

6 Assessment of all six proposed marine reserves as part of a network of marine protected areas

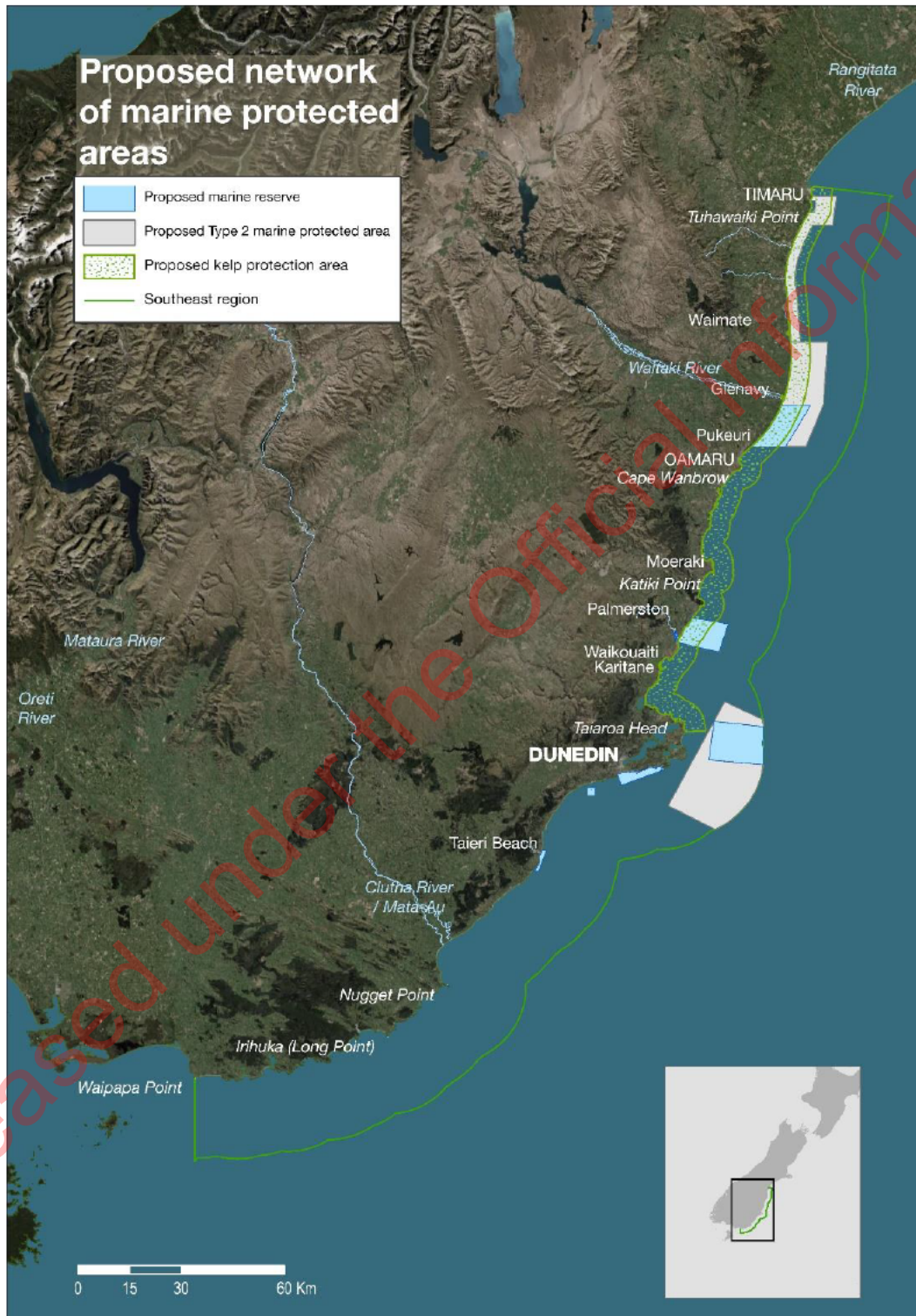


Figure 6-1: Location of the proposed marine protected areas

6.1 Introduction

278. The Application for the six proposed marine reserves is presented on pages 64–114 of the Consultation Document⁶³ (see Appendix 1).

6.1.1 Network description

279. The proposed Network refers to the full suite of marine protected areas proposed in the joint consultation undertaken in 2020 (see 2.4 and 2.5 of this report). The proposed sites are six marine reserves, five Type 2 marine protected areas and a kelp protection area. The sites are located within an area from South Canterbury to The Catlins (Figure 6-1). The proposed Network (excluding the proposed kelp protection area⁶⁴) would cover 14.2% (1267 km²) of the Forum region⁶⁵, with 4.5% in the six proposed marine reserves and 9.7% in the five proposed Type 2 marine protected areas.

6.1.2 Forum recommendations

280. The proposed Network corresponds to 'Network 1' as recommended to Ministers in 2018 by the Forum in their Recommendations Report⁶⁶ (as set out in 2.3). There are minor differences between the Forum's 'Network 1' and the proposed Network consulted on, as set out in 2.4.

281. The Forum's recommendations (on page 52 of their Recommendations Report) stated that this network would provide protection 'to many of the Forum region's iconic marine habitats, species and ecosystems, with emphasis on those that are rare, distinctive and nationally or internationally important'.

282. The Forum's recommendations also noted that this network aimed to achieve protection for each habitat type⁶⁷ in a marine reserve, with replication in another marine protected area. The recommendations (on page 52) described that this network would protect a wider range of habitat types than the 'Network 2' proposal and that efforts were made to minimise impacts on Kāi Tahu and existing users.

6.1.3 Decision-making on the six proposed marine reserves as part of a network of marine protected areas

283. As outlined in 5.3.3, submissions (including objections) made in relation to the proposed Network are treated as applying to all six proposed marine reserves. These submissions and our advice should therefore be considered when making your decisions in respect of individual marine reserves.

⁶³ Department of Conservation and Fisheries New Zealand 2020. Proposed southeast marine protected areas: Appendices to consultation document (including marine reserve applications) June 2020. 126 p.

⁶⁴ The proposed kelp protection area does not meet the 'protection standard' to be called a 'marine protected area' as set out in: Department of Conservation; Ministry of Fisheries 2008: Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines, Wellington. 54 p.

⁶⁵ The term used by the Forum to describe the area within which the Forum was tasked with providing recommendations for marine protection. Specifically: "...the marine coastal area (mean high water spring out to 12 nautical miles (NM) from Timaru in South Canterbury to Waipapa Point in Southland." Page 17, South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

⁶⁶ South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

⁶⁷ Distinct areas of the marine environment that have been classified according to the approach set out in: Department of Conservation; Ministry of Fisheries 2008: Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines, Wellington. 54 p.

284. Most importantly, if a submission was made in relation to the proposed Network and has been classified as an objection (as described in 5.1), it should be considered as an objection for each of the marine reserves and be considered against the criteria in section 5(6)(a)–(e) of the Marine Reserves Act. If an objection made in respect of the proposed Network is upheld, it would apply across all individual sites, so none of the proposed marine reserves would be declared.

285. It is also important to acknowledge that the proposed marine reserves were developed (by the Forum) and formally proposed (through the Director-General's Application) as part of a wider network of marine protected areas. Submissions received during the statutory consultation, both supporting and objecting, were therefore made on the basis that all proposed sites would be included in the proposed Network. This is particularly relevant for some objections that raise issues in relation to the cumulative impacts of multiple proposed sites, or conversely that raise issues about whether the area or habitats proposed to be protected were insufficient.

286. Our advice in this and the subsequent site chapters is therefore made on the basis that the benefits and impacts of each proposed marine reserve needs to be considered in the context of the overall Network as currently proposed.

287. Finally, as set out in 3.2.3, to the extent that Kāi Tahu views have been provided via direct engagement with agencies (Te Papa Atawhai and Tini a Tangaroa, the Agencies) rather than through submissions under the statutory process, you must consider those views as part of your section 5(9) assessment for each individual site. Given that the agency engagement with Kāi Tahu has proceeded on the basis of the proposed Network as a whole, the outcome of engagement and our advice is provided in this chapter.

6.1.4 Chapter outline

288. This chapter:

- outlines our assessment of the benefits of the proposed marine reserves collectively and their contribution to the overall proposed Network
- outlines matters discussed during Treaty partner engagement that apply across the proposed Network and therefore to each proposed marine reserve
- presents the number of submissions related to the proposed Network that were received through the statutory consultation
- describes the issues raised in these submissions
- provides our advice in relation to the tests under section 5(6) of the Marine Reserves Act arising from these submissions
- provides our advice on matters in relation to the proposed Network that are relevant to section 5(9) of the Marine Reserves Act.

6.2 Assessment of the benefits of the proposed marine reserves as part of a network of marine protected areas

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

290. For both objections that have been made in relation to the proposed Network and individual sites, you will need to consider the context of the wider proposed Network as well as matters

relevant to individual sites (as discussed in subsequent chapters). This means you should assess the objections in light of the purpose of the Marine Reserves Act and the benefits of the proposed marine reserves collectively and as part of the proposed Network in terms of achieving that purpose.

291. You also need to assess the values of the proposed marine reserves and the ‘overall public advantages’⁶⁸ that would come from these areas being declared as marine reserves, including their contribution to the proposed Network.

292. The following section is a summary of our assessment of those benefits in relation to the proposed marine reserves, collectively and as part of the proposed Network. Much of this assessment is also relevant to your decision-making under section 5(9) for each site as discussed further in 6.8. This includes an assessment of your obligations under the Treaty of Waitangi (as set out in 3.3). More detail is also available in section 4 of the Application.

6.2.1 Achieving the purpose of the Marine Reserves Act

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

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

294. A full assessment of the proposed marine reserves against these criteria is set out in section 4 of the Application.

295. It is well established that implementing marine protection, including marine reserves, as part of a network of marine protected areas provides greater benefits than establishing individual marine protected areas in an ad hoc fashion⁶⁹. This underpins the design principles in the *Marine Protected Areas Policy and Implementation Plan* (MPA Policy)⁷⁰ and the reference in the goals of *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* (Te Mana o te Taiao)⁷¹ of establishing an ‘effective network’ of marine protected areas and other tools (see 2.2.2). The network design provides the important spatial links that are needed to maintain ecosystem processes and connectivity. As discussed further below, this in turn increases the opportunities and benefits for scientific study.

6.2.1.1 Underwater scenery, natural features, and marine life

296. The six proposed marine reserves contain underwater scenery and areas that are typical of the coastal marine environment of the southeastern South Island from Timaru to Kaka Point. They would encompass a variety of natural features and habitat types across a range of depths, exposures and substrate characteristics. These include exposed shallow reefs near Dunedin, moderately exposed soft-sediment and reef habitats north of Otago Peninsula and deep biogenic (living) habitats and canyons off Otago Peninsula. The features of each proposed marine reserve are described in the individual site chapters.

⁶⁸ *CRA3 Industry Association Inc v Minister of Fisheries* HC Wellington CP317/99, 24 May 2000, at [36].

⁶⁹ For example: IUCN World Commission on Protected Areas, 2008. *Establishing Marine Protected Area Networks—Making It Happen*. Washington, D.C. IUCN-WCPA, National Oceanic and Atmospheric Administration and The Nature Conservancy. 118 p.

⁷⁰ Department of Conservation, Ministry of Fisheries, 2005. *Marine Protected Areas: policy and implementation plan*. Department of Conservation and Ministry of Fisheries, Wellington. 25 p.

⁷¹ New Zealand Government, 2020. *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*. Department of Conservation, Wellington, 73 p.

297. The proposed marine reserves also include ecologically important and sensitive biogenic habitats that contain marine life of distinctive quality. All three biogenic habitat types known to occur in this region are found within the proposed marine reserves - giant kelp forests, bryozoan thickets (bryozoans are tiny colony-forming animals) and seagrass (although there is limited information about the distribution of seagrass it is known to occur, e.g. in the Pleasant River estuary).

6.2.1.2 Opportunities for scientific study

298. The typical and distinctive features of the proposed marine reserves offer opportunities for scientific study. This would improve Aotearoa New Zealand's understanding of the structure and functioning of the marine environment. Scientific studies in the proposed areas would also contribute to a better understanding of how the impacts of human use and development on land and sea can be managed.

299. Multiple marine reserves increase research opportunities to improve our understanding of the structure and functioning of the marine environment across bigger spatial scales. The six proposed marine reserves represent the majority of habitat types found in this region, thereby providing increased opportunities for scientific study on species or other ecological features associated with these habitat types.

300. The establishment of the six proposed marine reserves as part of the proposed Network would enable opportunities to study a range of habitats and their associated species under differing management approaches. These are areas protected under the Marine Reserves Act, areas subject to additional fisheries restrictions (proposed Type 2 marine protected areas), and areas subject to general fisheries restrictions including customary protected areas (such as mātaītai reserves⁷² and taiāpure⁷³).

301. Marine reserves in New Zealand and overseas are a major focus of scientific research aimed at better understanding the marine environment and existing pressures and threats. For instance, the Cape Rodney-Okakari Point Marine Reserve (Goat Island) has provided an essential setting for marine research in New Zealand⁷⁴. It stimulated a wide range of research and scientific papers that have helped inform marine management. Much of our knowledge about fish movement for example can be attributed to research carried out in marine reserves and is used to inform decision-making on fish stock management, spatial closures and marine protected area planning.

302. The University of Otago is close to many of the proposed marine reserves. It has an active marine research programme, supported by the Portobello Marine Laboratory and its research equipment and vessels. It is anticipated that some future research activities would use the proposed marine reserves as study sites. Other New Zealand universities also have active coastal research programmes that may utilise the proposed marine reserves collaboratively or independently.

⁷² Mātaītai are identified traditional fishing areas for tangata whenua. The kaitiaki (guardians) sustainably manage fisheries there through bylaws. They are now established under the Fisheries Act 1996.

⁷³ Taiāpure are areas that have customarily been of special significance to iwi or hapū, as a source of food, or for spiritual or cultural reasons, and are now established under the Fisheries Act 1996.

⁷⁴ MacDiarmid, A. B., Freeman, D., Kelly, S. & Rock, S. K., 2013. Rock lobster biology and ecology: contributions to understanding through the Leigh Marine Laboratory 1962-2012. *New Zealand Journal of Marine and Freshwater Research*, 47: 313-333.

6.2.2 Other values and advantages to the public

6.2.2.1 Benefits for wellbeing, recreation and tourism

303. The proposed marine reserves individually and collectively are expected to increase human wellbeing, public enjoyment and prosperity. Protected areas are being increasingly recognised for their contribution to wellbeing and health and are included in the United Nations Sustainable Development Goals⁷⁵.

304. The proposed marine reserves are expected to contribute to wellbeing and enjoyment by creating opportunities for people to experience areas that are 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. Also, establishing multiple marine reserves across the region would provide access to a greater proportion of the population.

305. 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. The establishment of multiple marine reserves would increase these benefits across the region. However, predicting the net economic impact and gains associated with the proposed Network (e.g. expected actual losses or costs in the fishing sector and expected gains in the tourism sector) is difficult.

306. As described in 2.2.2.2, establishing the proposed marine reserves as part of the proposed Network will provide benefits through mitigation and adaptation against the effects of climate change. Te Mana o te Taiao 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 marine reserves would make an important contribution to this and therefore contribute to public wellbeing.

6.2.2.2 Benefits for fisheries

307. The proposed marine reserves 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 evident⁷⁶. Te Papa Atawhai expects that regional benefits related to fisheries would be enhanced by establishing multiple marine reserves in combination with the other proposed marine protection measures.

6.2.2.3 Benefits for scientific study

308. Research and scientific study of the proposed marine reserves 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. This knowledge will help inform the management of these natural assets.

⁷⁵ <https://sdgs.un.org/goals>.

⁷⁶ 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.

6.2.3 Contribution to New Zealand's marine protected areas goals

309. As outlined in the Consultation Document (on page 14), establishing the proposed marine reserves would contribute to New Zealand's international biodiversity commitments and the objectives of the 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.
310. As stated in 2.1, there are currently no marine protected areas (areas that meet the protection standard⁷⁷) in the Forum region⁷⁸. This represents a significant gap in meeting New Zealand's commitment to the Convention on Biological Diversity's Kunming-Montreal Global Biodiversity Framework Target 3 (see paragraph 57).
311. As outlined in 2.2.2.1, the *Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines* (MPA Guidelines)⁷⁹ provide a classification approach for New Zealand's coastal marine habitats. This classification identifies 22 coastal habitat types, 3 biogenic habitat types and 12 estuarine habitats within the Forum region. Establishing the proposed Network would help fill the gap in the protection of representative habitats as follows:
- The proposed marine reserves would collectively include 18 of the 22 coastal habitat types.
 - The proposed Type 2 marine protected areas would collectively include 10 of the 22 coastal habitat types (all of which are also included in the proposed marine reserves).
 - 7 of the 12 estuarine habitats would be included in the proposed Network.
 - All three biogenic habitats that have been mapped in this region would be represented in some degree by the proposed Network.
312. Four coastal habitat types would not be represented. These are all sheltered habitats that occur to the northwest of the Ōtākou/Otago harbour entrance, between the East Otago Taiāpure⁸⁰ and Heyward Point. Concern regarding the viability of these sites due to the effects of consented dredge spoil dumping meant that they were not put forward in the Forum's recommendations. The East Otago Taiāpure includes these four habitat types but is not considered a marine protected area (as per the protection standard in the MPA Guidelines).
313. The Forum's recommendations (at page 60, section 2.2.3) describe how the proposed Network would meet the MPA Policy. In summary, it would:
- provide adequate habitat representation (18 out of 22 coastal habitat types, 7 out of 12 estuarine habitats, and likely 3 out of 3 biogenic habitats⁸¹)

⁷⁷ As defined in: Department of Conservation; Ministry of Fisheries 2008: *Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines*, Wellington. 54 p.

⁷⁸ Department of Conservation, Ministry for the Environment, Ministry for Primary Industries, 2019: *New Zealand marine protected areas: Gaps Analysis*, Wellington. 75 p.

⁷⁹ Department of Conservation, Ministry of Fisheries, 2008: *Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines*, Wellington. 54 p.

⁸⁰ The customary fishery management area established in 1999 between Waikouaiti and Pūrākaunui Inlet, east Otago. Taiāpure are areas that have customarily been of special significance to iwi or hapū, as a source of food, or for spiritual or cultural reasons, and are established under the Fisheries Act 1983.

⁸¹ Note, Te Papa Atawhai considers that some of the habitat types included in the proposed Network do not contribute to representation as they are not viable in terms of their size or proposed protection.

- provide adequate replication of habitats protected (12 out of 22 coastal habitat types would be replicated in more than one marine protected area)
- allow for ecological connectivity across habitats
- be viable in terms of the size of the proposed sites.

6.3 Consideration of Kāi Tahu views on the proposed Network and marine reserves as heard through direct engagement

6.3.1 Introduction

314. As described in 2.6.2, Kāi Tahu confirmed during the engagement process that they would not make a submission through the statutory process, on the basis that their preference was for their views to be heard via direct engagement with the Agencies.

315. This section sets out the Kāi Tahu views that have been received through direct engagement and our advice in relation to these views for the purposes of your decision-making.⁸²

6.3.2 Kāi Tahu views received through engagement

6.3.2.1 Kāi Tahu concerns regarding the impact of the proposals on their rights and interests

316. The region covered by the Forum and therefore each of the proposed marine protected areas that comprise the proposed Network are located within the Kāi Tahu takiwā and specifically the rohe moana of six papatipu rūnaka⁸³.

317. Through the engagement undertaken between the Crown and Kāi Tahu (described in 2.6.2), Kāi Tahu have identified the rights and interests they hold and have outlined their concerns regarding what they consider to be the potential impacts of the proposed marine protected areas on these rights and interests. Kāi Tahu consider the proposed marine protected areas, particularly the marine reserves, would displace and alienate their customary rights, and that this effect would be compounded across the generations. The following sections provide further detail on the views received through engagement in relation to these concerns.

Impacts on fishing rights and interests

318. In terms of fishing activities, Kāi Tahu have emphasised the cost marine protected areas impose on their commercial fishing interests and concerns regarding the potential impacts new marine reserves might have on their non-commercial customary fishing rights including customary protected areas (mātaitai reserves and taiāpure).

Commercial fishing interests

319. Regarding impacts on commercial fishing interests, throughout engagement Kāi Tahu have expressed concern that the proposed marine protected areas will reduce the space for Kāi Tahu-owned commercial quota to be fished, resulting in less profitable fisheries and therefore decreased quota value. Additionally, there is concern that localised depletion of stocks may occur due to the displacement of commercial, recreational, and customary fishing from the proposed marine protected areas and could require the Total Allowable Catch (TAC) to be reduced to decrease fishing pressure to sustainable levels. In either case,

⁸² Note that this section summarises the Kāi Tahu views that have been received through engagement. Full minutes from the hui over the course of engagement from 31 July 2018 to 23 July 2021 are included as appendices to the Rōpū Report (Appendix 9). Minutes from the 30 November 2021 Ministerial hui are attached as Appendix 10.

⁸³ Te Rūnaka o Arowhenua, Te Rūnaka o Waihao, Te Rūnaka o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnaka o Ōtākou and Awarua Rūnaka.

Kāi Tahu see these impacts as directly affecting quota provided to Kāi Tahu as part of the redress made by the Crown under the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 (hereafter referred to as the Fisheries Settlement Act, see further in 3.3.4) and the economic wellbeing of coastal fishing communities.

320. Kāi Tahu have expressed significant concerns with regards to the proposed Te Umu Koau marine reserve site. As set out further in chapter 8, this proposed marine reserve extends over areas of offshore reef that are seasonally important for rock lobster. Kāi Tahu are concerned that prohibiting commercial fishing on these grounds would impact on their people, particularly those members of the Moeraki, Ōtākou, and Puketeraki Rūnaka whose families are involved in rock lobster fishing, processing and export.

Non-commercial customary fishing interests

321. Kāi Tahu have also articulated concern about their non-commercial customary fishing rights. Kāi Tahu view the proposed marine protected areas, particularly the marine reserves, as reducing the likelihood of establishing other customary protected areas⁸⁴ and affecting the quality of kāimoana in existing customary protected areas by displacing commercial or recreational catch into them, magnifying the level of fishing pressure on these areas and their wider rohe moana. The view of Kāi Tahu is that the proposed marine protected areas affect their ability to exercise kaitiakitanga over their fisheries. Providing opportunities to enable Māori to manage non-commercial customary fishing (including through the establishment of customary protected areas) was a matter provided for under the Fisheries Settlement Act (see above in 3.3.4).

Wider customary interests

322. In addition to the impacts described above, Kāi Tahu have concerns about the potential impact of the proposed marine protected areas on their wider customary interests. These concerns relate to the connection of Kāi Tahu and status over the areas concerned and taonga present. Themes identified through the engagement include the potential for the proposed marine protected areas to impact on Kāi Tahu rangatiratanga, their ability to exercise kaitiakitanga, their ability to capture and transfer mātauraka between generations and the need to be closely involved in ongoing management of any protected areas. In particular, these concerns arise from the restrictive nature of marine reserves in terms of the activities that are prohibited within them, and the view that marine reserves threaten the inter-generational connection Kāi Tahu have traditionally held with their rohe moana.

6.3.2.2 Measures Kāi Tahu put forward to address their concerns

323. As described in 2.6.2, early in the engagement with Agencies on the Network proposals Kāi Tahu proposed 'rebalancing' and co-management measures (the 'proposed measures') to address their identified concerns in relation to the impact of the proposed Network on their rights and interests. These proposed measures have been refined and developed through the engagement.

324. As at 29 July 2020⁸⁵, the proposed measures were:

⁸⁴ Te Papa Atawhai understands this view to be related to the statutory tests for establishing customary marine protected areas. The relevant tests require consideration of the impacts of a proposal including (for mātauraka reserves specifically) whether the proposed mātauraka reserve will: 'prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species' (Regulation 20(e)(ii) of the Fisheries (South Island Customary Fishing) Regulations 1999). While the degree to which it will be more difficult is uncertain, it is possible that establishing the proposed marine protected areas through the southeast marine protection process will make it more difficult to establish new customary protected areas because of the cumulative impacts on commercial fishing.

⁸⁵ 29 July 2020 being the date of a hui between Kāi Tahu and Agencies, immediately prior to the end of the statutory consultation period. Discussed further in 2.6.2 and below.

1. Financial compensation
2. Ex gratia payments
3. Preferential access to commercial development opportunities – eco-tourism – within marine protected areas
4. Establishing customary protected areas and marine protected areas in a co-ordinated way
5. Integrated management of marine protected areas and customary protected areas
6. Formal co-management arrangements for the marine protected area sites and the proposed Network
7. Appointment of Kāi Tahu rangers for marine protected areas and customary protected areas
8. Site boundary amendments (for proposed Te Umu Koau marine reserve)
9. Providing for the continued enhancement of mātauraka Māori through wānaka within marine protected areas
10. Providing for retrieval of kōiwi tākata⁸⁶ and archaeological artefacts, and access to cultural materials within marine protected areas
11. Continued Kāi Tahu access to any approved SEMP marine reserve to utilise Kāi Tahu's MPI *Undaria*⁸⁷ permit.⁸⁸
12. Naming of new marine protected areas and the installation of pou whenua at each site
13. Periodic reviews of marine protected areas
14. Generational reviews of marine protected areas

325. As discussed further in 6.3.8, Kāi Tahu identified two additional matters during subsequent engagement:

15. Measures to manage recreational take of pāua in the PAU5D⁸⁹ fishery management area
16. Ensuring that the marine protected areas do not negatively impact the Kāi Tahu application for customary marine title under te Takutai Moana Act.

326. The indication from Kāi Tahu throughout engagement has been that they may oppose the proposed Network unless their proposed measures are sufficiently addressed.

6.3.3 Te Papa Atawhai position on the rights, interests and impacts identified

327. As recorded in 2.6.2, Te Papa Atawhai acknowledges that the establishment of any marine protected areas within the Kāi Tahu takiwā has the potential to impact on a range of interests, rights and values held by Kāi Tahu. Given the restrictive nature of marine reserves (as discussed in 3.2.1, the starting point is that the declaration of a marine reserve prohibits a range of activities, including extractive activities), their imposition in particular has the potential to impact on the interests held.

⁸⁶ Unidentified (Māori) human remains.

⁸⁷ *Undaria pinnatifida* is an introduced, invasive seaweed.

⁸⁸ Note: this text was updated following December 2022 feedback from Kāi Tahu, and differs slightly from the Rōpū Report (Appendix 9) and 15 December 2021 letter from Kāi Tahu to Ministers (Appendix 11).

⁸⁹ The pāua fishery management area from the Taieri River in the north to Slope Point in the south.

328. At a general level, therefore, Te Papa Atawhai acknowledges that the proposed marine protected areas, particularly the marine reserves, could interact with the rights and interests as described by Kāi Tahu and identified above in 6.3.2.1. Te Papa Atawhai, together with Tini a Tangaroa, has therefore proceeded on the basis that it was appropriate to progress discussions with Kāi Tahu on the proposed measures in order to undertake a process, and provide recommendations, that would best give effect to the relevant Treaty principles.

329. The following section (6.3.4) provides further detail on the process that was followed to work through each of the measures proposed by Kāi Tahu. As described in chapter 4, Te Papa Atawhai considers that this process (i.e. the engagement process prior to your substantive decision-making) has been undertaken in a manner that fulfils the Crown's obligations in respect of the Treaty, in particular the obligations under section 4 of the Conservation Act 1987 to give effect to the principles of the Treaty (see specifically 4.13).

6.3.4 Progressing the kaupapa on the proposed measures

6.3.4.1 Establishment of Rōpū

330. As outlined in 2.6.2, at a hui with Kāi Tahu on 29 July 2020, Agencies set out their positions on the measures proposed by Kāi Tahu to that point. In accordance with previous Ministerial directives, Agencies confirmed that financial compensation and ex gratia payments (listed 1 – 2 above) could not be progressed at an agency level (see 6.3.7.1). A detailed action plan was developed for the remaining proposed measures, and a rōpū (working group – the Rōpū) of Kāi Tahu, Te Papa Atawhai and Tini a Tangaroa representatives was established to progress this kaupapa.

331. To help focus their mahi, the Rōpū prioritised their actions into three tranches based on whether the information was required before or after Ministerial decisions on the marine protected areas. This resulted in three additional proposed measures (listed 3–5 above) being largely set aside by the Rōpū to be progressed at a later date (see 6.3.7.2–6.3.7.4).

332. The Rōpū met four times between 20 January 2021 and 23 July 2021 and the outcomes of this engagement were recorded in hui records⁹⁰. Te Papa Atawhai and Tini a Tangaroa summarised these hui records in the Rōpū Report (see Appendix 9). Note that Kāi Tahu were offered the opportunity to review the Rōpū Report but did not take up that opportunity.

6.3.4.2 Kāi Tahu concerns about progress on rebalancing

333. Towards the end of Rōpū engagement, Kāi Tahu expressed concern that the kōrero had focussed on the “co-management” aspects of the proposed measures rather than “rebalancing”. For Kāi Tahu, rebalancing is about: “addressing the biological, economic and mana impacts of [the proposed] MPAs [marine protected areas]. It has three distinct steps:

1. Rebalancing MPA impacts on the marine environment's capacity to support fisheries – i.e. impact of displacement of recreational, customary, and commercial fishing effort.
2. Rebalancing economic impacts arising from Step 1.
3. Empowering customary co-management and more robust Customary Protected Areas.” (Appendix 9, section 2.5)

334. In the view of Kāi Tahu, rebalancing had not been sufficiently addressed via the Rōpū hui. Kāi Tahu indicated that they might not support the proposed Network without knowing, or

⁹⁰ All hui records during this time, except that from the 23 July 2021 hui, were agreed to by Kāi Tahu, Te Papa Atawhai and Tini a Tangaroa. The 23 July 2021 hui record was not confirmed at the time and, due to personnel changes since then, remains an unconfirmed record.

having a strategy for, how rebalancing would be addressed by the Crown prior to implementation of any marine protected areas. (Appendix 9, section 2.5).

6.3.4.3 Ministerial meeting, November 2021

335. On 30 November 2021, at the request of Kāi Tahu, the then Minister of Conservation and the former Minister for Oceans and Fisheries met with Kāi Tahu to directly hear their views on rebalancing prior to making any decisions on the proposed Network.

336. At this hui and in a subsequent letter to these Ministers, Kāi Tahu outlined that while good progress had been made in addressing their concerns, points of disagreement remain. Kāi Tahu are looking for solutions mutually acceptable to them and the Crown and seek:

‘a package of measures that addresses the displacement of recreational and commercial fishing effort (addressing the biological impacts of Marine Protected Area (MPA) establishment), provides opportunities for us to exercise our kaitiaki responsibilities and rangatiratanga, and to uphold our mana.’⁹¹

337. Kāi Tahu confirmed they are seeking that you, as Minister of Conservation, and the Minister for Oceans and Fisheries agree to the package of measures as part of your decision-making on the proposed Network or a commitment from you both that these matters will be addressed immediately after decisions. The letter from Kāi Tahu organised the package of measures into those they seek to rebalance the expected ‘economic impacts’, those they seek to address the expected ‘customary impacts’, and those relating to review of the marine protected areas and interaction with te Takutai Moana Act. The package as outlined in the letter is:

Measures to rebalance the environmental impacts/displacement

- measures to manage recreational take of pāua in the PAU5D fishery management area

Measures to rebalance economic impacts⁹²

- measures to manage recreational take of pāua in the PAU5D fishery management area (as above), and
- a boundary change for the proposed Te Umu Koau marine reserve

Measures to address customary impacts

- a range of measures (co-governance and co-management, Kāi Tahu rangers, ability to take from marine protected areas for the purpose of wānaka, legislative change to mātaimai reserves and taiāpure, and continued 9(2)(g)(i) access for *Undaria* control harvesting)

Periodic and generational review

- periodic (5 yearly) reviews using science and wānaka
- Full generational reviews of marine protected areas initiated no later than 25 years after establishment

Interaction with te Takutai Moana Act

⁹¹ Letter dated 15 December 2021 and addressed to the then Minister of Conservation and the former Minister for Oceans and Fisheries. An attachment to the letter summarised matters for which papatipu rūnaka seek Ministerial commitment to addressing.

⁹² Kāi Tahu indicated that if the proposed boundary of Te Umu Koau marine reserve is altered to their satisfaction and the measures to manage recreational take of pāua in the PAU5D fishery management area are agreed to (see 6.8.3.1), then no further rebalancing of economic impacts would be required.

- ensuring that the marine protected areas do not negatively impact the Kāi Tahu application for customary marine title under te Takutai Moana Act.

338. The measure relating to the management of recreational take of pāua in the PAU5D fishery management area and the assurance sought in relation to the interaction with te Takutai Moana Act had not previously been raised during engagement.

339. At a meeting on 2 December 2021 with officials from Te Papa Atawhai and Tini a Tangaroa, representatives of Te Rūnanga o Ngāi Tahu stated that all the matters listed in the package above must be satisfactorily addressed by the Crown. Otherwise Kāi Tahu considers the proposed Network will impact too greatly on their rights and interests and they may challenge decisions made on the proposed marine protected areas.

340. A copy of the finalised meeting minutes from the 30 November 2021 hui is attached as Appendix 10.

341. A copy of the letter from Kāi Tahu (dated 15 December 2021), which sets out the full detail of the package sought, is attached as Appendix 11.

6.3.5 Te Papa Atawhai advice on the views received from Kāi Tahu

342. As set out in 3.2.8, as part of your decision-making under section 5(9) of the Marine Reserves Act, for each of the proposed marine reserves you must consider whether declaring the marine reserve would be in the best interests of scientific study, in the public interest and expedient, in light of the Crown's obligations in relation to the Treaty of Waitangi. This includes the obligation to give effect to the principles of the Treaty of Waitangi pursuant to section 4 of the Conservation Act.

343. The application of section 4 means that you must consider the views received from Kāi Tahu via direct engagement as part of your decision-making under section 5(9), even though their views are not an 'objection' for the purposes of section 5(6) of the Marine Reserves Act. In accordance with section 49 of te Takutai Moana Act, you must give 'particular regard' to these views in considering the Application (see 3.3.2 and 5.2).

344. As the engagement with Kāi Tahu has focused on the proposed measures outlined above, you will need to consider these measures and our advice in making your assessment under section 5(9) for each of the proposed marine reserves. While some measures relate to specific sites, Kāi Tahu has proposed the 'package' of measures in the context of the proposed Network as a whole. Your decision-making on each individual site will therefore be informed by our advice in this section.

345. Our advice in the following sections covers each of the proposed measures and provides:

- A summary of the views expressed (Kāi Tahu and Agencies) through the engagement to date
- Te Papa Atawhai further advice and recommendations on each of the proposed measures.

346. In order to inform your decision-making under section 5(9), our advice assesses each of the proposed measures in terms of the relevant obligations in relation to the Treaty of Waitangi, including section 4 of the Conservation Act. As set out in 3.3, the relevant obligations derive from:

- Section 4 Conservation Act
- Te Takutai Moana Act
- The Ngāi Tahu Claims Settlement Act

- The Fisheries Settlement Act

347. Note that our advice in this section focuses on the *substance* of each of the proposed measures. As noted above, Chapter 4, and in particular sections 4.11, 4.12, and 4.13, set out Te Papa Atawhai advice as to whether the engagement and development of the advice (i.e. the process up to the point of decision-making) are in accordance with the Crown's obligations in relation to the Treaty of Waitangi.

348. Our advice and analysis below focus on the obligation under section 4 of the Conservation Act to administer and interpret the Marine Reserves Act, and therefore your decisions under it, to give effect to the principles of the Treaty of Waitangi. Additional Treaty obligations are discussed below as relevant in the context of the proposed measures. An overall assessment and summary as to how our recommendations fulfil each of the relevant obligations is provided in 6.3.9.

349. To the extent that the proposed measures relate to those discussed by the Rōpū, this advice draws from the Rōpū Report and Rōpū hui records between 20 January 2021 and 23 July 2021. You should refer to the Rōpū Report and hui records for full details of the views expressed. As recorded in 2.6.2, Agencies made clear to all participants that the outcomes reached through the Rōpū engagement would inform Agencies' recommendations to the Ministers, but that final decision-making would sit with Ministers.

350. A summary of our recommendations arising from Kāi Tahu engagement is set out in 6.8.1 and 6.8.2.

351. Our advice below is presented in four parts:

- proposed measures that were progressed by the Rōpū (see 6.3.6)
- proposed measures that were not progressed by the Rōpū (see 6.3.7)
- additional matters raised by Kāi Tahu from 30 November 2021 onwards (see 6.3.8)
- concluding advice regarding Te Papa Atawhai's recommendations and consistency with the Crown's obligations in relation to the Treaty of Waitangi (see 6.3.9).

6.3.6 Proposed measures progressed by the Rōpū

6.3.6.1 Formal co-management of marine protected areas across the proposed Network and for individual sites

Views expressed through engagement

352. Formal co-management of any marine protected area and the proposed Network approved under this process was a key focus of the Rōpū, including by a Rōpū sub-committee. Section 4.1 of the Rōpū Report summarises the views of Kāi Tahu on this proposed measure, the Agency position, and outcomes of engagement, including unresolved matters or key points of difference.

353. In summary, Kāi Tahu have stated their requirement for formal co-management arrangements with the Crown for the proposed marine protected areas and the proposed Network as a whole. Kāi Tahu consider formal co-management would reflect tino rangatiratanga (self-determination) and enhance the retention and transfer of knowledge through generations. Kāi Tahu also consider it would allow for the maintenance of their connection to their takiwā. Through engagement, Agencies confirmed their support in principle for the establishment of a co-management framework with Kāi Tahu. As set out in 6.3.4.2, Kāi Tahu have confirmed that they see co-management as the third step of rebalancing.

354.

355. The Rōpū concluded that following decisions on the proposed marine protected areas, further work would be required by the Rōpū to progress the framework and roles and to work through how to implement any co-management arrangements. The Rōpū Report (in section 4.1.2) notes a point of difference regarding the views of Kāi Tahu on how decision-making, including statutory decision-making, should be approached in any co-management arrangement.

356. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu outlined that co-governance and co-management, including joint decision-making, are matters on which Kāi Tahu seek written Ministerial commitment to address either before (i.e. as part of the decision-making process) or immediately after the establishment of the proposed marine protected areas. In their letter, Kāi Tahu identified this as one of the matters they seek in order to address the customary impacts of the proposed marine protected areas.

Te Papa Atawhai further advice

357. The rights and interests relevant to this proposed rebalancing measure relate to the concerns of Kāi Tahu about the potential impact of the proposed marine protected areas on their wider customary interests. In particular, Te Papa Atawhai understands this relates to the potential for the proposed marine protected areas (particularly the marine reserves) to impact on the ability of Kāi Tahu to exercise rangatiratanga and kaitiakitanga through the separation of tangata whenua from their taonga. It also relates to the need to reflect and uphold the mana of Kāi Tahu in the structure of management arrangements for the proposed marine protected areas. It links to the interest of Kāi Tahu in ensuring that concepts of tikanga, are incorporated into these arrangements, including the ability to transfer mātauraka between generations and for mātauraka to inform future decision-making about marine protected areas. It is particularly important to Kāi Tahu that any arrangements are implemented at the appropriate level –

9(2)(g)(i)

9(2)(g)(i)

The

The emphasis Kāi Tahu placed on the need for joint decision-making comes from their view of what is required to give effect to the Treaty principle of partnership.

358. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the proposal of Kāi Tahu for formal co-management and the

outcome arrived at through the Rōpū engagement in terms of the Treaty principles of partnership, active protection and informed decision-making.

359.

Te Papa Atawhai acknowledges the interests identified by Kāi Tahu in terms of their status and connection with areas over which the marine protected areas are proposed and the taonga present. In light of those interests, and the potential impacts of the proposals (particularly the marine reserves) on those interests, Te Papa Atawhai considers that enabling Kāi Tahu to be actively involved in the management of any marine protected areas and the proposed Network through formal co-management arrangements is necessary to ensure that a decision to progress the proposed marine reserves is consistent with the Crown's obligations under section 4. While acknowledging that the framework developed by the Rōpū remains in draft, Te Papa Atawhai considers that the structure proposed would give effect to the following Treaty principles:

- **Partnership** – the proposed structure has been developed through the Rōpū engagement in the spirit of good faith and reasonableness. It has been designed to ensure that the principle of partnership is a feature

9(2)(g)(i)

9(2)(g)(i)

In terms of the issue raised by Kāi Tahu about shared decision-making, including statutory decisions, Te Papa Atawhai reiterates the agency position set out in the Rōpū Report at section 4.1.2. There is scope in Agencies' operational work in relation to the proposed marine protected areas for Kāi Tahu to work alongside the Agencies and share 'operational' decisions in a collaborative and equitable way, wherever possible within statutory constraints. Under existing legislation, where legislation identifies the Minister or agency official as the decision-maker, it is not possible for Kāi Tahu (or any other third party) to be a joint decision-maker. It is entirely possible, however, for Agencies and Kāi Tahu to find ways within the existing and applicable legislative scheme for Kāi Tahu to participate in all levels of the decision-making process (other than the decision itself), including the opportunity for Kāi Tahu to inform the decision-maker of their views. The co-management arrangements as developed by the Rōpū will ensure and enhance these opportunities.

- **Informed decision-making** – Te Papa Atawhai considers that the proposed co-management structure will ensure that on-going informed decision-making is a key feature of the management of any marine protected areas established (including the marine reserves), from an operational through to a strategic level.

9(2)(g)(i)

9(2)(g)(i)

- **Active protection** – The proposed structures would help recognise and address the concerns identified by Kāi Tahu in terms of the impacts of the proposed marine protected areas (particularly the marine reserves) on their role and status.

9(2)(g)(i)

9(2)(g)(i)

360. Te Papa Atawhai acknowledges that further work is required for co-management to be achieved in practice. For practical reasons, in particular, not knowing which marine protected areas will be established, much of this work will not be able to be progressed until Ministerial decisions on the proposed marine protected areas have been made. This means that some aspects remain uncertain – for example, while Kāi Tahu have indicated they anticipate the implementation of the co-management arrangements will be supported by Agency resourcing, this detail remains to be worked through.

361. Te Papa Atawhai 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, is problematic for your ability to progress the decisions on the proposed marine reserves. In particular, Te Papa Atawhai does not consider that a specific commitment as to the level of Agency resourcing of co-management arrangements is necessary at this stage in order for a decision to recommend the declaration of the proposed marine reserves to give effect to Treaty principles. Resourcing will need to be an operational decision at the relevant point/s, in light of what can be contributed by the Crown as a reasonable Treaty partner. Rather, Te Papa Atawhai considers that the work undertaken to date by the Rōpū provides a ‘base-line’ that can guide the subsequent development of the formal co-management structures. For the reasons set out above, Te Papa Atawhai considers that a decision to progress the proposed marine reserves 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.

362. Accordingly, Te Papa Atawhai recommends that for any of the marine reserves you recommend declaring, you direct that formal co-management arrangements are to be implemented, guided by the work undertaken to date by the Rōpū and the Rōpū co-management sub-committee.

6.3.6.2 Appointment of Kāi Tahu rangers for marine protected areas and customary protected areas

Views expressed through engagement

363. The appointment of Kāi Tahu rangers was a key focus of the Rōpū, including by a Rōpū sub-committee. Section 4.2 of the Rōpū Report summarises the views of Kāi Tahu on this proposed measure, the agency position, and outcomes of engagement, including unresolved matters or key points of difference.

364. In summary, Kāi Tahu have indicated that as part of co-management, they want to be directly involved in the active management of marine protected areas and customary protected areas through the establishment of Kāi Tahu ranger roles. Throughout engagement, Agencies have confirmed that they are supportive of this proposal in principle. As set out in 6.3.4.2, Kāi Tahu have confirmed that they see co-management as the third step of rebalancing.

365. The draft Kāi Tahu ranger job description developed through the Rōpū hui is provided as Appendix 10 of the Rōpū Report and remains a working draft.

9(2)(g)(i)

9(2)(g)(i)

366. The Rōpū Report records that many aspects of the Kāi Tahu ranger role remain to be worked through. This includes questions about the scope of the role (warranted or not), lines of reporting and resourcing. The Rōpū proceeded on the basis that further work on the implementation of the ranger roles, including but not limited to addressing and working through these outstanding issues, would be progressed through future Rōpū hui following decisions on the proposed marine protected areas.

367. At the hui on 30 November 2021, Kāi Tahu outlined their aspirations for Crown support of Kāi Tahu rangers. These included funding for ranger programme management and six ranger positions as well as guaranteed operational budget for their work and training opportunities. Kāi Tahu want a guarantee that the rangers can work in customary protected areas as well as marine protected areas and see them reporting to papatipu rūnanga or Agencies, depending on the role at the time. Papatipu rūnanga are still reaching their conclusions on what they want from the Kāi Tahu ranger role. In their letter of 15 December 2021, Kāi Tahu confirmed that the establishment of six Kaitiaki (Kāi Tahu) Rangers, including funding and operational support, is a matter on which Kāi Tahu seek written Ministerial commitment to address before or immediately after the establishment of the marine protected areas. In their letter, Kāi Tahu identified this as one of the matters they seek in order to address the customary impacts of the proposed marine protected areas.

Te Papa Atawhai further advice

368. As the establishment of Kāi Tahu ranger roles forms part of co-management, the rights and interests and concerns identified above at paragraph 357 apply equally to this proposed measure. In their letter of 15 December 2021, Kāi Tahu specifically identified the establishment of Kāi Tahu rangers as one of the measures that they considered necessary to address the customary impacts of the proposed marine protected areas. In terms of your Treaty obligations, therefore, section 4 of the Conservation Act is of primary relevance.

369. Generally speaking, Te Papa Atawhai considers that provision for the establishment of Kāi Tahu ranger positions within the co-management arrangements for the proposed marine protected areas (including the marine reserves) would be appropriate as recognition of Kāi Tahu wider customary interests in maintaining an active role in the ongoing management of any marine protected areas established. This would give effect to the principle of active protection, in particular in relation to preserving the ability of Kāi Tahu to exercise tino rangatiratanga and kaitiakitanga. It would give effect to the principle of partnership, by allowing tangible opportunities for Agency and Kāi Tahu personnel to work together at an operational level.

9(2)(g)(i)

9(2)(g)(i)

370. As with co-management arrangements generally, Te Papa Atawhai acknowledges that significant further work is required to work through the detail of how the Kāi Tahu ranger roles would be implemented in practice. For practical reasons, in particular, not knowing which marine protected areas will be established, much of this work will not be able to be progressed until Ministerial decisions on the proposed marine protected areas have been made.

371. Te Papa Atawhai notes specifically the confirmation sought by Kāi Tahu in their letter of 15 December that Ministers will agree to “6 kaitiaki rangers” with “funding and operational support”. For practical reasons, including those identified above, Te Papa Atawhai cannot at this stage commit to the level of detail sought by Kāi Tahu, either in terms of the number of rangers or the operational and resourcing support sought. These matters will need to be further considered as part of the implementation of any marine reserves declared, which will

include consideration of what financial support can reasonably be contributed by Agencies. Te Papa Atawhai considers, however, that without the level of Ministerial commitment proposed by Kāi Tahu, a decision to recommend the declaration of the proposed marine reserves would still give effect to Treaty principles. In other words, for the reasons described above, Te Papa Atawhai considers that a commitment to include roles for Kāi Tahu rangers within the co-management structures for any marine reserves declared, without the level of detail identified by Kāi Tahu, is consistent with your obligations under section 4 and would therefore fulfil your obligations in relation to the Treaty in respect of this proposed measure.

372. We therefore recommend that for any of the marine reserves you recommend declaring, you direct that Kāi Tahu ranger roles are provided for within the formal co-management arrangements implemented, guided by the work to date of the Rōpū sub-committee.

6.3.6.3 Provisions for periodic and generational review of marine protected areas and the proposed Network

View expressed through engagement

373. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement are set out at section 4.4 of the Rōpū Report.

374. In summary, Kāi Tahu expressed the view through engagement that they want data collected so it can be periodically reviewed to determine, and if necessary, respond to, any impacts on their customary protected areas caused by fishing displaced from the proposed marine protected areas. Kāi Tahu propose such periodic reviews occur every 5 years, with the data also used for generational reviews. Kāi Tahu want 25-year generational review of any approved marine protected areas so that future generations have the opportunity to assert tino rangatiratanga and exercise kaitiakitanga of marine resources in accordance with the rights guaranteed to them under the Treaty. Kāi Tahu propose generational review is undertaken by co-management groups (as set out in 6.3.6.1) and that it be provided for by a condition in the Order in Council for each proposed marine protected area (as set out at section 4.4 of the Rōpū Report).

375. Agencies have confirmed through engagement that they are supportive of these measures. During Rōpū hui, Agencies and Kāi Tahu generally reached agreement in respect of what should be recommended to Ministers for these proposed measures, recognising that further work will be required by the Rōpū, particularly in terms of the specific role of the co-management groups. It was agreed that periodic review did not need to be provided for in the relevant legislative instruments given that this will be largely an operational matter for the co-management groups to consider. The Rōpū view was that generational review should be provided for in the relevant legislative instruments. The Rōpū agreed that for any approved marine protected areas (including the marine reserves) periodic and generational reviews should occur in the context of the proposed Network as a whole (set out at section 4.4.3 of the Rōpū Report).

376. Providing for periodic and generational review of the sites that make up the proposed Network and the proposed Network itself is part of co-management, and so relates to rebalancing step 3 as articulated by Kāi Tahu (see 6.3.4.2).

377. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu restated that they want periodic and generational reviews of the marine protected areas to occur. In their letter of 15 December 2021, Kāi Tahu confirmed that this is a matter on which Kāi Tahu seek written Ministerial commitment to address before or immediately after the establishment of the marine protected areas.

Te Papa Atawhai further advice

378. The rights and interests relevant to this proposed rebalancing measure relate to Kāi Tahu concerns about the potential impact of the proposed marine protected areas on their wider customary interests. It relates in particular to the desire of Kāi Tahu to be closely involved in ongoing management as a means of exercising their tino rangatiratanga and kaitiakitanga, and their focus on ensuring mātauraka can be transferred between generations and incorporated into the management of the proposed marine protected areas. It also relates to Kāi Tahu concerns regarding the impacts of the proposed marine protected areas on their fishing interests (both commercial and non-commercial). Kāi Tahu see provision for periodic review as an appropriate mechanism to understand and respond to potential displacement, which in turn will assist them to manage their customary protected areas (mātaihai reserves and taiāpure) and inform generational reviews of marine protected areas. Kāi Tahu believe a generational review mechanism would allow each generation to evaluate the marine protected areas and reflect on whether they are achieving their purpose.

379. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the proposed rebalancing measure in terms of the Treaty principles of active protection, partnership and informed decision-making.

Periodic review – marine reserves

380. Te Papa Atawhai acknowledges the importance of periodic review for the reasons articulated by Kāi Tahu through the engagement process and endorses the outcomes of the Rōpū.

381. Te Papa Atawhai considers that providing for periodic review would give effect to the principle of active protection, both in terms of the wider customary interests of Kāi Tahu, but also in terms of providing a potential mechanism to monitor impacts on Kāi Tahu fishing interests (both commercial and non-commercial). It would give effect to the principle of partnership, on the basis that it is envisaged the co-management groups will work together to develop the process for periodic reviews. It would also give effect to the principle of informed decision-making – the key purpose of periodic reviews will be to ensure opportunities to receive and respond to information to an ongoing basis.

382. Te Papa Atawhai supports the conclusion reached by the Rōpū that provision for periodic review is not a matter that needs to be included in the Order in Council for any marine reserves declared through the process on the basis that it is an operational matter for the co-management groups. Te Papa Atawhai considers, however, that in order to provide an appropriate assurance to Kāi Tahu that this measure will be implemented, your decision should record that provision for periodic reviews is to be incorporated within the formal co-management arrangements.

383. Accordingly, Te Papa Atawhai recommends that for any marine reserves you recommend declaring, you direct that periodic reviews are incorporated into the formal co-management arrangements implemented.

Generational review – marine reserves

384. Te Papa Atawhai acknowledges the importance of generational review for the reasons articulated by Kāi Tahu through engagement and endorses the outcomes of the Rōpū.

385. Te Papa Atawhai considers that providing for generational review would give effect to the principle of active protection, both in terms of the wider customary interests of Kāi Tahu, but also in terms of providing a potential mechanism to monitor impacts on Kāi Tahu fishing interests (both commercial and non-commercial). An aspect that was discussed by the Rōpū was the importance of ensuring that the rangatiratanga of each subsequent generation of Kāi Tahu is appropriately recognised and provided for – i.e. generational review should allow

each subsequent generation to inform decisions about the management of the proposed marine protected areas at that point in time. Te Papa Atawhai agrees that this approach is appropriate. For that reason, it is important that the precise scope and objectives of generational review is left as a matter for determination by the co-management groups at the time rather than being determined in advance. Provision for generational review would give effect to the principle of partnership, on the basis that it is envisaged the co-management groups will work together to develop the process for generational reviews. It would also give effect to the principle of informed decision-making – the key purpose is for informed decision-making about the marine protected areas to be able to occur on an ongoing basis.

386. As recorded in the Rōpū report, Kāi Tahu acknowledged that following the outcome of a generational review, any recommended changes to the marine reserve/s would need to be progressed through the relevant statutory processes. Under the current legislation, this would follow the same process as for establishing the reserve under the Marine Reserves Act, and would therefore mean that any changes would be a Ministerial decision. This is a feature of the statutory framework and is not inconsistent with the obligation to give effect to Treaty principles. As noted above in 6.3.6.1. Kāi Tahu have queried whether joint decision-making is possible under the Marine Reserves Act. Te Papa Atawhai's position is stated above in 6.3.6.1.

387. In order to provide an appropriate level of certainty, Te Papa Atawhai supports the Rōpū view that it will be appropriate for the requirement for generational review to be expressly provided for in the Order/s in Council establishing any declared marine reserve/s. In order to ensure that Kāi Tahu involvement is guaranteed, it would be appropriate for the Order in Council/s to make express reference to the requirement for the Minister to consult with Kāi Tahu.

388. In light of the considerations outlined above, in relation to any new marine reserves, Te Papa Atawhai recommends a condition in the Order in Council to provide the following:

- The Minister of Conservation would undertake the generational review. It would be mandatory for the Minister of Conservation to undertake the generational review within 25 years of the marine reserve being declared and at subsequent 25-year intervals.
- Prior to the Minister of Conservation undertaking the review, the co-management groups would determine and agree the scope and objectives of the generational review as well as who undertakes it and how this is done.
- Generational review of any marine reserve should be considered in the context of the proposed Network because that was how they were developed by the Forum (i.e., the value of each site was balanced and considered against the total components of the proposed Network).
- The condition in the Orders in Council would specifically refer to the requirement for the Minister of Conservation to consult with Ngāi Tahu Whānui.

389. For the reasons set out above, Te Papa Atawhai considers that a decision to progress the marine reserves in line with the recommendations provided for periodic and generational review would be consistent with your obligations under section 4 and would therefore fulfil your obligations in relation to the Treaty of Waitangi in respect of this proposed measure.

390. Further work would be required by the co-management groups to work through the detail of both generational and periodic review. The Rōpū may be able to assist with setting the

general direction, although the intention is for this matter to be primarily the role of the co-management groups at the appropriate point.

6.3.6.4 Boundary amendment to the proposed Te Umu Koau marine reserve

Views expressed through engagement

391 The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement are set out at section 4.6 of the Rōpū Report.

392 In summary, Kāi Tahu have indicated through engagement that they consider the proposed Network would potentially have significant impacts on their commercial fishing settlement assets, and that the proposed Te Umu Koau marine reserve is of most concern. As set out in 6.3.2 and described further below, the Te Umu Koau marine reserve falls within the CRA7 quota management area and extends over areas of offshore reef that are seasonally important for kōura. Kāi Tahu are concerned that prohibiting commercial fishing on these grounds would impact on their people, particularly those members of the Moeraki, Ōtākou and Puketeraki rūnaka whose families are involved in kōura/rock lobster fishing, processing, and export. It may also impact the associated tribal quota asset.

393 As part of Rōpū discussions on this issue, Kāi Tahu tabled three alternative boundaries to be considered by Te Papa Atawhai (which we have labelled D1-A, D1-B and D1-C; shown in Figure 8-2, chapter 8) for the proposed Te Umu Koau marine reserve. All three proposed amendments avoid an area of deep reef (referred to locally as 'The Church') which is particularly important to commercial kōura fishing in CRA7⁹³. Agencies confirmed that they were open to hearing the view of Kāi Tahu on potential boundary amendments, while reiterating that any decisions would sit with Ministers as part of the statutory process.

394 Two unresolved matters are outlined in section 4.6.2 of the Rōpū Report. These are for the Minister for Oceans and Fisheries and Tini a Tangaroa to progress.

395 As indicated in 6.3.4.3, at the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu confirmed their preferred boundary option as D1-C, with D1-B also acceptable. In their view, D1-A would represent too great an economic impact on Kāi Tahu to be acceptable to them. At the 30 November hui consideration of alternative sites to protect this deep reef habitat type was briefly discussed. No specific sites were suggested by Kāi Tahu or Agencies. In their letter of 15 December 2021, Kāi Tahu confirmed that a boundary amendment in line with their preferred boundary options is a matter which Kāi Tahu seek Ministerial agreement to as part of decision-making on the proposed marine reserve. Kāi Tahu identified this measure as one of two measures they consider as necessary to rebalance the economic impacts of the proposals.⁹⁴ The implication is that if these measures are not implemented as proposed, Kāi Tahu will consider the outcome to be inadequate in terms of what they consider as necessary to rebalance the economic impacts of the proposed Network.

Te Papa Atawhai further advice

396 This measure relates specifically to the proposed Te Umu Koau marine reserve. It is related to similar issues raised in objections to the proposed marine reserve. Therefore, our full advice and recommendations to you are provided in Chapter 8, at 8.3.1 and 8.6.4.2.

397 In summary, Te Papa Atawhai has concluded that it recommends amending the boundary in line with the proposed boundary of D1-A, but it does not recommend a larger boundary

⁹³ The kōura/rock lobster quota management area from the Waitaki River to Long Point.

⁹⁴ As noted in 6.3.4.3, the other being the measures to manage the recreational take of pāua in the PAU5D fishery management area.

amendment to boundaries D1-B or D1-C as requested by Kāi Tahu. Te Papa Atawhai considers that a decision to progress the D1-A boundary would be consistent with your obligations under section 4 of the Conservation Act and would fulfil your obligations in relation to the Treaty.

398. This conclusion is linked to Te Papa Atawhai's assessment of objections received under the statutory process in relation to impacts on commercial kōura fishing. These objections must be considered under section 5(6)(c) in terms of whether or not the Minister is satisfied that the proposed marine reserve would unduly interfere with commercial fishing. Based on the objections received, Te Papa Atawhai considers the level of interference with commercial fishing, specifically the commercial kōura fishery, is likely to be undue. However, Te Papa Atawhai considers that this interference would be significantly reduced to a point that it is no longer 'undue' by amending the boundary of the proposed marine reserve in line with boundary amendment D1-A. The recommended boundary amendment would exclude key kōura fishing habitat (including the area referred to locally as 'The Church') while maintaining the ability of the site to provide protection to the significant values it contains in accordance with the purpose of the Marine Reserves Act (see 8.6.4.2). For the reasons set out at 8.6.4.2, we have concluded that a larger boundary amendment (i.e. D1-B or D1-C) would go further than is required to ensure that any inference with the commercial kōura fishing industry is not undue.

399. At 8.3.1, we have considered the Kāi Tahu position in relation to their proposed boundary amendment (D1-B or D1-C) in the context of the conclusion reached in relation to the objections under section 5(6)(c) - i.e. the recommendation to amend the boundary to D1-A. The question we have focused on at that part of the advice is whether an analysis of the Crown's Treaty obligations, in particular section 4 of the Conservation Act, mean that a *larger* boundary amendment (i.e. in line with proposed boundaries D1-B or D1-C) would be the appropriate outcome for you to reach in your decision under section 5(9) on the proposed Te Umu Koau marine reserve. We have concluded that a decision to progress the D1-A boundary, rather than the boundaries preferred by Kāi Tahu, would be consistent with your obligations under section 4 of the Conservation Act, and therefore in relation to the Treaty of Waitangi. As part of that view, we also consider that such a decision would not be inconsistent with the Fisheries Settlement Act.

400. Our full reasoning for this is set out in 8.3.1.2. In summary, the D1-A boundary will result in a significant reduction in economic impact on the commercial kōura industry (including Kāi Tahu interests) as opposed to the original boundary (the estimated affected catch would be an annual average of 5.1% compared to 13.1%). Our assessment is that a decision to progress this boundary would give effect to the Treaty principles of partnership and active protection. While the D1-B and D1-C proposals would provide a further reduction in potential economic impact for Kāi Tahu (to 1.6% and 1.5%, respectively), the effect would be to remove almost all deep reef habitat from the site and so the proposed Network. This would have a significant effect in terms of loss in values and benefits of the proposed site (including in terms of its contribution to the proposed Network) in light of the purpose of the Marine Reserve Act. This would therefore go beyond what is required to give effect to Treaty principles.

401. We note that the above assessment focusses on the economic impacts of the proposed marine reserve as this is what has been raised through engagement with Kāi Tahu, including at the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021. Throughout engagement on the Application, Kāi Tahu have not raised any other considerations in addition to the economic impacts that would provide further rationale for the D1-B or D1-C boundary amendments being more appropriate than D1-A. As discussed in

additional detail in 8.3.1, Te Papa Atawhai has still considered what other impacts on Kāi Tahu interests may be relevant, including non-commercial customary take of kōura and pāua (including take authorised under the Fisheries (South Island Customary Fishing) Regulations 1999). The recommended D1-A boundary amendment would exclude a key area of kōura fishing habitat and would therefore ensure the potential impact on non-commercial customary take of kōura is also reduced. None of the proposed boundary amendments are likely to impact on non-commercial pāua take due to pāua habitat generally being in shallower and more inshore areas, which are unaffected by the three boundary amendment proposals. However, this is not a matter that Kāi Tahu have emphasised during engagement on the Te Umu Koau boundary. The commitment given in relation to changes sought to recreational take of pāua in PAU5D (see 6.3.8.1) will also contribute to addressing the potential displacement impacts of the establishment of the proposed marine reserves for commercial and non-commercial customary pāua take more generally.

402. In 8.3.1, our advice also covers two procedural points:

- Boundary amendments D1-B and D1-C would constitute a significant departure from the Application as consulted on, both in terms of the size of the proposed marine reserve and, given the removal of deep reef habitat, the values protected. Good public process and section 5 of the Marine Reserves Act would, therefore, limit your ability to immediately progress these alternative boundaries under the current process. At a minimum, you would need to seek further advice from Te Papa Atawhai about what additional consultation would be required.
- As noted above, consideration of alternative sites to protect similar values to those found in the proposed Te Umu Koau marine reserve was briefly discussed at the hui on 30 November 2021, however no alternative sites were specifically put forward. For the reasons summarised above and discussed in full in 8.3.1, Te Papa Atawhai's view is that it is not necessary to investigate alternative sites at this stage because we consider that the recommendation for the D1-A boundary amendment represents an appropriate outcome and would be consistent with your obligations under the Treaty. As an additional procedural point, however, we also note that consideration of an alternative site would require a decision to reject the existing Application and for a new application to be initiated.

403. Overall, our assessment is that a decision to progress the D1-A boundary would be consistent with your obligations under section 4 and would fulfil your obligations in relation to the Treaty in respect of this proposed measure.

404. We recognise that this conclusion is likely to differ from the perspective of Kāi Tahu in terms of what they consider as necessary to fulfil Treaty obligations, particularly in relation to what they consider is necessary to 'rebalance' the expected economic impacts of the proposed marine protected areas, including the proposed marine reserves. Our advice on the other measures raised by Kāi Tahu in relation to rebalancing the economic impacts (financial compensation/ex gratia payments and measures to manage recreational take of pāua in the PAU5D fishery management area,) are discussed further below (6.3.7.1 and 6.3.8.1 respectively).

6.3.6.5 Provisions for continued enhancement of mātauraka Māori through wānaka within marine reserves

Views expressed through engagement

405. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement including any unresolved matters or key points of difference are set out at section 4.3 of the Rōpū Report.

406. In summary, Kāi Tahu have expressed concerns that the prohibition on taking marine life (and other activities otherwise prohibited under the Marine Reserves Act) interferes with the inter-generational connection they have traditionally held with their rohe moana. Kāi Tahu seek provision in the Orders in Council establishing the marine reserves to allow for activities associated with wānaka and the furtherance and transfer of mātauraka Māori to continue. Kāi Tahu proposed that the papatipu rūnaka with mana moana for each proposed marine reserve should have the decision-making power for authorising mātauraka activities. Through engagement, Agencies confirmed their support for the maintenance or enhancement of mātauraka Māori through wānaka, within the limits of the Marine Reserves Act. Tini a Tangaroa confirmed that the Type 2 marine protected areas and kelp protection area will not impact these activities. Enhancing mātauraka Māori activities is part of co-management, and so relates to rebalancing step 3 as identified by Kāi Tahu (see 6.3.4.2).

407. The proposal put forward by Agencies through the Rōpū hui is described at section 4.3.1 of the Rōpū Report. The proposal is for a condition to be included in the Order in Councils establishing the marine reserves, which would allow activities that would otherwise constitute an offence under the Marine Reserves Act to be undertaken as part of organised wānaka so long as they are notified in advance (either to Te Papa Atawhai or to the rohe-specific co-management group once established). The proposal is a 'high trust' model and as such there would be no 'approval' role for Te Papa Atawhai. Notification would be made by the relevant papatipu rūnaka (i.e. the rūnaka with mana moana over the area in question). Activities would be subject to any other legal requirements and would have to be consistent with the purpose of the Marine Reserves Act.

408. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu reiterated that they want the ability to take from the marine protected areas for the purpose of wānaka. In their letter of 15 December 2021, Kāi Tahu confirmed that this is a matter on which Kāi Tahu seek written Ministerial commitment to addressing before or immediately after the establishment of the marine protected areas. In their letter, Kāi Tahu identified this as one of the matters they seek in order to address the customary impacts of the proposed marine protected areas.

Te Papa Atawhai further advice

409. The rights and interests relevant to this proposed rebalancing measure relate to Kāi Tahu concerns about the potential impact of the proposed marine protected areas on their wider customary interests. In particular, it relates to the ability of Kāi Tahu to capture and transfer mātauraka between generations, and for that mātauraka to inform future decision-making about any marine protected areas established (i.e. through periodic and generational review). The proposal for the relevant papatipu rūnaka to make decisions as to which activities should be authorised relates to Kāi Tahu interests in maintaining rangatiratanga and the ability of appropriate groups to exercise kaitiakitanga.

410. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the proposal arrived at through the Rōpū engagement in terms of the Treaty principles of partnership, active protection and informed decision-making.

411. As noted above, under the proposal there would be no 'approval' role for Te Papa Atawhai as to what mātauraka activities could be undertaken. Relevant papatipu rūnaka would essentially determine the activities which could be undertaken through their role in deciding what activities would be notified. The anticipated process, however, would enable Te Papa Atawhai (through its membership on the co-management groups) to provide feedback or concerns in the spirit of partnership, without placing Te Papa Atawhai in a formal approval

role.

9(2)(g)(i)

9(2)(g)(i)

This

process would therefore give effect to the principle of partnership, but also the active protection of rangatiratanga and the role of kaitiaki held by relevant papatipu rūnaka for activities within their rohe moana.

412. The proposal would go a significant way to addressing Kāi Tahu concerns about ensuring the continuation and transfer of mātauraka between generations. As such, it would allow these interests to be protected. At the same time, the requirement for any activities to be consistent with the purpose of the Marine Reserves Act and any other legal requirements would ensure that activities undertaken do not undermine the purpose of establishing the marine reserves.

413. The ability for such activities to continue means that mātauraka and cultural knowledge undertaken within the marine reserves would be able to be incorporated into the anticipated processes for periodic and generational review. This will ensure informed decision-making on an ongoing basis and will therefore give effect to the principle of informed decision-making. It would also recognise the distinction between mātauraka Māori and scientific study (for which there are provisions in the Marine Reserve Regulations 1993).

414. Te Papa Atawhai notes that there were two unresolved matters outlined in section 4.3.2 of the Rōpū Report.

415. Since the Rōpū Report was produced, we have resolved the first regarding whether any wānaka and/or mātauraka Māori activities should be specifically excluded in the Orders in Council for the proposed marine reserves. No activities need to be specifically excluded.

416. The other outstanding matter relates to how the co-management groups will manage the process for wānaka activities, particularly around the requirements for receiving notifications. This is an operational matter that can be worked through during future Rōpū hui.

417. For any marine reserve you approve in this process, therefore, Te Papa Atawhai recommends you include a condition in the Order in Council that would provide for members of Ngāi Tahu Whānui to continue undertaking activities within any marine reserves established within their rohe moana, that would otherwise constitute an offence where:

- those activities are undertaken as part of organised wānaka
- the activities are for the purpose of enhancing mātauraka Māori
- Te Papa Atawhai (9(2)(g)(i)) is notified by the relevant papatipu rūnaka of the proposed wānaka in advance and provided detail of the activities (e.g. the period when wānaka activities would be undertaken and where, details of activities to be carried out and species affected).

Mātauraka Māori/wānaka activities would be subject to any other legal requirements and must be consistent with the purpose of the Marine Reserves Act.

418. For the reasons set out above, Te Papa Atawhai considers that a decision to progress the marine reserves 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.

6.3.6.6 Provisions for the retrieval of kōiwi tākata and archaeological artefacts, and access to cultural materials

Views expressed through engagement

419. The views of Kāi Tahu on these proposed measures, the agency position and outcomes of engagement including any unresolved matters or key points of difference are set out at section 4.5 of the Rōpū Report.
420. In summary, Kāi Tahu want the retrieval of kōiwi tākata in line with the Ngāi Tahu Kōiwi Tāngata (human remains) Policy⁹⁵, and access to cultural materials in line with the Ngāi Tahu Cultural Materials Policy⁹⁶, to be unaffected by establishment of the proposed marine reserves. They propose these activities be provided for via conditions in the Order in Council for each marine reserve, except Papanui marine reserve which does not adjoin land.
421. Through engagement, Agencies confirmed their support for these proposals, subject to other legal requirements.⁹⁷
422. Tini a Tangaroa has confirmed that the Type 2 marine protected areas and kelp protection area would not restrict these activities. Due to the more restrictive nature of marine reserves, Te Papa Atawhai's position varies in respect of each measure. Te Papa Atawhai's proposals have been put forward through the Rōpū hui, as summarised at section 4.5.1 of the Rōpū Report. While these proposals do not fully align with the preferred outcome of Kāi Tahu, they were generally accepted by Kāi Tahu.
423. Providing for the retrieval of kōiwi tākata and archaeological artefacts and access to cultural materials within marine reserves is part of co-management, and so relates to rebalancing step 3 as identified by Kāi Tahu (see 6.3.4.2).

Te Papa Atawhai further advice

424. The rights and interests relevant to this proposed rebalancing measure relate to Kāi Tahu concerns about the potential impact of the proposed marine protected areas on their wider customary interests. In relation to the retrieval of kōiwi tākata, archaeological artefacts and cultural materials, these concerns arise from the restrictive nature of marine reserves in terms of the activities that are prohibited within them. Under the Marine Reserves Act, the starting point is that the removal of any 'natural thing' is prohibited, as is the wilful interference with the foreshore or seabed. Kāi Tahu therefore seek to protect their ability to retrieve these items, which in many cases will be of significant cultural importance.
425. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the proposed rebalancing matter in terms of the Treaty principle of active protection.

Kōiwi tākata and archaeological artefacts

426. In accordance with the outcome reached by the Rōpū, Te Papa Atawhai supports the position of Kāi Tahu on retrieval of kōiwi tākata and archaeological artefacts consistent with the Ngāi Tahu Kōiwi Tāngata (human remains) Policy and subject to any legal requirements. Kāi Tahu have a clear, customary connection with the items in question and

⁹⁵ Te Rūnanga o Ngāi Tahu, 1993 (amended 2019), Kōiwi Tangata, te Wawata a Ngāi Tahu e pa ana ki Ngā Tāonga Kōiwi o Ngā Tūpuna, the Policy of Ngāi Tahu Concerning the Human Remains of our Ancestors, Te Rūnanga o Ngāi Tahu.

⁹⁶ Toitū Te Whenua, Te Rūnanga o Ngāi Tahu, the Department of Conservation and Southern Operations, 2007, Allocation of Cultural Materials Guideline for the Takiwā of the Ngāi Tahu Whānui, Department of Conservation and Te Rūnanga o Ngāi Tahu, Wellington. p 1-18.

⁹⁷ This would include the Marine Reserves Act (subject to proposed conditions in an Order in Council), Ngāi Tahu Claims Settlement Act, Reserves Act 1977, Wildlife Act 1953, Marine Mammal Protection Act 1978, Resource Management Act 1991, Protected Objects Act 1975.

retrieval will be able to occur with limited (if any) adverse effect on marine reserve values. Making provision for Kāi Tahu to be able to retrieve kōiwi tākata and archaeological artefacts in these sites is therefore necessary and appropriate to ensure a decision to declare the marine reserve/s gives effect to the Treaty principle of active protection.

427. For any marine reserve you approve in this process (except Papanui), we therefore recommend you include a condition in the Order in Council that would allow for Kāi Tahu papatipu rūnaka with mana moana (or anyone authorised by said papatipu rūnaka) to retrieve kōiwi tākata and archaeological artefacts consistent with the Ngāi Tahu Kōiwi Tāngata (human remains) Policy and subject to any legal requirements.
428. For the proposed Okaihae marine reserve, the boundary of the marine reserve will be mean low water springs⁹⁸ rather than mean high water springs⁹⁹ (see 11.1.1). Therefore, this condition would only apply to the retrieval of kōiwi tākata and archaeological artefacts below mean low water springs. For retrieval of kōiwi tākata and archaeological artefacts above mean low water springs, i.e. within the Green Island Nature Reserve, existing provisions under the Reserves Act 1977 would apply.
429. For the reasons set out above, Te Papa Atawhai considers that a decision to progress the marine reserves 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.

Access to cultural materials

430. Under the Ngāi Tahu Cultural Materials Policy, cultural materials are defined as:
- Plants, plant materials; and
 - Materials derived from animals, marine mammals or birds, to the extent to which the Department holds and is responsible for them, and which are important to Ngāi Tahu in maintaining their culture'
431. Te Papa Atawhai recognises Kāi Tahu interest in cultural materials generally and the need for this interest to be protected. Te Papa Atawhai does, not, however, support a general condition in the Order in Council to provide for access to cultural materials within the proposed marine reserves once established. This is due to the fact that such a condition would be too broad. Given the range of materials that potentially fall within the scope of cultural materials, such a condition could have the effect of authorising activities which would be inconsistent with the purpose of the Marine Reserves Act. This would therefore go beyond what is required in order to give effect to the Treaty principles of active protection and partnership. Rather, Te Papa Atawhai has proposed providing for access to cultural materials through a series of specific mechanisms discussed at section 4.5.1 of the Rōpū Report (and below). While these proposals do not fully align with the preferred outcome of Kāi Tahu, they were generally accepted by Kāi Tahu, as recorded in the Rōpū Report.

Our recommendations are as follows:

Condition for fossicking of beach materials

As discussed further in the individual site chapters, the Director-General's Application (on page 74) proposed a general 'fossicking' condition that would apply in each of the relevant marine reserves and to all members of the public, including Kāi Tahu. Subject to

⁹⁸ Average of each pair of successive low waters when the range of the tide is greatest.
<https://www.lin.govt.nz/sea/tides/introduction-tides/definitions-tidal-terms>.

⁹⁹ Average of each pair of successive high waters when the range of the tide is greatest.
<https://www.lin.govt.nz/sea/tides/introduction-tides/definitions-tidal-terms>.

any other legal requirements, the condition would allow for the non-commercial gathering of beach stones, non-living shells and driftwood on the foreshore of the proposed marine reserves using only hand-held (non-mechanical) methods. Te Papa Atawhai considers this condition is appropriate for inclusion in the Orders in Council on the basis that the nature of the identified activities will not interfere with the purpose of the Marine Reserves Act. This condition will provide Kāi Tahu access to many of the cultural materials Kāi Tahu have identified. As part of the engagement, Kāi Tahu noted that this condition does not extend to detached kelp which can be important for a number of cultural reasons. In particular, Kāi Tahu confirmed that detached rimurapa/bull kelp can be collected to make pōhā after a storm. Of note, rimurapa is a taonga plant species identified in Schedule 97 of the Ngāi Tahu Claims Settlement Act (see 3.3.3.2). Kāi Tahu agreed however that a further condition in relation to detached kelp is not required. This is because in practice rimurapa will often be available outside the boundaries of the proposed marine reserves, including above mean high water springs (section 4.5.1 of the Rōpū Report).

As set out in subsequent site chapters, we recommend you include this condition in the Orders in Council for any marine reserves you approve in this process except Papanui (as the proposed marine reserve is entirely offshore) and Okaihae (as the proposed marine reserve would not include the foreshore, as described in 11.1.1).

As set out in section 4.5.2.1 of the Rōpū Report, Kāi Tahu raised an issue during engagement about restricting this condition to ensure 'Moeraki boulder' concretions are not removed from the proposed marine reserves. Te Papa Atawhai understands that this is on the basis that these concretions are considered culturally significant to Kāi Tahu. Expert advice from Otago University indicates it is unlikely that there are such concretions on the foreshore of any of the proposed marine reserves. There is some evidence that concretions could be present in the proposed Te Umu Koau marine reserve, in more than 10 m water depth and more than 1 km offshore. Information from members of Te Rūnaka o Moeraki and Kāti Huirapa Rūnaka ki Puketeraki indicates these concretions may be found on the foreshore within and near to the proposed Te Umu Koau marine reserve.

The proposed fossicking provision would limit the size of stones that can be removed to those smaller than 256 mm. This size limit is imposed to ensure that the fossicking provisions would not be inconsistent with the purpose of the Marine Reserves Act. It is possible, however, that within the proposed Te Umu Koau marine reserve, concretions or fragments of concretions may exist within this size limit. Given the concerns raised by Kāi Tahu, we consider that it is appropriate in order to give effect to the principle of active protection to expressly exclude the take of concretions (known colloquially as Moeraki boulders) from the fossicking condition for the Te Umu Koau marine reserve (as set out in 8.8.1.2). This change is not needed for the remaining sites, on the basis that there is no evidence that the concretions exist at those other sites. This has been discussed with Kāi Tahu who are comfortable with the proposed approach.

Condition for retrieval of dead marine mammals and marine mammal parts

Te Papa Atawhai acknowledges that the ability to retrieve dead marine mammals and their parts for possession and use is a matter of cultural significance to Kāi Tahu.

Under ordinary circumstances (i.e. where a marine reserve is not in place) the Marine Mammals Protection Act provides a permitting system under which any person may be authorised to retrieve dead marine mammals and marine mammal parts. Additionally, the Act allows detached parts to be taken without a permit so long as Te Papa Atawhai is

notified. The starting point is that the Marine Reserves Act would over-ride these provisions. That is because the Marine Reserves Act prohibits 'taking' of marine life alive or dead. Te Papa Atawhai acknowledges that maintaining the ability of a discrete group of people (Kāi Tahu) to continue accessing dead marine mammals and their parts in the circumstances provided for under the Marine Mammals Protection Act would not interfere with the purpose of the Marine Reserves Act. On that basis, Te Papa Atawhai considers that allowing these activities to continue is appropriate in order to give effect to the Treaty principle of active protection. A similar provision was included in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

We therefore recommend a condition in the Orders in Council for the proposed marine reserves except Papanui (as the proposed marine reserve is entirely offshore) and Okaihae (as the proposed marine reserve would not include the foreshore, as described in 11.1.1) that provides for Kāi Tahu (Ngāi Tahu Whānui) to be able to take all or part of dead marine mammals in accordance with the usual Marine Mammals Protection Act provisions.

433. In addition, to the specific conditions outlined above, the condition providing for wānaka/mātauraka Māori activities will also provide opportunities to ensure access to cultural materials.
434. The specific role of the co-management groups in relation to these measures is a matter that can be progressed by the Rōpū at subsequent hui, as the co-management framework is further worked through.
435. Te Papa Atawhai has confirmed through Rōpū engagement that the marine reserves will not affect the ability of Ngāi Tahu Whānui to possess or transfer between members dead 'wildlife' (as defined under the Wildlife Act – most relevantly, birds) as provided for under the Ngāi Tahu Claims Settlement Act. However, such items would not be able to be taken or removed from the marine reserves (without lawful authority or reasonable excuse). Further discussion is required in relation to the management of 'cultural material' banks as provided for under the Ngāi Tahu Cultural Materials Guidelines. This is a matter that can be progressed separately to the southeast marine protection process.
436. For the reasons set out above, Te Papa Atawhai considers that a decision to progress the marine reserves in accordance with these recommendations would be consistent with your obligations under section 4 and would fulfil your obligations in relation to the Treaty in respect of this proposed measure.

6.3.6.7 Continued Kāi Tahu access to any approved SEMP marine reserve to utilise Kāi Tahu's MPI *Undaria* permit

Views expressed through engagement

437. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement including any unresolved matters or key points of difference are set out at section 4.7 of the Rōpū Report.
438. In summary, *Undaria pinnatifida* is an invasive exotic seaweed which can only be harvested in accordance with permitting requirements under the Biosecurity Act 1993 administered by Biosecurity New Zealand Tiakitanga Pūtaiao Aotearoa. Additional requirements under the Resource Management Act may also apply. Kāi Tahu have a permit to harvest *Undaria* in many areas within the Forum region. Through engagement, Kāi Tahu have indicated they want s9(2)(g)(i) rights to harvest in most of the proposed marine protected areas, including all proposed marine reserves except for Papanui, for the purpose of control. Through

engagement, Agencies have confirmed they are supportive of the Kāi Tahu position subject to existing legal permitting requirements.

439. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu reiterated that they want continued 9(2)(g)(i) access for *Undaria* control harvesting under their existing Ministry of Primary Industries Manatū Ahu Matua permit. In their letter of 15 December 2021, Kāi Tahu confirmed that this is a matter on which Kāi Tahu seek written Ministerial commitment to addressing before or immediately after the establishment of the marine protected areas. In their letter, Kāi Tahu identified this as one of the matters they seek in order to address the customary impacts of the proposed marine protected areas.

Te Papa Atawhai further advice

440. Te Papa Atawhai acknowledges that the ability for Kāi Tahu to continue taking *Undaria* from within any declared marine reserve is relevant to their wider customary interests, in particular their ability to exercise kaitiakitanga. As described at 4.7 of the Rōpū report, under the existing permitting arrangements, while the permit holder cannot make a profit from the sale of the seaweed it can be sold for profit by entities purchasing it from the permit holder. Te Papa Atawhai acknowledges the Kāi Tahu perspective that this commercial aspect may add to regional economic development.

441. In terms of your Treaty obligations, section 4 of the Conservation Act is of primary relevance. You should consider the proposal arrived at through the Rōpū engagement in terms of the Treaty principles of partnership and active protection.

442. The operation of the Marine Reserves Act would ordinarily prohibit the taking or removal of marine life. The Marine Reserves Act does not exempt exotic organisms, or those species regulated under the Biosecurity Act from the meaning of 'marine life'. In order to allow this activity to continue, therefore, provision would need to be made in the Order/s in Council for any marine reserve declared.

443. Te Papa Atawhai has considered this proposed measure in terms of whether allowing for the continued removal of *Undaria* for control purposes would be consistent with the purpose of the Marine Reserves Act. Relevant considerations are the fact that *Undaria* is an exotic species, the purpose of the activity would be for control, the emphasis section 3 of the Marine Reserves Act places on administering and maintaining marine reserves so that they can be preserved in their 'natural state as far as possible', and 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. In those circumstances, Te Papa Atawhai considers that allowing *Undaria* to be removed from any of the proposed marine reserves subject to any other applicable legal requirements would be consistent with the purposes of the Marine Reserves Act. Given the rights and interests identified by Kāi Tahu, it would therefore be appropriate in order to give effect to the Treaty principles of active protection and partnership to include a condition in the Order in Council/s to allow the activity to continue. Any question of preferential access to Kāi Tahu for harvesting opportunities is not a matter for you to determine as part of your decision-making but would be a matter for consideration at the point of permitting by the relevant agencies.

444. For any marine reserve you approve in this process, therefore, Te Papa Atawhai recommends you include a condition in the Order in Council that would allow the removal of *Undaria pinnatifida* (unattached or attached) from marine reserves, as long as all other legal requirements relating to the removal are complied with (e.g. Biosecurity Act and

Resource Management Act). Te Papa Atawhai would require notice to the relevant DOC Operations Team of the *Undaria* harvest.

445. Note that the specific role of the co-management groups in relation to this measure is a matter that can be progressed by the Rōpū at subsequent hui, as the co-management framework is further worked through.

6.3.6.8 Naming and pou whenua for each new marine protected area

Views expressed through engagement

446. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement including unresolved matters or points of difference are set out at section 4.8 of the Rōpū Report.

447. In summary, through the Southeast Marine Protection Forum process papatipu rūnaka with mana moana provided 'placeholder' te reo Māori names for the proposed marine protected areas. Through engagement, Agencies have confirmed their support for the use of te reo Māori for the names of these sites and during the Rōpū hui confirmed the names of proposed marine protected areas with the appropriate papatipu rūnaka (Rōpū Report, sections 4.8 and 4.8.1). The te reo Māori names for the proposed marine reserves are used in chapters 7–12.

448. At the hui on 29 July 2020, Kāi Tahu confirmed their preference that pou whenua (culturally significant posts for marking or acknowledging the marine protected areas) should be in place for each of the approved marine protected areas. Agencies support the use of pou whenua at each approved marine protected area that adjoins land (Rōpū Report, sections 4.8 and 4.8.1). As mean low water springs is the proposed boundary for Okaihae marine reserve, and Green Island (Okaihae) is a nature reserve with restricted access, Te Papa Atawhai does not recommend a pou whenua for this site.

Te Papa Atawhai further advice

449. In order to give effect to the Treaty principles of active protection and partnership, the use of te reo Māori names and the pou whenua for any marine reserves declared through this process would be appropriate to recognise and respect the traditional relationship between Kāi Tahu and the areas proposed as marine protected areas and acknowledge the mana and role of Kāi Tahu as kaitiaki of their takiwā. While the ultimate decision on naming is subject to the New Zealand Geographic Board review, it would therefore be consistent with your obligations under section 4 and therefore your Treaty obligations to progress te reo Māori names arrived at by the Rōpū and to direct the placement of pou whenua during implementation of the proposed marine reserves.

450. We therefore recommend for any marine reserves you approve in this process,

- you progress the use of te reo Māori names confirmed by papatipu rūnaka through the Rōpū hui, noting that the ultimate decision on the use of te reo Māori names is subject to NZ Geographic Board Review
- you direct the placement of pou whenua for any marine reserve which adjoins land.

6.3.7 Proposed measures not progressed by the Rōpū

451. As described in 6.3.4, the Rōpū proceeded on the basis that five of the proposed measures identified by Kāi Tahu would not be progressed by the Rōpū. These are the matters listed above as 1 – 5 in 6.3.2.2. The following section describes the consideration of these matters through engagement, including any necessary assessment of Treaty obligations as relevant to your decision-making.

6.3.7.1 Financial compensation and ex gratia payments

Views expressed through engagement

452. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of the Rōpū engagement are set out at section 3.3 of the Rōpū Report.

453. In summary, Kāi Tahu see rebalancing the economic impacts of the Network proposals as a fundamental component of rebalancing (as described above in 6.3.4.2). During engagement, Kāi Tahu suggested financial compensation (i.e. buy back of quota) and/or ex gratia payments as a means of achieving this rebalancing, to address the impact on established fisheries and loss of future opportunities to develop fisheries for species that have yet to be introduced into the quota management system. Agencies reiterated the position articulated by Ministers through engagement that financial compensation will not form part of rebalancing within the southeast marine protection process.¹⁰⁰ Agencies confirmed the position that ex gratia payments¹⁰¹ would also be a matter for consideration at Ministerial level so could not be considered further by the Rōpū.

454. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu confirmed their position that provided the measures outlined to address economic impacts are agreed to (boundary amendment to the proposed Te Umu Koau marine reserve and changes to recreational allowances for PAU5D), no further steps would be required to rebalance what Kāi Tahu consider to be the economic impacts of the Network proposals. The implication is that if these measures are not implemented as proposed, Kāi Tahu will consider the outcome to be inadequate in terms of what they consider necessary to rebalance the economic impacts of the proposed Network. This means Kāi Tahu may want to reinitiate discussion with you and the Minister for Oceans and Fisheries regarding financial compensation and/or ex gratia payments, or challenge the decision in the courts.

Te Papa Atawhai further advice

455. In terms of the Crown's position on financial compensation generally:

- The Marine Reserves Act and the Fisheries Act do not include any mechanisms that provide for payment by the Crown of compensation to quota owners for sustainability, biodiversity or conservation purposes when areas are closed or made unavailable to fishing by the Crown.
- A marine reserve cannot be established if the Minister of Conservation considers it would 'interfere unduly with commercial fishing' and/or if the Minister for Oceans and Fisheries does not concur with establishing the marine reserve. This mitigates any requirement for compensation to be paid to commercial quota owners for the establishment of marine reserves, Kāi Tahu or otherwise.
- There are no precedents in the marine space for financial compensation for Crown action taken for these purposes. A decision to financially compensate could create expectations that financial compensation would be extended to other situations where Crown action is taken for sustainability/conservation purposes.

456. Ex gratia payments are not made as a result of a legal or contractual obligation or requirement and therefore do not amount to 'compensation' per se. There is some recent precedent for ex gratia payments in response to marine protection regulation. In 2020 a

¹⁰⁰ See Rōpū Report section 3.3, recording that this was the position confirmed by Ministers at the February 2020 hui with Kāi Tahu Rangatira and reconfirmed by the former Minister for Oceans and Fisheries at the April 2021 hui at Ōtākou marae.

¹⁰¹ A voluntary payment made where there is no contractual obligation to do so and without legal obligation.

'multimillion dollar ex gratia transition support package'¹⁰² was announced by the Minister of Fisheries to assist commercial fishers and related industry impacted by Fisheries Act measures following the Hector's and Māui Dolphin Threat Management Plan¹⁰³.

457. As noted above, the Rōpū did not progress the possibility of financial compensation or ex gratia payments. Kāi Tahu have subsequently confirmed its position in terms of what they consider necessary to rebalance the economic impacts of the proposed Network and the implication is that they may seek to revisit this measure if their proposals in relation to these impacts are not agreed to in full.

458. Te Papa Atawhai has considered whether a decision to progress the proposed marine reserves without financial compensation or ex gratia payments to Kāi Tahu would be consistent with your obligations in relation to the Treaty of Waitangi.

459. The rights and interests relevant to this proposed rebalancing measure are those identified above in relation to Kāi Tahu concerns about the impacts of the marine protected areas on their commercial fishing interests. The impacts therefore are the 'economic impacts' referred to by Kāi Tahu in their letter of 15 December 2021. Of particular relevance are the obligations in relation to section 4 of the Conservation Act, and in relation to the Fisheries Settlement Act.

460. The measures that Kāi Tahu have said must be implemented to rebalance these economic impacts are the proposed boundary amendment to the proposed Te Umu Koau marine reserve and the proposed changes to recreational allowances for PAU5D. Te Papa Atawhai's advice in relation to the boundary amendment is discussed above in 6.3.6.4 and in relation to the proposed changes to recreational allowances for pāua, below in 6.3.8.1. Of particular relevance is that although Te Papa Atawhai recommends a boundary amendment for the proposed Te Umu Koau marine reserve, the recommendation does not go as far as the preferred boundary of Kāi Tahu. The reasons for this recommendation are discussed above in 6.3.6.4 and are not repeated here. It is sufficient to note, however, that this conclusion is based on an assessment that the recommended boundary gives effect to the Treaty principles of partnership and active protection in terms of the rights and interests identified above that Kāi Tahu seek to protect (specifically commercial fishing interests and economic interests). Te Papa Atawhai has reached that conclusion in the context of the benefits conferred on Kāi Tahu under the Fisheries Settlement Act in relation to commercial fishing interests. Overall, our assessment is that a decision to progress the D1-A boundary would be consistent with your obligations under section 4 and would fulfil your obligations in relation to the Treaty in respect of this proposed measure. 9(2)(j)

9(2)(j)

461. On that basis, Te Papa Atawhai considers that the Crown does not need to consider compensation or ex gratia payments. This is because the recommended Te Umu Koau boundary and the commitment to progressing changes to the recreational allowances for PAU5D gives effect to the principles of partnership and active protection, by achieving what

¹⁰² <https://www.mpi.govt.nz/dmsdocument/40922/direct>.

¹⁰³ <https://www.mpi.govt.nz/fishing-aquaculture/sustainable-fisheries/protecting-marine-life/protecting-hectors-and-maui-dolphins/>.

is reasonably required to actively protect the relevant Treaty interest. This outcome would therefore be consistent with your obligations in terms of section 4.

462. In terms of the Fisheries Settlement Act specifically, Te Papa Atawhai acknowledges that although any customary basis for commercial fishing rights was substituted by the settlement benefits, those benefits (particularly quota holdings), are nevertheless important interests of Māori requiring due consideration (see further in 6.3.9.4). Te Papa Atawhai considers, however, that for the reasons summarised above, the recommended boundary amendment, considered in conjunction with the fact that the boundaries across all of the proposed sites have been developed so as to reduce the impact on commercial fishing to the extent possible (as discussed in subsequent site chapters)

9(2)(g)(i) means that a decision to progress the marine reserves without the provision of compensation or ex gratia payments to Kāi Tahu remains consistent with the Fisheries Settlement Act.

463. Te Papa Atawhai therefore recommends that no financial compensation or ex gratia payments need to be provided to Kāi Tahu as part of your decisions on the proposed marine reserves. Given that the impacts raised by Kāi Tahu relate to matters that are regulated under the Fisheries Act, any change in the position articulated to date in relation to financial compensation or ex gratia payments would need to be determined in conjunction with the Minister for Oceans and Fisheries. Agencies can provide further advice on this if requested.

6.3.7.2 Coordinated establishment of customary protected areas and marine protected areas

Views expressed through engagement

464. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement are set out at section 3.1 of the Rōpū Report.

465. In summary, Kāi Tahu initially requested Agencies slow down the southeast marine protection process so that it could be considered alongside their aspirations for customary protected areas in the region. This relates to Kāi Tahu concerns regarding the impact of the proposed marine protected areas on their non-commercial customary fishing rights, in particular the concerns about the displacement of fishing effort from marine protected areas into existing customary protected areas and the impact that establishing the proposed marine protected areas would have on the likelihood of new customary protected areas being established. Throughout engagement, Agencies expressed the view that it is practical to advance the establishment of the proposed Network of marine protected areas and other customary protected areas on different timeframes. It was agreed during Rōpū hui that this matter would not be progressed further by the Rōpū. Ultimately, the southeast marine protection process was not slowed down and this was a matter that was not progressed further by the Rōpū. At the hui on 23 July 2021, however, Tini a Tangaroa confirmed that they are currently exploring regulatory changes and amendments that would address a number of the concerns raised by Kāi Tahu (see section 3.1 Rōpū report and further discussion below).

466. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu confirmed that: *proposed legislative change to mātaihai and taiāpure passed* was a matter on which Kāi Tahu seek written Ministerial commitment to address either before (i.e. as part of the decision-making process) or immediately after the establishment of the proposed marine protected areas (see above in 6.3.4.3). In their letter, Kāi Tahu identified this as one of the matters they seek in order to address the customary impacts of the proposed marine protected areas.

Te Papa Atawhai further advice

467. In terms of the regulatory changes discussed at the hui on 23 July 2021 and 30 November 2021 to enable more effective management of mātaihai reserves, Tini a Tangaroa confirmed to Kāi Tahu that public consultation was anticipated for early 2022. This consultation has now concluded and Tini a Tangaroa is preparing advice to support the Minister for Oceans and Fisheries' decision-making. The proposed changes consulted on were:

- a proposal to enable infringement notices to be issued for offences in mātaihai reserves, and
- a proposal to make possession of fish in contravention of mātaihai reserve bylaws an offence.

468. Tini a Tangaroa has also confirmed to Kāi Tahu that as part of the Fisheries Amendment Bill, scheduled to come into force late 2022, there is a proposed amendment to allow for recreational management controls to be implemented. This will allow more timely intervention in the event that displacement of recreational fishers from nearby marine reserves pushes up fishing pressure in taiāpure and undermines delivery of customary fisheries outcomes.

469. These regulatory changes are matters that will need to be progressed by Tini a Tangaroa. Agencies can provide you with a further update on the progression of these changes prior to making your decisions on the proposed marine reserves if required.

470. As noted above, the rights and interests relevant to this proposed rebalancing measure are those identified above in relation to Kāi Tahu concerns about the impacts of the marine protected areas on non-commercial customary interests, including the establishment of new customary protected areas. Of particular relevance therefore are the obligations in relation to section 4, recognising that the interests identified by Kāi Tahu relate to benefits provided under the Fisheries Settlement Act in relation to non-commercial customary fishing.

471. In terms of section 4, Te Papa Atawhai considers that the key Treaty principles are partnership and active protection. In accordance with the principle of partnership, Agencies and Kāi Tahu mutually recognised through the Rōpū process that the original proposal (slowing down the southeast marine protection process to allow for coordinated development with customary protected areas) was not a matter that could be progressed by the Rōpū. Since then, Tini a Tangaroa has undertaken consultation to progress the regulatory changes identified, as described above. Te Papa Atawhai acknowledges that these changes, if implemented, will not directly address Kāi Tahu concerns about the potential impact of the proposed marine protected areas, particularly the marine reserves, reducing the likelihood of establishing other customary protected areas. They would, however, help address the concerns raised by Kāi Tahu about the ability to manage and respond to the potential impacts of displacement on the non-commercial customary interests identified. The steps taken so far by Tini a Tangaroa to progress the regulatory changes, therefore, coupled with Agencies' commitment to work in good faith and with effective partnership on planning processes for both the marine protected areas and customary tools give effect to the principle of active protection in respect of those interests.

472. Te Papa Atawhai acknowledges the interests identified relate to benefits provided under the Fisheries Settlement Act in relation to non-commercial customary fishing. The matters identified above are sufficient to ensure that a decision to progress the marine reserves based on the engagement to date would be consistent with the Fisheries Settlement Act. In addition, other measures discussed above such as co-management and periodic and generational review will enable ongoing engagement and monitoring of the impacts of the proposed marine protected areas on non-commercial customary fishing interests.

473. Kāi Tahu may consider that this measure has not been adequately addressed. However, for the reasons set out above, Te Papa Atawhai considers that a decision to progress the marine reserves on the basis of the position reached through engagement to date would fulfil your obligations in relation to the Treaty.

6.3.7.3 Preferential access to commercial development opportunities—eco-tourism

Views expressed through engagement

474. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement are set out at section 3.4 of the Rōpū Report.

475. In summary, Kāi Tahu want Te Papa Atawhai to consider providing them with preferential access to eco-tourism opportunities once the marine protected areas are established. Through engagement, Te Papa Atawhai has confirmed that preferential access to commercial development opportunities may be able to be considered but this would need to happen under separate relevant statutory processes associated with any relevant permit. We have also clarified that Part 3B (Concessions) of the Conservation Act does not apply to activities undertaken within marine reserves. The most likely permitted activity to which preferential access for Kāi Tahu may be relevant would be commercial operations for viewing marine mammals under the Marine Mammals Protection Act. This was therefore not a matter that could be further progressed by the Rōpū at this stage.

Te Papa Atawhai further advice

476. In the event that the marine protected areas are established, this measure can and should be addressed through alternative statutory processes as relevant. Section 4 will apply to any future consideration of applications by Kāi Tahu for any relevant permits applying to the marine reserves, most likely commercial operation permits under the Marine Mammals Protection Act. The question of whether section 4 will require a degree of preference for a Kāi Tahu applicant will depend on a case-by-case assessment of what is reasonably required to actively protect the relevant Treaty interest in all the circumstances of the case.

477. Te Papa Atawhai considers that a decision to progress the proposed marine reserves based on the outcomes of the engagement to date in respect of this measure would fulfil your obligations in relation to the Treaty.

6.3.7.4 Integrated management of marine protected areas and customary protected areas

Views expressed through engagement

478. The views of Kāi Tahu on this proposed measure, the agency position and outcomes of engagement are set out at section 3.2 of the Rōpū Report.

479. In summary, Kāi Tahu view the proposed marine protected areas as ineffective in terms of managing land-based effects on the marine environment. Kāi Tahu seek an integrated approach to managing marine protected areas and customary protected areas within the context of the wider marine environment, in particular, through working with local authorities. Agencies support an integrated approach to coastal management. It was acknowledged by Kāi Tahu and Agencies, however, that this mahi was outside the scope of the southeast marine protection process. This matter was therefore not progressed during the Rōpū hui.

Te Papa Atawhai further advice

480. As recognised in other parts of this advice (6.6.6.9 and in subsequent site chapters), Te Papa Atawhai acknowledges that marine reserves do not solve all issues affecting the coastal marine environment. That is not their role. Rather, with the removal of some human-induced

pressures, marine reserves allow for the protection and restoration of ecosystems and habitats and are reference areas for scientific study (as outlined in 2.1).

481. The rights and interests relevant to this proposed rebalancing measure relate to Kāi Tahu concerns about the potential impact of the proposed marine protected areas on their wider customary interests. In particular, Te Papa Atawhai understands it relates to the ability of Kāi Tahu to exercise kaitiakitanga over the marine area within their rohe and the need to exercise that role in a holistic way.

482. While this measure was not formally progressed by the Rōpū, it is anticipated that the co-management structures proposed by the Rōpū will provide avenues for engagement with other relevant agencies (in particular local authorities) within the region. This will support and enhance the opportunities for integrated management as sought by Kāi Tahu. In terms of section 4, this approach is consistent with the obligation to give effect to the principles of partnership and active protection, and will provide ongoing opportunities for informed decision-making.

483. Te Papa Atawhai considers that a decision to progress the proposed marine reserves based on the outcomes of the engagement to date in respect of this measure would fulfil your obligations in relation to the Treaty.

6.3.8 Additional matters raised by Kāi Tahu from 30 November 2021 onwards

484. At the hui on 30 November 2021 and in their subsequent letter to the then Minister of Conservation and the former Minister for Oceans and Fisheries of 15 December 2021, Kāi Tahu outlined a package of measures they are seeking (as set out in 6.3.4.3). Two of these measures had not been discussed during Rōpū hui and are therefore not covered above. These measures are:

- measures to manage the recreational take of pāua in the PAU5D fishery management area
- measures to ensure the marine protected areas do not negatively impact the Kāi Tahu application for customary marine title under te Takutai Moana Act.

6.3.8.1 Recreational take of pāua in PAU5D

Views expressed through engagement

485. As set out in their letter of 15 December 2021, Kāi Tahu seek changes to the management of recreational pāua harvesting to address what they see will be the impacts of displaced recreational take on their commercial and non-commercial customary rights and interests by the proposed marine reserves. Kāi Tahu seek that the annual recreational allowance for pāua in PAU5D be reduced from 22 tonnes to 10 tonnes along with the following changes to support the management of recreational pāua take:

- Bag limit of 5 per person
- New accumulation limits (10 pāua or 1.25kg – like Canterbury)
- Vehicle/vessel limits (20 pāua)
- Minimum legal size review
- Seasonal closures, if required
- Recreational reporting or tagging system to identify harvest levels.

486. In their letter of 15 December 2021, Kāi Tahu confirmed that this is a matter on which Kāi Tahu seek written Ministerial commitment to addressing before or immediately after the establishment of the marine protected areas. Kāi Tahu identified the implementation of

these changes as one of two measures they consider as necessary to rebalance the economic impacts of the proposals.¹⁰⁴ The implication is that if these measures are not implemented as proposed, Kāi Tahu will consider the outcome to be inadequate in terms of what they consider as necessary to rebalance the economic impacts of the proposed Network.

Te Papa Atawhai further advice

487. Te Papa Atawhai, together with Tini a Tangaroa, recognises that establishing the proposed marine reserves would displace some recreational pāua fishing to other areas and that this may have some impact on pāua fishing activities in those adjoining areas, both commercial and non-commercial. The rights and interests relevant to this proposed rebalancing measure are therefore those identified in relation to Kāi Tahu concerns about the impacts of the marine protected areas on their commercial fishing interests - i.e. the 'economic impacts' referred to by Kāi Tahu in their letter of 15 December 2021. However, it also relates to Kāi Tahu rights and interests in relation to non-commercial fishing activities, given that Kāi Tahu has also raised concerns about the impacts of displacement on non-commercial customary pāua take. In terms of your obligations in relation to the Treaty of Waitangi, therefore, of particular relevance to your consideration of this measure are the obligations under section 4 of the Conservation Act, and in relation to the Fisheries Settlement Act. The relevant Treaty principles are active protection and partnership.

488. The potential impact of the displacement raised by Kāi Tahu is difficult to estimate, due to there being limited information about the current level of recreational pāua take from those areas. Commercial pāua fishing data for 2019/20 to 2021/22 shows that ^{9(2)(b)}_(ii) of PAU5D landings were taken from the areas proposed as marine reserves. This suggests these areas are not significant commercial pāua fishing areas and there is no evidence to suggest that they are heavily used for recreational pāua fishing either. We note that commercial pāua fishing is currently prohibited in the area of the proposed Ōrau marine reserve. However, as discussed in 10.6.4.1, we consider that any displacement of recreational pāua fishing from this proposed marine reserve is likely to be into the remainder of the commercial prohibition area, adjacent to this site. In any event, under the applicable statutory framework, the consideration and implementation of this proposed measure is a matter for Te Tini a Tangaroa and the Minister for Oceans and Fisheries. You are therefore not required or able to make any decisions directly in relation to this measure.

489. ^{9(2)(j)}

490. Given the nature of this proposed measure, particularly the fact that you do not have a decision-making role under the Fisheries Act processes, ^{9(2)(j)}

¹⁰⁴ As noted in 6.3.4.3, the other being the proposed boundary amendment to the proposed Te Umu Koau marine reserve.

491. Accordingly, a decision on this basis would fulfil your obligations in relation to the Treaty.

6.3.8.2 Commitment sought in relation to application for customary marine title

Views expressed through engagement

492. In its letter of 15 December 2021, Kāi Tahu sought a commitment from Ministers that the proposals will not 'pre-empt or negatively impact' the Ngāi Tahu Whānui application for customary marine title under te Takutai Moana Act.

493. The Ngāi Tahu Whānui customary marine title application comprises the vast majority of the South Island (being the area that falls within the Kāi Tahu takiwā) and therefore overlaps with all of the proposed marine protected areas, including the proposed marine reserves. In accordance with the statutory framework under te Takutai Moana Act, the application will be determined either by agreement with the Crown (through the responsible Minister) or by an order of the High Court.

494. In either case, the two-limb test for customary marine title is set out in section 58 of te Takutai Moana Act. Subsection 58(1) provides:

- (1) Customary marine title exists in a specified area of the common marine and coastal area if the applicant group—
 - (a) holds the specified area in accordance with tikanga; and
 - (b) has, in relation to the specified area,—
 - (i) exclusively used and occupied it from 1840 to the present day without substantial interruption; or
 - (ii) received it, at any time after 1840, through a customary transfer in accordance with subsection (3).

Te Papa Atawhai further advice

495. Given the nature of this proposed measure, and in particular the fact that the Ngāi Tahu Whānui application is yet to be determined by either of the two routes set out above, Te Papa Atawhai cannot give a definitive position on the commitment sought from Kāi Tahu. Our advice focusses on what can be said about the interaction between te Takutai Moana Act and the Marine Reserves Act in the context of the Ngāi Tahu Whānui application and the proposed marine protected areas. We have focussed our advice on the proposed marine reserves, given this is what you must make your decisions on and the fact that the marine reserves are the most restrictive of the proposed protection measures.

496. In considering the commitment sought by Kāi Tahu, we have addressed two questions:

- (i) the likelihood of the declaration of a marine reserve/s materially affecting the group's ability to meet the two limbs in section 58
- (ii) the potential effect that the declaration of one or more of the proposed marine reserves would have on the rights that would ordinarily attach to customary marine title under te Takutai Moana Act.

497. As part of this second question, we have also considered potential implications of the declaration of marine reserve/s on protected customary rights which may also be granted under te Takutai Moana Act, although noting (as discussed further below) that the Ngāi Tahu Whānui do not seek protected customary rights as part of their application.

Section 58 te Takutai Moana Act

498. Te Papa Atawhai considers that it is *unlikely* that the declaration of one or more of the marine reserves would materially affect the Ngāi Tahu Whānui group's ability to meet the

two limbs in section 58 and therefore to negatively impact on the group's ability to establish customary marine title in respect of the proposed marine reserve areas. Key reasons for this are as follows.

499. First, there is unlikely to be any discernible impact on the Ngāi Tahu Whānui group's ability to satisfy the first limb of the section 58 test - holding the area in accordance with tikanga (section 58(1)(a)). We do not consider that the declaration of one or more of the proposed marine reserves would impact on the Ngāi Tahu Whānui group's ability to demonstrate that they have whakapapa connecting them to the particular area, that they have an enduring relationship and spiritual connection with that part of the takutai moana, and that there is a coherent set of beliefs, practices and values that is observed by applicant group members, that is widely known and understood, and that guides their everyday behaviour.

500. Similarly, it is unlikely the declaration of a marine reserve would materially impact on the Ngāi Tahu Whānui group's ability to establish the second limb of the test - demonstrating the exclusive use and occupation since 1840 without substantial interruption (section 58(1)(b)). This is because the proposed marine reserve/s would not necessarily diminish or detract from on the Ngāi Tahu Whānui group's ability or intention to exercise its customary authority in respect of an area. Nor is the mere establishment of a marine reserve within the area subject to the Ngāi Tahu Whānui application for customary marine title likely to amount to a 'substantial interruption', given the approach taken by the courts on this issue to date. While some existing activities (in particular, fishing activities) would be prohibited within the proposed marine reserves, the Ngāi Tahu Whānui would still be able to carry out activities within the proposed marine reserve/s that demonstrate exclusive and continuous use and occupation, and in a manner that does not detract from their customary authority (in particular, their kaitiaki role) or the customary connection that Ngāi Tahu Whānui has with the area. This conclusion is further supported by the range of measures that Te Papa Atawhai has recommended to ensure the role of Kāi Tahu as kaitiaki is recognised in the establishment of any of the proposed marine reserves.

Potential effects on rights that would ordinarily attach to customary marine title under te Takutai Moana Act

501. Also relevant to the assurances sought by Kāi Tahu is the potential effect that the declaration of one or more of the proposed marine reserves would have on the rights that would ordinarily attach to customary marine title under te Takutai Moana Act. Those rights, set out in section 62, are:

- a Resource Management Act 1991 permission right: A right under the Resource Management Act to give or decline permission, on any grounds, for an activity to which a Resource Management Act permission right applies
- a conservation permission right: A right to give or decline permission for certain conservation activities, including applications to declare or extend a marine reserve under the Marine Reserves Act
- a right to protect wāhi tapu and wāhi tapu areas
- rights in relation to marine mammal watching permits and the process for preparing, issuing, changing, reviewing or revoking a New Zealand coastal policy statement
- prima facie ownership of newly found taonga tūturu¹⁰⁵

¹⁰⁵ Taonga tūturu is defined for the purposes of te Takutai Moana Act in accordance with the definition in the Protected Objects Act 1975: (a) relates to Māori culture, history or society; and (b) was or appears to have been, - (i) manufactured or modified in New Zealand by Māori; or (ii) brought into New Zealand by Māori; or (iii) used by Māori; and (c) is more than 50 years old.

- ownership of minerals other than minerals within the meaning of section 10 of the Crown Minerals Act 1991 or pounamu to which section 3 of the Ngai Tahu (Pounamu Vesting) Act 1997 applies
- the right to create a planning document.

502. In addition, while there is an application for customary marine title pending, people must notify Kāi Tahu and seek their views before lodging an application that relates to the rights set out above.¹⁰⁶

503. Te Papa Atawhai's view is that in the event that customary marine title is established in an area that has been declared a marine reserve, most of the rights that will ordinarily attach to customary marine title under the Takutai Moana Act will not be affected, and those that will be affected will be affected to a limited degree.

504. We consider the following rights would be unaffected: rights in respect of marine mammal watching permits; consultation rights in respect of a New Zealand Coastal Policy Statement; and the right to create a planning document.

505. In addition, in terms of the rights relating to newly found taonga tūturu, any newly found taonga tūturu would continue to be the prima facie property of the customary marine title group. To the extent that extraction of newly found taonga tūturu in a marine reserve is prohibited, the practical ability to extract that material would be negatively impacted. However, because the Takutai Moana Act confers ownership rights in respect of these materials, not rights of extraction, we do not consider the establishment of a marine reserve in a customary marine title area can properly be described as negatively impacting on the rights that ordinarily attach to customary marine title. In any event, as set out in 6.3.6.6, Te Papa Atawhai recommends that for any marine reserve you declare, you include a condition in the Order in Council that would allow for Kāi Tahu papatipu rūnaka with mana moana (or anyone authorised by said papatipu rūnaka) to retrieve kōiwi tākata and archaeological artefacts consistent with the Ngāi Tahu Kōiwi Tāngata (human remains) Policy and subject to any legal requirements.

506. For the same reason, we do not consider that a customary marine title group's ownership of non-nationalised minerals is a right that would be negatively affected by the existence of a marine reserve in the customary marine title area. While the ability to extract may well be affected, as above with taonga tūturu, the Takutai Moana Act confers ownership rights in relation to these materials, not extraction rights.

507. We also consider it is unlikely that the wāhi tapu protection right would be negatively impacted. This is because this protection right is concerned with the imposition of prohibitions or restrictions on access that are necessary to protect the wāhi tapu. In other words, wāhi tapu conditions are not permissive. It is therefore difficult to see how a wāhi tapu condition would be inconsistent with an existing prohibition under the Marine Reserves Act on activities that can be carried out in a marine reserve.

508. The existence of a marine reserve in a customary marine title area 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, although as described below, it would not mean the rights are unable to be exercised at all.

509. First, in terms of the Resource Management Act permission right, the right cannot be exercised by the customary marine title group in respect of management activities (for which a resource consent is required) in respect of any marine reserves that are established

¹⁰⁶ Section 62(3).

before customary marine title is awarded. This is because such activities are expressly carved out as ‘accommodated activities’ to which the Resource Management Act permission right does not apply. That said, the right would continue to apply to other activities which were permissible within the marine reserve and in respect of which resource consent was required. Likewise in terms of the conservation permission right, accommodated activities (most relevantly management activities) are activities to which the conservation permission right would not apply. Additionally, the right would not apply to the current applications for the declaration of the proposed marine reserves, assuming that this occurs prior to the determination of customary marine title. The right will still be able to be exercised in respect of any future applications to declare or extend a marine reserve within the customary marine title area, any proposals to declare or extend a conservation area within the customary marine title area and any applications for concessions that are made within the customary marine title area.

Protected customary rights

510. In addition to customary marine title, an applicant may seek recognition of protected customary rights. Protected customary rights are provided for under section 51 of the Takutai Moana Act. A protected customary right is an activity, use or practice that has been exercised in a specified area of the common marine and coastal area since 1840 and continues to be exercised by the applicant group in accordance with tikanga. The particular types of activities, use and practices that are capable of recognition as a protected customary right are not specified in the Act, however the Act sets out a number of activities that may not be recognised as a protected customary right (section 51(2)). A key feature of a protected customary right is that it may be exercised without a resource consent.

511. While the Ngāi Tahu Whānui customary marine title application doesn’t specifically seek recognition of protected customary rights, the Takutai Moana Act provides the Court with flexibility to treat an application for recognition of customary marine title as an application for protected customary rights.

512. Additionally, the other two customary marine title applicants, Te Maiharoa Whānau, and Paul and Natalie Karaitiana, are separately seeking recognition of protected customary rights in sites that overlap with proposed marine reserves:

- The application by Te Maiharoa Whānau partially overlaps with the proposed Waitaki marine reserve. It seeks recognition of protected customary rights for “gathering tuna, eel, whitebait, inanga, pātiki silveries, kahawai, paraki, naenae, lamphrey, kanakana, swan and duck eggs and for kai hau kai – make storage, gathering raupō¹⁰⁷ to build mōkihi¹⁰⁸, plants for rongōā¹⁰⁹”.
- The application by Paul and Natalie Karaitiana seeks recognition of protected customary rights for “numerous activities including collecting hāngī stones and launching waka”. This application overlaps with two proposed marine reserves (Ōrau and Papanui).

513. Generally speaking, in the event that protected customary rights are established in an area that has been declared a marine reserve, it is possible that a successful applicant group’s ability to exercise the protected customary rights could be negatively impacted. If the activity is prohibited in a marine reserve by virtue of the Marine Reserves Act, it would not be able to be carried out as a protected customary right. This is because the Takutai Moana

¹⁰⁷ Bulrush.

¹⁰⁸ Rafts.

¹⁰⁹ Medicinal purposes.

Act does not provide a general licence for protected customary right groups to exercise protected customary rights despite any prohibition, restriction or imposition that applies under another enactment.

514. Given protected customary rights are not currently sought in the Ngāi Tahu Whānui application, it is difficult to provide a view on whether Kāi Tahu would be unable to carry out a protected customary right due to relevant prohibitions that apply under the Marine Reserves Act. We also note that, while fishing will generally be prohibited within the proposed marine reserves, protected customary rights cannot be recognised under te Takutai Moana Act in any event for activities that are regulated under the Fisheries Act.

515. For completeness, and although we are providing this advice in the context of the assurance sought by Kāi Tahu, we have also considered the protected customary rights sought by the other two customary marine title applicants.

516. A number of protected customary rights sought by Te Maiharoa Whānau cannot be recognised as protected customary rights. This is due to the fact that they fall within the exclusions in section 51(2), in particular the exclusion on activities regulated under the Fisheries Act or that relate to wildlife within the meaning of the Wildlife Act. To the extent the application seeks protected customary rights for the gathering of raupo and other plants for building mōkihi and carrying out rongoā, it appears that such activities (if recognised as protected customary rights) could potentially come into conflict with the Marine Reserves Act's prohibitions on disturbing marine life (if they do not fall within the proposed provision for fossicking and retrieval of kōiwi tākata). This is largely speculative at this stage, however, and would only apply to the extent that any area of customary marine title did overlap with the proposed marine reserves if declared.

517. In terms of the application by Paul and Natalie Karaitiana, to the extent the application seeks recognition for launching waka as a protected customary right, this activity would not give rise to an inconsistency with particular prohibitions under the Marine Reserves Act. Given that rights of access and navigation are preserved both by the Marine Reserves Act and te Takutai Moana Act,¹¹⁰ and specific exemptions for vehicle use for vessel launching will be one of the recommended conditions, it is unlikely that the exercise of this protected customary right (if recognised) would be impacted. As for the protected customary rights sought for the collection of hāngī stones, the establishment of the marine reserves may well prevent this activity from occurring,¹¹¹ given the proposed provision for fossicking of beach stones in the marine reserves is unlikely to sufficiently accommodate this activity given the proposed size restrictions. At a practical level, however, the beaches within the proposed Ōrau marine reserve are largely sand, and the proposed Papanui marine reserve is offshore. As such, these marine reserves if declared are unlikely to have any significant effect on this activity.

Conclusion on potential effects on rights that would ordinarily attach to customary marine title under te Takutai Moana Act

518. Overall, in light of the minimal practical impact of a marine reserve on customary marine title rights and protected customary rights, Te Papa Atawhai does not consider the potential limitations would significantly diminish the rights of Kāi Tahu in the event that the Ngāi Tahu Whānui application for customary marine title is successful.

¹¹⁰ Section 23 of the Marine Reserves Act; sections 26-27 of te Takutai Moana Act.

¹¹¹ See section 18I(3)(d) of the Marine Reserves Act.

Conclusion on commitment sought by Kāi Tahu in relation to application for customary marine title

519. For the reasons set out above, Te Papa Atawhai has concluded:

- it is *unlikely* that the declaration of one or more of the proposed marine reserves would materially affect the Ngāi Tahu Whānui group's ability to meet the two limbs in section 58 and therefore to negatively impact on the group's ability to establish customary marine title in respect of the marine reserve areas
- overall, in light of the minimal practical impact of a marine reserve on customary marine title rights and protected customary rights, Te Papa Atawhai does not consider the potential limitations would significantly diminish the rights of Kāi Tahu in the event that the Ngāi Tahu Whānui application for customary marine title is successful.

520. Accordingly, Te Papa Atawhai recommends that you record as part of your decision-making that a decision to declare one or more of the proposed marine reserves is *unlikely, and not intended*, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title. Te Papa Atawhai considers that to make this commitment is consistent with your obligations under section 4 of the Conservation Act to act reasonably and in good faith and in the spirit of partnership, noting that it is not possible to give a definitive commitment given the fact that the application will have to be progressed under the relevant statutory framework set out in the Takutai Moana Act.

6.3.9 Concluding advice regarding Te Papa Atawhai's recommendations and consistency with the Crown's obligations in relation to the Treaty of Waitangi

521. Our advice above has considered each of the individual measures proposed by Kāi Tahu. The advice has focused on the obligation under section 4 of the Conservation Act to administer and interpret the Marine Reserves Act, and therefore your decisions under it, to give effect to the principles of the Treaty of Waitangi. Additional Treaty obligations from the other identified sources¹¹² were discussed as relevant in the context of the proposed measures. The following section provides an overall assessment and summary as to whether, and if so how, a decision to progress the proposed marine reserves on the basis of these recommendations would fulfil your obligations in relation to the Treaty.

522. Note that views received through the statutory process from affected iwi, hapū and whānau (i.e. those affiliated with Kāi Tahu but who submitted under the statutory process) and views from Māori who are not affected iwi, hapū and whānau (i.e. who do not affiliate to Kāi Tahu) are also relevant in terms of your obligations in respect of the Treaty of Waitangi. These views are considered and addressed in this chapter and in subsequent site chapters.

6.3.9.1 Section 4 – Conservation Act

523. In addition to the analysis above in respect of each of the proposed measures, the following additional points that apply to the proposals and recommendations overall are relevant to the Treaty principles of partnership, active protection, and redress. These matters are therefore also relevant to your assessment of whether a decision to declare each of the proposed marine reserves on the basis of the recommendations above would be consistent with section 4.

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

¹¹² As set out in 3.3, the relevant Treaty obligations derive from section 4 Conservation Act, the Takutai Moana Act, the Ngāi Tahu Claims Settlement Act and the Fisheries Settlement Act.

Te Papa Atawhai considers that viewed as a whole, a decision to approve each of the proposed marine reserves based on the recommendations outlined above give effect to the principle of partnership. The principle of partnership is concerned with the way in which the Crown and Māori behave in their interactions with each other. It requires the Crown and Māori to act towards each other reasonably and in good faith. Partnership is centred around balancing in context kāwanatanga of the Crown (the right to govern) and rangatiratanga of Māori (autonomy, self-governance).

Te Papa Atawhai has given effect to this principle by carefully listening to the views of Kāi Tahu through engagement and in good faith has endeavoured to accommodate the measures outlined above to the extent reasonably possible within the statutory framework. A decision to progress all or some of the proposed marine reserves would provide the conservation and scientific benefits of the proposals as outlined in this and subsequent chapters to be achieved, while still ensuring that Kāi Tahu interests are recognised and maintained. As such, a decision to progress the proposed marine reserves would appropriately reconcile the applicable Treaty principles with other relevant values.

525. **Active protection** - The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for Crown's the 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.

In addition to the analysis of the principle of active protection in the context of each of the proposed measures, you should also consider the principle of active protection in relation to the proposals overall.

In accordance with the purpose of the Marine Reserves Act, the declaration of each of proposed marine reserves would ensure enduring protection of the areas and marine life within the proposed boundaries from a number of activities which would otherwise impact on the values present. The values and benefits that would result from the proposed marine protected areas are set out above in 6.2. The whole proposed Network, including the proposed marine reserves, falls within the Kāi Tahu takiwā and therefore these values and benefits will be experienced within this area. In terms of specific Kāi Tahu interests, the proposed marine reserves and wider proposed Network will provide protection to a number of taonga species and taonga fish listed in Schedules 97 and 98 of the Ngāi Tahu Claims Settlement Act. The particular species present across the proposed sites are listed in Appendix 5 of the Application (page 122).

In addition, the declaration of each of the marine reserves would provide tangible and varied opportunities by which the status and role of Kāi Tahu in relation to the areas over which the marine reserves are proposed can be recognised and enhanced. This is achieved through the various measures proposed above including the formal co-management arrangements, Kāi Tahu rangers, periodic and generational reviews and provision for continued enhancement of mātauraka Māori through wānaka.

526. **Redress** - 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 agreed grievances from not upholding the promises made in the Treaty. Māori and the Crown should demonstrate reconciliation as grievances are addressed.

The principle of redress is not directly engaged, because Kāi Tahu historical claims have been settled (as relevant, through the Ngāi Tahu Claims Settlement Act and the Fisheries Settlement Act) and no other breaches have been identified. However, the benefits and rights that derive from and are recognised by these settlements are clearly

relevant to the proposals. This is therefore now more relevant to the principle of active protection. The advice and recommendations provided above has been considered and developed in light of the relevant settlement context.

527. In summary, Te Papa Atawhai considers that to declare each of the marine reserves on the basis of the recommendations made would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi.

6.3.9.2 Te Takutai Moana Act

528. As set out in 3.3.2 and 5.2, Kāi Tahu are affected iwi, hapū, and whānau for the purposes of section 47 of te Takutai Moana Act. In accordance with section 49, you must, therefore, give particular regard to the views received as part of the direct engagement. Further guidance on what is required in order to give 'particular regard' is set out in 3.3.2. Provided you follow this guidance, you will have fulfilled your obligations in relation to te Takutai Moana Act, noting also the advice provided above about the commitment sought by Kāi Tahu in relation to the effect of the proposals on their application for customary marine title.

6.3.9.3 Ngāi Tahu Claims Settlement Act 1998

529. As set out in 3.3.3, in making your decisions on the proposed marine reserves you have obligations pursuant to the Ngāi Tahu Claims Settlement Act in relation to any views received from Kāi Tahu in respect of taonga species and taonga fish species.

Taonga species

530. Pursuant to section 293, the Minister must:

consult with, and have particular regard to the views of, Te Rūnanga o Ngāi Tahu when the Minister makes policy decisions concerning the protection, management, or conservation of a taonga species, including those subject to recovery plans or species recovery groups.

531. As set out in 3.3.3, Appendix 5 of the Consultation Document includes a description of the taonga species (as agreed in Schedule 97 of the Ngāi Tahu Claims Settlement Act) that are considered likely to occur within each of the proposed marine reserves.

532. Through the Rōpū engagement, Kāi Tahu have not expressed views directly in relation to the identified taonga species beyond acknowledging their significance and importance as part of our kōrero. The one exception to that is the specific discussion about rimurapa which arose in the context of the Rōpū engagement on the proposed measure for providing access to cultural materials. As set out in 6.3.6.6, Kāi Tahu confirmed through engagement that a condition in relation to detached rimurapa was not required. This is because in practice rimurapa will often be available outside the boundaries of the proposed marine reserves, including above mean high water springs (see section 4.5.1 of the Rōpū Report). Our recommendation in relation to the proposed conditions for fossicking of beach materials (see 6.3.6.6) reflect this position and you should have particular regard to the views of Kāi Tahu that have informed the recommendation in so far as it relates to rimurapa.

533. Otherwise, on the basis that Kāi Tahu did not express views directly in relation to any other taonga species, you will have met the requirements of section 293 of the Ngāi Tahu Claims Settlement Act if you have particular regard to the view of Kāi Tahu on the proposals generally, as set out in this advice.

534. We note also that pursuant to section 294, the Director-General must:

consult with and have particular regard to the views of Te Rūnanga o Ngāi Tahu when the Director-General makes policy decisions concerning the protection, management or conservation of all taonga species subject to a species recovery group or recovery plan.

535. The obligation on the Director-General to have particular regard to the views of Te Rūnanga o Ngāi Tahu applies when the Director-General makes recommendations to the Minister of Conservation in respect of the promulgation of any regulations, and therefore applies to Te Papa Atawhai's advice to you on the proposed marine reserves. As noted in 4.12, however, of the species listed in the Application and Consultation Document, hoiho/yellow-eyed penguin are currently the only taonga species in the proposal area with an active species recovery group and recovery plan. Kāi Tahu did not express a specific view regarding hoiho during direct engagement, and therefore this obligation does not directly apply. As is clear from the advice above, however, Te Papa Atawhai has given particular regard to the totality of the views received from Kāi Tahu in the preparation of its advice and recommendations. You may therefore proceed on the basis that the Director-General has discharged the obligation under section 294.

Taonga fish species

536. Pursuant to section 304, the Minister must:

in all matters concerning the management and conservation by the Department of Conservation of taonga fish species within the Ngāi Tahu claim area, consult with, and have particular regard to the advice of, Te Rūnanga o Ngāi Tahu in its capacity as an advisory committee appointed pursuant to clause 12.14.9 of the deed of settlement.

537. Appendix 5 of the Consultation Document also contains the taonga fish species likely to occur within each of the proposed marine reserves. Kāi Tahu did not express any specific views in relation to the identified species. You will therefore have met the requirements of section 293 of the Ngāi Tahu Claims Settlement Act if you have particular regard to the view of Kāi Tahu on the proposals generally, as set out in this advice.

6.3.9.4 Treaty of Waitangi (Fisheries Claim) Settlement Act 1992

538. A general overview of the Fisheries Settlement Act and its relevance to your decision-making is set out in 3.3.4. Our advice above has also addressed the Fisheries Settlement Act as relevant to several of the specific measures proposed by Kāi Tahu. In addition, we make the following points in relation to the proposals overall and which are therefore relevant to your decision-making on the proposed marine reserves.

539. The Fisheries Settlement Act does not preclude the creation of marine reserves under the Marine Reserves Act. However, as noted in 3.3.4, the impacts of the proposed marine reserves on the provisions of the Fisheries Settlement Act and the customary non-commercial fishing rights recognised therein are relevant to your decision-making (particularly the exercise of your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi, as discussed in our analysis of the individual measures above).

540. The Fisheries Settlement Act recognises that non-commercial fishing rights and interests give rise to direct obligations on the Crown under the Treaty.¹¹³ The exercise of such customary fishing rights/gathering kaimoana is central to Māori identity and te ao Māori. Although not precluded, any limitation of those activities must therefore be demonstrably justified. And while any customary basis for commercial fishing rights was substituted by

¹¹³ Section 10(a).

the settlement provisions, those assets (particularly quota holdings) are nevertheless important statutory requirements for Māori (as engagement with Kāi Tahu has made clear).

541. Te Papa Atawhai has worked in good faith with Kāi Tahu to ensure the impacts of the proposed marine reserves on both non-commercial fishing rights and the settlement benefits (quota) are properly understood and afforded a level of protection that is appropriate in all the circumstances. As set out above, this includes the recommended boundary amendment to the proposed Te Umu Koau marine reserve and the commitment from Tini a Tangaroa to address Kāi Tahu concerns about the impact of recreational fishing pressure on the PAU5D pāua fishery. In addition, the location and size of the proposed marine reserves are based on the recommendations of the Forum. These options were developed so as to ensure the impacts of the proposals on commercial and non-commercial fishing (including customary activities) were limited.

542. While the proposed marine reserves – both individually and as part of the proposed Network – will have an impact on customary non-commercial fishing rights and commercial fishing, Te Papa Atawhai considers that those impacts, though tangible, are proportionate and ultimately justified in light of the countervailing benefits as set out in this and subsequent site chapters. As such, a decision to declare each of the marine reserves on the basis of the recommendations made would be consistent with the Fisheries Settlement Act.

6.3.10 Te Papa Atawhai advice on outcomes of Kāi Tahu engagement – conclusion

543. Based on the assessment above, and subject to the matters discussed in this and subsequent chapters arising from submissions received through the statutory submission process, Te Papa Atawhai considers that to declare each of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi. The relevance of this conclusion to your decision-making under section 5(9) is discussed further below in 6.8.

6.4 Submissions received on the proposed Network

544. In total, 3,908 submissions were received on the proposed Network. Ninety percent (3,522) of submissions supported its establishment as proposed¹¹⁴, noting that 93% (3,271) of these used the online template provided by Forest & Bird¹¹⁵. Objections to the proposed Network made up 9% (366) of the submissions and were either outright objections or a preference for 'Another option' rather than implementation of the proposed Network. Note that 69% (218) of these objections were made on templates provided by fishing clubs. The remaining 0.5% (20) of submitters did not indicate a preference for implementing the proposed Network or otherwise.

545. Of the 3,908 submissions, 20 were from submitters identified as affected iwi, hapū or whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act). Three supported implementing the proposed Network, 13 objected to implementing the proposed Network and four objected by indicating a preference for Another option. A further 15 submissions (five in support, five in objection, two preferring another option and three not indicating a position) were from other Māori submitters (i.e. those who do not whakapapa to

¹¹⁴ This included submitters who qualified their support by suggesting changes but whose support was not conditional on the changes.

¹¹⁵ An independent conservation charity that advocates to protect New Zealand's wildlife and wild places, to city, district and regional councils, central government and in courts.

the Kāi Tahu rohe¹¹⁶ and were therefore not identified as affected iwi, hapū or whānau under te Takutai Moana Act).

546. Submitters in support of the proposed Network being established gave the following main reasons¹¹⁷:

- the likely benefits for wildlife like rāpoka/New Zealand sea lion and pahu/Hector's dolphins and hoiho/yellow-eyed penguins and the tourism related to this species
- the long-term ecological benefits of marine reserves for ecosystem and biodiversity recovery, including commercial fish and shellfish
- the apparent detrimental effects of recreational and/or commercial fishing practices on ecosystems and habitats under the status quo.

547. Submitters in support also commonly noted that the proposed Network was a bare minimum and that more, larger and better designed marine reserves would provide more effective biodiversity protection. Many also noted the lack of marine reserves proposed for the area of coast off The Catlins.

548. Submitters who did not support the proposed Network being established, or wanted changes before it was established, gave the following main reasons¹¹⁸:

- concerns about impacts on their recreational use of the area(s), particularly recreational fishing or seafood harvesting, often expressed through personal stories
- the direct economic impacts, principally for commercial fishers but also for families in lower socioeconomic circumstances that rely on seafood as part of their diet
- the potential impacts from fishing pressure being moved to other areas
- a lack of evidence about the negative impacts of fishing and a view that that current management is adequate especially given the protection by proxy due to the area's unfavourable weather and sea conditions
- the safety of recreational fishers.

549. Some submitters objected because they wanted more protection than is proposed in the Network. They believed the proposed Network would not provide meaningful protection to the area's biodiversity and argued that it should encompass a larger area, more habitats or be better designed.

6.5 Stage 1 assessment – Network objections from affected iwi, hapū, or whānau

6.5.1 Obligations in relation to the Treaty of Waitangi

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

551. Under section 49 of te Takutai Moana Act, you, as the decision-maker, 'must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application' (see

¹¹⁶ To descend from the Kāi Tahu (Ngāi Tahu) tribal group.

¹¹⁷ Bothwell, J., Long, D., Daddy, N., Hing, Z. 2020. Proposed southeast marine protected areas: Summary of submissions September 2020. Published by PublicVoice. 209 p.

¹¹⁸ Ibid.

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

552. The obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act is also relevant to your assessment of objections from submitters identified as affected iwi, hapū, or whānau. In order to give effect to the principle of informed decision-making, all objections received from these submitters are identified and analysed below. In addition to the principle of informed decision-making, the principles of partnership and active protection are also relevant. For the objections received in relation to the proposed Network from these submitters, these principles are primarily relevant to your assessment of the objections that relate to impacts on commercial and non-commercial fishing activities (including the ability to continue the customary harvest of seafood), the take of cultural materials, the use and transfer of mātauraka Māori and tikanga, and a desire for co-management of the proposed marine reserves. Te Papa Atawhai considers these issues relate to the protection of Kāi Tahu fishing rights and interests, both in terms of their commercial interests and non-commercial customary rights (noting the relevance of the Fisheries Settlement Act to these matters – see 3.3.4.3), and the ability of Kāi Tahu to exercise tino rangatiratanga and kaitiakitanga over the areas covered by the proposed marine reserves and taonga present (including those taonga and taonga fish species identified under the Ngāi Tahu Claims Settlement Act, see 3.3.3). In considering whether or not to uphold the objections relating to these matters, therefore, you must consider whether to do so would give effect to the Treaty principles of partnership, active protection and informed decision-making.

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

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

6.5.2 Section 5(6)(a) estate or interest in land

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

6.5.3 Section 5(6)(b) navigation

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

6.5.4 Section 5(6)(c) commercial fishing

6.5.4.1 Objections supporting marine protection but seeking a lower financial impact

557. One objection to the proposed Network from an individual identified as affected iwi, hapū or whānau raised issues related to commercial fishing. The submitter stated, *“I fully support the concept of marine reserves to protect marine bio-diversity and enable the general public access to a pristine marine environment”* but believed the *“reserves can be set with less financial impact on the commercial fisheries and associated communities and industries”*.

Te Papa Atawhai advice

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

559. No detail was provided to allow an assessment of the submitter’s view. We note however, that throughout the Forum’s process to reach their recommendations (which the proposed Network is based on) a balance was sought between biodiversity outcomes and impact on users and the community. The Forum sought to identify and design the proposed sites so they would contribute towards the objectives of the MPA Policy and the marine reserves would fulfil the purpose of the Marine Reserves Act. This design was balanced with minimising the potential impacts on Māori and commercial and recreational fishers in particular. The Forum originally selected a number of marine reserve proposals based on expected biodiversity outcomes but these were not progressed because of feedback received during their consultation about the level of impact to existing users.

560. Clearly the establishment of any marine reserves will have some impacts on current use, including commercial fishing. Further detailed discussion on the impacts on commercial fishing is provided elsewhere in this advice, both in terms of the proposed Network and the specific sites. This includes a recommendation to amend the boundary of the proposed Te Umu Koau marine reserve (as set out in 8.6.4.2) to avoid what would otherwise be undue interference with the commercial kōura fishery. In light of this, and given the Forum’s balancing process, as reflected in their recommendations, we do not consider the above objection demonstrates that the proposed marine reserves would cause undue interference with commercial fishing when considered against the expected benefits.

Submissions in support

561. Two submissions in support of the proposed Network from individuals identified as affected iwi, hapū or whānau stated there would be negative impacts on commercial fisheries if the proposed marine protected areas were not established. They noted the benefits of marine protection for species spawning and recruitment.

6.5.5 Section 5(6)(d) recreational usage

6.5.5.1 Objections related to seafood harvesting and recreational fishing

562. Four objections to the proposed Network from submitters identified as affected iwi, hapū or whānau raised issues related to recreational use. One stated that as this is their “home” they “should have the right to fish for food”.

563. Two of the four submitters used one of the fishing club templates, which stated the proposed marine reserves would require families (including those in lower socioeconomic circumstances and already restricted by weather and sea conditions) to travel further by car or boat and thereby restrict them “enjoying” recreational fishing and allowing them to put “locally gathered nutritious food on their tables at minimal cost”. They stated that the ability to do this with potential food shortages and lockdown restrictions as a result of the COVID-19 pandemic was particularly important. Increased fuel costs to fishers with access to a car and/or boat were described as a result of having to travel further to fish.

564. The template submission further described that the existing arrangements allow the “unique fishing culture to be maintained and encouraged” particularly for fishing activities close to urban areas and holiday destinations.

565. The fourth submitter chose ‘Another option’ rather than implementation of the proposed Network, stating that a “realistic quota on all fish species” should be set instead of the marine protected areas.

566. These objections relate to the six proposed marine reserves only since recreational fishing would be unaffected by the proposed Type 2 marine protected areas or the kelp protection area.

Te Papa Atawhai advice

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

568. The general comment about the “right to fish for food” gave no further detail on how the proposals would affect the submitter, which made it difficult to assess the issue any further. We take this objection and the others made using the fishing club template as relating mainly to the effect of the proposed marine reserves on individuals’ or families’ ability to gather seafood for themselves. The six proposed marine reserves would cover less than 5% of the Forum region and 9.5% of the Forum region’s coastline, so fishing would still be possible in many places. The Forum’s Recommendations Report (page 80) identified 26 areas in the Forum region that were known to be used for boat-based recreational fishing. Of these, 22 would remain outside the proposed marine reserves. Some of the 22 areas are described as long stretches of coastline.

569. It is evident that many areas would remain available for recreational fishing, albeit potentially requiring some adjustment for individual fishers to move from their usual fishing locations. We therefore consider that people would still be able to seek enjoyment and provide for themselves through recreational fishing, and that the fishing culture mentioned should not be affected significantly. While we agree that there may be some increases in travel costs for fishers who are currently located very close to one of the proposed marine reserves, we consider this is unlikely to be significant.

570. One submitter suggested that changes to quota for fished species should occur instead of establishing the proposed marine protected areas. Changes under the fisheries management system alone will not meet New Zealand’s objectives for protecting marine biodiversity. The

quota management system sets a level of catch or quota for each fish stock to ensure its long-term sustainability. This approach, however, does not fully consider the ecological links within and between species, or between species and their habitats. Furthermore, as stock management occurs at the scale of large quota management areas, the quota management system alone cannot manage fishing impacts on local-scale marine systems. New Zealand's marine management system therefore includes the quota management system, a representative network of marine protected areas and a range of other management measures.

6.5.6 Section 5(6)(e) public interest

6.5.6.1 Objections related to customary interests

571. Eight objections to the proposed Network from submitters identified as affected iwi, hapū or whānau (six individuals and one organisation) raised issues related to impacts on customary interests.
572. One individual noted *“as people of the land we should have a right to be able to harvest from these waters”*, while stating that the proposed Network would force them further away and make it more difficult for this harvest to happen. They also said the *“proposed marine reserves are the wrong step forward”*.
573. Another individual noted a need to *“stop whanau losing jobs”*, which Te Papa Atawhai infers as meaning the proposed Network could cause job losses for Māori. Another objection states they consider there will be impacts on *“Ngai Tahu settlement and commercial assets”* if the proposed Network is established.
574. An individual submitter also stated that they *“support the position of Ngai Tahu iwi in determining what is required of this process”*.
575. A further individual submitter raised similar issues, stating that resourced co-management needs to be ensured so that *“Kai Tahu customary and commercial use aren't hampered”*. They noted the benefits of some commercial development opportunities (such as the harvest of *Undaria*, an introduced kelp), as well as the need to enable *“kaitiakitaka of their rohe moana”*, the importance of generational reviews and that *“manawhenua are not restrained from accessing and retrieving material cultural heritage”*.
576. Another submitter noted that if the proposed Network proceeded, there would need to be provision for mātaihai reserves to be established if desired. They also stated *“legislation was formulated, known as the South Island Customary Fishing Regulations, to ensure kaimoana, or seafood, would always be available for Maori. This legislation had precedence over all other fisheries legislation”*.
577. Another submitter noted that the Forum process and subsequent statutory consultation process have focussed too strongly on biodiversity protection objectives, rather than looking more broadly at *“government, regional and societal objectives, such as maintaining sustainable commercial fisheries, which in turn support Maori economic development and our region”*. They further stated that *“given the economic impact on Ngai Tahu, [it] is not in the interests of mana whenua, and is wholly inconsistent with the government's obligations to its Treaty partner”*.
578. Waitaha Taiwhenua o Waitaki Trust¹¹⁹ raised issues related to impacts on their customary rights and interests. They stated that the proposed Network:

¹¹⁹ A trust of Kāi Tahu hapū who whakapapa to the Rakaihautū and Uruao waka, and who practice Waitaha kawa and tikanga.

- precludes options for expression of mana whenua
- fails to address a changing future, including the needs of future generations
- fails to “understand the idiosyncrasies that pertain to Iwi, Hapu and Whanau needs and responsibilities”
- “fails to properly express Waitaha matauraka”
- “fails to propose any form of co-management”.

579. Te Papa Atawhai notes that the objection in response to the proposed Network by Te Ohu Kaimoana¹²⁰ (who are not identified as affected iwi, hapū or whānau) raised issues that they say have also been raised by Kāi Tahu (who are affected iwi, hapū or whānau). These are:

- “co-management of the proposed MPAs between Ngāi Tahu and the Crown”
- “regular review to determine that the proposed network is an appropriate tool for management”
- “generational review of the proposed MPA network”
- “ensuring Ngāi Tahu rangers to manage the network of MPAs”

580. Te Ohu Kaimoana also stated that “*Ngai Tahu’s concerns include the effects of the proposed MPA ‘D1 Te Umu Koau’ on their rights and interests*”. They said that “*these issues highlight the importance to Ngāi Tahu of retaining their rangatiratanga over their rohe moana*”.

581. The issues above have been discussed extensively throughout the Treaty partner engagement, and our advice and recommendations on each is set out in 6.3 and therefore not repeated here.

Te Papa Atawhai advice

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

583. In terms of the objection concerning the “*right to be able to harvest*” seafood, it is acknowledged that the declaration of marine reserves will prevent extractive fishing activities in those areas, including fishing activities (commercial and non-commercial) currently undertaken by affected iwi, hapū and whānau. As recorded in the Forum’s Recommendations Report (page 103), the coastal area the proposed marine reserves fall within were historically, and still remain, ‘an important source of kaimoana and fishery for Kāi Tahu customary, recreational and commercial fishers’. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area. Rather, there are already a range of regulatory measures that govern such activities. This includes the Quota Management System which applies to commercial fishing generally and also the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. While acknowledging the cultural importance of the coastline generally, and the fact that the proposed marine reserves would prohibit the take of marine life, areas surrounding the proposed marine reserves (such as those discussed in 6.5.5.1) would remain available for non-commercial customary and other fishing activities. The Forum also sought to minimise disturbance to existing users where possible, and thus avoided recommending a number of sites that were known to have high customary significance (as discussed further in individual site chapters). As set out in the

¹²⁰ A national organisation that works to advance Māori interests in the marine environment, including customary fisheries, commercial fisheries and aquaculture as well as providing policy and fisheries management advice to iwi and the wider Māori community.

Application (on page 60), the Ministers' decision to proceed with statutory consultation processes to implement 'Network 1' took into account the Forum's recommendations and subsequent agency advice on those recommendations. The proposed sites in the Application therefore reflect these considerations.

584. Other submitters, including Waitaha Taiwhenua o Waitaki Trust, raised issues that are closely aligned with matters described in 6.4 and have been progressed during engagement between Te Papa Atawhai, Tini a Tangaroa and Kāi Tahu. Our recommendations on these matters, if implemented, will mitigate the issues raised in these objections.

585. Issues about the potential impacts on employment for Māori, Kāi Tahu commercial assets and settlement matters were also raised in objections. These issues are likely to relate to impacts on commercial fishing activities carried out by Kāi Tahu. The potential impacts on Kāi Tahu commercial fishing activities and corresponding economic interests are discussed and analysed in 6.3. Matters relating to impacts on commercial fishing generally are also discussed below at 6.6.4.1. Our advice there includes a description of the commercial catch that is likely to be displaced by establishing the proposed Network. We note that displacement of this fishing effort is not equivalent to the same level of loss to the industry, as catch may be able to be taken from elsewhere to some degree, albeit potentially at a higher operating cost. The ability of fishers to take their catch elsewhere is very fishery dependent and is described in individual site chapters.

586. Our advice in relation to the suggestion that there will be impacts on "*Ngai Tahu settlement*" (which we assume to be in relation to the Fisheries Settlement Act and the Ngāi Tahu Claims Settlement Act) is discussed in our advice in 6.3.

587. One submitter noted that mātaihai reserves should still be able to be established if the proposed Network is put in place. Mātaihai reserves can be established under the Fisheries (South Island Customary Fishing) Regulations as referred to by the submitter. While it would not be possible to establish a mātaihai reserve in the same place as any marine reserves established as part of the proposed Network, there would be no change to the process for establishing mātaihai reserves in the wider region. It is possible that establishing marine protected areas through this process will make it more difficult to establish new mātaihai reserves because of the cumulative impacts on commercial fishing. The degree to which it would be more difficult is uncertain, as the presence of marine reserves would be just one of many factors taken into consideration. In order to assess the likely effect of the proposed Network on establishing new mātaihai reserves, information about the location, size, and proposed restrictions of any new proposal would need to be known. There are no current applications for mātaihai reserves in the region and so no specific assessment can be made. As set out in 6.3.7.2, Kāi Tahu raised similar concerns about the ability to establish new customary protected areas once any proposals from the Network are established. Agencies considered that it was practical to advance the establishment of the proposed Network of marine protected areas and other customary protected areas on different timeframes, and the Rōpū agreed to not progress the matter further at that point. Tini a Tangaroa did, however, confirm to Kāi Tahu during engagement that public consultation on regulatory changes that will enable more effective management of mātaihai reserves was anticipated for early 2022. This consultation has now concluded and Tini a Tangaroa is preparing advice to support the Minister for Oceans and Fisheries' decision-making under the relevant legislative processes. Te Papa Atawhai further advice in relation to this issue is set out above in 6.3.7.2. This advice concludes that a decision to progress the marine reserves on the basis of the position reached through engagement with Kāi Tahu to date on this issue would fulfil your obligations in relation to the Treaty.

588. One submitter stated that the processes to date, which we interpret to mean the Forum process and subsequent statutory process, have focussed too heavily on biodiversity objectives rather than taking a more holistic view. The proposed Network is based on the Forum's recommendation for 'Network 1'. The Forum's purpose was to develop recommendations for marine protected areas in the Forum region consistent with the MPA Policy and MPA Guidelines. These guiding policy documents require taking the effects on existing users into account alongside biodiversity protection. The Forum's resulting recommendations incorporated a number of changes to the proposed sites based on public and Kāi Tahu feedback received during the Forum's process. Te Papa Atawhai considers the Forum's process adequately balanced biodiversity protection with existing uses and sought to minimise impacts, including economic impacts. In agreeing to initiate a statutory consultation process to progress the proposed Network, the Ministers of Conservation and Fisheries indicated they wished to respect the integrity of the Forum process and considered that the Forum's recommendation for 'Network 1' would best meet the objectives under the MPA Policy. The statutory process under the Marine Reserves Act through which the Application for the six proposed marine reserves is now being considered requires specific consideration of impacts on the range of interests identified in sections 5(6)(a) - (e). We therefore disagree that there has been too much focus on biodiversity objectives.

Submissions in support

589. One submission in support of the proposed Network, was received from an individual identified as affected iwi, hapū or whānau. They stated that, "*our marine environment is under threat from miss management [sic] and if the status quo is kept the fisheries in the unprotected areas will collapse and will have a large negative impact on commercial and recreational fishers as well as cultural traditions of Māori*". This submission highlights the varied perspectives that exist on the benefits and impacts of the proposed Network on customary interests.

6.5.6.2 Objections related to the need or benefit of the proposed Network

590. Six objections to the proposed Network from submitters identified as affected iwi, hapū or whānau questioned the need for or benefit of the proposed Network.

591. Two of these objections were from submitters using one of the fishing club templates. The template states that recreational fishing activity is naturally limited by the weather conditions, the areas are not overfished as they are generally inaccessible, and that banning this activity to meet international obligations is unnecessary.

592. One submitter simply stated, "*leave it as it is*", which we infer to mean that there is no justification for additional protection. Another submitter stated that "*measures need to be in place to ensure sustainable hunting and gathering but not the proposed marine reserves*". Another submitter stated that they believed the main impact to the area is from "*what is allowed to flow down the rivers into the sea*", which Te Papa Atawhai interprets as questioning how the proposed marine reserves would remedy this.

593. The above objections mainly relate to the proposed marine reserves, as recreational fishing would still be allowed in the other proposed marine protected areas.

Te Papa Atawhai advice

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

595. The values and benefits of the proposed marine reserves as part of the proposed Network are described in 6.2. While the weather conditions in the southeast region may limit fishing

activity to some extent, and some submitters contend the area is not overfished, fisheries management only will not achieve the outcomes sought from the proposed Network.

596. We agree with the submitter that establishing the proposed Network would not directly alleviate impacts from terrestrial discharges into the coastal marine environment, but that other management tools (such as under the Resource Management Act) would remain in place to manage these activities.

Submissions in support

597. Four submissions in support of the proposed Network (three in support and one choosing Another option) from individuals identified as affected iwi, hapū or whānau, highlighted the benefit and need of establishing the proposed Network. One stated that “*other places around Aotearoa and worldwide have amply demonstrated the recovery of ecosystems, despite the screaming and yelling of fishing industries. So that’s my first request: get started*”. Others stated that “*the benefits for public interest and science will outweigh the costs*”, and that there would be important benefits for fisheries and tourism.

6.5.6.3 Objections related to the lack of a comprehensive national marine protection plan

598. One objection to the proposed Network from an individual identified as affected iwi, hapū or whānau raised the issue that there is no overarching strategy to implement marine protection nationally and that the southeast coast had been targeted without reason. They stated, “*New Zealand’s commitments are national commitments and there should be a comprehensive national plan to meet those. It is not appropriate to target one coastal region and impose marine protected areas in that area to meet national commitments*”.

Te Papa Atawhai advice

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

600. The Forum and its process were part of a national approach to make progress towards meeting New Zealand’s international commitments, the *New Zealand Biodiversity Strategy 2000*¹²¹ and the MPA Policy objective¹²². The Forum’s process was the third marine protection planning process to be completed under the MPA Policy, following the Sub-Antarctic¹²³ and the West Coast¹²⁴ biogeographic regions. The southeast region was selected as the area for the third planning process as it was one of a few remaining areas with a large extent of coastline with no formal marine protected areas. Therefore, we consider the submitter was misinformed that there is no national approach to marine protected area planning.

6.5.6.4 Objections questioning the integrity of the Forum or consultation process

601. Objections to the proposed Network from those identified as affected iwi, hapū or whānau (three individuals and Waitaha Taiwhenua o Waitaki Trust) raised issues relating to the integrity of the Forum’s process or of the statutory Consultation process.

¹²¹ Now replaced by *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*.

¹²² ‘Protect marine biodiversity by establishing a network of MPAs that is comprehensive and representative of New Zealand’s marine habitats and ecosystems.’

¹²³ Mulcahy K., Peart R. and Bull A., 2012. Safeguarding Our Oceans – Strengthening marine protection in New Zealand. Chapter 18: Sub-Antarctic Marine Protection Planning Forum (pages 309-334).

¹²⁴ Mulcahy K., Peart R. and Bull A., 2012. Safeguarding Our Oceans – Strengthening marine protection in New Zealand. Chapter 17: West Coast Marine Protection Forum (pages 273-308).

602. An individual stated that “*commercial fishing interests were not allowed to be talked about*” during the Forum process.
603. Another individual stated that inadequate resourcing of the Forum led to various issues and the development of the two networks recommended to Ministers. They contend this meant that the development of ‘Network 1’ (which the proposed Network is based on) did not have the input from the commercial fishing industry and that rūnanga (local governing council) representatives were “*prevented from consulting with the various hapu and rūnaka*”¹²⁵. They also stated that officials did not provide the Forum with adequate information on a range of matters, including biodiversity values, economic impacts, or on alternative management options to the marine protected areas. They said that overall the Forum was too focussed on biodiversity protection rather than taking a more holistic view, and that these “*mistakes*” were then taken through by agency officials to subsequent processes. They state that “*there appears to have been no interdepartmental consultation, nor has any regulatory impact analysis been undertaken*”.
604. The submission from Waitaha Taiwhenua o Waitaki Trust stated that the analysis had not accounted adequately for the “*potential for impacts on non-commercial customary fishing rights*”, “*impacts on tangata whenua*”, the recognition of “*Maori practices in the exercise of their customary fisheries and associated food gathering practices*”, or the “*special relationships that tangata whenua have with certain fisheries that relate to an ancestral location*”. They stated they chose ‘Another option’ in preference to establishing the proposed Network because while they “*agree in part to the implementation of marine protection measures [they] consider that insufficient consultation and understanding of [their] connection to certain named sites means that the measures may not reflect [their] cultural values*”.
605. One individual in support of establishing the proposed Network, but who qualified their support, stated, “*the process getting here was and is fundamentally flawed. Under ToW it should be Ngai Tahu and the crown e.g. Department of Conservation and MBI [sic] as equal partners, who then consulted with groups such as marine research, communities and fishing interests. I’m surprised that given the voice for the actual species and ecosystems is legislated with DOC, that Fisheries has been prioritised. I’m also aware that Ngai Tahu can be seen only as a fishing stake holder, and encourage an ongoing effort to support our full participation*”.

Te Papa Atawhai advice

606. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserves would be contrary to the public interest.
607. In response to the submitter’s contention that commercial fishing interests were not able to be adequately discussed during the Forum process, we emphasise that considerable effort was made by Forum members, with support from Agencies, to understand and obtain commercial fisheries information. Te Papa Atawhai strongly disagrees with the contention that commercial fishing interests were “*not allowed to be talked about*”. The discussions around affected users, which included commercial fishing interests, was a fundamental part of the Forum discussions throughout the entire process, consistent with Planning Principle 5 of the MPA Policy and the Forum’s terms of reference.
608. Regarding the statement that inadequate resourcing of the Forum led to some issues, and ultimately the recommendation of two networks by the Forum rather than one, Te Papa Atawhai highlights that this is not correct. The Forum sought and was given multiple

¹²⁵ Kāi Tahu dialect for rūnanga.

extensions of time to work towards reaching consensus on one network proposal, but ultimately decided that this was not achievable and that a pragmatic solution was to put forward two network recommendations. While working on the two separate network proposals, the Forum chair facilitated discussion between the groups so that opportunity to input into both proposals was had by all, including on commercial fishing and other matters.

609. It is difficult to ascertain exactly what the submitter is referring to regarding the claim that rūnanga representatives were prevented from consulting, but we note that the Forum process was suspended for a number of months to allow adequate time for rūnanga representatives to engage with whānau and hapū. A decision was made by the Forum to not publicly share the proposals in this later stage of their development, and that these discussions were 'in committee' until recommendations were provided to Ministers. It is possible that rūnanga felt constrained by this decision of the Forum.
610. Regarding the claim that inadequate information was provided to the Forum by Agencies, it is difficult to assess this statement without further detail. However, our position is that the Forum was provided with the best available information and that both the Agencies and Forum sought information where there were significant gaps.
611. The submitter's subsequent statement that the Forum process was too focussed on biodiversity protection seems to be a misunderstanding of the purpose of the Forum process and the terms of reference they were operating under. In working towards the recommendation to Ministers for marine protected area proposals for the southeast region, the Forum certainly took into account other factors such as impacts on existing users and cultural values. Their resulting recommendations would arguably have been significantly different if the protection of biodiversity was their only consideration.
612. Furthermore, we can confirm that there was significant interdepartmental consultation. Both Te Papa Atawhai and Tini a Tangaroa were closely involved in the Forum process and subsequent to it. The issue raised of the lack of a Regulatory Impact Analysis being undertaken was raised by other submitters, and our advice on this is set out in 6.6.6.6.
613. In relation to the objection from Waitaha Taiwhenua o Waitaki Trust, we note the Forum process sought to allow for adequate analysis and consideration of its recommendations in relation to customary interests, namely through the representation on the Forum of Kāi Tahu members, various face-to-face engagement events and online mechanisms for people to be involved and have their say, as well as a formal public consultation process. Te Papa Atawhai has also continued direct engagement with Kāi Tahu in the five years since the Forum delivered their Recommendations Report to Ministers. As set out in 6.3, Te Papa Atawhai recommends a number of measures for any marine reserves approved in this process, which we consider will alleviate, at least to some extent, the impacts identified by the submitter.
614. The statutory Consultation process on the proposed Network under the Marine Reserves Act and Fisheries Act also enabled the public, including Māori, to raise any issues on these sites. Therefore, Te Papa Atawhai believes that overall, its process, and those of the Forum, have enabled adequate consideration of the potential impacts on customary interests from the establishment of the proposed Network.
615. The Forum process, with input from Te Papa Atawhai, Tini a Tangaroa and others as appropriate, provided a balanced and inclusive approach to planning for marine protected areas in the region. While one submitter stated that "*fisheries has been prioritised*", Te Papa Atawhai considers that the Forum's recommendations, and our subsequent analyses of those recommendations, sought to achieve a balance of adequate biodiversity protection and acceptable impacts on existing users.

6.6 Stage 1 assessment – Network objections from all other submitters

6.6.1 Obligations in relation to the Treaty of Waitangi

616. Section 6.5 sets out the views of submitters identified as affected iwi, hapū or whānau. The following section sets out the objections received from all other submitters and provides our advice on the assessment of these objections in terms of the tests in section 5(6)(a)-(e) of the Marine Reserves Act.

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

618. As set out in 5.2, however, the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act may still be relevant to your consideration of objections received from these submitters. In order to give effect to the principle of informed decision-making, Te Papa Atawhai has identified all objections received from other Māori submitters. Of these, we consider that objections relating to impacts on commercial and non-commercial fishing activities (including the ability to continue the customary harvest of seafood), the establishment of future customary protected areas, and the transfer of mātauraka Māori, should be considered in terms of the principles of active protection and partnership. As with objections received from affected iwi, hapū and whānau (see 6.5.1), our consideration of these objections in relation to section 4 obligations is made in the context of our direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement. As set out in 6.3.10, our assessment prior to considering any objections received, is that to declare each of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown’s obligations in relation to the Treaty of Waitangi. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. We are therefore considering whether there is anything additional that has been raised in the objections received from other Māori submitters that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserves should not be declared) or that additional mitigation measures are required.

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

6.6.2 Section 5(6)(a) estate or interest in land

620. No objections to the proposed Network, that raised issues relating to any estate or interest in land in or adjoining the six proposed marine reserves, were received.

Te Papa Atawhai further advice

621. In November 2022, BW Digital approached Te Papa Atawhai regarding their plan to install a submarine fibre-optic cable in the nearshore area of the southeast South Island, linking

Christchurch, Dunedin, and Invercargill, via Foveaux Strait to south-east Australia.¹²⁶ The work is in the planning stage and any resource consent application is a long way off. We have informed BW Digital of the locations of the proposed southeast marine reserves and our preference that any cables be laid outside these sites. We understand BW Digital are adjusting the proposed cable route based on our feedback and that of other interested parties. For these reasons, we do not consider you need to take BW Digital's proposed submarine cable into account in your decision-making.

6.6.3 Section 5(6)(b) navigation

6.6.3.1 Objections related to vessel access and safety

622. A number of objections to the proposed Network (from four individual submitters, those using fishing club templates, the Green Island Fishing Club¹²⁷ and the combined industry submission from the New Zealand Rock Lobster Industry Council¹²⁸, Paua Industry Council¹²⁹ and Fisheries Inshore New Zealand¹³⁰) raised issues relating to existing rights of navigation.

623. Concern was raised that the launching and retrieval of boats and the ability of boats to seek shelter would be affected by the establishment of the proposed Network, mainly with reference to the proposed marine reserves. One individual submitter and the Green Island Fishing Club noted that *"there are already limited places to launch bigger boats"*, and that if the proposed Network was implemented as proposed the owners of these vessels would have to travel a long distance to another suitable launching place. One submitter said that the proposed Network would create a *"dangerous and impractical"* situation, as currently boats can shelter wherever they need to during storms and rough seas.

624. The combined industry submission stated that for each marine reserve, they wanted the condition *"to allow driving on the foreshore by the most direct formed route to launch or retrieve a vessel"* and to *"allow the anchoring of vessels"*, in order to provide for public access and to *"support the safety of vessel users"*.

Te Papa Atawhai advice

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

626. The transit, shelter and anchoring of boats within a marine reserve is not prohibited. For anchoring, there is a requirement under the Marine Reserves Regulations¹³¹ to keep damage to the minimum practicable level. The transit, shelter and anchoring of boats would be unaffected by the establishment of the Type 2 marine protected areas.

627. Driving on the foreshore and, therefore, launching and retrieving boats using a vehicle, are generally prohibited activities in marine reserves¹³². However, the Application proposed (on page 74) to allow 'driving on the foreshore by the most direct formed route to launch or

¹²⁶ <https://www.bw-digital.com/projects/hawaiki-nui/>.

¹²⁷ Local community recreational fishing club based in Otago.

¹²⁸ 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.

¹²⁹ The national agency for five commercial stakeholder groups that represent commercial pāua fishery interests.

¹³⁰ A commercial fisheries stakeholder organisation.

¹³¹ Regulation 5 - <http://www.legislation.govt.nz/regulation/public/1993/0230/latest/DLM179649.html>.

¹³² Marine Reserves Regulations 1993, sections 18I(3)(a) and (d), section 21(e) and (f).

retrieve a vessel'. An Order in Council condition could provide for this activity to continue as for some other marine reserves in New Zealand. The appropriateness of these activities is assessed separately for the individual proposed marine reserve based on the objections received and the level of disturbance that may affect the values of each proposed marine reserve (see chapters 7-12). The status quo regarding driving on the foreshore would be unaffected by the establishment of the proposed Type 2 proposed marine protected areas or kelp protection area.

6.6.4 Section 5(6)(c) commercial fishing

6.6.4.1 Objections related to general impacts on commercial fisheries

628. An individual objector to the proposed Network stated, "*we are being constantly bombarded with new expectations and costs and if the proposals go ahead as planned it will be likely that New Zealand or at the very least the South East portion of it will lose its fishing industry completely*".

629. The combined objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand said the cumulative impacts on commercial fisheries of the proposed marine reserves and the proposed Network overall had not been well assessed. They said this was due particularly to other existing commercial fishing restrictions, including mātaītai reserves, shellfish harvesting closures, voluntary and regulatory pāua harvesting closures, and various areas closed to different fishing methods.

630. An objection to the proposed Network from a commercial fisher said that establishment of the proposed Network would result in a reduction in their income and value of their quota and stated that it is "*state appropriation of personal property rights without compensation*". Fiordland Lobster Company¹³³ raised a similar objection, stating that establishing the proposed marine reserves "*is an expropriation of the property right in quota shares*" and suggesting that compensation occur for those affected by this.

Te Papa Atawhai advice

631. We present an assessment of the impacts on commercial fishing based on objections to each marine reserve in the individual site chapters (see chapters 7-12).

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

633. In terms of the combined effect on commercial fishing of all proposed marine protected areas, as raised in objections here, we note the submitters have not provided any further detail to support their statements. Te Papa Atawhai considers that the Forum's recommendations, and the Agencies' subsequent analysis of those proposals, were based on the best available information, including input and information from the commercial fishing industry. Updated fisheries data using electronic reporting is now considered to be the best available fisheries data and, along with information from submissions, can be incorporated into an assessment of the potential effects of the proposed Network on commercial fishing.

634. Updated fisheries information¹³⁴ provides an indication of the level of catch that may be affected by establishing all 12 proposed sites in the proposed Network (see also Appendix 8):

¹³³ A rock lobster receiving and export company based in Fiordland.

¹³⁴ Data are from the period October 2019 to September 2022 (three fishing years) for all species except kōura, which is from April 2020 to March 2023 (three fishing years). Data do not include the matamoe/eel fishery, as they are not required to report catch at a spatial scale suitable for analysis, and therefore catch cannot be estimated from the proposed marine reserves. The eel fishery is discussed in section 8.6.4.4.

- As an annual average, the estimated displacement of catch across all species is 247,960 kg/yr, with an estimated port price value of \$1,993,772/yr. Of particular note is the kōura fishery that has the majority of its catch exported and contributes the most to the overall value of catch. While kōura only accounts for an estimated 6.1% of affected landings, it accounts for 65.4% of the port price value. Using the export price for kōura (\$113.54/kg)¹³⁵ rather than port price equates to approximately \$1,706,430 of export value affected by the proposed Network (\$1,025,495 port price).
- In regard to the landings of fish stocks within their quota management areas, the average catch affected by the proposed Network would be less than 5% for most quota species. The exceptions to this are for kōura (13.8%), mako/rig (8.4%), mako/school shark (6.4%), kina (5.7%), repe/elephant fish (5.3%), and rāwaru/blue cod (5.1%).
- Across three fishing years (for all species), eight fishers would have more than 10% of their combined catch affected, as shown in Table 6-1. For the trawl fishers, the majority of catch would be affected by the proposed Tuhawaiki Type 2 marine protected area. Set netters would mostly be affected by the proposed Papanui marine reserve and the Kaimata Type 2 marine protected area. Fishers using pots would be most affected by the proposed Te Umu Koau and Papanui marine reserves. Kina is taken mainly from the proposed Te Umu Koau marine reserve (the remaining from the proposed Okaihae marine reserve).

Table 6-1: *Proportion of individual fishers' catch estimated to be affected (where greater than 10%) by the proposed Network*

Fisher	Proportion of catch affected (%)	Fishing method
9(2)(b)(ii)		Bottom trawl
		Bottom trawl
		Bottom trawl
		Potting and set net
		Potting (mixed)
		Potting and set net
	(2020/21 and 2021/22 only)	Dive (kina)
		Mostly set net (plus ling potting)

635. In terms of just the six proposed marine reserves, the fisheries information available demonstrates the level of potentially affected catch as follows (see also Appendix 8):

- The annual average across the three fishing years for catch displaced is estimated as 128,941 kg, with an estimated port price value of \$1,686,846.
- In regard to the landings of fish stocks within their quota management areas, the annual average catch affected by the proposed marine reserves would be less than 5% for all quota species except for kōura (13.8%), rāwaru/blue cod (5.0%), mako/rig (5.1%), and kina (5.7%)
- Four of the fishers (507, 560, 595 and 600) shown in Table 6-1 would still have 10% or greater of their catch displaced by the proposed marine reserves. The trawler fishers are most affected by the proposed Type 2 marine protected areas and therefore the

¹³⁵ Export value for the period April 2020 - March 2021, provided by Tini a Tangaroa in May 2022.

affected catch, when only looking at the proposed marine reserves, are all less than 9(2)(b)(ii). All kina fishery effects are attributed to the proposed marine reserves, and therefore remains at 9(2)(b)(ii) 9(2)(b)(ii) 9(2)(b)(ii) fishers 600 and 560, catch from just the proposed marine reserves would drop to 9(2)(b)(ii) respectively.

636. We recognise that displaced catch is one metric for indicating the potential impact on commercial fishing, and that there are likely to also be impacts to the post-harvest sectors of the industry. This is particularly so for kōura and pāua fisheries that have a majority of catch exported and are of high export value that is not fully reflected in the port price. As such, Licensed Fish Receivers and exporters may have additional impact above what is indicated by port price.
637. The displacement of the commercial catch described in these figures would not be equivalent to the same level of loss to the industry or to individuals, as a proportion of the catch is likely to be able to be taken from elsewhere, albeit potentially at a higher operating cost. We are unable to reconcile this information with the submitter's statement about the potential for New Zealand or the southeast region to "lose its fishing industry completely".
638. Te Papa Atawhai notes that under the statutory requirements of the Marine Reserves Act, a marine reserve application must be considered as an individual proposal and be assessed as such. However, this does not preclude an assessment of the cumulative effects of multiple proposals on existing users, or the effects of any new proposals in combination with any existing management measures, in this case existing fisheries restrictions. We consider the assessment in the Application and the analysis above does generally take into consideration existing fisheries restrictions as the data presented demonstrates current levels of catch, i.e. that taken within the existing fisheries restrictions, that are likely to be affected by the new proposals.
639. However, fisheries restrictions introduced in 2020 as a result of the Threat Management Plan for Hector's and Māui Dolphins are a consideration in assessing the wider cumulative impacts on the commercial fishing industry of the proposed Network. This is particularly relevant for the set net fishery where the threat management plan restrictions and the proposed Papanui marine reserve and proposed Moko-tere-a-torehu and Kaimata Type 2 marine protected areas occur within the same quota management area for several species.
640. In relation to the objection about quota property rights, we note that while fishing quota has been considered a form of property interest by the Courts, it does not provide a fisher with an absolute right of entitlement to take fish or to occupy space within a quota management area. The rights are subject to the provisions of the legislation that established them and other environmental regulation. The Crown's longstanding position is that the loss of fishing rights as a result of Crown action taken for sustainability, biodiversity or conservation purposes will not be compensated.

Submissions in support

641. A submitter in support of the proposed Network described an alternate view of marine reserves. "These are often seen as 'locking up the coast' or 'excluding people from the resource' when in fact they are designed to increase fecundity and reproduction of important stocks as well as preserve biogenic habitats that are key to the productivity and biodiversity of the coast".

6.6.4.2 Objections related to the displacement of fishing effort

642. Twenty-six objections to the proposed Network raised an issue about the impacts of displacement of fishing pressure from the proposed marine protected areas, including the six proposed marine reserves. The objections included those from the following organisations: Otago Rock Lobster Industry Association (the Association)¹³⁶, Tautuku Fishing Club Dunedin and Haast Incorporated¹³⁷, Te Ohu Kaimoana, and the combined industry submission from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand.
643. The objections raised concerns that areas outside the proposed marine protected areas, which remained open to fishing, would sustain more environmental damage and negate the benefits of the proposed Network. An example of statements made about this issue is as follows, “[the proposed Network] will have the “appearance” of helping ensure fisheries and habitat security, but will in effect accelerate degradation by concentrating a lot of fishing effort on what are small remaining areas of suitable habitat for those species. [It] is especially environmentally reckless unless there is a subsequent and appropriate concurrent reduction in TACC’s [total allowable commercial catch¹³⁸] and recreational/customary allowances for the fish stocks that will be caught from the remaining fishing areas”.
644. Te Ohu Kaimoana stated that displaced fishing effort can “increase the risk of local depletion”, “negatively effect the abundance of surrounding fish stocks”, “slow down stock rebuild rates”, “preclude future TAC [total allowable catch¹³⁹] increases”, and “increase risk of spatial conflict between fisheries sectors”.
645. The combined industry submission cited Hilborn *et al.* (2004)¹⁴⁰ and Ovando (2018)¹⁴¹ and stated, “research shows that the negative impacts of displaced fishing effort are more severe in countries like New Zealand where fisheries are regulated by a Total Allowable Catch (TAC). Unless the TAC is reduced when a marine reserve is established, the same amount of catch will continue to be taken, effectively guaranteeing that fishing will become more intense outside the reserve”.
646. The Association also raised this issue, stating that displacement effects will have “implications for a potential reduction in the CPUE [catch per unit effort¹⁴²] which is then likely to result in a decreased TACC for years to come”, and that due to the complexity of the CRA7 fishery it was difficult to estimate how long this reduction would continue. The Association also stated that overall, 25% of their fishery would be displaced by the proposed Network. Most individual objectors from the commercial fishing sector also raised the issue of the impacts on the catch per unit effort and related total allowable commercial catch.

¹³⁶ A fully constituted and incorporated society which is recognised as the commercial stakeholder organisation representing the interests of the commercial kōura/rock lobster industry on the Otago Coast, the CRAMAC7 (CRA7) fishery.

¹³⁷ A club based in Dunedin and Haast that was formed in 1970 for bringing the community together to fish recreationally, is affiliated with the New Zealand Sport Fishing Council, and has 75 members.

¹³⁸ The total quantity of each fish stock that the commercial fishing industry can catch in a given year. Tini a Tangaroa/Fisheries New Zealand.

¹³⁹ Total quantity of each fish stock that can be taken by commercial, customary Māori interests, recreational fishery interests and other sources of fishing-related mortality, to ensure sustainability of that fishery in a given period, usually a year. Tini a Tangaroa/Fisheries New Zealand.

¹⁴⁰ Hilborn, R., et al., 2004. When can marine reserves improve fisheries management? *Ocean and Coastal Management* 47: 197-205.

¹⁴¹ Ovando, D., 2018. *Of Fish and Men: Using Human Behavior to Improve Marine Resource Management*. PhD dissertation, University of California Santa Barbara.

¹⁴² A stock abundance index derived from dividing the total catch of a species by the total amount of effort used to harvest that catch.

647. The Fiordland Lobster Company stated that they estimated the proposed Network would cause a ^{9(2)(b)}_(ii) decrease in the value of CRA7 quota and “a decrease in sales income of between ^{9(2)(b)}_(ii)”. They highlight the importance of the area within the proposed Te Umu Koau marine reserve to the fishery and therefore its quota value and profitability.

648. The Association said the “lost export revenue” presented in the Consultation Document (\$2m annually for the kōura fishery) was an under-estimate. They provided figures from a review they commissioned, which concluded there was likely to be an annual revenue reduction for the kōura fishery of \$3m, based on a projection over the next 25 years. The Association pointed out that the economic impacts would be harder on some fishers than others and were “likely to result in loss of employment and other permanent effects”. They provided an example of a fisherman for whom the displacement due to the proposed Network “may represent more than 60% of present income” based on the 25-year model.

649. PauaMac 5 Incorporated¹⁴³ stated that “a significant portion of PAU 5D is already closed to commercial fishing” through a number of customary, regulatory and voluntary closures. They noted that the effect of displacing catch from the proposed marine reserves would be exacerbated given the catch that has already been displaced by the existing closures. They also stated that while the sites proposed as marine reserves are “not the most productive areas of PAU 5D, [they] are nonetheless important contributing areas that help spread commercial catch across the entire fishery” and are an “integral part of the pattern of harvesting”.

Te Papa Atawhai advice

650. Objections above that relate to impacts to commercial kōura fishing in the proposed Te Umu Koau marine reserve are discussed further in 8.6.4.2. For the remainder of the objections and for the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised do not support a conclusion that declaring the proposed marine reserves would interfere unduly with commercial fishing.

651. The Forum sought to avoid the most significant cultural, commercial and recreational fishing areas when it formulated its recommendations for the sites that make up the proposed Network. For the most part, Te Papa Atawhai considers the Forum achieved this goal, with several sites of interest not recommended for these reasons. Updated and better quality fisheries data that the Forum did not have available to it at that time, also lends support to this in the context of the current proposals, with a few exceptions.

652. For some fisheries, in particular those that are effectively constrained to reef areas (e.g. kōura and pāua), the potential for displacement effects outside the proposed marine reserves is greater than for more widely dispersed fisheries (e.g. trawl fisheries), at least in the short term. The site with the greatest potential for localised effects is the proposed Te Umu Koau marine reserve, particularly in relation to the commercial kōura fishery. The specific issues in relation to that site and our associated advice are set out in 8.6.4.2. In summary, however, Te Papa Atawhai considers the level of interference with commercial kōura fishing at this site is likely to be undue and that the interference would be significantly reduced by amending the boundary to exclude a key kōura fishing area from the proposal (the reefs in the northeastern part of the site, including the area known as ‘The Church’).

653. We find it difficult generally to reconcile claims that displacement of fishing effort from the proposed marine protected areas would cause undue adverse effects on a “few remaining

¹⁴³ The regional commercial stakeholder group for Fiordland (PAU 5A), Stewart Island (PAU 5B) and Southland/Otago (PAU 5D). Members include owners of pāua quota and Annual Catch Entitlement, as well as fishing vessel operators, processors, fish dealers and harvesters.

areas”, particularly as all proposed areas in the Network cover less than 15% of the Forum region, with only 4.5% in marine reserves. We acknowledge that not all the area that would remain contains fishable habitat. However, even for the kōura fishery, which is effectively constrained to reef habitat, approximately 86.2% of catch is estimated to come from areas outside the proposed marine reserves¹⁴⁴ (noting that kōura fishing would be unaffected by the other proposed marine protected areas in the Network).

654. Tini a Tangaroa regularly monitors the catch of commercially harvested species and uses this information to set total allowable commercial catch limits, which are reviewed as needed. For example, this is done annually for kōura. Any effect on fish stocks by displacement of fishing will therefore ultimately be managed under the quota management system. There is also potential for long-term benefits of the proposed marine protected areas (as set out in 6.2) in the medium to long-term. As set out in 6.6.5.3, we consider it unlikely that displacement of recreational fishing will cause adverse effects due to the small area fishing would be displaced from relative to the surrounding areas and that the proposed marine reserves contain just a few of the areas currently used by boat-based recreational fishers.
655. As stated above, the majority of the region would remain under existing recreational and commercial fishing management arrangements. Therefore, we consider that in general it is unlikely that displacement of fishing would create negative ecological impacts on the marine environment in the medium to long term. We are not aware of any report or evidence of such negative ecological impacts around any of the existing marine reserves in New Zealand.
656. In conclusion, displacement of fishing effort may have short-term negative effects on the abundance of fished species outside the proposed marine protected areas (assuming a reduction of suitable fishable area), but this may be alleviated by a recovery of these species after protection is established. If there are stock sustainability concerns, these would be accounted for within the fisheries management framework, potentially resulting in an altered total allowable catch if needed.
657. The potential for a reduction in the total allowable commercial catch following the establishment of marine protected areas is acknowledged as possible, particularly for some quota species such as kōura. The extent of this change, however, is unable to be predicted with current data. Some species, including kōura, are highly mobile and would be available to catch if they left the proposed marine reserves, albeit potentially at a reduced catch per unit effort. This is discussed further in subsequent site chapters (chapters 7–12).
658. Based on current fisheries data, the commercial kōura fishery would be most affected by establishing the proposed Network, in terms of value. The economic assessment included with the Association’s submission referred to scientific analysis forecasting it would be sustainable for the total allowable commercial catch for kōura to remain unchanged even if the proposed Network is established. They state this is due to the fishery being strong and highlight that without the proposed Network a 25% increase may be sustainable. We acknowledge the catch per unit effort may change (as proposed in the economic assessment), however consider there is uncertainty as to the extent that this will occur, and whether this will reflect long term rather than short term changes as a result of the proposed Network. Likewise, it is uncertain whether there will be a change to the total allowable catch as a result of the proposed Network. As noted above, the proposed Te Umu Koau marine

¹⁴⁴ Based on the marine reserves as proposed in the Application, noting that the recommendation to amend the boundary of the proposed Te Umu Koau marine reserve would increase the amount of catch estimated to come from areas outside the proposed marine reserves from 86% to 94%.

reserve is estimated to affect the greatest amount of kōura catch across the proposed Network, with the other sites contributing to a minor degree or not at all. The issues specific to this site are discussed in 8.6.4.2.

659. Over time, marine protected areas may demonstrate fisheries benefits or increased resilience to large-scale environmental changes that improve or maintain fish stocks (as set out in 6.2). This could result in total allowable commercial catch decisions that are favourable to the commercial fishing industry. Marine reserves also have value as control sites to advance scientific knowledge of the effects of fishing on the marine environment.
660. The Association raised an argument regarding a discrepancy relating to the estimated impact on the kōura fishery between the values provided in the Consultation Document (approximately \$2m/annum). The estimate received in an independent economic analysis commissioned by this objector was approximately \$3m/annum.
661. We consider it to be overly simplistic to compare these figures against each other. The economic analysis commissioned by the Association based their estimate of “foregone export revenue” (approximately \$3m/annum) on a forward-looking 25-year model in which they assumed a total allowable commercial catch increase of 25% at the start of that period. This anticipated increase was based on analysis showing that without the establishment of the proposed marine protected areas, the fishery was in a state that could sustain this level of catch increase. Conversely, the \$2m/annum figure stated in the Consultation Document represented the export value of the estimated displaced catch based on historical data from 2007/2008 to 2016/2017.
662. The other source of discrepancy between the figures, as the authors of the economic analysis included in the Association’s submission point out, is that their analysis was based on a higher export price than was used in the Consultation Document (\$113/kg based on 2019 data compared to \$103/kg based on 2017 data). We maintain that the figure used in the Consultation Document was an adequate estimate for the purposes of illustrating the potential displacement effect on this fishery based on the information available at the time.
663. Updated and more spatially accurate data estimates that the actual kōura catch may have been overestimated and the catch from the proposed marine reserves over the last three years, using electronic reporting data, show a range of 12.5% (2020/21) to 14.8% (2021/22), rather than the 23.3% presented in the Consultation Document. Using the updated export price of \$113.54/kg, the value of affected catch using the best available information is estimated to be approximately \$1,706,453 annually (three-year average).
664. The Association describes the impact on the kōura fishery as “significant” and says it is likely to be felt unevenly across fishers. From the information provided, we agree that the effect of displaced catch is likely to be greater on some fishers than others but note that displaced catch is not equivalent to the same level of loss of that catch, or of potential earnings. We agree that the level of interference on commercial kōura fishers would be high due to the spatial nature of the fishery. However, the actual realised cost of the proposed marine reserves is difficult to predict and will be less than that indicated by the level of affected catch due to the ability for at least some of that catch to be caught elsewhere, including at the boundary of the proposed marine reserves. In contrast, we note the potential future benefits that are expected from establishing the proposed marine reserves (as set out in 6.2). The Association and Fiordland Lobster Company emphasised the importance of the proposed Te Umu Koau marine reserve to the impacts they described. Further advice relating to this proposed site, both the potential costs and the values and benefits of establishing a marine reserve there, and our recommendation to amend the boundary to reduce the level of interference, is set out in chapter 8.

665. Information received from fishers as part of the Association's submission stated that at times 70–80% (and up to 95%) of their catch is returned to the sea so higher value kōura can be landed. This indicates that, at least in part, the displacement of catch can be mitigated by retaining a greater proportion of the catch. While this may mitigate the effects on catch per unit effort and overall catch, it is still likely to have economic implications as the value derived, particularly from export, is likely to be reduced to some degree for those fish (i.e. a lower financial return may be achieved due to variation in the value per kilogramme of different sized kōura).

666. PauaMac 5 Incorporated stated that an observed decline in catch per unit effort in their fishery is attributable to the displacement of fishing effort caused by existing closures. They anticipate the proposed marine reserves would have the same effect. We consider that there are likely to be more factors contributing to variability in catch per unit effort than just displacement from closures, and that it is not possible to say with any certainty that establishing the proposed marine reserves would lead to further reductions in catch per unit effort. Updated fisheries data estimates that the total pāua catch displaced by the six proposed marine reserves from the 2019/20 fishing year was 9(2)(b)(ii) of the quota management area landings for that year. All of this was caught in the proposed Te Umu Koau marine reserve. There were no reported catches from any of the proposed reserves over the two subsequent fishing years. While we acknowledge the industry body's point about the current pattern of fishing being well spread across the available areas, we do not consider there is evidence to demonstrate that displacement of 9(2)(b)(ii) of the catch, averaged across three fishing years, would constitute undue interference with this fishery when balanced against the expected benefits of the proposed marine reserves.

Submissions in support

667. Two submissions, including one from WWF-New Zealand¹⁴⁵, qualified their support by saying that any potential ecological impacts due to fishing effort displacement should be monitored and remedied as required.

6.6.4.3 Objections related to safety for potting and fishing

668. One commercial fisher and the Otago Rock Lobster Industry Association raised an objection that establishing the proposed marine reserves would lead to a concentration of commercial pots in the remaining areas where fishing was permitted. They said this would create safety issues as the pot lines would become entangled more readily and that there would be a collision risk for vessels working in close proximity. An objection from Fish Mainland¹⁴⁶ also raised concerns around "safety and exacerbated conflicts" of commercial fishers due to reduced areas to fish.

Te Papa Atawhai advice

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

670. We agree that a higher density of pots in a location has the potential to increase the risk of pot line entanglement and collisions between vessels. The submissions, however, did not provide any detail about the likelihood or extent to which this may occur. We presume that fishers currently manage this issue in areas where more than one vessel is operating, and that the same approach would be applied to any new areas if the issue arose. Safe vessel

¹⁴⁵ A branch of an independent conservation organisation dedicated to protecting nature and looking after the planet.

¹⁴⁶ A not-for-profit organisation that aims to provide a voice for the marine recreational fishing community in the South Island and Stewart Island.

management processes should be of utmost importance to vessel skippers and while operational changes may be required, it is the skipper's responsibility to ensure vessel safety.

6.6.4.4 Objections related to the proposed take of beach stones

671. PauaMac 5 Incorporated and the combined industry submission from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand objected to the proposed Network and commented that if the marine reserves were implemented, they "*oppose the proposed condition [included in the Application] to allow non-commercial gathering of beach stones from the foreshore as this may interfere with juvenile pāua habitat*".

672. This objection relates to the proposed marine reserves only, since removing beach stones in the proposed Type 2 marine protected areas or the kelp protection area would be unaffected by their establishment.

Te Papa Atawhai advice

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

674. Gathering and removing beach stones from a marine reserve would be prohibited unless provided for in the Order in Council. The Application (page 74), however, proposes that the non-commercial gathering of beach stones from the foreshore be allowed. Such gathering can currently occur, subject to local bylaws.

675. Our advice on providing for this activity is presented in the individual site chapters (chapters 7–12). In summary, Te Papa Atawhai is comfortable that the potential impact of removing beach stones from any of the proposed marine reserves, with restrictions on the volume that can be taken and methods that can be used, would be immaterial in terms of achieving the purpose of the proposed marine reserves. Given the proposed restrictions on this activity, and that it would allow for collection only on the foreshore and not in the subtidal part of the proposed marine reserves, we do not expect any effect on juvenile pāua habitat.

6.6.5 Section 5(6)(d) recreational usage

6.6.5.1 Objections related to impacts on recreational fishing

676. Several submitters (including five Māori submitters not identified as affected iwi, hapū or whānau) raised objections about impacts on their recreational fishing experience. The fishing club templates used by used by 218 submitters to object to the proposed Network also raised similar points in their objections. Submitters were concerned that the proposed marine reserves would prevent them from:

- continuing to recreationally fish and dive in favoured spots, including those that are close to them or to vessel launching spots
- taking their children and other family and friends fishing with them
- being able to harvest seafood at all, or in a low-cost way

677. One objection related to impacts on the sport and community culture associated with recreational fishing, while another objected on the basis of the anticipated impacts on tourism associated with recreational fishing.

Te Papa Atawhai advice

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

679. The above objections mostly relate to the desire of submitters to continue to be able to recreationally harvest seafood. As set out in 6.5.5.1, the six proposed marine reserves would cover a small proportion of the Forum region and most of the areas identified as boat-based recreational fishing areas by the Forum would remain available for this activity. We acknowledge, that some fishers, both shore-based and boat-based, would need to move from their usual fishing locations, but consider that people would still be able to seek enjoyment and provide for themselves through recreational fishing, and that the fishing culture mentioned should not be affected significantly. While we agree that there may be some increases in travel costs for fishers who are currently located very close to one of the proposed marine reserves, we consider this is unlikely to be significant. Likewise, given that areas would remain available for recreational fishing, we do not consider any impact on recreational fishing related tourism is likely to be significant. The proposed marine reserves may also attract alternate forms of tourism.

6.6.5.2 Objections related to increased safety risks to recreational fishers

680. A number of objections (including two Māori submitters not identified as affected iwi, hapū or whānau) raised concern with what they saw as increased risks to the safety of recreational fishers. One individual objection stated, "*safety is probably the biggest concern for recreational fishermen around Dunedin and as a member of the Marine search and rescue team I know that forcing people further from shore will lead to dangerous situations and the increased chance of loss of [life] in a marine tragedy. Our weather currently protects the marine environment as the days I am able to go fishing are limited by suitable tides and conditions*".

681. DiveNation¹⁴⁷ chose 'Another option' rather than implementation of the proposed Network. The submission said that most diving spots for pāua and spearfishing in the greater Dunedin area would be included in marine reserves and that divers would therefore have to venture to more remote areas where their lives would be more at risk. They also noted that this would place extra cost on emergency services.

682. The objection from the Tautuku Fishing Club Dunedin and Haast Incorporated stated similar concerns for the safety of recreational fishers, who would have to go further offshore and have fewer protected fishing spots to use. The same concerns around safety were included in the fishing club templates used by 218 submitters to object to the proposed Network, with 124 of these submitters adding personalised comments to the templates that emphasised their specific concerns related to this issue.

683. These objections only relate to the six proposed marine reserves, as recreational fishers' activities would be unaffected in the areas proposed as Type 2 marine protected areas and the kelp protection area.

Te Papa Atawhai advice

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

¹⁴⁷ An Otago-based spearfishing club.

685. The establishment of marine reserves would displace the recreational fishing activity that occurs in those areas. Submitters noted that some sites outside the proposed marine reserves may be less safe or not be as sheltered as those within the proposed sites. While there may be some interference with recreational fishing, there would still be safe locations to fish recreationally outside the proposed marine reserves.

686. The Forum sought to minimise the impacts on existing recreational fishing activities when recommending sites for protection. As set out in 6.5.5.1, the six proposed marine reserves would cover a small proportion of the Forum region and most of the areas identified as boat-based recreational fishing areas by the Forum would remain available for this activity. The issue of safety in respect of the individual proposed marine reserves is further assessed in the site chapters (chapters 7–12).

687. Te Papa Atawhai acknowledges that establishing the proposed marine reserves may mean there are some days when fishers who otherwise could have gone fishing will not be able to, or that they would need to travel further to be able to undertake this activity. Safety is a matter of personal responsibility for shore-based and dive-based fishers and is the overall responsibility of any vessel's skipper. If conditions are too uncertain to operate, then the onus remains with the skipper to ensure the safety of themselves and others.

688. We consider the likely benefits from the proposed marine reserves, including potential benefits for recreational fishers, will outweigh the social cost of these changes. We note that the recovery of exploited species within a marine reserve for example, 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.

6.6.5.3 Objections related to the displacement of recreational fishing

689. One individual objector stated that the proposed Network would cause detrimental congestion and concentration of effort in a few areas that were still available to recreational fishing. They said Moeraki in particular, "*will be one of the very limited spaces where the coast is suitable and legal to dive for seafood*".

690. Another individual objector chose 'Another option' in their submission on the proposed Network, saying that marine reserves "*would be better placed where shore access is difficult and where it is already difficult for small boats to access*". This was presumably to minimise interference with recreational fishing.

691. A third individual objection to the proposed Network raised the issue that across all proposed marine reserves, "*three of the four major paua spots [would be] closed*" and therefore the remaining areas would be significantly impacted. The submission, however, did not include the names of the four sites.

692. Two other objections (from Māori submitters not identified as affected iwi, hapū or whānau) raised similar issues that remaining areas (such as Kaka Point) would be placed under "*extreme pressure*" and therefore become depleted or overfished.

693. These objections only relate to the six proposed marine reserves, as recreational fishers' activities would be unaffected in the areas proposed as Type 2 marine protected areas or the kelp protection area.

Te Papa Atawhai advice

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

695. Te Papa Atawhai accepts that the displacement of recreational fishing from the six proposed marine reserves would be likely to increase pressure on adjacent areas. This may affect local fish abundances in the short term, but its effect on recreational fishing activity is uncertain because information on recreational fishing effort is limited.

696. As mentioned above, the Forum's Recommendations Report (page 80) identified areas that are currently used for boat-based recreational fishing. Of these, only 4 areas fall within the proposed marine reserves with 22 remaining outside the proposed marine reserves. Some of the 22 sites are described as long stretches of coastline. We do not therefore consider that there is a high risk of the remaining areas, or specific locations, suffering adversely from concentration of displaced fishing effort to the point that interference is undue, having regard to the value, benefits and overall public advantages that will flow from the marine reserves.

697. The objection that the proposed marine reserves should be placed where shore access is more difficult is the perspective of one sector of the community. An opposing view is held by other sectors of the community. During the Forum process, one of the main criticisms of the proposed Network by the environmental sector was a lack of public access to the marine reserves. Of all the proposed marine reserves, only Ōrau is very accessible to the public (and generally just the western half of the site). Section 3(2)(d) of the Marine Reserves Act confirms that the marine reserves shall be administered and maintained so that the public (subject to any necessary restrictions) 'may enjoy in full measure the opportunity to study, observe and record marine life in its natural habitat'.

698. Where practicable, the Forum placed the proposed marine reserves so as to minimise impacts on existing users while still protecting habitats. We note the submission in support from Stewart Island Adventures Snorkelling¹⁴⁸ that highlights the success of an established marine reserve for enhanced recreational activities, "*protection will only add to the ecosystem and the recreational resource. The Te Wharawhara/Ulva Island marine reserves are a perfect example of how protection can lead to a healthy and sustainable recreational area*".

699. The submitter describing three "*major paua spots*" within the proposed marine reserves did not provide any additional detail, so it was difficult to assess their statement further. Of the proposed marine reserves, only the proposed Ōrau and Okaihae marine reserves are known to be significant recreational pāua fishing areas (according to the Forum's Recommendations Report, page 80). While the proposed Ōrau marine reserve covers part of an area that is already closed to commercial pāua fishing, it would only include about half of the commercial exclusion area. This would leave areas for recreational pāua fishing in the remainder of the commercial exclusion area outside the proposed marine reserve. These areas would also provide alternative recreational fishing locations to the proposed Okaihae marine reserve.

6.6.6 Section 5(6)(e) public interest

6.6.6.1 Objections related to impacts on customary interests

700. One objection from a Māori submitter who was not identified as affected iwi, hapū or whānau, stated, "*the reserve system breaches our treaty rights by removing access to these taonga altogether in some cases*" and that a "*loss of ability to teach our tamariki about mahinga tangaroa, mahinga kai*" would occur. Another objection received from a Māori submitter who was not identified as affected iwi, hapū or whānau, stated, "*its our customary right*", which we assume to relate to the harvest of kaimoana.

¹⁴⁸ A company offering snorkel tour activities in Stewart Island.

701. The objection from Te Ohu Kaimoana, who are not identified as affected iwi, hapū or whanau, raised concern that the Crown is not taking into account its section 4 Conservation Act obligations (regarding giving effect to the principles of the Treaty of Waitangi) when progressing towards its international obligations under the Convention on Biological Diversity. Te Ohu Kaimoana stated that the “*consultation document fails to prioritise the Crown’s obligation under Te Tiriti o Waitangi*”, and that under this legal framework the Crown must protect the rights for Māori to “*own and use natural resources*” into the future, citing the United Nations Declaration on the Rights of Indigenous Peoples. They also stated that there were likely to be impediments to establishing future mātaihai reserves due to the establishment of the proposed marine protected areas, as the Minister for Oceans and Fisheries would be less likely to be satisfied that commercial quota was still able to be caught due to more areas being under “*closures*”.

702. The Fiordland Lobster Company objected by stating that the “*current consultation under the Marine Reserves Act is flawed*” because it threatens the “*durability of Treaty settlements*”. They said this was because the process “*overrides the quota management system*”, “*it puts large areas of the coast into marine reserves, which effects the value of quota – a property right*” and that “*due process has [not] been observed*”.

703. Fourteen submissions (five in objection and nine that qualified their support by raising this issue) including those from the New Zealand Marine Sciences Society¹⁴⁹, Forest & Bird¹⁵⁰ and WWF-New Zealand explicitly expressed that the proposed marine reserves must be co-managed with Kāi Tahu. They often stated that this would be crucial to the success of the protected areas.

Te Papa Atawhai advice

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

705. As set out in 6.5.6.1, it is acknowledged that this coastline generally is important for mahinga kai and that the declaration of marine reserves will prevent extractive fishing activities in those areas. This would include commercial fishing activities (including quota owned in accordance the Fisheries Settlement Act) and non-commercial customary fishing activities, as identified by these submitters. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area, as suggested by the submitter. Rather, there are already a range of regulatory measures that govern such activities. This includes the Quota Management System which applies to commercial fishing generally and also the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. Te Papa Atawhai notes that non-commercial customary and other fishing activities will still be possible at many other areas outside the 4.5% of the Forum region proposed as marine reserves. The Forum also sought to minimise disturbance to existing users where possible, and thus avoided recommending a number of sites that were known to have high customary significance (as discussed further in individual site chapters). These recommendations have been taken forward in the sites proposed under the Application.

706. In relation to the point raised about passing knowledge on to future generations, as discussed in 6.3.6.5, this is recommended to be specifically provided for through allowing

¹⁴⁹ NZMSS is a professional society with approximately 200 members. It provides access to and within the marine science community, and identifies emerging issues through annual conferences, annual reviews, a list serve and a website.

¹⁵⁰ An independent conservation charity who for more than 90 years has advocated to protect New Zealand’s wildlife and wild places, on land and in the sea, to city, district and regional councils, central government and in courts.

wānaka and the enhancement of mātauraka Māori to continue. These recommendations will alleviate, at least to some extent, impacts on cultural values and interests associated with the proposed marine reserves. We do acknowledge, however, that the recommended condition would be limited to members of Ngāi Tahu Whānui, and therefore would not authorise these specific submitters to continue carrying out such activities within the proposed site.

707. Te Papa Atawhai disagrees with the assertion made by Te Ohu Kaimoana that adequate consideration of its obligations under section 4 of the Conservation Act has not occurred. Extensive work has taken place between Kāi Tahu, Tini a Tangaroa and Te Papa Atawhai, both before and since the process leading up to the statutory consultation in 2020. This work has focussed on progressing matters raised by Kāi Tahu as critical to alleviate any impacts on customary rights and interests that the proposed Network may cause. The engagement that has taken place is described in 2.6.2, and the specific proposals are described in 6.3. Our advice on these proposals and the views received from Kāi Tahu through direct engagement has included an analysis of the Crown's obligations in relation to section 4 of the Conservation Act and other obligations in relation to the Treaty (as set out in 6.3).

708. Regarding the submission of Te Ohu Kaimoana that the Crown must protect the rights for Māori to "*own and use natural resources*" into the future, Te Papa Atawhai recognises the importance of customary non-commercial fishing rights but does not consider that any interference is to an extent that it would be contrary to the public interest. As set out in 2.6.2 and 6.3.4, our engagement with Kāi Tahu has been designed to ensure we are giving effect to the principles of the Treaty in our process and development of advice and recommendations, including taking appropriate steps to mitigate the impact of the proposed marine reserves on both commercial and non-commercial fishing interests. Te Papa Atawhai considers that establishing marine reserves also contributes to active protection of taonga species and taonga fish species (including but not limited to those identified in the Ngāi Tahu Claims Settlement Act - see 3.3.3) and will assist in the preservation of natural resources for the future. The proposal for wānaka also addresses some of the concerns regarding using natural resources for cultural purposes. More generally, in terms of the suggestion by Te Ohu Kaimoana that the consultation document "*fails to prioritise the Crown's obligation under Te Tiriti o Waitangi*", and the reference to international commitments, our advice in 6.3 on the direct engagement with Kāi Tahu is relevant to the points raised. In light of this analysis, Te Papa Atawhai considers both the process and recommended outcomes are in accordance with the domestic framework and New Zealand's international commitments in respect of the rights of Māori as its indigenous people.

709. Te Ohu Kaimoana stated that the ability to establish future mātaihai reserves was likely to be impacted by establishing the proposed marine protected areas. The establishment of marine protected areas is one aspect of New Zealand's marine management framework, along with customary and other fisheries management tools, and other legislative and policy mechanisms. Applications for future mātaihai reserves, fisheries restrictions or further marine protected areas would be considered on their merits, taking into account the information available at the time. As discussed above in 6.5.6.1, it is possible that the addition of new marine protected areas through this process will make it more difficult to establish new mātaihai reserves, however there is uncertainty in the degree to which it would be more difficult. Tini a Tangaroa's progress of consultation and advice to the Minister for Oceans and Fisheries on regulatory changes that will enable more effective management of mātaihai reserves, as discussed above in 6.3.7.2, is also relevant.

710. We disagree that the current process threatens the "*durability of Treaty settlements*". As stated in 6.3.9.4 while it is recognised that the proposed marine reserves will have an impact

on customary non-commercial fishing rights and commercial fishing, we consider those impacts are not so significant as to affect the enduring nature of the Fisheries Settlement Act (see further in 6.3.9.4). We disagree with the Fiordland Lobster Company's point that due process has not been followed (as set out in our advice in 6.6.6.4–6.6.6.6).

711. Many submitters stated the importance of establishing co-management of the proposed marine reserves with Kāi Tahu. We also note that many submitters in support made the comments that it would be important to provide for Kāi Tahu being allowed to collect material for the purpose of wānaka in the proposed marine reserves. This statement is one example: *"Forest and Bird recognises the importance of wānaka and accept the importance of providing for the sampling and strategic take of marine life for cultural purposes"*. WWF-New Zealand stated that they *"support exceptions for no-take marine reserves that are defined by mana whenua to allow Kāi Tahu to take or disturb life for special occasions such as wānaka, provided this will not significantly impact the ecological integrity of the marine reserve"*.

712. Both co-management and provision to support wānaka and the enhancement of mātauraka Māori are matters that have been progressed during engagement between Te Papa Atawhai, Tini a Tangaroa and Kāi Tahu. Our recommendations on these matters (as set out in 6.3.6.1 and 6.3.6.5), if implemented, will mitigate the issues raised in these objections.

6.6.6.2 Objections related to amendment of the marine reserves

713. Nineteen submissions objecting to the proposed Network (including 18 that indicated their preference for 'Another option' rather than implementation of the proposed Network) stated that the proposed marine reserves were too small. These included those from the following organisations: New Zealand Sea Lion Trust¹⁵¹, Christchurch Penguin Rehabilitation¹⁵², DiveNation and Penguin Rescue¹⁵³.

714. Nine of these objections specifically explained that the proposed Network needed to be increased to effectively protect threatened native species such as hoiho, pahu and rāpoka. Another common issue was that not all habitat types had two replicates included in the proposed Network, which the objectors believed was the initial requirement of the Forum.

715. Three objections stated that the proposed marine reserves required modifying by adding areas to increase the benefits they would provide to the marine ecosystems generally. One suggested that a third of each habitat should be protected (as non-fishing areas) in accordance with recent scientific research.

716. Penguin Rescue stated support for increasing the *"size and range"* of the proposed areas to benefit hoiho. They said, *"in the past, our voiced and written concerns for the need for Yellow Eyed Penguins foraging areas to be protected have been met with the statement that these marine reserves are not species specific. This is now clearly untrue as areas have been set aside to protect bull kelp and the bryozoan beds"*.

717. North Otago Dolphin Protection¹⁵⁴ stated, *"the marine protected areas and marine reserves proposed cover only a limited proportion of the area and will therefore offer little protection [to Hector's dolphins or hoiho]. This will not save either species from extinction"*.

718. Several submitters also noted that some sites that are not included in any proposed marine reserve would have been better candidates. The New Zealand Sea Lion Trust, which objected

¹⁵¹ A trust established in Dunedin in 2003 with a mission and activities focused on the conservation of New Zealand sea lion by supporting ongoing research and education.

¹⁵² Provides a rehabilitation service for sick and injured penguins in Canterbury.

¹⁵³ An organisation focused on the conservation of yellow-eyed penguins.

¹⁵⁴ Unknown.

by choosing 'Another option', stated, "*the Trust is disappointed that no marine reserves are being proposed for Shag Point, The Nuggets, or Karitane, as there has been wide public support for marine protection in these areas in the past*". Another objector stated that there was a need for "*two or more accessible marine reserves specifically for education and public enjoyment. One at Shag Point and one at the Nuggets*". A further objector stated that Taieri Island would be much better than the proposed Hākinikini marine reserve because it would make a "*wonderful snorkelling destination*" and that finding pāua was already difficult there.

719. The Herbert Heritage Group¹⁵⁵ objected to the proposed Network by indicating their preference for 'Another option' rather than implementing the proposed Network. They explained their replanting work at the Waianakarua River mouth and, therefore, that "*it would be good to have a marine reserve there as that river is largely sourced from forest and bush and runs relatively clean [compared] to all other East Coast Rivers who suffer from intensive dairying*".
720. DiveNation also chose 'Another option' for the proposed Network stating that "*the Dunedin harbour would make for an excellent marine reserve, easily policed, convenient access, much needed protection to allow species to recover*".
721. Another 63 submissions in support of the proposed Network qualified their support by raising issues similar to those described above. These submissions stated that the proposed Network would need expanding by increasing the areas and/or creating more marine reserves. Statements from these submitters included "*it is very important that this proposal is not further decreased*" or "*Forest and Bird wants the full network as presented in the consultation document implemented as soon as possible as the network as a whole has the potential to improve biodiversity conservation*". Forest & Bird also stated, "*there are no marine reserves proposed for the significant biogenic habitats associated with the Hay Paddock off Oamaru*".
722. An individual submitter questioned why the Tautuku Peninsula was no longer part of the proposed Network and commented that four marine habitats were not included at all, while ten were very poorly represented in the proposed Network.
723. The New Zealand Marine Sciences Society qualified their support by making extensive comments about the proposed Network falling short of the MPA Policy target of protecting at least one sample of each habitat. They also noted that most of the proposed marine reserves were smaller than the minimum threshold for effectiveness based on the latest scientific, best-practice recommendations.
724. Many submitters in support of the proposed Network stated that resources for adequate management of the marine reserves must be made available to enable the proposed Network to be effective. Resources for enforcement and monitoring were highlighted. Some submitters raised this issue in relation to their view that the proposed Network was too small or inadequately represented habitats, so monitoring would be critical to "*assess whether they do result in recovery of indigenous marine life and habitats*".
725. The New Zealand Marine Sciences Society strongly recommended that monitoring be made a priority, saying they wanted, "*research and monitoring highlighted as critical activities in the MPA network. We see Matauranga Māori as an important part of understanding the network's marine biodiversity. The MPA network will provide new research opportunities and it is likely that many of our members will be interested and seek funds from a range of sources, accordingly*".

¹⁵⁵ A group that holds twice yearly working bees to plant and weed at the Waianakarua river.

Te Papa Atawhai advice

726. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserves would be contrary to the public interest.
727. We acknowledge there are gaps where habitats were not included in the proposed Network. 18 out of 22 coastal habitat types would be included in the proposed Network. The objective of the MPA Policy is to 'Protect marine biodiversity by establishing a network of MPAs that is comprehensive and representative of New Zealand's marine habitats and ecosystems'. While the proposed Network does not fully meet the MPA Policy guidance (including network design principle 1 regarding representation and principle 3 regarding replication), the individual marine protected areas would still make a significant contribution to protecting habitats across the Forum region.
728. Gaps in the representation or replication of habitats are due to the negotiations undertaken during the Forum process and as a result of the 2016 consultation. The Forum process was focussed on balancing the benefits and costs of marine protection to create the most representative network for the region possible. Many of the alternate sites suggested by submitters (as described above) may have been appropriate to include in the proposed Network and most were investigated by the Forum. However, the proposed Network, including the proposed marine reserves, is the result of a process where a reduction of impacts on existing users was an important consideration. Many of the sites considered initially were removed by the Forum because they would have been likely to cause too great an impact on customary, cultural, recreational or commercial interests. For instance, Ōtākou/Otago Harbour was originally considered by the Forum but because there was a mātaītai reserve application over the entire harbour at the time, it was removed from consideration. The Ōtākou Mātaītai Reserve, which covers part of the harbour, was subsequently established in 2016.
729. As noted by a submitter, establishing marine reserves is not about managing threats to specific species. Rather, marine reserves protect representative habitats for the benefit of whole ecosystems. The alternate sites for marine reserves suggested by submitters may be good for individual threatened species but it was not the aim of the Forum to design such species-specific measures. It is also not an approach that is provided for under the Marine Reserves Act. Other more appropriate management measures exist for threatened species management. These include Te Kaweka Takohaka mō te Hoiho¹⁵⁶ and Te Mahere Rima Tau¹⁵⁷, which were finalised in June 2020. They provide a framework to improve protection of hoiho based on threat management.
730. In relation to the comment about marine protection being proposed in the context of certain species (e.g. bryozoans and bladder kelp), we note that these are habitat-building organisms. They are often associated with areas of high biodiversity because they provide substrate or shelter, or play a crucial role at particular life stages of other species. Their importance, therefore, is highlighted due to their ecological role, rather than as a single species.
731. We agree with submitters that appropriate and effective management should be in place if the proposed marine reserves are established. Effective monitoring and enforcement activities are recommended in the MPA Policy, and our intention is to establish these activities as part of the implementation of any marine reserves.

¹⁵⁶ <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-kaweka-takohaka-mo-te-hoiho-2020.pdf>.

¹⁵⁷ <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-mahere-rima-tau-2020.pdf>.

732. In summary, we note the Application for the proposed sites must be considered on its merits, and the matters raised in these submissions do not demonstrate that to establish the marine reserves as proposed in the Application would be contrary to the public interest.

6.6.6.3 Objections related to the need for a marine reserve in The Catlins

733. The lack of a marine reserve proposal in The Catlins area was a main issue raised in eight objections that stated the proposed Network should be more extensive or more representative. This issue was also raised by 35 submitters in support, who qualified their support by stating that some habitat protection in The Catlins is needed. Specific site suggestions included Long Point and Nugget Point (also known as the Nuggets).

734. The Forest & Bird template, used by 3,271 submitters to support the proposed Network, stated that “ensuring representation of the Catlins habitats” would be an improvement. Many personalised comments added to the template reiterated this qualification of support.

735. Statements made in objections about the lack of protection in The Catlins included:

- “Clearly this issue needs to be resolved in order to meet the stated aim of a representative network of MPAs for the southeast region”
- “with the addition of at least one marine reserve in the Catlins in order to make the network more representative, and to protect the rich and varied ecosystems in this area”
- “[the area is] one of the most important mainland New Zealand sea lion breeding areas outside of Otago Peninsula” (New Zealand Sea Lion Trust).

736. Some similar sentiments were expressed in submissions in support, including:

- the “current proposal cannot be called a network that extends all the way to Waipapa Point as most of the Catlins is missing” (Otago Museum¹⁵⁸)
- “approximately 130 km of the southeast region’s coastline would have no Type 1 (marine reserve) protection” and that “inter-reserve distances from tens to about 100 km can enhance both conservation and fishery benefits” (New Zealand Marine Sciences Society)
- “The excluded Long Point marine reserve is adjacent to the [Yellow-eyed Penguin Trust’s] reserve at Long Point / Irahuka which supports a colony of hoiho, as well as other seabirds (including titi, little penguins), fur seals and sea lions. The marine reserve would have provided a good level of protection for hoiho breeding at this site and nearby smaller breeding sites, including Cosgrove Creek. Hoiho in the Long Point region were subject to the starvation events in 2018/19” (Yellow-eyed Penguin Trust)
- “With a predominant northward-flowing current to carry planktonic larvae, a high density of subtidal reef habitats, and a healthy fishery, the area between Waipapa and Nugget Point likely serves as a source population for sites downstream. We strongly encourage a form of marine protection in this southern region to help conserve source populations”

¹⁵⁸ Otago museum which shares the natural, cultural and scientific stories of Otago, Aotearoa New Zealand and the world.

- “a site designation in the southern part of the forum region is potentially crucial to successful protection” (The MOANA project¹⁵⁹).

737. Several submitters in support also noted that the coastal land area of The Catlins is already predominantly protected and, therefore, an important opportunity to link terrestrial and marine protection is being missed.

Te Papa Atawhai advice

738. We have assessed these objections as taking the position that it would be contrary to the public interest to implement the proposed Network (specifically the six proposed marine reserves) if it does not meet the criteria of the MPA Policy (i.e. connectivity and representation of habitats) by excluding protection in The Catlins.

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

740. Overall, the suite of marine protected areas in the proposed Network would contribute significantly to representation of the region’s habitats. However, there is a recognised gap in marine protected area proposals in The Catlins and in the southern third of the Forum region, where only one Type 2 marine protected area, Tahakopa, is proposed. The MPA Policy’s objective is to ‘Protect marine biodiversity by establishing a network of MPAs that is comprehensive’. While multiple sites in The Catlins were considered by the Forum to ensure connectivity throughout the region (e.g. the Nuggets, Long Point, Waipapa Point), only Long Point was taken through to their public consultation. During the Forum process, Kāi Tahu indicated they would not support any network if marine reserves were proposed along this area of coastline (Recommendations Report, page 205, section 2.4.12.3).

741. The Ministerial decisions to proceed with statutory processes to progress ‘Network 1’ as recommended by the Forum (including the public Consultation), also came with a directive for Agencies to continue to engage with Kāi Tahu on this issue. In August 2019, Te Papa Atawhai and Tini a Tangaroa met with Murihiku rūnanga specifically to address the Irihuka (Long Point) proposal. Murihiku rūnanga stated that their position of opposition to a marine reserve proposal had not changed from that given during the Forum process but that they were open to further discussions on establishing areas for customary fishery management purposes.

742. We acknowledge that the lack of marine reserve sites in The Catlins means there would be an ecological gap in the proposed Network. The proposed Network also does not fully meet a number of other MPA Policy ecological requirements. This is due to the MPA Policy requiring that marine protected area proposals are designed while also balancing the interests of tangata whenua and impacts on existing users. It is anticipated that any future review of New Zealand’s marine protected areas would take into account significant gaps in protection and whether additional protection was deemed valuable.

743. Further, the current statutory process is concerned only with whether the six proposed marine reserves should be established. This does not discount future consideration of protection in the area, but any new marine reserves would be established under a separate statutory process. We note that Te Papa Atawhai has no official role in customary fisheries management processes should this be further explored for The Catlins.

¹⁵⁹ Organisation which aims to develop New Zealand’s first Ocean-Atmosphere Knowledge Infrastructure to facilitate world-leading science on the ocean circulation dynamics in New Zealand’s exclusive economic zone, leading to improved understanding and the growth of the blue economy.

6.6.6.4 Objections questioning the integrity of the public consultation process

744. Several objections, mostly from those with recreational fishing interests, stated that the Consultation process was hard to follow or too complex and difficult to understand. Comments like “*documents not made for average kiwi*” were made. Some noted that the survey form was difficult, time-consuming and confusing to fill in. An example of the issues raised in submissions was, “*I believe they have been purposefully done like this to confuse and put off the average commercial and recreational fisherman off filling in a submission. I also believe the process is designed to wear people down so they don’t file a submission and by this fact seen as acceptance when that is not the case*”.
745. Forest & Bird, while supporting the proposed Network also said, “*many people have said that your online form was time consuming and difficult to use*”. This may be one reason why they created an alternate online form for people to use.
746. The combined industry objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand, raised the issue that the Consultation Document made many references to “*the Forum’s attempts to minimise costs on existing users (e.g., by excluding certain areas from the proposed marine reserves)*”. They argued that these references were irrelevant to the current assessment. Their rationale was that the statutory assessment under the Marine Reserves Act must relate only to the areas that have been proposed as marine reserves, not to sites or areas that were not included in the marine reserve proposals.
747. Forest & Bird also stated, “*there were 2,803 submissions received [during the 2016 consultation] and it is likely that many of these submitters will consider they have already made their views known and these should be taken into account as part of the current consultation round*”. They also pointed out that one of the outcomes from the 2016 consultation was a summary of scientific submissions from experienced and locally knowledgeable scientists, which stated that, “*scientists reluctantly supported the proposals as they viewed the proposed 20 sites as inadequate, less than required by the MPA Policy, NZ Biodiversity Strategy and international best practices and obligations*”.
748. An objector with a recreational fishing interest made a submission a few weeks before the close of public consultation. They raised concerns with the advertisement process, stating that the consultation had only come to the attention of “*the majority of recreational interests in the last few days*”. The templates provided by fishing clubs and used by 218 objectors, included this same issue. One of the fishing club templates stated, “*I would not have known about these marine reserve proposals and the submission deadline. The process has not involved any real consultation. For example, the Department of Conservation has not explained it properly in the local paper, the Otago Daily Times*”.
749. An individual objection to the proposed Network stated that there was a bias in the Consultation Document’s description about the impacts of maintaining the status quo, or not implementing the proposed Network. They contended that there must be bias regarding the statement asserting public desire to have marine protection.
750. The Fiordland Lobster Company stated that they “*would have expected the consultation document to work through the relevant statutory considerations for each and every marine reserve*” with considerations listed being, for instance “*an analysis of whether that impact [on commercial fishing] constitutes undue interference given the scientific benefit identified*”.

Te Papa Atawhai advice

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

752. We acknowledge there was some technical content in the Consultation Document. While this was minimised where possible, detail and technicality were required in places, especially relating to ecological terminology, the Marine Reserves Act and Fisheries Act, and the statutory consultation. It is unfortunate that some members of the public found this too complex, but we consider this information was a necessary part of the statutory process under the Marine Reserves Act.

753. We also acknowledge that the online interface for the survey was detailed and may have caused confusion for those less familiar with computers or who were time constrained. However, the questions included in the survey were approved by the Treasury's Regulatory Quality Team as forming, along with the options presented and cost and benefits outlined, an interim Regulatory Impact Analysis suitable for effective consultation under the Marine Reserves Act.

754. Overall, we are confident that most people would have been able to complete the online form but note that most submissions were not made using the online form. The public was informed that their views could be provided by email or post, and 3,649 submissions were received in this way. This included 3,271 Forest & Bird template submissions, 266 fishing club template submissions, and 112 other written submissions.

755. We consider that people with recreational interests, along with the wider public, were adequately informed about the Application for the proposed marine reserves and the associated statutory consultation process. (Chapter 4 describes how the Application was notified and publicised.) We note that several local fishing clubs were apparently aware of the Consultation as they shared it with their members and more widely via different media, as well as organising member and public meetings. We consider therefore that members of the public had many opportunities to become aware of the Consultation.

756. The combined industry objection stated that the process and rationale leading to the Forum's proposed Network was irrelevant, and that under the Marine Reserves Act, the focus should have been only on the proposed marine reserves and not areas outside them. Te Papa Atawhai disagrees and considers it to be highly relevant for the public and the Minister of Conservation to understand how the proposed sites were selected and designed, including the reasons why they were selected. These reasons were based on balancing biodiversity objectives while minimising impacts on existing users and future commercial opportunities, as per guidance under the MPA Policy. Therefore, we consider the Forum's attempts to minimise costs on existing users are valid in the context of the Consultation Document and as information to support decision-making by the Minister of Conservation.

In terms of alleged bias in the Consultation Document related to the description of the impacts of not establishing the proposed Network, we do not accept this. We maintain it is an accurate description, and that it aligns with what the Forum learnt and heard during their 4-year process. Further, the Consultation Document and associated consultation process provided information about the proposed marine protected areas for the purpose of inviting public comment, including the public's views on the costs and benefits of the proposed Network. This was a further step in what has been a comprehensive process involving numerous checks and balances.

758. The Application document stepped through the statutory criteria for the marine reserves and was attached as an appendix to the Consultation Document. The Fiordland Lobster

Company seemed to have conflated the expectations for the marine reserves Application with the Minister of Conservation's decision-making process following statutory consultation. Under section 5(6) of the Marine Reserves Act, the Minister shall decide whether to uphold any objection received (as a result of the Consultation). Therefore, our assessment and advice to inform this decision-making, could not have been carried out prior to the Consultation process. The assessment of 'undue interference' happens as part of this decision-making process when the objections are assessed.

6.6.6.5 Objections questioning the integrity of the Forum process

759. A large proportion of objections from recreational and commercial fishing interests raised the issue that the Forum did not adequately represent the recreational fishing sector in particular, or the interests of the commercial fishing sector. Several objections stated that the two recreational fishing representatives on the Forum were either not suitable because they did not have the best interests of this sector in mind or did not adequately represent the fishers of the southeast region.

760. Regarding commercial fishers, the combined industry submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated, "*the lack of scientific information and analysis has also made it hard for ORLIA fishers to understand and participate*". The Otago Rock Lobster Industry Association stated, "*the final shape of the Network 1 proposal that is being consulted on was developed without input from the commercial fishers*". They also said the Forum process should be restarted and its recommendations reviewed. Fiordland Lobster Company said that their understanding was that "*the Forum was unable to reach agreement on the area to be put forward for a reserve and with time and money running out, the Chair separated the group so that two options could be presented to Ministers*". They said this led to inadequate input from the commercial fishing representatives, particularly regarding the proposed Te Umu Koau marine reserve.

761. The lack of reliable recreational fishing data was often mentioned as a reason why the Forum process was flawed. Some objectors also noted that implementing the Forum's recommendations would be contrary to the public interest because the Forum could not understand the impacts on recreational fishing, or the impacts of displacing this activity to other areas. For instance, the combined industry submission stated, "*the current proposal being consulted on (and the justifications for it) was created out of a flawed process and is based on undeveloped and imprecise information. This means that the proposed reserve network must be declined*". Their submission then stated that Te Papa Atawhai and Tini a Tangaroa could "*readily have obtained information on recreational fishing at the proposed marine reserve sites without unreasonable cost or effort*" but did not include any suggestion of how this could have been done. The Tautuku Fishing Club Dunedin and Haast Incorporated also raised this issue in their objection stating, "*information should be gathered from fishers*" but made no attempt to provide any data from their members.

762. DiveNation chose 'Another option' in their submission on the proposed Network stating, "*spearfishing and diving has not been taken into consideration at all [...] Our concerns were passed onto fishing club representatives that didn't highlight them*". An individual objection using the fishing club template also included a personalised comment contending that one of the recreational fishing representatives on the Forum "*had different motives for being on the committee than to represent the fishing [and] diving community*".

763. An individual submitter raised concerns about the Forum's agenda and vision, saying that the appointed Forum members were defined by the (former) Minister of Conservation rather than communities at place. They stated that the Forum process was facilitated with a good understanding of law and policy but not a good understanding of management of marine

areas or the wishes of the community involved. They also commented that the amount of money spent on the process was far too much for this kind of initiative.

Te Papa Atawhai advice

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

765. We note the points raised by submitters as to their perceived flaws in the Forum process. We recognise that unless these submitters were directly involved in the Forum, they would be unlikely to have a full appreciation of its process. As a result of the direct involvement Te Papa Atawhai had with the Forum between 2014 and 2018, we consider the Forum process was robust and transparent, while recognising that the process was not without its challenges.

766. The current consultation process is separate from the Forum process, which concluded in 2018. The Forum process was reviewed and the outcomes of the review were made public¹⁶⁰. We consider that the Forum fulfilled its Terms of Reference by engaging with stakeholders and the community and producing network options based on the best available data and efforts to reduce the impacts on existing users. In May 2019, the then Ministers of Conservation and Fisheries announced their agreement to consult on the proposed Network using the provisions in the Marine Reserves Act and the Fisheries Act. The purpose of the statutory Consultation in 2020 was to allow the public to express their views specifically on the proposed Network, to inform ministerial decision-making against the relevant legislative criteria in these two Acts. Overall, we consider there to have been many opportunities and mechanisms in place to seek input from the diverse range of users of the southeast region.

767. It is well recognised that information about recreational take from specific areas is limited. As part of the Forum process, Forum members gathered information to support arguments for and against establishing marine protection in the various locations considered. Multiple meetings were held with recreational fishers, and various knowledgeable fishers were contacted by Forum members to gather information. We therefore consider that the Forum used reasonable endeavours to gather anecdotal information and that this process increased the Forum's knowledge about relevant recreational fishing areas.

768. As discussed in 5.3.2, Te Papa Atawhai acknowledges that quantitative data relating to recreational fishing is limited. There are some data about recreational catch for some species such as rāwaru/blue cod, but the distribution of this catch is not available at a scale that is relevant to marine protected area planning. Conducting recreational fishing surveys has proven difficult in the past with recreational fishers often being reluctant to give details of where they catch their fish, or the species and quantity caught. Unless there is a legal requirement for recreational fishers to provide catch locations, this information is not likely to be readily available. Overall, we consider that the best available information was used by the Forum to develop the proposals they recommended to Ministers. As a general statement, Te Papa Atawhai considers that this information, while it has limitations, is sufficient for the purpose of assessing the impact on recreational fishing. As such, it is not contrary to the public interest to proceed on the basis of the available information. Further advice is provided on this issue as relevant to individual proposed marine reserves in chapters 7-12.

¹⁶⁰ <https://oag.parliament.nz/2019/marine-environment/docs/marine-environments.pdf> Page 24: 'The Southeast Forum met MPA policy expectations for inclusiveness 3.4 The Southeast Forum met these expectations. DOC and MPI worked together to ensure that the Southeast Forum was made up of a broad range of stakeholders. They also worked to ensure that the process was flexible for iwi to be involved in a way that worked for them. We also saw evidence that the Southeast Forum was adequately supported to collect the views of the public, and that those views were fed back to the Southeast Forum.'

769. Contrary to the statements made by submitters, input from the commercial fishing sector was sought and considered by the Forum throughout the process. There was also a significant representation of the commercial fishing sector on the Forum. We therefore consider there were ample opportunities to raise and work on these issues during the Forum process. Moreover, the recent Consultation provided a further avenue for issues to be raised on the proposed Network as part of the statutory process under which final decisions will be made.

770. Regarding the concern raised about the selection of the Forum members and the Forum's "vision", we note that establishing the Forum and its terms of reference was carried out under the guidance of the MPA Policy. We also consider that the appointed Forum members represented the breadth of community interests and users of the region as well as Kāi Tahu. The submitter made a further suggestion that the facilitation of the Forum was not directed towards management or an understanding of the wishes of the community. Te Papa Atawhai does not agree with that assessment, noting that this was the very point of the multitude of activities the Forum undertook to firstly develop marine protected area proposals and then seek input from the community about them.

6.6.6.6 Objections questioning the validity of the marine reserve applications

771. The Fiordland Lobster Company objected to the proposed Network and noted, "*there is a conflict of interest where the Director-General applies for a marine reserve and Department of Conservation staff are taking a lead role in the analysis that is then presented to Ministers and Cabinet*". They also raised the issue that Ministers were not provided with a Regulatory Impact Analysis to support their decisions and that formal notification of the process appeared to have happened prior to Cabinet approval. The Otago Rock Lobster Industry Association raised this same issue and noted that the lack of a Regulatory Impact Analysis meant that decision-makers did not consider "*essential economic analysis and other costs to current businesses such as those of fishers*".

772. Several objections raised issues relating to the legislative and policy setting under which the proposed Network is being progressed. These included that the Marine Reserves Act was "*well past its 'use by' date*" and was only intended for scientific purposes and not biodiversity protection. This issue was also raised by individual submitters and the following organisations: Te Ohu Kaimoana, Fiordland Lobster Company, the Otago Rock Lobster Industry Association, Fish Mainland, Southern Inshore Fisheries Management Company Limited¹⁶¹ and the combined industry submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand. Statements made in their submissions included:

- "the Marine Reserves Act 1971 [does not] provide a legal framework for the establishment of measures for the protection of the marine biodiversity at risk"
- "The Forum and consultation documents failed to rigorously assess whether the tools available in the MRA and the Fisheries Act 1996 actually address the specific issues in local context without needing to alienate any specific areas from fishing" (Otago Rock Lobster Industry Association)
- the Fisheries Act "already has provisions to manage and prohibit fishing when required for the recovery or sustainability of fisheries resources" and suggested

¹⁶¹ A commercial stakeholder organisation that has a mandate to represent a range of fish stocks occurring primarily in the South Island. This includes operational and stock-specific matters such as setting total allowable commercial catch limits and deemed values.

using the Fisheries Act to set aside areas for protection rather than the “inadequate” Marine Reserves Act

- “*signing the CBD [Convention on Biological Diversity] did not commit New Zealand to establishing MPAs over 10% of our coastal areas*” (combined submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand).

773. The combined industry submission asserted that the proposed marine reserves must be justified on their own individual merits under the Marine Reserves Act, not in relation to the attributes of a marine protected area network or the requirements of the MPA Policy.

774. Southern Inshore Fisheries Management Company Limited and Te Ohu Kaimoana questioned establishing new marine protected areas while New Zealand’s marine protected areas policy and legislative framework is due for review, and that the review should be carried out first.

775. Several objections said the Consultation Document did not provide any details in terms of the scientific objectives associated with each proposed marine reserve. For instance, one objection stated that “*there is no information in the consultation document about intended scientific studies*” and that it is “*not in the public interest to establish marine reserves that have not been [...] justified in relation to the purpose of the MRA*”. Other objections linked this lack of scientific objectives to a “*lack of aims or management goals for the network and individual proposed areas as a whole*”.

Te Papa Atawhai advice

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

777. The Marine Reserves Act anticipates the Director-General of Conservation making an application (section 5(1)(a)). Therefore, the Director-General is the Applicant and Te Papa Atawhai is providing advice, which does not constitute a conflict of interest. In addition, the Minister of Conservation has discretion to seek an independent review and has done so (see 3.2.2).

778. Regarding the issues raised by submitters about a Regulatory Impact Analysis and Cabinet approval as part of this statutory process, we clarify here the process that was undertaken in respect to these issues:

1. Upon Treasury advice, Te Papa Atawhai and Tini a Tangaroa officials incorporated a bespoke Regulatory Impact Analysis process into the Consultation Document. This action was in response to a risk identified by the Treasury that because the Consultation Document was not going through the Cabinet process (which would have triggered the requirement for a Regulatory Impact Analysis to accompany the Cabinet paper), it may not lead to effective consultation and support the delivery of a quality regulatory impact analysis to support Cabinet’s final decisions.
2. The Treasury Regulatory Quality Team directed Tini a Tangaroa and Te Papa Atawhai that the Consultation Document would function as an interim regulatory impact analysis on the basis that the document addressed all feasible options and contained interim analysis of those options, as well as questions consistent with effective consultation expectations.

3. The Regulatory Quality Team noted that they considered aligning the processes being undertaken by Agencies was consistent with the requirements of a regulatory impact analysis.
4. The consultation document was reviewed and approved by a joint Te Papa Atawhai- Ministry for Primary Industries Manatū Ahu Matua Regulatory Impact Analysis Panel. Following approval by this panel, the necessary approvals to initiate public consultation were received.
5. The Director-General approved the marine reserves Application for public notification on 19 December 2019, as required under the Marine Reserve Act.
6. The Minister of Fisheries approved the public consultation on the package of fisheries regulations proposed for establishment of the Type 2 marine protected areas and kelp protection area.

779. The Consultation Document covered both the marine reserves Application and the proposals for the Type 2 marine protected areas and kelp protection area under the Fisheries Act. While the initiation of public consultation on the Fisheries Act proposals needed to be approved by Cabinet, the notification of the marine reserves Application did not.

780. The position of Te Papa Atawhai was that to seek Cabinet's authorisation to release the Consultation Document in so far as it related to the marine reserves Application was not appropriate. The marine reserves Application is made in the name of the Director-General and neither Cabinet nor Ministers have a statutory role under the Marine Reserves Act at this stage of the marine reserves application process.

781. Former Minister of Fisheries, the Hon Stuart Nash, presented an oral update on public consultation to Cabinet (Economic Development Committee) on 12 February 2020 with support from the former Minister of Conservation, Hon Eugenie Sage. Following the Cabinet presentation, Te Papa Atawhai and Tini a Tangaroa launched the public consultation on 17 February 2020. (This was later withdrawn due to COVID-19 national restrictions).

782. Our position therefore is that the concerns raised by submitters in this regard are unfounded.

783. Several submitters raised concerns that the Network is proposed to be established using inappropriate legislative tools and policy settings. We disagree with this proposition for the following reasons:

- Despite the Marine Reserves Act being 50 years old, it remains a primary piece of legislation for establishing marine protected areas. Any application will be assessed against the purpose and tests of the Marine Reserve Act which remain applicable and relevant.
- While a number of areas for improvement have been identified in the 15 years of implementing marine protected areas under the MPA Policy, we consider it still provides a robust planning framework.
- The Application stated (on page 77), 'Although the purpose of the [Marine Reserves] Act is specific to scientific study rather than biodiversity protection, it is considered that biodiversity protection is a valid consideration in terms of the benefit to the public (s5(9))'.
- The Marine Reserves 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'. We consider the term 'natural state' is strongly linked to biodiversity protection.

- Marine reserves are not specifically intended as threat management tools for marine resources but rather for the protection of areas for scientific studies and public benefit. Therefore, habitat types and their uniqueness and national representation, are important factors in identifying sites as possible marine reserves, which is what the Forum considered throughout its process.

784. The proposed Network would support New Zealand's commitment under the Convention on Biological Diversity. Kunming-Montreal Global Biodiversity Framework Target 3 provides important context for the proposed Network regarding global marine protection targets but is not the only driver. The MPA Policy provided the national context for the Forum's process and the marine reserves Application as part of the proposed Network.

785. The statutory framework provided for under the Marine Reserves Act must be adhered to. However, in assessing whether to uphold an objection under section 5(6), the High Court in the case of *Akaroa Marine Protection Society Incorporated v The Minister of Conservation* [2012] NZHC 933, confirmed that it is appropriate to consider the merits of the proposal, including the wider public interest¹⁶². The benefits derived from a network of protected areas designed in accordance with the MPA Policy is a relevant consideration for assessing that wider public interest. The costs and effectiveness of the proposed marine reserves are to be assessed against the multiple public benefits that are expected to arise from their establishment.

786. Some submitters noted a lack of justification for the scientific purpose of the proposed marine reserves. The establishment of marine reserves under the Marine Reserves Act does not require specific research questions to be identified in advance of them being established. The purpose of the Marine Reserves Act is '...preserving, as marine reserves for the scientific study of marine life, areas of New Zealand'.

787. Establishing areas that can be used as scientific reference areas is appropriate and scientifically valuable. Scientific research and monitoring would be part of future management plans developed for the proposed marine reserves. It is expected that research would be undertaken by various organisations in the years and decades after their implementation as has been the case with many marine reserves in New Zealand. The University of Otago already has a marine research facility in the area (the Portobello Marine Laboratory) and carries out an extensive research programme that would be likely to benefit from the marine reserves being established.

788. Including a representative range of habitats and ecosystems in marine reserves as part of a network of marine protected areas enables scientific studies to operate at broader scales than the iconic habitats (like rocky reefs) that tend to be the focus of ad hoc marine reserve proposals. The importance of different habitats to different species at different times of their lifecycle are widely acknowledged but poorly understood in the New Zealand context. One example is the value of biogenic habitats for commercially fished species¹⁶³.

789. Ensuring that marine reserves collectively protect the full range of unique or typical habitats of a region allows connectivity and ecosystem processes to be studied without the confounding effects of external impacts, such as extraction and disturbance from fishing

¹⁶² *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [53].

¹⁶³ Morrison, M. A., Jones, E. G., Parsons, D. P., & Grant, C. M., 2014. Habitats and areas of particular significance for coastal finfish fisheries management in New Zealand: A review of concepts and life history knowledge, and suggestions for future research. New Zealand Aquatic Environment and Biodiversity Report No. 125 (Vol. 6480, Issue 125).

activities. For this reason, including representative habitats in the proposed Network is considered to be of high scientific value.

6.6.6.7 Objections questioning the need or benefit of the proposed marine protected areas

790. Many objections (either outright objections or those choosing 'Another option') to the proposed Network raised issues questioning the need to establish any marine protected areas. These objections were in three main groups.
791. The first group (including two Māori submitters not identified as affected iwi, hapū or whānau) stated that there was no problem with the status quo, that fish stocks were healthy and that fishing had no effect. They concluded that it would be contrary to the public interest to establish these areas, given there was no need or foreseeable benefit. Some submitters stated that they did not understand why there was any need for protection when they had not noticed any decline in fish or shellfish in the region. Others stated that fishing had not worsened and some noted that the fishing was improving. DiveNation for example stated, "*just because we don't have a marine reserve does not mean we need one, an absence of MPAs does not infer an increase [sic] risk*". The Green Island Fishing Club stated, "*there is no evidence that marine reserves are effective, let alone that banning fishing from areas will restore habitat and ecosystems*", indicating that the establishment of the marine reserves was unwarranted.
792. Many objectors (including four Māori submitters not identified as affected iwi, hapū or whānau) also raised the issue that they did not understand why recreational fishing should be banned as they felt this activity had little impact on the marine environment, at least compared to commercial fishing. These objections said they wanted commercial fishing banned in the proposed marine reserves, but that recreational fishing should not be affected. The general feeling of these recreational fishers is summarised in this statement, "*there is a huge difference between environmental impacts of a bloke with a rod and a corporation with millions of kit scraping all life from the seafloor*".
793. The fishing club templates used by 218 submitters (including one Māori submitter not identified as affected iwi, hapū or whānau) to object to the proposed Network said that recreational fishing activity was naturally limited by the poor weather conditions (high winds and large swells are usual along the southeast coast). These objections also stated that the areas were not overfished because they were generally inaccessible, and that banning this activity to meet international obligations was unnecessary.
794. The Green Island Fishing Club, Tautuku Fishing Club Dunedin and Haast Incorporated and another 20 objections from individual submitters (including one Māori submitter not identified as affected iwi, hapū or whānau) also raised the issue that, in their view, no protection from recreational fishing was needed as the weather self-regulated recreational fishing levels in this region. There was therefore no detrimental impact from recreational fishing on the marine environment.
795. Southern Inshore Fisheries Management Company Limited stated it "*does not agree that fishing activity poses an adverse effect on the aquatic environment*", which we assume to refer to commercial fishing given it is an organisation involved in commercial fishing matters. The Otago Rock Lobster Industry Association asserted that "*there is insufficient scientific evidence that the continuation of kōura potting could not co-exist with some of the other aims that the proponents of marine reserves are seeking*".
796. The second group of objections related to arguments that other existing or alternative management options could be maintained, strengthened, or put in place instead of the

proposed marine reserves. They questioned the need for these proposals when other options existed.

797. One objection (from a Māori submitter not identified as affected iwi, hapū or whānau) included the suggestion to adopt the traffic light system used for fisheries management and to use *“sensible reviews and ongoing monitoring”* instead of implementing marine reserves. One objection using a fishing club template also added a personalised comment with an extensive list of areas that are *“already closed”* to recreational fishing, concluding that the number of existing protected areas make it difficult to undertake fishing activities.
798. The combined industry objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand also provided a list of existing marine management areas to prove the marine environment in the southeast region was already protected and that these measures were enough for the marine biodiversity to be maintained and allowed to recover. This point was also made by Te Ohu Kaimoana who stated that New Zealand’s fisheries management system provides a framework that *“delivers biodiversity outcomes”*.
799. Another objector stated that a number of new regulations had recently been put in place but that these had not had time to show effects or benefits. They therefore questioned the timing of the proposal for these marine protected areas and the need for additional restrictions. We have approached this on the basis that the objector considers it would be contrary to the public interest to establish the proposed marine protected areas until there was evidence that current management measures were not enough.
800. Often objections stated that a reduction in catch limits for recreational fishing (e.g. further lowering the rāwaru bag limit) and lowering the total allowable commercial catch for commercial fishing would provide more effective protection of the marine environment than the proposed marine protected areas. The need for better enforcement was also a recurrent theme in some of these objections, including one from a Māori submitter not identified as affected iwi, hapū or whānau (e.g. having more fisheries officers would be more beneficial than implementing marine reserves).
801. An individual objector with recreational interests raised the issues of the current management of fisheries stocks, with a particular focus on the wastage that occurs under the quota management system. The submitter stated that if the quota management system was better managed and the wastage from commercial fishing was minimised, there would be no need for marine reserves. The same objector also stated that charter boat operations are not subject to any commercial quota allowance, would therefore have a significant impact and should be managed under the quota management system.
802. The third group of objections stated that resources must be made available for adequate management of the marine reserves if the proposed Network is to be effective. Resources for enforcement and monitoring in particular were often mentioned. For example, one objection stated, *“staff and financial resources are the strongest predictors of conservation impact and I see no mention of either in the proposed plan”*.
803. Objections from recreational fishing interests often commented that the marine reserves would not be efficient because they would not have community support, and it would be too hard and costly to enforce them. This would therefore make the establishment of the marine reserves contrary to the public interest.

Te Papa Atawhai advice

804. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserves would be contrary to the public interest.
805. The arguments raised concerning the lack of impact from fishing activity and the apparent health of the marine areas are likely to refer only to those submitters' direct experiences as fishers. If the purpose of establishing the proposed marine protected areas was to provide continuity for the current level of fishing activity, the existing arrangements are likely to be adequate. However, the purpose of the Forum's process and the subsequent proposals for marine protected areas, was to protect the full suite of biodiversity values associated with these sites, not just the fished species, as well as to protect these values against a number of pressures besides fishing activity. The creation of marine reserves under the Marine Reserves Act is fundamental to achieving that purpose, given the comprehensive protection conferred by marine reserve status.
806. The ecological significance of long-term changes to the marine environment is largely unknown and unaccounted for due to a 'shifting baseline'. The shifting baseline concept was explained by Robert Callum¹⁶⁴ as follows:
- 'Each generation comes to view the environment into which it was born as natural, or normal. Shifting environmental baselines cause a collective societal amnesia in which gradual deterioration of the environment and depletion of wildlife populations pass almost unnoticed. Our expectations diminish with time, and with them goes our will to do something about the losses.'
807. The public often fails to acknowledge that the current state of the environment is an altered state, given people are unlikely to have witnessed noticeable changes within their lifetime. A 2016 report¹⁶⁵ detailed the changes on The Catlins coast:
- 'The historical records collated, reviewed, and interpreted in this report indicate that over the period from Cook's 1769 voyage to New Zealand to 1950, marine environments [...] in Otago-Catlins study sites underwent a profound change.'
- This highlights the value of establishing the network of marine reserves for the purpose of scientific study.
808. We acknowledge that weather and sea conditions in the southeast region restrict recreational fishing activity. As described in 5.3.2, there is limited information about the level of recreational fishing in the general area and at this proposed site. According to the 2019 Tini a Tangaroa fisheries assessment¹⁶⁶ (Tables 3 and 6), approximately 100 tonnes of rāwaru is harvested annually by recreational fishers in the BCO3 quota management area compared to approximately 170 tonnes harvested by commercial fishers. Note that although these figures represent catch over the entire quota management area rather than this site specifically (more specific information is not available), they indicate the potential for recreational take of rāwaru to be significant in this region.

¹⁶⁴ Callum C., 2007. *The Unnatural History of the Sea*. Island Press.

¹⁶⁵ MacDiarmid, A.B., Abraham, E., Baker, C.S., Carroll, E., et al. 2016. *Taking Stock - the changes to New Zealand marine ecosystems since first human settlement: synthesis of major findings, and policy and management implications*. New Zealand Aquatic Environment and Biodiversity Report No. 170.

¹⁶⁶ Fisheries New Zealand (2019). *Fisheries Assessment Plenary, May 2019: stock assessments and stock status Vol 1*. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand. 1,641 p
<https://fs.fish.govt.nz/Doc/24726/May-Plenary-2019-Vol1.pdf.ashx>

809. If the proposed marine reserves were Type 2 marine protected areas instead (as suggested by some submitters that only commercial fishing should be banned), the level of impact from recreational fishing is likely to be inconsistent with the purpose of establishing marine protection. We do not consider that the weather-induced limitations on recreational fishing activity are a sufficient reason not to establish the proposed marine reserves.
810. While some fishing methods do not significantly damage habitats directly (e.g. potting over non-sensitive seafloor), the removal of keystone species or top predators (e.g. kōura) can have impacts on the ecological processes and health of marine ecosystems. In their submission (in relation to the proposed Te Umu Koau marine reserve), the New Zealand Marine Sciences Society recommended not compromising the potential effectiveness of the proposed marine reserve by allowing the take of kōura. This is because kōura are one of the dominant predators inhabiting subtidal reefs in New Zealand, and therefore have a significant role in these ecosystems.
811. 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 states¹⁶⁷. A global review of studies on marine reserves¹⁶⁸ 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 review authors also noted that fished species often showed the most dramatic increases – some had more than 1000% higher biomass or density inside marine reserves. While it can be expected that marine reserves established in areas where surrounding fishery management is poor are likely to have the greatest response to protection, marine reserves in New Zealand have also shown significant changes post-establishment.
812. In New Zealand, the ecosystem changes associated with the establishment of Cape Rodney-Okakari Point Marine Reserve (Goat Island) have been well documented. Despite the wealth of evidence about the 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 of time. Robust monitoring plans would allow this assessment in the future.
813. All objections that mentioned existing or alternate management measures (e.g. areas that are already closed) as a preferred alternative to establishing the proposed marine protected areas, referred only to existing fishing regulations. While there are indeed many existing fisheries restrictions on the southeast coast, as discussed in 6.2.3 none meet the protection standard required for an area to be considered a marine protected area. That is, they do not meet the requirements related to restoring and maintaining ecological values. Neither do they provide the level of protection that would create a reference area for scientific studies, which would add to New Zealand's understanding of ecological systems and improve management.

¹⁶⁷ For example: Costello, M. J., 2014. Long live Marine Reserves: A review of experiences and benefits. *Biological Conservation*, 176, 289–296; Edgar, G. J., & Barrett, N. S., 1999. Effects of the declaration of marine reserves on Tasmanian reef fishes, invertebrates and plants. *Journal of Experimental Marine Biology and Ecology*, 242: 107–144; Babcock, R. 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: 18256–18261; Lester, S. et al., 2009. Biological effects within no-take marine reserves: a global synthesis. *Marine Ecology Progress Series*, 384: 33–46; 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).

¹⁶⁸ Partnership for Interdisciplinary Studies of Coastal Oceans. 2007. *The Science of Marine Reserves* (2nd Edition, International Version). www.piscoweb.org. 22 p.

814. Partial protection as in fisheries management areas globally, have shown poor responses to protection compared to 'no-take' reserves¹⁶⁹. Similarly, it is considered that none of the current fishing management tools, such as the suggested traffic light system used for fish stocks, are designed to work at the habitat or ecosystem level. Catch is therefore unable to be managed at the scale of the individual proposed marine protected area or provide the biodiversity protection of representative habitats. These measures are therefore not appropriate for meeting the objectives of the MPA Policy, which the Forum worked under to arrive at their recommendations for a network, and which the current proposals are based on.
815. Charter boat operators are not subject to commercial quota restrictions. However, their estimated catch is allowed for in the setting of the total allowable catch for each fishery in the area and their customers are subject to the recreational fishing regulations.
816. The planning for monitoring and compliance of any established marine reserves would occur after gazettal and is envisaged to be undertaken through Te Papa Atawhai national frameworks for monitoring and compliance activities. For this reason, no detail on these activities was included in the Consultation Document. We do, however, agree that these activities would be critical to the long-term effectiveness of any new marine protected areas.

6.6.6.8 Objections related to the impacts of the global pandemic

817. Nine objections from submitters with fishing interests commented on the impacts of the COVID-19 pandemic. These objections included those from the following organisations: Green Island Fishing Club, Otago Rock Lobster Industry Association, Tautuku Fishing Club Dunedin and Haast Incorporated and the combined industry submission from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand. The fishing club templates also raised this issue.
818. All these objections stated that no marine protected areas should be implemented until the pandemic was over, so as not to further affect livelihoods at the time of economic crisis. Livelihoods were viewed as people's income from commercial fishing and the ability of recreational fishers to harvest seafood inexpensively. Examples of statements made in objections were, "*the cumulative effect of the pandemic and a marine network will be catastrophic and jobs will be lost*", and "*I do not believe that the network should be front-of-mind for Government at this time. To proceed with the implementation of a radical and untested model is insensitive and negligent when the primary objective currently ought to be job security and consumer confidence in the continued supply of affordable options with which to feed their families*".

Te Papa Atawhai advice

819. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserves would be contrary to the public interest.
820. We acknowledge the uncertainties and risk that arose from the pandemic, and that it caused disruption and economic impacts on a range of industries, businesses, and individuals. We note, however, that the submissions were received during the public consultation period which ran from 3 June – 3 August 2020. The Treasury's Budget Economic and Fiscal Update 2022¹⁷⁰ stated that 'the New Zealand economy has overall been resilient to the transmission of the Delta and Omicron variants [of COVID-19] across the motu, although some

¹⁶⁹ 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: 1,860-1,873.

¹⁷⁰ New Zealand Government: Budget Economic and Fiscal Update 2022. 19 May 2022, The Treasury. p162.

businesses and households have been more impacted than others'. The effect of the pandemic on the CRA7 catch was relatively minor in terms of overall catch. The total allowable commercial catch was not fully caught in the 2019/20 fishing year, presumably as a result of the pandemic. Following consultation, up to 10% of Annual Catch Entitlement was carried forward to the following fishing year, meaning total allowable commercial catch was slightly overcaught in the subsequent year. Since then, the overall total allowable commercial catch has been increased and fully caught. We also consider that other factors are more likely to affect economic returns in the commercial fishing industry than establishing the proposed Network.

821. We also consider that the proposed marine reserves would not, for the most part, prevent people being able to harvest seafood inexpensively as suggested, since this activity would still be possible outside these areas.

6.6.6.9 Objections questioning the management of non-fishing threats

822. Eleven objections to the proposed Network expressed concerns that marine reserves only manage the threats from fisheries and not other pressures on the marine area. The most serious land-based threats to the marine environment include discharges into the marine areas, urban runoff and sediment and nutrient runoff.

823. Submitters raising these objections included the following organisations: Herbert Heritage Group, Otago Rock Lobster Industry Association, Te Ohu Kaimoana, Fish Mainland and the combined industry submission of the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand. They stated that marine reserves would not provide the expected benefits if land-based pollution was not managed, presumably arguing that it would therefore be contrary to the public interest to establish them.

824. Several submissions in support qualified their support by stating that it was important for the management of land-based threats to be improved, or at least monitored, as part of any management plans developed for the proposed marine reserves. One suggestion was to incorporate management measures for the marine reserves into catchment management plans to reduce the impacts of runoff.

825. Another issue raised in objections was that marine reserves cannot protect the marine environment from the threats associated with climate change and related ocean acidification and increased sea temperatures, and marine pests. Some submissions in support also qualified their support by raising similar issues and recommending that the marine reserves be well monitored for marine pests and the impacts of climate change in order to determine their effectiveness in the long term.

Te Papa Atawhai advice

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

827. Given the long history of fishing and other uses in this region, the current state of the marine environment is not considered 'natural'. Marine reserves would allow recovery to a more natural state over time. While it is understood that other stressors such as sediment inputs, disease and climate change play a role in the health of the marine environment, their individual impacts are poorly understood and expected to vary from place to place¹⁷¹.

¹⁷¹ 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: 1,860-1,873.

828. The establishment of marine reserves, however, has increased our knowledge of marine ecosystems in New Zealand¹⁷². Research inside and outside marine reserves has been used in the management of the marine environment domestically and internationally. Marine reserves provide natural laboratories or control areas to study the marine environment in its most undisturbed state. They also offer a unique opportunity for an enhanced understanding of natural processes in the absence of some of the most significant pressures on the environment (e.g. fishing and habitat disturbance). This allows a better understanding of the effects of extractive use, as well as the effects of other pressures such as land-based impacts or climate change. Marine reserves also allow ecosystems to recover and become a benchmark for the ecological processes and functioning that could be expected to occur in the absence of many of the human pressures affecting the marine environment.

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

829. Te Papa Atawhai has considered all objections made in relation to the proposed Network against the criteria of section 5(6) of the Marine Reserves Act. You must consider these objections as part of your decision-making on each the six proposed marine reserves as set out in 6.1.3.

830. Based on the objections made in relation to the proposed Network, we conclude that while there would be some interference with existing uses and interests specified in section 5(6) of the Marine Reserves Act if the proposed marine reserves were established, the nature and magnitude of the interference would not be undue, nor contrary to the public interest. In reaching this conclusion we have considered the values of the proposed marine reserves both cumulatively and as part of the proposed Network, and the extent to which they are expected to fulfil the purpose of the Marine Reserves Act.

831. We have also considered whether a decision to not uphold any objections made in relation to the proposed Network would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including under section 4 of the Conservation Act. This is considered in light of our assessment (as set out in 6.3.10) that to declare the proposed marine reserves with the recommendations resulting from the direct Kāi Tahu engagement to date would fulfil the Crown's obligation in relation to the Treaty of Waitangi. As recorded above in 6.5.1–6.6.1, Te Papa Atawhai considers that no additional matters have been raised in objections from submitters identified as affected iwi, hapū or whānau or other Māori submitters that would change that assessment.

832. We therefore consider that no objection made in relation to the proposed Network should be upheld in accordance with section 5(6) Marine Reserves Act. Before making a decision on whether any objection should be upheld on each individual proposed marine reserve, you will also need to assess the information in chapters 7–12. However, if you agree that none of the objections in relation to the proposed Network should be upheld and you do not uphold any of the objections made in relation to the individual sites, you should proceed to assessing the information below relating to considerations under section 5(9) of the Marine Reserves Act.

¹⁷² Willis, T.J., 2013: Scientific and biodiversity values of marine reserves: a review. DOC Research and Development Series 340. Department of Conservation, Wellington. 70p.

6.8 Stage 2 assessment – Statutory considerations section 5(9) of the Marine reserves Act

833. Section 5(9) provides that your recommendations to the Governor-General on the proposed marine reserves can be made unconditionally or subject to conditions. Conditions to provide for activities that were proposed in the Application as being allowed to continue, and those we recommend as a result of submissions received in relation to individual proposed marine reserves, are set out in each of the site chapters (chapters 7–12). No additional conditions are recommended for the proposed marine reserves as a result of submissions made in relation to the proposed Network. Our recommendations arising from Treaty partner engagement (as set out in 6.3), including Order in Council conditions and other measures, are set out below in 6.8.1 and 6.8.2.

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

835. Our assessment of each proposed marine reserve against the section 5(9) criteria is set out in chapters 7–12. In order to assess whether each proposed marine reserve meets the criteria in section 5(9), you will need to consider the information below in addition to information contained in the individual site chapters.

6.8.1 Recommendations for Order in Council conditions arising from Treaty partner engagement

836. As a result of Treaty partner engagement, we recommend the conditions described below for the stated marine reserves should they be established. These would be set out in the Order in Council creating each marine reserve.

837. In addition to the recommended conditions listed below, as set out in 6.3.6.6, Te Papa Atawhai recommends a condition for any marine reserve you approve in this process (except Papanui and Okaihae) to allow for the non-commercial gathering of beach stones, non-living shells and driftwood on the foreshore using only hand-held (non-mechanical) methods. This is a condition that was proposed in the Director-General’s Application and is therefore discussed in further detail in the subsequent site chapters.

(a) Condition for continued enhancement of mātauraka Māori and wānaka

838. As set out in 6.3.6.5, Te Papa Atawhai recommends a condition for any marine reserve you approve in this process that would provide for members of Ngāi Tahu Whānui to continue undertaking activities that would otherwise constitute an offence where:

- those activities are undertaken as part of organised wānaka
- the activities are for the purpose of enhancing mātauraka
- Te Papa Atawhai (or the rohe specific co-management group once established) is notified by the relevant papatipu rūnaka of the proposed wānaka in advance, and provided detail of the activities (e.g. the period when wānaka activities would be undertaken and where, details of activities to be carried out and species affected).

839. Mātauraka Māori/wānaka activities would be subject to any other legal requirements and must be consistent with the purpose of the Marine Reserves Act.

(b) *Condition for the retrieval of kōiwi tākata and archaeological artefacts*

840. As set out in 6.3.6.6, Te Papa Atawhai recommends a condition for any marine reserve you approve in this process (except Papanui) that would allow for Kāi Tahu papatipu rūnaka with mana moana (or anyone authorised by said papatipu rūnaka) to retrieve kōiwi tākata and archaeological artefacts consistent with the Ngāi Tahu Kōiwi Tāngata (human remains) Policy. This activity would be subject to any other legal requirements.

(c) *Condition for retrieval of dead marine mammals and marine mammal parts*

841. As set out in 6.3.6.6, Te Papa Atawhai recommends a condition for any marine reserve you approve in this process (except Papanui and Okaihae) that provides for Kāi Tahu (Ngāi Tahu Whānui) to be able to take of all or part of dead marine mammals in accordance with the usual Marine Mammals Protection Act provisions. 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):

- all or part of a marine mammal may be taken if it washes up dead, or strands and dies (permit required)
- bones, teeth, ivory or ambergris may be collected from a marine reserve if they have naturally separated from a marine mammal (no permit required, so long as Te Papa Atawhai is notified)

(d) *Condition to allow the removal of Undaria pinnatifida*

842. As set out 6.3.6.7, Te Papa Atawhai recommends a condition for any marine reserve (except Papanui) you approve in this process that would provide for the removal of *Undaria pinnatifida* (unattached or attached), as long as all other legal requirements relating to the removal are complied with (e.g. Biosecurity Act and Resource Management Act).

843. Te Papa Atawhai would require notice to the relevant Te Papa Atawhai Operations Team of the *Undaria* harvest.

(e) *Condition to require generational reviews*

844. As set out 6.3.6.3, Te Papa Atawhai recommends a condition for any marine reserve you approve in this process that would require generational reviews to be undertaken. The condition would provide for the following:

- The Minister of Conservation would undertake the generational review.
- The generational review would be undertaken within 25 years of the marine reserve being declared and at subsequent 25-year intervals.
- The Minister of Conservation would be required to consult with Ngāi Tahu Whānui as part of undertaking the generational review.
- Generational review of any marine reserve should be considered in the context of the proposed Network because that was how they were developed by the Forum (i.e. the value of each site was balanced and considered against the total components of the proposed Network).

6.8.2 Recommendations for other measures arising from Treaty partner engagement

845. As a result of Treaty partner engagement, we recommend the measures described below for the stated marine reserves should they be established

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

846. As set out in 6.3.6.1, Te Papa Atawhai recommends, for any marine reserve you approve in this process, you direct that formal co-management arrangements with Kāi Tahu are to be implemented, guided by the work undertaken to date by the Rōpū and the Rōpū co-management sub-committee.

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

847. As set out in 6.3.6.2, Te Papa Atawhai recommends, for any marine reserve you approve in this process, that you direct that Kāi Tahu ranger roles are provided for within the formal co-management arrangements implemented, guided by the work to date of the Rōpū sub-committee, noting that the details of the rangers' roles, and the resourcing and support from Agencies cannot be determined at this point.

(h) Recommendation for periodic reviews

848. As set out in 6.3.6.3, Te Papa Atawhai recommends, for any marine reserve you approve in this process, that you direct that periodic reviews are incorporated into the formal co-management arrangements implemented.

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

849. As set out in 6.3.6.8, Te Papa Atawhai recommends that, for any marine reserves you approve in this process, you progress the use of te reo Māori names confirmed by papatipu rūnaka through the Rōpū hui, noting that the ultimate decision on the use of te reo names is subject to review by the New Zealand Geographic Board.

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

850. As set out 6.3.6.8, Te Papa Atawhai recommends, for any marine reserves you approve in this process (except Papanui and Okaihae), that you direct the placement of pou whenua.

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

851. As set out in 6.3.8.2, Te Papa Atawhai recommends that you record as part of your decision-making that a decision to declare one or more of the proposed marine reserves is *unlikely, and not intended*, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title.

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

852. As set out in 3.2.8, under section 5(9) you must decide whether declaring each of the marine reserves will be in the best interests of scientific study, for the benefit of the public and expedient. Our advice on these criteria as relevant to the proposed Network as a whole is described below. As part of this advice, we have included reference to additional information raised in submissions of support that is relevant to each of the section 5(9) criteria. Note that objections are not considered at this stage, as these views have already been considered in our advice on section 5(6) in accordance with the statutory framework.

6.8.3.1 Obligations in relation to the Treaty of Waitangi

853. In considering whether the declaration of the marine reserves cumulatively and as part of the proposed Network would be in the best interests of scientific study, for the benefit of the public and expedient, you must consider your obligations in relation to the Treaty of Waitangi.

854. As set out in 3.2.7, in accordance with your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi, you must consider the views provided by Kāi Tahu in respect of the proposals in making your assessment under section 5(9). The obligation to have 'particular regard' to these views in accordance with section 49 of the Takutai Moana Act also applies to these views. Our advice and conclusions in respect of the Crown engagement with Kāi Tahu and the corresponding obligations under the Treaty of Waitangi is set out above in 6.3.10. Based on this assessment, and subject to the matters discussed in this and subsequent chapters, Te Papa Atawhai considers that the declaration of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

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

856. In terms of your decision under section 5(9), the obligation to have 'particular regard' applies to the views received from affected iwi, hapū or whānau through the statutory consultation process. The obligation in section 4 of the Conservation Act also applies to your consideration of these views, and may still be relevant to submissions from other Māori (although the obligation to have particular regard does not apply to the views from other Māori). In order to allow you to have 'particular regard' to the relevant submissions, and in accordance with the principle of informed decision-making, in our advice below we have therefore identified where submissions have been made from affected iwi, hapū or whānau and/or other Māori submitters that are relevant to the specific section 5(9) criteria. None of the submissions identified raise matters that are inconsistent with our conclusion set out above at paragraph 854 - that the declaration of the proposed marine reserves on the basis of the recommendations made in relation to the engagement with Kāi Tahu would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including the obligation under section 4 to give effect to the principles of the Treaty.

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

6.8.3.2 Consistency with statutory planning instruments

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

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

6.8.3.3 In the best interests of scientific study

860. In considering the six proposed marine reserves cumulatively and as part of the proposed Network, for the reasons set out below and in light of our conclusions in 6.8.3.1 and 6.8.3.2, we consider their establishment with the recommended conditions and measures set out in 6.8.1 and 6.8.2 would be in the best interests of scientific study.

861. As described in the Application (on page 75) and in 6.2, the proposed marine reserves 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 marine reserves encompassing a range of habitat types that are typical of the southeast region.

Points raised in submissions

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

- An individual submitter identified as affected iwi, hapū or whānau stated, “*the benefits for public interest and science will outweigh the costs*”.
- A Māori submitter not identified as affected iwi, hapū or whānau stated establishing marine reserves was important for “*furthering our understandings of marine science*”.
- The Otago Museum stated, “it is important to remember that beneficial effects take time. The most productive no take marine reserves are over 10 years old [...]. There are great learning and research opportunities in tracking and understanding ecological recovery in our region”.
- The Otago Branch of the Ornithological Society of New Zealand Inc.¹⁷³ indicated that “*this network will assist in furthering [their] purposes*”, that is, the study, appreciation and conservation of the birds of New Zealand and that “*marine reserves provide an un-fished baseline on a local scale to facilitate study by structured comparison*”.
- The New Zealand Marine Sciences Society stated in their submission “the MPA network will provide new research opportunities and it is likely that many of our members will be interested and seek funds from a range of sources, accordingly”.

6.8.3.4 For the benefit of the public

863. In considering the six proposed marine reserves cumulatively and as part of the proposed Network, for the reasons set out below and in light of our conclusions in 6.8.3.1 and 6.8.3.2, we consider their establishment with the recommended conditions and measures set out 6.8.1 and 6.8.2 would be for the benefit of the public.

864. As described in 6.2 the proposed marine reserves can be expected to create wellbeing and public enjoyment benefits, enhanced tourism opportunities, potential fisheries benefits and to benefit the public through research and scientific studies.

¹⁷³ The primary organisation concerned with the study of birds in New Zealand and the dissemination of this knowledge to assist the conservation and management of birds.

Points raised in submissions

865. Further information supporting a conclusion that the proposed marine reserves would be for the benefit of the public is evident from points raised in submissions of support.

Long-term benefits to fisheries, including spillover

866. Many submissions (including 41 from individuals and 3,271 people using the Forest & Bird template) outlined that the long-term ecological benefits of marine reserves for ecosystem and biodiversity recovery outweighed the short-term costs of implementation.

867. An individual submitter identified as affected iwi, hapū or whānau, warned against fisheries collapse if the status quo was maintained, which they contended would have a negative impact on recreational and commercial fisheries, and Māori cultural traditions. The submitter also stated that marine protected areas serve to maintain the stability of fish stocks and the marine biodiversity that is important for tourism.

868. Other submitters stated that marine taonga and fish stocks were currently declining along the coast.

869. Spillover was a common benefit mentioned by submitters. Many submitters also highlighted that it was a long-term process, which would eventually ensure a coastal ecosystem that was more resilient to the effects of fishing, even taking the context of climate change and impacts from land use changes into account. The Otago Museum stated, "*as shown in some fisheries abroad, such spill-over can more than offset the decrease in allowable fishing area due to higher catch per unit effort from the surrounding areas*".

870. A Māori submitter not identified as affected iwi, hapū or whānau stated, "*A more complex food web (more species diversity/biodiversity) is more stable in times of change and stress whether environmental or anthropogenic. It is beneficial to both the environment, fisheries, and communities to try and preserve the complexity.*"

871. Another often-mentioned benefit, that was also made by an individual identified as affected iwi, hapū or whānau, was that marine protected areas would provide more resilience to climate change for marine habitats. One submitter cited a range of scientific evidence and said that "*the science is clear, no take marine reserves protect biodiversity and spawning populations of exploited fish and invertebrates*".

872. The Otago Branch of the Ornithological Society of New Zealand Inc. explained that large fish "*produce far more young of better quality than young fish*" and that the proposed marine reserves would support more and larger fish.

Improved public experiences of the marine environment

873. Several submitters commented that marine reserves provide a different experience of the marine environment because they allow people to discover what a more natural marine area is like. The Otago Museum said, "*there is evidence that fish behaviour changes within marine reserves losing their fear of people*" and that this could enhance the experience of "*ecotourists*" and the public. They also stated, "*people have a limited frame of reference for what is 'natural'*". Another submitter wrote that "*MPAs are also a place where people can have a different kind of experience with marine life - snorkelling, swimming -where the fish are plentiful and do not flee. I would love to experience that with others*". One submitter wrote that "*extensive reserves close to Dunedin are particularly important for public engagement and education*".

Tourism relies on healthy marine ecosystems and charismatic wildlife

874. Dunedin Host¹⁷⁴, on behalf of tourism industry operators, raised the issue that the Application understated the benefits that marine reserves would have for the regional economy. They stated that eco-tourism operators are “*particularly concerned to emphasize [sic] the economic value to Dunedin of a healthy marine ecosystem*”. The submitter compared the economic value of ecotourism to Dunedin, estimated in March 2020 as “*\$168 - \$237 million*”, to the estimated value of fisheries displaced, stated as \$3.1 million in the Consultation Document.

875. Many other submitters also raised the value of the proposed Network for the tourism industry, highlighting the economic revenue benefits and job opportunities they believe are likely to arise.

Support for biodiversity restoration despite financial or recreational impacts

876. Many submissions said the proposed Network was already the result of many years of alterations to reduce the potential impacts (especially on the fishing industry) and warned against making further alterations.

877. The Forest & Bird template used by 3,271 submitters stated, “*this proposed network already includes significant concessions to fishing*”, and another submitter said that those with “*vested interest in the status quo continue to follow their own selfish interests by blocking and watering down marine protected area actions wanted by the majority of New Zealanders*”.

878. A submission in support from an individual identified as affected iwi, hapū or whānau stated that other examples from New Zealand and internationally have “*amply demonstrated*” the recovery of ecosystems through the establishment of marine protected areas, despite opposition from the commercial fishing sector.

879. Forest & Bird and the New Zealand Marine Sciences Society commented that the proposed Network fails to meet the MPA Policy due to alterations to accommodate existing users, and that “*decision makers should bear this in mind when considering opposition to the proposed marine reserves*”. The Otago Branch of the Ornithological Society of New Zealand Inc. noted “*the need to avoid impact upon the fishing industry and this is reflected in the limited size of the proposal and the inconvenient locations of some [proposed marine reserves]*”.

880. Another submitter described their own research findings that “*the bulk of all adult New Zealanders prioritise biodiversity restoration above all other goals (recreational fishing, customary fishing, commercial fishing) if a traded-off is needed* [175]”.

6.8.3.5 It is expedient

881. In considering the six proposed marine reserves cumulatively and as part of the proposed Network, for the reasons set out below and in light of our conclusions in 6.8.3.1 and 6.8.3.2, we consider their establishment with the recommended conditions and measures set out 6.8.1 and 6.8.2 would be expedient.

882. As set out in 6.2, the proposed marine reserves would provide a timely contribution to a number of domestic and international marine biodiversity commitments. The outcomes of these commitments would be expedient for the protection of marine biodiversity and for human prosperity.

¹⁷⁴ The primary industry body for tourism operators in and around Dunedin.

¹⁷⁵ Chhun, S.; Thorsnes, P.; Moller, H., 2013. Preferences for Management of Near-Shore Marine Ecosystems: A Choice Experiment in New Zealand. *Resources* 2: 406-438; Chhun, S., Kahui, V., Moller, H., Thorsnes, P., 2015. Advancing Marine Policy Toward Ecosystem-based Management by Eliciting Public Preferences. *Marine Resource Economics* 30: 261-275.

Points raised in submissions

883. Further information supporting a conclusion that the proposed marine reserves would be expedient is evident from points raised in example submissions of support.

Fulfil international agreements

884. Numerous submitters commented that New Zealand was once a world leader in marine protection but is now falling behind. They highlighted that this has consequences for the health of New Zealand's marine environment and the economy through negative international perception of the tourism and seafood sectors. This statement is one example: *"Loss of NZ's global branding as being a country that is environmentally-conscious. A failure to meet our international agreements and MPA and Biodiversity Policy will cost us our international reputation"*.

885. The Otago Conservation Board stated, *"Ministers have a responsibility and indeed obligations, to account for New Zealand's international commitments and established best practice standards when establishing the South East Marine Protected Areas"*.

Stopping long-term degradation of fisheries

886. Several submitters noted a lack of consideration for the long-term impacts on fisheries resources of not implementing the proposed Network. They commented that this impact was understated in the Consultation Document, for example: *"The assessment does not put a value [on] the collapse of fisheries as we know them upon future generations"* and *"I disagree that there would be no impacts on fisheries, commercial, recreational and customary. Status quo business-as-usual will mean that all these fisheries will continue to degrade and eventually become untenable"*.

Urgent protection sought

887. Many submitters noted the urgency of establishing protection now and that any further delays would mean further degradation of the marine environment. Most of these submitters noted, at the same time, that they would have liked more or better protection, but they chose to support the implementation of the proposed Network to put some protection in place as soon as possible.

888. One submitter stated that *"the proposed network is less than the minimum we need in order to achieve any kind of biodiversity conservation in Otago. At every stage of the process, it has been diminished and downgraded. I support this network only because we cannot afford the losses that will result from any further consultation"*.

Personal observations of benefits

889. Many submitters provided personal accounts of observed declines in marine life or impacts of a lack of protection. Examples included, *"I'd really like to enjoy representative areas with my family snorkelling etc like goat island but closer to home"*, *"one absolutely has to call halt on open use before the sea is depleted"*, *"marine reserves end up benefiting everyone, including fishers, as they act as safe nursery grounds and a haven for developing fish"*, and *"I have seen in my lifetime the local decimation of some species populations such as paua, blue cod"*.

890. A Māori submitter not identified as affected iwi, hapū or whānau said *"I fully support the establishment of marine reserves and protective measures to ensure marine ecosystems and biodiversity are safeguarded [...] and for intrinsic value of nature."*

Benefits for populations of threatened species

891. Many (187) submitters who used the Forest & Bird template added personalised comments to indicate that their support was also because the proposed marine reserves would help protect threatened species such as hoiho that are in decline in the region.

892. The Otago Branch of the Ornithological Society of New Zealand Inc. highlighted the importance of the region for numerous “*iconic*” seabird species, notably the hoiho, toroa/Northern royal albatross and the koau/Otago shag. At least 72 submissions in support (or that choose ‘Another option’ because they wanted more areas to be covered) highlighted the importance of the areas for marine wildlife, notably hoiho, pahu, rāpoka, other seabirds and fish. An example of such submissions was “*more detail should be added about the unique species that could be lost or come to harm with maintaining status quo - for example, the Hoiho, NZ sea lion and Hector's dolphins, all very sensitive species that are relying heavily on the implementation of these marine protected areas around southeast South Island*”.

893. Two submissions from Māori not identified as affected iwi, hapū or whānau also described their support for the proposed Network in relation to benefits to threatened species. One said, “*extending protection for foraging habitat along the Otago coastline has the potential to greatly increase food availability for these iconic penguins [hoiho]*”. The other said the proposed Network “*could help these species at risk rejuvenate*”, referring specifically to bycatch of pahu.

6.9 Conclusion – all six proposed marine reserves as part of a network of marine protected areas

894. Our overall assessment in relation to the six proposed marine reserves, collectively and as part of the proposed Network, is that, subject to matters raised in subsequent chapters:

- the procedural requirements of section 4 and section 5 of the Marine Reserve Act have been met
- we do not recommend upholding any objections made in relation to the proposed Network under section 5(6) of the Marine Reserves Act
- in considering the six proposed marine reserves cumulatively and as part of the proposed Network, and in light of the recommendations arising from Treaty partner engagement, their declaration will be in the best interests of scientific study, will be for the benefit of the public, and will be expedient (in accordance with section 5(9) of the Marine Reserves Act)
- to declare the proposed marine reserves on the basis of the recommendations listed above would fulfil the Crown’s obligations in relation to the Treaty of Waitangi.

895. Therefore, we recommend you proceed to consider each proposed marine reserve individually, including the matters raised in submissions regarding individual sites.