

# **Kermadec Ocean Sanctuary Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to establish a new marine protected area in New Zealand's exclusive economic zone around the Kermadec Islands and to preserve it in its natural state.

The Kermadec Ocean Sanctuary (the **Sanctuary**) will comprise the waters and underlying seabed and subsoil extending from the boundary of the current Kermadec Islands Marine Reserve to the 200-nautical-mile limit of New Zealand's exclusive economic zone surrounding the Kermadec Islands.

Fishing, mining, and seismic surveying for non-scientific purposes will be prohibited in the Sanctuary. The disturbance of the Sanctuary's seabed and subsoil and the dumping of waste and other matter will be prohibited to the greatest extent consistent with international law. Passage through the Sanctuary will continue to be allowed. Activities in the Sanctuary not specifically prohibited or regulated under this Bill will continue to be regulated under their applicable regimes as if the Sanctuary were any other part of the exclusive economic zone.

The Department of Conservation will administer and manage the Sanctuary. This Bill will be listed in Schedule 1 of the Conservation Act 1987 and will provide for the development of a conservation management strategy for the Sanctuary, the Kermadec Islands, and the Kermadec marine reserve.

Marine scientific research will be allowed in the Sanctuary. However, research that would otherwise breach one of the Sanctuary's prohibitions will have to be approved by the Environmental Protection Authority (the **EPA**). The approval process will be supplemented by regulations made on the joint recommendation of the Minister of Conservation and the Minister for the Environment.

The prohibitions that apply to the Sanctuary will be reflected in existing legislation for the purposes of enforcement. The prohibitions on mining, disturbance of the sea-

bed and subsoil, dumping, and undertaking certain marine scientific research without an approval will be reflected in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the **EEZCS Act**) and enforced by the EPA. The prohibition on fishing in the Sanctuary will be reflected in the Fisheries Act 1996 and enforced by the Ministry for Primary Industries.

This Bill is an omnibus Bill introduced in accordance with Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. It is intended that the Bill will be divided at the Committee of the whole House stage into 2 Bills as follows:

- *Parts 1 and 2 and Schedules 1 and 2* will become the Kermadec Ocean Sanctuary Bill:
- *Part 3 and Schedule 3* will become the Kermadec Ocean Sanctuary (Related Amendments) Bill.

#### **Departmental disclosure statement**

The Ministry for the Environment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=120>

#### **Regulatory impact statement**

The Ministry for the Environment produced a regulatory impact statement on 25 February 2016 to help inform the final decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/kermadec-ocean-sanctuary>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

#### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* provides for most of the Bill to come into force on 1 November 2016. The provisions that establish the Kermadec Conservation Board may be brought into force later by Order in Council to allow time for the board to be set up. Any provision not brought into force earlier will come into force on 1 November 2018.

## Part 1

### Preliminary provisions

*Clause 3* states the purpose of the Bill, which is to preserve the Sanctuary in its natural state.

*Clause 4* contains the definitions.

*Clause 5* provides for the transitional provisions set out in *Schedule 1* as follows:

- no compensation is payable by the Crown for the enactment of this Bill (which will prohibit the use of fishing permits, quota, customary fishing, and other existing consents or use rights in the Sanctuary). As a consequence, no compensation will be payable for loss of the value of quota in Fishery Management Area 10, any loss of expectancy, or any other adverse effect on any rights or interests:
- all activities under existing permits and authorisations and processing of applications must stop immediately on the Bill's commencement. There is an exception for marine scientific research if it is a "permitted activity" under the EEZCS Act. That research can continue under that regime for a 1-year transitional period:
- the Auckland Conservation Board will cease to have jurisdiction over the Kermadec area (which is the Kermadec Ocean Sanctuary, Kermadec marine reserve, and Kermadec Islands) once the Kermadec Conservation Board is established. The existing parts of the relevant conservation management strategy for the Kermadec marine reserve and the Kermadec Islands will continue to apply until a new conservation management strategy is approved for the Kermadec area.

*Clause 6* provides that the Bill binds the Crown.

*Clause 7* disapples the Bill to Crown activities necessary for reasons of national security (as certified by the Minister of Defence) and to ships and aircraft of the New Zealand Defence Force and foreign States. These provisions are consistent with those already applying under the EEZCS Act.

## Part 2

### Kermadec Ocean Sanctuary

*Clause 8* establishes the Sanctuary over the area described in *Schedule 2*. The Sanctuary is in New Zealand's exclusive economic zone and excludes the marine reserve established by the Marine Reserve (Kermadec Islands) Order 1990.

*Clause 9* prohibits fishing, mining activities, disturbance of the seabed and removal of non-living material from the seabed, dumping, and the causing of vibrations likely to have an adverse effect on marine life (for example, from seismic surveying) in the Sanctuary. These activities (**Kermadec prohibited activities**) would usually be permitted and regulated (in the case of fishing) under the Fisheries Act 1996 or (for the

other activities) under the EEZCS Act. The effect of this Bill is to close the Sanctuary to these activities.

*Clause 10* permits marine scientific research to be carried out despite the prohibitions in *clause 9* if the researcher obtains an authorisation from the EPA and the research activity is carried out in compliance with any conditions set by regulations. In addition, the prohibitions do not apply to the following activities (to which other regulatory regimes apply):

- specific activities that continue to be regulated by the EEZCS Act, such as the laying of submarine cables and pipelines, and seismic surveying for the purposes of marine scientific research;
- specific activities that continue to be regulated under the Maritime Transport Act 1994.

*Clause 11* sets out how the prohibitions in *clause 9* interact with other marine management regimes, particularly the EEZCS Act and the Fisheries Act 1996. Kermadec prohibited activities are not permitted activities under the EEZCS Act (and no consent can be issued for them) and are not lawful fishing under the Fisheries Act 1996. Separate amendments to those Acts (*see Part 3*) make it an offence under the Fisheries Act 1996 to take or possess fish, aquatic life, or seaweed in the Sanctuary and an offence under the EEZCS Act to carry out any other Kermadec prohibited activity. No other permission (for example, a permit under the Wildlife Act 1953) can override the prohibitions in the Bill.

*Clause 12* clarifies that this Bill imposes prohibitions and obligations that are additional to (and not a substitute for) other regimes. As a result, the usual prohibitions that apply in the exclusive economic zone under the EEZCS Act will also apply to the Sanctuary.

*Clauses 13 to 20* set out the process for obtaining an EPA authorisation for marine scientific research if it involves any of the prohibited activities. The key elements of this process are that,—

- before an application may be made, the applicant must engage with the trustees of Te Rūnanga Nui o Te Aupouri Trust and the trustees of the Te Manawa O Ngāti Kuri Trust (the **Kermadec iwi authorities**) by informing them of the authorisation application and giving them an opportunity to provide views;
- the application to the EPA must include a copy of the Kermadec iwi authorities' views and set out any changes that have been made to the application as a result of that engagement. The application must state whether or not (and in what ways) it is consistent with the Kermadec conservation management strategy and why the activity is necessary for the purposes of the research;
- if the EPA considers that the application does not contain enough information on which to make a decision, it must refer it back to the applicant for resubmission with the additional information. The EPA must seek advice from the Director-General of Conservation, and may seek advice from others, for the purpose of informing its consideration of the application:

- the EPA may refuse the application only if certain listed activities will be carried out in undertaking the research and it considers that those activities are not necessary for the purpose of the research.

Holders can transfer authorisations by written notice to the EPA under *clause 21*. They may also apply to change the activities authorised by using the same process as the process for the initial application (*clause 22*).

*Clauses 23 to 26* establish a statutory Conservation Board over the Kermadec area and provide for the appointment and replacement of its members. The Board is made up of—

- 1 nominee from each of the Kermadec iwi authorities:
- 1 nominee from the Minister of Māori Affairs for the purpose of representing other iwi interests in the area:
- 4 members appointed by the Minister of Conservation after following a public process calling for nominations and being satisfied as to each person's skills, knowledge, and experience.

The Kermadec Conservation Board will operate under the usual Conservation Act 1987 provisions in carrying out its functions.

*Clause 27* enables regulations to be made to support the process for granting authorisations for marine scientific research and to impose conditions on how the marine scientific research must be carried out. The regulations must be made on the joint recommendation of the Minister of Conservation and the Minister for the Environment, after having regard to New Zealand's rights and obligations under the United Nations Convention on the Law of the Sea. In addition, regulations may impose fees or charges on applicants for marine scientific research authorisations in relation to the EPA's functions in considering those applications.

### Part 3

#### Amendments to other enactments

*Clause 29* amends the Biosecurity Act 1993 to ensure that eradication or management of organisms that is exempted from the EEZCS Act is also exempted from the additional prohibitions that apply under this Bill.

*Clauses 31 to 33* amend the Conservation Act 1987. The effect of the amendments is to enable the Sanctuary to be managed under the Conservation Act 1987, including by establishing a conservation management strategy over the Sanctuary.

*Clauses 35 to 43* amend the EEZCS Act. The key change is to ensure that a breach of the additional prohibitions in the Bill will constitute a breach of, and an offence under, the EEZCS Act (other than the fishing prohibition, which is instead enforced under the Fisheries Act 1996). This also has the effect that the enforcement powers under the EEZCS Act may be used to enforce this Bill.

*Clause 45* amends the Environmental Protection Authority Act 2011 to include this Bill in the list of Acts under which the EPA carries out functions.

*Clauses 47 and 48* amend the Fisheries Act 1996 by inserting a new offence for taking fish, aquatic life, or seaweed from the Sanctuary, or for possessing fish, aquatic life, or seaweed taken, to reflect the fishing prohibition in the Bill.

Consequential amendments to the Maritime Transport Act 1994 and various regulations under the Fisheries Act 1996 are made by *clause 49 and Schedule 3*.

*Hon Dr Nick Smith*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Kermadec Ocean Sanctuary Act **2016**.

**2 Commencement**

- (1) This Act comes into force on **1 November 2016** (except as provided in **sub-sections (2) and (3)**). 5
- (2) **Sections 23 to 26** come into force on a date appointed by the Governor-General by Order in Council.

- (3) Any provision that has not earlier been brought into force comes into force on **1 November 2018**.

## Part 1

### Preliminary provisions

- 3 Purpose** 5
- The purpose of this Act is to preserve the Kermadec Ocean Sanctuary in its natural state.
- 4 Interpretation**
- In this Act, unless the context otherwise requires,—
- Director-General** means the Director-General of Conservation within the meaning of section 2(1) of the Conservation Act 1987 10
- disturb** includes excavate, drill, tunnel, or dredge
- dumping**—
- (a) means—
- (i) any deliberate disposal into the sea of waste or other matter from ships, aircraft, and structures at sea; and 15
- (ii) any deliberate disposal into the sea of ships, aircraft, and structures at sea; and
- (iii) any storage of waste or other matter in the seabed and the subsoil of the seabed from ships, aircraft, and structures at sea; and 20
- (iv) any abandonment or toppling at the site of structures at sea for the sole purpose of deliberate disposal; but
- (b) does not include—
- (i) the disposal into the sea of waste or other matter incidental to, or derived from, the normal operations of ships, aircraft, and structures at sea and their equipment, other than waste or other matter transported by or to ships, aircraft, and structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such waste or other matter on such ships, aircraft, and structures; or 25
- (ii) placement of matter for a purpose other than the mere disposal of them; but only if the placement is not contrary to the aims of the 1996 Protocol to the London Convention; or 30
- (iii) abandonment in the sea of matter (for example, cables, pipelines, and marine research devices) placed for a purpose other than the mere disposal of it 35

- EEZCS Act** means the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- effect** has the same meaning as in section 6 of the EEZCS Act
- EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011 5
- exclusive economic zone** means the exclusive economic zone of New Zealand as defined in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977
- fishing** has the same meaning as in section 2(1) of the Fisheries Act 1996
- harmful substance** has the same meaning as in section 4(1) of the EEZCS Act 10
- Kermadec area** means the Kermadec Islands, the Kermadec marine reserve, and the Kermadec Ocean Sanctuary
- Kermadec Conservation Board** means the Conservation Board established by **section 23**
- Kermadec conservation management strategy** means the conservation management strategy approved under section 17F of the Conservation Act 1987 for the Kermadec area or (until a strategy is approved for that area) the strategy that applies to the Kermadec area under **clause 5 of Schedule 1** 15
- Kermadec iwi authority** means each of the following:
- (a) the trustees of Te Manawa: 20
  - (b) the trustees of Te Rūnanga Nui
- Kermadec marine reserve** means the areas that together form the marine reserve adjacent to the Kermadec Ocean Sanctuary
- Kermadec Ocean Sanctuary** means the area established as the Kermadec Ocean Sanctuary under **section 8** 25
- Kermadec prohibited activity** means an activity that is prohibited in the Kermadec Ocean Sanctuary by **section 9**
- London Convention** means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972)
- marine reserve** has the same meaning as in section 2 of the Marine Reserves Act 1971 30
- marine scientific research**—
- (a) means research (whether fundamental or applied) carried out for the purpose of increasing knowledge about the environment, marine resources, or living marine organisms; and 35
  - (b) includes any related scientific activity; but
  - (c) excludes any research carried out in relation to a mining activity (unless that research relates to a mining activity undertaken outside the Kermadec Ocean Sanctuary)

- mineral** has the same meaning as in section 2(1) of the Crown Minerals Act 1991
- mining activity** means any of the following activities carried out for, or in connection with, the identification of areas of the seabed likely to contain mineral deposits, the identification of mineral deposits, or the taking or extraction of minerals from the sea or seabed and associated processing of those minerals: 5
- (a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure, part of a structure, or a ship used in connection with a structure:
  - (b) the depositing of any thing or organism in, on, or under the seabed: 10
  - (c) the destruction, damaging, or disturbance of the seabed or subsoil:
  - (d) the discharging of a harmful substance
- Minister** means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- prescribed** means prescribed by regulations or, in relation to **sections 14 to 22**, means prescribed by regulations or approved by the chief executive of the EPA 15
- quota** has the same meaning as in section 2(1) of the Fisheries Act 1996
- regulations** means regulations made under this Act
- seismic survey** means a survey of the geology of the seabed, or the structures beneath the seabed, carried out by projecting pressure waves into the layers beneath the seabed and detecting and measuring the reflected signals 20
- ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994
- structure** has the same meaning as in section 4(1) of the EEZCS Act 25
- trustees of Te Manawa** has the same meaning as in section 12 of the Ngāti Kuri Claims Settlement Act 2015
- trustees of Te Rūnanga Nui** has the same meaning as in section 12 of the Te Aupouri Claims Settlement Act 2015.
- 5 Transitional, savings, and related provisions** 30
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown**
- This Act binds the Crown (except as provided by **section 7**).

- 7 Application to national security activities or ships and aircraft of New Zealand Defence Force and foreign States**
- (1) This Act does not apply to any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security.
- (2) This Act does not apply to any of the following: 5
- (a) warships of the New Zealand Defence Force:
  - (b) warships of any other State:
  - (c) aircraft of the New Zealand Defence Force:
  - (d) aircraft of the defence forces of any other State:
  - (e) any ship owned or operated by any State other than New Zealand, if the ship is being used by the State for wholly governmental purposes: 10
  - (f) the master and crew of any warship, aircraft, or ship referred to in **paragraphs (a) to (e)**:
  - (g) defence areas as defined in section 2 of the Defence Act 1990.
- (3) In this section, a ship that is being used for commercial purposes, or both commercial and governmental purposes, is not being used for wholly governmental purposes. 15

## Part 2 Kermadec Ocean Sanctuary

*Kermadec Ocean Sanctuary established* 20

- 8 Kermadec Ocean Sanctuary established**
- (1) The area described in **Schedule 2** is established as the Kermadec Ocean Sanctuary.
- (2) The area is described in **Schedule 2** as follows:
- (a) **Part 1 of Schedule 2** contains a map that shows the general location of the Kermadec Ocean Sanctuary: 25
  - (b) **Part 2 of Schedule 2** describes the geographical boundaries of the Kermadec Ocean Sanctuary.
- (3) If there is any inconsistency between **Part 1** and **Part 2 of Schedule 2**, the descriptions in **Part 2** prevail. 30

## **9 Activities prohibited in Kermadec Ocean Sanctuary**

- (1) No person may undertake any of the activities described in **subsection (2)** in the Kermadec Ocean Sanctuary (*but see section 10*).
- (2) The prohibited activities are as follows:
- (a) fishing: 35

- (b) a mining activity:
- (c) the disturbance of, or the removal of non-living natural material from, the seabed or subsoil:
- (d) the dumping of waste or other matter (including from ships, aircraft, or structures): 5
- (e) the causing of vibrations (other than vibrations caused by the propulsion of a ship) in a manner that is likely to have an adverse effect on marine life.
- 10 Activities to which prohibition does not apply**
- (1) The undertaking of an activity for the purposes of marine scientific research is not prohibited by **section 9** if the activity is— 10
- (a) covered by an authorisation granted by the EPA under this Act; and
- (b) undertaken in accordance with the terms and conditions set out in regulations (if any).
- (2) In addition, the prohibition in **section 9** does not apply to the following activities: 15
- Activities regulated under EEZCS Act*
- (a) any of the following activities permitted or authorised under the EEZCS Act: 20
- (i) the construction, placement, alteration, extension, removal, or demolition of a submarine pipeline on, from, or under the seabed:
- (ii) the placement, alteration, extension, or removal of a submarine cable on or from the seabed:
- (iii) seismic surveying for the purposes of marine scientific research:
- (iv) dumping under an emergency dumping consent issued under section 20H of that Act: 25
- (v) any other activity permitted or authorised under that Act in connection with another activity covered by any of **subparagraphs (i) to (iv)**:
- (b) any action taken under an exemption from Part 2 of the EEZCS Act granted under section 7B of the Biosecurity Act 1993 or continued under regulations made under the Biosecurity Act 1993: 30
- Activities regulated under Maritime Transport Act 1994*
- (c) any of the following activities done under the Maritime Transport Act 1994: 35
- (i) anything done by or on behalf of a person under any of sections 248, 249, 255, 305, 310, and 311 of that Act:

- (ii) anything done under any instructions permitted to be issued or directions permitted to be given under any of those sections.
- (3) Any term or expression used in **subsection (2)**, but not defined in this Act, has the meaning given to it in the EEZCS Act or regulations made under that Act (in the case of **subsection (2)(a) and (b)**) or the Maritime Transport Act 1994 (in the case of **subsection (2)(c)**). 5
- 11 Effect of prohibitions on permissions under EEZCS Act, Fisheries Act 1996, and other enactments**
- (1) If an activity is prohibited by **section 9**,—
- (a) the activity (if listed in **section 9(2)(a)**) is not lawful fishing under the Fisheries Act 1996 and undertaking that activity is an offence under that Act (*see* **section 113AB** of that Act); and 10
- (b) the activity (if listed in **section 9(2)(b) to (e)**) is not a permitted activity for the purposes of the EEZCS Act, no consent may be granted for that activity under that Act, and undertaking that activity is an offence under that Act (*see* **sections 20K and 134EA** of that Act); and 15
- (c) no permission or authorisation to undertake the activity under any other enactment has any effect.
- (2) *See also* **clause 1 of Schedule 1** (as a result of which no compensation is payable for loss or damage arising from the enactment or operation of this Act, including the prohibition in **section 9**). 20
- 12 Relationship with other legal requirements**
- (1) Compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, and rules of law.
- 
- Example** 25
- A person carrying out marine scientific research that involves taking fish from the Kermadec Ocean Sanctuary will need an authorisation under this Act (so that the activity will be permitted under **section 10(1)**) and a permit under the Fisheries Act 1996.
- 
- (2) Compliance with any other Act, regulations, or rule of law does not remove the need to comply with this Act. 30
- (3) However, an activity undertaken for the purposes of marine scientific research that is covered by an authorisation under this Act need not also comply with the terms and conditions specified for the activity in regulations made under the EEZCS Act. 35

*Authorisations for marine scientific research*

- 13 Research applicant may apply for authorisation for marine scientific research**
- (1) A person (the **research applicant**) may apply to the EPA for an authorisation to undertake an activity for the purposes of marine scientific research in the Kermadec Ocean Sanctuary. 5
- (2) **Sections 14 to 20** apply to that application.
- (3) To avoid doubt, those sections affect only marine scientific research that involves an activity prohibited by **section 9**.
- 14 Pre-application engagement with Kermadec iwi authorities** 10
- (1) A research applicant must, before applying for an authorisation,—
- (a) inform the Kermadec iwi authorities of the proposal and seek their views on it; and
- (b) give the Kermadec iwi authorities a reasonable opportunity to provide their views on the proposal. 15
- (2) The information provided under **subsection (1)(a)** must include a description of each activity (in sufficient detail to enable an informed assessment of the proposed nature, extent, timing, location, and effects of the activity) and of the purposes of the marine scientific research.
- 15 Application for authorisation for marine scientific research** 20
- (1) The application for an authorisation must—
- (a) be made in the prescribed form; and
- (b) describe each activity (in sufficient detail to enable an informed assessment of the proposed nature, extent, timing, location, and effects of the activity), state who will undertake the activity, and describe the purposes of the marine scientific research; and 25
- (c) state—
- (i) whether or not (and in what ways) the purposes of the marine scientific research are consistent with the Kermadec conservation management strategy; and 30
- (ii) if the application relates to any activity listed in **section 19(2)(a)**, why the activity is necessary to achieve the purposes of the marine scientific research; and
- (d) include a report that contains—
- (i) a copy, or summary, of the views provided under **section 14**; and 35
- (ii) details of any change that has been made to the proposed activity as a result of the pre-application engagement under **section 14**; and



- (e) contain, or be accompanied by, any other prescribed matters.
- (2) If the application relates to an activity to be undertaken partly in the Kermadec Ocean Sanctuary and partly in the Kermadec marine reserve, the EPA must—
- (a) refer the part of the application that relates to the Kermadec marine reserve to the Director-General for consideration under section 11 of the Marine Reserves Act 1971; and 5
- (b) give written notice to the research applicant of that action and of the fact that the authorisation under this Act must relate only to the part of the activity to be undertaken in the Kermadec Ocean Sanctuary.
- 16 EPA must refer incomplete application back to research applicant 10**
- (1) If the EPA considers that the application does not provide sufficient information to make a decision on the application, the EPA—
- (a) must not make a decision on the application; and
- (b) must refer the application back to the research applicant identifying the additional information that the EPA considers it needs to make a decision. 15
- (2) The application may be resubmitted with additional information (and in that case, **section 14** does not apply).
- 17 EPA must seek further advice on application to inform consideration**
- For the purposes of informing its consideration of the application, the EPA— 20
- (a) must seek advice from the Director-General; and
- (b) may seek advice from any other person it thinks fit.
- 18 Other requirements for EPA's process**
- (1) If the EPA proposes to decline the application under **section 19(2)**, the EPA must— 25
- (a) notify the research applicant in writing of the EPA's proposed decision and its reasons; and
- (b) give the research applicant a reasonable period within which to respond (which must not be less than the prescribed minimum period, if any); and 30
- (c) consider any response made by the research applicant within that period.
- (2) The EPA must notify the research applicant in writing of its final decision on the application.
- (3) The EPA must comply with any other requirements set out in the regulations in relation to the application. 35
- 19 Application may be declined on limited grounds only**
- (1) The EPA must grant the application unless **subsection (2)** applies.

- (2) The EPA must decline the application if—
- (a) the EPA determines that the proposed marine scientific research involves 1 of the following activities:
    - (i) drilling: 5
    - (ii) the use of explosives: 5
    - (iii) the introduction of harmful substances:
    - (iv) the installation of artificial islands, installations, and structures; and
  - (b) the EPA considers that the activity is unnecessary to achieve the purposes of the marine scientific research. 10

## **20 Matters to be specified in authorisation**

- (1) The EPA must confirm, in granting the authorisation,—
- (a) who is authorised to undertake the activity; and
  - (b) the term of the authorisation; and
  - (c) the activities authorised (including their nature, extent, timing, and location as set out in the application); and 15
  - (d) the prescribed matters (if any).
- (2) The term of the authorisation must not exceed 2 years.

## **21 Authorisation is transferable**

A holder of an authorisation may, by written notice to the EPA, transfer an authorisation to another person or add another person to the authorisation. 20

## **22 Change to scope of authorisation**

- (1) A holder of an authorisation may apply to the EPA for a change in the activities authorised.
- (2) **Sections 14 to 20** apply to the application for that change with all necessary modifications. 25

### *Kermadec Conservation Board*

## **23 Establishment of Kermadec Conservation Board**

- (1) The Kermadec Conservation Board is established, and must be treated as established, under section 6L(1) of the Conservation Act 1987. 30
- (2) The Kermadec Conservation Board—
- (a) is a Conservation Board under the Conservation Act 1987 with jurisdiction over the Kermadec area; and
  - (b) must carry out, in the Kermadec Ocean Sanctuary, the functions specified in section 6M of that Act; and 35

- (c) has the powers conferred by section 6N of that Act.
- (3) The Conservation Act 1987 applies to the Kermadec Conservation Board with the following modifications:
- (a) section 6L(2) and (3) (relating to the name and area of a board) does not apply: 5
  - (b) section 6P(1) to (7D) (relating to membership) does not apply:
  - (c) section 6R(2) (relating to membership) does not apply to an appointment made under **section 24(1)(a) or (b)**:
  - (d) section 6S(1) (relating to the chairperson) does not apply.
- 24 Appointment of members of Kermadec Conservation Board** 10
- (1) The Kermadec Conservation Board consists of 7 members appointed by the Minister as follows:
- (a) 1 member appointed on the nomination of the trustees of Te Manawa:
  - (b) 1 member appointed on the nomination of the trustees of Te Rūnanga Nui: 15
  - (c) 1 member appointed on the nomination of the Minister of Māori Affairs:
  - (d) 4 members appointed by the Minister.
- (2) In relation to the appointment under **subsection (1)(c)**, the Minister of Māori Affairs must be satisfied that the person nominated is appropriate to represent the interests of iwi in the Kermadec area (other than those already represented by the nominations of the Kermadec iwi authorities). 20
- (3) In relation to each appointment under **subsection (1)(d)**, the Minister must—
- (a) make the appointment only after giving public notice in accordance with **subsection (4)**; and
  - (b) be satisfied that the person has the skills, knowledge, or experience to— 25
    - (i) participate effectively in carrying out the functions of the Kermadec Conservation Board; and
    - (ii) contribute to the achievement of the purpose of the Kermadec Conservation Board.
- (4) A notice required by **subsection (3)(a)** must— 30
- (a) state the number of appointments that the Minister intends to make to the Kermadec Conservation Board under **subsection (1)(d)**; and
  - (b) call for nominations for members of the Kermadec Conservation Board to be sent to the Minister; and
  - (c) state a date (which must be at least 28 days after the date of the first publication of the notice) after which the Minister may decline to accept those nominations; and 35

- (d) be published by the means, and with the frequency or for the period, that the Minister thinks fit.

## 25 Chairperson of Kermadec Conservation Board

- (1) The Minister must, by written notice to the Kermadec Conservation Board, appoint one of its members to be the chairperson of the Board after consultation with each of the Kermadec iwi authorities. 5
- (2) The chairperson holds that office until the expiry of the term of appointment specified in the notice of appointment (or any earlier date on which the member ceases to hold office).

## 26 Replacement of members 10

- (1) The Minister must remove a member of the Kermadec Conservation Board appointed on the nomination of a nominator if requested in writing to do so by the relevant nominator.
- (2) If the Minister is concerned that a member of the Kermadec Conservation Board appointed under **section 24(1)(a) or (b)** is no longer able properly to discharge the obligations of a member of the Board, the Minister must— 15
- (a) inform the relevant nominator in writing of the Minister’s concern; and
  - (b) seek to resolve the concern through discussion with the nominator; and
  - (c) remove the member if the concern is not resolved; and
  - (d) if **paragraph (c)** applies, request a new nomination from the relevant nominator; and 20
  - (e) appoint a new member of the Kermadec Conservation Board in accordance with **section 24** when the Minister has received a nomination from the relevant nominator.
- (3) If a Kermadec iwi authority is concerned that a member of the Kermadec Conservation Board (other than a person appointed on the authority’s own nomination) is no longer able properly to discharge the obligations of a member of the Board,— 25
- (a) the Kermadec iwi authority may inform the Minister in writing of the Kermadec iwi authority’s concern; and 30
  - (b) the Minister must consider the matters set out in the notice; and
  - (c) if the member is appointed under **section 24(1)(a) or (b)**, **subsection (2)** applies; and
  - (d) if the member is appointed under **section 24(1)(c) or (d)** and the Minister is concerned that the member is not able properly to discharge the obligations of a member of the Conservation Board for a reason given in section 6R(2) of the Conservation Act 1987, the Minister may remove that member; and 35

- (e) the Minister must give notice in writing to the relevant Kermadec iwi authority of the outcome of the process undertaken under this subsection.

### *Regulations*

#### **27 Regulations**

- (1) The Governor-General may, by Order in Council made on the joint recommendation of the Minister and the Minister for the Environment, make regulations— 5
- (a) providing for additional requirements for applications, and the process for consideration and granting of applications, for authorisation for the purposes of **sections 14 to 22** (including forms, any minimum periods for response, and the matters to be specified in authorisations): 10
- (b) specifying terms and conditions that apply to marine scientific research undertaken under an authorisation granted by the EPA under this Act:
- (c) for the purpose of recovering so much of the costs of the performance of the EPA's functions under **sections 14 to 22** as is not provided for by money appropriated by Parliament for that purpose, by— 15
- (i) requiring the payment to the EPA of fees and charges by applicants for authorisations under the Act in connection with the performance of those functions:
- (ii) prescribing the amounts of those fees and charges or the method by which those fees and charges must be calculated or ascertained (including, without limitation, hourly charges): 20
- (iii) authorising the EPA to require payment of any costs incurred by the EPA in connection with those functions:
- (d) providing for any other matters contemplated by this Act and necessary for its administration or necessary for giving it full effect. 25
- (2) The Minister and the Minister for the Environment must, before making a recommendation under **subsection (1)(a)**, have regard to New Zealand's rights and obligations under the United Nations Convention on the Law of the Sea 1982. 30
- (3) An Order in Council made under **subsection (1)** may authorise the EPA to refund or waive, in whole or in part and on any conditions that are prescribed, payment of any fee, charge, or cost payable in relation to any person or class of persons.
- (4) The EPA may refuse to perform or exercise a function, power, or duty until the prescribed fee, charge, or cost is paid. 35
- (5) Any fee, charge, or cost payable to the EPA is recoverable by the EPA in a court of competent jurisdiction as a debt due to the EPA.

### Part 3 Amendments to other enactments

#### *Amendment to Biosecurity Act 1993*

- 28 Amendment to Biosecurity Act 1993**  
**Section 29** amends the Biosecurity Act 1993. 5
- 29 Section 7B amended (Relationship with Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012)**  
 After section 7B(5), insert:
- (6) If an exemption is granted under subsection (1) or continued by regulations made under section 7D,— 10
- (a) **Part 2** of the Kermadec Ocean Sanctuary Act **2016** also does not apply to the action while the exemption continues; and
- (b) subsection (5) and section 7D apply (and, for that purpose, any reference in those provisions to Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 also includes a reference to **Part 2** of the Kermadec Ocean Sanctuary Act **2016**). 15

#### *Amendments to Conservation Act 1987*

- 30 Amendments to Conservation Act 1987**  
**Sections 31 to 33** amend the Conservation Act 1987.
- 31 Section 17C amended (General policy under more than 1 Act)** 20  
 In section 17C(1), after “Marine Mammals Protection Act 1978,” insert “the Kermadec Ocean Sanctuary Act **2016**,”.
- 32 Section 17D amended (Conservation management strategies)**  
 In section 17D(1), replace “National Parks Act 1980 Hauraki Gulf Marine Park Act 2000” with “National Parks Act 1980, the Hauraki Gulf Marine Park Act 2000, the Kermadec Ocean Sanctuary Act **2016**”. 25
- 33 Schedule 1 amended**  
 In Schedule 1, insert in its appropriate alphabetical order:  
 Kermadec Ocean Sanctuary Act **2016**

#### *Amendments to EEZCS Act* 30

- 34 Amendments to EEZCS Act**  
**Sections 35 to 43** amend the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

- 35 Section 4 amended (Interpretation)**  
 In section 4(1), insert in its appropriate alphabetical order:  
**Kermadec prohibited activity** means an activity prohibited by **section 9(2)(b) to (e)** of the Kermadec Ocean Sanctuary Act **2016**
- 36 Section 7 amended (Meaning of marine management regime)** 5  
 After section 7(2)(ga), insert:  
 (gb) Kermadec Ocean Sanctuary Act **2016**:
- 37 Section 20H amended (Emergency dumping)**  
 After section 20H(3)(a), insert:  
 (ab) consult the Director-General of Conservation if it is an emergency dumping consent to dump waste or other matter into waters in the Kermadec Ocean Sanctuary (as defined by **section 4(1)** of the Kermadec Ocean Sanctuary Act **2016**); and 10
- 38 New subpart 2A of Part 2 inserted** 15  
 After section 20J, insert:  
 Subpart 2A—Additional restrictions on activities in Kermadec Ocean Sanctuary
- 20K Additional restrictions on activities in Kermadec Ocean Sanctuary**  
 (1) No person may undertake a Kermadec prohibited activity.  
 (2) The effect of **subsection (1)** is that— 20  
 (a) no person may apply for a marine consent for a Kermadec prohibited activity, and a consent for a Kermadec prohibited activity must not be granted, under this Act:  
 (b) no Kermadec prohibited activity is a permitted activity or authorised by section 21, 22, or 23. 25
- 39 New section 37AA inserted (Kermadec prohibited activities)**  
 After section 37, insert:  
**37AA Kermadec prohibited activities**  
 (1) A Kermadec prohibited activity is not a permitted activity, discretionary activity, or prohibited activity to which sections 35 to 37 apply. 30  
 (2) *See* **section 20K** for how this Act applies to a Kermadec prohibited activity.

**40 Section 132 amended (Offences in relation to activities regulated under section 20)**

In section 132(3), replace “and 134B to 134D” with “, 134B to 134D, and **134EA**”.

**41 New sections 134EA and 134EB and cross-heading inserted**

5

After section 134E, insert:

*Offences and defences in relation to Kermadec prohibited activities*

**134EA Offences in relation to Kermadec prohibited activities**

- (1) This section applies if a Kermadec prohibited activity is carried out.
- (2) The following persons commit an offence: 10
- (a) if the activity is one described in **section 9(2)(b)** of the Kermadec Ocean Sanctuary Act **2016**, the person in charge of the operations connected with the activity and the person carrying out the activity:
- (b) if the activity is one described in **section 9(2)(d)** of the Kermadec Ocean Sanctuary Act **2016**,— 15
- (i) the master and the owner of a ship, if the dumping is from the ship or the ship is dumped:
- (ii) the person in possession of, and the owner of, an aircraft, if the dumping is from the aircraft or the aircraft is dumped:
- (iii) the owner of a structure, if the dumping is from the structure or the structure is dumped: 20
- (c) for any other activity, the person who carried out the activity.

**134EB Strict liability and defences in relation to Kermadec prohibited activities**

- (1) In a prosecution for an offence of breaching, or permitting a breach of, **section 134EA**, it is not necessary to prove that the defendant intended to commit the offence. 25
- (2) In a prosecution for an offence against **section 134EA**, it is a defence if the defendant proves—
- (a) that the act or omission that is alleged to constitute the offence— 30
- (i) was necessary to save or prevent danger to human health or safety, or the marine environment, to avert a serious threat to the ship, aircraft, or structure, or (in the case of force majeure caused by stress of weather) to secure the safety of the ship, aircraft, or structure; and
- (ii) was a reasonable step to take in all the circumstances; and 35
- (iii) was likely to result in less damage than would otherwise have occurred; and



	(iv) was done in such a way that the likelihood of damage to human or marine life was minimised; or	
	(b) that the action or event to which the prosecution relates resulted from an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage, and in each case—	5
	(i) the action or event could not reasonably have been foreseen or been provided against by the defendant; and	
	(ii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred.	
<b>42</b>	<b>Section 134I amended (Additional penalties for discharge and dumping offences)</b>	<b>10</b>
	In section 134I, replace “or 134D” with “, 134D, or <b>134EA(2)(b)</b> ”.	
<b>43</b>	<b>Section 134M amended (Application of fines for discharge and dumping offences)</b>	
	In section 134M, replace “or 134D” with “, 134D, or <b>134EA(2)(b)</b> ”.	15
	<i>Amendment to Environmental Protection Authority Act 2011</i>	
<b>44</b>	<b>Amendment to Environmental Protection Authority Act 2011</b>	
	<b>Section 45</b> amends the Environmental Protection Authority Act 2011.	
<b>45</b>	<b>Section 5 amended (Interpretation)</b>	
	In section 5, definition of <b>environmental Act</b> , after paragraph (c), insert:	20
	(ca) the Kermadec Ocean Sanctuary Act <b>2016</b> :	
	<i>Amendments to Fisheries Act 1996</i>	
<b>46</b>	<b>Amendments to Fisheries Act 1996</b>	
	<b>Sections 47 and 48</b> amend the Fisheries Act 1996.	
<b>47</b>	<b>New section 113AB and cross-heading inserted</b>	<b>25</b>
	After section 113A, insert:	
	<i>Specific prohibition on fishing in Kermadec Fishery Management Area 10</i>	
	<b>113AB No fishing permitted in Kermadec Fishery Management Area 10</b>	
(1)	No person may—	
(a)	take any fish, aquatic life, or seaweed from the Kermadec Fishery Management Area 10; or	30
(b)	possess any fish, aquatic life, or seaweed taken from the Kermadec Fishery Management Area 10.	

- (2) **Subsection (1)**—
- (a) overrides any permit or other exemption or authorisation for fishing under this Act or any enactment made under this Act; but
  - (b) does not apply to any fishing to which **section 10** of the Kermadec Ocean Sanctuary Act **2016** applies or to possession of fish, aquatic life, or seaweed taken in the course of that fishing. 5
- (3) Every person who contravenes **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 252(3).
- (4) In this section, **Kermadec Fishery Management Area 10** means the fishery management area 10—Kermadec as described in Part 1 of Schedule 1. 10

#### 48 **Section 252 amended (Penalties)**

After section 252(3)(ha), insert:

(hab) **section 113AB** (no fishing permitted in Kermadec Fishery Management Area 10):

*Consequential amendments*

15

#### 49 **Consequential amendments**

The enactments specified in **Schedule 3** are amended in the manner indicated in that schedule.

## Schedule 1

### Transitional, savings, and related provisions

s 5

#### Part 1

#### Provisions relating to Act as enacted 5

- 1 No compensation payable**
- (1) No compensation is payable by the Crown for any loss or damage, or any adverse effect on a right or interest, (including, without limitation, to or on the value of quota or a right to fish) arising from the enactment or operation of this Act. 10
- (2) If there is any inconsistency between this clause and any other enactment or rule of law, this clause prevails over that enactment or rule of law.
- 2 Effect on marine scientific research**
- (1) This clause applies to the activity of marine scientific research if—
- (a) the activity is a permitted activity for the purposes of the EEZCS Act immediately before the relevant date; and 15
- (b) the pre-activity requirements in Schedule 1 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Permitted Activities) Regulations 2013 have been complied with before the relevant date in relation to the activity; and 20
- (c) that activity is, on the relevant date, a Kermadec prohibited activity.
- (2) The activity may be undertaken without an authorisation, as if it were still a permitted activity for the purposes of the EEZCS Act, until the first anniversary of the relevant date.
- (3) In this clause, **relevant date** means the later of— 25
- (a) the date on which this clause comes into force; and
- (b) the date on which regulations made under **section 27(1)(a)** come into force.
- 3 Effect on other existing permits and permit applications and authorisations** 30
- (1) This clause applies to any activity other than an activity to which **clause 2** applies.
- (2) On the date on which this clause comes into force,—
- (a) a person must immediately cease any Kermadec prohibited activity despite any existing permit or authorisation; and 35

- (b) a person must immediately cease considering any application for a permit or an authorisation to undertake a Kermadec prohibited activity.

**4 Role and jurisdiction of Auckland Conservation Board to cease**

On and from the date on which **section 23** comes into force, the Auckland Conservation Board, as set up under Part 2A of the Conservation Act 1987, ceases to have jurisdiction within or over the Kermadec area. 5

**5 Existing parts of conservation management strategy apply until new Kermadec conservation management strategy approved**

- (1) This clause applies until a conservation management strategy is approved under section 17F of the Conservation Act for the Kermadec area. 10
- (2) The conservation management strategy that applies to the Kermadec area for the purposes of the Conservation Act 1987 is the part or parts of a conservation management strategy that directly relate to the whole or any part of the Kermadec marine reserve and the Kermadec Islands (to the extent that it is relevant).

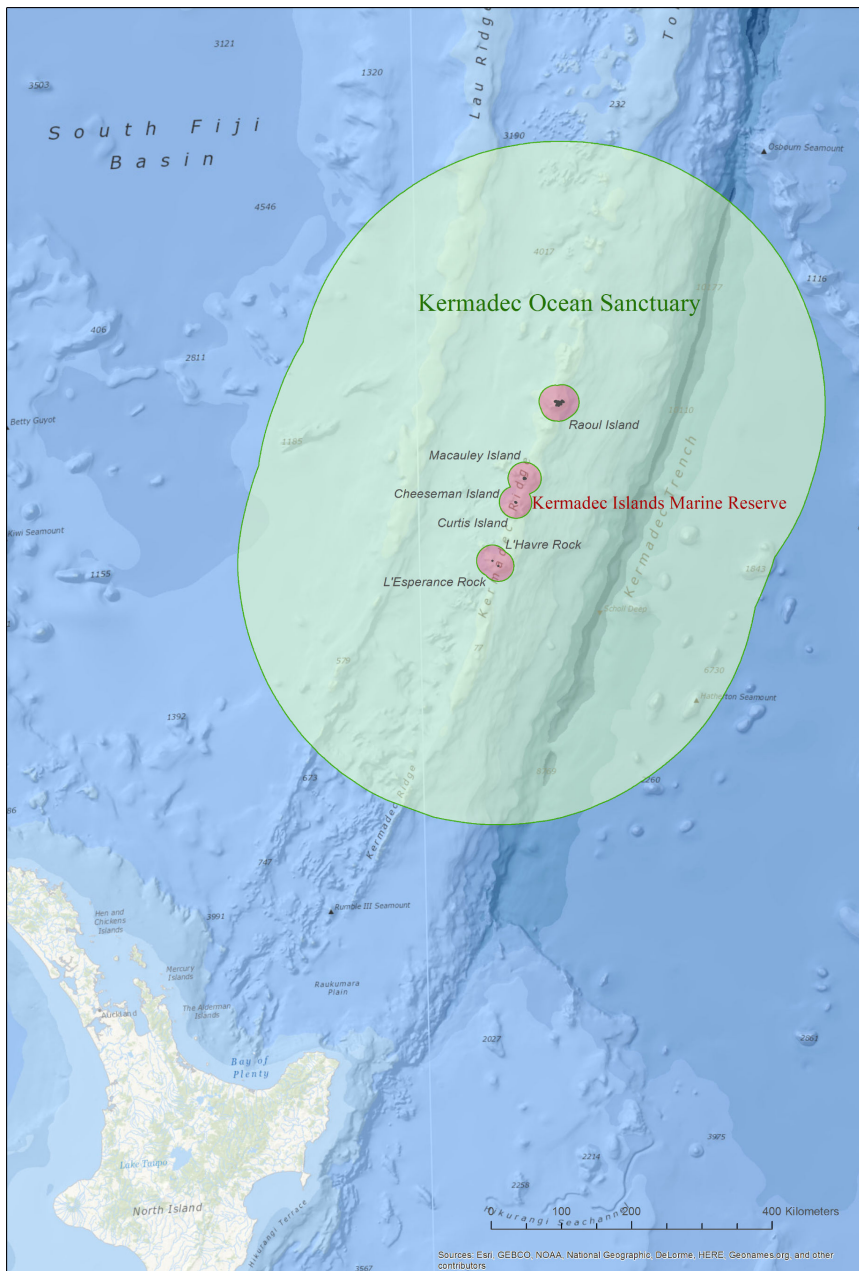
## Schedule 2 Kermadec Ocean Sanctuary

s 8

### Part 1

### Indicative map showing general location

5



## Part 2

### Description of geographic boundaries

An area—

- (a) enclosed by a line—
  - (i) commencing at the easternmost point of the exclusive economic zone boundary nearest 34°22.10'S and 179°29.60'E; and then 5
  - (ii) heading in generally north-westerly, northerly, easterly, and southerly directions along the boundary of the exclusive economic zone to the westernmost point of the exclusive economic zone boundary nearest 34°34.20'S and 179°51.20'E; and then 10
  - (iii) proceeding in a generally westerly direction directly to the point of commencement; and
- (b) including all waters, seabed, and subsoil in the area; but
- (c) excluding any part of the area that is a marine reserve or is not in the exclusive economic zone. 15

## Schedule 3 Consequential amendments

s 49

### Part 1 Amendment to Act

5

#### Maritime Transport Act 1994 (1994 No 104)

In section 467A, insert as subsection (2):

- (2) **Subpart 2A** of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 does not apply to activities listed in **section 10(2)(c)** of the Kermadec Ocean Sanctuary Act **2016**.

10

### Part 2 Amendments to legislative instruments

#### Fisheries (Amateur Fishing) Regulations 2013 (SR 2013/482)

In regulation 7(1), revoke the definitions of **Auckland and Kermadec FMA** and **Kermadec FMA**.

15

In regulation 7(2), delete “and Kermadec”.

In the Part 3 heading, delete “**and Kermadec**”.

In regulations 55, 56, 57, 58, 59, 64, 67, and 76, delete “and Kermadec” in each place.

In regulation 62(1), delete “or the Kermadec FMA” in each place.

20

In Schedule 3, in the Part 2 heading, delete “**and Kermadec**”.

In the Schedule 6 heading, delete “**and Kermadec**”.

In the Schedule 14 heading, delete “**and Kermadec**”.

In Schedule 14, in the heading to clause 2, delete “**and Kermadec**”.

In Schedule 14, clause 2(1), delete “**and Kermadec**”.

25

In Schedule 14, clause 3(1)(s), delete “and Kermadec”.

In Schedule 19, in the Part 2 heading, delete “**and Kermadec**”.

In Schedule 19, Part 2, items relating to regulations 55(3), 56(2), 57(2), 58(2), 59(4), and 76(1), delete “and Kermadec” in each place.

#### Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 (SR 1986/216)

30

In regulation 1(1), replace “and Kermadec Areas” with “Area”.

In regulation 2(1), revoke the definition of **Kermadec fishery management area**.

**Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 (SR 1986/216)—continued**

Revoke regulation 18A.

In regulation 20, delete “or the Kermadec fishery management area”.

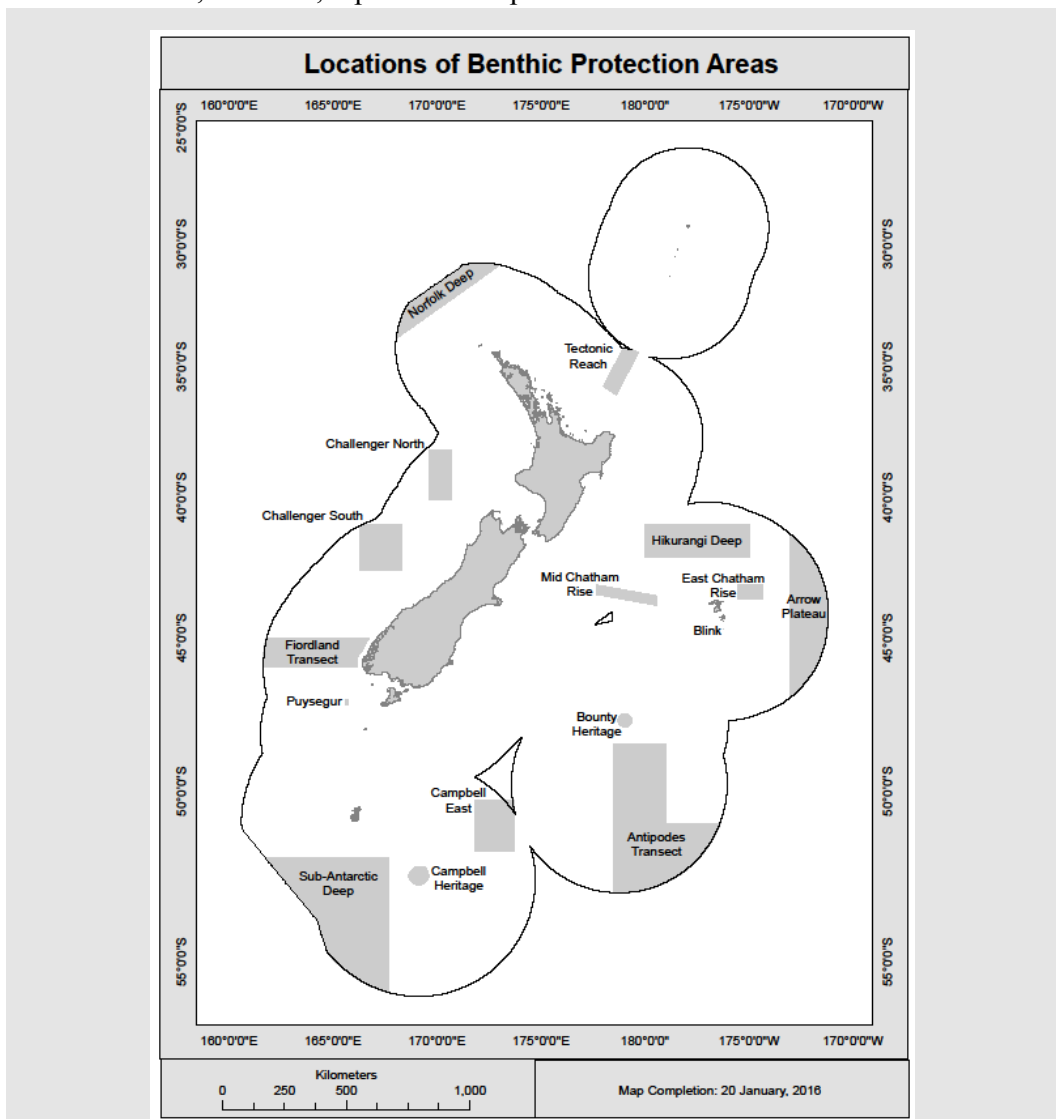
Revoke regulation 20A.

In regulation 24(2), replace “18A” with “18AA”.

**Fisheries (Benthic Protection Areas) Regulations 2007 (SR 2007/308)**

5

In the Schedule, in Part 1, replace the map with:



In the Schedule, in Part 2, revoke the item relating to Kermadec.



**Fisheries (Reporting) Regulations 2001 (SR 2001/188)**

In Schedule 3, table 8, paragraph (a), replace “and Kermadec Areas” with “Area”.