

# Characterising the regulatory seascape in Aotearoa New Zealand: Implications for policy and practice

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Summary

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## About the Sustainable Seas National Science Challenge

Our vision is for Aotearoa New Zealand to have healthy marine ecosystems that provide value for all New Zealanders. We have 75 research projects that bring together around 250 scientists, social scientists, economists, and experts in mātauranga Māori and policy from across Aotearoa New Zealand. We are one of 11 National Science Challenges, funded by the Ministry of Business, Innovation & Employment.

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Cover image: *Māhia Peninsula, Mathyus Hurmann*

# Characterising the regulatory seascape in Aotearoa New Zealand: Implications for policy and practice

The Sustainable Seas National Science Challenge is exploring opportunities for law and policy to support ecosystem-based management (EBM) in Aotearoa New Zealand's (NZ) marine environment.

Our previous research included a review of international approaches to providing for [EBM in law and policy of other countries](#), and found that some degree of fragmentation of marine law and policy is inevitable when managing the marine environment because of the complexity of the ocean and human relationships with it. Recognising and providing for the rights of Indigenous peoples (Māori in NZ) is critical to any marine reform process.

The research summarised here is based on our [detailed study](#) of existing legal and policy mechanisms that support implementing EBM in NZ at the regional and local scale. Our research focused on three key pieces of marine legislation: the Fisheries Act 1996, the Resource Management Act 1991 and the Marine and Coastal Area (Takutai Moana) Act 2011. We surveyed regional and unitary authorities and key government agencies, and analysed relevant policies and plans, to understand the implementation experience and potential for each of these laws.

We found that there are key, existing opportunities for incremental improvements to policy implementation for marine ecosystems under each of these laws.

## Summary of findings

We found the following in our review of the NZ's regulatory seascape:

- Initiatives are being taken to improve the interaction between different organisations working in marine regulation, from local to national scale (e.g. the establishment of a team within Fisheries NZ to work with local government coastal planners)
- There have been significant delays in implementing existing policies that support EBM in regional coastal planning (e.g. New Zealand Coastal Policy Statement 2010)
- In some cases, planning and regulatory mechanisms have resulted from court decisions, but have yet to be fully integrated through legislative or policy reform and plan reviews
- Natural ecosystem processes may take many years to fully respond to implementation of new regulations, which may produce mismatches like that between the duration of temporary fishery closure regulations to aid ecosystem recovery (e.g. rāhui) and the actual recovery of the ecosystem
- The separate development and implementation of significant environmental and resource management regimes (e.g. those of the Fisheries Act and those of the Resource Management Act) has challenged implementation of potentially complementary mechanisms
- Minor variations in implementing existing legislation, especially in relation to place-based tools available to Māori, may provide new pathways to enabling improved EBM (e.g. greater flexibility in the duration of rāhui)
- The approaches taken by regional councils to resourcing information gathering for EBM have been quite narrow, generally relying on general rating and not utilising occupational charges or co-operative approaches with research or private entities.

## The ‘Regulatory Seascape’

We explored the regulatory characteristics of New Zealand’s marine environment – what we call the ‘regulatory seascape’.

We focused on the nexus between the Resource Management Act, the Fisheries Act and the Marine and Coastal Area (Takutai Moana) Act as they affect EBM in marine environments.

Our previous research highlighted the importance of enabling the [rights, authority, beliefs and value systems](#) of Māori to support EBM. In this research we considered opportunities for Māori decision-making in existing regulatory processes in the marine environment. We also drew attention to the need for [‘relationality’](#) between people and place in decision-making and management, in particular across jurisdictional and geographic scales.

The three pieces of marine legislation we studied have legal and policy mechanisms that operate at different scales, and consequences for collaborating with Māori. The decision-making process of the Fisheries Act is primarily centralised, Resource Management Act decision-making is at the regional council level, and the Marine and Coastal Area (Takutai Moana) Act is at rohe, hapū, or whānau level.

The different scales at which decision-making is organised, and the different purposes for which their empowering legislation has been designed, means they may have overlapping and inconsistent temporal and spatial boundaries. This makes it difficult to effectively align their regulatory tools.

### *Shared understandings*

Prior to the 2019 Motiti Court decision ([Attorney-General v Trustees of the Motiti Rohe Moana Trust \[2019\] NZCA 532](#)) there appeared to be a shared understanding among many regional planning authorities and Fisheries NZ that the Resource Management Act could not control the effects of fishing activities.

That Court decision, clarifying that regional coastal plans can have rules controlling the effects of fishing in certain circumstances (eg, for biodiversity protection), paves the way for improved EBM in marine areas through clarifying the respective roles of the Resource Management Act and Fisheries Act in managing environmental impacts.

Aligning management under these two Acts will be critical, and developing the processes and skill sets to achieve this will be key to effective implementation of EBM.

Fisheries NZ has established a team to implement the new understanding of the regulatory environment by working with regional planning authorities. This could be a useful model for working with other aspects of regulatory integration discussed above.

### *Māori authority, kaitiakitanga and customary interests*

Taipure, mataitai reserves, customary fishing regulations (rāhui and tiaki permitting systems) provide expressions of customary rights with enforcement that can be supported through courts. Each of these mechanisms requires approval at the national level and provides minimal delegated powers to Māori.

They fall well short of tribal authority or co-governance, but potentially implement other aspects of customary interests in the context of EBM.

Taiapure, mataitai reserves and customary fishing regulations must be had regard to, and iwi management plans must be taken into account, by regional planning authorities under the Resource Management Act. Regional councils must recognise and provide for planning documents prepared by groups holding customary marine title for the title area and such planning documents must be taken into account outside those areas.

These requirements provide means for recognising, to a limited degree, relationships of Māori with their marine interests. They provide avenues for policies and rules supportive of Māori interests that may also implement EBM.

The recent court decisions (eg [Re Edwards \(Te Whakatōhea No. 2\) \[2021\] NZHC 1025](#)) about the basis on which customary marine interests and rights can be determined suggest that Customary Marine Titleholders (CMT) under the Marine and Coastal Area (Takutai Moana) Act could have a significant role in the long-term regulation of activities affecting EBM.

When the role of CMT plans in relation to regional coastal plans is combined with the recognition that regional coastal plans can control fisheries when it is for purposes governed by the Resource Management Act, then the possibility arises that CMT plans might influence regional coastal plans in such a way as to lead to constraints on fishing activities. Whether CMT plans could constrain fishing activities if the plans are implemented through regional coastal plans is unclear and untested. More generally, a CMT holder can decline to allow an activity authorised by a resource consent within the area for which the title is held, thereby providing potential for further restraint on activities that might hinder EBM.

### *Rāhui*

Rāhui (localised closures intended to increase the abundance of specific fisheries) appear to be an accepted approach to implementing aspects of EBM, but improvements are possible to the statutory tools that support them.

They are implemented through two-year temporary closures or restrictions under the Fisheries Act. These need to be renewed on request every two years and multiple renewals are not seen as fitting with the 'temporary' intent of the mechanism.

At the time of the research the Environment Court was hearing appeals on proposed rules in a regional coastal plan to implement a longer term hapū initiated rāhui restricting fishing for the life of the plan (at least ten years).

The outcome of this decision will provide some clarity over the potential for the Resource Management Act as a tool to recognise customary relationships where these relate to the effects of fishing at a local scale.

### *Enabling cooperative EBM*

Where localised or cross-scale integrated approaches have been reached between government agencies and Māori these have largely been through bespoke legislation or Treaty of Waitangi settlement legislation.

Some voluntary arrangements exist at local levels for collaborative monitoring and enforcement between agencies (eg, Department of Conservation and NZ Fisheries), but the potential to use Resource Management Act section 33 transfer provisions to allow cooperative EBM between agencies, between local authorities and central government agencies and Māori appears untested.

In 2017, the Resource Management Act was amended to include provisions for much greater empowerment of Māori in decision-making through mana whakahono ā rohe agreements. These have the potential to provide for key decision-making roles regarding implementing EBM in marine environments, if this is a priority for Māori.

### *Funding and data acquisition*

We found most regional councils are relying on general rates for funding their RMA activities, including the data needed to effectively implement their responsibilities in the marine environment. Some have found ways to collaboratively generate resources to acquire and share useful data.

More work needs to be done on identifying and linking existing mechanisms and regulatory requirements to gather information and resources to enable better implementation of EBM and to evaluate the effectiveness of the regulatory tools.

For instance, while the effectiveness of marine reserves and marine parks has received evaluative attention, there is little readily accessible information on the effects of other mechanisms able to contribute to delivering EBM (eg, the effects of taiapure, mataitai and regional coastal plans).

### *Are regulatory methods effective?*

The effectiveness of regulatory methods is difficult to assess as it takes time to implement new tools and there are natural delays in the biophysical systems' response to changing use because of new regulations.

The outcome of changes in national level policies that are implemented through local methods (e.g., regional coastal plans or rāhui) may take a long time to become apparent. This makes it difficult to assess whether regulatory tools are being effective unless there are effective monitoring mechanisms in place. Such mechanisms require good baseline and ongoing monitoring data which is expensive.

Competing priorities and claims on resourcing mean that more than a decade after the New Zealand Coastal Policy Statement 2010 was made five regional planning authorities were yet to notify new regional coastal plans.

Of the other regional councils, few had considered the implications of the new understandings regarding the relationship of regional plans and fishing activities. Most have left them until the next review of their plans.

The National Policy Statement on Fresh Water Management (NPSFWM) should reduce the adverse effects of freshwater born contaminants entering the marine environment, but the length of time that groundwater takes to reach the surface means that it will take a long time for beneficial effects to be evident. This will also vary from river mouth to river mouth depending on the catchment characteristics.

Although the benefits of no-take marine reserves for the restoration of habitats have been well-established, the benefits of closing areas to commercial fishing while allowing continued recreational fishing appear less certain. Unfortunately, we were not able to find robust comparative studies of the ecosystem benefits of taiapure or maitaitai reserves. Total closure rāhui, however, appear to be effective if in place for long enough.

## Implications for policy makers

Our results suggest the following options could be explored to support EBM:

1. Building capacity and capability at the regional level to:
  - a. integrate and develop underutilised existing regulatory options,
  - b. use existing mechanisms for sharing, integrating and utilising resources.

Examples of instances where this would be beneficial include:

- The use of existing mechanism such as Resource Management Act section 33 transfers and mana whakahono ā rohe agreements to facilitate cooperative relational approaches to EBM between Māori and regulatory authorities and between different regulatory authorities at the regional level, building on models of co-operative and trusted relationships (e.g., to develop and enforce regulations).
  - Customary marine title holder-led co-development and sharing of models of implementing EBM through management plans in ways that effectively influence other regulatory instruments.
2. Integrated mechanisms initiated by and with Māori to enable 6- to 20-year closure of marine areas to activities that adversely affect the ecosystem in order to enable ecosystem recovery

## Next steps

We are building on this research to [suggest options](#) for NZ law and policy to better support the health and resilience of marine ecosystems and related people.

This includes the need to embed ecosystem-thinking across [temporal and spatial scales](#), recognising and providing for the [intent guaranteed to Māori under Te Tiriti o Waitangi](#) and [kaitiakitanga](#), and the conditions that will support a transition towards EBM in marine law, policy and practice.