



# Customary Regulations for the Tītī/Muttonbird Islands

## Decision Document

MPI Discussion Paper No: 2014/29

Prepared for the Minister for Primary Industries  
By the Ministry for Primary Industries

ISBN No: 978-0-908334-88-9 (online)  
ISSN No: 2253-3907 (online)

July 2015



<b>1</b>	<b>Executive Summary</b>	<b>1</b>
<b>2</b>	<b>Purpose</b>	<b>3</b>
2.1	Background	3
2.2	Rationale for management intervention	3
<b>3</b>	<b>Consultation</b>	<b>4</b>
3.1	Submissions received	4
3.2	Summary of submissions	5
3.3	Issues raised in submissions	5
<b>4</b>	<b>Legal Considerations</b>	<b>10</b>
4.1	Section 5 – International obligations and the Settlement Act	10
4.2	Section 8 – Purpose of the Fisheries Act	11
4.3	Section 9 – Environmental principles	11
4.4	Section 10 – Information principles	11
4.5	Other legal and policy considerations	12
<b>5</b>	<b>Management Options</b>	<b>14</b>
5.1	Analysis of Options	14
<b>6</b>	<b>Other Matters</b>	<b>18</b>
<b>7</b>	<b>Regulatory Impact</b>	<b>19</b>
<b>8</b>	<b>Conclusion</b>	<b>19</b>



# 1 Executive Summary

MPI is seeking your agreement to recommend to the Governor-General the making of regulations under the Fisheries Act 1996 (the Fisheries Act) for 31 areas<sup>1</sup> around the Titi/Muttonbird Islands as follows:

- Prohibiting the commercial harvesting of kina and paua in 25 areas;
- Prohibiting the commercial harvesting of kina, alone, in 5 areas; and
- Prohibiting the commercial harvest of paua, kina and rock lobster in 1 area.

The areas are relatively small, totalling approximately 1.9 square kilometres. They are all adjacent to safe landing areas around the Titi/Muttonbird Islands (Figure 1).

Te Rūnanga o Ngāi Tahu (Ngāi Tahu) requests the regulations to recognise and provide for customary, non-commercial food gathering of paua, kina and rock lobster by the Titi/Muttonbird Islands birding community, and the special relationship between the birding community (as tangata whenua) and these areas which are of importance to customary food gathering. Section 186(1) of the Fisheries Act provides that the Governor-General may make regulations for such purposes.

The Ministry of Fisheries (MFish)<sup>2</sup> undertook consultation on the proposed regulations in May 2010 and received eight submissions: five from the commercial fishing sector; two from the customary sector; and one from the recreational fishing sector. In October 2014, MPI undertook further targeted consultation with those eight submitters. This resulted in three further submissions, two from the commercial fishing sector and one from a customary stakeholder.

In response to a submission in 2010, Ngāi Tahu amended its proposal to reduce the impact on commercial paua harvesters. From 2010 until 2014, Ngāi Tahu and commercial fishing representatives were negotiating to try to resolve points of disagreement, primarily in regard to the mechanism to be used for any closures. Ultimately this was unsuccessful and Ngāi Tahu asked MPI to proceed with advice on the proposal, as amended.

Other than concerns raised that resulted in the amendments noted above, commercial stakeholders raise no concerns about the impact of the closures on commercial fishing. However, commercial fishing sector submitters oppose the proposed regulations, arguing that they are beyond the intended scope of s 186 of the Fisheries Act.

MPI considers that the proposed regulations better provide for Māori, non-commercial, traditional and customary rights and interests than the status quo. MPI also considers the proposed regulations are consistent with the Crown's obligations under s 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act) and the purpose and principles of the Fisheries Act. MPI considers that the regulations can be made under s 186 of the Fisheries Act and are unlikely to have a significant adverse effect on commercial fishing.

---

<sup>1</sup> See Table 1 for a list and Appendix 1 for maps of the areas.

<sup>2</sup> MFish is now part of MPI.

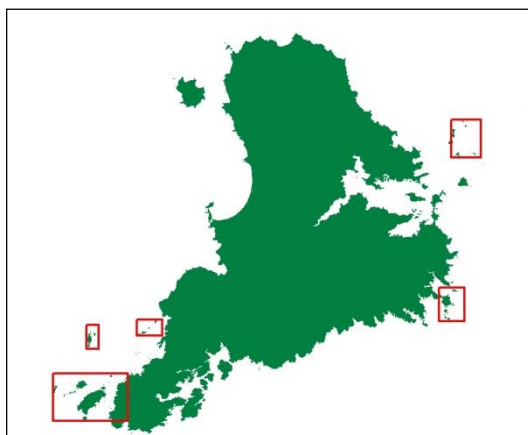
**Table 1: Areas proposed for closure by regulation**

No.	Name	Proposed closure to commercial harvest for:	For a map see:
1	Pikomamakuiti (North Island) <sup>3</sup>	Kina and paua	Fig. 2, Appendix 1
2	Bunker Island	Kina	Fig. 2, Appendix 1
3	Herekopare <sup>3</sup>	Kina and paua	Fig. 2, Appendix 1
4	Tia Island <sup>3</sup>	Kina and paua	Fig. 3, Appendix 1
5	Rukawahakura	Kina and paua	Fig. 3, Appendix 1
6	Wharepuitaha	Kina and paua	Fig. 3, Appendix 1
7	Poutama	Kina and paua	Fig. 4, Appendix 1
8	Puwai	Kina and paua	Fig. 4, Appendix 1
9	Hinekuha	Kina and paua	Fig. 4, Appendix 1
10	Murderers Cove	Kina and paua	Fig. 4, Appendix 1
11	Patupahe	Kina and paua	Fig. 4, Appendix 1
12	Pukeotakohe	Kina and paua	Fig. 4, Appendix 1
13	Pukeweka	Kina and paua	Fig. 4, Appendix 1
14	Solomons <sup>4</sup>	Kina	Fig. 4, Appendix 1
15	Upokopotiti – Potted Head	Kina, paua, rock lobster	Fig. 4, Appendix 1
16	West Taukihepa	Kina	Fig. 4, Appendix 1
17	Southern Putauhinu	Kina and paua	Fig. 4, Appendix 1
18	South Eastern Putauhinu	Kina and paua	Fig. 4, Appendix 1
19	Eastern Putauhinu	Kina and paua	Fig. 4, Appendix 1
20	North Eastern Putauhinu	Kina and paua	Fig. 4, Appendix 1
21	North Western Putauhinu	Kina and paua	Fig. 4, Appendix 1
22	Putauhinu Nuggets	Kina and paua	Fig. 4, Appendix 1
23	Kaimohu	Kina and paua	Fig. 4, Appendix 1
24	Pohowaitai & Tamaitemoika Islands	Kina and paua	Fig. 4, Appendix 1
25	Poho a Tairea <sup>4</sup>	Kina	Fig. 5, Appendix 1
26	Poho a Tairea 2	Kina	Fig. 5, Appendix 1
27	Poho a Tairea/Chimneys Island	Kina and paua	Fig. 5, Appendix 1
28	Betsy Island	Kina and paua	Fig. 5, Appendix 1
29	Kani (Kundy Island)	Kina and paua	Fig. 5, Appendix 1
30	Paua Bay (Big Moggy Island)	Kina and paua	Fig. 6, Appendix 1
31	Little Moggy Island	Kina and paua	Fig. 6, Appendix 1

<sup>3</sup> The boundaries of Pikomamakuiti, Herekopare and Tia Island have changed compared to the original proposal.

<sup>4</sup> The proposal in the initial position paper was also to close Solomons and Poho a Tairea to commercial paua harvesting.

**Figure 1: Map of Stewart Island indicating the general locations of the proposed closures**



## 2 Purpose

### 2.1 BACKGROUND

Tītī (muttonbird) harvesting on the Titi/Muttonbird Islands is recognised nationally and internationally as being of special importance to tangata whenua. The Titi/Muttonbird Islands birding community traditionally gathers kaimoana, particularly shellfish (kina, paua and rock lobster) to help sustain them while on the islands for the tītī harvest. Ngāi Tahu wishes to ensure the birding community can continue this tradition and also seeks recognition of the special relationship between the birding community and the 31 areas it has identified as being of importance for customary food gathering. The areas are all adjacent to safe landing areas.

The birding community is tangata whenua of the islands. Due to the remote location of the islands and other restrictions to land access,<sup>5</sup> the only take of shellfish is by the birding community and commercial fishers. The tītī harvest runs from mid-March to mid-May. The islands are unoccupied at other times.

### 2.2 RATIONALE FOR MANAGEMENT INTERVENTION

Section 10 of the Settlement Act declares that, “... claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983 ... shall, in accordance to the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations ...” (s 10(a)).

In pursuance of those Treaty obligations, you are obliged to recommend to the Governor-General the making of regulations<sup>6</sup> “... to recognise and provide for [non-commercial]<sup>7</sup> customary food gathering ... and the special relationship between tangata whenua and those places which are of customary food gathering importance...” (s 10(c) of the Settlement Act). Section 186(1) of the Fisheries Act provides that the Governor-General may make such regulations.

<sup>5</sup> Only Rakiura Māori with a beneficial interest in any of the islands or their family members (with authorisation) may enter onto the islands without a permit or harvest tītī from the islands (reg 3 of the Titi (Muttonbird) Islands Regulations 1978). Rakiura Māori are members of the Ngai Tahu tribe or Ngati Mamoe tribe who are also descendants of the original Maori owners of Rakiura/Stewart Island (s 333 of the Ngāi Tahu Claims Settlement Act 1998).

<sup>6</sup> Section 10 of the Settlement Act references s 89 of the Fisheries Act 1983, now repealed. Section 186 of the Fisheries Act 1996 is now the relevant provision under which such regulations are to be made.

<sup>7</sup> Food gathering that is neither commercial in any way nor for pecuniary gain or trade.

Ngāi Tahu requests that you recommend to the Governor-General the making of new regulations under s 186(1) to recognise and provide for customary food gathering of paua, kina and rock lobster by the birding community, and the special relationship between the birding community and the 31 areas. Ngāi Tahu makes this request on behalf of the Titi/Muttonbird Island birding community as tangata whenua of the islands.

### 3 Consultation

In May 2010, MFish undertook consultation on behalf of the then Minister of Fisheries and Aquaculture, Hon. Phil Heatley. The proposal was notified in the local newspapers, sent to interested parties, and the initial position paper (IPP) was posted in full on the MFish website, along with background information on tītī harvesting.<sup>8</sup> MFish particularly sought submissions on the impact of the proposals from commercial paua, kina, and rock lobster harvesters.

In response to a submission, Ngāi Tahu then amended its proposal to reduce the impact on commercial paua harvesters. From 2010 until 2014, Ngāi Tahu and commercial fishing representatives were negotiating to try to resolve points of disagreement, primarily in regard to the mechanism to be used for any closures. Ultimately this was unsuccessful and Ngāi Tahu asked MPI to proceed with advice on the proposal, as amended.

In October 2014, MPI consulted on your behalf on the proposed regulations. Consultation was targeted at the submitters from 2010.

#### 3.1 SUBMISSIONS RECEIVED

In 2010, MFish received submissions regarding the proposed regulations from:

- CRA8 Management Committee Inc (CRA8)
- Paua Industry Council Ltd (PIC)
- PauaMAC5 Incorporated (PauaMAC5)
- New Zealand Recreational Fishing Council (NZRFC)
- New Zealand Rock Lobster Industry Council (RLIC)
- The New Zealand Seafood Industry Council Ltd (SeaFIC)<sup>9</sup>
- Rakiura Titi Islands Administering Body (RTIAB)
- Te Runanga o Ngāi Tahu (Ngāi Tahu).

In 2014, MPI received further submissions from:

- Fisheries Inshore New Zealand Ltd (FINZ)<sup>10</sup>
- Paua Industry Council, PauaMAC 5 Incorporated, CRA8 Management Committee Incorporated, NZ Rock Lobster Industry Council, and the Kina Industry Council (the Industry Bodies)
- Tane Davis.<sup>11</sup>

Submissions are attached in full in Appendix 2.

---

<sup>8</sup> Document titled *Overview of Rakiura Titi Harvesting* and provided by Ngāi Tahu. MPI can provide a copy upon request.

<sup>9</sup> SeaFIC has since restructured and is now known as Seafood New Zealand.

<sup>10</sup> FINZ is one of five stakeholder representative entities that make up Seafood New Zealand.

<sup>11</sup> Chair of the Rakiura Titi Islands Administering Body.



## 3.2 SUMMARY OF SUBMISSIONS

Ngāi Tahu, RTIAB and NZRFC support the proposed closures. Tane Davis supports the closures, but also proposes an additional area and closing a larger number of the 31 areas to commercial harvest of rock lobster and paua. The Industry Bodies, CRA8, PIC, RLIC and SeaFIC oppose the proposed regulations, on the basis that they cannot be made under s 186(1) of the Fisheries Act. FINZ states it is “unable to support the closures” as the need for them has not been demonstrated.

PauaMAC5 also has concerns about the proposal to introduce new customary regulations to implement the closures, but agrees that the birding community should be able to catch adequate shellfish. PauaMAC5 states it would not oppose the use of the general regulation making power under s 297 of the Fisheries Act to implement the closures. However, this would be subject to the outcome of discussions around its request for changes to the proposal in order to mitigate the impact on paua harvesters. Ngāi Tahu has made those changes.

## 3.3 ISSUES RAISED IN SUBMISSIONS

### 3.3.1 Use of s 186 to make regulations to restrict or prohibit commercial fishing

SeaFIC, CRA8, RLIC, FINZ and the Industry Bodies contend that s 186(1) of the Fisheries Act is not able to be used to close areas to commercial fishing. FINZ also argues that no one is empowered under the Fisheries Act to permanently close an area for customary fishing purposes, except via taiāpure or mātaihai reserves.

The Industry Bodies submit that s 186(2) provides guidance on the intended scope of regulations and asserts that MPI has ignored this guidance. FINZ also references s 186(2) as evidence of the intended scope of s 186(1) and submits that MPI’s internal policy guidelines in regard to s 186 are “legislatively incorrect”.

The Industry Bodies state that, if it were intended that s 186(1) provide for the closure of areas to commercial fishing, they would expect this to be explicitly stated along with a mechanism to protect property rights. The Industry Bodies note examples of such a mechanism exist in the tests for mātaihai reserve and aquaculture applications.

#### *MPI response*

Section 186(1) prescribes the purpose, but not the content of regulations. Section 186(2) sets out matters that may be included in regulations. But, s 186(2) expressly does not limit the scope of regulations that may be made under s 186(1) to those matters.<sup>12</sup> MPI has considered the wording of these sections and other relevant legislative provisions in its advice to you. These provisions were also considered in development of the internal s 186 guidelines referred to by FINZ and discussed in section 4.5.1 below.

---

<sup>12</sup> Section 186(2) states, “Without limiting the generality of subsection (1), regulations made under that subsection may—  
(a) declare the relationship between such regulations and general fishing regulations and regulations relating to taiāpure-local fisheries; and declare that the first-mentioned regulations are to prevail over the other regulations;  
(b) empower the Minister to declare, by notice in the *Gazette*, any part of New Zealand fisheries waters to be a mātaihai reserve; and any such regulations shall require that, before any such notice is given, the Minister and the tangata whenua shall consult with the local community and the Minister shall have regard to the need to ensure sustainability in relation to the reserve;  
(c) provide for such matters as may be necessary or desirable to achieve the purpose of this Act in relation to mātaihai reserves, including general restrictions and prohibitions in respect of the taking of fish, aquatic life, or seaweed;  
(d) empower any Maori Committee constituted by or under the Maori Community Development Act 1962, any marae committee, or any kaitiaki of the tangata whenua to make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed;  
(e) empower any such Maori Committee, marae committee, or kaitiaki to allow the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of the marae concerned, notwithstanding any such bylaws.”

MPI acknowledges that there is no explicit provision for an area to be closed to commercial fishing. However, s 186(2) allows for mātaihai reserves, including provision for general prohibitions on fishing, and for bylaws to be made prohibiting the taking of fish, aquatic life and seaweed. So, s 186(2) implicitly recognises that the taking of fish may be prohibited in order to recognise and provide for customary food gathering.

Although there is no protective mechanism in the Fisheries Act, MPI considers that the impact on the rights and interests of other groups, including commercial fishers, is relevant to whether new customary regulations should be made under s 186(1). These rights and interests are considered in sections 4.5.1 and 5.1.2 below; MPI does not consider that the proposed regulations would have a significant impact on commercial fishers or unreasonably interfere with their rights or interests. MPI notes there are other provisions in the Fisheries Act which allow areas to be closed which also lack “a protective mechanism”.

### 3.3.2 Obligation to make new regulations

RLIC and CRA8 argue that the obligation to create regulations providing for customary food gathering “has already been discharged” through the Fisheries (South Island Customary Fishing) Regulations 1999 (the South Island Customary Regulations).

#### *MPI response*

Section 10 of the Settlement Act confirms an ongoing obligation on the Crown to provide for customary food gathering (see discussion in section 2.2 above). Section 10(c) provides for you to recommend the making of regulations in pursuance of those Treaty obligations. The ongoing nature of this obligation is reflected in s 186(1) of the Fisheries Act which provides that the Governor-General may make such regulations “from time to time”. MPI considers that the wording of these provisions makes it clear that regulations providing for customary food gathering can be made when necessary to fulfil the Crown’s ongoing Treaty obligations.

### 3.3.3 Customary food gathering

CRA8, RLIC and SeaFIC argue that customary food gathering in s 186(1) of the Fisheries Act means that authorised by tangata tiaki/kaitiaki. As the gathering of kaimoana by the birding community is not proposed to be authorised by tangata tiaki/kaitiaki, they argue that the activity is recreational fishing, rather than customary food gathering. Therefore, they say, s 186(1) does not apply.

#### *MPI response*

There is no definition of “customary food gathering” included in the Fisheries Act or the Settlement Act. MPI does not consider that there is any basis to limit it to that authorised by tangata tiaki/kaitiaki in the context of s 186(1) of the Fisheries Act.<sup>13</sup>

### 3.3.4 Justification for the closures

FINZ states that, “[there] is no indication that commercial fishing activity is having a detrimental impact on the ability of mutton-birders to take their recreational allowances or that the recreational allowances are insufficient for their needs.” FINZ says that the birding community is no longer reliant on seafood while on the islands. FINZ submits that special circumstances justifying the creation of new customary regulations are not proven.

Ngāi Tahu states, “It was felt that tītī harvesting was so nationally and internationally significant that the customary fishing (that is an integral part of the tītī gathering experience) that occurs in the rāhui areas around each island should be appropriately acknowledged with

---

<sup>13</sup> MPI notes that “customary food gathering” is defined in subordinate legislation, including the South Island Customary Regulations.

special regulations promulgated specifically to recognise and provide for this ... food gathering and the special relationship between muttonbirders and these rāhui gathering areas.”

RTIAB supports the closures, stating that, “The customary harvest of Titi has always been combined with the customary harvest of kai moana on and around those islands that Rakiura Maori have accessed for many generations, and hundreds of years.” RTIAB also states that, “these recourses [sic] cannot sustain a commercial harvest.”

#### *MPI response*

MPI does not hold information on customary take by the birding community, nor the actual numbers of people currently visiting the islands. A University of Otago research team estimated over 300 individuals visited the islands for the harvest in 2006.<sup>14</sup> Around 15 800 people hold tītī harvest rights for the islands, according to a recent estimate.<sup>15</sup>

The birding community is not, in a strict sense, reliant on seafood, in that alternative food sources are available to it. However, Ngāi Tahu and RTIAB have requested the regulations on the basis they would recognise and provide for customary food gathering and the special relationship of the birding community with the 31 areas which are of importance for customary food gathering.

Kina and paua in particular are relatively sessile and susceptible to localised depletion. Closing the areas as requested will help to protect the abundance of kina, paua and rock lobster in the areas and to ensure that the birding community can continue its tradition of taking kaimoana during the tītī harvest. This is an important aspect of the birding community’s relationship with the islands and the proposed regulations would acknowledge the importance of mahinga kai (the practice of collecting, preparing, and eating food) to Ngāi Tahu.

#### **3.3.5 Mātaimai reserve provisions**

RLIC submits that if the closures are needed to provide for customary food gathering, mātaimai reserve provisions should be used. The Industry Bodies also submit that the mātaimai reserve provisions can be used, citing the establishment of three mātaimai reserves around the Titi/Muttonbird Islands as evidence of the suitability of this mechanism. In contrast, FINZ does not consider mātaimai reserves to be appropriate.

In 2010, PauaMAC5, SeaFIC and PIC advocated reviewing the existing South Island Customary Regulations to improve their flexibility. In addition, PIC suggested a joint working group be established to “remove confusion and develop agreement on the legitimate use and purpose of s 186 and ultimately to review the South Island Customary Regulations.” At that time, no review was planned.

In 2014, the Industry Bodies note the current mātaimai reserve provisions do not provide sufficient flexibility, particularly because they exclude all commercial fishing. The Industry Bodies refer to proposed amendments to the South Island Customary Regulations which they say will “better meet Ngāi Tahu’s needs”. They advocate for MPI supporting the proposed amendments in preference to new regulations under s 186.

---

<sup>14</sup> See *Overview of Rakiura Titi Harvesting* (a document provided by Ngāi Tahu for the 2010 consultation) citing unpublished data of H. Moller and others. MPI can provide a copy upon request.

<sup>15</sup> *Ibid.*

#### *MPI response*

MPI is currently preparing advice to you on amendments to the South Island Customary Regulations proposed by Ngāi Tahu and commercial fishing sector representatives. MPI does not consider that the amendments will address the circumstances of the specific case. The amendments would allow commercial fishing for specific species to continue when a mātaihai reserve is established; all other commercial fishing would still be excluded. The current proposal involves allowing all other commercial fishing and excluding only fishing for kina, paua and rock lobster; the “opposite” situation to that addressed by the proposed amendments.

Due to the remoteness, number and small scale of the areas, existing tools, including mātaihai reserves, would be difficult to implement and are not a good fit to the specific circumstances of this case. MPI’s view on the suitability of existing tools is set out more fully in section 4.5.1 below. That view is informed by MPI’s policy guidelines<sup>16</sup> for the use of s 186, which MFish developed in consultation with Māori and commercial fishing representatives.

#### **3.3.6 Alternative solutions**

FINZ notes that Ngāi Tahu has worked with industry to try to address these issues through means other than regulatory closures. FINZ says that kina, paua and rock lobster organisations “have offered to impose voluntary seasonal closures, lightly fish any economic areas and even re-locate stocks to ensure a plentiful supply for the mutton-birders.” FINZ recommends MPI actively try to facilitate an agreement for an alternative solution and states that it remains willing to work with Ngāi Tahu on this matter.

#### *MPI response*

Discussions between Ngāi Tahu and industry in regard to the proposed closures over four years have not resulted in agreement and previous non-regulatory approaches have proved unsuccessful, with commercial fishing occurring in these areas despite a voluntary ban. Ngāi Tahu has decided that it wishes MPI to now proceed with advice to you on its request for regulations under s 186 to implement the closures.

#### **3.3.7 Setting a precedent**

FINZ is concerned that approving the proposed regulations will “provide a precedent for a proliferation of unsubstantiated spatial claims”. The Industry Bodies are also concerned about the proposed regulations setting “an unfavourable policy and operational precedent.” FINZ asks that, “[the] unique circumstances giving rise to the need for such regulations be clearly stated in any Final Advice Paper” and be reflected in your decision.

#### *MPI response*

The combination of factors is so specific to the Titi/Muttonbird Islands and the birding community that MPI does not consider that making the regulations would set a precedent. MPI considers customary regulations under s 186 are appropriate in this case because of that combination of factors. MPI discusses these factors in this Decision Document, particularly in section 4.5.1 below.

#### **3.3.8 Cumulative impact of closures/sustainability**

PauaMAC5, CRA8 and the Industry Bodies do not consider the proposed closures would create a sustainability risk for paua, kina or rock lobster. However, PauaMAC5 notes its concern about the potential impact of “cumulative multiple small scale closures and the sustainability risk of displaced catch for a sessile species such as paua.”

---

<sup>16</sup>Internal guidelines for the consideration of new customary fishing regulations under section 186 of the Fisheries Act 1996.

### *MPI Response*

MPI acknowledges the potential cumulative impact of the closures. However, MPI also considers that there would be no sustainability risk caused by the proposed closures.<sup>17</sup>

#### **3.3.9 Wording and intent of the proposed regulations**

SeaFIC and RLIC submit the IPP contained no details of the proposed customary regulations, including wording and intent.

### *MPI response*

The IPP stated the proposed regulations would close specified areas to commercial fishing for kina, paua and, in one case, rock lobster, through amendments to the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986. Specific wording to reflect this would be decided at the drafting stage, should you agree to recommend the proposed regulations.

The intent of the proposed regulations is also set out in the IPP; to recognise and provide for customary food gathering and the special relationship between tangata whenua and those places that are of customary food gathering importance.

#### **3.3.10 Section 297**

CRA8 suggests the IPP is confused because it focuses on s 186 and that s 297(1)(a) should be used to introduce any of the proposed closures. However, the Industry Bodies say that s 297 cannot be used to close an area “to provide for customary fishing” without “clear legal authority in s 186”, which they say does not exist (see section 3.3.1 above).

SeaFIC suggests that, rather than regulations under s 186(1), Ngāi Tahu should work with commercial fishing interests to resolve the issues, “including agreement for the use of s 297 to amend the commercial regulations.” CRA8 asks that the proposal be withdrawn and further consultation be undertaken on introducing the closures using s 297. PIC submits that, “It would have been far simpler and transparent to consult on amendments to the commercial regulations”.

Ngāi Tahu considers that regulations under s 186(1) of the Fisheries Act are preferred rather than under s 297 “in recognition of the cultural significance of the muttonbirding islands.”

### *MPI response*

The proposed regulations would be made under s 186(1) and (if necessary) under s 297. The regulations would take effect as amendments to the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986, which were made under s 297. Parliamentary Counsel will consider whether to reference s 297 when drafting the proposed regulations.

Stakeholders and tangata whenua have had the opportunity to comment on the proposed closures, including the nature of the relationship between tangata whenua and the areas proposed to be closed. MPI provided further opportunity to comment on the amended proposals.

#### **3.3.11 Lack of catch history**

PauaMAC5 notes that “over one third of the areas proposed for closure have no commercial catch history”. In view of this, PauMAC5 does not “see how...new regulations will meet the aim of improving shellfish availability to mutton bird harvesters”.

---

<sup>17</sup> The impacts on commercial fishing are discussed in section 5.1.2.

#### *MPI response*

MPI does not have the fine scale spatial information to determine the history of commercial catch on a bay-by-bay basis. Ngāi Tahu has identified areas that meet the needs of the birding community while attempting to minimise the impact on commercial fishers. Therefore, some areas may well have no catch history.

Closing these areas to commercial fishing will help to ensure that shellfish continue to be available in the 31 areas in future. As well as providing for customary food gathering by improving shellfish availability, the purpose of the proposed closures is to recognise the special relationship between the birding community and the areas of importance for customary food gathering.

#### **3.3.12 Compliance monitoring**

CRA8 suggests that, “it is impractical to expect that any meaningful compliance monitoring of any regularity will occur.” The Industry Bodies are concerned “that boundaries be clearly specified and easily distinguished”.

#### *MPI response*

MPI acknowledges the relative isolation of the areas proposed for closure and the species specific closures creates enforcement challenges. Fishers may be operating in the closed area for fishing of other species and fishing in adjacent areas for those species restricted in these proposed areas.

Monitoring compliance would be on a priority basis for resources and would, of necessity, focus more on ensuring awareness of the restrictions. Information about the boundaries of the closed areas would be included in educational material supplied to fishers.

#### **3.3.13 Consistency with amateur regulations**

NZRFC states that it did “not want to see this right abused in that shellfish are accumulated in great numbers to return to the mainland” and wanted any shellfish gathering to be consistent with amateur fishing regulations.

#### *MPI response*

No changes to the amateur fishing regulations are proposed. Any take that was not consistent with amateur fishing regulations would need an appropriate customary authorisation to be lawful.

## **4 Legal Considerations**

### **4.1 SECTION 5 – INTERNATIONAL OBLIGATIONS AND THE SETTLEMENT ACT**

Under s 5(a) of the Fisheries Act, you are required to act in a manner consistent with New Zealand’s international obligations relating to fishing and with the provisions of the Settlement Act. The proposed closures and the status quo are consistent with New Zealand’s international obligations relating to fishing.

Ngāi Tahu considers that voluntary measures and existing tools have not adequately provided for customary needs, and it is unclear whether the status quo is consistent with the provisions of the Settlement Act. If compliance could be improved, voluntary closures of the areas could be sufficient to meet the Crown’s Treaty obligations, though concerns over the effectiveness of such measures could recur. Compared to the status quo, regulations under s 186 would provide greater recognition and provision for non-commercial customary food gathering and

the special relationship between tangata whenua and those places which are of customary food gathering importance. Thus, the proposed regulations would be consistent with the Crown's obligation under s 10 of the Settlement Act.

## **4.2 SECTION 8 – PURPOSE OF THE FISHERIES ACT**

Section 8 of the Fisheries Act states the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. MPI considers that both the status quo and the proposed regulations are consistent with the purpose of the Act. Utilisation, as defined in the Act, includes using and enhancing fisheries resources to enable people to provide for their social, economic and cultural wellbeing. The definition of utilisation includes “conserving”, which means providing for the maintenance or restoration of fisheries resources for their future use.

The proposed regulations are aimed at restoring and maintaining the fisheries resources within the proposed closed areas to enable tangata whenua to better provide for their social and cultural wellbeing. Against this, some economic potential may be lost as a result of the closure of these areas to some commercial fishing activities (see section 5.1.2). However, the proposal takes into account submissions from industry and has been designed to minimise any commercial impact. MPI considers the proposal meets the purpose of the Fisheries Act.

## **4.3 SECTION 9 – ENVIRONMENTAL PRINCIPLES**

Section 9 of the Fisheries Act requires that you take the following environmental principles into account when exercising or performing functions, duties, or powers in relation to the utilisation of fisheries resources or ensuring sustainability:

- a) Associated or dependent species should be maintained above a level that ensures their long-term viability;
- b) Biological diversity of the aquatic environment should be maintained; and
- c) Habitat of particular of significance for fisheries management should be protected.

Neither the proposed regulations nor the status quo will negatively impact the associated and dependent species, the biological diversity of the aquatic environment or habitats of particular significance for fisheries management. MPI considers that both options satisfy your obligations under section 9 of the Fisheries Act.

## **4.4 SECTION 10 – INFORMATION PRINCIPLES**

Section 10 of the Fisheries Act requires that you take the following information principles into account:

- a) Decisions should be based on the best available information;
- b) Decision makers should take into account any uncertainty in the available information;
- c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate; and
- d) The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.

MPI considers that the best available information has been used as the basis for the analysis herein. There are uncertainties in the estimates of commercial catch from the 31 proposed closed areas and the costs and benefits of the proposed regulations cannot be accurately quantified.

#### 4.4.1 Section 11A – Fisheries Plans

There is no approved fisheries plan relevant to this proposal. The draft National Inshore Shellfish Fisheries Plan (the draft Plan) sets out a ‘use’ objective for Group 1 stocks such as paua and rock lobster to “Maximise the overall social, economic and cultural benefit obtained from each stock.” The proposal is consistent with this objective as it better provides for customary, non-commercial food gathering of paua and rock lobster.

Kina in the relevant fisheries management area is a Group 4 stock in the draft Plan. The ‘use’ objective for Group 4 stocks is to “Enable utilisation of each stock.” MPI considers that the proposal better provides for customary, non-commercial utilisation of kina than the status quo and is not likely to have a significant adverse impact on utilisation by the commercial sector.

Paua, kina and rock lobster are taonga species under the Te Waipounamu Iwi Forum Fisheries Plan, which applies to the area that includes the Titi/Muttonbird Islands. Management Objective 1 of the Plan is: “To create thriving customary non-commercial fisheries that support the cultural well-being of South Island Iwi and our whānau.” The proposal is also consistent with this objective.

### 4.5 OTHER LEGAL AND POLICY CONSIDERATIONS

#### 4.5.1 Section 186 of the Fisheries Act - policy guidelines

Based on its internal policy guidelines, MPI considers the following matters are also relevant to whether new customary regulations should be made:

- whether customary interests can be provided for through existing tools;
- whether the proposed new regulations meet the conditions of s 186;
- whether the proposed regulations are consistent with fisheries legislation and other legal obligations (such as the Bill of Rights Act 1990);
- the rights and interests of other groups; and
- resourcing and implementation issues.

##### *Existing tools*

Existing tools include the establishment of taiāpure-local fisheries<sup>18</sup> and mātaihai reserves,<sup>19</sup> temporary closures, appointment of tangata tiaki/kaitiaki and existing regulations. MPI does not consider that any existing tool is appropriate to the specific circumstances of this case.

The Titi/Muttonbird Islands are remote, occupied for only a few months each year with no resident community, and land access is almost exclusively restricted to the birding community. MPI considers that the use of taiāpure or mātaihai reserves mechanisms, particularly for so many isolated, small-scale areas, would be resource intensive for the birding community and place an unreasonable administrative burden on them.

Taiāpure-local fisheries are a local, community-focused management mechanism. The main management mechanism available for a taiāpure is for the management committee for the taiāpure to recommend the making of regulations (including regulations under s 186). As such, addressing Ngāi Tahu’s concerns via the establishment of taiāpure over the areas would likely lead to a recommendation for regulations similar to those currently proposed.

---

<sup>18</sup> Taiāpure-local fisheries aim to provide for recognition of rangatiratanga and the fisheries rights secured under Article Two of the Treaty of Waitangi, over any area of estuarine or coastal waters that have customarily been of special significance to any iwi or hapu either as a source of food or for spiritual or cultural reasons (s 174 of the Fisheries Act).

<sup>19</sup> These reserves provide for tangata whenua to manage all non-commercial fishing in some of their traditional fishing grounds. Tangata Tiaki/Kaitiaki may be appointed by tangata whenua to make by-laws for the mātaihai reserves.



Ngāi Tahu is concerned that mātaihai reserves would impact a wider range of commercial fisheries than the proposed closures. Ngāi Tahu considers this unjustified to address their concerns around access to paua, kina and rock lobster in the proposed closed areas. MPI also considers that management by mātaihai reserves may be undesirable because of the small number of species for which the closures are sought and the large number of small areas proposed to be closed. Establishing a large number of mātaihai reserves would be costly.

Temporary closures<sup>20</sup> may assist in restoring the kina, paua and rock lobster in depleted areas around the Southern Titi/Muttonbird Islands in the short-term, but would not enhance access to customary fisheries resources in the longer term. Given the historic and contemporary cultural and economic significance of the tītī harvest to the birding community and Ngāi Tahu as a whole, MPI considers that it is desirable that any legislative protection afforded to the 31 proposed areas should be permanent. MPI does not consider temporary closures are able to recognise and provide for the interests of the birding community in these 31 places of customary food gathering importance in the longer term.

Tangata tiaki/kaitiaki are not able to manage commercial fishing, which the proposed regulations seek to restrict. MPI does not consider that any existing regulations adequately provide for customary interests in the 31 areas proposed for closure.

#### *Conditions of s186*

The Titi/Muttonbird Islands are of cultural and economic significance to Ngāi Tahu. The Crown has acknowledged the ‘special relationship’ between tangata whenua and the Titi/Muttonbird Islands through:

- implementation of legislative restrictions on access by non-tangata whenua to the islands;<sup>21</sup>
- vesting the fee simple estate of the islands in Ngai Tahu;<sup>22</sup>
- protecting the customary right to take tītī from the islands;<sup>23</sup> and
- engagement with, and support of, Rakiura Māori kaumātua in their work on the Ministry of Agriculture and Fisheries’ South Island “Rāhui Area” Programme (the Rāhui Programme).

The Rāhui Programme is one of several ways that Ngāi Tahu has engaged with the Crown to seek protection for areas of significance to customary fishing around the Titi/Muttonbird Islands. Ngāi Tahu’s work on the “Ngāi Tahu Customary Fisheries Protection Areas Project” re-confirmed many of the areas identified by the Rāhui Programme as being of sufficient historic and contemporary significance within the Ngāi Tahu takiwā (tribal area).

The gathering of paua, kina and rock lobster by the Titi/Muttonbird Island birding community is for sustenance and is not for pecuniary gain or trade.

---

<sup>20</sup> Under s 186B of the Fisheries Act, tangata whenua may request the Minister of Fisheries to close or restrict fishing in a given area of the South Island Fisheries waters for a period not exceeding two years. The purpose of these temporary closures is to improve the size and/or availability of fish stocks that have been depleted, or to recognise and provide for the use and management of tangata whenua.

<sup>21</sup> Only Rakiura Māori with a beneficial interest in any of the islands or their family members (with authorisation) may enter onto the islands without a permit or harvest tītī from the islands (reg 3 of the Titi (Muttonbird) Islands Regulations 1978). Rakiura Māori are members of the Ngai Tahu tribe or Ngati Mamoe tribe who are also descendants of the original Maori owners of Rakiura/Stewart Island (s 333 of the Ngāi Tahu Claims Settlement Act 1998 (the Ngāi Tahu Act)).

<sup>22</sup> Section 334(2) of the Ngāi Tahu Act.

<sup>23</sup> Section 335 (1)(i) of the Ngāi Tahu Act.

### *Consistent with fisheries legislation and other legal obligations*

MPI considers that the proposed regulations are consistent with fisheries legislation. MPI is not aware of any inconsistency with any other legal obligation, including the Bill of Rights Act 1990.

### *Rights and interests of other groups*

In developing its initial proposals, Ngāi Tahu worked with commercial stakeholders to try to minimise the impact of the proposed closures on commercial fishing. Although commercial fishing industry submitters oppose the use of s 186 (see section 3.3), only PauaMAC 5 in 2010 commented on potential impacts of the proposed closures on commercial fishing. Ngāi Tahu made amendments in response to PauaMAC5's concerns.

MPI considers that the rights and interests of other groups would not be significantly impacted by the proposed regulations. Potential impacts on commercial fishers are discussed further at section 5.1.2 below. Recreational fishing would not be impacted by the proposed closures.

### *Resourcing and implementation issues*

There will be some resourcing and implementation implications as a result of the proposed regulations, but MPI considers that these will not be significant. Monitoring compliance will be on a priority basis for resources, but is problematic given the location and partial species restrictions on commercial fishing that is carried out in the wider area. Therefore, monitoring and evaluation of the regulations will likely be largely reliant on information from Ngāi Tahu and commercial stakeholders.

It is proposed that the penalty for breaching the closures would be a fine not exceeding \$20,000, which is consistent with penalties for other offences relating to closed commercial areas.

## **4.5.2 Section 297**

Section 297(1)(a) of the Fisheries Act allows the Governor-General to make regulations to regulate or control fishing and the possession, processing and disposal of fish, aquatic life, or seaweed. This section also prescribes the power to make regulations to prohibit the taking of fish from any area (s 297(1)(a)(ii)). When drafting the proposed regulations, Parliamentary Counsel may, in addition to utilising s 186, include reference to s 297 in the enacting words of the regulations.

# **5 Management Options**

## **5.1 ANALYSIS OF OPTIONS**

### **5.1.1 Option 1 – status quo (no action)**

The status quo (Option 1) allows commercial fishers to continue to harvest paua, kina and rock lobster from the 31 areas proposed for closure.<sup>24</sup>

### *Impact*

Commercial harvest of paua, kina and rock lobster will be unaffected. The ability of the Titi/Muttonbird Island birding community to manage and have access to traditional fishing

---

<sup>24</sup> None of the proposals relate to recreational fishing.

resources will not improve. The birding community sees this as a barrier to their expression of tikanga (customary protocols).

Under this option, the birding community would need to rely on voluntary measures to address their concerns. Previous attempts by the birding community in conjunction with commercial fishers to create voluntary commercial closures in these areas have been met with varying degrees of compliance from the fishers. So, the effectiveness of any future voluntary agreement is uncertain. However, FINZ and the Industry Bodies favour this approach.

The birding community are only on the islands from March to May each year. It is, therefore, impossible for them to monitor the effectiveness of any voluntary commercial measures throughout the year.

#### *Costs*

This option does not address the birding community's concerns about access to kaimoana during the annual harvesting of tītī. It does not recognise and provide for customary food gathering by the birding community of paua, kina, and rock lobster in these areas, and the special relationship between the birding community and the areas.

#### *Benefits*

The status quo would mean less cost to MPI for compliance services. This option also leaves open the prospect of voluntary measures being put in place by commercial fishers (although this has been previously unsuccessful).

### **5.1.2 Option 2 – New customary regulations under s 186(1)**

Option 2 is for regulations to be made, closing the 31 areas listed in Table 1 above: 25 areas to the commercial harvest of kina and paua; 5 areas to the commercial harvest of kina, only; and 1 area to the commercial harvest of kina, paua and rock lobster.

#### *Impact*

This option would address the birding community's concerns about access to kaimoana during the annual tītī harvest and provide recognition of the special relationship between the community and the 31 areas. However, the proposed regulations would have some impact on commercial harvest of shellfish and the use of s 186 to close the areas is opposed by commercial fishing industry submitters. This option is supported by Ngāi Tahu, RTIAB, Tane Davis and NZRFC.

#### *Costs*

Kina, paua and rock lobster catch is reported by statistical area. Due to the coarse scale of statistical areas, MPI cannot use this information to directly estimate take at the finer scale of the 31 areas. However, as the stocks of interest are all reef dwelling, MPI considers reef area to be a coarse, but useful indicator of how much a particular location might be expected to contribute to the total landings within the relevant quota management area (QMA).

For each of the proposed closures, MPI evenly apportioned the catch for the related statistical area across the total area of reef within that statistical area. MPI then estimated displaced catch by measuring the area of reef within each proposed closure and calculating the amount of apportioned catch for each relevant fishstock (Table 2). The resulting estimates do not

account for variations in productivity and catch per unit effort across reef area and actual catch from these areas may be higher or lower than estimated.<sup>25</sup>

For the estimates of displaced catch, MPI averaged catch data for five years between the 2007/08 and 2011/12 fishing years (inclusive). MPI compared this average catch data with annual average QMA landings over the same period.

Based on these estimates, MPI considers that the main impact of the proposed closures would be on the commercial harvesting of kina. The proposed closed areas all occur in the SUR 5 kina QMA. The current total allowable commercial catch (TACC) for SUR 5 is 455 tonnes (t). MPI estimates if all 31 areas are closed to commercial kina fishing, then 4.6 t, around 1.4% of SUR 5 landings or 1% of the TACC, could be displaced.

Commercial harvest of paua could also be impacted. The proposed closures all occur in the PAU 5B paua QMA. The current TACC for PAU 5B is 90 t. MPI estimates that if the 26 areas are closed to commercial paua fishing as proposed (see Tables 1 & 2), then 48 kg, around 0.1% of PAU 5B landings (less than 0.001% of the TACC) could be displaced.

Although it objected to the use of s 186(1) to create new regulations, PauaMAC5 indicated it would not oppose the closures provided requested changes were made to avoid potential impacts on commercial paua harvesting. Ngāi Tahu made those changes, specifically:

- Three adjustments to boundaries (Pikomamakuiti; Herekopare; and Tia Island);<sup>26</sup> and
- Two areas (Solomons and Poho a Tairea) which were originally proposed to be closed to commercial harvesting of both paua and kina are now proposed to be closed to the commercial harvesting of kina, only.

For commercial rock lobster fishing, Ngāi Tahu only seeks to close Upokopotiti – Potted Head. This is a small bay on Big South Cape Island (Taukihepa) and lies within the CRA 8 rock lobster QMA. Based on the estimated displaced catch (0 kg), MPI expects the proposed closure to have little or no impact on commercial fishing for rock lobster.

MPI estimates the **maximum** total economic impact of the closures on commercial kina and paua fishing to be approximately \$310,000 (including quota value loss of \$50,000) and \$50,000 (including quota value loss of \$15,000), respectively. This includes income loss by the harvesting sector, processing sector, industries that supply the harvesting and processing sectors (indirect income), and the broader economy through flow-on effects (induced income).

However, the economic impact model assumes that there will be permanent loss of catch as a result of the proposed closures. MPI considers it likely that the displaced catch can be taken elsewhere from the relevant QMAs and that closing these areas would not prevent commercial fishers from taking their quota entitlement or annual catch. This is supported by the Industry Bodies' submission which noted, "any displacement of commercial fishing effort from the proposed closures ... is unlikely to increase sustainability risks for the relevant paua, kina or rock lobster stocks". No other submissions comment on the likely impact on commercial fishing.<sup>27</sup>

---

<sup>25</sup> MPI notes this analysis differs from the approach taken in the IPP in 2010. MPI considers that the current analysis more accurately reflects the likely impacts of the proposed closures. The current analysis was not provided to submitters in 2014.

<sup>26</sup> See Fig. 7, Appendix 1 for a map showing the original and final boundaries.

<sup>27</sup> MPI notes that the analysis in this Decision Document differs from the approach taken by MFish in the IPP in 2010. MPI considers that it better reflects the likely impacts of the proposed closures. This analysis was not provided to submitters in 2014. However, MPI considers commercial fishers have access to more accurate information about catch taken from the 31 areas than MPI does. For example, paua fishers now use data loggers to record catch and location.

**Table 2: Estimated displaced catch from the proposed closures (kgs and by % of total QMA landings)**

No.	Name	SUR 5		PAU 5B		CRA 8	
		kgs	%	kgs	%	kgs	%
1	Pikomamakuiti (North Island)	0	0.000	1	0.001	-	-
2	Bunker Island	1	0.000	-	-	-	-
3	Herekopare	0	0.000	2	0.002	-	-
4	Tia Island	163	0.050	3	0.004	-	-
5	Rukawahakura	50	0.015	0	0.000	-	-
6	Wharepuitaha	0	0.000	0	0.000	-	-
7	Poutama	45	0.014	1	0.001	-	-
8	Puwai	152	0.047	3	0.003	-	-
9	Hinekuha	0	0.000	1	0.001	-	-
10	Murderers Cove	1422	0.437	26	0.029	-	-
11	Patupahe	18	0.006	2	0.002	-	-
12	Pukeotakohe	400	0.123	3	0.003	-	-
13	Pukeweka	325	0.100	4	0.004	-	-
14	Solomons	1108	0.341	-	-	-	-
15	Upokopotiti – Potted Head	0	0.000	0	0.000	0	0.000
16	West Taukihepa	50	0.015	-	-	-	-
17	Southern Putauhinu	243	0.075	0	0.000	-	-
18	South Eastern Putauhinu	28	0.009	0	0.000	-	-
19	Eastern Putauhinu	3	0.001	0	0.000	-	-
20	North Eastern Putauhinu	0	0.000	0	0.000	-	-
21	North Western Putauhinu	21	0.006	0	0.000	-	-
22	Putauhinu Nuggets	0	0.000	0	0.000	-	-
23	Kaimohu	0	0.000	1	0.001	-	-
24	Pohowaitai & Tamaitemoika Islands	170	0.052	0	0.000	-	-
25	Poho a Tairea	0	0.000	-	-	-	-
26	Poho a Tairea 2	0	0.000	-	-	-	-
27	Poho a Tairea/Chimneys Island	323	0.099	2	0.002	-	-
28	Betsy Island	11	0.003	0	0.000	-	-
29	Kani (Kundy Island)	92	0.028	0	0.000	-	-
30	Paua Bay (Big Moggy Island)	68	0.021	0	0.000	-	-
31	Little Moggy Island	0	0.000	0	0.000	-	-
<i>Total</i>		4692	1.442	48	0.088	0	0.000

The recommended regulations do not relate to recreational fishing. So, the proposals will have no cost in terms of recreational fishing for paua, kina and rock lobster.

No significant additional compliance costs would be incurred under Option 2. However, Option 2 would involve additional effort to educate commercial fishers, promote voluntary compliance, and monitor compliance with the closed areas and species restrictions. MPI has no estimate for the likely cost of this work which would be undertaken within existing priorities for resources. The nature of the location and the types of restrictions creates risks to our ability to effectively monitor compliance.

### *Benefits*

Creating new customary fisheries regulations for the 31 areas provides tangata whenua with the ability to express more fully their tikanga (customary protocols) and mātauranga Māori (traditional knowledge) in relation to the harvest of tītī, which includes the gathering of shellfish for sustenance.

Proceeding with these proposals therefore better provides for Māori non-commercial fishing interests. This is consistent with the Crown's obligation under s 10 of the Settlement Act. This option also addresses Ngāi Tahu's concerns about access by the birding community to paua, kina and rock lobster in safe customary fishing areas whilst harvesting tītī on the Titi/Muttonbird Islands.

Recreational fishers may benefit if local abundance of kina, paua and rock lobster increases as a result of closing the 31 areas.

## **6 Other Matters**

### **6.1.1 Adequacy of 2014 consultation**

FINZ considers the MPI's consultation to be "below an acceptable standard". FINZ considers MPI should have provided a new discussion document, including reference to matters raised in submissions in 2010. FINZ says the information provided was "not sufficient to allow submitters to form any opinion on the need for the proposed measures".

### *MPI response*

MPI acknowledges that, when it initiated targeted consultation in 2014, it failed to highlight the amendments Ngāi Tahu made in 2010 (though many submitters would have been aware of them). MPI addressed this by specifically advising all submitters of the details of the amendments during the consultation process and before the submission period closed.

As there had been no other substantive change to the proposals since 2010, MPI did not consider a new discussion document was necessary. MPI does not normally respond to submissions before providing advice.

Overall, MPI considers that sufficient information on the need for the proposed regulations was included in the IPP. In particular, the IPP highlighted the importance of the areas to the birding community and the rationale for using new customary regulations to close the areas in preference to any alternative measures.

### **6.1.2 Size of the proposed closures**

CRA8 queried the size of the closures, stated in the IPP as 1.9 square kilometres. MPI has checked the total area of the closures and confirms it is approximately 1.9 square kilometres.

### 6.1.3 Customary authorisations

FINZ suggests customary authorisations be used if the daily recreational bag limits are insufficient to provide for the birding community's needs. Ngāi Tahu's concerns did not extend to increasing the customary take of kaimoana. So, MPI does not consider this a relevant issue. If it were, tangata tiaki/kaitaiki are appointed for the area and the birding community will be aware of this option.

### 6.1.4 Mātaitai reserves

In 2010, the then Minister of Fisheries and Aquaculture approved mātaitai reserves in four areas around the Titi/Muttonbird Islands where management by mātaitai has been deemed appropriate by the respective applicants. These were Kaihuka Island, Horomamae and Pikomamaku (two areas). These areas do not overlap with, but are in close proximity to, some of the proposed closed areas.

## 7 Regulatory Impact

The MPI Regulatory Impact Analysis Panel has reviewed the regulatory impact statement (RIS) prepared by MPI and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

## 8 Conclusion

MPI considers that the proposed regulations better provide for customary, non-commercial fishing than the status quo. Commercial fishing industry submitters object to the use of s 186(1) of the Fisheries Act to make the regulations, though they raise no concerns about the impact on the sustainability of the SUR 5, PAU 5B or CRA 8 fisheries.

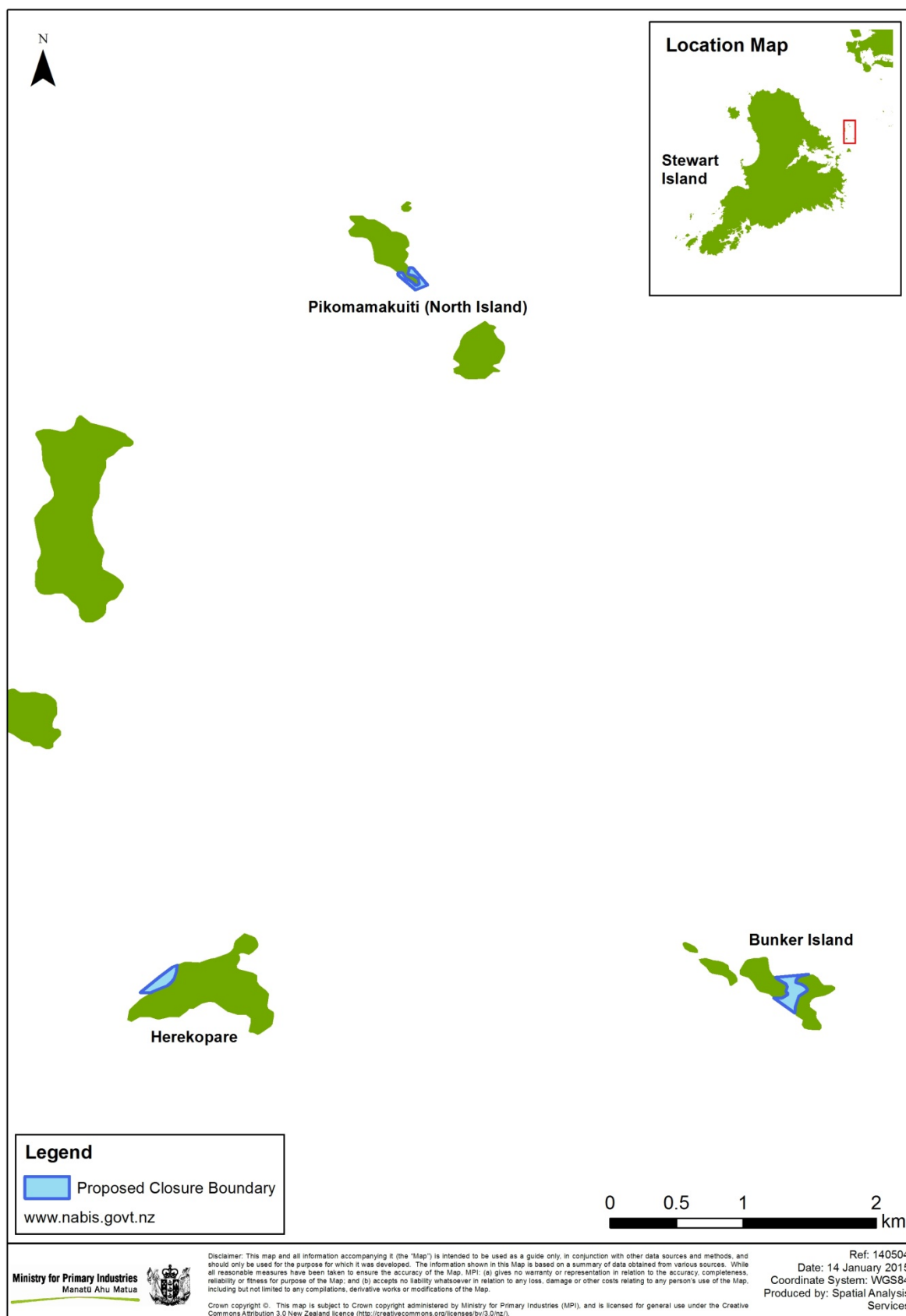
MPI considers making regulations under s 186(1) of the Fisheries Act is the most appropriate and effective way to recognise and provide for customary food gathering by the birding community and the special relationship between the birding community and these areas which are of customary food gathering importance. Parliamentary Counsel may, in addition to utilising s 186, include reference to s 297 when drafting the proposed regulations.

MPI advises that you agree to recommend to the Governor-General the making of the regulations for the 31 areas as Ngāi Tahu requests.

# Appendix 1

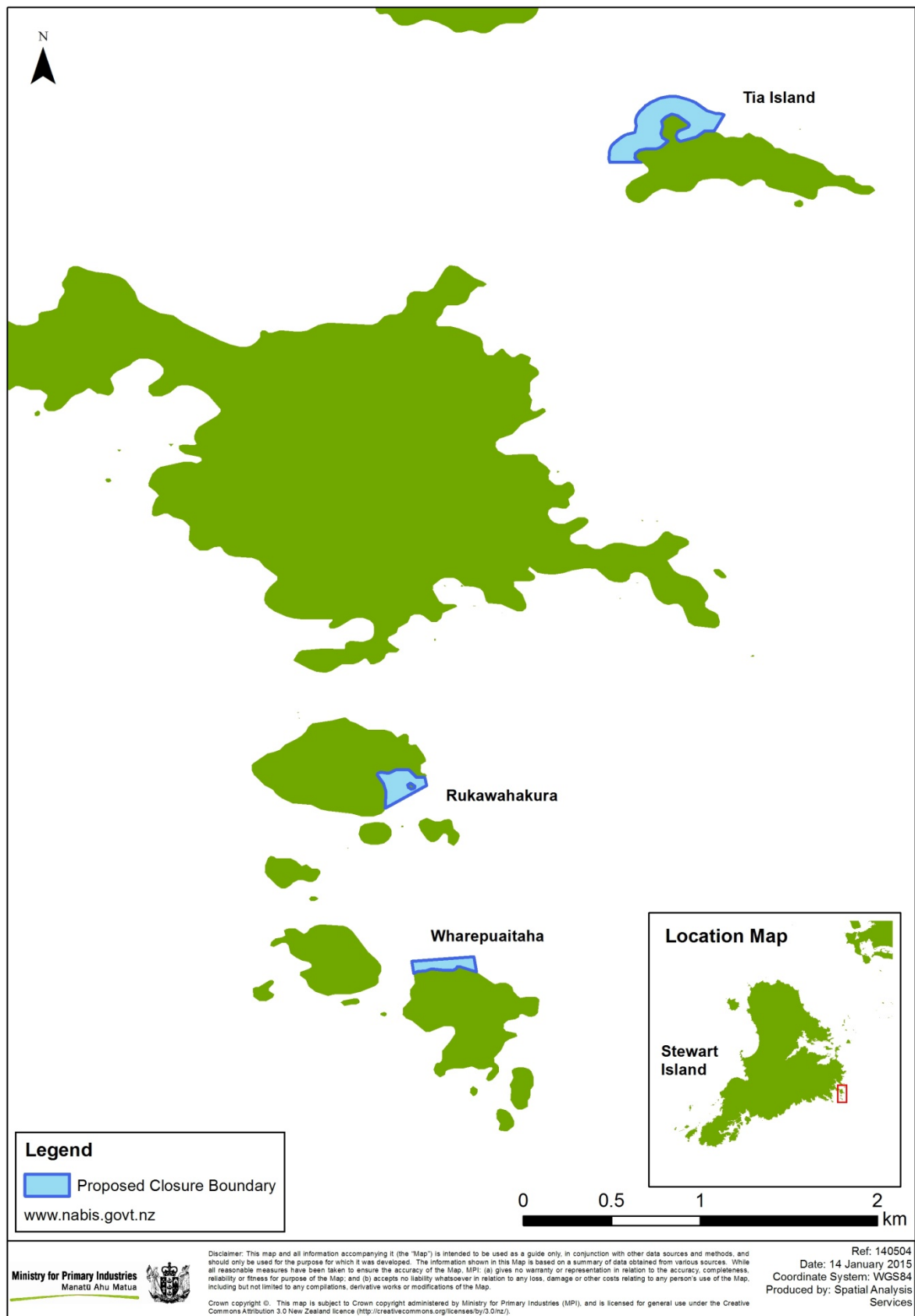
## Maps

Figure 2

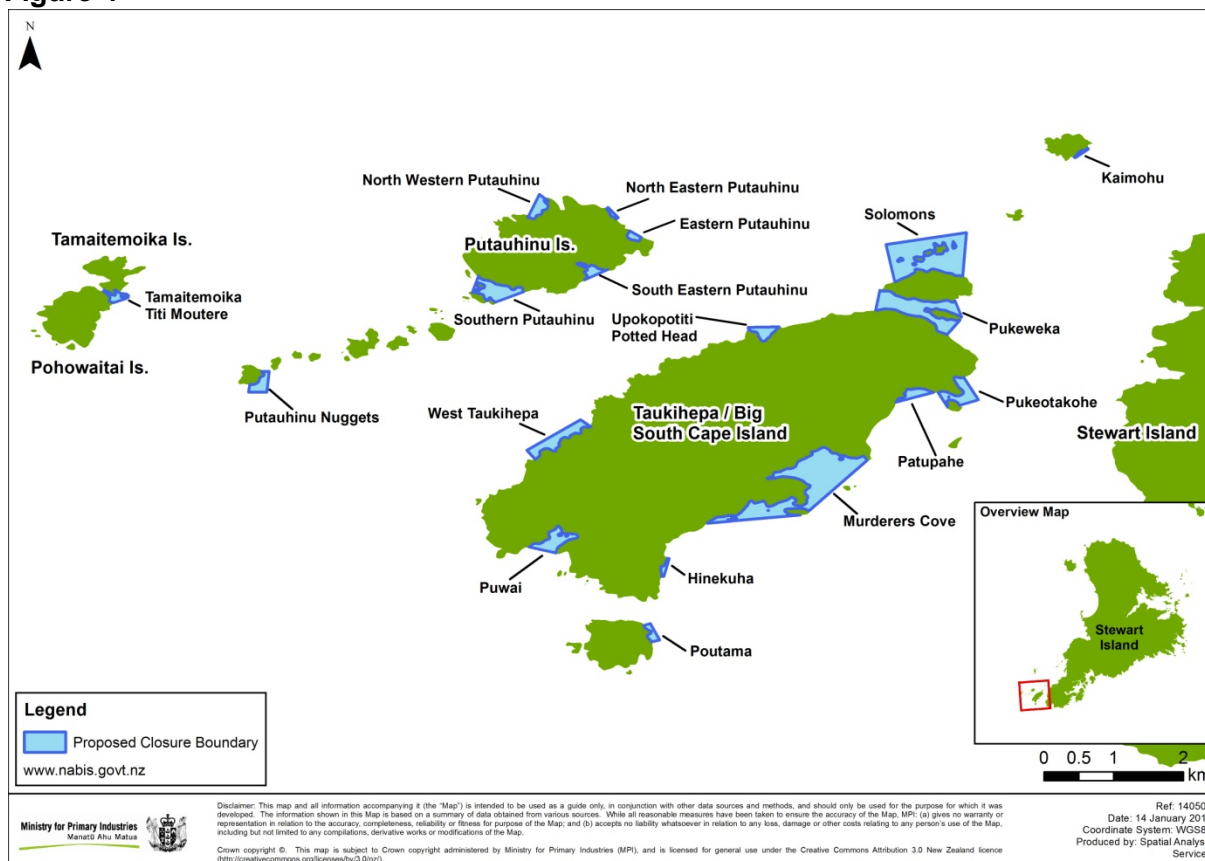




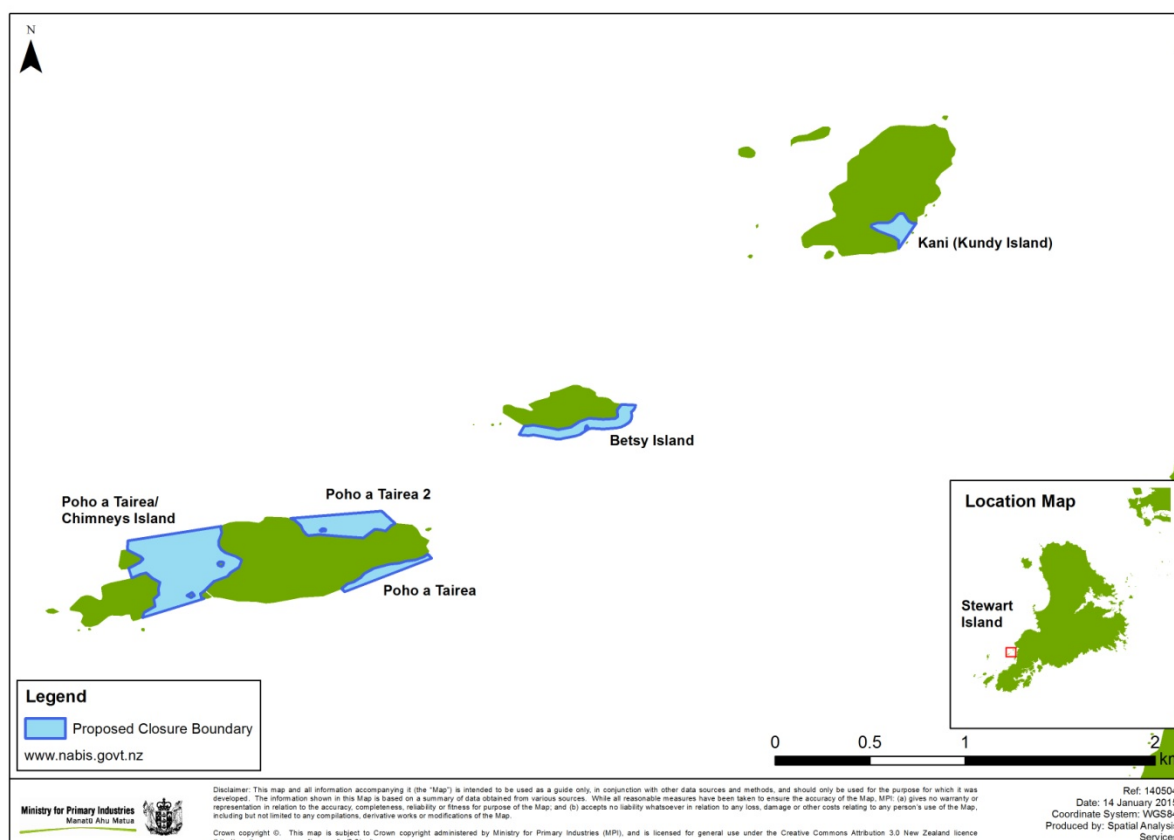
**Figure 3**



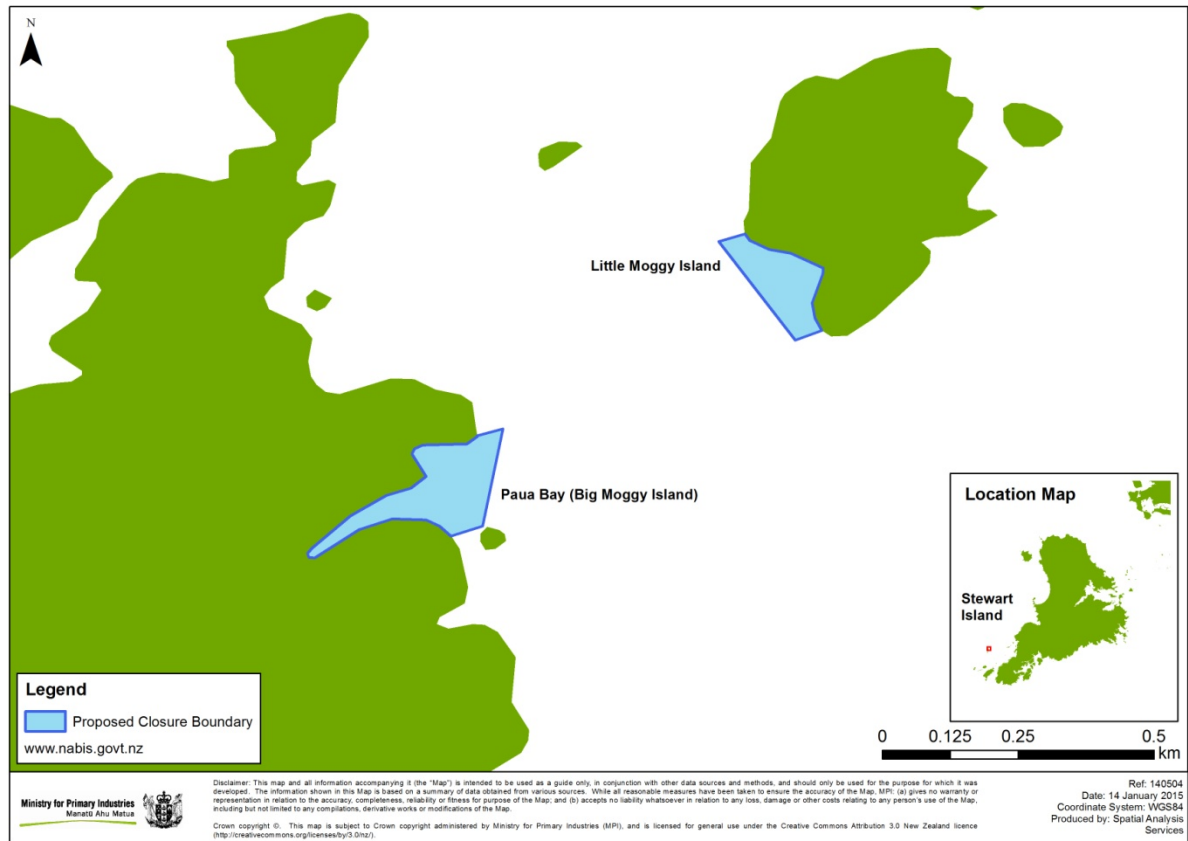
**Figure 4**



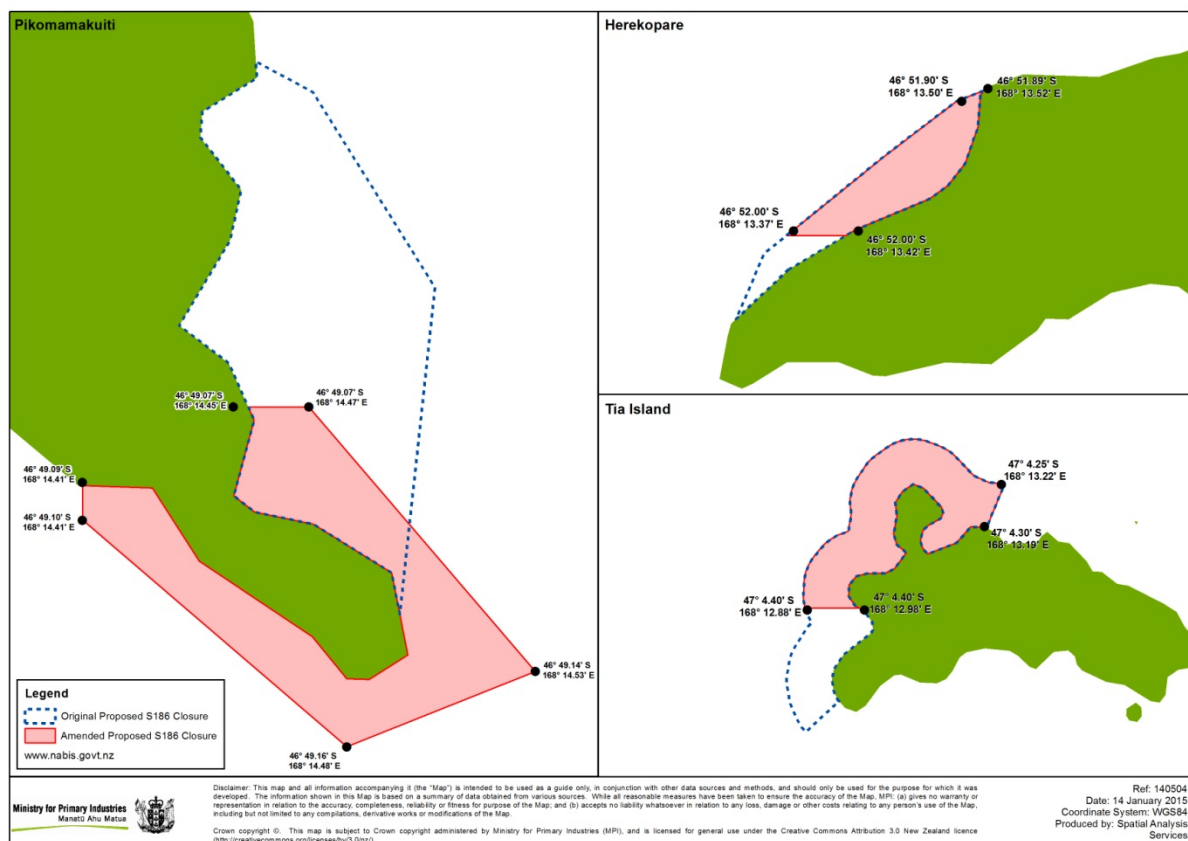
**Figure 5**



**Figure 6**



**Figure 7 – Proposed closures showing original (blue dotted line) and final (amended) proposed boundaries**



## **Appendix 2**

### ***Submissions***