



West Coast South Island: Proposed Marine Protected Areas (Using Fisheries Regulations)

Decision Document

MPI Discussion Paper No: 2015/28

Prepared for the Minister for Primary Industries
by the Ministry for Primary Industries.

ISBN No: 978-0-908334-85-8 (online)

ISSN No: 2253-3907 (online)

July 2015

1	Executive Summary	3
2	Purpose	4
2.1	Background	4
2.2	Rationale for management intervention	5
3	Consultation	9
3.1	Submissions received	9
3.2	Summary of submissions	10
3.3	Issues raised in submissions	10
4	Legal Considerations	14
4.1	Statutory requirements and policy commitments	14
4.2	MPA network Planning Principles	15
5	Management Options	15
5.1	Analysis of Options	15
6	Regulatory Impact	19
7	Conclusion	19
	Appendix - Submissions	20

1 Executive Summary

Under the *Marine Protected Areas Policy and Implementation Plan* (the MPA Policy),¹ a network of marine protected areas (MPAs) is planned. The network will help meet New Zealand's commitments to protect biodiversity under the *United Nations Convention on Biodiversity* (the Convention). The network is to be “comprehensive and representative of New Zealand's marine habitats and ecosystems.”

In 2011, the then Minister of Conservation and the then Minister of Fisheries and Aquaculture proposed a package of eight MPAs (five marine reserves and three other MPAs – see below) for the West Coast South Island. The package of MPAs will deliver marine biodiversity protection on the West Coast South Island and partly fulfil New Zealand's obligations under the Convention.

In March this year, you concurred with the then Minister of Conservation's decision to recommend the establishment of five new marine reserves on the West Coast South Island.² The five new marine reserves were part of the Ministers' proposed package and were opened on 7 September 2014.

This paper provides advice on the three remaining MPAs proposed by Ministers in 2011: two at Punakaiki and one at Gorge, in the West Coast South Island area (see maps below). The proposed MPAs would add 0.08% (9557 ha) of the Territorial Sea to New Zealand's MPA network. To establish the proposed MPAs, regulations under the Fisheries Act 1996 (the Act) would prohibit mobile, bottom-impacting commercial fishing methods (ie Danish seining, bottom trawling and dredging).³

MPAs established using fisheries regulations are known as Type 2 MPAs in the *Marine Protected Areas Classification, Protection Standard and Implementation Guidelines* (the MPA Guidelines).⁴ Marine reserves are established under the Marine Reserves Act 1971 and are Type 1 MPAs. The five marine reserves established in September included the Punakaiki Marine Reserve and the Hautai Marine Reserve (at Gorge).

The Ministry for Primary Industries (MPI) considers the proposed Type 2 MPAs would help to achieve the purpose of the Act of enabling utilisation while ensuring sustainability (s 8). In particular, the proposed Type 2 MPAs aim to avoid, remedy or mitigate adverse effects of fishing on the aquatic environment. MPI also considers that the proposed Type 2 MPAs would help to give effect to an international obligation relating to fishing, namely the Convention, and are consistent with the MPA Policy.

The MPA Policy requires the long-term maintenance of the biodiversity of an MPA to be ensured. There is little, if any, Danish seining, bottom trawling or dredging in the three areas. However, the maintenance of biodiversity in the proposed Type 2 MPAs could be threatened if these fishing methods were used there.

The MPA Policy states that, in planning the MPA network, “[adverse] impacts on existing users of the marine environment should be minimised.”⁵ The proposed Type 2 MPAs are consistent with

¹ Department of Conservation and Ministry of Fisheries, December 2005.

² See B13-534.

³ For the definitions of Danish seining and dredge, see reg 3 of the Fisheries (Commercial Fishing) Regulations 2001. For the definition of bottom trawling, see rule 3 of the Fisheries (Cost Recovery) Rules 2001.

⁴ Ministry of Fisheries and Department of Conservation, 2008.

⁵ See Planning Principle 5 of the MPA Policy.

the MPA Policy and would protect biodiversity without significant adverse impact or cost⁶ to fishers or other users.

MPI received 12 submissions on the proposals. There were seven submissions from environmental organisations and individuals. These submitters are generally supportive of MPAs at Gorge and Punakaiki, but request some increase to the level and/or area of protection. Three commercial fishing organisations submit that the proposed regulations are not consistent with the provisions of the Act and/or that the MPA Policy should be reviewed. Of the two remaining submitters, Te Rūnanga o Ngāi Tahu is in support and Maritime New Zealand does not express support or opposition.

MPI is seeking your agreement to recommend to the Governor-General the making of regulations prohibiting commercial fishers from Danish seining, bottom trawling and dredging in the proposed Type 2 MPAs.

2 Purpose

2.1 BACKGROUND

2.1.1 Statutory Framework

The purpose of the Act is: “to provide for the utilisation of fisheries resources while ensuring sustainability” (s 8(1)). Utilisation means “conserving,⁷ using, enhancing, and developing fisheries resources to enable people to provide for their social, economic and cultural wellbeing.” (s 8(2)). Ensuring sustainability means:

- a. maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations (s 8(2)(a)); and
- b. avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment (s 8(2)(b)).

The Act defines effect as “the direct or indirect effect of fishing”. It includes “any past, present or future effect”. It also includes “any potential effect of high probability” and “any potential effect of low probability which has a high potential impact” (s 2).

Section 5 of the Act requires decision makers to interpret the Act “in a manner consistent with New Zealand’s international obligations relating to fishing”.⁸ One such obligation is the Convention.⁹ The objectives of the Convention include “the conservation of biological diversity and the sustainable use of its components.” Use in the context of the Convention would include fishing.

Article 8 of the Convention includes requirements for parties to “... as far as possible and as appropriate ...:

- a. Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity ...
- b. Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings ...

⁶ Bottom trawling at Gorge may be displaced, but volumes taken there by that method are not a significant portion of total bottom trawl catches, and could likely be caught elsewhere and/or be taken by other methods. See below under section 5.1 for details.

⁷ Under the Act, conservation is defined as “the maintenance or restoration of fisheries resources for their future use and conserving has a corresponding meaning” (s 2).

⁸ You are also required to interpret the Act “in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.”

⁹ New Zealand ratified the Convention in 1993.

- c. Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components.”

Under the Act, decision makers are required to take into account the environmental principles set out in the Act (s 9) namely:

- 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
- c. habitat of particular significance for fisheries management should be protected.

Decision makers must also take into account the information principles set out in s 10 of the Act. These are:

- a. decisions should be based on the best available information
- b. decision makers should consider any uncertainty in the information available in any case
- c. decision makers should be cautious when information is uncertain, unreliable, or inadequate
- d. the absence of, or uncertainty in, any information should not be used as a reason to postpone or fail to take any measure to achieve the purpose of [the] Act.

Section 297 of the Act provides that the Governor-General may make regulations by Order in Council. Inter alia, such regulations may be made for the purpose of prohibiting any method of fishing (s 297(1)(a)(vii)).

2.1.2 MPA Policy

New Zealand’s undertakings under the Convention are consistent with the purpose and principles of the Act and are reflected in the MPA Policy. The objective of the MPA Policy is to:

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

An MPA is defined in the MPA Policy as:

An area of the marine environment especially dedicated to, or achieving through adequate protection, the maintenance and/or recovery of biological diversity at the habitat and ecosystem level in a healthy functioning state.

2.2 RATIONALE FOR MANAGEMENT INTERVENTION

2.2.1 The proposed Type 2 MPAs

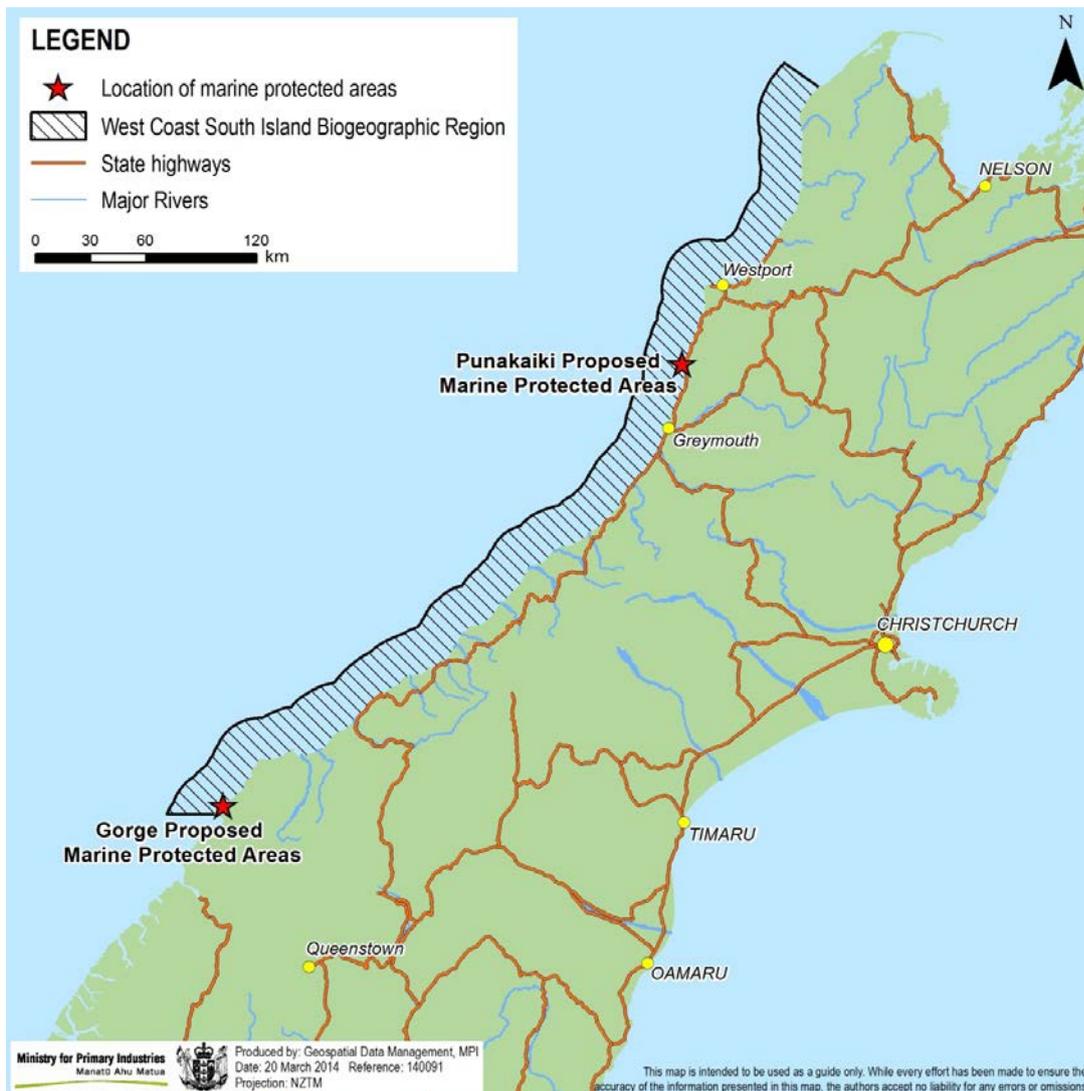
This paper provides information on proposals to use regulations made under the Act to establish and protect three Type 2 MPAs in the West Coast South Island (WCSI) Biogeographic Region¹⁰ (see Map 1) as part of New Zealand’s MPA network; two at Punakaiki and one at Gorge (see Maps 2 and 3, respectively).

The then Ministers of Conservation and Fisheries and Aquaculture proposed the Type 2 MPAs in 2011, as part of a package for the WCSI Biogeographic Region which also included five marine reserves. The West Coast Marine Protection Forum (the WCSI Forum) provided a Recommendation Report to Ministers in 2010 (the Recommendation Report) which guided those proposals.¹¹

¹⁰ There are 14 biogeographic regions around New Zealand which form the basis of MPA nearshore planning. The WCSI Biogeographic Region extends from Kahurangi Point in the north to Awarua Point in the south and offshore to the 12 nautical mile limit of the Territorial Sea.

¹¹ The WCSI Forum included representatives of tangata whenua, recreational and commercial fishing interests, the West Coast Regional Council and the local community. It was tasked with developing marine protection options for the WCSI Biogeographic Region.

Map 1 The WCSI Biogeographic Region and location of proposed MPAs

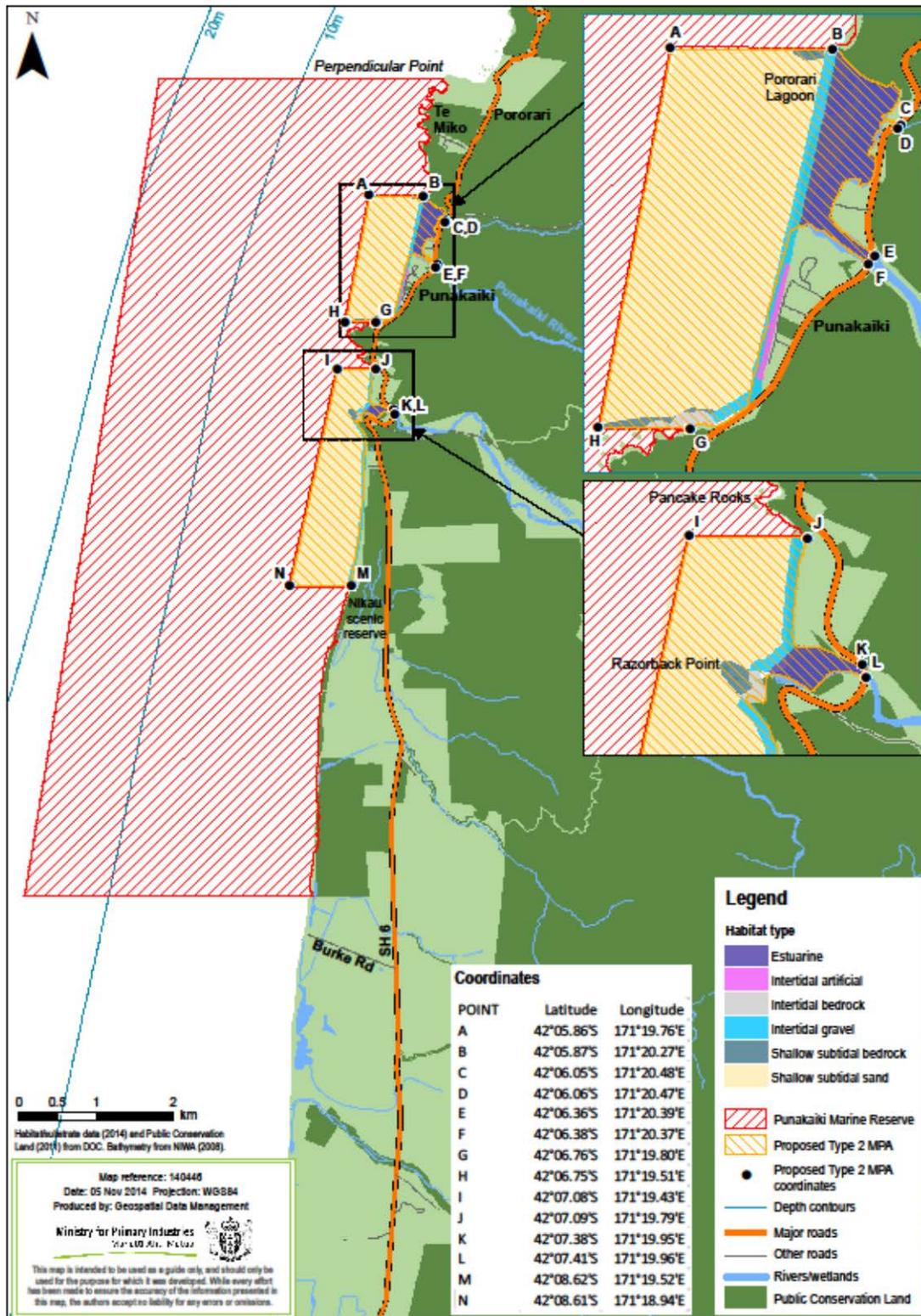


The three areas proposed as Type 2 MPAs are:

- Two coastal areas (totalling 326 ha or 3.26 sq km), adjoining and completely enclosed by the Punakaiki Marine Reserve, located north and south of Dolomite Point and in the central part of the WCSI Biogeographic Region.
 - The northern area extends up to 700 m (0.38 nautical miles (nm)) offshore from mean high water springs (MHWS) and alongshore 1.7 km (0.92 nm). It includes the estuary in the lower reaches of the Porarari River (Northern Punakaiki).
 - The southern area extends up to 800 m (0.43 nm) offshore from MHWS and alongshore 2.9 km (1.56 nm). It includes the estuary in the lower reaches of the Punakaiki River (Southern Punakaiki).
- An area totalling 9,231 ha (92.31 sq km), extending from the vicinity of the Gorge River southwards to Awarua Point and located at the southern end of the WCSI Biogeographic Region. The area adjoins and completely encloses the Hautai Marine Reserve. At its southern point, it extends approximately 4 km (2.15 nm) offshore from MHWS and its northernmost point extends approximately 9.8 km (5.29 nm) offshore (Gorge).

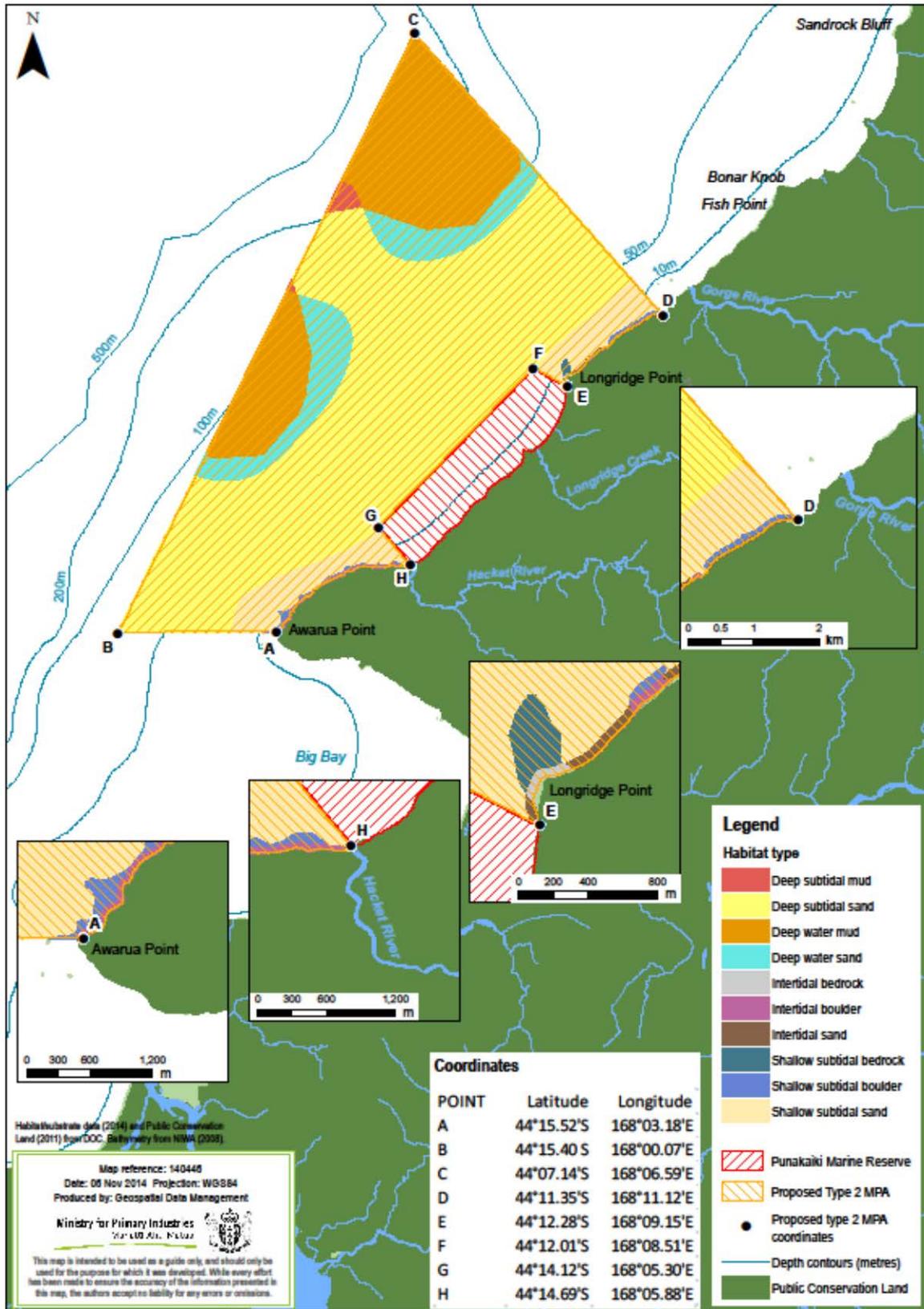
Both proposed Punakaiki Type 2 MPAs include shallow subtidal sand, intertididal and shallow subtidal bedrock, intertididal gravel and estuarine habitats. The Gorge area includes shallow subtidal and intertididal sand, boulder and bedrock, and deep subtidal and deep water sand and mud habitats. The deepwater habitats are not protected elsewhere in the WCSI Biogeographic Region.

Map 2 The location¹² of the proposed Type 2 MPAs at Punakaiki



¹² The co-ordinates for the three proposed Type 2 MPAs have been slightly amended from those in the maps provided during consultation, to better align the boundaries with the new Marine Reserves. This is necessary due to differences in the precision with which MPI and the Department of Conservation define co-ordinates.

Map 3 The location of the proposed Type 2 MPA at Gorge



2.2.2 Impacts of mobile, bottom-impacting fishing methods

Benthic habitats are important for a number of reasons. They provide shelter and refuge for juvenile fish. Fauna associated with benthic habitats can also be the prey of demersal (bottom-dwelling) fish species. Disturbances resulting from the use of mobile, bottom-impacting fishing methods may have both physical and biological impacts on benthic habitats, fauna and communities.

Habitats subject to substantial natural disturbance are somewhat better adapted to disturbance from mobile, bottom-impacting fishing methods than habitats where natural disturbance is low. The WCSI Biogeographic Region is generally quite exposed. But, the average exposure of benthic habitats to wave- and tidal-induced disturbance is only moderate¹³ except in shallower areas, such as in the two proposed Type 2 MPA areas at Punakaiki.

Impacts on hard, complex rocky bottoms tend to be greater than on sandy bottoms. The areas proposed as Type 2 MPAs include a mixture of soft and hard bottom types. So, some parts of the areas will be more susceptible to damage than others. Similarly, some parts would be expected to recover more quickly than others.

Impacts tend to be greatest when an area is first exposed to mobile, bottom-impacting methods. Based on current patterns of utilisation, MPI expects that the areas proposed as Type 2 MPAs (particularly at Punakaiki) are in a relatively natural state and therefore relatively more susceptible to adverse impacts from these methods.

3 Consultation

3.1 SUBMISSIONS RECEIVED

Between June and August 2012, MPI invited submissions on the proposals.¹⁴ MPI received submissions from:

- Judy Cochrane;
- Maritime New Zealand (Maritime NZ);
- New Zealand Marine Sciences Society (NZMSS);
- New Zealand Rock Lobster Industry Council jointly with Paua Industry Council (NZRLIC/PIC), supported by the Challenger Finfisheries Management Company;
- Christine Rose jointly with the Maui's and Hector's Dolphin Education/Action Incorporated Society (Christine Rose);
- Royal Forest and Bird Protection Society of New Zealand (Forest and Bird NZ);
- Royal Forest and Bird Protection Society of New Zealand – West Coast Branch (WC Forest and Bird);
- Seafood Industry Council (SeaFIC);¹⁵
- Te Ohu Kaimoana (TOKM);
- Te Rūnanga o Ngāi Tahu (TRONT);
- West Coast Tai Poutini Conservation Board (the Conservation Board); and
- World Wildlife Fund for Nature (WWF).

¹³ See *A Benthic –optimised Marine Environment Classification (BOMECE) for New Zealand waters*. New Zealand Aquatic Environment and Biodiversity Report No.88 (Ministry of Fisheries, 2012).

¹⁴ Consultation was concurrent with that by the Department of Conservation on the five WCSI marine reserves.

¹⁵ SeaFIC is now known as Seafood New Zealand.

3.2 SUMMARY OF SUBMISSIONS

One submitter (TRONT) supports the proposals. Seven submitters support MPAs at the locations, but want higher levels of protection and/or larger MPAs. The three submitters with commercial fishing interests all argue for a review of the MPA Policy and that the proposed regulations are inconsistent with the provisions of the Act. The remaining submitter (Maritime NZ) does not express a position.

Full copies of submissions are available in Appendix 1.

3.3 ISSUES RAISED IN SUBMISSIONS

3.3.1 Impact on commercial fishing

NZRLIC/PIC reference the Paua Industry Council's earlier submission to the WCSI Forum. That earlier submission sought an extension to the Northern Punakaiki Type 2 MPA into part of what is now the Punakaiki Marine Reserve. This would remove some paua habitat from the Marine Reserve and reduce its impact on the development potential of the commercial paua fishery.

MPI response

MPI considers that there would be a loss of development opportunity for the paua fishery as a result of the Marine Reserve. But, you decided that the impact would not be undue when you concurred with the then Minister of Conservation's decision to establish it.¹⁶ MPI received no other submissions about impacts on commercial fishing.

3.3.2 Management of fishing

The Conservation Board submits that, to maintain the integrity of an MPA, there should be no commercial fishing within any MPA (or within 2 nm of a marine reserve). WC Forest and Bird considers that catch levels need to be reduced "to properly protect ... marine ecosystems". NZMSS suggests that partial protection may prevent "re-establishment of fully functioning 'natural' ecosystems" and is ineffective for conserving targeted species.

MPI response

In the case of the proposed Type 2 MPAs, MPI considers that prohibiting all commercial fishing would be less consistent with the purpose of the Act and is unnecessary to protect biodiversity and meet the objective of the MPA Policy. It is the physical effects of mobile, bottom-impacting fishing methods that present a risk to maintaining biodiversity in the three areas, not commercial fishing more generally.

The MPA Policy aims to protect marine biodiversity generally, not to conserve individual species. Many of the likely target finfish species in these areas are mobile. MPI considers the most effective method of protecting such species is through appropriate management, eg the setting of catch limits under the Act.

3.3.3 Statutory basis for proposed regulations

SeaFIC, TOKM and NZLRLIC/PIC question the statutory basis for protecting representative areas and argue that the proposals are not consistent with the purpose of the Act. NZRLIC/PIC submits that to support the proposed regulations, evidence of adverse impacts of fishing on the aquatic environment linked to "the need to protect habitats of particular significance to fisheries management" from such impacts is required.

¹⁶ The Punakaiki Marine Reserve contains 1.5% of the PAU6 reef areas shallower than 10 m. There are no reported catches in the area. For further information, see MPI's advice to you on the marine reserves (B13-534).

MPI response

MPI's view is that establishment of the proposed Type 2 MPAs is consistent with the purpose of the Act. MPI considers that the application of measures to "avoid, remedy or mitigate adverse effects of fishing on the aquatic environment"(s 8(2)(b)) is appropriate given that the Act's definition of effect includes future effects and "any potential effect" (s 2).

There is evidence of the potential for mobile, bottom-impacting commercial fishing methods to have an adverse effect on the aquatic environment and biodiversity. MPI considers that the proposed regulations would protect the areas from those potential adverse effects and are consistent with the purpose and principles of the Act (see sections 2.1.1 and 4.1 for further discussion).

Precedents for protecting representative areas using the Act include the Benthic Protected Areas (BPAs) established by regulation in 2007.¹⁷ Fisheries regulations were also used to prohibit Danish seining and establish Type 2 MPAs around the Sub-Antarctic Islands in line with the MPA Policy.¹⁸

3.3.4 Submissions relating to adjacent marine reserves

Forest and Bird NZ, Judy Cochrane and NZMSS submit that the proposed Type 2 MPAs at Punakaiki should be part of the Marine Reserve. Forest and Bird NZ initially supported these two cut-outs (see map 2) from the Marine Reserve, but that was in the context of an option for a much larger adjoining marine reserve proposal (out to 12 nm). WC Forest and Bird states that it would accept the cut-outs, but that submission is made alongside one advocating for a much larger marine reserve at Punakaiki. Forest and Bird NZ, Judy Cochrane and NZMSS believe that by allowing fishing in the two areas "the biodiversity values and benefit of comprehensive protection will be significantly compromised."

The two cut-outs increase the total boundary of the Marine Reserve relative to its size. Forest and Bird NZ and NZMSS submit that this will increase edge effects, particularly the risk of, and extent to which, fishing on the boundary of the Marine Reserve may reduce species richness within it. Forest and Bird NZ and Judy Cochrane are also concerned that "a significant portion of shallow inshore habitats" would be in Type 2 MPAs rather than the Punakaiki Marine Reserve. They argue that this will significantly impact the integrity of the Marine Reserve.

Forest and Bird NZ and Judy Cochrane raise concerns about compliance and enforcement at Punakaiki. They consider the cut-outs complicate the Marine Reserve boundary and that this could be more confusing for fishers.

Forest and Bird NZ see the proposed Type 2 MPA at Gorge as providing a buffer to the Hautai Marine Reserve. Forest and Bird NZ submits that the Hautai Marine Reserve should be larger and the boundaries of the proposed Type 2 MPA at Gorge should be adjusted accordingly. Judy Cochrane and NZMSS also advocate for the proposed Type 2 MPA to be extended.

WC Forest and Bird opposes a Type 2 MPA at Gorge. It says that the entire area should be a marine reserve and that the total area proposed for protection (including the five marine reserves) is "insufficient to meet the objectives of the MPA Policy." WWF also advocates for larger marine reserves, with at least one out to 12 nm.

¹⁷ Fisheries (Benthic Protection Areas) Regulations 2007. The BPAs are closed to all types of trawling and dredging. They were chosen, *inter alia*, because they were broadly representative of the marine environment.

¹⁸ Regulation 15AA of the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986 prohibits Danish seining in the Territorial Sea around the Bounty and Campbell Islands.

MPI response

The MPA Policy requires adverse impacts on existing users to be minimised in establishing MPAs. The WCSI Forum considered that protecting the two areas at Punakaiki with fisheries regulations, rather than in a marine reserve, would balance the needs of existing users against the need to protect biodiversity. MPI considers this is consistent with the purpose of the Act.

The boundaries of the proposed Type 2 MPA at Gorge were discussed with and agreed to by commercial fishing representatives.¹⁹ MPI considers that a larger Type 2 MPA at Gorge would likely have more significant adverse impacts on existing users and is unnecessary to meet the objective of the MPA Policy.

The boundaries of all three proposed Type 2 MPAs are straight lines. MPI does not consider the boundaries, including at Punakaiki, will confuse fishers or cause problems for compliance or enforcement.

The marine reserve application did not include the two areas at Punakaiki in the adjacent Marine Reserve, and did not propose a larger marine reserve at Gorge (or elsewhere). In March 2014, you concurred with the then Minister of Conservation's decision on the marine reserves. Shallow inshore habitats are protected in all five of the marine reserves.

The Recommendation Report included options for marine reserves out to 12 nm. Though the MPA Policy aims to protect 10% of New Zealand's marine environment,²⁰ it does not require a particular percentage of any one biogeographic region to be protected or require an MPA to extend to 12 nm.

3.3.5 Hector's dolphins

Christine Rose and WWF submit that the proposed Type 2 MPAs and marine reserves are inadequate to protect Hector's dolphins. They consider MPAs in the WCSI Biogeographic Region should extend further alongshore and offshore to protect more of the dolphins' range. WWF also submit that a set net prohibition should apply to these areas year-round.

MPI response

The MPA Policy does not aim to protect individual species. The *Hector's and Maui's Dolphin Threat Management Plan* (the TMP) considers known risks to Hector's dolphins and guides management of marine activities in order to protect this vulnerable species. As a result of the TMP, a 2 nm set net prohibition applies on the WCSI between 1 December and 28 February for commercial fishers and year-round for recreational fishers. This applies to the full extent of the two proposed Type 2 MPAs at Punakaiki and a portion of the proposed Type 2 MPA at Gorge. MPI and the Department of Conservation (DOC) are continuing to monitor the WCSI and other Hector's dolphin populations and plan to review the Hector's dolphin component of the TMP in due course.

3.3.6 Inadequate consultation

SeaFIC and NZRLIC/PIC submit that MPI provided insufficient documentation for effective consultation. SeaFIC submit that this meant interested parties had insufficient information "to provide a properly informed submission". NZRLIC/PIC states that a lack of information about "how or whether the regulatory proposal complies with the purpose and principles of the Act" makes legal analysis of the proposals "extremely difficult".

¹⁹ The then Minister for Primary Industries, Phil Heatley, consulted with Carol Scott (Challenger Finfish) and George Clement (Deepwater Group).
²⁰ Thirty per cent of New Zealand's exclusive economic zone is protected in Benthic Protected Areas (BPAs). However, BPAs are not considered to meet the protection standard under the MPA Policy.

MPI response

MPI considers that the relevant parties were provided with enough and sufficiently specific information to enable them to understand what was being proposed and to respond in an informed way. The documentation provided by MPI during consultation in 2012 stated the areas involved and what the proposed fisheries regulations were. Copies of the advice paper to then Ministers on the Recommendation Report were also available upon request.²¹

The WCSI Forum included representatives of all interested classes of persons and tangata whenua. The WCSI Forum undertook extensive consultation to develop initial options and again before making its recommendations.

In addition, several commercial fishing representatives contributed to the development of the options and were consulted by Ministers before they decided on proceeding further with the current proposals, particularly for Gorge. With the exception of the boundary change to Gorge, the current proposals are identical to options consulted on by the WCSI Forum.

In October 2014, MPI approached Fisheries Inshore New Zealand²² in regard to whether there was merit in undertaking further consultation with commercial fishing interests before advice was provided to you. After talking with finfish, paua and rock lobster industry representatives,²³ Fisheries Inshore New Zealand advised MPI that they saw no value in further consultation.

3.3.7 MPA Policy should be reviewed

TOKM and NZRLIC/PIC submit that the MPA Policy and tools to achieve marine protection should be reviewed. NZLRIC/PIC submit that the existing tools are not “an ideal statutory “fit” for implementing MPA Policy”.

TOKM chose not to comment on the proposed Type 2 MPAs. However, TOKM is concerned about the potential for the implementation of the MPA Policy elsewhere to affect Treaty of Waitangi fisheries settlement assets and rights. TOKM considers the MPA Policy allows areas to be closed without adequate justification or compensation. TOKM also sees the MPA Policy as “inconsistent with traditional Maori resource management practices”.

MPI response

No review of the MPA Policy is currently planned. Officials from across government are currently developing a policy for new MPA legislation to supplement and simplify the existing marine protection regime. However, MPI considers that the MPA Policy is consistent with the purpose of the Act and that existing legislation may be used to establish MPAs (see sections 2.1.1 and 4.1).

MPI considers that the MPA Policy provides for the protection of fisheries settlement assets and rights. For example, the MPA Policy requires adverse impacts on existing users to be minimised. Planning Principle 3 of the MPA Policy also states, “The special relationship between the Crown and Maori will be provided for, including kaitiakitanga, customary use and mātauranga Maori.”

Further protection is provided by the Act which requires you, as a decision maker, to interpret the Act “in a manner consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992” (s 5(b)).

²¹ Dated 2 June 2011 (H1171). MPI is only aware of one person requesting this, though it is understood it was also available on the Department of Conservation’s website. The advice paper was cited in the NZRLIC/PIC submission.

²² Fisheries Inshore New Zealand represents inshore finfish quota owners, ACE holders and commercial fishers. It was established following a restructure of SeaFIC and is one of five main sector organisations that underpin the resulting entity, Seafood New Zealand.

²³ Carol Scott (finfish), Storm Stanley (paua) and Malcolm Lawson (rock lobster).

3.3.8 Enforcement

WWF submit that the proposed Type 2 MPAs would be difficult to enforce, particularly in isolated areas.

MPI response

MPI considers breaches of the proposed regulations would likely be observed at Punakaiki as the areas proposed as Type 2 MPAs are adjacent to a tourist route. Surveillance of the area would also be relatively easy. The proposed Gorge Type 2 MPA is in an isolated area which could be more challenging to police. However, MPI notes commercial vessels over 28 m length are required to carry automatic location communicators which may be used to help monitor compliance in the Gorge area. MPI will consider the appropriate level of compliance activity as part of implementing any Type 2 MPA.

3.3.9 Unbalanced process

WWF are concerned that the WCSI Forum process favoured commercial interests over environmental concerns.

MPI response

MPI considers that it was a balanced process, guided appropriately by the MPA Policy and the MPA Guidelines. This is reflected in the range of options in the Recommendation Report.

3.3.10 Other submissions

TRONT's submission supports the proposed Type 2 MPAs. TRONT considers that the proposed Type 2 MPAs "align with the customary rights of Ngāi Tahu Whānui on Te Tai Poutini."²⁴

Maritime NZ's submission focuses on the marine reserves and makes no comment on the proposed Type 2 MPAs.

4 Legal Considerations

4.1 STATUTORY REQUIREMENTS AND POLICY COMMITMENTS

MPI considers establishing the proposed Type 2 MPAs would help to achieve the purpose of the Act of enabling utilisation while ensuring sustainability. In particular, it would provide for some utilisation while protecting biodiversity.

The proposed Type 2 MPAs would also help to give effect to both domestic policy and international commitments to protect biodiversity, without significant adverse impact or cost to fishers. The three areas proposed as Type 2 MPAs all include representative examples of habitats and ecosystems typical of the WCSI Biogeographic Region and could contribute to the MPA network.

Creating Type 2 MPAs helps to ensure the maintenance of biodiversity (s 9(b)) by protecting representative examples of habitats and ecosystems.

MPI does not expect the impact of the proposed Type 2 MPAs on the abundance of associated and dependent species (s 9(a)) to be significant, but does expect any such impact to be positive. MPI is not aware of any habitats of particular significance for fisheries management (s 9(c)) in the areas of the three proposed Type 2 MPAs.

²⁴ Te Tai Poutini is the WCSI.

As per the MPA Policy, the best available information (s 10(a)) was considered by the WCSI Forum and the then Ministers in 2011 in developing the proposals. It is also incorporated in this advice paper.

For further information, see the discussion under Statutory Framework (section 2.1.1 above).

4.2 MPA NETWORK PLANNING PRINCIPLES

The MPA Policy includes a number of Planning Principles to help guide the planning process for the MPA network. Planning Principle 2 requires a management tool (or combination of tools) chosen to protect a site be “sufficient to meet the protection standard”. The MPA Policy states:

To meet the protection standard, a management tool must enable the maintenance or recovery of the site’s biological diversity at the habitat and ecosystem level to a healthy functioning state.

Inter alia, the MPA Policy goes on to state that, “... the management regime must provide for maintenance and recovery at the site of ... physical features and biogenic structures that support biodiversity.” MPI considers that protecting the areas from mobile, bottom-impacting fishing methods would be necessary for the areas to meet the protection standard and qualify as MPAs.

Planning Principles 6 and 9 are also of particular relevance to the selection of tools. Planning Principle 6 requires management tools selected to establish an MPA to “be consistent and secure in the long term ... taking into account natural dynamics.” Planning Principle 9 requires that “[the] MPA management regime must be enforceable.”

5 Management Options

Option one – status quo: Type 2 MPAs would not be established. Bottom trawling and dredging in all three areas and Danish seining in part of the proposed Type 2 MPA at Gorge would be allowed. Danish seining is prohibited within 3 nm of the South Island coast. This includes all of the two areas at Punakaiki and a portion of the area at Gorge.²⁵

Option two – MPI’s preferred option: The three Type 2 MPAs would be established, protecting 0.73% of the WCSI Biogeographic Region. Bottom trawling, Danish seining and dredging would be prohibited in the three areas.

5.1 ANALYSIS OF OPTIONS

5.1.1 Option 1 – Status Quo

Impact

Current management of the three areas at Punakaiki and Gorge does not meet the MPA Policy protection standard. So, the three areas do not contribute to the MPA network. Alternatives may need to be considered that might have a greater cost to existing users and be less effective in enabling utilisation.

The status quo is consistent with the purpose and principles of the Act. Utilisation of the fisheries resources in the areas will not be impacted, nor would other existing or potential uses.

²⁵ See reg 70 of the Fisheries (Commercial Fishing) Regulations 2001.

Costs

The buffer offered by a Type 2 MPA at Gorge would not be provided to the Hautai Marine Reserve. There would be fewer replicates of some habitat types and no examples of deepwater habitats protected in the WCSI Biogeographic Region. The maintenance of biodiversity in the three areas would not be ensured; the potential for adverse effects from fishing would remain.

The Ministers' proposed package of marine reserves and Type 2 MPAs would protect 2.08% of the WCSI Biogeographic Region and add 0.23% of New Zealand's Territorial Sea to the MPA network. Without the Type 2 MPAs, these percentages would reduce to 1.35% and 0.15%, respectively.

Benefits

There would be no additional compliance costs to MPI (DOC has responsibility for ensuring compliance within the Marine Reserves). There would be no loss or disruption to commercial fishers. But, this is not expected to be a significant benefit to fishers compared with Option 2.

5.1.2 Option 2 – Prohibit mobile, bottom-impacting commercial fishing methods (MPI's preferred option)

Impact

The proposed prohibitions on Danish seining, bottom trawling and dredging aim to avoid any adverse effects of fishing on the aquatic environment in the three areas proposed as Type 2 MPAs. This would be consistent with the Act, help to protect and maintain biodiversity in the areas, meet the MPA Policy protection standard and enable the sites to contribute to the MPA network.

At Gorge, the proposed Type 2 MPA would protect ten habitat types, including deepwater habitats not protected elsewhere in the WCSI Biogeographic Region. At Punakaiki, the two proposed Type 2 MPAs would each protect five habitat types, including estuarine habitat that is not represented in the Punakaiki Marine Reserve. The habitats that would be protected in the three proposed Type 2 MPAs also include replicates of all but one of those protected in the adjacent marine reserves.

All three proposed Type 2 MPAs adjoin conservation land, thus forming part of a continuum of protected areas from the land to the sea. This continuum is one of the reasons the proposed areas were chosen by the WCSI Forum.

Mobile, bottom-impacting methods could be authorised by customary permit. However, TRONT supports the proposals and Tangata Tiaki/Kaitiaki have not previously authorised the use of such methods. So, MPI does not expect such methods to be authorised.

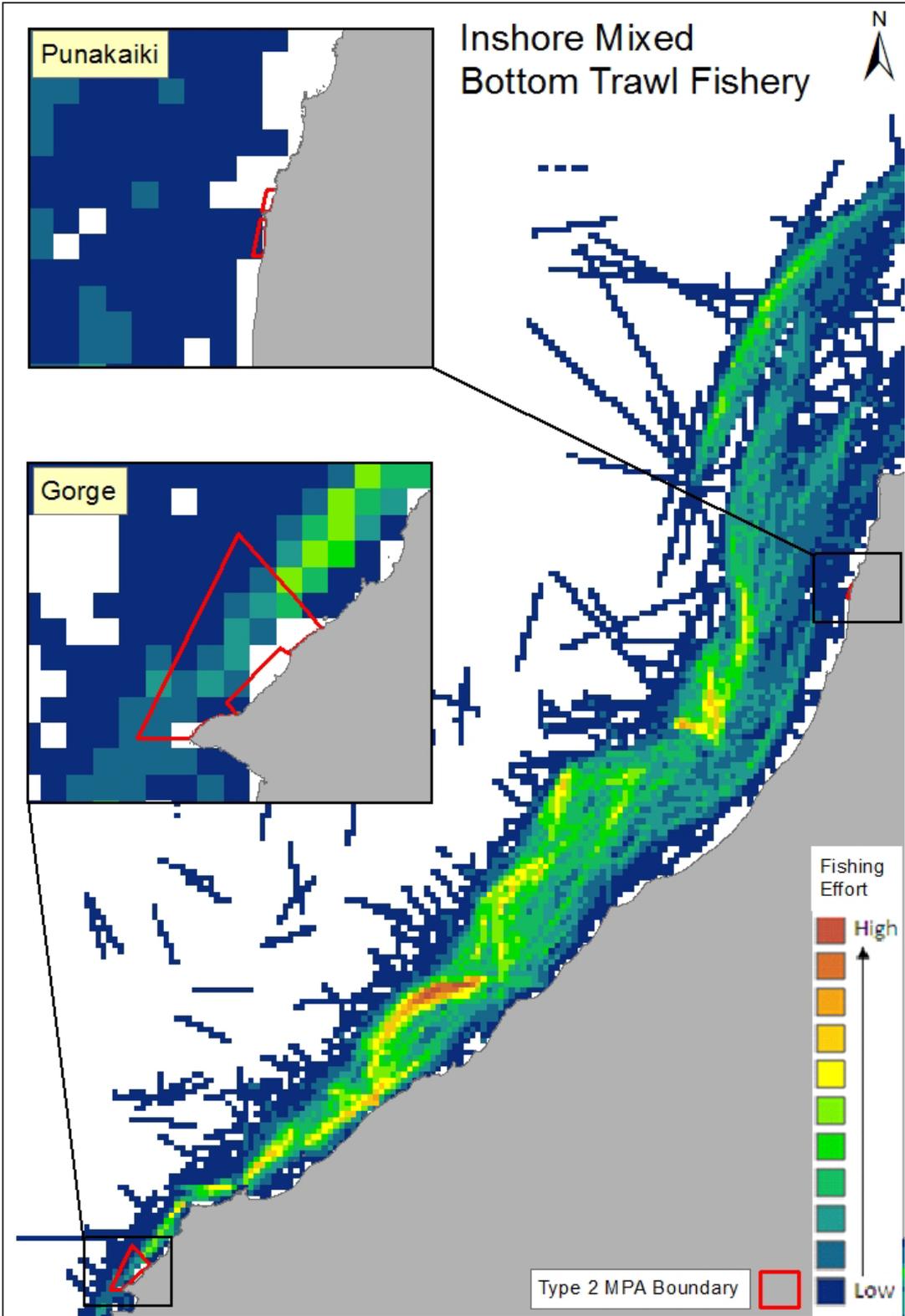
Costs

The WCSI Forum proposed areas and tools that would minimise the impact on existing users. Ministers also took impacts on existing users into account and consulted with commercial fishing representatives in developing their proposal for Gorge. Consequently, the areas proposed as Type 2 MPAs are not heavily utilised and the impact of the proposed regulations on existing users is expected to be minor.

The two areas proposed as Type 2 MPAs at Punakaiki are both in waters shallower than 10 m. Ten metres is shallower than the flatfish and mixed trawl fisheries operate, according to information provided by commercial representatives. Due to the shallow depth and location (mostly in the surf zone), setting gear would be difficult without the gear being damaged. So, MPI also considers it unlikely that dredging would occur at Punakaiki. Danish seining is already prohibited at Punakaiki.

Both inshore and deepwater fishing representatives consulted by then Ministers in 2011 indicated support for the design of the proposed Type 2 MPA at Gorge. They consider it a more pragmatic option compared to the WCSI Forum’s options for Type 2 MPAs at Gorge. Bottom trawling is known to occur at Gorge (see Map 4), but no Danish seining or dredging has been reported.

Map 4 The inshore mixed bottom trawl fishery (fishing effort per hectare, annual average of the 2007/08 to 2011/12 fishing years) off the WCSI, showing the location of the proposed Type 2 MPAs (outlined in red)



Based on average catches by bottom trawling at Gorge over the 2007/08 to 2011/12 fishing years, the economic impact of the closure is estimated at \$836,410²⁶ (including quota value loss of \$109,747). This includes income loss by the harvesting sector, processing sector, industries that supply harvesting and processing sector (indirect income), and the broader economy through flow-on effects (induced income).

However, the economic impact model assumes that there will be a permanent loss of catch as a result of fishing restrictions in an area. MPI considers the actual losses from a Type 2 MPA at Gorge would be significantly mitigated by the ability of fishers to catch fish elsewhere (nearby) and/or use other methods. Also, most target species are mobile and will move in and out of the proposed Type 2 MPAs, leaving them accessible to fishers in other areas on occasion.

MPI notes the volumes involved (18 tonnes annual total) represent a small percentage²⁷ of mixed bottom trawl catches from the wider quota management area (QMA) within which the proposed Type 2 MPAs are located (FMA 7). The biggest impact by fish stock would be on tarakihi (TAR7), for which MPI estimates 0.5% of total QMA landings could be displaced.

Therefore, MPI considers that the proposals would not adversely affect finfish fisheries in the vicinity. MPI does not know of any adverse impacts on other existing users of the areas.

MPI would actively seek to work cooperatively with DOC to patrol all three proposed Type 2 MPAs, as they are adjacent to marine reserves. By working in cooperation, enforcement costs could be kept manageable.

Using fisheries regulations to protect the proposed Type 2 MPAs from mobile, bottom-impacting commercial fishing methods would enable other utilisation of fisheries resources in the areas to continue, while a no-take marine reserve would not. This is consistent with the Act and the MPA Policy which allows for extractive uses to continue in Type 2 MPAs as long as the protection standard would not be breached. MPI considers that the protection standard would not be breached by allowing other activities to continue.

Under the proposals, commercial fishing (including potting for rock lobster, hand gathering of paua and fyke netting for eels) could continue, as could customary fishing, recreational fishing (largely rod and line or hand gathering) and whitebaiting. Based on effort levels assumed by MPI for recreational fishing and reported for commercial fishing, none of these activities is likely to have significant, adverse physical impacts on the benthic environment.

Little, if any, mobile, bottom-impacting commercial fishing currently occurs in the two areas proposed as Type 2 MPAs at Punakaiki, with only a small amount of bottom trawling at the Gorge area. So, the proposed prohibitions are not responding to a specific, existing effect of fishing. Instead, they would provide more generally for the protection of marine biodiversity by avoiding future potential adverse effects of fishing. As noted, “effects” of fishing include future potential effects of low probability which have a high potential impact (s 2).

²⁶ This total includes the annual value represented by average catches (\$92,700) as well as capitalised future value (\$743,710). The total annual tonnage involved is around 18 tonnes.

²⁷ On average, of the top 12 fish stocks taken in Gorge, the amount taken was between less than 0.1 and 0.5% of total catches caught in the mixed bottom trawl fishery within FMA 7 over 2007/08 to 2011/12. The twelve stocks are tarakihi (TAR7), stargazer (STA7), barracouta (BAR7), red gurnard (GUR7), red cod (RCO7), ling (LIN7), blue warehou (WAR7), spiny dogfish (SPD7), rig (SPO7), flatfish (FLA7), rough skate (RSK7) and smooth skate (SSK7).

Benefits

Mobile, bottom-impacting fishing methods can have a wide variety of adverse impacts on the benthic environment and associated biodiversity. Impacts tend to be greatest when such methods are first used in an area. The three areas proposed as Type 2 MPAs are likely to be more susceptible to the impacts of such methods because the methods have rarely, if ever, been used in the areas proposed as Type 2 MPAs at Punakaiki, and only a small amount of bottom trawling occurs at Gorge. Therefore, though MPI does not consider the use of these methods in the proposed Type 2 MPAs a high probability, any use of these methods in the areas would undermine their effectiveness as MPAs. The potential adverse effects have a high potential impact.

Prohibiting these methods would ensure that the biodiversity value of the proposed Type 2 MPAs is maintained, consistent with the protection standard. Regulatory prohibitions are more secure and enforceable than any voluntary measures that might be used to protect the areas.

6 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.

7 Conclusion

MPI considers that the proposed Type 2 MPAs would help achieve the purpose of the Act and make a valuable contribution to meeting New Zealand's commitment to protecting biodiversity under the Convention.

MPI recommends that you agree to recommend to the Governor-General the making of the proposed regulations under s 297 of the Act. This would enable Type 2 MPAs to be established at Gorge and Punakaiki.

Appendix - Submissions