2021, which stated that, in an area adjacent to the proposed site, sedimentation and runoff pollution are 'major pressures'. The objection argued that these threats cannot be managed by a marine reserve and therefore that the proposed site cannot be preserved in its natural state as required under the Act.

425. Auckland Council supported the proposed reserve but noted that 'there is evidence of sedimentation having an impact within the proposed marine reserve area, but the source of sediments is not well understood'.

Applicant's response

426. The Applicant stated that they share the same concerns about the sedimentation issues raised and noted that local and central governments should do more to address these.

427. The Applicant distinguished Te Matuku Marine Reserve from the proposed reserve, stating that Te Matuku Marine Reserve is 'invaluable as a nursery ground for juvenile hapuku, bass, snapper, and a multitude of other reef species' along with being a feeding ground for many coastal birds that use sandy spits and mud flats. They pointed out that the habitat of Te

[103] Department of Conservation 2010. New Zealand Coastal Policy Statement 2010. Department of Conservation. 30 p.

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Matuku Marine Reserve is substantially different from the proposed reserve because it has virtually no rocky reefs. The Applicant stated that 'in solid contrast, the proposed reserve has [...] considerable areas of rocky reefs, healthy stands of brown kelps, mixed with considerable areas of soft muddy sediments and sponge gardens' and that it will 'carry substantially more reef species than the mangrove nursery grounds of Te Matuku'. They particularly noted that the reef areas in the proposed site are favoured by packhorse crayfish 'which has a very limited distribution when compared with the red crayfish'.

Departmental advice

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

429. The Department notes that the protection afforded by a marine reserve does not immediately mitigate the effects of stressors such as sedimentation (originating from land or marine sources), however, this does not mean that it would be contrary to the public interest to declare the area a marine reserve. As described in 9.5.1 for land-based threats in general, the 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, and other management measures from Auckland Council are in place to manage or mitigate land-based pollution.

430. The Department agrees that terrestrial sedimentation adversely affects many parts of the inner Hauraki Gulf, particularly estuaries, sheltered inlets and almost all of the Firth of Thames. Silt has been observed as a thin drape covering the seafloor within the proposed reserve[104] but there was no report of adverse effects on marine life. There are no available data on levels and sources of suspended sediments and sedimentation in the proposed area, but these are likely to be much lower than in other marine reserves in the Hauraki Gulf due to the local oceanographic conditions (higher currents and greater depths). In addition, the current general land use of the catchment is very low density residential with some small areas of vineyards and significant historical and ongoing coastal revegetation efforts that have likely reduced land-based sedimentation, as described by the Coastal Custodians in their submission.

431. Monitoring data at Long Bay-Okura Marine Reserve showed that excess sedimentation caused by catchment development has likely affected benthic diversity in Okura Estuary, but marine life responded positively to protection in all other habitats, including similar habitats to those at the proposed site[105]. It is, therefore, unlikely that sedimentation would prevent the benefits provided by a marine reserve at the proposed site.

432. Regarding the objection that Te Matuku Marine Reserve has not achieved the desired biological benefits due to sediment, the marine habitats in Te Matuku Marine Reserve (dominated by mangrove forests, intertidal estuarine sand and mud flats) are not comparable to those within the proposed reserve. The waters of Te Matuku Marine Reserve are naturally highly turbid, limiting the ability to undertake routine monitoring. Trends in the abundance of most species are unknown, except for shellfish where sporadic monitoring between 2009-2011 has shown an increase in abundance and size of cockles in the reserve compared to

[104] Haggitt, T. 2016. Ecological survey of Waiheke Island northwest coastline December 2016. Prepared for Auckland Council and Hauraki Gulf Conservation Trust. eCoast, Raglan. https://www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/local-boards/all-local-boards/waiheke-local-board/docswaihekeplans/waiheke-north-western-coastline-ecologoical-survey.pdf and confirmed from observation in 2021 by DOC technical team during site visit.

[105] Kulins, S. 2021. Investigating the ecological effects of Long Bay-Okura Marine Reserve. M.Sc. thesis, Leigh Marine Laboratory, The University of Auckland, New Zealand. 90 p https://researchspace.auckland.ac.nz/bitstream/handle/2292/58820/Kulins-2021-thesis.pdf?sequence=1&isAllowed=y.

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declines or no detectable change in populations at other non-protected sites[106]. This indicates that, even in high sedimentation areas, protection from a marine reserve may provide biodiversity benefits.

9.5.3 Objections related to improving fisheries management

Objections from affected iwi, hapū, or whānau

433. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter. Objections relating to the rāhui and subsequent section 186A temporary closure, over which the proposed reserve would overlap, are set out in 9.5.17 below.

Objections from all other submitters

434. Twenty individual objections[107], including three from Māori submitters, the New Zealand Sport Fishing Council and Muriwai Sport Fishing Club raised that fishing has caused the health of the Hauraki Gulf to decline and that the marine reserve would provide no benefits if commercial fishing continues and/or if recreational fishing management is not improved. The objections wanted improvements to the management of commercial fisheries or its complete ban instead of a marine reserve. Some objections stated that marine reserves would not be needed if the management of commercial fishing was done correctly. For example, 'a better option is to just reduce total take by proportionally adjusting down [...] catch limits and revamping the Quota Management system'.

435. Some objections stated that recreational fishing management also needs to be improved to reduce pressure on marine ecosystems and that a broader approach to managing fishing would provide much greater benefits than a marine reserve. Instead of the marine reserve, some objections also suggested that bottom-trawling (or any other destructive fishing method) be banned. Other suggestions included reviewing recreational catch limits, lowering quotas or changing commercial permits. These points mirror the statements from the New Zealand Sport Fishing Council that 'a marine reserve won't facilitate an increased population around the wider Hauraki Gulf Marine Park, or further afield', and from an individual submitter that 'the overriding issue at hand here: unregulated recreational take across the entire Hauraki Gulf, and extremely poorly managed fisheries under the current QMS [Quota Management System]. One small marine reserve will not fix our fisheries'.

Applicant's response

436. The Applicant agreed with the concerns about commercial fishing which they said, 'should be further regulated in the Hauraki Gulf Marine Park'. They stated that 'recreational fishers have employed advancing technology to more effectively remove the already depleted fish stocks and present a significant ongoing impact'.

437. The Applicant disagreed that the proposed reserve would not be needed if commercial and/or recreational fishery management was improved because: (1) of the fisheries benefits of marine reserves, (2) the recreational catches of snapper, kahawai and kingfish in the Hauraki Gulf significantly exceed the commercial catches, (3) marine reserves provide a reference point for measuring other changes from fishing elsewhere and that marine reserves have more fish than fished areas where stocks are managed at low levels, and (4) marine reserves offer an opportunity for the public to experience our best attempt at an unfished biomass.

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[106] Monitoring Programme annual report 2010-2011 In Hauraki Gulf Forum 26 Sept 2011 Agenda (page 23) https://infocouncil.aucklandcouncil.govt.nz/Open/2011/09/HGF_26092011_AGN.pdf.

[107] HMMR-753050- Māori, HMMR-773584- Māori, HMMR-773689- Māori, HMMR-191391, HMMR-311688, HMMR-331826, HMMR-361913, HMMR-763200, HMMR-763359, HMMR-773503, HMMR-773509, HMMR-773563, HMMR-773590, HMMR-773593, HMMR-773605, HMMR-773713, HMMR-784013, HMMR-794808, WSHMMR-791877, WSHMMR-791880.

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438. The Applicant noted that 'the Fisheries Act, which includes some of the suggested controls, has been in force, in its present form, in the Hauraki Gulf since 1986. Before then the Gulf was a controlled fishery. Decline has continued despite using catch limits, sizes, quotas, gear closures and other restrictions. Clearly, management with the Fisheries Act alone is insufficient to stop the decline let alone restore the marine ecology and species of the Hauraki Gulf'.

Departmental advice

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

440. Marine reserves are not about fisheries management. They are a means to ensure a full range of biodiversity is adequately protected and that ecosystems are more resilient to environmental change. This has a high value for science particularly as a baseline for research and ecological monitoring.

441. Marine reserves are highly effective at restoring the abundance of exploited species within their boundaries. They can also benefit adjacent non-protected areas.[108] Larval production, even from small marine reserves, can be substantially greater than from a much larger surrounding fished area.[109] Larvae can disperse over large areas, providing significant benefits to marine life outside marine reserves. For instance, in the case of snapper, larval dispersion up to 40 km away from marine reserves was a significant contribution to recruitment into the fishery from an increased breeding population. In the case of pāua, which have a shorter larval life span, the benefits of larval spill-over from protected areas is likely to enhance recruitment within a few kilometres of reserve boundaries.

442. The Department considers that the Application overstated the potential positive fishery impacts of the proposed reserve on the wider Hauraki Gulf. The benefits of marine reserves in terms of increasing fishery stocks are most likely to be localised (as per spill-over examples in the paragraph above). Revitalising the Gulf, along with other initiatives led by Fisheries New Zealand, aim to improve the state of the Hauraki Gulf and its fishery. Marine reserves can assist in, and provide complementary benefits to, this wider aim.

443. Overall, while improved fisheries management may achieve some biodiversity outcomes, it would not provide the benefits of the higher level of protection offered by a marine reserve status for its localised area. Therefore, the Department does not consider that the need to improve fishery management in the Hauraki Gulf overall makes it contrary to the public interest to establish the proposed reserve.

9.5.4 Objections questioning the Department's ability to manage a new marine reserve

Objections from affected iwi, hapū, or whānau

444. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

445. Five individual objections (HMMR-773701, WSHMMR-441142, HMMR-722786, HMMR-341847, WSHMMR-801982) and the objections from New Zealand Sport Fishing Council and Muriwai Sport Fishing Club raised concerns that the proposed reserve would require additional resources to manage it adequately, which the Department does not have. Most

[108] Costello, M. J., 2014. Long live Marine Reserves: A review of experiences and benefits. Biological Conservation, 176, 289–296. https://doi.org/10.1016/j.biocon.2014.04.023.

[109] Qu, Z., Thrush, S., Parsons, D. & Lewis, N., 2021. Economic valuation of the snapper recruitment effect from a well-established temperate no-take marine reserve on adjacent fisheries. Marine Policy, 134: 104792.

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noted that the budget shortage of the Department is a regular news item; others noted that current marine reserves, including Te Matuku Marine Reserve, receive little to no investment and lack any management or monitoring.

446. Two individual submissions in support (HMMR-773851, WSHMMR-761520) recommended that a budget and investment into policing will be necessary.

447. Some objections emphasised the need for management investment because the area is populated with very high boat traffic, making enforcement activities difficult. One wrote 'I have not seen a discussion of the potential costing associated with MCS [monitoring, control and surveillance]. Easiness of surveillance and controls need to be a key element in the planning and potential success of an MPA'.

Applicant's response

448. The Applicant stated that they 'agree that DOC is underfunded' noting that 'Their budget is way less than 1% of the tax spend in New Zealand. To make the argument that DOC can't do the work when we don't resource them adequately is a wider issue'. They did not see it as their role to answer for the Department and its operational activities but noted several surveys that have been undertaken in Te Matuku Marine Reserve.

449. The Applicant noted that they 'would certainly encourage more scientific monitoring in this area but whether Te Matuku [Marine] Reserve is being monitored or not is irrelevant as marine life has been unfished there for 17 years' and that it 'is under the watchful eye of nearby residents'. They cited section 12(b) of the Act, that the Director-General 'shall ensure that reserves are available for the purposes of scientific research', 'Not that they must be used for research. To that end the Te Matuku Marine Reserve and all other marine reserves are available for scientific study – forever'.

450. They concluded that the proposed reserve is 'both available and well placed for scientific study which is in effect monitoring. It is anticipated that the public will keep a watchful eye. In addition, it is relatively close to Auckland making it simpler for DOC to manage as necessary'.

Departmental advice

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

452. The Department undertakes management, including compliance and monitoring of marine reserves within the bounds of its resources. The specific planning for monitoring and compliance of any established marine reserve would occur after gazettal. It is envisaged the Department's national monitoring framework will guide management and compliance plans. Applications for marine reserves are not required to contain costing details.

453. Regarding resources for monitoring, it is correct that not all marine reserves are regularly monitored but instead the Department directs resources to prioritised sites (one of which is Te Matuku Marine Reserve) based on its compliance and monitoring frameworks. Te Matuku Marine Reserve has also historically been mapped and baseline survey information gathered. It has also been a site for community shellfish monitoring projects and scientific research on sedimentation rates in Auckland estuaries.

454. Increased staff time has been allocated in recent years to compliance of the marine reserves in the Auckland region, a new national compliance database was created, and infringement notices have been introduced. These new tools in combination with effective education have made compliance work significantly more efficient. For example, Te Matuku Marine Reserve

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had 146 offences officially recorded from 2005 until 2019. Between 2020 until 2023, with the introduction of new rangers, database and infringement notices, there have been 76 processed offences (including 44 infringement notices). These numbers do not cover the additional compliance effort that rangers conduct in the field, where many preventative and advocacy interactions have occurred.

455. Compliance activities can still be successful in areas of high boat traffic. The two channels where Te Matuku Marine Reserve and the proposed reserve are respectively located provide main access routes to the Hauraki Gulf from Auckland, and act as water highways at busy times of the year. Marine reserve rangers successfully patrol Te Matuku Marine Reserve regardless of the high boat traffic. Members of the public also help to report offences to the 'DOC hotline' and educate others. The Department anticipates running an outreach campaign if the reserve is established. Along with signage, this would give members of the public the tools to educate fellow boat users and fishers about the marine reserve.

9.5.5 Objections questioning the management of climate change threats

Objections from affected iwi, hapū, or whānau

456. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

457. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that ocean acidification and climate change (quoted as the most significant threats to marine biodiversity in the Hauraki Gulf) cannot be managed by a marine reserve.

Applicant's response

458. The Applicant did not provide a response to this matter.

Departmental advice

459. For the reasons set out below, the Department's assessment is that the matter raised in this objection does not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

460. It is correct that marine reserves do not directly and in isolation manage climate change threats. However, marine reserves provide the opportunity to determine the ecological effects of climate change, including the identification of emergent resilience signals, free of the confounding influence of other activities, such as fishing. Marine reserves, therefore, provide natural laboratories or control areas to study the marine environment in a less disturbed state. This allows a better understanding of the effects of extractive use, as well as the effects of other pressures such as climate change.[110]

9.5.6 Objections related to impacts on the marine reserves from visitors and boats

Objections from affected iwi, hapū, or whānau

461. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

462. Two objections (WSHMMR-791832, WSHMMR-801982) raised the matter that a high number of visitors in the water of the proposed site is expected and could adversely impact the proposed reserve. They stated that marine reserves are an important source of revenue and tourism jobs for local communities but that the level of in-water human activities may

[110] Micheli, F., Saenz-Arroyo, A., Greenley, A., Vazquez, L., Espinoza Montes, J.A., Rossetto, M. & De Leo, G.A., 2012. Evidence that marine reserves enhance resilience to climatic impacts. PloS one, 7: 40832.

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negatively impact the marine reserve, notably affecting fish behaviours (e.g. aggressiveness, fish feeding). They suggested seasonal closures to visitors could be an appropriate method to improve management.

463. Coastal Custodians and several other objections raised that the proposed site would have high vessel traffic and that the impacts of motorised boats (i.e. noise, pollution, wakes, collision with wildlife) would compromise the biodiversity and scientific benefits of the marine reserve. For example, one objection stated that they would only support it if motorised boats were prohibited in the marine reserve (at the exception of boats for scientific research and monitoring and enforcement activities). They provided scientific evidence to support their argument that noise and engine pollution from boats would alter the natural environment, hence making the activity contrary to the objectives of a marine reserve. They also stated that 'An MPA with a prohibition on motorised access will be a scientifically important milestone for baseline studies in the region' (HMMR-341847).

464. Two submissions in support (WSHMMR-731367, WSHMMR-721310) also recommended that boats should be banned from the proposed reserve.

Applicant's response

465. The Applicant did not provide a response regarding in-water human activities.

466. In relation to boat traffic impacts, the Applicant stated that 'boat traffic could have a minor impact on the recovery potential of the area (along with many other minor factors) but [the Applicant] does not consider it a significant factor'. They agreed that noise pollution affects marine life and that exhaust gases of engines, particularly outboards, are detrimental.

467. The Applicant pointed out that in the paper cited in one of the objections, boat strike of wildlife and sediment disturbance were the major risks due to boats rather than noise and exhaust pollution. They added that 'the rocky coastline and depth at which most of the boat traffic occurs means concerns about erosion due to wake or prop wash are unfounded'. The Applicant stated there are 'no plans to limit power boat access in the marine reserve' and that 'gazetting of a marine reserve will mean reduced fishing boat activity in the reserve and space to allow marine life to regenerate'.

Departmental advice

468. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

469. High visitor use can have adverse environmental effects, and some existing marine reserves have experienced levels of visitor use high enough to impact some biological assemblages (e.g. rocky intertidal assemblages in the Cape Rodney-Okakari Point Marine Reserve). This has, however, not generally been a concern for most marine reserves. The actual number of people visiting marine reserves varies considerably and depends on characteristics such as accessibility, the infrastructure provided, the type of coastline, ambient underwater conditions and the presence of unique or attractive marine life. One reason for the choice of the site was its accessibility. It is expected to receive a high level of visitor use if established.

470. Unauthorised disturbance of any marine life or materials, including fish feeding, is prohibited in marine reserves. Therefore, if future visitor numbers to the proposed reserve are high, management actions may be needed to mitigate the impacts. Section 3(2)(d) of the Act states 'subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the marine life or for the welfare in general of the reserves, the public shall have freedom of access and entry to the reserves, so that they may

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enjoy in full measure the opportunity to study, observe, and record marine life in its natural habitat'.

471. In relation to boat traffic impacts, the Department recognises that chronic disturbance, underwater noise, introduction of invasive species and boat strikes are all potential adverse effects of heavy vessel traffic on wildlife and marine life.

472. Like much of the inner Hauraki Gulf, the area covered by the proposed reserve is subject to high levels of recreational and commercial vessel traffic. However, this varies spatially and temporally. Most of the proposed reserve is outside the main ferry routes to and from Waiheke Island and Great Barrier Island; peak vessel traffic is therefore largely confined to weekends and public holidays. Current use of the inshore area is also most intense in Owhanake Bay, Double U Bay and around Hakaimango Point. For most of the time, a large proportion of the inshore area likely receives low numbers of daily vessel visits.

473. Vessel traffic is high throughout the Hauraki Gulf but has not precluded establishment of the other marine reserves in the region, which have demonstrated biodiversity benefits.

474. While there could be interesting scientific benefits to prohibiting motorised vessels as suggested, this would cause significant disruption to existing users as the area is a major thoroughfare for vessels transiting to and from Auckland and the outer islands and Oneroa.

9.5.7 Objections related to impacts of increased tourism on Waiheke Island

Objections from affected iwi, hapū, or whānau

475. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

476. One individual objection (WSHMMR-201019) and the objection of the Coastal Custodians raised that the proposed reserve would attract many visitors to Waiheke Island which would have negative impacts for the island, making the proposal contrary to the public interest.

477. Two submissions in support (HMMR-732840, HMMR-381928) stated that suitable infrastructure would be needed, and public access would have to be managed as part of planning for the marine reserve (but that it should not prevent its establishment).

478. The Coastal Custodians argued that the island does not have sufficient infrastructure to support the anticipated number of visitors, stating there is 'no existing infrastructure to support this, no toilet facilities, no car parks, inadequate roads, no footpaths, and current coastal tracks are already often neglected by DOC and Auckland Council'. They estimated that there could be an additional 500,000 visitors per year (up to 7,000 per day) to Waiheke Island. They also objected to increased traffic on Korora Road, the expected primary access route, stating that 'an overflow of vehicles will make the road dangerous'.

Applicant's response

479. The Applicant contended that there is no evidence provided that the proposed reserve would attract so many more visitors and that such visitors would be detrimental. They stated that 'the Waiheke Local Board indicated it was unlikely to do this [heavily promote the site for tourism] for the Hākaimangō Matiatia Marine Reserve'. They noted that 'the proposed location is several hundred metres from Waiheke's main passenger wharf, at which are located the most expansive public amenities on Waiheke. The esplanade reserves abutting the proposed marine reserve are well developed and maintained by Auckland Council'.

480. The Applicant did not expect any measurable increase in visitors for some years until the marine ecosystem in this area begins to regenerate. They stated that visitors would access the area 'probably by kayak from nearby Matiatia, or Oneroa Bay, or directly through publicly

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accessible Owhanake Bay. Being entirely accessible by public transport, ferries and buses from the Matiatia ferry terminal at one end, and bus stops at Oneroa village at the other, and by excellent walkways from these, the Hākaimangō Matiatia Marine Reserve will place very little pressure on existing infrastructure'. They also stated that there is 'an existing car park at Owhanake Bay which has ample space to be further developed if necessary on the road reserve and/or the adjacent public reserve land. Korora Road is a two lane road with room for road side parking'.

Departmental advice

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

482. Auckland Council advised the Department that there are approximately 1 million visitors to Waiheke Island each year (equivalent to an average of 2,740 people per day) and that most arrive at the Matiatia ferry terminal but then disperse widely across the island. The Department anticipates that the proposed reserve would increase visitation, but it is hard to predict, and any increase will occur over time (because it will likely take years for the ecological benefits to be visible and attract visitors to enjoy the restored marine life).

483. The Department acknowledges that there is currently a toilet capacity issue during short peak visitor times at Oneroa (largest suburb of Waiheke). Planning is in place to improve infrastructure capacity at the key sites for public access to the proposed reserve (Matiatia Bay through the Matiatia Gateway Plan and at Oneroa). Auckland Council advised that they would monitor visitor numbers over time and look into providing necessary facilities at the proposed site (e.g. Owhanake Reserve), if the need arises. The increase in visitors would be gradual, allowing ferry operators the time to adapt to changing demand. The Department considers any expected gradual increase in visitor numbers to Waiheke Island, if the proposed reserve is established, can be managed positively.

484. The Department acknowledges that an increase in visitor numbers to the area adjacent to the proposed reserve, namely the coastal Matietie Track and the Owhanake Reserve, may result in increased littering and wear and tear on assets such as tracks and picnic amenities. Owhanake Reserve is classified under the Reserves Act 1977 as a recreation reserve. The primary purpose of a recreation reserve is to provide areas for recreation and enjoyment of the public and for protection of the natural environment. Under this classification, 'scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife must be managed and protected to the extent compatible with the principal or primary purpose of the reserve'.

485. Some of the coastal Matiatia Walk crosses the Matietie Historic Reserve, established under the Reserves Act. The primary purpose of an historic reserve is to protect and preserve places, objects, and natural features, and things on or in these, that have historic, archaeological, cultural, educational, and other special interest. Recreational access to historic reserves is a secondary purpose and is compatible, provided the historic features are protected.

486. Therefore, the establishment of the proposed reserve would be compatible with the purpose of Owhanake Reserve, the Matietie Historic Reserve, and the Coastal Walkway and likely enhance the recreation experience they provide. Auckland Council advised that they monitor visitor numbers and that they would increase maintenance as required.

487. In conclusion, the Department anticipates that the number of visitors to the island may increase over time if the reserve were established. For the reasons above we do not consider this would constitute a threat to the island.

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Submissions in support

488. A submitter who identified as a long-time resident in Oneroa stated 'The presence of visitors means that many aspects of the island are better served than they would otherwise be. We get, for example, [...] more frequent public transport, a wider range of activities, better wharves, better walking track maintenance, and better awareness in general of the environment. So an increase in eco-aware tourists will also increase the island's general facilities, its environmental consciousness, and efforts to maintain an environmentally-friendly community. I welcome this opportunity' (HMMR-381928).

9.5.8 Objections questioning the ease of public access to the marine reserve

Objections from affected iwi, hapū, or whānau

489. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

490. Two individual objections (HMMR-462045, HMMR-773623) raised that most of the land adjacent to the proposed reserve is private and that they previously had difficulties accessing the coast there. They concluded that the proposed reserve would not be readily accessible to the public.

Applicant's response

491. The Applicant disagreed with the matter raised in these objections. They stated, 'Convenient public access to the proposed marine reserve, via the existing (approximately 4 km) public walkway, makes this the most accessible area on the whole Waiheke coastline'. They added that the proposed reserve would also be fully accessible to the public from the sea.

Departmental advice

492. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

493. The proposed reserve would have excellent public access from land and sea. The coastal Matietie Walk (that borders the proposed reserve from Matiatia Bay to Owhanake Bay) and the Owhanake Reserve (accessible by road with a car park adjacent to it) are public areas, and it is anticipated they would be the key land-based public access points. Te Ara Hura public track would also give land-based public access to Island Bay. It is correct that Fossil Bay and the small headland between Owhanake Bay and Island Bay have restricted public access from land due to being adjacent to private properties. However, there would be no restrictions to access any part of the proposed reserve from the sea, by boat, kayak or swimming, for example.

9.5.9 Objections questioning the science underpinning the Application

Objections from affected iwi, hapū, or whānau

494. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

495. Three individual objections, including one from a Māori submitter (HMMR-773689-Māori, HMMR-784544, WSHMMR-441142), and those of Coastal Custodians, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council asserted that the Application was not well supported by science or that the science was misused.

496. The above submitters and a further 9 individuals, including one Māori submitter (HMMR-753050-Māori, HMMR-462045, HMMR-562186, HMMR-773542, HMMR-784013, HMMR-

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794808, HMMR-341847, WSHMMR-691241) asserted that the location and characteristics of the proposed site and the protection afforded by marine reserve status would not provide the expected biodiversity and scientific benefits. Three individual submissions in support (WSHMMR-731367, WSHMMR-721310, WSHMMR-761658) also raised these matters.

497. The Coastal Custodians stated that the Waiheke Local Board first advocated for the establishment of a network of six marine protected areas, including the proposed site, in 2016. The Coastal Custodians questioned the validity of the main scientific study[111] underpinning the choice for the location of the proposed reserve. They stated that only four areas around the western end of Waiheke Island were put forward as potential sites (and therefore surveyed) by the Waiheke Local Board and Hauraki Gulf Conservation Trust (who commissioned the study). The Coastal Custodians claimed that the Waiheke Local Board misrepresented the scientific advice and wrongly selected candidate sites. The New Zealand Sport Fishing Council described what they felt was a misuse, in the Application, of this same study that first proposed the area as a marine reserve. They asserted that Auckland Council rejected the proposal and that this 'reinforces the fact this area does not hold any distinctive or unique marine features justifying a marine reserve'. Coastal Custodians referenced an earlier study[112] where three sites were suggested around Waiheke Island as part of a recommendation for a network of marine protected areas during the Sea Change process, and that none included the proposed reserve site.

498. The Coastal Custodians also questioned the validity of the poll survey results that the Applicant used in the Application, notably that there were 'many errors'. They concluded that the Applicant wrongly used the results of this survey because the northwest Waiheke area was mis-labelled, leading to unreliable poll results.

499. The Coastal Custodians raised the matter that the proposed site is near populated areas, and close to the ferry terminal and that, for this reason, it would not provide the biodiversity and scientific benefits required of a marine reserve. They stated, 'The most successful marine reserves in New Zealand are generally located in remote locations that are more difficult to access, while those adjacent to high human impact urban areas tend to perform badly. For example, reef fish assemblage and composition remain generally similar between reserve and non-reserve areas, and lobster abundance remains extremely low after thirty years of protection in the Long Bay-Okura Marine Reserve'.

500. The New Zealand Sport Fishing Council questioned the scientific evidence used in the Application to claim that the area would protect snapper spawning ground because, they stated, the spawning areas of this species were identified in eastern and western areas of the Hauraki Gulf, not in the general area of the proposed site as noted in the Application.

501. The New Zealand Sport Fishing Council and Muriwai Sport Fishing Club raised the matter that marine reserves do not provide benefits for migratory species. They gave the example of Cape Rodney-Okakari Point Marine Reserve where they asserted 'Populations of crayfish in the marine reserve are now similar or lower than crayfish populations outside the marine reserve'. They also stated, 'a case study on a mātaitai placed around Paterson Inlet [Stewart Island] on scallops showed more scallop density in the mātaitai as opposed to the surrounding marine reserve'. One of the individual objections from a Māori submitter also

[111] Haggitt, T., 2016. Waiheke Island Marine Reserve Network – Gaps Analysis and Feasibility Study. A report prepared for Waiheke Local Board and Hauraki Gulf Conservation Trust. September 2016. eCoast. Raglan.

[112] Grace, R., 2014. Towards a Marine Protected Areas Network for the Hauraki Gulf Marine Park. SeaSketch draft MPAs Network, Site Descriptions. For consideration by the Biodiversity and Biosecurity Round Table of the Marine Spatial Planning Process of the Hauraki Gulf Marine Park.

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asserted that the proposed site covers a channel where fish migrate through and that 'the fish will be protected for only a brief time during their migration'.

502. The New Zealand Sport Fishing Council also asserted that some of the scientific references used in the Application to justify the biodiversity benefits of the proposed reserve are not scientifically robust and cannot be used to justify the proposal. For example, they stated that Sala and Giakoumi (2017) used as a reference in the Application is not a peer-reviewed paper or that 'comments such as "biomass of whole fish assemblies in marine reserves is on average: greater than in adjacent unprotected areas" is based on data that is mostly unpublished, and by a single person, rather than a 'meta-analysis' as claimed'.

503. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand also raised the matter that 'All bottom-impacting commercial fishing methods are prohibited at the site and the total volume of commercial harvest is small' and so the proposed reserve would not achieve further biodiversity benefits.

504. The combined industry objection, New Zealand Sport Fishing Council and Muriwai Sport Fishing Club noted that the Application generally did not demonstrate how the proposed reserve would fulfil the purpose of preserving areas for the scientific study of marine life or for the best interests of scientific study or for preservation that is in the national interest.

505. Several objections also expressed concerns that the proposed reserve would not improve the health of the Hauraki Gulf. For example, 'A closure in perpetuity, as proposed with this marine reserve, will not address, or solve the issue of declining marine life populations', and 'It will do nothing to reverse the actual effects that degrade the Hauraki Gulf'.

Applicant's response

506. Regarding the alternative sites and selection process, the Applicant stated that the objections are incorrect. The Applicant states that five areas were selected by the Waiheke Local Board. The Applicant agreed that 'the areas considered were limited by decisions made by the Waiheke Local Board and stated that the process is available on page 12 of the Application. They added that 'The Waiheke Local Board is a democratically elected body, empowered to make funding decisions on behalf of constituents interalia'.

507. Regarding snapper spawning, the Applicant noted that the Application did not claim that the proposed site was a main spawning area but, instead, that it would enhance spawning, adding 'The last study on tāmure snapper egg production in the area was published 24 years ago [...] the proposed marine reserve [...] was poorly sampled. Therefore the importance of the area for tāmure snapper spawning is unknown'.

508. Regarding the scientific references, the Applicant provided evidence that the concerns made by the objections were unfounded. They stated that they contacted the publisher and the author of the paper named in the objection, who both confirmed that the paper was peer reviewed. The author further clarified that the paper used published and unpublished data as indicated in the supplementary online material and that the methods section showed how they conducted the meta-analysis.

509. The Applicant provided no response on the matter of commercial fishing being minimal at the site.

510. In relation to the matter that the proposed reserve is near a populated area, the Applicant disagreed by stating 'The marine reserve is not 'adjacent' to an urban area but to rural Waiheke Island. It is centrally placed in the Hauraki Gulf Marine Park. Apart from Waiheke the nearest neighbouring land is DOC Motuihe, Motutapu, Rangitoto Islands, Rakino Island

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and the Noises. Most of which are conservation islands', and 'Marine reserves that are closer to more populated areas are more accessible and therefore, more in the public interest'.

511. In relation to the matter on migratory fish, the Applicant responded: 'The marine reserve will indirectly benefit highly mobile species by increasing REEF LIFE abundance in the proposed area. A healthy functioning reef ecosystem will be a valuable feeding area for both protected reef species AND seasonal pelagics'. They added, 'The marine reserve application does not intend to protect highly mobile species from the direct effects of fishing' and 'The proposed marine reserve will function as part of a network of marine reserves to support highly mobile species in the Hauraki Gulf Marine Park (HGMP). Waiheke waters used to carry world record 50+ kg kingfish in season, thus gazetting such a no-take reserve will provide for a scientific experiment in finding out if these giant pelagics eventually return'.

512. The Applicant disagreed with the statements that fished species are found in higher abundance outside marine reserves than inside. They stated that the large size of the proposed site was an important design consideration meaning that 'when koura/crayfish leave the reefs as part of their normal lifecycle they will still be protected'.

513. In relation to the matter of scientific studies and national interests, the Applicant wrote 'Those who are familiar with the area above and/or below water are convinced of the beauty, natural features and marine life. In addition, the area is typical of rocky heavily indented coastline in the transition zone between Inner and Outer Gulf. The proposal therefore fulfils more than just the basic purpose of the MRA. This section of the Act covers all aspects of marine habitat - from uniqueness to typicality. The proposed marine reserve area has features which could be seen as unique e.g. extensive underwater rock terraces, fossil bearing rock, and flourishing kelp beds but at the same time of course it has aspects which are typical. University of Auckland already has a research facility, complete with a comprehensive chemistry laboratory, at Goldies Vineyard on Waiheke Island. This could sometime in the future complement the Leigh Marine Laboratory'.

514. The Applicant then referred to a long list of research projects suggested for the proposed reserve, and to many submissions in support that mention scientific opportunities, stating there were 'an additional 113 submissions expressing an interest in the application for research (including mātauranga, and citizen science)'. They further added that the marine reserve would be good for 'comparison also with proposed High Protection Areas which do not yet exist and are considered experimental. These will be subject to negotiation but are planned to include customary fishing. The Hākaimangō-Matiatia no-take reserve and the nearby proposed bespoke Noises High Protection Area would be ideal for comparative research on species recovery & recruitment and comparisons of ecosystem function in a similar marine environment. The proximity of the Te Matuku marine reserve offers comparison of marine life between a protected south facing sheltered mangrove inner Gulf muddy estuarine habitat with a north-facing quasi-Outer Gulf site with a high energy exposed rocky shoreline, comprising a mosaic of reefs, brown kelp forests, sponge gardens and large expanses of sandy seabed. Once species assemblies re-establish it will provide an unprecedented opportunity to study comparative larval dispersal throughout the Hauraki Gulf. We also note widespread aspirations among submitters to study and teach mātauranga in the recovering ecosystem of the marine reserve'.

515. In relation to the matter on the overall Hauraki Gulf benefits, the Applicant said 'Marine reserves provide important buffers for impacts that affect marine life. This marine reserve will make the HGMP more resilient', adding 'The abundance will spillover [...] increasing food supply to the wider area. The proposed marine reserve will function as part of a network of marine reserves to support highly mobile species in the Hauraki Gulf Marine Park'.

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516. The Applicant also noted that they believe 'the long-term benefits of the proposed marine reserve will outweigh any detectable short term losses and provide an important 'fish bank' to buffer the effects of overfishing'.

Departmental advice

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

518. Regarding alternative sites, the Department advises that the Act does not require consideration of alternative sites and that the existence of alternative sites would not preclude approval of an application.

519. Regarding the selection of the site, two marine protected area planning projects[113] identified parts of the proposed site as moderate to high priority for protection. Both projects consistently identified the area immediately south of the proposed reserve as being among the highest priority areas for protection; this area experiences the most recreational fishing pressure in New Zealand. The projects also identified other sites of varying sizes between Waiheke, Motutapu and Rangitoto Islands as priorities for protection. Some of these areas roughly corresponded to the areas investigated by the Waiheke Local Board, or those proposed in the earlier report. Further, the reports mentioned in the objections did not go to Auckland Council's Environment and Community Committee for approval but were only provided as information. The decision by the Committee was that it was not the Council's role to lead work on implementation of these potential marine reserves (this decision was agreed by the Waiheke Local Board).

520. Regarding the poll survey, the Department found no reason to question the competency or validity of the Colmar Brunton (2015) poll. However, the results are now seven years old and attitudes of Waiheke rate payers may have changed. We note that the results of the 2015 poll did not show strong rate payer support for the northwest Waiheke proposal. This proposal included Matiatia Bay (a popular bay for locals and visitors to fish), which was excluded from the current proposed reserve; this may have impacted the results.

521. Regarding the scientific justification for biodiversity benefits, the Application contains relevant scientific references to support the benefits. Moreover, the Department conducted a review of the scientific and grey literature (see Volume 2, Appendix 21) and has described the expected biodiversity benefits in chapter 8.

522. Regarding snapper spawning, the proposed reserve is in an area known to support high densities of adult and juvenile snapper. Snapper spawn throughout the Hauraki Gulf, although the largest spawning aggregations occur north and east of Waiheke Island, and off southwest Great Barrier Island. It is likely that some snapper would spawn within the proposed reserve, while others would migrate temporarily to one or more of the main spawning areas in the central Gulf. As the Applicant's response stated, there was no claim in the Application that the site was an important spawning ground.

523. Regarding the scientific references, the Applicant's response provided the evidence to confirm that the paper mentioned is peer-reviewed and that the argument of the objections is not compelling. The Department confirmed that the paper was published in ICES Journal of Marine Science, which is a peer-reviewed scientific journal covering oceanography and

[113] Jackson, S. E., 2014. Prioritisation of areas in the Hauraki Gulf Marine Park for biodiversity conservation. MSc. thesis in Marine Science, The University of Auckland. https://researchspace.auckland.ac.nz/handle/2292/22783, and Lundquist, C., Tablada, J. & Watson, S., 2020. Evaluation of biodiversity protected by Sea Change Tai Timu Tai Pari – marine protected area proposals. NIWA Client Report No: 2020244HN. National Institute of Water & Atmospheric Research Ltd., Hamilton.

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marine biology. The Application referenced other appropriate scientific literature to support its statements about biodiversity benefits.

524. In relation to objections claiming that commercial fishing is minimal at the proposed site: although the area is not commercially fished with bottom-impacting methods, it is commercially fished and receives heavy recreational fishing pressure. Fishing will, therefore, have altered the abundance and size structure of exploited species and altered trophic processes. Protection with marine reserve status would provide benefits to fish stocks.

525. In relation to the matter that the proposed reserve is near a populated area, the proposed reserve is located adjacent to an urban area but does not share a catchment with that urban area. The surrounding catchment is rural, being largely pastoral farmland, vineyards and small patches of regenerating native shrubland. In any case, the assertion that marine reserves adjacent to urban areas tend to perform badly is overly simplistic. In making this assertion, the objection appears to misinterpret the results of monitoring of Long Bay-Okura Marine Reserve. The results of this monitoring showed a variety of responses that are habitat, time and species dependent. Since establishment of the marine reserve, benthic invertebrate diversity in Okura Estuary has continued to decline.[114] However, the areas of the Long Bay-Okura Marine Reserve outside the estuary and other species within the estuary showed positive protection effects.

526. Regarding fish species, it is correct that it is likely that the proposed reserve would have little or no positive effect on demersal fishes living over soft sediments in the channel. The Application and Applicant's response over-estimated benefits to these species. However, fish are not the only forms of marine life living in the channel. The sediments contain numerous organisms. Epifaunal species found on soft sediments in the channel including sponges, ascidians, small seaweeds and horse mussels would all benefit from the protection.

527. The objections also appear to misinterpret the monitoring results from marine reserves. There is a large body of evidence globally and nationally that marine reserves have significant positive effects on the abundance, size and biomass of exploited species, and increase biodiversity and restore marine habitats to more natural states.[115] A global review of studies on marine reserves[116] found that fish, invertebrates and seaweed had the following average increases inside marine reserves: biomass increased on average by 446%, density increased on average by 166%, animal size increased on average by 28% and species diversity increased on average by 21%. The authors also noted that fished species often showed the most dramatic increases (some had more than 1000% higher biomass or density inside marine reserves).

528. In New Zealand, the ecosystem changes associated with the establishment of Cape Rodney-Okakari Point Marine Reserve have been well documented. Despite the evidence of positive effects of marine reserves, it is not possible to demonstrate or predict what specific effects a new marine reserve will have until it has been established for a suitable period.

529. In relation to the matter of scientific studies and national interest, the area encompassed by the Application qualifies as an area for marine reserve status under section 3(1) of the Act as described in 8.1. The Applicant's response provided a range of other scientific benefits that the Department accepts would likely arise. The accessibility of the proposed reserve and its proximity to research institutions in Auckland and Waikato mean it is highly likely it would

[114] Kulins, S. 2021. Investigating the ecological effects of Long Bay-Okura Marine Reserve. M.Sc. thesis, Leigh Marine Laboratory, The University of Auckland, New Zealand. https://researchspace.auckland.ac.nz/bitstream/handle/2292/58820/Kulins-2021-thesis.pdf?sequence=1&isAllowed=y.

[115] Costello, M. J., 2014. Long live Marine Reserves: A review of experiences and benefits. Biological Conservation, 176: 289–296.

[116] Lester, S. et al., 2009. Biological effects within no-take marine reserves: a global synthesis. Marine Ecology Progress Series, 384: 33–46.

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be used for scientific research and education, including monitoring by community groups and Government agencies.

530. In relation to overall Hauraki Gulf benefits, the purpose of a single marine reserve is not directly the restoration of large surrounding areas such as the entire Hauraki Gulf. Marine reserves replicated geographically to create a network will increase their scientific and ecological value. While not unique, the shallow high current soft sediment habitats between Waiheke Island and Motutapu Island covered by the proposed reserve are underrepresented in existing marine reserves in the Hauraki Gulf Marine Park and the marine protected areas proposed in Revitalising the Gulf (Figure 2-1). The proposed reserve would, therefore, contribute to the existing and proposed marine protected area network within the Hauraki Gulf Marine Park, thus benefiting its overall restoration.

Submissions in support

531. The Hauraki Gulf Forum and the Auckland Conservation Board partially supported the proposed reserve due to concerns about other matters. Both stated, however, that they see this proposal as having a strong scientific basis and that it covers a range of marine habitats making it a good first part of the essential conservation foreshadowed in the Sea Change Plan. The New Zealand Marine Sciences Society Te Hunga Mātai Moana ō Aotearoa[117] stated they 'generally agree with the boundaries, location and size/area of the proposed marine reserve. These straight-line boundaries of the reserve will help to reduce the edge effect' and added 'The coastline of the proposal is approximately 7.2 km in length, slightly longer than the recommended minimum' and therefore they 'consider that the proposed Hākaimangō-Matiatia Marine Reserve is a good start towards developing a Hauraki Gulf MPA network'.

9.5.10 Objections questioning the safety for in-water recreational activities

Objections from affected iwi, hapū, or whānau

532. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

533. Five individual objections (HMMR-773542, HMMR-773572, HMMR-773647, HMMR-773680, HMMR-462045) raised concerns that the proposed reserve is not a safe site for in-water activities such as swimming and snorkelling because of strong currents and high boat traffic. One suggested that there are safer bays such as Enclosure Bay and Hekerua Bay.

Applicant's response

534. The Applicant disagreed with the objections, stating 'The area at Owhanake Bay is eminently suitable for snorkelling and swimming as is Little Island Bay and several small bays to the north of Matiatia Bay', 'To move the marine reserve area further east would clash with the already restricted areas of public access (and much more limited car parking) at Oneroa, Little Oneroa and Sandy Bay Beaches', and 'High speed boat traffic is offshore and does not overlap snorkelling depths'.

Departmental advice

535. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

[117] 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 server, and a website.

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536. While some parts of the proposed reserve may not be highly suitable for swimming or snorkelling, the Department notes that providing for these recreational activities is not a prerequisite for areas to be established under the Act.

537. However, consistent with the view of the Applicant, the Department considers some parts of the proposed reserve are suitable for these activities. Owhanake and Island Bays, and the smaller bays along the headlands are sheltered to semi-sheltered and are out of the main tidal flow in the channel between Motutapu and Waiheke Islands. These areas are already regularly used for recreational activities such as rock pooling, swimming, diving, and kayaking. SCUBA diving at Hakaimango Point has been described as a beginner level dive.[118] Therefore, the Department did not find compelling evidence that the site is unsafe.

9.5.11 Objections questioning the integrity of the public engagement and consultation process

Objections from affected iwi, hapū, or whānau

538. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

Objections from all other submitters

539. The objections of Coastal Custodians, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council expressed concerns that the community was not engaged in the development of the Application and does not support it.

540. The Coastal Custodians asserted that the proposal is contrary to the public interest because 'it is not inclusive of mana whenua or local residents'. They also stated, 'It is clear that a focused process of community engagement is required', noting their view that the current proposal did not include community engagement and that the idea of a marine reserve at the site on Waiheke met strong opposition during the Colmar Bruton 2015 survey. They added that, earlier in 2013, the Applicant had tried to gather support for a marine reserve close to the current proposed site but 'were met with fierce opposition with over 2,600 people signing a petition opposing a marine reserve'. The New Zealand Sport Fishing Council stated, 'It's clear that without community support, this application will not deliver the desired result'.

541. The objections of the Muriwai Sport Fishing Club and Coastal Custodians raised concerns that the public consultation did not follow statutory requirements under the Act. The Muriwai Sport Fishing Club expressed concerns that the public consultation was too short as they wrote it was only from 14 to 20 March 2022 and stated, 'Six days to publicly consult on a marine reserve in perpetuity is unreasonable'. Coastal Custodians argued that the Applicant did not consult with them adequately as adjoining landowners, and that not all adjacent landowners received a notice in writing.

Applicant's response

542. The Applicant expressed strong disagreement with these objections. They stated that they conducted public engagement for several years preceding notification of the Application. They stated that community support is demonstrated with '93% of more than 1300 public submissions relating to this application are in support including an extraordinary 95% of Waiheke sourced submissions'.

543. The Applicant stated that 'No marine reserve application was lodged let alone drafted in 2013. The current proposal has taken into consideration concerns about the location of a possible marine reserve in 2013. The 2013 petition is not relevant in any way to this application'. They further stated that the 2015 Colmar Brunton survey was intended to establish community values and noted that 'this area equally received no opposition from the

[118] Moran, D., Enderby, J. & Enderby, T., 2004. Spot X Diving New Zealand. Spot X Diving New Zealand Ltd., Auckland.

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community in the 2015 Colmar Brunton survey'. They pointed out that the location proposed in the Application was well socialised by the Waiheke Local Board as a potential site for a marine reserve, including with mana whenua.

544. The Applicant disagreed that there was any issue with the public consultation process and that they followed statutory requirements. They stated that they sent a letter to 46 individual residents, posted on 14 May 2021, prior to publishing the notification of the Application in the local newspaper. The letters invited the residents to attend a meeting held locally to discuss the Application. The Applicant stated that the meeting was well-attended but that there was disruption from a small group who claimed the Applicant failed to consult. They noted that the most common concern articulated by residents at the meeting was possible inconvenience from traffic congestion, especially from buses, on Korora Road. The Applicant further noted that 'As a result, the applicant, the Friends of the Hauraki Gulf later formally committed by resolution that, subject to the marine reserve gaining ministerial approval, it would lobby the Waiheke Local Board and Auckland Transport to exclude buses from Korora Road'.

545. The Applicant then stated that, immediately before public notification on 20 January 2022[119], they wrote to every resident in the area (and have described this in one of the appendices of the Application). They stated that for 'the landowners contacted, addresses were obtained from the Auckland Council database, if a landowner was overlooked or a letter went astray, we are unable to confirm one way or the other'. They concluded that 'best endeavours were made to write to all qualifying residents on two separate occasions, both at the very beginning of the process and 10 months later at the end of the pre-notification consultation period and prior to formal public notification' and that the process they followed was agreed with the Department.

Departmental advice

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

547. The Department considers that the 2013 petition opposing the informal proposal for a marine reserve on a nearby site and the 2015 poll provide historic context of the attitudes of Waiheke Island residents to marine reserves at that time. The statutory public consultation for the current proposal provides contemporary views on the current proposal. The Department agrees with the objections that community support would likely improve the effectiveness of the proposed reserve if established. Based on the submissions received, and in line with other established marine reserves, the Department considers that the community would be likely to engage with the reserve and provide support.

548. As set out in 6.7–6.9, the Applicant satisfied the statutory requirements for public and adjoining landowner notification of the Application. The Act does not require further specific consultation with landowners. Landowners can make a submission or objection along with everyone else, during the public consultation period. Regarding the timing of this public consultation, the Department confirms it took place from 20 January to 20 March 2022, not 14-20 March as the objector suggests.

[119] Note, the Applicant incorrectly wrote '20 January 2021' in their Response to objections (page 36, Appendix 9).

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9.5.12 Objections related to amending the marine reserve

Objections from affected iwi, hapū, or whānau

549. Horowhenua ki Tai marae[120] partially supported the proposed reserve, stating the proposal 'doesn't go far enough [...] To have any hope to revive of the "mauri" of the gulf'. They stated that this marine reserve is only 2,350 ha, in a good geographic location but that 'the Gulf is in crisis and some action to help our moana and life within, is better than nothing, but it is a drop in the bucket for what is required' and that if '30% of Waiheke waters were protected under Marine Protected area (MPA)' then there would be efficient progress.

Objections from all other submitters

550. One individual objection (HMMR-572198) and seven individual submitters in partial support, including one Māori submitter (HMMR-773530-Māori, HMMR-361913, HMMR-552162, HMMR-773590, WSHMMR-301049, WSHMMR-331082, WSHMMR-791883) stated they wanted the marine reserve to be larger.

551. Numerous individual submissions in support, including three from Māori submitters (e.g. HMMR-562180-Māori, HMMR-572225-Māori, HMMR-784379-Māori, HMMR-191406, HMMR-201445, HMMR-261595, HMMR-301652, HMMR-391955, HMMR-512099, HMMR-773794, HMMR-784166, HMMR-784682, WSHMMR-791850, WSHMMR-791853, WSHMMR-791934, WSHMMR-791826, WSHMMR-802381) stated that they would have liked the marine reserve to be larger. Auckland Council and Friends of Taputeranga Marine Reserve[121] also supported the proposed reserve but suggested amendments to increase its size. Suggestions included extension of the site to Motutapu and/or Rakino Islands, to encompass the Noises, to cover more or all of the Waiheke Island coastline to gain further ecological benefits or to include Home Bay, specifically, on Motutapu Island to enhance education benefits (the campsite there is used by school groups). The New Zealand Marine Sciences Society supported the proposed reserve, and while they stated their support for a site with a longer coastline and larger size, they 'accepted the rationale put forward by the applicant' regarding the size and location.

552. One submitter objected stating that the proposed reserve will not be efficient because of its 'ineffectually small area' (HMMR-784622). Two individual objections (HMMR-794808, HMMR-784622) questioned the square shape and small size of the proposed reserve and considered that it would not achieve the objectives stated in the Act.

553. Three individual objections (HMMR-562186, HMMR-692636, HMMR-773503) wanted the proposed reserve to be smaller, away from the shoreline, or larger but at a different location that is less used by the public or away from populated areas.

Applicant's response

554. In relation to the matter on the shape and size of the proposal, the Applicant stated that 'The proposed marine reserve, small as it is, would be more than four times larger than the Cape Rodney to Okakari Point (Leigh) Marine Reserve whose remarkable generative capacity considering snapper alone throughout much of the Hauraki Gulf, has been the subject of recent scientific research viz. Qu et al (2021)'.

555. The Applicant stated that 'the proposed 2350 ha reserve, supported by 93% of submissions, will be bigger than any existing marine reserve in the Hauraki Gulf, almost doubling the

[120] The Horowhenua ki Tai marae and its papakainga are situated on the beach at Kennedy Point Reserve on Waiheke Island. Matiatia is the ancestral whenua of Ngāti Horowhenua, their hapū.

[121] An organisation that runs and supports activities to protect, maintain and enhance Taputeranga Marine Reserve and to ensure benefits to the community.

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existing area of protection' and that they received scientific advice that it is of sufficient scale to enable restoration.

Departmental advice

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

557. The Application outlined that the proposed site was backed up by scientific evidence and that some other sites were not included because they would likely cause too great an impact on customary, cultural, recreational or commercial interests. The Department advises that the size and shape of the proposed reserve chosen by the Applicant is scientifically sound. While making the proposed reserve larger could improve the biodiversity or education benefits, it is not a requirement to fulfil the purpose of the proposed reserve under the Act.

558. The Department assessed that the size of the proposed reserve is adequate for its purpose and fulfils best practice in terms of marine protected area design. The proposed reserve is larger (1.4 to 5 times) than each of the existing marine reserves in the Hauraki Gulf. Research and monitoring have demonstrated the effectiveness of these existing reserves, including increases in the size and abundance of exploited species, restoring ecological processes and protecting marine and estuarine habitats.[122] The large size and square shape of the proposed reserve are also optimal for reducing edge effects, known to occur up to 2 km inside boundaries, due to fishing taking place on the boundaries of marine reserves.

559. Overall, the Department acknowledges the various suggestions by submitters for alternative sites but considers that the Applicant used a thorough process based on scientific advice and public input to assess the merits and impacts on users of alternative sites around Waiheke Island. 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.

9.5.13 Objections related to the lack of alignment with the 'Waiheke Marine Project'

Objections from affected iwi, hapū, or whānau

560. Five individual objections (HMMR-752960, HMMR-752972, HMMR-753017, HMMR-682516, HMMR-784622) raised the matter that mana whenua of Waiheke Island have worked together with the local community for several years on the Waiheke Marine Project to make recommendations for active restoration of the moana. They objected to the proposed reserve, each stating 'I am actively engaging with the moana and motu. I want to keep doing this and not be prevented by an imposed marine reserve'.

561. Another stated 'I am very active working in partnership with the Waiheke Marine Project (WMP) to ensure that Ngāti Pāoa ki Waiheke (NPKW) can regenerate our connections with the island and her future.' This submitter also expressed that they feel supported by the Waiheke Marine Project to reconnect and take leadership in the protection and regeneration of the mauri of Waiheke Island.

Objections from all other submitters

562. Two individual objections (HMMR-753050, HMMR-753053) and those from Coastal Custodians, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council, raised

[122] Costello, M. J., 2014. Long live Marine Reserves: A review of experiences and benefits. Biological Conservation, 176: 289–296; Shears, N. & Thomas, H., 2014. Marine reserves in New Zealand: ecological responses to protection and network design. In Austral Ark: The state of wildlife in Australia and New Zealand, pp. 600–623; Shears, N., Kushner, D., Katz, S. & Gaines, S., 2012. Reconciling conflict between the direct and indirect effects of marine reserve protection. Environmental Conservation, 39: 225-236.

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concerns that the proposed reserve would prevent 'people's ability to assist with proactive restoration' with the example of the rock lobster rewilding program as part of the Waiheke Marine Project.

563. Coastal Custodians described an ongoing community initiative where iwi and community groups are working together to develop the 'North-West Waiheke Island Marine Regeneration Plan'. They stated 'It is our view that FOHG [Friends of the Hauraki Gulf – i.e. the Applicant] have completely ignored the existing collaborative processes underway with the Waiheke Marine Project. Our Coastal Custodians group maintains active collaboration with the Waiheke Marine Project, and via WMP [Waiheke Marine Project], Ngāti Pāoa and associated community groups'. The Coastal Custodians consider that 'a more inclusive and holistic pathway towards marine protection for all areas of Waiheke Island is offered through the Waiheke Marine Project'.

Applicant's response

564. The Applicant pointed out that the Waiheke Marine Project chose not to make a submission on the proposed reserve but that 'in a letter to the *Gulf News* dated 10 February 2021, the Steering Committee of the Waiheke Marine Project stated that it 'supports the intention for protection in a marine reserve proposal yet believes... the full suite of management options deserves consideration'.

565. The Applicant also stated that 'Revitalising the Gulf 2021 makes plans to trial localised management approaches to fisheries and conservation through Ahu Moana pilots' but noted that the plan is experimental, and that no-take marine reserves have proven benefits adding, 'We see that the reserve is complementary to any outcomes which the WMP [Waiheke Marine Project] seeks to achieve'.

566. The Applicant stated they have no knowledge of 'this non-statutory plan [the North-West Waiheke Island Marine Regeneration Plan] which presumably covers the coastal and common marine area...', that this plan has not been shared with the Waiheke community and that it would have been 'conceived well after the marine reserve application'.

Departmental advice

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

568. The Waiheke Marine Project is a community-led project, which the Department has actively contributed to in the past. The Department acknowledges their contribution to marine conservation. It is a 'collaborative Mana Whenua and Waiheke Island community partnership project' aiming to 'protect and regenerate Waiheke Island's marine environment through the use of action-based kaitiakitanga'[123]. The development of this Application pre-dates the start of the Waiheke Marine Project by several years. Rather than going straight to legislative options such as marine reserves or management tools under the Fisheries Act, the Waiheke Marine Project has sought to build support for and explore all types of marine management tools, including those based on tikanga and mātauranga Māori. The Waiheke Marine Project has nine strands of work, of which marine protection is one. Their focus is on active management such as removal of kina from urchin barrens (known locally as kelp gardening), a proposal to trial introductions of rock lobster (known as the kōura rewilding program) and participating with the Iwi Trust-led exotic *Caulerpa* control efforts, including undertaking survey dives and collating tracking maps.

[123] Waiheke Marine Project website: https://www.waihekemarineproject.org/.

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569. The Waiheke Marine Project did not submit on the proposed reserve.

570. The establishment of the proposed reserve covers a small proportion of the Waiheke Island coastline. Monitoring activities could form part of a management regime in the proposed reserve in the interests of the conservation, propagation, and preservation of species, and to ensure the protection and well-being of marine life of reserves. Additionally, this could continue to be supported by the active regeneration activities led by the Waiheke Marine Project with mana whenua and the community around the rest of the Waiheke Island coastline such as the introduction of wild-caught or cultured kōura or other management interventions such as 'kelp-gardening'. There would be large areas of equally suitable and accessible rock lobster habitat outside the proposed reserve along the northern and northeastern coastlines of the island.

571. The Waiheke Marine Project does not appear to have carried out active regeneration activities within the proposed reserve area to date. Therefore, their current activities would not be affected by the proposed reserve. However, the potential for future active regenerative activities is acknowledged. The Waiheke Marine Project and mana whenua are actively involved in exotic *Caulerpa* control efforts, and as set out in 10.1, the Department recommends a condition to allow for the rapid control of unwanted organisms[124] within the proposed reserve by the Iwi Trust and others. Exotic *Caulerpa* has not currently been detected inside the proposed reserve area, but the Department acknowledges this is likely.

572. The proposed reserve may provide a useful comparison against areas that do have active management interventions being undertaken, such as those by the Waiheke Marine Project.

573. Furthermore, there are mechanisms to authorise active management interventions within a marine reserve. As outlined in 9.5.20, active regeneration activities consistent with the purpose of a marine reserve could be considered under section 11(b) of the Act (authorisation for scientific purposes) or section 3(3) of the Act (authorisation of 'fishing'). The Department additionally recommends a condition for kina removal from the marine reserve for management purposes, as outlined in 10.1, which will be developed by consulting with the Waiheke Marine Project, and others, on their goals and methods.

574. The Department acknowledges the restrictive or protective nature of a marine reserve may impact the ability of tangata whenua and/or the Waiheke Marine Project to carry out active regeneration practices. However, the opportunity to be involved in efforts related to the conservation, propagation, and preservation of species, and ensure the protection and well-being of marine life of the reserve remains. Such opportunity would be at the Director-General's discretion under the Act

9.5.14 Objections related to the proposal not aligning with Sea Change / Revitalising the Gulf

Objections from affected iwi, hapū, or whānau

575. Four objections (from two individuals (HMMR-753017, HMMR-784622), Ngāti Maru Rūnanga and the Iwi Trust) raised the matter that Sea Change provides for mana whenua co-governance whereas the proposed reserve does not. Ngāti Maru Rūnanga stated that 'Tai Timu Tai Pari was developed in conjunction with Mana Whenua and the government to develop a collaborative and co-governance process for a marine spatial plan for Tikapa Moana' and that 'Tai Timu Tai Pari provides the basis for a Treaty compliant approach to protecting Tikapa Moana'. They added that the actions in response to the Sea Change Plan preclude the use of marine reserves. The Iwi Trust stated that 'The Ministry of Fisheries &

[124] As defined under the Biosecurity Act 1993: 'any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health'.

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DOC through Sea Change have engaged with Ngāti Pāoa and many other iwi about their fisheries plan and marine protection proposals to discuss our views and to identify what our customary practices are. The discussion was to share our views on how these proposals can best respond to the rights, interests, and aspirations of mana whenua as rangatira and kaitiaki. Yet, ironically discussing marine protection with DOC and MPI with this kaupapa and then on the other hand, Ngāti Pāoa mana is undermined through the Hakaimango-Matiatia Marine Reserve process'. The individual submissions expressed similar concerns stating, 'Sea Change are currently consulting with Iwi around High Protected Areas' and 'We want to partnership with the crown in the decision making, we are not a stakeholder'.

Objections from all other submitters

576. One individual objection (HMMR-753053), the objections from Muriwai Sport Fishing Club and the combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand raised the matter that the proposed reserve is not part of the Sea Change Plan or the proposed actions under the Revitalising the Gulf. Overall, the main concern is that the proposal is contrary to the public interest because it will undermine these processes that already have strong iwi and community support. Some objections included the statement that the Revitalising the Gulf strategy does not include marine reserves. The combined fishing industry objection also pointed out that the Hākaimangō-Matiatia site was not identified as a high biodiversity value site during the Sea Change process and that the proposed site is not included in the Revitalising the Gulf outcomes as a potential community-led protection project. The Coastal Custodians stated '... the Government's initiative in Sea Change [... should] be given the opportunity to bring the community together in the spirit of Ahu Moana'. Hauraki Gulf Forum asked that '... the Minister consider whether this application could be considered under foreshadowed new legislation for Revitalising the Gulf which will enable both larger marine protected areas and the maintenance of customary connection'.

577. Auckland Council supported the proposed reserve but questioned '... how the marine reserve connects to other areas proposed as High Protection Areas or the community-led proposal assessed within the Government Response Strategy at the Noises Islands' and recommended that further analyses be conducted to determine this.

578. The Hauraki Gulf Forum and Auckland Conservation Board, who submitted in partial support, suggested that the Application be considered as part of Revitalising the Gulf if it can't be progressed under the Act or if customary connection to the area would be adversely affected.

Applicant's response

579. The Applicant did not provide a response to the specific matter of the lack of co-governance with iwi or inclusion of customary rights. However, some relevant aspects were covered in their response to objections relating to the prevention of exercising kaitiakitanga (9.5.19).

580. Regarding marine reserves being a tool that was excluded from the Sea Change Plan and the Revitalising the Gulf strategy, the Applicant stated that the objections were not accurate. They stated that 'It is correct to say marine reserves were excluded by the small group who ran the Sea Change - *Tai Timu Tai Pari* process, in particular rejecting the inclusion of such proposals from the Waiheke Local Board. However, it should be pointed out the Government's *Revitalising the Gulf* 2021 response to *Sea Change* includes committing to significant expansion of the Cape Rodney to Okakari Point (Leigh) Marine Reserve and the Whanganui a Hei (Cathedral Cove) Marine Reserve. Moreover, the Government's response nowhere precludes marine reserve applications made under existing laws in the common marine and coastal area'. The Applicant pointed out that 'Sea Change 2017 had a marine

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protection goal for Waiheke Island' and quoted this from Sea Change 2017, 'By 2018, identify any gaps in the MPA network with specific attention to Waiheke Island and Aotea – Great Barrier Island. Establish further MPAs if required'. The Applicant stated that their proposal has '... helped fulfil Sea Change recommendations by proposing the marine reserve', that 'Community support for the recommended MPA is clear in the popular support for the proposed marine reserve' and that 'No polling or public consultation has been done on the Sea Change recommendations'.

581. They pointed out that 'Additional protections are required to meet the Hauraki Gulf Forums goal of 30% protection [...], the Government's ambition of 30% protection [...] and global efforts to protect 30% of our ocean by 2030'. The Applicant stated that 'The government has certainly responded to the *Sea Change - Tai Timu Tai Pari* in a measured way but has not accepted some of its more controversial proposals (such as 'Ahu Moana') which it evidently considers unsuitable or impracticable at this point in time'.

Departmental advice

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

583. Regarding the suggestion that the proposal could be considered '... under foreshadowed new legislation for Revitalising the Gulf', we emphasise that the Application for the proposed reserve was received by the Department under the Act. The public notification by the Applicant to submit a marine reserve application is a legal process under the Act and triggered the subsequent statutory steps, which will result in a decision being made by the Minister of Conservation unless the Application is withdrawn. The Department notes the Applicant submitted for the proposed reserve to be included in the Bill during public consultation and Select Committee hearings. The Select Committee did not recommend its inclusion.

584. Regarding the proposal not aligning with Sea Change in terms of co-management and partnership with mana whenua, while it is correct that the Revitalising the Gulf Strategy intends to provide for customary activities within high protection areas, this is an application for a marine reserve under the Act and therefore has a different purpose than areas being proposed under the Bill. Additionally, the Department acknowledges that Sea Change takes a different approach to partnership with mana whenua, the Department considers that, under existing legislation, the proposal would not undermine the Sea Change process progress made in partnership with mana whenua as an outcome.

585. Regarding the lack of protection goals for Waiheke Island in Sea Change, we note that the establishment of marine protected areas, including marine reserves, around Waiheke Island was considered by the Sea Change Stakeholder Working Group and the Biodiversity and Biosecurity Roundtable (one of the sub-groups under the Sea Change project structure), during the development of the Sea Change - Tai Timi Tai Pari Plan. Both groups noted that the Waiheke Local Board was undertaking public consultation on options for additional marine protection around Waiheke Island in the form of marine reserves. The Stakeholder Working Group decided to not influence this process by not recommending any protection for Waiheke Island as part of the Sea Change process.

586. The Department considers the proposed reserve would complement the Revitalising the Gulf proposals to increase marine protection and restoration in the Hauraki Gulf.

587. In conclusion, the Department does not consider that the proposed reserve would undermine or contradict the current spatial planning initiatives of the Sea Change Plan and Revitalising the Gulf strategy.

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Submissions in support

588. The Trust Board (affected iwi, hapū, or whānau) supported the proposed reserve stating that 'Repetative reports on the horrific state of the gulf demands that Ngati Pāoa, as kaitiaki, must support and attach our mana to proposals that align with our aspirations to renourish and revitalise the Hauraki Gulf'.

589. Piritahi Marae[125] (affected iwi, hapū, or whānau) gave a supporting argument that 'Due to the urgent need for ocean protection around Waiheke, and this proposal being a step toward that now, Piritahi Marae supports the proposed Hakaimango-Matiatia (Northwest Waiheke) Marine Reserve'.

590. Two individual submissions in support from affected iwi, hapū, or whānau provided similar arguments: 'Evidence shows that marine reserves are essential to stop our ecosystems from dying' (HMMR-784427) and 'As mana whenua kaitiaki of Tikapa Moana I feel the weight firmly on my shoulders to support the proposed marine reserve' (HMMR-784157).

591. Auckland Council, in their partial support, stated that 'a direction for marine protection around Waiheke was not provided by Sea Change. [...] it did explicitly recognise that there were other community-driven initiatives on the island seeking greater protection in the Hauraki Gulf'.

592. A large proportion of all other submitters in support acknowledged the existence of the Sea Change Plan but expressed their general dissatisfaction with the process and that no tangible protection has yet been established by this process. The following comment represents the general argument of these submitters: 'A non-statutory 'Spatial Plan' for the Hauraki Gulf branded as 'Sea Change - Tai Timu Tai Pari' largely sponsored by Auckland Council was completed in 2017 but unfortunately along with the by-and-large exclusion of the general public, conflicting objectives and interests of various stakeholders' agendas, and the weight and influence of extractive resource users, nothing tangible emerged from this process by way of meaningful marine conservation measures' (HMMR-201493).

9.5.15 Objections related to better alternative management tools

Objections from affected iwi, hapū, or whānau

593. Eight individual objections (HMMR-784100, HMMR-752960, HMMR-752972, HMMR-753017, HMMR-773911, HMMR-784661, HMMR-682516, HMMR-784622) and the objection of the Iwi Trust stated there are better alternative marine management tools in the way of traditional practices and new tools (high protection areas) that allow kaitiakitanga and mātauranga Māori.

594. One individual objection stated that 'mātaitai, taiapure and now ahu moana' along with rāhui and associated section 186A temporary closure, are better management tools that provide for the Treaty. Several objectors expressed similar views, including '... there are more flexible and sophisticated legal mechanisms available that both acknowledge my connection and provide legal protection', '... more inclusive and whakamana our people to regenerate' and '... bring greater benefits not only environmentally, but socially and culturally'. Another individual objection stated that research showed it will take 20 years for species such as rock lobster to return with a marine reserve. They concluded that there is a need for 'active regeneration' but that a marine reserve will prohibit required activities that would 'add' value (e.g. kōura rewilding).

[125] A Ngā Hau e Whā marae situated on the shore of Te Huruhi Bay on Waiheke Island. The whenua the marae stands on was secured in 1976 by tangata whenua and the Waiheke community.

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595. The Iwi Trust stated that there are other management strategies available that '... include and prioritise Indigenous ecological knowledge (mātauranga Māori) and action-oriented management practices (kaitiakitanga)'. They described their strategic integrated plan, 'an action-based protection and management model designed to establish rāhui as the primary tool' to address the state of the Hauraki Gulf environment. Their plan would include establishing the scientific basis of rāhui, and environmental monitoring led by iwi to decide where and when rāhui and other interventions are required 'using rāhui as a credible, bespoke Māori customary marine management tool [...] The central theme of this strategic plan is focused on Rāhui to revive, restore and reignite 'te mauri o te moana'.

596. Te Matuku Marine Reserve was mentioned in several objections as an example to express concerns that marine reserves do not appear to provide benefits.

597. Another submitter (HMMR-784622) objected to the proposed reserve, stating that education of fishermen is required to improve marine conservation instead. They believe behavioural changes are needed through education to protect Tīkapa Moana and to build a 'protection culture' rather than establishing a marine reserve that is only a 'tick box legal process'.

Objections from all other submitters

598. Seven individual objections, including two from Māori submitters (HMMR-794826-Māori, HMMR-753050-Māori, HMMR-753053, HMMR-753140, HMMR-763200, HMMR-773971, WSHMMR-802264), the combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand and the objection of Coastal Custodians, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council opposed the proposed reserve because various other marine management tools exist (ecosystem-based management, tikanga-based tools, adaptive and pro-active management, Fisheries Act controls) that they consider more appropriate.

599. Two submissions in support, including one from a Māori submitter (HMMR-784472-Māori, HMMR-773458) stated that marine reserves are not ideal and suggested alternative tools may be better.

600. Individual objections stated their wish 'that a form of marine papakainga / papa moana be created where mana whenua title is absolute according to article 2 of the Tiriti o Waitangi and United Nations declaration on the right of indigenous peoples section 30 -35 and others as appropriate' or that 'Marine reserves are not ideal. Ecosystem based management led by tangata whenua, mātauranga, rāhui, mātaitai and taiāpure are ideal'. Other objections asserted that better fisheries management or active management (e.g. kina removal) would help more than the marine reserve.

601. The New Zealand Sport Fishing Council stated that 'banning mobile bottom-contact fishing methods such as scallop dredging and bottom trawling from our inshore waters' would benefit the marine environment, better than a marine reserve, and that 'Tikanga-based traditional methods' are a better form of management because 'A marine reserve means taking future goal setting out of the hands of mana whenua and local communities'.

602. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that management tools under the Fisheries Act would be more effective and that recreational fishing should be managed 'through the urgent adoption of targeted controls and restrictions under the Fisheries Act'. Their submission also stated that the proposed reserve will not address the 'excessive recreational catch' and that controls under the Fisheries Act via 'the government's draft Hauraki Gulf Fisheries Plan' would provide better outcomes for the protection of important fish habitats.

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603. The Coastal Custodians used the example of the current Noises Marine Restoration Project to demonstrate an example of a better management approach to marine conservation than marine reserves. They noted that the proposal from The Noises Trust in 2021 made no use of the Marine Reserves Act legislation, instead proposing an area to be declared as a high protection area to be managed by a group of Guardians where extractive or destructive activities would be prohibited but 'enable customary practices and allow whānau, hapu, and iwi to exercise rangatiratanga and kaitiakitanga. There will be provisions to allow scientific investigations and active regeneration and translocations to occur within the protected area'.

604. An objection from a Māori submitter used Te Matuku Marine Reserve as an example of how marine reserves do not appear to provide benefits: '[It] was formed in 2003 but little has been made public about how well it is doing. I have not seen much of a mention of its impact in any of our local papers on Waiheke where our fishermen live, work and raise families' (HMMR-773689-Māori).

605. The same submitter also stated that education of fishermen regarding 'our responsibility' is needed 'before this privilege [of fishing] can possibly be taken away'. They added that the fishing habits have changed in time with new tools and advice easily available. They suggested that 'with consolidated action from all of these groups [iwi, DOC, local user groups etc.] a proposal of regeneration through education rather than restriction will work'. Another individual objection (WSHMMR-791883) also expressed that 'more education could be provided for fishermen to give them a greater understanding of the ocean and hopefully change their attitude towards marine life, encouraging them to make a difference'.

Applicant's response

606. Regarding traditional Māori management tools, the Applicant stated that 'Tikanga-based and more narrowly-focused actions such as temporary conservation rāhui were developed in an epoch of far greater base resilience of all Aotearoa / New Zealand's ecosystems, and during a time of far lower population pressure and technological capability than in 2022' and, therefore, cannot provide the required benefits for ecosystem management at the present time. They argue that a rāhui does not provide the same biodiversity benefits as a marine reserve and that 'Rāhui are a seafood / fisheries management tool - not a tool for conservation or generating scientific baselines'. The applicant disagreed with the suggestion that active management is required, stating that, such methods 'involve human interventions which are experimental, unproven, uncosted and by their own admission relate to a very limited number of species (3 are cited) in a stressed ecosystem of myriad species, and will do nothing at all about tackling the principal problem of overfishing'. The Applicant noted that there is 126 km of the Waiheke coastline and the rest of the Hauraki Gulf available to undertake and test active management.

607. Regarding High Protected Areas, the Applicant stated that 'there is interest from the research community on comparing the benefits of the HPA's [High Protection Areas] with the proposed no-take marine reserve in the context of the new fisheries management plan'. The Applicant stated that they consulted with The Noises Marine Restoration Trust representatives at Auckland Museum and provided them with a draft of the Application before it was submitted. They stated that they 'maintained contact with the Noises Trust ever since and wishes them well in their proposal'. In February [2022], the Applicant met with the recognised tangata whenua of the Noises, Ngāitai ki Tāmaki [and] consulted with them on the Hākaimangō – Matiatia Marine Reserve and opportunities for collaboration for science and mātauranga between the two projects'.

608. Regarding fisheries management, the Applicant expressed disagreement that tools under the Fisheries Act would be more appropriate than a marine reserve, stating 'The Fisheries Act

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has been in effect and updated since 1986. [...] the Gulf, including fish stocks, has been steadily declining. Clearly the Fisheries Act on its own is insufficient to stop, let alone reverse the decline, least of all achieve sustainability'. They then described findings of the 2020 'State of Our Gulf' report, e.g. 'near 100% decline in green-lipped mussels [...] 57% decline in key fish stocks [...] 76% decline in crayfish, 83% decline in snapper, 86% decline in trevally, 86% decline in all shark species'.

609. The Applicant considered that 'if this area becomes a marine reserve it will be available for education in boat skills and theoretical understandings of marine ecology and species behaviour with other equally accessible areas readily available for the practical skills of fishing'. They added that the proposed reserve 'would provide unparalleled snorkelling and fish ID opportunities for kids, getting them in the water to show them the full suite of fish' that should be found around Waiheke Island.

610. The Applicant described more potential educational benefits. The proposed reserve would be the only marine reserve in New Zealand with 4 schools within 5 km of the site, adding that the Fossil Bay School would be the first in New Zealand to be on the waterfront of a marine reserve. They added that 'the reserve will be of great value to the well-established Waiheke High School SeaSports Academy, which is already equipping young people with all the skills of outdoor leadership in a marine environment' and that 'every other school in Auckland will also have public-transport access to the Hākaimangō – Matiatia Marine Reserve'. Other local programs were named (Waiheke Collective, Waiheke Resources Trust and Re-wilding koura) that could benefit 'greatly from the establishment of the marine reserve'. The Applicant cited another educational benefit with the program Experiencing Marine Reserves stating that the proposed reserve would 'offer the closest venue to Auckland for this valuable, nation-wide community and junior school activity, where young people are taken to enjoy marine reserves in a safe and supervised manner'.

611. They stated that 'the future management of the Hauraki Gulf Marine Park will rely on many moana rangers' and that the proposed reserve would provide 'a perfect outdoor classroom for their tuition'.

Departmental advice

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

613. The Department considers there are a range of different tools available for marine protection in New Zealand with different purposes and different benefits. For example, the purpose of a rāhui or temporary closure under the s186A of the Fisheries Act is to recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing - by improving the availability or size (or both) of identified fish species, aquatic life or seaweed, or by recognising a customary fishing practice in that area. The purpose of a marine reserve is to preserve areas for the scientific study of marine life. The Department considers that it is appropriate to apply different tools (including tikanga based or consistent tools) in different situations.

614. For the proposed reserve, submissions favouring the use of rāhui/section 186A temporary closure, mātaitai reserves, and high protection areas noted that they are better able to allow for customary practices. The Department's advice in relation to impacts on customary rights and interests is set out in 9.5.19 and in relation to rāhui in 9.5.17. As set out in 9.5.14, the High Protection Areas proposed under Revitalising the Gulf and not yet legally in effect and are also proposed for a different purpose.

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615. Marine reserves are considered to provide the highest level of marine protection. Globally, fishery management involving partial protection of ecosystems have shown poorer responses compared to 'no-take' reserves.[126] Of the available tools, marine reserves target habitat or whole of ecosystem protection and management for all species. For this reason, alternative tools are not considered to offer the same scale and comprehensiveness that could be achieved by the proposed reserve.

616. For temporary protection, such as rāhui, there is a risk that accumulated biomass of exploited species is rapidly depleted following the lifting of temporary closures. Partial closures, such as mātaitai reserves and taiāpure, typically do not provide for the restoration of ecological processes unless specifically targeted at habitat forming or habitat modifying species. Most research on partially protected areas, including those that allow non-commercial fishing to continue, showed that these have little or no detectable effect on biodiversity or the abundance and sizes of exploited species. One of these studies127 concluded that the current provisions for customary fisheries closures require reform because they do not account for individual species biology and the time required for a biological response.

617. Tikanga-based management tools are efficient for specific purposes and the reflection of kaitiakitanga and allowance for customary rights and practices is more easily seen in these management approaches. However, as marine reserves offer more comprehensive protection of the whole ecosystem on a permanent basis, rāhui, mātaitai reserves and taiāpure are not considered to provide the same level of scientific and biodiversity benefits as marine reserves. Additionally, while the proposed reserve would restrict the use of these tools within the area of the marine reserve, they remain available as complementary tools in other areas, including as providing for customary interests.

618. Regarding 'ecosystem-based' management tools, we assume that the objectors are referring to ecosystem-based management at a Hauraki Gulf-wide scale. We note that the purpose of a marine reserve is not to restore the Hauraki Gulf but to provide an area where the local marine ecosystems can recover to a more natural state. Broader ecosystem-based management tools would complement the protection of a marine reserve to improve the health of the Hauraki Gulf.

619. The Department considers that there is a role for educating fishers. In terms of achieving recovery of a marine ecosystem, however, education alone is unlikely to be as effective as measures that prohibit fishing activities. Education measures can be considered to play an important role alongside marine protection. Establishing the proposed reserve would also provide educational opportunities that would benefit local and regional communities as well as improving awareness of responsible fishing practices in the surrounding areas.

Submissions in support

620. Piritahi Marae (affected iwi, hapū, or whānau) supported the proposal and wrote 'The opportunities for rangatahi and whānau to learn from and interact with the recovering and eventually thriving marine ecosystem of the Hākaimango-Matiatia Marine Reserve will provide educational opportunities to learn about marine habitats, ecosystems and further protection measures. It has the potential to inspire careers in marine biology and conservation'.

[126] Shears, N.T., Babcock, R.C. & Salomon, A.K., 2008. Context-dependent effects of fishing: variation in trophic cascades across environmental gradients. Ecological Applications 18: 1860–1873.

[127] Gnanalingam, G. & Hepburn, C., 2015. Flexibility in temporary fisheries closure legislation is required to maximise success. Marine Policy, 61: 39-45.

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621. An individual Māori submitter (HMMR-672474-Māori) stated that 'the rahui in place is still being breached and only covers select marine habitants, this needs to be partnered with governmental support such as a marine reserve'.

9.5.16 Objections related to the limitations of the Marine Reserves Act

Objections from affected iwi, hapū, or whānau

622. Seven individual objections (HMMR-752960, HMMR-752972, HMMR-753017, HMMR-773911, HMMR-682516, HMMR-784622) and the objections of Ngāti Maru Rūnanga and the Iwi Trust argued that the Act is outdated and that it has no regard to section 4 of the Conservation Act or the Treaty. All objections agreed that urgent management is required to improve the health of the marine environment of the Hauraki Gulf but questioned the limitations and legitimacy of the Act.

623. The Iwi Trust stated that 'Marine reserve legislation is antiquated (obsolete), and at the time it was written, did not have regard for a Māori world view. We have seen it used to that effect in a current situation, which in its process has not approached the kaupapa in a partnership way'. The Iwi Trust also asserted that current marine reserves do not provide an effective conservation tool because they are not monitored well, existing monitoring includes no mātauranga Māori, they do not allow for kaitiakitanga, and because none have provided 'significant increased biodiversity nor increased global understandings of ecological wisdom for present and future generations'.

624. Ngāti Maru Rūnanga stated that 'Treaty settlements are not to be prejudiced by obsolete legislative regimes which is the underpinning for the Proposal. As such, the Proposal offends against the Crown's obligations to Ngāti Maru/Marutūāhu'.

625. An individual objection stated 'marine reserve legislation is not fit for purpose and should not be a first choice' describing the proposal as 'the wrong tool at the wrong time, using the wrong process and does not walk Te Tiriti principles'. This submitter also considered that there 'are more flexible and sophisticated legal mechanisms available that both acknowledge my connection and provide legal protection'. One of the individual submitters also stated, 'At the time this legislation was written, there was no consideration around the principles of Te Tiriti'. For this reason, the submitter considered that 'this marine reserve proposal is based on antiquated legislation'.

Objections from all other submitters

626. Three individual objections, including one from a Māori submitter (HMMR-773689-Māori, HMMR-753053, HMMR-722786), the combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand and the objections of Coastal Custodians, Hauraki Gulf Forum, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council raised the matter that the Act is outdated legislation that is not fit-for-purpose. The Coastal Custodians stated that the Act is 'incompatible with the guiding principles of the Government's Revitalising the Gulf strategy to deliver on the Treaty commitments of recognising mana whenua as rangatira and kaitiaki. The Marine Reserves Act simply has no mechanisms for iwi/hapu/whanau participation in decision-making' and quote a 2016 report from the Ministry for the Environment. The New Zealand Sport Fishing Council argued that the Act must be reviewed, giving the example that 'in the Māori Methods and Indicators for Marine Protection project, there is a clear statement the Act needs to be reviewed to become more relevant to Māori. This statement was made 15 years ago, back in 2007'.

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627. The New Zealand Marine Sciences Society supported the proposed reserve, but noted 'A significant shortcoming is the absence of a specific reference to Te Tiriti ō Waitangi' and they urged the Minister of Conservation 'to finalise the new MPA framework and legislation'.

628. An individual Māori submitter (HMMR-784370-Māori) supported the proposal but stated that the statutory framework is 'outdated and need[s] urgent review'. They also wrote that 'The whole matter needs to be looked at with a wider lens to include [...], MACA claims and a whole raft of recent highly relevant case law'.

629. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand further expressed concerns that it would be contrary to the public interest to 'seek to protect marine biodiversity' through the Act as its purpose is not related to biodiversity protection.

Applicant's response

630. The Applicant stated that, in their opinion, the Act, in conjunction with te Takutai Moana Act, is fit for purpose adding that 'while one can find fault in any legislation, it is hard to fault the Marine Reserves Act for its evident effectiveness in preserving a small but precious part of our marine environment in the national interest'. They pointed out that '73% of submitters identifying as Māori along with the Ngāti Pāoa Trust Board support the application' and that successive New Zealand governments 'have recognised the effectiveness of permanent no-take marine reserves'. They stated, in addition, that 'the Crown is well aware of its obligations under the Treaty of Waitangi and the Conservation Act'.

631. The Applicant also emphasised that the Act is the current law and that the 44 existing marine reserves in New Zealand attest to its efficacy. They referenced scientific papers to demonstrate the effectiveness of marine reserves noting that 'since they were established under the MRA [the Act], it is clearly fit for purpose'.

632. They stated that 'Revitalising the Gulf 2021 makes plans to trial localised management approaches to fisheries and conservation through Ahu Moana pilots' but that it is experimental while no-take marine reserves have proven benefits. They suggested that 'An advisory board for the proposed marine reserve could address any co-management concerns'.

Departmental advice

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

634. While the Act remains current New Zealand legislation, any applications prepared by a third party will require the Department to carry out the steps required under the Act (including the section 4 obligation) and require the Minister of Conservation to reach a decision. Any questions around the suitability of the Act to remain as part of New Zealand's legislation, either in its present form or amended, are for Parliament to consider and are not able to be addressed within this current Application. As noted, The Department considers that it is appropriate to apply different tools (including tikanga-based or consistent tools) in different situations.

635. Objections relating to the possibility for mana whenua involvement in governance are addressed in 9.5.18. Objections relating to ability to exercise kaitiakitanga and mātauranga are addressed in 9.5.19.

636. The key differences between marine reserves and rāhui, mātaitai reserves, taiāpure and high protection areas, as understood from the objections raised by affected iwi, hapū, and whānau,

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is the allowance for customary practices and involvement of mana whenua. Generally, existing marine reserves have been implemented as 'no take' by default, however, the Act does not rule out fishing entirely. Section 3(3) contemplates that non-commercial fishing may be authorised by Gazette Notice. Section 3(4) contemplates that fishing may be allowed by way of condition in the Order in Council establishing a reserve. In either case, the activity would need to be consistent with the purpose of the Act.

637. Objections from affected iwi, hapū, and whānau reflect their view that the Act is 'not a first choice' and is less progressive, flexible and sophisticated compared with other available marine protection mechanisms (e.g. rāhui, mātaitai reserves, taiāpure and High Protection Areas), which more explicitly reflect Te Tiriti and provide for the customary practices and involvement of mana whenua. The Department acknowledges these objections; however, the Act is subject to section 4 of the Conservation Act and so the Department will interpret and administer the Act so as to give effect to the principles of the Treaty.

638. Under the Act, marine reserves are created 'for the purpose of preserving, as marine reserves for the scientific study of marine life…' [certain areas] and they shall be administered to 'be preserved as far as possible in their natural state' and 'marine life of the reserves shall as far as possible be protected and preserved'. The Department considers that an interpretation of 'scientific study' that incorporates mātauranga Māori is appropriate, and that protecting and preserving of marine life could include activities as associated with kaitiakitanga. By taking a Treaty-informed approach, the Department considers that there is ability to allow for kaitiakitanga and mātauranga under the Act in a way that can address the perceived rigidity of the Act and recognise the connection of mana whenua with the marine space. For example, the Director-General can authorise taking of marine life for scientific purposes under section 11(b). The Department considers section 11(b) one mechanism that could allow for customary practices and involvement of mana whenua, if such practices are consistent with the purpose of the Act, as recommended in 10.1.2.

639. There are examples of mana whenua being joint applicants for a marine reserve (e.g. Te Tapuwae O Rongokako Marine Reserve), supporting marine reserve status for waahi tapu (e.g. Te Paepae o Aotea (Volkner Rocks) Marine Reserve) and participating in the management of marine reserves through advisory committees and monitoring programmes. While these roles don't extend as far as decision-making, they demonstrate where active involvement in the establishment and management of marine reserves has occurred and been effective.

640. The Department disagrees with the combined industry's objection relating to the Act not having biodiversity conservation as part of its purpose and therefore that the establishment of the proposed reserve would be contrary to the public interest. The Act states that in order for areas to achieve the purpose related to scientific study, they should be 'preserved as far as possible in their natural state'. The Department considers the term 'natural state' is strongly linked to biodiversity protection. Further, the protection of biodiversity is a valid consideration in terms of assessing the benefit to the public (as required under section 5(9) of the Act).

9.5.17 Objections questioning the need for a marine reserve given existing rāhui

Objections from affected iwi, hapū, or whānau

641. Objections from three individuals (HMMR-784661, HMMR-784712, HMMR-692585), Wharenikau Peeke and Ngaraima Honetua Whānau Trust[128] and the Iwi Trust raised concerns that there is already a rāhui in place (given effect through the section 186A notice)

[128] A whānau trust of the descendants of Wharenikau Peeke of Ngāti Pāoa.

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around the entire Waiheke Island coastline. The general objection is that this rāhui already provides enough protection, is well supported by tangata whenua and is not a permanent closure. In their objection, the Wharenikau Peeke and Ngaraima Honetua Whānau Trust stated 'The rahui was well attended by kaumatua, whanau, hapu, iwi, crown agencies, businesses, and the wider community. The rationale for placing the rahui is due to the declining inshore biodiversity'. They added that 'Ngati Pāoa and the Waiheke community are committed to implementing a future marine management plan so that the regeneration and restoration that takes place during the rahui is not undone once lifted'. The Iwi Trust stated that 'the rahui is to restrict taking of taonga species so that we can restore for future generations with the intention of lifting the rahui over time. Our commitment as mana whenua is to educate our communities about the rahui and develop an action plan to future-proof and restore our taonga species within the moana'.

Objections from all other submitters

642. One individual submission (HMMR-794808) and the objections from Muriwai Sport Fishing Club and New Zealand Sport Fishing Council questioned the need for a marine reserve around Waiheke Island when there is an existing rāhui covering a much larger area. The reasons stated are that this rāhui already adequately protects the coastal areas of the island and that it is well-supported by mana whenua and the local community. The New Zealand Sport Fishing Council stated 'The Ngāti Pāoa rāhui has unified the community'. The Auckland Conservation Board and the Hauraki Gulf Forum partially supported the proposed reserve, noting that the proposed area is already covered by a rāhui. This was assumed to imply that they wanted clarity over the interactions between the two regimes (rāhui and marine reserve) and whether the marine reserve can be established in this circumstance.

Applicant's response

643. The Applicant described their view that 'The rāhui around Waiheke covers only four species and does not in any way address the problem of chronic overfishing which has cascade effects on the whole marine ecosystem. The Hākaimango-Matiatia Marine Reserve will provide sanctuary for all locally occurring marine life'. They stated that there is no current scientific evidence that rāhui are effective and that only three scientific papers have assessed the efficacy of rāhui in New Zealand, all concluding that the rāhui they studied were not successful in the full recovery of mauri (they gave the example of Booth (2020)[129] as the most relevant reference). They added that 'none conclude that rāhui (temporary closures) generate comparable recovery and abundance benefits as those of marine reserves'. They further stated that 'Rāhui are a seafood / fisheries management tool - not a tool for conservation or generating scientific baselines […] Most rāhui are temporary; all marine reserves are in perpetuity. So it follows that a marine reserve, regardless of size, will have greater long-term ecological benefits than a rāhui. Indeed we are seeking inter-generational benefits'.

644. The Applicant stated that 'the Waiheke rāhui will not be sufficient for a full subaquatic recovery, as measured over time by the re-establishment of large, long-lived umbrella / apex reef species like hāpuku, tāmure, kourā, packhorse crayfish, and reef fish which live to over 60 years of age'. They also referred to the International Union for the Conservation of Nature that has developed global standards for marine protection[130], and that these exclude protections that are short term or species-specific.

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[129] Booth, J., 2020. Marine biodiversity in Bay of Islands' Maunganui Bay, and consideration of the impact of 10 years' closure to fishing under a Fisheries Act Section 186A rāhui. On behalf of Fish Forever. https://www.fishforever.org.nz/images/ff/documents/submissions/Manuscript_Maunganui_Bay_Rahui.pdf.

[130] IUCN WCPA, 2018. Applying IUCN's Global Conservation Standards to Marine Protected Areas (MPA). Delivering effective conservation action through MPAs, to secure ocean health & sustainable development. Version 1.0. Gland, Switzerland. applying_mpa_global_standards_final_version_050418.pdf.

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645. The Applicant noted that they supported the rāhui around Waiheke as a step in the right direction and concluded that 'Relying solely on rāhui which single out taonga food species overlooks the importance in the ecosystem of other less valued, more humble and cryptic biota and their vital role in a healthy functioning marine ecosystem'.

Departmental advice

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

647. As stated in objections and also set out in 3.4, Ngāti Pāoa placed a traditional rāhui around Waiheke Island on 31 January 2021 and this was given statutory force through the subsequent temporary closure under section 186A Fisheries Act, issued by the Minister for Oceans and Fisheries, and was established for two years. A further section 186A temporary closure was applied for and granted on 6 August 2024 for two years, prohibiting the take of mussels, pāua and rock lobster (but was not extended to scallops on this occasion) around Waiheke Island to a distance of one nautical mile offshore. The closure will expire on 6 August 2026. The proposed reserve overlaps 7.8% of the area of the rāhui.

648. Submissions from the Iwi Trust and the Trust Board mentioned the role of Ngāti Pāoa in the establishment of a protective rāhui around the coast of Waiheke Island as an example of their response to the current state of the Hauraki Gulf and their role as kaitiaki. The Iwi Trust stated that their intention with the rāhui is to restore taonga species for future generations with the intention of lifting the rāhui over time. Rāhui is identified in objections as a desired tool for marine conservation. The Department acknowledges that the rāhui from 2021 to 2023 was implemented with wide community support.

649. The proposed reserve covers 7.6 km of coastline, which is a small proportion (5.2%), of the Waiheke Island coastline.[131] The Department does not consider that an existing section 186A temporary closure prevents the creation of a marine reserve. They are different tools with different purposes and intended outcomes. A rāhui or section 186A temporary closure targets particular species over a finite period and recognises customary fishing use and management practices. The purpose of a marine reserve, instead, is to preserve all marine life on a permanent basis (but could be subject to review in the future). The Department considers this is a distinct difference and that by protecting all marine life, any poorly understood species or linkages within the marine ecosystem are safeguarded. By protecting the marine ecosystem as a whole, rather than just parts of it, a marine reserve is able to take a more holistic approach to marine protection.

650. The Department acknowledges that the declaration of a marine reserve would impact on traditional practices and would prevent customary fishing within its boundaries (without any additional notice given by the Minister of Conservation authorising activities). In particular, it would also impact upon the intent of the existing section 186A notice (where the area subject to that notice overlaps with the Application area), which recognises and makes provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing (over the overlapped area of the notice and the Application area). Declaration of a marine reserve, however, would not otherwise impact upon the use and management practices of tangata whenua on those areas outside of the proposed reserve (85% of the Waiheke coastline remains available, i.e. outside the existing Te Matuku Marine Reserve and the proposed reserve). The Department also notes the ability of a marine reserve to act as a nursery for fish species and the benefits of a marine reserve extend beyond its

[131] Waiheke Coastline is 146.5 km including close small islands and rocky outcrops. These measurements are given in NZTM and are based on the LINZ mean high water coastline dataset (Browse GIS data | LINZ Data Service).

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boundaries to create more abundant fish communities in areas open to fishing activities which would positively impact on the management practices of tangata whenua.

651. In their November 2023 application to extend the duration of the temporary closure, the five 'Iwi Organisations' stated the purpose of the closure was to 'replenish these taonga species to ensure the customary practice of gathering kaimoana for whānau (recreational take) and for tribal gatherings such as hui (meetings), tangihanga (funerals), wānanga (workshops) and marae hui. But more importantly, the value of manaakitanga, hosting our manuwhiri can be upheld'.[132] The Department acknowledges that the declaration of a marine reserve would frustrate the ability of tangata whenua to carry out some customary practices in this area on the expiration of the notice. As mentioned, customary fishing in areas outside of the proposed reserve would not be impacted by the declaration of the marine reserve and could potentially benefit from the nursery areas created within the marine reserve.

652. Temporary closures do not provide the level of protection and only allow for limited scientific studies. Based upon the experience of temporary closures elsewhere, unless it is renewed immediately upon its expiry, any accumulated biomass of the species protected will be rapidly removed by fishing. The Applicant's response referred to Booth (2020) that analysed data from a 10-year section 186A temporary closure (i.e. it was renewed every two years) in Maunganui Bay, Bay of Islands. This closure prohibits all fishing (except of kina) within a small bay (approximately 1.5 x 1 km). A key conclusion in this report is that there was little recovery of the marine ecosystems during the 10-year closure. The recommendation of the report was that the closure needed to be renewed again for the effects of the protection to remain and improve.

653. If the proposed reserve is declared, there could be confusion about where the section 186A temporary closure rules apply versus the marine reserve rules. Good information, signage and public awareness activities would be needed to increase the awareness of the rules of the two areas.

654. These issues are not considered to unduly interfere as the proportion of the coastline affected by the proposed reserve would be relatively small leaving the majority of the Waiheke Island coastline subject to the temporary closure as a management tool.

655. The Department recommends that if the proposed reserve is declared, a condition be imposed to require a 'generational review' of the marine reserve after 25 years (see recommendation (a), 10.1.1) and agree in principle to the establishment of an advisory rōpū (see recommendation (h), 10.1.2). These are recommended to provide an opportunity for the contemporary views of tangata whenua and the community to input into the management and future direction of the marine reserve at that time, including how the marine reserve interacts with other marine management tools such as rāhui (section 186A temporary closure). Such a mitigation measure is recommended as appropriate, having particular regard to the views of tangata whenua and in giving effect to Treaty principles.

Submissions in support

656. The Trust Board (affected iwi, hapū, or whānau) supported the proposed reserve stating that 'Ngati Pāoa have instigated a protective rahui around Waiheke Island (acknowledged and given effect to by MPI) in a desperate attempt to revitalise 4 marine species that are facing extinction and we support this application as an extension of those aspirations'.

[132] Application for extension to section 186A Fisheries Act closure for Waiheke Island and other areas, November 2023. https://www.mpi.govt.nz/dmsdocument/61774-Request-for-Further-Extension-of-Temporary-Closure-of-Mahinga-Mataitai-for-6-Years-186A-Fisheries-Act.

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657. An individual submitter identified as affected iwi, hapū, or whānau (WSHMMR-791823), stated their support was based on, 'The value of this marine protected area for scientific research and matauranga; and for the public good accruing from such a sanctuary due to protecting the multiplicity of marine species. This would enable significantly greater benefits than the recent rāhui which covers just four species'.

658. An individual Māori submitter (HMMR-672474-Māori) stated that 'The rahui in place is still being breached and only covers select marine habitants, this needs to be partnered with governmental support such as a marine reserve'.

9.5.18 Objections related to the aspirations for co-management or co-governance

Objections from affected iwi, hapū, or whānau

659. The Iwi Trust objected on the basis that 'a better pathway forward is allowing iwi to lead this space' and that 'this process needs to be led by Ngāti Pāoa and other tangata whenua on Waiheke.' They also stated, 'We also don't want to be treated as another stakeholder under the management of DOC and FoHG [Friends of the Hauraki Gulf – i.e. the Applicant]'.

660. An individual submitter (HMMR-752960) stated 'we want to partnership with the crown in the decision making, we are not a stakeholder'.

661. The submissions from Piritahi Marae and Protect Pūtiki[133] supported the proposed reserve but requested the assurance that co-governance with mana whenua is established for the marine reserve and that mātauranga Māori be part of the management. Piritahi Marae wrote 'Our support for the application asks that mātauranga and tangata whenua be central to the management and kaitiakitanga of the reserve. Under the Takutai Moana Act 2011, section 47 we reserve our right as whānau of Piritahi Marae and Waiheke Island to participate in conservation processes in the common marine and coastal area'. Protect Pūtiki wrote 'Giving effect to Te Tiriti and co-governance must allow tangata whenua to be central to decisions made in regard to the marine reserve and the ability for us to apply mātauranga alongside western science. This is a valuable opportunity for education and connection/reconnection of our people with the moana and with Waiheke'. An individual submitter in support (HMMR-784709) also stated their view that 'mana whenua are involved with the writing of the reserve plan and implementation of that plan'.

Objections from all other submitters

662. No objections were received from other submitters relating to this issue.

Applicant's response

663. The Applicant's response noted that some of the objections refer to 'Article 2 of the Treaty and te tino rangatiratanga' and that 'Many marine reserves are already actively led by tangata whenua e.g. Te Tapuae o Rongokako (Ngāti Konohi o Ngāti Porou) and Whanganui a Hei Marine Reserve (Ngāti Hei)'. The Applicant noted that 'it is standard best practice that tangata whenua are actively involved in governing committees of marine reserves'.

Departmental advice

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

665. The Department acknowledges that the establishment of the proposed reserve would impact on the ability of mana whenua to undertake some activities associated with their kaitiaki and

[133] The website of Protect Pūtiki describes Protect Pūtiki as 'A movement of Ngāti Pāoa, tangata whenua and the Waiheke community working together to highlight the need to protect Pūtiki Bay from the development of marina at Kennedy Point'.

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rangatiratanga rights and responsibilities, including a role in the management of the marine environment, such as implementing or experiencing the benefits of the existing rāhui in this area (as set out in 9.5.17). The Department also notes that the establishment of the proposed reserve would only limit some activities (particularly the take of marine life), while other activities (i.e. those that are not prohibited under the Act) could continue.

666. The Department considers, however, that tangata whenua could have an advisory role in the establishment and ongoing management of the proposed reserve and that this would give a degree of recognition to the rangatiratanga and kaitiaki responsibilities of tangata whenua, and this is reasonable in the circumstances. As such, the Department recommends that the Minister agree in principle to the establishment of an advisory rōpū for the proposed reserve, and that this should include strong Ngāti Pāoa representation, as mana whenua, and other tangata whenua representation as appropriate. We recommend that advice on the establishment, potential terms of reference, and composition of such a rōpū be provided to you within 12 months of gazettal of the marine reserve (see recommendation (h), 10.1.2).

667. An advisory rōpū would, as its name suggests, have an advisory role in matters related to the proposed marine reserve. Under existing legislation, where the Minister or Director-General is identified as the decision-maker, it is not possible to delegate these powers outside the Department. However, the proposed advisory rōpū could have meaningful input into operational and statutory decision-making. The Department also recommends a requirement for generational reviews (see recommendation (a), 10.1.1), which would provide a further mechanism for tangata whenua involvement in assessing the management of the marine reserve and inputting into its future management direction.

668. While acknowledging the Iwi Trust (in particular) opposed the Application, the Department considers that the objections relating to limitations on potential co-governance and co-management created by a marine reserve do not amount to undue interference, particularly given the recommendations for an advisory rōpū and generational reviews.

9.5.19 Objections related to the prevention of the exercise of customary rights and practices

Objections from affected iwi, hapū, or whānau

669. Nine individual objections (HMMR-784100, HMMR-752960, HMMR-752972, HMMR-753017, HMMR-773911, HMMR-784712, HMMR-794775, HMMR-682516, HMMR-784622) and the objections of the Iwi Trust and Ngāti Maru Rūnanga raised the issue that the proposed reserve would prevent the exercise of cultural practices, particularly kaitiakitanga and mātauranga Māori.

670. The Iwi Trust's view is that the Application contravenes section 4 of the Conservation Act because the Iwi Trust is the 'mandated body to represent all matters that affect Ngāti Pāoa treaty settlement business' and, therefore, the Application undermines their relationship with their rohe moana. They asserted that the proposed reserve cuts across their rohe moana, and that it would lock them out and prevent them from continuing their mahi in the area following the rāhui (section 186A temporary closure). They state that 'This proposal will not strengthen our historic, traditional, cultural, and spiritual relationship as tangata whenua, it is not for others to articulate iwi aspirations'. The Iwi Trust also emphasised that 'Wānanga (workshops) are already underway [...] Ngāti Pāoa are also engaged with rangatahi (youth) in which we will train our next generation to learn about kaitiakitanga from a Ngāti Pāoa world view'.

671. The Iwi Trust stated that Ngāti Pāoa has been engaged in marine protection, stating 'Our kaumātua gave the directive to lay down the rāhui [....] we proceeded through the 186A

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Temporary Closure application and future management plan'. The Iwi Trust also stated that 'permanent no-take marine reserves [...] make it illegal for Māori to enact intergenerational customary practices' and that 'This process needs to be led by Ngāti Pāoa and other mana whenua on Waiheke'. They also expressed their views that the current Western marine conservation practices such as the Application 'actively seeks to legislatively eliminate Māori intergenerational connectivity, wisdom and practices' and is 'unacceptable'. The Iwi Trust state they would 'prefer to work with our wider community and identify opportunities to change the paradigm of conservation to one in which the enormous contributions, knowledge and practices of Indigenous Māori peoples are recognised, supported and implemented in contemporary marine management'.

672. Ngāti Maru Rūnanga stated that 'The Proposal will inhibit Ngāti Maru from exercising tikanga and its customary interests in the area. [...] The Proposal would sever the relationship of Ngāti Maru/ Marutūāhu with Tikapa and is repugnant to our tikanga relationships and customary interests'.

673. Individual objections stated that the proposed reserve would prevent them from exercising kaitiakitanga. For instance, 'Marine reserves do not give me the opportunity to actively rekindle my mātauranga Māori. [...] permanent no-take marine reserves and marine protected areas (MPA) extinguish connectivity with our moana and make it illegal for Māori to enact intergenerational customary practices', or 'the limiting of our engagement with te taiao also has an effect on our ability to observe and develop our mātauranga Māori', or 'The marine reserve locks, and takes away the opportunity for kaitiakitanga to occur. It is another form of land grab but within the water space', or that establishment 'denies us of our roles and responsibilities as manawhenua'.

Objections from all other submitters

674. One individual Māori submitter (HMMR-794826-Māori) raised the matter that the proposed reserve would 'alienate and extinguish Kaitiakitanga o te takutai moana at Hakaimango – Matiatia' and that it would take away 'customary rights to hi ika, kohikohi kai mo nga kaumatua-kuia and [the ability to] conduct spiritual and cultural events'. The submitter also added that the proposed reserve would prohibit the sourcing of material such as wood, stone, and shell to fashion into taonga or the ability to place sculptures or other artifacts in the marine area for a rāhui.

675. The submissions in partial support from the Auckland Conservation Board and the Hauraki Gulf Forum, and the submission in support from the Sir Peter Blake Marine Education & Recreation Centre[134] also noted the impact the proposed reserve could have on customary connection to the area.

Applicant's response

676. The Applicant expressed their disagreement with the objections because 'a protected, recovering ecosystem will enable, indeed require more, not less opportunities for kaitiakitanga' and that they 'believe a marine reserve will actually facilitate opportunities to rekindle these objectors' mātauranga Māori within a recovering marine ecosystem, that is in healing and rebuilding its damaged mauri'. They reinforced that the Act 'does not exclude anyone from connecting with the moana' but that section '3 (4) expressly states 'the public should have freedom of access and entry to the reserves so that they enjoy in full measure the opportunity to study, observe and record marine life in its natural habitat' '.

[134] A not-for-profit charity based at the Long Bay-Okura Marine Reserve that aims to provide life changing marine environmental education and outdoor experiences for young New Zealanders.

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677. The Applicant responded by 'acknowledging that the recognised tangata whenua of Waiheke is Ngāti Pāoa, including Te Uri Karaka [a hapū of Ngāti Pāoa]. The Crown (Te Puni Kokiri -Te Kahui Mangai) recognises two tribal authorities representing Ngāti Pāoa iwi. The Ngāti Pāoa Trust Board and the Ngāti Pāoa Iwi Trust.[135] That being said the applicant must point out that the Ngāti Pāoa Trust Board and tribal kaumatua and whānau descended from 19th century Ngāti Pāoa/Uri Karaka rangatira who lived at Matiatia and Owhanake Bay have formally declared their tangata whenua and kaitiaki status and have submitted in support of the Marine Reserve'.

678. The Applicant's response noted that some of the objections refer to 'Article 2 of the Treaty and te tino rangatiratanga' and that 'Many marine reserves are already actively led by tangata whenua e.g. Te Tapuae o Rongokako (Ngāti Konohi o Ngāti Porou) and Whanganui a Hei Marine Reserve (Ngāti Hei)'. The Applicant noted that 'it is standard best practice that tangata whenua are actively involved in governing committees of marine reserves'.

679. The Applicant provided more context stating that 'the Ngāti Pāoa Trust Board and a number of Ngāti Pāoa descended from 19th century Rangatira who lived in the area of the proposed reserve, the Piritahi Marae [all of which are also affected iwi, hapū, or whānau], and 73% of individual Māori submitters have a different view...'. The Applicant described their views on how these supporters of the proposed reserve see the urgent need for the protection e.g. 'fully within their Māori world view, just as with the conservation of terrestrial species' and that they believe 'they have kaitiaki responsibilities in the broadest sense to safeguard and protect nature'. The Applicant finally noted that 'Not the least the protection of the ecosystem of this area will thereby allow nature to regenerate and thereby restore its life supporting capacity and that this will in turn enrich their traditional associations with the moana and its restored wildlife – and for their descendants'.

680. The Applicant expressed that they do not 'believe it is [their] role under the Marine Reserves Act or the Takutai Moana Act to identify customary practices and tikanga, some of which are private, indeed tāpu'. They stated that they 'have consulted with tangata whenua and manawhenua to seek their views on these questions' and that they have also 'worked closely over the past year with DOC officials, who [they] can attest are very much concerned with these questions'. The Applicant states that they 'respect assertions by the spokesperson for the Ngāti Pāoa Iwi Trust' but that, after consultation with tangata whenua and mana whenua (the Trust Board and Ngāi Tai ki Tāmaki) the Applicant 'understands the marine reserve will not impact on any customary practices or tikanga'.

Departmental advice

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

682. Ngāti Pāoa is acknowledged as holding mana whenua for Waiheke Island and its surrounding waters[136], and the proposed reserve is within the Ngāti Pāoa area of interest[137]. As described in section 4.3, other iwi also have interests in the Hauraki Gulf / Tīkapa Moana, which is recognised as having very high spiritual, ancestral, cultural, customary and historical significance to the iwi and hapū of the Hauraki Gulf / Tīkapa Moana.

683. The Ngāti Pāoa Deed of Settlement includes a Statutory Acknowledgement of the Matietie Historic Reserve, which reinforces the connection of Ngāti Pāoa to the area, as this reserve

[135] Note: in 2024, the Te Puni Kōkiri website was amended to remove the Trust Board from the list of representative organisations. https://www.tkm.govt.nz/iwi/ngati-paoa/#.

[136] *SKP Incorporated v Auckland Council* [2021] NZSC 35 [27 April 2021] fn 7.

[137] See 'Ngāti Paoa Area of Interest' map, Attachment 1, Deed of Settlement.

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runs along the coast between Matiatia Bay and Owhanake Bay bordering the proposed marine reserve. The Matietie Historic Reserve has strong historical, spiritual, cultural and traditional significance for Ngāti Pāoa.[138]

684. The kaitiaki responsibilities of Ngāti Pāoa for the area of the proposed reserve, the existing section 186A temporary closure, and desire to carry out customary activities in the marine space are acknowledged. This advice emphasises the need, under te Takutai Moana Act (sections 47 to 49), to give particular regard to the views of affected iwi, hapū and whānau in considering a proposal to create a marine reserve.

685. The objections describe that marine reserves do not recognise kaitiakitanga or allow the use or development of mātauranga Māori. These concerns are acknowledged. The establishment of a marine reserve does not prevent activities unless they constitute offences. It may be that some exercises of kaitiakitanga will not be affected in this sense. However, in other cases, establishing a marine reserve may create a barrier to the exercise of kaitiakitanga or the development of mātauranga. For example, if the activity involves 'take' of marine life it would require authorisation (if consistent with the purpose of the Act). The purpose of the Act is tied to 'scientific study' (as set out in 5.1.1). As noted, the Department considers that an interpretation of 'scientific study' that incorporates mātauranga Māori is appropriate. Therefore, the Department considers that certain activities associated with using, sharing or developing mātauranga Māori may be able to be authorised.

686. The Department considers that the Act has several mechanisms for the Minister of Conservation to consider authorising otherwise prohibited activities that might make some provisions for the continued exercise of some kaitiakitanga responsibilities, or the use or development of mātauranga Māori, where those activities are consistent with the purpose of the Act. An immediate example is the wish of the Iwi Trust to continue to remove kina from the area of the proposed reserve (being a species not covered by the section 186A notice) to mitigate the impact of kina on kelp populations. If the proposed reserve is declared, the Department recommends consultation with Ngāti Pāoa, tangata whenua and other potentially interested parties, such as the Waiheke Marine Project, who wish to carry out kina removal in the marine reserve, on their goals and methods. If you agree to this recommendation, the Department will provide advice, within 12 months of gazettal of the marine reserve, on whether the activities would be consistent with the purpose of the Act (see recommendation (g) in 10.1.2). For other activities, further site and species-specific assessments would be required to ensure any proposed activities are consistent with the purpose of the Act.

687. Further, the Department recommends the marine reserve be declared with additional provisions to recognise the role of mātauranga Māori and the kaitiakitanga of Ngāti Pāoa and tangata whenua, as appropriate, in management of the marine space, including the recommendations for generational review (see recommendation (a), 10.1.1) and for an advisory rōpū (see recommendation (h), 10.1.2). The Department considers the obligation under section 4 of the Conservation Act supports this approach.

688. The Department acknowledges that even with the above recommendation this would leave some residual impact on the connection that Ngāti Pāoa and the customary interest groups have with the moana and their kaitiakitanga responsibilities, including that some activities would require an additional Crown permission that does not currently exist for this location. The Department considers, however, the impacts can be mitigated to the extent that interference with the matters raised in these submissions would not be undue.

[138] See page 16, Attachment 1, Deed of Settlement: Ngāti Paoa Deed of Settlement documents | New Zealand Government (www.govt.nz).

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Submissions in support

689. An individual submitter identified as affected iwi, hapū, or whānau (WSHMMR-791823) supported the proposed reserve stating, 'While active in tribal affairs I am unaligned with either of the two recognised boards representing Ngāti Pāoa. In the matter of the proposed Hākaimangō – Matiatia (NW) Waiheke Marine Reserve however I fully support the position of the Ngāti Pāoa Trust Board whose support for the marine reserve I believe reflects general grass-roots sentiment among members of Ngāti Pāoa, kaumatua and rangatahi'.

9.5.20 Objections related to aspirations for active regeneration practices

Objections from affected iwi, hapū, or whānau

690. Five individual objections from submitters identified as affected iwi, hapū, or whānau (HMMR-752960, HMMR-752972, HMMR-753017, HMMR-682516, HMMR-784622) questioned the efficiency of marine reserves to restore marine biodiversity ('heal the mauri'). They stated that marine reserves are passive conservation tools, that this is not sufficient, and active management is required instead (an example was given of the benefit from active kina removal).

691. The Iwi Trust stated that they are pursuing 'bespoke Māori customary marine management tool [rāhui as a section 186A temporary closure] to address the current challenges of 'functionally extinct' fauna and flora, taonga species that were once gathered from traditional mahinga kai and tauranga ika sites'. They state, 'The current status of Tīkapa Moana and Te Moananui-ā-Toi [the Hauraki Gulf] requires an active protection model not a passive one'.

692. One individual submitter (HMMR-682516) stated that 'as part of the WMP [Waiheke Marine Project] we are currently actively regenerating near shore reef systems that are very similar habitat to the proposed marine reserve area. Examples are with kina, kelp and kōura. We would not be able to do such regeneration if there was a marine reserve'. This submitter also objected to 'scientific and bureaucratic hurdles' and stated 'We actually need to employ active regenerative responses if we are going to make a difference in this space. A marine reserve not only means 'no take' but also means 'no add".

693. Another individual submitter (HMMR-752960) stated that 'Regeneration is crucial. It has been amply demonstrated by existing marine reserves in Tīkapa Moana that passive conservation by marine reserves is NOT sufficient to heal the mauri'.

Objections from all other submitters

694. Two individual objections and those from Coastal Custodians, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council, raised concerns that the proposed reserve would limit 'people's ability to assist with proactive restoration' with the example of the kōura rewilding program as part of the Waiheke Marine Project. Coastal Custodians described an ongoing community initiative where iwi and community groups are working together to develop the 'North-West Waiheke Island Marine Regeneration Plan'.

Applicant's response

695. In relation to the matter that marine reserves as passive conservation tools are not sufficient, the Applicant responded, 'The marine reserve will allow nature itself to lead the healing process in this area. Meanwhile, as noted, the questionable practice of killing kina, the localised high numbers of which are due to the removal of kina's natural predators (especially tāmure/snapper) due to over-fishing, is therefore trying to deal with an effect rather than the fundamental cause of environmental degradation'.

Released under Official Information Act

Departmental advice

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

697. Objections from affected iwi, hapū and whānau have raised specific examples of active regeneration practices currently being carried out by the Waiheke Marine Project, including removing over-abundant kina and aspirations for introducing juvenile rock lobster. The Department is also aware of efforts to control exotic *Caulerpa* initiated by Ngāti Pāoa upon the species' detection in late 2023 at Waiheke Island. Further detail on the management of invasive species is set out in 9.5.22 and on the removal of kina in 9.5.21.

698. Offences under the Act include taking or removing marine life from a marine reserve, discharging or depositing in a marine reserve, and introducing any living organism, and interfering with or disturbing marine life. These activities are an offence if a person carries out the action 'without lawful authority'.

699. The Department considers that there are several mechanisms under the Act that can authorise active regeneration methods that would otherwise be prohibited under the Act (for example sections 3(3), 11(b) or 11(c)), including those methods that relate to the exercise of kaitiakitanga. A decision to allow for a regenerative activity would need to be well-defined in terms of the species and site.

700. There are few examples of active regeneration activities being undertaken in a marine reserve. However, in April 2023, the Department, in collaboration with Ngātiwai and the University of Auckland, commenced an experiment at the Poor Knights Islands Marine Reserve to better understand the impact of a subtropical sea urchin (*Centrostephanus rodgersii*) on rock wall communities and the potential for urchin removal as a means of actively managing these impacts. This study was carried out under the Director-General of Conservation's management powers, specifically section 11(a) of the Act.

701. The activities involved in the current active regeneration practices being carried out by the Waiheke Marine Project and examples from objections include: taking/removing from a marine reserve (kina), depositing in a marine reserve (benthic mats for exotic *Caulerpa* control), disturbing marine life (suction to bring seaweed to the surface for exotic *Caulerpa* control), and introducing living organisms (rock lobster relocation). These could be considered for future authorisation on a case-by-case basis if considered consistent with the purpose of preserving the marine reserve. See recommendation (b) in 10.1.1 with regard to control of unwanted organisms and recommendation (g) in 10.1.2 with regard to kina removal.

702. The Department acknowledges that this is still an additional layer of obtaining permission than currently exists. However, as there are mechanisms to authorise the activities, where consistent with the purpose of the Act, this is not considered to meet a threshold of undue interference.

9.5.21 Objections related to the need for kina removal

Objections from affected iwi, hapū, or whānau

703. Six individual objections from submitters identified as affected iwi, hapū, or whānau (HMMR-784100, HMMR-752960, HMMR-752972, HMMR-753017, HMMR-784622, HMMR-682516) expressed concerns that the removal of kina for the purpose of assisting kelp regeneration would be prohibited if the proposed reserve is established. They described how they, or people they know, have snorkelled or SCUBA dived to remove kina in Enclosure Bay (outside the proposed reserve) as part of the Waiheke Marine Project's initiative 'Kelp Gardeners'.

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They added that they wouldn't be able to do this within the proposed reserve if the Application was approved, and that the proposed reserve therefore 'defies this matauranga'.

704. One submission (HMMR-784709) supporting the proposed reserve stated that there are kina barrens in the proposed area and that kina will need to be removed to restore the area.

Objections from all other submitters

705. Two individual objectors (HMMR-763200, HMMR-773971) and the Coastal Custodians expressed concerns that the removal of kina to assist kelp regeneration would be prohibited if the proposed reserve is established. They also mentioned the Waiheke Marine Project's initiative at Enclosure Bay. They believe that there is a need for active removal of kina to protect the area. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that there was a small amount of commercial kina harvest in the proposed area and concluded that this may have contributed to the absence of kina barrens at this site.

706. One submitter in support (HMMR-742900) recommended that mana whenua are 'actively being able to manage pest species in the area eg Kina barren'.

Applicant's response

707. The Applicant did not agree that direct intervention, such as kina removal, is required to facilitate regeneration. The Applicant commented that if the objectors 'wish to remove kina while opposing measures to protect the kina's natural predator, the snapper and other fish species', there is '125 km of Waiheke coastline' available. The Applicant stated they are not 'aware of any direct intervention in the marine environment in New Zealand or overseas that is scientifically based and has resulted in the abundance or biodiversity regeneration benefits of a no-take marine reserve'. They concluded that the marine reserve would serve as an important benchmark to active restoration efforts that are planned under the Waiheke Marine Project in some areas. They also commented that 'marine reserves do not prohibit scientific research within them. There will be nothing to stop the Waiheke kelp gardening initiative from making an application to continue their work within the marine reserve'.

Departmental advice

708. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

709. Kina barrens are deforested areas of reef where kina have eaten all the kelp, and their continued grazing prevents kelp from growing back. 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 (including within the proposed reserve).

710. The importance of kina in controlling kelp biomass (and therefore the extent to which kina are responsible for 'barrens') 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.[139] Other studies have shown that implementing marine reserves allowed predators of kina to recover and naturally resulted in a decrease in kina numbers and a return to a more natural ecosystem.[140]

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[139] Shears, N. T., Babcock, R. C. & Salomon, A. K., 2008. Context-dependent effects of fishing: variation in trophic cascades across environmental gradients. Ecological Applications: 1860–1873.

[140] Shears, N. T. & Babcock, R. C., 2002. Marine reserves demonstrate top-down control of community structure on temperate reefs. Oecologia, 132(1), 131-142

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711. A benefit of marine reserves is improved understanding of ecological processes, and the influence of external pressures (for example, fishing) on the marine environment is highlighted by the research conducted in marine reserves. This proposed reserve would provide an opportunity to study these ecological questions further.

712. The proposed reserve covers a relatively small portion of the Waiheke Island coastline and there would be many opportunities to apply and expand the mātauranga of kina removal in the non-protected areas. If the proposed reserve is established, this might provide opportunities for groups such as the Waiheke Marine Project, that includes Ngāti Pāoa, and their Kelp Gardeners initiative to apply and expand mātauranga Māori, by comparing kina numbers and kelp health in the proposed reserve and in non-protected areas, with and without active kina removal. This could inform conservation efforts and may enhance the ability to develop further management and restoration for the coasts of Waiheke Island. Lessons learned could be applied elsewhere.

713. The Department acknowledges the Applicant's point that measures to protect the natural predators of kina are a less intensive intervention and therefore a preferrable first approach. Nevertheless, this does not rule out well-supported proposals for interventions involving the removal of kina in the future.

714. It is correct that members of the public could not take kina from the area if it became a marine reserve, unless they were specifically authorised to do so. However, removal of kina could be considered as an activity for approval where it is consistent with the purpose of the Act. The Department's position is that activities for the purposes of exercising kaitiakitanga and enhancing mātauranga Māori may fit within the purpose of the Act, whereas take for food would not. For example, the Department understands that Ngāti Pāoa wish to remove kina as an exercise of kaitiakitanga, as they observe that the number of kina in some areas is out of balance and causing denudation of kelp. If this was deemed appropriate (in consultation with the proposed advisory rōpū for example – see recommendation (h), 10.1.2), the activity could be authorised. The full details behind this recommendation are outlined in recommendation (g), 10.1.2.

715. The Department recommends, if the proposed reserve is declared, consultation occurs with Ngāti Pāoa, tangata whenua and other potentially interested parties (e.g. the Waiheke Marine Project), who may wish to carry out kina removal in the marine reserve, on their goals and methods. The Department proposes to provide advice, within 12 months of gazettal of the marine reserve, on whether the activities would be consistent with the purpose of the Act as outlined in 10.1.2.

716. Therefore, the Department considers that the objections relating to the need for kina removal within a marine reserve do not amount to undue interference, particularly given the Department's recommendation above.

Submissions in support

717. An individual submitter in support (WSHMMR-721289) noted their observation of the 'rapid increase in Kina population, and thus a decrease in Kelp and Seaweed populations' and that 'a marine reserve off the coast of Waiheke would provide a safe haven for Snapper, Crayfish, and other locally threatened species [... to] help to increase the numbers of these species which are predators of Kina [... and] overtime, through predation, the populations of Kina would decrease to a manageable level'.

9.5.22 Objections relating to unwanted organisms

Objections from affected iwi, hapū, or whānau

718. No objection from submitters identified as affected iwi, hapū, or whānau raised this matter.

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Objections from all other submitters

719. An individual objection (WSHMMR-791832) raised a concern that a marine reserve would create negative biological responses because they questioned whether non-native species may establish in the marine reserve more easily.

720. An individual submitter (HMMR-622333) supported the proposal but raised the potential issue of invasive species.

Applicant's response

721. The Applicant did not provide a response to this matter.

Departmental advice

722. For the reasons set out below, the Department's assessment is that the matters raised in these objections, and anticipated since exotic *Caulerpa* has been detected at Waiheke Island, do not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

723. The Port of Auckland is a major point of entry for non-indigenous marine species and approximately 144 exotic species have become established in the Hauraki Gulf Marine Park.[141] Research suggests that healthy ecosystems, like those that develop over time in marine reserves, are more resilient to invasion.[142] Research in New Zealand and globally has also shown that marine reserves are effective at restoring healthy ecosystems without any indication of negative biological responses from mobile predators coming from outside marine reserves.[143] The Department considers that marine reserves allow healthy populations of large predators to be restored and trophic processes to function naturally. It follows that protected areas should, therefore, be more resilient to non-indigenous species than unprotected areas.

724. In 2023, exotic *Caulerpa* was detected off the northern coast of Waiheke Island.[144] Within six months of detection, Ngāti Pāoa (supported by Biosecurity New Zealand and with permits from the Ministry for Primary Industries) had engaged contractors and begun treatment to control exotic *Caulerpa*, including with a small-scale suction dredge. The rapid response from Ngāti Pāoa is acknowledged, and the Department anticipates that the ability for Ngāti Pāoa to continue the permitted control activities within the proposed reserve, should it be established, would be desired.

725. The issue of exotic *Caulerpa* was not raised in submissions, as at the time of public consultation, exotic *Caulerpa* had not yet been detected in the Waiheke area. The Department considers it is appropriate to acknowledge the subsequent detection of exotic *Caulerpa* off the northern coast of Waiheke Island when considering objections relating to the threat of invasive species.

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[141] State of Our Gulf 2020. https://www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/harbour-forums/docsstateofgulf/state-gulf-full-report.pdf.

[142] Lohrer, D., Townsend, M., Morrison, M. & Hewitt, J., 2008. Change in the benthic assemblages of the Waitemata Harbour: invasion risk as a function of community structure. Biosecurity New Zealand Technical Paper No: 2008/17. Ministry of Agriculture and Forestry, Wellington. http://www.biosecurity.govt.nz/files/pests/salt-freshwater/benthic-assemblages-waitemata-harbour.pdf; Townsend, M., Lohrer, A. M., Rodil, I. F. & Chiaroni, L. D. 2014. The targeting of large-sized benthic macrofauna by an invasive portunid predator: evidence from a caging study. Biological Invasions, 2014: 1-14. 10.

[143] Costello, M. J., 2014. Long live Marine Reserves: A review of experiences and benefits. Biological Conservation, 176, 289–296; Lester, S., Halpern, B.S., Grorud-Colvert, K., Lubchenco, J., Ruttenberg, B.I., Gaines, S.D., Airame, S., Warner, R.R., 2009. Biological effects within no-take marine reserves: a global synthesis. Marine Ecology Progress Series, 384: 33–46.

[144] https://www.mpi.govt.nz/dmsdocument/59755-Exotic-caulerpa-Waiheke-Island-as-at-20-Oct-2023.

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726. It is likely that an additional requirement to obtain authorisation for activities within a marine reserve at the time of an unwanted organism's incursion would impact flexibility and rapid responses to new biosecurity threats.

727. In light of these matters, the Department considers that an Order in Council condition, allowing unwanted organisms to be removed from the marine reserve, subject to any other applicable legal requirements, would be consistent with the purpose of the Act (see recommendation (b), 10.1.1).

Submissions in support

728. Numerous individual submitters supporting the proposed reserve noted that the presence of a marine reserve could improve resilience and protect from the impacts of invasive species. Note these submissions used identical text in relation to this point.

9.5.23 Objections related to monitoring and mātauranga Māori

Objections from affected iwi, hapū, or whānau

729. Two individual objections (HMMR-752960, HMMR-773911) and the objection from the Iwi Trust, raised issues relating to the impact the proposed reserve would have on mātauranga Māori and that monitoring in marine reserves doesn't allow for the use or transfer of mātauranga Māori.

730. One individual objector stated that 'Marine reserves do not give me the opportunity to actively rekindle my mātauranga Māori'. They also mentioned the activities of the Waiheke Marine Project and that these allow active re-engagement with the 'moana and motu' but that a marine reserve would prevent this.

731. Another individual objector described how the proposed reserve would deny them access to the area and, therefore, deny them the ability to develop their mātauranga Māori by limiting their 'engagement with te taiao'.

732. The objection from the Iwi Trust stated that the proposed reserve 'denies the opportunity for manawhenua to carry out customary practices such as gathering kai, not only to manaaki, but also importantly to observe conditions, behaviour's and relationships between the moana, the whenua and Ranginui. The ability to observe these things is what our knowledge systems are built on'. They also stated that 'we seek to establish the scientific basis of rāhui so that, going forward, it can be as effective as possible as a tool for ecosystem restoration and healing. To achieve this, we will develop a model of environmental monitoring to be led by iwi (alongside monitoring by others) to understand change occurring in the environment by which iwi are able to decide when and where to apply interventions including rāhui and by which factors they can measure their effectiveness'. They further noted that 'none of the marine monitoring regimes include mātauranga me ngā tikanga Māori'.

Objections from all other submitters

733. No objection from other submitters raised this matter.

Applicant's response

734. The Applicant disagreed with the points raised in objections and described how the protection of the ecosystem will, in turn, support traditional associations with the area. They also noted that the Act doesn't exclude people from connecting with the area, instead quoting section 3 of the Act which relates to freedom of access for the public.

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Departmental advice

735. For the reasons set out below, the Department's assessment is that the matter raised in these objections does not support a conclusion that declaring the proposed reserve would otherwise be contrary to the public interest.

736. A marine reserve does not prevent the observation of marine life and environmental conditions within it, so long as the activities are not offences, such as taking or disturbing marine life. The Department considers there are activities that can be undertaken for both Western scientific and mātauranga Māori purposes that would not be affected by the establishment of the proposed reserve.

737. Also, monitoring or research activities that do involve taking or disturbing (i.e. they would otherwise be offences) may be authorised by the Director-General of Conservation under section 11(b) of the Act. While this section refers to 'scientific purposes' and has historically been interpreted as indicating Western science, the Department's position is that there is an important role for mātauranga Māori in the management of marine reserves and that acknowledging and supporting mātauranga Māori are Crown responsibilities, including as an expression of the section 4 obligation. As noted at 9.5.19, the Department considers that an interpretation of 'scientific study' that incorporates mātauranga Māori is appropriate. section 11(b) could be a mechanism to enable this.

738. The submission of the Iwi Trust noted the importance and potential of the intersection between Western science and mātauranga Māori, noting they are exploring 'an alternative way of improving marine biodiversity and environmental health using a mātauranga taiao Māori approach. This approach will achieve wider benefits beyond the aspirations of all iwi, such as providing an exemplar for the complementarity between mātauranga Māori and science'. The Trust Board, in their submission in support, also noted this complementarity (see paragraph 744744).

739. Planning for monitoring of the proposed reserve, if it is approved, would occur after its gazettal and would be guided by the Department's national frameworks for monitoring and compliance activities. The Department's 'Marine Monitoring and Reporting Framework'[145] guides long-term marine monitoring and developing monitoring plans for marine reserves. It states that the recognition and integration of mātauranga Māori within 'mainstream conservation management needs to improve'. It commits to the system ensuring 'Mātauranga Māori is an integral part of biodiversity research and management' in design, implementation and reporting of monitoring. It considers that the protection and restoration objectives of reserves will be achieved by 'Using the findings from the monitoring, both mātauranga and scientific, to make informed decisions about management interventions'.

740. The Department considers that, where consistent with the purpose of the Act, these activities could be considered for authorisation. As kina removal has already been identified as an activity of high importance to the Iwi Trust and others, should the proposed reserve be approved, the Department recommends consultation begins with Ngāti Pāoa, tangata whenua and other potentially interested parties, such as the Waiheke Marine Project, who may wish to carry out kina removal in the marine reserve, on their goals and methods. The Department recommends that we provide advice, within 12 months of gazettal of the marine reserve, on whether the activities would be consistent with the purpose of the Act (see recommendation (g), 10.1.2). In future, other activities such as this, whether they are for

[145] Department of Conservation, 2022. Marine Monitoring and Reporting Framework, 224p. https://www.doc.govt.nz/nature/habitats/marine/type-1-marine-protected-areas-marine-reserves/marine-monitoring-and-reporting-framework/.

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management, restoration, or are associated with the development and transfer of mātauranga Māori, could be considered through a similar process.

741. In addition, the Department envisages that one of the roles of an advisory rōpū (see recommendation (h), 10.1.2) would be to advise on suitable research / mātauranga Māori and monitoring , thus bringing Ngāti Pāoa, tangata whenua and other potentially interested parties expertise to bear on the matter.

742. The Department considers that the ability for mātauranga Māori to still be used, developed and transferred will be maintained if the proposed reserve is declared, either at areas outside the proposed site, within the proposed site where those activities are not prohibited under the Act, or through authorisation of some activities via relevant sections of the Act.

743. Therefore, the Department considers that the objections relating to monitoring and for mātauranga Māori within a marine reserve do not amount to undue interference, particularly given the Department's recommendations which aim to enable mātauranga Māori in management of the proposed reserve.

Submissions in support

744. The Trust Board stated their vision that 'mātauranga māori and western science will offset and complement one another in the conservation of our marine environment'. Another individual submitter identified as affected iwi, hapū or whānau (WSHMMR-791823), stated 'My support is also based on the reasons set out in the Marine Reserves Act: The value of this marine protected area for scientific research and matauranga'.

9.5.24 Objections questioning the proposal against Treaty of Waitangi obligations

Objections from affected iwi, hapū, or whānau

745. Six individual objections (HMMR-752960, HMMR-752972, HMMR-753017, HMMR-773911, HMMR-682516, HMMR-784622) and the objections of Ngāti Maru Rūnanga and the Iwi Trust raised the matter that the Application does not give effect to the principles of the Treaty as per section 4 of the Conservation Act.

746. All of the individual objections raised the matter that they want to have iwi-led moana protection. One of these objections expressed concern that the proposal is not a partnership with the Crown and, therefore, does not follow the Treaty obligations. Another raised concern that decisions for the management of the proposed reserve would be made only by Government agencies.

747. Ngāti Maru Rūnanga objected to the proposal because they see the Act as contrary to the obligations of the Crown under Treaty settlements, namely because the proposed reserve would prohibit any customary and settlement-based kaimoana activities.

748. The Iwi Trust sees the merits of marine protection for Waiheke Island, but they stated that they are in the process of Treaty Settlement and that 'partnership engagement with the Crown is front and center of our role for Ngāti Pāoa and therefore the landscape has changed for iwi' and, therefore, the Application cannot provide for the principles of the Treaty.

749. The Iwi Trust also raised whether the Department is meeting section 4 commitments, 'DOC failed to understand their views on the proposed marine reserve and to meet obligations set out under section 4 of the Conservation Act 1987, Te Takutai Moana Act 2011, and relevant Treaty settlement agreements'.

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Objections from all other submitters

750. The objections from Coastal Custodians and Muriwai Sport Fishing Club raised the matter that the Applicant did not develop the proposal according to section 4 of the Conservation Act and the principles of the Treaty in engaging and partnering with iwi.

751. Auckland Council submitted in support but noted the Application had not considered 'potential impacts on Treaty claims, Customary Marine Title claims and the Māori Commercial Aquaculture Claims Settlement Act 2004 (including the New Space Plan, which is in progress with Fisheries New Zealand)'. Their submission recommended further engagement and consideration of 'mana whenua views, Treaty settlements and customary takes'.

Applicant's response

752. The Applicant rejected the assertion that exercising an existing right under the law to make an application for protection of the marine environment would prejudice any Treaty settlements. They stated that the Ngāti Maru Treaty settlement or the Marutūāhu Collective Treaty settlement do not contain 'any Crown commitments to repeal environmental statutes, in particular the Marine Reserves Act (1971), and the Marine & Coastal Area [Takutai Moana] Act (2011), nor change existing jurisdictional or constitutional arrangements relating to the role of the Crown and democratic regional government over the Common Marine & Coastal Area'. The Applicant also stated that they invited relevant iwi to meet with them to discuss the Application but that only some responded and engaged.

753. The Applicant acknowledged the proposed Ngāti Pāoa Treaty settlement in the Application and 'in good faith satisfied to the best of our ability all obligations under the Marine & Coastal Area (Takutai Moana) Act'. They concluded that 'to the best of our knowledge the marine reserve proposal in this area will not impact negatively on any Treaty settlement, nor compromise any claim for customary title or customary rights under the Marine & Coastal Area (Takutai Moana) Act'.

754. Regarding potential impacts on Treaty settlements, the Applicant stated that they have discussed this matter with 'Ngāti Pāoa Trust Board, kaumatua and whānau and with Ngāitai ki Tāmaki' and stated that 'to the best of our knowledge the marine reserve proposal in this area will not impact negatively on any Treaty settlement'.

Departmental advice

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

756. The Department acknowledges its commitments and obligations under the Treaty, section 4 of the Conservation Act and te Takutai Moana Act. Ngāti Pāoa are recognised as mana whenua for Waiheke Island and its surrounding waters.[146] The proposed reserve is within the Ngāti Pāoa area of interest.[147] Other iwi have interests too, as identified above. The Department also acknowledges the Matietie Historic Reserve, which borders the proposed reserve, and has historical, spiritual and cultural significance for Ngāti Pāoa.[148]

757. The Department confirms that there is no intention that creating the proposed reserve will pre-empt or negatively impact any applications for customary marine title.

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[146] *SKP Incorporated v Auckland Council* [2021] NZSC 35 [27 April 2021] fn 7.

[147] See Ngāti Paoa Area of Interest map, Attachment 1, Deed of Settlement: Ngāti Paoa Deed of Settlement documents | New Zealand Government (www.govt.nz).

[148] See page 16, Attachment 1, Deed of Settlement: Ngāti Paoa Deed of Settlement documents | New Zealand Government (www.govt.nz).

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758. The Crown's obligations in respect of the proposed reserve and the Treaty are set out in 5.2. The Act must be interpreted so as to give effect to the principles of the Treaty, as required under section 4 of the Conservation Act.[149] Section 4 of the Conservation Act is a powerful Treaty provision that should not be narrowly construed. Key principles of the Treaty that of most relevance to your decision are partnership, informed decision-making, active protection and redress and reconciliation. In particular, the principle of active protection requires reasonable steps to actively protect Māori interests. This obligation is not absolute and unqualified, as this would be inconsistent with the Department's other statutory responsibilities. Active protection requires informed decision-making and judgement as to what is reasonable in the circumstances.

759. In this case, while the Iwi interests engaged are recognised as significant, the Department's recommendation is that a decline of the Application is not reasonably required. The Department considers the imposition of the recommended conditions and other mitigation measures would be reasonable to provide recognition of and actively protect iwi-Māori interests, while also recognising the Government's ability to manage the environment in the interests of all New Zealanders.

760. Consideration of active protection of mana whenua interests is reflected in the proposed conditions and measures set out in 10.1. In particular, mitigation measures that recommend:

- recognising and providing for mātauranga and the kaitiaki responsibility of tangata whenua (see recommendations (a), (b), and (f) 10.1.1, and (g) and (h) 10.1.2)
- removal of any barriers to unwanted organisms control currently undertaken by Ngāti Pāoa (see recommendation (b), 10.1.1)
- a generational review of the marine reserve, including the requirement that the Minister of Conservation consults with Ngāti Pāoa and tangata whenua on this (see recommendation (a), 10.1.1)
- an advisory role for Ngāti Pāoa, as mana whenua, and potentially other tangata whenua in the management of the proposed reserve (see recommendation (h), 10.1.1).

761. While the Department acknowledges that the Iwi Trust (in particular) remains fundamentally opposed to the Application, these proposals are considered to be reasonable and appropriate so as to give effect to Treaty principles, particularly active protection and partnership, and in having particular regard to the views of affected iwi, whanau and hapū (the section 49 te Takutai Moana Act obligation). This also reflects te Takutai Moana Act section 3(2)(c), which recognises, and promotes the exercise of, the customary interests of iwi, hapū, and whānau in the common marine and coastal area of New Zealand.

762. The Department acknowledges objections that the proposed reserve would not embody the principle of partnership given that the Crown is the decision-maker on the Application and would be the decision-maker for management of the marine reserve if declared. The Department seeks to work together with Treaty partners and includes a recommendation for an advisory role for Ngāti Pāoa (and potentially other iwi) in the management of the proposed reserve. However, for matters where the Act specifies that a decision sits with the Minister of Conservation or the Director-General of Conservation it is not within the powers of the Minister or the Department to delegate that decision-making role to a third party.

[149] Section 4 of the Conservation Act requires that Act be interpreted and administered as to give effect to the principles of the Treaty of Waitangi. This also applies to Acts in the First Schedule, as confirmed in the Whales case - *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 533.

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763. The Department has endeavoured to accurately reflect and identify submissions received from affected iwi, whānau and hapū to enable informed decision-making and to meet the requirement under te Takutai Moana Act for the 'decision maker to have particular regard to the views of those affected iwi, hapū, or whānau'.

764. Regarding the issue raised by Auckland Council about the Māori Commercial Aquaculture Claims Settlement Act 2004, the Department notes there is no existing aquaculture within the proposed reserve.

765. The purpose of the Māori Commercial Aquaculture Claims Settlement Act (section 3) is to:

> '(a) provide a full and final settlement of Maori claims to commercial aquaculture on or after 21 September 1992; and
>
> (b) provide for the allocation and management of aquaculture settlement assets'.

766. This Act requires the Crown to prepare a plan that sets out how the Crown will deliver the aquaculture settlement. This 'new space plan' forecasts where aquaculture growth is expected to happen up to 2035, and provides a methodology for valuing that space, to identify the Crown's settlement obligations to iwi in a particular region. No aquaculture settlement areas in this plan overlap with the proposed reserve.

767. The Sea Change Plan also provided recommendations on suitable areas for aquaculture, identifying 13 proposed areas for intertidal shellfish, subtidal shellfish and finfish aquaculture. None of those areas are near the proposed reserve. Given the biodiversity values (as set out in chapter 8) and the large amount of vessel traffic through the area, the Department considers it unlikely that the area within the proposed reserve would be identified as a suitable site for aquaculture in the future. Therefore, the Department did not identify any potential future interference of the proposed reserve on the rights under the Māori Commercial Aquaculture Claims Settlement Act and the new space plan it enables.

9.5.25 Objections relating to engagement with and support of tangata whenua

Objections from affected iwi, hapū, or whānau

768. Three individual objections (HMMR-784100, HMMR-773911, HMMR-682516), the objection of the Iwi Trust and the submission in partial support from Horowhenua ki Tai marae raised concerns that the process of engagement with tangata whenua conducted by the Applicant during the development of the Application, and the Department's engagement with tangata whenua on the Application, was not acceptable.

769. An individual submitter stated 'I am opposed to this submission due to not being duly engaged in a respectful manner as a direct descendant of those hapū of Ngāti Pāoa, as mana whenua'.

770. Another expressed that they did not feel the Applicant consulted widely enough with people fulfilling the role of kaitiakitanga and that the timing of the Application, coinciding with the Ngāti Pāoa Treaty settlement process, was not ideal.

771. Another objected to the approach taken by the Applicant to 'single out individuals of Ngāti Pāoa descent' stating that the approach 'has made me both very uneasy and pushed me into a corner... FOHG [Friends of the Hauraki Gulf – the Applicant] are creating dissent amongst my own iwi in order to achieve their desired solution. Further, this push by FOHG is being held in a court of public opinion that has me feeling like a victim of a process that is not embodying Te Tiriti principles'.

772. The Iwi Trust stated that the Applicant has not engaged with them in person whereas they are active kaitiaki of the proposed site. They also stated that in their view the 'Department of

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Conservation failed to properly consult with Ngāti Pāoa, our hapū Ngāti Hura, Ngāti Kapu, and Te Uri Karaka, or our whānau who reside on Waiheke and those who are active participants as Ngāti Pāoa representatives on a range of Waiheke committees. DOC failed to understand their views on the proposed marine reserve and to meet obligations set out under section 4 of the Conservation Act 1987, Te Takutai Moana Act 2011, and relevant Treaty settlement agreements'.

773. The Iwi Trust stated they feel a 'deep sense of being disenfranchised from this process' because the Department only communicated with them by email prior to running the public consultation for the proposed reserve and during one Zoom meeting after the start of the consultation. They also raised concerns about the series of questions sent by the Department (see Appendix 3) regarding their customary and commercial activities at the proposed site stating, 'These questions are heavily loaded and seem to privilege FoHG and not mana whenua'.

774. One individual submission in support (HMMR-784709) stated that mana whenua need to be involved with the development and implementation of the marine reserve management plan. The submission in support from Piritahi Marae asked that 'mātauranga and tangata whenua be central to the management and kaitiakitanga of the reserve. Under the Takutai Moana Act 2011, section 47 we reserve our right as whānau of Piritahi Marae and Waiheke Island to participate in conservation processes in the common marine and coastal area'.

Objections from all other submitters

775. Two individual objections (WSHMMR-802264, HMMR-722786), the combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand, the objections of Coastal Custodians, Muriwai Sport Fishing Club and New Zealand Sport Fishing Council, and the submission in partial support from the Auckland Conservation Board, raised concerns regarding the engagement of mana whenua on this proposal. The themes were mana whenua not being consulted appropriately during the development of the Application, a lack of support from mana whenua for the Application, and that it should be clearly part of the proposal that mana whenua will be involved with managing the marine reserve (e.g. co-management), if it is established.

776. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand also questioned whether other iwi with customary fisheries interests in the Hauraki Gulf, other iwi organisations with quota management areas overlapping the proposed site, and iwi with customary non-commercial fishing who may experience additional fishing pressure in their rohe moana (if the proposed reserve is established), were consulted. They stated that the proposed reserve would not be in the public interest unless there is explicit support from all relevant iwi.

777. Seven individual submissions in support (WSHMMR-802123-Māori, HMMR-742900, HMMR-732840, HMMR-562192, WSHMMR-721268, WSHMMR-761514, WSHMMR-721253) and the submissions in support from Auckland Council and Native Bird Rescue Charitable Trust[150] raised the issue that the reported consultation with iwi was done too late (e.g. only after the Application was developed), or was only partial (e.g. further engagement with the Iwi Trust is required and engagement with Ngāi Tai ki Tāmaki was recommended), and by recommending that mana whenua be involved in the management of the marine reserve, if it is established.

[150] A local bird rescue centre on Waiheke Island.

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Applicant's response

778. Regarding engagement with the Iwi Trust, the Applicant stated that 'Formal letters were sent with copies of the draft application report to the Ngāti Pāoa Iwi Trust and the Ngāti Pāoa Trust Board. (Both Boards are recognised by the Crown). These letters were sent by email on 23 April 2021, on the same date as the draft application report was sent to the Director-General of DOC as per s 5 of the Act [...]. The letters [...] invited the boards' views and sought to meet with the Boards at their convenience'.[151] They then stated that multiple reminders were sent to the Iwi Trust and that, at this point, the Department's Pou Tairangahau / Māori Engagement Strategic Manager then took the lead role for engaging with iwi. The Applicant then described that they received one message from the Iwi Trust expressing the willingness to meet, but that the meeting never occurred, and that further correspondence to the Iwi Trust, including invitations to meet, were not responded to.

779. Regarding consultation with mana whenua, the Applicant stated that 'The location proposed in the application is one which has been well socialised by the Waiheke Local Board as a potential site for a Marine reserve and through their processes, there was a level of engagement with Mana Whenua and Tangata Whenua, especially the Ngāti Pāoa representative to the Waiheke Local Board'. They added that members of the Applicant's organisation participated in the early meetings of the Waiheke Marine Collective around 2019. They noted that the local Piritahi Marae has the 'unique historical role of representing and facilitating the cultural needs of Māori living on Waiheke both Maata Waka and Tangata Whenua' and that they have worked closely with Piritahi Marae and appreciate their support.

Departmental advice

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

781. The Department acknowledges the perspectives of submitters raising concerns regarding engagement with tangata whenua. The Department acknowledges that the Applicant consulted with some representatives of Ngāti Pāoa and Piritahi Marae. The Applicant's description that they provided formal letters to the Iwi Trust and the Trust Board on the same date as the draft application report was sent to the Department is noted and clarifies how developed the proposal was when the Applicant sought this engagement.

782. The Department has commitments under section 4 of the Conservation Act to act reasonably and in good faith in its engagement with Treaty partners, which is at the core of the Treaty principle of partnership, along with requirements under te Takutai Moana Act. In this case, the proposal was developed by a third party and the Applicant met the procedural requirements of the Act. Therefore, the Application was processed by the Department.

783. The engagement carried out by the Applicant before the Application was lodged with the Department is not commented on further in this advice. Engagement carried out by the Department after the Application was lodged is described in chapter 4. The Department considers this engagement is consistent with our obligations under section 4 of the Conservation Act, and as set out in 6.12.

784. The Iwi Trust stated that the Department did not undertake adequate consultation and therefore has failed to meet its section 4 obligation. The Department notes, however, that its role prior to the third-party Application being lodged was necessarily limited. Following the Application being lodged, the Department undertook several steps to ensure all iwi with

[151] Note: in 2024, the Te Puni Kōkiri website was amended to remove the Trust Board from the list of representative organisations. https://www.tkm.govt.nz/iwi/ngati-paoa/#.

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customary interests in the area were engaged with (see 4.4). The Department considers this consultation and engagement to have fulfilled our section 4 obligation in the context that the Application was not developed by the Department.

785. The Department considers that receiving views on the proposed reserve via public consultation, and specifically those from submitters identified as iwi, hapū or whānau (as under section 47 and 48 of te Takutai Moana Act), also provided a strong mechanism for those views to be properly considered and given 'particular regard' in making a decision on the Application.

Submissions in support

786. The Trust Board included in their submission in support that they are grateful to the Applicant for taking the time to physically show them their marine reserve aspirations in person and stated that these 'aligned with the aspirations we also hold for the Hauraki Gulf'. They also stated that they 'will walk alongside [the Applicant] in support of the application to establish the Hakaimango-Matiatia Marine Reserve, and that the mana of Ngati Pāoa Iwi/hapu support will help to make our joint aspirations a reality'.

9.5.26 Objections related to impacts on customary fishing

Objections from affected iwi, hapū, or whānau

787. Two individual objections (HMMR-794775, HMMR-692585) and the objections of the Iwi Trust and Ngāti Maru Rūnanga raised the issue that the proposed reserve would impact negatively on customary fishing. Ngāti Maru Rūnanga objected to the proposal because they see the Act as against the obligations of the Crown under the Treaty settlements, namely because the marine reserve would prohibit any customary and settlement-based kaimoana activities.

788. Ngāti Maru Rūnanga stated 'The no-take marine reserve would prohibit any Treaty based fishing rights'. The Iwi Trust expressed concerns that the marine reserve would create displacement of fishing effort, commercial, and recreational that will place 'more impact on other iwi's natural resources'. An individual objector stated, 'I believe as tāngata te whenua. Manawhenua have customary harvesting and fishing to our moana by whakapapa under the tiriti'.

Objections from all other submitters

789. Four individual objections, including two from Māori submitters (HMMR-794826-Māori, HMMR-773689-Māori, HMMR-753053, HMMR-191391) and the combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand raised the matter that the Application did not contain details of impacts on customary fishing or that there is a risk of significant impacts.

790. Individual objections stated that the proposed reserve would affect customary fishing by 'limiting our cultural connection to harvesting kaimoana as a form of manaakitangata and hou kai' or that 'This reserve proposal placement dis-proportionally effects [...] customary fishers' because it is in a populated coastal area.

791. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand claimed that the proposed reserve would create potential adverse effects on customary fisheries in the Hauraki Gulf (from the cumulative impacts on iwi-owned quotas due to displacement of recreational fisheries). They 'consider the adverse effects of the proposed marine reserve on the sustainable management of fisheries and [the consequences of fishing displacement on customary fishing] are

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relevant to the Treaty obligations of both Ministers [the Minister of Conservation and the Minister of Oceans and Fisheries]'.

792. One individual submission in support (HMMR-512087) suggested that compensation for any customary fishing losses should be considered. Auckland Council supported the Application but stated that 'Estimates of customary take of aquatic life are not included in the application, and therefore do not align with other strategic directions for marine protection under Sea Change and the Government Response Strategy, which does recognise and provide for customary harvesting within the proposed marine protected areas'.

Applicant's response

793. The Applicant referred to customary rights and customary title as addressed in te Takutai Moana Act, especially section 59. The Applicant stated that they have been taking the Department's advice on the implications of this important legislation. They stated that, after consultation with Ngāti Pāoa and Ngāi Tai ki Tamaki, they 'are not aware of any recognised customary title holders or claimants being adversely affected or affected at all by this proposal' and that 'in the matter of customary connection we must defer to the tino Rangatiratanga over the area declared by the Ngāti Pāoa Trust Board'. The Applicant said they 'discussed all those questions as is tika with Ngāti Pāoa Trust Board, kaumatua and whānau and with Ngāitai ki Tāmaki who have recognised manawhenua status over neighbouring Otata (the Noises Islands), and also on an ongoing basis with the Department of Conservation'.

794. The Applicant acknowledged the proposed Ngāti Pāoa Treaty settlement in the Application and 'in good faith satisfied to the best of our ability all obligations under the Marine & Coastal Area (Takutai Moana) Act'. They concluded that 'to the best of our knowledge the marine reserve proposal in this area will not impact negatively on any Treaty settlement, nor compromise any claim for customary title or customary rights under the Marine & Coastal Area (Takutai Moana) Act'. The Applicant also stated, 'The customary practice and tikanga of the rāhui we formally acknowledge and respect'. The Applicant concluded that, after consultation with tangata whenua and mana whenua, they understand that 'the proposed marine reserve will not impact on any customary practices or tikanga'.

Departmental advice

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

796. Estimating customary fishing from the area of the proposed reserve was not possible, given the lack of data provided by the customary interest groups and that the reporting requirements to Fisheries NZ were also inadequate for this process. Fisheries New Zealand confirmed that commercial customary fishing activities are reported at the scale of the quota management area that covers the entire Hauraki Gulf and the reporting of customary fishing for hui and tangi purposes is not required (see Volume 2, Appendix 23). Therefore, any estimate of customary take in the area of the proposed reserve can only be estimated through engagement with iwi. The Applicant's response stated that they were not made aware of any customary fishing from their engagement with mana whenua. The objections received also did not provide any information on or confirmation of customary fishing at the proposed site.

797. Despite this lack of data regarding existing customary fishing activities, the Department acknowledges that the establishment of a marine reserve would impact on customary fishing rights within its boundaries. The Department notes, however, that the proposed reserve covers 7.6 km of coastline, which is a small proportion (5.2%), of the Waiheke Island

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coastline.[152] 85% of the coastline of Waiheke Island would remain available to customary fishing (i.e. outside the existing Te Matuku Marine Reserve and the proposed reserve) but appreciating that there is currently a section 186A temporary closure in place.

798. The proposed reserve would overlap with 7.8% (10.3 km²) of the current section 186A temporary closure around Waiheke Island (see 3.4). The Department appreciates that the purpose of the closure is to recognise and make provision for the use and management practices of tangata whenua in the exercise of customary fishing rights, and that the establishment of a marine reserve would effectively frustrate the ability of tangata whenua to practice cultural fishing activities within the overlapped areas, on the expiration of the section 186A notice. However, the areas outside the proposed reserve would not be affected and the Department notes the benefits of a marine reserve extend beyond its boundaries to create more abundant fish communities in areas open to the customary fishing practices of tangata whenua. Further, it the view of the Department that the exitance of a section 186A notice does not of itself prevent the establishment of a marine reserve over all or part of the area covered by that notice.

799. Regarding cumulative impacts of fishing displacement on customary fishing, the Department's assessment of the impacts of displacement of fishing effort on commercial fishing is also relevant here (see 9.3.3). In summary, there will be some displacement of fishing effort if the proposed reserve is established but the proposed site does not cover the current most popular areas of recreational fishing, and commercial fishing effort at the site is very low. Therefore, the Department considers displacement of fishing effort would not be large and would be unlikely to unduly impact customary fishing around Waiheke Island or in the rest of the Hauraki Gulf. Therefore, the Department did not find any compelling evidence that customary fishing outside the proposed reserve would be unduly affected if the proposed reserve was established.

[152] Waiheke Coastline is 146.5 km including close small islands and rocky outcrops. These measurements are given in NZTM and are based on the LINZ mean high water coastline dataset (Browse GIS data | LINZ Data Service).

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9.6 Summary of all objections and the Department's assessment

Table 9-1: Summary of objections to the proposed reserve under each of the Marine Reserves Act section 5(6) tests, and the Department's assessment and recommended actions

Key: **Categorisation of objections**

- ○ Objection(s) received from 'affected iwi, hapū, or whānau'
- ^ Objection(s) received from 'other Māori'
- ≈ Objection(s) received from 'all other submitters'

Department's assessment and recommended action

- No undue interference/not contrary to the public interest, recommend objection is not upheld
- Likely undue interference or likely contrary to the public interest
- Recommend objection is upheld and marine reserve should not be declared

Marine Reserves Act section	Topic of objection	Category and assessment	Recommended action (if any)
Estate or interest in land: 5(6)(a)	Visitor noise impacts on adjoining land interests	≈	
	Increased visitor impacts on adjoining land interests	≈	
	Impacts on shore fishing for coastal homeowners	≈	
Navigation: 5(6)(b)	Impacts on vessel access and safety	≈	
	Difficulty of determining where the marine reserve boundary is	≈	
	Navigational risks	≈	Condition for emergency pollution response
Commercial fishing: 5(6)(c)	Impacts on commercial set netting and ring netting	≈	
	Impacts on commercial sea cucumber harvesting	≈	
	Impacts on commercial fishing from displacement of fishing	≈	
Recreational usage: 5(6)(d)	Inability to collect beach material	^ ≈	
	Impacts on dog off leash areas	≈	
	Impacts on non-fishing water-based recreational activities	≈	
	Recreational fishing opportunities	^ ≈	
	Impacts on recreational fishing from displacement of recreational fishing	≈	
	Impacts on commercial charter operations	^ ≈	
Public interest: 5(6)(e)	Lack of management of land-based threats by a marine reserve	^ ≈	
	Lack of management of sedimentation threats by a marine reserve	^ ≈	
	Improving fisheries management	^ ≈	
	Questioning the Department's ability to manage a new marine reserve	≈	

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Marine Reserves Act section	Topic of objection	Category and assessment	Recommended action (if any)
	Questioning the management of climate change threats	≈	
	Impacts on the marine reserves from visitors and boats	≈	
	Impacts of increased tourism on Waiheke Island	≈	
	Questioning the ease of public access to the marine reserve	≈	
	Questioning the science underpinning the Application	^ ≈	
	Questioning the safety for in-water recreational activities	≈	
	Questioning the integrity of the public engagement and consultation process	≈	
	Amending the marine reserve	○ ^ ≈	
	Lack of alignment with the 'Waiheke Marine Project'	○ ≈	
	Proposal not aligning with Sea Change / Revitalising the Gulf	○ ≈	
	Better alternative management tools	○ ^ ≈	
	Limitations of the Marine Reserves Act	○ ^ ≈	
	Questioning the need for a marine reserve given existing rāhui	○ ≈	
	Aspirations for co-management or co-governance	○	Establish an advisory rōpū for the marine reserve Condition to require generational reviews
	Prevention of the exercise of customary rights and practices	○ ^ ≈	Kina removal from the marine reserve for management purposes Condition to require generational reviews Establish an advisory rōpū for the marine reserve
	Aspirations for active regeneration practices	○ ≈	Condition for the control of unwanted organisms Kina removal from the marine reserve for management purposes
	Need for kina removal	○ ≈	Kina removal from the marine reserve for management purposes
	Marine pests	≈	Condition for the control of unwanted organisms
	Monitoring and mātauranga Māori	○	Kina removal from the marine reserve for management purposes Establish an advisory rōpū for the marine reserve
	Questioning the proposal against Treaty of Waitangi obligations	○ ≈	
	Engagement with and support of tangata whenua	○ ≈	
	Impacts on customary fishing	○ ^ ≈	

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9.7 Stage 1 assessment – Obligations in relation to the Treaty of Waitangi

800. As set out in 5.2, as part of your assessment of objections under section 5(6) of the Act, you have obligations relating to the Treaty, including those under section 49 of te Takutai Moana Act and section 4 of the Conservation Act. Note that the requirements of the HGMPA (including the recognition and protection obligations related to the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Hauraki Gulf with the Gulf and its islands) and the Department's advice in relation is addressed in 10.2.2. The HGMPA considerations are additional to the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty when interpreting and administering the Act.

801. To allow you to 'have particular regard to the views' of affected iwi, hapū or whanau, objections received from these submitters were set out above separately from all other submitters at the start of each objection section. This allows for your consideration of these views before considering any response from the Applicant or the Department's advice on the assessment of these objections.

802. As set out in 5.2.15.2.1, the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty when interpreting and administering the Act is a mandatory requirement and relevant to your assessment of objections from submitters identified as affected iwi, hapū, or whānau. In accordance with the principle of informed decision-making, all objections received from these submitters are identified and analysed above. The principles of partnership and active protection are particularly relevant to your consideration of the impacts on customary rights and interests, including impacts on customary fishing practices, the ability to continue to develop and use mātauranga Māori, and to continue to exercise kaitiakitanga over the area.

803. In considering whether to uphold these objections, or whether any of the concerns raised might be reasonably reconciled through our recommendations, you must consider whether to do so would be reasonable in the circumstances and consistent with the obligations to give effect to the Treaty principles. You must have particular regard to these objections.

804. The Department has also identified, above, the objections received from other Māori submitters. Some of these objections raised issues relating to impacts on the exercise of customary rights and practices, including customary fishing. We note that these views are received from Māori submitters who are not affiliated with Ngāti Pāoa or any other cultural interest group. Our assessment is that the issues raised in these objections do not engage section 4 interests but, in any event, do not raise anything additional to those views provided by Ngāti Pāoa and other cultural interest groups. On that basis, we consider that a decision to not uphold any of the objections received from other Māori submitters would not be inconsistent with your obligations under section 4 of the Conservation Act.

805. While the Treaty interests engaged are recognised as significant, the Department's view is that a decline of the Application is not reasonably required and it is our recommendation that the proposed conditions for the Order in Council and other mitigation measures (as set out in 10.1) are reasonable and sufficient to discharge the duty of active protection in the circumstances of this matter, while also recognising the government's ability to manage the environment in the interests of all New Zealanders.

806. It is the Department's view that a decision to declare the proposed reserve with these conditions and other measures would also be consistent with your obligation to have particular regard to the views of those affected iwi under section 49 of te Takutai Moana Act.

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As addressed below, the Department also considers such an approach to be consistent with the recognition and protection obligations under the HGMPA, related to the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Hauraki Gulf with the Gulf and its islands under the HGMPA.

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10 Stage 2 assessment – section 5(9) of the Marine reserves Act

807. As set out in chapter 9, the Department concludes that while there would be some interference with existing uses and interests specified in section 5(6) of the Act (as raised through objections) if the proposed reserve was established, the nature and magnitude of the interference would not be undue, nor would declaring the marine reserve be contrary to the public interest. The Department also considers a decision to not uphold any objections would not be inconsistent with the Crown's obligations in relation to the Treaty, including under section 4 of the Conservation Act.

808. The Department has reached these conclusions in light of our recommendations for Order in Council conditions and other measures (as set out in 10.1) and having considered the values of the proposed reserve and the extent to which it is expected to fulfil the purpose of the Act. If you agree, you should proceed to the second stage of decision-making under section 5(9) of the Act as set out below.

809. The relevant decision steps associated with the Stage 2 assessment are:

If you don't uphold any objections, you must consider if a decision to declare the proposed Hākaimangō-Matiatia marine reserve, with the recommended Order in Council conditions and other measures at 10.1.1 and 10.1.2, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Act). You must either:

Agree all the following proposed Order in Council conditions

OR

Agree some/none of the following proposed Order in Council conditions:

a) Condition to require generational reviews
b) Condition for the control of unwanted organisms
c) Condition for pollution response
d) Condition for existing consented structures, replacement of existing consented structures and associated maintenance
e) Condition for existing discharges of contaminants and associated monitoring
f) Condition for retrieval of dead marine mammals and marine mammal parts

Agree all the following proposed other measures

OR

Agree one/none of the following proposed other measures:

g) Recommendation relating to kina removal from the marine reserve for management purposes
h) Recommendation to establish an advisory rōpū for the marine reserve

You must consider if a decision to declare the proposed Hākaimangō-Matiatia marine reserve, with the recommended Order in Council conditions and other measures above, would be consistent with the Crown's obligations in relation to the Treaty of Waitangi.

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You must consider if declaration of the marine reserve is consistent with the requirements of the Hauraki Gulf Marine Park Act 2000.

You must consider if declaration of the marine reserve is consistent with the Conservation General Policy and the Auckland Conservation Management Strategy.

10.1 Recommendations for the proposed marine reserve

810. Section 5(9) provides that your recommendation to the Governor-General on the proposed reserve can be made unconditionally or subject to conditions. The Department's recommendations for Order in Council conditions and other measures are set out in 10.1.1 and 10.1.2 respectively.

811. The Department recommends the conditions and other measures described below be applied if the proposed reserve is established. The conditions would be set out in the Order in Council creating the marine reserve and the other measures implemented after the marine reserve has been declared. The recommended conditions and other measures aim to mitigate interference with the matters listed in section 5(6) of the Act, to alleviate adverse impacts on customary rights and interests identified through engagement with customary interest groups, and to address obligations arising from Treaty settlements not addressed in other ways (for example effective partnership post decision and marine mammal considerations). In most instances, but not all, the conditions and measures have been proposed in response to objections raised in submissions.

812. The Departments engagement with submitters who identified as affected iwi, hapū, or whānau, and the customary interest groups, including Ngāti Pāoa as mana whenua, continued through the process of preparing this advice to enable further understanding of their views in relation to the establishment and management of the proposed reserve (see 4.4 and 4.5).

813. As set out in 4.4, the Department sought feedback from the customary interest groups on potential conditions and measures the Department developed to alleviate concerns raised through submissions. Through the engagement process, most did not respond and Ngāti Te Ata and Ngāti Tamaoho formally deferred to Ngāti Pāoa as mana whenua and provided no further feedback. This view or lack of response does not remove the need to consider recommendations in light of Treaty obligations to all customary interest groups and the Department's recommendations reflect this.

814. Feedback on the potential conditions and measures developed by the Department was received from the Iwi Trust and the Trust Board and is set out below.

815. The Department is acutely aware of the high cultural significance of the Hauraki Gulf / Tīkapa Moana and, in particular the proposed reserve area, to Ngāti Pāoa and the customary interest groups, and of its obligations in relation to actively protecting Treaty partner interests, as well as recognising kaitiaki responsibilities and statutory obligations ('must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application or proposal') in relation to te Takutai Moana Act. Noting that active protection requires informed decision-making and judgement as to what is reasonable in the circumstances. Recommended conditions and measures to protect iwi interests are addressed below.

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10.1.1 Recommendations for Order in Council conditions

(a) Condition to require generational reviews

816. The Department recommends a condition to require generational reviews of the marine reserve. The condition would provide for the following:

- the Director-General of Conservation would undertake the generational review
- the review would be initiated within 22 years, and completed within 25 years, of the marine reserve being declared, and at subsequent 25-year intervals
- the Director-General would be required to consult with Ngāti Pāoa (as mana whenua) and other tangata whenua groups and the community as appropriate as part of undertaking each generational review.

817. Some submitters expressed concerns about adequate management of the marine reserve, reviews of fisheries management, community engagement and support for the marine reserve, and a lack of alignment with other marine protection processes occurring in the Hauraki Gulf. Generational reviews would provide an opportunity for the Department, any advisory rōpū established (see 10.1.2 (h) below) and the community to input into an assessment of these matters and any actions needed for improvement.

818. In developing this recommendation, the Department has drawn on information provided in submissions and views received through subsequent engagement with Ngāti Pāoa.

819. The Iwi Trust raised several concerns about the potential impact of the proposed reserve on their customary interests. One concern relates to the desire to be closely involved in ongoing management of the area as a means of exercising tino rangatiratanga and kaitiakitanga, and their focus on ensuring mātauranga can be transferred between generations and incorporated into marine protection. A generational review mechanism would allow each generation to review and evaluate the marine reserve mechanism, including to reflect on whether it is achieving its purpose.

820. You should consider the recommended generational review condition in terms of the Treaty principles of active protection, partnership and informed decision-making.

821. The Department considers that providing for generational review would be an appropriate mitigation measure that would give effect to the principles of partnership and active protection. During engagement, both entities of Ngāti Pāoa stressed the importance of ensuring that customary practices are appropriately maintained and each subsequent generation of Ngāti Pāoa is appropriately recognised and provided for. The recommendation for a generational review would allow each subsequent generation to inform decisions about the management of the marine reserve at that point in time. The Department only heard from Ngāti Pāoa on this measure but considers the same generational importance is likely to be held by other tangata whenua groups.

822. It is important that the precise scope and objectives of each generational review is left to be determined at the relevant point in time rather than being determined in advance. Provision for generational review would also give effect to the principle of partnership, on the basis that it is envisaged the proposed advisory rōpū (with mana whenua and tangata whenua representation) will work with the Department to recommend the process for generational reviews. It would also be appropriate in terms of the principle of informed decision-making, given the key purpose of a generational review is for ongoing informed decision-making about the marine reserve.

823. If any statutory changes to the marine reserve are required as a result of a generational review, these would need to be progressed through the relevant statutory process. Under the

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current legislation, this would follow the same process as for establishing the reserve and therefore, any changes would be a Ministerial decision. This is a feature of the statutory framework. The delegation of decision-making to an advisory rōpū is not possible.

824. In order to ensure appropriate tangata whenua involvement in generational reviews is guaranteed, it would be appropriate for the condition to make express reference to the requirement for the Director-General to consult with Ngāti Pāoa (as mana whenua) and other tangata whenua groups as appropriate in undertaking each generational review.

825. Prior to the Director-General undertaking the review, we anticipate that the proposed advisory rōpū would advise on the scope and objectives of the generational review as well as who undertakes it and how this is done.

826. For the reasons set out above, the Department considers that a decision to declare the proposed reserve with the recommendation providing for generational review would alleviate impacts on customary rights and interests identified in submissions and engagement, and be consistent with your obligations under section 4.

(b) Condition for the control of unwanted organisms

827. The Department recommends a condition to allow for the control of unwanted organisms[153] within the marine reserve.

828. The Act prohibits the taking or removal of marine life from marine reserves 'without lawful authority'. 'Marine life' includes invasive species. To allow the control of invasive species without the need for permission under the Act, provision would therefore need to be made in the Order in Council declaring the marine reserve.

829. The condition would provide for the following:

- unwanted organisms (attached or unattached) can be removed in accordance with permitting requirements under the Biosecurity Act 1993 as long as all other legal requirements relating to the removal are complied with
- any additional requirements under the Resource Management Act are unaffected (i.e., continue to apply)
- the Department would require notice of the activity to its relevant senior local manager.

830. The Iwi Trust currently has a permit to remove exotic *Caulerpa* from several areas in the Hauraki Gulf, including the area of the proposed reserve. They have stated, 'The Iwi Trust is leading out the response to caulerpa, and is participating in the Pou Rāhui project, which is focussed on marine regeneration' (see Volume 2, Appendix 7). Through engagement, the Iwi Trust has indicated undertaking the work to remove and reduce invasive marine species is important, for the purpose of control and their ability to exercise kaitiakitanga.

831. The Department considers that the ability for Ngāti Pāoa to combat unwanted organisms within the area of the proposed reserve without an additional barrier (i.e. permission under the Act) is desirable for the purpose of protecting the marine environment and for the ability of Ngāti Pāoa to exercise kaitiakitanga.

832. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the recommended condition in terms of the Treaty principles of partnership and active protection.

[153] As defined under the Biosecurity Act 1993: 'any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health'.

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833. Given the rights and interests identified by Ngāti Pāoa, the Department considers that it would be consistent with the Treaty principles of active protection and partnership to include a condition in the Order in Council to allow current unwanted organisms control, i.e. *Caulerpa* removal, within the marine reserve.

834. Current invasive species response in the Hauraki Gulf relates primarily to *Caulerpa* and Ngāti Pāoa and the Waiheke Marine Project. However, given the potential for other incursions, and the likelihood that other groups may have a role to play in control, the Department recommends that the condition be broader than just the current *Caulerpa* control carried out by Ngāti Pāoa. The Department considers it would be consistent with the purpose of the Act to include a broader condition in the Order in Council. Relevant points that have been taken into consideration are:

- that this recommendation is restricted to unwanted organisms
- the purpose of the activity would be for control of unwanted organisms
- the intent is to minimise or remove barriers to unwanted organisms control
- the emphasis that section 3 of the Act places on administering and maintaining marine reserves so that they can be preserved 'as far as possible in their natural state'
- the regulatory safeguards for this activity provided by the existing permitting processes administered by Tiakitanga Pūtaiao Aotearoa (Biosecurity New Zealand) and in some instances, under the Resource Management Act.

835. In light of these matters, the Department considers that allowing unwanted organisms to be removed from the marine reserve, subject to any other applicable legal requirements, would be consistent with the purposes of the Act.

(c) Condition for pollution response

836. The Department recommends a condition to allow responses to emergency oil spill or pollution incidents. The Department has discussed this with the Ministry of Transport. This condition is recommended as a good practice measure and was also raised in Maritime New Zealand's submission through the public consultation.

837. 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. The Department's 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 the Department 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).

838. 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.

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

839. The Department recommends a condition to allow any existing consented structures to remain in the marine reserve once declared. This condition is recommended as a good practice measure; it did not arise from objections.

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840. Auckland Council advised, as of November 2024, that three resource consents exist within the area of the proposed reserve that relate to 'structures' occupying the seabed. Two consents are for swing moorings in Owhanake Bay (Consent reference: CST60260686 and Consent number: 22416) and the third consent is for submarine power cables terminating in Owhanake Bay (Consent number: 9816).

841. 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 Act.

842. 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.

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

843. The Department recommends a condition to allow for the continuation of existing consented discharges of contaminants adjacent to the proposed reserve. Auckland Council advised that, as of November 2024, one resource consent (Auckland Council consent number: 15426) for a discharge exists in or adjacent to the proposed reserve. This consent permits the discharge of stormwater from residential properties through multiple outfalls into Owhanake Bay (within the proposed reserve).

844. The Act prohibits the discharges of certain substances either directly or indirectly into a marine reserve. The Department considers these discharges would not interfere with the proposed reserve achieving the purpose of the Act, and that prohibiting the discharges through declaration of the marine reserve would impact on the associated property owners. This condition is recommended as a good practice measure; it did not arise from objections.

845. 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.

846. 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, thus avoiding permitting duplication.

847. Note that the intention would be to continue to exempt these activities from the operation of the 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.

(f) Condition for retrieval of dead marine mammals and marine mammal parts

848. The Department recommends a condition for the proposed reserve that provides for the taking of all or part of dead marine mammals in accordance with the applicable Marine Mammals Protection Act 1978 provisions and Treaty settlement provisions (including associated relationship agreements). This condition is recommended as a good practice measure; it did not arise from objections.

849. The condition should be drafted to cover the following aspects (which are similar to those in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005):

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- all or part of a marine mammal may be taken if it washes up dead, or strands and dies (permit still required under Marine Mammals Protection Act)
- bones, teeth, ivory or ambergris may be collected from a marine reserve if they have naturally separated from a marine mammal (no permit required under Marine Mammals Protection Act, so long as the Department is notified).

10.1.2 Recommendations for other measures

(g) Recommendation relating to kina removal from the marine reserve for management purposes

850. The Department recommends that you direct the Department to:

- consult with Ngāti Pāoa, tangata whenua and other potentially interested parties who wish to carry out kina removal in the marine reserve on their goals and methods
- provide advice, within 12 months of gazettal of the marine reserve, on whether the activities would be consistent with the purpose of the Act.

851. The Department recommends this measure due to the concerns of Ngāti Pāoa, and other submitters, that preventing kina removal will stop active regeneration and stand in the way of mātauranga. The Department also understands that a particular concern highlighted by Ngāti Pāoa is their wish to remove kina as an exercise of kaitiakitanga, as they observe that the number of kina in some areas is out of balance and causing denudation of kelp.

852. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the recommendation in terms of the Treaty principles of partnership, active protection and informed decision-making.

853. The Department considers that there are several mechanisms under the Act that may be able to be used to consider authorising active regeneration methods that would otherwise be prohibited under the Act (for example section 3(3), 11(b) or 11(c) of the Act), including those methods that relate to the exercise of kaitiakitanga. The Department anticipates that Ngāti Pāoa would have particular interest in this measure.

854. At present the Department does not have sufficient information to recommend that any particular group or method be authorised. Therefore, we recommend that you direct the Department to consult with Ngāti Pāoa, tangata whenua and other potentially interested parties (e.g. Waiheke Marine Project) who wish to carry out kina removal in the area of the proposed reserve, on their goals and methods. The Department will then report back to you on the methods by which this could be authorised, if consistent with the purpose of the Act.

855. The Department considers that although the outcome of this process is unknown, you can still progress the decision on the proposed reserve. For the reasons set out above, the Department considers that a decision to progress the proposed reserve on this basis would be consistent with your obligations under section 4 and would therefore fulfil your obligations in relation to the Treaty in respect of this proposed measure.

(h) Recommendation to establish an advisory rōpū for the marine reserve

856. The Department recommends that you:

- agree in principle to the establishment of an advisory rōpū for the marine reserve, which should include strong representation from Ngāti Pāoa, as mana whenua, and other tangata whenua as appropriate

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- direct the Department to provide advice, within 12 months of gazettal of the marine reserve, on the establishment mechanism, terms of reference and membership of an advisory rōpū.

857. Many submissions, including those of both Ngāti Pāoa entities, raised issues relating to the need for mana whenua to be closely and integrally involved in the establishment and future management of the proposed reserve, including a desire to begin discussions on the structure of any management/advisory entity.

858. As detailed in Volume 2, Appendix 6, the Trust Board provided written feedback in August 2024 on potential measures to mitigate concerns about the proposed reserve. They stated their strong interest in having an oversight advisory role for the proposed reserve. Specifically, 'The Ngāti Pāoa Trust Board is driven by principles of kaitiakitanga, manaakitanga and taonga tuku iho mō ngā uri whakatipu (guardianship of resources for future generations). These are the principles we maintain that need to be at the heart of the management and advisory roles of the Hākaimangō – Matiatia marine reserve'.

859. The Trust Board concluded 'Ngāti Pāoa is willing to work alongside the Crown and with the local community to ensure the Hākaimangō – Matiatia Marine Reserve becomes a reality and is managed in accord with the purposes of the Marine Reserves Act, and the provisions of the Hauraki Gulf Marine Park Act, and that the mana of Ngāti Pāoa Iwi/hapū will help to make our joint aspirations with the Waiheke community and the beginning of ecological restoration of this part of Tīkapa Moana under our mana, a reality. Any advisory roles would be dependent on which iwi holds kaitiaki status within the Rohe the marine reserve is situated in'.

860. The Iwi Trust hui summary on mitigation measures outlines the views of the Iwi Trust on this proposed measure, including unresolved matters or key points of difference (Volume 2, Appendix 7). The Iwi Trust expressed opposing views to the Trust Board on this measure. They stated 'We are concerned at the over bureaucratic layers proposed to be added to what is a relatively small geographical space. By creating an extra layer with a marine reserve, then adding a committee layer, and then below that another layer with Biosecurity NZ, you will kill action'. The Iwi Trust also expressed 'Mana whenua have concerns about how DOC administers that reserve [Te Matuku Marine Reserve], and others around country', indicating unilateral management would not be desired.

861. Overall, should you approve the marine reserve, further work would be required with Ngāti Pāoa and other tangata whenua as appropriate to progress any advisory rōpū arrangements. Therefore, we recommend at this stage that you agree in principle to the establishment of an advisory rōpū and direct the Department to report further to you on this matter.

862. The Department acknowledges the view of the Iwi Trust regarding the high burden on tangata whenua of the numerous existing committees. The Department wants to explore how advisory rōpū arrangements could complement or be part of other existing or new management structures in the Hauraki Gulf. For example, should the Bill be enacted, any advisory group(s) set up may be able to include this proposed reserve (and, potentially, other existing marine reserves in the region). There is also an existing mechanism under section 56 of the Conservation Act where the Minister of Conservation can appoint a specific advisory committee for a marine reserve and declare it to be a statutory board. As part of discussions with Ngāti Pāoa and other tangata whenua as appropriate, the Department will explore the section 56 mechanism and other options for the establishment of the proposed advisory rōpū.

863. If a rōpū is created, its terms of reference could include advising on the design and delivery of any generational reviews (as recommended in 10.1.1 (a) above) and for advising on any requests for authorisations of activities in the marine reserve.

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864. The rights and interests relevant to this proposed measure relate to the concerns raised through submissions about the potential impact of marine protected areas on wider customary interests. In particular, the Department understands this relates to the potential for the proposed reserve to impact on the ability of Ngāti Pāoa, as mana whenua, to exercise rangatiratanga and kaitiakitanga through the separation of mana whenua from their taonga. It also relates to the wider need to reflect and uphold the mana of tangata whenua in the structure of oversight arrangements for the proposed reserve. It links to the interest of tangata whenua in ensuring that concepts of tikanga, are incorporated into these arrangements, including the ability to transfer mātauranga between generations and for mātauranga to inform future decision-making about the proposed reserve.

865. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the recommendation in terms of the Treaty principles of partnership, active protection and informed decision-making.

866. The Department acknowledges the interests identified by mana whenua, in terms of their status and connection with the area within which the reserve is proposed and the taonga present there. While acknowledging that the formal structure and participation requires further work, the Department considers that the establishment of an advisory rōpū with Ngāti Pāoa representation as mana whenua and other tangata whenua as appropriate would be appropriate in terms of giving effect to the following Treaty principles:

- **partnership** – the advisory rōpū recommendation has been developed by the Department via engagement with Ngāti Pāoa in the spirit of good faith and reasonableness. The advisory rōpū should be designed to ensure the principle of partnership is a feature and applies to tangata whenua (not just Ngāti Pāoa). It is envisaged that the advisory rōpū would be involved in several of the other proposed measures, including unwanted organisms management and kina control.
- **informed decision-making** – the Department considers that the proposed advisory rōpū will ensure that on-going informed decision-making is a key feature of the management of the proposed reserve, from an operational through to a strategic level. The role of the advisory rōpū in the anticipated generational reviews will be particularly important. The intention is that membership will include the Department and tangata whenua but will also provide opportunities for others within the community to support when needed, e.g. scientists or local community groups. This will provide avenues for the incorporation of Western science and mātauranga into strategic planning and operational decision-making and implementation
- **active protection** – the proposed advisory rōpū would help recognise and address the concerns identified in terms of the impacts of the proposed reserve on the role and status of mana whenua and tangata whenua. This would be achieved by recognising the rangatiratanga and kaitiaki responsibilities of Ngāti Pāoa as mana whenua and customary interest groups as tangata whenua to ensure they have a central role in informing decisions, both current and future (including via generational reviews). This would not curtail or prevent other avenues of engagement, instead it is viewed by the Department as an additional opportunity for tangata whenua.

867. The Department acknowledges that further work is required for this measure to be achieved in practice. For practical reasons, much of this work will not be able to be progressed until Ministerial decisions on the proposed reserve have been made. This means that some aspects remain uncertain – for example, how Ngāti Pāoa will be represented given potentially

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opposing views on who should represent Ngāti Pāoa on this matter, and who else, including other tangata whenua, should be represented.

868. The Department does not consider the fact that further work is required, and that there remains uncertainty on some aspects that will need to be worked through for implementation, prevents you making decisions now on the proposed reserve. For the reasons set out above, the Department considers that a decision to progress the proposed reserve on this basis would be consistent with your obligation under section 4 and would therefore fulfil your obligations in relation to the Treaty in respect of this proposed measure.

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

869. The Department's assessment of the Application, including in light of the recommended conditions and other measures, against the statutory criteria in section 5(9) is provided below. As part of this assessment, the Department has considered the relevant obligations under the Treaty (10.2.1), the requirements of the HGMPA (10.2.2) and consistency with relevant statutory planning instruments (10.2.3).

870. The information available to formulate this advice includes content in the Application, the Applicant's response to objections, new information provided through engagement with tangata whenua and in submissions from the statutory consultation. Submissions in support made in relation to the proposed reserve, which provide information in relation to the section 5(9) criteria, are also described below.

10.2.1 Obligations in relation to the Treaty of Waitangi

871. In considering whether the declaration of the proposed 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.

872. As set out in 5.2, in accordance with your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty, you must consider the views provided by tangata whenua (through engagement or submissions received) and consider how Treaty principles might influence your decision under section 5(9). In applying section 4, you must, so far as possible, apply the statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty. However, in taking steps to protect relevant interests, the Crown is not required to go beyond what is reasonable in the circumstances.

873. We acknowledge the concerns raised by some tangata whenua about the impacts the proposed reserve may have on their cultural interests, particularly the ability to exercise cultural use and management practices. The Department's role is to assess the Application by considering the expected benefits of the proposed reserve against the concerns raised and in light of the obligation under section 4 of the Conservation Act. The Department has undertaken fulsome engagement to understands these rights and interests, and the challenge is to carefully weigh these with the wider or competing rights and interests. Section 4 should not however, be seen as being trumped by other considerations. What is required is a process under which the meeting of other statutory or non-statutory objectives is achieved, to the extent this can be done consistently with section 4, in a way that best gives effect to the relevant Treaty principles.[154] Any measures to reduce expected impacts of the proposed reserve and the continuing ability to exercise cultural use and management practices outside

[154] *Ngai Tai* at [54]

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the proposed reserve should also be taken into account. We consider the recommendations set out in 10.1 will alleviate, to some extent, the concerns raised relating to the ability to continue to exercise kaitiakitanga (the advisory role for the customary interest groups through the proposed advisory rōpū) and to be actively involved in the management of the area (unwanted organisms control, active kina management, the proposed advisory rōpū). Additional concerns raised relate to the continuation of customary practices such as customary fishing and implementing rāhui (section 186A temporary closure). While the proposed reserve would prevent customary fishing and some other activities within this specified area, the availability of other areas for these activities means that the impact on cultural practices would be limited (but is acknowledged). Tangata whenua would continue to be able to exercise customary fishing and other cultural practices in the other waters around Waiheke, albeit not to their fullest extent within the marine reserve areas (which include the existing Te Matuku Marine Reserve). There are potential benefits of a marine reserve on fishing stocks on the areas outside of a marine reserve, which acts as a nursery to improve marine life. Therefore, the Department considers that these concerns are able to be alleviated to a point that is reasonable in the circumstances.

874. In addition to the section 4 obligation, you must have 'particular regard' to the views received from affected iwi, hapū or whānau through the statutory consultation process (in accordance with section 49 of te Takutai Moana Act). 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 that are relevant to the specific section 5(9) criteria. The Department also considers that the recommendations set out in 10.1 would comply with your obligations under section 49 of te Takutai Moana Act to have particular regard to the views of those affected iwi, hapū, or whānau in considering the Application.

875. Both the Minister of Conservation and the Director-General have obligations in relation to enacted individual or collective iwi Treaty settlements and considerations in relation to settlements that are in various stages of negotiation but have not yet been enacted. Further to our analysis in 6.13, which relates to considerations that apply when formulating recommendations and will apply post decision-making, Table 10-1 sets out those obligations and considerations that apply during decision-making (see Volume 2, Appendix 2 for more detail).

Table 10-1: Treaty settlement obligations and considerations and how the Department considered these when formulating recommendations for decision-making on the Application

Treaty settlements	Obligations and considerations	How obligations and considerations were considered by the Department
Enacted – Ngā Mana Whenua o Tāmaki Makaurau Collective Redress – Ngāti Tamaoho Treaty Settlement – Ngāi Tai ki Tāmaki Treaty Settlement Signed Deed of Settlement – Ngāti Pāoa – Ngāti Tamaoho – Te Patukirikiri Initialled Deed of Settlement – Ngāti Tamaterā	Effective Partnership/co-management	The Department engaged with collective and individual iwi to understand how and if they would like a recommendation for an advisory rōpū to be included in the Department's advice on this Application. The Department considers the operational measure recommendation to appoint an advisory committee and declare it to be a statutory board, likely under 56 of the Act, will contribute to effective partnership and co-management (within the limits outlined in 10.2). This recommendation is limited in scope to the proposed reserve area

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Treaty settlements	Obligations and considerations	How obligations and considerations were considered by the Department
– Ngati Maru – Ngaati Whanaunga Agreement in Principle – Ngāti Hako – Redress		only and does not seek to address the full extent of the condition as outlined in settlements. The Department also notes in order to give full effect to this measure all iwi listed as referring to this obligation (or consideration) in settlement documents must be given opportunity to participate in the creation of an advisory rōpū.
Enacted – Ngā Mana Whenua o Tāmaki Makaurau Collective Redress – Ngāi Tai ki Tāmaki Treaty Settlement	Marine mammal considerations	The Department has included a recommendation for an order in council condition for retrieval of dead marine mammals and marine mammal parts. The inclusion recognises the importance of marine mammals as taonga species.
Enacted – Ngā Mana Whenua o Tāmaki Makaurau Collective Redress – Ngāti Tamaoho Treaty Settlement	Reporting on Decisions	The Department will formally notify all collective and individual iwi listed in Volume 2, Appendix 2 of a decision.

876. The Department recognises the clear and strong traditional, historical, cultural and spiritual significance of the Hauraki Gulf / Tīkapa Moana to Ngāti Pāoa and the customary interest groups, has engaged in good faith, and developed conditions (e.g. marine mammal retrieval) and other mitigations (e.g. recommendation for generational review) that we consider have particular regard to their views and concerns, and provide for a role in the management and decision-making for the proposed reserve (e.g. advisory rōpū). While the impacts on cultural activities and responsibilities are recognised, the Department considers the mitigations provide for a degree of rangatiratanga and the continuation of some kaitiaki responsibilities and that this is reasonable in the circumstances and consistent with obligations under the respective Treaty settlements.

877. Note that harbours redress has been excluded from these settlements and is yet to be negotiated. While you need to be cognizant of the potential impact of the declaration of a marine reserve on future settlement negotiations, this does not of itself prevent you from making decisions in the meantime to manage the environment in the interests of all New Zealanders. Noting, also, that the recommendations provide a role for the cultural interest groups in the management of the proposed marine reserve.

878. Based on this assessment, the Department considers that the declaration of the proposed reserve on the basis of the recommendations made would fulfil the Crown's obligations in relation to Treaty settlements.

879. The Department therefore considers that to declare the proposed reserve, with the recommended conditions and other measures, would fulfil the Crown's obligations in relation to the Treaty.

10.2.2 Consideration of Hauraki Gulf Marine Park Act requirements

880. As described in 5.1.7, as part of your section 5(9) assessment, you must consider three sections of the HGMPA:

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- section 37 – consideration of whether your decision will recognise and give effect to the purpose of the Hauraki Gulf Marine Park (as outlined in section 32 of the HGMPA)
- section 13 – that you have particular regard to the elements of sections 7 and 8 of the HGMPA
- section 11 – consideration of whether your decision is consistent with sections 7 and 8 of the HGMPA.

881. The requirements of these provisions and the Department's assessment is set out below.

10.2.2.1 Section 37 HGMPA - Recognise and give effect to the purpose of the Park

882. Section 37(1) of the HGMPA requires 'Any person holding, controlling, or administering land, foreshore, seabed, marine reserve, a taiapure-local fishery, or a mataitai reserve in the Hauraki Gulf Marine Park must recognise and give effect to the purpose of the Park.' The purpose of the 'Park' is set out at section 32 of the HGMPA. The proposed reserve area is within the Park.

883. The Department considers section 37(1) applies to your decision-making on the Application because of your role in 'controlling, or administering...foreshore [and] seabed', rather than in relation to 'marine reserves', as this proposed reserve is still at the application stage, and therefore is not being held, controlled or administered by the Department.[155]

884. Section 32 provides a set of protective purposes for the Park. These purposes align closely with the protective purposes of the Act, but noting it also requires having particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park (section 32(c)). It is the Department's view that there is considerable similarity between the attributes that section 32 seeks to protect and those the Act seeks to protect, and the requirements of te Takutai Moana Act (regarding consideration of tangata whenua views). The Department considers that a decision to declare the proposed reserve under section 5(9) of the Act with the proposed conditions and other measures would recognise and give effect to the purposes set out in section 32 of the HGMPA, thereby achieving section 37 of the HGMPA. The Department has reached this conclusion based on the following analysis of each part of section 32.

Section 32(a) – To recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park

885. The proposed reserve, and the natural resources within it, are inside the Park. Marine reserves are generally established in perpetuity, which aligns with the section 32(a) purpose.

886. The Technical Report (Volume 2, Appendix 21) provides information on the marine life within the proposed reserve and the likely responses of those species to protection. In summary, in terms of the natural resources within the Park, existing information for the area covered by the proposed reserve shows that it provides habitat for at least 187 species. Although it is difficult to predict the short and long-term changes that may occur within specific marine protected areas, positive effects of protection have been documented for snapper, red moki, red rock lobster, butterfish, blue cod, john dory, silver drummer and large brown seaweeds within existing Hauraki Gulf marine reserves. All these species occur within the proposed reserve. Given the proposed reserve is 1.4 to 5 times the size of the existing marine reserves in the Hauraki Gulf, it is highly likely that these species would respond

[155] While Auckland Council has the primary function of managing 'foreshore and seabed', this occurs 'in conjunction with the Minister of Conservation' (section 30(1)(d) Resource Management Act).

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positively to protection within the proposed reserve. Pāua abundance is also likely to respond positively to protection.

Section 32(b) – To protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth

887. In addition to that set out in paragraph 886885886, and as set out in 8.1.1, the proposed reserve contains two significant natural features - the submarine volcanics (pillow lavas, chert) that are exposed in Island Bay and the fossil beds exposed in Double U Bay. The Auckland Unitary Plan also identifies Hakaimango Point and the area surrounding it as an 'Outstanding Natural Landscape' and area of 'High Natural Character'.

888. The proposed reserve would help to protect the significant natural features identified above (and the marine life identified in the preceding section), as it would become an offence to 'wilfully damage or wilfully injure any marine life, or wilfully damage the foreshore or seabed, or any of the natural features in a marine reserve', to 'damage the foreshore or seabed or any of the natural features in a marine reserve', to 'deposit or throw any rubbish in or into a marine reserve', and to 'use, dispose of, or be in possession of any marine life, gravel, sand, or other substance or thing that has been removed unlawfully from a reserve'[156].

889. As described in the Technical Report, the size (approximately 2,350 ha – 23.5 km^2) and location of the proposed reserve means it encompasses a representative range of inner Hauraki Gulf intertidal and subtidal habitats. These include a large area of shallow high current mixed sediments in the channel between Waiheke and Motutapu Islands; shallow high current reefs between Matiatia and the northern coastline of Waiheke Island; shallow sheltered reefs in the bays along the northern coastline of Waiheke Island; and the very sheltered, semi-estuarine habitats in Owhanake Bay. Shallow high current habitats are underrepresented in existing marine reserves in the Hauraki Gulf Marine Park and the marine protection proposed to be established by the Bill.[157] As outlined in 8.2.3, the Department considers that this area could be scientifically significant, providing the opportunity to examine how these habitats would respond to marine reserve protection.

890. The public would be able to access the marine reserve on foot, by boat or other form of vessel (such as a kayak or paddle board) and will be able to enjoy and benefit from the natural features, habitats and landscapes outlined above by swimming, snorkelling or diving. Also as set out in the Technical Report, when nested within marine protection networks, populations of exploited species protected within marine reserves can also improve the sustainability of adjacent fisheries and can increase the abundance and size of trophy size fish accessible to sport fishers in waters adjacent to marine reserves. These potential 'spill over' effects from marine reserves could benefit recreational fishing over time by helping to restore the surrounding fish stocks.

Section 32(c) – To recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park

891. As set out in 4.1, Ngāti Pāoa are recognised as mana whenua with very deep and strong interests and traditional associations with Waiheke Island and its surrounding waters, but not to the exclusion of the rights and interests of the cultural interest groups. These relationships with the natural and historic resources of the Park are recognised.

[156] Offence provisions, section 18 and 21 of the Marine Reserves Act 1971.

[157] Chiaroni et al. 2010; Kerr & Grace 2013; Jackson 2014; Haggitt 2016a, b; Lundquist et al. 2020

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892. The Matietie Historic Reserve (adjacent to the proposed reserve) has 'historical, spiritual, cultural and traditional significance for Ngāti Pāoa', including historic use of the coastline of the Matietie Historic Reserve for transport and food gathering purposes.

893. As set out in 4.5, the two groups who represent Ngāti Pāoa submitted contrasting views on the Application. The views provided in their submissions and the Department's corresponding advice are set out in chapter 9. The Trust Board submitted in support, stating their support is driven by 'principles of kaitiakitanga (environment responsibility), manaakitanga (capability building), and taonga tuku iho mō ngā uri whakatipu (guardianship of resources for future generations)'. The Iwi Trust objected with their key views being that permanent 'no-take' marine reserves extinguish their connectivity with their moana, prohibit Māori from undertaking intergenerational customary practices, and do not account for the Māori world view. Ngāti Maru and Te Patukirikiri also submitted objections to the Application.

894. As set out in 9.5.19, the Department acknowledges that marine reserves can impact the continued exercise of kaitiakitanga and the continued use or development of mātauranga Māori in the area they are established. However, we consider that declaration of the proposed reserve with the recommendations set out in 10.1 (e.g. generational reviews, management advisory role, marine mammal retrieval, control of invasive species) would alleviate these impacts and does 'recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua' to the area. While the impacts on cultural activities and responsibilities are recognised, the Department considers the mitigations provide for a degree of rangatiratanga and the continuation of some kaitiaki responsibilities and that this is reasonable in the circumstances and consistent with the obligations. While a marine reserve would interrupt the cultural relationship of tangata whenua in relation to the customary activity of gathering kaimoana, we note this would apply to the area of the marine reserve only and therefore this activity could continue in adjacent areas on Waiheke Island and throughout many other areas of the Park.

Section 32(d) – To sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park

895. While marine reserves are not sufficient in themselves to address or correct all factors driving loss of marine biodiversity in the Park (for example, sediment run-off, pollution from adjoining land, effects of climate change), they provide protection from disturbance, can restore trophic processes within their boundaries and positively affect the abundance and size structure of exploited species inhabiting them. These anticipated benefits are likely to help 'sustain the life-supporting capacity of the...water... and ecosystems' located within the proposed reserve. The proposed reserve could thereby measurably contribute towards the greater objective of sustaining the life-supporting capacity of the Hauraki Gulf in the Park.

10.2.2.2 Section 13 HGMPA – Obligation to have particular regard to sections 7 and 8

896. Section 13 of the HGMPA states that all persons exercising powers or carrying out functions for the Hauraki Gulf under any act specified in Schedule 1 must 'have particular regard to' the provisions of section 7 ('Recognition of national significance of Hauraki Gulf') and section 8 ('Management of Hauraki Gulf') of the HGMPA. The Conservation Act, te Takutai Moana Act and the Act are all listed in schedule 1 of the HGMPA.

897. To have 'particular regard' is something more than 'have regard to' and requires you to give the matters genuine thought and attention while recognising they are important to the decision you are making. All the elements of sections 7 and 8 must be addressed, however it is up to you as the decision-maker to decide what weight should be given to each of the elements (including the option to give them no weight).

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898. The courts have given guidance as to how a decision-maker should consider sections 7 and 8. The key points are:

- the factors are 'broadly expressed"[158]
- the sections require a balancing exercise between different interests. 'Self-evidently the statutory scheme requires the Director-General, as part of the concession process, to balance these interests to the extent they compete.' The decision-maker can use 'conditions' to best achieve consistency with sections 7 and 8[159]
- '...where the decision-maker is required to have particular regard to a number of factors of varying relevance, which are expressed as general purposes rather than specific criteria, the decision-maker must be permitted to discount those which are not relevant and give varying weight to those that are. In those circumstances, the requirement to have particular regard requires the decision-maker to satisfy himself or herself that the decision meets those of the purposes which are of most relevance, to the extent that that can be achieved in harmony with other relevant considerations applying to the decision'.[160]

899. The Department considers all elements of sections 7 and 8 of the HGMPA are relevant to your decision-making. To assist you to 'have particular regard' to sections 7 and 8, we provide advice below on each of these elements as they relate to the proposed reserve.

Section 7(1) – The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance

900. As described in paragraph 895, the establishment of the proposed reserve would provide protection from some disturbance, restore trophic processes within its boundaries and positively affect the abundance and size structure of some species. This is likely to have a positive influence on the ability of the interrelationships of the Hauraki Gulf to sustain the life-supporting capacity of the Hauraki Gulf.

Section 7(2)(a)(i) – The life-supporting capacity of the environment of the Gulf and its islands includes the capacity to provide for the historic, traditional, cultural, and spiritual relationship of tangata whenua of the Gulf with the Gulf and its islands

901. As set out in paragraphs 887-890887890 in relation to section 32(b) HGMPA, and in 8.2, protection by the proposed reserve would contribute to sustaining the life-supporting capacity of the Hauraki Gulf's environment. This in turn would contribute to the Gulf's 'capacity to provide for the historic, traditional, cultural, and spiritual relationship of tangata whenua...'.

902. Our advice in paragraphs 891-894 891894is relevant to section 7(2)(a)(i) also. As stated in 894, while the impacts on cultural activities and responsibilities are recognised, the Department considers declaring the proposed reserve with the recommendations set out in 10.1 would provide for a degree of rangatiratanga and the continuation of some kaitiaki responsibilities connected to their relationship with the Application area and that this is reasonable in the circumstances and consistent with the obligation to have regard to this provision. (Albeit

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[158] *Sanford Ltd, Sealord Group Ltd and Pelagic and Tuna New Zealand Ltd v New Zealand Recreational Fishing Council Inc, and New Zealand Big Game Fishing Council Inc and others* [2008] NZCA 160, at para [98] (Note, this case was about fisheries, but the judge's comments apply in a marine reserve context also).

[159] *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation & Others* [2017] NZCA 613, at para 41. (Note, this case was about a 'concession' decision, not a marine reserve application, but the comments cited apply in a marine reserve context also.)

[160] *Sanford Ltd* (as above at fn 162) at [99].

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noting the restriction on activities that would be prohibited under the Act, such as gathering kaimoana).

Section 7(2)(a)(ii) – The life-supporting capacity of the environment of the Gulf and its islands includes the capacity to provide for the social, economic, recreational, and cultural well-being of people and communities

903. As set out in paragraphs 887-890 in relation to section 32(b) HGMPA, and in 8.2, protection of the proposed reserve would contribute to sustaining the life-supporting capacity of the Hauraki Gulf's environment, and thereby have a number of benefits to people and communities.

904. The Department considers that no information presented in objections (as set out in chapter 9) provides evidence that declaring the proposed reserve would detract from the 'life-supporting capacity of the environment of the Gulf', including its capacity to 'provide for the social, economic, recreational, and cultural well-being of people and communities'.

Section 7(2)(b) – The life-supporting capacity of the environment of the Gulf and its islands includes the capacity to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation

905. If declared, take of marine life would be prohibited within the marine reserve, but people and communities would still be able to 'use the resources of the Gulf' in adjoining areas. In terms of use of resources through recreational and commercial fishing activities, our advice, as set out in 9.3 and 9.4, is that impacts on those activities are likely to be relatively minor when balanced against the wider expected benefits of the proposed reserve. Also, as set out in 8.2.2, there are likely to be benefits for those fisheries resources outside the marine reserve, for example through 'spillover', or for economic opportunities for the local community as marine life within the marine reserve recovers.

Section 7(2)(c) – The life-supporting capacity of the environment of the Gulf and its islands includes the capacity to maintain the soil, air, water, and ecosystems of the Gulf

906. The Department considers that the expected benefits of the proposed reserve for marine life, as set out in 8.2.1, means that its declaration would contribute positively to the Hauraki Gulf's capacity to maintain the 'water' and 'ecosystems' of the Gulf.

907. The Department considers that no information presented in objections (as set out in chapter 9) provides evidence that declaring the proposed reserve would detract from the 'life-supporting capacity of the environment of the Gulf', including its capacity to 'maintain the...water, and ecosystems of the Gulf'.

Section 8 – To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—

8(a) – the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments

908. In addition to our advice set out in paragraphs 901-907907 above in relation to section 7(2) HGMPA, the Department considers that declaring the proposed reserve would also contribute positively to this management objective. This is due to the alignment of this objective with the purpose under section 3 of the Act (particularly that it 'shall be preserved as far as possible in its natural state') and the offence provisions under sections 18I and 21 of the Act.

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8(b) – the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments

909. As set out in paragraph 908908908 in relation to section 8(a) HGMPA, the proposed reserve, would be managed in a manner that was highly consistent with this management objective, particularly in relation to protecting and enhancing the natural and physical resources of the Hauraki Gulf.

8(c) – the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship

910. Our advice above in paragraphs 891–894 in relation to section 32(c) HGMPA891894 is also relevant to this consideration. We consider the establishment of the proposed reserve would contribute to protecting and enhancing the 'natural, historic, and physical resources (including kaimoana)' of the wider Hauraki Gulf due to the expected benefits for marine life (as set out in 8.2.1).

8(d) – the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources

911. By establishing the proposed reserve, and therefore changing what activities are permitted in the area, there may be a change to some people's cultural or historic association with the natural, historic or physical resources of that area. In some cases, this may weaken the association, for example, by prohibiting fishing activities. In other cases, the association may be strengthened, for example, by allowing people to experience a marine ecosystem in a more natural state and therefore closer to historic associations that some people may have of the Hauraki Gulf.

912. A submission in support from the Environmental Defence Society noted the historical significance of the marine fossils in Double U Bay and that the proposed reserve would provide protection to them.

913. In terms of the impacts on cultural associations, the Department considers declaring the proposed reserve with the recommendations set out in 10.1 would provide for a degree of rangatiratanga and the continuation of some kaitiaki responsibilities connected to their relationship with the Application area and that this is reasonable in the circumstances and consistent with the obligation to have regard to this provision. (Albeit noting the restriction on activities that would be prohibited under the Act, such as gathering kaimoana.)

914. We consider that the Act's purpose of allowing the area to recover to a more natural state, and the Act's offence provisions, which prohibit damage or taking, would serve to protect the area's natural, historic and physical resources and therefore aligns with this management objective for the wider Hauraki Gulf.

8(e) – the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand

915. See advice above in paragraphs 901901-907907 in relation to section 7(2) HGMPA. For those reasons, we consider a decision to declare the proposed reserve would be consistent with this objective for management of the Hauraki Gulf.

8(f) – the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute

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to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand

916. See advice above in paragraphs 901901-907907 in relation to section 7(2) HGMPA. For those reasons, we consider a decision to declare the proposed reserve would be consistent with this objective for management of the Hauraki Gulf.

10.2.2.3 Section 11 HGMPA – Consistency of decision under the Act with sections 7 and 8 HGMPA

917. In addition to the requirement in section 13, section 11 of the HGMPA states that sections 7 and 8 'have the same effect' as a statement of general policy made under several pieces of conservation legislation, including the Marine Reserves Act.

918. The Marine Reserves Act does not otherwise state what the 'effect' of a statement of general policy made under the Act is. However, section 6 of the Marine Reserves Act does provide that section 17N of the Conservation Act applies to such general policies. In turn, section 17N of the Conservation Act provides that general policies can restrict or affect the exercise of your powers. This means that in considering whether to declare the proposed reserve, your decision should be consistent with sections 7 and 8 HGMPA. If you have already reached this conclusion (when having particular regard to sections 7 and 8), that will suffice for this further requirement.

10.2.3 Consistency with statutory planning instruments

919. As set out in 5.1.7, also relevant to your assessment as to whether the declaration of the proposed reserve 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 Conservation General Policy and the Auckland Conservation Management Strategy. Our full assessment of which provisions are relevant to your assessment, and how a decision to declare the proposed reserve with the recommendations listed in 10.1 would be consistent with those provisions, is set out in Volume 2, Appendix 24.

920. The Department considers a decision to declare the proposed reserve, with the recommendations set out in 10.1, would be consistent with all relevant provisions of relevant statutory planning instruments.

10.2.4 In the best interests of scientific study

921. For the reasons set out below and in light of our conclusions in 10.2.1-10.2.3, we consider that establishing the proposed reserve with the recommended conditions and measures set out in 10.1 would be in the best interests of scientific study.

922. In considering whether a marine reserve would be 'in the best interests of scientific study', it is appropriate to assess the area against the criteria in section 3(1) of the Act. This is described in 8.1.

923. As described in 8.1.2, the proposed reserve would be likely to provide sites for scientific study as has been observed in other marine reserves in New Zealand and overseas. There is high scientific value in having reference areas in a more natural state to carry out studies across a range of disciplines and research questions. Greater opportunities for scientific study would be provided by the proposed reserve encompassing a range of habitat types that are typical of the inner Hauraki Gulf intertidal and subtidal habitats.

Points raised in submissions

924. Further information supporting a conclusion that the proposed reserve would be in the best interests of scientific study is included in submissions of support. For example, submitters identified as affected iwi, hapū, or whānau commented:

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- 'The trust board vision is that mātauranga māori and western science will offset and complement one another in the conservation of our marine environment' (the Trust Board)
- 'This will provide an important benchmark and reference point for assessing the impacts of activities on other areas around Waiheke Island and the wider Hauraki Gulf. It will be of significant scientific benefit' (Piritahi Marae)
- 'My support is also based on the reasons set out in the Marine Reserves Act: The value of this marine protected area for scientific research and matauranga' (WSHMMR-791823).

925. A number of submitters highlighted the opportunities that would arise from being able to compare rates of recovery at the proposed reserve with other adjacent and nearby areas that have different management (e.g. the proposed high protection area at The Noises Island group, the rāhui, mussel reef restoration, a kelp farming area). Other submitters stated:

- 'NZMSS would like to see research and monitoring highlighted as critical activities in the marine reserve.' 'Monitoring [...] should be undertaken as a priority, with a focus on biodiversity, recovery of harvested species [...] and social and cultural changes. The Society considers it important that opportunities are provided by the Department of Conservation to include matauranga Māori'. (New Zealand Marine Sciences Society)
- 'The proposed marine reserve offers a unique chance to research the social, economic and environmental benefits of various restoration tools being used in the wider area including passive restoration initiatives (an HPA on the Noises Islands, rāhui, ahu moana and ecosystem based fisheries management) and active restoration (mussel reef restoration, kelp gardening and kōura rewilding). These would all benefit from an adjacent no-take marine reserve as a reference model' (Friends of Motukorea[161])
- 'The Bay [Double U Bay] hosts rich fossil beds which have been the subject of considerable scientific interest since their discovery in 1927 [...] Marine fossils are of historic and scientific significance. They are a rare and distinct feature that should be protected and preserved under the Act' (Environmental Defence Society[162])
- 'My own research and that of post-graduate research students that I supervise has been commonly undertaken within marine reserves [...] Research conducted in these [...] marine reserves in the Hauraki Gulf have been hugely valuable in improving our overall understanding of ecological processes, especially how they are impacted by human activities. The proposed Hākaimangō – Matiatia Marine Reserve would be a valuable addition to the tiny total area protected as marine reserves in New Zealand and the Hauraki Gulf. Its accessibility and close proximity to Auckland make it highly suitable for research activities' (WSHMMR-802171).

10.2.5 For the benefit of the public

926. For the reasons set out below and in light of our conclusions in 10.2.1-10.2.3, we consider that establishing the proposed reserve with the recommended conditions and measures set out in 10.1 would be for the benefit of the public.

[161] An organisation that promotes and supports Motukorea Regional Park on Brown's Island in the inner Hauraki Gulf.

[162] An independent not-for-profit organisation conducting interdisciplinary policy research and litigation with the purpose of improving environmental outcomes in Aotearoa New Zealand.

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927. As described in 8.2.2, the proposed reserve can be expected to create wellbeing and public enjoyment benefits, enhanced tourism opportunities, potential fisheries benefits, educational, cultural, and recreational opportunities, climate resilience for the Hauraki Gulf, and enhanced marine protection in line with some mana whenua aspirations.

Points raised in submissions

928. Further information supporting a conclusion that the proposed reserve would be for the benefit of the public is evident from points raised in submissions of support. For example, submitters identified as affected iwi, hapū, or whānau commented:

- 'The Ngati Pāoa Trust Board supports this application by FoHG because it aligns with Ngati Pāoa aspirations to conserve and protect our moana' (the Trust Board)
- 'The marine reserve will also provide economic opportunities for local whānau and community' (Piritahi Marae)
- 'The marine reserve will allow for the next generations who face the task of protecting and restoring our moana, an opportunity to learn from and research a healthy and protected ecosystem' (Protect Pūtiki)
- 'Opportunities for rangatahi and whānau to learn from and interact with the recovering and eventually thriving marine ecosystem of the Hākaimango-Matiatia Marine Reserve will provide educational opportunities to learn about marine habitats, ecosystems and further protection measures. It has the potential to inspire careers in marine biology and conservation' (Piritahi Marae)
- 'The value of this marine protected area [...] for the public good accruing from such a sanctuary due to protecting the multiplicity of marine species' (WSHMMR-791823).

929. Several other submitters noted the creation of scientific and educational opportunities for schools, including the benefits that would arise due to the proposed reserve being easily accessible by boat, road and foot, and being closer for many schools than other existing marine reserves in the Hauraki Gulf. Many submitters also noted the benefits that could arise over time through increased tourism activities (ecotourism, water activities such as kayaking and snorkelling). A few submitters cited the economic benefit that has come from the Cape Rodney-Okakari Point Marine Reserve. Others noted the potential for flow on effects (e.g. more or better infrastructure, more retail and hospitality outlets) to Waiheke Island if visitor numbers increased due to the marine reserve being established.

930. Examples of other comments from other submitters included:

- 'I have watched my elderly father in recent times look sadly out in the bay talking about how there used to be so much kai and now there is nothing. I want my children who I am raising on this motu to have the moana that I believe they deserve. They are growing up learning about kaitiakitanga of te taiao, I believe the adults in their lives need to put into place systems that leave them with a healthy environment to protect and care for' (HMMR-794856-Māori)
- 'As a youth and tourism operator I see benefits for our rangatahi and visitors in being able to physically interact with the marine reserve. To be involved with research and efforts for restoration. The marine reserve will allow for locals and visitors to have an insight into a recovering and eventually thriving ecosystem that will inspire further protection measures for generations to come' (WSHMMR-802123-Māori)

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- 'Students have been involved in the Marine Education Initiative since 2018. Through this initiative, students have had the opportunity to learn, experience and engage with their local marine environment through in-class learning and experiential days outside school. The students are well supported by local and off-island experts and are encouraged to take action in their local marine environment. They learn about how important our marine life is, why we need to protect it and how we can collectively do that. Students from our three Waiheke Island schools then come together to celebrate and share their learning, actions, and future plans at a community celebration day. To have an easily accessible area on our doorstep to study and learn about the marine environment would be hugely beneficial' (WSHMMR-791721)
- 'Fishing on the boundary will be awesome. The proposed marine reserve is big enough for people to fish the borders with a clear conscience. Fishing here will be popular with many big fish leaving the area' (WSHMMR-251043)
- 'The discovery of the history behind the name Hakaimango has been especially pleasing.[...] I have a vision of this area of land/sea becoming a combined historical heritage/ marine reserve precinct. What an achievement this would be for the future' (HMMR-652390)
- 'If this area is made into a no-take zone I will definitely be visiting it to enjoy it's marine life as it recovers. Very few of the no-take areas have road access, which means to enjoy my recreational activity of choice I have to have a boat or pay to go out on a tourist boat' (HMMR-201511)
- 'It complements the $10.9 million dollar investment in Predator Free Waiheke (Predator Free 2050 Limited 2021) which has a vision to become the world's largest predator-free urban island. The marine reserve will be much cheaper to create and maintain and will deliver a mountains to the sea nature experience' (Native Bird Rescue Trust).

10.2.6 It is expedient

931. For the reasons set out below and in light of our conclusions in 10.2.1-10.2.3, we consider that establishing the proposed reserve with the recommended conditions and measures set out in 10.1 would be expedient.

932. The proposed reserve would contribute to a number of domestic and international marine biodiversity commitments. Specifically, it would contribute towards New Zealand's goals in Te Mana o te Taiao. The proposed area includes shallow high current habitats that are under-represented in either existing marine reserves in the Hauraki Gulf Marine Park or in the potential marine protected areas proposed by Sea Change. The proposed reserve would additionally contribute to the overall restoration efforts for the Hauraki Gulf. Establishment is consistent with the support for this proposed reserve as indicated by 91.0% of submitters in the public consultation process.

Points raised in submissions

933. Further information supporting a conclusion that the proposed reserve would be expedient is evident from points raised in submissions of support.

934. The main theme that was overwhelmingly found in submissions of support was the urgent need for protection. A large proportion of these submitters expressed their deep concern about the state of the Hauraki Gulf, especially around Waiheke Island. They also articulated dissatisfaction at the delays in implementation of any protection after more than a decade of

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the Sea Change / Revitalising the Gulf process, and despite the creation of the Hauraki Gulf Marine Park in 2000.

935. Some submitters stated that the proposed reserve will help to increase the biodiversity and abundance of marine species within the Hauraki Gulf Marine Park, making it more resilient to the impacts of climate change (e.g. heatwaves, increases in invasive species and ocean acidification). Others noted that restoring the ecosystems within the proposed reserve could contribute to climate change mitigation through protecting marine species (e.g. sponges and kelp) that absorb carbon dioxide.

936. Many described their personal experiences of the Hauraki Gulf, with a clear focus on the waters around Waiheke Island, and their distress at the changes they observed or the lack of marine life. Notably, submissions in support were received from recreational fishers who explained that they voluntarily stopped fishing due to the poor state of the fish stocks. Many submitters voiced disappointment at the perceived lack of management actions, but also hope via this marine reserve proposal. Generally, they called for urgent implementation of the marine reserve and, in some instances, of all potential protections under the Sea Change / Revitalising the Gulf process.

937. For example, submitters identified as affected iwi, hapū, or whānau commented:

- 'Through lived experience, our kuia and kaumātua have witnessed the rapid decline of marine biodiversity around Waiheke Island. Species that once were abundant are now infrequently seen. Over the past 40+ years they have seen our marine coastal environment go from a healthy pātaka kai and ecosystem to a barren seabed with many functionally extinct species. The ability to continue the lived experiences with a healthy ocean and biodiversity and ability to continue intergeneration knowledge and mātauranga is under threat. Urgent action is required for the protection and rejuvenation of the mauri of Tikapa Moana' (Piritahi Marae)
- 'I grew up on Waiheke and spent almost my whole life there 60 plus years. As a Maori family we gathered a lot of our kai from the sea and I am very aware of how prolific the gulf was. [...] I can remember being surrounded by huge schools of fish, and so much kelp when I was diving. I know how full of life it was. I honour that life, the mauri and wairua of it, how it can feed other animals and people. I want that life to continue and believe we are heading currently towards species extinction and underwater deserts as told in the State of the Gulf Reports which are highlighting at each successive report a continuing decline. We need no take areas to address this, we need it immediately and I support this reserve off Waiheke 100%' (HMMR-753065)
- 'We ask you to act now. Too little has been done to protect Tikapa Moana and every measure of protection must be taken and acted upon quickly' (Protect Pūtiki).

938. Comments from other submitters that raised the urgency for protection included:

- 'I am an 85 year old former seaman, boat owner and recreational fisherman. I have lived on Waiheke Island for over 50 years. During that time I have witnessed the heartbreaking deterioration of fish stock in the Hauraki Gulf which includes mussels, scallops, crayfish, paua and kelp. Tragically it has got even worse over the past ten years and I made the personal decision not to fish for this reason some years ago' (HMMR-371925)
- 'I have enjoyed fishing around the Waiheke coastline over the past forty years although have largely refrained from fishing here as I have become aware of the degraded state of the environment in the Hauraki Gulf' (WSHMMR-791850)

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- 'We have clearly seen the ongoing degradation of the waters surrounding Waiheke Island, of the limited amount of marine life & the low quality Kelp habitat. While there is still plenty to enjoy here, I am aware of the concept of shifting baselines, and acknowledge that this is far from the healthy marine environment that Tīkapa Moana / The Hauraki Gulf deserves to be' (Waiheke Dive & Snorkel[163])
- 'As a pre-schooler fifty years ago I was fascinated by the vertebrate, invertebrate and plant life readily visible in rock pools on the Waiheke Coastline. As a teenager I enjoyed the beauty and mystery of kelp beds and associated wildlife on the Waiheke coast and further out from the coast of Waiheke Island. As a father I am now unable to show my children the beauty of the Waiheke Coastline in the more natural and healthy state in which I knew it to exist when I saw it as a child' (WSHMMR-791856)
- 'We do not need any more reports or investigations or fancy branded initiatives that explore issues staring us in the face. We just need to take concrete action right now. Marine reserves are proven to be the fastest and most effective way to preserve biodiversity in the ocean' (HMMR-784091)
- 'My concern for the Hauraki Gulf marine ecology is extreme. The deterioration that has occurred in recent years in the Gulf and around Waiheke are extraordinary and disturbing for future generations. I am a very concerned great grandmother' (HMMR-321730).

939. Additional points raised in support of the proposal's expediency include that establishment would provide the largest marine reserve in the Hauraki Gulf; additional coastal protection and management; larval dispersal to improve marine life and fishing in surrounding areas; community leadership in marine protection; protection and recovery of marine species, notably rock lobster, packhorse crayfish, scallops, hapuka, snapper, seabirds, and marine mammals; habitat protection that is complementary to the protection afforded under the Sea Change proposals; and some preserved kelp beds in the area.

940. For example, a submitter identified as affected iwi, hapū, or whānau commented:

- 'Supporting the formation of the proposed marine reserve from my perspective is the additional protection it affords coastal wahi tapu, and more stringent protocols on land development activities' (WSHMMR-791958).

941. Comments from other submitters included:

- 'In particular, Waiheke Island is a breeding stronghold for little penguins in the inner Hauraki Gulf. Little penguins are at risk and declining and their population would benefit from the enhancement of their likely feeding areas northwest of Waiheke Island. In addition, the coastal area that is protected as part of the marine reserve is used by penguins for breeding and moulting and the additional protection will likely increase their breeding success and survival' (NZ Penguin Initiative)
- 'It is notable that some small scallop beds were recorded within the proposed marine reserve area. The latest stock assessments for scallop fisheries located within the Hauraki Gulf suggest the stocks are on the verge of widespread and persistent collapse. The biomass of commercially important scallop beds declined from 1,005 tonnes in 2012 to 52 tonnes in 2021. Any remaining scallop beds within the Hauraki Gulf are a rarity that deserve the highest form of protection. Their

[163] A local SCUBA dive store, training centre and dive and snorkel guided tour organiser on Waiheke Island.

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presence within the proposed reserve area must be recognised as a unique and special natural feature in the context of widespread depletion' (Environmental Defence Society).

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11 Naming of the proposed marine reserve

942. The name proposed by the Applicant for the proposed reserve is 'Hākaimangō-Matiatia (Northwest Waiheke Island) Marine Reserve'. The Application states this name as Hākaimangō – Matiatia (Northwest Waiheke Island) Marine Reserve, however the Applicant later advised the Department that, following professional review, the name structure and use of macrons should be Hākaimangō-Matiatia (Northwest Waiheke Island) Marine Reserve'.

943. The name proposed is based on navigational boundary features as for other existing marine reserves and 'The formal name would be a matter of decision for the Crown, the NZ Geographic Board - Ngā Pou Taunaha o Aotearoa and mana whenua, Ngāti Pāoa'.

944. During further engagement with them in August 2024, the Iwi Trust raised concerns about the proposed name: 'The name proposed (Hākaimangō – Matiatia Marine Reserve) relates to the harvesting of sharks and is inappropriate' (Volume 2, Appendix 7).

945. The Department has communicated with the New Zealand Geographic Board and provided the Application during the development of this report and will formally submit the name for review prior to a final decision on the Application. If the proposed reserve is approved, it would be named in accordance with the requirements of the New Zealand Geographic Board.

Note the proposed name for the marine reserve is subject to review by the New Zealand Geographic Board.

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12 Conclusion

946. The Department's overall assessment in relation to the proposed reserve is that:

- the procedural requirements of section 4 and section 5 of the Act have been met
- the Department does not recommend upholding any objections received under section 5(6) of the Act on the proviso that the recommended conditions and measures listed below are implemented
- obligations under the relevant Treaty settlements, the HGMPA, and te Takutai Maona Act have all been compiled with and, while the fundamental opposition of the Iwi Trust (in particular) to the proposed marine reserve and the impacts on cultural activities and responsibilities are recognised, the Department considers the conditions and other measures provide for a degree of rangatiratanga and the continuation of some kaitiaki responsibilities and that this is reasonable in the circumstances and consistent with obligations
- 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 Act), including with the Department's recommended conditions to be included in the Order in Council (as set out in 10.1.1):
    (a) Condition to require generational reviews
    (b) Condition for the control of unwanted organisms
    (c) Condition for pollution response
    (d) Condition for existing consented structures, replacement of existing consented structures and associated maintenance
    (e) Condition for existing discharges of contaminants and associated monitoring
    (f) Condition for retrieval of dead marine mammals and marine mammal parts

  and recommendations for other measures (as set out in 10.1.2):
    (g) Recommendation relating to kina removal from the marine reserve for management purposes
    (h) Recommendation to establish an advisory rōpū for the marine reserve.
- to declare the proposed reserve on the basis of the recommendations listed above would, so far as possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty.

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APPENDICES – SEE VOLUME 2

Appendix 1: *The Application: Hākaimangō-Matiatia Marine Reserve (Northwest Waiheke Island) – Report in support of an application for an order in council for a marine reserve*

Appendix 2: *Treaty settlement obligations and considerations relevant to decision-making*

Appendix 3: *December 2021 Department of Conservation summary document for the Department's engagement with tangata whenua*

Appendix 4: *List of applicants under the Marine and Coastal Area (Takutai Moana) Act 2011 for customary marine title or protected customary rights in areas that are adjacent to or over the proposed marine reserve*

Appendix 5: *July 2024 Department of Conservation discussion paper provided to the 12 tangata whenua groups for their review – potential management measures for the proposed marine reserve*

Appendix 6: *5 August 2024 Ngāti Pāoa Trust Board response letter on the July 2024 Department of Conservation discussion paper*

Appendix 7: *Summary from 30 July 2024 hui between the Department of Conservation and Ngāti Pāoa Iwi Trust on the Department's July 2024 discussion paper*

Appendix 8: *Method used by the Department of Conservation to classify and analyse views received on the proposed marine reserve through statutory consultation*

Appendix 9: *The Applicant's 'Response to Objections / Whakautu ki nga Whakahē' document – 20 April 2022*

Appendix 10: *Auckland Council submission on the Application – 17 March 2022*

Appendix 11: *23 April 2021 – Applicant's notification to the Director-General of Conservation of their intention to apply for an Order in Council declaring the proposed marine reserve, plus their draft Application*

Appendix 12: *The Department of Conservation's initial and then formal response to the Applicant acknowledging the notification of the Applicant's intention to apply for the proposed marine reserve – 5 May and 3 June 2021 respectively*

Appendix 13: *Copies of the Applicant's notice of intention to apply for the proposed Hākaimangō-Matiatia marine reserve, 20 and 27 January 2022*

Appendix 14: *Copy of the Applicant's letter to persons owning any estate or interest in land in or adjoining the proposed marine reserve (17 January 2022), and the list of recipients of this letter*

Appendix 15: *14 January 2022 – Copy of the Applicant's letter to the Chief Executive of Auckland Transport and the Auckland Harbourmaster regarding the proposed marine reserve*

Appendix 16: *Copy of the Applicant's letter to the Waiheke Local Board regarding the proposed marine reserve*

Appendix 17: *14 January 2022 – Copy of the Applicant's letter to the Chief Executive of the Ministry of Transport regarding the proposed marine reserve*

Appendix 18: *14 January 2022 – Copy of the Applicant's letter to the Director-General of the Ministry for Primary Industries*

Appendix 19: *Copy of the plan of the proposed marine reserve, prepared by the Department of Conservation*

Appendix 20: *20 January 2022 – Copy of the Director-General of Conservation's notices for 'iwi, hapū, or whānau who exercise kaitiakitanga' regarding the application for the proposed marine reserve*

Appendix 21: *4 August 2022 – Department of Conservation technical assessment of the proposed Hākaimangō-Matiatia (NW Waiheke) marine reserve application against the criteria in Section 3 of the Marine Reserves Act 1971*

Appendix 22: *Ngāti Pāoa Iwi Trust submission on the Application – 20 March 2022*

Appendix 23: *Proposed Hākaimangō-Matiatia Marine Reserve – an assessment of displaced commercial landings and recreational catch between 2019 and 2024– Fisheries New Zealand Tini a Tangaroa report*

Appendix 24: *Department of Conservation assessment of provisions in the Conservation General Policy 2005 and Auckland Conservation Management Strategy 2014 and their relevance to decision-making on the proposed marine reserve*

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