



27 March 2019

AQUACULTURE DECISION REPORT — BAY FRESH AQUACULTURE LTD, COASTAL PERMIT U180468, PIPI BAY, PORT UNDERWOOD

PURPOSE

1 This report sets out my aquaculture decision (as the relevant decision maker¹) for an aquaculture decision request made under section 114(4)(c)(ii) of the *Resource Management Act 1991* (**RMA**). The aquaculture decision request is described below. My aquaculture decision is made under section 186E of the *Fisheries Act 1996* (**Fisheries Act**).

SUMMARY

2 I am satisfied the aquaculture activities proposed within the area of coastal permit U180468 will not have an undue adverse effect on the following fishing sectors:

- *recreational* - for the reasons set out in this report and summarised in paragraph 17;
- *customary* - for the reasons set out in this report and summarised in paragraph 17;
- *commercial* - for the reasons set out in this report and summarised in paragraph 40.

AQUACULTURE DECISION REQUEST DETAILS

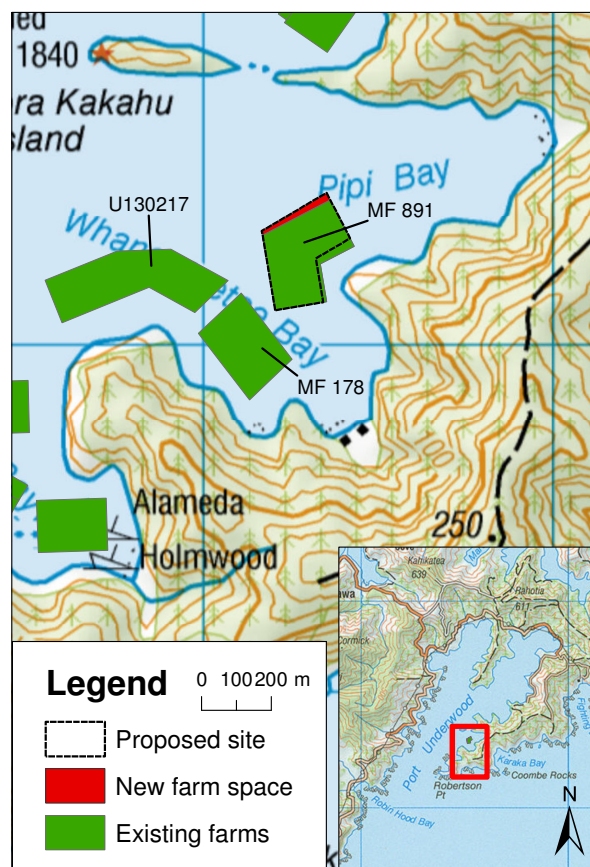
Regional Council:	Marlborough District Council (MDC)
Date of Request:	24 October 2018
Coastal Permit Applicant:	Bay Fresh Aquaculture Ltd
Location of marine farm site:	Port Underwood
Size of farm:	4.93 ha renewal and small repositioning of existing farm including 0.37 ha of new space offshore and 0.37 ha relinquished inshore.
Species listed on consent:	Green-lipped mussel (<i>Perna canaliculus</i>).
Farm structures:	Standard marine farm longlines and anchors with droppers

Location and structures

3 Coastal permit U180468 (**proposed site**) applies to an area off the small headland between Pipi Bay and Whangatoetoe Bay on the eastern shoreline of Port Underwood (Map 1). The proposed site occupies 4.93 ha, of which 0.37 ha is new space and the rest is the renewal of marine farming permit 891 (**MF 891**). 0.37 ha of the existing consented area is being relinquished.

¹ Acting under authority delegated to me by the Director-General of the Ministry for Primary Industries (**MPI**) in accordance with section 41 of the *State Sector Act 1988*.

4 The closest existing farms to the area of the proposed new site (apart from MF 891), are marine farming permit 178 (**MF 178**), and resource consent U130217 to the west (Map 1).



Map 1²: Location of the proposed site (area authorised by coastal permit U180468) at Port Underwood (MPI, 2019).

5 The proposed site will extend the already operational 15 longlines and droppers offshore and relinquish the same area inshore. This will allow one additional longline to be installed. A site map of structures can be found in Appendix A.

² Disclaimer: Maps 1-6 and all accompanying information accompanying (the “Maps”) is intended to be used as a guide only, with other data sources and methods, and should only be used for the purpose for which it was developed. The information shown in the Maps is based on a summary of data obtained from various sources. While all reasonable measures have been taken to ensure the accuracy of the Maps, MPI: (a) gives no warranty or representation in relation to the accuracy, completeness, reliability or fitness for purpose of the Maps; and (b) accepts no liability whatsoever in relation to any loss, damage or other costs relating to any person’s use of the Maps, including but not limited to any compilations, derivative works or modifications of the Maps. Crown copyright ©. The maps are subject to Crown copyright administered by Ministry for Primary Industries (MPI). Data Attribution:

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Environment

6 The original marine farm site at this location was approved with an exclusion area where cobble substrate existed. The boundaries of the proposed replacement site have been altered to remove all cobbled substrate so only silt and clay substratum occurs within the new boundaries.

7 Abundance and diversity of fauna at the proposed site was independently surveyed and reported as low, and typical of the substrate type and the location (Davidson and Richards, 2017). The only species observed that is known to have fisheries value was sea cucumber. Macroalgae were reasonably abundant. The effects of the existing mussel farming activity on the benthic habitat appeared to be typical.

Input from stakeholders

8 MPI did not seek any information from the public on this application because it largely involves the renewal of an existing marine farm in an area traditionally used for marine farming.

STATUTORY CONTEXT

9 Section 186E(1) of the Fisheries Act requires me to, within 20 working days after receiving a request for an aquaculture decision from a regional council, make a determination or reservation (or one or more of them in relation to different parts of the area to which the request relates).

10 A ‘*determination*’ is a decision that I am satisfied that the aquaculture activities authorised by the coastal permit will not have an undue adverse effect on customary, recreational, or commercial fishing³. A ‘*reservation*’ is a decision that I am not satisfied that the aquaculture activities authorised by the coastal permit will not have an undue adverse effect on fishing.

11 If I make a reservation, I am required to specify whether the reservation relates to customary, recreational or commercial fishing or a combination of them. If the reservation relates to commercial fishing, I must specify the stocks and area concerned—section 186H(4).

12 Section 186GB(1) of the Fisheries Act specifies the only matters I must have regard to when making an aquaculture decision. These matters are as follows:

- (a) the location of the area that the coastal permit relates to in relation to areas in which fishing is carried out;
- (b) the likely effect of the aquaculture activities in the area that the coastal permit relates to on fishing of any fishery, including the proportion of any fishery likely to become affected;
- (c) the degree to which the aquaculture activities in the area that the coastal permit relates to will lead to the exclusion of fishing;
- (d) the extent to which fishing for a species in the area that the coastal permit relates to can be carried out in other areas;
- (e) the extent to which the occupation of the coastal marine area authorised by the coastal permit will increase the cost of fishing; and

³ Section 186C of the Fisheries Act defines “adverse effect,” in relation to fishing, as restricting access for fishing or displacing fishing. An “undue adverse effect” is not defined. However, the ordinary meaning of “undue” is an effect that is unjustified or unwarranted in the circumstances. For the purpose of my decision under section 186E, an undue adverse effect will mean the significance of the effect on restricting access for fishing, displacing fishing or increasing the cost of fishing is unjustified or unwarranted in the circumstances.

- (f) the cumulative effect on fishing of any authorised aquaculture activities, including any structures authorised before the introduction of any relevant stock to the quota management system.

13 For the purpose of my assessment, customary fishing differs from recreational fishing if it is undertaken outside of the recreational limits provided in the *Fisheries (Amateur Fishing) Regulations 2013* (**Amateur Regulations**) and is instead authorised by a customary authorisation.

14 Appendices B and C have further information on statutory context and customary fishing respectively.

ASSESSMENT

15 The following is an assessment, within the statutory context, of the effects of the proposed aquaculture activities on recreational, customary and commercial fishing. It is based on all the relevant information available to me.

16 This assessment relates to the 0.37 ha of new marine farming space authorised by coastal permit U180468.

Recreational and customary fishing

17 I am satisfied the aquaculture activities that may operate within the proposed site will not have an undue adverse effect on recreational or customary fishing because:

- only a small amount of recreational and customary fishing is likely to occur at the proposed site;
- anchored rod/line fishing and diving could still occur at the proposed site;
- there are other recreational and customary fishing areas available in Port Underwood and the wider Marlborough Sounds;
- occupation of the proposed site will result in a minimal, if any, increase in the cost of recreational or customary fishing;
- the likely effect of occupation of the proposed site on recreational and customary fishing is only small; and
- this small effect added to existing effects of approved aquaculture space will not cause the cumulative effect on recreational or customary fishing to become undue.

18 The above conclusions were reached following the more detailed assessment below.

Location of the coastal permit area relative to fishing areas

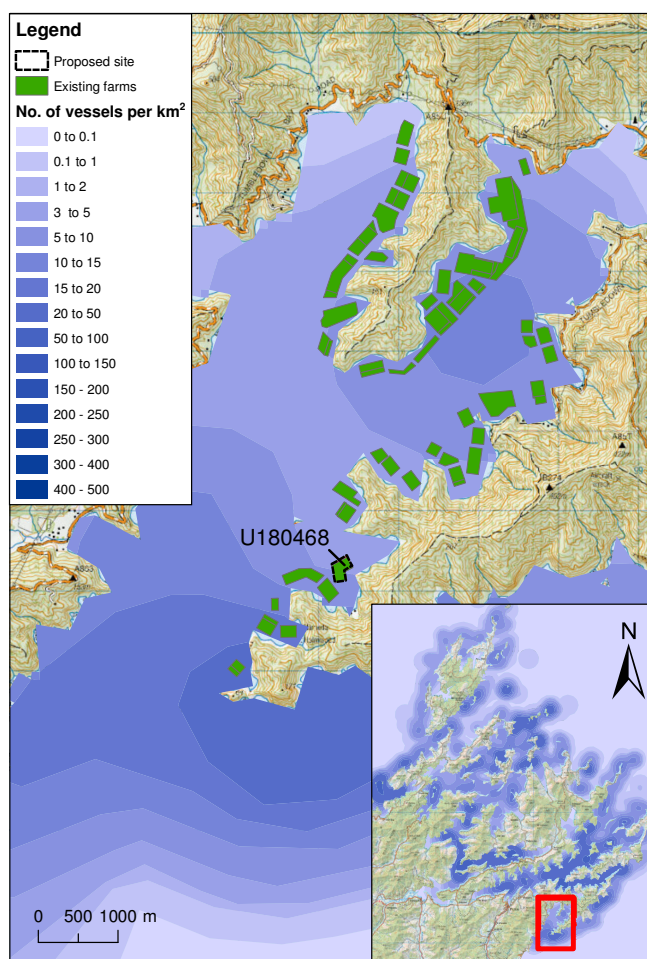
20 The location of the coastal permit area relative to fishing areas for recreational and customary⁴ sectors are considered separately below.

⁴ There is little quantitative data available on customary or recreational catch taken from the proposed site. Fishing locations for customary authorisations are usually only reported at the Fisheries Management Area (**FMA**) or Quota Management Area (**QMA**) although more specific sites are sometimes identified. Customary authorisations issued under regulations 50 and 51 of the Amateur Regulations do not need to be routinely reported. Recreational fishers are not required to report catch or fishing locations. MPI is therefore unable to estimate an average annual recreational catch or proportion of recreational catch likely to be affected by the proposed aquaculture activities. Rather, MPI can only assess the effect of the proposed aquaculture activities on recreational fishing based on qualitative information.

Recreational Fishing

21 I consider the area of the proposed site is located where a relatively small amount of recreational fishing occurs. Methods likely to be used include mobile and stationary rod/line fishing from a boat, diving and perhaps longlining and set netting. Species which may be caught include tarakihi, kahawai, gurnard, moki, flatfish and maybe snapper.

22 There have been three surveys of recreational fishing in the Marlborough Sounds that included aerial mapping of fishing location.⁵ About 4.5% of all vessels fishing in the Marlborough Sounds in 2005-06 fished in the survey zone that includes Port Underwood and the coast up to Tory Channel. These surveys provide evidence that the location of the proposed site is of lesser importance for recreational fishing from boats than other areas along the coast nearby (Map 2).



Map 2. Aerial survey results from 2006 of recreational fishing intensity in Port Underwood (Davey *et al.*, 2008).

23 The proposed site falls within an area that is exempt from the surrounding prohibition on set netting. Set netting is prohibited in the general location from Cape Jackson to the Clarence River to protect marine Hector's and Maui dolphins. However, along some of this

⁵ A 12 month period in 2005-06 (Davey *et al.*, 2008), for two days in 2014-15 (Hartill, *et al.*, 2015) and again for 12 months in 2015-16 (Hartill, *et al.*, 2017).

shore, including Port Underwood, a 200 m strip close to shore has been exempt for certain types of set netting that would allow flatfish and butterfish to be caught.

24 Very little fishing has been reported in Port Underwood from Amateur Charter Vessels⁶ (ACV).

25 Table 1 summarises my assessment of the main methods used and species likely to be caught by recreational fishers at the proposed site based on the recreational fishing survey of Davey et al. (2008), the benthic survey (Davidson and Richards, 2017), ACV data, and other sources.

⁶ ACV data is reported through Activity Catch Returns and includes fishing positions, target and caught species numbers, and methods used.

Table 1: Recreational fishing methods used and species likely to be caught and targeted at the area of coastal permit U180468 based on the available information.

	Davey <i>et al.</i> (2008) results for the survey zone including Port Underwood	ACV data for Port Underwood	Submissions	Other information	My assessment
Methods used	Rod/line from private boat (44% of trips), diving from private boat (21% of trips), drag netting (16% of trips), hand gathering and potting (5% of trips), rod/line from charter vessel (2%), rod/line and diving from shore (<3%of trips).	Hand lining. ⁷	In submissions on previous applications in the area (mainly northeastern arm of Port Underwood) the main methods cited are line fishing from a private boat, hand gathering and long lining from shore and private boat.	<p>The silt, clay and relatively flat seabed close to cobbles and reef is suitable for hand lining, set netting and perhaps diving inshore from the proposed site. No species that are typically taken by dredging were observed by Davidson and Richards (2017).</p> <p>Set netting is prohibited in Port Underwood except for a strip 200 m from shore and only during January to April. The exclusion zone was implemented because set netting close to shore for flatfish, moki and butterfish is common along the south island east coast.</p>	<p>Stationary and mobile rod/line methods, set netting and diving from a private boat are likely the main used methods at the site.</p> <p>Access to the adjacent shore is limited so shore-based fishing (eg, by rod/line, drag netting or flatfish spearing) is unlikely.</p>
Species caught (top 10)	Mussels, oysters, paua and rock lobster, blue cod, moki, butterfish, kahawai, tarakihi, hapuka.	Blue cod, tarakihi, gurnard and sea perch.	Previous submissions note blue cod, kahawai, red cod, tarakihi and kingfish, mussels, pipis, cockles, crabs, crayfish, moki, monk fish, snapper and gurnard as species caught in the northeastern arm of Port Underwood (proposed new site combined with existing farm is in the western arm) of Port Underwood.	No scallops or oysters were observed by Davidson and Richards (2017).	<p>Tarakihi, kahawai, sea perch, gurnard, moki, and flatfish are likely the species most commonly caught at the proposed site.</p> <p>Blue cod and butterfish could be caught inshore of the proposed site. The proposed site is too deep for species taken by hand gathering.</p> <p>The coastal permit area is likely to be too shallow for fishing for hapuku.</p>

⁷ Including rod / line fishing.

Customary Fishing

26 I consider the proposed site is located where there is likely to be little, if any, customary fishing. Any customary fishing is likely to be by rod/line from a boat, set netting, diving or perhaps longlining. The main species targeted in this area are likely to be butterfish, moki, terakihi, flatfish, and mussels.

27 Available information on customary fishing is primarily qualitative information from submissions and quantitative catch information from customary authorisations.⁸ Further details on specific customary fishing information can be found in Appendix C.

28 I have assessed likely customary fishing in the proposed site in Table 2 below.

Table 2: Customary fishing methods used and species caught or targeted at the area of coastal permit U180468⁹

	Source of information		
	Customary authorisations for Port Underwood	Other information	My assessment
Methods used	Methods not specified	Recreational fishers commonly use stationary and mobile rod/line methods, diving, set netting and possibly some longlining. Customary fishers may also use these methods.	Rod/line from boat, diving and set netting are likely the most common methods for recreational fishers and may also be used by customary fishers.
Species caught or targeted	Butterfish, moki, terakihi, rock lobster, kina and paua are the species most commonly targeted by customary fishers in Port Underwood. Other species include blue cod, flatfish, mussels, rig, trevally, kahawai and scallops.	Paua, kina, rock lobster, blue moki, blue cod or green-lipped mussels are not typically found over the reef free substrate at the proposed site. No scallops were observed at the site by Davidson and Richards (2017)	Tarakihi, kahawai, sea perch, butterfish and moki are likely the species most commonly caught at the proposed site.

Exclusion of fishing

29 I consider that, of the recreational and customary fishing occurring in the area, set netting, longlining, and rod and hand line drift fishing may be excluded¹⁰ from the proposed site because of the risk of entanglement.

30 However, I consider that stationary rod and line fishing could continue between the proposed structures, as anecdotal information suggests fishers commonly fish by rod/line within mussel farms. Some diving may still occur.

⁸ Fishing locations for customary authorisations are usually only reported at the Fisheries Management Area (FMA) or Quota Management Area (QMA) although more specific sites are sometimes identified. Methods used are not reported. Customary authorisations issued under regulations 50 and 51 of the Amateur Regulations do not need to be routinely reported.

⁹ From January 2009 to June 2018 no customary authorisations with site-specific information were issued for Pipi Bay in Port Underwood but 449 customary authorisations were issued for Port Underwood.

¹⁰ Anecdotal information from recreational fishers suggests that spaces between longlines of mussel farms in the Marlborough Sounds are too narrow for longlining, set netting and trolling without risk of entanglement. I also consider that drift fishing is unlikely to occur within marine farms because of risk of entanglement.

Availability of other areas

31 I consider alternative areas in Port Underwood and the wider Marlborough Sounds could absorb recreational and customary fishing displaced from the proposed site because:

- the proposed site is only small and the amount of fishing that would occur there is likely small also;
- the same species seen over the silt and clay substrate at the proposed site could be found in most areas of Port Underwood and the wider Marlborough Sounds, where this substrate is common. No information suggests the proposed site offers unique habitats or species mix; and
- the same methods used at the proposed site could be used elsewhere in Port Underwood and other parts of the Marlborough Sounds; sufficient alternative areas exist especially for rod/line fishing and set netting.

32 There are closures and various species and method restrictions in place for recreational fishing, particularly for set netting in Port Underwood and the wider Marlborough Sounds. While these restrictions limit the availability of other areas, there is still a large area available for recreational fishing in relation to the small area of the proposed site.

33 Apart from the Long Island Marine Reserve and Fighting Bay,¹¹ all of the Marlborough Sounds is available for customary fishing under regulations 50 and 51 of the Amateur Regulations. Many alternative areas are therefore available for customary fishers.

34 Areas of authorised aquaculture space have reduced the availability of other recreational and customary fishing areas over time. The cumulative effects of existing aquaculture are further considered below.

Increased cost of fishing

35 I consider that the aquaculture activities at the proposed site will increase the cost of recreational and customary fishing minimally, if at all.

36 I consider that any recreational or customary fishing excluded from the site could be carried out nearby with minimal additional cost, as a result of a marginal increase in fuel cost or change in method. I consider that most species targeted at the site can still be taken, using alternative fishing methods.

Likely effect on fishing

37 I consider the effect on recreational and customary fishing from the proposed aquaculture activities will be small because:

- not all recreational or customary fishing methods would be excluded from the proposed site;
- the area of the proposed site is small and is unlikely to be of particular importance to recreational or customary fishers;
- alternative areas within Port Underwood and the wider Marlborough Sounds could absorb the recreational and customary fishing displaced from the proposed site.

¹¹ *Marine Reserves Act 1971* and the *Submarine Cables and Pipelines Protection Act 1996*.

Cumulative effects

38 I consider existing aquaculture in the Marlborough Sounds has affected recreational and customary fishing. There are approximately 3,700 ha of existing aquaculture in the Marlborough Sounds, approximately 200 ha of which is in Port Underwood.¹²

39 I consider the cumulative effects on recreational and customary fishing, including the aquaculture activities at the proposed site, will not be undue because:

- some recreational and customary fishing (eg, anchored rod/line fishing) can still occur within marine farms;
- not all existing farms are located in popular recreational and customary fishing areas; and
- the area of the proposed site is minimal with regard to all of the space available for recreational and customary fishing in the Marlborough Sounds.

Commercial fishing

40 I am satisfied the aquaculture activities that may operate within the proposed site will not have an undue adverse effect on commercial fishing because:

- a negligible amount of commercial fishing is likely to occur in the area;
- a negligible amount of commercial fishing is likely to be excluded from the proposed site;
- there are alternate fishing grounds in Port Underwood, SA017 and the relevant QMAs or FMA7 for any fishing excluded from the proposed site;
- occupation of the proposed site will result in a minimal, if any, increase in the cost of commercial fishing;
- effects on commercial fishing catch will be negligible; and
- the additional adverse effect on commercial fishing is only small and will not cause the cumulative effect on commercial fishing for any fish stock to become undue.

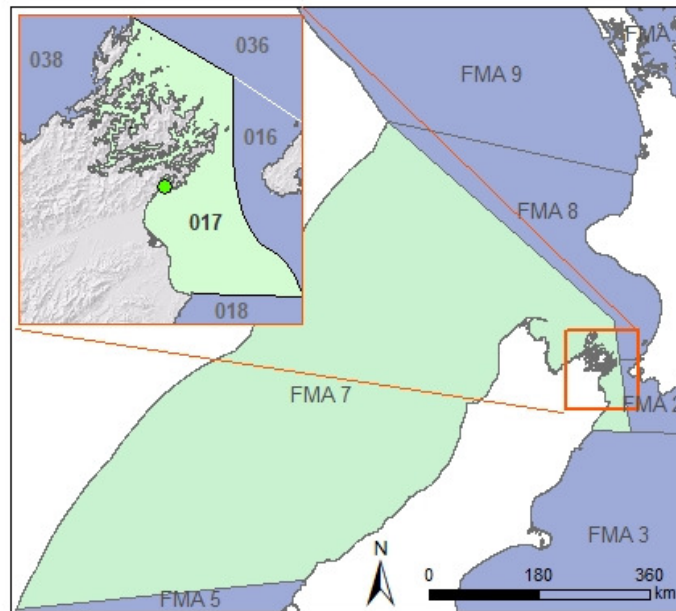
41 The above conclusions were reached following the more detailed assessment below.

Location of the coastal permit area relative to fishing areas

42 I consider the proposed site is located where there is little, if any, commercial fishing. It is possible, but unlikely that trawling, set netting and longlining could be affected by the proposed small extension to the existing farm.

43 Port Underwood is within Fisheries Management Area 7 (**FMA7**) (Map 3). Historically, most commercial fishing has been reported by statistical area. The area of the proposed site is in general statistical area 017 (**SA 017**) (Map 3), which extends from the eastern edge of D'Urville Island to Cape Campbell. Further detail on fisheries management and statistical areas is available in Appendix D.

¹² As noted, there is limited quantitative data available to assess the cumulative effects of authorised aquaculture on customary or recreational fishing. Therefore, MPI can only assess cumulative effects on customary or recreational fishing based on the amount of aquaculture already authorised in the relevant customary or recreational fishery and the likely importance of the area of the proposed site for fishing.



Map 3. Fisheries Management Area 7 (FMA7). Insert shows location of the proposed marine farm within statistical area 017 (green dot).

44 MPI has assessed the main fisheries, bathymetry and habitat known to occur in SA 017 and the relative amounts of fishing that report by start position. MPI has used this, along with institutional information, to inform Table 3 and the commercial fishing assessment below. Further detail on how MPI analyses commercial fishing can be found in Appendix D.

45 MPI considers a negligible amount of commercial fishing occurs at the proposed site. Table 3 gives the fisheries in the local statistical areas that might occur nearby and those that are known not to occur near the proposed site. The proposed site is tucked into a bay and surrounded by other marine farms so is unlikely to be within a trawl path. Set netting for butterfish and long lining could occur at the proposed site.

Table 3: Fisheries that are included in the commercial fishing assessment

Fishery segment (main fishstock and main fishing method) ¹³	Statistical area	% high spatial resolution	Average annual no. fishing days ¹⁴	% of main fishstock caught by this method and in this statistical area	Potentially affected by coastal permits?	Rationale for excluding fishery from proposed farm assessment
Inshore Mixed species, Trawl	017	99%	375	-	Yes	A few trawl events in this fishery may be displaced by the proposed marine farm.
Red cod (RCO7), Trawl	017	99%	186	15%	Yes	A few trawl events in this fishery may be displaced by the proposed marine farm.
Butterfish (BUT7), Set Net	017	59%	166	63%	Yes	Could possibly occur at the site but known to mostly occur along the outer coast of the Sounds.
Gurnard (GUR7), Trawl	017	99%	87	2%	Yes	A few trawl events in this fishery may be displaced by the proposed marine farm.
School shark (SCH7), Long Lining	017	23%	84	1%	Yes	Could possibly occur at the site
Spiny Dogfish (SPD7), Trawl	017	99%	68	7%	Yes	A few trawl events in this fishery may be displaced by the proposed marine farm.
Flatfish (FLA7), Trawl	017	96%	66	1%	Yes	A few trawl events in this fishery may be displaced by the proposed marine farm.
Mixed species, Set Net	017	52%	54	-	Yes	Could possibly occur at the site when targeting butterfish but mostly known to occur in inner Pelorus Sounds or along the outer coast of the Sounds
Sea cucumber (SCC7A), Diving	017	0%	36	-	Yes	Could possibly occur at the site
Other species, Diving	017	0%	21	-	Yes	There are a small amount of fishing trips that report diving for a variety of fish and invertebrate species. Depending on the species some could be found at the proposed site.
Mixed fishery, Long Lining	017	68%	13	-	Yes	Could possibly occur at the site
Rock Lobster (CRA5), Lobster Pot	933	0%	717	13%	No	Rock lobsters inhabit areas of hard substrate. This habitat type does not occur in the proposed site.
Hoki (HOK1), Trawl	017	100%	375	12%	No	There is no trawling in this fishery reported near the proposed area
Kina (SUR7), Diving	017	0%	184	88%	No	Kina inhabit areas of reef and hard substrate. This habitat type does not occur in the proposed site.

¹³ Main fishstock refers to the species most often caught by the relevant method; it does not include all species taken by that method. Figures from 2007/08 to 2016/17.

¹⁴ Excludes fisheries with less than 10 days fishing per year.

Table 3 continued.

Fishery segment (main fishstock and main fishing method)	Statistical area	% high spatial resolution	Average annual no. fishing days	% of main fishstock caught by this method and in this statistical area	Potentially affected by coastal permits?	Rationale for excluding fishery from proposed farm assessment
Ghost shark (GSH7), Trawl	017	99%	169	39%	No	There is no trawling in this fishery reported near the proposed area
Blue cod (BCO7), Cod Pot	017	0%	154	7%	No	Blue cod potting is highly unlikely to be affected as fishers are unlikely to set pots over soft substrate.
Hapuku and Bass (HPB7), Long Lining	017	28%	116	18%	No	Hapuku and bass are unlikely to be found in the shallow waters of the proposed site.
Surf clams, Dredge (PDO7, SAE7, MMI7)	017	0%	104	100%	No	Known to occur elsewhere and not at the proposed site.
Barracouta (BAR7), Trawl	017	100%	78	1%	No	There is no trawling in this fishery reported near the proposed area
Blue cod (BCO7), Hand Lining	017	0%	74	0%	No	Hand lining reported by commercial fishers is usually recreational fishing by crew whilst commercial fishing with other methods rather than hand lining for commercial landings.
Tarakihi (TAR7), Trawl	017	100%	73	6%	No	There is no trawling in this fishery reported near the proposed area
Other species, Potting	017	0%	32	-	No	Pots are most likely set over or near reefs.
Blue Warehou (WAR7), Trawl	017	100%	27	7%	No	There is no trawling in this fishery reported near the proposed area
Snapper (SNA7) Trawl	017	98%	16	2%	No	There is no trawling in this fishery reported near the proposed area
Oyster (OYS7C), Dredge	7MM	0%	11	100%	No	Known to occur further south and not in Port Underwood.
Flatfish (FLA7), Set Net	017	50%	214	2%	No	Set netting for other than butterfish is prohibited
School shark (SCH7), Set Net	017	95%	10	1%	No	Set netting for other than butterfish is prohibited

Exclusion of fishing

46 I consider that some commercial fishing could be excluded from the proposed site. The proposed new area of farming is 0.37 ha and this will be removed from space available for diving, longlining or set netting. Based on a 250 m exclusion zone for trawling around marine farms, about 6 ha will be removed from space available for trawling beyond the bounds of the area already excluded from trawling by the existing farm.

Availability of other fishing areas

47 I consider alternative areas in Port Underwood and other parts of SA 017 could absorb any commercial fishing displaced from the proposed site because:

- the same methods as those possibly used at the coastal permit area could be used elsewhere in Port Underwood or other parts of SA 017¹ and in the relevant QMAs or FMA7
- the species potentially targeted by commercial fishers within the proposed site are typically found over silt and clay substrate common throughout the rest of Marlborough Sounds, elsewhere in SA 017 and in the relevant QMAs or FMA7; and
- the area excluded to commercial fishing is small compared to the available area.

48 Areas of authorised aquaculture space have reduced the availability of other commercial fishing areas over time. The cumulative effects of existing aquaculture is considered further below.

Increased cost of fishing

49 I consider that the aquaculture activities at the proposed site will not increase the cost of commercial fishing.

50 While the proposed site may be located within a region used for commercial fishing, I consider that using alternative commercial fishing grounds would not result in an increase in the cost of commercial fishing. This is because the coastal permit area will only exclude a small area from commercial fishing and there are equally productive fishing grounds available nearby.

Likely effect on fishing

51 I consider the aquaculture activities at the proposed site will have a negligible adverse effect on commercial fishing.

52 Using CatchMapper and other commercial fishing analysis tools detailed in Appendix D, MPI estimates the amount of fishing that would be displaced by the aquaculture activities in the proposed site is less than 10 kg total for all species included in the assessment, as indicated in Table 3.

Cumulative effects

53 I consider existing aquaculture in the Marlborough Sounds has affected commercial fishing. There is around 200 ha of authorised aquaculture space in Port Underwood. There is approximately 3,500 ha of marine farms in SA 017 that make up about 24% of the 14,900 ha of aquaculture in FMA7.

¹ Few closures or restrictions in SA017 limit alternative areas for methods permitted in Port Underwood (ie, set netting and lining for taking finfish, and dredging, diving and other methods for taking non-fish species) but closures elsewhere in FMA7 limit alternative available areas, particularly for set netting.

54 I consider the cumulative effects on commercial fishing, including the aquaculture activities at the proposed site, will not be undue because:

- for any fish stocks potentially affected by the proposed site, the cumulative effect has previously been assessed as a maximum of approximately 2.3% effect on any fishery, and not undue;
- MPI estimates less than 10 kg of average annual catch is taken, for the fishing as assessed in Table 3 as potentially occurring in the proposed site; and
- this amount of catch is small and would not cause the cumulative effects of approved aquaculture space to become undue.

AQUACULTURE DECISION

55 I am satisfied – based on all relevant information available to me – the activities proposed for coastal permit area U180468 will not have an undue adverse effect on:

- a) recreational fishing, and
- b) customary fishing, and
- c) commercial fishing.

56 Accordingly, my decision is a determination for coastal permit U180468 with regard to:

- a) recreational fishing, and
- b) customary fishing, and
- c) commercial fishing.

57 The area of the determination on recreational, customary and commercial fishing is 0.37 ha comprising an area with the following coordinates (NZTM2000):

<u>Point</u>	<u>Easting</u>	<u>Northing</u>
1	1695348.24	5423438.63
2	1695162.56	5423329.23
3	1695164.43	5423317.28
4	1695351.03	5423417.26

58 The reasons for my decision are set out in the conclusions for recreational, customary and commercial fishing in this report.



David Scranney
Manager Customary Fisheries and Spatial Allocations
Fisheries New Zealand – Tini a Tangaroa
Ministry for Primary Industries – Manatū Ahu Matua

Dated 29 March 2019

References

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APPENDIX A: SITE AND STRUCTURES MAP

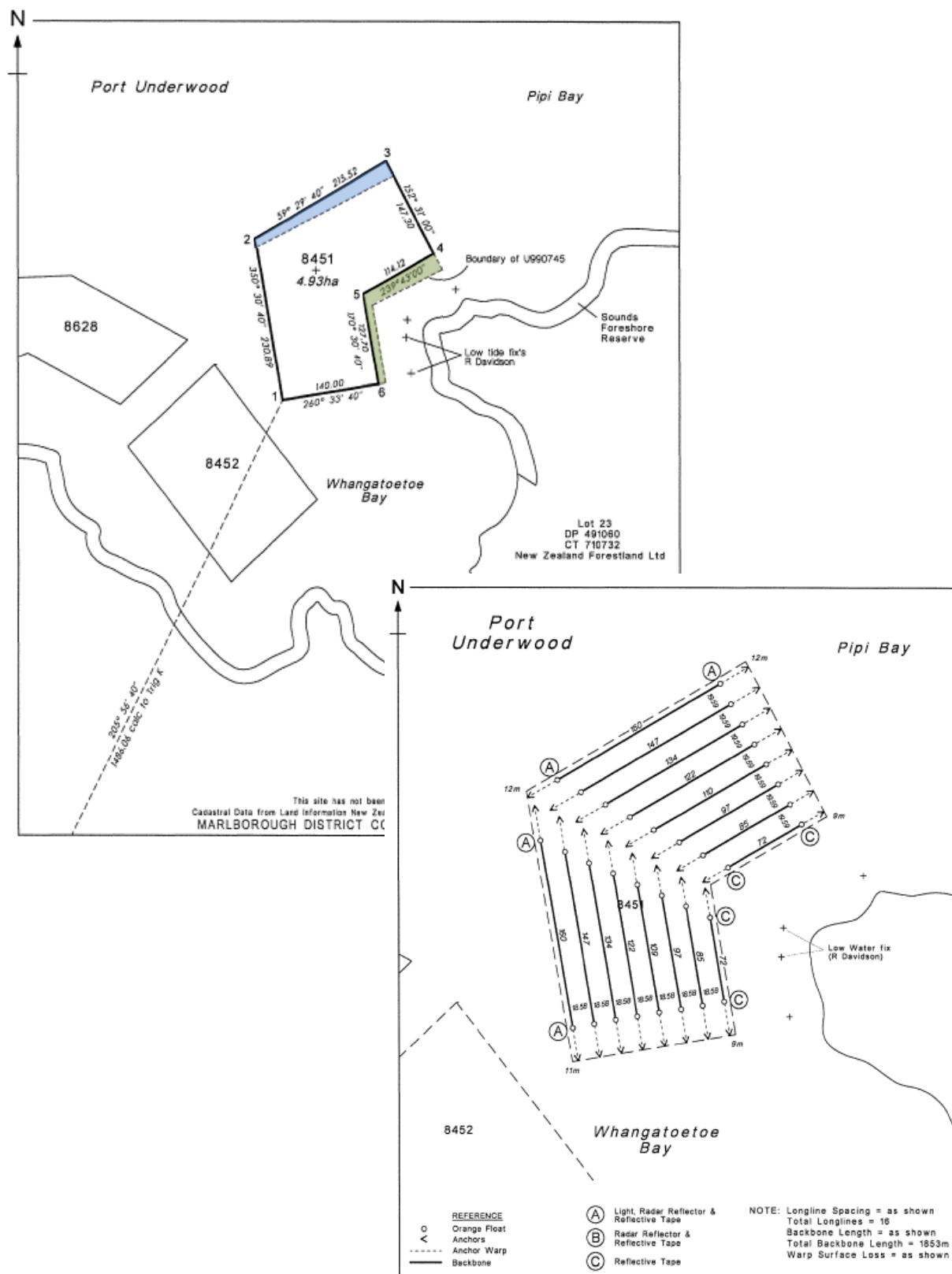


Figure 1. Site map showing location of new space and structures. New space in blue and area to be relinquished in green

APPENDIX B: ADDITIONAL STATUTORY CONTEXT

1 Section 186E(3) of the Fisheries Act ¹⁶ requires me, in making an aquaculture decision, to have regard to any:

- (a) information held by the Ministry for Primary Industries; and
- (b) information supplied, or submissions made, to the Director-General under section 186D(1) or (3) by:
 - i. an applicant for or holder of the coastal permit;
 - ii. any fisher whose interests may be affected;
 - iii. persons or organisations that the Director-General considers represent the classes of persons who have customary, commercial or recreational fishing interests that may be affected by the granting of the coastal permit or change to, or cancellation of, the conditions of the coastal permit; and
- (c) information that is forwarded by the regional council; and
- (d) any other information that the Director-General has requested and obtained.

2 Section 186F of the Fisheries Act specifies an order of processing that must be followed in making aquaculture decisions. But section 186F(5) allows aquaculture decisions to be made in a different order from that specified if I am satisfied that in making an aquaculture decision out of order it will not have an adverse effect on any other aquaculture decision that has been requested. I am so satisfied in this case.

3 Section 186GB(2) of the Fisheries Act says that if a pre-request aquaculture agreement has been registered under section 186ZH in relation to the areas that the coastal permit relates to, I must not have regard to the undue adverse effects on commercial fishing in respect of any stocks covered by the pre-request aquaculture agreement when having regard to the matters specified in section 186GB(1). No pre-request aquaculture agreements have been registered in relation to coastal permit U180468.

4 Section 186GB(1)(b) requires an assessment of the likely effects of the aquaculture activities on fishing of any fishery including the proportion of any fishery likely to be affected. “Fishery” is not defined either in section 186 or elsewhere in the Fisheries Act. However, “stock” is defined in section 2 to mean any fish, aquatic life, or seaweed of one or more species that are treated as a unit for the purposes of fisheries management. Parts (3) and (4) of the Fisheries Act focus on “stocks” for the purpose of setting and allocating Total Allowable Catches and managing species within the quota management system (**QMS**). Sections 186GB(1)(f) and (2) also refer to “stock” with specific regard to adverse effects on commercial fishing. So for the purpose of my decision under section 186E, I consider a commercial fishery is a fish stock delineated by a fisheries management area (**FMA**) or quota management area (**QMA**).

5 I consider the relevant recreational and customary fishery are as I have described in the assessment above in “*Location of the coastal areas relative to fishing area.*”

¹⁶ Section 186E(3)(a) of the Fisheries Act refers to the ‘Ministry of Fisheries’ which is now the Ministry for Primary Industries. Section 186E(3)(b) and (d) refers to the ‘chief executive’ who is now the director-general.

6 Section 186C of the Fisheries Act does not define “cumulative effect” beyond what is provided in section 186GB(1)(f) that the effect includes any structures authorised before the introduction of any relevant stock to the QMS. For the purpose of my decision under section 186E, “cumulative effect” on commercial fishing includes the total effect of all authorised aquaculture activities within the relevant QMA or FMA. For recreational and customary fisheries, the relevant areas for considering “cumulative effects” are as I have described in the assessment above in my consideration of section 186GB(1)(a) and (f). Sections 186GB(1)(a) and (f) relate to location at proposed site in relation to where fishing occurs and the cumulative effect of aquaculture, respectively.

7 The *Fisheries (South Island Customary Fishing) Regulations 1999* (**the South Island Regulations**) define customary food gathering as the traditional rights confirmed by the Treaty of Waitangi and the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992*, being the taking of fish, aquatic life, or seaweed or managing of fisheries resources, for a purpose authorised by Tangata Tiaki/Kaitiaki, including koha, to the extent that such purpose is consistent with tikanga Māori and is neither commercial in any way nor for pecuniary gain or trade.

8 The South Island Regulations and regulation 50 and 51 of the Amateur Regulations provide for Tangata Tiaki/Kaitiaki to determine the customary purpose for which fish, aquatic life, or seaweed may be taken, methods used, seasons fished, size and quantity taken etc. The South Island Regulations and regulations 50 and 51 do not contemplate restrictions under the Fisheries Act on the quantity of fish taken or the methods used to take fish. Should tangata whenua fish without customary authorisations, all the recreational limits under the Amateur Regulations apply.

APPENDIX C: CUSTOMARY FISHING

1 At least eight iwi at the top of the South Island may have customary fishing interests in the coastal permit area. While there are no existing customary management areas in the Marlborough Sounds (eg, taiapure-local fishery or mātaihai reserves), the eight iwi have jointly notified their Tangata Tiaki/Kaitiaki for an area/rohe moana that encompasses the new coastal permit area. The notification is currently in dispute.¹⁷

2 The eight iwi, collectively known as Te Tau Ihu o Te Waka o Maui (**Te Tau Ihu Iwi**), include those defined as tangata whenua in regulation 2 of the Fisheries (South Island Customary Fishing) Regulations 1999: the whānau, hapu or iwi that hold manawhenua manamoana over a particular area and are represented by Ngāti Apa Ki Te Rā To Trust; or Ngāti Koata Trust; or Ngāti Rarua Iwi Trust; or Ngāti Tama Ki Te Waipounamu Trust; or Te Runanga o Ngati Toa Rangitira; or Te Atiawa o Te Waka a Maui Trust; or Te Runanga a Rangitane o Wairau; or Te Runanga O Ngāti Kuia Trust.

¹⁷ Because the notification is in dispute, customary authorisations for the top of the South Island are issued under regulations 50 and 51 of the Amateur Regulations.

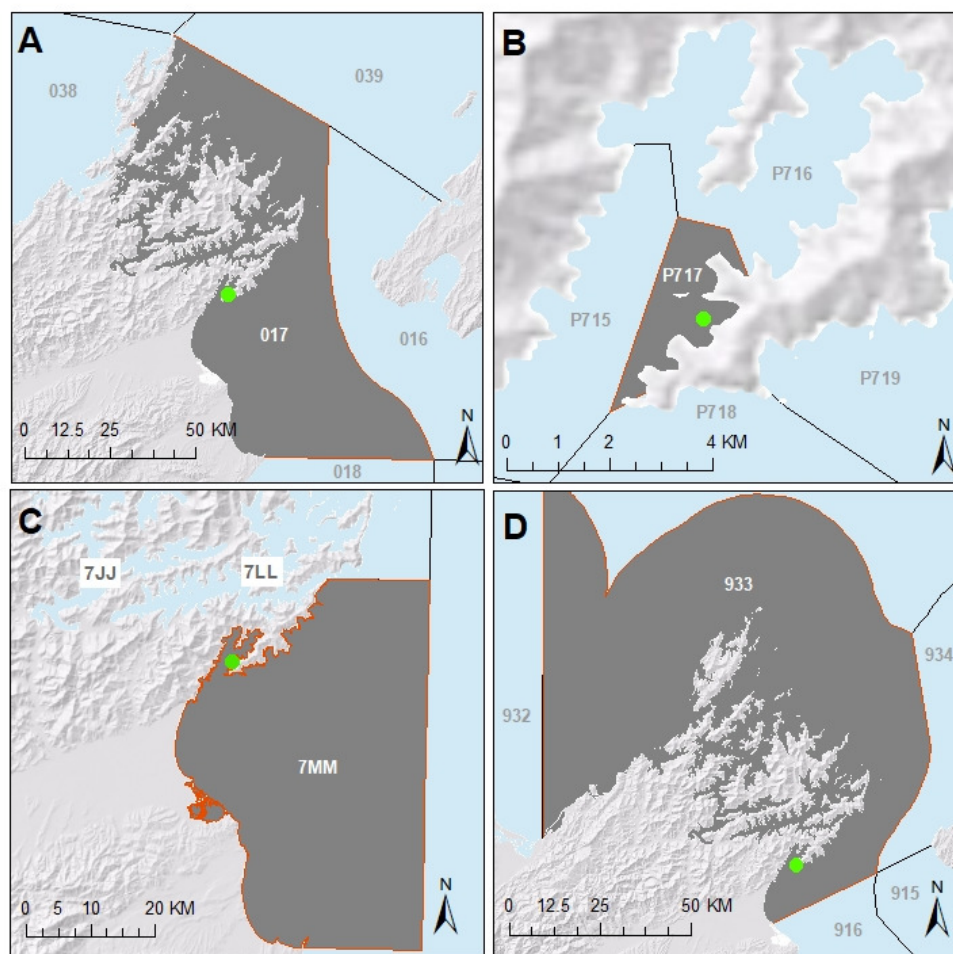
APPENDIX D: COMMERCIAL FISHING

Fisheries boundaries

1 A Fisheries Management Area (**FMA**) is one of the ten regions that the New Zealand 200nm Exclusive Economic Zone (**EEZ**) is divided into for fisheries management purposes. A Quota Management Area (**QMA**) is an area within which a designated fish stock is managed under the Quota Management System, and is generally based around FMAs. As noted, this application is in FMA7.

2 Fisheries reporting historically occurred by general statistical area. There are 120 of these areas in New Zealand's EEZ and this provides for more fine scale data to be collected than at an FMA scale. As noted, this application is in general statistical area 017 (Map 1A).

3 Scallops, oysters, rock lobster and paua are reported by species-specific statistical areas rather than by general statistical area. The area of coastal permit U180468 falls within rock lobster statistical area 933, paua statistical area P717, and scallop and oyster statistical area 7MM (Maps 1B-D).



Map D1: Species-specific statistical areas that encompass the area of coastal permit U180468 (approximate location as green circle). A General Statistical Area 017, B - Paua statistical area P717, C – Scallop and Oyster Statistical Area 7MM, D Rock lobster statistical area 933.

Commercial fishing reporting and analysis

4 Reporting by statistical area only provides coarse-scale information about where commercial fishing occurs. However, since 2007/08 vessels over 6 m long that have used trawl or line fishing methods have reported the start position of each fishing event by latitude and longitude to within 1 minute, which equates to around 1 nautical mile (nm). Since 2006/07, start positions for netting methods have reported to within 2 nm. Using this fine scale position data, MPI has modelled and mapped fishing intensity for different segments of fishing, characterised by a type of fishing gear and the main species caught.¹ This detail can be commercially sensitive and cannot be publically released

5 The location of fishing by vessels less than 6 m long within SA017 is unknown. However, based on information from fisheries officers and Maritime New Zealand, MPI has mapped long lining, bottom trawling and set netting by vessels less than 6 m as being within enclosed bays and within 3 nm of open coasts. Knowledge about species and information from commercial fishers and fishing companies, and Fishery Officers can also help to determine whether specific types of fishing are likely to occur in an area.

6 Maps of fishing intensity (effort per ha) for each fishing sector were used to calculate the average annual amounts of fishing effort that is likely to be displaced from the exclusion zone/s of the coastal permit area.² Average landings per unit effort for all species caught in each fishery segment were then used to estimate the amount of fish likely to have been landed

7 Fishing effort that is only reported by statistical area was apportioned evenly across the area available for fishing although some areas are likely to include more productive habitats than others. The parts of the statistical area available for fishing for each type of fishing method are defined by using all available information (including regulated closures, bathymetry, seabed substrate, and consultation with fishers) about where the method is likely to be used. Where fishing is reported to the statistical area level, there is increased uncertainty as to where fishing events have taken place within the statistical area.

8 The amount of fishing was averaged over October fishing years 2007/08 to 2016/17. Ten years is long enough to take into account natural variation in the abundance and distribution of fish stocks and fishing effort so that likely average future fishing is fairly represented.

¹ MPI developed the Catchmapper tool to model the estimated catch from landing data, and uses the best information available from fisheries statistics. This informs our assessment, and particularly, Table 3.

² The “exclusion zone” used for commercial fishing methods assessed is the coastal permit area, with the exception (where applicable) of dredging, trawling and seining. In sheltered waters, buffers of 50m, 250m and 500m respectively are applied. In open water buffers of 75m, 500m and 500m respectively are applied.