



# Implementing key components of the Kaikōura Marine Strategy Regulatory Impact Statement

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# REGULATORY IMPACT STATEMENT

## Implementing the Key Components of the Kaikōura Marine Strategy

### Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI) and the Department of Conservation (DOC).
2. The RIS provides an analysis of the options for implementing the key components of the Kaikōura Marine Strategy (the Strategy) submitted to the government by Te Korowai o Te Tai ō Marokura (Te Korowai) in 2012. The Strategy seeks to protect the marine environment in Kaikōura whilst providing economic benefits and opportunities for present and future generations. MPI and DOC propose that special legislation is the most efficient and effective means to give effect to the Strategy.
3. The analysis has been undertaken by MPI and DOC, with information supplied by Te Korowai. Te Korowai consulted extensively with the Kaikōura community in developing the Strategy. Officials have not repeated that consultation, but have undertaken targeted engagement with some stakeholders, primarily at the national level.
4. There are some constraints in the RIS analysis. Te Korowai, independent of Government, developed the Strategy and MPI and DOC have accepted the information contained in the Strategy in good faith. Fisheries management usually occurs over a larger area than at a localised Kaikōura -specific level. Information given to officials about localised depletion of fisheries resources is therefore anecdotal and is not able to be verified independently.
5. The proposal will not impair private property rights or market competition. It may impact on the incentives for the petroleum and seabed minerals industry to invest in exploration; the scale of any potential effect is unknown but likely to be minor. The proposal does not override common law principles.
6. Costs to government from the preferred option are expected to be minimal with the majority of implementation, monitoring and compliance costs to be met through existing MPI and DOC baselines.

Jeff Flavell  
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Conservation

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Director Fisheries Management, Ministry  
for Primary Industries

Date:

Date:

## Executive Summary

7. The Kaikōura marine and coastal environment has unique biological features and is of historical, cultural, spiritual and economic significance with a thriving tourism industry centred on the viewing of marine mammals worth \$134m per annum in local revenue. Despite these attributes, Kaikōura has very little formal coastal or marine protection.
8. Recognising this, a group of mainly local community members came together in 2005 and established themselves as Te Korowai o Te Tai ō Marokura (Te Korowai - the Kaikōura Coastal Marine Guardians) to provide leadership about the use and protection of Kaikōura's resources. Te Korowai submitted the Kaikōura Marine Strategy to the government in 2012 following a seven year process of negotiating "gifts and gains" where one party is offered a gift in exchange to achieve a gain in another area. The Strategy reflects a successful collaborative process that captures the community's aspirations and concerns while paving a way forward by proposing a range of tools to protect and manage the Kaikōura marine and coastal environment.
9. DOC and MPI consider that the Strategy's vision for the protection of the Kaikōura marine environment, the sustainable management of its resources, and recognition of customary rights is consistent with maintaining the natural capital that underpins Kaikōura's contributions to economic activity and the generation of export revenues in the fishing and marine tourism sectors.
10. The economic impact of the proposal is low (e.g. displaced fishing activity with up to \$1.1m annual impact on commercial fishing and potential impact on the petroleum and seabed mineral sector to invest). There will be economic benefits from increased marine tourism.
11. This proposal addresses how Government can balance environmental protection and provide for customary rights and values whilst ensuring economic growth in Kaikōura. Establishing the following will help achieve this: a marine reserve, a marine mammal sanctuary, three mātaihai reserves, two taiāpure-local fisheries, changes to recreational fishing regulations, and establishment of a Ministerial advisory committee. A number of options to achieve this balance were considered:
  - 1) Do nothing or status quo;
  - 2) Use a non-regulatory approach;
  - 3) Use existing legislation;
  - 4) Use special legislation; and,
  - 5) Implement an alternative approach.
12. Nine criteria were developed to provide a series of "tests" for government to assess the above implementation options by asking whether the proposal:
  - a) Has public and regional acceptability;
  - b) Promotes and increases environmental protection;
  - c) Results in integrated management;
  - d) Has economic benefits;
  - e) Minimises costs and impacts on existing and potential activities;
  - f) Recognises customary rights and values;
  - g) Supports collaborative processes;
  - h) Meets Regulatory Best Practice; and
  - i) Preserves the negotiated "gifts and gains".
13. Table 1 assesses the implementation options against the assessment criteria. In some cases the impact is variable (e.g. positive for the marine tourism sector, but potentially

negative for the petroleum and seabed minerals sector). The best implementation approach is option 4 - special legislation.

14. Special legislation will preserve the Strategy's consensus of "gifts and gains" by providing an integrated and coordinated mechanism for implementation.
15. Special legislation does not require existing legislative requirements to be met (in this case, the Marine Reserves Act 1971, Marine Mammals Protection Act 1978, Fisheries Act 1996, and Fisheries (South Island Customary Fishing) Regulations 1999). However, they have been used in this proposal to provide a basis for robust analysis of the proposed management tools.
16. Costs to government are expected to be minimal with the majority of implementation, monitoring and compliance costs to be met through existing baselines by MPI and DOC at a cost of approximately \$100-\$200,000 in the first year and \$50-\$60,000 in each subsequent year. Costs of establishing and running a Ministerial advisory committee are being considered.
17. A thorough consultation process was undertaken by Te Korowai and further strengthened by MPI and DOC targeting key stakeholders. The Ministry for Business, Innovation and Employment (including the New Zealand Petroleum and Minerals business group) and Ministry for the Environment have raised concerns regarding the nature and extent of seismic testing restrictions in the proposed marine mammal sanctuary. Concerns have also been raised about the shape of the marine reserve.
18. MPI and DOC believe that the benefits of the proposal outweigh the impacts and concerns raised and recommend that the following are established: the marine reserve, the marine mammal sanctuary, the three mātaihai reserves and the two taiāpure-local fisheries. Options are given regarding the marine mammal sanctuary, with DOC recommending the sanctuary be implemented as proposed by Te Korowai and MPI, Ministry for Business Innovation and Employment (Infrastructure and Resource Markets Group) and the Ministry for the Environment recommending an alternative proposal that involves fewer restrictions on seismic surveying. To provide advice on conservation and fisheries issues in Kaikōura it is also recommended that a Ministerial advisory committee be established (Te Korowai in the first instance).
19. Out of the 28 proposed changes to recreational fishing regulations, 23 are supported. The five proposals not recommended to be progressed through the special legislation would have negligible impact and complicate compliance, or are better dealt with through codes of practice or other voluntary measures.

**Table 1: Objectives Criteria and Implementation Options**

Implementation Options	Criteria 1 Public and Regional acceptability	Criteria 2 Environmental protection	Criteria 3 Integrated Management	Criteria 4 Economic benefits	Criteria 5 Minimises impact on existing & potential activities	Criteria 6 Recognises customary rights and values	Criteria 7 Supports collaborative processes	Criteria 8 Regulatory Best Practice	Criteria 9 Preserves “gifts and gains”
Option 1: Do Nothing or Status Quo	x	x	x	x	✓	x	x	x	x
Option 2: Non-regulatory approach <sup>1</sup>	x	x	✓	x	✓	x	x	x	x
Option 3: Use existing legislation	✓	✓	✓	x	✓	✓	x	✓	x
Option 4: Use special legislation ( <i>preferred option</i> )	✓	✓	✓	x	✓	✓	✓	✓	✓
Option 5: Implement an alternative approach <sup>2</sup>	✓	✓	✓	x	✓	x	x	✓	x

**Legend**

✓	Generally positive
x	Generally negative

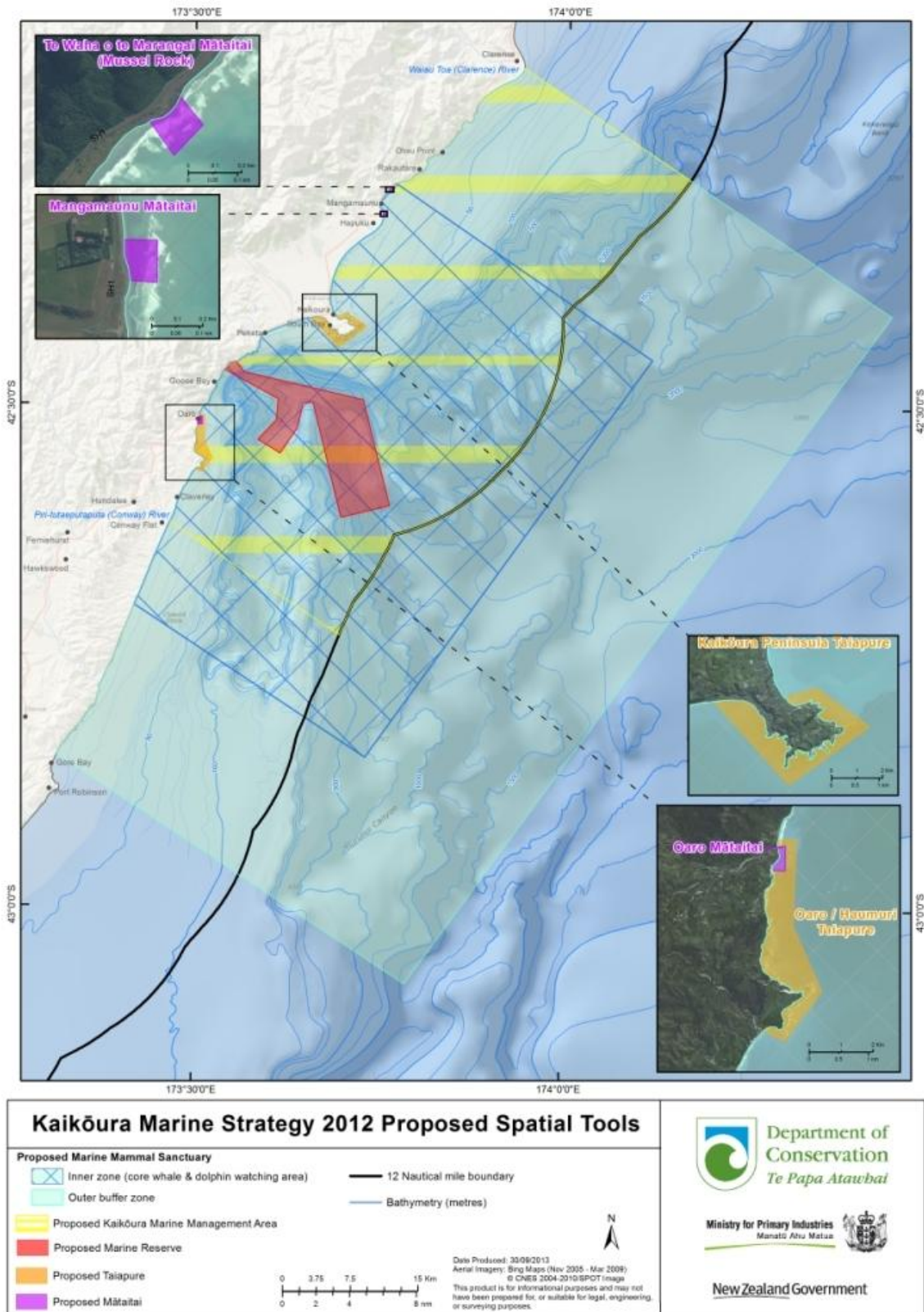
<sup>1</sup> Non –regulatory refers to measures such as voluntary compliance, education and increased compliance

<sup>2</sup> For example, a larger marine reserve with more simple boundaries, a marine mammal sanctuary with a greater range of restrictions, a smaller marine mammal sanctuary, larger or more mātaītai reserves and taiāpure-local fisheries, further cuts to recreational bag limits.



# Overview map of proposal

Figure 1: Overview map of proposal



## Status quo and background

20. The Kaikōura marine environment holds great significance historically, culturally, spiritually, environmentally and economically. It has dynamic geography, geology and marine life with resultant significant marine tourism but is not subject to any formal spatial protection afforded under existing legislation<sup>3</sup> except for a small rāhui (area closed to fishing) on the northern side of the Kaikōura Peninsula. Existing regulations do not address particular concerns of the local community nor provide recognition of the special nature and customary values of the area.

*“The sea around Kaikōura is unusually productive and supports a great diversity of life. Kaikōura Peninsula has been a natural focus for human settlement and interaction with the sea. For 400 years it has been the home of the Ngāti Kurī hapu of Ngāi Tahu.”<sup>4</sup>*

## TE KOROWAI AND THE KAIKŌURA MARINE STRATEGY

21. Te Korowai is a diverse group of people mainly based in Kaikōura standing for local leadership in caring for Tangaroa, and who have sought to play an active role in decision-making on the use and protection of the marine environment. A korowai is a cloak worn by a chiefly person and is laid over something to ensure its care and protection. Te Korowai’s vision is:

*“By perpetuating the mauri and wairua of Te Tai o Marokura the community act as kaitiaki of Tangaroa’s taonga; to achieve a flourishing, rich and healthy environment where opportunities abound to sustain the needs of present and future generations.”*

22. Te Korowai was established in 2005 as the result of an impasse over a stalled marine reserve application for the Kaikōura Peninsula. Recognising the importance of the marine environment, Te Rūnanga o Kaikōura (representing Ngāti Kurī), in association with DOC, gathered interested parties together and established Te Korowai with the goal of providing leadership about use and protection of the marine environment.
23. Current membership of Te Korowai includes representatives from: Te Rūnanga o Kaikōura, Ngāti Kurī of Ngāi Tahu, recreational fishers, the Kaikōura Boating Club, local commercial fishers (rock lobster, paua and inshore finfish), charter fishing operators, tourism operators and the Kaikōura branch of the Royal Forest and Bird Protection Society.
24. In 2008 Te Korowai produced a characterisation report to determine coastal and marine values and uses in Kaikōura. Public contributions and scrutiny were welcomed.
25. Te Korowai’s next step was to develop Kaikōura Marine Strategy (“the Strategy”) through a collaborative seven-year process. Te Korowai adopted a “gifts and gains” approach to building a consensus, where one party is offered a gift in exchange to achieve a gain in another area with an aim to sustain the integrity of the whole approach to stewardship of resources for the future. The Strategy reflects the agreement Te Korowai reached in consultation with the community about how they want the Kaikōura marine and coastal environment to be managed.
26. The following agencies or organisations have provided advice or support to Te Korowai at varying times and levels: DOC, MPI, Ministry for the Environment, Environment Canterbury, Kaikōura District Council and Te Rūnanga o Ngāi Tahu.

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<sup>3</sup> Various statutory and regulatory protections exist at species level under the Marine Mammals Protection Act and the Fisheries Act but there is no spatial protection mechanism currently in place.

<sup>4</sup> Kaikōura Coastal Marine Values and Uses: A characterisation report May 2008, p2.

## Definition

27. “Implementation of the key components of the Strategy” in this proposal refers to implementation of some, but not all of the measures proposed in the Strategy.
28. Specifically this proposal relates to implementation of key spatial tools (marine reserve, three mātaimai reserves, two taiāpure-local fisheries, marine mammal sanctuary), changes to recreational fishing regulations and the establishment of a Ministerial advisory committee. Elements of the Strategy not considered in this proposal that will need to be progressed independently include: World Heritage Status, integrated land and water management plans, biosecurity measures, International Bird Area status, voluntary codes of practice for commercial fishing and education and compliance initiatives.
29. Officials have discussed this partial implementation of the proposal with Te Korowai who have agreed that implementing those elements described above as an integrated package would maintain the balance of “gifts and gains”.

## Constraints

30. It has been difficult to gather Kaikōura-specific fishing data and monitor trends as there is limited data on recreational and customary fish take and commercial catch data is not gathered in relation to a precise location but over a large statistical area within a Quota/Fisheries Management Area. Evidence about local depletion of the fisheries resource in the Strategy has been largely anecdotal. Te Korowai, independent of Government, developed the Strategy and MPI and DOC have accepted the information contained in the Strategy in good faith. Officials agree there is a trend of increasing recreational fishing pressure and fish poaching in the area, and accept Te Korowai’s assessment that there are a number of local resource management issues that need to be addressed. Data concerning marine mammal distribution and behaviour has been gathered in conjunction with existing marine mammal tourism activities. There is limited data for the areas beyond the tourism operation areas of practice.

## MARINE TOURISM IN KAIKŌURA

31. Marine tourism is a significant economic earner for New Zealand that is increasing annually. Between 2004 and 2008 revenue from whale and dolphin tourism increased from \$72 million nationally to \$80 million<sup>5</sup>. In 2013 international visitors voted whale and dolphin tourism 45th from 131 activities and attractions surveyed. Kaikōura is the main centre in New Zealand that these activities take place.
32. Kaikōura District Council estimates the current value of tourism to be approximately 35% of the district’s economy. Direct spending is estimated at \$30 million pa (gross).<sup>6</sup> Increasing marine tourism is essential to Kaikōura’s continued economic growth.
33. Safeguarding the marine environment by implementing the proposed key components will allow marine tourism to grow and flourish which will in turn provide investment security, positive economic spin-offs and environmental benefits for Kaikōura and the surrounding region. Refer to Appendix 3 for specific figures and benefits of marine tourism in Kaikōura.

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<sup>5</sup> [Large & Associates report for IFAW 2009](#) Executive Summary version tabled at IWC by Australia

<sup>6</sup> Based on 2013 data provided by Te Korowai including whale, seal and dolphin watching from boats, kayaks or aircraft, and fishing charters.

## MARINE PROTECTED AREAS AND OVERARCHING MARINE WORK

34. The current Marine Protected Areas Policy provides for a regionally based planning approach for marine protection in New Zealand. The Kaikōura Marine Strategy was progressed outside of the Marine Protected Areas process as agreed in 2006 by the then Minister of Conservation.
35. The lack of a national framework that enables integrated planning and management of marine areas has been recognised through previous Government oceans policy initiatives. The Natural Resource Sector (NRS) agencies are currently in the early stages of a project to assess the existing marine management regime to better identify the significance of this issue and potential solutions. The NRS project has not yet provided an initial report to Ministers and decisions on its priority and progression have not yet been made.
36. Given the work Te Korowai have undertaken over the past seven years and the success of its collaborative approach in reaching agreement through its “gifts and gains” approach, MPI and DOC do not think it is appropriate that this proposal should be delayed whilst awaiting new Marine Protected Areas Policy, new Marine Reserve legislation or an Natural Resource Sector marine strategy work plan.

### Problem definition

37. Four key problems inherent with the status quo have been identified:
  - 1) Kaikōura’s special qualities as a biodiversity ‘hotspot’ and as a habitat for iconic marine species do not have any formal protection or official recognition.
  - 2) Lack of mechanisms in place to fully recognise Ngāti Kurī’s customary rights.
  - 3) Localised sustainability concerns with fisheries, including a significant level of illegal fishing.
  - 4) The Strategy is unable to be implemented, as an integrated package, through the current legal framework.
38. These four key problems are expanded upon in Table 2 below:

**Table 2: Problem Definition Table – Issues facing Kaikōura’s marine environment**

Problem	Analysis	Likely impact if status quo continues	Proposed solution
Key Problem 1: Kaikōura’s special qualities as a biodiversity ‘hotspot’ and as a habitat for iconic marine species do not have any formal protection or official recognition.			
a) Lack of official recognition of the submarine canyon, marine species, and other natural marine habitats in the Kaikōura marine and coastal area.	<p>There is no official recognition of:</p> <ul style="list-style-type: none"> <li>the important biophysical characteristics of the Kaikōura marine and coastal area;</li> <li>the biological diversity and integrity of marine species, particularly in the unique ecosystem in and around the Kaikōura canyon;</li> <li>the diverse range of species, including the iconic marine mammals (some of which are threatened species) and their habitat.</li> </ul> <p>Kaikōura is New Zealand’s main centre for whale and dolphin tourism and receives between 800,000 and 1 million visitors per year.</p>	<p>Loss of international reputation.</p> <p>Loss of mana for Ngāti Kuri/ Ngāi Tahu</p> <p>The area is subject to competing, and at times conflicting activities and uses. And in particular, the use and extraction of resources, including biomass, will alter the habitat for marine species and the ecosystem.</p>	<p>Establish a marine mammal sanctuary.</p> <p>Establish a marine reserve</p>
b) Potential habitat degradation from fishing and other activities	<p>Current activities that can contribute to habitat degradation include bottom trawling and land-based effects.</p> <p>Te Korowai is concerned about the impact bottom trawling is having on species, like horse mussels, who help to establish three dimensional habitats.</p> <p>The precise magnitude of the problem is unknown.</p> <p>Bottom trawling does occur in certain inshore areas between Kaikōura Peninsula and Haumuri Bluffs and it is to be expected that horse mussels, along with other seabed species will have been impacted by this activity.</p> <p>Land-based effects from, for example urban waste and run-off, are also thought to contribute to habitat degradation.</p>	<p>Precise impact on fishing and habitats unknown due to lack of current data but bottom trawling is known to be a technique that can cause significant destruction of benthic habitat.</p>	<p>Establish a marine reserve</p>
c) Potential impact on marine	<p>There is a range of potential impacts arising directly or</p>	<p>Potential risk to marine mammals from the residual risk of</p>	<p>Establish a marine mammal sanctuary</p>

Problem	Analysis	Likely impact if status quo continues	Proposed solution
mammals from seismic surveying	<p>indirectly from acoustic seismic sources depending on energy levels, frequencies and duration. These include:</p> <ul style="list-style-type: none"> <li>• Physical effects: trauma to body tissues... or auditory damage leading to permanent or temporary hearing loss;</li> <li>• Auditory masking: increasing background noise levels which affects an animal's ability to detect relevant sounds, such as when finding prey, navigating or in social communications;</li> <li>• Behavioural: causing avoidance or attraction responses, which may lead to disruption of normal functions; and</li> <li>• Disturbance or reduction in prey species.<sup>7</sup></li> </ul> <p>The potential adverse impacts of seismic surveying can be largely avoided, remedied or mitigated through compliance with the existing Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations ("the Code"). However, there is a unique and special mix of values at this site, including the importance of reliable marine mammal behaviour to tourism, that make it appropriate to also regulate the minor residual risk.</p> <p>It is unlikely that a voluntary industry agreement could be reached to limit seismic surveying, to the extent proposed in the Strategy. A moratorium on seismic surveying may not offer long-term certainty to the marine mammal tourism industry.</p> <p>In any case, given the particular mix of values at this site including the marine mammal tourism industry, there is a case for managing the residual risks to marine mammals that may not be fully managed by the Code. In particular the marine mammal the marine</p>	<p>potential behaviour modification due to effects of seismic surveying.</p> <p>Potential risk to tourism industry and New Zealand's international reputation as a protector of marine mammals.</p> <p>Compliance with the Code is mandatory within the EEZ but is voluntary in the territorial sea. While most organisations conducting level 1 or 2 surveys in New Zealand have signed up to the Code and treat the provisions as a requirement throughout New Zealand waters, this does rely on the good-will of operators when carrying out surveys in the territorial sea. If the Code is not followed in the territorial sea then adverse physical and behavioural effects on marine mammals could occur.</p>	with restrictions on seismic testing.

<sup>7</sup> 2012 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations Reference Document



Problem	Analysis	Likely impact if status quo continues	Proposed solution
	mammal tourism industry relies heavily on both access to the marine mammals in the area and on them having predictable patterns of behaviour.		
d) Threats to seal breeding colony from human interference.	<p>Ohau Point is the largest single fur seal breeding colony along the east coast of the South Island, and is possibly the largest breeding colony in the country.</p> <p>New Zealand fur seals are fully protected under the Marine Mammal Protection Act 1978, however, this has not prevented people harassing, deliberately harming or killing these creatures.</p> <p>There have been several serious incidents at Ohau Point where seals have been deliberately harassed, harmed, and killed.</p> <p>People approaching seals or wandering amongst the colony can result in a range of seal responses from agitation and aggression through to flight and stampedes. Mother-pup bonds may be broken and pups can be crushed. Fur seals are most vulnerable to disturbance from approaches on land and breeding colonies are especially susceptible due to their high densities and particular social dynamics.</p>	<p>Continued disruption to the seals at the Ohau Point seal colony.</p> <p>Potential risk to tourism industry and New Zealand's international reputation as a protector of marine mammals.</p>	Establish a marine mammal sanctuary with restrictions on public foot access to the Ohau Point New Zealand Fur Seal Colony.
Key Problem 3: Lack of mechanisms in place to fully recognise Ngāti Kuri's customary rights.			
e) Inadequate recognition of customary fishing rights and customary relationships with marine mammals.	<p>Ngāti Kuri's customary rights have been officially recognised in the Treaty settlement process but have not been fully implemented.</p> <p>There is no further recognition, (other than Ngāi Tahu Claims Settlement Act 1998) of the cultural significance of marine mammals, in particular, Ngāti Kuri's special relationship with Sperm Whales. New Zealand fur seals, sperm whales, humpback whales and southern right whales are specifically recognised as taonga species under the Ngāi Tahu Claims Settlement Act 1998 for Ngāi Tahu.</p>	<p>Potential loss of access to fisheries of customary importance.</p> <p>Loss of mana for Ngāti Kuri/ Ngāi Tahu.</p> <p>Negative impact on the Crown/Ngāi Tahu relationship.</p>	<p>Establish mātaihai reserves</p> <p>Establish taiāpure-local fisheries</p> <p>Establish a marine mammal sanctuary</p> <p>Establish a Ministerial advisory committee that includes Iwi representation.</p>
Key Problem 2: Localised sustainability concerns with the fisheries, including a significant level of illegal fishing.			

Problem	Analysis	Likely impact if status quo continues	Proposed solution
f) Sustainability concerns the local fisheries with flow-on tensions between commercial, recreational and customary fishers competing for reduced fish numbers.	<p>The focus of the fisheries management system is to manage sustainability of fish stocks at the macro level of relatively large Fisheries Management Areas, which can potentially lead to localised sustainability issues.</p> <p>Kaikoura has relatively easy access to fishing grounds, while reductions to recreational bag limits in other areas (for example Marlborough), and increasing visitor numbers means there is a high risk, and anecdotal evidence, of localised depletion of sedentary species such as shellfish and reef fish. New recreational fishing survey data will be available shortly, and charter vessels are now registered and required to report catch of key species. As a result MPI will be better placed to monitor trends in recreational and charter vessel catch.</p>	Increased localised depletion of fisheries resources.	<p>Reduce local recreational bag limits</p> <p>Establish mātaimai reserves</p> <p>Establish taiāpure-local fisheries</p>
g) Illegal fishing (poaching)	<p>Poaching of high value species is a significant problem in this area. Fishing grounds in this area are located next to a state highway and are therefore very accessible. There is a low population in this area so, despite compliance presence, there is a reasonable chance that rogue fishing practices will not be observed. Paua and rock lobster (which are plentiful in Kaikōura and are both high value species) are sought after, and poaching of these is known to occur. Rock lobster fishers will often take their daily allowance of 6 every day and often take associates with them. There have been successful prosecutions for selling illegally taken rock lobster. Paua legal harvest is high and MPI is aware of the black market problem and has also successfully prosecuted several individuals for selling paua that are undersize or in excess. A considerable amount of resource, that could be used elsewhere, is committed to patrolling recreational fishing activity.</p>	<p>Continued illegal fishing of high value species.</p> <p>Increased localised depletion of high value species.</p>	<p>Reduce local recreational bag limits and introduce telson clipping of recreationally caught rock lobster</p>
Key Problem 4: The Strategy is unable to be implemented, as an integrated package, through the current legal framework.			
h) Current law would fragment implementation of the Strategy	Te Korowai has expectations around the Strategy being implemented as a result of the support and agreements	Significant risk of loss of goodwill between the Crown and Te Korowai.	<p>Promulgate through special legislation.</p> <p>Establish a Ministerial advisory</p>



Problem	Analysis	Likely impact if status quo continues	Proposed solution
<p>through separate regulatory processes under three different Acts.</p>	<p>reached between sectors involved in developing the Strategy (referred to as the “gifts and gains”).</p> <p>There is a lack of a national framework that enables integrated planning and management of marine areas with clear decision making over the competing uses in the Kaikōura Marine environment.</p> <p>The four spatial tools utilised by the Strategy fall under the jurisdiction of three different Acts, with separate and sometimes conflicting regulatory processes and requirements (e.g. a marine mammal sanctuary can not be created inside a marine reserve).</p>	<p>Negative signals sent to other community groups working collaboratively - which would conflict with government’s growing support for community collaborative planning processes.</p>	<p>committee (Te Korowai in the first instance).</p>

## Objectives

39. The objectives guiding this proposal have been drawn from: Te Korowai's desire to preserve the negotiated consensus of "gifts and gains" which guided development of the Strategy; the objectives expressed in the Strategy; and wider government goals, objectives and legislative obligations.
40. Te Korowai's four key objectives are:
- That traditional fishing areas of special significant to Ngāti Kurī are restored and maintained and traditional knowledge (matauranga) and customs (tikanga) of Ngāti Kurī are utilised to protect the fisheries of Te Tai o Marokura;
  - That our marine treasures are protected and future generations can continue to experience the wonders that we have today;
  - Abundant fish for present and future generations; and,
  - Sustain and enhance the quality of the Kaikōura marine and coastal environment.
41. Wider government goals, objectives and legislative obligations linked to this proposal are those around:
- Business growth, including natural resources, tourism and export markets;
  - Balancing economic growth with environmental protection;
  - Statutory obligations to Maori;
  - Improving relationships with Ngāi Tahu;
  - Supporting collaborative planning; and,
  - Regulatory best practice.

Appendix 1 contains more in-depth discussion of these wider government goals, objectives and legislative obligations.

## Options Analysis

42. The objectives expressed above provide the basis for assessing the proposal. Nine specific criteria have been developed to provide a series of "tests" for government to assess the implementation options by asking whether the proposal:
- a) Has public and regional acceptability;
  - b) Promotes and increases environmental protection;
  - c) Results in integrated management;
  - d) Has economic benefits;
  - e) Minimises costs and impacts on existing and potential activities;
  - f) Recognises customary rights and values;
  - g) Supports collaborative processes;
  - h) Meets Regulatory Best Practice; and
  - i) Preserves the negotiated "gifts and gains".

43. Five options for achieving the objectives were shortlisted and these were evaluated against the criteria in paragraph 42. There are a range of options which have not been assessed as they do not meet the majority of the criteria, therefore the objectives cannot be met.
44. A detailed benefits/costs analysis of implementation options is discussed below in Table 3.

**Table 3 : Benefits and costs analysis on options for implementing key components of the Strategy**

Options	Benefits	Costs
<p><b>Option 1: Do Nothing or Status Quo</b> It is not appropriate to do nothing or ignore the status quo as it does not meet the public policy objectives.</p>	<p>No action required.</p>	<p>Loss of mana for Ngāti Kuri/ Ngāi Tahu</p> <p>Negative impact on the Crown/Ngai Tahu relationship.</p> <p>The area is subject to competing, and at times conflicting activities and uses. And in particular, the use and extraction of resources, including biomass, will alter the habitat for marine species and the ecosystem.</p> <p>Continued disruption to the seals at the Ohau Point seal colony.</p> <p>Potential increased risk to marine mammals from the residual risk of potential behaviour modification due to effects of seismic surveying.</p> <p>Potential risk to tourism industry and New Zealand's international reputation as a protector of marine mammals.</p> <p>Potential loss of access to fisheries of customary importance.</p> <p>Continued illegal fishing of high value species.</p> <p>Increased localised depletion of fisheries resources, including high value species. (Precise impact unknown due to lack of current data.)</p> <p>Significant risk of loss of goodwill between the Crown and Te Korowai.</p> <p>Negative signals sent to other community groups working collaboratively - which would conflict with government's growing support for community collaborative planning processes.</p>
<p><b>Option 2: Use a Non-regulatory approach<sup>8</sup></b></p>	<p>Supports and promotes existing Codes of Practice and voluntary measures.</p>	<p>Relying on the good will of the community, tourists, recreational and commercial fishers and the petroleum and seabed minerals industry to meet the voluntary measures – which may not be adhered to, thereby resulting in the same costs set out in Option 1 above.</p> <p>No consequences for non-compliance.</p>

<sup>8</sup> Non –regulatory refers to measures such as voluntary compliance, education and increased compliance

Options	Benefits	Costs
<b>Option 3:</b> <b>Use existing legislation</b> <sup>9</sup>	<p>Existing legislative requirements would result in robust individual analysis of the proposed spatial tools.</p> <p>Each tool would be progressed via its own well established legislative pathway, with each considered independently on its own merits. The existing Acts include consultation/submissions processes, that may capture a range of stakeholders and parties that have not participated in the Te Korowai process.</p>	<ul style="list-style-type: none"> <li>Resource intensive, time consuming and complex</li> </ul> <p>Existing processes have resulted in some of these tools taking an extremely long time to be implemented. For example, mātaītai reserve take about 2-3 years on average as part of the process is open-ended and largely determined by applicants and also depends on the issues raised during consultation. A taiāpure-local fishery takes about 8 years as there may be extensive waits while the tribunal (consisting of a Judge of the Maori Land Court appointed by the Chief Judge of the Maori Land Court) considers any issues.</p> <ul style="list-style-type: none"> <li>Simultaneous and coordinated advancement unlikely</li> </ul> <p>Each tool has its own legislative pathway subject to public submission and it is highly unlikely that they will all be progressed concurrently (or at all) leaving Kaikōura at risk of inadequate marine protection.</p> <p>If one or more of the integral components of the Strategy are not implemented then the negotiations and consensual approach (“gifts and gains”) agreed by Te Korowai could unravel.</p> <p>It is not possible to create a marine mammal sanctuary over a marine reserve.</p>
<b>Option 4:</b> <b>Use special legislation</b> <i>(preferred option)</i>	<p>Implementing the key components of the Strategy will preserve the integrity of the “gifts and gains” collaborative approach taken and agreed to by Te Korowai.</p> <p>Special legislation will deem the proposed management tools as if they were established under existing legislation but in an integrated and concurrent manner.</p>	<p>Resourcing and capability costs associated with running an advisory committee.</p> <p>While Te Korowai represents a diverse range of stakeholders who embarked on collaborative journey to develop the Strategy, their process, and the resultant proposals may not reflect all interests.</p> <p>Might be seen as precedent setting (not legally but as a policy approach in other geographic areas).</p>
<b>Option 5:</b> <b>Implement an alternative approach</b> <sup>10</sup>	<p>A larger marine reserve with more straightforward boundaries would be simpler to comply with and easier to monitor compliance.</p> <p>A smaller marine mammal sanctuary that follows the lines of the commercial whale watch area may have less impact on potential petroleum and seabed mineral activities such as seismic survey</p>	<p>Higher costs to some fishers, particularly rock lobster fishers due to being excluded from productive fishing grounds.</p> <p>Marine mammals are likely to be exposed to the potential effects from seismic survey if work is conducted.</p> <p>Less supportive of marine mammal tourism.</p>

<sup>9</sup> Where the spatial tools are processed by the relevant agencies under relevant legislation with the aim of coming into the effect at the same time.

<sup>10</sup> For example, a simpler marine reserve, a marine mammal sanctuary with a greater range of restrictions, larger/more mātaītai reserves and taiāpure, further cuts to recreational bag limits – using existing regulation to achieve.

Options	Benefits	Costs
	and exploration.	Undertaking a seismic survey off the Kaikōura coast in strict accordance with the Code could be difficult (though not necessarily impossible) and will be constricted due to the abundance of dolphins and whales present in the area.
	A marine mammal sanctuary with a greater range of restrictions e.g. trawling bans and restrictions on purse seining.	Increased costs of compliance.  Higher costs to some fishers with more restrictions on catch methods permitted. This could result in less catch with the inability to meet quota entitlement.
	Reducing recreational bag limits further would allow species to flourish.	Potential for increased tension between recreational and commercial fishers as recreational fishers move further off-shore into areas generally fished commercially.  Individual sustenance levels at risk i.e. “fish for a feed”.
	Larger or more mātaimai reserves and taiāpure-local fisheries would provide greater area for customary gathering and greater marine protection.	Increased compliance.  Initially increased impact on commercial fishers in mātaimai.  Unravelling of the collaborative process and agreements of Te Korowai.

## PREFERRED OPTION: SPECIAL LEGISLATION (AN INTEGRATED APPROACH)

45. Te Korowai proposes that the key components of the Strategy be implemented using primary legislation under which delegated (“special”) legislation (regulations and gazette notices) would be created or amended to created the Kaikōura (Te Tai o Marokura) Marine Management Act. DOC and MPI support this approach.
46. Special legislation is the option that meets the most of the criteria in Table 1. In particular, special legislation is the most effective means of ensuring the “gifts and gains” negotiated and agreed to by Te Korowai are upheld by implementing the key components of the Strategy as an integrated package.

## Impact Analysis

47. Implementing the key components of the Strategy requires that the following be established: customary tools, specifically three mātaihai reserves and two taiāpure local fisheries; changes to recreational fishing bag limits; a marine reserve; a marine mammal sanctuary; and establishment of a Ministerial advisory committee. Refer to the overview map on page 7 showing the extent of the proposed spatial tools.
48. A discussion about each of these key components follows and includes existing statutory and regulatory obligations, issues raised during consultation and the benefits, costs and risks of each.

### HIKURANGI MARINE RESERVE

49. The Strategy seeks to protect New Zealand treasures with the objective *“that marine treasures are protected and future generations can continue to experience the wonders that we have today”*. The Strategy proposes the establishment of a marine reserve to achieve this objective.

#### Description

50. The proposed marine reserve covers the core Kaikōura canyon area and has a connection to the coast at Goose Bay. The canyon is a recognised biodiversity “hot spot” and the coastal section is regarded as a representative example of the near-shore rocky coast, while avoiding areas important for commercial fishers. The connection to the coast is relatively narrow (1.95 km of shoreline) and the reserve has irregular boundaries; these aspects have been negotiated as part of Te Korowai’s “gifts and gains” process; where something is offered up as a gift in order to achieve a gain in another aspect of the proposal. The proposed reserve is 10400ha in area and makes a significant contribution to the percentage of marine and coastal area that is protected throughout New Zealand as no-take reserves. Currently there are 34 marine reserves in New Zealand, ranging from 93 to 748000 ha in size.

#### Statutory and Regulatory Obligations

51. The objectives link to the purpose of the Marine Reserves Act 1971 which is to preserve areas, for the scientific study of marine life, that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.
52. The Marine Reserves Act sets out a notification process to be run by the applicant and a subsequent objections process. The Minister of Conservation ultimately decides whether to uphold objections or to approve the reserve. The Minister can uphold objections if they are satisfied that declaring the area a marine reserve would:
  - a) Interfere unduly with any estate or interest in land in or adjoining the proposed reserve;
  - b) Interfere unduly with any existing right of navigation;
  - c) Interfere unduly with commercial fishing;
  - d) Interfere unduly with or adversely affect any existing usage of the area for recreational purposes; and,
  - e) Otherwise be contrary to the public interest.
53. The Minister for Primary Industries and Minister of Transport concurrence is necessary in regard to the Conservation Minister’s decision. If concurrence is reached, the Governor-General can declare an area to be a marine reserve. If any objections are upheld, or concurrence is not obtained, then the reserve application cannot be

established. The existing legislative process (including statutory public consultation, approval by the Minister of Conservation and concurrence) takes, on average, 4 years.<sup>11</sup>

54. DOC is responsible for managing marine reserves. Management functions include marking marine reserve boundaries, law enforcement, issuing scientific permits and monitoring environmental changes.
55. The Marine Reserve Act covers matters such as freedom of access and any restrictions on fishing within all reserves, but additional conditions can apply to individual reserves by including them on the Order in Council that establishes the marine reserve.

### Targeted engagement undertaken by DOC

56. Forest and Bird National Office and the New Zealand Marine Sciences Society have concerns regarding the proposed design of the marine reserve. DOC notes that while the shape of the reserve is unorthodox, the proposed reserve will preserve part of the Kaikōura canyon, an area recognised as a 'biodiversity hotspot'<sup>12</sup> and maintain a connection to the shore, protecting a representative area of the Kaikōura rocky coastline - protection of the area proposed will have benefits.

### Assessment of Benefits, Costs and Risks

#### *Benefits*

57. Marine reserves are the government's most comprehensive tool in the provision of area-based biodiversity protection in the marine environment. The Marine Reserves Act 1971 states that they are specified areas of the sea and foreshore that are managed to preserve them in their natural state as the habitat of marine life for scientific study. Marine reserves may be established in areas that '...contain underwater scenery, natural features, or marine life of such distinctive quality, or so typical, beautiful or unique that their continued preservation is in the national interest'.
58. Within a marine reserve, all marine life is protected and fishing and the removal or disturbance of any living or non-living marine resource is prohibited, except as necessary for permitted monitoring or research. This includes dredging, dumping or discharging any matter or building structures.
59. The proposed marine reserve protects the seabed (and the water column directly above it) within the base of the Kaikōura canyon and a portion of the continental slope and shelf at the head of the canyon. The Kaikōura canyon is recognised as a 'biodiversity hotspot' containing far more marine life than seen before at such depths.<sup>13</sup> The proposed reserve includes much of the area thought to be critical habitat for sperm whales at Kaikōura and it has a connection to the shore, protecting a representative slice of the Kaikōura rocky coastline.<sup>14</sup>
60. Fish life within the reserve will be protected from all fishing and other threats.
61. The Kaikōura canyon is one of only 100 underwater canyons of this type known in the world. The canyon "*holds one of the most productive deep sea habitats known to science...and hosts an astonishing number of fish, plus large invertebrates, burrowing sea cucumbers, and various marine worms...[studies have] revealed invertebrate biomass values 100 times higher than any previously reported for deep sea habitats*

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<sup>11</sup> Average for 26 marine reserves between 1975-2011. Excludes 8 reserves established in Fiordland in 2005 by special legislation.

<sup>12</sup> <http://www.niwa.co.nz/our-science/aquatic-biodiversity-and-biosecurity/research-projects/all/Kaikōura-canyon>

<sup>13</sup> <http://www.niwa.co.nz/our-science/aquatic-biodiversity-and-biosecurity/research-projects/all/Kaikōura-canyon>

<sup>14</sup> Kaikōura Marine Strategy 2012

*below 500 metres (other than those supported by hydrothermal vents)*".<sup>15</sup> Creating a reserve over the canyon is consistent with protecting areas of scientific and ecological value. The canyon's proximity to the shore also means it is relatively accessible for undertaking scientific research. The canyon has marine life of such distinctive and unique quality that we consider that its preservation is in New Zealand's interest.

62. The proposed marine reserve extends inshore up the head of the Kaikōura Canyon, across the continental shelf to meet the shoreline along a 1.9km stretch of rocky coast north of Goose Bay. The proposed reserve therefore includes a broad range of marine habitats including: intertidal and subtidal rocky reef habitats; nearshore cobble and boulders; offshore sand and mud across the continental shelf and down the head of the canyon; and deep sea habitats in the depths of the Kaikōura Canyon. This sequence of habitats across this depth range in such close proximity to the shore is rare in New Zealand and is not included in any existing marine reserve.
63. The shoreline connection ensures a representative portion of the Kaikōura rocky coastline is included in the marine reserve. The effectiveness of this shoreline connection will be constrained by its narrowness; the benefits for aquatic life will be species dependent depending on their different distribution and movement patterns (i.e. the reserve will be more beneficial for less mobile species but less so for wider ranging species).

#### Costs

64. The economic impact of establishing the proposed marine reserve is low. It is unlikely that the marine reserve will interfere unduly with commercial fishing. Estimated economic impact on fishing is up to \$1.1 million annually for Kaikōura-specific fishing.<sup>16</sup> Exact figures are difficult to calculate as commercial catch data is not gathered in relation to a Kaikōura-specific location but over a large statistical area.
65. The policy intent is to maintain the current interface between the Marine Reserves Act 1971 and the Crown Minerals Act 1991 in relation to marine reserves, namely that the marine reserve would be placed on Schedule 4 of the Crown Minerals Act 1991 so prospecting, exploration or mining in marine reserves be restricted to minimum impact activities.
66. Based on experience with establishing and managing marine reserves elsewhere in New Zealand, DOC estimates that the initial set-up, baseline monitoring and compliance costs associated with the reserve are approximately \$100,000 in the first year and \$55,000 each year thereafter.

#### Other impacts and risks

67. Comment has been made that the proposed reserve (and other spatial protection tools) have not been comprehensively assessed against the Marine Protected Areas Policy<sup>17</sup> network design principles. The principles include ensuring protection of the full range of habitats and ecosystems (representativeness), and consideration of the viability of the proposal, and the management tools must meet the protection standard.

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<sup>15</sup> <http://www.niwa.co.nz/publications/wa/water-atmosphere-2-february-2011/in-brief>

<sup>16</sup> The \$1.1 million figure was estimated using the MPI economic impact methodology developed for the Maui and Hector's dolphin Threat Management Plan.

<sup>17</sup> <http://www.biodiversity.govt.nz/pdfs/seas/MPA-Policy-and-Implementation-Plan-low-res.pdf>



68. The particular description for the marine reserve protection tool in the standard is that marine reserves will be used to protect:
- a) Representative examples of the range of marine communities and ecosystems that are common or widespread;
  - b) Outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and,
  - c) Natural features that are part of the biological and physical processes of the marine communities and ecosystems referred to in (i) and (ii), in particular those natural features that are outstanding, rare, unique, beautiful, or important.
69. It is correct that a comprehensive assessment has not been done for the proposed spatial tools against the MPA Policy. Officials consider, nevertheless, that the proposed marine reserve is the right tool for protection of the marine environment in this locality, and that there are likely to be issues in that the reserve may be under-representing the range of habitats in this location, and the boundaries will make enforcement difficult (but not unachievable). The proposed marine reserve is nevertheless considered likely to be viable.
70. The spatial extent of the proposed marine reserve has drawn criticism given its unusual shape which some argue will be difficult to enforce, and high edge to total size ratio creating significant “edge effects”.
71. Whilst the shape of the marine reserve is complicated, attempting to simplify the boundaries or broaden its shore connection would challenge the integrated process and outcomes of the Strategy. As discussed above, there have been concessions or compromises in some areas to achieve gains in others, and to unpick one tool could unravel the entire strategy (i.e. changes to the reserve could result in the withdrawal of support for other elements in the strategy, including the suite of non-spatial tools).
72. Te Korowai has proposed a generational review of the marine reserve after 25 years in regard to its performance and effects on the Kaikōura community. It may be possible at this time to adjust the reserve’s boundaries, particularly if there is good monitoring of how well the reserve is functioning. There may also be relevant changes in commercial or other interests in the region.

## Conclusion

73. Because the reserve is to be progressed through special legislation some of the consultation and notification pathways in the Marine Reserves Act have not been followed in the manner they would have if the reserve was to be processed through the traditional pathways. Officials are satisfied that the process undertaken, and that will be undertaken through the select committee process will largely meet the criteria and processes set out in sections 3-5 of the Marine Reserves Act.
74. As previously discussed, Te Korowai has carried out a comprehensive consultation process, and the reserve itself has been the source of some debate. Te Korowai has considered submissions, and while it has not necessarily amended the proposal to meet submitters’ desires, the select committee process will give submitters another bite of the cherry, and other parties who may not have been previously involved an opportunity to be heard.
75. Noting the exceptions to the notification and submissions process, MPI and DOC both agree that the proposed reserve is in keeping with the purposes of the Marine Reserves Act.

## TE ROHE O TE WHĀNAU PUHA - THE KAIKŌURA MARINE MAMMAL SANCTUARY

76. The Strategy seeks to protect New Zealand treasures with the objective *“that marine treasures are protected and future generations can continue to experience the wonders that we have today”*. In addition to the proposed marine reserve, the Strategy proposes the establishment of a marine mammal sanctuary to help achieve this objective.

### Description

77. The proposed sanctuary is from the Clarence River in the north to just north of Gore Bay (some 91km of shore line, refer to Figure 2). The proposed sanctuary extends beyond 12 nautical miles out to a maximum of 56km from the shore, and covers an area of 4686 km<sup>2</sup>. The sanctuary is divided into two zones, an inner area around the canyon and core whale watching area, and then an outer buffer zone. The proposed sanctuary is generally to sea, but covers a portion of the foreshore around Ohau Point.

78. The purpose of this marine mammal sanctuary is to protect marine mammals and their habitat. Specific restrictions are proposed:

- To reduce or eliminate residual risk<sup>18</sup> of effects from seismic survey activities on marine mammals this area; and,
- To provide the seals at Ohau Point some respite from human interference and harassment.

### Statutory and Regulatory Obligations

79. Under the Marine Mammals Protection Act 1978 (MMPA), the Minister of Conservation can define any place and declare it to be a marine mammal sanctuary for the purpose of the protection, conservation, and management of marine mammals. When defining and declaring a sanctuary, the Minister may specify the activities that may or may not be engaged in within the sanctuary, and may impose restrictions in respect of the sanctuary.

80. Where any other Minister of the Crown has the control of any Crown-owned land, foreshore, seabed, or waters of the sea which is declared to be a marine mammal sanctuary or which forms part of one, consent from that Minister should be sought concurrently with the standard notification practice. Part of the proposed mammal sanctuary will be over legal road (around Ohau Point).

81. Under the current legislation a marine mammal sanctuary cannot be established within a Marine Reserve.

82. Te Korowai has proposed that seismic surveying be limited within this sanctuary. “level 3 surveys” (as defined in the Code; typically low powered research surveys) would be permitted throughout the sanctuary. Level 1 surveying (large-scale geophysical investigations typically used for petroleum exploration) would be prohibited throughout the sanctuary. Level 2 (moderate-powered surveys typically used for shallow geological research) surveying would be permitted in the outer zone subject to compliance with the Code, and in the inner zone in limited circumstances. It is acknowledged that the potential effects of seismic surveying can be largely avoided, remedied or mitigated through compliance with the Code however, given the unique and special mix of values at this site, including the importance of reliable marine mammal behaviour to tourism, it is considered appropriate to also regulate the minor residual risk by imposing further restrictions.

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<sup>18</sup> most risk resulting from seismic surveying is avoided, remedied or mitigated by the conditions set out within the Code however further restrictions are proposed at this site to avoid the remaining minor residual risks given its particular mix of values and the importance of reliable behavioural patterns for the tourism industry.

Figure 2: Ohau Point Seal Colony Proposed Closure



## Targeted engagement

83. The Ministry for Business, Innovation and Employment, including the New Zealand Petroleum and Minerals business group, have expressed concerns regarding the proposed marine mammal sanctuary. In particular the Ministry for Business, Innovation and Employment are concerned about the potential impact of a prohibition of Level 1 seismic surveying in the sanctuary on oil and gas development. Such a prohibition would effectively sterilise any resources underneath it and would focus critical attention on any petroleum related activity occurring adjacent to the sanctuary,
84. Prohibiting Level 1 seismic surveying in the proposed Kaikōura marine mammal sanctuary would also be the first time such a prohibition has occurred in a marine mammal sanctuary in New Zealand.
85. Existing marine mammal sanctuaries, such as the West Coast North Island marine mammal sanctuary and the Banks Peninsula marine mammal sanctuary, place restrictions on how seismic surveying can be undertaken to minimise the impact on marine mammals, however there is no outright prohibition. These restrictions are similar to those outlined in the Code, though they vary by individual sanctuary.
86. The Ministry for Business, Innovation and Employment is of the view that if Level 1 surveys were prohibited within a sanctuary off the Kaikōura coast, then this could establish a precedent for how seismic surveying is treated in existing and future marine mammal sanctuaries. They consider that this has the potential to create a new de facto minimum requirement for marine mammal sanctuaries for the current government or a future government.
87. The Ministry for Business, Innovation and Employment is also concerned that it would lead to calls for greater restrictions on petroleum and mineral related activities in areas where there are at-risk or endangered species. This can be seen in the number of submissions proposing further restrictions on petroleum development received during recent consultations on proposed additional fishing restrictions in the West Coast North Island marine mammal sanctuary, which overlaps the parts of the Taranaki Petroleum Basin.
88. They consider that the marine mammal sanctuary component has not been subject to the same 'gift and gains' approach as other parts of the Te Korowai Marine Strategy and propose that seismic surveying within the sanctuary should be subject to similar restriction to those present in existing marine mammal sanctuaries.
89. Code also allows DOC to include additional mitigation requirements as warranted, particularly if the activity will occur in an Area of Ecological Importance as defined by DOC. This would likely be the case for any survey activities near to Kaikōura.
90. An alternative option for implementation would be to prohibit Level 1 seismic surveying within the inner zone, which is also the core whale watching area, and to allow seismic surveying in the outer zone subject to the seismic Code.
91. While this would still be a higher level of restriction in a marine mammal sanctuary for seismic surveying than has previously existed, meaning the risk of precedent setting still exists, it would make it easier to make the case for the uniqueness of the proposal in terms of the special circumstances in Kaikōura. It would also allow Te Korowai to achieve a high level of protection for marine mammals in the zone of the proposed sanctuary.

## Targeted engagement undertaken by DOC

92. DOC have discussed the proposed sanctuary with Petroleum Exploration and Production Association New Zealand (PEPANZ) who provided the following feedback:
93. *“PEPANZ supports the establishment of marine protected areas in appropriate places. We most recently supported the establishment of several new marine reserves on the West Coast of the South Island. We support the intent behind the Kaikōura Marine Strategy.*
94. *The petroleum exploration industry has only undertaken minor activity off the east coast of the South Island in the vicinity of Kaikōura. The restrictions on Level 1 seismic surveys throughout the sanctuary mean that it would not be possible to determine whether the area was prospective for oil and gas in the future – this opportunity cost is an issue particularly for the Crown as owner of the petroleum resource on behalf of all New Zealanders. Whilst Level 2 surveys would be permitted in the outer zone these may not be sufficient to determine prospectivity. There could also be wider impacts on the ability to understand the geology of the area for other scientific reasons.*
95. *The proposed marine mammal sanctuary appears larger than is necessary to offer protection to the Kaikōura whale watching activities, which is of itself an unconventional reason for establishing a marine sanctuary, and would set an interesting precedent as it is not related to protecting any particular “at risk” species.*
96. *Seismic surveying is already subject to a comprehensive DOC Code of Code Conduct, which has the force of regulation in the EEZ, and which imposes a whole series of mitigations with the sole purpose of avoiding and/or mitigating adverse impacts on marine mammals”*
97. DOC also discussed the proposed seismic surveying restrictions with the National Institute of Water and Atmospheric Research (NIWA) and GNS Science (GNS) who are supportive of the proposed changes to level 2 restrictions which are discussed in further detail below.

## Options considered for Marine Mammal Protection

98. Te Korowai initially considered a range of options to provide additional protection for marine mammals including:
  - Voluntary industry agreements to restrict seismic surveying
  - A Ministry for Business, Innovation and Employment led moratorium on seismic surveying
  - Using the provisions of the RMA, however, this was discounted as it is limited to the territorial sea
  - Using the EEZ Act, however, this was discounted as the legislation was in its infancy during the development of the Strategy (which didn't provide certainty), it does not have effect within the territorial sea, and the legislation was not necessarily fit for purpose, in regard to what Te Korowai seeks to achieve.
99. Relying on voluntary compliance is considered unacceptable given the importance of the values at this site. There are a number of ways that the issue could be regulated however reducing regulatory complexity or inconsistency is desired. Achieving an integrated package of regulatory measures is at the core of Te Korowai's vision.
100. It is possible to establish area based regulations under section 28 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, this section in particular recognises that there are different and often conflicting uses and activities within the marine environment. However, any area based restrictions would apply only within the

EEZ, and the area identified by Te Korowai, straddles both the territorial sea and the EEZ, which would potentially result in a complicated regime with different legislation being used to try and achieve the same outcomes on each side of the 12 mile nautical limit. This option has limited certainty as it would still be subject to the regulatory public consultation processes.

101. Creating a marine mammal sanctuary (either under the Marine Mammal Protection Act 1978, or by way of special legislation) would enable the desired regulation under one legislative regime as it has jurisdiction across the proposed sanctuary boundaries (the RMA and EEZ only have jurisdiction over part of the proposed sanctuary area) and would recognise:

- That the area is particularly important given its biophysical characteristics; the considerable diversity, abundance and concentration of marine mammals present,
- That the area is important for a specific use, namely the multi-million dollar marine tourism industry, and it is the only place in New Zealand with a major whale and dolphin watching industry that has highly reliable access to whales

### **Assessment of Benefits, Costs and Risks**

102. The purpose of the proposed marine mammal sanctuary is to protect marine mammals and their habitat, and specific restrictions are proposed ;

- To reduce or eliminate residual risk of effects from seismic survey activities on marine mammals this area; and,
- To provide the seals at Ohau point some respite from human interference and harassment.

103. An assessment of benefits, costs and risks of these two aspects of the sanctuary, along with other risks and issues is below.

#### *Seismic Surveying Restrictions*

104. The wider Kaikōura canyon region is a significant habitat for marine mammals. The diversity and abundance of marine mammals found there is testament to this fact. The water column is part of that significant habitat, as is the acoustic environment of the water column.

105. The proposed sanctuary has been designed to have two zones:

- An inner zone that excludes or limits seismic survey within the core commercial whale and dolphin watching area; and,
- An outer buffer zone that excludes level 1 seismic surveys to reduce the noise generated by seismic surveys to a maximum sound pressure value at the outer boundary of the inner zone.<sup>19</sup>

106. The outer zone of the sanctuary is intended to serve two purposes. The outer zone will act as a noise attenuation buffer so that noise from seismic survey activities are reduced to a level in the inner area which reduces or eliminates potentially adverse effects on the behaviour of marine mammals. A precautionary approach has been taken in applying the boundaries of the zones. The outer zone also recognises that sperm whales, other large whales, dolphins and seals also frequent this area.

107. Seismic surveying is managed in part in New Zealand's continental waters by DOC's 2012 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations (the Code). The Code is voluntary in the territorial sea, and,

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<sup>19</sup> 160 dB (re 1µPa @ 1m RMS), the sound pressure threshold adopted by the US National Marine Fisheries Service for behavioural changes.

under the permitted activity regulations of the recently promulgated EEZ Act, mandatory within the EEZ.

108. The Code was developed to provide practical mitigation measures for minimising acoustic disturbance of marine mammals during seismic surveys. The code seeks to minimise disturbance to marine mammals from seismic surveying and to minimise noise, as a result of seismic surveying, in the marine environment,<sup>20</sup> and is not intended to eliminate all risks associated with seismic surveys on marine mammals. There will still be some residual risks associated with seismic surveying,<sup>21</sup> which, on balance, have been considered to be acceptable in most circumstances.

109. The Code does however make additional provision for “species of concern” (of which the majority of the resident and visiting species are), and that surveying should be avoided where possible in sensitive or ecologically important areas, or key biological periods. There is no doubt that Kaikōura is a sensitive and ecologically important area for marine mammals.

110. Given the diversity of marine mammals, some of which are threatened species, and important biophysical characteristics of the Kaikōura marine and coastal area that make up their habitat, there are unique values that make a more stringent approach to eliminating any residual risk, particularly around behavioural effects and disruption to habitat (i.e. acoustic noise pollution in the water column) appropriate. DOC believes the Kaikōura situation is unique in terms of the diversity and abundance of marine mammals present and their behaviour and its accessibility to tourism due to its proximity to shore, and that therefore further protective restrictions are warranted to remove the residual (albeit minor) risks.

111. In practical terms, undertaking a seismic survey off the Kaikōura coast in strict accordance with the Code could be difficult (though not necessarily impossible) given the diversity and abundance of seals, dolphins and whales present there and the risk mitigation measures already contained within the Code that require operations to be suspended when marine mammals are present.

112. Restrictions on seismic surveying, as proposed by Te Korowai and supported by DOC, are set out in Table 4.

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<sup>20</sup> Primary objectives 1 and 2 of the Code, pg 1, 2012 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations Reference Document

<sup>21</sup> For example, practical limitations of visual and acoustic monitoring mean that reliance solely on the code could inadvertently put marine mammals at risk which are present but cannot be detected.

**Table 4: Proposed seismic surveying restrictions**

Level	Inner zone	Outer zone
Level 1 (typically used for petroleum exploration)	Excluded throughout the sanctuary	
Level 2 (moderate-powered surveys typically used for shallow geological research)	<p>Excluded, except (subject to approval of the Director General of Conservation) , pre-planned surveying in the following instances:</p> <ul style="list-style-type: none"> <li>• For hazard resilience and preparedness; or</li> <li>• To undertake research that would make a nationally significant contribution to the scientific understanding of New Zealand's geology or values.</li> </ul> <p>Any surveying must comply with the Code, including surveying within the Territorial sea. Noting the exception below.</p>	Permitted provided any surveying complies with the Code, including surveying within the Territorial sea. Noting the exception below.
	<p>The Code must be complied with throughout the entire sanctuary except in exceptional circumstances where there is an immediate need to assess fault lines or the stability of the canyon slope, following a major seismic event or threat of a natural hazard (e.g. tsunami triggered by a collapse at the head of the canyon) subject to the approval of the Director-General of Conservation. In these circumstance operators must still make ever endeavour to adhere to the Code.<sup>22</sup></p>	
Level 3 (typically low powered research surveys)	No restrictions throughout the sanctuary	

113. The outer buffer zone seeks to attenuate noise from level 1 surveying. Level 2 surveys also have the potential to generate noise levels that would exceed the 160 dB threshold in the inner zone depending on the power of the acoustic source and how close it is to the boundary. Level 2 surveys are significantly lower in power than level 1 surveys, and with sound transmission loss it is estimated 160 dB would be reached between 500m and 1km from the source (perhaps closer). Consequently, even if a level 2 survey was undertaken near the boundary between the inner and outer zones, the amount of significant noise encroachment into the inner zone would be small. The Code sets minimum mitigation zones (ranging from 200m – 1km) and, under section 3.6 of the Code, the Director -General of Conservation can also impose additional conditions within a marine mammal sanctuary such as increasing the size of the mitigation zones.

#### *Benefits*

114. New Zealand fur seals, sperm whales, humpback whales and southern right whales are specifically recognised as taonga species under the Ngāi Tahu Claims Settlement Act 1998 for Ngāi Tahu. Providing some sanctuary for these iconic species will acknowledge their cultural significance.

115. The proposed restrictions and prohibitions on seismic surveying will serve to reduce the potential for any adverse behavioural effects on the diverse range of marine mammals, that reside and visit this area, and also physical trauma which seismic noise can cause.

<sup>22</sup> This exception is to recognise that in genuine emergency operators will not be able to submit an environmental impact assessment 3 months in advance, and if human life is at risk, may not be able to strictly adhere to the shut down or delayed starts as outlined in the Code.



116. Kaikōura generates significant economic activity through a multi-million dollar marine tourism industry which is reliant on the presence of marine mammals and the predictability of their behaviour. Reducing the potential for any adverse behavioural effects on marine mammals will in turn support this industry. Adding a marine mammal sanctuary, along with the other spatial tools, will enhance “Brand Kaikōura”.

117. A reduction in seismic noise in the water column will also assist in protecting the habitat of the marine mammals, some of which are threatened species.

#### Costs

118. Large-scale geophysical investigations using high-power acoustic sources will be excluded throughout the sanctuary and this will preclude investigations of the prospectivity of this area and effectively sterilise any petroleum or mineral resources underneath it. There is petroleum exploration interest in the Pegasus-East Coast Basin to the northeast of Kaikōura; however, the geology of the area proposed for the sanctuary has not been identified as being conducive to, or optimal for petroleum and seabed mineral exploration and production due to a lack of geophysical information about it. As such, costs to the petroleum and oil industry have not been quantified.

119. The conflicting uses of this area by the tourism industry and petroleum and minerals industry do not sit easily side by side in this instance; however, through the development of the Strategy, Te Korowai has indicated a clear preference is to support the tourism industry.

#### Alternative seismic surveying restrictions

120. An alternative option, supported by MPI, Ministry of Business Innovation and Employment (Infrastructure and Resource Markets Group) and Ministry for the Environment, is to prohibit level 1 seismic surveying within the inner zone and to require that all seismic surveying in the outer zone be carried out in accordance with the seismic Code.

**Table 5: Alternative seismic surveying restrictions**

Level	Inner zone	Outer zone
Level 1 (typically used for petroleum exploration)	Excluded throughout the sanctuary	Permitted provided any surveying complies with the Code, including surveying within the Territorial sea.
Level 2 (moderate-powered surveys typically used for shallow geological research)	Permitted provided any surveying complies with the Code, including surveying within the Territorial sea, except in exceptional circumstances where there is an immediate need to assess fault lines or the stability of the canyon slope, following a major seismic event or threat of a natural hazard (e.g. tsunami triggered by a collapse at the head of the canyon) subject to the approval of the Director-General of Conservation. In these circumstance operators must still make ever endeavour to adhere to the Code <sup>23</sup> .	
Level 3 (typically low powered research surveys)	No restrictions throughout the sanctuary	

121. This option would protect marine mammals from high intensity seismic surveying within the inner zone, which is the core whale watching area as defined by Whale Watch Kaikōura, and make compliance with the Code mandatory in order to manage effects within the broader area. Currently the Code is mandatory within the EEZ only.

122. MPI, Ministry of Business Innovation and Employment (Infrastructure and Resource Markets Group) and Ministry for the Environment consider that this option is a better balance

<sup>23</sup> This exception is to recognise that in genuine emergency operators will not be able to submit an environmental impact assessment 3 months in advance, and if human life is at risk, may not be able to strictly adhere to the shut down or delayed starts as outlined in the Code.

between competing interests. It is clearly linked to the core whale watching area of New Zealand's premier marine mammal tourism location and therefore poses less risk of establishing a precedent for future marine mammal sanctuaries. In practice this option would effectively provide marine mammals with a similar level of protection to that proposed by Te Korowai (because the number of marine mammals present in the Kaikōura area would make it challenging to undertake seismic surveying in accordance with the Code).

123. DOC acknowledges that the alternative proposal contains a number of safeguards for marine mammals and may impose less disruption on the petroleum industry. However, DOC considers that this approach does not sufficiently avoid or eliminate residual risk to marine mammals in this area, particularly behavioural effects, and therefore places at risk the aspirations of Te Korowai to protect marine mammals and maintain a successful marine mammal watching industry.

124. Specifically, DOC is concerned that relying on the Code in the broader area, instead of having a noise attenuation buffer, carries a residual risk that it will not reduce noise levels in the inner zone to a level low enough to ensure that the behaviour of marine mammal behaviour within the inner zone is not disturbed, and will not provide the safeguards the marine tourism industry are seeking in terms of ensuring reliable behaviour patterns of marine mammals. However, if this alternative approach is to be adopted, DOC supports a recommendation that active monitoring should be a requirement for operators to record noise levels and evaluate any subsequent behavioural effects in the inner zone.

*Restricting public foot access to the New Zealand fur seal breeding colony at Ohau Point*

125. Ohau Point is the largest single fur seal breeding colony along the east coast of the South Island, and is possibly the largest breeding colony in the country.

126. People approaching seals or wandering amongst the colony can result in a range of seal responses from agitation and aggression through to flight and stampedes. Mother-pup bonds may be broken and pups can be crushed. There have also been instances of people deliberately harming and killing seals at Ohau Point. Fur seals are most vulnerable to disturbance from approaches on land and breeding colonies are especially susceptible due to their high densities and particular social dynamics.

127. It is proposed to restrict access to the Ohau Point fur seal colony in order to better protect those seals in the area between mean low water springs and the edge of the formed carriage way or the perimeter of the formed public viewing platform at Ohau Point (as shown in Figure 2), except:

- Access in or on the water;
- In an emergency or by emergency services;
- Where a permit has been issued under section 5 and 6 of the MMPA (e.g. to allow research), or a permit has been issued under Regulation 12 of the Marine Mammals Protection Regulations 1992;
- Access by New Zealand Transport Agency (NZTA) or its appointed contractors, that is necessary for road maintenance and upgrades of SH1 and is within the confines of an agreed traffic management plan;
- Access by NZTA to carry out maintenance, primarily in order to inspect and maintain the sea defences;
- For Fisheries management by MPI staff, agents or invitees and honorary fisheries officers;
- For conservation management by DOC employees, agents, or invitees; and
- For cadastral surveying work by Land Information New Zealand employees, agents, or invitees.

128. These proposed restrictions will not affect access to the popular tourist attraction of the seal “crèche” up nearby Ohau Stream. The seals in the restricted area will still be able to be observed from above from the existing viewing area. Visitors will also still be able to encounter seals on either side of the Ohau Point colony as well as along the remainder of the Kaikōura coast, including at Kaikōura Peninsula should they wish. We do not consider the proposed measures will reduce tourism opportunities. Extra protection for this seal colony may in fact be an added attraction.

#### *Benefits*

129. New Zealand fur seals are specifically recognised as taonga species under the Ngāi Tahu Claims Settlement Act 1998 for Ngāi Tahu.

130. Restricting access to a portion of the seal breeding colony, will give some respite to the seals, giving them an exclusive area where they are free from human interaction.

131. The proposed restrictions would simplify compliance and enforcement (any person inside the restricted area would be breaching the Act – there is no need to prove harassment and disturbance which can be difficult and costly to prove).

#### *Costs*

132. Monitoring and enforcement at Ohau Point is not expected to cost more than current management does. Restriction on public access to the Ohau Point fur seal breeding colony will have a negligible impact, as it is a small area, and will not preclude access to the seal “crèche” in the adjacent Ohau Stream, and the public will still be able to have a ‘close encounter’ with seals.

133. The proposed sanctuary will not restrict fishing activities. Anecdotal evidence has indicated that paua fishing off Ohau Point is not undertaken given the presence of great white sharks which are attracted to the seal colony.

#### *Other impacts and risks*

134. Impact on the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013.

135. The Strategy proposed to exclude level 2 surveying in the inner zone; however, DOC was concerned that this would preclude surveying necessary in emergency response situations, and research necessary for hazard resilience and disaster preparedness. NIWA and GNS confirmed that level 2 surveying is generally necessary for imaging major faults etc. It is proposed now to allow level 2 surveying in the inner zone (i.e. in and around the canyon) in an emergency response scenario, and to having a permit process (administered by DOC) for planned research that is nationally significant, and for planned research for disaster/hazard preparedness.

136. Seismic surveying is a permitted activity within the EEZ provided it is carried out in accordance with the Code; however, in an emergency type response (a large magnitude earthquake, or imminent collapse of the canyon) then it is unlikely that operators will be able to adhere with the Code, particularly notification and planning requirements. They would technically require a marine consent and would be committing an offence to undertake a survey without one.

137. DOC, the Environmental Protection Authority (EPA) and the Ministry for the Environment have all pondered this predicament. There are several possible solutions:

- That the special legislation specifically provides for this exemption;

- That the EEZ regulations or the EEZ Act are amended to provide for this exemption; and,
- That the Code is amended (in a future review) to recognise this scenario.

138. We note that while the risk of a tsunami generated by underwater landslide is unique, the presence of fault lines is not an issue specific to the Kaikōura Coast. Creating Kaikōura specific provisions would not address this issue at national issue, particularly if the Code is to become mandatory in the territorial sea as well.

139. DOC considers that an amendment to the Code, defining a set of alternative processes to be applied in exceptional circumstances, is the most appropriate option. This is because the Code is specifically for the management of the effects of seismic surveying on marine mammals, as opposed to under the EEZ Act the purpose of which is to promote the sustainable management of the natural resources. A review of the Code is planned to commence in mid-2014.

140. In the interim this would create uncertainty in the hopefully unlikely event of an emergency. We suggest that the most pragmatic approach is to rely on the EPA's discretion in terms of enforcement, and the Director-General of Conservation's discretion in regard to the application of the Code, as officials across the relevant agencies are in agreement that it is not in the national interest to prevent level 2 seismic in the aftermath of an earthquake or if there is an imminent risk of a tsunami (generated by a submarine landslide in the canyon), or to prosecute NIWA or GNS for undertaking surveying in these circumstances.

#### *Impacts on the petroleum industry*

141. The petroleum geology of the seabed in the proposed sanctuary itself is largely unknown as detailed seismic surveying has not been undertaken. Level 1 surveying will be effectively excluded within the entire sanctuary and this will limit further investigations of the prospectivity of this area. This area is not considered to be currently commercially prospective due to a lack of specific information about the area, but there is considerable commercial interest in the Pegasus Basin more broadly.

142. Specific concerns regarding the petroleum industry have been listed above.

143. While the proposed restrictions would effectively "lock-up" potential mineral resources, and this sanctuary will be the strictest in terms of seismic surveying restrictions in a marine mammal sanctuary nationally, DOC notes that there are also several distinguishing factors that make Kaikōura, and this proposed sanctuary unique, and worthy of such protection. These include:

- a) The unique deep sea topography and hydrology has lead to a high diversity and abundance of marine life including marine mammals close to the coast.
- b) Ease of accessibility to the marine mammals given Kaikōura's location adjacent to SH1 and en route between Christchurch and Picton, and the township being of a sufficient size to support a tourism industry.
- c) Creating a marine mammal sanctuary is likely to add value to "brand Kaikōura" as a tourist destination and consequently have a significant positive impact on the local tourism industry.
- d) Whale Watch Kaikōura (which operates up to 16 vessel-based whale watch trips per day off the Kaikōura coast) is operated by Ngāi Tahu, the tangata whenua.
- e) New Zealand fur seals, sperm whales, humpback whales and southern right whales are specifically recognised as taonga species under the Ngāi Tahu Claims Settlement Act 1998.

144. Due to a lack of information about this area the geology has not been identified as being conducive to or optimal for hydrocarbon exploration/production.

145. This will be the first sanctuary in New Zealand to include a noise attenuation buffer zone. Reservations have been expressed about whether taking this approach creates precedent. In particular, that future and existing, sanctuaries could adopt this approach, resulting in larger sanctuaries. This approach is not necessarily appropriate to be applied to any existing or future sanctuaries, and this sanctuary has been very much designed around the mammals that frequent it, their dynamics and patterns of behaviour, and their habitat.

*Impact on public access*

146. The Marine and Coastal Area (Takutai Moana) Act 2011 provides a public right of access to the coastal marine area but also enables restrictions on access to be imposed under other enactments. It is acknowledged that restricting coastal access is a sensitive issue. To date, marine mammal sanctuaries have not restricted access to the coast; however DOC officials do not consider that the current proposal is setting a precedent. Access to the coast/beaches is restricted elsewhere to protect bird nesting sites and in nature reserves (e.g. Taiaroa heads and at Farewell Spit).

147. Non-legislative tools such as additional signage (particularly to the northern end), educational programmes, and additional physical and or symbolic barriers could be put in place to try and prevent people accessing the seal colony by foot. The effectiveness of these measures could be monitored, and the measures then subsequently reviewed. Once the sanctuary has been established it is possible to add additional restrictions by way of a gazette notice. However, the effectiveness of such an approach is very questionable given the Department's past experience with similar non-regulatory measures elsewhere (including the seal crèche up nearby Ohau Stream).

*Elements that deviate from the Strategy*

148. While the 2012 finalised Strategy refers to "...public access to the Ohau Point fur seal colony is restricted" the extent of this closure and the proposed restrictions themselves have not been part of Te Korowai's consultation process nor have they been publicly notified. The select committee process will provide a forum for comments on the extent of these restrictions.

149. Providing for some level 2 surveying in the inner zone is not part of the restrictions proposed in the Strategy and therefore have not been part of Te Korowai's consultation process nor have they been publicly notified. The main purpose for these amendments is to provided for surveying necessary for emergency responses and for hazard resilience (and in some circumstances other scientific research), so there is a high level of public good/ in the national interest in these proposed amendments. The select committee process will provide a forum for comments on this matter.

150. MPI, the Ministry for Business Innovation and Employment (Infrastructure and Resource Markets) Group and the Ministry for the Environment have suggested an alternative option for the seismic survey restrictions to that proposed by Te Korowai (refer paragraphs 120-124). This option has not been discussed with Te Korowai or the wider public. The select committee process will provide a forum for comments on this matter.

## Conclusion

151. DOC considers that the proposal for establishing a marine mammal sanctuary meets the requirements of Marine Mammals Protections Act 1978.

152. DOC recommends that the restrictions on seismic surveying in table 4 be adopted because it:

- Provides effective protection for marine mammals that visit and are resident in Kaikōura, and their habitat by reducing or eliminating residual risk of effects resulting from seismic surveying
- Recognizes the uniqueness of Kaikōura as a leading marine mammal watching destination
- Has undergone extensive consultation with the local community and fully delivers on their aspirations as expressed through the Te Korowai process and report

153. MPI, the Ministry for Business Innovation and Employment (Infrastructure and Resource Markets) Group and the Ministry for the Environment recommend the restrictions on seismic surveying as set out in table 5 be adopted, because it:

- Provides effective protection for marine mammals in Kaikōura by reducing or eliminating residual risk of effects resulting from seismic surveying with a lower risk of establishing a precedent for future marine mammal sanctuaries.

## CUSTOMARY TOOLS – MĀTAITAI RESERVES AND TAIĀPURE LOCAL FISHERIES

154. One of the outcomes that the Strategy seeks is 'sustaining customary practices'. The objectives of the Strategy are to restore and maintain the traditional food gathering areas of special significance to Ngāti Kurī, and utilise the traditional knowledge and customs of Ngāti Kurī to protect the fisheries of Te Tai o Marokura. The Strategy proposes the following customary tools to achieve these objectives:

- a) Three mātaimai reserves to protect the traditional food gathering areas at Mangamaunu, Mussel Rock, and Oaro; and
- b) Two taiāpure-local fisheries to protect the traditional food gathering areas around the Kaikōura Peninsula and Oaro Blocks/Haumuri Bluff. Refer Appendix 2 for detailed maps of the proposed mātaimai reserves and taiāpure-local fisheries.

### Statutory and Regulatory Obligations

#### *Mātaimai reserve*

155. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, which includes the requirement on the Crown to make regulations to recognise and provide for non-commercial customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering.

156. Accordingly, the Fisheries (South Island Customary Fishing) Regulations 1999 (the regulations), which apply to the fisheries waters around the South Island and Stewart Island, were promulgated that allow the Minister for Primary Industries (the Minister) to declare areas to be mātaimai reserves.

157. The regulations give rise to the establishment of mātaimai reserves which are an expression of the right of tangata whenua to exercise use and management practices in traditional fishing grounds and of their relationship to an area of customary food gathering importance.

158. The application process includes a public meeting and consultation with the local community and fishing interests<sup>24</sup>. The regulations allow the applicants to amend their application to address any issues raised during consultation.

159. Before declaring an area a mātaimai reserve, the Minister must be satisfied that:

- a) There is a special relationship between the tangata whenua and the proposed mātaimai reserve;
- b) The general aims of management of the application are consistent with sustainable management of fisheries in the area;
- c) The proposed reserve is an identified traditional fishing ground and is of a size appropriate to effective management by the tangata whenua;
- d) The Minister and the tangata whenua are able to agree on suitable conditions (if any) for the proposed reserve to address issues raised by submissions;
- e) The proposed reserve will not unreasonably affect the ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes;
- f) The proposed reserve will not prevent persons with a commercial interest in a species taking their quota entitlements or annual catch entitlements within the quota management area for that species;

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<sup>24</sup> Persons who take fish, aquatic life, or seaweed or own quota, and whose ability to take such fish, aquatic life, or seaweed or whose ownership interest in quota may be affected by the proposed mātaimai reserve.

- g) The proposed reserve will not prevent persons with a commercial fishing permit for a non-quota management species taking fish, aquatic life, or seaweed under their permit; and
- h) The proposed reserve is not a marine reserve under the Marine Reserves Act 1971.

160. Upon establishment of a mātaimai reserve, commercial fishing is excluded, although it can be reinstated by regulation when recommended by the Tangata Tiaki/Tangata Tiaki/Kaitiaki for the mātaimai reserve and approved by Cabinet. Fishing for non-commercial purposes continues until any bylaws are recommended by the Tangata Tiaki/Tangata Tiaki/Kaitiaki and approved by the Minister.

#### *Taiāpure-local fishery*

161. A taiāpure-local fishery can be established in coastal waters that have special significance to any iwi or hapu, either as a source of food or for spiritual or cultural reasons.

162. Part IX of the Fisheries Act 1996 sets out a process by which taiāpure-local fishery proposals are to be considered. This process includes consultation with the Minister of Maori Affairs, public notification of the proposal in the Gazette calling for any objections to be lodged with the Maori Land Court. The Minister decides whether or not to accept the recommendations of the Maori Land Court.

163. The Governor-General may, subject to s 176 of the Fisheries Act and by Order in Council published in the Gazette, declare any area of New Zealand fisheries waters (being estuarine or littoral coastal waters) to be a taiāpure-local fishery. An order may only be made upon a recommendation by the Minister for Primary Industries.

164. Before recommending the making of an order the Minister must be satisfied that:

- a) The order makes better provision for the recognition of Ngātiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi; and
- b) The making of the order is appropriate in terms of the size of the area; the impacts on welfare of the community, on people having a special interest in the area and on fisheries management.

165. Ngāi Upon establishment of a taiāpure-local fishery, there are no changes to any fishing activities until such time as the Minister appoints management committee members and then agrees to any recommended changes to fishing regulations by the committee.

166. Although the Strategy does not specifically request the establishment of rāhui as part of the implementation package, Te Korowai clearly state their intent to create one or two generational (25 years) rāhui if the proposed taiāpure progress.

### **Assessment of Benefits, Costs and Risks**

#### *Special relationship, traditional fishing ground and size appropriateness*

167. The proposal for establishing the taiāpure-local fisheries (around the Kaikōura Peninsula and Oaro Blocks/Haumuri Bluff) and mātaimai reserves (at Mangamaunu, Mussel Rock and Oaro as) has been assessed taking into account the relevant provisions of the Fisheries Act 1996 and the Fisheries (South Island Customary Fishing) Regulations 1999.

168. In the mid-1980s, MPI undertook a programme to identify Rāhui Areas that were traditionally fished by local tangata whenua. Approximately 170 Rāhui Areas were identified



across the South Island and compiled in the 'Cooper Report'<sup>25</sup>. In 2008, Te Rūnanga o Ngāi Tahu provided MPI with a report on their Customary Fisheries Protection Areas Project. The intention of this project was to establish a co-ordinated network of customary fishing protection areas throughout the Ngāi Tahu Whanui Takiwa. The areas identified in the Strategy for establishing them as mātaimai reserves and taiāpure-local fisheries were also identified as traditional fishing grounds in the Cooper Report and the Customary Fisheries Protection Areas Project.

169. Under section 313 of the Ngāi Tahu Claims Settlement Act 1998, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Te Tai o Marokura.<sup>26</sup>

170. The Strategy provides an account of the history and traditions associated with the proposed mātaimai reserves and taiāpure-local fisheries, and its surrounding areas. This account outlines settlements, statutory acknowledgements, migration, occupation, customary practices and traditional food gathering areas of Māori. There is no dispute between tangata whenua groups regarding who has customary authority over the proposed reserves.

171. These historical accounts support tangata whenua special relationship with the proposed mātaimai reserves and taiāpure-local fisheries through occupation and customary fishing rights to the area. By describing the customary use of the surrounding area tangata whenua has also demonstrated that the proposed reserve areas have more special significance than the waters of their rohe generally.

172. Furthermore, the existence of a special relationship is consistent with tangata whenua having confirmed the Tangata Tiaki/Kaitiaki for their rohe moana, which includes the areas of the proposed mātaimai reserves and taiāpure-local fisheries.

173. MPI considers recognising the special relationship between tangata whenua and the proposed areas would not diminish the local community's relationship with these areas.

174. The proposed mātaimai reserves and taiāpure-local fisheries have clearly definable boundaries and the accessible landing points. The information available demonstrates that tangata whenua have knowledge of the proposed areas and their resources. There is sufficient evidence of the areas fished and customary fishing methods, which support the size of the proposed mātaimai reserves and taiāpure-local fisheries.<sup>27</sup>

175. MPI considers that the proposed mātaimai reserves and taiāpure-local fisheries are identified traditional fishing grounds and that there is a special relationship between tangata whenua and those areas. MPI also considers the proposed mātaimai reserves and taiāpure-local fisheries are of size appropriate for effective management by tangata whenua.

#### *Impact on commercial fishing*

176. Upon establishment, all commercial fishing within a mātaimai reserve is prohibited. However, Tangata Tiaki/Kaitiaki for a mātaimai reserve can request that the Minister

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<sup>25</sup> MAFFish Evidence on Local Control and Management of Coastal Fisheries by Maori. Robert Cooper: Document 26, in the matter of claims to the Waitangi Tribunal by Henare Rikihia Tau and Ngāi Tahu Trust Board (WAI 27).

<sup>26</sup> Schedule 100 of the Ngāi Tahu Claims Settlement Act 1998. Statutory acknowledgement for Te Tai o Marokura (Kaikōura Coastal Marine Area).

<sup>27</sup> The East Otago Taiāpure Tribunal concluded that the size of each taiāpure should be depended on the areas fished and the type of customary fishing carried out.

recommend the making of regulations to allow commercial fishing of specified species by quantity or time period. To date, this has not occurred in any reserve.

177. MPI understands the areas identified and specific boundaries of those areas were discussed and agreed before finalising the Strategy. The current membership of Te Korowai includes representatives from local commercial fishers.

178. Based on the available information, approximately 40 species were recorded being taken in the proposed taiāpure-local fisheries with a total catch of approximately 1.6 tonnes per year. Approximately one tonne of this catch is kina (SUR3) is taken in the proposed Kaikōura Peninsula (560 kg) and Oaro Blocks/Haumuri (440 kg) taiāpure-local fisheries. However, a taiāpure-local fishery will not prohibit commercial fishing until such time as the Minister agrees to any recommended changes to fishing regulations recommended by the taiāpure management committee.

179. The area off Wakatu Quay on the northern coast of the Kaikōura Peninsula has been closed to all fishing since 2002 on a two-year basis under section 186B of the Fisheries Act 1996. There is a high level of local community awareness and support for the closure, although fisheries resources have not been taken from the area since 2002. The Strategy indicates that the taiāpure management committee would work through the options for regulations within the taiāpure-local fishery, including placing a 25 year closure of one or two areas under section 297 of the Fisheries Act 1996.

180. MPI understands there has been little, if any, commercial take in the proposed Te Waha o te Maranāi, Mangamaunu and Oaro mātaimai reserves for the last five fishing years. MPI considers that establishing the proposed mātaimai reserves will not prevent persons with a commercial interest in a species taking their quota entitlement or Annual Catch Entitlement (where applicable) within the Quota Management Area for that species.

#### *Impact on non-commercial fishing and public access*

181. The fisheries waters of the Kaikōura coast are an important customary resource for local tangata whenua. The Kaikōura coastal region is also popular with recreational fishers and is easily accessible. The region has historically supported significant paua, kina and rock lobster fisheries.

182. MPI considers that establishing the proposed mātaimai reserves and taiāpure-local fisheries will not have any adverse effects on existing non-commercial fishing.

183. Upon establishment, there is no change to recreational fishing regulations within a mātaimai reserve until the Minister approves any proposed bylaws. Tangata Tiaki/Kaitiaki for a reserve can propose bylaws to restrict or prohibit fishing that they consider necessary for the sustainable management of the fisheries resources in the reserve.

184. Similarly, fishing for non-commercial purposes in a taiāpure-local fishery continues until such time as the Minister agrees to any recommended changes to fishing “regulations” recommended by the taiāpure management committee.

185. Upon establishment mātaimai reserves and taiāpure-local fisheries, there is no change to public access to the beach, marine, or freshwater environment or any restrictions on, or access to, private land.

### *Other issues*

186. Under part IX of the Fisheries Act 1996 and the Fisheries (South Island Customary Fishing) Regulations 1999, there is no requirement to justify that there are threats to any species taken within a proposed mātaimai reserve or taiāpure-local fisheries, or whether or not the local fish stocks are sustainable under existing management measures.

187. Te Korowai supports tangata whenua gaining direct control of their most important food gathering places by declaring them as mātaimai reserve, and tangata whenua leading (with equal representation of tangata whenua and other local interests) local management of fisheries associated with key traditional occupation sites by declaring them as taiāpure-local fisheries. Te Korowai also supports customary and scientific baseline surveys and ongoing monitoring in these areas to assist managers.

### **Conclusion**

188. MPI considers that the proposal for establishing taiāpure-local fisheries meets the requirements of section 176(2) and the object set out in section 174 of the Fisheries Act 1996, and that the proposal for establishing mātaimai reserves meets the requirements of the Fisheries (South Island Customary Fishing) Regulations 1999.

## CHANGES TO RECREATIONAL FISHING REGULATIONS

189. The Strategy seeks fishing for abundance with the objective “abundant fish for present and future generations”. Community driven and guided by the approach “fish for a feed and for the future”, the Strategy proposes to protect inshore fisheries from a trend of increased harvesting from recreational and charter fishers and fish theft by lowering limits for some recreational fishing species. Proposed changes only affect that area defined as the Kaikōura Marine Management Area (refer overview map p.7).

### Statutory and Regulatory Obligations

190. The Fisheries Act 1996 (section 297) provides for the Governor-General (by Order in Council) to make regulations to control recreational fishing. Such regulations can include limits on the size, and number or weight of fish, aquatic life or seaweed that may be taken or possessed. This can include prohibiting the taking or possessing of any fish, aquatic life or seaweed from or in any area. Regulations can also control the method to be used and specify labelling or marking requirements for the identification of fish, aquatic life or seaweed.

191. Such regulations must be consistent with the purpose of the Fisheries Act: to provide for the utilisation of fisheries resources while ensuring sustainability (section 8). Ensuring sustainability means, ‘maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations and 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 well-being.’ The Strategy objective ‘abundant fish for present and future generations’ appears consistent with the purpose of the Fisheries Act and that objective has guided the development of the proposals relating to recreational fishing.

192. Two sets of regulations currently govern recreational fishing in the Kaikōura area:

- Fisheries (Amateur Fishing) Regulations (the National Regulations), which apply through-out New Zealand; and
- Fisheries (South-East Area Amateur Fishing) Regulations 1986 (the South-East Regulations), which apply only to the South-East fishery management area.

193. MPI is currently consolidating the six existing sets of amateur regulations, including the National and South-East regulations. Making the proposed new regulations will likely involve amending the consolidated regulations, rather than the existing National and South-East regulations.

#### *Shellfish*

194. The relevant regulations relating to shellfish are set out in the National Regulations. Regulation 19 specifies the maximum number of shellfish that may be taken in most relevant cases. Regulation 25 sets the maximum daily number of rock lobster. The existing accumulation limit for paua is set out in Regulation 19B.

#### *Finfish*

195. The relevant provisions for finfish are set out in the South-East Regulations. Regulation 3A specifies the maximum daily number of finfish that may be taken, including a maximum combined daily limit of 30 for species listed. Regulation 3C sets out the minimum legal size for blue cod. There is currently no maximum daily recreational limit for sea perch or

albacore tuna. Red Moki are not commonly found in the Kaikōura area so are not generally targeted although they are vulnerable to overfishing.

#### *Seaweed*

196. There are currently no restrictions on the recreational harvest of karengo or bladder kelp.

#### **Targeted engagement by MPI**

197. New Zealand Rock Lobster Management Group (NRLMG) endorsed by CRAMAC5 (Cray Management Advisory Committee Area 5), and the NZ Recreational Fishing Council provided feedback to MPI specifically regarding the proposed recreational bag limits.

198. Industry representatives of NRLMG & CRAMAC5 believe that Te Korowai proposals in relation to rock lobsters are directed at better managing lobster fishing activities and note the proposals do not replace the overall CRA 5 fishery management roles and responsibilities. The industry anticipates further discussion and decisions in relation to the integrity of the CRA 5 TAC and increasing evidence that recreational catches are exceeding allowances. It also anticipates attention being directed at the recreational fishing entitlements related to rock lobster potting, and further clarification of pot use by the charter industry. Industry representatives of NRLMG & CRAMAC5 also noted there is a suggestion that amateur daily bag limits are not useful constraints.

199. In relation to CRA 5, industry representatives of NRLMG & CRAMAC5 noted there needs to be a mechanism to make non-commercial pot fishers more aware of the risks of cetacean interactions and the need to avoid or mitigate gear entanglements. In the absence of a sector response similar to the CRAMAC 5 Whale Safe initiative it is not unreasonable to consider that additional controls may need to be placed on recreational potting in areas of potential interaction with marine mammals.

200. The Recreational Fishing Council supported the representative clubs and fishers views in the Kaikōura region and would support telson clipping as a recreational management tool for identifying lobsters taken under amateur fishing regulations. They would prefer to see this rule extended nationally (or at least to CRA4 and CRA3) and for it to have the support of iwi so that it applies to lobsters taken under customary fishing rules.

#### **Assessment of Benefits, Costs and Risks**

201. A range of issues have been identified with a number of the changes proposed in the Strategy. Some of the regulations proposed provide only a marginal, if any, benefit over existing requirements. Some proposals may be better addressed through codes of practice and education rather than regulation.

#### *Benefits*

202. Te Korowai identified a risk of excessive recreational fishing pressure on some fishing stocks around Kaikōura. The majority of the proposed changes may help offset the impact of increased recreational fishing pressure by reducing the numbers of fish each fisher may take. Increasing fish minimum size limits will increase the amount of time a fish or shellfish can breed before reaching legal size. Over time, this should lead to an increase in both the number of breeding individuals and overall abundance as greater numbers of new fish and shellfish recruit into the population.

203. A rock lobster accumulation limit and requirement for telson clipping (one third of the central telson to be clipped) may also discourage illegal black market sales as the ability to store large quantities of rock lobster will be restricted.

204. To assist with the enforcement of the rock lobster accumulation limit, it is proposed that 'bag and tag' conditions be introduced. The 'bag and tag' conditions would require an individual fisher to hold rock lobster in a container that only contains a single days catch, and is clearly labelled with the fishers name, date it was taken, number held and where it was taken from. The condition will help to show that any accumulated rock lobsters were taken within prescribed daily limits over three days or more.

205. Te Korowai proposes that specific bag limits be reviewed annually to fit with current fisheries management processes (and the Strategy every 10 years). Yearly reviews would be costly and MPI does not anticipate changes to abundance would be evident over such a short timeframe. Many factors influence how quickly a stock's abundance increases in the context of reduced fishing pressure (for example fecundity, longevity and inter-annual variation in environmental conditions) so a longer review period would be more effective, achievable and cost-effective.

#### *Costs*

206. There would be no direct impact on commercial fishers. Charter boat operators may be impacted negatively as they will not be able to provide the same opportunities for clients compared with the status quo (specifically, if the daily limit applies to each person on a charter boat instead of just the crew which is the current informal agreement). However, the operators can adjust their business to target other species and/or areas thereby minimising the impacts.

207. There may be some displacement of effort to other areas as recreational fishers seek areas with higher bag limits for key species. For some species such as blue cod, this could lead to depletion of neighbouring areas. It is not possible to quantify this risk accurately.

208. MPI has existing fisheries compliance resources based in the Kaikōura area, so significant additional costs related to staffing are not anticipated. Implementation of the proposed changes will require signage and education. Additional resources are not required as these costs will be met within current baselines and existing work programmes.

209. The proposed changes will add some complexity and compliance costs to recreational fishing in the Kaikōura area, and the typical scale for fisheries management is the much larger quota management area, but it is not unusual to have specific rules for recreational fishing in particular areas. The proposals are community led and may have a lower evidential basis than other fisheries management regulatory changes (because, for example, stock assessments are undertaken in relation to a much larger area), but MPI agrees that they are appropriate.

#### **Conclusion**

210. Te Korowai has undertaken extensive consultation (refer Appendix 4) in developing and then finalising the proposals for changes to the recreational fishing regulations in the context of the wider "gifts and gains" approach of the Strategy. This was further strengthened by MPI's targeted engagement of key stakeholders.

211. Of the 28 proposed changes to recreational fishing regulations, MPI supports 23 of these as they will help achieve the Strategy objective for abundant fishing and meet Te Korowai's aim "fish for a feed and for the future" which is consistent with the purpose of the Fisheries Act (Table 6).

212. A number of issues raised by submitters, and assessment by MPI officials have resulted in reservations for the other proposed five changes and it is recommended that these are not progressed through the special legislation (Table 7) as the changes are negligible and will complicate compliance, or they are better dealt with through codes of practice or voluntary measures.

**Table 6: Te Korowai’s proposed recreational bag limits to be progressed through special legislation**

Species	Current	Proposed change		
	Bag limit, minimum legal size (if relevant to discussion)	Proposed daily limit (bag limit or weight limit per person per day)	Proposed minimum legal size	Proposed additional requirements
Karengo (porphyra spp. and ulva spp.) and Bladder kelp <i>Macrocystis pyrifera</i>	No limit	5 litre wet volume measured in a 5 litre bucket		Require handpicking
Black foot paua	10, 125 mm	6		
Yellow foot paua	10, 80mm	6	No change	
Pupu ( <i>Turbo smaragdus</i> )	Part of combined daily bag limit of 50 “other” shellfish	20		
Cockles ( <i>Protothaca crassicosta</i> and <i>Astrovenus stutchburyi</i> )	150	50		
All “other shellfish” as specified in the regulations	50	30		
Kina ( <i>Evichinus chloroticus</i> )	50	20		
Crayfish/Rock Lobster ( <i>Jasus edwardsii</i> )	6 (no accumulation limit)	No change		To require telson clipping for all recreationally harvested lobster.  Accumulation limit of 18 (three day take)
Blue cod ( <i>Paraperchis colias</i> )	10 30 cm	6	33 cm	
Tarakihi ( <i>Nemadactylus macropterus</i> )	15	10		
Perch ( <i>Helicolenus percoides</i> )	No limit or minimum size	Introduce bag limit of 20	Introduce minimum size of 26 cm	
Kahawai ( <i>Arripis trutta</i> , <i>A. xybion</i> )	15	10		
Butterfish ( <i>Odax pullus</i> )	15	10		
Red Moki ( <i>Cheilodactylus spectabilis</i> )	15	NO TAKE		
Blue Moki ( <i>Latridopsis ciliaris</i> )	15	10		
Kingfish ( <i>Seriola lalandi</i> )	3 – part of a combined daily bag limit of 5 with hapuku/bass	Daily combined bag limit of five per person		Daily limit of three for any one of these species
Bass ( <i>Polyprion moeone</i> ) and Hapuku ( <i>Polyprion oxygeneios</i> )	Combined daily bag limit including kingfish of 5			
Bluenose ( <i>Hyperoglyphe antarctica</i> )	5			
Ling ( <i>Genypterus blacodes</i> )	30			
Albacore tuna ( <i>Thunnus alalunga</i> )	No limit			
Game sharks ( <b>seven-gilled shark</b> <i>Notorhynchus cepedianus</i> , <b>mako shark</b> <i>Isurus oxyrinchus</i> , blue shark <i>Prionace glauca</i> , hammerhead shark <i>Sphyrna zygaena</i> , porbeagle shark <i>Lamna nasus</i> , thresher shark <i>Alopias vulpinus</i> )	1 for each species	1 game shark total		
School shark ( <i>Galeorhinus galeus</i> )	5	3		
Rig ( <i>Mustelus lenticulatus</i> )	5	3		



**Table 7: Te Korowai's proposed recreational bag limits with reservations (not to be progressed)**

Species	Proposed by Te Korowai	Reason
Paua (blackfoot and yellowfoot)	Daily accumulation limit of 20 paua or 2 kg	Currently the regulation is daily accumulation limit of 20 paua or 2.5 kg for all species. The proposed change is minor and unnecessary, and will overly complicate compliance (if paua are claimed to be taken from outside the Te Korowai area).
Paua (blackfoot and yellowfoot)	Requirement to measure before taking	It is illegal to take an undersized paua, so technically paua should already be being measured before taken. Clarifying the definition of take (removing from habitat rather than taking home with you) could be addressed in the code of practice. Requiring to measure before taking will also be extremely difficult for compliance officers to enforce. The goal of this regulatory change is likely to be better met through education rather than legal requirement.
Blackfoot paua	Proposed minimum legal size 127mm (from 125mm)	This change is proposed so as to bring the recreational minimum legal size to match commercial. Currently, the commercial minimum legal size is 125 mm, but commercial fishers adhere to a minimum <i>harvest</i> size of 127 mm, which is voluntary. MPI suggests a voluntary recreational minimum legal size of 127 mm could be implemented through a code of practice, similar to the way commercial has developed their minimum size.
Kahawai	Requirement for fish not be utilised to be released immediately	More appropriate to be treated as a code of practice issue. This is hard to enforce and will be better achieved through education.
Blue Cod	Include the use of circle 6/0 or larger hooks	The strategy proposes this as part of a code of practice. This does not need to be addressed as a regulatory change. MPI is supportive of addressing this in a code of practice and through education.

## GOVERNANCE

213. Te Korowai considers that effective oversight of implementation is essential to the success of the Strategy. A range of governance options that could support integrated marine management in Kaikōura have been considered below. Some of these options would meet Te Korowai's desire to have an ongoing role and voice in the management of Kaikōura's marine and coastal environment. The preferred option is for the special legislation to include an enabling provision that empowers Ministers to appoint, alter or discharge an advisory committee for the Kaikōura marine management area that may include an incorporated society, and is representative of the Kaikōura community, Ngāti Kurī, environmental, tourism and fishing interests. This will give an adequate statutory basis for the Committee, but also provide flexibility should the future needs of, or for, the Committee change.

214. There is no comparable precedent for appointing an incorporated society in an advisory committee role. However, given the extensive commitment of Te Korowai and the community driven nature of the Kaikōura Marine Strategy, MPI and DOC consider that Te Korowai is better placed to provide advice on the implementation of the Strategy than individual appointees.

### Assessment

**Table 8 : Options analysis on governance options**

Option	Benefits	Costs
Option 1: No statutory provision for an advisory committee	<ul style="list-style-type: none"> <li>No cost to Government to implement and operate a new Committee.</li> <li>Avoids setting potential precedent for future statutory recognition of other environmental management groups.</li> </ul>	<ul style="list-style-type: none"> <li>Compared to other options, Government may be provided with less comprehensive information and advice, and have less engagement with the Kaikōura community.</li> <li>Does not provide an ongoing role for Te Korowai in the management of Kaikōura's marine and coastal resources or recognise its efforts to date.</li> </ul>
Option 2: Establish an advisory committee under existing provisions in fisheries and conservation legislation <sup>28</sup>	<ul style="list-style-type: none"> <li>Would provide an advisory role for Te Korowai but scope of the role may be unclear (though it could be specified in the appointment process).</li> </ul>	<ul style="list-style-type: none"> <li>Potentially resource intensive for both government and Te Korowai (if appointed) with duplication of functions and costs.</li> <li>It would be clearer and provide more certainty if the special legislation implementing key components of the Strategy specifically provided for a Ministerial advisory committee to be established.</li> </ul>
Option 3: Detailed legislative provisions in special legislation specifying Committee functions, membership, meetings, etc	<ul style="list-style-type: none"> <li>Clearly defines role of an advisory committee to allow Government to be provided with information and advice.</li> <li>Would provide an advisory role for Te Korowai but may be unwieldy and overly constrictive for the incorporated society.</li> </ul>	<ul style="list-style-type: none"> <li>Resource intensive for Government to maintain and implement.</li> <li>Te Korowai may or may not be appointed, so no certainty for Te Korowai to play an ongoing role in the management of Kaikōura's marine environment.</li> <li>Uncertain it will lead to improved outcomes (no guarantee of behaviour change).</li> <li>No flexibility to adapt the current advisory committee form and function to changing needs over time.</li> </ul>
Option 4: Legislative provision that enables	<ul style="list-style-type: none"> <li>Provides choice about whether to establish (or disestablish) a Committee, and flexibility to adapt Committee form and function to changing needs over time.</li> </ul>	<ul style="list-style-type: none"> <li>May be resource intensive for Government</li> <li>May reduce Te Korowai's autonomy.</li> <li>Does not necessarily give Te Korowai long-term certainty of its role and ability to influence – though</li> </ul>

<sup>28</sup> Section 21(1) of the MAF Restructuring Act 1995, and section 56 of the Conservation Act

Option	Benefits	Costs
Ministers to appoint an advisory committee that may include an incorporated society. <i>(preferred option)</i>	<ul style="list-style-type: none"> <li>• Avoids setting potential precedent for future statutory recognition of other environmental management groups.</li> <li>• Provides the opportunity to give Te Korowai an ongoing role the management of Kaikōura's marine and coastal resources or recognise its efforts to date.</li> <li>• Government would be provided with comprehensive information and advice and have more engagement with the Kaikōura community.</li> </ul>	once a Committee has been established it would be quite a significant step to discontinue it.

## Conclusion

215. Special legislation could include an enabling provision that empowers Ministers to appoint, alter or discharge an advisory committee for the Kaikōura marine management area. Individual persons or an incorporated society could be appointed ensuring the Committee is representative of the Kaikōura community by including Ngāti Kurī, environmental, tourism and fishing interests.

216. It would be sensible to appoint Te Korowai as the Ministerial advisory committee in the first instance to provide advice on conservation and fisheries matters as recognition of its substantial achievement in developing the Strategy, its wide community support and substantial local knowledge of the marine and coastal environment.

217. Any advisory committee would be compatible with other governance structures supporting specific components of the Strategy, including management committee/s for the customary fisheries tools<sup>29</sup> and potential management committee/s for the marine reserve and marine mammal sanctuary. There may well be considerable overlap in the membership of these committees, but their respective roles will be well defined.

218. The cost of the advisory committee will be met from within existing MPI and DOC baselines. Te Korowai has advised that it does not want its members to be paid meeting fees, but is seeking operational funding to support its ongoing work. MPI and DOC are considering this request.

<sup>29</sup> Each mātaihai reserve would have Tangata Tiaki/Kaitiaki nominated by Tangata Whenua (regulation 17 of the Customary Regulations). Each taiāpure-local fisheries would have a management committee with members nominated by Tangata Whenua and approved by the Minister of Fisheries (s184 of the Fisheries Act 1996).

## Consultation and targeted stakeholder engagement

219. Two main types of consultation and discussion have been undertaken regarding the Strategy:

- Te Korowai's consultation process on the Strategy; and
- Targeted engagement by MPI and DOC to gain a better understanding of key issues and engage with a number of key stakeholders.

### TE KOROWAI'S PROCESS

220. Consultation formed an integral part of the Te Korowai process, with key players and the wider community kept informed and consulted throughout the development of the Strategy. The Te Korowai process was initiated, and fully supported by Ngāti Kurī at all stages. Key consultation milestones were: the publication of Te Korowai's characterisation report (2008), the release of a draft strategy for public comment and the subsequent submission decision report in 2011.

221. During the submission period there were regular reports in the weekly Kaikōura Star, newsletters, brochures and rack cards distributed around Kaikōura, presence at events such as Sea Week, open days, public sessions of Te Korowai meetings, Te Korowai presence members on other boards<sup>30</sup>, and talks with interested groups.

222. Te Korowai issued a comprehensive summary of all submissions in 2011.<sup>31</sup> 169 submissions were received from a wide variety of individuals, organisations and key stakeholders with the majority from those living in, or regular visitors to Kaikōura (85 submissions), Canterbury (26) Auckland (10) and Wellington (10). The remaining 38 were wide ranging from all over NZ.

223. Of the 169 submissions, 56 specifically supported the Strategy and 13 specifically expressed opposition. Comments from those opposed included 'the plan doubles administration costs through duplication of effort', 'the Strategy is based on tourism', 'maintain the status quo', 'not enough consultation', 'enough bureaucracy in Kaikōura already; and 'Kaikōura's bounty of the sea was too valuable to be locked up and dished out to the privileged few'.<sup>32</sup>

224. Analysis of the submissions, the summary of submissions, and the decisions documents provided by Te Korowai show that Te Korowai conducted a thorough response process to individual submissions. It is clear some submitters ideas have been taken on board with changes made to the Strategy.

225. A key gap noted in the Strategy is the lack of economic analysis by Te Korowai. MPI and DOC engagement with key stakeholders and further research have helped garner a clearer picture of the economic impacts of providing marine protection to Kaikōura by

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<sup>30</sup> Boards such as: Nelson Marlborough Conservation Board, Te Rūnanga o Kaikōura, Cramac5, PauaMac3, Kaikōura Zone Committee, Hutton's Shearwater Trust, Kaikōura Boating Club, New Zealand Recreational Fishing Council, and Forest and Bird

<sup>31</sup> Te Korowai (2011) Summary of Submissions and Decision Document

<sup>32</sup> *ibid* p.31

implementing the Strategy (in particular costs around fishing displacement alongside the economic benefits of marine tourism).

226. Te Korowai would like to continue engagement with the community on the Strategy. They note that they don't expect everyone to be happy due to divide in the community on certain points but that they have, in good faith, listened and considered carefully these points. Their decisions, they believe, have resulted in a robust "gifts and gains" process and as such are a good conclusion for meeting the outcomes and objectives of the Strategy.

## **TARGETED ENGAGEMENT**

227. In addition to the consultation carried out by Te Korowai, MPI and DOC checked in separately with a number of key stakeholders in August/September 2013. Feedback was received from: Te Oh Kaimoana, Te Tau Ihu, Southern Inshore Fisheries, Sanfords, New Zealand Rock Lobster Management Group (NRLMG) endorsed by CRAMAC 5 (Cray Management Advisory Committee Area 5), NZ Recreational Fishing Council, Forest and Bird National Office, New Zealand Marine Sciences Society, National Institute of Water and Atmospheric Research (NIWA), GNS Science (GNS) and the Petroleum Exploration & Production Association New Zealand (PEPANZ).

228. Feedback from these key stakeholders concerning the marine reserve, marine mammal sanctuary, mātaītai reserves, taiāpure-local fisheries and changes to recreational fishing regulations are addressed in the relevant parts of the Impacts Analysis section.

## **GENERAL FEEDBACK**

229. Submissions specifically concerning the marine reserve, marine mammal sanctuary, mātaītai reserves, taiāpure-local fisheries and changes to recreational fishing regulations are summarised in Appendix 4.

230. Key general themes that arose from submissions concern:

- the level of consultation undertaken by Te Korowai;
- special legislation as a means to implement the Strategy;
- the status of the Marine Reserves Bill and Marine Protected Areas Policy; and
- compliance costs and the role of the Quota Management System.

These are also summarised in Appendix 4 (Table 10).

## Conclusions and Recommendations

### CONCLUSIONS

231. The preferred option to balance environmental protection and provide for customary rights and values while ensuring economic growth in Kaikōura is to implement the key components of the Kaikōura Marine Strategy through special legislation.

232. Other implementation options have been discounted as they do not support the overriding objectives of the proposal or provide a feasible way to implement the key components of the Strategy in an integrated manner that will preserve the consensus of “gifts and gains” agreed by Te Korowai.

233. Te Korowai consulted thoroughly on the Strategy; MPI and DOC undertook specific targeted engagement with a number of key stakeholders and raised key issues with relevant Government agencies.

234. Each of the proposed spatial tools (marine reserve, marine mammal sanctuary, mātaítai reserves and taiāpure-local fisheries) and changes to recreational fishing regulations were assessed using existing and relevant legislative provisions where applicable.

235. The proposal for establishing taiāpure-local fisheries meets the requirements of section 176(2) and the object set out in section 174 of the Fisheries Act 1996, and the proposal for establishing mātaítai reserves meets the requirements of the Fisheries (South Island Customary Fishing) Regulations 1999.

236. Noting the exceptions to the notification and submissions process, DOC considers that the proposal for establishing a marine reserve meets the requirement of the Marine Reserves Act 1971. MPI considers that the concurrence requirements for establishing a marine reserve would likely be met.

237. DOC considers that the proposal for establishing a marine mammal sanctuary meets the requirements of Marine Mammals Protection Act 1978.

238. DOC recommends that the restrictions on seismic surveying in table 4 be adopted because it:

- Provides effective protection for marine mammals that visit and are resident in Kaikōura, and their habitat by reducing or eliminating residual risk of effects resulting from seismic surveying
- Recognizes the uniqueness of Kaikōura as a leading marine mammal watching destination
- Has undergone extensive consultation with the local community and fully delivers on their aspirations as expressed through the Te Korowai process and report

239. MPI, the Ministry for Business Innovation and Employment (Infrastructure and Resource Markets) Group and the Ministry for the Environment recommend the restrictions on seismic surveying as set out in table 5 be adopted, because it:

- Provides effective protection for marine mammals in Kaikōura by reducing or eliminating residual risk of effects resulting from seismic surveying with a lower risk of establishing a precedent for future marine mammal sanctuaries.

240. MPI supports 23 of the 28 proposed changes to recreational fishing regulations (Table 6) as they will help achieve the Strategy objective for abundant fishing and meet Te Korowai's aim "fish for a feed and for the future" which is consistent with the purpose of the Fisheries Act. A number of issues raised by submitters, and assessment by MPI officials have resulted in reservations for the other proposed five changes and it is recommended that these are not progressed through the special legislation (Table 7) as the changes are negligible and will complicate compliance, or they are better dealt with through codes of practice or voluntary measures.

241. MPI and DOC consider an advisory committee should be established to provide advice on conservation and fisheries matters and that Te Korowai be appointed in the first instance.

242. Overall, the benefits of the proposal are considered to outweigh residual concerns.

## RECOMMENDATIONS

243. MPI and DOC recommend that the Kaikōura (Te Tai o Marokura) Marine Management Act) be created to establish:

- a) The Hikurangi Marine Reserve;
- b) The Te Rohe o Te Whānau Puha – The Kaikōura Marine Mammal Sanctuary restricting public foot access to the Ohau Point seal breeding colony; and
  - i. Seismic surveying as set out in table 4 (supported by DOC)

### OR

- ii. Seismic surveying as set out in table 5 (supported by MPI, the Ministry for Business Innovation and Employment (Infrastructure and Resource Markets) Group and the Ministry for the Environment)
- c) Three mātaītai reserves;
- d) Two taiāpure-local fisheries;
- e) Changes to 23 of the 28 recreational fishing regulations proposed in the Strategy. Five of the recreational fishing regulations changes proposed are not recommended to progress; and
- f) A Ministerial advisory committee (Te Korowai in the first instance).



## Implementation Plan

244. The special legislation will result in the creation of the Kaikōura (Te Tai o Marokura) Marine Management Act. The Act will be administered by DOC and MPI and a Ministerial advisory committee will be created as part of this process to provide advice on conservation and fisheries matters in the Kaikōura area.

245. The following table set out the tasks needed for implementation and compliance costs of the proposal.

**Table 9 : Implementation and Compliance costs**

Proposed Spatial Tool	Implementation	Implementation & Compliance Costs
Implementing the special legislation (The Kaikōura (Te Tai o Marokura) Marine Management Act)	<p>A public awareness campaign will be necessary to advise commercial fishers, recreational fishers, local community, tourists, tourist operators and business of the proposed changes which include: reduction in recreational catch levels for a number of fish species, marine reserve boundaries and rules, marine mammal sanctuary boundaries and rules, restrictions on foot access to Ohau Point, taiāpure and mātaītai locations and rules.</p> <p>A combination of education and information such as brochures, maps, newspaper advertisements, signage, gazette notices, industry (e.g. commercial fishers) notices, updates to electronic applications (available on smart phones) will be used to raise awareness.</p>	<p>An interagency group of DOC, MPI, Te Korowai, Kaikōura DC and Environment Canterbury could be established to plan and integrate these activities to achieve optimal delivery and cost effectiveness.</p> <p>Costs to be met within existing baseline funding.</p>
Three mātaītai reserves (Mangamaunu, Mussel Rock and Oaro)	Signage and boundary markers	<p>Medium direct/ indirect implementation costs to MPI including notification and signage - \$10k.</p> <p>Low-medium ongoing compliance costs to MPI depending on number/complexity of bylaws.</p> <p>Will form part of existing monitoring compliance activities by fisheries officers.</p>
Two taiāpure – local fisheries (Kaikōura and Oaro Blocks/Haumui Bluff)	Signage and boundary markers	<p>High direct/ indirect implementation costs to MPI including notification and signage - \$10k.</p> <p>Medium-high ongoing compliance costs to MPI depending on number/ complexity of regulations put forward by taiāpure committee.</p> <p>Will form part of existing monitoring compliance activities by fisheries officers.</p>
Hikurangi Marine Reserve	<p>The use of modern technology (GPS) will assist with compliance monitoring and enforcement of the marine reserve which has complex boundaries.</p> <p>GPS should only be required around the Canyon where commercial fishing, and the few recreational fishers involved in deep water fishing, can all be expected to have good position finding equipment.</p>	<p>\$100,000 set up costs (including baseline survey) in year 1 then \$55,000 per year thereafter to be met with existing baseline.</p> <p>DOC is responsible for enforcement within marine reserves. Where appropriate, MPI works with DOC in enforcing marine reserve boundaries and adjoining areas.</p>
Te Rohe o Te Whānau Puha - Marine Mammal Sanctuary	<p>The number of seismic surveys likely to take place within the sanctuary will be very low.</p> <p>GPS coordinates should be sufficient to mark the boundaries of both the sanctuary in its entirety and the boundary between the two zones.</p>	<p>Direct implementation costs to DOC (amount uncertain).</p> <p>Seismic surveying operators are required (under the Code) to notify DOC in advance, so active monitoring of rouge surveys is not</p>

Proposed Spatial Tool	Implementation	Implementation & Compliance Costs
	Prohibiting public foot access to the Ohau Point fur seal breeding colony will require signage and potentially additional barriers.	required. Compliance costs for foot access to Ohau Point will be absorbed in DOC's operational budget for the management of this area.
Changes to recreational fishing regulations	Updating information pertaining to fishing regulations in Kaikōura (e.g. Smart Phone apps, websites, advising fisheries officers, pamphlets)	High direct/ indirect implementation costs to MPI including notification and signage. Costs are estimated at \$15,000.  High ongoing compliance costs to MPI due to complexity and small spatial scale of proposals.  Will form part of existing monitoring compliance activities by fisheries officers and be met within existing baseline funding.
Establishment of a Ministerial advisory committee	The committee will need to be appointed by Ministers.	Te Korowai has advised that it does not want its members to be paid meeting fees, but is seeking operational funding to support its ongoing work. MPI and DOC are considering this request. Operational costs of the Ministerial advisory committee are estimated at \$60,000 per year (ex GST) as a 50% contribution in the form of an annual grant leaving the committee to find the rest of the balance within the region through grants. This does not include the time or direct departmental costs of officials which will be met by DOC and MPI from existing baselines.

## Monitoring, Evaluation and Review

246. There are already a number of existing processes and resources in place for marine management in Kaikōura that will be extended if and when required. Specific monitoring of the spatial tools will be as follows:

### *Changes to recreational fishing bag limits*

247. Recreational fishing is monitored by MPI Fisheries Officers as part of routine monitoring and enforcement activities in the area. Officers will be informed of the bag limit changes and if additional resources are required then these will be diverted from other activities. The Kaikōura Strategy and regulations will be taken into account in the prioritisation of resources that occurs through fisheries planning processes.

### *Mātaitai reserves and taiāpure-local fisheries*

248. The mātaitai reserves and taiāpure-local fisheries are monitored by MPI as part of fisheries compliance in the wider area. Each mātaitai reserve would have Tangata Tiaki/Kaitiaki nominated by Tangata Whenua (regulation 17 of the Customary Regulations). Each taiāpure-local fisheries would have a management committee with members nominated by Tangata Whenua and approved by the Minister of Fisheries (s184 of the Fisheries Act 1996).

### *Marine Reserve*

249. DOC is responsible for enforcement within the marine reserves. Where appropriate, MPI works with DOC to enforce marine reserves boundaries and adjoining areas. DOC carries out ecological monitoring within selected marine reserves around New Zealand. Monitoring is tailored to each reserve depending on the reserve's location, size/configuration

and bio-physical attributes. A range of species are typically monitored, notably those which are commercially and recreationally fished (e.g. rock lobster, blue cod, paua) as these species tend to respond the quickest and most noticeably to marine reserve protection. Wider ecosystem effects can also be assessed (e.g. by monitoring secondary and tertiary-level effects on prey and habitat forming species).

250. While not all reserves are monitored, it is anticipated the proposed Hikurangi Marine Reserve would be given its strategic location and the proposed 25-year review. The ecological efficacy of the reserve's narrow connection to the coast would also need to be assessed over time.

251. In addition to monitoring undertaken by DOC, scientific research by Universities and other research institutions can also provide valuable insights into the form and function of marine reserves. The University of Canterbury has a field base at Kaikoura.

#### *Marine mammal sanctuary*

252. Monitoring and compliance within the proposed Marine Mammal Protection Sanctuary, particularly around public foot access to the Ohau Point fur seal breeding colony, will be administered by DOC as part of its regional functions.

253. Under the Code, proponents of level 1 or 2 seismic surveys are required to notify DOC in advance of their intentions, including provision of marine mammal impact assessments.

254. Ongoing monitoring, evaluation and review of the effectiveness of the seismic surveying restrictions within the sanctuary will depend on what restrictions are implemented. DOC considers that active monitoring by operators to record noise levels and evaluate any subsequent behavioural effects in the inner zone would be beneficial, and could be required through conditions applied under the Code. This information will assist with evaluating how well the proposed restrictions are working in relation to reducing or eliminating residual effects of seismic survey activities on marine mammals within the sanctuary, including their habitat. In addition this information will also assist in providing useful data as to the practical application of the Code, and how seismic surveying, particularly high intensity level 1 surveying, can affect the behaviour of marine mammals.

255. Monitoring of compliance to public foot access to Ohau Point will be carried out as part of DOC's normal business. The effectiveness of these measures should be apparent through an observed reduction in foot access through the seal colony.<sup>33</sup>

### **Reviewing the Strategy**

256. Te Korowai has proposed the following review processes:

- Review of the Strategy every 10 years involving opportunities for the community to influence future directions;
- A generational review of the marine reserve after 25 years to monitor performance and effects on the Kaikōura community.

257. These reviews are supported by DOC and MPI.

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<sup>33</sup> These restrictions will not physically prevent access

## APPENDIX 1 – DISCUSSION OF THE WIDER GOVERNMENT GOALS, OBJECTIVES AND LEGISLATIVE OBLIGATIONS

### DELIVERY OF THE BUSINESS GROWTH AGENDA

1. MPI and DOC consider that the Strategy's vision for the protection of the Kaikōura Marine environment and the sustainable management of its resources is consistent with maintaining the natural capital that underpins Kaikōura's contributions to economic activity and the generation of export revenues in the fishing and marine tourism sectors.
2. The Strategy aligns to the Government's drive through the Business Growth Agenda (BGA) to build the economic potential of both 'natural resources'<sup>34</sup> and 'export markets'.<sup>35</sup> There may be some commercial costs in order to achieve better environmental outcomes (e.g. displaced fishing activity); however, these costs are relatively low. There will also be compensating commercial benefits e.g. from eco-tourism and enhancement of the sustainability credentials of New Zealand's exports (including seafood exports). The consistency of the Strategy's vision with these key BGA themes is assessed below.

#### Natural Resources

3. The Strategy's vision of an integrated management approach that meets the needs of a range of stakeholders is consistent with the BGA's objective of improving marine management to achieve the best use of resources and manage the cumulative effects of different users.
4. The Strategy holds the potential for greater value to be derived from the local fisheries sector in Kaikōura by providing improved certainty around the allocation of marine space, alleviating competition between recreational, customary and commercial fishers.

#### Export Markets

5. The Strategy's vision of comprehensive protection for Kaikōura's coastal environment supports the BGA objective of delivering a compelling New Zealand story that will enhance the value of New Zealand's flagship exports including tourism. Kaikōura already has a well-established reputation as a high-profile destination for marine tourism, and the Strategy's implementation would provide an opportunity to strengthen this position to take greater advantage of international opportunities.
6. Implementation of the key components of the Strategy would provide tangible evidence of the strength of New Zealand's stewardship of the Kaikōura Marine environment, and it's globally recognised iconic marine species.
7. This would bolster the credibility of efforts to market Kaikōura as a marine tourism destination, and reinforce the reputation of 'brand New Zealand' that underpins access to international markets. Injecting this element of credibility into New Zealand's international marketing efforts has been identified as a key plank of the BGA's strategy for achieving 'green growth'.
8. A longer term objective of the Strategy is to secure World Heritage status for Kaikōura from the mountain tops to canyon floor<sup>36</sup>. This international recognition of areas of

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<sup>34</sup> Business Growth Agenda Progress Reports – Building Natural Resources, December 2012.

<sup>35</sup> Business Growth Agenda Progress Reports – Building Export Markets, December 2012.

<sup>36</sup> World heritage is a status conferred by UNESCO, after sites nominated by member states are investigated against world heritage criteria. New Zealand currently has 8 sites on its tentative nomination list. Kaikōura is not one of the current tentative sites. There has been some analysis of including Kaikōura in future nominations, however, the Cultural and Natural Heritage Advisory Groups (convened on behalf of DOC) considered there were "major integrity and management issues which would need to be addressed before a potential World Heritage site could be defined and added to New Zealand's tentative list" (Our World Heritage: A Tentative List of New Zealand Cultural and Natural Heritage Sites, November 2006).

outstanding heritage value has proven to be a potent driver for marketing them to international tourists, and strong revenue growth has been observed from sites in Australia following 'World Heritage' designation.<sup>37</sup>

9. World Heritage status for the Kaikōura coast holds the potential for New Zealand to compete in the international eco-tourism market, and is consistent with the BGA's objective of developing international tourism opportunities on the public estate.

## BALANCING ECONOMIC GROWTH WITH ENVIRONMENTAL PROTECTION

10. As the National Party's advisory group on environmental issues, the BlueGreens have developed key principles that should be applied to the broad range of environmental challenges facing New Zealand. The complex nature of marine management can be considered as one of these challenges. The Strategy outcomes align well with these principles:
  - Resource use must be based on sustainability;
  - Economic growth and improving the environment can and must go hand in hand;
  - Good science is essential to quality environmental decision making;
  - People respond best to change when engaged and given incentives; and,
  - New Zealanders have a unique birthright to access and enjoy our special places.
11. Te Korowai's vision aligns with these key BlueGreen principles with its focus on "a flourishing, rich and healthy environment where opportunities abound to sustain the needs of present and future generations".
12. Recent EEZ legislation acknowledges that tensions can exist between competing and conflicting uses in marine areas.
13. By implementing the key components of the Strategy, Te Korowai seek to rectify and address marine management issues, including balancing a range of different uses, while simultaneously ensuring economic growth and opportunities in Kaikōura .

## DELIVERY OF STATUTORY OBLIGATIONS TO MAORI

14. The Crown has an ongoing obligation to recognise and provide for customary food gathering by Maori and the special relationship of tangata whenua with places of customary food gathering importance.<sup>38</sup> The Strategy proposes the use of marine spatial tools available to deliver these obligations: three small mātaimai reserves and two larger taiāpure-local fisheries<sup>39</sup> with the intention to impose one or two generational closures (rahui)<sup>40</sup> at a later stage. Refer to Appendix 2 for a detailed map of these spatial tools.

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<sup>37</sup> Buckley.R., 2004 The effects of World Heritage Listing on Tourism to Australian National Parks. *Journal of Sustainable Tourism*, 12(1), pp 70-84.

<sup>38</sup> *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992*, s10; *Fisheries (South Island Customary Fishing) Regulations 1999* which apply to the fisheries waters around the South Island and Stewart Island and allow the Minister for Primary Industries to declare areas to be mātaimai reserves; and Part IX of the *Fisheries Act 1996* which allows for consideration of taiāpure proposals.

<sup>39</sup> A mātaimai reserve recognises and provides for customary food gathering and special relationship between tangata whenua and places of importance for customary food gathering. Upon establishment, a mātaimai excludes commercial fishing. A mātaimai cannot be established if it will prevent commercial fishers from taking their quota or Annual Catch Entitlement (ACE). In a taiāpure, a local management committee, led by tangata whenua, may recommend regulations for the conservation and management of fisheries resources within the taiāpure.

<sup>40</sup> *Fisheries Act 1996*, s186B refers to the temporary closure of fisheries for up to 2 years which can be rolled over, or s297 General Regulations that provides for regulating or controlling fishing and the possession, processing, and disposal of fish, aquatic life, or seaweed.

## IMPROVEMENT OF STRATEGIC RELATIONSHIP WITH NGAĪ TAHU

15. The Government has worked positively with Ngāi Tahu throughout development of the Strategy from its inception as a joint initiative between Ngāi Tahu and DOC through to the present. Continuation of this approach and relationship is important as the Government looks to future economic and environmental initiatives with Ngāi Tahu and other iwi.

## SUPPORT COLLABORATIVE PLANNING PROCESSES

16. The Strategy is an excellent example of a community-led collaborative planning process representing an agreed position amongst a diverse group of stakeholders.<sup>41</sup>
17. The value of Te Korowai’s approach has been recognised in the National Party’s ‘BlueGreen Future’ policy paper, which states: *“National is a strong believer in the collaborative approach of stakeholders working closely together to resolve complex environmental issues and has helped fund this coastal initiative”*<sup>42</sup>
18. Government has been investigating collaborative processes for other natural resource processes: an amendment to the Resource Management Act 1991 (RMA) was approved by Cabinet in June 2013 which introduces a structured collaborative planning process as an alternative to the current RMA consultation system.
19. Ministry for the Environment research on natural resource governance supports collaborative governance over other forms of decision making when a diverse range of values and interests need to be considered - as is the case with the Te Korowai which is made up of a diverse range of people with often opposing interests.<sup>43</sup>

## REGULATORY BEST PRACTICE

20. Government’s Best Practice Regulation Model<sup>44</sup> outlines principles to assist with determining good policy development, regulatory design and implementation. Assessment of the proposal against these principles shows that the majority have been met.

Principle	Assessment
Proportionality	The benefits of the proposal outweigh costs of disruption.
Certainty	Special legislation will combine the key components of the Strategy under one umbrella as opposed to the numerous and time consuming legislative pathways available and the associated lack of certainty about the outcome of each of these pathways. Legislation for the marine environment has been identified as lacking integration and creating overly complex processes; Kaikōura has been highlighted as a key area of concern “The practical implications of this regulatory mess are well illustrated in Kaikōura in the debates over its coastal management...” <sup>45</sup>
Flexibility & Durability	Integrating of the key components of the Strategy under one umbrella (e.g. special legislation) in this instance provides a least-cost approach over the lengthy and costly route of taking existing legislative pathways to implement different marine spatial tools. The Strategy proposes a number of non-regulatory and voluntary measures and this proposal has recommended the use of regulation only where necessary to ensure effective implementation and ongoing management.

<sup>41</sup> Elements identified in *Review of Collaborative Governance: Factors crucial to the internal workings of the collaborative process* - a Research Report prepared for the Ministry for the Environment (2012) includes meaningful stakeholder inclusion, commitment to participate and resolve pre-existing conflict (i.e. the stalemate reached on the stalled marine reserve proposal opposed by tangata whenua), flexible leadership, shared authority and consensus decision making.

<sup>42</sup> The National Party’s environment policy paper, March 2012: Building a BlueGreen Future.

<sup>43</sup> Ministry for the Environment (2012) Research into natural resource governance. <http://www.mfe.govt.nz/issues/environmental-governance/index.html>

<sup>44</sup> New Zealand Treasury (2012) *The Best Practice Regulation Model: Principles and Assessments*.

<sup>45</sup> New Zealand National Party (2006) *A BlueGreen Vision for New Zealand*.

Principle	Assessment
	Any subsequent amendments to regulations will be made under existing provisions to avoid amendments to the proposed special legislation. When assessing proposed changes to recreational fishing regulations a number of non-regulatory measures have been suggested as an alternative. The appointment of a Ministerial advisory committee (Te Korowai in the first instance) will ensure emerging and ongoing marine management issues are able to be explored at a local level.
Transparency & Accountability	Decisions around the best approach to implement this proposal have been addressed through a very thorough consultative process by Te Korowai and by officials at MPI and DOC who have undertaken targeted engagement with key stakeholders.
Capable Regulators	Regular capability assessments by MPI and DOC of their regulatory obligations (annual and biannual in most cases), alongside independent reviews commissioned by Treasury, and the overview provided by the proposed Ministerial advisory committee will ensure that the proposal is well monitored and regularly reviewed in terms of its effectiveness and efficiency.
Growth Supporting	Economic benefits (from marine tourism primarily) and environmental protection sit side-by-side in this proposal with relatively little trade-off.



# APPENDIX 2 – MAPS OF PROPOSED MĀTAITAI RESERVES AND TAIĀPURE-LOCAL FISHERIES

Figure 3: Proposed mātaimai reserve at Mangamaunu





Figure 4: Proposed mātaītai reserve at Mussel Rock





Figure 5: Proposed taiāpure-local fishery and mātaimai reserve at Oaro/Haumuri

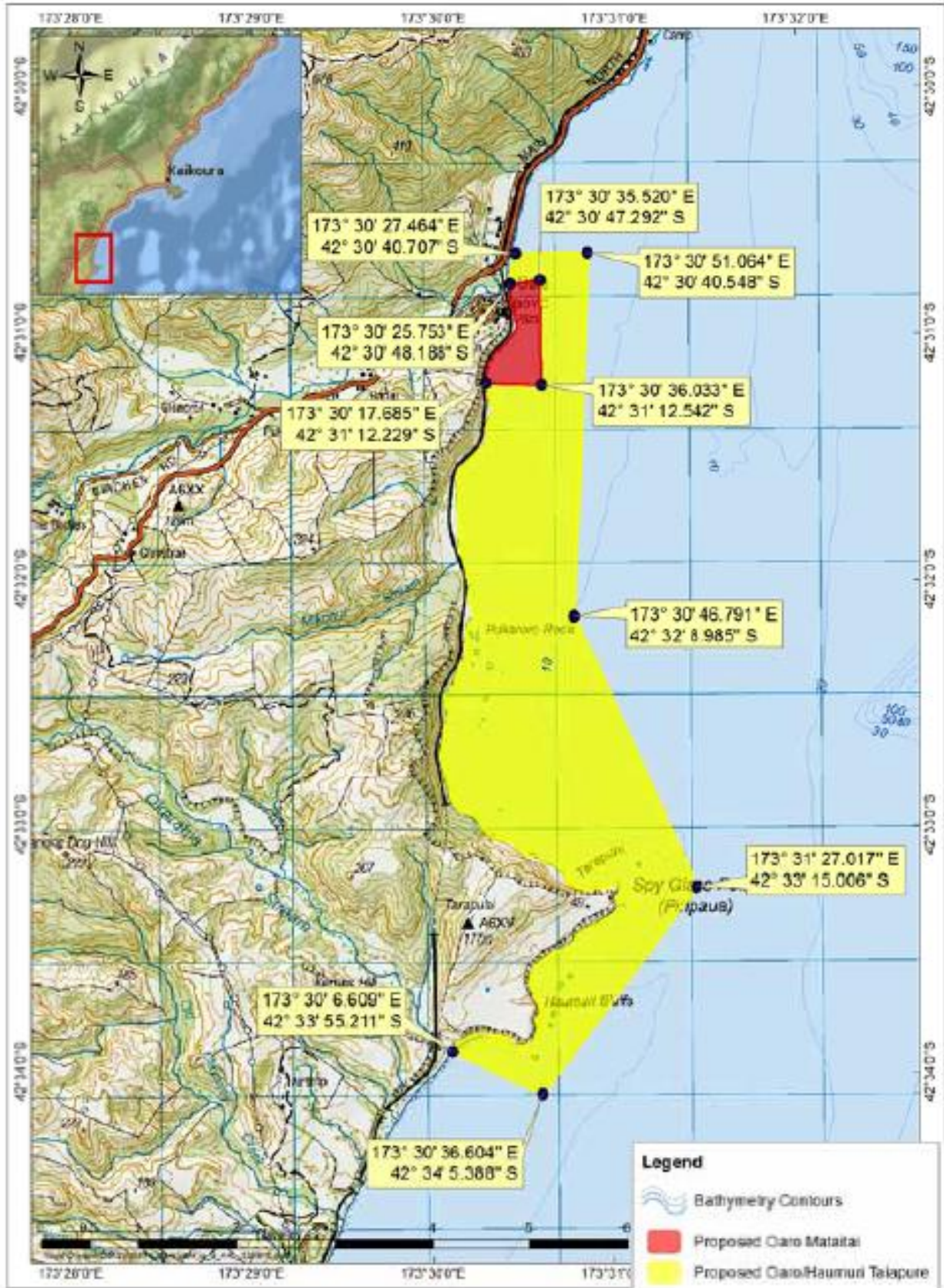
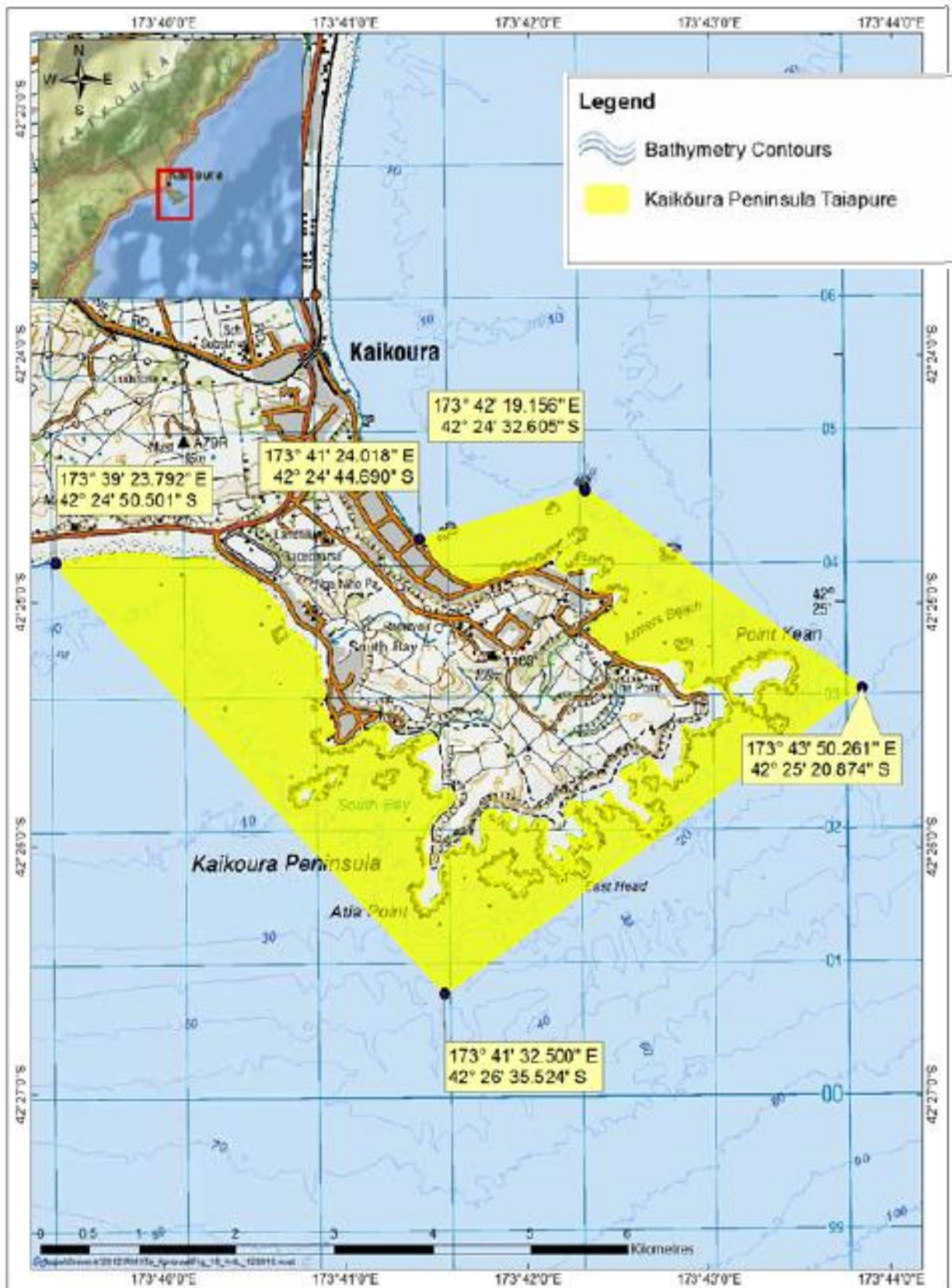




Figure 6: Proposed taiāpure-local fishery around Kaikōura Peninsula

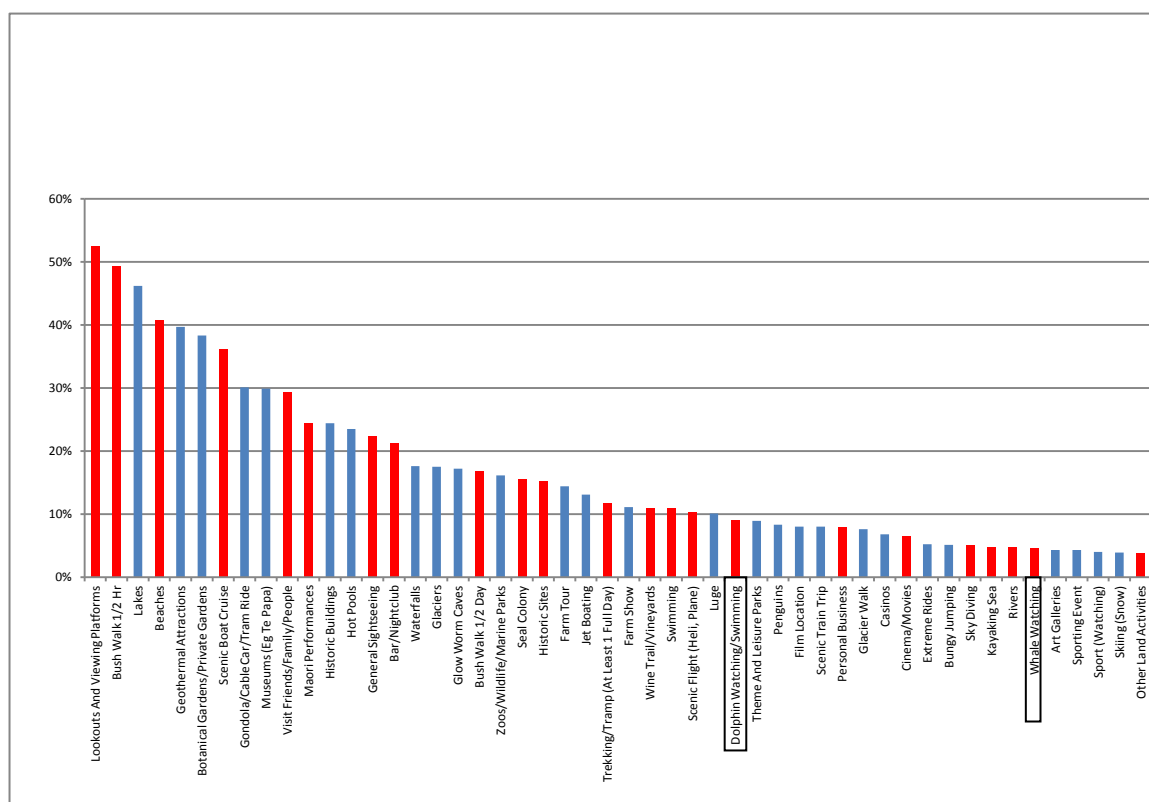


## APPENDIX 3 – ECONOMIC BENEFITS OF MARINE TOURISM

### Nationally

1. Marine tourism attracts significant economic revenue in New Zealand. In the year ended June 2013, 514,000 (or 50%) of international visitors in New Zealand took part in marine tourism activities and while in New Zealand spent \$1.6 billion during their time here.
2. That same year, of 131 tourist activities and attractions ranked by international visitors, dolphin swimming/watching was ranked 31st and whale watching ranked 45th out of 131 activities and attractions surveyed (Figure 7)<sup>46</sup>. Kaikōura was the main centre that these activities took place.
3. In 2004, whale and dolphin tourism was worth about \$72 million to the national economy with about 425,000 paying customers. By 2008, annual growth rates resulted in an estimated 550,000 visitors worth \$80 million.<sup>47</sup>
4. New Zealand marine tourism growth rates are relatively high compared to the global average of 3.7% and average compared to regional growth rates Asia (17% per year), Central America and the Caribbean (13% per year), South America (10% per year), Oceania and the Pacific Islands (10% per year) and Europe (7%).

**Figure 7: Top 50 activities and attractions ranked by international visitors (year ended June 2013)**



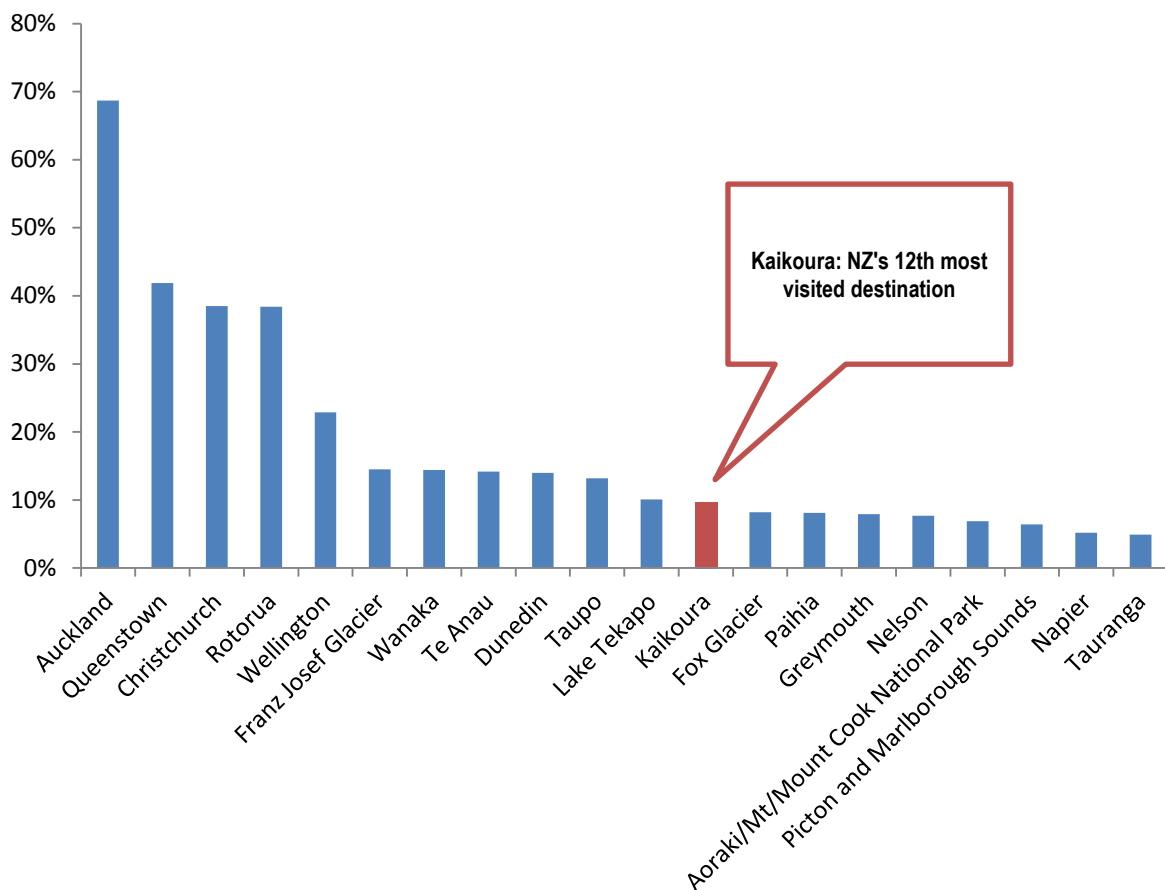
<sup>46</sup> Tourism New Zealand 2013

<sup>47</sup> [Large & Associates report for IFAW 2009](#) Executive Summary version tabled at IWC by Australia

## Kaikōura

5. Increasing marine tourism is essential to Kaikōura’s economic growth. Kaikōura District Council estimates the current value of tourism to be approximately 35% of the district’s economy. Kaikōura is known globally for its whale watching activities and is recognised for its best practice in sustainable tourism<sup>48</sup>. Since 1988, when the first whale watching boat was launched, Kaikōura has seen a rapid expansion in other marine attractions including dolphin and seal encounters, kayaking, snorkelling and fishing. There are now approximately eighteen marine tourism companies in Kaikōura.
6. Marine tourism in Kaikōura is complemented by freshwater-based activities such as the Clarence/Waiarau-toa River rafting, scenic flights and horse trekking. These activities, combined with its scenic location between mountain and sea, provide visitors to Kaikōura with a balanced and varied eco-tourism experience. Kaikōura is now ranked the 12th most visited destination in New Zealand by international tourists of 142 locations surveyed (Figure 8).<sup>49</sup>

**Figure 8: Top Twenty Overnight Visitations by International Tourists**



<sup>48</sup> In 2010 the Kaikōura-based tourism company, Whale Watch Kaikōura, won the Community Benefit Award at the Tourism for Tomorrow Awards, hosted by the World Tourism and Travel Council (WTTC) in Beijing, China. The [Tourism for Tomorrow Awards](#) recognise best practice in sustainable tourism within the travel and tourism industry internationally. Whale Watch Kaikōura was one of 160 tourism operators from over 45 countries considered for the awards

<sup>49</sup> Tourism New Zealand 2013

7. Economic benefits of marine tourism to Kaikōura include:
- Direct spending estimated at \$30 million pa (gross)<sup>50</sup> (\$15 million pa 2003)<sup>51</sup>;
  - Total expenditure \$134 million per annum<sup>52</sup>;
  - Local hotels surveys indicate that overnight tourists spend \$123 per person on average;
  - The current market is made up of 60% domestic tourists and 40% international visitors;
  - Overall, tourism makes up approximately 35% of the Kaikōura economy;
  - There are 739 tourism businesses providing 1,620 jobs<sup>53</sup>;
  - In 2005, 60% of whale watching was in Kaikōura and Akaroa worth \$43 million<sup>54</sup>;
  - In 2008, 40% of whale watching was in Kaikōura bringing \$32 million to New Zealand<sup>55</sup>;
  - Ten cruise ship visits in 2012-13 to Kaikōura brought nearly 1700 passengers and at least \$2.9 million to New Zealand.<sup>56</sup>

### **Growing tourism in Kaikōura**

8. The Christchurch earthquake had a significant impact on Kaikōura tourism. The reduced number of high-end hotel beds available in Christchurch resulted in a negative flow-on effect for Kaikōura. Prior to the earthquake, Kaikōura had 1 million visitors per year with 160,000 of these doing whale watching tours. Post-quake numbers were reduced overall visitors to around 800,000 per year, however, the number of visitors is gradually returning to original levels.
9. Projecting future economic benefits by increasing marine protection initiatives in Kaikōura is difficult to estimate. However, experience at Leigh Marine Reserve in New Zealand (New Zealand's longest established marine reserve), as well as international literature indicates that visitor numbers will increase with increased marine protection. In addition, safeguarding the marine environment will provide investment security for the marine tourism sector.
10. Te Korowai would like to see Kaikōura added to New Zealand's tentative list of sites for World Heritage consideration. Increased marine protection in Kaikōura would strengthen its case for consideration of World Heritage status. If Kaikōura Marine area did become a World Heritage candidate or a listed site then it is highly likely that international tourism would significantly increase.
11. Tourism numbers to Kaikōura are highly likely to increase with the addition of a marine reserve and marine mammal sanctuary resulting in positive economic spin-offs and environmental benefits for Kaikōura and the surrounding region.

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<sup>50</sup> Based on 2013 data provided by Te Korowai including whale, seal and dolphin watching from boats, kayaks or aircraft, and fishing charters

<sup>51</sup> May 2003, research findings from Tourism Recreation Research and Education Centre study commissioned by MED and Canterbury Development Corp.

<sup>52</sup> Te Korowai 2013 study - When income from accommodation, entertainment and other spending by visitors is accounted for (based on the methodology used in the 2003 research).

<sup>53</sup> Statistics NZ, 2012

<sup>54</sup> [Large & Assocs 2005](#) p.18

<sup>55</sup> [Large & Assocs 2009 full version](#) p.189

<sup>56</sup> [Cruise NZ - schedule - Kaikōura 2012-13](#) [17/9/12]

## APPENDIX 4 – SUMMARY OF TE KOROWAI’S CONSULTATION RELATING TO THE PROPOSED SPATIAL TOOLS

### Hikurangi Marine Reserve

1. Sixty-seven submissions were received on the proposal for a marine reserve over the Kaikōura Canyon. There was strong support for the marine reserve (23) but with simpler boundaries (12), a larger area (8), or no coastline connection (18). Opposition (17) related to access issues, displacement of fishing effort, ineffective means to control fish theft, lack of evidence, compensation needed for commercial fishers and the need for equity between local residents and tourists in small boats. Other comments were around access and compliance, the need for on-going dialogue important, tourism should not be allowed in a marine reserve, and markers needed to be detailed.

#### *Te Korowai’s response*

2. Establish a no-take marine reserve under the Marine Reserves Act 1971.
3. The proposal differs from existing marine reserves in NZ which typically follow the coastline, are long and relatively shallow in depth. The proposed reserve has a connection to the shore but is mainly in water depths of 800m to 1200m.
4. The boundaries chosen sought to bring protection to the areas of highest documented biodiversity which generally lie between 900 m and 1100 m while generally avoiding the area’s most fished which generally lie at depths of less than 800 m. They led to a series of straight lines approximating the 800m contour, except at the head of the Canyon, where the reserve connects to the near shore area – protecting sediment in/outflows and typical Canyon slope habitats.
5. Fishers can operate at these depths using modern GPS systems, and as such can manage more complex boundaries. A lot of small vessels are not equipped with electronic position fixing and here simple straight-line boundaries are important.
6. A small adjustment was made to the proposed boundaries inshore to reduce effects on the commercial rock lobster fisher operating in this area, and to achieve boundaries that are enforceable and link better to pull-off areas on the State Highway.
7. The boundaries chosen for the offshore section of the marine reserve were considered appropriate and remain unchanged. Te Korowai’s argument is that the simplified boundaries would negatively affect local commercial fishers.

### The Kaikōura Marine Mammal Sanctuary

8. PEPANZ requested, in their submission on the draft Strategy, that the size of the sanctuary was decreased to match the whale watching activities area.

#### *Te Korowai’s response*

9. A press release 6 August 2012 stated:

*We sought advice from both the Department of Conservation and from the Petroleum Exploration Association of New Zealand to help us understand the issues and options. People will find that we have held to the proposed boundaries for the marine mammal sanctuary, but have developed detailed ideas about zones and conditions for seismic survey that link with current best practice. We were advised that the Kaikōura Marine*

*area has low [prospect] for oil and gas and is not the sort of environment where fracking would be used. We have taken a [pre]cautionary approach, however, as Kaikōura is the premier marine mammal hotspot in New Zealand and is internationally important.*

10. Te Korowai agreed that what is proposed could limit petroleum exploration and extraction. They argue that there needs to be a significant buffer around the area of unique marine mammals, which is not compatible with seismic surveys. They proposed an alternative arrangement in the decision document that included:

- A ban on Level 1 surveys within the entire area though allow line turns as long as there were no sound data acquisition within the sanctuary(p80);
- Allowing Level 2 surveys in the outer buffer zone (ban in the inner zone); and,
- Allowing Level 3 surveys throughout both zones

### **Customary Tools – Mataitai Reserves and Taiapure-Local Fisheries**

11. Overall there is support for the stated objectives of Te Korowai and the proposed customary tools. However, the following issues were raised in submissions:

- The area already has an abundance of sea life ‘with crayfish and butterfish more plentiful than ever’. The legal provisions for proposed customary tools are already in place, and there is no need for any further legislation.
- The areas are serving commercial and Maori interests. No one person or group has the right to impose their beliefs and practices on other communities.
- Maori own more than their fair share of fisheries and there was a need to reduce the customary allocation. Need to restrict customary areas, stating it is ‘unfair’ to have customary plus recreational allowances. Customary permits are ‘theft’. Conflict about issuing kaimoana permits between Kaikōura and Marlborough iwi needs to be addressed.
- The taiāpure-local fisheries proposals do not meet part 9 section 174 of the Fisheries Act. Do not support any closure on the north and east side of the Kaikōura Peninsula, but support the southern side of the Peninsula.
- Concern about the displacement of fishing effort and the effect on local businesses.
- Customary practices might not be sustainable, but this Strategy is a good attempt to manage any ‘blind spots’.
- Concern about the leadership role of tangata whenua in the taiāpure management committee and suggested broader representation and consensus decision making. The taiāpure-local fishery would be enhanced by incorporating scientific collaboration and the inclusion of one or more scientific advisors with appropriate skills would be an essential part of future management committees.
- There is a need for more information on how customary fishing tools will work in practice.

### **Changes to Recreational Fishing Regulations**

12. Consultation undertaken by Te Korowai noted potential impacts on the economic benefits of fishing. These concerns were largely limited to the charter fishers who felt that lower bag limits could lead to loss of business as a result of tighter restrictions imposed on fish take. Although some submitters proposed alternative or additional measures, other submitters suggested that the current rules seemed adequate.

13. Individual points raised were discussed in a full meeting of Te Korowai. Agreement was reached on the following: getting rid of a proposed vehicle limit for some species;



emphasising the ‘fish for a feed’ element of the bag limits; adding albacore tuna to the bag limit for larger fish; and changes to shark catch.

14. Following input from the Ministry of Fisheries (later MPI) Te Korowai amended or dropped some proposals. This included instances where the proposals were seen as difficult to enforce. Te Korowai retained other proposals; the telson clipping requirement and the limit for karengo and bladder kelp. The agency provided them with scientific information that helped in guiding the minimum legal size limits in the final proposals.
15. There was concern from some submitters about the transfer of effort from one area to another. Te Korowai acknowledged that some transfer of effort is unavoidable but has stated it is working to minimise this.
16. Although the Strategy is guided by the philosophy of “gifts and gains” some submitters were concerned about a lack of balance between sectors seeing the recreational fishers more disadvantaged than the commercial sector. Te Korowai responded by saying it would seek changes to commercial fishing through ‘agreements and negotiations’.
17. Some submitters sought regular reviews of bag limits, as abundance increases. The Strategy states that “specific bag limits will be reviewed annually to fit with current fisheries management processes”<sup>57</sup>. Te Korowai has also proposed the Strategy and management measures be reviewed after 10 years.

## General Feedback on the Strategy

**Table 10 : Summary of general feedback**

Issue	Response
Some submitters said there was a lack of engagement from Te Korowai. During targeted engagement Te Oh Kaimoana commented there needed to be more engagement nationally, Te Tau Ihu would have liked more engagement at an individual iwi level. Southern Inshore Fisheries and Sanford stated that commercial fishers concerns were excluded, particularly fisher and quota owners not resident in the Kaikōura area.	The consultation process undertaken by Te Korowai has been thorough and inclusive. Further targeted engagement by MPI and DOC has sought to confirm positions by a number of key stakeholders and to fill gaps in the consultation process.
The special legislation route was criticised by Southern Inshore Fisheries and Sanfords as it does not follow the legislative framework for marine reserve applications, further, special legislation should be kept for areas that have national and international significance; Kaikōura Canyon’s biodiversity value has not been proven.	Special legislation does not require existing provisions to be used when assessing a proposal; however, the marine reserve proposal has been assessed under the relevant sections of the Marine Reserves Act where applicable.  Special legislation is the preferred option for implementing the key components of the Strategy in the absence of an agreed overarching framework for integrated marine management in New Zealand. Special legislation will ensure that the key components are implemented in an integrated manner. Special legislation, in this instance, meets all of the objective criteria which have been used to assess the proposal.
Southern Inshore Fisheries would like the Marine Reserves Bill and Marine Protected Areas policy finalised before further proposals for marine protection	Officials note that Te Korowai were given assurances in 2006 by the then Minister of Conservation Hon Chris Carter, that they could continue their process separate from the MPA process.

<sup>57</sup> Kaikōura Marine Strategy p.87

Issue	Response
<p>are initiated.</p> <p>Forest and Bird National Office signalled concerns that they do not believe the Strategy complies with the Marine Protected Area Policy and that the proposed marine reserve is not optimal. For these reasons Forest and Bird National Office oppose the implementation of the Strategy in its current form.</p>	<p>Ideally, it would be preferable to have an agreed overarching framework for integrated marine management in New Zealand for assessing proposals such as the Strategy. However, neither of the MPA nor the Marine Reserve Bill is at a sufficient stage to provide robust guidance.</p> <p>If the Strategy is not progressed then there will remain a lack of formal recognition of the uniqueness of the Kaikōura coastal marine environment, a lack of formal marine protection for this area and a significant risk of loss of goodwill given the raised expectations of Te Korowai.</p>
<p>Te Korowai will not be able to manage the proposal which would add significant compliance costs to industry by the Ministry for Primary Industries to manage. Southern Inshore Fisheries, on behalf of the commercial fishing industry, request a meeting with the Minister before progressing the application further.</p>	<p>Costs for implementation, monitoring and compliance will be met primarily within existing MPI and DOC baselines.</p> <p>Operational costs for an advisory committee are being considered.</p>
<p>Sanford believes that the Strategy shows limited understanding of the QMS [Quota Management System] and how they can be involved via MPI Working Group processes and TAC [Total Allowable Catch] Sustainability Reviews. Sanford are concerned that the group has identified as issues 'ACE [Annual Catch Entitlement] being taken in Kaikōura by fishers based outside the region', 'Big long liners' and 'deepwater trawlers'. As quota owners in FMA3 Sanford have a deep interest in wanting to ensure the fisheries resources are managed sustainably for the shared benefit of all. Strategies to manage local, recreational and non-commercial effort are matters that need to be properly taken into account in the MPI processes.</p>	<p>MPI acknowledges the importance of managing stocks under the quota management system at the level of their quota management area. MPI recognises Sanford's sentiment as quota owners that it is important to ensure sustainable fisheries management for the shared benefit of all sectors. MPI will continue to work closely with Te Korowai to ensure that this sentiment is carried forward, and that all sectors are given due consideration in the context of shared fisheries in the Kaikōura area.</p>