

## Your Comment on the Taranaki VTM Project

Please include all the contact details listed below with your comments.

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| 1. Contact Details                                                                                         |                      |
| Please ensure that you have authority to comment on the application on behalf of those named on this form. |                      |
| <b>Organisation name (if relevant)</b>                                                                     | Te Kāhui Maru Trust  |
| <b>First name</b>                                                                                          | ████                 |
| <b>Last name</b>                                                                                           | ████████             |
| <b>Postal address</b>                                                                                      |                      |
| <b>Phone number</b>                                                                                        |                      |
| <b>Email (a valid email address enables us to communicate efficiently with you)</b>                        | ████████████████████ |

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| 2. We will email you draft conditions of consent for your comment |                                                      |                          |                                                          |
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| 3. Please select the effects (positive or negative) that your comments address: |                                                                                                                                   |                                     |                                                  |
| <input checked="" type="checkbox"/>                                             | Economic Effects                                                                                                                  | <input checked="" type="checkbox"/> | Sedimentation and Optical Water Quality Effects  |
| <input type="checkbox"/>                                                        | Effects on Coastal Processes                                                                                                      | <input checked="" type="checkbox"/> | Benthic Ecology and Primary Productivity Effects |
| <input checked="" type="checkbox"/>                                             | Fished Species                                                                                                                    | <input checked="" type="checkbox"/> | Seabirds                                         |
| <input checked="" type="checkbox"/>                                             | Marine Mammals                                                                                                                    | <input checked="" type="checkbox"/> | Noise Effects                                    |
| <input type="checkbox"/>                                                        | Human Health Effects of the Marine Discharge Activities                                                                           | <input type="checkbox"/>            | Visual, Seascape and Natural Character Effects   |
| <input type="checkbox"/>                                                        | Air Quality Effects                                                                                                               | <input checked="" type="checkbox"/> | Effects on Existing Interests                    |
| <input checked="" type="checkbox"/>                                             | Other Considerations (please specify):<br>Cultural impacts<br>Treaty of Waitangi impacts<br>Incompatibility with other activities |                                     |                                                  |

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Please provide your comments below. You may include additional pages if needed. If you are emailing this form and attaching any supporting documents, please list the names of those files below to help us ensure all materials are received.

Appendix 1 – Te Kāhui Maru Trust submission

Appendix 2 – Te Ohu Kaimoana submission

**Thank you for your comments**



Fast-Track Panel  
Environmental Protection Authority  
Private Bag 63002  
Waterloo Quay  
Wellington  
Via email: - [substantive@fasttrack.govt.nz](mailto:substantive@fasttrack.govt.nz)

## **Te Kahui Maru Trust – Submission on Taranaki VTM Project Fast-Track Application**

Tēnā koe,

Te Kāhui Maru Trust, the Post-Settlement Governance Entity for Ngāti Maruwharanui (Taranaki), **strongly oppose** the seabed mining application by Trans-Tasman Resources Ltd (TTR) under the Fast-Track Approvals Act 2024 and urge decision-makers to **reject this proposal** in its entirety.

### Lack of Robust Environmental Effects Assessment

TTR seeks to extract up to 50 million tonnes of iron sands annually off the coast of Pātea in the South Taranaki Bight. The proposed mining operation poses significant risks to marine ecosystems, including habitat for pygmy whales, dolphins and New Zealand's only known population of blue whales.

The Environmental Protection Agency (EPA) rejected TTR's first application in 2013, then three years later approved consents for the activity, subject to 109 conditions. This decision was appealed to the High Court who quashed the EPA's decision to grant the consents. The High Court ruled that TTR's risk management model amounted to "adaptive management" or "suck it and see" mining, which is prohibited under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

This decision was appealed and again affirmed by the Court of Appeal, denying TTR permission to mine off the coast of Pātea in the South Taranaki Bight as the proposal does not meet environmental standards and Treaty of Waitangi principles. After further appeal, the Supreme Court upheld this decision, citing the uncertainty of impacts on marine mammals and seabirds, and concluded that the EPA could not be satisfied that the proposed conditions would adequately protect the environment.

Without comprehensive baseline data and a credible environmental impact assessment, this application cannot be responsibly approved without posing significant risks to the environment.

### Legal precedent

The application has already been rejected by the High Court, Court of Appeal and the Supreme Court which found serious flaws in the environmental assessment and Treaty of Waitangi compliance.

Attempting to revive the same project through the Fast-Track Approval Act is a backdoor tactic that disregards judicial rulings and sets a dangerous precedent for environmental governance.

#### Treaty of Waitangi Compliance and Lack of Engagement with Tangata Whenua

The fast-track process has excluded iwi and hapū from meaningful engagement, violating the principles of the Treaty of Waitangi. Iwi in Taranaki have lodged claims with the Waitangi Tribunal, asserting breaches of rangatiratanga, kaitiakitanga and customary rights.

The Supreme Court has already affirmed that tikanga Māori is part of New Zealand law, and that Treaty principles must be given full effect in environmental decision-making. The use of fast-track legislation to override these protections is a direct affront to the Treaty of Waitangi and the Crown's constitutional obligations.

#### Customary and Commercial Fishing Rights

The South Taranaki Bight is regarded as a taonga and tupuna to the iwi in Taranaki. It is a culturally and spiritually significant area which is tied to our identity, history and whakapapa. Through their whakapapa, Ngāti Maru have inherited responsibilities as kaitiaki to respect and protect the ocean. The oceans are also considered wāhi tapu.

The South Taranaki Bight is home to many taonga species, including migrating tuna and pīharau. It is a vital area for both customary and commercial fishing, supporting local economies and cultural practices. The proposed seabed mining operation threatens to disrupt these activities in multiple ways.

Customary fishing is an expression of kaitiakitanga and rangatiratanga and is protected under the Treaty of Waitangi. It is a cornerstone of the cultural identity of Taranaki Māori and a valued source of sustenance.

The impacts of seabed mining including sediment plumes, habitat destruction and noise would devastate traditional fishing grounds, undermine food security and erode cultural practices passed down through generations. They also negatively impact the relationship of Ngāti Maru with their wāhi tapu and taonga.

The sediment plumes from the mining activity risk smothering benthic habitats and kaimoana species such as pāua, mussels and crustaceans. As a vital part of the food chain, impacts on these species will inevitably have negative impacts on other marine species which rely on these for food and habitat. These species are not only ecologically significant, but are culturally significant for the role they play in enabling tangata whenua to exercise kaitiakitanga and cultural practices, and in the unique cultural identity of Taranaki Māori.

Customary catch data from the area encompassing the proposed mining zone show consistent harvesting activity since 2006. Disruption to these areas would directly impact rights under the Treaty of Waitangi and undermine the ability for tangata whenua to exercise rangatiratanga and kaitiakitanga over traditional fishing grounds.

The sediment plumes and habitat destruction caused by seabed mining are likely to reduce fish abundance and migration patterns, making these areas less viable for commercial fishing operations. This will negatively impact iwi in Taranaki who have quota to commercially fish in the proposed mining zone. Further degradation of habitat could lead to reduced catch volumes, economic losses and job insecurity for local fisherman.

The impacts on iwi commercial fishing rights and interests are covered in the submission by Te Ohu Kaimoana. Te Kāhui Maru fully support the submission by Te Ohu Kaimoana opposing the TTR seabed mining application and would like it to form part of our submission.

#### Community Opposition and Cultural Impact

The project has sparked widespread opposition, including from all eight Taranaki iwi, local councils and hundreds of community members who have protested in solidarity. The South Taranaki Bight is a source of kai, recreation and cultural identity and the vast majority of people in Taranaki do not support the proposal.

#### Impacts on Wind Farming and Community Engagement Comparison

The South Taranaki Bight is globally ranked as one of the top five locations for offshore wind energy, with projects potentially contributing NZ\$50 billion to GDP and creating up to 10,000 jobs, while supporting New Zealand's zero emissions goals.

However, seabed mining poses a direct threat to offshore wind development. Its physical impacts like sediment plumes and seabed disruption, make it incompatible with wind turbine installation and operation. Developers warn that seabed mining would halt wind energy development for decades due to long seabed recovery times.

This is a strategic decision for New Zealand: choosing between a short-term, high-risk extractive industry with poor community engagement, and a long-term, sustainable renewable energy sector that aligns with climate goals and community values.

Seabed mining has faced legal challenges, protests, and criticism for excluding iwi and local communities. In contrast, offshore wind developers have engaged openly, fostering community support and collaboration.

Ultimately, the two industries are mutually exclusive in the region, and the choice will shape New Zealand's energy future.

#### Benefits for the Taranaki Region

Potential benefits of the proposal include short-term job creation. Some local jobs may be created during the operational phase, though the majority of high-value roles and construction work (such as building mining vessels and equipment) are likely to be based offshore. For example, 95% of the \$1 billion construction cost for the TTR project would be spent overseas, mainly in China.

Another potential benefit is government revenue from royalties and taxes. However, mining companies often pay minimal tax due to depreciation, offshore ownership and fluctuating commodity prices. Previous experience in New Zealand shows that mining is not a stable or significant source of Government revenue. TTR is also 100% Australian owned, so the profits will go to Australia. The New Zealand royalty regime is small and any royalties are likely to be paid on the iron sands, not the more expensive metals like vanadium and titanium.

Some local businesses may benefit from supplying goods and services to the mining operation, but these are generally limited compared to other industries.

In contrast, the costs and risks of the proposal are significant. Seabed mining poses significant risks to marine ecosystems, including sediment plumes which can smother habitats, harm fisheries and threaten rare and taonga species such as blue whales and Māui dolphins. Both

customary and commercial fishing could be severely impacted by habitat destruction and reduced fish stocks, impacting food security, cultural practices and local livelihoods.

There is also the cost associated with the loss of alternative opportunities, such as wind farming, which is incompatible with seabed mining. Wind farming could provide far greater long-term benefits for the Taranaki community.

The proposal has also received widespread opposition from iwi, local councils and the Taranaki community. Most of the benefits from seabed mining also flow offshore, with limited long-term gains for the Taranaki community.

The costs of seabed mining for the Taranaki region – environmental, cultural, economic and social – far outweigh the limited and mostly offshore benefits.

### Conclusion

The seabed mining proposal off the coast of Pātea has already failed the tests of law, science, and community consent. The costs also outweigh the benefits. The fast-track process is not a legitimate workaround, it is a dangerous shortcut that undermines environmental protection, customary and commercial fishing rights, Treaty obligations, and democratic participation.

**I urge the panel to reject this application in full** and uphold the integrity of Aotearoa's legal, environmental, and cultural frameworks.

Ngā mihi,



Chair of Te Kāhui Maru Trust

## Your Comment on the Taranaki VTM Project

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|------------------------------------------------------------------------------------------------------------|-----------------------------|
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| Please ensure that you have authority to comment on the application on behalf of those named on this form. |                             |
| Organisation name (if relevant)                                                                            | Te Ohu Kaimoana Trustee Ltd |
| First name                                                                                                 | [REDACTED]                  |
| Last name                                                                                                  | [REDACTED]                  |
| Postal address                                                                                             | [REDACTED]                  |
| Phone number                                                                                               | [REDACTED]                  |
| Email ( <i>a valid email address enables us to communicate efficiently with you</i> )                      | [REDACTED]                  |

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| <input checked="" type="checkbox"/>                                             | Other Considerations (please specify):<br>Impacts to Treaty Settlement Rights and Interests |                                     |                                                  |

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- Te Ohu Kaimoana Response to the Taranaki VTM Project (Fast Track Approvals) - PDF

**Thank you for your comments**



**TE ŌHU  
KAIMOANA**

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# **Response to the Taranaki VTM Project - Fast Track Approvals Application**

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September 2025



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# This is our response to the Taranaki VTM Project

1. Thank you for providing us with the opportunity to comment on the Taranaki VTM Project.
2. We have structured our response as follows:
  - First, we set out who we are and the reasons for our interest in the Taranaki VTM Project.
  - Second, we outline our views.
  - To conclude, we provide our recommendations.
3. We anticipate that specific submissions will likely be made by particular iwi through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs). We do not intend our response to conflict with or override any response provided independently by iwi.
4. In short, we confirm Te Ohu Kaimoana is **opposed** to the Taranaki VTM Project. Te Ohu Kaimoana's opposition is detailed in this submission however, at the outset, we confirm our view that the Taranaki VTM Project is inconsistent with the Māori Fisheries Settlement and therefore able to be declined on the basis that, under section 7 of the Fast-track Approvals Act 2024 (FTA), persons performing and exercising functions, powers, and duties under the FTA will not be able to act in a manner that is consistent with the Māori Fisheries Settlement.<sup>1</sup>

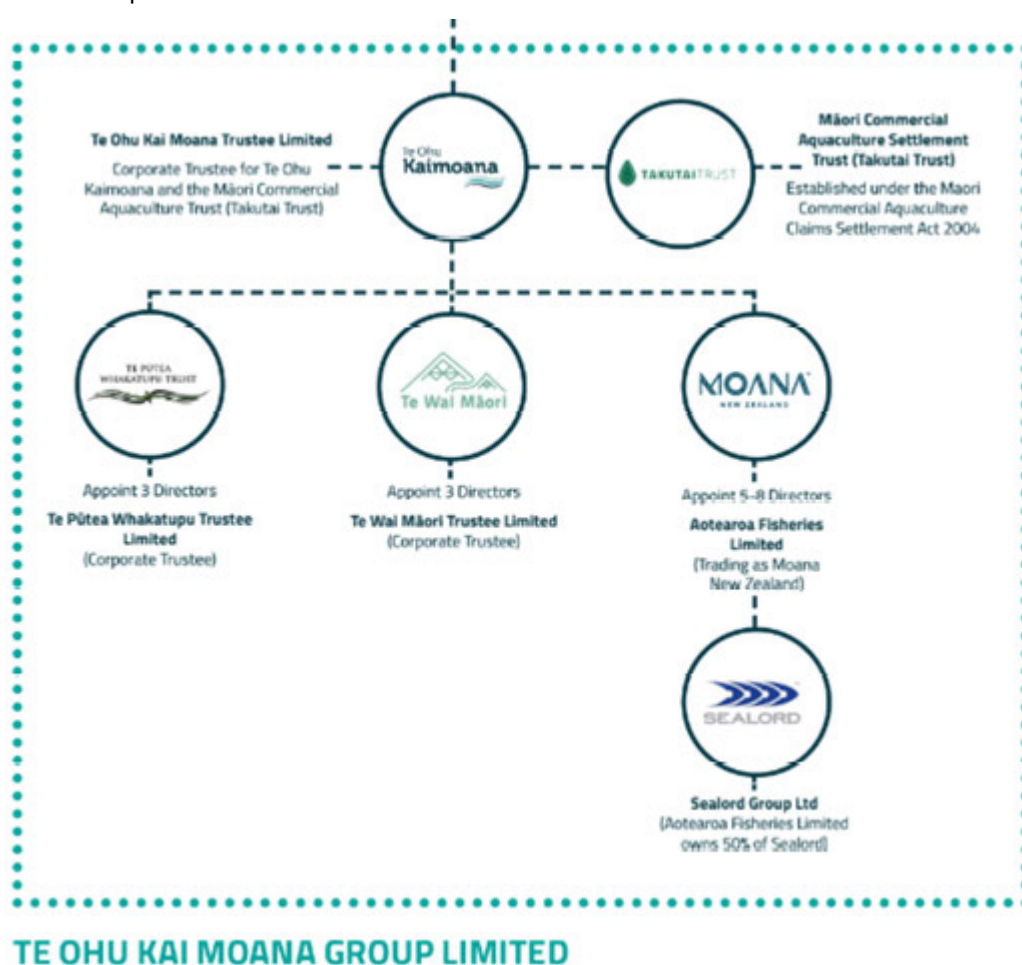
## We are Te Ohu Kaimoana

5. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance the Māori Fisheries Settlements. The Māori Fisheries Settlement, the Māori Fisheries Act 2004 (the MFA), and the Māori Commercial Aquaculture Claims Settlement Act 2004 (the MCACSA) are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.
6. Our purpose, set out in section 32 of the MFA, is to "advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:
  - a) ultimately benefit the members of iwi and Māori generally
  - b) further the agreements made in the Deed of Settlement
  - c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
  - d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

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<sup>1</sup> Under Section 85(b) of the Fast Track Approvals Act 2024 the panel must decline an application if the panel considers that granting the approval would breach section 7.

7. We work on behalf of 58 Mandated Iwi Organisations (MIOs),<sup>2</sup> Recognised Iwi Organisations (RIOs) and Iwi Aquaculture Organisations (IAOs) who represent iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.
8. MIOs have endorsed our Māori Fisheries Strategy and three-year strategic plan, which has as its goal “that MIOs collectively lead the development of Aotearoa’s marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent”. We play a key role in assisting MIOs to achieve that goal.
9. The Te Ohu Kaimoana Group structure is included below as **figure 1**. All entities under the group were established pursuant to the Māori Fisheries Settlement.



**Figure 1.** Te Ohu Kaimoana Group Structure.

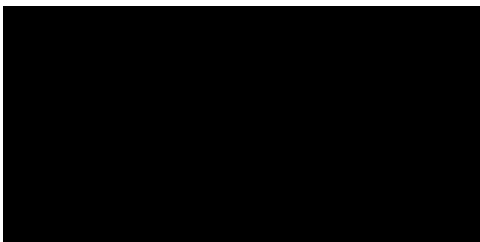
<sup>2</sup> MIO in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) of the MFA as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

## Te Ohu Kaimoana's interest

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10. Our interest arises from our responsibility to protect the rights and interests of Iwi in the Deed of Settlement and assist the Crown to discharge its obligations under the Deed and the Te Tiriti o Waitangi.
11. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga over their taonga, including fisheries. At its core, tino rangatiratanga is about Māori acting with authority and independence over their own affairs. It is practiced through living in accordance with tikanga, practicing their own mātauranga, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations.
12. The obligations under Te Tiriti o Waitangi apply to the Crown generally, whether or not there is an explicit reference to the Treaty in the governing statute, in this case the Fisheries Act 1996. Of particular note are the comments in the Barton-Prescott case, that “since the Treaty of Waitangi was designed to have general application, that general application must colour all matters to which it has relevance, whether public or private and...whether or not there is a reference to the Treaty in the statute.”<sup>3</sup> And more recently, the Supreme Court has emphasised the importance of Te Tiriti o Waitangi in the context of both statutory references and more generally (notably, this example is the Supreme Court case that denied Trans-Tasman Resources Limited's (TTR) second attempt to obtain consents).<sup>4</sup>

Mauri ora,



Te Mātārae | Chief Executive

Te Ohu Kai Moana Trustee Limited

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<sup>3</sup> *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179, 184.

<sup>4</sup> *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* [2021] NZSC 127.

# Our advice is based on Māori principles

## The significance of Tangaroa to Te Ao Māori

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13. The relationship Māori have with Tangaroa is intrinsic, and the ability to benefit from that relationship was and continues to be underpinned by whakapapa. Tangaroa is the son of Papatūānuku, the earth mother, and Ranginui, the sky father. When Papatūānuku and Ranginui were separated, Tangaroa went to live in the world that was created and has existed as a tipuna to Māori ever since.<sup>5</sup>
14. Protection of the reciprocal relationship with Tangaroa is an inherent part of the Deed of Settlement – it is an important and relevant part of modern fisheries management for Aotearoa.

## Our view on the Taranaki VTM Project

15. Te Ohu Kaimoana **opposes** the Taranaki VTM Project. Our position is that consents for this project need to be declined; as has been the case the previous two times TTR has attempted to obtain consents. The rationale for our position is provided throughout the sections below.

## The Taranaki VTM project – a background

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16. The Taranaki VTM Project (the project) is a renewed bid by TTR to gain approval for large-scale seabed mining in the South Taranaki Bight (STB), targeting vanadium, titanium, and magnetite deposits. The project involves dredging up to 50 million tonnes of seabed material each year from an area between 22 and 36 kilometres offshore, processing it at sea to extract an estimated five million tonnes of concentrated ore, and discharging the remaining 45 million tonnes back into the marine environment.
17. This is not TTR's first attempt at gaining approval for this project. TTR has repeatedly attempted to secure consent for this activity. Their initial application in 2013 was declined by the EPA due to the inability to adequately assess the environmental risks. A second application to the EPA was lodged by TTR in August 2016. The 2016 application was granted by a second Decision-making Committee (DMC) in August 2017, however, iwi then appealed the DMC's decision to the High Court, where their appeal was upheld. In response, TTR also appealed the High Court decision to the Court of Appeal. In April 2020, the Court of Appeal dismissed TTR's appeal, quashing the grant of consent. TTR then sought and was granted leave to appeal to the Supreme Court, who unanimously dismissed the appeal and upheld the Court of Appeal's decision to quash the grant of consent.
18. The Supreme Court found that the 2016 DMC had made a mistake in its treatment of environmental effects and in the way it assessed Māori interests. It held that section 10 of the Exclusive Economic Zone and

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<sup>5</sup> Waitangi Tribunal. "Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity." Te taumata tuatahi (2011).

Continental Shelf (Environmental Effects) Act 2012 established an overarching framework for decision-making and that section 10(1)(b) creates an environmental “bottom line”. This bottom line requires that if the effects of a discharge or dumping activity cannot be avoided or managed, so that the environment is protected from material harm, then consent cannot be granted. In TTR’s case, the evidence provided on the impacts of the sediment plume and its potential effects on marine ecosystems, marine mammals, and seabirds was not sufficient to meet the Supreme Courts requirements<sup>6</sup>.

19. The Supreme Court also provided important clarification on the role of the Treaty of Waitangi and tikanga. It rejected the argument that Treaty obligations were limited to procedural requirements and instead held that Treaty principles must be applied more broadly across the decision-making framework. When the application was referred back to the DMC in 2024, the DMC was then required to address these matters. However, these issues remain unresolved as TTR ultimately withdrew from the DMC process. This meant that uncertainties about the environmental effects of the sediment plume on ecosystems have not been resolved, and the practical application of tikanga in the assessment of seabed mining proposals has not been tested.

## **Outstanding Impacts and Concerns – Tangaroa and the Environment**

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20. These uncertainties identified by the Supreme Court are particularly important in the context of the compounding impacts of the sediment plume, noise effects, and its impact on Tangaroa. In Te Ao Māori, Tangaroa is not viewed as a resource to be extracted from, but as our tupuna (ancestor) to whom Māori are connected to through whakapapa (genealogy). Tangaroa’s health is inseparable from the well-being of his descendants, which includes us as Māori. Therefore, when Tangaroa thrives, so too do we. The ecosystems and habitats within Tangaroa’s realm are a direct environmental indicator of his mauri (life force) in real time.
21. Within the STB, these ecosystems and habitats include things such as the plankton, fish, marine mammals and seabirds. The sediment plume created by the Project disturbs these ecosystems and habitats which means that ecological processes such as light penetration, nutrient cycling, and phytoplankton productivity could be disrupted<sup>7</sup>. Disruption to these processes are therefore not just an environmental concern but a weakening of Tangaroa himself.
22. Moreover, Tangaroa embodies both the physical and meta-physical dimensions of the marine environment. His presence is not limited to the material world alone but also extends to the spiritual connection that Māori have with the moana. Activities from seabed mining that reduce water clarity, smother benthic habitats, or disrupt spawning grounds, do more than just harm habitats and ecosystems, they impact Tangaroa’s ability to maintain balance and regenerate.

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<sup>6</sup> Trans-Tasman Resources – the Supreme Court tikanga and Te Tiriti. Justine Inns – Ocean Law. (2021).

<sup>7</sup> South Taranaki Bight iron sand mining proposal Assessment of potential impacts on commercial fishing. Fathom Consulting. (2013).

23. Lastly, the uncertainty regarding the long-term trophic impacts of the sediment plume reinforces these concerns. As uncertainties remain regarding whether the plume may cause material harm to the environment, so too do questions remain about the plume's potential impacts on primary production, including the long term and cascading impacts through higher trophic levels. From a Te Ao Māori perspective, short-term data is not enough to fully understand this issue. Iwi and hapū have intergenerational responsibilities to Tangaroa that extend far beyond the present and into the future. This means that without a long-term view of the plume's impacts, it is not possible to determine whether the health of Tangaroa would be maintained for our mokopuna to come.

## **Impacts to Māori Customary Non-Commercial Fishing Rights and Interests**

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24. The Fisheries Settlement was agreed through the signing of a Deed of Settlement in 1992 and then given effect through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Māori Fisheries Act 2004. The Settlement is a foundational expression of the Crown's obligations under Te Tiriti in relation to Māori fishing rights.
25. In addition to these core Fisheries Settlement Acts, the broader legislative framework includes the Fisheries Act 1996, under which the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and the Fisheries (South Island Customary Fishing) Regulations 1999 were established. These Regulations are integral to the practical exercise of customary fishing affirmed by the Settlement. They enable Māori to exercise their customary fishing rights in a contemporary context.
26. A person who is nominated by tangata whenua to authorise and manage customary harvest under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 is known as the Tangata Kaitiaki. When operating in areas that are under the Fisheries (Amateur Fishing) Regulations 2013, this person nominated by tangata whenua is known as the Authorised Representative. The Taranaki- STB coastal area operates under both of these regulations. For clearer understanding within this response, we will use the term Tangata Kaitiaki to encapsulate both roles, unless otherwise specified.

### **Insufficient Consultation with Tangata Kaitiaki**

27. TTR's application shows a lack of understanding of the role and responsibility that Tangata Kaitiaki have within the STB<sup>8</sup>. Section 11 of the Fast-Track Approvals Act 2024 requires applicants to engage with relevant iwi authorities, hapū, Treaty settlement entities, and tangata whenua where a project area includes a taiāpure-local fishery, a mātaītai reserve, or an area subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996.
28. In the STB, a number of gazetted customary non-commercial fisheries areas (rohe moana) have been established under Part 9 of the Fisheries Act 1996. As a consequence, each iwi with a recognised customary non-commercial fishing interest in these rohe moana, appoints its own Tangata Kaitiaki to exercise statutory

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<sup>8</sup> Tangata Kaitiaki authorise and manage customary activities, enabling customary fishing and management traditions to continue in rohe moana (Ministry for Primary Industries (2025)).

authority on behalf of their iwi. This means there are multiple Tangata Kaitiaki across the STB, each carrying their own authority, tikanga, and responsibilities for the protection and management of customary non-commercial fisheries. The Panel Convenor has identified 17 iwi or hapū whose practices are recognised under the Fisheries Act 1996 through regulation or customary management areas.

29. Despite this, the Tangata Kaitiaki who authorise and manage these areas appear to have been sidelined in TTR's process. This is unacceptable. Tangata Kaitiaki hold statutory authority over their rohe moana and their responsibilities are grounded in tikanga, whakapapa and intergenerational obligations to their iwi, hapū and marae<sup>9</sup>. The failure to properly engage meaningfully with them represents a serious failure by TTR.
30. While we understand that TTR has engaged to some extent with the now-disbanded Te Tai Hauāuru Fisheries Forum (TTHFF) in 2016, TTHFF stipulated clearly in their report to TTR, that they did not seek to endorse the project through their engagements. TTHFF made clear that their role was to support in bridging the knowledge gap on customary fishing rather than speaking on behalf of Tangata Kaitiaki at place<sup>10</sup>. No further engagement regarding customary non-commercial fisheries, beyond that undertaken with TTHFF could be found in the application.
31. TTR's continued failure to meaningfully engage with Tangata Kaitiaki over the years, demonstrates a disregard for Māori rights and the responsibilities of mana whenua. This lack of engagement has meant that mātauranga Māori has not informed the project, the assessment of impacts, nor the development of measures to mitigate risks to customary non-commercial fisheries. This oversight risks causing damage to customary non-commercial fisheries and eroding the relationship iwi and hapū maintain with Tangaroa.

### **Lack of Data Leads to Uncertain Impacts on Customary Fishing**

32. Moreover, another key concern is the significant lack of reliable data on how the project may impact customary non-commercial fishing. In NIWA's report 'South Taranaki Bight Fish and Fisheries (2015)', NIWA concedes that there is "very limited information" on the extent and scale of customary fishing in the STB<sup>11</sup>. They further confirm that no comprehensive or systematic assessment of these fisheries has ever been undertaken. Despite this absence of data, NIWA acknowledges that customary fisheries remain unquestionably important for coastal hapū, meaning that the project risks undermining cultural practices in ways that cannot be properly measured or mitigated.
33. NIWA further notes that there is almost no information on how customary fisheries have changed over the past century, particularly in relation to the growth of commercial and recreational fishing, and changes in land use within catchments that drain into the STB. Without understanding these historical and contemporary shifts, we cannot fully appreciate the cumulative pressures already facing customary

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<sup>9</sup> The statutory authority of Tangata Kaitiaki within a rohe moana can be granted through the Fisheries (Kaimoana Customary Fishing) Regulations 1998 or South Island Customary Fishing Regulations 1999.

<sup>10</sup> TTR - Sand Mining – Patea Mātauranga Māori and Customary Fisheries Analysis. Te Tai Hauāuru Fish Forum. (2016). [https://www.fasttrack.govt.nz/\\_data/assets/pdf\\_file/0014/4343/Taranaki-VTM-FTA-Application-Appendix-Section-5.pdf](https://www.fasttrack.govt.nz/_data/assets/pdf_file/0014/4343/Taranaki-VTM-FTA-Application-Appendix-Section-5.pdf)

<sup>11</sup> South Taranaki Bight Fish and Fisheries. NIWA. (2015) [https://www.fasttrack.govt.nz/\\_data/assets/pdf\\_file/0020/4286/Report-10-NIWA-South-Taranaki-Bight-Fish-and-Fisheries-Report-FINAL.pdf](https://www.fasttrack.govt.nz/_data/assets/pdf_file/0020/4286/Report-10-NIWA-South-Taranaki-Bight-Fish-and-Fisheries-Report-FINAL.pdf)

fisheries, let alone predict how the proposed project might exacerbate them. This is particularly concerning considering the broader ecological uncertainties linked to the sediment plume and the plumes impacts on Tangaroa.

34. NIWA further identifies that there is almost no knowledge of whether diadromous species (those that migrate between freshwater and the sea), such as piharau (lamprey), tuna (eels), and inanga (whitebait) occur near the project site. Very little is known about their marine life stages, meaning the project could inadvertently harm species and habitats that are taonga to Māori. This concern is particularly acute for tuna, given the potential for reduced connectivity between their marine and freshwater habitats. Such connectivity is vital for their long-term survival, as barriers to migration can restrict access to essential areas for foraging, feeding, predator avoidance, shelter, and spawning. Loss of access to these habitats can ultimately lead to reduced recruitment, population declines, and a loss of biodiversity.<sup>12</sup>
35. The uncertainty surrounding these taonga species means that potential impacts could extend well beyond the Taranaki coast. Migratory routes for diadromous species within the STB are not fully understood, so any adverse effects could reach far inland, impacting hapū and iwi beyond the immediate coastal area.
36. In addition, NIWA speculates that certain species (such as rig and leatherjackets) may be most impacted by the project. However, in our experience working with Tangata Kaitiaki across the STB, we know that a wide variety of fish and shellfish species are utilised in customary harvest, far beyond what NIWA has speculated. This information and knowledge exist and is safeguarded by iwi and hapū, who hold mana motuhake (self-determination/sovereignty) over it.
37. We also note the customary fishing data within the most recent NIWA report commissioned by TTR named “South Taranaki Bight Fishing” (2024)<sup>13</sup>. Although brief, the customary non-commercial fisheries data recorded is stated to be provided by Fisheries NZ and reflects reporting on a coarse spatial scale within the area of New Plymouth to Whanganui. Our concerns with this data being used to assess impacts on customary non-commercial fishing in the STB, is that it fails to provide a full or accurate picture.
38. As noted above, the Taranaki-STB coastline includes areas that may authorise customary harvest under both the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and the Fisheries (Amateur Fishing) Regulations 2013. However, there is no legislative requirement for Authorised Representatives (kaitiaki) who authorise customary harvest under the Fisheries (Amateur Fishing) Regulations 2013 to report their catch to the Crown. Therefore, any data that Fisheries NZ holds on customary fishing provided by Authorised Representatives (kaitiaki) is on a voluntary basis only. While we acknowledge that some Authorised Representatives (kaitiaki) may choose to share this data with the Crown, this is not a standardised or consistent practice across the STB nor Aotearoa more broadly. As we have previously stated, this information is safeguarded by hapū and iwi, who retain sovereignty over its management and use.

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<sup>12</sup> Tuna – freshwater eels – Understanding Freshwater Fisheries in Aotearoa. Te Wai Māori. (2020).

<sup>13</sup> South Taranaki Bight Fishing 1 October 2007 - 30 September 2023. NIWA. (2024).

39. As such, the customary non-commercial data presented in NIWA's 2024 report cannot be considered representative of the breadth or reality of customary non-commercial fishing in the STB. Its inclusion instead highlights the uncertainties that remain.

### **Gaps in Crown Process**

40. The Ministry for the Environment (MfE) has acknowledged in its section 18 report under the Fast-track Approvals Act 2024 that it "does not have the technical expertise to comment on the potential impact of the project on customary fisheries." Given the significant customary interests in the area, MfE recommended that the panel investigate further, as tangata whenua were said to be best placed to inform the assessment. We agree that tangata whenua hold the expertise to advise on customary non-commercial fisheries within their own moana, and we support MfE's recommendation that the panel actively engage with them on this matter.
41. In our view, MfE should also be proactively engaging with the Ministry for Primary Industries (MPI), who has the relevant technical expertise and statutory responsibilities concerning fisheries in Aotearoa. Relying solely on tangata whenua to provide this assessment within the highly constrained Fast-track process imposes an unreasonable burden on iwi and hapū, particularly given the limitations on their resources and timeframes. Of course, the lead should be taken by iwi and hapū in terms of the effects, but support could be provided by both MfE and MPI.

### **Potential adverse effects on Pātaka**

42. The interests of iwi in fisheries are multi-faceted. One way in which commercial fishing operations in the STB support the exercise of customary non-commercial fishing rights is through the use of the Pātaka system.
43. The purpose of a pātaka is to enable Māori to access and exercise their customary fishing rights under the Settlement. Traditionally a pātaka is a means for Māori to harvest, store, and later distribute kaimoana for significant events, such as tangihanga (funeral). The contemporary use of a pātaka system typically operates under an agreement partnership between a Māori grouping (hapū, marae, iwi etc), a commercial fishing operator and a licensed fish receiver (LFR), with approvals required from MPI. pātaka provides a system that enables Authorised Representatives and Tangata Kaitiaki/Tiaki to issue customary permits to access kaimoana utilising commercial fishing operations as a supplement to times when hapū and marae members are unable to harvest themselves. This kaimoana is then held in a LFR storage facility until such time as that kaimoana is needed, such as during tangihanga.
44. There are four approved and two active pātaka that operate across the STB. The two active pātaka service the customary fishing interests of seven iwi across Te Tai Hauāuru in partnership with a Taranaki commercial fishing operator. These pātaka primarily harvest and distribute a number of customary species such as snapper, tarakihi, kingfish, warehou, rig and crayfish. The availability of customary fish species is determined by Tangata Kaitiaki and the target species of the commercial fishing operator harvesting on behalf of iwi. Depending on the time of year, the location of the vessel, and the species being harvested, the range of species in any pātaka can change. Moreover, these pātaka actively support nearly 50 tangihanga

and hui each year by providing customary fish, highlighting the significance of these customary species to iwi across both Taranaki and Māori more broadly.

45. In addition to these active and existing pātaka, iwi from Te Tai Hauāuru are also currently seeking approval to pilot another pātaka in the STB. This pātaka focuses on harvesting customary species that are caught as part of the Jack Mackerel fishery by the Sealord deepwater fleet. While the pilot currently involves only four Te Tai Hauāuru iwi, the intention is for the pātaka model to include all 17 iwi with interests to the Deepwater Rohe Moana.
46. The success and ongoing operation of all pātaka in the STB demonstrates the importance and value of commercial fisheries to iwi and the vital connection between Māori customary non-commercial fishing rights and commercial fishing operations. The true “value” of pātaka cannot be measured in monetary terms, but rather it lies in the cultural sustenance it provides to whānau. Through pātaka, whānau are able to practice manaakitanga and actively uphold tikanga. As pātaka are used for tangihanga and hui, these practices not only maintain the whakapapa connections within the whānau but also sustain the oranga (wellbeing) of hapū and iwi as a whole. In this way, the “value” of pātaka is reflected in the collective wellbeing, resilience and continuity of Māori and their relationship with the moana. Any activities that have the potential to impact customary fish stocks or limit the ability to harvest customary species risks disrupting these important practices. This would directly undermine the ability of iwi to exercise their customary non-commercial fishing rights.
47. The risk of disruption to pātaka and the customary species within them, will lead to a breach of Section 7 of the FTA. This disruption would not only have the potential to erode the ability of iwi and hapū to uphold tikanga through the provision of kaimoana for tangihanga and hui but would also undermine a fundamental expression of tino rangatiratanga through the exercise of customary fishing practices. Section 7 requires decision-makers to act consistently with obligations arising under Treaty settlements; this is unable to be achieved through this application.

## Commercial Fishing Impacts on Māori Fisheries

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48. In addition to recognising customary non-commercial fishing interests, the Settlement also established significant customary commercial fishing interests and created an economic foundation to support iwi in achieving their commercial fishing aspirations. The Deed of Settlement restored Māori property rights to fisheries resources, including 10% of all quota in the Quota Management System (QMS) at the date of the Deed, and provided funding for iwi to purchase a 50% stake in Sealord Group Limited. Iwi were also guaranteed 20% of the quota for all new species introduced into the QMS as a part of that Settlement. Additionally, the iwi-owned commercial fishing enterprise Aotearoa Fisheries Limited (now trading as Moana New Zealand) was established. The structure of where both Moana New Zealand and Sealord fit into Te Ohu Kaimoana Group Limited has been previously outlined in **Figure 1**.

49. These commercial elements of the Settlement were designed to provide a sustainable economic base for iwi, uphold the Crown's obligations under Te Tiriti o Waitangi, and ensure iwi remained key participants in Aotearoa's growing seafood sector.

### Settlement Quota Could Be Impacted

50. The QMS has 10 Fisheries Management Areas (FMA) which are then divided into separate Quota Management Areas (QMA) for different fish stocks, depending on the known biological distribution of these stocks. The use of QMAs for fisheries management allows for finer controls on stocks, such as allocating catch limits across fishing sectors. QMAs were also utilised when allocating settlement quota.
51. Settlement quota is allocated among iwi according to whether a fish stock is considered to be a deepwater stock or an inshore stock. For deepwater stocks, 75% of quota is allocated based on an iwi population based on the 2001 census data, and the remaining 25% is allocated according to the proportion of coastline within the QMA that each iwi claims. For inshore stocks, all quota is allocated based on the percentage of coastline within the QMA.
52. This means the number of iwi with a stake in a particular fish stock depends on the size of the QMA and whether the stock is classified as deepwater or inshore. For example:
- a. Rig (SPO 8) is classified as an inshore stock for allocation purposes. Any iwi with coastline inside SPO 8 get a share of the quota. Since the SPO 8 QMA aligns with FMA8, the quota is shared among the 15 iwi with coastline interests in that area.
  - b. Jack mackerel (JMA 7) is considered as a deepwater stock. For JMA7, 75% of the quota is divided among all 58 iwi based on population, while the remaining 25% goes to iwi with coastline inside the QMA. Because the JMA7 QMA covers FMA7, FMA8, and FMA9, 30 iwi have coastline interests within it. A map of these FMA are included in **appendix one and two**.
53. As such, the way settlement quota is allocated means that a diverse range of iwi have interests in particular fisheries in the area. To support in the understanding of how settlement quota is allocated and the methodology behind the allocation model itself, a copy of Te Ohu Kaimoana's supplementary material filed in relation to TTR's 2016 application to the DMC is included in **appendix three**.
54. The STB occurs within FMA8. We have calculated that there are 95 fish stocks with associated settlement quota within this FMA. FMA8 not only contains its own stocks but also contributes to catches from other fisheries management areas due to their biological and administrative nature. Of the 95 fish stocks which occur or overlap within FMA8, 57 individual iwi entities each hold settlement interests in them. Therefore, all MIOs have overlapping fisheries interest within FMA8 in one way or another.
55. Under the Māori Fisheries Amendment Act 2024 (MFAA), settlement quota cannot be sold outside of iwi (through their Mandated Iwi Organisations and Asset Holding Companies) or Te Ohu Kai Moana Group (Te Ohu Kai Moana Trustee Limited and every subsidiary, trust, or other entity over which it has effective control, including Aotearoa Fisheries Limited and its subcompanies). Collectively, this group is referred to as the

‘Māori Pool’ and the MFAA is designed to ensure that the ownership of settlement quota is preserved and protected within this group for future generations.

56. However, because settlement quota must remain within the Māori Pool, iwi are unable to sell or transfer their shares to anyone outside of that group. This restriction means that if the value of quota declines as a result of seabed mining or any of its related impacts, iwi have no ability to exit or recover that value through the open market. In effect, iwi are obliged to carry the full weight of any loss in value.
57. This creates a risk, as it effectively locks iwi in. If seabed mining reduces the productivity or sustainability of the fisheries tied to that quota, iwi cannot offset or mitigate their losses by divesting. Instead, any negative effect on the fish stocks flows directly into the value of iwi settlement assets. With no market mechanism available to recover that value, the consequences of seabed mining becomes disproportionately shouldered by all iwi holding quota interests in that impacted area.
58. We note that calculating the commercial value of all settlement quota in the STB would be an extremely complex task. This is due to the large number of iwi with interests in both inshore and deepwater stocks in FMA8 (highlighted in paragraph 51), the need to identify who is undertaking the fishing on behalf of which iwi, where within FMA8 the quota in question is being fished, which stocks are being targeted and when that fishing occurs. We also acknowledge that many iwi also have quota interests beyond the settlement quota within the Fisheries Settlement itself. As such no commercial evaluation specifically for settlement quota exists.
59. However, beyond these practical challenges, it is important to recognise that settlement quota cannot be reduced to its commercial value alone. Settlement quota was hard fought for and was intended to recognise the tino rangatiratanga of Māori over their fisheries. It provides not only commercial opportunities, but also the means to uphold the commitments of Te Tiriti o Waitangi, the ability for Māori to exercise kaitiakitanga over their fisheries, and a way to ensure that commercial fisheries rights were cared for on behalf of the future mokopuna (descendants) to come. In this sense, settlement quota is a taonga tuku iho (heirloom/treasure) in which its value cannot be reduced to monetary terms.
60. As such, this issue raises an FTA section 7 breach given TTR’s application poses a direct risk to the iwi quota in the STB, which is a core component of the Fisheries Settlement, the granting of approval would ultimately undermine the integrity of the Settlement itself.

### **Spatial Overlap on Fisheries Settlement Interests**

61. Moana New Zealand is the largest Māori-owned fisheries company in Aotearoa and a key expression of Treaty settlement rights exercised in a modern context. Their existing fishing operations directly overlap with the proposed project area, and their activity in the STB has been increasing in response to shifting fish behaviours in New Zealand waters. As commercial fishing efforts typically follow fish abundance, Moana New Zealand’s presence in the STB is expected to continue growing in the future.
62. In the STB, Moana New Zealand currently holds over 80% of the SNA8 Annual Catch Entitlement (ACE) and actively harvests along the West Coast within Fisheries Management Areas 8 and 9 (FMA 8 and FMA 9).

Snapper (SNA8) is a core commercial species harvested by Moana New Zealand in the STB, alongside trevally and gurnard - all of which are harvested in the project area. Moana New Zealand's commercial catch from the STB has steadily increased year on year, reflecting both a productive fishery and a growing iwi investment in the region's blue economy. The SNA8 Plenary report indicates a trend of snapper abundance increasing in FMA8, therefore Moana New Zealand's activity in the STB is also anticipated to increase given their ACE<sup>14</sup>.

63. This spatial overlap means that the sediment plume and habitat disruption caused by the mining activities will directly impact iwi fishing operations potentially leading to displacement, reduced catch rates, and altered fish distribution. These impacts would not only have commercial impacts but also carry direct Treaty implications, given that iwi fishing quota is protected under the Settlement.
64. It is further noted that all commercial fishers in FMA 8, are already subject to a number of extensive spatial restrictions. These restrictions include regulatory closures to trawling and set netting to protect Māui dolphins, protection and safety zones around oil and gas infrastructure, and a prohibition on fishing vessels over 46 metres operating within 20 nautical miles of the coast.
65. As a result, iwi fishing efforts face further cumulative spatial impacts, making it increasingly difficult for iwi to exercise their commercial fishing rights and interests within the STB. Fishing as an activity is inherently spatially constrained by both the biological behaviour of target species and the QMS frameworks, which regulate fisheries within defined management areas (e.g., FMA 8). Any further restrictions or displacement caused by this Project would prevent iwi from fully exercising their Settlement rights through their commercial assets. This directly impacts both the commercial outcomes for iwi and hapū and the integrity of the Settlement itself, again raising a FTA section 7 breach.

## Māori Aquaculture Rights and Interests

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66. TTR state that the proposed sheltering of project-related vessels in Admiralty Bay is expected to have minimal direct impacts on aquaculture interests in Te Tau Ihu. As a consequence, this would include Māori aquaculture interests in the Marlborough region. TTR further note that their vessels would not engage in dredging or harvesting activities, and that anchoring is predicted to disturb less than 20 m<sup>3</sup> of seabed, remaining below the threshold requiring a coastal permit under the Marlborough Sounds Resource Management Plan.
67. While TTR considers these sheltering activities to have no direct effect on other parties, there remains potential for indirect impacts, particularly through biosecurity risks such as the introduction of pathogens or invasive species, which could affect shellfish and finfish farms.
68. We acknowledge that TTR has undertaken consultation with representatives from Ngāti Koata as part of the pre-application process. Ngāti Koata identified that their concerns were limited to potential effects within

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<sup>14</sup> Snapper (SNA8) Fisheries Assessment Plenary Report. May 2025. <https://fs.fish.govt.nz/Doc/26113/snapper-sna-8-fisheries-assessment-plenary-may-2025-volume-3.pdf.ashx>

Admiralty Bay as a result of anchoring or discharges, due to the significance of this area for their aquaculture activities.

69. While we understand that Ngāti Koata's concerns have been addressed through the inclusion of specific consent conditions agreed to by TTR, we are concerned that there are other iwi with aquaculture and customary non-commercial interests in Admiralty Bay who have not been engaged as part of this process. For instance, Ngāti Rārua have an existing mussel farm within Admiralty Bay, which was not considered within the TTR's engagement process.
70. Under the Māori Commercial Aquaculture Claims Settlement Act 2004, the Crown's new aquaculture space obligations are settled on a regional basis. Following this, all Marlborough Iwi Aquaculture Organisations (IAOs) may be impacted if vessels in Admiralty Bay have any impact on aquaculture. We note that there are six iwi with fisheries coastline interest in Admiralty Bay, namely: Ngāti Koata, Ngāti Kuia; Ngāti Rārua; Ngāti Toa Rangatira; Rangitāne o Wairau and Te Ātiawa o Te Waka-a-Māui.
71. We further note that New Zealand King Salmon's Blue Endeavour project has triggered a new aquaculture settlement obligation which is currently being negotiated with the aforementioned IAOs. This project uses new technologies which make it possible to farm salmon in more exposed water space, including at the top of the sounds. If IAOs choose to take a space-based settlement, there may be more potential aquaculture impacts than were present when Ngāti Koata was first consulted. We also note that there are many overlapping iwi interests in the Marlborough Sounds, with multiple iwi interests extending across to Rangitoto ki te Tonga / D'Urville Island.
72. As such, we hold that broader engagement is needed with these IAOs and their respective MIOs to confirm that TTR's proposal would not negatively impact Māori aquaculture interests in the Marlborough region. We are concerned that TTR's engagement to date does not meet the consultation requirements for relevant iwi authorities, hapū and Treaty settlement entities under section 11 (1)(b) of the Fast-track Approvals Act 2024.

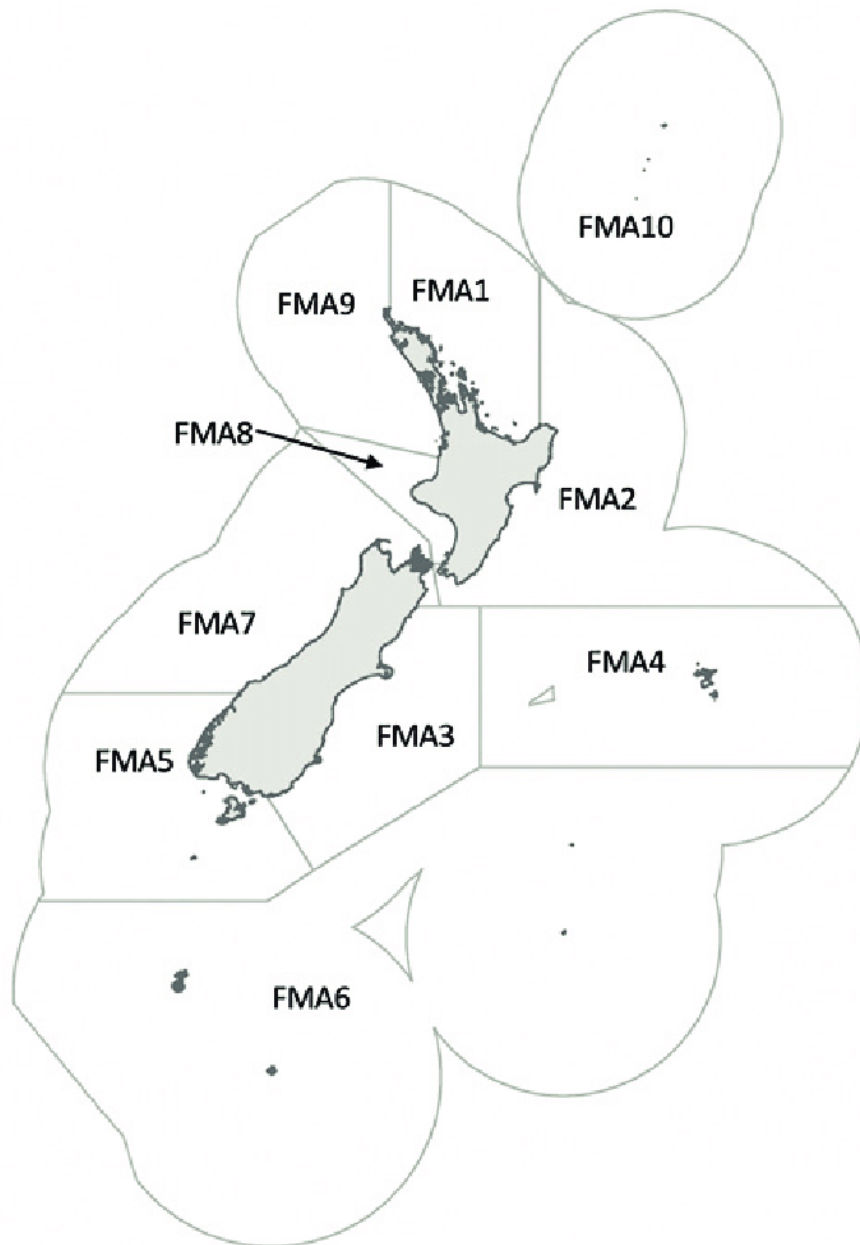
## Our recommendations

73. Te Ohu Kaimoana recommend that the Taranaki VTM project be declined in its entirety for the reasons set out in this submission including inconsistency with FTA, section 7.

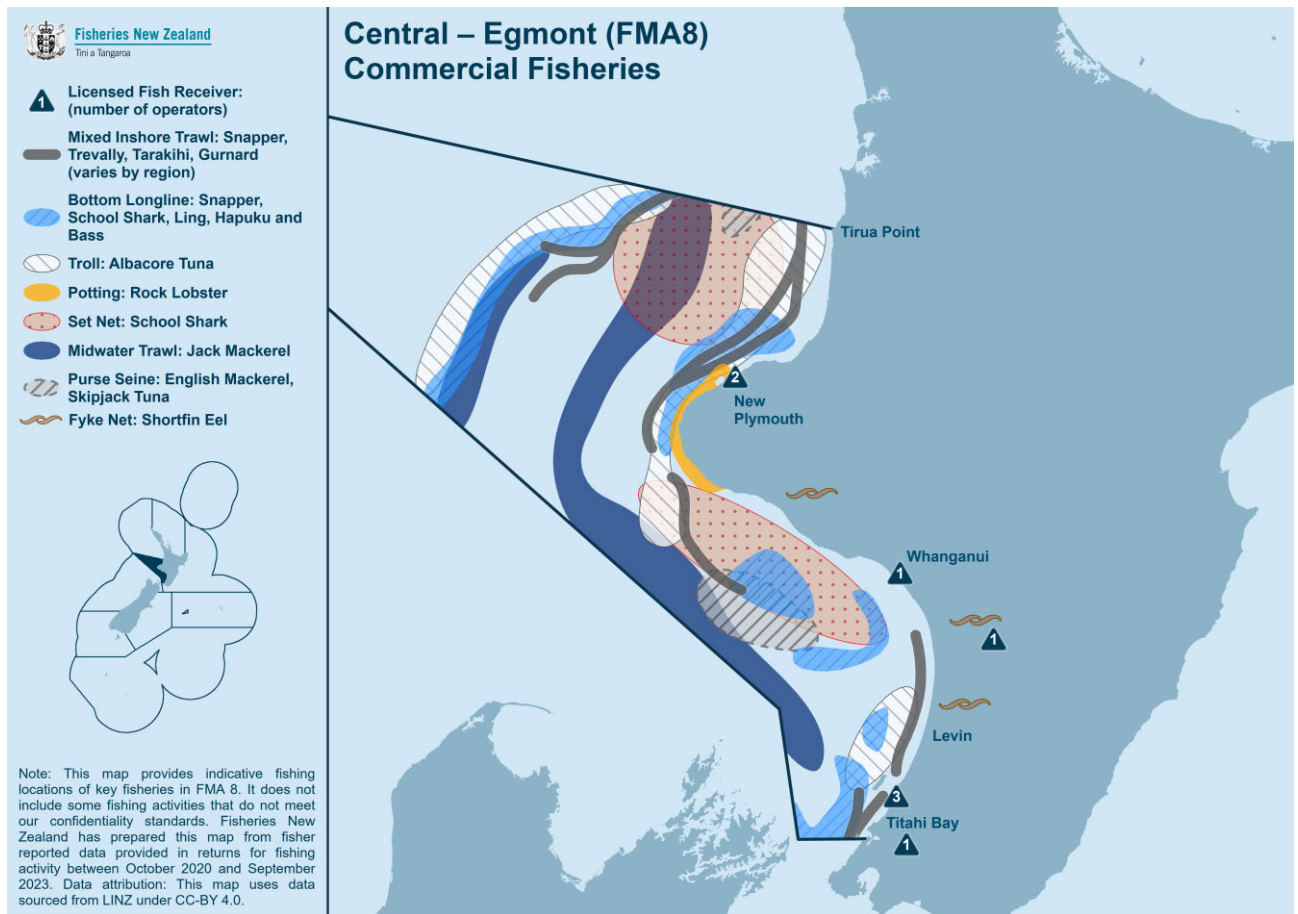
# Appendices

## Appendix One – Fisheries Management Areas (FMA)

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## Appendix Two – FMA8 Area



## Appendix Three - Supplementary material filed to the DMC in relation to TTR's 2016 application.

### ATTACHMENT: Te Ohu Kai Moana Trustee Ltd: Supplementary material

1. Te Ohu Kaimoana Trustee Ltd (**Te Ohu**) has made a submission on the 2016 application by Trans-Tasman Resources Ltd for marine consents and marine discharge consents to extract and process iron sand within the South Taranaki Bight (the **Application**).
2. The purpose of this supplementary material is to provide additional information to the decision-making committee on the Māori Fisheries Settlement (the **Settlement**) and Te Ohu's role in this context.<sup>15</sup> This document outlines how rights are allocated to iwi under the Settlement, and

<sup>15</sup> This supplementary material was provided with Te Ohu's submission on the Application.

illustrates how iwi fishing rights could be affected by the proposed activity sought through the Application. Te Ohu's position on the Application is set out in its submission.

### Who are we?

3. Te Ohu is the corporate trustee of the Te Ohu Kai Moana Trust. We were established under section 33 of the Fisheries Act 2004 (the **Māori Fisheries Act**).
4. Te Ohu's purpose is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities,<sup>16</sup> in order to:
  - ultimately benefit the members of iwi and Māori generally;
  - further the agreements made in the fisheries Deed of Settlement and to assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
  - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.
5. To further its purpose Te Ohu may, in relation to fisheries, fishing, and fisheries-related activities, act to protect and enhance the interests of iwi and Māori in those activities (among other things).<sup>17</sup> Te Ohu's obligations are to *all iwi*, individually and collectively, and *Māori generally*, pursuant to the Māori Fisheries Act.
6. Our duties include administering settlement assets and allocating and transferring those assets to iwi once satisfied that iwi have met the criteria set out in the Act (section 34, Māori Fisheries Act 2004). While most of the settlement assets have now been allocated to iwi, we still hold some assets where iwi have yet to meet those requirements. We will outline these matters in more detail below. Some aquaculture settlement assets have also been allocated to iwi, however we are still engaging with the Crown on the settlement of its future obligations under the Settlement.
7. We also work actively with the wider seafood industry (both fisheries and aquaculture) and participate in industry organisations to protect the interests of iwi and Māori as the beneficiaries of the settlements. We wish to acknowledge that we are a member of Fisheries Inshore New Zealand (FINZ), who is also a submitter on the Application.

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<sup>16</sup> MFA, section 32. This is "to ultimately benefit the members of iwi and Māori generally; further the agreements made in the Deed of Settlement; assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty; and contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

<sup>17</sup> MFA, section 35(1)(b).

## The Māori Fisheries Settlement

8. The Fisheries Settlement settles all Māori claims to fisheries, based on an agreement that the Crown would allocate particular assets (including quota, cash and shares in fishing companies) and implement regulations for customary food gathering. All Māori are beneficiaries.
9. The Settlement cleared the way for the Government to extend the Quota Management System (the **QMS**) to all New Zealand's commercial fisheries. There are currently 100 species (or species groupings) within the QMS, made up of 638 individual stocks.<sup>18</sup> Each stock is managed individually within a quota management area to ensure the sustainability of the fishery. Commercial fishing rights for each of these stocks take the form of quota shares known as Individual Transferrable Quota (**ITQ**).
10. ITQ is a perpetual right which needs to be protected to create certainty for investment and incentives for good stewardship. The property rights that have been allocated as part of the Settlement include these same characteristics but have the additional significance of being part of a Treaty of Waitangi settlement. In that respect, the Crown has a duty to protect them.
11. The Crown also has duties in respect of Māori non-commercial fishing rights which continue to give rise to Treaty obligations on the Crown.<sup>19</sup> The Fisheries Settlement requires the Crown, through the Minister, to develop policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights.

## Background to the Fisheries Settlement

12. By the 1980s, the Crown's failure to recognise tribal authority and property in fisheries had to a large extent undermined the ability of Māori to develop effective ways to exercise their authority or protect their rights in a modern context. At the same time, Māori concerns about removal of their ability to participate and lack of recognition of their fishing rights came to a head when the QMS was introduced and ITQ allocated to private interests as a means of preventing further degradation of fisheries.
13. The QMS was introduced in 1 October 1986. In response, Māori obtained an injunction against the Crown to prevent further fish-stocks from being introduced into the QMS until the issue of ownership had been resolved.
14. In 1989, Māori and the Crown agreed to an interim settlement to resolve these claims. This settlement recognised that Māori customary interests in fisheries include commercial and non-commercial aspects. It provided for 10% of the quota for all fisheries in the QMS to be allocated

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<sup>18</sup> fs.fish.govt.nz

<sup>19</sup> See section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992).

to Māori. The Crown established the Māori Fisheries Commission to hold this quota and develop a process to allocate the quota. The Crown was not able to deliver 10% of the quota for some stocks and so it provided cash to the Commission in lieu of the outstanding quota. For this reason, the current settlement shares for many of these “pre-settlement” stocks are less than 10%.

15. In 1992, a final settlement of Māori fisheries claims was enshrined in the Fisheries Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Under the settlement, the Crown:

- gave Māori funds to purchase 50% of Sealord Products Ltd
- guaranteed to provide Māori with 20% of the quota for all species brought into the Quota Management System after that time
- restructured the Māori Fisheries Commission into the Treaty of Waitangi Fisheries Commission to increase its accountability to Māori; and
- agreed to regulate to allow self-management by Māori of fishing for subsistence and cultural purposes.

16. In return, Māori agreed:

- that all Māori claims to commercial fishing rights and interests were settled
- to stop litigation (including any Waitangi Tribunal claims) about Māori commercial fisheries
- to support legislation to give effect to the settlement
- to endorse the QMS
- that the Crown should regulate to provide for customary non-commercial fishing.

17. A key role for the Treaty of Waitangi Fisheries Commission was to develop proposals to allocate the various commercial assets and benefits arising from the settlement. It also had responsibility for stewardship of the assets until allocation was complete and to assist iwi/Māori into the “business and activity” of fishing.

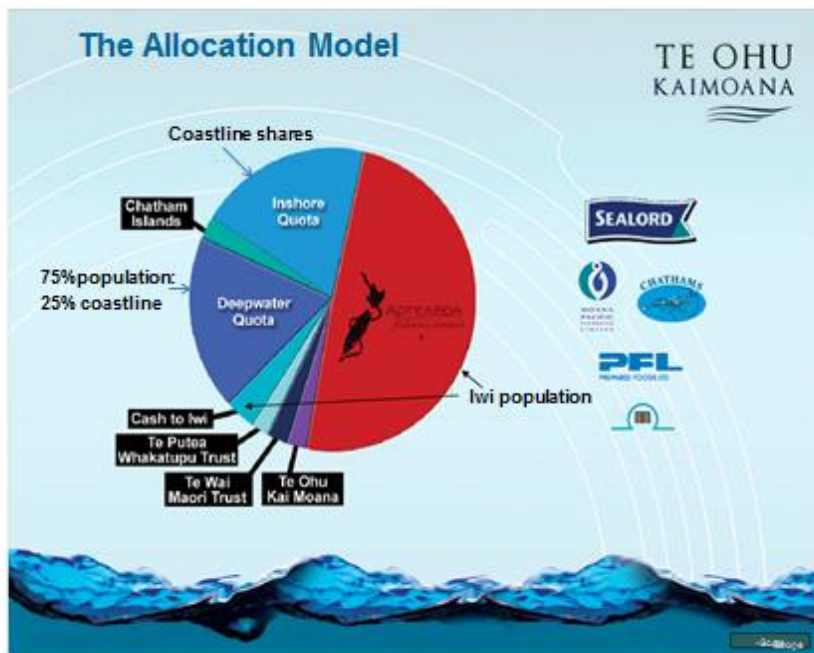
### **Beneficiaries of the Fisheries Settlement**

18. The Settlement is intended to benefit all Māori. For twelve years following the settlement agreement, the Commission facilitated debate among Māori about how the commercial fisheries assets should be allocated. The debate focused on three main issues:

- to whom should ownership of the assets be allocated, for instance how is an “iwi” defined and how would urban Māori be provided for?
- how would the assets be managed – centrally, through cooperation a national entity and individual iwi, or by each iwi individually?

- how would full or beneficial ownership be allocated, for instance should it be based on the relative population of each iwi, or the extent of their coastline, or a combination of these factors?
19. By 2004, 96% of iwi agreed the final allocation model should advance into law. The model includes the following:
- 75% of quota shares for stocks classified as “deepwater” stocks would be allocated according to an iwi’s population, while 25% would be allocated according to the percentage of coastline within the quota management area that iwi claim and agree with their neighbours
  - quota shares for stocks classified as “inshore” stocks would be allocated fully based on the percentage of coastline within the quota management area that iwi claim and agree with their neighbours
  - quota in freshwater fisheries would be allocated to iwi based on an agreement reached between iwi whose rohe falls within the relevant QMA. Where no agreement can be reached, the quota shares will be allocated based on the proportion that the population of each iwi living within the quota management area bears to the combined population of those iwi living within the quota management area
  - income shares in Aotearoa Fisheries Ltd (which owns 50% of Sealord) are allocated to iwi based on their population.
20. This is now enshrined in the Māori Fisheries Act 2004, which also established Te Ohu. A key duty of Te Ohu is to administer, allocate and transfer the settlement assets. The allocation model identifies 57 iwi. Each iwi would receive assets based on:
- satisfying strict governance and mandating rules
  - a mix of an iwi’s population and coastline, as outlined above.
21. Figure 1 summarises the settlement assets and the basis for allocation. Fifty five of fifty seven iwi who have Mandated Iwi Organisations and Asset Holding Companies in place have received their “population based” assets (shares in deepwater stocks and income shares for Aotearoa Fisheries Ltd). Many iwi have also reached agreement on their coastline interests and have been allocated their inshore quota, and relevant percentage of their deepwater quota. Note there is a special allocation scheme for the Chatham Islands. The Wai Māori and Putea Whakatupu Trusts were also established.

**Figure 1: The Allocation Model**



22. Te Ohu continues to retain ownership of quota for the relevant inshore and deepwater stocks where iwi are yet to finalise their governance arrangements or resolve coastline agreements. In the meantime, Te Ohu continues to make the appropriate Annual Catch Entitlement (**ACE**) available to those iwi. ACE is generated annually and is based on the share of the Total Allowable Commercial Catch (**TACC**) that quota holders are entitled to harvest. This entitlement can be freely traded.
23. At the same time it is important to note that while ACE can be traded by iwi, the provisions in the Māori Fisheries Act currently prevent the sale of settlement quota outside the entities involved in the allocation of the commercial settlement assets – iwi (through MIOs and AHCs) and the Te Ohu Kaimoana group (Te Ohu and AFL). This group as a whole must retain ownership of settlement quota. If the value of quota is at risk, iwi cannot trade their settlement portions outside this group.

#### **Māori Fisheries Settlement not clearly understood**

24. Iwi and Te Ohu together hold 10 - 20% of the quota shares for all fish-stocks.
25. An additional complication in the context of the Application is that the QMS areas do not encompass the same geographical area - some encompass relatively small areas while others extend over large areas. This means that the number of iwi who have an interest in a particular fish-stock will depend on the geographical extent of the quota management area, and whether the fishstock is classified as “deepwater” or “inshore” for allocation purposes under section 7 of the Māori Fisheries Act.

26. However, it is not clear from the Application that the nature and extent of iwi interests under the Settlement fully understood. In addition, given concerns that have been expressed about the potential effects of any sediment plume on aquaculture in the Marlborough and Tasman regions we also consider it important to signal that the interests of iwi under the Māori Commercial Aquaculture Settlement could be affected. We raised this concern in the context of our previous submission on TTR's 2013 application, but we remain concerned in the context of this Application.

#### **Basis for identifying iwi interests in commercial fishing**

27. Stocks managed within the Quota Management System are classified under section 7 of the Māori Fisheries Act as “deepwater” or “inshore”. The model for allocation to iwi is different for each and will determine how many iwi share in particular stocks and what proportion of the settlement quota each receives.

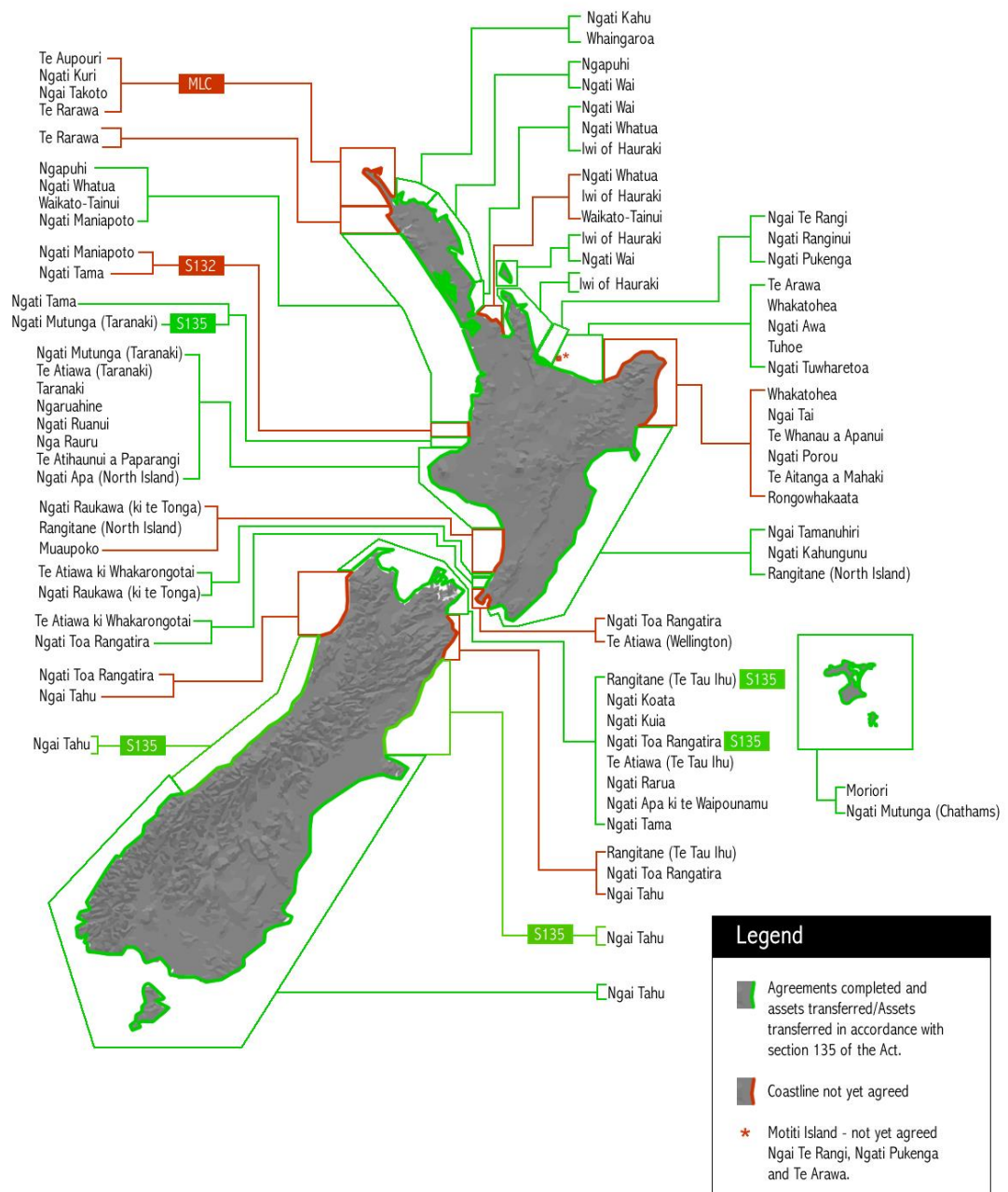
28. The population component of an iwi's interests is set out under Schedule 3 of the Māori Fisheries Act. The coastline component is determined on the proportion of the total coastline within a quota management area that an iwi successfully claims. This proportion is generally resolved by iwi by agreement. There are some lengths of coastline that have yet to be agreed. Figure 2 provides an overview of the coastline within which agreements have been reached as at February 2016,<sup>20</sup> and those that have yet to be reached. These agreements are without prejudice.<sup>21</sup>

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<sup>20</sup> There have been additional coastline agreements reached in September 2016.

<sup>21</sup> There five iwi who are landlocked and who do not claim coastline interests. They are: Ngati Hauiti, Ngati Maru, Ngati Whare, Ngati Manawa and Ngati Raukawa ki Waikato.

**Figure 2: Snapshot of progress on coastline agreements for fisheries allocation purposes**



29. The steps for determining how settlement quota is allocated can be summarised as follows:

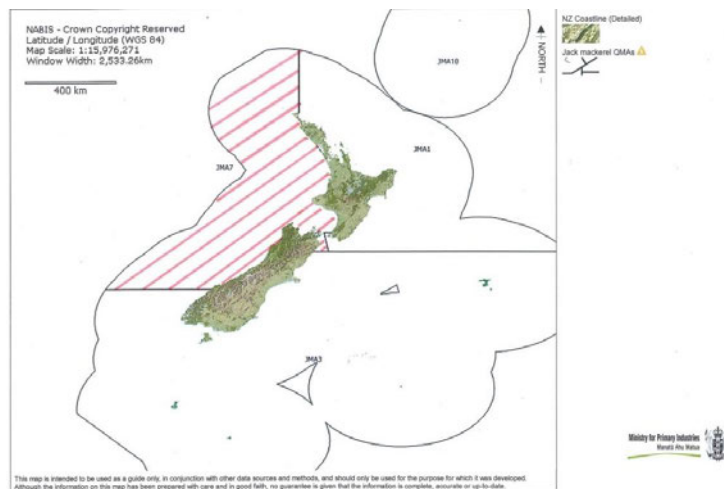
| Steps                                                                             | Allocation approach                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| What is the total amount of settlement shares for the fish-stock?                 | <ul style="list-style-type: none"> <li>• 10% if introduced into the QMS before the final settlement</li> <li>• 20% if introduced into the QMS after the final settlement</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                         |
| How is the stock classified and as a consequence what is the allocation approach? | <div> <ul style="list-style-type: none"> <li>• Deepwater </li> <li>• Inshore </li> <li>• Freshwater </li> </ul> </div> <div> <p>Mix of population (75%) and coastline (25%)</p> <p>100% coastline</p> <p>By agreement between iwi whose rohe is in the QMA, or based on their relative resident populations</p> </div> |

### Examples of the allocation model

30. Set out below, we use a selection of stocks whose quota management areas intersect with the proposed mining site to illustrate how the allocation model works. We have chosen a selection based on a mix of characteristics, including whether they are pre- or post the final settlement and whether they are classified as deepwater, inshore or freshwater stocks. We have also included a selection of stocks with different sized QMAs.

31. There are many other stocks whose QMAs intersect with the site. Please note these examples do not take into account the potential for the effects of the mining operation to extend into neighbouring QMAs.

## JMA 7 (jack mackerel)



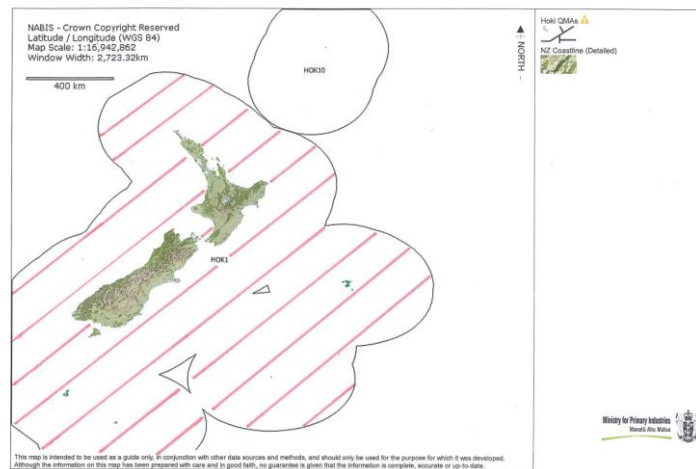
32. JMA7 was introduced into the quota management system before the interim fisheries settlement. Of the quota shares, 9.99% is derived from settlement quota.

33. Under the Māori Fisheries Act, JMA7 is classified as a “deepwater” stock. That means 75% of the settlement quota is shared amongst all 57 iwi based on their population. Twenty five percent of the quota shares is allocated to those iwi whose coastline is included within the quota management area. Thus those iwi with interests in this stock include all 57 iwi based on their notional populations (see Appendix 1), plus iwi with coastline interests, who are:

- Te Aupouri
- Ngati Kuri
- Ngai Takoto
- Te Rarawa
- Ngapuhi
- Ngati Whatua
- Waikato-Tainui
- Ngati Maniapoto
- Ngati Tama
- Ngati Mutunga (Taranaki)
- Te Atiawa (Taranaki)
- Taranaki
- Ngaruahine
- Ngati Ruanui
- Nga Rauru
- Te Atihaunui a Paparangi
- Ngati Apa (North Island)
- Ngati Raukawa (ki te Tonga)
- Rangitane (North Island)
- Muaupoko
- Te Atiawa ki Whakarongotai
- Ngati Toa Rangitira
- Rangitane (Te Tau Ihu)
- Ngati Koata
- Ngati Kuia
- Te Atiawa (Te Tau Ihu)
- Ngati Rarua
- Ngati Apa ki te Waipounamu
- Ngati Tama
- Ngai Tahu

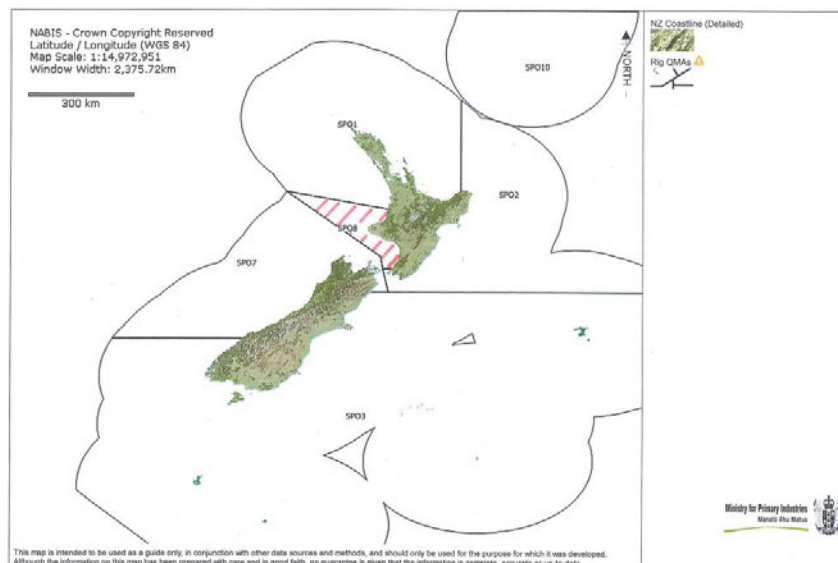
34. Te Ohu continues to hold quota on behalf of those iwi who have yet to reach agreement on their coastline interests.

***HOK1 (Hoki)***



35. HOK1 was introduced into the quota management system before the interim fisheries settlement. Ten percent of the quota shares are derived from settlement quota.
36. Under the Māori Fisheries Act, HOK1 is classified as a “deepwater” stock. That means 75% of the settlement quota is shared amongst all 57 iwi based on their population. Twenty five percent of the quota shares are allocated to those iwi whose coastline is included within the quota management area. In this case, 52 iwi share coastline for HOK1. The exceptions are those five iwi who do not claim coastline interests.

***SPO8 (Rig)***

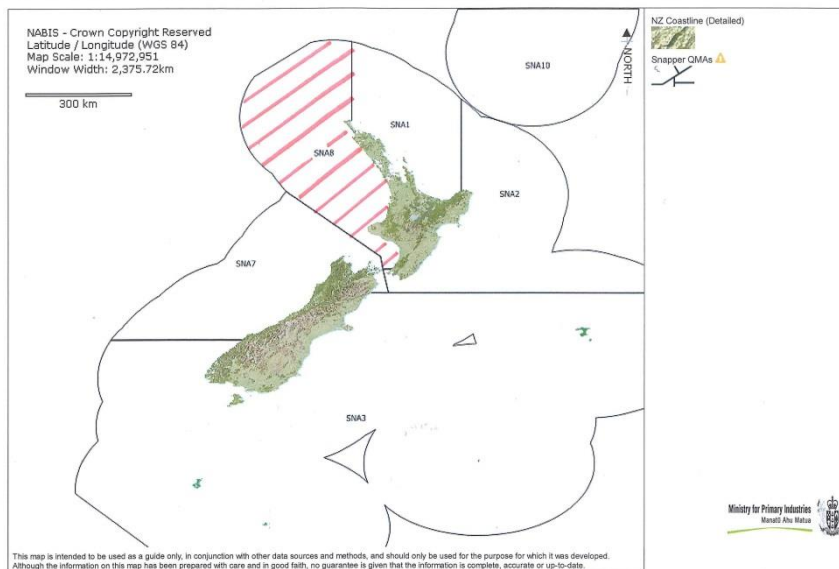


37. Rig (SPO) was introduced into the quota management system before the interim fisheries settlement. SPO8 intersects the application area. Of the quota shares, 9.72% are derived from settlement quota.
38. SPO8 is classified under the Māori Fisheries Act as an “inshore” stock. Its quota management area extends from North of Taranaki to the Southern West Coast of the North Island. All iwi with coastline that falls within this quota management area share the settlement quota. The iwi who have been, or are eligible to be allocated settlement quota are:
- Ngati Maniapoto
  - Ngati Tama
  - Ngati Mutunga (Taranaki)
  - Te Atiawa (Taranaki)
  - Taranaki
  - Ngaruahine
  - Ngati Ruanui
  - Nga Rauru
  - Te Atihaunui a Paparangi
  - Ngati Apa (North Island)
  - Ngati Raukawa (ki te Tonga)
  - Rangitane (North Island)
  - Muaupoko
  - Te Atiawa ki Whakarongotai
  - Ngati Toa Rangatira
39. Te Ohu continues to hold quota on behalf of those iwi who have yet to reach agreement on their coastline interests.

### ***Surf clams – QMA8***

40. Seven surf clam species were introduced into the quota management system after the final fisheries settlement was agreed. Each of these species is managed within 8 quota management areas. Twenty percent of the quota shares in each of the stocks are derived from settlement quota. QMA8 for each of these stocks intersects with the application area. In QMA8, these are these are: frilled venus shell (BYA8) trough shell (MDI8), large trough shell (MMI8), deepwater tuatua (PDO8), triangle shell (SAE8), ringed dosinia (DAN8) and silky dosinia (DSU8).
41. Te Ohu has made considerable efforts to work with iwi and Cloudy Bay Clams to develop options for developing this fishery. Despite TTR’s further work on the models (and modelling scenarios), Te Ohu remain very concerned about these potential effects.
42. Surf clam stocks are classified under the Māori Fisheries Act as an “inshore” stock. Their quota management areas in this region cover the same area as SPO 8 above and the same group of iwi hold, or are eligible to receive settlement quota.

## SNA 8 (Snapper 8, QMA 8)



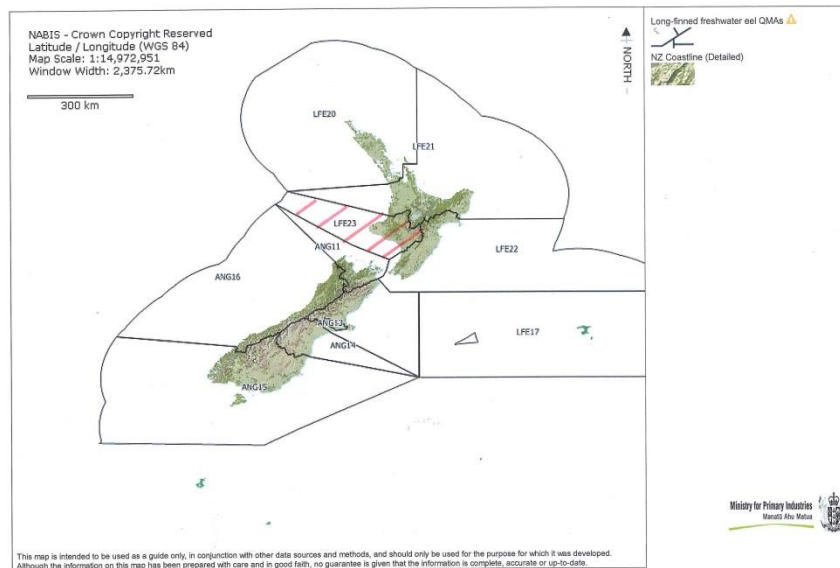
43. SNA8 was introduced into the quota management system before the interim fisheries settlement. Of the quota shares, 8.46% are derived from settlement quota.

44. SNA8 is classified under the Māori Fisheries Act as an “inshore” stock. Its quota management area extends from the tip of the North Island to the Southern part of the North Island West Coast. Iwi with an interest in this coastline who hold or are eligible for allocation of settlement quota are:

- |                            |                               |
|----------------------------|-------------------------------|
| • Te Aupouri               | • Taranaki                    |
| • Ngati Kuri               | • Ngaruahine                  |
| • Ngai Takoto              | • Ngati Ruanui                |
| • Te Rarawa                | • Nga Rauru                   |
| • Ngapuhi                  | • Te Atihaunui a Paparangi    |
| • Ngati Whatua             | • Ngati Apa (North Island)    |
| • Waikato-Tainui           | • Ngati Raukawa (ki te Tonga) |
| • Ngati Maniapoto          | • Rangitane (North Island)    |
| • Ngati Tama               | • Muaupoko                    |
| • Ngati Mutunga (Taranaki) | • Te Atiawa ki Whakarongotai  |
| • Te Atiawa (Taranaki)     | • Ngati Toa Rangatira         |

45. As is the case with other stocks, Te Ohu continues to hold quota on behalf of those iwi who have yet to reach agreement on their coastline interests.

## LFE23/SFE23 (Long-finned/short-finned eel)



46. The long-finned and short-finned eel (LFE and SFE) were introduced into the quota management system after the final fisheries settlement was agreed. LFE23 is adjacent to the application area. Twenty percent of the quota shares are derived from settlement quota. The short-finned eel (SFE23) has the same quota management area and same number of settlement shares.

47. LFE23 and SFE23 are classified as freshwater stocks<sup>22</sup>. As noted earlier, the allocation model is based on agreements between iwi in the relevant QMA, otherwise failing that, the proportion that the population of each iwi living within the quota management area bears to the combined population of those iwi living within the quota management area

48. Iwi whose rohe is wholly or partially included in LFE 23 are:

- Te Atiawa (Taranaki)
- Ngati Maru
- Ngati Mutunga
- Nga Rauru
- Ngaruahine
- Ngati Ruanui
- Ngati Tama (Taranaki)
- Taranaki
- Ngati Apa
- Te Atihaunui a Paparangi
- Ngati Hauiti

49. Settlement quota shares for this stock have yet to be allocated. The long-finned and short-finned eel migrate to sea to spawn. Glass eels return from the sea into freshwater catchments to grow

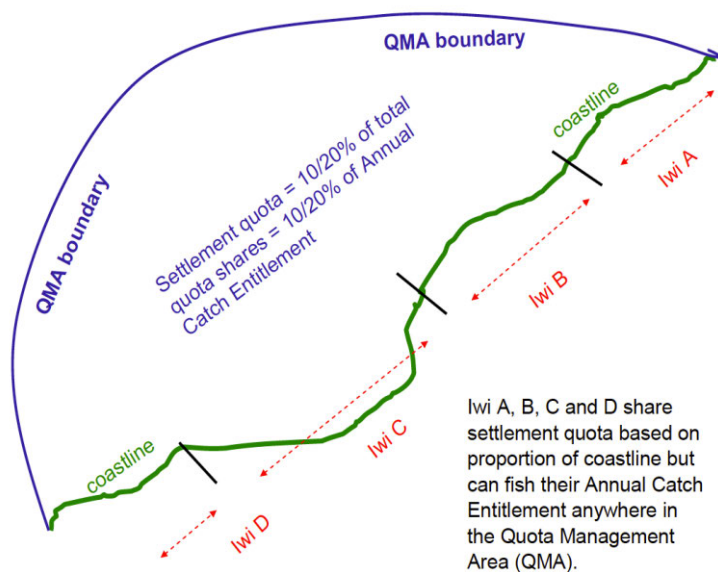
<sup>22</sup> Note that long and short-finned eel are classified under one stock code (ANG) in the South Island

until it is time to begin the cycle once again. It is not clear what effect the proposed activity might have on the life-cycle of these eel stocks.

### Settlement quota entitlements can be fished throughout a quota management area

50. It is important to understand that iwi are not restricted to fishing their ACE within their own local coastline areas. Their ACE can be fished anywhere within the quota management area. Figure 3 illustrates this as it relates to inshore quota.

**Figure 3: Iwi settlement quota within a QMA**



51. Spatial exclusions or effects on the ecosystems that support fisheries can require a reduction in the Total Allowable Commercial Catch or reduce the amount of quality produce available – leading to a reduction in the value of quota. Such a result would affect all quota holders including iwi quota holders.

### The customary non-commercial aspects of the Fisheries Settlement

52. While the commercial interests of iwi span an entire QMA, the customary non-commercial interests of iwi and their hapū are generally more locally based.

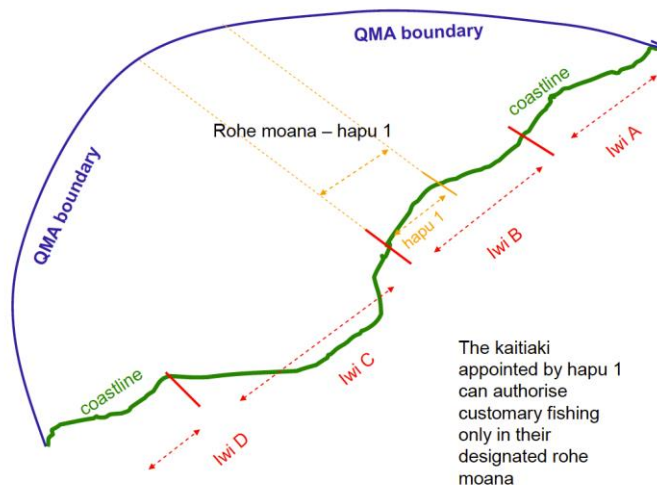
53. Customary non-commercial interests are provided for through the Fisheries (Amateur Fishing) Regulations 2013, the Fisheries (Kaimoana Customary Fishing) Regulations 1998, the Fisheries (South Island Customary Fishing) Regulations 1999 (which apply in South Island fisheries waters) and sections 186A & B of the Fisheries Act 1996. These provide access to seafood for customary non-commercial purposes, and for iwi and hapū to exercise management rights over customary fishing areas and fisheries resources.

54. Under the Fisheries (Kaimoana Customary Fishing) Regulations, tangata whenua can appoint kaitiaki to authorise customary non-commercial fishing within a defined “rohe moana”. Under the

regulations, “tangata whenua”, in relation to a particular area, means the whanau, hapū, or iwi, being Māori that hold “manawhenua manamoana over that area”.<sup>23</sup>

55. The process of defining a rohe moana and appointing kaitiaki includes a public notification and objection process. Following the resolution of any disputes, the Minister of Fisheries confirms rohe moana boundaries and kaitiaki appointments, so that kaitiaki can authorise customary fishing within those boundaries.
56. Kaitiaki are empowered by the customary regulations to issue customary fishing authorisations only within their defined rohe moana. These areas are usually subareas – or “slivers” – of quota management areas (see Figure 4). Note that the designation of a rohe moana does not prevent commercial or recreational fishing in that area.
57. The interests of iwi are multi-layered. Since making our last submission, iwi who have coastline interests in the broader quota management area for JMA7 have been working together to designate an area from which they will all benefit from the customary non-commercial harvest of deepwater fisheries by a commercial vessel. The harvest would be authorised by kaitiaki appointed by agreement of all iwi concerned.

**Figure 4: example of a rohe moana within a QMA**



These regulations are not yet fully implemented throughout New Zealand.

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<sup>23</sup> The Fisheries (South Island Customary Fishing) Regulations are more explicit about the relationship between whanau, hapū and iwi and specify the nine iwi organisations existing in the late 1990s who represent the whanau, hapū and iwi who hold manawhenua. These organisations are now Mandated Iwi Organisations.

### **Transitional measures for customary non-commercial fishing**

58. Regulation 50 of the Fisheries (Amateur Fishing) Regulations 2013 (formerly known as “Regulation 27” of the 1986 Fisheries Regulations), enables the gathering of seafood for hui and tangi. This regulation is a transitional measure and once the Fisheries (Kaimoana Customary Fishing) Regulations (or Fisheries (South Island Customary fishing) Regulations) are implemented in any area, Regulation 50 cannot be used for harvesting seafood.

### **Aquaculture**

59. The Aquaculture Settlement mirrors the commercial aspects of the Fisheries Settlement. It delivers 20% of space approved for aquaculture since September 1992, out into the future, to iwi.
60. The Crown’s obligations under this settlement can be settled by iwi receiving cash for space approved between September 1992 – December 2004, authorisations for space approved between January 2005 – September 2011 and a combination of authorisations, cash or other for space created after October 2011.



**TE OHU  
KAIMOANA**