Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	**Portfolio**	Environment
Name of package	RIS material for Resource Management (Consenting and Other System Changes) Amendment Bill	**Date to be published**	10 December 2024

List of documents that have been proactively released		
Date	***Title***	***Author***
4-Dec-24	Regulatory Impact Statement – Addressing the Resource Management 1991 – Fisheries Act 1996 Interface	Ministry for Primary Industries Ministry for the Environment

Information redacted **YES**

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Summary of reasons for redaction

In the above documents, information has been withheld under the following sections of the Official Information Act:

- S9(2)(b)(ii) – to protect information that would unreasonably prejudice the commercial position of the person/s who supplied the information,
- S9(2)(ba)(i) – to protect information that would likely prejudice the supply of similar information in the future,
- sS9(2)(g)(i) – to protect the free and frank expression of opinions by or between or to Ministers of the Crown and public servants, and
- s9(2)(h) – to maintain legal professional privilege.

Resource Management Amendment Bill no.2 – Addressing the Resource Management Act 1991 – Fisheries Act 1996 Interface

Coversheet

Proposal Addressing the Resource Management Act-Fisheries Act interface	**Description** Both the Resource Management Act 1991 (the RMA) and Fisheries Act 1996 (the Fisheries Act) can be used to control the effects of fishing on biodiversity and related values, such as to protect habitats, ecosystems, and protected species from fishing. The Fisheries Act is limited to when that control is for utilisation of fisheries resources while ensuring sustainability, whereas the RMA objective of protecting biodiversity is broader and can apply to other activities with the same effects. The current interface is complex and the lack of coordination between the RMA and Fisheries Act (and other marine management legislation) leads to duplication of efforts by central and local government It also means that there is less clear accountability on who is responsible for managing particular issues in relation to fishing. The current approach may not be the most efficient way of achieving positive marine outcomes with uncertainties and tensions between stakeholders overachieving biodiversity protection, access to resources and space, and the balance between protection and use. Addressing this problem will reduce regulatory burden, lower costs to fisheries stakeholders, and provide regulatory coherence.
Relevant legislation	*Resource Management Act 1991.* *Fisheries Act 1996.*
Policy lead	Freya Mann, Fisheries Policy, Ministry for Primary Industries Stuart Brodie, Marine Policy, Ministry for the Environment Debbie Freeman, Marine Policy, Department of Conservation
Source of proposal	Coalition agreements: • Remove regulations that impede the productivity and enormous potential of the seafood sector. • Amend the Resource Management Act 1991 to enable aquaculture and other primary industries.
Linkages with other proposals	N/A
Limitations and constraints on analysis	The scope of options has been limited by Cabinet's direction to amend the RMA-Fisheries Act interface, meaning non-regulatory options are not considered.

	Time and resourcing pressures have placed constraints on the ability to undertake cross-agency policy development, and engagement/consultation with Treaty partners and stakeholders.
Responsible Manager	Eugene Rees, Manager Fisheries Policy, MPI Fiona Newlove, Manager Marine Policy, MfE Angela Bell, Manager Marine Policy, DoC
Quality Assurance: Impact Analysis	A Quality Assurance panel made up of members from the Ministry for Primary Industries, and the Ministry for the Environment reviewed this impact analysis. The panel considers the impact analysis undertaken for the RM Bill 2 – RMA-Fisheries Act Interface Regulatory Impact Statement (RIS) **partially meets** the Quality Assurance criteria. The limitations and constraints of the proposals have been clearly outlined. However, the compressed time frame and limited consultation has limited the range of options and the level of supporting evidence and analysis of the proposed options. The panel considers that more time for consultation and the inclusion of stakeholder feedback could have improved the scope and depth of the impact analysis. A qualitative description of the costs and benefits of the options are outlined. No quantitative evidence provided due to data and time limitations. The lack of cost or benefit evidence in the analysis has resulted in inconclusive analysis of the options. Options are complex and unclear due to multiple sub-options. The complexity and lack of clarity of options makes it difficult to understand how they will be implemented and hence to assess their impacts. The RIS acknowledges that there will be both positive and negative impacts on Māori depending on their views on fisheries rights and approaches to protection of the marine environment. However there has been inadequate engagement with Māori. This evidence gap and lack of consensus among Māori could pose significant risks on implementation.

Context

Both the Resource Management Act 1991 and the Fisheries Act can be used to manage the marine environment

1. The Resource Management Act 1991 (the RMA) is broadly concerned with the sustainable management of natural and physical resources, such as the air, water, soil, and ecosystems. This includes maintenance and enhancement of the quality of environment, protecting biodiversity, and avoiding, remedying, or mitigating any adverse effects from activities in the environment.[1] The RMA is supported by the New Zealand Coastal Policy Statement (NZCPS), which provides national direction to guide councils on the day-to-day management of the coastal environment. The RMA and

[1] RMA, ss 5; 6; and 7.

NZCPS are given effect through the development of regional environment and coastal plans and policies.

2. The purpose of the Fisheries Act 1996 (the Fisheries Act) is to provide for the utilisation of fisheries resources while ensuring sustainability.[2] This includes avoiding, remedying, or mitigating adverse effects of fishing on the aquatic environment. A wide range of measures have been implemented under the Fisheries Act to manage the effects of fishing on habitats and protected species, and to give effect to customary management practices.

3. Please see Appendix one for further detail on the RMA and Fisheries Act.

The two sets of legislations 'look at' each other

4. Decision-makers under both Acts are required to have regard to intersecting policies when making decisions. Under the RMA, there is a requirement for councils to consider management plans, strategies and regulations made under the Fisheries Act when changing regional policy statements and plans.[3] For decisions under the Fisheries Act, this includes a requirement to consider relevant provisions of regional policy statements and coastal plans, and resource consents when setting sustainability measures.[4] The Minister for Oceans and Fisheries must be consulted during the preparation of a regional coastal plan in relation to fisheries management and the management of aquaculture activities.[5]

5. While the RMA was passed in 1991, controls on fishing were not proposed until the Marlborough District Council's Environment Plan was notified in 2016 and an appeal against the proposed Bay of Plenty Regional Coastal Environment Plan was taken in 2019.

6. A range of factors may have contributed to this, including uncertainty about whether these effects could be controlled under the RMA, additional controls not considered to be necessary (due to management under other legislation including the Fisheries Act), as well as the cost and complexity of considering these matters and regional councils having competing priorities (many of which still remain).

The Court of Appeal confirmed the RMA's jurisdiction in respect of fishing

7. Both the RMA and Fisheries Act can be used to control the effects of fishing on biodiversity and related values, such as to protect habitats, ecosystems, and protected species. This sets up an interface between the RMA and Fisheries Act.

8. The Court of Appeal in Attorney-General v The Trustees of the Motiti Rohe Moana Trust & Ors 2019 (the Motiti decision)[6] confirmed that regional councils can control fishing activities to protect biodiversity and related values (such as natural character, intrinsic values, and cultural values), provided those controls are not for Fisheries Act

[2] Fisheries Act, s 8.
[3] RMA, 61(2); 66(2); 74(2).
[4] Fisheries Act, s 11(2). Sustainability measures mean any measure set or varied under Part 3 of the Act for the purpose of ensuring sustainability. These can include placing limits on catch, size, biological state, areas where fish can be taken, or fishing methods.
[5] RMA, sch 1 s3.
[6] *Attorney-General v The Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532.

purposes[7] (ie, core functions like the taking, allocation and enhancement of fisheries resources, or requirements relating to the Fisheries Settlement)[8]. The Court also held that the RMA objective of protecting indigenous biodiversity is broader than that of the Fisheries Act, and that regional councils have the primary governance role in maintaining indigenous biodiversity through the RMA, as opposed to such controls being a function of the Fisheries Act.

9. The Court considered that certain indicia may provide some objective guidance when assessing whether a given control would contravene s 30(2) of the RMA in any given factual setting, namely:

    a. Necessity: whether the objective of the control is already being met through measures implemented under the Fisheries Act

    b. Type of control: controls that set catch limits or allocate fisheries resources among fishing sectors or establish sustainability measures for fish stocks would likely amount to fisheries management

    c. Scope: a control aimed at indigenous biodiversity is likely not to discriminate among forms or species

    d. Scale: the larger the scale of the control the more likely it is to amount to fisheries management

    e. Location: the more specific the location and the more significant its biodiversity values, the less likely it is that a control will contravene s 30(2) of the RMA.

10. In the Motiti decision, the Court of Appeal also found that the legislative history of the RMA and Fisheries Act demonstrates Parliament's intention for regional councils to have a role in managing biodiversity in the natural environment.[9] In the report of the Primary Production Select Committee on the draft Fisheries Bill, many submitters commented that the environmental principles did not include things such as protection of areas of significant biodiversity, or maintenance and enhancement of the quality of the environment. [10] The Committee stated that these broader values should not be included, as it would introduce a range of non-utilisation principles that are considered in other legislation, such as the RMA, the Marine Reserves Act 1971, the Marine Mammals Protection Act 1978, and the Wildlife Act 1953.

11. In practice, the Fisheries Act purpose to provide for utilisation while ensuring sustainability can also support protection of marine biodiversity more broadly. This is discussed further below at paragraph 61.

12. The current interface reflects the principle that fishing, like other activities in the natural environment, can be restricted under the RMA to address effects on matters such as maintenance of significant biodiversity and habitats, or enhancement of the quality of the environment. These effects are not explicitly considered under the Fisheries Act

The RMA has now been used to establish fishing-related controls in three regions

[7] RMA, s 30(2) states that a regional council and the Minister of Conservation must not perform functions specified in subsection (1) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996.
[8] Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
[9] In 2022, proceedings in the Environment Court relating to Northland's Environment Plan further confirmed that both the RMA and Fisheries Act can control aspects of fishing to support marine biodiversity values, and the two Acts are intended to look at each other.
[10] Fisheries Bill 1996, as reported from the Primary Production Committee.

13. Regional plans contain a broad range of controls established for various purposes, including to protect biodiversity and other related values, such as natural character and intrinsic value. The current controls that relate to fishing are:

    a. *Bay of Plenty/Motiti protected areas* – following an Environment Court decision, controls have been established so that marine life can no longer be taken from three areas in this region (collectively around 60km^2). While the measures are relatively small, they included some popular fishing areas and the measures have been controversial with Māori (eg, the prohibition of Māori customary fishing). Note that it was hapū in the area who originally sought to progress these controls.

    b. *Northland* – two no-take zones, and prohibitions on bottom trawling, Danish seining and purse seining to a depth of 100 metres. The rules have minimal commercial and recreational impact in part due to Fisheries Act controls already being in place in these areas, and no significant impact on treaty settlements.

    c. *Marlborough* – there are currently about 160 small Ecologically Significant Marine Sites which prohibit dredging, bottom trawling, other seabed disturbance, or deposition of dredged material. These rules have minimal commercial and recreational impact due to existing closures or seasonal closures under the Fisheries Act, and no significant impact on customary fishing or treaty settlements.

14. There are also Environment Court proceedings appealing the Marlborough Environment Plan, with appellants seeking to exclude dredging, bottom trawling, or deposition of dredged material across a large part of the Marlborough Sounds (excluding the inner Pelorus Sound and Kenepuru Sound) within feeding areas for King shag [11]. If this proposal was successful it could result in broader closures which displace fishing efforts elsewhere, create further pressure in areas surrounding where controls are placed, and additional pressure in other areas.

15. Councils are required to review their coastal and environment plans every 10 years, so it is likely that other regions will consider reviews of plans and additional marine controls in the coming years. This could lead to significantly more measures over time. For example:

    a. The proposed Waikato Regional Coastal Plan includes policies and objectives relating to marine biodiversity, but as notified did not propose rules to control the effects of fishing. A range of submitters have requested rules on fishing, particularly bottom contact fishing methods. Hearings are scheduled to start early 2025.

    b. Environment Canterbury has also passed a motion to consider whether to commence a targeted review of their Coastal Plan, including consideration of a rule providing that trawl vessels cannot operate within 6 nautical miles (nm) of the coast from the Waiau River to the Rakaia River (inclusive), due to concerns that

[11] The Environment Court date is set for November 2024. MPI, Marlborough District Council, and the fishing industry are opposing the relief.

measures under the Fisheries Act are insufficient to protect biodiversity (including Hector's dolphin).[12]

16. These will likely come with related costs for fishers and other parties to participate in the process, alongside additional monitoring and evaluation costs for councils. It should be noted that all coastal plan processes, regardless of impact on fishing, come at a cost to councils and stakeholders.

The RMA and Fisheries Act are part of a broader suite of marine management actions and tools

17. Other key legislation that provides for maintenance of biodiversity in the marine environment are:

    a. Marine Reserves Act 1971: the Act enables the creation of marine reserves (the strictest form of Marine Protected Areas (MPAs)), 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.[13] They are strict no-take zones, with very narrow exceptions.

    b. Marine Mammals Protection Act 1978: the Act provides powers to manage marine mammals and create marine mammal sanctuaries.[14] Marine mammal sanctuaries are designed to protect marine mammals from harmful human impacts, including in vulnerable areas such as breeding grounds and on migratory routes. This can be done through restricting activities in these areas, including fishing methods that pose risks, or activities such as seismic surveying.

    c. Wildlife Act 1953: allows for the partial or full protection of species.[15] There are a range of marine species protected under this Act, including seabirds, coral, shark and fish species.

18. These statutory tools, alongside the RMA and Fisheries Act, support a broad network of instruments aimed at protecting and managing the marine environment. The current domestic Marine Protected Areas Policy recognises these tools as providing important contributions to the protection of New Zealand's biodiversity.

19. Additionally, New Zealand is party to several international agreements that guide management of the marine environment, including:

    a. United Nations Convention on the Law of the Sea (UNCLOS) – this established an international legal framework to regulate all ocean space, its uses and resources, and provide for the preservation of the marine environment.

[12] Measures under the Fisheries Act include area-based closures and Fishing-Related Mortality Limits. A non-regulatory *Bycatch Reduction Plan* provides for framework for an escalating vessel and/or area-based response to a capture, providing a 'back-stop' to regulatory measures.
[13] Marine Reserves Act 1971.
[14] Marine Mammals Protection Act 1978.
[15] Wildlife Act 1953.

b. Convention on Biological Diversity (CBD) – this supports the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

c. Global Biodiversity Framework (GBF) – a product of the CBD, this aims to support achievement of the Sustainable Development Goals. The GBF includes a target to effectively conserve terrestrial, inland water, coastal, and marine areas through protected areas by 2030.

Problem

20. There are pressures on the marine environment from marine-based activity, climate change, as well as activity on land which impacts the coastal marine area (eg, sedimentation). There are tools available under both the RMA and Fisheries Act (as well as other conservation legislation) to address these pressures.

21. The problem is the current interface is complex and results in a duplication of regulation, monitoring, and enforcement efforts across central and local government. This regulatory overlap leads to uncertainty and costs for fishers, Treaty partners and other interested parties, tensions between users regarding the balance between use and protection, and duplication of functions by regulators.

22. Key issues include:

    a. Concerns over future loss of access to fisheries resources and the flow on effect for fisheries management.

    b. Council planning processes can be costly and time consuming, and do not always provide for effective participation.

    c. The RMA does not have an explicit requirement to consider the Treaty of Waitangi (Fishing Claims) Settlement Act 1992 (Fisheries Settlement).

    d. Resourcing issues can impact effective implementation of RMA controls.

23. These issues are discussed below.

Concerns over future loss of access to fisheries resources and the flow on effect for fisheries management

24. There are concerns about the future cumulative impacts of RMA controls on property rights established under the Quota Management System, recreational fishing, and customary interests. The RMA does not specify or limit how many areas or rules councils can establish under the RMA, but does require an assessment of controls for efficiency and effectiveness, including an evaluation of costs and benefits.

25. There are currently controls established in three regions, which so far have had a minor impact on fishing but have likely resulted in some displacement of fishing effort to other areas. It is possible that other regions will consider reviews of plans and additional marine controls in the near future. There is an active case for further controls in Marlborough, and at least two other regional councils (Waikato and Canterbury) who are progressing reviews of their coastal plans.

26. As more space is protected, consequential cumulative displacement of fishing effort may see concentration of activity in fewer places, with increased pressure on resources and the environment. In turn, this may lead to further management restrictions being introduced to ensure utilisation is sustainable. The effect of increased closures and increased costs of fishing when effort is displaced may impact the profitability of some fishing businesses.

27. Loss of access to fisheries resources and increased regulation is a general concern of the fishing industry and not a problem unique to the RMA. Any implementation of new protection measures has seen concern being raised by affected users, including the fishing industry. Currently cumulative impacts are managed through a range of requirements and tests under the Fisheries Act and the RMA.

This fragmentation of fisheries controls can lead to a lack of coordination across central and local government and duplication of efforts

28. While layering of management tools across different legislation can help support positive biodiversity outcomes, fragmentation in the regulatory regime and the lack of coordination between the RMA and Fisheries Act (and other marine management legislation) leads to duplication of efforts by central and local government. This may not be the most efficient way of achieving positive marine outcomes. It also means that there is less clear accountability on who is responsible for managing particular issues in relation to fishing.

29. For example, the RMA was used to establish a 'no-take' zone in Mimiwhangata Marine Park, East Coast Northland. This zone was made despite existing rules under the Fisheries Act being in place that already prohibited commercial fishing and placed tight restrictions on recreational fishing in an area smaller than the Marine Park (with the recreational restrictions being found to be insufficient for ensuring marine biodiversity protection during Environment Court proceedings).In practice, further measures could have been implemented under the Fisheries Act, but were seen as sufficient as there was nothing found to be particularly 'outstanding' relative to other areas in the region,[16]

30. Additionally, Environment Canterbury is considering changes to their coastal plan to introduce additional measures to protect Hector's dolphins, when a Threat Management Plan already exists for the species. Duplication of controls contributes to confusion for stakeholders as to how different rules work together under both statutes.

31. Identifying the appropriate level of protection in relation to a particular issue is often contentious, due to the need for decisions to balance the wide range of often differing views and interests from tangata whenua and other stakeholders. This means there is a high prospect of decisions made under other legislation being relitigated through the RMA when parties are not satisfied with the outcomes and consider additional protection is warranted, which reduces certainty and predictability over time. However, the RMA process enables a role for non-fishing parties in developing controls for biodiversity purposes, which can address community concerns around environmental protection.

[16] MPI consulted on including additional protection measures at direction of the Court, but the Court made its ruling prior to those being implemented, so the new measures were not progressed.

Council planning processes can be costly and time consuming for stakeholders, and do not always provide for effective participation

32. RMA processes are designed to include significant public consultation requirements.[17] The RMA-Fisheries Act interface means that fisheries stakeholders may need to participate in planning processes for multiple statutory regimes, which increases time and resource costs. This can be exacerbated by the fact fish stocks and protected species are often managed over broad distributions which can include multiple regional councils, and that fishers can operate in many regions. We heard from industry Sector Representative Entities that they have spent more than s9(2)(b)(ii), s9(2)(ba)(i) on these processes over the last five years.

33. With the rules made in Motiti and Northland, the potential nature and extent of RMA controls on fishing have mostly been determined through court proceedings. When controls are brought by third parties through submissions to the Court and at the appeals stage, it can reduce the ability for affected stakeholders and the public to effectively engage.

34. The cost, time and complexity of these processes place a burden on tangata whenua and fisheries stakeholders, and if matters are appealed to the Environment Court and they do not participate in relevant court proceedings, their perspectives are unlikely to be well considered in decision-making. Controls in Northland demonstrate the complexity of determining where protection should be placed, where iwi and hapū views differed vastly.

35. As well as stakeholder costs, central government participates in regional planning processes to ensure that broader fisheries management considerations are made, which requires time, resource, and money to engage with. Costs associated with participation in the Bay of Plenty and Northland Environmental Court Proceedings were around $850,000 for the Ministry for Primary Industries (MPI), and costs of any future participation cannot be estimated.

36. Lengthy planning and engagement processes is a general RMA issue and not specific to the RMA-Fisheries Act interface. There are other sectors which are also subject to a variety of controls across different legislation (eg, the forestry and farming sector). Further, engagement by the fishing sector in council planning processes can be beneficial, as it allows industry the opportunity to engage on other matters that affect them (eg, port management, vessel access, coastal infrastructure, water quality).

The RMA does not have an explicit requirement to consider the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

37. Though the RMA includes provisions to consider the Treaty of Waitangi and provides for recognition and provision for customary rights, it does not have clear statutory guidance on how the rights and interests guaranteed under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Fisheries Settlement) are protected. The lack of express requirement to uphold the Fisheries Settlement could affect the value

[17] Schedule 1 of RMA deals with Council planning process and provides for notification of submissions, opportunity for certain persons to make further submissions, plus requirements for an evaluation report (s 32) and further evaluation report (s 32A).

of fisheries assets and quota held by tangata whenua, and raises concerns over access to customary non-commercial fishing.

38. In addition, controls on recreational and commercial may also impact on how Kaitiaki exercise their non-commercial rights, due to a desire to align with broader protection objectives in an area (tangata whenua may restrict the use of their rights to conform to the views of others).

39. During consultation for the Natural and Built Environment Act (now repealed), many iwi were explicit that either the RMA should make direct reference to the Fisheries Settlement, or the ability for councils to make rules that control fishing under the Fisheries Settlement should be removed to ensure iwi rights are upheld. Conversely, some whānau and hapū support use of the RMA as a pathway for local marine management, as was the case when some existing controls were established.

Resourcing issues can impact effective implementation of RMA controls

40. Varied capacity and resourcing of regional councils can cause uneven implementation of RMA controls in relation to fishing, including compliance, enforcement, and monitoring. Marine compliance is generally taken under an all-of-government approach, with compliance agencies such as the Defence Force, Police, MPI, Customs, the Department of Conservation (DoC) and regional councils working in collaboration. Sharing information is an important component of this approach.

41. To date, controls on fishing have only been considered by a small number of councils in relation to relatively small areas. However, it is expected that more regions will consider broader controls, with a strong prospect that stakeholders will seek more controls on fisheries in specific areas (likely to be small relative to fish stock areas) to be included in regional plans.

42. To effectively develop and assess controls of fishing, many councils are likely to need to build additional new expertise, resources, and maritime enforcement capabilities to ensure an informed and meaningful implementation of controls. This may be more challenging for smaller regional councils with constrained finances and competing priorities. A lack of resourcing at a local government level raises expectations of compliance and enforcement support from central government.

43. Without effective monitoring and compliance, there are risks that controls may not achieve intended outcomes. Regional council staff do not have the same powers as MPI fishery officers, or warranted conservation officers, such as to board vessels, inspect catch, or stop vehicles. To ensure effective implementation of controls, councils could be required to further invest in capability or new infrastructure (such as vessels). Informal conversations with council staff indicate that efforts are resource constrained and focused on education to support voluntary compliance, although there is some active monitoring.

44. Generally, the Fisheries Act manages at the fish stock level for biological reasons and for efficiency with the QMS, but it also supports management at a finer scale to protect biodiversity or habitats of significance. The fragmentation of rules across different council areas and legislation creates confusion for fisheries stakeholders, which makes it harder to voluntarily comply with them.

45. For example, in the Tory Channel, Marlborough District Council identified a number of Ecologically Significant Marine Sites as part of developing their coastal plan, but did not feel the RMA could adequately protect them from commercial kina dredge fishing that was occurring in the area. This is because Ecologically Significant Marine Sites are small, distinct areas and not one continuous area. As a result, it was decided that the Council and MPI would place a commercial kina dredge ban across the whole of the Tory Channel via the Fisheries Act. MPI considers this demonstrates how the Fisheries Act can be used to achieve marine biodiversity protection in ways that the RMA cannot. MfE and DoC see this is an example of the two regimes working effectively together.

Objectives

46. Cabinet agreed to policy objectives for the RMA reform program, guided by the underlying principle of enjoyment of property rights [CAB-24-MIN-0069-refers]. These include:

    a. Enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining)

    b. Driving a more efficient and effective resource management system.

47. While also:

    a. Safeguarding the environment and human health

    b. Adapting to the effects of climate change and reducing the risks of natural hazards

    c. Improving regulatory quality in the resource management system

    d. Upholding Treaty of Waitangi obligations, settlement and other arrangements.

48. Amending the RMA-Fisheries Act Interface will support continued access to property rights for commercial stakeholders by providing greater certainty as to how the RMA will impact on their quota rights. Greater certainty is also provided to recreational and customary fishers on how the RMA affects access to fisheries resources. The proposal relates to enabling primary sector growth and development by ensuring that marine management tools are efficient and fit for purpose.

49. The intention is for proposals to safeguard the environment, which is a guiding principle for utilisation of fisheries resources.

50. Clarifying or other otherwise removing duplication within the RMA and the Fisheries Act regulatory regimes will assist in improving regulatory quality. Any changes made by this proposal will consider the Treaty of Waitangi, in particular the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Fisheries Settlement).

Assessment Criteria

51. All proposals included in the RMA reform programmes are assessed using generic criteria to ensure consistent evaluation. These include:

a. **Effectiveness** – Extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements. The proposal should deliver net benefits. Any trade-offs between the objectives should be factored into the assessment of the proposal's overall effectiveness.

b. **Efficiency** – Extent to which the proposal achieves the intended outcomes/objectives for the lowest cost burden to regulated parties, the regulator and, where appropriate, the courts. The regulatory burden (cost) is proportionate to the anticipated benefits.

c. **Certainty** – Extent to which the proposal ensures regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time. Legislative requirements are clear and able to be applied consistently and fairly by regulators. All participants in the regulatory system understand their roles, responsibilities and legal obligations.

e. **Durability & Flexibility** – Extent to which the proposal enables the regulatory system to evolve in response to changing circumstances or new information on the regulatory system's performance, resulting in a durable system. Regulated parties have the flexibility to adopt efficient and innovative approaches to meeting their regulatory obligations. (NB: A regulatory system is flexible if the underlying regulatory approach is principles or performance based).

f. **Implementation Risk** – Extent to which the proposal presents implementation risks that are low or within acceptable parameters (eg, Is the proposal a new or novel solution or is it a tried and tested approach that has been successfully applied elsewhere?). Extent to which the proposal can be successfully implemented within reasonable timeframes.

Options

52. We have identified three options to address the above problems. The scope of options has been limited by Cabinet's direction to amend the RMA-Fisheries Act interface. Because of this, we have not identified any potential non-regulatory measures that could address the issues discussed above.

Option One – status quo

53. No changes would be progressed. The current provisions setting out the interface between the RMA and Fisheries Act would remain, applied in accordance with the Motiti decision.

54. The RMA would continue to provide a pathway for localised marine protection, and be used to control the effects of fishing for biodiversity purposes (and other related values). This means central and local government will both be able to establish similar controls in the marine environment, although for different purposes. The boundary between controls for different purposes (biodiversity versus sustainable use of fisheries resources) will require objective assessment of the given facts of each case, and potentially result in further court proceedings. This will remain challenging to determine as protection and use are inherently connected, and different fisheries stakeholders often have differing objectives.

55. MPI will continue to engage with any regional councils and stakeholders who seek to use the RMA to establish biodiversity control that impact fishing as they arise.

Option Two – remove the ability for councils to control fishing to protect biodiversity under the RMA

56. The ability for councils to make rules that directly control fishing to protect biodiversity or other related values under the RMA would be removed.

57. For controls that can currently be made under both the RMA and Fisheries Act, such as placing restrictions on fishing gear or closing areas, the Fisheries Act will be the primary mechanism for making these controls to manage the effects of fishing on biodiversity (noting the interface with other legislation related to protection of biodiversity). While Fisheries Act controls are often established for different purposes to those made under the RMA, they can still provide the same practical outcome. As a consequence, this option also removes the public's ability to initiate plan changes that would directly control fishing.

58. There are some RMA matters that could impact fishing (directly or indirectly) that cannot be controlled under the Fisheries Act, which would continue to be able to be managed under the RMA. These include rules such as restrictions on releasing noise and odours in the Coastal Marine Area (CMA), releasing harmful substances into the water, and anchoring and other rules that apply to vessels generally. In practice, such controls are limited and have not led to significant concerns by fisheries stakeholders. Other activities managed under the RMA, such as aquaculture and offshore wind farms, would also continue to have potential impacts on fishing (which must be considered during consenting processes). Measures adopted in regional plans would still need to be considered by the Minister when enacting sustainability measures under the Fisheries Act.

There are three other issues that must be considered to progress Option Two

Issue one: gaps in biodiversity protection

59. The Fisheries Act protects biodiversity for the sake of sustainable utilisation. The RMA protects biodiversity for its intrinsic value. The removal of the ability for the RMA to control the effects of fishing may result in a gap in dedicated legislation on marine biodiversity protection. As discussed above, in the *Motiti* decision, the Court of Appeal highlighted that the RMA and Fisheries Act 'look at' each other and have a different underlying purpose for providing marine biodiversity protection.

60. Any potential gap created by this option relates to how the usage of the RMA and Fisheries Act plays out in practice. For example, some stakeholders may be motivated to seek controls through the RMA that impact fishing when those made under the Fisheries Act are considered more burdensome to pursue (eg, s 186A temporary closures need to be reapplied for every 2 years while a permanent solution is considered, whereas RMA rules have greater longevity). Further, the RMA provides for the public to seek protection of the marine area in a way that may not be viewed by some applicants as being available under the Fisheries Act.

61. However, the Fisheries Act is broad enough in scope to encompass sustainable use, protection of fisheries resources for the wellbeing of people (socially, economically and culturally), and the protection of the aquatic environment from the adverse effects of

fishing. This is clear when considering the environmental principles laid out in section 9 of the Fisheries Act. Though the Fisheries Act does not provide protection of indigenous biodiversity more generally, there are still tools available which can achieve similar protective outcomes in terms of protection of biodiversity from the effects of fishing. This includes:

a. Section 11 (Sustainability measures) enables the Minister to put in place measures such as closing areas to fishing, or prohibiting certain fishing methods and gear to be used in the course of fishing for the purpose of ensuring utilisation is sustainable.

b. Section 13 (Total Allowable Catch) allows the Minister to set and alter the total allowable catch for a fish stock, to ensure that stock remains at a level of Maximum Sustainable Yield (MSY) and rebuild the stock if it has fallen below that level.

c. Section 15 (Fishing-related mortality of marine mammals or other wildlife) allows the Minister to take steps to further avoid, remedy, or mitigate adverse fishing impacts on marine mammals and other wildlife, including prohibiting fishing in certain areas or using certain gear.

d. Section 16 (Emergency Measures) states that if there is a serious decline in abundance or potential of one or more species, the Minister may impose emergency measures such as closing an area by prohibiting the harvesting of fish or restricting fishing methods in the area.

e. Type 2 Marine Protected Areas (MPAs) can be established under the Fisheries Act (eg, through the above measures or through regulations) if they meet the domestic MPA Protection Standard (under the MPA Policy). The protection standard includes (among other matters) prohibition of certain fishing methods that involve dragging gear across the seabed.

f. Section 186A (Temporary closure of fishing area or restriction on fishing methods) provides customary management tools, such as enabling temporary closures or prohibiting the use of certain fishing gear. The creation of Mātaitai reserves is an example of this section.

g. Section 297 (General regulations) enables the making of wide range of regulations including regulating or controlling fishing and the possession, processing, and disposal of fish, aquatic life, or seaweed.

h. Section 298 (Regulations relating to sustainability measures) this includes imposing measures to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species.

62. Other legislation also provides a basis for maintaining marine biodiversity, such as the Marine Reserves Act, the Marine Mammals Protection Act, and the Wildlife Act, and can protect biodiversity from a range of pressures in addition to fishing.

Issue two: associated values related to biodiversity

63. The Motiti decision confirmed that under the RMA, councils are able to set controls on fishing for values related to biodiversity, such as protection of:

    a. amenity values: the natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

    b. natural character: consists of natural processes, natural elements and natural patterns.[18] Natural processes include the action of rivers, waves, tides, wind and rain as well as the movement of animals and the natural succession of plant species. Natural elements include water, landforms, and vegetation cover. The distribution of these natural elements over an area forms natural patterns. A fourth important component is the human experiences of these natural processes, elements and patterns and values.

    c. intrinsic value: aspects of the ecosystem and their constituent parts which have value in their own right, including their biodiversity and the characteristics that determine an ecosystem's integrity.

    d. cultural values: relates to the relationship tangata whenua have with their ancestral lands, water, sites of significance (wāhi tapu) and other taonga (treasure).

64. In existing controls, these matters have had a support role and not been determinative in the way that biodiversity was. However, if the ability for councils to control fishing activity for biodiversity purposes is removed, there is potential that similar controls on fishing would be progressed in accordance with these related values. The scope of the Fisheries Act does not accommodate these related values, and amendments to the Fisheries Act to enable protection of these values falls outside the intended purpose to enable utilisation while ensuring sustainability.

65. There are two broad options for addressing this issue:

    a. Option one: maintain the ability for councils to make rules on fishing activity in the coastal marine area for related values. Councils will still be able to propose rules solely to protect these values (when they are not tied to biodiversity protection), something which cannot be regulated under other legislation. This does not necessarily align with the position that fishing activity and its effects should only be managed under the Fisheries Act and risks creating more complexity in the system as to when councils can create such rules.

    b. Option two: remove the ability for councils to make rules on fishing activity in the coastal marine area for related values. The role of councils will be limited to rules regarding vessels (such as odour, discharge, navigation), rules on infrastructure, and harbour rules. This removes the prospect that councils can continue to establish rules that impact fishing, and aligns with the position that fishing activity and its effects should only be managed by the Fisheries Act. There is a risk that

[18] Environment Guide. 2015. *What is 'natural character'?.*

this option creates a practical gap, where other legislation does not regulate for these values.

Issue three: existing closures

66. We must consider what to do with existing RMA controls in the Bay of Plenty, Northland and Marlborough.

67. The current closures have come at considerable cost to establish, have a minimal impact on fishing and have been tested through the courts. Removal of controls has the potential to be highly controversial with stakeholders. s9(2)(g)(i)

68. There are pathways under Option Two for maintaining existing controls in some form. These include:

    a. maintaining existing Resource Management Act rules on fishing activity in Northland, Bay of Plenty, and Marlborough by providing for substantially equivalent fishing rules under the Fisheries Act; or

    b. maintaining existing Resource Management Act rules on fishing activity in Northland, Bay of Plenty, and Marlborough in regional council plans under the Resource Management Act; or

    c. disestablishing existing Resource Management Act rules on fishing activity in Northland, Bay of Plenty, and Marlborough

69. Via the current phase of the resource management reform programme, a new provision could be added to the RMA to enable these to continue following removal of councils' ability to make future rules that control fishing. Current controls will require a statutory review when relevant regional plans come up for renewal. Following this, if controls are working well and still have a limited impact on fishing, the controls could be transitioned to the Fisheries Act or stay within coastal plans.

70. Transitioning to the Fisheries Act will commit MPI resource to managing the implementation of rules and being responsible for design and review processes. This process will be complex, as controls will need to be separated out from other parts of the regional plan, where there are interdependencies with different rules that cannot be transitioned to the Fisheries Act. However, MPI has the technology to monitor fishing in the sites through electronic reporting of position ad catch by fishers and this would enable tangata whenua to exercise rights where they are operating customary fishing under regulations that conform to the Fisheries Settlement.

Option Three – clarify the extent to which councils can control fishing to protect biodiversity under the RMA

71. This option would clarify and narrow the scope of RMA jurisdiction to control fishing. Under this approach, councils would still be empowered to make rules that manage the effects of fishing for biodiversity purposes, but with greater limitations.

72. As outlined in paragraph 60, there are some RMA matters that could impact fishing (directly or indirectly) that cannot be controlled under the Fisheries Act, which would continue to be able to be managed under the RMA.

73. Under this option, we propose that existing controls in the Bay of Plenty, Northland and Marlborough remain under the RMA.

74. The additional requirements for councils to consider could include:

    a. Limiting the ability for coastal plans to include rules that impact fishing unless such rules are included by councils prior to public notification

    b. Adding a specific test for assessing the impacts of council proposals on fisheries

    c. Explicitly recognising the Fisheries Settlement in the RMA and clarifying that non-commercial customary fishing cannot be controlled

    d. Providing that fishing activities cannot be subject to a resource consenting process.

75. These issues are discussed below. Note, all of these options or a subset of them could be progressed.

Limiting the ability for coastal plans to include rules that impact fishing unless such rules are included by councils when publicly notified

76. The RMA has a jurisdiction of 12nm from the coastline. Areas of any size can be established within this jurisdiction. This change means new areas that prevent fishing activity would need to be included in plans when notified, and they could not be added based on third party submissions, as was the case with the Bay of Plenty and Northland.

77. This change would not impact controls to protect non-fishing areas.

78. Submissions on the extent of notified areas in council plans insofar as they affect fishing activity would be limited to:

    a. clarifying area boundaries

    b. reducing area boundaries

    c. removing areas completely

    d. the controls that apply to fishing within these areas.

Adding a test for assessing the impacts of proposals on fisheries

79. While there are requirements to consider the environmental, economic, social and cultural effects of proposals under s32 and s32AA of the RMA, concerns have been raised that this does not adequately recognise impact on fisheries. There is an opportunity to provide more explicit direction on how impacts on fishing should be considered in decision-making, which would provide greater clarity to fisheries stakeholders and support a more consistent approach across regional councils.

80. A process for assessing the impacts of proposals on fisheries would create a more explicit requirement for councils to evaluate potential impacts of proposed controls on fishing. This would require decision-makers to evaluate whether the proposal would:

a. affect the ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes; or

b. affect persons with a commercial interest in a species ability to take their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species; or

c. affect persons with a commercial fishing permit for a non-quota management species in exercising their right to take fisheries resources under their permit within the area(s) for which that permit has been issued.

81. In considering the impacts of proposals on fishing, regional councils would have regard to:

a. the objectives of the proposed fisheries control

b. the necessity of the control in achieving those objectives

c. the location of proposed fisheries control in relation to fishing interests and activities

d. how much it will exclude fishing interests and activities

e. the extent to which fishing interests and activities could be carried out in other areas

f. how much the proposal will increase the cost of fishing interests and activities

g. cumulative effects of multiple controls on fishing interests and activities (within the region and relevant quota management areas)

h. any other relevant factor.

82. These assessments would be context specific. For example, constraining fishing to a certain degree may be reasonable to protect a threatened species, but unreasonable if the biodiversity values are lower. Or conversely, for given biodiversity values, a small and targeted control may be appropriate but not a larger or less targeted control.

83. Once these matters have been assessed there are options for how they are reflected in decision-making. It could either be:

a. Required to be included in s32 reports which are provided and the findings of the report are given to effect by decision-makers when the plan is notified. Where changes are proposed when decisions are made, a further assessment would be needed by the decision-maker in relation to those changes. The evaluations would have to explicitly account for the above matters about impacts on fishing. In practice, this would mean a proposal that would unreasonably affect fisheries would be unlikely to pass the cost/benefit assessment and could be disallowed; or

b. An explicit direction could be added to the Act, stating that a control cannot be approved if it would unreasonably affect or prevent the ability of commercial and non-commercial fisheries to take fish.

84. There is already a requirement to consult with the Minster for Oceans and Fisheries before plans are notified. We propose that this consultation specifically addresses the

matters outlined above. The ability for additional technical information to be requested from the Minister for Oceans and Fisheries by a hearing panel could also be added to support their considerations alongside submissions.

85. Agencies agree that the process outlined above could be introduced under Option Two, either by factoring into the existing section 32 cost/benefit evaluation process which would enable proposals to be disallowed if there were an unreasonable impact on fisheries, or introducing a mandatory requirement for controls not be progressed if they are assessed as unreasonably affecting or preventing fishing.

Strengthening consultation requirements with the Minister for Oceans and Fisheries

86. Currently, there is a requirement to consult with the Minster for Oceans and Fisheries on matters relating to fisheries and aquaculture management before plans are notified.

87. These consultation requirements could be strengthened and enhanced to support a more coordinated planning process between central and local government and ensure greater opportunity for MPI input into plans that relate to controls on fishing. This could include a requirement for councils to engage with MPI or the Minister for Oceans and Fisheries at the s32 proposal evaluation stage and/or at the final 32AA report stage.

Explicitly recognising the Fisheries Settlement in the RMA and clarifying that non-commercial customary fishing cannot be controlled

88. The Treaty of Waitangi is a mandatory consideration under the RMA, but does not explicitly refer to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. We propose an amendment be made so it is explicit that the Fisheries Settlement should be taken into account, which will better support commercial customary fishing rights for Māori.

89. We also propose to clarify the interaction with s 10 of the Settlement Act and the RMA. This would mean that any regional or national plans cannot restrict or control non-commercial customary fishing in any way, as provided for under the Fisheries Act and the Treaty of Waitangi (Fisheries Claims) Settlement Claims Act, as well as individual iwi Treaty settlements. This will ensure that Māori non-commercial rights and interests in fishing are properly considered under the RMA.

90. In the Northland proceedings, it was accepted by parties that this provision means that non-commercial customary fishing authorised under regulations under the Fisheries Act cannot be controlled under the RMA. The Natural and Built Environment Act (now repealed) included a provision on this basis for the avoidance of doubt.

91. There is still potential that, under Option Three, Māori will consider that their commercial interests are still not appropriately protected, which they may consider erodes the value of the settlement.

Providing that fishing activities cannot be subject to a resource consenting process

92. Currently, councils can establish rules that give fishing a discretionary status, where fishers must apply for a resource consent in order to fish in certain areas. However, councils are reluctant to have provisions to this effect, with the only example of this to date is a discretionary rule proposed in Marlborough in relation to ‘buffer’ areas around identified Ecologically Significant Marine sites.

93. Subjecting fishing to resource consents increases uncertainty, adds additional regulatory costs, and could result in some fishers being allocated access to resource over others. Such a requirement is likely to result in excessive costs for fishers and in effect could be prohibitive for some commercial operators (particularly small ones) or recreational fishers to obtain a consent. We therefore propose to prevent councils from establishing such rules under this option. This means that any rules must be in the form of prohibitions, together with exceptions by permitted activity rules for which no resource consent is required. A comparable rule was included in the Natural and Built Environment Act (now repealed).

How do the options compare to the status quo?

	Option One – *Status Quo*	Option Two – remove the ability for councils to control fishing to protect biodiversity under the RMA	Option Three – clarify the extent to which councils can control fishing to protect biodiversity under the RMA
Effectiveness: extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements.	0	Supports enjoyment of property rights guaranteed under the Quota Management System and recreational and customary fishing interests. Enables primary sector growth and development by ensuring regional councils cannot establish controls which constrain fisheries. Upholds treaty obligations and settlements by removing ability of RMA to have jurisdiction over Māori fishing interests. However, removes a tool that has been proactively used by Māori in the past to achieve biodiversity protection. Potential for less environmental protection where marine biodiversity protection would be based on utilisation of fisheries resources, instead of for the sake of protection itself. +	Supports enjoyment of property rights guaranteed under the Quota Management System, and better supports recreational and customary fishing interests (but less than Option Two). It enables primary sector growth and development, but may still be limited through continuation of RMA controls. Better upholds treaty obligations and settlements by removing ability of RMA to have jurisdiction over Māori fishing interests. Supports safeguarding the environment by retaining a core biodiversity protection tool and maintaining integrated environmental management, which can benefit fisheries. Regulatory overlap remains. +
Efficiency: extent to which the proposal achieves the intended outcomes/objectives for the lowest cost burden to affected parties	0	Less cost for fisheries stakeholders, Treaty partners, communities and central government as no longer required to engage in council planning processes. Higher resource requirements for MPI in terms of implementation, but already within current capabilities. +	Additional rules may require greater collaboration between regional councils and central Government, which may add to resource pressures. High costs continue for stakeholders, due to participation in both central government and council planning processes. Councils continue to bear cost burden for developing and implementing new rules. 0
Certainty: extent to which the proposal ensures regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time.	0	Removes duplication between Acts for purposes of protecting biodiversity. Greater operational clarity on when and how controls can be established. Stakeholders have clarity on decision-making and their obligations under the regulatory system. Reinforces role of Fisheries Act to manage the effects of fishing. Provides clarity as to the status of existing measures taken by councils under the RMA. +	Greater certainty than the status quo by ensuring RMA jurisdiction over fisheries by a more clearly defined interface. This will support greater consistency across regional councils. Fisheries has the same status as other activities in the coastal marine area and all affected parties will understand their statutory requirements. Dual regulatory system will still cause confusion and concern for stakeholders. +
Durability & Flexibility: extent to which the proposal enables the regulatory system to evolve in response to changing circumstances or new information on the regulatory system's performance, resulting in a durable system.	0	More prescriptive regulatory framework and 'hard line' between RMA and Fisheries Act means less flexibility on what councils can do. Clearer decision-making regarding fishing lies with the appropriate expertise (Fisheries New Zealand, Minister for Oceans and Fisheries). Potential for dual processes under the RMA and Fisheries Act to consider adverse effects on the coastal marine area with potential to arrive at differing assessments and different protection measures under both regimes. 0	Councils consider the status quo currently provides flexibility. More prescriptive regulatory framework means less flexibility in what councils can do under the RMA. Splitting up of ability to propose some controls for biodiversity protection but not others adds more complexity to the regulatory regime. 0
Implementation Risk: Extent to which the proposal presents implementation risks that are low or within acceptable parameters	0	Monitoring and compliance of fisheries controls sits better with the Fisheries Act due to expertise and capability. Some risks that related values (amenity value, intrinsic value) are no longer well considered as they don't directly relate to supporting utilisation. Process to transition existing controls to the Fisheries Act is likely to be complex. Potentially contentious reputationally in terms of ensuring environmental outcomes. Some councils may consider this undermines their function to protect indigenous biodiversity. -	Does not address issues with council capability to monitor and enforce controls. May be some confusion for stakeholders around incoherence in the regulatory regime with duplicative processes. Implementation may still be costly to fishers due to engagement in council planning processes. -
Overall assessment	0	+ (MPI preferred option)	+ (MfE/DoC preferred option)

Example key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

Overall Assessment

Option Two – remove the ability for councils to control fishing to protect biodiversity under the RMA

94. Option Two is preferred by MPI.

Benefits

95. Option Two will provide certainty that the Fisheries Act is the primary control to manage the impacts of fishing on biodiversity, which improves regulatory quality and removes duplication of efforts between central and local government. It provides fisheries stakeholders with assurance as to ongoing access to fisheries resources, and ensures that consideration of Māori commercial and non-commercial customary rights are not impacted by regional council controls. It provides commercial fishers with more confidence to enjoy the property rights guaranteed under the Quota Management System.

96. This option supports effective implementation of marine controls at a national level, where MPI has greater tools available for enforcement, compliance and monitoring purposes than are available at a local level.

97. Option Two is preferred by commercial and recreational fisheries stakeholders. Many iwi have also supported the option and argued that the Fisheries Act is the only appropriate legislative tool to manage fishing, and its mechanisms better provide for the ability to ensure protection of biodiversity through appropriate controls, while also supporting Māori fishing rights.

    Risks A dual process for protecting biodiversity (one in the marine space under the Fisheries Act and one in the terrestrial space under the RMA) could result in less efficiency and increased system complexity in overall management of biodiversity outcomes, due to different regimes applying different levels of protection (noting other conservation legislation which provides marine biodiversity protection). Regional councils would still be required to manage impacts on biodiversity other than fishing, meaning that area controls would need to be duplicated across both the Fisheries Act and RMA.

98. Option Two is likely to be contentious with some stakeholders, due to concerns that less localised protections will be progressed under the Fisheries Act regime. Identification of significant ecological marine sites is a core function of councils and a requirement under the NZCPS, which may not be met under Option Two. It may also result in less local participation and less finer scale marine protection by removing pathways for the public to seek biodiversity protection in their regions and may add

costs for some interested parties who previously viewed the council as a one stop shop. Some Māori, particularly those hapū who sought the introduction of controls in Northland, view the RMA as an important pathway for local marine protection.

99. Option Two was not supported by regional councils in part due to these concerns. Environmental Non-Governmental Organisations (eNGOs) strongly oppose this option, due to concerns that it obstructs councils' ability to perform their functions, disregards community aspirations for the coastal marine area, and will result in additional harm to indigenous biodiversity. MPI is of the view that the Fisheries Act can provide effective biodiversity protection, and notes that we are progressing other work to support a more ecosystem-based management approach, which works at a finer scale.

Option Three – clarify the extent to which councils can control fishing to protect biodiversity under the RMA

100. Option Three is preferred by MfE and DoC.

Benefits

101. Option Three provides greater certainty than the status quo on the considerations regional councils must have before establishing controls in the coastal marine area that restrict fishing. This will allow fishers to have more confidence as to their access to fisheries resources (though less than Option Two). Option Three better supports safeguarding the environment by providing dedicated legislation which protects biodiversity for the sake of it, and only when it is tied to use. It enables the RMA to provide for integrated management of indigenous biodiversity that considers both the marine and terrestrial environment. Regional coastal plans protect marine indigenous biodiversity from other damaging activities such as dredging, or damage and destruction, which can have benefits for the fisheries sector and fisheries resources. If these protections did not also apply to damaging fishing practices they have the potential to be fully undermined.

102. Option Three will better support Māori rights and interests in the RMA system than the status quo, as there will be an explicit requirement to consider the Fisheries Settlement. Option Three will likely be less controversial with the public, where there are expectations that the marine environment will be safeguarded, particularly in the context of climate change.

103. Option Three is likely to reduce, but does not remove, the cost associated with engaging in council planning processes. It provides constraints on councils where access to fisheries resources may be impacted by proposed controls.

Risks

104. Option Three does not address issues of uneven implementation due to varied resource capacity across different regions. There may still be some confusion from fishers as to which rules apply under the differing legislative regimes.

105. This option is not supported by commercial or recreational fisheries stakeholders, who have expressed that only the Fisheries Act should be able to place restrictions on fishing. Many iwi have also argued against the RMA having any jurisdiction over fishing. Conversely, some Māori have said that well determined and specifically defined areas with distinctive and endangered biodiversity can be appropriately

protected under the RMA. As was the case in Northland, hapū were able to use the RMA to establish protections in specific areas to enable the ongoing care of the coastal marine area. This option is more supported by regional councils (but they prefer the status quo) as it does not completely remove their ability to establish biodiversity controls that impact fishing. We have not consulted with eNGOs, but we expect that they will support Option Three over the Option Two.

Cost/Benefit Analysis

106. As agencies are recommending different options, there are two cost-benefit analysis tables presented below.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the Option Two compared to taking no action			
Regulated groups (fisheries stakeholders)	No increased cost.	None	NA
Regulators (central government, local government)	Higher resource requirements for MPI due to increased focus on creating biodiversity controls to mitigate impacts of fishing.	Low	Low
Treaty Partners	Removal of local pathways to establish local marine protection.	Low	Low
Wider government	Total additional fiscal costs to the Government (mainly borne by MPI) in developing, implementing, monitoring and enforcing new biodiversity protection measures under the Fisheries Act.	low (with electronic reporting and geospatial reporting MPI would have real time ability to monitor much more effectively than Councils at no great cost)	Medium
Public and communities	Removal of local pathways to establish local marine protection	Low	Low
Total monetised costs	*NA*	Unknown	Low
Non-monetised costs		Medium	Low
Additional benefits of the Option Two compared to taking no action			
Regulated groups (fisheries stakeholders)	Assurance that councils cannot establish controls which impact fishing. Less cost as no longer required to participate in court proceedings.	Medium	Low
Regulators (central government, local government)	Less resource for councils and MfE to establish those controls. Less cost for central government in terms of participating in court proceedings.	Low	Low

Treaty Partners	Assurance that councils cannot establish controls which impact on customary fishing rights.	Low	Low
Wider government	Greater oversight and management of human-induced threats on marine biodiversity and improved research focus.	Medium	Medium
Public and communities	Certainty that the Fisheries Act is the primary control to manage the impacts of fishing on biodiversity, which removes duplication of processes between central and local government.	Low	Low
Total monetised benefits		Unknown	Low
Non-monetised benefits		Medium	Low

Affected groups	**Comment**	**Impact**	**Evidence Certainty**
Additional costs of the Option Three compared to taking no action			
Regulated groups (fisheries stakeholders)	No increased cost. Still required to participate in council planning process, some risk that controls will still impact fisheries.	None	NA
Regulators (MPI, MfE, local government)	Higher resource requirements for MPI to support councils to understand new requirements for establishing controls. More resource for councils to understand new rules.	Low	Low
Treaty Partners	Concerns that interface impact on Māori fishing rights and interests may still be present. Better for non-commercial fishing.	Low	Low
Wider government	Some additional fiscal costs to the Government (mainly borne by MPI) in engaging in processes for new biodiversity protection measures that might impact fishing.	Low	Low
Public and communities	Engagement in different processes under the Fisheries Act and the RMA.	Low	Low
Total monetised costs		Unknown	Low
Non-monetised costs		Low	Low
Additional benefits of the Option Three compared to taking no action			

Regulated groups (fisheries stakeholders)	Greater assurance that councils cannot establish controls which impact fishing.	Low	Low
Regulators (MPI, MfE, local government)	Less cost for MPI in terms of participating in court proceedings.	Low	Low
Treaty Partners	Greater assurance that councils cannot establish controls which impact on customary fishing rights.	Low	Low
Wider government	Costs will still be largely borne by Regional Councils in the implementation of new biodiversity measures in the MCA.	Low	Low
Public and communities	Processes that will be familiar and are similar to the status quo.	Low	Low
Total monetised benefits		Unknown	Low
Non-monetised benefits		Low	Low

Treaty implications

Upholding Treaty of Waitangi obligations, settlements and other arrangements

Policy options	Analysis
By signing the Treaty, the Crown and Māori entered a compact where the Crown gained the right to govern, but Māori retained the ownership of their fisheries, lands and other taonga until they chose to dispose of them. Māori also retained rangatiratanga over those properties which included the right to make decisions over their use and management while they retained them but also included a role as kaitiaki in their continued management even after these taonga were no longer held. Māori expect the Crown to act honourably towards them and uphold the agreements each have made. This means the Crown should protect Māori interests in their properties and enable them to exercise their right to make decisions over matters of significance to them, as well as to act as kaitiaki over the natural resources within their iwi area of interest. **Background to the Fisheries Settlement and the Treaty Implications of the Settlement for the proposed amendments the Resource Management Act** Māori fishing rights were secured and guaranteed by Article 2 of the Treaty of Waitangi. Under the Treaty, Māori exercised rangatiratanga and kaitiakitanga over fisheries resources making their own decisions on how, when and by whom fishing was undertaken. Māori chose whether fisheries resources were used for subsistence or economic return and extensively traded fish within New Zealand between iwi and with the growing settler communities. As kaitiaki, tangata whenua protected fishing grounds and maintained the abundance of fisheries by regulating the times when fishing could occur, methods and areas where fishing could take place. When fisheries were depleted rāhui were applied until fish stocks rebuilt. Over time the Crown eroded Māori rights to manage and benefit from their fisheries, by imposing and limiting access to commercial fishing permits and removing the right to controlling how fishing occurred. The effect was to treat Māori fishing as a non-commercial subsistence activity controlled by the Crown. In 1986 the Crown sought to introduce the Quota Management System (the QMS). The introduction of the QMS was challenged both in Court and through the Waitangi Tribunal and was found to be illegal because it transferred to others rights that belonged to Māori and which the Crown had not removed. The Waitangi Tribunal observed that while the QMS breached the Treaty it need not do so if Māori rights were provided for. In 1989, the Crown and Māori negotiators agreed on an interim settlement, which was given effect by the Māori Fisheries Act 1989. This interim settlement saw the creation of a Māori Fisheries Commission that progressively received 10 percent of all fish species that were in the QMS and approximately $10 million to hold and manage on behalf of all Māori. The commission's role was also to promote Māori involvement in the business and activity of fishing. Where the Crown was unable to provide the agreed 10 percent of fish species in the Quota Management System (QMS), Māori were provided the equivalent value in cash.	

Policy options	Analysis
Commercial fishing claims were finally settled with the signing of a Deed of Settlement (the Sealord Deal) in September 1992. This Deed was given effect through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Fisheries Settlement) and saw the creation of the Treaty of Waitangi Fisheries Commission, which took over the responsibilities of the Māori Fisheries Commission and enhanced its accountability to Māori. The Fisheries Settlement refers to how, through Article 2 of the Treaty, the Crown "confirms and guarantees to the Chiefs, tribes and individual Māori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries." In the Fisheries Settlement, the Crown recognized the full extent of Māori customary rights to fishing and fisheries by: • providing funds for Māori to buy a 50 percent stake in Sealord Products Limited which, as one of the largest fishing companies in New Zealand at the time, was a major owner of fisheries quota, • undertaking to provide Māori with 20 percent of commercial fishing quota for all new species brought within the QMS, • undertaking to ensure the appointment of Māori on statutory fisheries bodies, and • agreeing to make regulations to allow self-management of Māori fishing for communal subsistence and cultural purposes. In return, Māori agreed: • that all Māori commercial fishing rights and interests were settled, • to accept regulations for customary fishing, • to cease litigation, and • to endorse the QMS. Currently, Māori directly own quota or have shares in companies that control 40% of all fishing quota. There are a range of views held by Māori – while concerns about protecting the fisheries settlement are widespread, some do support local government being able to manage fisheries and the effects of fishing through the RMA. In terms of Treaty settlements (other than the Fisheries Settlement (above) some redress does apply to the coastal marine area and we do not think it is significant issue in terms of the proposals in this paper. Statutory acknowledgements can apply to the CMA but only relate to consenting processes. Other arrangements, such as the Te Oneroa a Tohe Beach Management Board (provided for in Te Hiku settlements) require councils to recognise and provide for the board's management plan. A similar arrangement exists for Muriwai o Te Whanga in Napier through the Ahuriri Hapū settlement. s9(2)(g)(i) In addition, there is the: • Marine and Coastal Area (Takutai Moana) Act 2011 – the only limit on fishing is if a customary marine title group agrees a wāhi tapu protection and they can then prevent access to that area, including for fishing. To date no such protections have been agreed.

Policy options	Analysis
• Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 – this recognises the customary rights and interests of Ngāti Porou in the coastal marine area (predating the Takutai Moana Act regime) The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 has provisions requiring the Crown to recommend regulations under the Fisheries Act to enable Ngā hapū to recommend bylaws to manage fishing of all types within their rohe and in the Exclusive Economic Zone. s9(2)(g)(i) The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 recognises the customary rights and interests of Ngā hapū o Ngāti Porou (NHNP) in the coastal marine area (CMA) and makes provision for regulations to be made to enable NHNP to manage fisheries in their rohe moana. Our assessment is that the options under consideration will not impact on the ability for NHNP to manage fisheries and would prevent the Gisborne District Council from managing fisheries under the RMA. In our view the proposals are consistent with the purpose of the Act. Officials have provided information about the proposals and met with NHNP to discuss. s9(2)(g)(i) They will have the opportunity to submit to the select committee. s9(2)(g)(i) Similar provisions also apply to freshwater indigenous fisheries on the Waikato and Waipa Rivers for Waikato-Tainui, Raukawa Te Arawa River Iwi and Ngāti Tūwharetoa and for Ngāti Maniapoto and in respect of the Rotorua Lakes in respect of Te Arawa Lakes Trust. Treaty negotiations have reached agreement on the development of fisheries regulations to manage indigenous fisheries on the Wanganui River, Whangaehu River and Ruamahanga/ Wairarapa Moana. s9(2)(g)(i)	
Option One – status quo	The status quo may be seen to not appropriately provide for upholding Māori rights and interests under the Treaty, or the Fisheries Settlement. The right to customary fishing as recognised under s 10 of the Fisheries Settlement Act is not currently acknowledged by the RMA. Customary fishing can only be exercised through regulations made under the Fisheries Act, and activities protected under the fisheries system are not specifically protected under the RMA. Customary fishing rights are spatially located, and specific hapū and iwi can be disproportionately affected by regional closures made under the RMA. Under the Fisheries Settlement, the Crown is required to enable tangata whenua to manage important customary fishing grounds. If councils protect certain sites under the RMA, those sites may no longer be available for hapū and iwi, which imposes an unintended constraint on the Fisheries Settlement. Previous RMA controls have been implemented without effective consultation and has resulted in Māori losing access to important customary fishing areas (eg, in the Bay of Plenty/Motiti). Some iwi groups were vocal about their

Policy options	Analysis
	disagreement with the closures, and the breaches their right to act as kaitiaki over a given area. Te Ohu Kaimoana strongly oppose the status quo. However, some Māori have considered the RMA to be a useful mechanism to achieve biodiversity outcomes and have supported existing controls.
Option Two – remove the ability of councils to control fishing under the RMA	This option removes the need for Māori fisheries stakeholders to participate in council planning processes that relate to fisheries. It better ensures that Māori rights and interests guaranteed by te Tiriti and the Fisheries Settlement are upheld. Ensuring that the RMA does not impact Māori fishing rights provides for equitable access to use of fisheries resources. It will also improve capacity for local government when working with Māori, as regional councils will be able to ensure proposed controls are not impacting on Māori fishing rights. The current closures established under the RMA will remain in place. If transitioned to the Fisheries Act, because they are under Fisheries legislation, customary fisheries protections would apply where fishing is undertaken under customary regulations made in accordance with the Fish settlement Act. Removal of the RMA power and existing controls has the potential to be highly controversial with hapū who fought for them to be established in Northland and in Motiti. s9(2)(g)(i) [redacted] There is tension between different iwi, hapū and Māori groups as to RMA jurisdiction over fisheries. Option Two is more aligned with protecting iwi use and access rights but may impact on hapū level kaitiaki rights which could be seen to be more aligned with the RMA, regardless of whether these could undermine the ability to use fisheries settlement processes. While the RMA can infringe on rights guaranteed under the Fisheries Settlement, it also provides a local pathway for participation in marine planning, which allows Māori (and other stakeholders) to propose rules or controls in the coastal marine area to protect te taiao and the health of Tangaroa. However, many iwi[19] have argued that empowerment of local authorities to make rules that would restrict commercial and non-commercial customary fishing is contrary to commitments made by the Crown to iwi under the Treaty and Fisheries Settlement. Some groups will support this

[19] For example, Te Ohu Kaimoana, Ngāi Tahu, Te Rūnanga o Waihao, Te Korowai o Ngāruahine Trust, during submissions on the Natural and Built Environment. Te Ohu Kaimoana also expressed these views during targeted engagement on RM Bill no.2 proposals.

Policy options	Analysis
	option as it removes the possibility of the RMA impacting on fisheries rights. Te Ohu Kaimoana are supportive of this option.
Option Three – clarify the extent to which councils can control fishing under the RMA	This option will ensure that the RMA recognises the Fisheries Settlement, which will better support Māori rights and interests. Ensuring that the RMA does not impact Māori fishing rights provides for equitable access to use of fisheries resources. It will also improve capability for local government when working with Māori, as regional councils will be able to ensure proposed controls are not impacting on Māori fishing rights. Māori will still be empowered to participate in RMA processes under Option Three. There is tension between different iwi, hapū and Māori groups as to RMA jurisdiction over fisheries. Option Three may be less aligned with protecting iwi use and access rights, but provide greater support for hapū-level kaitiaki rights, which could be seen to be more aligned with the RMA, regardless of whether these could undermine the ability to use fisheries settlement processes. The RMA can provide a local pathway for participation in marine planning, which allows Māori to propose rules or controls to protect the coastal marine area. In Northland, current controls were fought for by iwi and hapū to protect the area. Some Māori groups (eg, hapū in Northland and the Bay of Plenty who sought the current controls) will prefer this option as it still provides a local pathway to establish protections in the marine environment. However, section 186A of the Fisheries Act allows for iwi and hapū to apply for closures or fishing restrictions in specific areas to ensure their rights to fisheries resources are upheld. This could mitigate concerns some Māori groups may have over removal of the RMA-Fisheries Act interface, as it provides a local pathway for seeking protection of the marine environment. Te Ohu Kaimoana do not support this option.

Costs and benefits for Māori

Policy options	Analysis
Option One – status quo	The status quo can impose high costs on iwi, hapū and Māori business owners due to requirements to participate in lengthy and resource intensive council planning processes. This is exacerbated by controls being established regionally, whereas Māori fisheries rights are specific to Quota Management Areas (QMA), meaning they must go to multiple councils to ensure their rights and interests are considered. This is also the case for other fisheries stakeholders, but there are higher implications for Māori due to their rights being protected under the Fisheries Settlement. MPI understand there is no local or central government support to fund these costs, and the burden falls on iwi Māori. Benefits of the status quo is that it provides local pathways for Māori to seek protection of the marine environment.
Option Two – remove the ability of councils to control fishing under the RMA	Option Two will remove the burden and cost for Māori groups to participate in RMA planning processes for fishing purposes, as councils will no longer be able to establish controls which impact fisheries. This also has the benefit of ensuring that the controls established under the RMA cannot impact on Māori customary rights and interests in fisheries (commercial and non-commercial). Māori are still likely to engage in planning processes that relate to other non-fishing controls. In regard to customary fishing measures, Māori will need to engage in processes under the Fisheries Act, which were specifically developed to give effect to the agreements in the Fisheries Settlement.
Option Three – clarify the extent to which councils can control fishing under the RMA	Option Three removes some cost for Māori groups as they will have assurance that no council controls will impact on non-commercial customary fishing, and that commercial customary fishing will be better considered. Limitations placed on councils with this amendment, such as the introduction of an Undue Adverse Effects test, will also provide more confidence for Māori customary commercial fishers. There may still be some requirements for Māori groups to participate in planning processes for customary and commercial fishing, which is the same for other fisheries stakeholders.

Waitangi Tribunal Recommendations

Policy options	Analysis
Option One – status quo	

Policy options	Analysis
Option Two – remove the ability of councils to control fishing under the RMA	We are not aware of any Waitangi Tribunal findings that relate to this issue, though there have been various reports that highlight how fisheries should be considered as taonga.[20] Due to time constraints, we have been limited in further investigating if this issue has been raised with the Tribunal previously.
Option Three – clarify the extent to which councils can control fishing under the RMA	

Māori rights and interests in fisheries

Policy options	Analysis
Māori rights and interests derive from their unique connection to te taiao (the natural environment), and were recognised as part of the Fisheries Settlement. This includes both commercial customary interests and non-commercial customary interests. The Fisheries Settlement provided Māori with a guaranteed percentage of quota. Today, Māori directly own quota or have shares in companies that control 40% of all fishing quota and have diversified interests across the fishing and aquaculture sectors, including harvesting, processing, marketing, and food services. This income stream and the dividends from fishing make an important contribution to the economic, social, and cultural investment of many iwi, and the NZ economy.	
Option One – status quo	Under the status quo, regional councils have the power to restrict access to fisheries resources, without recognising Māori rights guaranteed under the Fisheries Settlement. This is in conflict with the Fisheries Settlement where Māori have agreed to mechanisms which provide for the right to self-management important customary fishing grounds, as well as how their quota is used for the benefit of their iwi.

[20] Waitangi Tribunal, Report of the Waitangi Tribunal on the Motunui–Waitara Claim, 2nd ed (Wellington: Government Printing Office, 1989).; Waitangi Tribunal, Report of the Waitangi Tribunal on the Te Reo Māori Claim, 3rd ed (Wellington: Brooker's Ltd, 1993).; New Zealand Māori Council v Attorney-General [1994] 1 NZLR 513 (PC) at 517.

Policy options	Analysis
Option Two – remove the ability of councils to control fishing under the RMA	Option Two best provides for upholding of Māori rights to fisheries by ensuring that the councils cannot establish controls in the coastal marine area that could limit their ability to customary fishing and their right to self-management of fishing areas and how they use their quota. Some Māori could see that this option places some restriction on the exercise of their rights, particularly where hapū have actively pursued RMA controls to protect the coastal marine area. Some could see this as preventing Māori right to exercise rangatiratanga over things of importance to them. However, during engagement other Māori groups have noted that existence of the RMA-Fisheries Act overlap also restricts this right.
Option Three – clarify the extent to which councils can control fishing under the RMA	Option Three is more consistent with upholding the rights guaranteed under the Fisheries Settlement, as the RMA would explicitly acknowledge that councils cannot establish controls which impact on Māori customary non-commercial fishing rights, and must have greater consideration for customary commercial fishing rights. Some Māori may argue that any jurisdictional overlap in legislation may impact on their right to exercise rangatiratanga over fisheries, as decision-makers under the RMA do not have the same legislative obligations to ensure Māori rights and interests in fisheries are upheld. Councils will still be required to consider the views of other stakeholders and non-Māori during processes to establish controls, which can be highly complex due to differing views and interests.

Māori Crown relations risks and opportunities

Policy options	Analysis
Option One – status quo	All options create some risks for the Māori-Crown relationship due to tension and competing views between different iwi and hapū groups. s9(2)(h) [redacted]
Option Two – remove the ability of councils to control fishing under the RMA	
Option Three – clarify the extent to which councils can control fishing under the RMA	

Overall assessment

Policy options	Analysis	Rank
Option One – status quo	This status quo does not support a more Treaty-consistent resource management system. It does not address the issue of the RMA not acknowledging the Fisheries Settlement, and will not ensure that consideration of Māori rights and interests in fisheries is provided for when councils seek to establish controls in the coastal marine area.	3
Option Two – remove the ability of councils to control fishing under the RMA	Option Two will support a more Treaty-consistent resource management system by ensuring that Māori commercial and non-commercial customary fishing rights cannot be impacted by any controls established by regional councils in the coastal marine area. Some Māori may see removal of their ability to pursue local marine protection controls through the RMA as restricting their right to make decisions over things that are important to them, regardless of the ability to tailor local solutions through the Fisheries Act.	1
Option Three – clarify the extent to which councils can control fishing under the RMA	Option Three will support a more Treaty-consistent resource management system by explicitly recognising the Fisheries Settlement and ensuring that regional councils take customary fishing into account during planning processes. Some Māori may see any continuation of RMA jurisdiction over fisheries as restricting their fishing rights, regardless of recognition of the Fisheries Settlement, as councils may still be able to make controls which impact on fishing.	2

Engagement

Policy options	Analysis
Engagement was highly limited due to timing constraints associated with the RMA reform programme. The Fisheries Settlement, and the protocols that MPI entered into with Post Settlement Governance Entities (PSGEs) as a result of it, places obligations on the Crown to consult with Māori on policies that impact them. There is potential that the lack of engagement will be seen as the Crown failing to act in good faith and appropriately enable Māori participation. We did not speak with the hapū who supported and were proponents of previous RMA controls, meaning their views are not well considered in this analysis. We reached out to PSGEs and MIOs for comment on our proposal and did not receive much feedback. Officials met with s9(2)(ba)(i) . They offered conditional support for Option 1 with the proviso that they were provided more information on the issue and options and that further feedback could be incorporated into any further advice to Ministers. We have relied on previous submissions from the Natural and Built Environment Bill to understand Māori views of this issue. These views have been integrated into the policy analysis where possible, including for informing part of the problem definition.	
Option One – status quo	We have not heard any views for Māori groups that support the status quo, due to the lack of express requirement to acknowledge the Fisheries Settlement and the ability for the RMA to restrict Māori fishing rights, as was the case when the Motiti controls were established.

Policy options	Analysis
Option Two – remove the ability of councils to control fishing under the RMA	*NBEA submissions* Many Māori expressed the view that empowerment of local authorities to make rules that would restrict commercial and non-commercial customary fishing are contrary to the commitments made by the Crown to iwi under the Treaty and Fisheries Settlement. Many argued that the Fisheries Act is the only appropriate legislative tool to manage fishing, and its mechanisms better provide for the ability to ensure protection of biodiversity through appropriate controls, while also supporting Māori fishing rights. As Māori have specific interests in fisheries, as guaranteed by the Fisheries Settlement, their exercise of rangatiratanga may be better enabled by Option Two – removing the RMA-Fisheries Act interface. *Views expressed outside of formal engagement* s9(2)(ba)(i) . They asked the Government to revisit its approach to ocean/marine management to avoid overlap or contradiction in legislative and regulatory regimes. This included reference to the RMA, noting their position that "fisheries and the effects of fishing should be managed by the Minister of Fisheries, and should not be compromised by other legislation." *Targeted engagement for RM Bill 2* Te Ohu Kaimoana confirmed their previously outlined position that fishing should be controlled under the Fisheries Act alone, and a clean line should be drawn between the RMA and Fisheries Act with no overlapping jurisdiction. We received a submission from s9(2)(ba)(i) . They consider the existing lack of clarity between the Fisheries Act and RMA in the management of fishing for biodiversity purposes has been misinterpreted following the Motiti and Northland cases, resulting in an assumption of there being a greater power for councils to manage fishing than intended. Without appropriate connection points between the RMA and Fisheries legislation, customary fisheries can be threatened. s9(2)(ba)(i) have a strong preference that the Fisheries Act is the mechanism by which impacts of fishing on the environment, and so support Option Two.

Policy options	Analysis
Option Three – clarify the extent to which councils can control fishing under the RMA	*NBEA submissions* While most submissions received during the NBEA submission process wanted the RMA-Fisheries Act interface removed, many stakeholders also said that as an alternative, they would consider direct reference to the Fisheries Settlement in the RMA as more enabling for ensuring their rights and interests in fisheries. Conversely, some NBEA submissions highlighted that well determined and specifically defined areas with distinctive and endangered biodiversity can be appropriately protected under the RMA. As was the case in Northland, hapū were able to use the RMA to establish protections in specific areas to enable the ongoing care of the coastal marine area. *Targeted engagement for RM Bill 2* Te Ohu Kaimoana did not support this option. As a second preference, s9(2)(ba)(i) considers that additional clarity of the role of councils in managing fishing for biodiversity purposes is also achievable, and wish to explore other methods to provide safeguards to ensure that the property rights under the Fisheries Settlement are not eroded.

Limitations of the treaty impact assessment

107. The major limitations of this proposal are the time restrictions associated with the Resource Management reform process. Policy development has taken place over a short time period, meaning there has not been time to consider unintended consequences of the proposal. We did not analyse the specific MPI and MfE obligations outlined in the settlement agreement, and have taken a more general approach to the above analysis.

108. Engagement has been limited due to condensed timeframes. We have relied more on views expressed previously during development of the Natural and Built Environment Act. Views on the broad options being proposed have not yet been tested. This has created challenges for acting in partnership, in good faith, and with good governance in the context of the Treaty, where Māori were not provided with appropriate time to consider the proposal.

Consultation

109. The interface between the RMA and the Fisheries Act is a divisive matter, and stakeholder and iwi views vary.

110. Consultation has been limited to essential engagement only due to the timeframes associated with the resource management reform programme. As a result, we have only undertaken targeted engagement with key stakeholders, and have relied more heavily on feedback during the previous government's RMA reform work programme.

There has been no consultation with the general public, but it is anticipated that further consultation will happen at the Select Committee stage.

Consultation during previous RMA reform

111. In 2021, consultation took place during the select committee process on the Natural and Built Environment Act (NBEA), which has since been repealed. Here, submissions were received from the commercial fishing industry, the New Zealand Sport Fishing Council and some recreational fishers, Te Ohu Kaimoana, some iwi, and environmental groups.

112. During the select committee process for the NBE, the commercial fishing industry, recreational fishers, and Te Ohu Kaimoana were opposed to allowing fishing to be controlled under the resource management system. They considered that the Fisheries Act provides appropriate sustainability measures to manage the effects of fishing on biodiversity. The NZ Law Society also recommended either removing the duplication or clarifying the statutory overlap.

113. Many iwi Māori expressed the view that empowerment of local authorities to make rules that would restrict commercial and non-commercial customary fishing are contrary to the commitments made by the Crown to iwi under the Fisheries Settlement. Many argued that the Fisheries Act is the only appropriate legislative tool to manage fishing, and its mechanisms better provide for the ability to ensure protection of biodiversity through appropriate controls, while also supporting Māori fishing rights.

114. Environmental groups were not supportive of removal of the RMA-Fisheries Act interface, due to concerns it would undermine environmental protection of marine resources. Some iwi and hapū have also said that well determined and specifically defined areas with distinctive and endangered biodiversity can be appropriately protected under the RMA, and that the RMA provides a local pathway for participation in marine planning.

Views expressed outside of formal consultation processes

115. s9(2)(ba)(i) They asked the Government to revisit its approach to ocean/marine management to avoid overlap or contradiction in legislative and regulatory regimes. This included reference to the RMA, noting their position that "fisheries and the effects of fishing should be managed by the Minister of Fisheries, and should not be compromised by other legislation."

116. In February 2024, The Seafood Industry Forum, made up of key industry members, also raised their desire to have the RMA-Fisheries Act interface addressed. The Forum noted that regulatory overlap through RMA controls can impose restrictive rules on fishing, through prohibition of certain activities or resource consent requirements, depending on relevant rules. There is concern that about the loss of economic potential resulting from local area closures.

Targeted engagement on RM2 proposals

Industry bodies, including Te Ohu Kaimoana

117. In June, we engaged with Te Ohu Kaimoana, Seafood New Zealand, the Rock Lobster Industry Council, and the Pāua Industry Council to broadly discuss the RMA-Fisheries Act interface.

118. All groups expressed the views previously outlined in their submissions on the NBEA, and what has been shared through briefings for incoming ministers and the Seafood Industry Forum – that fishing should be controlled by the Fisheries Act alone, and a clean line should be drawn between the RMA and Fisheries Act with no overlapping jurisdiction.

119. We discussed the groups' position on what to do with existing closures. Industry groups want to see the controls disestablished, but acknowledged that this may not be the practical path, s9(2)(g)(i)

120. We also discussed the groups' position on what to do with related values. They acknowledged this was a tricky policy area, and suggested we consider specifying in the RMA exactly what councils could control regarding fishing, rather than listing what they could not control.

Local Government

121. We met with Bay of Plenty Regional Council, Tasman District Council, Waikato Regional Council, Auckland Council, Environment Southland, Otago Regional Council, Northland Regional Council, Marlborough District Council, and the Hawke's Bay Regional Council (referred to collectively as 'the councils') to discuss options for amending the RMA-Fisheries Act interface.

122. The councils highlighted that with the current closures, hapū they had worked with were strongly supportive of the status quo and that protections in place had been "hard fought." There were concerns that removal of the interface completely would have further impacts for controls that don't directly relate to fishing, and that this would raise significant concern in the community and constrain public participation in marine management.

123. Councils highlighted that Option Two could also increase overall system complexity, as regional councils would still need to manage impacts on biodiversity other than fishing, meaning that area controls would need to be duplicated across both the Fisheries Act and the RMA (eg, sites with high benthic values could require both controls through the Fisheries Act on dredging and bottom contact trawling and coastal plan controls for other types of bed disturbance).

124. Councils therefore supported the status quo as the recommended option. Alternatively, some councils voiced support for Option Three, but raised some concerns about how this would work in practice.

Environmental Non-Governmental Organisations

125. Engagement with Environmental Non-Governmental Organisations (eNGOs) involved discussion of the broad options and what their view was in summary.

126. We met with the Environmental Defence Society (EDS) and they provided their submission on the Motiti case.

127. They were strongly opposed to any change to the RMA-Fisheries Act interface (and therefore support the status quo).

128. EDS believe that the change is unwarranted, and the current legislation and case law is clear that there is no overlap in terms of purpose of protection under the RMA and the Fisheries Act. They say amending the interface will obstruct regional councils from performing their functions under the RMA, and disregard community aspirations for the coastal marine area. They highlight that it will also result in additional harm to the environment and potentially permanent loss of indigenous biodiversity in the coastal marine area.

129. They state that it is inconsistent with government commitments, including the objective of enhancing the primary sector, as significant habitat degradation is a major road block to fisheries productivity due to the 'bottleneck' it creates for juvenile survival and recruitment into the fishery.

130. There is additional engagement planned with the World Wildlife Fund and the Royal Forest and Bird Protection Society. Any additional views provided during this engagement will be incorporated into further advice to Ministers. .

Post-Settlement Governance Entities and Mandated Iwi Organisations

131. We reached out to PSGEs and MIOs for comment on our proposal and did not receive much feedback.

132. We received a submission from s9(2)(ba)(i) They consider the existing lack of clarity between the Fisheries Act and RMA in the management of fishing for biodiversity purposes has been misinterpreted following the Motiti and Northland cases, resulting in an assumption of there being a greater power for councils to manage fishing than intended. Without appropriate connection points between the RMA and Fisheries legislation, customary fisheries can be threatened.

133. s9(2)(ba)(i) have a strong preference that the Fisheries Act is the mechanism by which impacts of fishing on the environment, and so support Option Two. As a second preference, s9(2)(ba)(i) considers that additional clarity to the role of councils in managing fishing for biodiversity purposes is also achievable, and wish to explore other methods to provide safeguards to ensure that the property rights under the Fisheries Settlement are not eroded.

134. The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 recognises the customary rights and interests of Ngā hapū o Ngāti Porou (NHNP) in the coastal marine area (CMA) and makes provision for regulations to be made to enable NHNP to manage fisheries in their rohe moana. s9(2)(ba)(i)

s9(2)(ba)(i) [redacted]

Implementation

Legislative change

135. Options 2 and 3 would both require changes to both the Fisheries Act and RMA. Any new legislative changes would come into effect at commencement.

136. Under Option Two, regional councils' ability to control the impacts of fishing for biodiversity purposes under the RMA would be removed. The effects of fishing would primarily be managed under the Fisheries Act (MPI), and additional tools would continue to be available under the Marine Reserves Act, Wildlife Act and Marine Mammals Protection Act (DOC).

137. Under Option Two, the RMA could continue to manage indirect effects of fishing that are not managed under the Fisheries Act, including controls which apply to vessels generally, such as rules relating to noise, light and odour.

138. Under Option Three, regional councils would retain the ability to control fishing for biodiversity purposes under the RMA in limited circumstances or subject to greater constraints. Legislative changes would be implemented that:

    a. Limit the ability for coastal plans to include rules that impact fishing unless such rules are included by councils prior to public notification

    b. Add a provision that explicitly recognises the Fisheries Deed of Settlement to ensure Māori rights and interests are considered and upheld

    c. Create some form of Undue Adverse Effect test that more explicitly requires potential impacts of RMA controls on fishing to be addressed in decision-making

    d. Provide that controls on fishing activities can only be in the form of prohibitions, and that fishing cannot be subject to resource consent requirements.

139. There are no other changes in RM Bill no.1 or 2 that could impact on this proposal. There are also no other considerations for Reform Bill no.3 or national direction work.

140. Guidance will need to be developed and provided to regional councils as to what the change means for developing regional plans in the future.

Existing controls

141. There are pathways under Option Two for maintaining existing controls in some form. Via RM Bill no.2, new provision could be added to the RMA to enable these to continue following removal of councils' ability to make future rules that control fishing. Current controls will require a statutory review when relevant regional plans come up for renewal.

142. Following this, if controls are working well and still have a limited impact on fishing, the controls could be transitioned to the Fisheries Act or remain under the RMA.

Transitioning to the Fisheries Act will commit MPI resource to managing the implementation of rules and being responsible for design and review processes.

Engagement with iwi/Māori

143. A communications plan will be developed for the notification of the measures. The new measures would be publicised through agency and regional council websites and social media channels, directly to affected tangata whenua and iwi/hapu, and through agency and regional council interactions with tangata whenua in each area.

144. Further, targeted and detailed information will be provided to affected iwi/Māori closer to implementation (eg, during the 28-day Gazette notice period before the measures take effect).

145. This information will detail how iwi/Māori can participate in the implementation of new measures in legislation and engage in decision-making processes.

Litigation

146. There are concerns that implementation may be compromised if litigation is undertaken by any of the interested stakeholder parties. Litigation can result in a delay and/or failure to put in place measures to protect marine biodiversity. Litigation could occur due to controls established under the RMA, the Fisheries Act, or other conservation legislation.

147. There has been significant opposition to new biodiversity protection measures and their impact on fishing by the commercial fishing industry, their representative bodies, some iwi and Te Ohu Kaimoana.

148. As noted in the Consultation Section, there is also strong concern from a range of eNGOs that the options proposing changes to the interface are unnecessary and could leave gaps in the ability to manage adverse effects on marine biodiversity.

149. It is possible that any new amendments to the interface and their implementation could be tested in the Courts.

Compliance

150. Successful implementation of fisheries measures always requires a high degree of compliance from those directly affected by the measures, including commercial and recreational fishers. Educational campaigns will need to be used to provide knowledge of any new measures affecting fishing and encourage compliance.

Monitoring

151. Regular engagement by central government agencies (MPI, DOC, and MfE) with tangata whenua (for example, through existing channels such as Iwi Fisheries Forums), regional councils and other interested or affected stakeholders (commercial, recreational and eNGOs) will provide an opportunity for discussion of any concerns with progressing biodiversity protection measures, achievement of biodiversity objectives, and any other related matters (eg, research, monitoring, and education).

152. MPI and DOC may also consider the establishment of North Island and South Island Stakeholder Advisory Groups made up of interested stakeholders that have knowledge and experience on the range of human-induced threats to marine biodiversity.

153. Research and data collection to inform biodiversity protection threats and their potential mitigation will need to be developed and coordinated between government agencies and regional councils.

154. Data that is relevant to marine biodiversity will be analysed and discussed in appropriate forums (eg, Science Working Groups, Stakeholder Advisory Groups, and/or other engagement meetings) with tangata whenua and stakeholders (or their representatives) as required.

155. Reporting on progress of biodiversity protection will be coordinated with the reporting mechanisms for the implementation of the Aotearoa New Zealand Biodiversity Strategy (ANZBS).

Appendix one – further information on the RMA and Fisheries Act

Resource Management Act 1991

The RMA is the main piece of legislation that sets out how we should manage the environment. It provides councils with powers to set rules and requirements to manage activities, ranging from building houses, clearing vegetation and moving earth, to taking water from a stream.

General considerations

Part 2 – Purpose and principles

The purpose of the RMA is to promote the sustainable management of natural and physical resources. Sustainable management means managing the use, development, and protection of natural and physical resource in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –

a. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations
b. Safeguarding the life-supporting capacity of air, water, soil and ecosystems
c. Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

This purpose is to ensure that activities that impact the environment won't harm our communities, or damage the air, water, soil and ecosystems that we and future generations need to survive.

Section 6 outlines that all persons exercising functions and powers under the RMA shall recognise certain matters of national importance. These include things like the preservation of the natural character of the coastal environment (including the coastal marine area, protection of outstanding natural features and landscapes, and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna). The section also outlines requirements to consider the relationship of Māori and their cultural and traditions with their ancestral lands, water, sites and taonga.

Section 7 outlines other matters that must be regarded, and include considering the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment, the finite characteristics of natural and physical resources, and the effects of climate change.

Section 8 states that in achieving the purpose of the RMA, all persons exercising functions and powers under it shall take into account the principles of the Treaty of Waitangi.

Part 3 – Duties and restrictions under this Act

Part 3 includes restrictions on the use of resources, including land, the coastal marine area, river and lake beds, water, discharges, noise and adverse effects. This provides rights and responsibilities for protecting the environment and people's enjoyment of it.

Relevant to the RMA-Fisheries Act interface, section 12 includes restrictions on use in the coastal marine area. This section places restrictions on what a person may do in the CMA, and prevents activities like:

a. Section 12(1)(c)) – disturbing any foreshore or seabed in a manner that is likely to have an adverse effect on the foreshore or seabed
b. Section 12(1)(e)) – destroying, damaging, or disturbing any foreshore or seabed in a manner that is likely to have an adverse effect on plants or animals or their habitat
c. Section 12(1)(g)) – destroying, damaging, or disturbing any foreshore or seabed in a manner that is likely to have an adverse effect on historic heritage.

These provisions allow for the lawful harvesting of any plant or animal, which enables the utilisation of fisheries resources in the coastal marine area. Section 12 also outlines that these activities are allowed where provided for by a national environmental standard, a rule in a regional coastal plan, or a resource consent.

Tools available

The RMA includes systems and processes for making decisions about things that could affect people's enjoyment of the environment. It requires decision-makers to consider environmental effects of activities and avoid or mitigate negative effects where possible.

Councils are empowered to make decisions about activities that impact the environment through regional plans, rules and policy statements. Relevant sections to the coastal marine area are as follows.

Section 30 – Functions of regional councils under this Act

Section 30 provides powers to councils for the purpose of giving effect to the RMA. This includes:

a. The ability to establish, implement and review objectives, policies and methods to achieve integrated management of natural and physical resources in their region.
b. In respect of the coastal marine area, the control (in conjunction with the Minister of Conservation) of:
    i. land and associated natural resources
    ii. the occupation of space in the coastal marine area
    iii. the discharge of contaminants into or onto land, air or water
    iv. any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards
    v. activities in relation to the surface of water.

In relation to activities in the coastal marine area, s 30(2) states that a regional council (and the Minister of Conservation) must not perform functions specified to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resource controlled under the Fisheries Act.

Section 62 – Contents of regional policy statements

This section outlines what needs to be included in a regional policy statements. It covers things like issues of significance to iwi, objectives and policies which aim to address any particular issues in that region, and requirements to maintain indigenous biodiversity. Regional policy statements can include any information required for the purpose of a council's functions, powers and duties under the RMA.

Matters to be considered by regional council and territorial authorities (s 61, 66 and 74)

Section 61 outlines that regional policy statements must be prepared in accordance with, among other things, the functions under section 30, and provisions under part 2 of the Act. Section 61(2) provide that councils must take into account any relevant management plans or strategies prepared under the Act, and regulations relating to the use of fisheries resources.

Section 66 outlines similar requirements, but in relation to regional plans. This includes consideration of management plans, strategies, and regulations relating to the use of fisheries resources.

Section 77 outlines similar requirements in relation to territorial authorities and district plans. This includes consideration of management plans, strategies, and regulations relating to the use of fisheries resources.

The New Zealand Coastal Policy Statement 2010

The New Zealand Coastal Policy Statement (NZCPS) guides councils in their day-to-day management of the coastal environment. The purpose of the NZCPS is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment. Regional policy statements and plans, and district plans, must give effect to the NZCPS.

The NZCPS notes key issues facing the coastal environment, such as loss of natural character, species and habitat decline, poor and declining water quality, and continued coastal erosion exacerbated by climate change. It outlines a number of objectives for the coastal environment, including safeguarding the integrity of the environment, preserving natural character, taking into account the Treaty of Waitangi, enabling people and communities to provide for their social, economic and cultural wellbeing, and ensuring management of the coastal environment provides for NZ's international obligations regarding its protection, including the coastal marine area. Key policies to the RMA-Fisheries Act interface include:

a. Policy 1 – Extent and characteristics of the coastal environment – recognises that the extent and characteristics vary from region to region and locality to locality, meaning different issues that arise will have different effects on each region or locality.
b. Policy 4 – Integration – states that integrated management of natural and physical resources in the coastal environment is needed. It encourages collaboration between relevant bodies and agencies who have responsibilities relevant to resource management, as well as working with stakeholders, hapū and the public.
c. Policy 6 – Activities in the coastal environment – recognises the contributions to the social, economic, and cultural wellbeing of people and communities from use and development of the coastal marine area.
d. Policy 11 – Indigenous biological diversity – aims to protect indigenous biodiversity in the coastal environment, by avoiding adverse effects of activities on indigenous ecosystems, vegetation, species and habitats. It also includes requirements for avoiding, remedying and mitigating adverse effects, including those that are important for recreational, commercial, traditional, or cultural purposes.

e. Policy 13 – Preservation of natural character – aims to preserve the character of the coastal environment and protect it from inappropriate use and development. This includes avoiding, remedying, and mitigating adverse effects on the natural character of the coastal environment, and providing that regional councils must identify these areas in regional policy statements and plans.

Fisheries Act 1996

Section 8 – Purpose

The Act contains an explicit purpose to provide for the utilisation of fisheries resources while ensuring sustainability. Section 8(2) states that:

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 Supreme Court has affirmed that the above purpose statement incorporates "the two competing social policies reflected in the Act" and that "both policies are to be accommodated as far as is practicable in the administration of fisheries under the quota management system. In the attribution of due weight to each policy that [the weight] given to utilisation must not be such as to jeopardise sustainability".[21]

The Act does not define the term "adverse effects". It is up to the Minister of Oceans and Fisheries, based on "best available information", to form a view as to the extent to which fisheries utilisation is having an adverse effect on the aquatic environment, taking into account the environmental principles.

Section 5(a) – International obligations

Section 5(a) of the Act requires that MPI act in a manner consistent with New Zealand's international obligations relating to fishing when making decisions or exercising functions, duties and powers. Relevant agreements include the United Nations (UN) Convention on the Law of the Sea, and the Convention on Biological Diversity,

Section 5(b) – Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

Section 5(b) requires decisions made under the Act to be consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act). To help ensure we meet this obligation, Fisheries New Zealand engages extensively with iwi, iwi fisheries forums and Te Ohu Kaimoana to seek views and input into proposals to manage the environmental effects of fishing.

[21] New Zealand Recreational Fishing Council Inc v Sanford Limited and Ors [2009] NZSC 54 at [39].

Section 9 – Environmental Principles

Section 9 sets out environmental principles which any person exercising or performing functions, duties, or powers under the Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account. The principles are:

- Associated or dependent species should be maintained above a level that ensures their long-term viability.[22]
- Biological diversity of the aquatic environment should be maintained.[23]
- Habitats of particular significance for fisheries management should be protected.

Section 10 – Information Principles

Section 10 sets out information principles which any person exercising or performing functions, duties, or powers under the Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account.

The principles are:

- decisions should be based on the best available information:
- decision-makers should consider any uncertainty in the information available in any case:
- decision-makers should be cautious when information is uncertain, unreliable, or inadequate:
- the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.

Specifically, we should be mindful of the best available information and associated uncertainties that surround the information that supports key management settings (eg, area closures, method restrictions). Also, we need to consider whether or not to proceed on the basis of available information if we are aware there is other information available which can be obtained without unreasonable cost, time or effort.

Tools available

Section 11 – Sustainability Measures

Section 11 enables the Minister of Oceans and Fisheries to put in place sustainability measures, either by regulations or through Gazette notices. These measures can include closing areas to fishing or certain methods and specifying certain fishing practices or gear to be used in the course of fishing.

Section 11(1) states that the Minister may set or vary such sustainability measures after taking into account:

[22] Associated or dependent species are defined in the Act as any non-harvested species (such as protected species) taken or otherwise affected by the taking of a harvested species. The Act defines long-term viability as in relation to a biomass level of a stock or species, means there is a low risk of collapse of the stock or species, and the stock or species has the potential to recover to a higher biomass level.

[23] The Act defines “biological diversity” as the variability among living organisms, including diversity within species, between species, and of ecosystems.

- Any effects of fishing on the stock or the aquatic environment; and
- Any existing controls that apply to the stock or area concerned; and
- The natural variability of the stock concerned.

Section 11(2) details a range of other matters the Minister must also have regard to, such as regional plans under the RMA or management plans made under the Conservation Act 1987.

Section 11(2A) requires that the Minister take into account:

- Any conservation services or fisheries services; and
- Any relevant fisheries plan approved under this Part; and
- Any decisions not to require conservation services or fisheries services.

Section 15 – Fishing related mortality of marine mammals or other wildlife

This section relates to changes in protected species. The Minister can take steps to further avoid, remedy, or mitigate adverse fishing impacts on marine mammals or other wildlife, including prohibiting fishing in certain areas or using certain gear.

Section 16 –Emergency measures

Section 16 states that if satisfied that there is or has been a serious decline in the abundance or reproductive potential of one or more stocks or species the Minister may, by notice in the Gazette, impose such emergency measures in respect of any stocks or areas affected, or both, as the Minister considers necessary or expedient in the circumstances. Section 16 also applies where there has been an outbreak of disease or a serious adverse change in the aquatic environment.

Emergency measures can include closing any area by prohibiting the harvesting of fish or restricting fishing methods, and consultation with interested parties must occur. Emergency measures under s 16(1) can be in force for three months and may be extended for a further nine months. This means emergency measures are in the nature of a holding action until other more permanent measures can be put in place - if these prove necessary.

Section 186A – Temporary closures of fishing area or restriction on fishing methods

Section 186A applies specifically to customary fishing and empowers the Minister to temporarily close any area of New Zealand fisheries waters or restrict or prohibit the use of any fishing method, if this will recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights.

Section 297 – General Regulations

Section 297 allows for the making of regulations to support the Fisheries Act, and includes regulation on fish stocks, fishing areas, gear type, methods of processing and reporting, and any other provisions that could reasonably be required to support the administration of the Act.

Addendum to Regulatory Impact Statement: Resource Management Amendment Bill no.2 – Addressing the Resource Management Act 1991-Fisheries Act 1996 Interface

Purpose of Document	
Proposal:	To add a requirement for councils to seek concurrence (agreement) of the Ministry for Primary Industries Director General prior to notifying a plan that contains rules on fishing, as part of the substantive proposal to amend the RMA-Fisheries Act interface
Advising agencies:	Ministry for Primary Industries, Ministry for the Environment, Department of Conservation
Linkages with other proposals	This is an addendum to the substantive Regulatory Impact Statement: *Resource Management Amendment Bill no.2 – Addressing the Resource Management Act 1990-Fisheries Act 1996 Interface*
Date finalised	4 December 2024

Executive Summary

This analysis is an addendum to the substantive RIS for amending the RMA-Fisheries Act interface submitted in August 2024, and does not duplicate matters covered in that analysis.

Ministers have agreed to amend the Resource Management Act 1991 (RMA) to clarify and constrain the extent to which regional councils can control fishing for marine protection purposes. The intent of these changes is to clarify the role of regional councils and ensure that biodiversity and related marine protections under the RMA are better balanced with considerations of fishing rights and interests.

Following substantive decisions on amending the interface, Ministers asked to add concurrence of the Ministry for Primary Industries Director General (MPI DG) to the package of amendments. The purpose of this is to add further checks and balances into the system to ensure adequate consideration to fisheries rights and interests. Beyond this direction Ministers did not indicate preference for a specific approach to concurrence.

Concurrence would involve the MPI DG having a greater degree of oversight over council proposals to control fishing. Concurrence could provide additional assurance that council proposals give appropriate and accurate consideration to fishing rights and interests; that MPI input is appropriately considered during council planning processes; and that proposed council controls would not progress if there were significant impacts on fishing.

This document analyses options for concurrence of the MPI DG. It covers four options:

- **Option one: status quo (no concurrence)** – the RMA-Fisheries Act is amended as per the previously agreed-to changes:
    - Regional coastal plans cannot include controls that impact fishing unless controls are notified in a proposed plan by councils;

- The potential impacts of controls on fishing are to be specifically considered as part of existing council planning and evaluation processes;
- Councils cannot make rules under the RMA that apply to customary non-commercial fishing;
- Fishing cannot be subject to resource consenting; and
- Controls on fishing to protect indigenous flora and fauna do not have immediate legal effect.

- **Option two: Quality assurance concurrence** – Option one (status quo) and:
  - Adding a process-based decision where the MPI DG must be satisfied that a council's assessment of proposed marine controls has appropriately considered the impacts on fishing, and that the information has quality, clarity, and accuracy, in order for that proposal to progress.

- **Option three: Threshold concurrence** – Option one (status quo) and:
  - Adding a substance-based decision where the MPI DG must be satisfied that the council proposal would not have significant or undue adverse effects on fishing, in order for that proposal to progress.

- **Option four: Balancing concurrence** – Option one (status quo) and:
  - Adding a substance-based decision where the MPI DG must be satisfied that the council proposal on fishing is proportionate in relation to the expected benefits, in order for that proposal to progress.

On balance, we consider that any form of concurrence provision would add cost, risk, and complexity to the process and may be unnecessary given other changes being progressed, which serve to provide assurance that fisheries matters will be appropriately considered in council plan-making processes.

However, if an additional layer of central government oversight over regional marine controls that impact fishing is weighted more highly, then **Option two: Quality assurance concurrence** is our preferred option. This option would provide additional assurance that council rules that impact fishing are developed following a robust process and would ensure that MPI input is given appropriate consideration. It maintains the primacy of councils as the substantive decision-maker over whether to place controls on fishing. This aligns best with the policy intent of the substantive proposal to amend the RMA-Fisheries Act interface; to clarify the interface so that existing council authority for councils to make rules on fishing is maintained subject to further constraints.

The timing of when MPI DG concurrence would take place was also considered, and on balance we recommend the concurrence decision occurs prior to a council plan being publicly notified. Pre-notification is the major decision point for the substance of a proposal, because marine protection areas that contain rules that impact fishing can only be introduced by councils via a notified plan. Early concurrence will best achieve the intent of MPI DG oversight over council rules on fishing while avoiding the risks associated with post-submissions concurrence.

Limitations and Constraints on Analysis

There are limitations and constraints to this analysis.

In addition to concurrence, there may be other legislative or operational avenues that would ensure an additional layer of consideration to fisheries rights and interests. These alternative options were

not considered. This is in part due to the scope of Ministerial direction – officials were asked to provide advice on adding concurrence of the MPI DG to the substantive policy proposal. It was also due to lack of time to consider alternatives.

There is a lack of supporting evidence for the options in the addendum as engagement was completed before Ministers requested that concurrence be considered. Compressed timeframes have also limited the range of options, and analysis of the proposed options.

This paper does not cover the subsequent Ministerial request to add a consultation requirement with Te Ohu Kaimoana. This matter can be addressed in the Departmental Report at the Select Committee stage.

Responsible Manager(s)

Eugene Rees, Manager Fisheries Policy, Ministry for Primary Industries

Fiona Newlove, Manager Marine Policy, Ministry for the Environment

Angela Bell, Manager Marine Policy, Department of Conservation

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for Primary Industries (MPI) Ministry for the Environment (MFE)
Panel Assessment & Comment:	The Quality Assurance panel made up of members from the Ministry for Primary Industries and the Ministry for the Environment assessed the addendum to the initial regulatory impact analysis to determine if their initial QA statement applies. The panel decided that the initial statement still applies, as below. The panel considers the impact analysis undertaken for the RM Bill 2 – RMA-Fisheries Act Interface Regulatory Impact Statement (RIS) **partially meets** the Quality Assurance criteria. The limitations and constraints of the proposals have been clearly outlined. However, the compressed time frame and limited consultation has limited the range of options and the level of supporting evidence and analysis of the proposed options. The panel considers that more time for consultation and the inclusion of stakeholder feedback could have improved the scope and depth of the impact analysis. A qualitative description of the costs and benefits of the options are outlined. No quantitative evidence provided due to data and time limitations. The lack of cost or benefit evidence in the analysis has resulted in inconclusive analysis of the options. Options are complex and unclear due to multiple sub-options. The complexity and lack of clarity of options makes it difficult to understand how they will be implemented and hence to assess their impacts. However, the options in the Addendum are clearly described. The RIS acknowledges that there will be both positive and negative impacts on Māori depending on their views on fisheries rights and approaches to protection of the marine environment. However there has been inadequate

	engagement with Māori. This evidence gap and lack of consensus among Māori could pose significant risks on implementation.

Section 1: Background

What is the context behind the policy problem?

1. Both the Resource Management Act 1991 (RMA) and Fisheries Act 1996 (the Fisheries Act) can be used to control the effects of fishing on biodiversity. The RMA concerns the sustainable management of natural and physical resources such as air, water, soils, and ecosystems. The Fisheries Act is narrower in scope and specifically concerns the sustainable use of fisheries resources. It also provides for mitigating the adverse effects of fishing on the marine environment.

Drivers for change: reform of the resource management system

2. Major reform of the resource management system is underway. As part of the ongoing RMA reform programme, in June 2024 Cabinet directed officials to investigate options for amending the interface between the RMA and the Fisheries Act to ensure effectiveness and efficiency, to reduce regulatory overlap, and provide certainty over the extent to which the RMA can control access to fisheries resources. The substantive policy problem and rationale for amending the RMA-Fisheries Act interface is provided in paras 20-45 of the substantive RIS.

3. Cabinet agreed that amendments to the RMA-Fisheries Act interface would be progressed via the Second Resource Management Amendment Bill (Bill 2). Cabinet also delegated substantive policy decision-making on amending the interface to the Minister Responsible for RMA Reform, the Minister for Oceans and Fisheries, and the Minister of Conservation and Māori-Crown relations (the delegated Ministers).

Substantive decisions on amending the RMA-Fisheries Act interface

4. Delegated Ministers received substantive advice on amending the RMA-Fisheries Act interface in August 2024.

5. Delegated Ministers agreed to a package of proposed amendments to clarify the interface between the RMA and the Fisheries Act, and to constrain the extent to which councils can control fishing for marine protection purposes under the RMA. Regulatory Impact Analysis of these amendments are covered in paras 70 – 92 of the substantive RIS. In summary, the proposed amendments are:

    a. *Regional coastal plans cannot include controls that impact fishing unless controls are notified in a proposed plan by councils;* this will limit third party discretion in seeking new fishing controls, increasing certainty over where, when and how controls on fishing may be proposed and ensuring that the substantive proposal is subject to the rigor of early council planning assessment processes;

    b. *The potential impacts of controls on fishing are to be specifically considered as part of existing council planning and evaluation processes;* this will provide

certainty and visibility about how the impacts on fishing activity are to be considered in council decision-making, and support a more consistent evaluation[1] approach across councils;

c. *Councils cannot make rules under the RMA that apply to customary non-commercial fishing;* this will address concerns and uncertainty around the interaction of customary fishing rights and rules under the RMA;

d. *Fishing cannot be subject to resource consenting;* this will address concerns and uncertainty around fishing activity being unnecessarily subject to an additional regulatory framework; and

e. *Controls on fishing to protect indigenous flora and fauna do not have immediate legal effect;* this addresses the risk that significant controls on fishing could come into effect prior to the consultation and submissions stage – i.e. before fisheries stakeholders have the opportunity to provide substantive feedback on rules which may significantly impact them.

6. Collectively, the above package of proposed amendments will increase certainty that biodiversity and related marine protections under the RMA are better balanced with considerations of fishing rights and interests. The ability for councils to progress local marine protection rules in the coastal marine area will also be maintained.

Request for further advice on decision-making concurrence

7. Following substantive decisions on amending the interface, delegated Ministers asked officials for further advice on adding decision-making concurrence of the Ministry for Primary Industries Director General (MPI DG) as part of the substantive proposal to amend the RMA-Fisheries Act interface.

Section 2: What is the policy problem or opportunity?

Policy opportunity

8. Ministers asked to add concurrence of the MPI DG to the package of amendments to add further checks and balances in the system to ensure adequate consideration to fisheries rights and interests. Officials formulated specific options for concurrence of the MPI DG based on this understanding.

9. Including concurrence of the MPI DG could provide additional assurance that:
   a. proposed council controls on fishing give appropriate and accurate consideration to fishing rights and interests;
   b. MPI input, including perspectives and information on fisheries management and science, is appropriately considered during council planning processes; and/or
   c. proposed council controls that would have significant or disproportionate impacts on fishing would be less likely to progress.

[1] Section 32 (s 32) of the RMA refers. Section 32 requires councils to prepare and publish an evaluation report when they prepare or amend a plan or policy statement. Councils must examine whether the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA, and whether the provisions (that is the policies, rules, and other methods) are the most appropriate way of achieving the objectives. s 32 will be amended to add a set of specific criteria that councils must consider in relation to the impacts of proposed rules on fishing activity.

10. The appropriate form of concurrence would depend on which of the above outcome(s) Ministers are seeking to achieve.

Section 3: Deciding on an option to address the policy problem

What criteria will be used to compare options to the status quo?

11. The criteria to be applied are the same as those in the substantive RIS (these criteria apply to all proposals that are part of the RMA reform programme to ensure consistent evaluation).

    Effectiveness: the extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements.

    Efficiency: the extent to which the proposal achieves the intended outcomes/objectives for the lowest cost burden to affected parties.

    Certainty: the extent to which the proposal ensures regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time.

    Durability & Flexibility: the extent to which the proposal enables the regulatory system to evolve in response to changing circumstances or new information on the regulatory system's performance, resulting in a durable system.

    Implementation Risk: the extent to which the proposal presents implementation risks that are low or within acceptable parameters.

What scope will options be considered in?

12. The scope of feasible options has been limited by Ministerial direction, and the options reflect this. No additional consultation was undertaken on concurrence.

What is "concurrence"?

13. A concurrence (agreement) provision in legislation generally requires specified decision-makers to perform an assessment of a proposal, or aspects of a proposal, against specified criteria.

14. Concurrence requires decision-maker(s) to receive their own independent advice on the matters under consideration. If the decision-makers agree that the proposal meets the specific criteria, the proposal can proceed. Disagreement from one or more decision-maker(s) could lead to range of potential outcomes including the requirement to amend a proposal, or the complete halting of a proposal.

15. There are some existing concurrence provisions in fisheries related legislation:

    a. The Marine Reserves Act 1971 requires the concurrence (agreement) of the Minister for Oceans and Fisheries and Minister of Transport with the decision of the Minister for Conservation in order for a marine reserve to be put in place. The purpose of Minister for Oceans and Fisheries concurrence in this context is to ensure consideration is given to how fisheries rights and interests may be impacted by a proposed marine reserve, and to weigh the effect on fishers against the overall public

benefit.

b. An MPI DG concurrence provision was also included in the recently passed Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill, which requires the concurrence (agreement) of the MPI DG with the consent authority before a council can proceed with a review of consent conditions. The purpose of MPI DG concurrence in this context is to provide assurance that consent reviews will only occur where necessary to meet the purpose of the legislation and will not undermine the ongoing viability of business operations.

General risks and trade-offs of concurrence that apply to all concurrence options

16. Any form of concurrence carries the following general risks. Some of these risks can be mitigated during design, and the degree to which the risks apply will vary depending on the specific form of concurrence. Concurrence may:

    a. Introduce an additional decision-point and layer of regulation into the process;

    b. Redistribute aspects of decision-making authority from local to central government and has the potential to undermine locally driven planning processes, which may be perceived as undue central government overreach;

    c. s 9(2)(h) [redacted]

    d. Protract the council planning processes (potentially by a significant amount depending on the nature and timing of concurrence); and

    e. Require additional resources from MPI and councils (potentially by a significant amount depending on the nature and timing of concurrence).

Options: type of concurrence provision

Option One – Status quo (No concurrence)

17. The RMA-Fisheries Act interface will be amended as per the previously agreed to package of amendments described in para 5, without an added concurrence provision.

Option Two – Quality assurance concurrence (preferred)

18. This option would include the previously agreed amendments and: for a council to progress an area with a marine protection rule that affects fishing, the MPI DG must agree that a council's s 32 assessment has given appropriate consideration to impacts in fishing (in accordance with the newly inserted criteria that provide explicit direction on how councils should assess the impacts on fishing), and must be satisfied with the quality, clarity, and accuracy of the council's assessment.

19. Under this option the MPI DG would not be concurring with the substance of the decision (i.e. the substantive decision on whether to progress rules that impact fishing) but rather that the assessment has been undertaken consistently with relevant s 32 assessment criteria. Therefore, so long as the MPI DG finds that the impacts on fishing were properly identified and considered in line with s 32 amendments, councils would remain the substantive decision-makers over whether rules on fishing can progress.

Option three – Threshold test concurrence

20. This option would include the previously agreed amendments and: for a council to progress an area with a marine protection rule that affects fishing, the MPI DG must be satisfied that the council proposal would not have significant or undue adverse effects on fishing.

21. This approach would be based on the Undue Adverse Effects (UAE) aquaculture test[2]. MPI performs this test when an applicant is seeking a resource consent for a marine farm. The purpose of the UAE test is to protect existing legitimate uses of coastal marine waters for fishing against diminution by the expansion of aquaculture. A proposed marine farm cannot proceed if MPI assesses that it would have "undue" (unreasonable or going beyond what is appropriate) adverse effects on fishing.

22. The purpose of adding a concurrence assessment based on the UAE approach would be to ensure that proposed controls that MPI considers will have an undue impact on fishing will not progress. Consistent with how the UAE test is performed, under this approach the MPI DG would only consider the impact on fishing, rather than balancing the impacts on fishing against the expected benefits of the proposal (i.e. to biodiversity).

23. Compared to Option two, under Option three the MPI DG would be concurring with the substance of the decision rather than whether good process was followed. This makes the MPI DG the substantive decision-maker over whether rules on fishing can progress.

Option four – Balancing test concurrence (discounted)

24. This option would include the previously agreed amendments and: for a council to progress an area with a marine protection rule that affects fishing, the MPI DG must consider the impacts on fishing in relation to the benefits and objectives of the proposed controls, and then make an overall judgement as to whether the suggested controls on fishing are appropriate or not. This would be similar to concurrence processes under the Marine Reserves Act.

25. The MPI DG would broadly consider the same matters the council did, including any factors considered during the council s 32 evaluation process. This could include:

    a. the impacts of the proposal on fishing rights and interests;

    b. the specific values that the proposal would protect such as biodiversity, outstanding natural character, natural features, cultural values, historic/heritage values, or amenity values (i.e. the benefits of the proposal);

    c. the broader social, cultural, and economic benefits and risks of the proposal; and

    d. the other costs of the rules (e.g. to other users).

26. Similar to Option three, under Option four the MPI DG would be concurring with the substance of the decision rather than whether good process was followed. This makes the MPI DG the substantive decision-maker over whether rules on fishing can progress. The difference with Option three is the factors the MPI DG must consider to reach their decision; under Option three the MPI DG focuses only on the impacts on fishing (without considering the potential benefits of constraining fishing), whereas under Option four they

[2] Section 186GB(1) of the Fisheries Act refers.

would weigh up the broader risks and benefits against each other.

27. This option has been discounted as being viable as it would:

    a. require MPI to consider a range of benefits and objectives of a council plan beyond the impacts on fishing, in which MPI does not have core expertise;

    b. result in MPI duplicating most aspects of council evaluation and analysis; and

    c. could have significant resourcing implications on MPI; and could significantly delay council planning processes.

Treaty Impact Analysis

28. This analysis supplements the Treaty Impact Analysis provided in the substantive RIS. The constraint on this analysis is that no additional consultation has been undertaken on concurrence.

Option 1: Status quo (no concurrence)	Treaty Impact Analysis of the substantive proposal is provided at pages 29 to 38 of the substantive RIS. The previously agreed to package of amendments was seen as an improvement on the status quo as it provides certainty that customary fishing rights cannot be impacted by any controls established by regional councils in the coastal marine area. This option provides assurance that greater consideration is given to wider fishing rights and interests (including Māori commercial fishing interests).
Option 2: Quality Assurance	This option aims to ensure a consistent and evidence-based process has been undertaken, including to ensure that the impacts on fishing (including Māori commercial and customary fishing) have been robustly and accurately considered by councils. For this option we consider there are no further Treaty impacts to those already described for Option 1: status quo (substantive proposal).
Option 3: Threshold	This option considers the impacts on fishing (including Māori commercial and customary fishing), which is a material benefit. It would not consider the benefits, other costs, or objectives of the proposed rule, and therefore would not take the broader spectrum of Māori views, rights, and interests into account. For example, under this option there is a risk that council rules on fishing that are supported through Joint Management Agreements, Mana Whakahono a Rohe, or Iwi/ Hapū Management Plans may be rejected if they are assessed to have undue adverse effects on fishing. This option also raises the issue of central government overriding local processes, which may be considered in conflict with the Treaty principle of participation. Māori participation tools under the RMA support their involvement in the development of RMA plans – for example, councils must consult with affected tangata whenua of the area through iwi authorities and any customary marine title group during the preparation of the proposed plan. The exercise of central government control under this option may limit the ability of Māori to achieve desired management outcomes through the RMA process.
Option 4: Balancing	This option considers the impacts on fishing (including Māori commercial and customary fishing) in relation to wider matters including the benefits of the proposed controls, which may include consideration of broader Māori views, rights, and interests (such as the viewpoints of Joint Management Agreements, Mana Whakahono a Rohe, or Iwi/ Hapū Management Plans on the proposed rules). This option still raises the issue of central government overriding local processes. The exercise of central government control under this option may limit the ability of Māori to achieve desired management outcomes through the RMA process.

How do the options for concurrence compare against the status quo?

	Status quo (no concurrence and previously agreed to package of amendments)	**Option 2:** Quality assurance concurrence *(preferred)*	**Option 3:** Threshold concurrence	**Option 4:** Balancing concurrence *(discounted)*
Effectiveness	**0**	- • Does not contribute to regulatory efficiency and clarity as it introduces an additional decision-point; risks protracting council planning processes • Increases certainty as to when and how fishing interests are to be considered in council planning processes	- • Does not contribute to regulatory efficiency and clarity as it introduces an additional decision-point; risks protracting council planning processes • Increases certainty as to when and how fishing interests are to be considered in council planning processes	- • Does not contribute to regulatory efficiency and clarity as it introduces an additional decision-point; risks substantively protracting council planning processes • Increases certainty as to when and how fishing interests are to be considered in council planning processes
Efficiency	**0**	- • Adds additional cost, time, and complexity into the process due to added layer of regulation. The additional cost burden falls on MPI and regional councils • Concurrence decision-making focused on MPI's expertise (assessing the impacts on fishing)	- • Adds additional cost, time, and complexity into the process due to added layer of regulation. The additional cost burden falls on MPI and regional councils. • Concurrence decision-making focused on MPI's expertise (assessing the impacts on fishing)	- - • Most resource-intensive of the options due to the breadth of factors the MPI DG would need to consider in their concurrence assessment; adds significant additional cost, time, and complexity into the process due to added layer of regulation. The additional cost burden falls on MPI and regional councils • Concurrence decision-making requires MPI to evaluate areas outside of direct expertise. MPI would likely require support from other agencies (e.g. the Department of Conservation) to assess these elements effectively • Likely to result in MPI replicating most aspects of council evaluation and

				analysis, causing duplication of effort by central and local government
Certainty	**0**	+ • Provides additional assurance that proposed council rules on fishing give appropriate and accurate consideration to fishing rights and interests, and that council marine protection areas that contain rules that impact fishing are developed following a robust process • Controls that MPI considers may be unwarranted or as having an undue impact on fishing may still progress (as MPI is not the substantive decision-maker)	+ • As MPI would be the substantive decision-maker, provides certainty that controls that MPI considers will have an undue impact on fishing will not progress • Provides greatest certainty for fishing interests. However, may add uncertainty for councils and other stakeholders as to whether marine protection controls will be progressed	+ • As MPI would be the substantive decision-maker, provides certainty that controls that MPI considers will have disproportionate impact on fishing (in relation to the benefits) will not progress • May provide some additional certainty for fishing interests. However, may also add uncertainty for councils and other stakeholders as to whether marine protection controls will be progressed
Durability & Flexibility	**0**	**0** • More consistent with status quo RMA s 32 evaluation processes; adds an additional layer of checks and balances to ensure robust processes are followed.	- • More prescriptive assessment where MPI only considers the risks to fishing and not the benefits of constraining fishing. This is inconsistent with integrity and purpose of RMA s 32 evaluation processes, in which risks and benefits are weighed against each other. • Adds complexity with two forms of test – likely with different thresholds or criteria – within the same evaluation process.	**0** • More consistent with status quo RMA s 32 evaluation processes, in which the risks and benefits of a proposal are weighed against each other.

Implementation Risk	**0**	**-** • Maintains primacy of councils as the substantive decision-maker over whether to place controls on fishing, whilst influencing 'good' decision-making. • s 9(2)(h) 	**- -** • Higher risk than option 2 of being seen as undue central government overreach: removes primacy of councils as the substantive decision-maker over whether to place controls on fishing. • s 9(2)(h) 	**- -** • Higher risk than option 2 of being seen as undue central government overreach: removes primacy of councils as the substantive decision-maker over whether to place controls on fishing. • s 9(2)(h) 
Overall assessment	**0** Progress previously agreed-to package of amendments to the RMA-Fisheries Act interface.	**-** • Would add additional cost, time, and complexity into the process due to added layer of regulation • However, would also provide increased certainty that fishing controls will be developed following a robust process	**- -** • Would add additional cost, time, and complexity into the process due to added layer of regulation. On balance, marginally poorer outcome when compared to Option 2 due to greater implementational risks and lower flexibility of option • However, would also provide certainty that controls that will have undue adverse impacts on fishing will not progress	**- -** • Would add significant additional cost, time, and complexity into the process due to added layer of regulation. On balance, poorer outcome when compared to Options 2 and 3 due to greater implementation risks, significant resourcing costs, and inefficiency of option • However, would also provide additional assurance that council proposals where the impacts on fishing outweigh the benefits cannot be progressed

Key:

+ better than the status quo **-** worse than the status quo **0** about the same as the status quo

Additional policy consideration: timing of concurrence decision

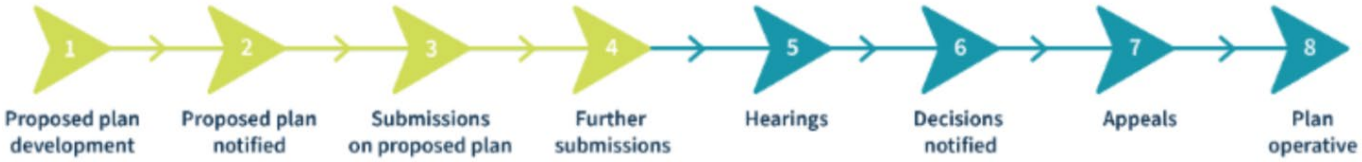
29. If a concurrence provision is pursued, the timing of the MPI DG's decision should also be considered. There are two viable options for when the MPI DG concurrence decision could occur in the council planning process:

    - Option A: prior to public notification of the plan (between stages 1 and 2 below). Under this option, the MPI DG concurrence assessment and decision occurs after the council had completed their s 32 evaluation report and immediately prior to the council publicly notifying their plan (i.e., prior to the plan advancing to the public submissions stage).; or

    - Option B: following the public submissions process (between stages 5 and 6 below). Under this option, this MPI DG assessment and decision occurs after a plan has gone through the public submissions and hearings process, and immediately prior to subsequent council decisions on amending a plan.

30. Later timing options (from stage 6 and beyond) have been discounted as they risk overriding decisions of the Environment Court, or of Ministers.

Diagram: high-level steps in council plan change process



How do the timing options compare against each other?

	Pros	Cons
Option A– prior to public notification of the plan (between stages 1 and 2)	**Effectiveness** • As per previously agreed amendments to the interface, councils can only progress marine protection areas that contain rules that impact fishing if proposals are included in notified plans (para 5(a) refers). Therefore, the plan notification stage is the major decision point for progressing a substantive proposal to control fishing, and early concurrence will best achieve the intent of MPI DG oversight and influence over council rules on fishing. **Certainty** • Creates most certainty for users as there is less risk of rules being overturned at a late stage of the process. **Implementation risk** • s 9(2)(h) [redacted]	**Effectiveness** • There is a risk that MPI DG may not be agreeing to the most 'final' version of the rules due to their scope to change via the public submissions process. However, this risk is mitigated as: ○ previously agreed amendments to the interface that constrain plans from including marine protection areas that contain rules that impact fishing unless they are included in notified plans (para 5(a) refers): this means that substantive new controls on fishing cannot be introduced following plan notification; ○ any new rules must align with the marine protection objectives sought by councils for the specific notified area (i.e., any subsequent rule changes must align with the outcomes the council is seeking); and ○ Under status quo RMA submissions processes MPI (and other interested

	Durability and flexibility • More regulatory flexibility (i.e. leeway to amend a plan) prior to public notification of a proposed plan.	parties) are able to submit on any further proposed rule changes that arise via the submissions process. This means that MPI still has recourse to provide feedback on further changes.
Option B– following the public submissions process (between stages 5 and 6)	**Effectiveness** • The MPI DG would be agreeing to a more 'final' version of the rules, as rules on fishing may have some (albeit relatively limited) scope to change via the submissions process.	**Certainty** • The risk of proposals changing late in the process creates the greatest uncertainty for users. **Efficiency** • Risks wasted effort and resource by councils and submitters. **Implementation risk** • Risks delaying a timebound statutory process (councils have two years after notifying a plan to make final decisions • s 9(2)(h) **Durability and flexibility** • Less regulatory flexibility following public notification and the submissions phase; enabling efficient and effective MPI DG concurrence at this stage would be more operationally complex.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Type of concurrence

31. Overall, concurrence would add cost, risk, and complexity into the process and may be unnecessary given other changes being progressed, which serve to provide assurance that fisheries matters will be appropriately considered in council processes. On balance, concurrence may not contribute to the assessment criteria of regulatory efficiency and effectiveness.

32. However, concurrence may be preferred if an additional layer of assurance that fisheries interests will be robustly considered and a greater degree of central government oversight over regional marine controls, are weighted more highly.

33. If a concurrence provision is pursued, officials consider that **Option two – Quality assurance concurrence** is the better option. This provides additional assurance that council rules on fisheries matters are developed following a robust process and ensures that MPI input is given appropriate consideration. It maintains the primacy of councils as the substantive decision-maker over whether to place controls on fishing – this aligns best with the policy intent of the substantive proposal to amend the RMA-Fisheries Act interface; clarify the interface so that existing authority for councils to make rules on fishing is maintained subject to new constraints.

Timing of concurrence

34. On balance, the benefits of pre-notification concurrence would outweigh the benefits of post-notification concurrence. As plan notification is the major stage where substantive fishing rules may be progressed, early concurrence will best achieve the intent of MPI DG oversight over council rules on fishing and create greatest certainty for users. The benefits of later concurrence (MPI would be agreeing to a more 'final' version of the fishing rules) do not outweigh the uncertainty and operational complexity associated with this timing.

Cost-benefit analysis

- This supplements the cost-benefit analysis provided in the substantive RIS. It analyses the preferred option: pre-notification, quality assurance concurrence (noting the limited supporting evidence for this analysis as engagement was completed before Ministers requested the additional options be considered).

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of preferred option (pre-notification, quality assurance concurrence) compared to taking no action			
Regulated groups (fisheries stakeholders)	May halt or delay the progression of RMA controls supported by fisheries stakeholders.	Low	Low
Regulators (MPI, MfE, local government)	Costs of doing quality assurance assessment and additional administrative processes will be borne by MPI and regional councils. May delay or protract council pre-notification planning processes. May delay or protract other BAU fisheries work for MPI.	Medium	High
Treaty Partners	May halt or delay the progression of RMA controls supported by Māori.	Low	Low
Public and communities	May halt or delay the progression of RMA controls supported by the public and local communities.	Low	Low
Total monetised costs	Not available - difficult to quantify.	N/A	N/A
Non-monetised costs	May be perceived as overriding local planning processes; reputational risk to central government and MPI. Delays in the progression of council planning processes may have broader social impacts on local communities.	Low	Low
Additional benefits of preferred option (pre-notification, quality assurance concurrence) compared to taking no action			
Regulated groups (fisheries stakeholders)	Increased certainty that proposed council rules give appropriate consideration to fishing rights and interests.	Medium	High

Regulators (MPI, MfE, local government)	Increased certainty that MPI input, including information on fisheries management and science, is given appropriate consideration during the council planning processes.	Medium	High
Treaty Partners	Increases certainty that proposed council rules consider Māori fishing rights and interests.	Low	Low
Public and communities	Not available - difficult to quantify.	Low	Low
Total monetised benefits	Not available - difficult to quantify.	N/A	N/A
Non-monetised benefits	Increases certainty and visibility as to when and how fishing interests are to be considered in council planning processes. The main benefactors of this will be MPI and fisheries stakeholders.	Low	Medium

Section 4: Delivering an option

35. There are no additional implementational or monitoring and evaluation considerations relevant to this addendum.