

12 Assessment of proposed Hākinikini marine reserve

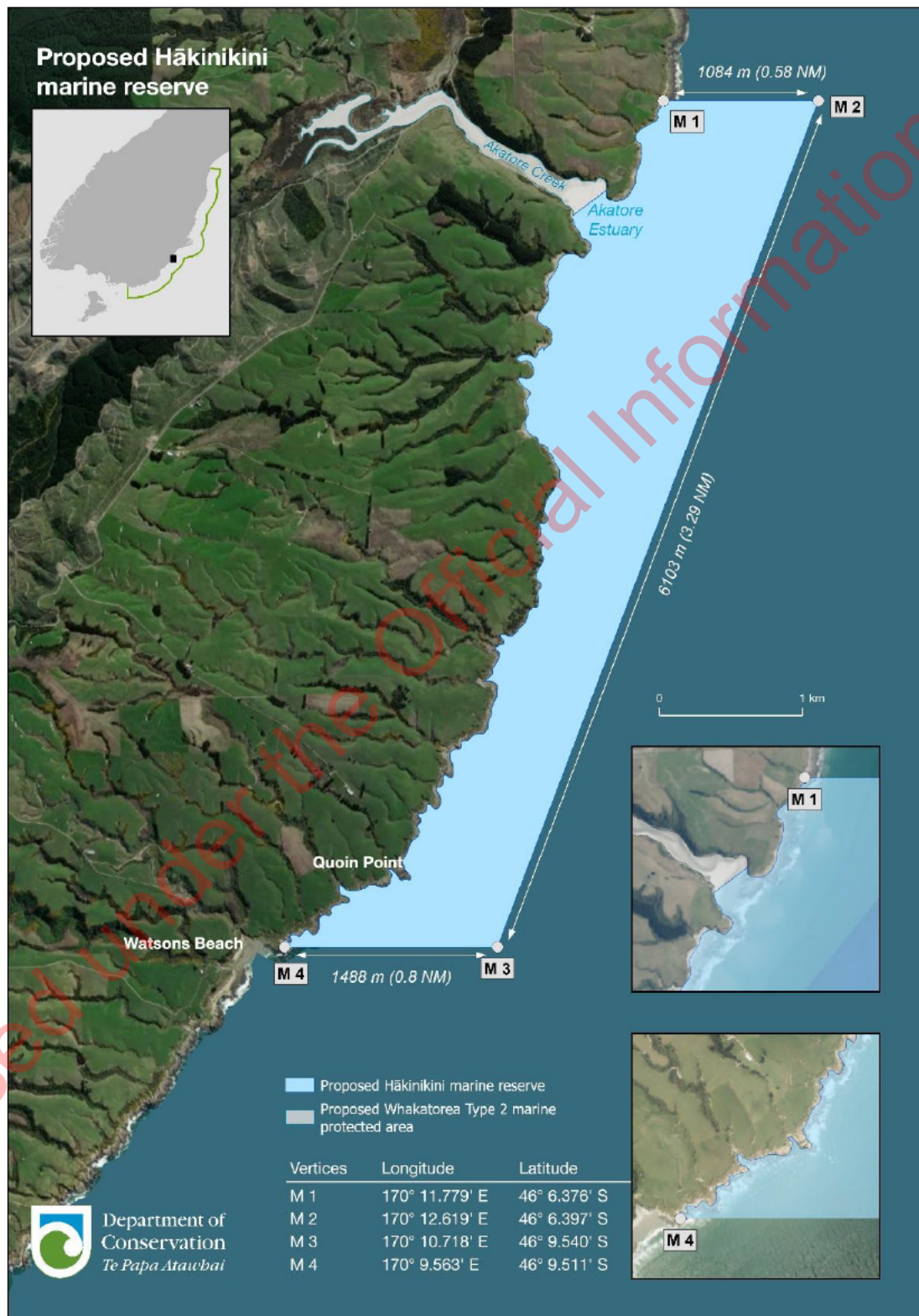


Figure 12-1: Location of the proposed Hākinikini marine reserve

12.1 Introduction

2130. The Application for this proposed marine reserve is presented on pages 108–112, of the Consultation Document⁴⁷⁰ (see Appendix 1).

12.1.1 Site description

2131. The proposed marine reserve is located approximately 5 km south of the Taieri River mouth. It would start 0.8 km north of Akatore Creek and extend south along the coastline for approximately 6 km. It would extend from mean high water springs⁴⁷¹ to between 0.6 km and 1.3 km offshore (Figure 12-1). The proposed site is approximately 6 km². It is adjacent to the proposed Whakatorea Type 2 marine protected area, which extends over the Akatore Estuary.

12.1.2 Forum recommendations

2132. The proposed marine reserve corresponds to Site M1 as identified by the Forum. In their Recommendations Report⁴⁷² the Forum highlighted the area's schist platforms – these create diverse habitats that support a wide variety of marine ecosystems, including rock pools.

2133. The Forum recommended limiting the offshore extent of the site to allow public enjoyment of the rock platforms and rock pools but reduce the impact on fishers. A slightly larger site, that included Watsons Beach, was consulted on by the Forum. Strong feedback was received that this area was particularly important for recreational fishing and had special significance for Kāi Tahu. This resulted in the current smaller area being proposed as part of the Forum's recommendations and subsequently as part of the proposed Network.

12.1.3 Activities proposed to be authorised to continue

2134. The Application proposes that some activities be allowed to continue if the proposed marine reserve is established. These are:

- activities operating under existing resource consents
- fossicking of beach materials
- retrieval of kōiwi tākata⁴⁷³
- vehicle access to the foreshore (in limited circumstances).

2135. Our advice on providing for these activities through Order in Council conditions is set out in 12.8.1.

12.1.4 Chapter outline

2136. This chapter:

- outlines our assessment of the benefits of the proposed marine reserve
- outlines matters discussed during Treaty partner engagement

⁴⁷⁰ Department of Conservation and Fisheries New Zealand 2020. Proposed southeast marine protected areas: Appendices to consultation document (including marine reserve applications) June 2020. 126 p.

⁴⁷¹ Average of each pair of successive high waters when the range of the tide is greatest.
<https://www.lin.govt.nz/sea/tides/introduction-tides/definitions-tidal-terms>.

⁴⁷² South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

⁴⁷³ Unidentified (Māori) human remains.

- presents the numbers of submissions that were received through statutory consultation
- describes the issues raised in these submissions
- provides our advice in relation to the tests under section 5(6) and section 5(9) of the Marine Reserves Act.

12.2 Assessment of the benefits of the proposed Hākinikini marine reserve

2137. Sections 3.2.4 and 3.2.5 set out the framework for assessing whether any objections related to this proposed marine reserve should be upheld pursuant to the ‘interfere unduly’ and ‘otherwise contrary to the public interest’ tests in section 5(6) of the Marine Reserves Act.

2138. You should assess the objections in light of the purpose of the Marine Reserves Act and the benefits of the proposed site in terms of achieving that purpose. You also need to assess the values of the proposed marine reserve and the ‘overall public advantages’⁴⁷⁴ that would come from this area being declared a marine reserve. This includes the site’s contribution to the proposed Network and the assessment provided in 6.2 of the values and benefits of the proposed Network overall.

2139. The following section is a summary of our assessment of those benefits in relation to the proposed marine reserve. Much of this assessment is also relevant to your decision-making under section 5(9) as discussed further in 12.8, which includes an assessment of your obligations under the Treaty of Waitangi (as set out in 3.3). More detail is also available in section 4.6 of the Application.

12.2.1 Achieving the purpose of the Marine Reserves Act

2140. As described in 3.2.1, the general purpose of the Marine Reserves Act is:

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

2141. A full assessment of the proposed marine reserve against these criteria is set out in section 4.6.2 of the Application.

12.2.1.1 Underwater scenery, natural features, and marine life

2142. The proposed marine reserve runs along a section of coast to the south of Taieri Mouth. The site is unique in the Forum region as it includes a section of the exposed, wave-cut platforms of Otago Schist that are typical of the reef habitat in this area. These platforms are interspersed with sandy beaches that contain a combination of fine, medium and coarse-grained quartz sands.

2143. The rock platforms form a beautiful and rugged coastline with special features in the intertidal zone (area exposed at low tide and covered at high tide) and subtidal zone (area that is always covered with water). The intertidal zone contains rock pools, crevices and gutters that create many microhabitats. Beds of kūtai (green-lipped and blue mussels) are found in stands of rimurapa/bull kelp in subtidal habitats.

⁴⁷⁴ *CRA3 Industry Association Inc v Minister of Fisheries HC Wellington CP317/99*, 24 May 2000, at [36].

2144. This site is undisputedly typical, beautiful and of distinctive quality. It contains diverse and iconic natural features, marine life and species associated with the coastline. Department of Conservation Te Papa Atawhai considers that protecting marine life and natural features at this site is consistent with section 3(1) because they are so typical, beautiful or unique that their continued preservation is in the national interest.

12.2.1.2 Opportunities for scientific study

2145. The geology of this site and its associated marine life, as well as the adjacent Akatore Estuary (proposed as a Type 2 marine protected area), would provide valuable opportunities for scientific study.

2146. The intertidal habitats offer opportunities for shore-based investigations by researchers, school students and citizen scientists, since they are accessible and varied. This is the only site in the proposed Network that includes these habitats and the species associated with them. It therefore provides a reference area for scientific and educational studies.

12.2.2 Other values and advantages to the public

2147. The proposed marine reserve would establish enduring protection for the site's habitats and species. The site would provide educational opportunities about marine protection, using the proposed marine reserve and Type 2 marine protected area as examples of different management tools.

2148. The health and resilience of marine life in the proposed marine reserve area can be expected to be enhanced by marine reserve protection. This will increase the ecosystem services (benefits from nature) it provides over time.

2149. Direct access to this site is limited, but easy public access for recreation is available from the Watsons Beach roadend or through Akatore Estuary.

12.2.3 Contribution to the proposed Network of marine protected areas

2150. This site would protect areas of shallow reef, shallow sand and intertidal habitats that are typical of the exposed Otago coast. It would contribute to the representation of exposed shallow reef habitat in the proposed Network and link with habitats in the proposed Ōrau and Okaihae marine reserves.

2151. The proposed marine reserve is adjacent to the proposed Whakatorea Type 2 marine protected area, which covers the Akatore Estuary. Protecting habitats at both sites would provide more benefits than establishing either site alone.

2152. The site would link the estuary to the coastal environment and bring particular benefits for species such as matamoe/eel, inaka/whitebait and pātiki/flatfish. This would make the proposed marine reserve's contribution to the proposed Network especially valuable.

12.3 Consideration of Kāi Tahu views on the proposed marine reserve as heard through engagement

2153. As outlined in 2.6.2, Te Papa Atawhai, Tini a Tangaroa and Kāi Tahu held a number of hui between July 2020 and July 2021. Further engagement has continued, including directly with Ministers. The purpose of this engagement has been to further understand Kāi Tahu rights and interests and views (including concerns) in relation to the establishment and management of the proposed southeast marine protected areas and to understand and work through the issues raised, including the measures proposed by Kāi Tahu to address their concerns. These views, proposed measures, our advice and recommendations are each set

out in 6.3. Sections 12.8.1.1 and 12.8.2 list the recommendations that apply to the proposed Hākinikini marine reserve.

12.4 Submissions received on the proposed Hākinikini marine reserve

2154. In total 4,052 submissions on the proposed Hākinikini marine reserve were received, with 90% in support of its establishment as proposed⁴⁷⁵. This included submissions on the proposed Network⁴⁷⁶ and on the proposed Hākinikini marine reserve specifically. There were 144 submissions specifically on this proposed marine reserve with 55 (38%) objections (either outright objections or expressing partial support), 87 (61%) in support and 2 (1%) did not give a preference.
2155. Of the 144 submissions, 7 were from submitters identified as affected iwi, hapū or whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 (te Takutai Moana Act). Two supported implementing the proposed marine reserve and five objected. A further three submissions (two in objection, one in support) were from other Māori submitters (i.e. those who do not whakapapa to the Kāi Tahu rohe⁴⁷⁷ and were therefore not identified as affected iwi, hapū or whānau under te Takutai Moana Act, as set out in 5.2).
2156. Submitters in support of the proposed marine reserve being established gave the following main reasons⁴⁷⁸:
- the benefits of the proposed protection for marine species, habitats and ecosystems
 - general support for marine reserves due to the long-term ecological benefits for ecosystem and biodiversity recovery
 - that the scientific and community benefits will outweigh the costs.
2157. Submitters who did not support the proposed marine reserve being established or wanted changes before it was established, gave the following main reasons⁴⁷⁹:
- the impact on recreational fishing
 - that the current level of recreational fishing is sustainable
 - that there are alternative better ways of managing the area
 - that there is a lack of sound evidence supporting establishment of the marine reserve.

⁴⁷⁵ This included submitters who qualified their support by suggesting changes but whose support was not conditional on the changes.

⁴⁷⁶ See chapter 5 for detail on how submissions were classified, assigned and analysed.

⁴⁷⁷ To descend from the Kāi Tahu (Ngāi Tahu) tribal group.

⁴⁷⁸ Bothwell, J., Long, D., Daddy, N., Hing, Z. 2020. Proposed southeast marine protected areas: Summary of submissions September 2020. Published by PublicVoice. 209 p.

⁴⁷⁹ Ibid.

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

12.5.1 Obligations in relation to the Treaty of Waitangi

2158. As set out in 3.2.7, as part of your assessment of objections under section 5(6) of the Marine Reserves Act, you have obligations relating to the Treaty of Waitangi, including those under section 49 of the Takutai Moana Act and section 4 of the Conservation Act.
2159. Under section 49 of the Takutai Moana Act, you, as the decision-maker, ‘must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application’ (see 3.3.2 for more information). To allow you to do so, the objections received from submitters who are affected iwi, hapū or whānau are set out below, along with our advice on these objections under section 5(6)(a)–(e) of the Marine Reserves Act. As described in 5.2, Te Papa Atawhai has proceeded on the basis that any submissions (including objections) received from submitters affiliated with Kāi Tahu are considered as being from ‘affected iwi, hapū, or whānau’ for the purpose of the Takutai Moana Act.
2160. The obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act is also relevant to your assessment of objections from submitters identified as affected iwi, hapū, or whānau. In order to give effect to the principle of informed decision-making, all objections received from these submitters are identified and analysed below. In addition to the principle of informed decision-making, the principles of partnership and active protection are also relevant. For the proposed Hākinikini marine reserve, these principles are primarily relevant to your assessment of the objections that relate to impacts on non-commercial fishing activities (including the ability to continue the customary harvest of seafood), the take of cultural materials and other resources for wānaka and the transfer of mātauraka Māori, preferential access to commercial development opportunities and a desire for co-management and generational reviews of the proposed marine reserve. Te Papa Atawhai considers these issues relate to the protection of Kāi Tahu non-commercial customary fishing rights (noting the relevance of the Treaty of Waitangi (Fisheries Claims) Settlement Act to this matter – see 3.3.4.3), and the ability of Kāi Tahu to exercise tino rangatiratanga and kaitiakitanga over the areas covered by the proposed marine reserves and taonga present (including those taonga and taonga fish species identified under the Ngāi Tahu Claims Settlement Act, see 3.3.3). In considering whether or not to uphold the objections relating to these matters, therefore, you must consider whether to do so would give effect to the Treaty principles of partnership, active protection and informed decision-making.
2161. In considering your Treaty obligations in relation to these objections, the direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement are directly relevant. Our advice in relation to the direct engagement with Kāi Tahu, including our consideration of each of the measures proposed by Kāi Tahu to mitigate what Kāi Tahu consider to be the impacts of the proposed marine protected areas (including the proposed marine reserves) on Kāi Tahu rights and interests and our recommendations are set out at 6.3. As set out in 6.3.10, our assessment, prior to considering any objections received, is that to declare each of the proposed marine reserves (including Hākinikini) on the basis of the recommendations made would fulfil the Crown’s obligations in relation to the Treaty. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. In assessing the relevant objections below, therefore, we have considered whether there is anything additional that has been raised that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the

proposed marine reserve should not be declared) or that additional mitigation measures are required. For this assessment, we have proceeded on the basis that our recommendations in relation to the direct Kāi Tahu engagement will be progressed.

2162. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of these objections would also be consistent with your obligations under section 4 and other Treaty obligations, and would therefore fulfil the Crown's obligations in relation to the Treaty.

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

2163. No objections that raised issues relating to any estate or interest in land in or adjoining the proposed reserve were received from submitters identified as affected iwi, hapū or whānau.

12.5.3 Section 5(6)(b) navigation

2164. No objections that raised issues relating to any existing right of navigation were received from submitters identified as affected iwi, hapū or whānau.

12.5.4 Section 5(6)(c) commercial fishing

2165. No objections that raised issues relating to commercial fishing were received from submitters identified as affected iwi, hapū or whānau.

12.5.5 Section 5(6)(d) recreational usage

2166. No objections that raised issues relating to any existing use of the area for recreational purposes were received from submitters identified as affected iwi, hapū or whānau.

12.5.6 Section 5(6)(e) public interest

12.5.6.1 Objections related to impacts on customary interests

2167. One submission from an individual identified as affected iwi, hapū or whānau stated that their ability and freedom to customarily harvest fish would be restricted by the proposed marine reserve, *"it is my families customary rights to fish were (sic) ever and when we choose"*. This submitter made the same submission in relation to each of the proposed marine reserves except for Papanui.

2168. A submission in partial support was received from Te Rūnanga o Ōtākou⁴⁸⁰, identified as affected iwi, hapū or whānau. The rūnanga stated that the proposed marine reserve was *"at the maximum extent to which it can agree"* and requested the inclusion of a number of provisions:

- to be *"well-represented"* in the governance of the proposed marine reserve with effective co-management undertaken in the *"spirit of partnership, co-design, and informed decision-making"*
- that regular monitoring was undertaken, which would inform 20 to 25-year generational reviews

⁴⁸⁰ Te Rūnanga o Ōtākou is the organisational structure of the hapū of Ōtākou marae on the Otago Peninsula whose rohe moana extends from Pūrehurehu (Heyward's Point) in the north to Mataāu (Clutha River) in the south.

- to retain the ability to retrieve cultural materials from the proposed site and take other resources for the purposes of wānaka⁴⁸¹ and transfer of mātauraka⁴⁸²
- 9(2)(g)(i) access to commercial development opportunities within the proposed marine reserve, such as the harvest of the introduced kelp *Undaria pinnatifida*.

Te Papa Atawhai advice

2169. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2170. In terms of the objection concerning the submitter's rights to the customary harvest of seafood, it is acknowledged that the declaration of a marine reserve will prevent extractive fishing activities, including non-commercial customary fishing activities undertaken by affected iwi, hapū, or whānau. The Kāi Tahu cultural assessment in the Forum's Recommendations Report (page 198) stated:

'The Akatore coast of Site M1 [the proposed Hakinikini marine reserve] is rich in shellfish, including pāua and kutai (mussels), and also supports kōura papatea (rock lobster) and wetfish, all of which are of particular importance to Taieri-based whānau of Te Runaka o Ōtākou who have traditionally utilised this coastal area for customary fisheries.'

2171. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area 'where and when ever', as suggested by the submitter. Rather, there are already a range of regulatory measures that govern such activities, including the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. While acknowledging the cultural importance of the coastline generally, and the fact that the proposed marine reserve would prohibit the take of marine life, areas surrounding the proposed marine reserve would remain available for customary take. Also, as mentioned above, the Forum amended their original proposal for this site to avoid Watsons Beach, which has special significance for Kāi Tahu. The proposed site in the Application therefore reflects these considerations.

2172. The submission from Te Rūnanga o Ōtākou aligns closely with the views expressed in the engagement between Agencies and Kāi Tahu (see 6.3). As set out in our detailed advice in 6.3, we support the proposals in accordance with the Crown's Treaty obligations, and consider the proposed measures can be implemented consistently with the purpose of the Marine Reserves Act. Te Papa Atawhai considers that our recommendations in 6.3, if implemented, would mitigate the issues raised above.

12.6 Stage 1 assessment – objections from all other submitters

12.6.1 Obligations in relation to the Treaty of Waitangi

2173. Section 12.5 sets out the views of submitters identified as affected iwi, hapū, or whānau. The following section sets out the objections received from all other submitters and provides our advice on the assessment of these objections in terms of the tests in section 5(6)(a)–(e) of the Marine Reserves Act.

⁴⁸¹ Intergenerational sharing of knowledge.

⁴⁸² The traditional knowledge accumulated by generations of Kāi Tahu whānau and hapū through co-existence with and use and protection of their natural resources.

2174. The objections considered include objections received from Māori submitters who were not identified as affected iwi, hapū, or whānau on the basis that they were not affiliated with Kāi Tahu (see 5.2). The requirement under section 49 of the Takutai Moana Act to 'have particular regard' therefore does not apply to these views.

2175. As set out in 5.2, however, the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi when interpreting and administering the Marine Reserves Act may still be relevant to your consideration of objections received from these submitters. In order to give effect to the principle of informed decision-making, Te Papa Atawhai has identified the three objections received from other Māori submitters below. As set out below, these objections referred to Treaty rights and non-commercial customary fishing activities, including the ability to continue the customary harvest of seafood. The comment relating to 'Treaty rights' is very broadly worded but could encompass impacts on commercial fishing in the context of the Treaty of Waitangi (Fisheries Claim) Settlement Act in addition to impacts on wider customary interests. These objections should therefore be considered in terms of the principles of active protection and partnership. As with objections received from affected iwi, hapū, or whānau (see 12.5.1), our consideration of these objections in relation to section 4 obligations is made in the context of our direct engagement with Kāi Tahu and the recommendations reached as a result of that engagement. As set out in 6.3.10, our assessment prior to considering any objections received, is that to declare each of the proposed marine reserves on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi. This includes our assessment that to make these decisions would be consistent with the obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi. We are therefore considering whether there is anything additional that has been raised in the objections received from other Māori submitters that means, in order to be consistent with Treaty obligations, an objection should be upheld (meaning that the proposed marine reserve should not be declared) or that additional mitigation measures are required.

2176. Our assessment is that the issues raised in the objections described below do not raise anything additional to that traversed through the extensive engagement with Kāi Tahu. We have also considered the fact that these views are received from Māori submitters who are not affiliated with Kāi Tahu. On that basis, in accordance with our conclusion in 6.3.10, we consider that a decision to not uphold any of the objections received from other Māori submitters would also be consistent with your obligations under section 4, and would therefore fulfil the Crown's obligations in relation to the Treaty of Waitangi.

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

12.6.2.1 Objections related to adjoining landowners' recreational activities

2177. Two objections to the proposed marine reserve were from submitters who identified as owning properties adjacent to the proposed marine reserve. Another submission in partial support was made by a family member of an adjacent property owner.

2178. One submitter said adjacent landowners had used this area for seafood harvest for many generations and would be disadvantaged by the establishment of the proposed marine reserve.

2179. Two adjoining landowners described their historical connection with the area, citing fishing as a "*customary activity*" that had been a family tradition for 150 years. They noted the importance of being able to go fishing near their properties, saying that this created an opportunity for the "*education of future generations*" and fostered a connection with and

care for the ocean. They contended that these activities had a very small effect compared to others (such as commercial fishers) and that to close the area would be unfair.

2180. One submitter suggested creating a special provision (by way of a permit) for adjoining landowners to continue their recreational activities. Another submission queried whether customary marine title could be granted to them (despite not being Māori), given their land ownership in the area was 150 years.

Te Papa Atawhai advice

2181. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with any estate or interest in land.

2182. While Te Papa Atawhai recognises that the coastal strip has high value for these two landowners, we consider the effect of the proposed marine reserve on the landowners and their families' fishing activity would not be undue. Regardless of where a marine reserve is located, some individuals are likely to be more affected than others who may use the area less frequently or live further away. Adjoining landowners and the public would still be able to fish outside the proposed marine reserve. This includes fishing at the reef system further offshore and the coast to the north and south – both of these areas were excluded from the Forum's recommendation for this site due to their value for recreational fishing. On that basis, provision to allow adjoining landowners to continue recreational fishing is not warranted.

2183. As to the suggestion that customary marine title could be granted to these submitters, Te Papa Atawhai notes that the processes for declaring customary marine title and the participation rights provided under the Takutai Moana Act are restricted to Māori.

12.6.3 Section 5(6)(b) navigation

12.6.3.1 Objections related to safe anchorage

2184. One objection from a commercial fisher said "*akatore is a safe anchorage*" in south to southwest winds and "*used by every commercial fisherman on the coast in this area*". For the purpose of section 5(6) we consider this submitter means that the proposed marine reserve would interfere unduly with existing rights of navigation if vessels could no longer use the area to shelter.

Te Papa Atawhai advice

2185. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would interfere unduly with existing rights of navigation.

2186. While the proposed marine reserve would prevent fishing within its boundaries, it would generally not prevent anchoring, provided damage is kept to a minimum practicable level⁴⁸³. Section 23(2) of the Marine Reserves Act also confirms that the ability to anchor within a marine reserve in times of 'stress or emergency' is preserved.

2187. General transiting through the proposed marine reserve would also be permitted. In addition to the references to freedom of entry and access to reserves in section 3(2)(d)⁴⁸⁴, section 23(1) of the Marine Reserves Act, 'Rights of access and navigation', provides:

⁴⁸³ Regulation 5 (Anchoring), Marine Reserves Regulations 1993
<https://legislation.govt.nz/regulation/public/1993/0230/latest/DLM179649.html?src=qs>.

⁴⁸⁴ See section 3.2.1.

(1) Subject to any regulations made under this Act, any right of access to or upon any foreshore or part of the foreshore comprised in any marine reserve or any right of navigation (other than anchorage) through or across any water at any material time comprised in any marine reserve shall remain unaffected.'

2188. Boats with fish caught elsewhere on board would retain this right provided they did not carry out any activities that are prohibited in a marine reserve. These include fishing and deploying or manipulating fishing gear⁴⁸⁵ and discharging any 'toxic substance or pollutant or other substance or article of any kind injurious to marine life'⁴⁸⁶ while anchored in or transiting the proposed marine reserve.

12.6.4 Section 5(6)(c) commercial fishing

12.6.4.1 Objections relating to safety and other impacts on commercial fishing

2189. An objection from an individual stated that the proposed marine reserve would affect their commercial trawl fishing operation and put them "out of business".

2190. The combined submission from the New Zealand Rock Lobster Industry Council⁴⁸⁷, Paua Industry Council⁴⁸⁸ and Fisheries Inshore New Zealand⁴⁸⁹ stated that the fishing grounds at this site were favoured by vessels that harvest kōura/rock lobster and mixed trawl species because the area is "accessible and relatively safe".

2191. The combined industry submission also said "maritime safety risks for commercial and recreational vessels operating out of the nearby port of Taieri Mouth will be increased". They explained that "the nature of the Taieri river mouth is such that vessels need to rapidly seek shelter in adverse weather. The removal of fishing grounds at site M1 [this proposed marine reserve] will force small vessels [operating out of the nearby port of Taieri Mouth] to range further up and down the coast to make up for lost catch and any additional steaming time increases the hazard of re-entry at the river mouth".

Te Papa Atawhai advice

2192. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial fishing.

2193. Te Papa Atawhai acknowledges that the safety of fishers is an important consideration, particularly given the prevailing weather and sea conditions in the region. Safety should be the paramount concern for the skipper of any vessel. We consider that, regardless of the establishment of the proposed marine reserve, the onus remains on a skipper to ensure conditions are suitable for their vessel and its occupants. Establishing the proposed marine reserve may mean that it is not possible to fish at certain locations on some additional days per year.

2194. We understand that the Forum sought to minimise the impact of this proposed marine reserve on commercial fishers by restricting its offshore extent (approximately 1.5 km at the widest point and 0.6 km at its narrowest). This was to ensure the usual pattern of fishing

⁴⁸⁵ Prohibited by sections 18I(1) and 21(1)(d).

⁴⁸⁶ Prohibited by sections 18I(2) and 21(1)(a).

⁴⁸⁷ The national representative organisation for the New Zealand rock lobster industry and the umbrella organisation for nine commercial stakeholder organisations operating in each of the rock lobster management areas in New Zealand.

⁴⁸⁸ The national agency for five commercial stakeholder groups that represent commercial pāua fishery interests.

⁴⁸⁹ A commercial fisheries stakeholder organisation.

offshore of this area could continue with minimal interference and that fishers' travel to and from Taieri Mouth would be largely unaffected.

2195. The objection stating that the proposed marine reserve would severely impact a trawl fisher's operation did not provide any information to allow analysis or verification of this statement. As described above, the limited offshore extent of the proposed marine reserve means that much of the trawling ground would remain available to the fishery. While we appreciate that smaller trawlers operating out of Taieri Mouth are more limited in where they can go (because of the need to leave and enter Taieri Mouth in the right weather conditions and at certain stages of the tide) most of the trawling grounds are outside the proposed marine reserve area.
2196. The displacement of commercial trawl activity from this site is considered to be low, with the pātiki/flatfish fishery expected to be most affected, in terms of catch. Information provided by Tini a Tangaroa indicated that only four fishers used this area over the 2019/20, 2020/21 and 2021/22 fishing years, with two only fishing the 2020/21 year. The most affected fisher took an annual average of ^{9(2)(b)}_(ii) of their catch from this site ^{9(2)(b)(ii)} on average). The remaining fishers were estimated to have not caught more than 110 kg from this site combined across all three fishing years. While we acknowledge that there will be some variability in the importance of this site to individual fishers across years or for other reasons, overall, we do not consider the available information demonstrates that there would be undue interference from establishing the proposed marine reserve.
2197. There was no reported kōura catch at this site over all three reporting years, 2020/21 to 2022/23.

12.6.4.2 Objections related to commercial pāua fishing

2198. An objection from PauaMac 5 Incorporated⁴⁹⁰ raised that this site, while not the most productive for the commercial pāua fishery, was nonetheless important to help spread the catch. The submission noted a number of problems that would arise from the anticipated displacement of fishing effort. It stated the importance of not reducing the area available to fishing in a fully utilised fishery such as this one, as it avoids localised depletion and reduces competition between fishers (especially when weather and sea conditions already restrict fishers).
2199. The submission noted that recreational pāua fishing would be displaced into areas with existing voluntary industry closures and negate the benefits of these areas. It said these closed areas "*were established by the pāua industry to reduce inter-sectoral conflict and provide for non-commercial fishing*". They acknowledged that the proposed marine reserve area was only used by a relatively small number of recreational pāua divers but was highly valued by those fishers.
2200. The PauaMac 5 Incorporated submission also said increased fishing pressure caused by displacement could lead tangata whenua to seek further management measures or additional customary protected areas. This would further exacerbate the effects on commercial fishing described above. These issues related to the displacement of fishing effort were also raised in the combined objection from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand.
2201. PauaMac 5 Incorporated also said that while there was no reported pāua catch in the statistical area containing the proposed marine reserve for the 2009/10 to 2018/19 fishing

⁴⁹⁰ The regional commercial stakeholder group for Fiordland (PAU 5A), Stewart Island (PAU 5B) and Southland/Otago (PAU 5D). Members include owners of pāua quota and Annual Catch Entitlement, as well as fishing vessel operators, processors, fish dealers and harvesters.

years, 9(2)(b)(ii) was caught in 2008/09. They said that while the commercial take from this area was “small and occasional, it is nonetheless an integral part of the PAU 5D fishery”. One fisher’s use of the site 12 years ago was noted when weather conditions did not allow harvest in other areas.

Te Papa Atawhai advice

2202. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with commercial pāua fishing.

2203. A direct consequence of establishing a marine reserve is the cessation of fishing activity in that area, with the displacement leading to the same or similar level of fishing activity in other areas. The issue is whether the displacement causes an adverse effect on other values or makes the fishing activities significantly more costly.

2204. The information we have available through the Forum’s process, fishery data provided by Tini a Tangaroa and from submissions, all indicate the level of commercial pāua fishing activity in this area is low, with no catch being taken from the area during the 2009/10 to 2021/22 fishing years. The 9(2)(b)(ii) catch from 2008/09 as reported by the submitter equated to 9(2)(b)(ii) of the overall commercial pāua catch for the quota management area for that year. Considering this low level of catch and the small size of the proposed marine reserve (6 km² of the Forum region⁴⁹¹, or 1.9% of the Forum region coastline) we consider the submitter’s suggestion of localised depletion and spatial conflict seems unlikely.

2205. We understand that many factors cumulatively affect this industry and that the proposed marine reserve would be an additional factor. However, we consider that any impacts from these factors would continue to be managed operationally by the industry and by the mechanisms of the quota management system.

2206. As set out in 6.3.8.1, Kāi Tahu are seeking changes to the management of recreational pāua harvesting to address what they see will be the impacts of displaced recreational take on their commercial and non-commercial customary rights and interests by the proposed marine reserves. 9(2)(i)

9(2)(i)

12.6.5 Section 5(6)(d) recreational usage

12.6.5.1 Objections related to the site’s value for recreational fishing

2207. Objections related to recreational fishing activities noted the value of the area for safe and accessible fishing and its contribution to the wellbeing of fishers and a positive culture in the recreational fishing community. Others highlighted the value of this site to local users and stated that there would be “major impacts” on the recreational fishing and community culture if fishing near holiday settlements was prohibited.

2208. Some objectors said the safety of recreational fishers would be jeopardised by fishers having to use areas further from land and shelter. The objection from the Tautuku Fishing Club Dunedin and Haast Incorporated⁴⁹² also raised this issue. It also mentioned an anticipated

⁴⁹¹ The term used by the Forum to describe the area within which the Forum was tasked with providing recommendations for marine protection. Specifically: “...the marine coastal area (mean high water spring out to 12 nautical miles (NM) from Timaru in South Canterbury to Waipapa Point in Southland.” Page 17, Forum Recommendations Report.

⁴⁹² A club based in Dunedin and Haast that was formed in 1970 for bringing the community together to fish recreationally, is affiliated with the New Zealand Sport Fishing Council, and has 75 members.

adverse effect on the wellbeing of club members for whom fishing was an “essential part of life” and “a means to put food on the table”.

2209. One individual submitter contended that in combination with the other proposed marine reserves, this site would “almost completely remove the ability to gather seafood by diving or spearfishing” in the region. Another stated that no alternate fishing sites were available for shore-based fishers because of the lack of public roads and the inability to access the coast through private land.
2210. The objection from the New Zealand Sport Fishing Council⁴⁹³ said this site was “frequently” used by recreational fishers likely to be targeting kōura and pāua, and shore-based fishers.
2211. The combined submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand noted that in the Forum’s consultation, many submitters who lived or had holiday homes nearby raised the value and importance of this site for recreational activities.

Te Papa Atawhai advice

2212. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational fishing.
2213. Recreational fishing is thought to be the most common recreational use of this site at present. As the Marine Reserves Act generally prohibits all forms of take, it would not be possible to establish a marine reserve in this area without some interference or effect on recreational fishing activity.
2214. As set out in 12.6.4.1, the safety of boat-based fishers is important and should be the paramount concern for the skipper of any vessel. However, regardless of the establishment of the proposed marine reserve, the onus will remain with the skipper to be sure the conditions are suitable for their vessel and its occupants.
2215. As described in 12.6.3.1, the transit or sheltering of boats would be unaffected by the establishment of a marine reserve. Similarly, fishers transiting the proposed marine reserve with fish caught outside this area would still be permitted to do so. If the proposed marine reserve is established, Te Papa Atawhai would work to ensure the public understands that these activities can continue, through education and as part of its compliance and law enforcement activities.
2216. We regard the effects of establishing the proposed marine reserve on the wellbeing of individuals or the culture of communities as a relevant consideration. Although evidence of the effects of establishing previous marine protected areas is lacking, they are unlikely to be significant in this case. This is because a relatively small area is proposed for the marine reserve and recreational fishing would still be possible in the vicinity of the site and in the wider area.
2217. The Forum recommended excluding Watsons Beach and the offshore reef system since both were highly valued by recreational fishers. The reasoning for excluding Watsons Beach was based on their consultation when submitters ‘strongly argued that this represents a traditional family-focused recreational fishery’⁴⁹⁴. The current proposal leaves areas immediately adjacent to the site (including Watson’s Beach and the areas south of Watson’s

⁴⁹³ A not-for-profit organisation with 55 affiliated member clubs. It advocates for responsible and sustainable management of the marine environment.

⁴⁹⁴ South-East Marine Protection Forum. 2018. Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island’s south-east coast of New Zealand. Department of Conservation. Wellington. 314 p.

Beach) available to recreational fishers. We acknowledge there would be some inconvenience to individual fishers who currently use the proposed marine reserve area but consider this would be outweighed by the expected benefits of the proposed marine reserve.

12.6.5.2 Objections related to impacts on recreational fishing

2218. The objection from the New Zealand Sport Fishing Council identified that there is limited information related to recreational fishing use or catch. It also said the potential costs of the proposed marine reserve to recreational fishers had not been adequately identified.

2219. Other submitters stated that establishing the proposed marine reserve would concentrate fishing effort into remaining areas, causing negative effects on marine life and the recreational fishing experience. One suggested that the already heavy recreational use of Bull Creek, just south of the proposed site, would not be improved by establishing the marine reserve.

2220. The combined submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand, said the nearest equivalent site for recreational pāua diving was Moturata/Taieri Island. They warned about the depletion of pāua at this small reef caused by greater pressure from displaced recreational and commercial effort.

2221. This submission also noted a lack of information about recreational fishing in the Application. They also disagreed with the Application's statement that the adverse effects on overall recreational opportunities would be moderated by the availability of alternate fishing locations. They stated that it was "*contrary to MRA s.5(6)(d) which requires that an objection must be upheld if there are adverse effects on existing recreational usage of the area. The reported existence of other suitable locations nearby (which the applicant has not identified) is irrelevant to the consideration of whether there are adverse effects on existing recreational fishing in the area of MPA M1*" [submitter's emphasis].

Te Papa Atawhai advice

2222. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would interfere unduly with recreational use.

2223. As described in 5.3.2, there is limited information about the level of recreational fishing in the region including the area of this proposed marine reserve. However, the best available information was used to develop the Application, and this was based on the Forum's work. The available information allowed the Forum to consider and make recommendations based on avoiding areas with relatively high recreational use.

2224. We note that submitters provided conflicting information about the level of recreational fishing at this site. Some emphasised the importance of the area to the local community and holiday settlement. However, given the site's relatively limited access and small size (6 km² and 0.1% of the Forum region), we consider the displacement of recreational fishing activity to adjacent areas is unlikely to cause any adverse effects.

2225. We acknowledge the comments by submitters about the popularity of this site for pāua-gathering and that the proposed marine reserve would cause pāua fishing to move to other locations. An assessment of any adverse effects on other reefs from this displacement would require information that is not currently collected. (It would require information on the levels of pāua take by all sectors as well as pāua population health within and adjacent to the site at a fine spatial scale.)

2226. As mentioned above, the Forum was cognisant of this limitation and their recommendations sought to minimise the effects on existing users while balancing marine protection objectives. This involved excluding areas such as Watsons Beach that were identified by the recreational fishing community as highly valued. We consider therefore that pāua fishing could continue at many areas outside the proposed marine reserve.

Te Papa Atawhai disagrees with the assertion made in the combined industry submission that the existence of other suitable locations nearby is “irrelevant” to the assessment under section 5(6)(d). Firstly, we note the submission refers to “adverse effects” on recreational fishing. As noted in 3.2.4, the High Court in *Akaroa Marine Protection Society Incorporated v The Minister of Conservation* [2012] NZHC 933 confirmed that the approach to ‘adverse effect’ in section 5(6)(d) must be approached on the same basis as ‘undue interference’. Therefore, it is not the case that an objection must be upheld if there is any scale of adverse effect on existing recreational users. The Minister must be satisfied that the adverse effect must be both ‘excessive and unjustified’⁴⁹⁵.

2227. Secondly, as a matter of logic, the availability of nearby locations must be relevant to the assessment of whether that adverse effect/undue interference threshold is met. It forms part of the factual context in which the assessment must be made. If *no* other locations for similar recreational uses were available nearby, that would likewise need to be taken into account in assessing the severity of the effects of a proposed marine reserve. The Akaroa case also confirms that in making the assessment under section 5(6)(d), it is appropriate to consider the merits of the proposal, including the wider public interest, and that the benefits may extend beyond the area of the proposed marine reserve.⁴⁹⁶

12.6.6 Section 5(6)(e) public interest

12.6.6.1 Objections related to impacts on customary interests

2228. One objection received from a Māori submitter who was not identified as affected iwi, hapū or whānau, raised an issue related to effects on their customary interests. The submitter stated that the proposed marine reserve “breaches treaty rights” and said this was a “mahinga tangaroa area”.

2229. The combined submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand stated that establishing the proposed marine reserve was likely to displace catch to Moturata/Taieri Island, which is an important area for customary fishing.

2230. Te Papa Atawhai notes that in its submission in support, Forest & Bird⁴⁹⁷ qualified their support by suggesting that provision should be made for customary shellfish gathering. The submission did not provide further detail, but we infer this suggestion is in response to knowledge of this area’s importance for customary harvest.

Te Papa Atawhai advice

2231. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

⁴⁹⁵ *Akaroa Marine Protection Society Incorporated v Minister of Conservation* [2012] NZHC 933, at [53].

⁴⁹⁶ *Ibid.* at [57].

⁴⁹⁷ An independent conservation charity that advocates to protect New Zealand’s wildlife and wild places, to city, district and regional councils, central government and in courts.

2232. As set out in 12.5.6.1, it is acknowledged that the coastline generally is an important area for mahinga kai and that the declaration of a marine reserve will prevent extractive fishing activities, including those non-commercial customary fishing activities currently undertaken. However, it is not currently the case that there is a general customary right to take fish from the coastal marine area, as suggested by the submitter. Rather, there are already a range of regulatory measures that govern such activities, including the Fisheries (South Island Customary Fishing) Regulations which specifically provide for and regulate non-commercial customary fishing activities. Te Papa Atawhai notes that customary harvest will still be possible in areas adjacent to the proposed marine reserve. As mentioned above, the Forum explicitly excluded some areas from this site due to their value to users. This includes Watsons Beach, which has special significance for Kāi Tahu. The Forum's recommendation has been reflected in the marine reserve as proposed in the Application.

2233. The suggestion made by Forest & Bird that provision should be made for customary gathering of shellfish was not a matter that was raised and/or considered during direct Crown/Kāi Tahu engagement or by affected iwi, hapū or whānau (in particular, Te Rūnanga o Ōtākou) through the statutory submission process. In order to give effect to the Treaty principles of active protection, partnership and informed decision-making, Te Papa Atawhai considers it is appropriate to adhere to the views expressed and the recommendations reached through that engagement.

2234. We have considered the adverse effects of fishing displacement to other areas including Moturata/Taieri Island as raised in the combined submission from the New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand. However, we do not consider that significant displacement would occur given the small area where fishing would be prohibited, relative to the surrounding areas.

12.6.6.2 Objections questioning the management of non-fishing threats

2235. The combined industry objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand said there were many "threats" to this site that would not be managed by marine reserve protection. These included increased sedimentation northwards from the Clutha River and activities in the Akatore Estuary. The submission also expressed concern about the potential effects on biodiversity and coastal water quality from "harvesting of the extensive exotic forestry plantations in catchments adjacent to the proposed marine reserve". The submitters argued that these threats meant the "marine reserve cannot be 'preserved as far as possible in [its] natural state'".

2236. An individual objector stated that harvesting the nearby Akatore forest would disturb large amounts of topsoil. They said that this, along with flushing events on the Clutha River from spilled dam water, would increase coastal sedimentation and discolour the water. The submitter noted that these issues would not be dealt with or improved by establishing a marine reserve.

Te Papa Atawhai advice

2237. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2238. We agree that multiple stressors affect the proposed marine reserve area, including those described above. The protection afforded by a marine reserve does not immediately mitigate the effects of land-based stressors, however this does not mean that it would be contrary to the public interest to declare a marine reserve. The Marine Reserves Act does not require all threats to be eliminated, rather it requires that an area be preserved 'as far as possible' in its natural state. Moreover, other management measures via the Resource Management Act

are either in place or being developed to manage or mitigate the effect of land-based stressors. These include:

- Regional council responsibility for developing and enforcing regional freshwater and coastal plans. These plans set rules to control discharges to coastal waters and improve land-use practices that release sediment or contaminated runoff in river catchments.
- Policy 5 of the New Zealand Coastal Policy Statement⁴⁹⁸ directs regional councils to consider the effects on waters in the coastal environment that are held or managed under other acts such as the Marine Reserves Act. It also directs regional councils to avoid the adverse effects of activities that are significant in relation to the purpose of the marine reserve.
- The National Policy Statement for Freshwater Management 2020⁴⁹⁹ will influence activities that may affect the proposed marine reserve by setting freshwater limits and land-use regulations.

2239. We do not agree with the submitters' argument that because the Marine Reserves Act does not manage all the potential threats in this area it is not possible for the 'administration and maintenance' of the reserve to preserve it 'as far as possible' in its natural state. The proposed marine reserve area is unlikely to be in a natural state, as is the case with all of Aotearoa New Zealand's marine environment. According to a 2016 report⁵⁰⁰ the marine environment in this region underwent a 'profound change' between Captain Cook's 1769 voyage and 1950. The Marine Reserves Act is just one tool that directs the management of the marine environment – other tools direct the management of particular impacts. We note, however, that the additional protection afforded by marine reserve status would manage some direct existing and potential future stressors on the area (e.g. habitat disturbance from some fishing methods). It could also improve the resilience of the area to other existing or future stressors (e.g. increased sedimentation or sea-surface temperature).

12.6.6.3 Objections questioning the need or benefit of the proposed marine reserve

2240. A number of submitters raised objections relating to the lack of need for, or benefit of, establishing the proposed marine reserve. We have considered these objections on the basis that they argue for it being contrary to the public interest to declare the area a marine reserve if there was no demonstrated need or benefit.

2241. Several objections from individuals emphasised the strength of the fishery in this area, thereby concluding that there was no need for the proposed marine reserve. The reasons behind this position included the area being naturally protected by poor access and the limits on recreational fishing activity caused by weather and sea conditions. One individual objector described how the "rough seas...batter the coastline" and make the water very "dirty and murky" and unsuitable for diving. This submitter was an adjacent landowner but had only been able to dive in the area three times.

2242. Other reasons cited by objectors included the small amount of commercial fishing activity in the area and that people did not fish offshore because there is no reef. Also, shore-based fishers were said to catch only tākahaka/banded wrasse, which are not eaten and often

⁴⁹⁸ Department of Conservation, 2010. New Zealand Coastal Policy Statement 2010. Department of Conservation. 30 p.

⁴⁹⁹ Ministry for the Environment, 2020. National Policy Statement for Freshwater Management 2020. Ministry for the Environment. 70 p.

⁵⁰⁰ MacDiarmid et al., 2016. Taking Stock – the changes to New Zealand marine ecosystems since first human settlement: synthesis of major findings, and policy and management implications. <https://fs.fish.govt.nz/Page.aspx?pk=113&dk=24058>.

returned to the sea. Other submitters stated the area should remain under the existing management arrangements as they saw no evidence that it was currently under threat.

2243. An objection from the Tautuku Fishing Club Dunedin and Haast Incorporated raised that only a Type 2 marine protected area was necessary at this site. The club argued that recreational fishing currently had limited impact and that there were alternative management options available. The submission also stated that because of shortcomings with “*current legislation*” this process should be put on hold.

2244. Several submitters objected on the basis that the Application seemed to suggest that the primary values to be protected related to the area’s geology and water clarity, which would not change with marine reserve protection.

2245. One objector noted the increasing number of kekeno/New Zealand fur seals in the area. They stated that their effect on the number of fish should be taken into account when the impacts on fish populations and fishing restrictions were assessed.

2246. An individual submitter said that scientific study could be carried out in this area whether it was a marine reserve or not. This questions the purpose of creating the marine reserve.

2247. The combined industry objection from New Zealand Rock Lobster Industry Council, Paua Industry Council and Fisheries Inshore New Zealand said the public would not have adequate opportunities to study, observe and record marine life in its natural habitat. This would be caused by limited road access to the site and because it was fully adjoined by private farmland.

Te Papa Atawhai advice

2248. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2249. A range of submitters said that current fishing practices had little or no effect on the area. We note that the purpose of establishing the proposed marine reserve is to preserve the area for scientific study (as per the Marine Reserves Act) and contribute to the protection of marine biodiversity through a comprehensive and representative marine protected area network (as per the *Marine Protected Areas Policy and Implementation Plan (MPA Policy)*).

2250. Marine reserves are not about fisheries management but a means to ensure the full range of biodiversity and ecosystem functioning is protected and more resilient to environmental change. Maintaining ecosystem functioning has high value for science as it provides a baseline for research and ecological monitoring. While existing fisheries management or a Type 2 marine protected area may achieve some biodiversity outcomes, these measures are unlikely to achieve the benefits that occur with the higher level of protection a marine reserve offers.

2251. The proposed marine reserve was recommended by the Forum for its contribution to protecting representative habitats in the region as well as the biodiversity values that are contained within it. The Otago region has been extensively fished for many decades, with significantly reduced numbers and biomass for most commercially targeted species. Information about the local effects of fishing on these habitats is scant. There is also a lack of certainty around how the marine environment in its current state will cope with increasing pressures from climate change. Providing for areas that act as reference sites and allow species to recover to a more natural state is highly valuable and is consistent with the purpose of the Marine Reserves Act.

2252. Te Papa Atawhai acknowledges that weather and sea conditions in this region restrict the amount of recreational fishing activity. As described in 5.3.2, there is limited information

about the level of recreational fishing in the area generally and in relation to the proposed marine reserve area. Regardless of the level of recreational fishing activity, marine reserves are to be 'preserved as far as possible in their natural state' so continued recreational fishing would not be consistent with this purpose. Therefore, we do not consider the weather-induced limitations on recreational fishing activity as sufficient reason not to establish the proposed marine reserve.

2253. The submission from the Tautuku Fishing Club Dunedin and Haast Incorporated suggested the marine reserve proposal should be put on hold because the Marine Reserves Act was not fit for purpose. We recognise that the Marine Reserves Act could be improved by incorporating current knowledge about the design and process of establishing effective marine protected areas. Several tranches of work have begun to develop policy that would ultimately lead to reforming the Marine Reserves Act. In the absence of that work being completed, Te Papa Atawhai is of the view that establishing marine protected areas under existing legislation (primarily the Marine Reserves Act and the Fisheries Act) with the broader guidance of the MPA Policy, adequately contributes towards New Zealand's commitments to the Convention of Biological Diversity⁵⁰¹ and associated ecosystem benefits.

2254. The issue raised by some submitters about reference to the region's geological and water clarity values in the Application appears to have been a misunderstanding. The Application did describe these features, but this was intended to highlight the ecological features they related to. The section of exposed Otago schist wave-cut platforms in this area is unique in the region and therefore the habitats and species they support have high value for protection at this site. Regarding the reference to water clarity, we can clarify that this was included in the Application because of the relationship between water clarity and kelp growth, particularly rimurapa.

2255. In response to the issue about kekeno, we note the purpose of the proposed marine reserve is not to manage fisheries, so the amount of kekeno predation on fished species is not relevant to the Application. Kekenos generally feed further offshore than the proposed site – they forage on and near the continental slope off Otago Peninsula for most of the year⁵⁰². Therefore, a breeding colony of kekeno in or near the proposed marine reserve would not affect the benefits of the protection and the recovery of the area to a more natural state.

2256. Regarding the value of the area for scientific study, the submitter is correct that scientific study can happen in this area regardless of its marine reserve status. It is, however, the type of study and the ability to separate particular effects that make marine reserves an important scientific tool. The use of non-fished sites as reference areas is a powerful way to detect change and to add context to research related to managing the marine environment. The benefits of marine reserves for research have been demonstrated across New Zealand, particularly at Cape Rodney-Okakari Point Marine Reserve in the Hauraki Gulf. Also, the University of Otago has an active marine research programme that would be likely to benefit from establishing this marine reserve.

2257. Regarding public access to the site, we acknowledge that access to the site is limited due to natural conditions and the lack of public roads in this area. A certain level of public access is not a prerequisite for areas to be established under the Marine Reserves Act. Section 3(2)(d)

⁵⁰¹ <https://www.cbd.int/>.

⁵⁰² Harcourt, R. G., Bradshaw, C. J., Dickson, K., & Davis, L. S., 2002. Foraging ecology of a generalist predator, the female New Zealand fur seal. *Marine Ecology Progress Series*, 227, 11-24.

of the Marine Reserves Act is permissive in that public access should not be restricted unless required for the 'preservation of marine life or welfare in general' of the area.

2258. We note however, that access would not be further restricted by creating a marine reserve. According to information gathered during the Forum process and supported by statements made in submissions on this Consultation, the public would continue to have freedom to access and enter the proposed marine reserve. This would be by Watsons Beach off Watsons Road (at the southern boundary of the proposed site) or by walking down Akatore Creek from Akatore Road at low tide. Access by boat would remain possible from all existing locations. However, we also anticipate that the declaration of the marine reserve would increase the public awareness of the area and would increase public engagement and educational opportunities for local and regional communities.

12.6.6.4 Objections related to amendment of the marine reserve

2259. In their objection, Christchurch Penguin Rehabilitation⁵⁰³ said they would only support the proposed marine reserve if it was enlarged to protect a greater area from damage from bottom trawling. The submission stated that the proposed marine protected areas encompass less than 25% of hoiho/yellow-eyed penguin foraging areas, which is considered inadequate to help ensure the survival of this species.

Te Papa Atawhai advice

2260. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in this objection do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2261. We acknowledge the desire from some submitters (including a number of submitters in support as described below) to see greater protection afforded to some habitats and species by extending the size of the proposed marine reserve. The work of the Forum which led to these proposals, guided by the MPA Policy, sought to strike a balance between establishing marine reserve protection over representative habitats and those that are unique or nationally important, while minimising effects on existing users.

2262. The proposed marine protected areas are not designed to specifically protect threatened species, or more mobile species, such as hoiho. Other management activities are in place for hoiho. These include Te Kaweka Takohaka mō te Hoiho⁵⁰⁴ and Te Mahere Rima Tau⁵⁰⁵, which were finalised in June 2020. They provide a framework to improve protection of hoiho based on threat management.

2263. Te Papa Atawhai acknowledges that there is potential for undesirable 'edge effects' arising due to the size and shape of the proposed marine reserve. Edge effects are where the edges of a protected area experience increased fishing pressure. However, the Forum's Recommendations Report noted that this site is important in the proposed Network for protecting the shallow rocky reef habitat, and that there is a sand 'buffer' further offshore of this habitat that would likely serve to minimise edge effects (particularly for kōura and pāua). Edge effects are more likely to occur on the northern and southern boundaries, and this would need to be part of an ongoing monitoring and review programme assessing the effectiveness of the marine reserve if established. Further, the site was developed in order to balance utilisation and protection objectives and we consider that establishing marine

⁵⁰³ Provides a rehabilitation service for sick and injured penguins in Canterbury.

⁵⁰⁴ <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-kaweka-takohaka-mo-te-hoiho-2020.pdf>.

⁵⁰⁵ <https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/birds/sea-and-shore/te-mahere-rima-tau-2020.pdf>.

reserve protection at this site will lead to measurable changes in biodiversity over time, as has been observed at similar-sized marine reserves in New Zealand previously.

2264. The Application for the proposed site must be considered on its merits, and the matters raised in these submissions do not demonstrate that to establish the marine reserve as proposed in the Application would be contrary to the public interest.

Submissions in support

2265. Nine submissions in support qualified their support by stating a preference that it be extended. These suggestions included statements by the New Zealand Marine Sciences Society⁵⁰⁶, WWF-New Zealand⁵⁰⁷, the Yellow-eyed Penguin Trust⁵⁰⁸ and several individual submitters, that the proposed marine reserve was “*very small*” and should be extended further offshore, ideally to the 50 m depth contour. Reasons given for the extension included avoiding cutting through reef habitat and preventing edge effects.

2266. The New Zealand Marine Sciences Society stated that a great deal of New Zealand research demonstrates the need for marine reserve boundaries to be further offshore to encompass the movement of species like kōura. It cautioned that current marine reserve proposals should consider the lessons learned in older marine reserves, noting that some of these are being recommended for boundary extensions. The Otago Branch of the Ornithological Society of New Zealand Inc.⁵⁰⁹ suggested an extension to deeper water, stating that this would protect areas where the water was less clouded by sediment, and presumably better foraging grounds for seabirds.

2267. Forest & Bird qualified their support of the proposed marine reserve by suggesting extending the boundaries such that the surf zone at the mouth of the Akatore Estuary is completely included, stating that coastal processes and their habitats are more associated with the seaward side as opposed to the estuary. An individual submitter in support highlighted the value in the boundary of the proposed site extending beyond the Akatore Creek mouth, such that the entire surf zone and true right sandspit are included, as it will “*allow the influence of the freshwater input from the creek to be studied, an influence that can have dramatic effects in times of high flow and calm seas*”, while still providing area for recreational fishers to catch aua/mullet and kahawai further up into the estuary.

12.6.6.5 Objections related to alternate management options

2268. Some objections suggested alternative management options for the area. We have taken these statements as arguing that it would be contrary to the public interest to establish the proposed marine reserve rather than using other management tools. The suggestions included:

- reducing recreational fishing limits
- restricting commercial fishing activity (including by one Māori submitter not identified as affected iwi, hapū or whānau), i.e. creating a Type 2 marine protected area (over a larger area), to prohibit particularly damaging fishing methods such as bottom trawling

⁵⁰⁶ NZMSS is a professional society with approximately 200 members. It provides access to and within the marine science community, and identifies emerging issues through annual conferences, annual reviews, a list serve and a website www.nzmss.org.nz.

⁵⁰⁷ A branch of an independent conservation organisation dedicated to protecting nature and looking after the planet.

⁵⁰⁸ A non-governmental organisation with a focus on the conservation of hoiho via managing birds and their habitat.

⁵⁰⁹ The primary organisation concerned with the study of birds in New Zealand and the dissemination of this knowledge to assist the conservation and management of birds.

- imposing a temporary closure to allow for monitoring to occur before further decision-making
- making the onshore boundary of the site “5-10 m from [the] low tide mark”
- establishing a “traffic-light system” (raised by a Māori submitter not identified as affected iwi, hapū or whānau), presumably as adaptive management dependant on the abundance of particular species
- increasing education and compliance.

Te Papa Atawhai advice

2269. For the reasons set out below, Te Papa Atawhai’s assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2270. A number of suggestions were made for management arrangements to improve fish stocks or biodiversity, which it was said would negate the need for the proposed marine reserve. Many of the suggestions still allowed recreational take. Given the lack of knowledge about the level of recreational fishing activity and its potential effects on different species and ecosystem processes, it would not be consistent with the purpose of the Marine Reserves Act to allow recreational fishing to continue.

2271. The suggestion to mitigate the effects on recreational fishers by moving the onshore boundary out to near the low tide mark is likely to be problematic. As described in 12.2.1.1, the intertidal area at this site represents a type of reef that is unique in the Forum region and therefore has high value in the proposed Network. Not providing marine reserve protection to a narrow strip of shallow water would also interfere with the ecosystem processes and links between the intertidal and shallow reefs and deeper habitats. This would likely compromise the area’s ability to meet the MPA Policy’s Network Design Principle 3 (“The Network should be viable”). Also, locating the onshore boundary of the marine reserve under this scenario would be difficult for the public and for compliance staff.

2272. We agree that education and compliance are important components of marine reserve management. If the proposed marine reserve was established, these would be important parts of a management plan developed by Te Papa Atawhai in collaboration with others. As management measures however, we do not consider they would provide sufficient protection to the biodiversity and habitats at this site.

2273. The suggestions provided by submitters are likely to be appropriate when fisheries management at a fine spatial scale is the goal. However, the purpose of the Forum’s work since 2014 has been to recommend a network of marine protected areas (including this site) to protect biodiversity and establish areas to be preserved as far as possible in their natural state, for scientific study. We do not consider the above suggestions are consistent with this purpose.

12.6.6.6 Objections questioning the integrity of Forum or statutory consultation processes

2274. In their submission, PauaMac 5 Incorporated raised concerns that no description or analysis of the effects on commercial pāua harvest were provided in the Application for this site.

2275. Two individual objectors perceived a lack of consultation with adjoining landowners, stating they had a deep connection with the area and believed they should have been talked to directly about the proposal. One stated, “*we do not exercise kaitiakitanga over the area but that is not to say we don't hold similar values as a result of our guardianship of and connection with the land*” and that their “*voices have not been heard*”.

Te Papa Atawhai advice

2276. For the reasons set out below, Te Papa Atawhai's assessment is that the matters raised in these objections do not support a conclusion that declaring the proposed marine reserve would be contrary to the public interest.

2277. The Application included more detailed information about the fisheries that were likely to be most affected by the proposals. Since the commercial pāua catch estimated to be affected by the proposed Network is low (0.4% of the total for the quota management area⁵¹⁰) it was not discussed in detail in the Application for this proposed site. We note the Application did state the estimated affected pāua catch for this site (Table A1.2, page 72). Updated catch data estimated that an average of 9(2)(b)(ii) per year of pāua was taken from this site for 2007–2019, equating to 9(2)(b)(ii) of the total quota management area catch. We acknowledge that the way fishers use different sites at different times may make the effects of this proposed site greater for some individuals. According to the information available and across the fishery, the proposed marine reserve does not cover an area where pāua fishing occurs at a high intensity.

2278. Regarding the issue about a lack of consultation, we note that extensive consultation with stakeholders, the public and community at place was carried out by the Forum and by Agencies during the Forum and subsequent statutory processes. This included a formal non-statutory consultation and ongoing public engagement by the Forum and the recent statutory consultation under the Marine Reserves Act process.

2279. From 2014 to 2017, the Forum carried out face-to-face consultation at place, with a focus on representing communities and stakeholders. During this time, Forum members and agency officials took part in a road show at various locations in the region from Invercargill to Christchurch to Cromwell (see Appendix 3 of the Forum's Recommendations Report). A website and an email contact were also available during the entire Forum process. All adjoining landowners were contacted directly about the recent consultation as required under section 5(1)(d)(i) of the Marine Reserves Act. While it is unfortunate that these adjacent landowners feel they have had inadequate opportunity to provide input, we consider that many opportunities to do so were provided by the Forum and Te Papa Atawhai.

12.7 Stage 1 assessment – Conclusion in relation to section 5(6) of the Marine Reserves Act

2280. Te Papa Atawhai has considered all objections made in relation to the proposed Hākinikini marine reserve against the criteria of section 5(6) of the Marine Reserves Act. This includes objections to the proposed Network (these are relevant to your decision-making, as set out in 6.1.3) and objections to the proposed marine reserve.

2281. We conclude that while there would be some interference with the existing uses and interests specified in section 5(6) of the Marine Reserves Act if the proposed marine reserve was established, the nature and magnitude of the interference would not be undue, nor contrary to the public interest. In reaching this conclusion we have considered the values of the proposed marine reserve and its value as part of the proposed Network, and the extent to which it is expected to fulfil the purpose of the Marine Reserves Act.

2282. We have also considered whether a decision to not uphold any objections received on the proposed Hākinikini marine reserve would fulfil the Crown's obligations in relation to the

⁵¹⁰ Table 1 page 19, Consultation Document, Appendix 1.

Treaty of Waitangi, including under section 4 of the Conservation Act. This is considered in light of our assessment (as set out in 6.3.10) that to declare the proposed marine reserves with the recommendations resulting from the direct Kāi Tahu engagement to date would fulfil the Crown's obligation in relation to the Treaty of Waitangi. As recorded above in 12.5.1 and 12.6.1, Te Papa Atawhai considers that no additional matters have been raised in objections from submitters identified as affected iwi, hapū, or whānau or other Māori submitters that would change that assessment.

2283. We therefore consider that no objection should be upheld for the purposes of section 5(6) of the Marine Reserves Act. If you agree, you should proceed to the second stage of decision-making under section 5(9) of the Marine Reserves Act.

12.8 Stage 2 assessment – Statutory considerations section 5(9) of the Marine Reserves Act

2284. Section 5(9) provides that your recommendation to the Governor-General on the proposed marine reserve can be made unconditionally or subject to conditions. Our recommended conditions for the proposed Order in Council are set out in 12.8.1. We also recommend other measures as a result of Treaty partner engagement (outlined in 6.3). Our advice on these is set out in 12.8.2.

2285. We have provided our assessment of the Application, including any recommended conditions and other measures, against the statutory criteria in section 5(9). As part of this assessment, we have considered the relevant obligations under the Treaty of Waitangi (as set out in 3.3). The information available to formulate this advice includes content in the Application, Consultation Document, Forum's Recommendations Report and new information provided by Kāi Tahu, Tini a Tangaroa and in submissions from the statutory consultation process. Where submissions in support were made in relation to the proposed marine reserve and provide information in relation to the section 5(9) criteria, we also describe this below.

2286. As set out in 6.8, in considering the s5(9) criteria, you will need to consider the advice provided in the Network chapter in relation to these criteria, in addition to the advice below.

12.8.1 Recommendation for Order in Council conditions for the proposed marine reserve

2287. We recommend the conditions described below if the proposed marine reserve is established. These would be set out in the Order in Council creating the marine reserve and fall into the following categories:

- conditions arising from Treaty partner engagement
- conditions to provide for other activities that were identified in the Application
- condition arising from engagement with the Ministry of Transport.

12.8.1.1 Conditions arising from Treaty partner engagement

2288. As described in 6.8.1, as a result of Treaty partner engagement Te Papa Atawhai recommends the following provisions be set out in the Order in Council creating the marine reserve.

- (a) Condition for continued enhancement of mātauraka Māori and wānaka*
- (b) Condition for the retrieval of kōiwi tākata and archaeological artefacts*
- (c) Condition for retrieval of dead marine mammals and marine mammal parts*

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

(e) Condition to require generational reviews

12.8.1.2 Conditions to provide for other activities identified in the Application

2289. The Application proposes that fossicking of beach materials be allowed to continue if the proposed marine reserve is established. We recommend allowing for this through an Order in Council Condition pursuant to your power under section 5(9) (see below).

2290. The Application also lists retrieval of kōiwi tākata. This was discussed through engagement with Kāi Tahu, and the recommendation in respect of this activity is described in 6.8.1.

2291. We also note the Application (Table A1.14, page 111) listed activities operating under existing resource consents relating to a closed landfill that is outside the boundary of the proposed marine reserve. We have considered these activities further in the preparation of this advice. Our assessment is that these activities would not constitute an offence under the Marine Reserves Act and could therefore continue to occur if the proposed marine reserve was established (see Appendix 13 for further detail).

2292. The Application did not specify providing for vehicle access over the foreshore for this proposed marine reserve. It did indicate in the general information relating to all proposed marine reserves, that vehicle access to the foreshore in limited circumstances was proposed to be allowed (pages 74-75 of the Application). Since it is not possible to access this proposed marine reserve by vehicle, no condition in the Order in Council is necessary.

2293. Similarly, the Application stated that driving on the foreshore for access by emergency services would be permitted. This activity does not need specific provision in the Order in Council as the 'reasonable excuse' aspect of section 18I of the Marine Reserves Act would apply and/or Te Papa Atawhai would not exercise its discretion to take enforcement action under either section 18I or section 21.

(f) Condition for fossicking of beach materials

2294. Te Papa Atawhai recommends a condition to allow for the non-commercial gathering of beach stones, non-living shells and driftwood on the foreshore of the proposed marine reserve using only hand-held (non-mechanical) methods (as described in the Application, Table A1.6, page 90).

2295. To ensure any fossicking activity would not be carried out in a manner that may interfere with the purpose of the Marine Reserves Act, the condition should also be drafted to include the following aspects (which are similar to those in the Marine Reserve (Kahurangi) Order 2014):

- A person who removes beach stones, non-living shell or driftwood must not use a method of collection that involves the use of machinery or cutting equipment.
- A person who removes beach stones, non-living shell or driftwood must not, in any one day, remove a greater weight than they can carry on their own in one trip.
- Beach stones are defined as stones that are no more than 256 mm in intermediate diameter including gravel and sand.

2296. The condition should stipulate that any activities would be subject to all other legal requirements.

12.8.1.3 Condition arising from engagement with the Ministry of Transport

(g) Condition for pollution response

2297. Te Papa Atawhai recommends a condition to allow responses to emergency oil spill or pollution incidents. We have engaged with the Ministry of Transport to inform the following advice on this matter.

2298. In certain emergency situations, vessel users or operators may be required to respond to an emergency oil spill or pollution incident. Action may also be required by the local authority or other central government agencies. Our position is that in such a situation, any action would likely to be considered a 'reasonable excuse' under section 18I(3) and/or would not result in Te Papa Atawhai exercising its direction to take enforcement action in respect of either section 18I(3) (offence for certain discharges) or section 21(a) (infringement offence for certain discharges).

2299. In recent marine reserve Orders in Council, however, a provision has been included to confirm 'for avoidance of doubt' that action can be taken in these circumstances, and that the declaration of the marine reserve does not affect or limit the powers of any person under the Maritime Transport Act 1994 in response to these events or the risk of an event. For consistency, we recommend the inclusion of a similar provision in the Order in Council.

12.8.2 Recommendations for other measures arising from Treaty partner engagement

2300. As described in 6.8.2, as a result of Treaty partner engagement Te Papa Atawhai recommends the following measures for the proposed marine reserve.

- (h) *Recommendation for establishing formal co-management with Kāi Tahu*
- (i) *Recommendation for the establishment and support of Kāi Tahu rangers*
- (j) *Recommendation for periodic reviews*
- (k) *Recommendation to use te reo Māori name confirmed by Kāi Tahu*
- (l) *Recommendation that pou whenua be established for any new marine reserves*
- (m) *Recommendation to record that marine reserve declaration is unlikely, and not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title*

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

2301. As set out in 3.2.3, under section 5(9) you must decide whether declaring each of the marine reserves will be in the best interests of scientific study, for the benefit of the public and expedient. Our advice on these criteria as relevant to the proposed marine reserve is described below. As part of this advice, we have included reference to additional information raised in submissions of support that is relevant to each of the section 5(9) criteria. Note that objections are not considered at this stage, as these views have already been considered in our advice on section 5(6) in accordance with the statutory framework.

12.8.3.1 Obligations in relation to the Treaty of Waitangi

2302. In considering whether the declaration of the proposed marine reserve would be in the best interests of scientific study, for the benefit of the public and expedient, you must consider your obligations in relation to the Treaty of Waitangi.

2303. As set out in 3.2.7, in accordance with your obligation under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi, you must consider the views provided by Kāi Tahu in respect of the proposals received through direct engagement in making your assessment under section 5(9). The obligation to have 'particular regard' to these views in accordance with section 49 of the Takutai Moana Act also applies to these

views. Our advice and conclusions in respect of the Crown engagement with Kāi Tahu and the corresponding obligations under the Treaty of Waitangi is set out in the Network chapter in 6.3.10. While this advice is provided in the context of the proposed Network, it applies equally to each of the proposed marine reserves, including Hākinikini, on the basis that the recommendations arising from the engagement apply to this site. Based on this assessment, Te Papa Atawhai considers that the declaration of the proposed marine reserves (therefore including Hākinikini) on the basis of the recommendations made would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

2304. In addition to the engagement with Kāi Tahu, as set out in 5.2, submissions in relation to the proposed marine reserve (including objections and submissions in support) were made through the statutory process by submitters who are 'affected iwi, hapū, and whānau' for the purposes of te Takutai Moana Act and from other Māori submitters (i.e. those not affiliated with Kāi Tahu).

2305. In terms of your decision under section 5(9), the obligation to have 'particular regard' applies to the views received from affected iwi, hapū or whānau through the statutory consultation process. The obligation in section 4 of the Conservation Act also applies to your consideration of these views, and may still be relevant to submissions from other Māori (although the obligation to have particular regard does not apply to the views from other Māori). In order to allow you to have 'particular regard' to the relevant submissions, and in accordance with the principle of informed decision-making, in our advice below we have therefore identified where submissions have been made from affected iwi, hapū or whānau and/or other Māori submitters that are relevant to the specific section 5(9) criteria. None of the submissions identified raise matters that are inconsistent with our conclusion set out above at paragraph 2303 - that the declaration of the proposed marine reserves (including Hākinikini) on the basis of the recommendations made in relation to the engagement with Kāi Tahu would fulfil the Crown's obligations in relation to the Treaty of Waitangi, including the obligation under section 4 to give effect to the principles of the Treaty.

2306. Te Papa Atawhai therefore considers that to declare the proposed marine reserve would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

12.8.3.2 Consistency with statutory planning instruments

2307. As set out in 3.2.8, also relevant to your assessment as to whether the declaration of the proposed marine reserves cumulatively and as part of the proposed Network would be in the best interests of scientific study, for the benefit of the public and expedient, is whether to do so would be consistent with the relevant provisions of any relevant statutory planning instruments. The relevant statutory planning instruments are the Conservation General Policy and the Otago Conservation Management Strategy. Our full assessment of which provisions are relevant to your assessment, and how a decision to declare each of the proposed marine reserves with the recommendations listed in 6.8.1 and 6.8.2 and the subsequent site chapters (for the purposes of the proposed Hākinikini marine reserve, therefore, the recommendations listed in 12.8.1 and 12.8.2) would be consistent with those provisions, is set out in Appendix 12.

2308. In summary, Te Papa Atawhai considers a decision to declare the proposed Hākinikini marine reserve with the recommendations listed would be consistent with all relevant provisions of these statutory planning instruments.

12.8.3.3 In the best interests of scientific study

2309. For the reasons set out below and in light of our conclusions in 12.8.3.1 and 12.8.3.2, we consider that establishing the proposed marine reserve with the recommended conditions and measures set out in 12.8.1 and 12.8.2 would be in the best interests of scientific study.
2310. In considering whether a marine reserve would be 'in the best interest of scientific study', it is appropriate to assess the area that is recommended for marine reserve status against the criteria in section 3(1) of the Marine Reserves Act⁵¹¹. This is provided in 12.2.1.
2311. The natural features and marine life associated with the coastline make this area unquestionably of distinctive quality, typical and beautiful. We consider that protecting these features at this site is consistent with section 3(1) in that they are so typical, or beautiful, or unique that their continued preservation is in the national interest.
2312. Further information supporting a conclusion that the proposed marine reserve would be in the best interests of scientific study is evident from points raised in submissions of support. For example:
- An individual identified as affected iwi, hapū or whānau said the proposed marine reserve was unique in the proposed Network as it would represent "*schist wave cut platforms and rock pools*".
 - A number of submitters (including the New Zealand Marine Sciences Society and the Yellow-eyed Penguin Trust) highlighted the habitats created by rock pools and schist formations and their value as nursery habitats, haulout areas for kekeno and favourable habitat for kōura and pāua, as well as offering unique educational opportunities.

12.8.3.4 For the benefit of the public

2313. For the reasons set out below and in light of our conclusions in 12.8.3.1 and 12.8.3.2, we consider that establishing the proposed marine reserve, with the recommended conditions and measures set out in 12.8.1 and 12.8.2, would be for the benefit of the public.
2314. These benefits are described above in 12.2.2. Te Papa Atawhai considers that the benefits of establishing long-term protection of representative habitats and the educational and recreational opportunities that would arise from this, would create benefits for the public.
2315. Further information supporting a conclusion that the proposed marine reserve would be for the benefit of the public is evident from points raised in submissions of support. For example:
- One submitter stated the "cost of not protecting these sites is a loss of heritage, legacy value and benefits from even knowing these special places are protected".
 - Forest & Bird and an individual submitter noted the surfing spot called 'Lobsters' on one of the headland reefs. While marine reserve status would not directly enhance or detract from this surfing site, we assume these submitters suggested an indirect benefit to surfers of establishing marine reserve protection here (e.g. the site's intrinsic value or less boat activity by prohibiting recreational fishing).

⁵¹¹ See chapter 3, Section 3(1): It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life of such distinctive quality, or so typical or beautiful or unique that their continued preservation is in the natural interest.

12.8.3.5 It is expedient

2316. For the reasons set out below and in light of our conclusions in 12.8.3.1 and 12.8.3.2, we consider that establishing the proposed marine reserve, with the recommended conditions and measures set out in 12.8.1 and 12.8.2, would be expedient.
2317. Te Papa Atawhai considers that because of the educational and scientific opportunities that could arise from the proposed marine reserve, its contribution to protection of representative habitats within the proposed Network, and the corresponding marine life these habitats support, that its establishment is expedient.
2318. Enhancing protection for marine mammals and seabird species is not the primary goal of marine reserve protection. This is because of the nature of the threats to these species and the larger spatial scale where management needs to apply. However, there are likely to be partial and/or indirect benefits to these species by enhancing protection over part of their habitat. Given that many species have a threat classification status of At Risk or Threatened, in our view, any additional benefits offered by a marine reserve would be expedient.
2319. Further information supporting a conclusion that establishing the proposed marine reserve would be expedient is evident from points raised in submissions of support. For example:
- One individual said marine protection was “*extremely important*” and highlighted the need to establish protection now because in their view “*clear, undeniable damage to the marine environment*” is being caused by overfishing so current practices must change.
 - A number of submitters including the Otago Branch of the Ornithological Society of New Zealand Inc. and the New Zealand Sea Lion Trust⁵¹² highlighted the benefits to protected species including rāpoka/New Zealand sea lion, kekeno, tōrea pango/variable oystercatcher, and karoro/southern black-backed gull.

12.9 Naming of the proposed marine reserve

2320. The proposed marine reserve would be named in accordance with the requirements of the New Zealand Geographic Board. Te Papa Atawhai has discussed the naming of this proposed site with Kāi Tahu. Kāi Tahu have endorsed the name to be taken forward for review by the New Zealand Geographic Board as ‘Hākinikini Marine Reserve’.

12.10 Conclusion – proposed Hākinikini marine reserve

2321. Our overall assessment in relation to the proposed Hākinikini marine reserve is that:
- the procedural requirements of section 4 and section 5 of the Marine Reserves Act have been met
 - we do not recommend upholding any objections received under section 5(6) of the Marine Reserves Act
 - to declare the area a marine reserve will be in the best interests of scientific study, will be for the benefit of the public and will be expedient (in accordance with section 5(9) of the Marine Reserves Act), including with our recommended conditions to be included in the Order in Council [(a)-(g) as set out in 12.8.1] and our

⁵¹² A trust established in Dunedin in 2003 with a mission and activities focused on the conservation of New Zealand sea lion by supporting ongoing research and education.

recommendations for other measures arising from Treaty partner engagement [(h)-(m) as set out in 12.8.2]

- to declare the proposed marine reserve on the basis of the recommendations listed above would fulfil the Crown's obligations in relation to the Treaty of Waitangi.

12.11 Recommendation – proposed Hākinikini marine reserve

2322.

We recommend that you proceed to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport⁵¹³ to recommend to the Governor-General the making of an Order in Council (subject to conditions) to declare the proposed area a marine reserve.

⁵¹³ As under section 5(9) of the Marine Reserves Act.

APPENDICES – SEE VOLUME 2

- Appendix 1 Joint Consultation Document including the marine reserves Application by the Director-General (starting pg 53)*
- Appendix 2 PublicVoice Summary of Submissions report – September 2020*
- Appendix 3 Record of public notices of intention to apply for an Order in Council for the proposed marine reserves*
- Appendix 4 Contact lists for Marine Reserves Act section 5(1)(d)*
- Appendix 5 SEMP statutory consultation recommencement letter - Marine Reserves Act section 5(1)(d)(i), (ii) and (iii)*
- Appendix 6 SEMP statutory consultation recommencement letter – Marine Reserves Act section 5(1)(d)(iv)*
- Appendix 7 SEMP statutory consultation recommencement letter – Marine Reserves Act section 5(1)(d)(v)*
- Appendix 8 Commercial Fisheries Information for the Proposed SEMP Marine Protected Area Sites*
- Appendix 9 Manaaki ki te Toka—Southeast Marine Protection Rōpū Report: Summary of Engagement on Proposed Measures to address Marine Protection Impacts on Kāi Tahu Rights and Interests*
- Appendix 10 30 November 2021 – confirmed hui record, Kāi Tahu hui with Minister of Conservation and Minister for Oceans and Fisheries*
- Appendix 11 15 December 2021 letter from Kāi Tahu to Minister of Conservation and Minister for Oceans and Fisheries*
- Appendix 12 Conservation General Policy and Otago Conservation Management Strategy provisions alignment with SEMP*
- Appendix 13 Assessment of consented activities identified in the Application*