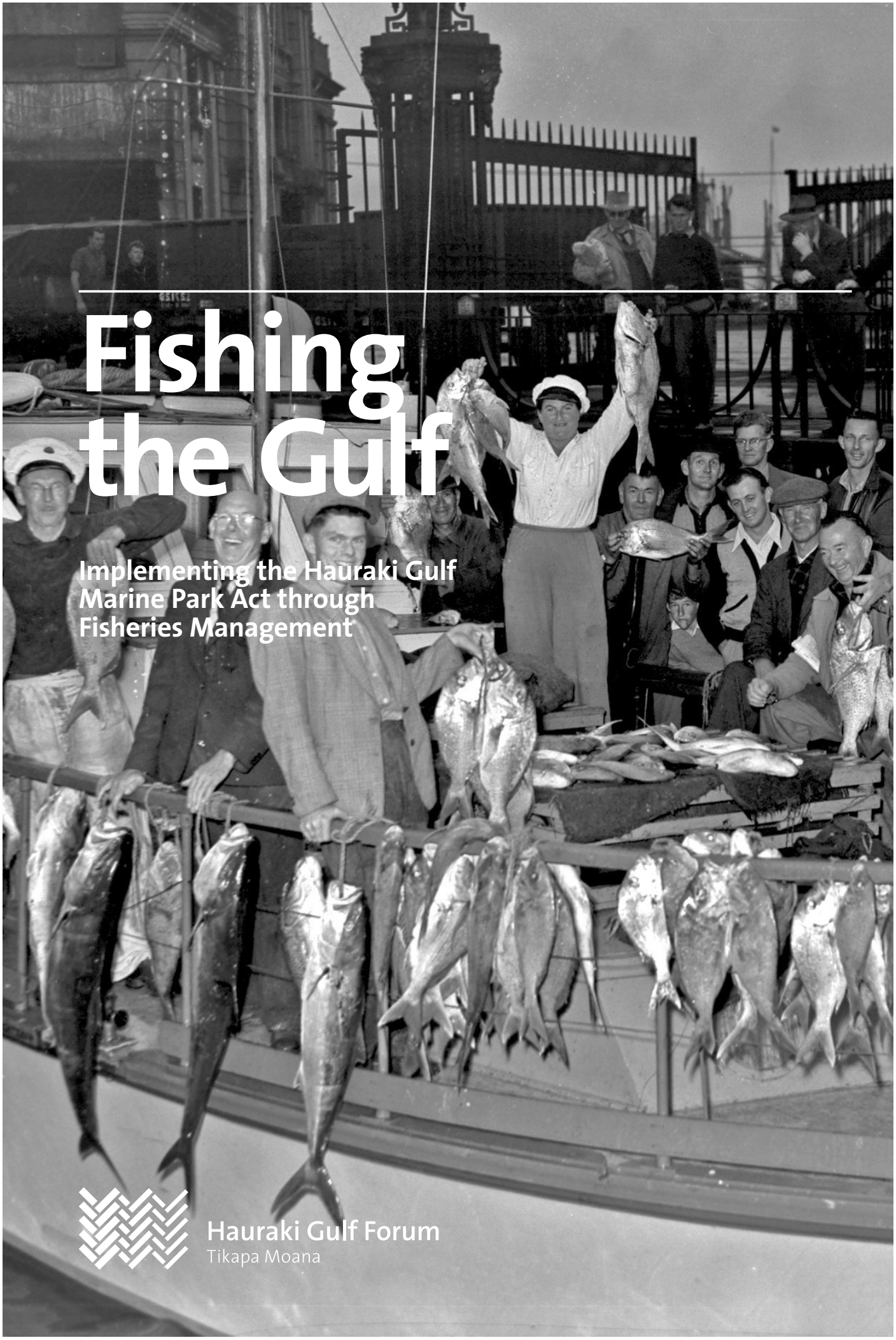

Fishing the Gulf

Implementing the Hauraki Gulf Marine Park Act through Fisheries Management

Hauraki Gulf Forum
Tikapa Moana

First published 2010

Published by:
Hauraki Gulf Forum
c/o Auckland Regional Council
Private Bag 92012
Auckland

The Hauraki Gulf Forum is a statutory body responsible for the integrated management of the Hauraki Gulf. The Forum has representation on behalf of the Ministers of Conservation, Fisheries and Māori Affairs; Auckland Regional Council and Environment Waikato; ten local authorities (Rodney, Franklin, Waikato, Hauraki, Thames Coromandel and Matamata Piako District Councils and North Shore, Waitakere, Auckland and Manukau City Councils); and six representatives of the tangata whenua of the Hauraki Gulf and its islands.

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For more information see www.haurakigulfforum.org.nz.

ISBN: 978-1-877540-79-0

Cover Photo: Fishermen proudly display a large catch of fish - mostly snapper - aboard their ship docked at a wharf in downtown Auckland. A crowd looks on. 1950s. Photographer unknown. NZ Herald Collection. Auckland War Memorial Museum

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DISCLAIMER

This material is intended as general guidance. The guide is not a substitute for proper professional advice where that is needed. It does not purport to provide definitive legal interpretations, nor should it be regarded as doing so. The guide should not be regarded as official government policy.

You should consult a lawyer for legal advice on any fisheries legal issue.

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FOREWORD

This is the second in a series of reports commissioned by the Hauraki Gulf Forum to encourage better implementation of the Hauraki Gulf Marine Park Act 2000.

The forward-looking act recognizes the national and international significance of the Hauraki Gulf and requires management agencies to integrate and focus their efforts on sustaining the gulf's life-supporting capacity.

The legislation's management objectives ask us to protect and enhance the gulf – to leave it in a better, improving state.

Sheltered and shallow, dotted with islands, varied in its habitats, temperate by nature, the Hauraki Gulf Marine Park is naturally a hugely productive system.

Among the many resources and benefits it provides, fisheries are among the most prized: for their intrinsic, recreational and commercial worth.

This guide documents the changing nature of the gulf and its fishery and explores the ways that fisheries managers can ensure the Hauraki Gulf Marine Park Act's objectives are realized.

Mayor John Tregidga, Chair Hauraki Gulf Forum

1 INTRODUCTION

Much of Tikapa Moana – the Hauraki Gulf consists of a broad coastal plain, intersected by river valleys, which was flooded when sea levels rose after the last ice age. This resulted in a highly indented coastline with numerous islands, peninsulas and estuaries bounding a semi-enclosed coastal sea.[1]

Prior to human settlement, the Gulf was a diverse and highly productive marine area. The shallow sheltered waters of the inner Gulf provided excellent nursery areas for juvenile fish. Large schools of fish congregated and spawned in deeper waters. Extensive mussel beds, seagrass meadows, kelp forests and sponge gardens supported a diverse range of marine life. Schools of dolphins and whales frequented the area. The Gulf also supported a wide range of sea and wading birds including migrants from the northern hemisphere.

People have fished the Gulf for centuries. Since early settlement, Māori have harvested kaimoana for sustenance, for ceremonial occasions and for trade. Early European settlers established a thriving commercial fishery in the Gulf. But bulk fishing methods, adopted during the early 1900s, soon depleted fish stocks and also damaged fragile marine habitats.

A century later the Gulf still supports customary fishers, a substantial commercial fishery and a growing number of amateur fishers. The Gulf's marine resources also continue to be of great significance to local iwi and hapū. This high level of fishing activity, coupled with other human-induced impacts, is placing strong pressure on the Gulf's marine environment.

The Hauraki Gulf Marine Park Act 2000 (HGMPA) seeks to better manage these pressures through integrating the efforts of the different agencies which have jurisdiction over the Gulf. It seeks to protect and enhance the Gulf's valuable resources. It also recognises the very important relationship that tangata whenua have with the area.

This guide has been commissioned by the Hauraki Gulf Forum. The Forum has been established under the HGMPA to bring together the different parties involved in the governance of the Gulf. The Forum provides a mechanism through which these parties can develop a common understanding of the key issues facing the Gulf and work collectively to address them.

This guide sets out how the provisions of the HGMPA interface with management of the Hauraki Gulf under the Fisheries Act 1996 and, in particular, how sections 7 and 8 of the HGMPA can be implemented through fisheries management decision-making. It is intended to provide broad guidance to those who have an interest in the Hauraki Gulf and who are involved in processes under the Fisheries Act. This group includes:

- Staff within the Ministry of Fisheries
- Staff of other statutory agencies involved in preparing planning documents impacting on the Gulf, including RMA, conservation and marine protection plans
- Tangata whenua involved in consultation and making submissions on fisheries matters and in preparing iwi planning documents

- Other organisations and individuals involved in consultation and making submissions on fisheries matters

- Professionals involved in advising parties involved in fisheries matters within the Gulf.

The guide begins by briefly describing historical and current fishing activity in the Gulf. It then identifies the environmental issues of relevance to fisheries management, including the impacts of fishing activity on the Gulf's marine environment, as well as the impacts of other activities on fish stocks and habitats. The guide goes on to analyse the relevant provisions of the HGMPA, the legal requirements to implement the provisions within fisheries management, and how these have been interpreted by the courts. It reviews the relevant provisions of the Fisheries Act and then identifies practical ways in which the HGMPA can be implemented through fisheries management and decision-making.

2 FISHING ACTIVITY IN THE HAURAKI GULF

HISTORICAL CONTEXT

Māori have harvested fish and shellfish from the Gulf since the days of early settlement. This was foremost to provide food for families and for guests. But seafood was also harvested for commercial purposes including barter with other tribes, koha and sales to early European settlers.[2] Tangata whenua were kaitiaki of the fishery within their rohe and fished according to tikanga. Although the impacts of this fishing activity are unknown, it appears to have had little impact on fish stocks, which were abundant when European settlers arrived.

Until the 1860s, Māori were the main commercial fishers within the Gulf, using hand lines and nets deployed from small sailboats and supplying the burgeoning settlement of Auckland.[3] For example, Ngatiwai fisherman Tenetahi would sail his scow *Ida* out to the Mokohinau Islands every summer to fish for hapuka:

> They would sail back to the Auckland markets with the huge fish cut up and hanging in the rigging to dry … if one passed to leeward of *Ida* at this time it was unlikely for many a day to forget the powerful fragrance of sun-drying hapuka.[4]

Up until the 1890s, snapper was still very abundant in areas close to Auckland. This is evidenced by reports at the time from the Auckland Fishing Club, which chartered a steamer every Saturday afternoon for 20 or so of its members to go fishing. On one trip they caught 1109 snapper. This situation rapidly changed, however, with the introduction of bulk fishing methods. The Auckland Fishing Club soon gave up its fishing trips as catches dwindled. [5]

Beam trawling was first introduced into the Gulf in 1899. This involved attaching long beams, which extended out over the water, to each side of the vessel. The edges of the trawl net were kept open by attaching them with wires to the beams.[6] Longlines were introduced in 1912 and steam trawlers from 1915. Steam trawlers towed large nets much more quickly along the seabed, and caught significant quantities of bottom-dwelling fish. Their impact was soon noticeable. After only six years,the trawlers started running out of fish in the Gulf and had to supplement with catches from further afield. Danish seiners were introduced in 1923 and provided a more efficient and selective method of catching snapper.[7]

Concerns about the impact of bulk fishing methods on the marine area heightened during the 1920s. In July 1927, the *New Zealand Truth* reported that:[8]

> If the Hauraki Gulf is to be conserved as a fish-breeding ground for future generations, then the power-driven net trawling must be prohibited.
>
> It has been proved beyond doubt that power-driven nets, with often some hundred horse-power engines, drag over the bottom of the sea with such force that they bring up such things as huge logs of timber and large anchors.
>
> As a result of this method of fishing, the bottom, which means shelter, protection and food for the young fry, is torn up.

By the late 1920s the Marine Department was considering how to address the depleted fishery in the Gulf and there were growing conflicts between commercial and recreational fishers. Some recreational fishers thought it no longer worthwhile to go fishing as catch

numbers were so low.[9] Restrictions were ultimately placed on trawling and Danish seining in areas close to Auckland and these were gradually extended over time.[10]

Licensing of commercial fishing boats was abolished in 1963 enabling the fleet to expand significantly. During the 1970s, the very efficient pair trawling method of fishing, where two boats pull a single net through the water, was introduced.[11]

Commercial harvests of snapper from the Gulf peaked in 1971 and again in 1978 and 1979, at more than 10,000 tonnes per annum. Catches then declined and are currently less than half this level. In 1982 the Hauraki Gulf was declared a controlled fishery and the first recreational fisheries controls, in the form of a bag limits, were put in place in 1983. By 1995, the snapper stock in the Gulf and Bay of Plenty was thought to be between only 11 and 13 per cent of its virgin biomass.[12] A year later, snapper was brought into the quota management system.

During the 1960s, marine researchers observed the disappearance of highly productive kelp beds around the rocky coastline and their replacement with "barrens" grazed by kina. The significant reduction in the size and density of the kina's main predators, snapper and crayfish, as a result of fishing activity, was thought to be the cause of this marked habitat change.[13]

Dredging of the extensive mussel beds in the inner Gulf started during the 1920s. The beds stretched across the Firth of Thames and were present in the Rangitoto Channel, Islington Bay, Tamaki Strait and around Ponui Island. An estimated 15 million mussels were landed in 1961. The fishery collapsed soon thereafter and the mussel beds have failed to recover. This was because, as well as removing the mussels, dredging removed the surfaces to which newly recruiting mussels could attach.[14] High levels of sediment, draining from catchments into the Firth of Thames, may also have contributed to the lack of recovery.

During 2002, an assessment of the benthic habitats of much of the inner Gulf (south of a line extending from Waiwera due east to Colville and excluding estuaries and the Firth of Thames) highlighted the significant impacts which humans have had on the Gulf's marine environment. It found the seabed to be dominated by broad areas of mud, with hardly any living organisms on the surface (epifauna), and relatively few fish species present. Only occasional patches of horse mussels and scallops were evident. The study did identify a few areas which had shell-armoured surfaces and epifauna present. These were in areas where there were strong current flows, such as the Motuihe and Ponui Channels.[15]

COMMERCIAL FISHING

The Hauraki Gulf Marine Park covers commercial fisheries statistical areas 005, 006 and 007 and parts of 003, 004, 008 and 009 (see Appendix 1). For analysis purposes, this report uses the inshore statistical areas of 005 (which covers part of the outer Gulf northwards of a line from Cape Colville to Cape Rodney), 006 (the middle regions of the Gulf south of this line but north of Coromandel Harbour and the inner islands such as Waiheke and Kawau) and 007 (the inner regions of the Gulf close to land and including the Firth of Thames) to establish the main commercial inshore species within the Park. Statistical area 008 covers the inshore waters to the east of Great Barrier Island and the Coromandel Peninsula but it also includes much deeper waters and therefore deepwater fisheries. Only those species caught in 005, 006, 007 and the inshore species within statistical area 008 are included in the analysis.

Snapper is the main commercially caught species within the Gulf comprising 62 per cent (by weight) of the total commercial catch for the 2007/08 fishing year. Other main target species include flatfish, grey mullet, kahawai, John Dory, rig and gurnard, but none of these species comprises more than 5 per cent of the total catch (see Figure 1). The main commercial shellfish species caught within the Gulf are scallops, crayfish and kina.

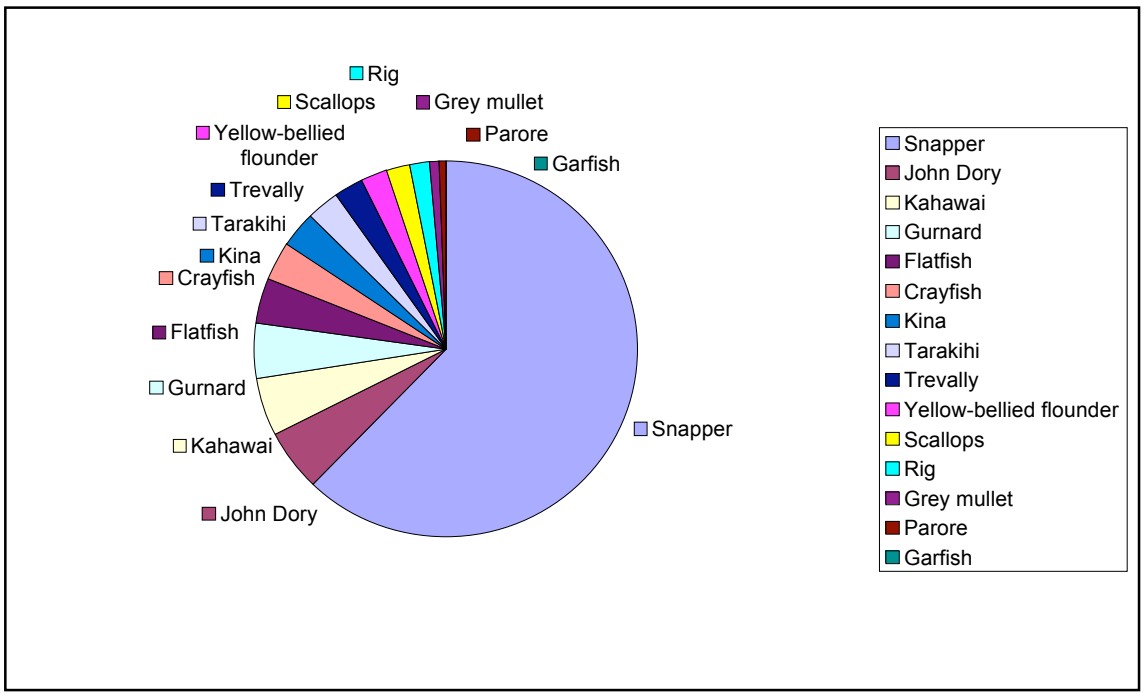


FIGURE 1: PROPORTION OF ESTIMATED COMMERCIAL CATCH WITHIN THE HAURAKI GULF BY TARGET SPECIES
Source: Ministry of Fisheries Records

The main commercial fishing methods used within the Gulf are set net (31% of boats), bottom longline (20%), bottom trawl (19%) and Danish seine (11%). Although there are more set net boats in the Gulf, the greatest proportion of the catch (41%) is harvested by bottom trawling followed by bottom longlining (30%). The proportion of the catch harvested by bottom trawling and Danish seining has increased in recent years with that caught by bottom longlining decreasing (see Figure 2). Bottom trawl, longline and Danish seine vessels tend to be larger vessels, capable of going out longer and further and of catching greater quantities of fish, than are set net boats.

Set net fishers often target relatively small local areas and are focused in the mid Gulf and Firth of Thames. They primarily target flatfish, grey mullet, kahawai and rig, but can catch a range of other species which swim into the nets.

Bottom trawling is mainly undertaken in the outer regions of the Gulf as there are regulations excluding them from the inner portions (see Appendix 2). Bottom trawling involves towing a net through the sea, sometimes for several kilometres in one tow. Steel cables attach the net to the boat. The mouth of the net is held open by two doors. The fish enter the net through the mouth and move to the smaller cod end. This generally results in lower-quality fish, than are those caught by other methods, because the fish can become bruised and crushed as they are towed along. The net is often protected along the leading edge by chains or rollers, which are dragged along the sea floor. Pair trawling involves a net being towed between two boats. This enables larger nets to be towed, and for the nets to be

towed at a faster speed, which means that larger and faster swimming fish can be captured. Bottom trawling primarily targets snapper and John Dory and also catches significant quantities of gurnard, tarakihi and trevally.

METHOD	COMMERCIAL CATCH 2003/04	COMMERCIAL CATCH 2007/08	MAIN TARGET SPECIES
Bottom trawling	*34%*	*41%*	*Snapper, John Dory*
Bottom longlining	*41%*	*30%*	*Snapper*
Danish seining	*15%*	*23%*	*Snapper, John Dory*
Set netting (and other)	*10%*	*6%*	*Flatfish, Grey Mullet, Kahawai, Rig*

FIGURE 2: MAIN COMMERCIAL METHODS OF FISHING IN THE HAURAKI GULF
Source: Ministry of Fisheries Records: statistical areas 005, 006 and 007

Bottom longline vessels primarily target snapper within the Gulf. Bottom longlining involves setting a long main line, which has numerous branch lines connected to it, each containing a baited hook. The lines are attached to the sea floor with an anchor at one end and a weight at the other. The lines are left on the bottom for some hours before being hauled in. This results in little damage to the fish caught.

Danish seining uses a net and weighted ropes. One end of the net is attached by a long rope to a buoy and the other end attached by another long rope to the fishing vessel. The ropes and net are laid out on the sea floor in a diamond shape around the target fish. They are then pulled together by the fishing vessel moving slowly forward. As the ropes move closer together along the sea floor, the fish are herded towards the end of the net, which is then slowly winched in. This method enables particular species to be targeted and results in high-quality fish. Danish seine vessels primarily target snapper and John Dory. Similar to the case with bottom trawlers, Danish seine vessels are restricted from much of the inner Gulf (see Appendix 2).

Some small-scale commercial fisheries within the Gulf use other fishing methods. For example, a commercial scallop dredge fishery primarily targets scallop beds around the Mercury Islands and also off Little Barrier Island and Colville. Dredging involves dropping a steel-toothed dredge to the sea floor and then dragging it across the seabed.

There is also a commercial potting fishery for both crayfish and paddle crabs. Potting involves lowering baited steel mesh pots to the sea floor with their location marked by a line and float. The targeted species are attracted to the bait and enter the pot. Once inside they are unable to escape. The pots are lifted by winch back onto the boat and the catch removed. A breath-hold dive fishery primarily targets kina, but also sea cucumbers and paua.

The total commercial catch harvested from the Hauraki Gulf was around 6,000 tonnes during the 1991/92 fishing year and has since dropped to around half that amount (3,000 tonnes) since the 2001/02 fishing year (see Figure 3). This has coincided with a gradual reduction in the number of commercial vessels fishing within the Gulf, from around 500 in the 1991/92 year to around only 150 in the 2007/08 year.

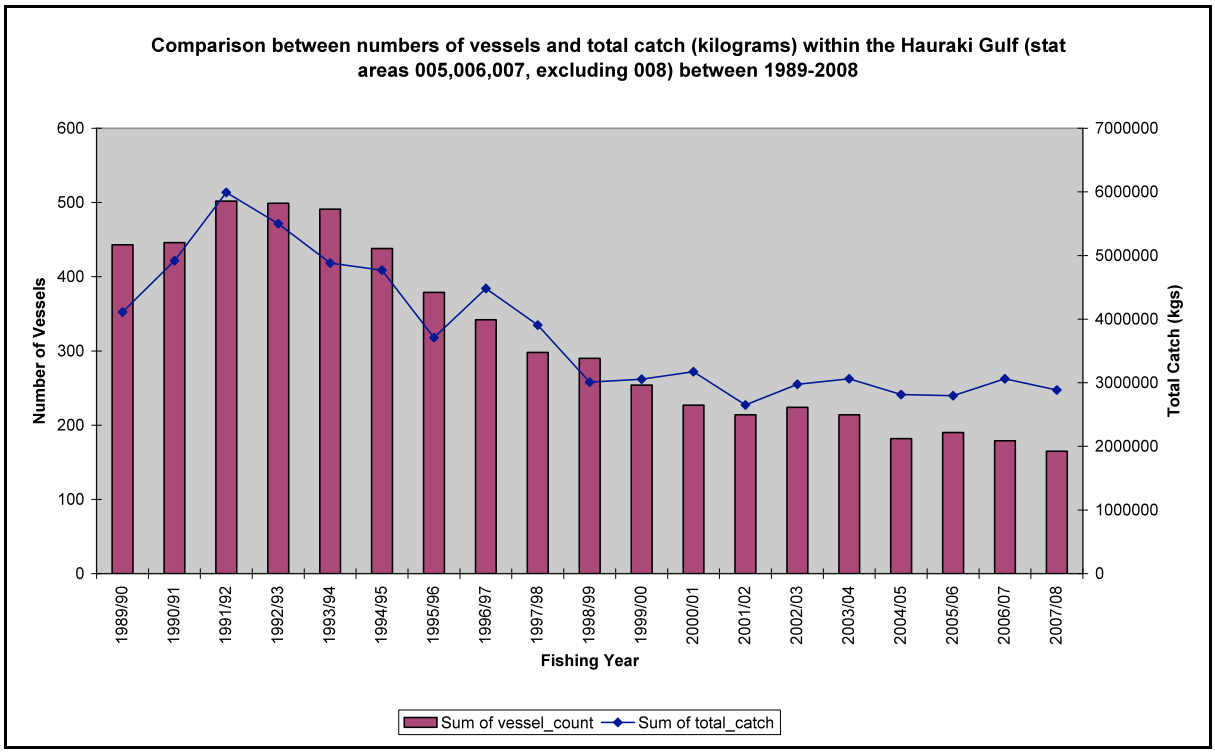


FIGURE 3: NUMBER OF VESSELS AND TOTAL COMMERCIAL CATCH IN THE HAURAKI GULF 1989 TO 2008
Source: Ministry of Fisheries Records

CUSTOMARY FISHING

Māori customary fishing was traditionally undertaken for a variety of purposes. These included whānau collecting seafood for the kāinga on a regular basis and on behalf of extended kin living inland or elsewhere. Seafood was collected as an exercise of manaakitanga for visitors and to provide seafood for guests to support the mana of the marae. Seafood was also collected for hui and tangi.[16] Coastal hapū frequently had reciprocal arrangements with inland tribes whereby access to the coast and kaimoana would be balanced by access to forestry resources.

What is now referred to as customary fishing under fisheries regulations has a far more limited application, as described in Chapter 5. This category of customary fishing is more prevalent in some parts of the Gulf, including Waiheke Island, Kaiaua and along the west coast shoreline of the Coromandel Peninsula. Quantities caught are currently small and are unlikely to place pressure on fish populations.[17]

RECREATIONAL FISHING

The Hauraki Gulf is home to some of the most popular recreational fishing grounds in New Zealand. Up to 1,000 recreational boats are used for fishing within the Gulf on a typical Saturday, Sunday or holiday during the summer months. The main finfish species caught are snapper, kingfish, kahawai, trevally, gurnard, tarakihi and John Dory. The key shellfish species targeted are scallops, crayfish, cockles, pipi and paua. It is estimated that

recreational fishers harvested 1,345 tonnes of snapper, 95 tonnes of kahawai and two tonnes of kingfish during the 2004/05 fishing year (see Figure 4). These estimates are, however, subject to a margin of error. Recreational fishers are not required to provide any official record of their catch. The information is based on a combination of aerial surveys, boat ramp surveys and telephone diary data.

SPECIES	CATCH (tonnes)
Snapper	1,345
Kahawai	95
Kingfish	2

FIGURE 4: ESTIMATED RECREATIONAL CATCH FROM THE HAURAKI GULF 2004/05 FISHING YEAR
Source: Ministry of Fisheries Records

Rod and line fishing from boats and the shore is the main method used by recreational fishers within the Gulf. The main target species is snapper. The areas around Rangitoto, Motutapu and Motuihe Islands sustain some of the highest recreational fishing levels in New Zealand. This is especially so over the summer period when hundreds of boats can be observed fishing there (see Figure 5).

Diving (both breath-hold and scuba) for species such as crayfish and scallops is common throughout the Gulf. Some recreational fishers target crayfish and scallops using pots and dredges respectively, but the majority of recreational fishers dive for them. Other species such as kina and green-lipped mussel are also targeted by divers. Spear-fishing targeting kingfish, John Dory and butterfish has become an increasingly popular sport within the Gulf.

Longlining has had somewhat of a renaissance in recent years with recreational fishers using new technologies such as torpedoes and kites to set longlines from the shore. This method commonly catches popular species such as snapper, gurnard, trevally and kahawai.

Set netting occurs in river mouths and estuarine areas throughout the Gulf. The main species targeted by recreational set netters include flatfish, grey mullet, school shark, rig and snapper. Game fish species such as swordfish, marlin and tuna are also caught occasionally within the boundaries of the Gulf by trolling methods.

There are increasing pressures on intertidal shellfish species from targeted hand gathering. These pressures are greatest near urban areas in and around Auckland and the Coromandel Peninsula. The main species targeted by hand gathering are cockles, pipis and mussels although almost all intertidal shellfish species found within the Gulf are gathered.

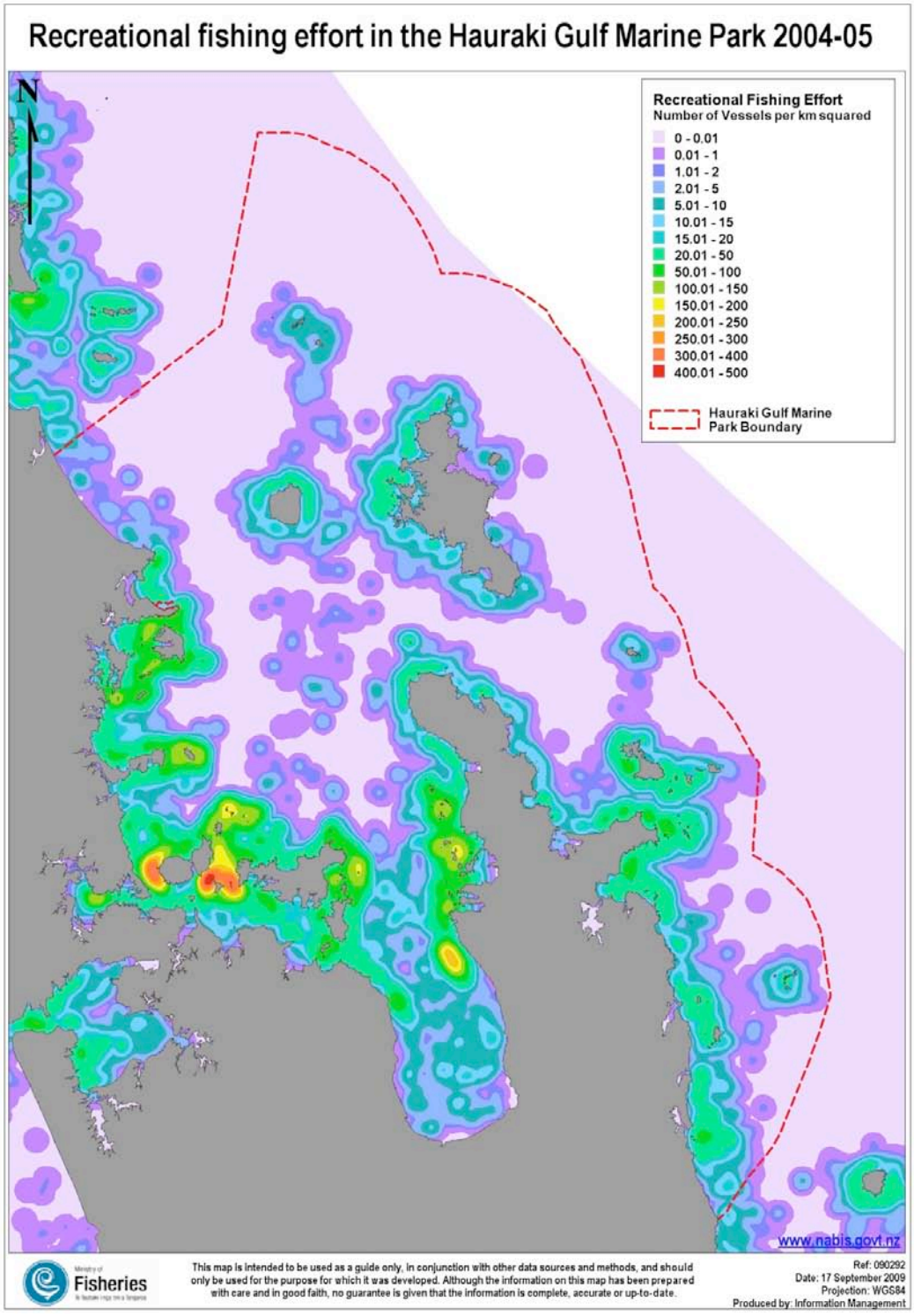
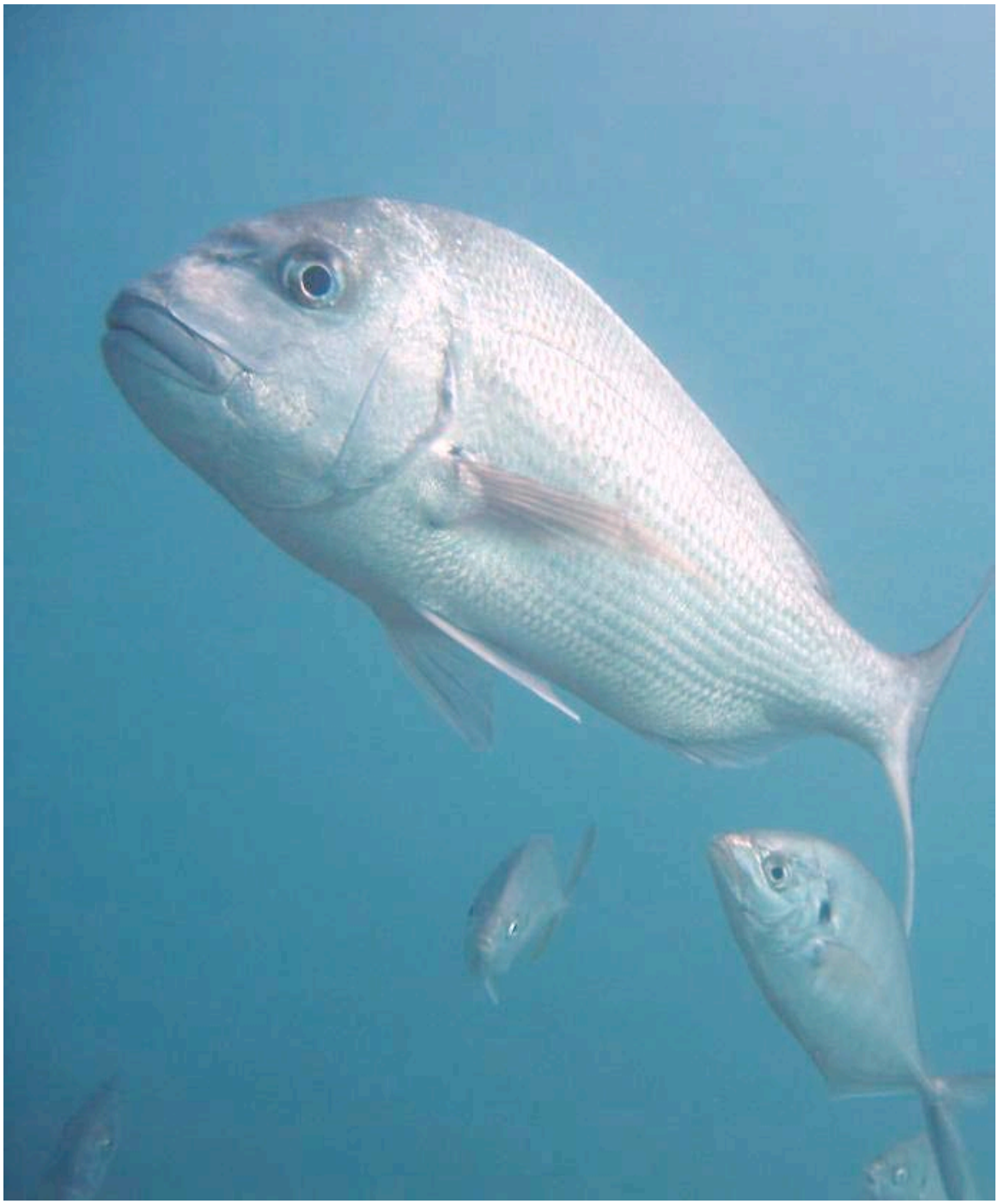


FIGURE 5: RECREATIONAL FISHING EFFORT IN THE HAURAKI GULF 2004/05



3 ENVIRONMENTAL IMPACTS

Fishing activity has a wide range of impacts on the Gulf's marine environment including on the targeted fish stock, on by-catch fish species, on protected species such as marine mammals and seabirds, on food webs and on marine ecosystems more generally. In addition, non-fishing activities can impact on the health of fish stocks and the marine environment which supports them. These include sediment and pollutants originating from land-based activities, seabed mining, dredging of the seabed, and disposal of spoil and waste directly into the marine area. This chapter provides an overview of these environmental impacts within the Gulf.

FISH STOCKS

The most direct impact of fishing activity is on targeted fish stocks which are reduced in size as a result of harvesting. Large reductions in the size of a fish stock can affect the ability of the stock to reproduce and sustain itself. Fishing also preferentially removes larger and older fish, changing the size and age structure of exploited populations and reducing a stock's genetic diversity.

Different fish species have various abilities to recover from harvesting pressure. Some species, such as snapper, are highly productive and can therefore recover relatively quickly. Snapper release large batches of eggs over spring and summer each year. Other species, such as rig, are less productive and are therefore more susceptible to over-harvesting. Rig give birth to only a small number of live young each year.

Larger fish generally have a greater reproductive capacity than do smaller fish, so removing these from the stock can reduce its overall reproductive potential. Traditional kaitiakitanga required that, in times of scarcity, the larger fish were not harvested to preserve the breeding stock. Current fisheries management restricts the harvest of small rather than large fish and also limits the total catch by species.

The current knowledge about the status of the key harvested fish stocks within the Hauraki Gulf is summarised in Figure 6. This information relates to the quota management area for each stock, which extends over an area much larger than the Gulf itself.

The snapper stock present within the Hauraki Gulf is thought to be part of a larger stock which extends south into the Bay of Plenty. The current stock is estimated to be somewhere between a quarter and just under a third of its virgin biomass and above the size which can produce the maximum sustainable yield (B_{MSY}). There is some uncertainty about these figures, however, because the last stock assessment was undertaken over nine years ago.

Although the total biomass of the Gulf and Bay of Plenty snapper stock is now thought to be increasing, the average size of snapper caught at around 35 centimetres, is relatively small when compared to snapper stocks in other areas. This means that more fish need to be caught in the Gulf and the Bay of Plenty, than elsewhere, to achieve the same total harvested weight. These snapper also exhibit some of the slowest growth rates of any snapper stock in New Zealand. The reason for this is not known.[18]

For most other species, the biomass of the virgin fish stock (B_0), the B_{MSY} and the current fish stock is unknown. For many, assessments of the sustainability of the current catch levels are made using catch per unit effort information (CPUE), on the basis that if more effort is

required to catch the same amount of fish, this indicates a declining stock and vice versa. This is a somewhat crude measurement tool but is often the only one available when little is known about a stock.

FISH STOCK	VIRGIN BIOMASS (tonnes)	B_{MSY} (tonnes)	CURRENT STOCK (tonnes)	CURRENT STATUS
Snapper (SNA1 – Hauraki Gulf/Bay of Plenty)	280,000	64,000 (23%)	Between 70,000 (25%) and 90,000 (32%)	Last stock assessment in 2000. Stock thought to be above B_{MSY} and increasing. Fish relatively small and slow growing compared to other snapper stocks
John Dory (JDO1)	Unknown	Unknown	260 (2000)	No trend in size since 1988. Catch thought to be sustainable in the short term
Kahawai (KAH1)	Between 42,000 and 60,000	Between 9,000 (21%) and 17,000 (28%)	Between 11,000 (26%) and 36,000 (60%) (2006)	Stock increasing. Thought to be above B_{MSY}
Gurnard (GUR1)	Unknown	Unknown	Unknown	Stable or increasing CPUE trends indicate that catch is sustainable
Flatfish (FLA1)	Unknown	Unknown	Unknown Variable	CPUE increasing for yellow-bellied flounder, decreasing for sand flounder
Crayfish (CRA2)	Unknown	Unknown	Unknown	Well below B_{MSY}. Current catch thought to be sustainable
Kina (SUR1B)	Unknown	Unknown	Unknown	Commercial harvest stable. Not known if current harvest is sustainable
Tarakihi (TAR1)	Unknown	Unknown	Unknown	Thought to be above B_{MSY}. CPUE slightly down for Bay of Plenty (including Gulf).
Trevally (TRE1)	Unknown	Unknown	Unknown	Thought to be declining
Scallops (SCA1)	Unknown	Unknown	Fluctuates each year	Scallop abundance experiences large fluctuations – reasons for this not understood
Rig (SPO1)	Unknown	Unknown	Unknown	Reported landings have consistently declined. CPUE has decreased. Not known if current catch rate is sustainable
Grey mullet (GMU1)	Unknown	Unknown	Unknown	CPUE in Gulf variable, showing no trend

FIGURE 6: STATUS OF COMMERCIALLY TARGETED FISH STOCKS IN THE HAURAKI GULF
Source: Ministry of Fisheries Records

The limited information available on fish stocks within the Gulf indicates that many of the stocks may be stable although crayfish stocks are thought to be well below B_{MSY} and trevally and rig stocks are thought to be declining.

Shellfish are also an important and highly utilised resource within the Gulf. Intertidal shellfish such as pipi, cockles and tuatua are susceptible to over-harvest, because they are very accessible, and can be harvested without any specialised equipment. Monitoring of

stocks at selected beaches has indicated significant declines in some areas and increases in others (ee Figure 7).

There has been a substantial decline in the number of cockles at Umupuia Beach. In October 2008, this beach was closed to harvesting for two years to enable stocks to recover. During 2009, 70 to 80 per cent of the cockle population died at Whangateau estuary as a result of parasitic and bacterial infections. The estuary was closed to cockle and pipi gathering from 25 March 2010 for three years.

LOCATION	STOCK SIZE (million)	STOCK SIZE (million)	% CHANGE
Okoromai Bay	33 (1997)	20 (2006)	-39%
Umupuia Beach	85 (1997)	12 (2006)	-86%
Whangamata	36 (1999)	33 (2006)	-8%
Whangateau	253 (2001)	349 (2005)	+38%
Whangapoua	13 (2002)	34 (2005)	+162%

FIGURE 7: CHANGES IN COCKLE POPULATIONS AT SURVEYED HAURAKI GULF SITES
Source: Ministry of Fisheries Records

BY-CATCH

Fishing activity often results in a range of non-targeted species being caught along with the targeted species. These are collectively termed “by-catch”. Different fishing methods can result in varying amounts and types of by-catch. Rod and line fishing, diving and potting are selective methods of fishing which usually result in little by-catch. Danish seining can be relatively selective when it targets schools of fish. Longlining in the Gulf can catch a range of fish species, which are not specifically targeted, but most of these are managed under the quota management system.

Set netting and trawling are the most non-selective fishing methods and they can entrap a wide range of species which came within the path of the nets. Set netting can be particularly damaging if the nets become snagged on rocks or reefs and cannot be retrieved. They can also cause problems when nets come adrift and float unconstrained through the water column. Such lost nets can continue to “ghost fish” for long periods of time, killing fish which swim into their paths.

A large proportion of by-catch is of species which are managed under the quota management system and these are normally landed and sold. However, a significant volume of non-commercial species is also caught and this may result in the depletion of sensitive reef communities and species which are slow to reproduce.

In particular, set netting over reefs has been linked with the serial depletion of reef species, and there is now a prohibition on the sale of 19 reef species if caught within the Auckland and Kermadec Fishery Management Area which includes the Gulf (see Figure 8).[19] There is also a prohibition on commercial and recreational set netting around the shores of some offshore islands, off the tip of the Coromandel Peninsula and off Tairua Harbour (see Appendix 3). But most of the Gulf is still open to set netting so long as a range of restrictions, such as those on mesh size and net length, is adhered to. Minimum mesh sizes are prescribed so that undersized fish can swim through the net unharmed.

SPECIES	
Banded wrasse	Red moki
Black angelfish	Red mullet (goatfish)
Butterfly perch	Red pigfish
Giant boarfish	Rock cod
Green wrasse	Sandager's wrasse
Kelpfish (hiwihiwi)	Scarlet wrasse
Long-finned boarfish	Silver drummer
Marblefish	Splendid perch
Notch-headed marblefish	Toadstool groper
Painted moki	

FIGURE 8: REEF FISH SPECIES PROHIBITED FROM SALE WHEN CAUGHT IN THE HAURAKI GULF

PROTECTED SPECIES

Fishing activity can result in the inadvertent capture of protected species such as dolphins, seals, turtles and seabirds. There was one recorded fatality of a bottlenose dolphin caught in a snapper trawl fishery within the Gulf during the 2007/08 fishing year. The 2008 Hauraki Gulf State of the Environment Report noted that the incidental by-catch of common dolphins within recreational set nets has been identified as a problem in the Gulf.[20] One green turtle was recorded caught in the bottom-trawl fishery during the 2008/09 and 2009/10 fishing years.

A number of petrels and shearwaters have been recorded as being caught in the Gulf's snapper longline and bottom-trawl fisheries. These include black petrels and flesh-footed shearwaters, whose populations are thought to be in gradual decline nationally. The black petrel is endemic to New Zealand and has been identified as vulnerable by the World Conservation Union IUCN.[21]

Seabirds are caught on hooks when they dive for the bait in the longline fishery. A range of mitigation devices has been developed to help reduce this problem including dying baits blue and using tori lines, which consist of hanging coloured bands over the longlines when they are being set, so that the lines are more visible to the birds.

The spotted black groper is protected under the Wildlife Act 1953. It occurs in small numbers, mainly around the outer Gulf islands, and is occasionally caught by spear-fishing or on lines.

BENTHIC HABITATS

Fishing activity can damage benthic habitats when fishing equipment contacts the seabed. Bottom trawling can be particularly damaging as a result of heavy nets and equipment being dragged along large areas of the sea floor. Habitat-forming organisms such as mussels and sponges can be crushed and the profile of the sea floor flattened. Bottom trawling can also suspend sediment in the water column which smothers remaining benthic organisms and clogs the apparatus of filter feeders.

Extensive areas of the Gulf are regularly trawled, with the heaviest trawling pressure occurring within a triangle located off the western edge of the tip of the Coromandel Peninsula (see Figure 9). There is also heavy trawling pressure around Little Barrier and Great Barrier Islands and north of Kawau Island. As already indicated, trawling is excluded from the inner Gulf.

Like bottom trawling, dredging can be harmful to benthic habitats and in the past was responsible for destroying the extensive mussel beds in the Gulf. Dredging is currently undertaken to harvest scallops, primarily in the area between the Mercury Islands and Opito Bay, but also around Little Barrier Island. The heavy dredge scrapes the sea floor, crushing benthic organisms and flattening the seabed profile. Like trawling, it also suspends sediment in the water column. Dredging can damage the target stock as well as the seabed. It has been estimated that for every two scallops landed by dredging, at least one scallop is left dead on the sea floor as a result of the dredging process.[22]

Danish seining can also impact on benthic habitats through the dragging of weighted lines across the seabed but the impacts are less than for trawling and dredging activity, because the lines are much lighter and are dragged for shorter distances. As already indicated, Danish seining is also excluded from the inner Gulf area.

Impacts on benthic habitats can be reduced by ensuring that trawl equipment does not come into contact with the sea floor, by avoiding trawling and dredging in areas which have not already been impacted and by excluding trawling and dredging from areas which have ecologically important benthic habitats or the capacity to regenerate them. The impacts of fishing activity on benthic habitats can also be reduced by using more “benthic-benign” methods where this is commercially feasible, such as Danish seining and longlining to catch finfish and diving to harvest scallops.

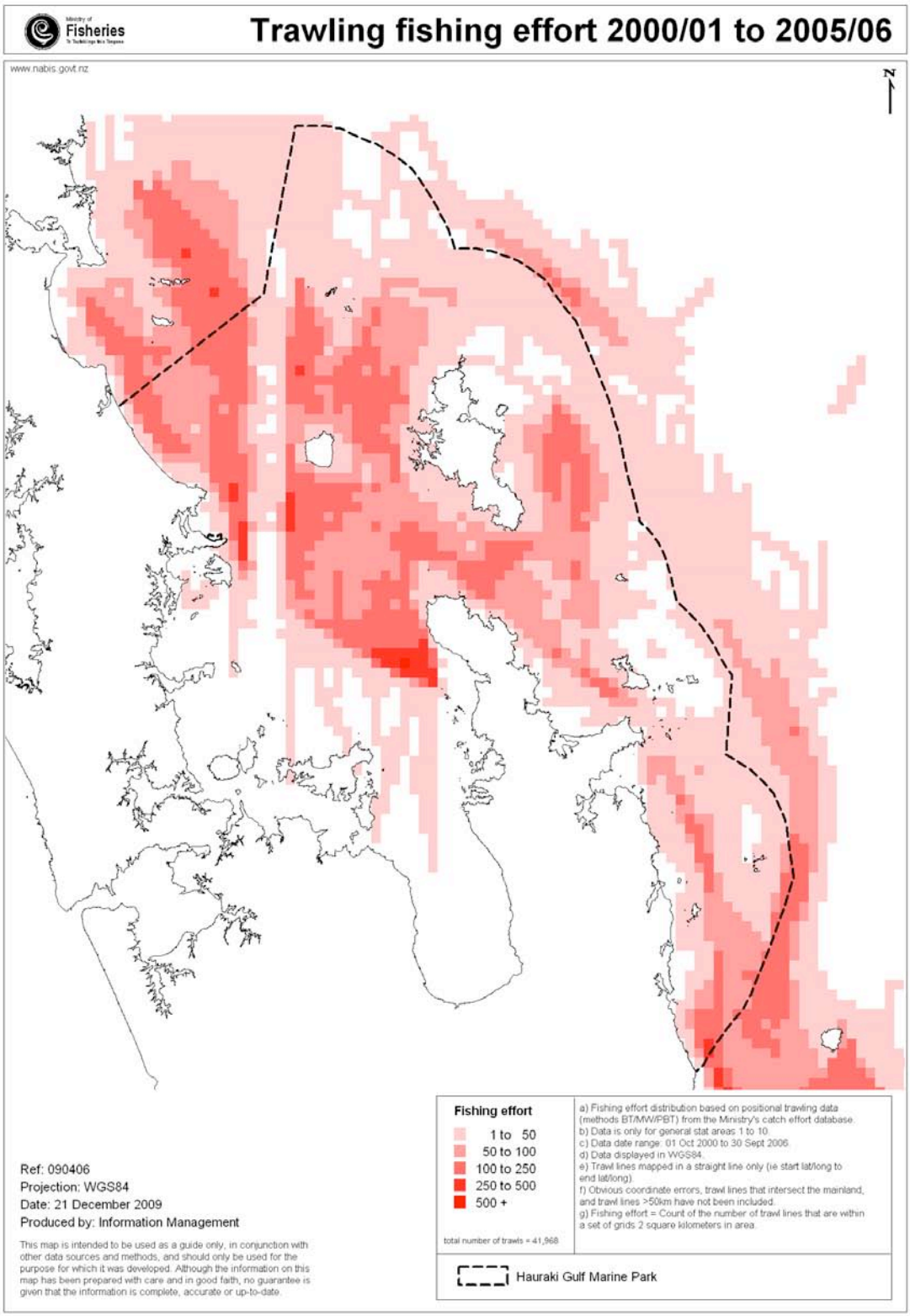


FIGURE 9: THE DISTRIBUTION OF BOTTOM TRAWLING IN THE HAURAKI GULF (2000/01 – 2005/06)

MARINE ECOSYSTEMS AND BIODIVERSITY

As well as direct impacts, reductions in populations of targeted fish and by-catch species can have indirect impacts which flow through the many levels of the food web and fundamentally change entire ecosystems. When top predators are removed, their prey species can increase in number, in turn increasing predation further down the food web. This is thought to be the cause of the "kina barrens" which appeared around the Gulf's rocky reefs when snapper and crayfish were heavily fished, and kina populations increased, depleting the kelp on which they graze. The removal of large amounts of fish from the marine environment can also impact on other top predators such as marine mammals and seabirds which rely on those species for food. These indirect ecosystem impacts of fishing activity are generally poorly understood.

One way of addressing some of the broader ecosystem impacts of fishing activity is to establish a network of marine protected areas (MPAs), where fishing activity is heavily controlled or excluded. This provides areas where species and ecosystems can function with minimal human impacts. Marine protected areas can provide control areas for scientific comparisons; they can protect sensitive marine habitats from damage caused by the use of fishing equipment. They can also provide a buffer in the event of uncertainty, management failure or additional external pressure on the marine area, such as from climate change.

Marine protected areas can benefit fishing activity, through spillover effects, where species within the protected areas spawn and/or move into fishable areas. Marine protected areas, however, are not generally seen as a fisheries management tool and there is often poor linkage between the identification and ongoing management of MPAs and the management of fisheries activities. This can result in unintended consequences where, for example, excluding fishing activity from one area can increase the level of fishing activity in another with negative environmental consequences.

There are few areas of the Gulf which are fully protected from the impacts of fishing activity. Although there are five marine reserves, more than in most other regions of New Zealand, these reseves currently protect less than 0.3 per cent of the Gulf's marine area. As well as being small, the areas protected are not representative of the Gulf's range of habitats and species, with, for example, only an estimated 37 per cent of intertidal species present within the Gulf currently protected.[23]

Marine reserves are not the only form of protection in the Gulf. Fishing activity is excluded from the Tawharanui Marine Park and there are proposals to convert this area to a marine reserve. In addition, there are submarine cable and pipeline protected areas within which anchoring and fishing is prohibited. The most significant runs in a zigzag northwards from Takapuna Beach (see Figure 10).

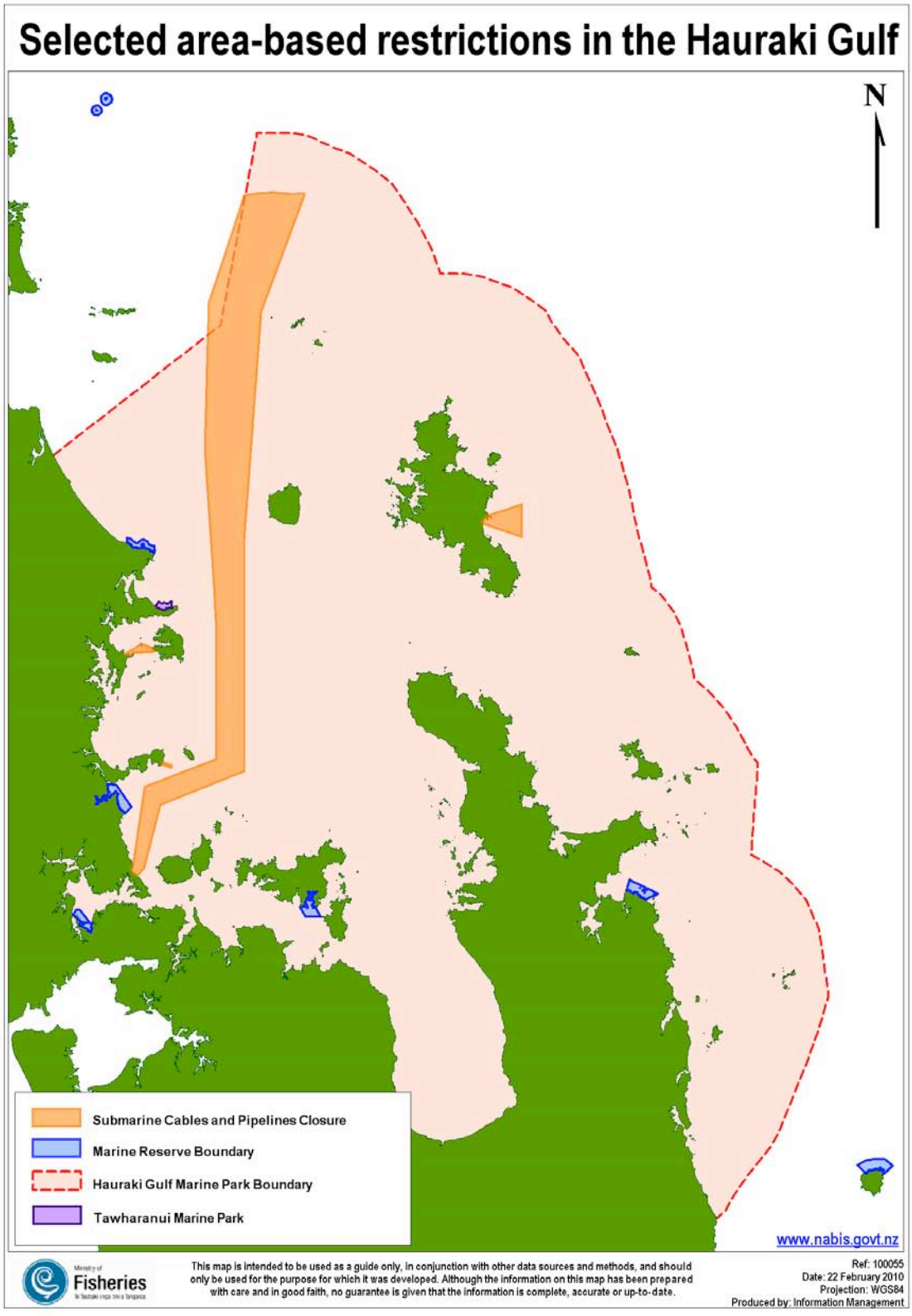


FIGURE 10: AREAS WITHIN THE HAURAKI GULF FULLY PROTECTED FROM FISHING ACTIVITY

HABITATS OF SIGNIFICANCE TO FISHERIES

The Hauraki Gulf provides habitats which are of significance to fisheries. Large numbers of juvenile snapper have been found concentrated in the shallower areas of the Gulf, particularly north of Whangaparaoa and off northwest Waiheke Island.[24] This indicates the important role the inner Gulf plays as a nursery area for juvenile snapper.

The Gulf is also the largest and most important spawning ground for snapper on the north-east coast, with spawning concentrations found between Tiritiri Matangi and Flat Rock east of Kawau Island, north of Waiheke Island and in the outer Gulf.[25]

A range of benthic habitats within the Gulf are thought to be important for fish. Research undertaken in the Whangapoua Estuary, on the east coast of the Coromandel Peninsula, has shown that the presence of seagrass significantly increases the abundance of juvenile snapper, trevally, parore, pipefish and triple fins relative to non-vegetated areas.[26] This is thought to be because seagrass beds provide juvenile fish with a refuge from predation.

Subtidal seagrass beds are particularly important for fish, as the seagrass remains submerged at low tide. There are only two known subtidal seagrass beds within the Gulf, one located off Slipper Island and the other off Great Mercury Island.[27]

Seagrass beds have declined within the Gulf, primarily due to sedimentation. Sponge gardens, bryozoan reefs and horse mussel beds also provide important habitats for fish and these have likewise declined within the Gulf.

Run-off from land entering the marine area can be particularly harmful to marine ecosystems. This is both from the effects of the sediment being suspended in the water column and from sediment settling on the seabed. Negative impacts of significance to the health of fisheries include:[28]

- Clogging of gills of filter feeders and decreases in filtering efficiencies (significant for cockles, pipi and scallops)
- Reductions in settlement success and survival of larval and juvenile phases (significant for kina and paua)
- Reductions in foraging abilities of finfish (such as juvenile snapper)
- Modification or loss of important nursery habitats especially those composed of habitat forming species.

Other activities which may occur in the coastal marine area, and which cumulatively may have harmful impacts on fisheries habitats, are the dredging of channels, the dumping of sediment and other material in the marine area, and development works such as marinas, wharves, sea walls and reclamations.

The two regional coastal plans applying to the Gulf identify some coastal marine areas as meriting additional protection from the adverse effects of human activities (see Figure 11). These are primarily designed to protect estuarine communities and bird habitats, rather than habitats of importance to fisheries, although the areas overlap to some extent. All the areas currently identified in the plans are located close to the shore.

The *Auckland Regional Plan: Coastal* identifies Coastal Protection Areas 1 and 2. Coastal Protection Areas 1 include ecologically important intertidal habitats such as saline

herbfields, saltmarshes and mangroves. They also include roosting and feeding areas for wading birds. Adverse effects on these areas are to be avoided.

Coastal Protection Areas 2 are identified in the plan as those not meriting the same protection as Areas 1 as they are more robust. They include the main intertidal banks of harbours and estuaries and areas of foreshore which are important habitats for coastal birds. They also include areas of mangroves, saltmarshes and herbfields, and subtidal areas, which collectively encompass most of the estuaries and small harbours within the area of the Gulf covered by the plan. In these areas, rather than avoiding all adverse effects, the provisions of the plan are designed to protect the values identified in these areas.[29]

The *Waikato Regional Coastal Plan* identifies areas of significant conservation value. These include harbours, estuarine systems, the coastal fringes of islands and important habitats for wading and coastal birds, amongst other things. The plan provisions stipulate that adverse effects on the conservation values in these areas are to be avoided "as far as practicable" and if not practicable, adverse effects are to be mitigated and provision made for remedying those effects, "to the extent practicable".

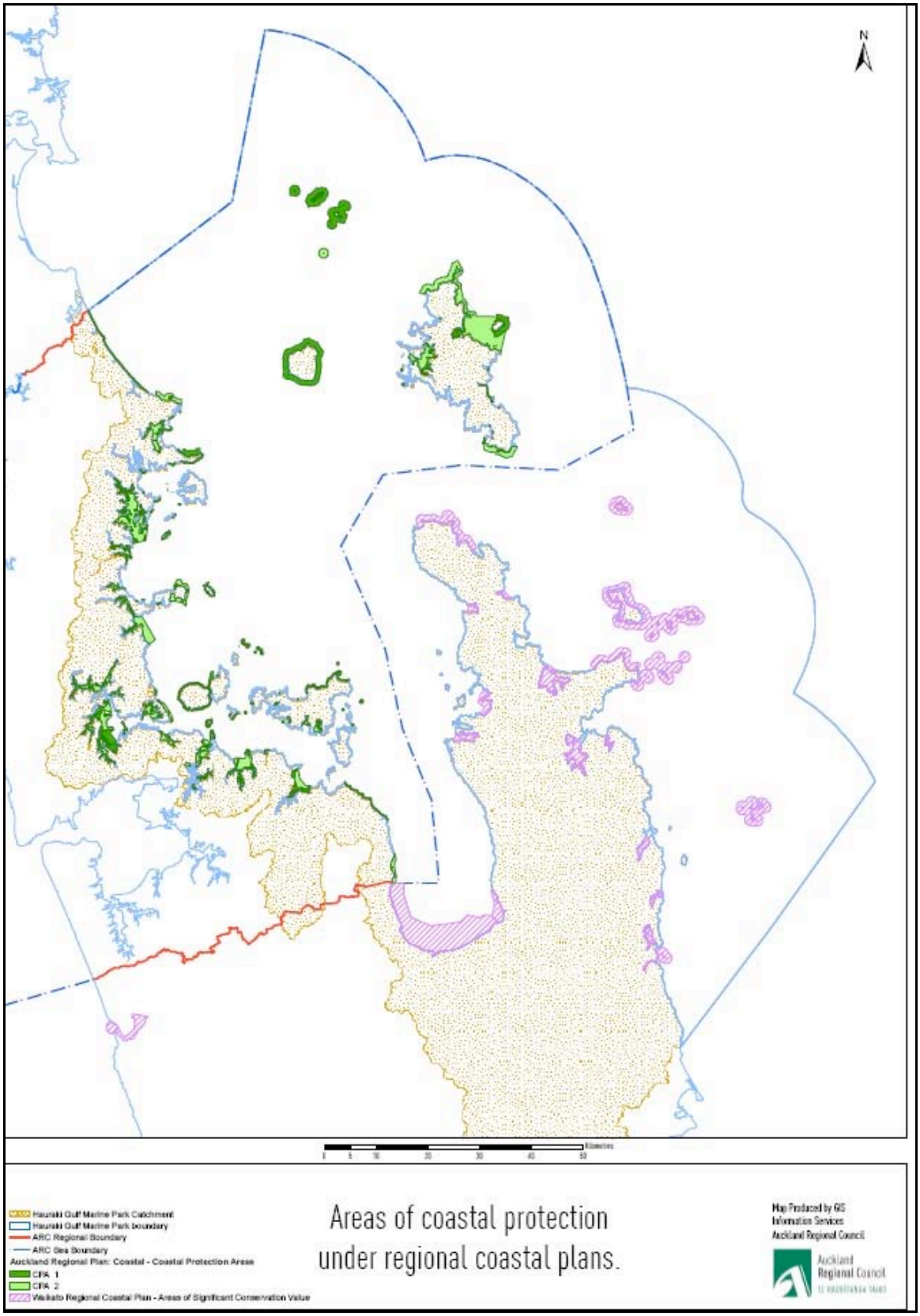


FIGURE 11: COASTAL MARINE AREAS WITHIN THE GULF PROTECTED IN REGIONAL COASTAL PLANS

4 THE HAURAKI GULF MARINE PARK ACT

LEGISLATIVE FRAMEWORK

The HGMPA seeks to better integrate the environmental management efforts of the numerous statutory authorities whose activities impact on the area, including the Minister and Ministry of Fisheries. A purpose of the Act is to "integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and its catchments" (section 3(a)).

The HGMPA also seeks to provide better recognition of the deeply rooted relationships which exist between tangata whenua and the Gulf. The Act has as another purpose, "to recognise the historic, traditional, cultural and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands" (section 3(d)).

INTEGRATED MANAGEMENT

"… The Gulf must be managed in a manner that crosses territorial jurisdictions, crosses land and water boundaries, and crosses cultures and that respects both conservation and development needs"
Preamble, para 7

TANGATA WHENUA RELATIONSHIP

"…The Gulf is one of the earliest places of human settlement in New Zealand and for generations supported and was home to tangata whenua …"
Preamble, para 3

These provisions highlight two strong themes underpinning the Act: the importance of integrated management; and the significance of the relationships between people and the natural resources of the Gulf.

SECTION 3 PURPOSE

The purpose of this Act is to—

(a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments;

(b) establish the Hauraki Gulf Marine Park;

(c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments;

(d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands;

(e) establish the Hauraki Gulf Forum.

The purpose section of the HGMPA also lists what are effectively the three main implementation mechanisms for the Act and these are fleshed out in subsequent parts of the legislation. Part 1 of the Act contains a set of common matters of national significance and management objectives to guide the decision-making of the various statutory agencies. It is this mechanism, and how it can be implemented more effectively through decisions under the Fisheries Act 1996, which is the focus of this guide.

Another important mechanism, set out in Part 2 of the Act, is the establishment of the Hauraki Gulf Forum. The Forum meets quarterly and provides an opportunity for representatives from tangata whenua and the various statutory bodies involved in managing the Gulf to share information, to discuss issues of common concern and to devise co-ordinated plans of action. The Forum is specifically tasked with preparing a list of strategic issues and a triennial State of the Environment Report for the Gulf.

The Forum's current membership includes representatives of the Minister of Fisheries, the Minister of Conservation, the Minister of Māori Affairs, two regional councils and ten territorial authorities. It also includes six tangata whenua representatives of the Hauraki Gulf's marine area and islands appointed by the Minister of Conservation after consultation with the tangata whenua and Minister of Māori Affairs. The local authority representation on the Forum is likely to change with the establishment of the new Auckland Council on 1

November 2010, which will incorporate into one entity the Auckland Regional Council and seven of the territorial authorities which are currently represented on the Forum.

A third implementation mechanism is the creation of the Hauraki Gulf Marine Park under Part 3 of the Act. Currently the Marine Park consists primarily of publicly owned areas including all the seawater in the Gulf, all foreshore and seabed owned by the Crown (and not held for defence purposes) as well as coastal reserve land administered by the Department of Conservation, much of which is situated on islands. The Park does not explicitly include marine life such as fish although it includes their habitat (foreshore, seabed and seawater).

Local authorities can add their reserves to the Marine pPark, while retaining ownership and control. Protected private or Māori land can be included in the Marine Park, at the landowner's request, and some private land has recently been included in the Park. Taiāpure-local fisheries and mātaitai reserves can also be included in the Park (section 36).

The purpose of the Park focuses on the protection "in perpetuity" of natural and historic resources of national and international significance within the Park (section 32).

> SECTION 32 PURPOSES OF HAURAKI GULF MARINE PARK
>
> The purposes of the Hauraki Gulf Marine Park are—
>
> (a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:
>
> (b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth:
>
> (c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:
>
> (d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

SPATIAL APPLICATION

The provisions of the HGMPA apply to three distinct physical elements – the Gulf's coastal marine area, its islands and the catchments which drain into the coastal marine area. The extent of the areas is shown on Figure 11 which is reproduced from Schedule 3 of the Act. The catchments include a relatively narrow strip along the eastern edge of the Auckland region, the entire Coromandel Peninsula and the expansive Hauraki Plains extending far inland to the south.

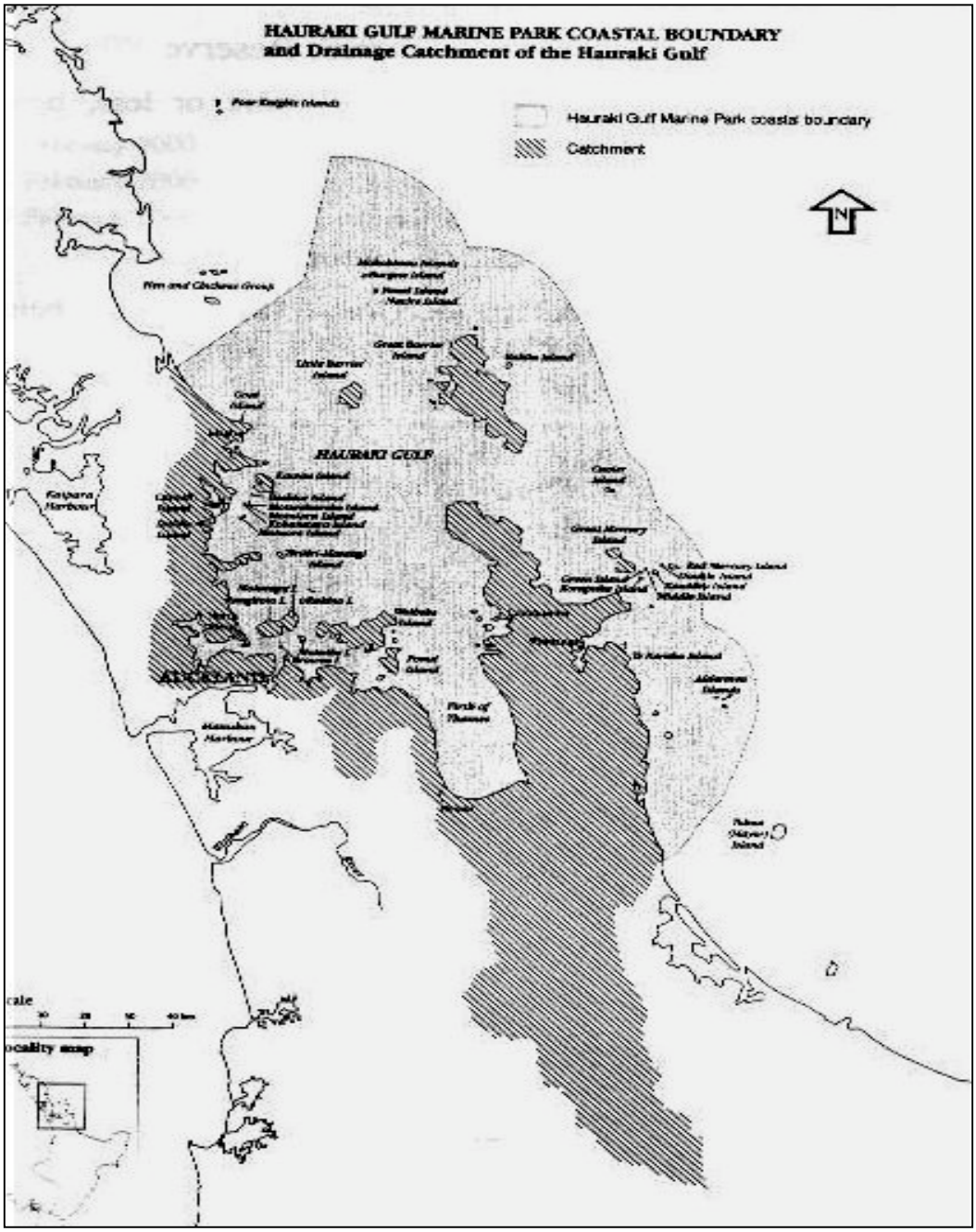


FIGURE 12: SPATIAL APPLICATION OF THE HGMPA

The coastal marine area is called the "Hauraki Gulf" or "Gulf" in the legislation. It extends seawards out to the edge of the territorial sea (12 nautical miles) and includes all the coastal marine area on the east coast of the Auckland and Waikato regions. On the landward side it includes all estuaries and tidal parts of rivers and creeks (section 2).

The marine area included within the Hauraki Gulf Marine Park aligns with the boundaries of the Auckland and Waikato regional councils. The boundaries of the regional councils were not designed to match the location of marine systems or biogeographical areas. They were largely based on land-based water catchments with the catchment boundaries extended out to the edge of the territorial sea. As a result, the Gulf's marine area is not a discrete

ecological system, but is interconnected with the larger marine environment spanning New Zealand's north-east coast.

The Gulf's marine area is much smaller than are the spatial areas managed under fisheries legislation, which often extend 200 nautical miles seawards to the edge of the exclusive economic zone (see Appendix 4). It is also much smaller than the regional marine biogeographical areas identified by the Ministry for the Environment for the purposes of identifying marine protected areas (see Appendix 5).

NATIONAL SIGNIFICANCE AND MANAGEMENT OBJECTIVES

Matters of national significance and management objectives for the Gulf are expressed in sections 7 and 8 of the HGMPA and are summarised in Figure 13. Legal principles of statutory interpretation require these sections to be interpreted within the context of the overall purpose of the Act which, as indicated above, focuses on achieving integrated management and on recognising the relationship of tangata whenua with the Gulf.

Section 7 specifically recognises the Hauraki Gulf as having national significance. The section contains two important elements. The first focuses on the concept of *interrelationships*. It specifically refers to the interrelationship between the Gulf's coastal marine area, the catchments which drain into that area, and the islands contained within it. It is not these natural elements in themselves which are identified as being of national significance, but the interrelationship between them. The legislation emphasises not the parts but the linkages, reflecting the overall integration thrust of the legislation. This recognises the dynamic nature of the marine environment, where individual elements are linked within complex webs. It signifies that management of the Gulf requires a focus on ecological systems rather than on discrete elements such as fish stocks. It also emphasises the need to link catchment management with fisheries management.

MATTERS OF NATIONAL SIGNIFICANCE

"The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance."
Section 7(1)

The second important concept in section 7 is that of *capacity*. The significance of the interrelationship between the elements of the Gulf is its ability to sustain "the life-supporting capacity of the environment". The capacity of the environment of the Gulf is very much based on its ecological health, because it is this health and productivity which provides many of the characteristics desired by people: clean water to swim in; abundant seafood to harvest; and natural landscapes to experience. It is also critical to the spiritual well-being of tangata whenua, which is "inextricably linked to the well-being of Tikapa Moana".[30]

LIFE-SUPPORTING CAPACITY

"The life-supporting capacity of the environment of the Gulf and its islands includes the capacity –
(a) to provide for –
  (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
  (ii) the social, economic, recreational, and cultural well-being of people and communities:
(b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation:
(c) to maintain the soil, air, water, and ecosystems of the Gulf."
Section 7(2)

It is only the life-supporting capacity of the coastal marine area and its islands which is referred to in section 7, not the capacity of their catchments which are given significance primarily in terms of their interrelationship with the other areas. This indicates that

management within mainland catchments is important under the HGMPA primarily in terms of its impact on the health and carrying capacity of the coastal marine area and islands rather than in terms of its impacts within the catchments themselves. There is a very strong marine focus to the legislation, and therefore it is of particular relevance to fisheries management within the Gulf.

The concept of "life-supporting capacity" is further defined in the second part of section 7. It includes the capacity to provide for a range of values and uses associated with the Gulf spanning social, economic, recreational and cultural areas.

When it comes to the maintenance of the natural environment for its own intrinsic value, which is referred to in section 7(2)(c), this is confined to the coastal marine area and does not include the islands. The reference to the use of resources for economic and recreation activities in section 7(2)(b) also relates only to the coastal marine area. As explained below, however, section 8 – which provides guidance on how the national significance (section 7) is to be recognised in practice – envisages management action across the Gulf, its islands and catchments.

So, under section 7, the interrelationship between the Gulf's coastal marine area, islands and catchments is of national significance in its own right. Of national significance also is the ability of this interrelationship to provide specifically for the tangata whenua relationships with the Gulf's coastal marine area and islands and, generally, to provide for community well-being. In other words, the interrelationship is both of intrinsic value and central to the provision of direct outcomes for the people of the Gulf.

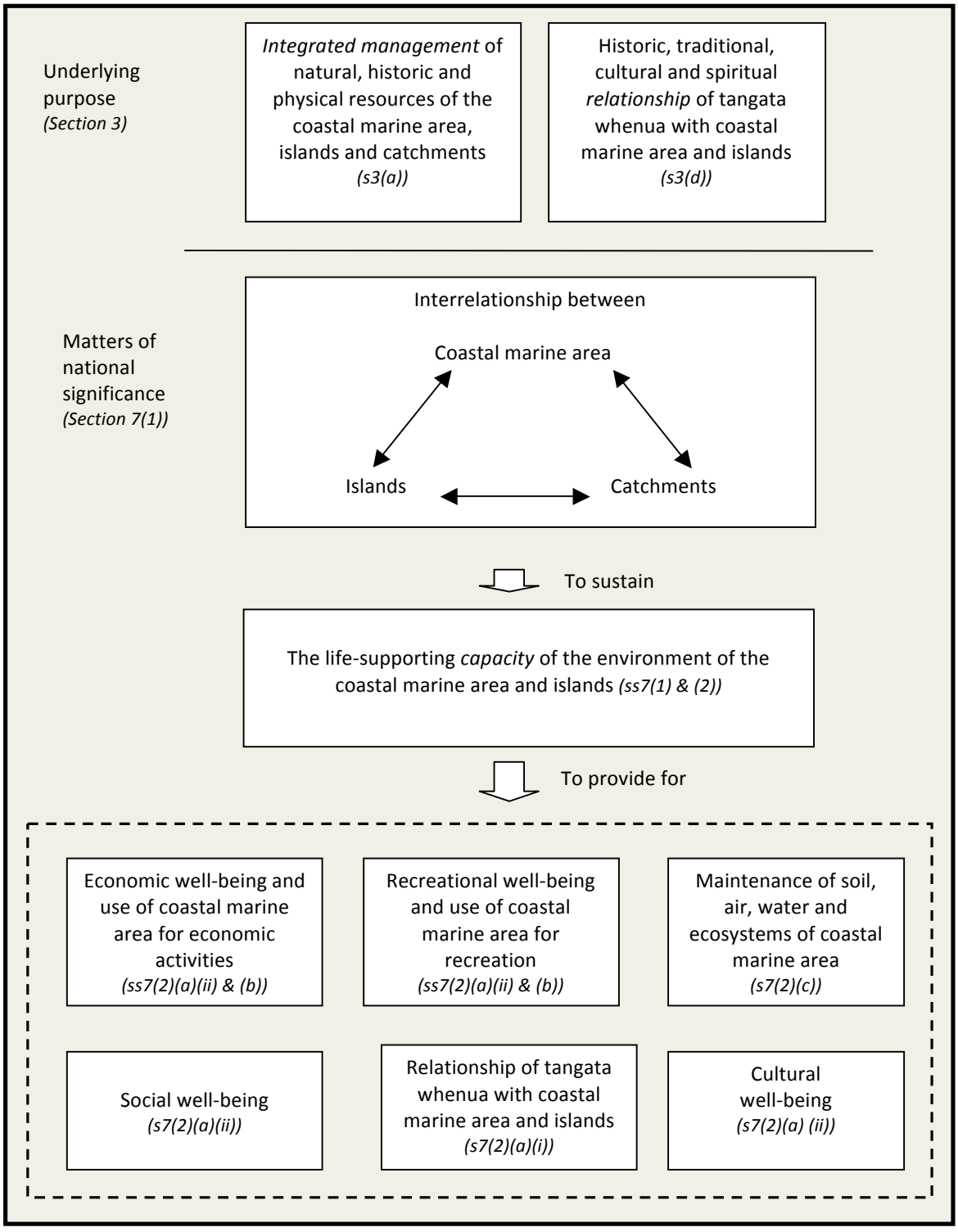


FIGURE 13: MANAGEMENT APPROACH UNDER THE HGMPA

Section 8 sets out six management objectives which are designed to ensure that the national significance of the Gulf is recognised in practice. They refer in the main to the protection (or maintenance) and "where appropriate" enhancement of the natural, historic and physical resources of the Gulf's coastal marine area, islands and catchments as well as of the associations which tangata whenua, people and communities have with them.

> SECTION 8 MANAGEMENT OF THE HAURAKI GULF
>
> To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—
>
> (a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:
>
> (b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
>
> (c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:
>
> (d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:
>
> (e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:
>
> (f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

The range of matters addressed in section 8, which includes ecological, social, cultural, recreational and economic issues, highlights the tensions embedded in the HGMPA. There are potential conflicts between conservation and development, tangata whenua interests and others, and economic and recreational uses.

Although these tensions are very real, section 8 of the HGMPA should be read within the context of section 7. This is because the purpose of the management objectives in section 8 is "to recognise the national significance of the Hauraki Gulf" and section 7 describes what the matters of national significance are. Fishing activity is not directly referred to in the HGMPA. It is encompassed in the references in section 7 to providing for the relationship of tangata whenua with the Gulf (customary fishing) and the use of the resources of the Gulf for economic activities (commercial fishing) and recreation (recreational fishing). Broader references in sections 7 and 8 to social, economic, recreational, cultural and historic matters also include the ability to fish. There is a direct reference to kaimoana in section 8(c), which means that a management objective for the Gulf is the protection and, where appropriate, enhancement of kaimoana with which tangata whenua have an historic, traditional, cultural or spiritual relationship.

As already indicated, section 7 emphasises the importance of sustaining the life-supporting "capacity" of the Gulf's environment. It is sustaining this "capacity" of the Gulf to provide for a range of interests which should be the focus of fisheries managers' efforts to implement the HGMPA, rather than how to allocate the Gulf's resources between competing users. The

management objectives in section 8 indicate elements to be protected, and where appropriate enhanced, to assist in achieving this. This means that the resources of the Gulf are to be used by commercial, customary and recreational fishers as well as to have their capacity protected and enhanced.

IMPLEMENTATION MECHANISMS

So how are the matters of national significance and objectives set out in the HGMPA to be implemented in practice? Instead of establishing a new environmental management regime for the Gulf, the legislation has sought to infiltrate its approach and priorities into existing systems. It does this by requiring agencies undertaking functions affecting the Gulf under other resource management legislation, to incorporate the matters set out in sections 7 and 8 into their planning and decision-making processes. The main agencies which are tasked with applying these HGMPA provisions are the Ministry of Fisheries, the Department of Conservation, regional councils and territorial authorities.

How the HGMPA impacts on fisheries management decisions is set out in sections 12 and 13. Section 12 of the HGMPA amends section 11(2) of the Fisheries Act by adding a requirement that the Minister of Fisheries "shall have regard to" sections 7 and 8 of the HGMPA when setting or varying any "sustainability measure". A sustainability measure has the purpose of "ensuring sustainability" which is defined in section 8(2) of the Fisheries Act as:

(a) maintaining the potential of fisheries resources to meet the reasonably forseeable needs of future generations; and

(b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.

This is similar to elements of the definition of "sustainable management" in the RMA although the Fisheries Act definition omits "safeguarding the life-supporting capacity of air, water, soil and ecosystems" (RMA section 5(2)(b)).

A sustainability measure means any measure set or varied under Part 3 of the Fisheries Act for the purpose of ensuring sustainability and includes (Part 3):

- The setting of catch limits for any stock
- The setting of the total allowable catch (TAC) for a quota management fish stock
- Prescribing the size, sex or biological state of any species which may be harvested
- Prescribing the spatial areas from which any species may be taken
- Prescribing the fishing methods which may be used within any area
- Prescribing fishing seasons

- Approving fisheries plans which identify fisheries management objectives and strategies to achieve them amongst other things
- Taking measures to avoid, remedy or mitigate the effect of fishing-related mortality on protected species such as whales, dolphins, seals, turtles and seabirds.

Sustainability measures can be adopted by the Minister either directly by notice in the *Gazette* or by recommending regulations under section 298 of the Fisheries Act.

When considering the requirement to "have regard" to sections 7 and 8 of the HGMPA in relation to the Fisheries Act, the Court of Appeal in the *Kahawai Case* (which is described more fully at the end of this chapter) stated that what is required is "that the matter is considered, but not that it necessarily influences the decision". The Court went on to explain:

> The requirement [to "have regard" to] is to give the matter genuine attention and thought, but it remains open to the decision-maker to conclude that the matter is not of sufficient significance to outweigh other contrary considerations.[31]

Section 13 of the HGMPA requires that "all persons exercising powers or carrying out functions for the Hauraki Gulf" under legislation which is listed in Schedule 1 to the HGMPA, must "have particular regard" to the provisions of sections 7 and 8 of the HGMPA. Schedule 1 includes the Fisheries Act 1986. Therefore, for decisions under the Fisheries Act which do not come within the category of "sustainability measures", there is a stronger requirement in regards to the HGMPA provisions.

In the *Kahawai Case*, the Court of Appeal interpreted "have particular regard to" as setting a higher standard than "have regard to" in the context of the Fisheries Act. But what it means in practice differs depending on the relevance of the factors being considered. The Court held that:[32]

- *Where the requirement is to have particular regard to a specific factor of obvious relevance* – the decision-maker is obligated "not only to be especially careful not to overlook the matter, but also to give greater weight to that factor in its determination than the 'other relevant circumstances' which the decision-maker may take into account".

- *Where the decision-maker is required to have particular regard to a number of factors of varying relevance, which are expressed as general purposes rather than specific criteria* – the decision-maker must be permitted to discount those which are not relevant and give varying weight to those that are. The Court stated that "in those circumstances, the requirement to have particular regard requires the decision-maker to satisfy himself or herself that the decision meets those of the purposes which are of most relevance, to the extent that that can be achieved in harmony with other relevant considerations applying to the decision."

Matters which are not sustainability measures include machinery provisions in the Act and measures which provide for customary and recreational fishing, such as:

- Setting the total allowable commercial catch (TACC) – the total amount of any fish stock which can be caught within a quota management area each year (section 20)
- Establishing and altering quota management areas (sections 24 and 25)

- Recommending the establishment of taiāpure (section 176)
- Closing areas to commercial fishing for a stock to protect access for recreational fishers (section 311).

Aquaculture decisions made by the Chief Executive of the Ministry of Fisheries under Part 9A of the Fisheries Act are also likely to fall outside the category of sustainability measures as they focus on determining whether an aquaculture management area will have an "undue adverse effect" on fishing in terms of restricting or displacing fishing activity.

Another implementation mechanism provided for in the HGMPA is through the creation of the Hauraki Gulf Marine Park. As already indicated, the Park includes all the seawater and Crown-owned foreshore and seabed within the Gulf along with reserve land and other areas. Section 37 of the HGMPA requires that any person "holding, controlling, or administering" land, foreshore, seabed, marine reserve, a taiāpure-local fishery or a mātaitai reserve in the Park must "recognise and give effect to" the purpose of the Park.

The Minister of Fisheries "controls" the impact of fishing activity on the foreshore and seabed of the Gulf through the Minister's ability to set sustainability measures to address such matters as the impact of bottom trawling and dredging on the seabed. When establishing the regulatory framework under which such fisheries operate within the Gulf, the Minister is therefore required to address the purposes of the Park. These purposes include protecting "in perpetuity" ecological systems and natural features "that are so beautiful, unique or scientifically important to be of national significance, for their intrinsic worth" (section 32(b)).

Schedule 1 of the HGMPA also identifies other legislation under which the Minister of Fisheries has a decision-making role. When making decisions under these non-fisheries pieces of legislation, the Minister must have "particular regard to" sections 7 and 8 of the HGMPA. They include the:

- *Marine Reserves Act 1971* – the Minister of Fisheries decides whether or not to concur with the decision of the Minister of Conservation to declare a marine reserve (section 5(9))

- *Marine Mammals Protection Act 1978* – the Minister of Fisheries decides whether or not to concur with the decision of the Minister of Conservation to approve a population management plan (section 3H(1)(n))

- *Wildlife Act 1953* – the Minister of Fisheries decides whether or not to concur with the decision of the Minister of Conservation to approve a population management plan (section 14I(1)(n)).

Relevant sections of the HGMPA are reproduced in Appendix 6.

SUMMARY OF IMPLEMENTATION MECHANISMS

The Minister of Fisheries is required to:

- "Have regard to" sections 7 and 8 of the HGMPA when setting or varying any sustainability measure under the Fisheries Act which applies to the Gulf
- "Have particular regard to" sections 7 and 8 of the HGMPA when undertaking other functions under the Fisheries Act which apply to the Gulf
- "Have particular regard to" sections 7 and 8 of the HGMPA when undertaking functions under other legislation identified in Schedule 1 of the HGMPA which apply to the Gulf including deciding whether or not to concur with the declaration of marine reserves and to concur with the approval of population management plans for marine mammals and seabirds
- "Recognise and give effect to" the purpose of the Hauraki Gulf Marine Park when controlling fishing activity which impacts on the foreshore or seabed within the Park.

APPLICATION BY THE COURTS

There is only one set of proceedings which has considered the application of the HGMPA to fisheries decision-making under the Fisheries Act 1996. This is known as the *Kahawai Case*. In the proceedings, recreational and commercial fisheries judicially reviewed the decisions of the Minister of Fisheries in 2004 and 2005 which fixed the TAC and the TACC for the fish stock known as Kahawai 1.

The management area for Kahawai 1 extended from North Cape to East Cape and included the Hauraki Gulf. The case was decided in the High Court in the first instance. It was subsequently appealed to the Court of Appeal and then on to the Supreme Court.[33]

One of the issues to be decided in the case was whether the Minister properly had regard to sections 7 and 8 of the HGMPA when setting the TAC. In the High Court decision, Justice Harrison noted that the emphasis of the HGMPA on "the social, economic, cultural and recreational well-being of the people of the Gulf" was material and that this mirrored the section 8(1) utilisation requirement under the Fisheries Act although with the addition of recreational well-being (para 78). Justice Harrison therefore considered that the HGMPA imported a utilisation concept into the setting of a sustainability measure such as the TAC and that this change was significant (para 78).

In considering this point, Justice Harrison stated that the HGMPA and the Fisheries Act 1996:

> … placed upon him [the Minister of Fisheries] an obligation to pay particular regard to the social, economic, recreational and cultural well-being of the people of the Hauraki Gulf, and in particular to maintain and enhance its physical resources in the form of kahawai stock (para 81).

The High Court found that the Minister had made a material error of law in not giving the Gulf special consideration. In its view "the Minister was bound to give discrete consideration to the Hauraki Gulf" when setting the total allowable catch which required "a self-contained enquiry" (para 82). The Judge also observed that the provisions of the HGMPA may have "been best recognised by identifying a new KAH [quota management area for kahawai] within the Gulf's boundaries from Bream Head to Cape Colville." The High Court directed the Minister to reconsider or review his decision.

The matter was appealed to the Court of Appeal where, amongst other things, the issue of the application of the HGMPA was reconsidered. The Court of Appeal found that the Minister must "have particular regard" to sections 7 and 8 of the HGMPA in relation to the TACC but is required only to "have regard" to sections 7 and 8 in relation to the TAC decision. The decision of the Court of Appeal overturned the High Court's finding that the Minister was bound to give discrete consideration to the Hauraki Gulf when setting the TAC for KAH1, stating that:

> … the requirement to have regard to a consideration is a requirement to take it into account, recognising that there will be other, perhaps more significant, matters which also need to be taken into account. We agree that the Minister had to address his mind to ss7 and 8 matters, but they are expressed in very broad terms and to some extent are mutually inconsistent. As long as the Minister turned his mind to the position of the Hauraki Gulf and the interests referred to in ss7 and 8, and satisfied himself that the TAC for KAH1 broadly met the objectives of the HGMPA, we consider that was enough, There was no need to consider a separate KAH area for the Hauraki Gulf (para 115).

When setting or varying the TAC, the Court of Appeal decided that it was sufficient that the Minister had "turned his mind to the position of the Hauraki Gulf and the interests referred to in ss7 and 8" and that he had "satisfied himself" that the TAC had "broadly met the objectives" of the HGMPA (para 115).

The Court of Appeal's decision was appealed to the Supreme Court, but the subsequent decision did not specifically address matters relating to the HGMPA. This means that the Court of Appeal's findings constitute the leading law on the application of the HGMPA to decision-making under the Fisheries Act.

5 THE FISHERIES ACT

The Fisheries Act 1996 is a large and complex piece of legislation. This chapter outlines some of the key provisions which are particularly relevant to the task of implementing the HGMPA through fisheries management. Relevant sections of the Act are reproduced in Appendix 7.

PURPOSE

The purpose of the Fisheries Act is "to provide for the utilisation of fisheries resources while ensuring sustainability" (section 8(1)). *Utilisation* is defined as:

> … conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

Fisheries resources are defined as "any one or more stocks or species of fish, aquatic life, or seaweed". *Aquatic life* is defined as meaning "any species of plant or animal life that, at any stage in its life history, must inhabit water, whether living or dead" and is also defined to include seabirds.

This means that provision for the conservation and enhancement of groups or species of marine plants, animals and seabirds is an integral part of the purpose the Fisheries Act, as is provision for their use and development, to the extent that this enables people to provide for their well-being.

Ensuring sustainability is defined in the Fisheries Act as:

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

When considering this section of the legislation in the *Kahawai Case*, the High Court found that there was no hierarchy between the two objectives of utilisation and sustainability and that "utilisation should be allowed to the extent that it is sustainable". However, the Court did conclude that sustainability constituted an environmental bottom line, because without sustainability "there will eventually be no utilisation".[34]

The Court of Appeal in the *Kahawai Case,* commented on the tension between provision for the utilisation of fishery resources and ensuring sustainability, which is inherent in the purpose of the Act. The Court contrasted this with the more single-minded purpose of the RMA which is the promotion of the sustainable management of natural and physical resources.[35]

The Court of Appeal also noted that the purpose statement in section 8 was "essentially a statement on government policy, to guide decision-makers and assist Courts in interpreting the detail of the Act" rather than the elements in section 8 being mandatory considerations for the decision-makers to take into account. This is similar to the manner in which the purpose section of the RMA has been interpreted.

PRINCIPLES

The Fisheries Act sets out environmental and information principles which all persons undertaking functions, duties or powers under the Act must "take into account". This is a higher standard than "have regard to" and means that decision-makers must provide for the matters identified rather than simply turn their minds to them.

SECTION 9 ENVIRONMENTAL PRINCIPLES

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:

(a) associated or dependent species should be maintained above a level that ensures their long-term viability:

(b) biological diversity of the aquatic environment should be maintained:

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

SECTION 10 INFORMATION PRINCIPLES

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles:

(a) decisions should be based on the best available information:

(b) decision makers should consider any uncertainty in the information available in any case:

(c) decision makers should be cautious when information is uncertain, unreliable, or inadequate:

(d) the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.

The environmental principles focus on:

- *Ensuring the long-term viability of associated or dependent species* – "associated and dependent species" are defined in the Act as meaning "any non-harvested species taken or otherwise affected by the taking of any harvested species". It includes non-targeted species which are taken as a result of fishing activity (by-catch), as well as other species which may be affected by the fishing activity through indirect impacts such as a reduction in their food source or increase in predation.

- *Maintaining biological diversity of the aquatic environment* – such as through controlling fishing methods which can damage important habitats, result in the mortality of threatened species or cause trophic cascades.

- *Protecting habitat of particular significance for fisheries management* – these can include spawning areas, nursery areas, estuaries, migratory routes, areas of particular high biodiversity and biogenic reefs.[36]

Collectively, these environmental principles require the Minister of Fisheries to take into account the direct and indirect effects of fishing on the marine ecosystem as well as the need to protect habitat of particular significance for fisheries management. Achieving such protection is likely to require engagement with RMA processes which control the impacts of non-fishing activities, such as land-based development, on fisheries habitats.

The information principles recognise that information plays a crucial role in fisheries management decisions and also that often decisions are made in the context of poor

information. The principles incorporate the precautionary principle and require decision-makers to be cautious when information is uncertain, unreliable or inadequate. They also indicate that decisions should not be postponed because of the absence of information.

QUOTA MANAGEMENT SYSTEM

Most commercial fisheries in the Gulf are managed under the quota management system (QMS) and much of the Fisheries Act is devoted to establishing the framework for this system (see Figure 14). The first step in fisheries management is to identify discrete fish stocks. A stock is defined in the Fisheries Act as "any fish, aquatic life, or seaweed of one or more species that are treated as a unit for the purposes of fisheries management". In practice, a fish stock may include a single species such as snapper, or sometimes several species as is the case with the flatfish stock which in the Hauraki Gulf includes sand flounder and yellow-bellied flounder. For management purposes, a stock usually includes the population of the identified species within a defined area called a quota management area (QMA).

The boundaries of QMAs differ between species and are designed to facilitate the management of each stock. They are typically very large. For example, the quota management area for Snapper 1 extends from North Cape to Cape Runaway, and for Flatfish 1 extends further around the entire northern half of the North Island. Once a QMA is established, it can be changed only with the agreement of the owners of at least 75 per cent of the affected quota (section 25), or if the Minister is satisfied that change is necessary to ensure sustainability (section 25B).

The main allocation mechanism for commercial rights to fishing is through the creation of individual transferable quotas (ITQ) which apply to specific fish stocks. Individual transferable quota are expressed as "quota shares" and they provide a right to harvest a proportional share of the TACC for a fish stock.

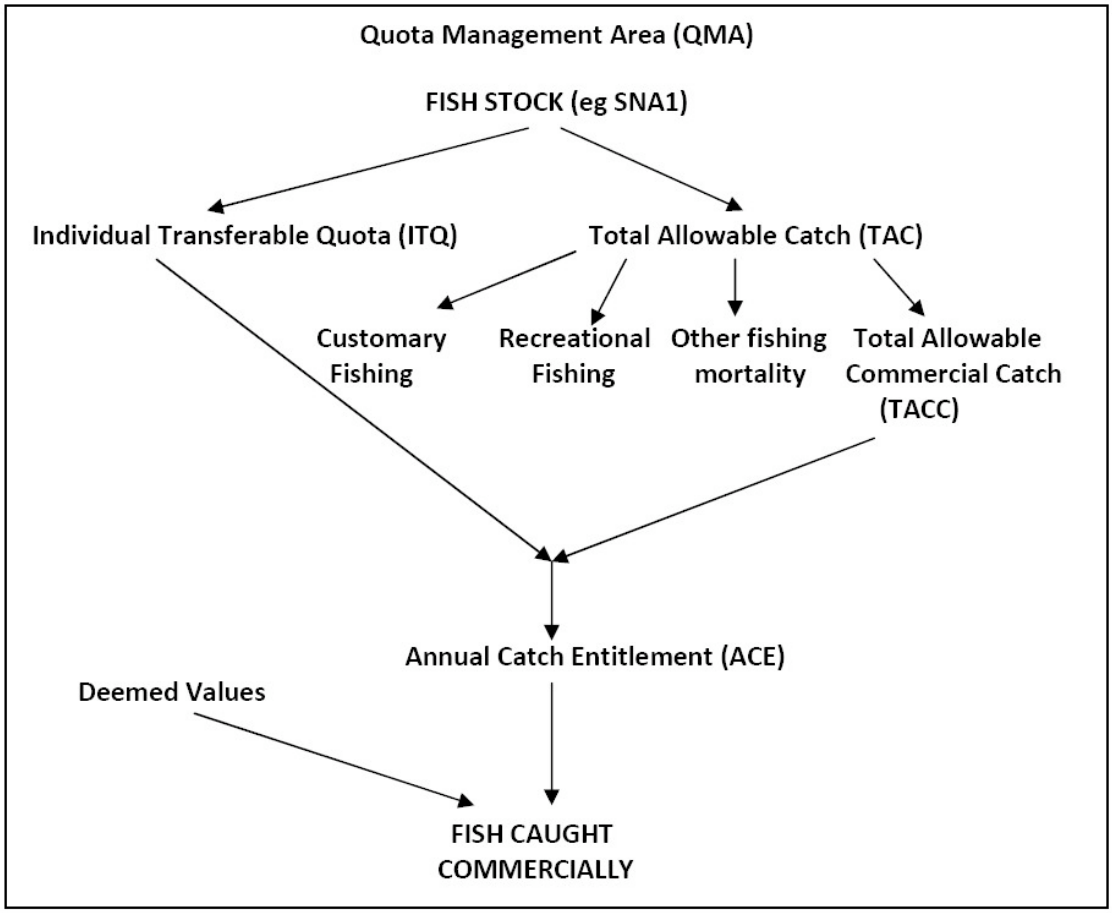


FIGURE 14: SUMMARY OF QUOTA MANAGEMENT SYSTEM

TOTAL ALLOWABLE CATCH

The Minister is required to set a TAC for each fish stock, that maintains it "at or above" (but not below) a level that can produce the "maximum sustainable yield" (B_{MSY}). Management of fisheries stocks on the basis of maximum sustainable yield is designed to maximise the biomass of fish which is produced each year. Maximum sustainable yield (MSY) is defined in the Fisheries Act as (section 2):

> … the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to population dynamics of the stock and any environmental factors that influence the stock.

The TAC indicates the maximum amount of fish which is allowed to be taken by the combined commercial, customary and recreational fishing effort each year from specific stocks, while making an allowance for other sources of fishing-related mortality including illegal fishing.

Where a fish stock is above its estimated B_{MSY}, the Minister can set a TAC which will result in the stock being fished down towards the B_{MSY} level. Where a fish stock is below its estimated B_{MSY}, the Minister is required to set a TAC which will enable the stock to increase to a level at or above B_{MSY}. The time period within which the stock should be able to rebuild to this level is undefined, but is to be a "period appropriate to the stock and

its biological characteristics", having regard to relevant "social, cultural and economic factors" (section 13).

The Ministry of Fisheries *Harvest Strategy Standard* 2008 indicates how the Minister of Fisheries intends to undertake stock management within the discretion provided by the Act. The standard provides reference points, based on the size of a stock's biomass, which trigger requirements for management action such as implementing a stock rebuilding plan. It contains three core elements:

- A specified target about which a fishery or stock should fluctuate
- A soft limit that triggers a requirement for a formal, time-constrained rebuilding plan. The default soft limit is the higher of one half of B_{MSY} or 20 per cent of the estimated virgin biomass of the stock
- A hard limit below which a fishery should be considered for closure. The default hard limit is the higher of one quarter of B_{MSY} or 10 per cent of the estimated virgin biomass of the stock.

TOTAL ALLOWABLE COMMERCIAL CATCH

The Minister is also required to set a TACC, which specifies how much of the TAC can be harvested by commercial fishers, and may adjust it from time to time (section 20). The TACC can be set at zero and must not exceed the TAC. The Minister must "allow for" Māori customary non-commercial fishing and recreational interests in that stock when setting or varying the TACC. Where fish stocks are shared between commercial, recreational and/or customary fishers, the Act provides no express guidance as to what amount of the TAC should be allocated to each fishing sector, although each is to be provided for. This is a matter which is left up to the discretion of the Minister of Fisheries.[37]

ANNUAL CATCH ENTITLEMENT

Each quota share generates an Annual Catch Entitlement (ACE) which is the right to harvest that share of the TACC during one fishing year. In some instances the fisher owns ITQ and fishes the ACE directly. In other cases the ITQ owner sells its ACE to parties which independently undertake the fishing activity.

DEEMED VALUES

A system of "deemed values" encourages commercial fishers to ensure that they have sufficient ACE to cover the species and amount of fish caught. When fishers have insufficient ACE to cover their catch, they are required to pay to the Crown the "deemed value" of the excess fish. The level at which deemed values is set is important. If it is too high, it will encourage fishers to (illegally) discard excess fish. However, if it is too low, it will fail to provide an incentive for fishers to acquire sufficient ACEs or to keep their catch within their quota.

TANGATA WHENUA

The Fisheries Act has strong provisions recognising the rights of tangata whenua in fisheries resources, particularly in light of the Deed of Settlement addressing fisheries claims under the Treaty of Waitangi.

The Act is to be interpreted, and all persons acting under it are to do so, in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act

1992 (section 5(b)). The Preamble to that Act (clause (l)(viii), refers to the fisheries Deed of Settlement and notes that

> The implementation of the deed through legislation and the continuing relationship between the Crown and Māori would constitute a full and final settlement of all Māori claims to commercial fishing rights and would change the status of non-commercial fishing rights so that they no longer give rise to rights in Māori or obligations on the Crown having legal effect but would continue to be subject to the principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown.

This means that, in making a decision under the Fisheries Act which affects Māori non-commercial fishing rights, the Minister will be subject to the principles of the Treaty of Waitangi. This includes duties to act reasonably and in good faith, to consult and to actively protect Māori interests.

The Sealord Deal, which was legislated in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, settled nationally claims brought by Māori in the Waitangi Tribunal and in the High Court seeking common law recognition of customary fishing rights. The customary fishing right covered all fisheries usages, whether for trade, manaakitanga, or feeding the whānau. The Settlement for commercial rights was awarded in terms of quota (and shares in the fishing company Sealord as a proxy for quota).

Non-commercial customary fishing rights were addressed in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 which obliged the Minister of Fisheries to consult with tangata whenua and "develop policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights". To meet these obligations, the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and the Fisheries (South Island Customary Fishing) Regulations 1999 were developed.

These regulations apply to the management of customary food-gathering activity in the marine area, particularly where it might contravene the amateur fishing rules. They provide for the appointment of Tangata Kaitiaki/Tiaka, who are able to authorise customary food gathering within a defined rohe moana for which they are responsible. The appointment of Tangata Kaitiaki/Tiaka is confirmed by the Minister of Fisheries by notice in the *Gazette*. "Customary food gathering" is defined in the regulations as meaning:

> … the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, being the taking of fish, aquatic life, or seaweed or managing of fisheries resources, for a purpose authorised by Tangata Kaitiaki/Tiaki, including koha, to the extent that such purpose is consistent with Tikanga Māori and is neither commercial in any way nor for pecuniary gain or trade.

Such customary food gathering, for most Māori, is not restricted to provision for hui and tangi, but includes harvesting for home and whānau consumption. No appointments of Tangata Kaitiaki/Tiaki have been made in the Hauraki Gulf under these customary fishing regulations. As a result, customary fishing is undertaken under regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 which provide that the amateur fishing regulations do not apply to seafood harvested for hui and tangi so long as it is properly authorised. Tangata Kaitiaki have been appointed to authorise customary fishing under these provisions which restrict "customary" fishing to provision for these formal occasions.

Māori rights in the three categories of fishing – commercial, recreational and "customary" as implemented by the Ministry of Fisheries – are all derived from the traditional customary rights, and were all settled in the "commercial" and "non-commercial" categories. Much Māori fishing is carried out under the "recreational" category, for which no specific settlement provisions have been made. Many Māori regard the non-Māori recreational fisheries as a privilege, not a right.

There are three additional legal mechanisms available through which kaitiakitanga over the marine area can be exercised under the Fisheries Act:

- *Taiāpure-local fisheries* can be established with the object of making better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article 2 of the Treaty of Waitangi. This is in relation to areas of estuarine and littoral coastal waters that have customarily been of special significance to any iwi or hapū as a source of food or for spiritual or cultural reasons (section 174). No taiāpure-local fisheries have been created in the Gulf.

- The *temporary closure* of fishing areas or restriction on fishing methods to recognise and make provision for the use and management practices of tangata whenua (section 186A). These provisions have been used from time to time in the Gulf and there is currently one closure in place to protect the cockles on Umupuia Beach.

- The establishment of *mātaitai reserves* over traditional fishing grounds of special significance to tangata whenua under the Fisheries (Kaimoana Customary Fishing) Regulations 1998. No mātaitai reserves have been created in the Gulf.

There are specific consultation requirements in the Fisheries Act applying to Māori. Before putting in place sustainability measures, the Minister must consult with persons or organisations representative of Māori interests (section 12(1)(a)) and, when setting the TACC, the Minister must allow for Māori customary non-commercial fishing interests (section 21(1)(a)(i)).

Deeds of settlement for resolution of Treaty Claims are currently being negotiated with iwi whose rohe include areas of the Gulf. These settlements may include provisions for greater iwi involvement in coastal and marine governance which could affect how the Gulf is managed in the future.

RECREATIONAL FISHERS

Any person is able to fish for non-commercial purposes so long as they comply with the relevant amatuer fishing regulations. The Fisheries (Amateur Fishing) Regulations 1986 and Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 apply to the Gulf. These include limits on the number of fish which can be taken each day (bag limits), limits on the size of fish which can be taken (minimum fish length) and limits on the mesh size of set and drag nets. There is also a range of other restrictions on fishing methods including the number of lines and hooks which can be used and the length of nets.

There are specific consultation requirements in the Fisheries Act applying to recreational fishers. Before putting in place sustainability measures the Minister must consult with persons or organisations representative of recreational interests (section 12(1)(a)), and when setting the TACC, the Minister must allow for recreational interests (section 21(1)(a)(ii)).

Where the catch rates of recreational fishers for a stock are low, and this is attributable to the effect of commercial fishing for the same stock in the same area, the Minister of Fisheries can make regulations which close an area to commercial fishing for that stock or prohibit commercial fishing methods (section 311). However, before the Minister can do this, the parties must have used their best endeavours in good faith to settle the issue under the dispute resolution provisions of the Fisheries Act. In parts of the inner Gulf, there is currently a prohibition on most commercial fishing between 1 October and 31 March each year to reduce conflicts with recreational fishers (see Appendix 2).

INTEGRATED MANAGEMENT

The Fisheries Act does not specifically refer to integrated management. However, there are provisions which do address this issue. Section 11(2) requires that, before setting or varying any sustainability measure, the Minister shall have regard to regional policy statements and regional plans under the RMA and management strategies or management plans under the Conservation Act 1987.

Conversely, when councils are preparing RMA policies and plans, they shall have regard to sections 61(2)(a), 66(2)(c) and 74(2)(b) of the RMA:

- Management plans and strategies prepared under other Acts, which would includes fisheries plans

- Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiāpure, mahinga mātaitai or other non-commercial Māori customary fishing).

The environmental principles in section 9 of the Fisheries Act also indicate that fisheries management needs to be integrated with other environmental management regimes. This is particularly the case with the requirements to maintain biological diversity of the aquatic environment and to protect habitat of particular significance for fisheries management. There is also a reference in the purpose of the Fisheries Act to the conservation and enhancement of marine plants, animals and seabirds. These aspects of the Gulf's marine environment are affected by the cumulative effects of land-based, fisheries and other marine-based activities.

ECOSYSTEMS-BASED MANAGEMENT

The Fisheries Act makes no mention of ecosystems-based management. However, the environmental principles in section 9, which refer to associated and dependent species, biological diversity and habitats of significance for fisheries management imply that fisheries management needs to take cognisance of the relationship between fishing activity and its impact on the broader marine environment. This is also the case with the reference to conservation and enhancement of marine life and seabirds in the purpose of the Act.

Section 8 of the Act includes as part of the purpose of the legislation "ensuring sustainability" which is defined as including "avoiding, remedying and mitigating any adverse effects of fishing on the aquatic environment", a similar phrase to that in the purpose of the RMA. In addition, section 11(1) requires the Minister of Fisheries to take into account the effects of fishing on the aquatic environment, as well as on any stock, when setting or varying any sustainability measure.

MINISTRY OF FISHERIES STRATEGIES

In order to help address the environmental impacts of fishing activity, the Ministry of Fisheries has prepared a *Strategy for Managing the Environmental Effects of Fishing*. The purpose of the strategy is to provide policies through which the Ministry can meet its environmental obligations under the Fisheries Act in an efficient and consistent manner. The strategy emphasises the need to assess the effects of fishing on all parts of the aquatic environment.

The core approach adopted in the strategy is the development of environmental standards, which will specify the limits of acceptable effects of fishing on the aquatic environment. Such standards have no statutory force but are used as a guide to decision-making under the Fisheries Act. As already indicated, a harvest strategy standard was approved by the Minister in 2008. A seabird standard is currently under preparation.

In September 2009, the Ministry of Fisheries released a document titled *Fisheries 2030* which is intended to provide a clearer strategic direction on how fisheries in New Zealand will be managed under the Fisheries Act and other legislation. The document sets out key values, principles, outcomes and strategic actions to be undertaken to achieve the overall goal of "New Zealanders maximising benefits from the use of fisheries within environmental limits". Relevant provisions of the strategy document are referred to in Chapter 6. *Fisheries 2030* supports a move towards a more integrated and ecosystems-based fisheries management system.

6 IMPLEMENTING THE HGMPA

This chapter focuses on how sections 7 and 8 of the HGMPA can be implemented through fisheries management. It focuses on mechanisms to achieve integrated management and ecosystems-based management, and to strengthen the relationship which tangata whenua and others have with the Gulf.

INTEGRATED MANAGEMENT

The previous chapters have described the importance which the HGMPA gives to integrated management and the mechanisms which have been provided in both the Fisheries Act and the RMA to achieve integration between these two management regimes.

This theme of integration has been picked up in *Fisheries 2030*. One of the outcomes identified in the document is that "impacts, including cumulative impacts, of activities on land, air or water on aquatic ecosystems are addressed." Another outcome states that "habitats of special significance to fisheries are protected." These outcomes are reflected in Objective 8 "Improve RMA/Fisheries interface" which is to be achieved through two actions:

- Improve fisheries sector input to processes that manage RMA-controlled effects on the marine and freshwater environment (Action 8.1)

- Promote the development and use of RMA national policy statements, environmental standards, and regional coastal and freshwater plans (Action 8.2).

There are a number of practical ways in which these integrative outcomes and objectives could be pursued through fisheries management affecting the Gulf:

RESEARCH TO IDENTIFY HABITATS OF IMPORTANCE TO FISHERIES

As already indicated, the Hauraki Gulf has generally been identified as an important nursery and spawning area for fish, although the spatial location of habitats of importance to fisheries has yet to be identified. The Ministry of Fisheries could commission a piece of research to identify these habitats within the Gulf and their sensitivity to both land-based and marine-based impacts. These could include areas such as estuaries, subtidal and intertidal seagrass beds, horse mussel beds and biogenic reefs. Identifying the areas, to the extent possible, would be an important step towards providing for their protection within RMA policies and plans and in resource consent decision-making.

INCORPORATION OF FISHERIES ISSUES INTO RMA POLICIES AND PLANS

Achieving better management of RMA-controlled effects on fisheries habitats within the Gulf will require stronger provisions in the RMA policies and plans, amongst other things. As described in *Governing the Gulf*, regional policy statements have a key role under the RMA in providing an integrative management framework for the Gulf and managing the interaction between catchments and the coastal marine area.

Regional policy statements are also strategically important documents because all regional plans and district plans need to "give effect" to them. If clear, strong provisions are included in regional policy statements, their effect will eventually cascade down through the other RMA planning documents into rules which control activities. If the Ministry of Fisheries ensures that regional policy statements adequately address fisheries-related issues, this

should reduce the need for the Ministry to engage in numerous RMA plan and resource consent processes.

In respect of the Hauraki Gulf, opportunities are currently available to proactively engage with the development of the second-generation regional policy statements. The Auckland regional policy statement is under review and a new document is likely to be developed shortly after the Auckland Council is established in late 2010. A proposed Waikato regional policy statement is planned to be notified in the second half of 2010.

It would therefore be timely for the Ministry of Fisheries to engage with the Auckland and Waikato regional councils with the aim of incorporating robust fisheries-related provisions into their proposed policy statements and subsequent plans. These could include the spatial identification of habitats within the Gulf of importance to fisheries, threats to these areas and appropriate management responses.

Development of a Hauraki Gulf Fisheries plan

The Fisheries Act enables the Minister to approve fisheries plans. The plans are not mandatory and may relate to fish stocks, fishing years or areas. They may include fisheries management objectives, strategies to achieve the objectives and/or performance criteria to measure the achievement of the objectives amongst other things (section 11A).

Fisheries plans set out the framework within which fisheries management decisions are made. They are intended to enable a more strategic and objectives-based approach to be applied to fisheries management. Fisheries plans have legal effect. They must be "taken into account" when addressing issues such as the setting of the TAC, defining where, when and with what methods fishing activity can take place, and quantifying allowable impacts on protected species.

A fish plan can be stock based and deal with fisheries management issues related to a specific fish stock. Alternatively, a fish plan can spatially based and deal with fisheries management issues related to some or all fish stocks within a spatial area such as the Gulf. A fish plan can also be a combination of the two approaches. An example of such a combination is the *North Island West Coast Finfish Fisheries Plan,* which is currently being developed, and which covers all finfish species caught in inshore waters and harbours along the entire west coast of the North Island.

Fisheries plans provide a mechanism for fisheries management decisions to directly interface with planning under the RMA. This is because when preparing RMA policies and plans, councils must "have regard to" management plans and strategies prepared under other Acts.

The Fisheries Act is silent on who may prepare a fisheries plan, but, in recent years, the Ministry of Fisheries has taken on this function. Other parties may prepare fisheries plans although they need to be approved by the Minister of Fisheries before having legal effect. It would therefore be possible for the Ministry of Fisheries, the Hauraki Gulf Forum or another party to facilitate the preparation of a fisheries plan for the Gulf.

One area where there is likely to be common ground amongst iwi and fisheries stakeholders is on the need to better control land-sourced impacts, such as sedimentation and pollution, on fisheries habitats. Initiating a process to prepare a plan on this topic could help develop a stronger relationship between these parties as well as provide a direct legal interface with

catchment management under the RMA. The content of the plan could be then expanded over time to address other fisheries management issues within the Gulf.

INTEGRATED MONITORING SYSTEM

The 2008 Hauraki Gulf State of the Environment Report stated that "indicators and monitoring systems for the Gulf remain under-developed".[38] Establishing a Gulf-wide monitoring system would help inform fisheries, RMA and conservation management in an integrated manner as well as feed into the triennial Hauraki Gulf State of the Environment report. Such a system would also assist in identifying and therefore managing the cumulative effects of fishing and other activities on the Gulf's natural environment. The Ministry of Fisheries could engage with other members of the Hauraki Gulf Forum to develop and implement such a system.

ECOSYSTEMS-BASED MANAGEMENT

The previous chapters have described the focus of the HGMPA, which is on the protection and enhancement of ecological systems and life-supporting capacity, as well as the recognition in the Fisheries Act of the need to manage the impact of fishing activity on the broader marine environment. *Fisheries 2030* has identified one of the key principles to apply to fisheries management as being "We apply an ecosystems-based approach to fisheries management decision-making". Other principles identified relate to conserving biodiversity and establishing environmental bottom lines.

Ecosystems-based management, when applied to fisheries, aims is to enable the utilisation of fisheries while maintaining the natural structure, balance and functioning of marine ecosystems and important species. *Fisheries 2030* identifies two outcomes relevant to ecosystems-based management — that "biodiversity and the function of ecological systems, including trophic linkages are conserved" and that "adverse effects on protected species are reduced or avoided". Actions identified in *Fisheries 2030* to manage the impacts of fishing on the environment include:

- Implement a revised marine protected area policy and legal framework
- Set and monitor environmental standards, including for threatened and protected species and seabed impacts.

An ecosystems-based `approach is consistent with kaitiakitanga as management is integrated over species and habitats.

Practical ways in which an ecosystems-based approach could be applied to fisheries management within the Gulf are identified below.

SCIENCE WORKING GROUP

The fisheries decision-making process currently involves the contribution of several Science Working Groups which identify research priorities, evaluate research and contribute to the assessment of fish stocks and the development of sustainability measures. Some of these working groups are stock specific, but others, such as the Aquatic Environment Working Group which focuses on the environmental impacts of fishing activity, have a more cross-cutting focus.

A mechanism to facilitate the application of ecosystems-based management to the Gulf would be the establishment of a *Hauraki Gulf Science Working Group.* Such a group could

identify the information required to apply an ecosystems-based approach to fisheries, RMA and conservation management within the Gulf and research priorities to meet those needs. The Science Working Group could also provide advice on linking scientific information to an ecosystems-based approach to planning and decision-making.

CREATE A NETWORK OF MARINE PROTECTED AREAS

An important tool to assist with implementing ecosystems-based management, and to ensure the protection of biodiversity and healthy functioning of ecosystems, is the creation of a network of MPAs which cover the full range of marine habitats, ecosystems and the life cycles of important species.

In 2006, the previous government released the *Marine Protected Areas Policy and Implementation Plan*. The purpose of the policy is to "protect marine biodiversity by establishing a network of MPAs that is comprehensive and representative of New Zealand's marine habitats and ecosystems". The Ministry of Fisheries and the Department of Conservation are jointly responsible for implementing the MPA policy. The MPA policy defines an MPA as:

> An area of the marine environment especially dedicated to, or achieving through adequate protection, the maintenance and/or recovery of biological diversity at the habitat and ecosystem level in a healthy functioning state.[39]

The *Marine Protected Areas Classification, Protection Standard and Implementation Guidelines* were released by the Ministry of Fisheries and the Department of Conservation in 2008. The Guidelines identify two types of MPAs:

- No-take marine reserves (Type One) where all fishing activities are excluded
- Other MPAs (Type Two) where fishing and other activities are restricted but not necessarily excluded.

Type One MPAs (marine reserves) are to be used to protect representative examples of the full range of common or widespread marine communities and ecosystems as well as outstanding, rare and distinctive, or internationally or nationally important, marine communities or ecosystems.

The Guidelines set out a consistent approach for classifying marine habitats which divides the New Zealand territorial sea into 14 biogeographic regions. The Hauraki Gulf Marine Park lies within the north-eastern biogeographic region which encompasses all waters out to 12 nautical miles extending from Ahipara on the west coast, around North Cape, and down the east coast as far as East Cape (see Appendix 5).

The Guidelines indicate that each of these biogeographic regions is to be the focus of a planning process undertaken by community-based marine protection planning fora consisting of stakeholders and supported by staff from the Ministry of Fisheries and the Department of Conservation. Design guidelines are provided to assist fora in identifying and selecting candidate areas for marine protection.[40] Two fora have been established so far, one for the West Coast of the South Island and the other for the Sub-Antarctic Islands.

Last year, the Ministers of Conservation and Fisheries directed that no new fora were to commence until after the completion of a national inventory of existing MPAs and an assessment of the extent to which different marine habitats and ecosystems are

represented within the network (gaps analysis). Following this, changes to the planning approach may be considered.

The emphasis of the HGMPA on protecting and enhancing the life-supporting capacity of the Gulf indicates that priority should be given to initiating a process to identify prospective MPAs within the Gulf and wider region. The Hauraki Gulf Forum could be represented in any such process to ensure that the HGMPA and the Park are given adequate cognisance within the decision-making process. Hauraki Gulf Forum representatives could also promote a closer interface between the identification and management of MPAs and fisheries management in the Gulf.

New Zealand still lacks integrated marine protected areas legislation. Until law in this area is reformed, protection will need to be provided under existing mechanisms, including the Fisheries Act, the RMA and the Marine Reserves Act 1971. Under the Marine Reserves Act, the Minister of Fisheries is required to decide whether or not to concur with the decision of the Minister of Conservation to establish a marine reserve. In doing so, the Minister of Fisheries is required to have "particular regard" to sections 7 and 8 of the HGMPA. This would include giving particular weight to the contribution the proposed marine reserve would make to the "life-supporting capacity" of the Gulf's environment.

Environmental standards

The prime mechanism identified by the Ministry of Fisheries for managing the impacts of fishing activity on the marine environment is the development of environmental standards. To ensure that such impacts are adequately managed in the Gulf, an environmental standard could be developed, reflecting the provisions of the HGMPA. Such a standard could provide for the protection of benthic habitats, protected species such as dolphins, whales and seabirds and important marine communities. The standard could provide a basis for the development of indicators which in turn could feed into Gulf State of Environment reporting.

Although environmental standards are non-regulatory, they do indicate how the Minister of Fisheries intends to exercise his or her discretion when making sustainability decisions. A standard for the Hauraki Gulf would provide clear direction on how the environmental impacts of fishing activity on the Gulf's marine environment are to be managed, to reflect the provisions of the HGMPA, thereby providing greater certainty for all parties.

Sustainability decisions

A variety of sustainability decisions taken by the Minister of Fisheries under the Fisheries Act can have a significant impact on the health and productivity of the Gulf's marine environment and these need to reflect section 7 and 8 of the HGMPA.

Setting the TAC for each stock is a key decision. The TAC has a major impact on the size of the targeted fish stocks and this, in turn, can have an impact on the stock's productivity, size, age structure and genetic diversity. It can also impact on the broader ecosystem through interlinkages and trophic cascades.

The HGMPA places emphasis on the need to sustain, protect and "where appropriate" enhance the life-supporting capacity of the Gulf. It is therefore important that, when setting the TAC, the Minister avoids any significant negative impacts on the health and productivity of the fish stock as well as on the broader ecosystems within the Gulf. This may require the TAC to be set at a level which enables the stock to rebuild to and remain above B_{MSY}. Such an approach is foreshadowed in *Fisheries 2030* which identifies as an action "Develop

alternative stock management targets that ensure the sustainability of fish stocks" (Action 1.2).

Different fishing methods have different impacts on the marine environment as described in chapter 2. To sustain, protect and enhance the "life-supporting capacity of the environment of the Gulf" it may be necessary to restrict some fishing methods in ecologically sensitive areas. For example, trawling and dredging activity may need to be avoided where there are important benthic habitats such as seagrass beds, horse mussel beds, bryozoan reefs and sponge gardens. Set netting may need to be avoided in sensitive reef communities and in marine mammal habitats.

Where more than one method is used to catch a species – such as trawling, longlining and Danish seining for snapper – it may be possible to encourage a move towards methods which result in less environmental damage and higher-quality fish. Some recent trends in the Gulf have been in the other direction, with an increasing amount of the catch being harvested by bottom trawling and a decreasing amount by longlining.

ENFORCEMENT

Given the emphasis in the HGMPA on sustaining, protecting and "where appropriate" enhancing the life-supporting capacity of the Gulf, it is important that controls on fishing activity are rigorously enforced within the Gulf. The Ministry of Fisheries could prioritise the Gulf in its enforcement efforts.

TANGATA WHENUA

The HGMPA places important emphasis on the need to recognise the strong relationship which tangata whenua have with the Gulf. "Tikapa Moana – Hauraki Gulf is the spiritual link in the chain that connects tangata whenua through whakapapa to Tangaroa and to all things in the universe". Tikapa Moana has been a provider of food to tangata whenua for generations and also has the role of a storehouse of knowledge and mātauranga Māori.[41] There are several mechanisms available under the Fisheries Act to acknowledge and strengthen this relationship. *Fisheries 2030* identifies a range of Māori values which are to be applied to fisheries management including tikanga, kaitiakitanga, kotahitanga and manaakitanga. Desired outcomes identified that are of particular relevance to Māori include:

- Thriving customary fisheries, managed in accordance with kaitiakitanga, supporting the cultural well-being of iwi and hapū

- That the Treaty partnership is realised through the Crown and Māori clearly defining their respective rights and responsibilities in terms of governance and management of fisheries resources.

The document then identifies a series of actions designed to achieve the objective of delivering obligations to Māori including:

- Develop meaningful co-management arrangements with Māori to deliver on Fisheries Settlement obligations

- Seek consensus on how to fully implement the Fisheries Deed of Settlement and historical treaty settlements

- Enable Māori to deliver fisheries management services including planning, administration, research and compliance.

As previously described, the Fisheries Act provides a range of statutory mechanisms through which the exercise of customary fishing activity and kaitiakitanga can be supported. These include the appointment of Tangata Kaitiaki/Tiaki, the establishment of taiāpure-local fisheries and mātaitai reserves, and the use of rāhui (temporary closures). Progress in applying these mechanisms within the Gulf has been slow, but there may be more demand for their application, once Deeds of Settlement for iwi with rohe within the Gulf have been finalised.

Tangata whenua have experienced difficulties in effectively engaging in broader fisheries decisions affecting the Gulf. While tangata whenua have important knowledge to contribute to fisheries decision-making processes, current processes do not facilitate their involvement. In addition, Ministry of Fisheries staff can lack the capacity to understand and effectively utilise indigenous knowledge when it is provided.

The Ministry of Fisheries has proposed the development of iwi fisheries plans and these may provide a mechanism through which iwi can better interface with the fisheries management system. These documents could feed into, and inform, sustainability decisions and the development of fisheries plans under the Fisheries Act. Currently, however, their scope and effect is unclear and it would be useful if the Ministry clarified the role of these plans.

As already indicated, the conclusion of Deeds of Settlement between iwi with rohe within the Gulf and the Crown, may include provisions for greater involvement of iwi in coastal management which will provide better recognition and practical application of kaitiakitanga in the Gulf. This may require changes to the manner in which fisheries management is undertaken within the Gulf.

SHARED FISHERIES

The HGMPA refers to making provision for the resources of the Gulf's coastal marine area to be used for both economic activities and recreation. The Act also emphasises the importance of the relationship of tangata whenua with the Gulf, of which the customary harvest of seafood is a very important element. Many of the fisheries within the Gulf are shared between commercial, customary and recreational fishers.

Fisheries 2030 identifies as an objective to "improve inter-sector allocation". Strategic actions identified to achieve this objective include:

- Develop and implement an allocation policy for shared fisheries (Action 1.1)

- Determine best option for providing non-commercial fishing areas (Action 1.3)

- Support the development of mechanisms that enable best-value use of marine water space (Action 1.4).

Setting the TAC can impact on the value which commercial fishers, versus recreational and customary fishers, obtain from the fish stock. Smaller stocks and smaller fish are disproportionately easier to catch through commercial bulk methods such as trawling and harder to catch by amateur methods such as rod and line. Therefore, in many cases, the smaller proportion of the stock which is left in the marine environment, the longer it will

take for customary and recreational fishers to catch the fish, and the fish caught will be smaller. The allocation implications of setting the TAC for species within the Gulf therefore needs to be considered when ensuring that commercial, customary and recreational fishers are provided for.

There is also provision in the Fisheries Act to exclude commercial fishers from spatial areas in favour of recreational fishers and this may need to be considered where access issues are unable to be adequately addressed through sustainability measures.

Issue	Action	Effect
INTEGRATION		
Identifying habitats within the Gulf of importance to fisheries	Ministry of Fisheries commissions research to identify habitats within the Gulf which are of importance to fisheries and their sensitivity to land and marine-sourced impacts	Enables measures to be put in place to protect important fisheries habitats
Incorporating of fisheries issues into RMA policies and plans	Ministry of Fisheries engages in the preparation of proposed regional policy statements for the Auckland and Waikato regions	Cascades measures to protect important fisheries habitats through RMA plans
Providing a statutory interface between fisheries and RMA mangement	Ministry of Fisheries and Hauraki Gulf Forum facilitate the development of a fisheries plan that describes the effects of land based activities on the fisheries resources of the Gulf and identifies measures to address these effects Gulf fisheries plan could be expanded in the future to cover other issues	Directly interfaces with RMA policies and plans Enables iwi and fisheries stakeholders to work together on a relatively non-contentious issue
Integrating environmental monitoring	Ministry of Fisheries engages with other Hauraki Gulf Forum members to develop and implement an integrated monitoring programme for the Gulf	Enables cumulative impacts on the Gulf's ecosystems to be measured and therefore better managed
ECOSYSTEMS-BASED MANAGEMENT		
Improving scientific understanding to support ecosystems-based management	Ministry of Fisheries and/or the Hauraki Gulf Forum establishes a Hauraki Gulf Science Working Group to identify research needs and to support the application of ecosystems-based management	Enables the cumulative impacts of fishing and other activity on the Gulf's marine environment to be considered in fisheries and other environmental decision-making
Establishing a network of marine protected areas	Ministry of Fisheries and the Department of Conservation confirm commitment to establishing a process for identifying marine protected areas in the north-east biogeographic region The process includes representation from the Hauraki Gulf Forum Marine protected areas identified within the Gulf reflect section 7 and 8 of the HGMPA and the purposes of the Hauraki Gulf Marine Park	Provides for the protection and enhancement of biodiversity and the healthy functioning of ecosystems in the Gulf Enhances integrated management Integrates the establishment of marine protected areas with fisheries management

Developing environmental standards	Ministry of Fisheries develops an environmental standard for the Gulf	Provides clear direction on how the environmental impacts of fishing in the Gulf will be managed
Ensuring sustainability decisions reflect ecosystems approach	Minister of Fisheries develops a decision-making framework to ensure that broader eco-systems effects are considered when setting the TAC for fish stocks and establishing other sustainability measures relevant to the Gulf Ministry of Fisheries encourages more environmentally benign fishing methods in the Gulf	Reduces the environmental impacts of fishing activity in the Gulf
Ensuring fisheries regulations are enforced	Ministry of Fisheries prioritises the Gulf in enforcement efforts	Reduces the environmental impacts of fishing activity in the Gulf
TANGATA WHENUA		
Strengthening the role of tangata whenua in fisheries management	Ministry of Fisheries responds to tangata whenua requests to appoint Tangata Kaitiaki/Tiāki, establish taiāpure and mātaitai and apply rahui Ministry of Fisheries clarifies role of iwi fisheries plans in fisheries decision-making Minister of Fisheries implements the terms of any Deed of Settlement which provides for greater iwi involvement in fisheries management	Enables tangata whenua to exercise kaitiakitanga within the Gulf
SHARED FISHERIES		
Providing equitable access to the Gulf's fisheries	Minister of Fisheries sets the TAC and TACC at a level which ensures that all users of the fisheries resource are provided for If warranted, Minister of Fisheries establishes non-commercial fishing areas	Ensures all users of the Gulf's fisheries resources are provided for

FIGURE 15: SUMMARY OF HOW THE HGMPA CAN BE REFLECTED IN FISHERIES MANAGEMENT

7 CONCLUSIONS

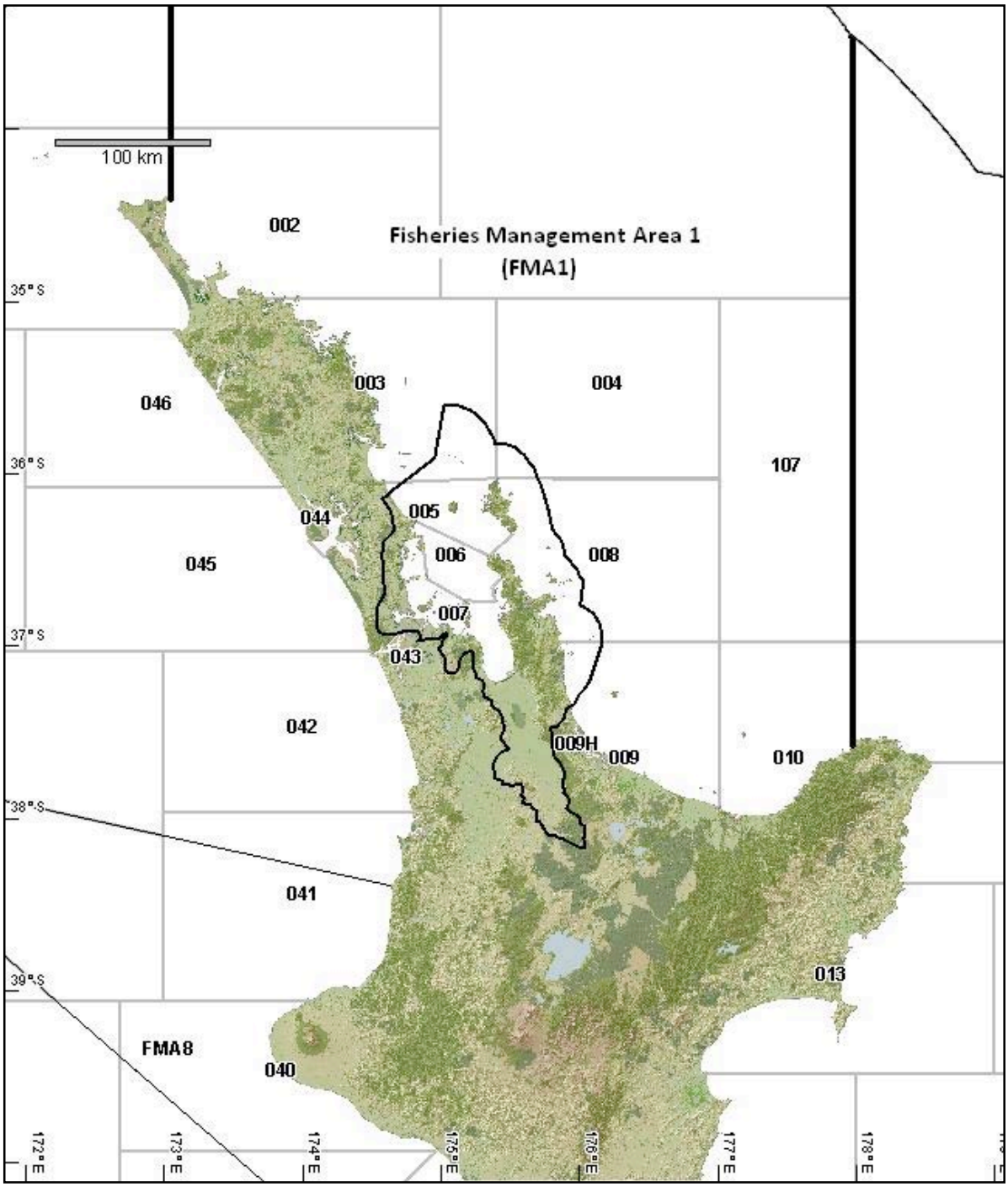
People have fished the Gulf from first human settlement. Fishing in the Gulf provides jobs, economic wealth, sustenance and recreational pleasure; it is also of considerable cultural importance. Fishing activity has had a significant impact on the Gulf's marine environment, particularly since the introduction of bulk fishing methods in the late 1890s. How fishing activity is managed, therefore, has great significance for the Gulf's natural environment as well as for the social, economic and cultural well-being of those who use it.

The HGMPA seeks to sustain and, where appropriate, enhance the life-supporting capacity of the Gulf's marine environment. It seeks to better provide for the relationship of tangata whenua with the Gulf. The Act also aims to improve the integration between the myriad of agencies involved in managing the Gulf including the Minster and Ministry of Fisheries.

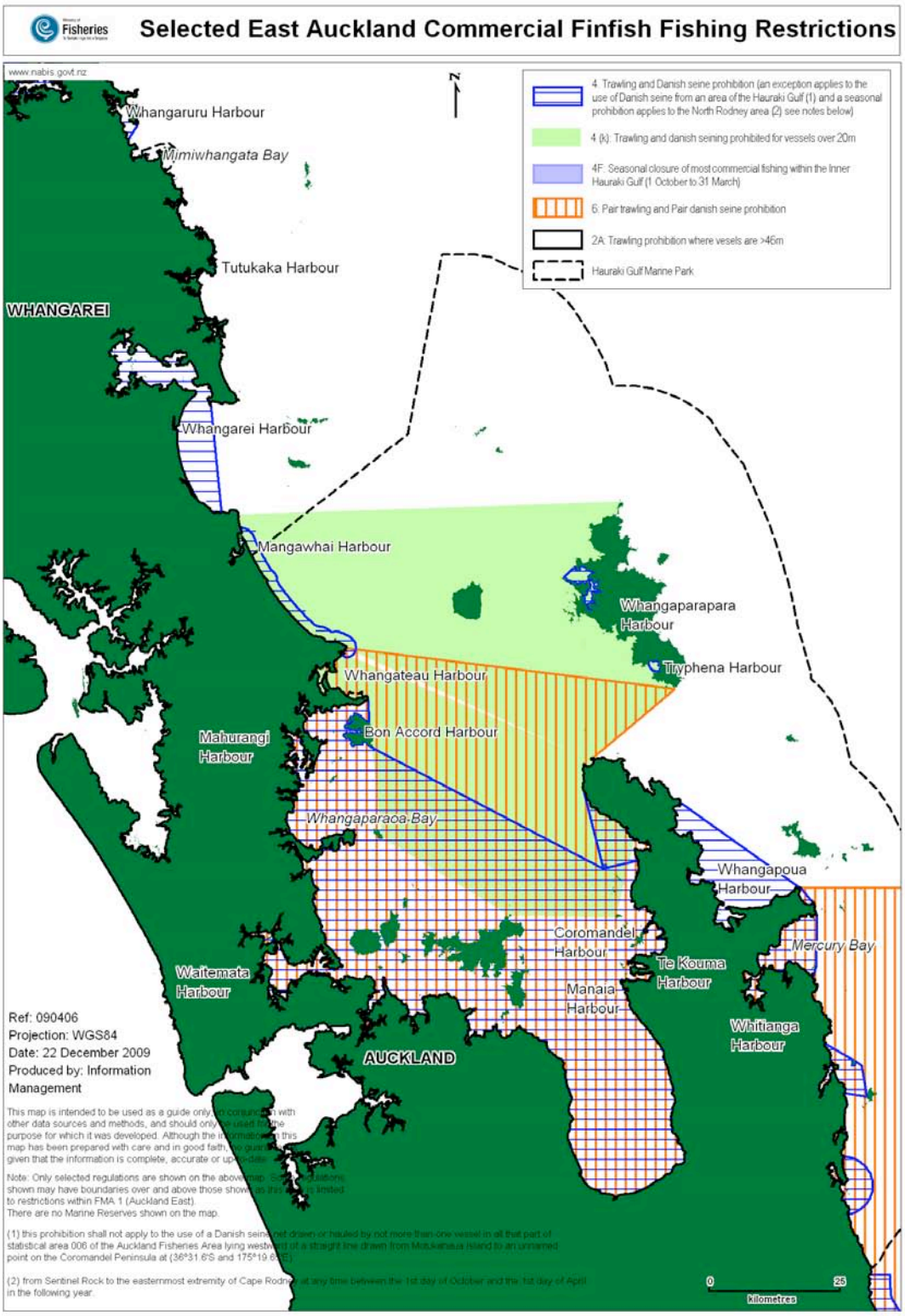
The Guide has identified ways in which the HGMPA can be implemented through fisheries decision-making. It is important that significant progress is made in this area if the purpose of the HGMPA is to be fulfilled.


PROWLER 13

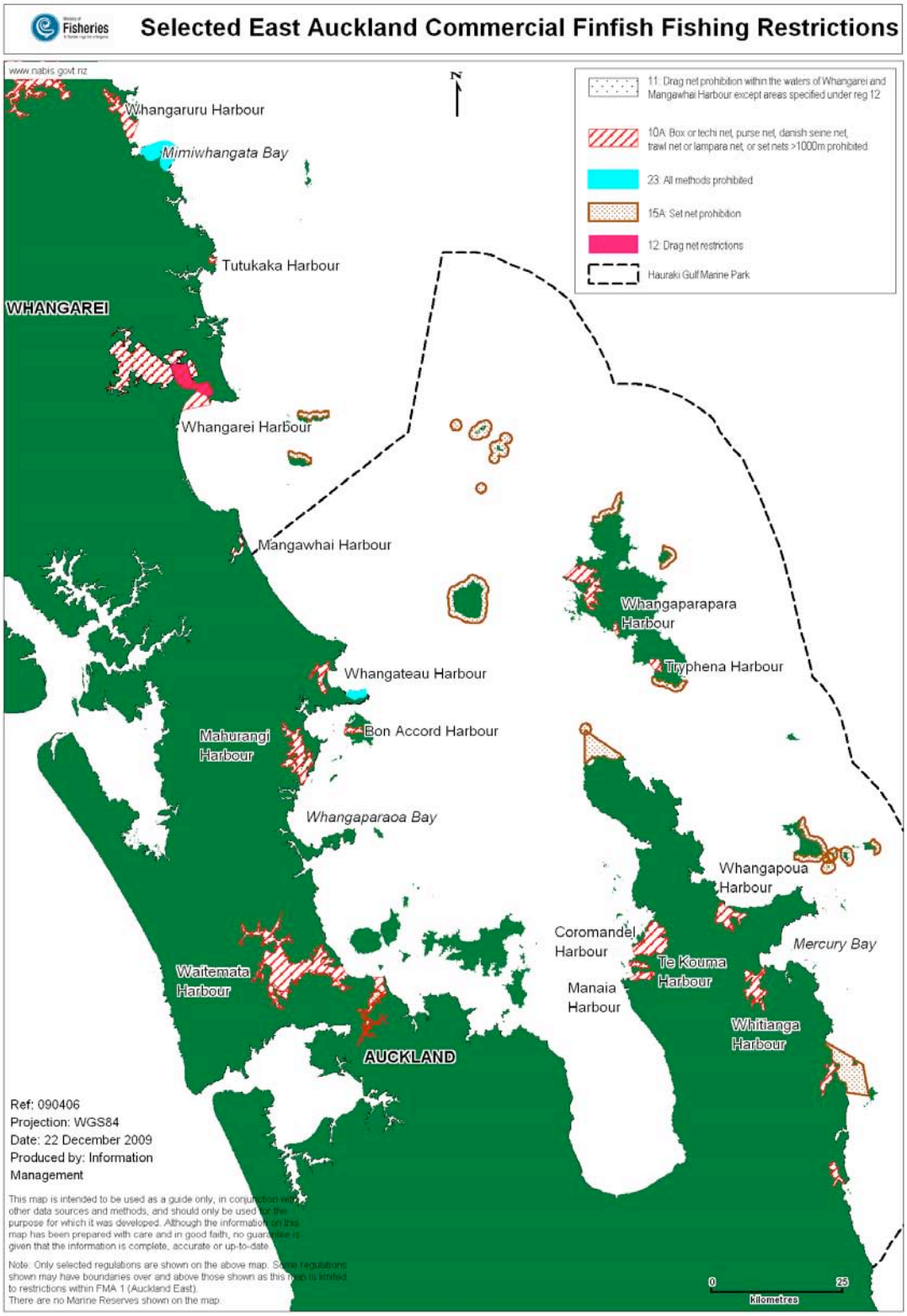
APPENDIX 1 STATISTICAL AREAS FOR FISHERIES MANAGEMENT



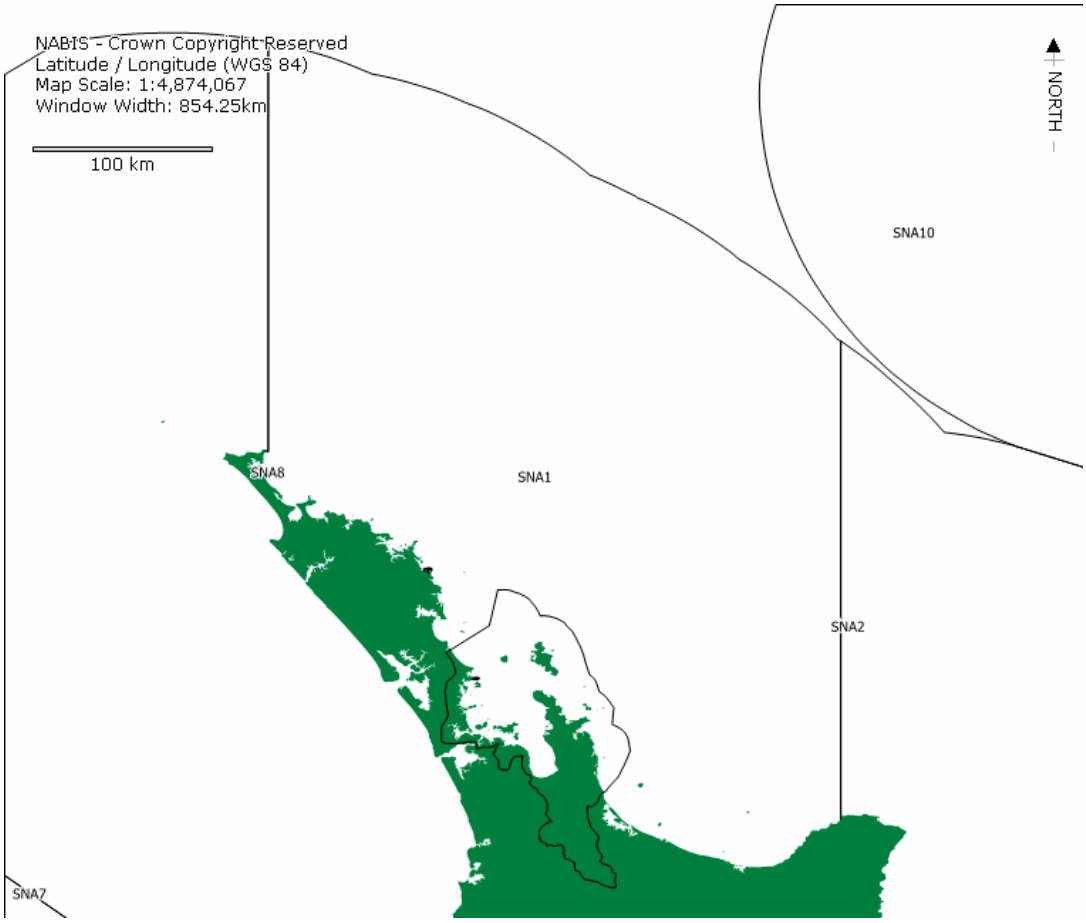
APPENDIX 2 COMMERCIAL TRAWLING AND DANISH SEINING RESTRICTIONS



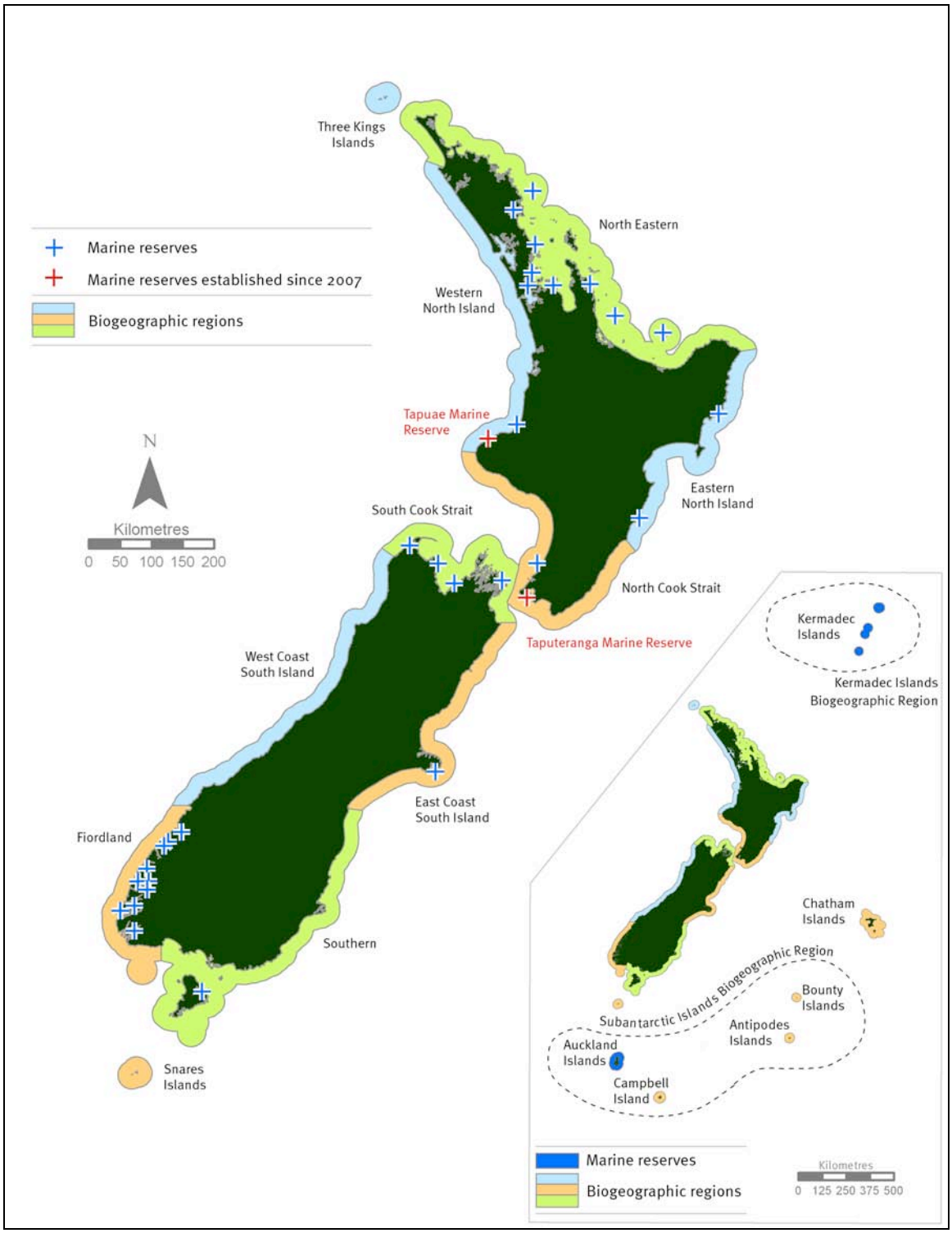
APPENDIX 3 COMMERCIAL NETTING RESTRICTIONS



APPENDIX 4 SPATIAL BOUNDARIES OF THE HAURAKI GULF MARINE PARK AND THE QMA FOR SNAPPER 1



APPENDIX 5 REGIONAL MARINE BIOGEOGRAPHICAL AREAS



Source: Department of Conservation

APPENDIX 6 RELEVANT SECTIONS OF THE HAURAKI GULF MARINE PARK ACT 2008

3 Purpose

The purpose of this Act is to—

(a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:

(b) establish the Hauraki Gulf Marine Park:

(c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments:

(d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands:

(e) establish the Hauraki Gulf Forum.

7 Recognition of national significance of Hauraki Gulf

(1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.

(2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—

(a) to provide for—

(i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and

(ii) the social, economic, recreational, and cultural well-being of people and communities:

(b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation:

(c) to maintain the soil, air, water, and ecosystems of the Gulf.

8 Management of Hauraki Gulf

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—

(a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:

(b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:

(c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:

(d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:

(e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:

(f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

12 Amendment to Fisheries Act 1996

Section 11(2)(b) of the Fisheries Act 1996 is amended by adding the expression "; and" and by adding the following paragraph:

"(c) sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (for the Hauraki Gulf as defined in that Act)—."

13 Obligation to have particular regard to sections 7 and 8

Except as provided in sections 9 to 12, in order to achieve the purpose of this Act, all persons exercising powers or carrying out functions for the Hauraki Gulf under any Act specified in Schedule 1 must, in addition to any other requirement specified in those Acts for the exercise of that power or the carrying out of that function, have particular regard to the provisions of sections 7 and 8.

32 Purposes of Hauraki Gulf Marine Park

The purposes of the Hauraki Gulf Marine Park are—

(a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:

(b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth:

(c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:

(d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

33 Establishment of Hauraki Gulf Marine Park

(1) The Hauraki Gulf Marine Park is established.

(2) The Hauraki Gulf Marine Park consists of—

(a) all conservation areas, wildlife refuges, wildlife sanctuaries, reserves, marine mammal sanctuaries, and marine reserves held, managed, or administered by the Crown from time to time in accordance with the Conservation Act 1987 or any Act in Schedule 1 of that Act within the Hauraki Gulf, its islands, and coastal area:

(b) any reserve controlled and managed from time to time by an administering body (whether or not that administering body is a local authority) under an appointment to control and manage made in accordance with the Reserves Act 1977 or any corresponding former Act, within the Hauraki Gulf, its islands, and coastal area:

(c) all foreshore and seabed that is land owned by the Crown within the Hauraki Gulf other than foreshore or seabed held for defence purposes:

(d) all seawater within the Hauraki Gulf:

(e) all land of the Crown in the Hauraki Gulf, within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971:

(f) all land included in the Park in accordance with section 34 or section 35:

(g) all mataitai reserves and taiapure-local fisheries included in the Park in accordance with section 36.

(3) The inclusion of seawater in the Hauraki Gulf Marine Park is to give effect to the purposes of the Park and does not—

(a) give the Crown or any other person ownership of seawater; or

(b) affect the responsibilities of a regional council in the coastal marine area.

(4) Land to which subsection (2)(a) applies and which is used for the purposes of education, defence, police, or prisons is not a part of the Park unless the Minister responsible for that use of the land requests the Minister to include the land in the Park; and the Minister may do so by notice in the *Gazette*.
(5) Despite subsection (4), the land described in Part 1 of Schedule 4 that, at the commencement of this section, is held as a reserve and is used for defence purposes—
  (a) must be held, and treated as classified, as an historic reserve under section 18 of the Reserves Act 1977; and
  (b) must be treated as included in the Park under subsection (2)(a).
(6) If the land or any part of the land described in Part 2 of Schedule 4 that, at the commencement of this section, is held as a reserve and is used for defence purposes, is no longer required for defence purposes, the land—
  (a) must be held, and treated as classified as a recreation reserve under section 17 of the Reserves Act 1977; and
  (b) must be treated as included in the Park under subsection (2)(a).
(7) Despite any provision of the Defence Act 1990 and subsection (6), the Minister of Defence may administer and manage the land or any part of the land in Part 2 of Schedule 4 jointly with the Commissioner or an administering body for the purposes of the Park as if it were a recreation reserve under section 17 of the Reserves Act 1977.
(8) For the purposes of subsection (7), Commissioner has the same meaning as in section 2 of the Reserves Act 1977.

37 Effect of Park

(1) Any person holding, controlling, or administering land, foreshore, seabed, marine reserve, a taiapure-local fishery, or a mataitai reserve in the Hauraki Gulf Marine Park must recognise and give effect to the purpose of the Park.
(2) Nothing in this Part—
  (a) affects any land in the Hauraki Gulf, its islands, or coastal area, that is not expressly included in the Park in accordance with this Part:
  (b) limits the ability of the Minister or an administering body to acquire conservation areas, reserves, wildlife refuges, wildlife sanctuaries, or marine reserves within the Gulf or the Park:
  (c) changes the ownership or management of areas of land, foreshore, seabed, or the waters of the Gulf:
  (d) limits the powers and functions of a regional council in the coastal marine area.
(3) Despite subsection (1), land included in the Park in accordance with section 33(2)(a), (b), (c), or (e) continues to be held, managed, or administered in accordance with the Conservation Act 1987, or any Act in Schedule 1 of that Act, if any of those Acts applies to that land.

Schedule 1: Acts to which Part 1 applies

Biosecurity Act 1993 (Part 5)
Conservation Act 1987
Fisheries Act 1983
Fisheries Act 1996
Foreshore and Seabed Act 2004
Harbour Boards Dry Land Endowment Revesting Act 1991
Historic Places Act 1993
Local Government Act 1974
Local Government Act 2002
Marine Farming Act 1971
Marine Mammals Protection Act 1978
Marine Reserves Act 1971
National Parks Act 1980
Native Plants Protection Act 1934
Queen Elizabeth the Second National Trust Act 1977

Reserves Act 1977
Resource Management Act 1991
Soil Conservation and Rivers Control Act 1941
Trade in Endangered Species Act 1989
Walking Access Act 2008
Wild Animal Control Act 1977
Wildlife Act 1953

APPENDIX 7 RELEVANT SECTIONS OF THE FISHERIES ACT 1996

5 Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

This Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act, in a manner consistent with—

(a) New Zealand's international obligations relating to fishing; and

(b) the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

6 Application of Resource Management Act 1991

(1) No provision in any regional plan or coastal permit is enforceable to the extent that it provides for—

(a) the allocation to one or more fishing sectors in preference to any other fishing sector of access to any fisheries resources in the coastal marine area; or

(b) the conferral on any fisher of a right to occupy any land in the coastal marine area or any related part of the coastal marine area, if the right to occupy would exclude any other fisher from fishing in any part of the coastal marine area.

(2) Subsection (1) does not—

(a) prevent a regional council from taking into account the effects of aquaculture activities on fishing or fisheries resources in establishing an aquaculture management area under section 165C of the Resource Management Act 1991; or

(b) apply to a regional coastal plan to the extent that it establishes an aquaculture management area; or

(c) prevent any regional plan or coastal permit authorising the erection in the coastal marine area of a fish farm structure or other structure.

(3) In this section—

Fishing sector means—

(a) commercial fishers:

(b) recreational fishers:

(c) Maori non-commercial customary fishers:

(d) fish farmers:

(e) other fishers authorised under this Act to take fish, aquatic life, or seaweed:

occupy has the same meaning as in section 2(1) of the Resource Management Act 1991.

8 Purpose

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act—

ensuring sustainability means—

(a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.

utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.

9 Environmental principles

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:

(a) associated or dependent species should be maintained above a level that ensures their long-term viability:

(b) biological diversity of the aquatic environment should be maintained:

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

10 Information principles

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles:

(a) decisions should be based on the best available information:

(b) decision makers should consider any uncertainty in the information available in any case:

(c) decision makers should be cautious when information is uncertain, unreliable, or inadequate:

(d) the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.

11 Sustainability measures

(1) The Minister may, from time to time, set or vary any sustainability measure for one or more stocks or areas, after taking into account—

(a) any effects of fishing on any stock and the aquatic environment; and

(b) any existing controls under this Act that apply to the stock or area concerned; and

(c) the natural variability of the stock concerned.

(2) Before setting or varying any sustainability measure under subsection (1) of this section, the Minister shall have regard to any provisions of—

(a) any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991; and

(b) any management strategy or management plan under the Conservation Act 1987; and

(c) sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (for the Hauraki Gulf as defined in that Act)—

that apply to the coastal marine area and are considered by the Minister to be relevant.

(2A) Before setting or varying any sustainability measure under this Part or making any decision or recommendation under this Act to regulate or control fishing, the Minister must take into account—

(a) any conservation services or fisheries services; and

(b) any relevant fisheries plan approved under this Part; and

(c) any decisions not to require conservation services or fisheries services.

(3) Without limiting the generality of subsection (1) of this section, sustainability measures may relate to—

(a) the catch limit (including a commercial catch limit) for any stock or, in the case of a quota management stock that is subject to section 13 or section 14 of this Act, any total allowable catch for that stock:

(b) the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken:

(c) the areas from which any fish, aquatic life, or seaweed of any stock may be taken:

(d) the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area:

(e) the fishing season for any stock, area, fishing method, or fishing vessels.

(4) The Minister may,—

(a) by notice in the *Gazette*, set or vary the catch limit (including the commercial catch limit) for any stock not within the quota management system:

(b) implement any sustainability measure or the variation of any sustainability measure, as set or varied under subsection (1),—

(i) by notice in the *Gazette*; or

(ii) by recommending the making of regulations under section 298.

(5) Without limiting subsection (4)(a) of this section, when setting or varying a catch limit (including a commercial catch limit) for any stock not within the quota management system, the Minister shall have regard to the matters referred to in section 13(2) or section 21(1) or both those sections, as the case may require.

11A Fisheries plans

(1) The Minister may from time to time approve, amend, or revoke a fisheries plan.

(2) A fisheries plan approved under subsection (1) may relate to 1 or more stocks, fishing years, or areas, or any combination of those things.

(3) Without limiting anything in subsection (2), a fisheries plan may include—
(a) fisheries management objectives to support the purpose and principles of the Act:
(b) strategies to achieve fisheries management objectives, which may include—
(i) sustainability measures set or varied under any of sections 11, 13, 14, and 15:
(ii) rules to manage the interaction between different fisheries sectors:
(c) performance criteria to measure the achievement of the objectives and strategies:
(d) conservation services or fisheries services:
(e) contingency strategies to deal with foreseeable variations in circumstances.
(4) Nothing in this section prevents the Minister from considering a proposal under Part 9.

12 Consultation

(1) Before doing anything under any of sections 11(1), 11(4), 11A(1), 13(1), 13(4), 13(7), 14(1), 14(3), 14(6), 14B(1), 15(1), and 15(2) of this Act or recommending the making of an Order in Council under section 13(9) or section 14(8) or section 14A(1) of this Act, the Minister shall—
(a) consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Maori, environmental, commercial, and recreational interests; and
(b) provide for the input and participation of tangata whenua having—
(i) a non-commercial interest in the stock concerned; or
(ii) an interest in the effects of fishing on the aquatic environment in the area concerned—
and have particular regard to Kaitiakitanga.
(2) After setting or varying any sustainability measure, or after approving, amending, or revoking any fisheries plan, the Minister shall, as soon as practicable, give to the parties consulted in accordance with subsection (1) of this section reasons in writing for his or her decision.
(3) This section does not apply in respect of emergency measures under section 16 of this Act.

13 Total allowable catch

(1) Subject to this section, the Minister shall, by notice in the *Gazette*, set in respect of the quota management area relating to each quota management stock a total allowable catch for that stock, and that total allowable catch shall continue to apply in each fishing year for that stock unless varied under this section, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26.
(2) The Minister shall set a total allowable catch that—
(a) maintains the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; or
(b) enables the level of any stock whose current level is below that which can produce the maximum sustainable yield to be altered—
(i) in a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; and
(ii) within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock; or
(c) enables the level of any stock whose current level is above that which can produce the maximum sustainable yield to be altered in a way and at a rate that will result in the stock moving towards or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks.
(2A) For the purposes of setting a total allowable catch under this section, if the Minister considers that the current level of the stock or the level of the stock that can produce the maximum sustainable yield is not able to be estimated reliably using the best available information, the Minister must—
(a) not use the absence of, or any uncertainty in, that information as a reason for postponing or failing to set a total allowable catch for the stock; and
(b) have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock; and

(c) set a total allowable catch—

(i) using the best available information; and

(ii) that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level that can produce the maximum sustainable yield.

(3) In considering the way in which and rate at which a stock is moved towards or above a level that can produce maximum sustainable yield under subsection (2)(b) or (c), or (2A) (if applicable), the Minister shall have regard to such social, cultural, and economic factors as he or she considers relevant.

(4) The Minister may from time to time, by notice in the *Gazette*, vary any total allowable catch set for any quota management stock under this section by increasing or reducing the total allowable catch. When considering any variation, the Minister is to have regard to the matters specified in subsections (2), (2A) (if applicable), and (3).

(5) Without limiting subsection (1) or subsection (4) of this section, the Minister may set or vary any total allowable catch at, or to, zero.

(6) Except as provided in subsection (7) of this section, every setting or variation of a total allowable catch shall have effect on and from the first day of the next fishing year for the stock concerned.

(7) After considering information about the abundance during the current fishing year of any stock listed in Schedule 2 to this Act, and after having regard to the matters specified in subsections (2), (2A) (if applicable), and (3), the Minister may, by notice in the *Gazette*, increase the total allowable catch for the stock with effect from such date in the fishing year in which the notice is published as may be stated in the notice.

(8) If a total allowable catch for any stock has been increased during any fishing year under subsection (7) of this section, the total allowable catch for that stock shall, at the close of that fishing year, revert to the total allowable catch that applied to that stock at the beginning of that fishing year; but this subsection does not prevent a variation under subsection (4) of this section of the total allowable catch that applied at the beginning of that fishing year.

(9) The Governor-General may from time to time, by Order in Council, omit the name of any stock from Schedule 2 to this Act or add to that Schedule the name of any stock whose abundance is highly variable from year to year.

(10) Subsection (1) does not require the Minister to set an initial total allowable catch for any quota management area and stock unless the Minister also proposes to set or vary a total allowable commercial catch for that area and stock under section 20.

15 Fishing-related mortality of marine mammals or other wildlife

(1) If a population management plan has been approved under section 14F of the Wildlife Act 1953 or section 3E of the Marine Mammals Protection Act 1978, the Minister—

(a) shall take all reasonable steps to ensure that the maximum allowable fishing-related mortality level set by the relevant population management plan is not exceeded:

(b) may take such other measures as he or she considers necessary to further avoid, remedy, or mitigate any adverse effects of fishing on the relevant protected species.

(2) In the absence of a population management plan, the Minister may, after consultation with the Minister of Conservation, take such measures as he or she considers are necessary to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species, and such measures may include setting a limit on fishing-related mortality.

(3) The Minister may require, or authorise the chief executive to require, any person or class of persons listed in section 189 of this Act to give to the Minister or the chief executive such information relating to fishing-related mortality as the Minister or chief executive, as the case may be, considers necessary, and may require, or authorise the chief executive to require, such information to be given in the approved manner and form.

(4) The Minister may recommend the making of such regulations under section 298 of this Act as the Minister considers necessary or expedient for the purpose of implementing any measures referred to in subsection (1) or subsection (2) or subsection (3) of this section.

(5) The Minister may, by notice in the *Gazette*, prohibit all or any fishing or fishing methods in an area either—

(a) under subsection (1)(a) of this section, for the purpose of ensuring the maximum allowable fishing-related mortality level set by the relevant population management plan is not exceeded; or

(b) under subsection (2) of this section, for the purpose of ensuring that any limit on fishing-related mortality is not exceeded.

(6) Every person commits an offence and is liable to the penalty set out in section 252(5) of this Act who fails to comply with any notice given under subsection (5) of this section.

20 Setting and variation of total allowable commercial catch

(1) Subject to this section, the Minister shall, by notice in the *Gazette*, set in respect of the quota management area relating to each quota management stock a total allowable commercial catch for that stock, and that total allowable commercial catch shall continue to apply in each fishing year for that stock unless varied under this section, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26.

(2) The Minister may from time to time, by notice in the *Gazette*, vary any total allowable commercial catch set for any quota management stock by increasing or reducing that total allowable commercial catch.

(3) Without limiting the generality of subsections (1) and (2) of this section, the Minister may set or vary a total allowable commercial catch at, or to, zero.

(4) Every total allowable commercial catch set or varied under this section shall have effect on and from the first day of the next fishing year for the quota management stock concerned.

(5) A total allowable commercial catch for any quota management stock shall not—

(a) be set unless the total allowable catch for that stock has been set under section 13 or section 14 of this Act; or

(b) be greater than the total allowable catch set for that stock.

21 Matters to be taken into account in setting or varying any total allowable commercial catch

(1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall allow for—

(a) the following non-commercial fishing interests in that stock, namely-

(i) Maori customary non-commercial fishing interests; and

(ii) recreational interests; and

(b) all other mortality to that stock caused by fishing.

(2) Before setting or varying a total allowable commercial catch for any quota management stock, the Minister shall consult such persons and organisations as the Minister considers are representative of those classes of persons having an interest in this section, including Maori, environmental, commercial, and recreational interests.

(3) After setting or varying any total allowable commercial catch under section 20 of this Act, the Minister shall, as soon as practicable, give to the parties consulted under subsection (2) of this section reasons in writing for his or her decision.

(4) When allowing for Maori customary non-commercial interests under subsection (1), the Minister must take into account—

(a) any mataitai reserve in the relevant quota management area that is declared by the Minister by notice in the *Gazette* under regulations made for the purpose under section 186:

(b) any area closure or any fishing method restriction or prohibition in the relevant quota management area that is imposed by the Minister by notice in the *Gazette* made under section 186A.

(5) When allowing for recreational interests under subsection (1) of this section, the Minister shall take into account any regulations that prohibit or restrict fishing in any area for which regulations have been made following a recommendation made by the Minister under section 311 of this Act.

311 Areas closed to commercial fishing methods

(1) The Minister may, where—

(a) catch rates by recreational fishers for a stock are low; and

(b) such low catch rates have a significant adverse effect on the ability of recreational fishers to take their allowance for that stock; and

(c) the low catch rates are due to the effect of commercial fishing for the stock in the area or areas where recreational fishing for the stock commonly occurs; and

(d) a dispute regarding the matter has been considered under Part 7 of this Act and the Minister is satisfied that all parties to the dispute have used their best endeavours in good faith to settle the dispute but have failed to do so,—

after consulting with such persons or organisations as the Minister considers are representative of those classes of persons who have an interest in the matter, recommend the making of regulations under section 297 of this Act that close an area or areas to commercial fishing for that stock, or prohibit a method or methods of commercial fishing in an area or areas for that stock for the purpose of better providing for recreational fishing for that stock, provided that such regulations are not inconsistent with the Maori Fisheries Act 1989, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or Part 9 of this Act.

(2) After determining to recommend the making of regulations under subsection (1) of this section, the Minister shall, as soon as practicable, give to the parties consulted in accordance with that subsection reasons in writing for his or her decision.

ACKNOWLEDGEMENTS

This Guide was commissioned by the Hauraki Gulf Forum and authored by Raewyn Peart. The author would like to acknowledge the Ministry of Fisheries and Keir Volkerling for contributing material to the Guide. The author would also like to acknowledge the following people who commented on drafts of the Guide:

Kath Coombes, Auckland Regional Council
Professor Charles Crothers, Auckland University of Technology
Sam Eccles, Ministry of Fisheries
Roger Grace, Marine Biologist
Tim Higham, Hauraki Gulf Forum
Scott Mcindoe, Option 4
Alan Moore, Ministry of Fisheries
John Taunton-Clark, Ministry of Fisheries
Keir Volkerling, Consultant

ACRONYMS

ACE	Annual catch entitlement
B_{MSY}	The size of a fish stock that can produce the maximum sustainable yield
DOC	Department of Conservation
EEZ	Exclusive economic zone
HGMPA	Hauraki Gulf Marine Park Act 2000
ITQ	Individual transferable quota
MfE	Ministry for the Environment
MPA	Marine protected areas
MSY	Maximum sustainable yield
NZCPS	New Zealand coastal policy statement
QMA	Quota management area
QMS	Quota management system
RMA	Resource Management Act 1991
TAC	Total allowable catch
TACC	Total allowable commercial catch

GLOSSARY OF MĀORI TERMS

Kaimoana	Seafood
Kāinga	Village
Kaitiakitanga	Exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori (Māori customary values and practices) in relation to natural and physical resources; it includes the ethic of stewardship (section 2, RMA)
Kotahitanga	Unity
Mana moana	Traditional authority over the marine area
Manaakitanga	Hospitality, providing for manuhiri (visitors)
Mātauranga	Traditional knowledge
Mauri	Life principle
Nohoanga	Dwelling places, often used for sites of temporary or seasonal occupation
Papakāinga	Group of houses and associated buildings enabling tangata whenua to live on their land
Rāhui tapu	To put in place a temporary ritual prohibition or closed season
Rangatiratanga	Traditional right to exercise authority
Rohe	Territory
Tikanga	Custom
Tohatoha	Distribution, allocation of resources
Tuakanatanga	Status of an elder sibling
Wairua	Spirit or soul
Whānau	Family
Whanaungatanga	Relationship or kinship

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