

Application 2021-048 Hananui Aquaculture Project (Ngāi Tahu Seafood Resources Limited)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision jointly with the Minister of Conservation under section 24 of the FTCA
Hon Kiritapu Allan, Minister of Conservation	Consider this report prior to making a decision jointly with the Minister for the Environment under section 24 of the FTCA
Date submitted: 9 December 2021	

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Pip Lee		
Manager	Stephanie Frame	s9(2)(a)	✓
Director	Sara Clarke	s9(2)(a)	

Introduction

1. The Ministry for the Environment has prepared this report in consultation with the Office for Māori Crown Relations – Te Arawhiti and in accordance with section 17 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. To satisfy obligations under section 6 of the FTCA, you must both consider this report before you make any decision under section 24 of the FTCA to accept the application to refer the Hananui Aquaculture Project to an expert consenting panel (a panel).

Proposed project

3. The applicant proposes to construct and operate an open ocean marine salmon farm within 2500 hectares of the coastal marine area (CMA) in Foveaux Strait (Te Ara a Kiwa), which will include exclusive occupation of 500 hectares of the CMA. A location map is in Attachment 1.
4. Ancillary activities required to support the project, such as servicing of barges, supply of smolt, and landing, processing and storage of fish will be undertaken at existing facilities at Bluff and elsewhere, and do not form part of the proposed project scope.

Essential information

5. The following information is required under section 17(3) of the FTCA for the project area.

Section of the FTCA	Information required	Detail
s17(3)(a)	Relevant iwi authority	Te Rūnanga o Ngāi Tahu (TRoNT) <i>Contact details are in Attachment 2</i>
s17(3)(b)	Relevant Treaty settlements	Ngāi Tahu Claims Settlement Act 1998 Maori Commercial Aquaculture Claims Settlement Act 2004
s17(3)(a)	Relevant Treaty settlement entities	TRoNT Takutai Trust Te Ohu Kaimoana <i>Contact details are in Attachment 2</i>
s17(3)(c)	Relevant principles and provisions of the Treaty settlements	<i>See below</i>
s17(3)(d)	Negotiation mandates recognised by the Crown	None
s17(3)(d)	Current Treaty settlement negotiations	None
s17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act	None that are relevant

Supporting material

Project area

- The project site covers a total of 2500 hectares lying between 1.7 and 6.1 kilometres (approximately) off the north-east coast of Stewart Island/Rakiura. The southern end of the site is approximately 10 kilometres north-west of the settlement of Oban (Half Moon Bay).
- The project site lies entirely in the coastal marine area of Foveaux Strait (Te Ara a Kiwa). This area, together with Stewart Island/Rakiura, forms an important part of the historical and cultural identity both for Ngāi Tahu iwi as a whole, and the Ngāi Tahu rūnanga and hapū of Murihiku (Southland) in particular.¹

¹ For further information refer to:

Section 3.6 Te Ākau Tai Tonga (Southland's Coastal Environment) in *Te Tangi a Tauira/The Cry of the People*, the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008, and

Schedule 104 of the Ngai Tahu Claims Settlement Act 1998: Statutory acknowledgement for Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait Coastal Marine Area).

Project details

8. Four separate marine farms are proposed within the project site. The farms each consist of two blocks of ten circular net pens and are referred to respectively as North-A and B, West-A and B, Mid-A and B, and South-A and B as shown in Attachment 3.
9. The pens will be fixed to the sea floor by a range of mooring lines and anchors. Five barges similarly anchored will also be installed at the site as operational bases for the farms.
10. The project will be developed in four stages over ten years, to eventually produce up to 16,000 tonnes of salmon per annum.
11. The applicant advises that smolt required to stock the farm in its initial stages can be obtained from existing hatchery operations. Stock for later stages may also be sourced from new hatchery facilities. The applicant also advises that the Ngāi Tahu Seafood Bluff plant already has facilities available to process product from the farm.

Statutory matters relating to this report

12. As the proposed project will occur in the CMA, decisions relating to referral of the project to a panel must be made jointly by the Minister for the Environment and the Minister of Conservation, in accordance with section 16(1) of the FTCA.
13. Section 17(1) of the FTCA requires you both to consider this report before making a decision under section 24 of the Act to refer the project to a panel, in order to satisfy your joint obligations under section 6 (Treaty of Waitangi) of the FTCA.
14. Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the MACAA or another Act which recognise, in relation to the project area, customary marine title or protected customary rights. We confirm that currently there are no such court orders relevant to the project area to consider in your referral decision.²

Iwi and iwi authorities

Information sources

15. Under section 7(1) of the FTCA, a relevant iwi authority for a referred project means an iwi authority whose area of interest includes the area in which a project will occur.
16. The FTCA does not define iwi authority, so under section 7(2) of the FTCA, it has the same meaning as in the Resource Management Act 1991 (RMA): the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
17. To identify the iwi authorities for RMA purposes which are relevant to the project area, information was sourced from:
 - a. the Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development - Te Puni Kōkiri (TPK)

²To date three orders recognising customary interests have been made under the Marine and Coastal Area (Takutai Moana) Act 2011, and one under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. These do not affect the proposed project area.

- b. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by TPK
- c. Ministry for the Environment
- d. Southland Regional Council (Environment Southland), the relevant local authority.

Iwi authorities relevant to project

18. Te Rūnanga o Ngāi Tahu (TRoNT) is the sole iwi authority for the project area.
19. TRoNT is the governing council of Ngāi Tahu iwi, established by the Te Rūnanga o Ngāi Tahu Act 1996 (TRoNT Act) to protect and advance the collective rights and interests of the iwi.
20. TRoNT is made up of 18 Papatipu Rūnanga (rūnanga) to which members of Ngāi Tahu Whānui can belong. Each rūnanga holds the rights, interests and responsibilities to specific takiwā (areas of land and waters) within the Ngāi Tahu Takiwā.³ Each rūnanga has its own governance structure and it is through this mechanism that the collective Ngāi Tahu voice in a region is represented and heard at local government and community level.
21. Four rūnanga (collectively referred to as Kaī Tahu ki Murihiku) have a shared interest in the Murihiku area, which includes Stewart Island/Rakiura and Foveaux Strait (Te Ara a Kiwa):
 - a. Te Rūnanga o Ōrāka-Aparima
 - b. Te Rūnanga o Awarua
 - c. Te Rūnanga o Waihōpai
 - d. Hokonui Rūnanga.
22. Section 15 of the TRoNT Act specifies that where any enactment requires consultation with any iwi or iwi authority in respect of matters affecting Ngāi Tahu Whānui, it will be held with TRoNT.
23. When TRoNT undertakes such consultation, the TRoNT Act also requires it to seek and have regard to the views of the rūnanga and hapū they consider may wish to comment on the matter being consulted on.
24. Te Ao Marama Incorporated, based at Murihiku Marae in Invercargill, represents Ngāi Tahu ki Murihiku. The agency liaises between the rūnanga and TRoNT, and on their behalf engages with the local authorities and others in relation to RMA matters.

Treaty settlements and Treaty settlement entities

Ngāi Tahu Claims Settlement Act 1998

25. The Ngāi Tahu Claims Settlement Act 1998 gives effect to certain provisions of the deed of settlement signed by TRoNT and the Crown on 21 November 1997, and amendment deeds signed in 1998 and 1999. The [deed, amendment deeds and related documents](#) are available on the NZ Government's Treaty settlement website.

³ The Papatipu Rūnanga of Ngāi Tahu Whānui and their respective takiwā are described in the Schedule to the Te Rūnanga o Ngāi Tahu (Declaration of Membership) Order 2001, which superseded Schedule 1 to Te Rūnanga o Ngāi Tahu Act 1996.

26. The Ngāi Tahu Treaty settlement applies to the Takiwā of Ngāi Tahu as defined in section 5 of the TRoNT Act, which covers the lands, islands and coasts of the majority of the South Island (Te Waipounamu). A [settlement summary](#) is available on the TRoNT website.
27. Under the FTCA, a Treaty settlement entity includes:
- a. a post-settlement governance entity, defined as a body corporate or trustees of a trust established by a claimant group for receiving redress, or for participating in arrangements established under a Treaty settlement Act
 - b. a board, trust, committee, authority, or other body, recognised in, or established under a Treaty settlement Act.
28. TRoNT was established by the 1996 TRoNT Act as explained above, and is an authority recognised in the Ngāi Tahu Claims Settlement Act 1996. It thus qualifies as a Treaty settlement entity of relevance to the Hananui Aquaculture project under the criteria noted in paragraph 27(b). No Treaty settlement entities established by the Ngāi Tahu Treaty settlement are relevant to the proposed project.

Maori Commercial Aquaculture Claims Settlement Act 2004

29. The Maori Aquaculture Claims Settlement Act 2004 provides a full and final settlement of Māori claims to commercial aquaculture arising on or after 21 September 1992 and provides for the allocation and management of aquaculture settlement assets.
30. The Act establishes an obligation on the Crown to provide Iwi Aquaculture Organisations (IAOs) (being iwi/Māori who have coastal interests and meet the criteria set out in the Act) with the equivalent of 20% of the aquaculture space created between 21 September 1992 and 31 December 2004 (referred to as 'pre-commencement space'). It also establishes a process (amended in 2011) for the allocation of the equivalent of 20% of all new aquaculture space created after 1 January 2005.
31. In relation to new space, the settlement is delivered via regional agreements negotiated between the Crown, Te Ohu Kaimoana Trustee Ltd (Te Ohu Kaimoana)⁴ and IAOs. New space is delivered prospectively based on anticipated growth of aquaculture out to 2035. Fisheries New Zealand⁵ manages the process for forecasting, valuing and reserving new space and represents the Crown in negotiations. The IAOs represent their own interests and Te Ohu Kaimoana administers the assets provided under settlement agreements and allocates them to IAOs. Assets take the form of RMA authorisations that provide exclusive right to apply for a resource consent to occupy aquaculture space in the CMA, payments from the Crown of a financial equivalent of that space were it to have been developed for aquaculture, or any other agreed benefit.
32. Te Ohu Kaimoana allocates the assets to IAOs within a region or harbour once all the relevant iwi have attained IAO status, the settlement assets have been delivered through a regional agreement, and entitlements and allocations have been determined.
33. A holder of an authorisation to occupy aquaculture space has the right to apply to the appropriate regional council for a resource consent to undertake aquaculture activities.

⁴ Te Ohu Kaimoana Trustee Ltd is a company established in accordance with section 33 of the Maori Fisheries Act 2004.

⁵ A business unit of the Ministry for Primary Industries/Manatū Ahu Matua.

34. The Māori Commercial Aquaculture Settlement Trust (Takutai Trust) was established by the Maori Aquaculture Claims Settlement Act 2004 to receive settlement assets from the Crown or regional councils and hold and maintain them until transfer to an IAO. Te Ohu Kaimoana was appointed as trustee under section 37 of the Act. As such, both bodies qualify as Treaty settlement entities under the FTCA.
35. Under the FTCA an IAO is also a Treaty settlement entity. For Foveaux Strait (Te Ara a Kiwa), TRONT is the sole relevant IAO.

Relevant principles and provisions of the Treaty settlements

Ngāi Tahu Treaty settlement

Relevant redress

36. Foveaux Strait (Te Ara a Kiwa) does not lie in the Ngāi Tahu Takiwā (as defined in the TRoNT Act), and consequently much of the Ngāi Tahu Claims Settlement Act 1998 does not directly apply to this area.
37. One aspect of settlement redress that is relevant to the Hananui Aquaculture Project is the Crown's acknowledgment of statements by TRoNT of the particular cultural, spiritual, historic, and traditional association of Ngāi Tahu with Rakiura/Te Ara a Kiwa (the Rakiura/Foveaux Strait Coastal Marine Area), as set out in [Schedule 104](#) of the settlement legislation.
38. In relation to Te Ara a Kiwa in particular, the statements of association include the following:

Te Ara a Kiwa, the estuaries, beaches and reefs off the mainland and islands all offered a bounty of mahinga kai, with Rakiura and the tītī islands being renowned for their rich resources of bird life, shellfish and wet fish. The area offered a wide range of kaimoana (sea food), including tuaki (cockles), paua, mussels, toheroa, tio (oysters), pūpū (mudsnails), cod, groper, barracuda, octopus, pātiki (flounders), seaweed, kina, kōura (crayfish) and conger eel. Estuarine areas provided freshwater fisheries, including tuna (eels), inaka (whitebait), waikōura (freshwater crayfish), kōkopu and kanakana (lamprey). Marine mammals were harvested for whale meat and seal pups. Many reefs along the coast are known by name and are customary fishing grounds, many sand banks, channels, currents and depths are also known for their kaimoana.

...

The tītī season still involves a large movement across the Strait to the islands, in addition large flotillas of Ngāi Tahu once came south from as far afield as Kaikōura to exercise their mutton-birding rights. Whenua Hou (Codfish Island) and the Ruggedy Islands were important staging posts for the movement of birders to the tītī islands off the south-west coast of Rakiura. Whenua Hou had everything that the birders required: shelter, proximity to the tītī islands, kai moana, manu (birds) and ngahere (bush). From Whenua Hou, the birders would camp at Minitī (Ernest Island), at the end of Mason Bay, where the waka-hunua (double-hulled canoes, or canoes with outriggers) were able to moor safely, ready for the final movement to the various tītī islands. Waka-hunua were an important means of transport on the dangerous and treacherous waters of Foveaux Strait and the Rakiura coast. After dropping birders and stores on the tītī islands the waka hunua generally returned immediately to Aparima and other tauranga waka along the mainland of Foveaux Strait, due to the paucity of safe anchorages among the tītī islands.

39. Schedule 104 specifies that the purposes of the statutory acknowledgement are to:

- a. require that relevant consent authorities forward summaries of relevant resource consent applications affecting the statutory area to TRoNT
- b. require that relevant consent authorities, Heritage New Zealand Pouhere Taonga or the Environment Court to have regard to the statutory acknowledgement in relation to the statutory areas in relevant decision-making
- c. enable TRoNT and any member of Ngāi Tahu Whānui to cite the statutory acknowledgements as evidence of the association of Ngai Tahu to the statutory area.

40. We note that cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – regardless of whether they are specifically identified in a Treaty settlement or affected by a statutory acknowledgement – are deemed to be matters of national importance that must be recognised and provided for in decision-making under Part 2 section 6(e) of the RMA.

41. It is also relevant to note that the settlement did not create any new co-governance or co-management processes affecting decision-making under the RMA for Rakiura/Te Ara a Kiwa.

Maori Commercial Aquaculture Claims Settlement Act 2004

42. Representatives of the four Murihiku Papatipu Rūnanga (on behalf of TRoNT), Te Ohu Kaimoana and the Crown signed a New Space aquaculture regional agreement for Southland on 5 October 2021, at Te Rau Aroha Marae in Bluff.

43. The agreement provides Ngāi Tahu with an RMA authorisation to apply for a 16.6-hectare area of marine space for aquaculture development in Foveaux Strait (Te Ara a Kiwa). The location of this area lies adjacent to the proposed Hananui Aquaculture project site (see Attachment 4).

44. Ngāi Tahu has yet to decide how the settlement area might be used and must obtain resource consents before undertaking marine farming activity in the settlement area. Any resource consents sought and determined under the FTCA for the Hananui Aquaculture Project will not apply to the settlement area.

Current negotiation mandates and settlement negotiations

45. There are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project area.

Details in this report affect certain provisions of the FTCA

Notices of referral decision

46. Under section 25 of the FTCA, you must give notice of the decisions made on an application for referral of a project to a panel, and the reasons for your decisions, to the applicant and anyone invited to comment under section 21 of the FTCA.

47. You invited TRoNT to comment on the referral application for the Hananui Aquaculture Project.

48. If you decide to refer this project to a panel, the notice of decisions and associated reasons must be given to:

- a. other relevant iwi authorities and Treaty settlement entities identified in this report
 - b. any other iwi authorities or Treaty settlement entities you consider have an interest in the matter
 - c. any group that is or party to either a joint management agreement or Mana Whakahono ā Rohe under the RMA that relates to the project area.
49. There are no other iwi authorities or Treaty settlement entities likely to have an interest in the matter, and no joint management agreements or Mana Whakahono ā Rohe to consider.
50. If you decide to refer the project we recommend copying the notice to the four relevant rūnanga through their representative agent Te Ao Marama Incorporated, to facilitate their preparedness for engagement in the panel process (should they wish to do so). Contact details are in Attachment 2.

Expert consenting panel membership

51. If a project is referred to a panel, the appointed panel must include one person nominated by the relevant iwi authorities under clause 3(2)(b) of Schedule 5 of the FTCA.
52. In the event iwi authorities nominate more than one person, the panel convener must decide which nominee to appoint. The panel convener has discretion to increase the panel membership to accommodate the matters specified in clauses 3(6)(a) – 3(6)(e) of Schedule 5 of the FTCA, which include matters unique to any relevant Treaty settlement Act.
53. TRoNT is the sole relevant iwi authority for the project; contact details are in Attachment 2.

Panel invitations to comment

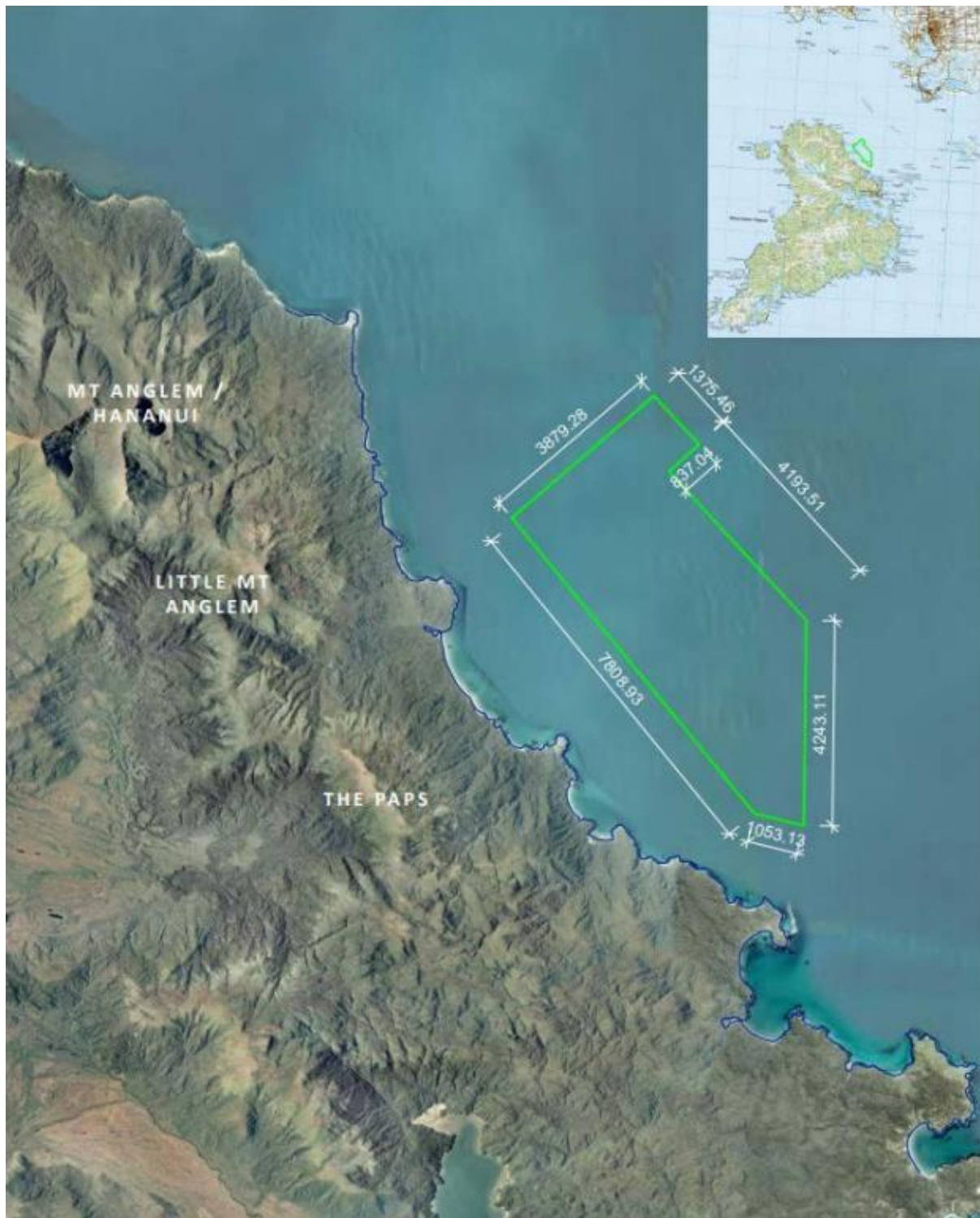
54. A panel must invite comments on a resource consent application or notice of requirement for a referred project from the parties listed in clause 17(6) of Schedule 6 of the FTCA. This includes:
- a. the relevant iwi authorities, including those identified in this report
 - b. a Treaty settlement entity relevant to the referred project, including an entity that has an interest under a Treaty settlement in an area where a referred project is to occur, and an entity identified in this report
 - c. any applicant group under the Marine and Coastal Area (Takutai Moana) Act 2011 identified in the report obtained under section 17(1).
55. TRoNT is the sole relevant iwi authority and Treaty settlement entity for the proposed project.
56. A MACAA applicant group means one or more iwi, hapū, or whānau groups that seek recognition under Part 4 of the MACAA of their protected customary rights or customary marine title by either a recognition order granted by the High Court; or an agreement negotiated with the Crown (through The Office of Māori Crown Relations – Te Arawhiti). The groups who have applications under the MACAA in the common marine and coastal area over the project site are listed in Attachment 5.
57. A panel may also invite comments from any other person it considers appropriate. We also recommend a panel invite comments from the appropriate rūnanga, through their representative agent Te Ao Marama Incorporated. This is because TRoNT is obliged to consult with the rūnanga when providing comments on local issues. Additionally, this consultative framework has been agreed between Ngāi Tahu and local authorities and is well established under standard RMA process. Contact details are included in Attachment 2.

Provision of Cultural Impact Assessment

58. Any resource consent application that is submitted to a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authority or a statement of any reasons given by the relevant iwi authority for not providing that assessment.⁶
59. The Environmental Protection Authority (which provides support services to a panel) will not confirm an application as complete and ready for consideration by a panel until this requirement has been satisfied.
60. The applicant has advised that a CIA has already been prepared by Te Ao Marama Inc and Tipa Associates. It was conducted through a series of wānanga with Ngāi Tahu katoa, using historical and current management plans and technical assessments relevant to this kaupapa, as a basis for cultural impact korero. TRONT and the Papatipu Rūnanga, together with other relevant groups (Tangata tiaki, Rakiura tangata tiaki, Rakiura Māori Land beneficiaries and Ahu whenua whānau) were all involved in this exercise.

⁶ Clause 9(5) of Schedule 6 of the FTCA.

Attachment 1 - Location

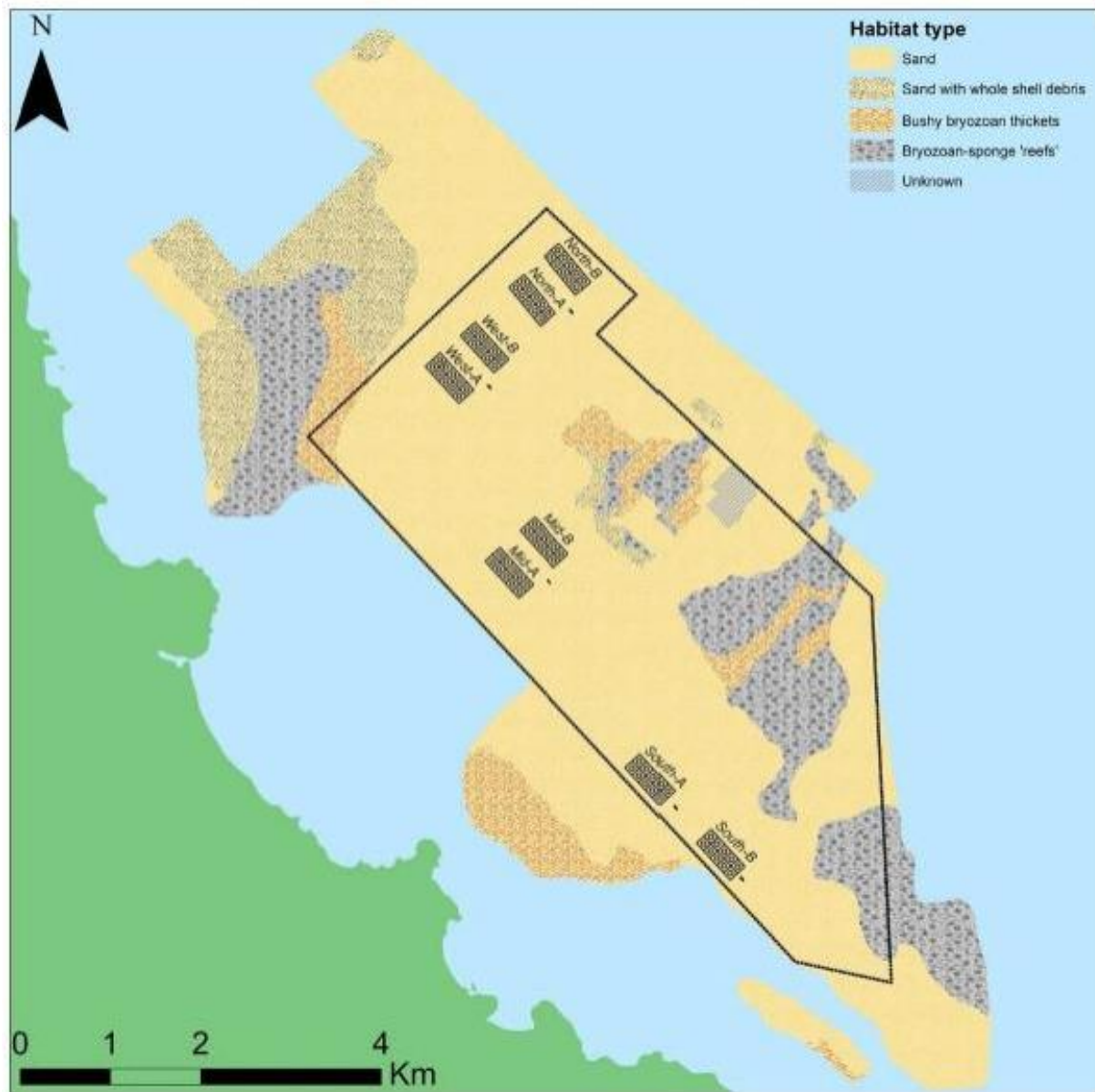


Attachment 2 - Contact information

Iwi/hapū	Representative body	Contact details	RMA Iwi authority	Treaty settlement entity	Other	Contact person	Copies to
Ngāi Tahu	Te Rūnanga o Ngāi Tahu (TRoNT)	P.O. Box 13 046 Christchurch 8141 Ph: s9(2)(a)	Represents Ngāi Tahu as an iwi authority for RMA purposes	The post-Treaty settlement governance entity under the Ngāi Tahu Claims Settlement Act 1998	Iwi Aquaculture Organisation under the Maori Commercial Aquaculture Claims Settlement Act 2004	CEO/Kaihautū – Arihia Bennett info@ngaitahu.iwi.nz	General Manager Te Ao Tūroa: Trudy Heath s9(2)(a) Senior Environmental Advisor: Tanya Stevens s9(2)(a)
Ngāi Tahu Papatipu Rūnanga with shared interests in Murihiku: <ul style="list-style-type: none"> Te Rūnanga o Awarua Te Rūnaka o Ōrāka-Aparima Te Rūnanga o Waihōpai Hokonui Rūnanga 	Te Ao Marama Incorporated <i>represents the 4 Rūnanga in Murihiku (south of the Clutha River – Mata-au)</i>	Te Ao Marama Inc C/- Murihiku Marae 408 Tramway Rd Invercargill 9844 Ph: s9(2)(a)				Kaupapa Taiao Manager: Dean Whaanga s9(2)(a)	Kaitohutohu Taiao: Stevie-Rae Blair s9(2)(a)
	Te Ohu Kaimoana Trustee Ltd	PO Box 3277 Wellington		Appointed corporate trustee of the Takutai Trust under Maori Commercial Aquaculture Claims Settlement Act 2004		Te Mātārae/Chief Executive: Lisa te Heuheu ika@teohu.maori.nz	

	Takutai Trust (Māori Commercial Aquaculture Settlement Trust)			Established under the Maori Commercial Aquaculture Claims Settlement Act 2004		As above	
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Attachment 3 – Proposed salmon farm layout and underlying sea-floor habitat



Attachment 4 – Southland Aquaculture Settlement Area



Note: the area shown as the 'Proposed Aquaculture Settlement Area' has now been confirmed as the Aquaculture Settlement Area.

Attachment 5 - Applicants for a customary marine title area or protected customary rights area

No	Application No	Applicant	Contact details	Track	Application status
1	MAC-01-13-002	Ngāi Tahu Whānui	PO Box 13046, 15 Show Place, Addington, Christchurch 8024 s9(2)(a) (preferred contact method) s9(2)(a) s9(2)(a)	Crown engagement	
2	CIV-2017-485-280	Te Rūnanga o Ngāi Tahu	PO Box 1291, DX SX11164 s9(2)(a) s9(2)(a) s9(2)(a)	High Court	

Source: Kōrero Takutai (Te Kete Kōrero a Te Takutai Moana Information Hub – Te Arawhiti) & Te Arawhiti