

Version
as at 28 October 2021



Fisheries (Benthic Protection Areas) Regulations 2007

(SR 2007/308)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 15th day of October 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 297 of the Fisheries Act 1996, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Ministry for Primary Industries.

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Schedule Description of benthic protection areas

Regulations

1 Title

These regulations are the Fisheries (Benthic Protection Areas) Regulations 2007.

2 Commencement

These regulations come into force on 15 November 2007.

3 Purposes of regulations

The purposes of these regulations are—

- (a) to establish benthic protection areas within New Zealand's fishery waters:
- (b) to set out rules that apply to vessels trawling within the benthic protection areas:
- (c) to prohibit the use of a dredge within the benthic protection areas:
- (d) to create offences and penalties in relation to any breach of these regulations.

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Fisheries Act 1996

benthic protection areas mean the areas established by regulation 6

ENMS—

- (a) means any electronic net monitoring system that collects the information specified in regulation 9(d) and that complies with any standards and

requirements specified by the chief executive in a circular issued under regulation 10; and

- (b) includes—
 - (i) any electronic equipment attached to the trawl net for the purpose of collecting any of the information specified in regulation 9(d) and any device used to store that information; and
 - (ii) any onboard equipment or software used to collect any of the information specified in regulation 9(d) and any device used to store that information; and
 - (iii) all information derived from, or stored using, any equipment described in subparagraph (i) or (ii)

lower buffer zone means all water and seabed within the benthic protection areas that is below the upper buffer zone

upper buffer zone means all water within the benthic protection areas that is between, and including, the following points:

- (a) 50 metres directly above the seabed; and
 - (b) 100 metres directly above the seabed.
- (2) Any term in or expression that is defined in the Act or the Fisheries (Commercial Fishing) Regulations 2001 and used, but not defined, in these regulations has the same meaning as in the Act or those regulations.

5 Relationship between these regulations and other regulations

- (1) The prohibitions and restrictions imposed by these regulations on the use of a dredge and trawling within a benthic protection area apply in addition to any prohibitions and restrictions imposed by any other regulations.
- (2) For the avoidance of doubt, these regulations do not forbid trawling for the purposes of regulation 74 of the Fisheries (Commercial Fishing) Regulations 2001.

Part 1

Benthic protection areas

6 Benthic protection areas established

- (1) This regulation establishes the benthic protection areas.
- (2) The areas described in the Schedule—
 - (a) are the benthic protection areas; and
 - (b) include all the waters and seabed in those areas.
- (3) The benthic protection areas are described in the Schedule as follows:

- (a) Part 1 of the Schedule contains a map that shows the general locations of the benthic protection areas:
 - (b) Part 2 of the Schedule describes the geographical boundaries of the benthic protection areas (WGS84 projection).
- (4) In the event of any inconsistency between the benthic protection areas shown in the map in Part 1 of the Schedule and the descriptions of the benthic protection areas in Part 2 of the Schedule, the descriptions in Part 2 prevail.

7 Prohibition on use of dredge in benthic protection area

No person may use a dredge within any benthic protection area.

8 Restrictions on use of trawl net in benthic protection area

- (1) No person may use a trawl net within any benthic protection area unless that person—
- (a) is trawling only above the upper buffer zone; and
 - (b) complies with the requirements of regulation 9.
- (2) No person may use a trawl net in the upper buffer zone.
- (3) No person may use a trawl net in the lower buffer zone.

9 Conditions applying to persons in benthic protection area for purpose of trawling

The requirements referred to in regulation 8(1) are that the person—

- (a) has, before entering a benthic protection area for the purpose of trawling, notified the Fisheries Communication Centre of—
 - (i) the person's intention to use a trawl net; and
 - (ii) the benthic protection area in which the person intends to trawl; and
- (b) has, after entering a benthic protection area but before commencing trawling, notified the person's intention to commence trawling to an observer on board the vessel; and
- (c) ensures that no less than 2 observers are on board the vessel at all times during trawling; and
- (d) carries on board the vessel an ENMS that, when the person is using a trawl net within a benthic protection area, continuously records—
 - (i) the depth of the ground rope and seabed; and
 - (ii) the date and time; and
 - (iii) the latitude and longitude of the vessel; and
 - (iv) any other information specified in a circular issued under regulation 10; and

- (e) permits inspection of information from the ENMS, at any reasonable time, by a fishery officer or an observer; and
- (f) supplies the information from the ENMS to a fishery officer on request by that officer; and
- (g) retains information from the ENMS for a period of not less than 2 years; and
- (h) complies with any circular issued by the chief executive under regulation 10.

10 Chief executive may issue circular

- (1) The chief executive may—
 - (a) issue a circular specifying the standards and requirements applying to ENMS for use within a benthic protection area; and
 - (b) amend or revoke the circular.
- (2) Before issuing, amending, or revoking a circular under subclause (1), the chief executive must consult with any organisations that the chief executive considers to be representative of those classes of persons likely to be substantially affected by the circular.
- (3) A circular may specify (but is not limited to) all or any of the following standards and requirements:
 - (a) the place on the vessel where the ENMS must be installed;
 - (b) the method of installing the ENMS on a vessel;
 - (c) the form, frequency, and type of ENMS information, including information derived from the ENMS and information relating to the ENMS installed on the vessel;
 - (d) the supply of ENMS information to the chief executive;
 - (e) the places and times at which ENMS information must be supplied;
 - (f) minimum standards and requirements for the ENMS and its operation, including testing, maintenance, and certification of the ENMS.
- (4) A circular may specify different standards and requirements for different types of ENMS.
- (5) A circular issued under subclause (1)(a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this regulation

Publication	It is not required to be published	LA19 s 73(2)
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the secondary legislation.

Regulation 10(5): inserted, on 28 October 2021, by regulation 26 of the Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021 (LI 2021/248).

11 Conditions applying to persons in benthic protection area for purpose other than trawling

Any person using a fishing vessel within a benthic protection area for a purpose other than trawling must ensure that, while within the benthic protection area,—

- (a) no trawl net or dredge is in contact with the water;
- (b) no trawl net or dredge is being prepared for use.

Part 2 Offences and penalties

12 Offences

- (1) A person commits an offence who contravenes or fails to comply with the requirements of any of regulations 8(2), 9(a), (b), (g), or (h), or 11.
- (2) A person commits an offence who contravenes or fails to comply with the requirements of any of regulations 7, 8(3), or 9(c), (d), (e), or (f).

13 Penalties

- (1) Every person who commits an offence against a regulation specified in regulation 12(1) is liable on conviction to a fine not exceeding \$20,000.
- (2) Every person who commits an offence against a regulation specified in regulation 12(2) is liable on conviction to a fine not exceeding \$100,000.
- (3) A person is liable on conviction to a fine not exceeding \$100,000 if—
 - (a) that person has been convicted of 2 or more offences against the regulations specified in regulation 12(1); and
 - (b) the offences were committed on more than 2 occasions within a period of 3 consecutive years.

Regulation 13(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

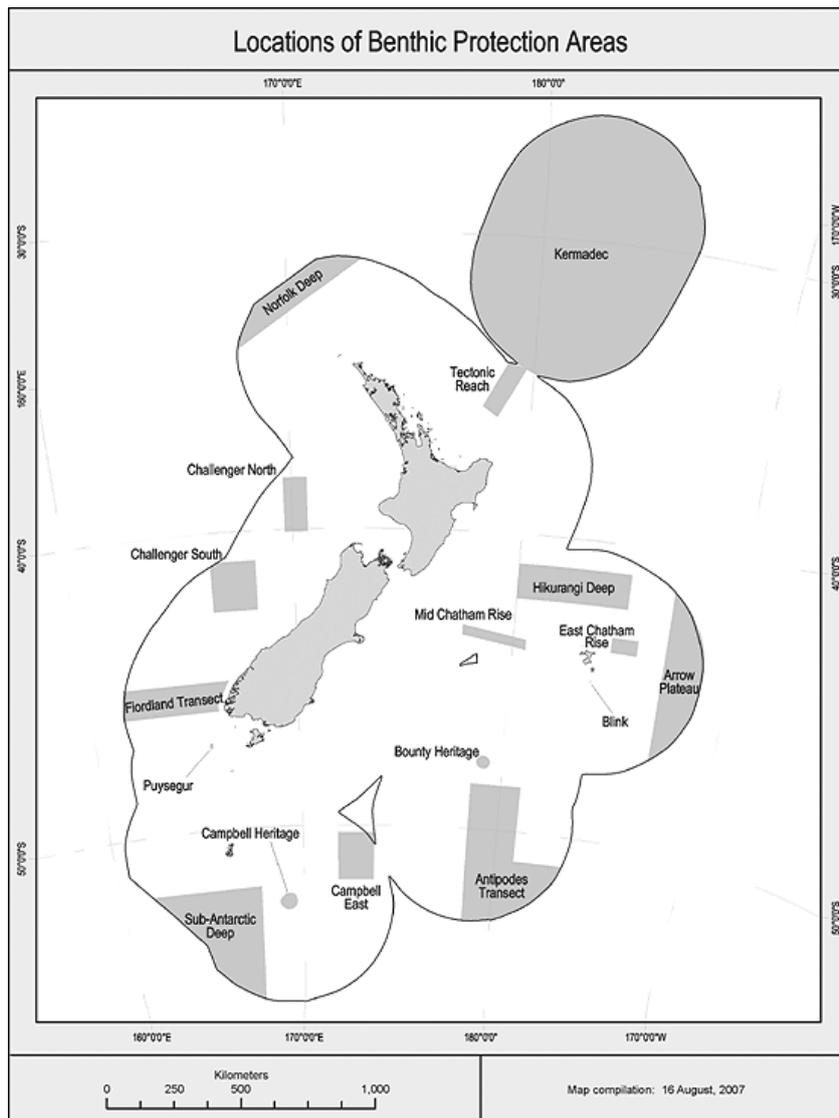
Regulation 13(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Regulation 13(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Schedule Description of benthic protection areas

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Part 1 Map showing general locations of benthic protection areas



Part 2

Description of geographical boundaries of benthic protection areas (WGS84 projection)

Kermadec: An area commencing at the easternmost point of the exclusive economic zone boundary nearest 34°22.10'S 179°29.60'E; then heading in generally north-west-erly, 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 179°51.20'W; then proceeding in a generally westerly direction directly to the point of commencement.

Tectonic Reach: A box covering the area commencing at 34°15.60'S 178°58'E; then heading in a generally easterly direction along the boundary of the exclusive economic zone to 34°26'S 179°42'E; then heading in a generally south-westerly direction directly to 36°06'S 178°37.70'E; then heading in a generally north-westerly direction directly to 35°46'S 178°00'E; then heading in a generally north-easterly direction directly to the point of commencement.

Norfolk Deep: An area commencing at 30°51.972'S and 173°00.362'E; then heading in a south-westerly direction directly to 33°52.633'S and 168°02.141'E; then heading in a generally north-easterly direction along the boundary of the exclusive economic zone to the point of commencement.

Challenger North: A box covering the area between 38°15'S and 40°05'S and 169°40'E and 170°40'E.

Challenger South: An area commencing at 41°00'S 168°18'E; then heading south along the 168°18'E line of longitude to 42°40'S 168°18'E; then heading west along the 42°40'S line of latitude to 42°40'S 166°18'E; then heading north along the 166°18'E line of longitude to the intersection with the exclusive economic zone boundary at 41°02.468'S; then following the exclusive economic zone boundary in a generally north-easterly direction to the intersection with the 41°00'S line of latitude at 166°24.757'E; then heading east along the 41°00'S line of latitude to the point of commencement.

Hikurangi Deep: A box covering the area between 41°00'S and 42°10'S and 180°00' and 175°00'W.

Mid Chatham Rise: A box covering the area commencing at 43°10'S 177°40'E; then heading in a generally easterly direction directly to 43°33'S 179°25'W; then heading in a southerly direction directly to 43°53'S 179°25'W; then heading in a generally westerly direction directly to 43°30'S 177°40'E; then heading in a northerly direction directly to the point of commencement.

East Chatham Rise: A box covering the area between 43°10'S and 43°40'S and 175°30'W and 174°20'W.

Arrow Plateau: An area commencing at the intersection of the 173°00'W line of longitude with the exclusive economic zone boundary at 41°21.36'S; then heading in generally south-easterly, southerly, and south-westerly directions along the exclusive

economic zone boundary to the intersection with the 173°00'W line of longitude; then heading north along the 173°00'W line of longitude to the point of commencement.

Fiordland Transect: An area commencing at the intersection of the 45°00'S line of latitude and the seaward boundary of the territorial sea at approximately 166°45.80'E; then travelling in a generally southerly direction along the territorial sea boundary to the intersection of the 46°00'S line of latitude at approximately 166°09.50'E; then heading west along the 46°00'S line of latitude to the intersection with the exclusive economic zone boundary; then following the exclusive economic zone boundary in a generally northerly direction to the intersection with the 45°00'S line of latitude; then heading east along the 45°00'S line of latitude to the point of commencement.

Campbell East: A box covering the area between 50°16'S and 51°50'S and 171°50'E and 173°41'E.

Antipodes Transect: An area commencing at the point 48°30'S 178°30'E; then heading east along the 48°30'S line of latitude to 48°30'S 179°00'W; then heading south along the 179°00'W line of longitude to 51°00'S 179°00'W; then heading east along the 51°00'S line of latitude to the intersection with the exclusive economic zone boundary; then following the exclusive economic zone boundary in a generally south-westerly direction to the intersection with the 178°30'E line of longitude; then heading north along the 178°30'E line of longitude to the point of commencement.

Bounty Heritage: An area covering the existing 12 nautical mile territorial sea limit around the Bounty Islands.

Campbell Heritage: An area covering the existing 12 nautical mile territorial sea limit around Campbell Island.

Sub-Antarctic Deep: An area commencing at 52°00'S 167°40'E; then heading south along the 167°40'E line of longitude to the intersection with the exclusive economic zone boundary; then heading in a generally north-westerly direction along the exclusive economic zone boundary until reaching the intersection with the 52°00'S line of latitude; then heading east along the 52°00'S line of latitude to the point of commencement.

Blink: A box covering the area between 44°42.63'S and 44°42.92'S and 176°14.83'W and 176°14.42'W.

Puysegur: A box covering the area between 47°04'S and 47°14'S and 165°35'E and 165°43'E.

Schedule Part 2 **Norfolk Deep:** amended, on 29 January 2020, by regulation 4 of the Fisheries (Co-ordinates) Amendment Regulations 2019 (LI 2019/292).

Schedule Part 2 **Challenger South:** amended, on 29 January 2020, by regulation 4 of the Fisheries (Co-ordinates) Amendment Regulations 2019 (LI 2019/292).

Diane Morcom,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 18 October 2007.

Notes

1 *General*

This is a consolidation of the Fisheries (Benthic Protection Areas) Regulations 2007 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021 (LI 2021/248): regulation 26

Fisheries (Co-ordinates) Amendment Regulations 2019 (LI 2019/292): regulation 4

Criminal Procedure Act 2011 (2011 No 81): section 413