

**Reprint
as at 19 October 2007**



**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.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

The Fisheries (Benthic Protection Areas) Regulations 2007 are administered by the Ministry of Fisheries.

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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.

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).

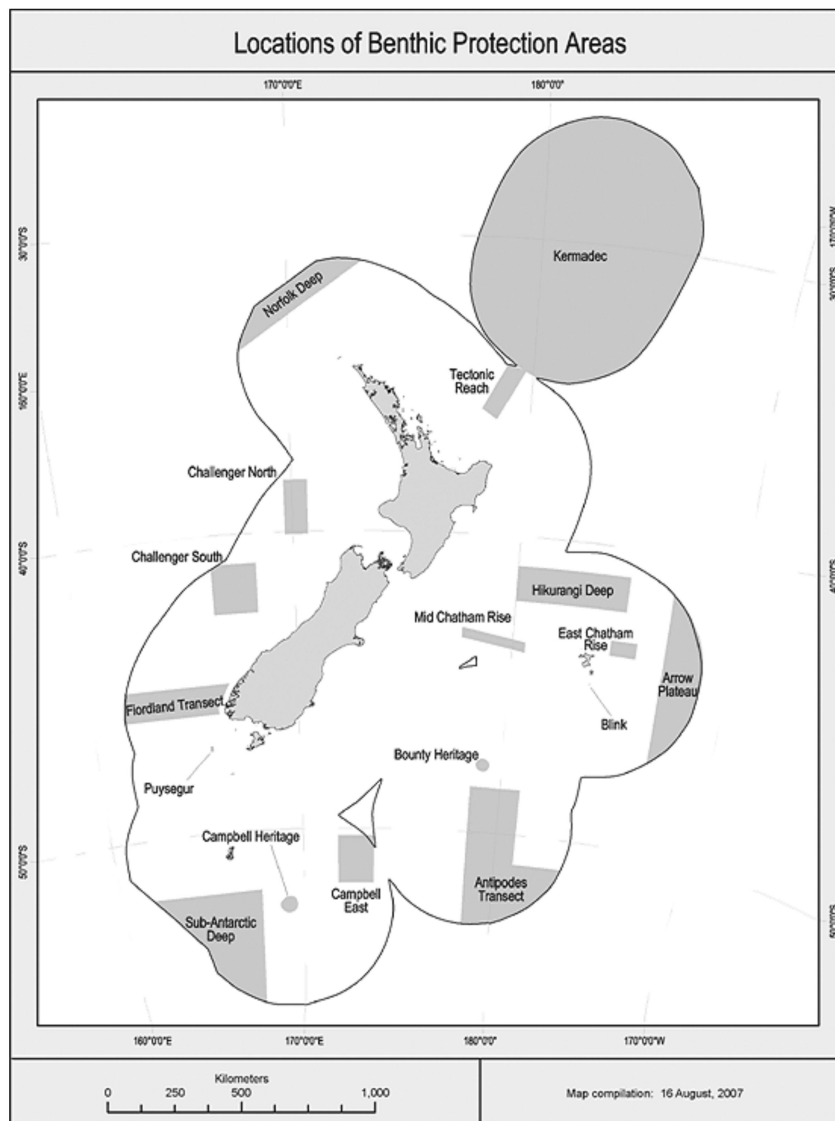
13 Penalties

- (1) Every person who commits an offence against a regulation specified in regulation 12(1) is liable on summary 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 summary conviction to a fine not exceeding \$100,000.
 - (3) A person is liable on summary 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.
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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-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 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°52.18'S 173°00'E; then heading in a south-westerly direction directly to 33°53.30'S 168°01'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°07.90'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°37.50'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

Part 2—*continued*

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.

Part 2—*continued*

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.

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 15 November 2007,—

- establish benthic protection areas:
- prohibit the use of a dredge in those areas:
- prohibit trawling in the upper and lower buffer zones of those areas:
- set out rules that apply to persons trawling within the benthic protection areas:
- enable the chief executive to issue, amend, or revoke a circular specifying the standards and requirements applying to ENMS for use within a benthic protection area:
- create offences in relation to any breach of these regulations.

These regulations apply in addition to any other regulations made under the Fisheries Act 1996 that relate to fishing in a benthic protection area.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 18 October 2007.

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 - 2 Status of reprints
 - 3 How reprints are prepared
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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Fisheries (Benthic Protection Areas) Regulations 2007. The reprint incorporates all the amendments to the Fisheries (Benthic Protection Areas) Regulations 2007 as at 19 October 2007, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
