

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2022] NZEnvC 228**

IN THE MATTER OF the Resource Management Act 1991

AND of an appeal under clause 14 of  
Schedule 1 of the Act

BETWEEN BAYS OF ISLANDS MARITIME  
PARK INCORPORATED

(ENV-2019-AKL-117)

THE ROYAL FOREST & BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INCORPORATED

(ENV-2019-AKL-127)

Appellant

AND NORTHLAND REGIONAL  
COUNCIL

Respondent

Court: Judge J A Smith  
Commissioner S Myers  
Deputy Commissioner G Paine

Hearing: 12 – 16 July 2021  
19 – 23 July 2021  
2 – 6 August 2021

Last case event: Joint memorandum 29 July 2022, several memoranda of counsel  
for Minister for Oceans and Fisheries and Minister of Conservation  
re update to controls including 27 October 2022

Appearances: P Anderson for Royal Forest and Bird Protection Society of New  
Zealand Incorporated  
S Gepp for Bay of Islands Maritime Park and Ngāti Kuta ki Te  
Rawhiti Hapū (s 274)  
M J Doesburg and E S Lake for Northland Regional Council and  
as agent for Aquaculture New Zealand, Moana New Zealand  
Limited and The New Zealand Oyster Industry Association (s 274)



S Shaw for Patuharakeke Te Iwi Trust Board (s 274)  
 R Enright and R Haazen for Te Uri o Hikihiki Hapū (s 274)  
 J Pou and M Apiti for Manuhiri Kaitiaki Charitable Trust (s 274)  
 D van Mierlo and M Downing for the Minister of Conservation  
 D van Mierlo and R Dixon for the Minister of Fisheries (s 274)  
 R Ashton for New Zealand Sport Fishing Council Incorporated  
 (s 274)  
 E Hudspith and L Bullen for Ngātiwai Trust Board and Te  
 Runanga a Iwi o Ngapuhi (s 274)  
 A Thomas and A Herewini for Te Runanga o Ngāti Rēhia (s 274)  
 M Wikaira and B Boxall for Te Ohu Kai Moana Trustee Limited  
 (s274)  
 J Appleyard and A Hill for the Fishing Industry Parties (Fisheries  
 Inshore NZ and NZ Rock Lobster Industry Council) (s 274)  
 No appearance for Federated Farmers, Minister of Defence,  
 Transpower New Zealand Limited (abide decision)

Date of Decision: 4 November 2022

Date of Issue: 4 November 2022

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## DECISION OF THE ENVIRONMENT COURT

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- A: We conclude that in the current circumstances the Fisheries Act 1996 provides adequate protection for the biodiversity values of Area B (Ipipiri/Inner Bay of Islands) and for the deeper waters in Areas C (Rakaumangamanga Moana Mara Tipu Rohe/ Te Au o Morunga Protection Area). Accordingly, we make no orders beyond 100 metres deep in Areas C and nor for Area B.
- B: In relation to Areas A (Mimiwhangata Rāhui Tapu and Maunganui Bay – Oke Bay Rāhui Tapu), we conclude there are significant biodiversity values that should be properly protected under the RMA. This does not prevent further protection under the Fisheries Act but recognises the high diversity values of both of these areas. In that regard, we conclude we should protect both areas sought namely Maunganui Bay – Oke Bay Rāhui Tapu and also the Mimiwhangata Rāhui Tapu area and its buffer area. We see little purpose in separating these two although there may be reasons if it is related to harvesting by tangata whenua. We leave that to be finalised in the wording.

- C: As far as Area C is concerned, we conclude on balance that the biodiversity values should be protected around Cape Brett which we show to be generally delineated in a plan annexed hereto as “**Appendix 3**”, including the rocky reefs to a depth of 100 metres. The limits of Area C will generally follow the Significant Ecological Area boundaries to 100 metres depth and include the rocky reefs from north of Maunganui Bay, around Cape Brett, to south of Whangamumu Harbour where it should terminate. The southern limit on the eastern side should be just north of Elliott Bay and to the north of Maunganui Bay on the western side. The maps will need to be redrawn as will the particular rules applying.
- D: We conclude that the wording of the regional provisions in this regard proposed by the Council are largely appropriate but minor wording changes for areas and for controls will need to be included.

## **REASONS**

### **Introduction**

[1] This decision relates to Topic 14 – Marine Protected Areas, in the proposed Northland Regional Plan (**NRP**).

[2] Bay of Islands Maritime Park Incorporated (**BOI Maritime Park**) and Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**), Ngāti Kuta Ki Te Rawhiti Hapū (**Ngāti Kuta**) and Te Uri o Hikihiki Hapū seek provisions in the NRP to protect areas in the Bay of Islands and Mimiwhangata from the adverse effects on marine biodiversity from human activity. This inevitably creates an intersection with fisheries and fishing and the interrelationship between the Resource Management Act 1991 (**RMA**) and the Fisheries Act 1996 (**Fisheries Act**).

### **Hearing and post hearing**

[3] A hearing was held from 12 – 16 July, 19 – 23 July and 2 – 6 August 2021. The hearing was adjourned following closing submissions on 6 August 2021. At the

conclusion of the hearing, the Court encouraged the parties to work together to try and find a solution.

[4] Since the hearing was adjourned:

- (a) on 17 August 2021, the Government announced a shift in COVID-19 Alert Levels, moving the country to Alert Level 4;
- (b) on 13 October 2021, the Court issued a Minute providing an update as to the anticipated timing of a decision and drawing the parties' attention to several documents which could be of relevance to the proceedings.<sup>1</sup> The Court directed the parties to provide a joint memorandum on the relevance of the documents;
- (c) due to the impact of COVID-19 restrictions, the parties were not able to meet *kanohi ki te kanohi*. Despite the constraints, the parties sought to make progress;
- (d) the parties met on 22 October 2021 via Microsoft Teams to discuss the Court's Minute and the way forward in terms of further discussions. The parties filed a joint memorandum on 29 October 2021, proposing to engage in further discussions on the substantive issues of the case and to report on those discussions in February 2022 and on further inter-party discussions;
- (e) on 9 December 2021, the Minister of Conservation and the Minister for Oceans and Fisheries circulated a paper for discussion on a without prejudice basis. This provided a starting point for discussions and a number of parties provided responses in December 2021 and early 2022. The Fishing Industry Parties also circulated a without prejudice proposal on 28 January 2022;
- (f) in response to a joint memorandum, by Minute dated 14 February 2022,

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<sup>1</sup> *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board & Ors* [2021] NZSC 127; Article by Dame Anne Salmond, *Te Tiriti and Democracy*; Justice Williams' lecture, *Lex Aotearoa*.

the Court extended the timeframe for the parties to report on the progress of substantive issues in relation to Topic 14 to 4 March 2022. At the conclusion of discussions held in February 2022, the parties considered it would be desirable to have more time for further substantive discussions and for further hui to occur among the iwi and hapū parties. The parties agreed that Ngātiwai Trust Board (**NTB**) and Te Rūnanga-Ā-Iwi Ō Ngāpuhi (**TRAION**) would provide an update following further hui. By Minute dated 1 April 2022, the Court directed the parties to report to the Court by 30 June 2022;

- (g) on 29 March 2022, the Minister for Oceans and Fisheries announced a full closure of scallop fisheries in Northland under section 11 of the Fisheries Act, effective from 1 April 2022. Counsel for the Minister for Oceans and Fisheries and Minister of Conservation filed a memorandum advising the Court of the closure on 31 March 2022;
- (h) on 31 May 2022, TRAION and NTB provided an update to the parties confirming that they held well-attended hui throughout April and that they planned to schedule a joint hui later in June;
- (i) the parties met on 22 June 2022 by Microsoft Teams to discuss the following matters:<sup>2</sup>
  - (i) an update from iwi and hapū parties on the outcome of hui;
  - (ii) the scallop fishery closure and potential implications for the proposed Area B: Inner Bay of Islands;
  - (iii) feedback on proposals provided by various parties on a without prejudice basis; and
  - (iv) the way forward;
- (j) some parties' positions have changed since the hearing (at least in part).

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<sup>2</sup> Ngāti Manuhiri, Ngāti Rēhia and Manuhiri Kaitiaki Charitable Trust were unable to attend the meeting.

The parties concluded after the 22 June 2022 meeting it was apparent that the issues between the parties would not be further resolved by additional inter-party discussions; and

- (k) on 29 July 2022 a joint memorandum of counsel was filed providing an update and recording the parties' post-hearing positions. The final iteration of the proponent's relief as provided at the hearing and the mapped marine protected area (Te Uri o Hikihiki and Ngāti Kuta) was attached to the memorandum.

[5] The parties have requested that the Court make a decision on the appeals.

### **Positions of parties currently**

[6] The parties' positions have remained largely unchanged from that by the end of the hearing. Annexed hereto and marked **Appendix 1** is the relief sought by the appellants, and the map protected areas (Te Uri o Hikihiki and Ngāti Kuta) shown in **Appendix 2**. It would be now helpful to recite the position of the various parties as noted in the memorandum of 29 July 2022.

### ***Ngāti Kuta Ki Te Rawhiti Hapū***

[7] Ngāti Kuta supports the protections through the proposed plan of the areas within its rohe moana:

- (a) Area A: Maunganui Bay – Oke Bay Rāhui Tapu;
- (b) Area B: Ipipiri/Inner Bay of Islands; and
- (c) Area C: Rakaumangamanga Moana Mara Tipu Rohe.

[8] Ngāti Kuta also supports the proposal by Te Uri o Hikihiki for protection of Mimiwhangata and Te Au o Morunga.

[9] As to the provisions in Appendix 1:

- (a) Ngāti Kuta would prefer that Rule C1.9.1 refers to:

The following activities in a Te Hā o Tangaroa Protection Area involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed and any associated damage to the seabed are permitted activities, subject to other applicable rules:

- (a) ...  
 (b) ...  
 (c) In Sub-Area B (in addition to those listed in (a)):

Any activity involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed and any associated damage to the seabed that is not a prohibited activity in Section C.1.9 of this Plan.

- (d) In Sub Area-C (in addition to those listed in (a)):

Any activity involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed and any associated damage to the seabed that is not a prohibited activity in Section C.1.9 of this Plan.

- (b) Ngāti Kuta considers that the exclusions for scientific research, conservation activities and monitoring undertaken by, under the supervision of or on behalf of specified entities be amended to include:

An incorporated society or hapū having as one of its objectives the scientific study of marine life or natural history, or the study of mātauranga Māori.

***BOI Maritime Park and Forest and Bird***

[10] BOI Maritime Park and Forest and Bird have a common position. In summary, they support:

- (a) Area A: Maunganui Bay – Oke Bay Rāhui Tapu;  
 (b) Area A: Mimiwhangata Rāhui Tapu;  
 (c) Area B: Ipipiri/Inner Bay of Islands; and

- (d) Area C: Rakaumangamanga Moana Mara Tipu Rohe/ Te Au o Morunga Protection Area

[11] They support the provisions and map in Appendix 1 and 2. In relation to the advice note dealing with s 10(d) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 neither party objects to this provision being amended to expressly cover regulations 50 to 52 of the Amateur Fishing Regulations (as were sought by some parties during the hearings) by changing the notice as follows:

Note: By operation of s 10(d) Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, these rules do not prevent customary (non-commercial) fishing provided for in regulations made in accordance with Part 9 of the Fisheries Act 1996 or regulations 50 to 52 of the Fisheries (Amateur Fishing) Regulations 2013.

[12] BOI Maritime Park and Forest and Bird also do not oppose the amendments to the provisions sought by Ngāti Kuta.

[13] BOI Maritime Park and Forest and Bird jointly comment:

- (a) that the process to allow hui to occur over the past months, in their view, gives effect to the relevant parts of Objective 3 and Policy 2 of the New Zealand Coastal Policy Statement (**NZCPS**);
- (b) they support the Minister of Primary Industries' decision to close the SCA 1 scallop fishery under the Fisheries Act 1996;
- (c) however, they agree with the Northland Regional Council (**Council**) that it is appropriate to identify Area B in the proposed plan as a marine protected area with restrictions on scallop dredging, due to the high benthic values in the area. In their view, this avoids the potential for it to be reopened by the Minister within the lifespan of the plan which would leave, in their view, a gap where the high benthic values of the area would not be recognised.



- (d) they also argue, (based on the Court of Appeal discussion),<sup>3</sup> there is no requirement for necessity to be established before the Environment Court can impose controls.

***Te Uri o Hikihiki Hapū***

[14] Te Uri o Hikihiki Hapū strongly supports RMA intervention. They consider that the Fisheries Act fails to take into account matters under Part 2 of the RMA, particularly under ss 6(e), 6(g), 7(a) and their relationship with the resources under s 6(c).

[15] They consider that the Fisheries Act provisions in sections 11(3)(d) and 11(2) could be used to supplement the provisions of the Proposed Regional Plan for Northland under the RMA. They seek efforts to protect the benthic biodiversity from adverse effects of fishing activities to be matched by the Council using its powers to protect marine biodiversity from any adverse non-fishing related threats.

[16] Therefore, Te Uri o Hikihiki Hapū support:

- (a) Area A: Maunganui Bay – Oke Bay Rāhui Tapu;
- (b) Area A: Mimiwhangata Rāhui Tapu;
- (c) Area B: Inner Bay of Islands; and
- (d) Area C: Rakaumangamanga Moana Mara Tipu Rohe/Te Au o Morunga Protection Area

[17] They also support Ngāti Kuta and Patukeha in proposing Maunganui Bay – Oke Bay Rāhui Tapu Ipipiri moana mara tipu rohe and Rakaumangamanga Moana Mara Tipu Rohe.

[18] In relation to the areas within its own rohe namely the Mimiwhangata Rāhui

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<sup>3</sup> *Attorney General v Trustees of the Motiti Rohe Moana Trust* [2019] NZCA 532 (***Motiti***).

Tapu and Te Au o Morunga Protection Area, their position remains the same as at the hearing.

[19] Te Uri o Hikihiki Hapū supports both areas A as marine protected areas. Thus, the existing Marine Park controls could be removed from the fisheries commercial and amateur regulations. They argue that the rāhui tapu and buffer areas could be managed as one contiguous area, if provisions were made for the customary management of kina in the buffer areas by hapū, so as to protect and enhance the mātauranga Māori and biodiversity values of the rāhui tapu.

[20] Te Uri o Hikihiki Hapū also supports the restrictions on scallop dredging as well as those under the Fisheries Act.

[21] Finally, they see *Centrostephanus rogersii* as an invasive species and therefore supports it being removed as a species of kina in the recreation bag limits. They also support the Council using its powers under the Northland Regional Biosecurity Plan to address this species.

### ***Northland Regional Council***

[22] The Northland Regional Council generally supports the inclusion of marine protected areas being:

- (a) Area A: Maunganui Bay – Oke Bay Rāhui Tapu;
- (b) Area A: Mimiwhangata Rāhui Tapu;
- (c) Area B: Inner Bay of Islands; and
- (d) Area C: Rakaumangamanga Moana Mara Tipu Rohe / Te Au o Morunga Protection Area.

### ***Manuhiri Kaitiaki Charitable Trust***

[23] They support the position of Te Uri o Hikihiki Hapū and have no further

additional positions.

***Patuharakeke Te Iwi Trust Board***

[24] The Trust Board is a s 274 party to the Forest and Bird appeal and is not a proponent of the proposed spatial areas at issue (which are not within its rohe moana). Patuharakeke however maintains support for the inclusion of Regional Plan provisions for marine protected areas, including a policy framework for the addition of future marine protected areas by plan change.

***Minister of Conservation and Minister for Oceans and Fisheries***

[25] This was a joint presentation for the Crown parties that is not intended as a general Crown position regarding the merits of using either the Fisheries Act or the RMA controls for achieving protection of marine biodiversity values.

[26] The Ministers recognise the biodiversity values of Areas A, B and C and consider that appropriate measures under the RMA or the Fisheries Act are warranted.

[27] The Ministers consider that any RMA control in these areas should recognise the continuation of customary fishing rights provided for in regulations made under the Fisheries Act 1996 (which for these areas are the Fisheries (Kaimoana Customary Fishing) Regulations 1998 made under s 186 of the Fisheries Act and regulations 50 to 52 of the Fisheries (Amateur Fishing) Regulations 2013 made under s 297 of the Fisheries Act).

[28] The Ministers note they are interested in the issues raised and look forward to the Court's decision. They also then note that in progressing matters under the Fisheries Act, it is not intended to be inferred as a request to the Court to delay its decision.

***Areas A – Maunganni Bay to Oke Bay and Miminhangata rāhui tapu***

[29] Moving on to the particular areas involved, the Ministers generally support prohibition on “temporary or permanent damage or destruction or removal of fish,

aquatic life or seaweed” (proposed rule C.1.9.2). In relation to Area A – Maunganui Bay to Oke Bay and Mimiwhangata rāhui tapu, they acknowledged the limited exceptions sought in the proposed rule C.1.9.1. They consider it is appropriate to prohibit those activities in Maunganui Bay to Oke Bay through an RMA plan rule. They also recognise that the same prohibition could be appropriate for Mimiwhangata (including the buffers) under an RMA plan rule while acknowledging that tāngata whenua will be confirming their position in respect of protection of this area.

[30] The Ministers note in particular the current temporary closure notice for Maunganui Bay which expires on 13 October 2022. Fisheries is engaging with hapū who have indicated a wish for a further temporary closure. The intention would be to maintain the status quo within the Maunganui Bay Temporary Closure pending the Court’s decision.

*Area B – Inner Bay of Islands, Ipipiri moana mara tipu robe*

[31] The Ministers did not see the benefit of a RMA rule to provide for biodiversity values in Area B, given the existing measures under the Fisheries Act prohibit the same fishing activities identified by proposed rule C.1.9.2(c). The recent closure of the Northland (SCA 1) scallop fishery recognised low levels of scallop abundance, and the impact of dredges on habitat, and has resulted in an indefinite ban on recreational scallop dredging effective from 1 April 2022. In the Ministers’ view, this has closed the gap between the Fisheries Act’s measures existing at the time of the hearing and the proposed RMA rule.

*Area C – Rakaumangamanga moana mara tipu robe & Te Au o Morunga protection area*

[32] The Ministers expressed no view on the use of RMA tools in relation to the relief in Areas C.

[33] The use of s 11 Fisheries Act tools was discussed in the hearing in relation to this area. At the time of the memorandum (29 July 2022), Fisheries New Zealand had undertaken some preparatory work on s 11 sustainability measures, but these had not progressed to statutory consultation in respect for the tikanga-led process and broader

discussions occurring between the parties.

[34] However, in a later memorandum dated 9 September 2022, the counsel advised that on 20 August 2022 the Minister for Oceans and Fisheries approved the commencement of consultation on s 11 sustainability measures for the Cape Brett to Mimiwhangata coastline. Accordingly, Fisheries New Zealand will be commencing public consultation on possible prohibition of commercial bottom trawling and Danish seining in all or part of Cape Brett to Mimiwhangata area in the next two weeks. The statutory consultation period is expected to run for four weeks and with a decision by the Minister of Ocean and Fisheries before the end of the year (2022).

***Te Rūnanga Ā Iwi Ō Ngāpuhi (TRAION)***

[35] In relation to Sub-Area A (Maunganui – Oke Bay), TRAION does not oppose the inclusion of that in the regional plan.

[36] In respect of Sub-Area B (inner Bay of Islands), TRAION considers there is no need for the relief sought as it was duplicating existing controls under the Fisheries Acts regime and thus they oppose the inclusion of the Sub-Area B in the Regional Plan.

[37] In respect of Sub-Area C (Rakaumangamanga), TRAION:

- (a) remains concerned at the scale of the controls and that it could lead to proliferation of such zones (under the RMA) throughout Northland. This could undermine the rights conferred by the Fisheries Settlement;
- (b) considers that in terms of their scope and the ‘indicia’ given by the Court of Appeal in *Motiti*, the kinds of controls proposed for Sub-Area C should be made under the Fisheries Act rather than the RMA (if at all); and
- (c) accordingly, opposes the inclusion of Sub-Area C in the Regional Plan and would prefer that any kōrero to restrict fishing in such a large area take place in the context of the Fisheries Act regime.

[38] We note that subsequent to the memorandum in the statement, the Minister of Oceans and Fisheries has advanced consultation on restriction as just outlined.

[39] In respect of Te Uri o Hikihiki's proposed marine protection areas, Area A: Mimiwhangata Rāhui Tapu, Mimiwhangata Rāhui Tapu Buffer Area and Area C: Te Au o Morunga Protection Area, TRAION does not assert a primary interest in these areas. As a result, it defers to Ngātiwai Trust Board in respect of those areas.

***Ngātiwai Trust Board (NTB)***

[40] NTB supports targeted and adaptive management measures to preserve at risk biodiversity including imposing limits on fishing activities. The Trust Board considers that the *Motiti* decision allows some regulation, but they are limited by the indicia of the decision. The position of NTB is:

- (a) regulation of fisheries under the RMA should be targeted at small, discrete well defined marine areas with high biodiversity values that are at risk;
- (b) for larger areas, such as Area C, Fisheries Act provisions should be used. In such larger areas the indicia would be breached if RMA provisions were to be implemented;
- (c) a rāhui at Mimiwhangata is appropriate and has been supported by NTB. However, what that rāhui means today needs to be determined through hui and wānanga;
- (d) a rāhui must be flexible, and that means it must be able to be adapted to address the risks in the environment and its implementation must be in the control of tangata whenua;
- (e) if a rāhui is to be established at Mimiwhangata under the RMA, it would only have the required flexibility and tangata whenua control if it was established through a s 33 transfer of powers or s 36B joint management agreement, neither of which is being considered in the appeal; and

- (f) the provisions of the Fisheries Act can in principle better enable adaptive management and tangata whenua control for rāhui. To date, that potential has not been realised, but use of regulation making provision under s 186 is able to provide an adequate solution.

***Te Runanga o Ngāti Rēhia***

[41] Te Runanga o Ngāti Rēhia support the position of TRAION.

***Te Ohu Kai Moana Trustee Limited***

[42] Te Ohu Kai Moana Trustee Limited (**Te Ohu**) generally supports the positions of Te Rūnanga Ā Iwi Ō Ngāpuhi, the Ngātiwai Trust Board and Te Rūnanga o Ngāti Rēhia (the iwi parties). Te Ohu continues to oppose the inclusion of Areas B and C as marine protected areas.

[43] In respect of Area A, Te Ohu understands that TRAION and Ngāti Rēhia no longer oppose the inclusion of that area. However, Ngātiwai's position continues to oppose its inclusion, consistent with its position at the hearing.

[44] In relation to areas where Te Ohu was not actively involved in discussions such as the inclusion of Area A, Te Ohu takes no position and will abide the decision of the Court.

[45] The position of Te Ohu raises issues as to the relationship between Te Ohu as a mandated authority for all Māori and the role of iwi, hapū and whanau as kaitiaki of resources in coastal areas.

***New Zealand Sport Fishing Council Incorporated***

[46] New Zealand Sport Fishing Council remains opposed to the relief sought by the appellants and submits that Fisheries Act tools are more appropriate to address the issues, namely the Minister's failure to:

- (a) maintain stocks particularly of snapper and crayfish, at or above the level

that will produce the maximum sustainable yield; and

- (b) provide tangata kaitiaki with such information and assistance as may be necessary for the proper administration of the Kaimoana Regulations, in accordance with s 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

[47] The Fishing Council draws the Court's attention to the Minister's recent decision, after this hearing, to prohibit scallop fishing along the Northland coast, protecting all the benthos from dredging, rather than the smaller Area B. Given this decision, the Fishing Council argues Area B does not meet the necessity indicia in the Court of Appeal's *Motiti* decision.

[48] The Fishing Council also maintains its position that there is no jurisdictional scope for the appellant's relief in the original submissions to the PRP.

### ***Fishing Industry Parties***

#### *Area A – Maunganui Bay to Oke Bay*

[49] In relation to Area A – Maunganui Bay and Oke Bay, the fishing industry parties acknowledged the significant values in this area. They are also neutral on the imposition of RMA rules in Area A as they acknowledge it meets the *Motiti* indicia. Nevertheless, they equally acknowledge the position of the iwi. They also note further refinements to the relief sought in their submissions with respect to Area A.

#### *Area A – Miminhangata rāhui tapu*

[50] The industry parties maintain the position that the Fisheries Act tools are broader and more flexible and are more appropriate to meet the outcomes sought by the iwi partners.

#### *Area B – Inner Bay of Islands*

[51] They agree with the Ministers that Area B should not be subject to RMA



controls and does not meet the necessary indicia set out in the *Motiti* decision because Fisheries Act controls are in place.

### Area C

[52] They oppose the relief sought in respect of Area C in relation to controls under the RMA. They note however that they are prepared to engage with parties as to Fisheries Act tools that may be appropriate in Area C.

[53] We note in particular that since the submissions, the Minister for Oceans and Fisheries has commenced consultation on the Fisheries Act which we noted earlier under the Minister's position.

### General

[54] Finally, the Fishing Industry Parties note that there are other non-fishing activities which could have an effect of undermining the values in Area A which are also regulated in terms of the Plan.

### ***Federated Farmers***

[55] Federated Farmers have no particular position to advance beyond a watching brief.

### **Issues**

[56] The main issue at the heart of this case is: What is the most appropriate way to achieve protection of marine ecological values?

[57] In particular, there are two regimes which look to one another and interrelate, being the Fisheries Act and the Resource Management Act. Where particular values are acknowledged, the question which has created the most concern to parties, beyond issues relating to tikanga, is the appropriate mechanism by which those values might be protected. That issue has remained extant notwithstanding the refinements of positions of parties subsequent to the last hearing.

[58] One of the key issues at the hearing itself were issues of tikanga. Tikanga has been described as doing the right thing in the right way. In this case, a primary question has been the procedural methods by which changes have been sought under the RMA. This has been the subject of extended discussions and hui between the parties after the hearing. We take it, by the agreement of all parties to refer the decision back to this Court, that they consider this aspect of this matter has now been fully explored. We note that there has been a narrowing of position.

[59] There has been a greater measure of agreement in respect of certain areas particularly:

- (a) Area A – Maunganui Bay – Oke Bay Rāhui Tapu; and
- (b) Area A – Mimiwhangata Rāhui Tapu.

[60] Disagreements between the various Maori entities remaining in relation to other areas in the Bay of Islands such as Area B and Area C, seaward of what might be described as the coastline from Cape Brett to Mimiwhangata, turn on tikanga. Tikanga can loosely be stated as “the right thing”. What is the right thing? In this case, parties promote various controls, from those exercised directly by tangata whenua, rāhui, tactical control mechanisms under the Fisheries Act, through to prohibitions under the Fisheries Act and controls by the Resource Management Act.

### **This Court’s role**

[61] We recognise there is a tension here between the interests of ‘Māori’ under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (**Settlement Act**) and the interests of iwi, hapū and whanau in the fisheries and quota system, including the exercise of autonomy by individual hapū and use of the resource by whanau and hapū members.

[62] That issue will be discussed in some particular detail in this decision. From the perspective of tangata whenua and most parties, the marine biodiversity values of these areas were not largely in dispute. It is the:

- (a) appropriate method to address those values;
- (b) what level of protection should be exercised; and
- (c) in what way,

that constitutes the areas of disagreement.

[63] We have recited the Ministers position as of 29 July 2022 and the further action taken. It is clear that the Ministers also see various tools as being available to address the ecological values identified. Therefore, we take it that there is less dispute about the biodiversity values than there is about the method that could be adopted to protect and preserve them.

[64] Under section 32(1)(a) and (b) of the RMA the Courts role is to determine:

- (a) whether the objectives of the proposals are the most appropriate way to achieve the purpose of the Act; and
- (b) whether the provisions of the proposals are the most appropriate way to achieve the objectives.

[65] Key issues for determination are:

- (a) whether controls for inclusion in the Regional Plan by the appellants would constitute taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act, such that they are precluded by the operation of s 30(2) of the RMA;
- (b) whether controls proposed would be inconsistent with the special provision made for Māori interests under the Fisheries Act or the Settlement Act;
- (c) whether objectives of the proposal are the most appropriate way to

achieve the purpose of the RMA. In particular whether the provisions are the most appropriate way to achieve the objectives, including assessment of benefits and costs to the environment, and to commercial and recreational non-customary fishers;

- (d) what statutory tools might be the most appropriate? What customary or statutory tools might be the most appropriate to achieve an appropriate balance of protection of biodiversity and access to it by tangata whenua use and general utilisation of the resource for its wider recreation and commercial benefits. The key tools identified are those of the Fisheries Act and the Resource Management Act and the various provisions and regulations under them; and
- (e) whether or not the relief sought is appropriate given the current state of the environment.

### **Relationship of Fisheries Act 1996 and Resource Management Act 1991**

[66] There was no real dispute before this Court that both the RMA and the Fisheries Act can control aspects of marine biodiversity values. We conclude that the Fisheries Act is focused from a resource perspective but does include broader powers to maintain biological diversity (s9(b)) and protect benthic and other elements of the broader environment.

[67] On the other hand, the RMA is focused on biodiversity and interrelated values but has a broader focus to look at the various elements that make up that environment.

[68] Tangata whenua gave clear and uncontroverted evidence of their broader perspective (perhaps in English described as holistic) as to the environment and the ecotones both on land and within the marine area, which constitute a permanent relationship between the various hapū and whanau of the area and the resources within it.

[69] Those rights are recognised in terms of the Settlement Act particularly s 10. It could be argued that neither the Fisheries Act nor the Resource Management Act fully capture the intended rights under the Treaty of Waitangi in respect of tangata whenua resources. Nevertheless, the Fisheries Act does contain customary take provisions and the ability to generate regulations to protect customary rights. On the other hand, the Resource Management Act, particularly ss 33 and 36(b), both provide for delegation of functions to tangata whenua. That could allow delegations which enable those rights protected under the Treaty.

[70] We are in no doubt whatsoever that both the Fisheries Act and the Resource Management Act look towards one another and are intended to interrelate. In some places, they cover the same ground. In others, they have a distinctly separate focus. For example, the Fisheries Act directly controls fish stock whereas the Resource Management Act looks to preserve and protect biodiversity generally. The relationships between these Acts has been discussed in this Court's decision on *Motiti* and also in those Superior Court decisions.<sup>4</sup>

[71] Both the Fisheries Act and the Resource Management Act need to be considered in the context of the tikanga which applies and particularly the relationship of tangata whenua with the biodiversity and values of this area. Many of those values were not in dispute. Thus in considering the Fisheries Act and the Resource Management Act, we must have regard to the relevant tikanga and incorporate this within our decision making process.

[72] What we do note by way of general importance is the role of multiple hapū and whanau in the Bay of Islands area, and the particular importance to most witnesses before us of the Cape Brett area and its relationship with key korero of arrival and relationship with Hawaiki. Moreover, we acknowledge the deep connection with the significant levels of biodiversity and physical values seen at and around Cape Brett including both the physical features (the hole in the rock and the cape itself), and the benthic biodiversity including mammals and birds.

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<sup>4</sup> *Trustees of the Motiti Robe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 240; *Attorney-General v Trustees of the Motiti Robe Moana Trust* [2017] NZHC 1429; *Attorney General v Trustees of the Motiti Robe Moana Trust* [2019] NZCA 532.

[73] To that extent, we see the one possible distinction between the Fisheries Act and the Resource Management Act as the focus of the RMA on particular areas of particular importance compared with a more generalised approach through Fisheries' areas (of various types), encompassing wide portions of the New Zealand coastlines. Alternatively, one could view that approach in the Fisheries Act as not derogating from the importance of particular areas.

### **Why have Marine Protected Areas?**

[74] The Ministry of Fisheries and Department of Conservation have developed a standard for Marine Protected Areas (**MPA**)<sup>5</sup> to determine which management tools contribute to the MPA policy objective to “protect marine biodiversity by establishing a network of marine protected areas that is comprehensive and representative of New Zealand’s marine habitats and ecosystems”.<sup>6</sup> Two types of MPAs are defined by this standard: Type 1 MPAs (marine reserves) and Type 2 MPAs (other management tools that meet the protection standard).

[75] Type 1 Marine Reserves (established under the Marine Reserves Act 1971) provide the highest form of marine protection as they are created to preserve and protect marine life. This requires government intervention and ministerial approval under the Marine Reserves Act.

[76] Type 2 MPAs can be created using the Fisheries Act and other legislation including the RMA.

[77] Marine reserves in the North-eastern bioregion, of which the northern and eastern coast of the Northland territorial sea is a part, cover 7,900 hectares or just 0.2% of the bioregion. This low percentage of MPAs is a typical pattern across the country. Under the Convention on Biological Diversity, New Zealand has committed to the global goal of establishing a representative network of well-connected protected

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<sup>5</sup> An area of the marine environment especially dedicated to, or achieving, through adequate protection, the maintenance and/or recovery of biological diversity at the habitat and ecosystem level in a healthy functioning state (Department of Conservation and Ministry of Fisheries 2005).

<sup>6</sup> Department of Conservation 2021: Marine Protected Areas: Tier 1 Statistic, 2020.

areas and other effective area-based conservation measures comprising ten percent of the coastal and marine area by 2020, with new post 2020 global targets being negotiated.<sup>7</sup>

[78] The 44 marine reserves in New Zealand are ‘no take’ and protect many unique habitats and species but only constitute 0.4% of our total marine area (9.8% of the territorial sea). The marine reserves within the territorial sea include larger MPAs within the sub–Antarctic Islands and Kermadec Islands, with percentages of MPAs significantly less around inshore New Zealand.

[79] By way of general comment, the strong implication of the evidence supporting MPAs under the RMA was the perceived failure to classify sufficient areas under the Fisheries Act as Marine Reserves in both number and area. There has been little use of Type 2 MPA. The clear preference of the Ministry of Fisheries has been to use tactical controls (quota, types of fishing and/or time limited closures/rāhui). Where adverse effects have continued, as in Bay of Islands, pressure for alternate approaches has grown.

### **The current state of protection**

[80] In the Northland region there are two ‘no take’ marine reserves, Poor Knights Marine Reserve (1,890ha) and Whangārei Harbour Marine Reserve (236.51ha), and the Type 2 MPA Mimiwhangata Marine Park, representing a total of 3,981.51 ha, equivalent to 0.2% of Northlands territorial sea (1,756,860 ha).<sup>8</sup>

[81] Mimiwhangata Marine Park was established in 1983 under the Fisheries Act, with commercial fishing prohibited but some non-commercial fishing still occurring. We heard that Department of Conservation (**DOC**) developed a marine reserve proposal for the Mimiwhangata area in 2004, however it never culminated in creation of a reserve.

[82] Concern was expressed from some iwi and hapū parties that they do not want

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<sup>7</sup> Cabinet paper for the Minister for Oceans and Fisheries, July 2021.

<sup>8</sup> Pardo EIC at [15].

management under the Marine Reserves Act, as it does not provide for rangatiratanga, and would prefer it under rāhui. The proposal under the RMA is preferred by Te Uri o Hikihiki as it would allow for a hapū management plan process.<sup>9</sup> The area sought includes the current Marine Park.

[83] Along with MPAs we heard there are various fisheries closures along Northlands east coast.<sup>10</sup> The Fisheries Act controls provide some overlap with the proposed marine protection areas but is not complete. Whether the Fisheries Act controls provide “effective area-based conservation measure[s]” is a point of disagreement between the parties.

[84] A proposed marine mammal sanctuary was also announced for public consultation in April 2021 in response to the dramatic decline of the local bottlenose dolphin population. The Bay of Islands is a nationally significant bottlenose dolphin habitat, with the species ranked as Threatened – Nationally Endangered under the New Zealand Threat Classification System. Numbers have declined due to chronic disturbance from tourism and recreational vessels. Common dolphins and Bryde’s whales (Threatened – nationally critical) are common in the outer Bay of Islands, and Killer whales (Threatened – nationally critical) regularly visit.

### **Species abundance**

[85] We heard from the ecology experts as well as from fisheries representatives on the state of fisheries stocks and the impact of fishing on marine ecology in Northland.

[86] The ecology experts all agreed that the biomass of snapper and crayfish are seriously depleted in Northland and are well below Ministry for Primary Industries (MPI) management targets.<sup>11</sup> Snapper and crayfish populations are considered functionally extinct (i.e., not playing a role in the ecosystem).<sup>12</sup> The urgency of the issue and the need to act quickly to prevent further loss of values was made clear by the ecological evidence.

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<sup>9</sup> Transcript pages 797 – 800.

<sup>10</sup> Pardo EIC Table 1; McKinnon EIC Table 2, Table 3, Table 4, Table 5, Table 6.

<sup>11</sup> JWS Ecology at [21].

<sup>12</sup> Shears Rebuttal at [26].



[87] Snapper and crayfish are the main predators of kina (*Evechinus chloroticus*) on the north-eastern New Zealand coast. Trophic cascades occur when predators limit the density and/or behaviour of their prey and thereby enhance survival of the next lower level, e.g., snapper and crayfish directly impact kina populations, which indirectly affects the abundance and distribution of kelp and other seaweeds.<sup>13</sup> A kina barren is a rocky reef community that is dominated by kina and devoid of large brown seaweeds (kelp).

[88] New Zealand snapper comprise seven or eight biological stocks, with three in the Snapper 1 (SNA 1) Quota Management Area covering East Northland, Hauraki Gulf and Bay of Plenty. In East Northland since 1900 the snapper stock has depreciated to around 24% of the original biomass, the quota being managed around the soft limit of 20% rather than the target (40%). Snapper stock biomass is estimated to have experienced a steep decline from about 1960 to 1985 and has fluctuated without trend since then. The current catch is very likely (> 90%) to cause overfishing to continue.<sup>14</sup> We note that another stock assessment of SNA 1 is due in 2022.

[89] We heard that crayfish stock are at critical levels and are well below the unfished biomass, with the 2019 stock assessment suggesting the vulnerable biomass was at 16% and the total biomass at 26%.<sup>15</sup> Crayfish are managed under the CRA 1 quota management area which extends from Te Arai Point north around the coast to the North Head of Kaipara Harbour.

[90] The ecology experts agreed that the effects of fishing within the proposed marine protection areas has included collapse of scallop populations, sequential disappearance of green lipped mussel beds, significant reduction in hāpuku numbers over large areas and loss from shallow water areas, decline in the size and number of workups, and the decline of other species with the reasons not fully understood.<sup>16</sup>

[91] Evidence from the ecologists at the hearing was that ‘no take’ marine protected

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<sup>13</sup> JWS Ecology, page 4.

<sup>14</sup> Fisheries New Zealand, Fisheries Assessment Plenary May 2021.

<sup>15</sup> Ross EIC at [33]; Transcript pages 171 and 172.

<sup>16</sup> JWS Ecology at [27].

areas are considered the most efficient tool to restore ecosystems, biomass and fish assemblages to a more resilient state. Well-designed 'no take' areas provide the greatest level of protection from the effects of fishing and return ecosystems to a more natural state. This involves the recovery of abundance and size of exploited species, which can have flow on effects on the overall ecosystem. There is growing evidence that this can help supplement populations of exploited species outside MPAs.<sup>17</sup>

[92] The recovery of exploited species such as snapper and crayfish generally occur within 5-10 years. Snapper biomass increased by 818% in four years following no take protection at Poor Knights. Rates of crayfish recovery were more variable as they are dependent on supply of larvae, notably variable.

[93] Recovery of ecosystems in MPAs takes considerably longer. Decline in kina barrens and recovery of kelp forests at Leigh and Tāwharanui took 15-25 years. Longer lived slow growing species such as corals and gorgonian species take considerably longer.<sup>18</sup>

### **Statutory Framework**

[94] A number of planning documents are relevant to the provisions sought by Forest and Bird, BOI Maritime Park, Ngāti Kuta and Te Uri o Hikihiki relating to marine protection, including the NZCPS, the Northland Regional Policy Statement (**RPS**), the NRP and iwi and hapū management plans. The relevant provisions of the NZCPS, RPS and the NRP are discussed in the planning evidence of Mr Reaburn, a Town Planner and Director of Cato Bolam Consultants, and are listed by the expert planners in the Agreed Statement of Facts – Planning, dated 21 June 2021. A complete list of relevant planning instruments and provisions is included in the Agreed Statement of Facts – Planning. We discuss key provisions in the NZCPS, RPS and Regional Plan below.

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<sup>17</sup> JWS Ecology at [13].

<sup>18</sup> JWS Ecology at [28].

***New Zealand Coastal Policy Statement (NZCPS)***

[95] The planning experts agreed that the following provisions of the NZCPS are particularly relevant:

Objective 1 – to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas ...

Objective 2 – to preserve the natural character of the coastal environment ...

Objective 3 – to take account the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by ... (*the methods specified*)

Objective 6 – to enable people and communities to provide for their social, economic and cultural wellbeing ...

[96] Key policies of the NZCPS include: Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage; Policy 6 Activities in the coastal environment; Policy 11 Indigenous Biological Diversity (biodiversity); Policy 13 Preservation of natural character; and Policy 14 Restoration of natural character.

[97] NZCPS Policy 2 and Policy 11 are particularly relevant in this case.

[98] Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage requires:

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

- (a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;
- (b) involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;
- (c) with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;
- (d) provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of

requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;

- (e) take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and
  - (i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and
  - (ii) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;
- (f) provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:
  - (i) bringing cultural understanding to monitoring of natural resources;
  - (ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;
  - (iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaītai or other non-commercial Māori customary fishing; and
- (g) in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:
  - (i) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and
  - (ii) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

[99] NZCPS Policy 11 Indigenous biological diversity (biodiversity) requires that:

To protect indigenous biological diversity in the coastal environment:

- (a) avoid adverse effects of activities on:
  - (i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

- (ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
  - (iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
  - (iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
  - (v) areas containing nationally significant examples of indigenous community types; and
  - (vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:
- (i) areas of predominantly indigenous vegetation in the coastal environment;
  - (ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
  - (iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
  - (iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
  - (v) habitats, including areas and routes, important to migratory species; and
  - (vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

[100] It was agreed by the ecologists that the values present within both Areas A, Area B, and the rocky reefs of both Areas C met criteria within NZCPS Policy 11(a) and 11(b). The values present within these areas is discussed in more detail below.

### ***Northland Regional Policy Statement (RPS)***

[101] The RPS is operative and is required to give effect to the NZCPS. The planning experts agreed that relevant objectives in the RPS include 3.4, 3.5, 3.12 and 3.14, and that relevant policies include 4.4.1, 4.6.1, 4.7.1-4.7.3, 8.1.1-8.1.4 and 8.3.1.

[102] RPS Objective 3.4 Indigenous ecosystems and biodiversity gives effect to

Policies 11 and 14 of the NZCPS. This requires *protecting* areas of significant indigenous vegetation and significant habitats of indigenous fauna, *maintaining* the extent and diversity of indigenous ecosystems and habitats in the region and, where practicable, *enhancing* indigenous ecosystems and habitats.

[103] RPS Policy 4.4.1 – Maintaining and protecting significant ecological areas and habitats – requires, under part (1) of the policy, the avoidance of adverse effects in the coastal environment, including areas of indigenous vegetation and habitats of indigenous fauna that are significant using the criteria in RPS Appendix 5. In the coastal environment under part (2) of the policy, significant adverse effects must be avoided, and other adverse effects avoided, remedied or mitigated in specified areas that include areas of predominantly indigenous vegetation, and habitats that are important for cultural or recreational purposes or indigenous ecosystems and habitats that are particularly vulnerable to modification, such as rocky reef systems and eelgrass (seagrass).

[104] Mr Reaburn notes that RPS Policy 4.4.1(1) “provides the highest level of protection to ecosystems, habitats, and species (biological values) most at risk of irreversible loss, with the appropriate management response being to avoid adverse effects in the coastal environment”. He notes “that by applying an “avoid adverse effects” approach to all areas assessed as ecologically significant under the RPS (whether they would meet Policy 11(a) or (b) of the NZCPS) the Northland RPS is potentially more stringent than Policy 11 itself”.<sup>19</sup>

[105] Objective 3.12 seeks to ensure tangata whenua’s kaitiaki role is recognised and provided for in decision-making over natural and physical resources. When developing plans, Policy 8.1.2 requires the regional council to recognise and provide for the relationship of tangata whenua and their culture and traditions with their ancestral land, water, sites wāhi tapu, and other taonga, including with particular regard to kaitiakitanga, and taking into account the principles of the Treaty of Waitangi including partnership.

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<sup>19</sup> Reaburn EIC at [4.22].

***Proposed Regional Plan (NRP)***

[106] The NRP Proposed Plan is a combined regional coastal plan and regional plan. A regional plan (including a regional coastal plan) is required to give effect to the RPS and the NZCPS. Under s 63(2) RMA the purpose of a regional coastal plan is to assist a regional council, in conjunction with the Minister of Conservation, to achieve the purpose of this Act in relation to the coastal marine area of that region.

[107] The NRP seeks to achieve integrated management of Northlands natural and physical resources and provides objectives, policies and rules relating to the management of the coast, land, water and air, within the Councils functions. Under s 30(1)(ga) RMA one of the functions of a regional council is:

the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity

[108] There are a number of mapped overlays in the NRP that apply to the coastal marine area (**CMA**) and that relate to the types of underlying values and features raised in this case. These include overlays relating to:

- (a) Significant Ecological Areas;
- (b) Significant Bird Areas;
- (c) Significant Marine Mammal and Seabird Areas;
- (d) Sites and areas of significance to tangata whenua; and
- (e) Areas of High and Outstanding Natural Character.

[109] We note that work is underway to identify Outstanding Natural Landscapes. The current natural character mapping in both the RPS and NRP identifies areas of Outstanding Natural Character around Cape Brett within proposed Areas A and C.<sup>20</sup> The balance of Area A and half of Area B is mapped as high natural character in the

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<sup>20</sup> Reaburn EIC at [5.27].

NRP.

[110] Ms Lucas, a landscape architect with Lucas Associates, explained that high natural character and outstanding natural character mapping was undertaken as part of the development of the RPS, and the NRP incorporated the natural character mapped in the CMA to address NZCPS Policy 13.<sup>21</sup> The open coast is largely not mapped for natural character in comparison with estuaries and harbours, as only areas of the open coast where there was sufficient information to draw precise boundaries were selected as overlays. An area seaward of Rakaumangamanga (Cape Brett) and around Motu Kōkako is identified as outstanding natural character in the NRP.<sup>22</sup> Ms Lucas notes that natural character methodologies undertaken should recognise mātauranga and tikanga aspects, and that including mana whenua experiential and biophysical attributes will increase the ratings of natural character units as proposed by Te Uri o Hikihiki.

***Most relevant plan provisions***

[111] The planning experts agreed that the following provisions of the Proposed Regional Plan are particularly relevant:

- (a) Objectives F.1.3 (indigenous ecosystems and biodiversity), F.1.5 (enabling economic wellbeing), F.1.9 (tangata whenua role in decision making), F.1.12 (natural character); and
- (b) Policies D.2.17 (managing effects on natural character, outstanding natural landscapes and outstanding natural features), D.2.18 (managing effects on indigenous biodiversity) and D.2.20 (precautionary approach).<sup>23</sup>

[112] The key provisions in the NRP are still subject to appeal.

[113] Policies on natural character and indigenous biodiversity use similar language to

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<sup>21</sup> Lucas EIC at [43].

<sup>22</sup> Lucas EIC at [53].

<sup>23</sup> Numbering as in August 2022 Appeals version.



the RPS provisions. In Policy D.2.17, adverse effects on areas of outstanding natural character in the coastal marine area are to be avoided, and in areas of high natural character appropriate methods for avoiding, remedying or mitigating adverse effects include minimising to the extent practicable indigenous vegetation clearance and modification including of the seabed.

[114] Policy D.2.18(3) recognises that areas of significant indigenous vegetation and significant habitats of indigenous fauna include Significant Ecological Areas, Significant Bird Areas, and Significant Marine Mammal and Seabird Areas. When assessing the potential adverse effects of an activity on indigenous biodiversity Policy D.2.18(5) refers taking a system wide approach to large areas of indigenous biodiversity such as widespread bird and marine mammal habitats and recognising that the scale of the effects of an activity is proportional to the size and sensitivity of the area of indigenous biodiversity.

[115] Policy D.2.20 (precautionary approach) states that where there is scientific uncertainty about adverse effects of activities on species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps, or any values ranked high by the Significant Ecological Areas maps then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight.

[116] Mr Reaburn notes that in respect of issues of relevance to tangata whenua, there are key provisions that are not subject to appeal.<sup>24</sup> These include Objective F.1.8 which requires that tangata whenua's kaitiaki role is recognised and provided for in decision-making over natural and physical resources. Policy D.1.1(3) states that resource consents must include an analysis of effects of an activity where it is likely that adverse effects on indigenous biodiversity impacts on the ability of tangata whenua to carry out cultural and traditional activities. Policy D.1.1(5) requires analysis of adverse effects on tāiapure, mātaītai or Māori non-commercial fisheries.

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<sup>24</sup> Reaburn EIC at [4.41].

### ***Iwi and hapū management plans***

[117] Under s 66(2A) RMA the Council must take into account any planning document recognised by an iwi authority. Mr Griffin, Policy Specialist at the Northland Regional Council, identified that twelve iwi and hapū environmental management plans have been submitted to the Council.<sup>25</sup>

[118] These plans identify key issues and management measures for iwi and hapū, which are relevant to the consideration of the management, protection and identification of natural resources. These include the Ngāti Kuta ki Te Rawhiti Hapū Management Plan, Te Iwi o Ngātiwai Iwi Environmental Policy Document, and the Ngāti Rēhia Hapū Environmental Management Plan.

### **Tikanga**

[119] Parties were encouraged to undertake further dialogue following the hearing.

[120] We recognise the importance of tikanga Māori based decision-making such as that proposed by Ngāti Rēhia:<sup>26</sup>

... when issues arise of such importance and have the potential to significantly affect the interests of Māori within the rohe moana, a tikanga Māori based approach must be followed whereby full, inclusive and informed discussions occur to enable the effected hapū to consider the benefits and the detriments of the issue and reach a conclusion that is best suited for those hapū and that community. ...

[121] We acknowledge that a tikanga process can allow participation for all parties to address their concerns and design a collective pathway that is supported and have a higher chance of success. Following this approach would allow for addressing all issues relating to the expression of kaitiakitanga and how these can be recognised and provided for, and also managed and balanced with competing interests such as those of fishing rights within the rohe.

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<sup>25</sup> Griffin EIC at [41].

<sup>26</sup> Legal submissions on behalf of the hapū, Ngāti Rēhia (English version) dated 4 August 2021 at [15].

[122] One of the methods is the tikanga of ‘rāhui’. Ngāti Rēhia’s position is that there are already laws, rules and regulations that provide for the exercise of rāhui concepts. These are found in provisions of the Fisheries Act providing for the creation of taiapure and mātaimai reserves. Ngāti Rēhia (among others) considered that the applicants did not follow that process.

[123] Mr Riley explained that kaitiakitanga is a very broad and holistic exercise of obligation, much more than just a singular narrow exercise of enablement through the Fisheries Act. The powers given to Tangata Kaitiaki or Kaitiaki or Tangata Tiaki act on behalf of a collective and look after the taiao in its totality.<sup>27</sup> To maximise fisheries in a sustainable manner there is a need to increase the amount or the mauri of the water, and the amount of fish available for harvesting.<sup>28</sup>

[124] Mr Willoughby told us Ngāti Kuta ki te Rawhiti had to put a rāhui in Maunganui Bay to bring back the fisheries. They have had to keep seeking a renewal from the Ministry of Fisheries to get to a point where it is much improved but still not where it should be. We heard similar evidence about other parts of inner Bay of Islands with tangata whenua seeking to get fisheries back to a healthy state and enabling fauna and flora a chance to regenerate itself.<sup>29</sup>

[125] The evidence of the proponents recited similar losses to the reef systems in both Areas C and the concern that the ecology needs to survive in order to replenish

### **Customary Non-Commercial and Customary Commercial Fishing**

[126] Evidence from Sir Tipene O’Regan detailed the whakapapa of the Maori Fisheries Settlement, and how it gives expression to the Maori relationship with Takaroa (Tangaroa).<sup>30</sup> Sir Tipene’s evidence expanded on this relationship saying:<sup>31</sup>

As Māori, our ability to fish, as confirmed by the Māori Fisheries Settlements, is not simply a property right under the Fisheries Act 1996; it is a right that recognises this relationship, this connection between us, our ancestors, and our

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<sup>27</sup> Transcript page 824, lines 10 – 14.

<sup>28</sup> Transcript page 841, lines 14 – 17.

<sup>29</sup> Transcript page 845, line 27 – page 846, line 4.

<sup>30</sup> O’Regan EIC at [15] – [46].

<sup>31</sup> O’Regan EIC at [17] to [18].

atua. The legislation only reflects the current formulation of that right; the right itself is inherent, but it has different formulations over time.

The values or concepts that underpin our worldview are shaped by this relationship. While there are distinctions between iwi, the fundamental tenets of our worldview are generally shared. For Māori, the relationship with Takaroa and associated atua incorporates a nexus of beliefs that permeate the spiritual, environmental and human spheres: these include whakapapa, whanaukataka, mana, rakatirataka, tapu, rāhui and kaitiakitaka.

[127] The whakapapa was helpful in providing an understanding of the complexity of the relationship between Māori and Iwi. It also set out the long, arduous process that resulted in the signing of the Deed of Settlement in September 1992, with the Crown recognising the full extent of Māori customary (commercial and non-commercial) rights to fishing and fisheries. Te Ohu Kaimoana is the mandated agent for Iwi and Māori generally in respect of the Maori Fisheries Settlement.

[128] Ms Te Heuheu, as Te Matarae (Chief Executive) gave evidence on behalf of Te Ohu Kai Moana Trust (**Te Ohu Kaimoana**). Explaining that the purpose of Te Ohu Kaimoana is to work with Iwi and the Crown to advance the interests of Iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities.<sup>32</sup> Te Ohu Kaimoana assists and empowers 58 mandated iwi organisations (MIOs) who represent iwi throughout Aotearoa, to manage and protect their customary non-commercial and commercial fisheries rights, guaranteed in the Fisheries Settlement and the Maori Commercial Aquaculture Settlement.<sup>33</sup>

[129] We heard that part of Te Ohu Kaimoana's role is to protect the kaitiaki interests of Iwi to cultivate kai affirmed through the Fisheries Settlement, and to protect those interests for current and future generations.<sup>34</sup> We understood that kaitiaki is multidimensional, complex and layered.

[130] Mr Drummond, the Kūrae Moana (Fisheries and Aquaculture Policy Manager) at Te Ohu Kaimoana, provided us with an overview of New Zealand's fisheries management framework, the Quota Management System (QMS), and an assessment

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<sup>32</sup> Te Heuheu EIC at [16] to [17].

<sup>33</sup> Te Heuheu EIC at [18(a)].

<sup>34</sup> Te Heuheu EIC at [46].

of the impact of the fishing controls sought by the Appellants on Māori fishing and Maori fishing rights and alternative customary management tools.

[131] Evidence tells us that New Zealand has a comprehensive and integrated fisheries management framework that protects and gives effect to Treaty rights and interests, and has tools required to respond appropriately to the effects of fishing and address concerns for ensuring sustainability of aquatic life, including protecting indigenous biodiversity.<sup>35</sup>

[132] We were informed that, as a result of the Fisheries Settlement, regulations have been developed that provide for kaitiaki to manage customary non-commercial food gathering. This function is now devolved to kaitiaki under the Fisheries Act and associated regulations, giving kaitiaki and their hapū representatives authority to issue customary permits. We also understand there is no such devolution available through the RMA.<sup>36</sup>

[133] The Deed of Settlement is specifically embedded into the Fisheries Act through s 5:

**5 Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992**

This Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act, in a manner consistent with—

- (a) ...
- (b) the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

[134] The evidence points out there is no such requirement embedded into the RMA or associated environmental legislation and that this is a critical difference between the Fisheries Act and the RMA. It is Te Ohu Kaimoana's view that the Fisheries Act has design features that enable Māori to exercise both rangātiratanga and kaitiakitanga. This evidence is consistent with evidence given by other Te Ohu Kaimoana

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<sup>35</sup> Drummond EIC at [15(a)].

<sup>36</sup> Drummond EIC at [15(c)].

representatives.

[135] In closing, we heard a critical concern of Te Ohu Kaimoana in joining these proceedings, was to ensure that the full sophistication of the Māori relationship with fisheries that is the foundation of the Settlement, formed part of the RMA deliberations.<sup>37</sup> It was clear that for Te Ohu Kaimoana any management regime touching upon Māori fishing rights, both customary non-commercial and customary commercial, should be under the Fisheries Act. This was reinforced by Sir Tipene concluding:<sup>38</sup>

...protecting the marine environment is not lost in the sophistication of the Fisheries Act and Māori Fisheries Settlement. Importantly, consistent with our rakatirataka and kaitiakitaka, Māori were guaranteed a statutory role in any necessary regulation.

[136] This highlights compromises reached in the Fisheries Settlement by which the mandated authority became the beneficiary of the rights under the Treaty reserved to the “chiefs, tribes and ordinary people of New Zealand” (English version).

[137] There was no criticism of those who settled the claim and witnesses recognised they did so for the iwi, hapū and whanau of New Zealand. However, we heard the division of gains from the arrangement have proved problematic particularly in areas of large fisheries such as the Bay of Plenty and Bay of Islands.

[138] Here the issue is the devolution of protections and benefits to the particular hapū who are kaitiaki in the various areas of interest.

### **Impact of marine protection measures on Māori fishing activities**

[139] The Fisheries Expert Conference on 11 June 2021 (JWS Fisheries) explored impacts of marine protection measures on Māori customary non-commercial, Māori customary commercial and recreational fishing activities.

[140] Mr Drummond stated that the establishment of marine protected areas under

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<sup>37</sup> Legal submissions for Te Ohu Kai Moana Trustee Limited dated 5 August 2021 at [59].

<sup>38</sup> O’Regan EIC at [55].

the RMA would mean that the Crown/Iwi partnership in the management of fisheries resources would be undermined and customary rights to utilise fisheries resources in accordance with tikanga would be denied.<sup>39</sup>

[141] Extensive reasons supporting these statements were provided in an attachment to the JWS, among them the following:<sup>40</sup>

- As is well known, the solemn undertakings in Article II of Te Tiriti o Waitangi were not honoured by the Crown, and in the case of fisheries led to the Fisheries Deed of Settlement (DOS) being signed in 1992. Under the DOS the Quota Management System was endorsed for the management of customary commercial fishing and the Crown agreed to develop and administer a regulatory framework to support the role of Tangata Kaitiaki/Tiaki in the management of customary non-commercial fishing.
- The Quota Management System (QMS) is, as its name implies, an integrated set of fisheries management measures established under the Fisheries Act 1996. These management measures, and the way they have evolved, not only provide for customary commercial and customary non-commercial take but also lay the foundation for Māori to exercise te tino rangatiratanga and, by that authority, kaitiakitanga.

[142] The fisheries experts agreed that part of both Areas A are already protected under the Fisheries Act and they are unaware of any commercial fishing in the remainder of Area A. There will be no impact on commercial fishing in Area B because of the existing fisheries controls, and in Area C of the Te Hā o Tangaroa Protection Area there would be impacts on bottom trawling, and Danish and Purse seining. It is noted that impacts on commercial and Māori customary commercial fishing are the same.

[143] Although the impacts on commercial fishing are not at issue here, the concern that remains is that the integrity of the obligations to Māori under the Fisheries Deed of Settlement<sup>41</sup> are not compromised.

[144] We note that the opinions of the fisheries experts in the JWS regarding the adequacy of existing marine protection contrasted with that provided by the ecological

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<sup>39</sup> JWS Fisheries at [1(a)].

<sup>40</sup> JWS Fisheries at Attachment 1, bullet points 2 and 3.

<sup>41</sup> JWS Fisheries at Attachment 1.

experts, and with the evidence we heard regarding the impacts on marine ecology.

### **Tikanga and Kawa**

[145] We have already discussed this issue at some length. We recognise the inherent tensions between Te Ohu and the Ngā Puhī Iwi in maintaining the hard-won fisheries rights and the interests of various hapū around the Bay of Islands including the Appellants and Ngāti Rehia. Whanaungatanga dictates that Tikanga should be followed. This was acknowledged and throughout the hearing the ongoing relationships were stressed.

[146] This did not mean that the various parties reached accord because they have differing Kawa in some respects and also Tikanga varies slightly. We cannot expect uniformity but note that the hapū values including overlapping rohe were acknowledged. Furthermore, the role of the Iwi authority and Te Ohu were also acknowledged.

[147] All tangata whenua were seeking to walk the tightrope between Tapu and Noa in difficult circumstances. We must seek to emulate those efforts in recognising all these tangata whenua interests and other recreational and conservation interests in the context of very high biodiversity values. This is a particularly difficult task in this case for both the Regional Council and now this Court on appeal.

### **Scope**

[148] An issue was raised by the parties as to whether BOI Maritime Park and Forest and Bird's original submissions on the Proposed Plan provides scope for the relief now sought. The issue of scope was addressed in the submissions by counsel for the Appellants, Regional Council and Ngāti Rehia and fisheries interests (including recreational).

[149] The BOI Maritime Park submission sought policies to address preservation of natural character or to address the Regional Councils role in protecting marine ecosystems from the adverse effects of fishing activities. Forest and Birds submission



however went much further and sought policies and rules to control the effects of fishing on values of significant ecological areas.

[150] There was concern expressed that the Māori Fishing Interest Parties and Fishing Industry Parties did not anticipate that the possible inclusion of rules prohibiting fishing and types of fishing within the sub-areas of the marine protected areas.<sup>42</sup> It was considered that the public consultation process and in particular consultation with tangata whenua as envisaged in clause 4A, Schedule 1 of the RMA was not followed.

[151] As already explained, we have encouraged continued tikanga based dialogue between the parties regarding the best outcome to control the effects of fishing on marine ecological values.

[152] The difficulty with plan changes is that concepts are addressed by parties and they must often be expressed in terms of generality given the lack of precise provisions within the plan. That is certainly the case here where the plan as notified did not contain any particular marine protected areas, or policies and rules to control the effects of fishing on values of significant ecological areas. We are satisfied that Forest and Bird at the very least directly sought policies and rules to control the effects of fishing on the values of these areas.

[153] We also conclude that the BOI Maritime Park sufficiently indicated their concern by seeking to protect marine ecosystems from the adverse effects of fishing activities. To suggest that this did not specify the exact wording of rules or that objectives, policies and other provisions does not seem to answer the question as to whether the matter was fairly raised in terms of the notification.

[154] When viewed in the context of the issues that have arisen in the Bay of Plenty, it would have been clear on any cursory examination of the submissions that they were seeking further controls which might affect commercial and non-commercial fishing. This also must be viewed in the context of an environment in which the pressure on the aquatic ecosystem in the Bay of Islands has become something of a

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<sup>42</sup> Mitchell EIC at [48].

public issue. We also note the agitation by tangata whenua including Mimiwhangata hapū for some time to have a marine reserve recognised. The Ngā Puhi Iwi held a different view but supported a rāhui. We conclude the subject matter was signalled in both of these submissions sufficiently to raise the issues before this Court.

[155] Issues as to how far such a submission may go (to what extent it may apply) are ones of merit which we do consider as part of this hearing. Clearly the further the provisions would impact upon recreational and commercial fishing, the more cautious the Court would be in imposing controls that have not been clearly identified. Nevertheless, if it got to that point, the Court does for example, have power under s 293 to require a more detailed renotification of the proposal. This Court granted a s 293 application on this plan, in respect of outstanding natural landscapes.<sup>43</sup>

[156] We agree that these submissions were not framed in such a way that they sought the banning entirely of commercial and recreation fishing in the Bay of Islands. It was clearly focussed around significant ecological areas and protecting marine ecosystems. The extent to which those values were identified and protected would be key in our view to that approach. This has been signalled in the *Motiti* series of decisions. Again, that goes to the extent of any controls rather than the question as to whether these were adequately signalled in a jurisdictional sense.

[157] We also appreciate that given the number of plans that are notified, and changes that are made to National Policy Statements and the like, it is very difficult for industry bodies and recreational bodies to keep up with checking all submissions and documents. Nevertheless, until there is reform of that system, the notification for submission is adequate provided it gives a basis for the claim before the Court.

[158] Accordingly, we do not consider there is anything in the jurisdictional scope point but acknowledge that the extent which controls might be exercised will be dependent on the extent to which the relationship to ecological areas and protecting marine ecosystems (and by implication, the values of those ecosystems) can be established.

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<sup>43</sup> *CEP Services Matawhi Ltd v Northland Regional Council* [2020] NZEnvC 202.

### **Ecological value of marine areas proposed for protection**

[159] We now go on to consider the values established in respect of each of the areas and the extent to which we conclude controls may or may not be appropriate under s 32 and/or s 32AA of the Act.

[160] In this particular case, it is whether or not the controls now sought are more appropriate than the existing provisions of the plan. In relation to Area B, there has however been a change in position and the area is now subject to a non-scalloping order introduced earlier this year. That clearly becomes relevant to the questions as to what steps the Court should take in relation to those areas.

[161] We now move to discuss the various biodiversity values that we conclude warrant protection and our conclusions in respect of each area.

[162] East Northland has a rich and biodiverse variety of environments with a range of sea exposure gradients (from largely enclosed through to open surf beaches and exposed rocky coastline) and associated seafloor types, as well as the influence of warmer water East Australian Current. The large broad expanses of subtidal rocky reef that occur, are much more extensive than those in most other coastal areas of New Zealand.<sup>44</sup> We heard evidence about the importance of protecting a representative range of ecosystem types and protecting the interconnecting sequences and ecotones from shallow to deep water and from rocky reefs to adjoining soft sediments, and the value of these habitats as nursery and feeding areas for a range of marine and coastal taxa.

[163] The ecological values of marine areas proposed for protection were described in detail in the evidence of the ecologists at the hearing and are briefly summarised in the sections below.

[164] We recognise the close connection between ecological values and Tikanga. The ecological and cultural values and the human impacts on these values, described to us by the cultural experts and by the ecologists, are very similar. There was little

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<sup>44</sup> Morrison EIC at [11].

disagreement regarding the values present in the core proposed marine protection areas. Where the disagreement lay was primarily with the measures necessary for protection.

[165] Overall, there was agreement amongst the ecologists that the two proposed Areas A and Area B are ecologically important and there was agreement with the management measures proposed for these areas. There was agreement that the rocky reefs and soft sediment areas in the two proposed Areas C are ecologically important, however there was a lack of agreement on the management measures proposed for Area C. Mr West, a senior marine ecologist at Bioreserches, considered the soft sediment area did not meet the criteria in NZCPS 11(a) and that the same level of protection was not required.<sup>45</sup>

***Area A: Maunganui Bay – Oke Bay Rāhui Tapu***

[166] This area represents a unique stretch of coast, as it is largely protected from ocean swells, with a limited influence of land-based stressors such as sediment runoff and strongly influenced by the East Auckland Current. Maunganui Bay is a hotspot for subtropical species of fish. The relatively steep sloping reefs support some of the highest diversity of subtropical reef fish in Northland, second only to the Poor Knights.<sup>46</sup> The rocky coast running south from Maunganui Bay to Oke Bay includes a number of rocky and sandy bays with shallower more gradual sloping reef systems that support a mosaic of macroalgal habitats, including kelp (*Ecklonia radiata*) forests.<sup>47</sup>

[167] There is a high diversity of ecosystems and habitat types present in the area with arches, caves, islands, and deeper subtidal habitats. Threatened ecosystem types present include seagrass meadows, kelp forest, macroalgae beds and sponge aggregations, shallow rocky reefs and biogenic habitats.<sup>48</sup>

[168] Cultural evidence from Ngāti Kuta is that the area was rich in fish life. They

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<sup>45</sup> JWS Ecology at [10].

<sup>46</sup> Shears EIC at [16].

<sup>47</sup> Shears EIC at [17].

<sup>48</sup> Pardo EIC at [20].

describe it as follows:<sup>49</sup>

In the coastal waters from Maunganui to Oke Bay there were always tāmure (snapper), tarakihi, and pōrae (trumpeter). There were tarakihi spawning grounds there associated with various features of the seabed. These fish and the kūtai (mussels) which were all along the coastline and coastal rocks were a food source for our hapū.

[169] They explained that fish life is recovering since legal protection from fishing in a rāhui in Maunganui Bay was placed on a small area in 2010. Dolphins are now coming into the bay to feed, with the fish life within it rebuilding. The tarakihi spawning grounds have never recovered, kina barrens have spread through from Whakapae Bay to Whapūkapirau Bay and kūtai (green lipped mussels) which were historically present in the area have now gone.<sup>50</sup>

[170] Green lipped mussel beds have sequentially disappeared from eastern Bay of Islands over the last decade and are ecologically/functionally extinct from native seabed habitats where they previously formed extensive beds.<sup>51</sup>

[171] Evidence suggests that populations of kōura (crayfish *Jasus edwardsii*) have recovered to some extent in Maunganui Bay as a result of the rāhui, and that the number and diversity of other species has increased significantly.<sup>52</sup> The small size of the area is likely the reason for a lack of fully recovered species in the area.<sup>53</sup>

***Area A: Mimiwhangata Rāhui Tapu***

[172] Mimiwhangata, as with Cape Brett, is described as an area of very high ecological significance, containing a significant sequence of high-quality marine habitats including shellfish beds, extensive seagrass beds, deep-water kelp forests, and deep reefs dominated by diverse filter-feeding encrusting invertebrate community.<sup>54</sup> The wide range of habitats present are influenced by the offshore subtropical currents

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<sup>49</sup> Clendon, Willouby, Riley EIC at [70].

<sup>50</sup> Clendon, Willouby, Riley EIC at [90] to [91].

<sup>51</sup> JWS Ecology at [27].

<sup>52</sup> Shears EIC at [19].

<sup>53</sup> Pardo EIC at [95].

<sup>54</sup> Shears EIC at [21].

sweeping around the peninsula and islands extending seaward into deeper waters.<sup>55</sup> There is a rich and diverse benthic environment and a great diversity of seaweed communities, and the complex reef systems provide habitat for snapper (tāmure), kōura and paua which were once abundant in the area.<sup>56</sup>

[173] Mimiwhangata Bay is a key seabird area.<sup>57</sup> Threatened habitats present include biogenic habitats with kelp forests and rich sponge and coral aggregations, including large areas of pink Gorgonian fan corals, and ivory coral and Antipatharian black coral.<sup>58</sup> Seventy-one fish species have been recorded at Mimiwhangata.<sup>59</sup>

[174] There have been long term ecological studies undertaken at Mimiwhangata that contribute to understanding the effectiveness of marine protected areas in New Zealand and globally. This includes long-term data sets for fish and crayfish dating back to the 1980s, which have been paired with the same methods used at the full ‘no take’ Tāwharanui Marine Park. This data shows the effectiveness of a full ‘no take’ reserve at Tāwharanui Marine Park, compared with partial protection at Mimiwhangata Marine Park, in restoring key species and the reversal of long-term trophic cascades resulting in algal forest decline. Detailed habitat mapping studies show significant loss of algal forest since the 1970s coinciding with increased fishing pressure.

[175] Commercial fishing is prohibited in the Marine Park however recreational fishing is permitted with some limits. The last survey in 2011 indicates low counts and virtually no large fish at Mimiwhangata. Crayfish densities have declined since the 1970s and are at very low levels inside and adjacent to the park.

[176] Evidence from Te Uri o Hikihiki record the rich fish life that was present at Mimiwhangata and the dramatic declines from historic records:<sup>60</sup>

the sea around Mimiwhangata peninsula once had an abundance of marine

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<sup>55</sup> Kerr EIC at [13].

<sup>56</sup> Shears EIC at [21] to [22].

<sup>57</sup> Stirnemann EIC at Figure 4.

<sup>58</sup> Kerr EIC at [13].

<sup>59</sup> Kerr EIC at [63].

<sup>60</sup> Carmen Hetaraka, Te Uri o Hikihiki, quoted in Ross EIC at [22]; Keefe EIC at [7].

resources including tuatua, kina, scallops, crayfish, mussels, oi and fish. Our kaumatua Puke Haika told me that in the 1950s you would always come across schools of large snapper and lobster. This abundance had turned to scarcity by the mid-1970s.

Over the years the fish aren't as plentiful, the crayfish don't get a chance to replenish, the Paua are scarce and hard to find, the Kutai are pēpi compared to the size they used to be (the size of my hands). The scallops have been wiped out. We now have to go further afield to gather kai moana.

[177] Kaumatua recall important traditional tarakihi and hāpuku fishing grounds at Mimiwhangata, and dramatic declines of crayfish from historic records.<sup>61</sup>

### ***Area B Ipipiri/Inner Bay of Islands***

[178] This area encompasses Te Rawhiti Strait and adjacent islands and coastal bays, it is a biodiverse area notable for its biogenic habitats (rhodolith beds and seagrass meadows).<sup>62</sup> It contains an unusually common abundance of macroalgal meadows and supports a significant number of intertidal and subtidal seagrass meadows distributed among the islands and adjacent to the coast.<sup>63</sup> Subtidal seagrass meadows are a rare marine habitat providing high value nursery habitats for fish, notably snapper.<sup>64</sup>

[179] Area B holds horse mussel populations that appear to be in relatively good condition. They provide nursery habitats for juvenile fish including snapper. Horse mussel beds of Te Rawhiti Strait have been protected from commercial bottom fishing gears for decades.<sup>65</sup>

[180] Scallop numbers have declined from historical times, and there has been a significant reduction in horse mussel beds in the last ten years. The East Northland scallop fishery is at very low levels.<sup>66</sup>

[181] Evidence of Ngāti Kuta discuss the rich fish life once present in the Inner Bay of Islands. Their evidence describes the reduction in abundance of big schooling fish,

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<sup>61</sup> Kerr EIC at [53] and Figure 6.

<sup>62</sup> Morrison EIC at [13].

<sup>63</sup> Pardo EIC at [108].

<sup>64</sup> Morrison EIC at [14] to [15].

<sup>65</sup> Morrison EIC at [20].

<sup>66</sup> Morrison EIC at [22].

the loss of seagrass beds in Ipipiri, and the huge schools of ana (herrings) and associated kahawai, kuparu (john dory) and warehenga (kingfish) that have not been seen in inner Bay of Islands of Ipipiri since the 1970s. Kina barrens started to appear in the mid-1970s with most of the kelp replaced by kina.<sup>67</sup>

The number of fish that you could see was incredible. There were kahawai chasing the takeke (piper), warehenga (kingfish) chasing the kahawai; you could watch them all around Ipipiri.

...

Around the inside of the islands of Ipipiri we would snorkel for tipa (scallops). They were commonly found on quite shallow sand banks and it was easy to collect them in only eight feet of water.

...there were huge migrations of ana (herrings) in the Inner Bay of Islands. The fish were following the plankton which made the water brown. Many kahawai, kuparu (john dory) and warehenga (kingfish) were caught around the schools of ana (herrings).

[182] The major concern is with bottom contact fishing methods touching the benthic environment, the seagrass meadows and shellfish beds in Area B. Fisheries Act controls now provide for full closure of the scallop fisheries in Northland from 1 April 2022 and this will prohibit activities which threaten the ecological values.

***Areas C: Rakaumangamanga Moana Mara Tipu Rohe / Te Au o Morunga Protection Area***

*Ecological values*

[183] The area of highest biodiversity value in the two proposed Areas C is the area around Cape Brett – Motu Kōkako. Cape Brett intercepts the warm waters from the East Auckland current allowing the development of subtropical habitats and species (turtles, tropical fish, invertebrates). Cape Brett is described as a hotspot of marine biodiversity, with the Oceans 20/20 survey describing Cape Brett as having some of the highest biodiversity index in the North Eastern Bioregion, after North Cape.<sup>68</sup> Reef fish diversity of Cape Brett is the second highest in Northland with 93 species

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<sup>67</sup> Clendon, Willouby, Riley EIC at [97] to [104]; quote: [74], [76] – [77].

<sup>68</sup> Pardo EIC at [112] to [117].



recorded in 2002 (cf. 98 species Poor Knights).<sup>69</sup>

[184] The area around Motu Kōkako and Cape Brett is an important upwelling zone which attracts shoaling fish (work ups) and these in turn attract seabirds. The productivity of the upwelling area is among the highest New Zealand wide, providing an important and productive area for filter feeding invertebrates and planktivorous fish species which feed other organisms higher in the food web. A range of seabirds are known to rely on workups of fish schools in upwelling areas of northern New Zealand waters.<sup>70</sup> Within Cape Brett to Mimiwhangata fluttering shearwater, terns and red billed gulls have been observed in large flocks over fish workups.<sup>71</sup>

[185] The islands provide safe breeding areas for various seabirds. Red billed gull breed on various rock stacks e.g., Mahenotapuku (Bird Rock), Black Rocks, Tapeka Point, and on Cape Brett below the light house. Motu Kōkako and Moturua are important breeding sites for various petrel species. White fronted tern breed on various rock stacks and cliffs. Gannets breed on the Nine Pin. Little Blue Penguin (at risk) breed along the coast.<sup>72</sup>

[186] The best available information for the sea floor and rocky reefs in Area C is the Oceans 20/20 Bay of Islands survey, and the DOC Northland Marine Habitat map which defines the spatial extent of rocky reef areas.<sup>73</sup> The April 2021 DOC drop camera survey targeted the areas proposed for protection to fill gaps in knowledge, with the deepest sample on the offshore reefs at around 97m.<sup>74</sup> The elevated areas (pinnacles) in offshore reef between Cape Brett and Mimiwhangata were found to have higher abundance and diversity of fish species compared with neighbouring flatter reef. Big schools of kingfish, pink maomao, butterfly perch, splendid perch and golden snapper were observed over these pinnacles.<sup>75</sup> The DOC survey noted rich benthic communities in the northern reef area, the extension from Cape Brett, with a

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<sup>69</sup> Froude EIC at [98].

<sup>70</sup> Stirnemann EIC at [44].

<sup>71</sup> Stirnemann EIC at [45].

<sup>72</sup> JWS Ecology at [17].

<sup>73</sup> JWS Ecology at [5].

<sup>74</sup> Pardo EIC, Appendix 5.

<sup>75</sup> Pardo EIC at [136] to [137] (DOC 2021 survey).

notable diversity of sponges.<sup>76</sup>

[187] The rocky reefs between the Bay of Islands and Mimiwhangata contain extensive deeper reefs some which extend continuously from shore to around 200m depth. The area is dominated by sponges (Desmospongiae and Hexactinellidae). Hydrozoa and Anthozoa (including anemones, sea-pens and protected gorgonian coral species (*Alcyonacea*)), and cup corals from order Scleractina (hard corals) are notable in deeper rocky areas, along with smaller populations of protected black corals (*Antipatharia* spp.).<sup>77</sup> The 2021 DOC survey documented black corals at 80m in Area C and the Ocean 20/20 survey recorded them north of Cape Brett and other locations.<sup>78</sup>

[188] We conclude that there was better information and more clearly defined boundaries in the evidence around the rocky reefs in Area C. The experts agreed that the soft sediment areas are generally known to have diverse and productive invertebrate communities that form the basis of many ecological food webs, which connect species, e.g., invertebrates, fish, mammals and seabirds.<sup>79</sup> Rare species likely to exist in the soft sediment but not sufficiently sampled included helmet shells and Tonna cask shells. Others such as stony cap corals as well as sea pen species are located in soft sediments.<sup>80</sup> The evidence described the important role the soft sediment environments play in providing marine ecosystem services and their role in carbon sequestration.<sup>81</sup>

[189] Evidence on fishing activity was that it has increased in the Bay of Islands as a result of displacement from the Hauraki Gulf, that the levels of trawling have declined, and the levels of longlining have increased in Area C.<sup>82</sup> Bottom contact fishing avoids the high reefs as the nets get caught and bottom trawling is primarily outside the reef structures identified as SEA. The catch is significantly dominated by purse seining

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<sup>76</sup> Pardo EIC at [133].

<sup>77</sup> Pardo EIC at [130] to [132].

<sup>78</sup> Pardo EIC at [66].

<sup>79</sup> JWS ecology at [10] and [14(b)].

<sup>80</sup> Stirnemann Rebuttal at [14].

<sup>81</sup> Thrush rebuttal at [33].

<sup>82</sup> Clark EIC at [90].

with large catches of mackerel. One fisher accounts for 65% of the bottom trawl catch in the Bay of Islands and is the main fisher in the Rakaumangamanga Moana Mara Tipu Rohe. Bottom longlining is more widespread in Area C, taking place in a greater range of depths on a greater range of seafloor types, with snapper the prime target.<sup>83</sup>

### Cultural values

[190] The evidence of Ngāti Kuta describe Rakaumangamanga as being of great significance with much mauri connected to it. Rakaumangamanga is a pou or marker, a tūāhu/altar, a passageway, where every waka stopped to give offerings to Rangitāhua and is a rich area for fish and birds.<sup>84</sup>

[191] Ngāti Kuta used to enjoy an incredible abundance and variety of fish in currents around Motu Kōkako and Rakaumangamanga. Up to the 1960s the ranga ika (work ups) of kahawai, warehenga, maomao, trevally, tuna/albacore and marlin were acres in size. The waters around Motu Kōkako were teeming with bird life, gannets, penguins, shags, oi (muttonbirds) and massive flocks of terns would chase our boats.<sup>85</sup> There are no longer acres of birds there now because there is not enough feed for them, and seabirds have diminished in numbers. The evidence of Ngāti Kuta describe during 1970s a massive increase in trawling, then purse seining, and after that a serious decline in oi (muttonbirds), to the extent they are no longer able to harvest them.<sup>86</sup>

### **Conclusion**

[192] It is clear from the evidence and the final position of the parties that there was a recognition of a gradient of importance in relation to biodiversity values.

[193] By the conclusion of the hearing, most parties supported protection of Area A: Maunganui Bay – Oke Bay Rāhui Tapu and also Mimiwhangata Rāhui Tapu and buffer. It is clear from the evidence before this Court that both those areas display very high biodiversity values.

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<sup>83</sup> Clark EIC at [93] to [96].

<sup>84</sup> Transcript at page 779.

<sup>85</sup> Clendon, Willouby, Riley EIC at [82] – [83].

<sup>86</sup> Clendon, Willouby, Riley EIC at [109].

***Area A: Mimiwhangata Rāhui Tapu***

[194] Mimiwhangata in particular has been subject to proposals for rāhui tapu and also as a marine reserve. We agree that a broader level of protection to include some of the deeper reefs will assist with an ecotone protection for the biodiversity of the area as a whole and provide support for the core areas that have been the subject of earlier protective steps.

***Area A: Maunganui Bay – Te Oke Bay***

[195] Similarly, the area of Maunganui Bay – Oke Bay Rāhui Tapu has been previously recognised as of particular importance for biodiversity and other values. There the argument turns on whether or not the Fisheries Act's protections are more appropriate than RMA. From our perspective, it does not appear that there is any particular reason why it cannot be covered by both regimes dependent on the final wording of the provisions.

***Area B Ipipiri/Inner Bay of Islands***

[196] In Area B, the argument is more pointedly around the controls now imposed by the Minister. Not only Area B but a wider area is protected from scallop dredging which was a major concern in relation to this area. We recognise that there were concerns expressed beyond scallop dredging with damage to the bottom from anchors. Overall, the evidence would tend to indicate that the more serious significant damage is caused by dredging rather than occasional use for anchorage. We recognise the importance of anchorage in untoward conditions and overall, we are not convinced that the area should be separately covered by the RMA rather than the current scallop dredging ban.

[197] In light of this decision, we would expect that the Minister of Fisheries would not likely remove such a ban without full consultation and the opportunity for the Council to be heard. The Council could impose control under the Resource Management Act, if it considered that the Minister's action in removing such ban was inappropriate.

[198] Again, we repeat that it is intended the Fisheries Act and RMA work together and this means that local government and relative organisations of the Crown at least discuss their intentions and that they attempt to work together. With that step, we consider that matters are adequately covered by the current ban and there is no justification for further control over the benthic area given the limited impact that the extra control under the RMA would have.

***Areas C Rakaumangamanga Moana Mara Tipu Rohe/Te Au o Morunga Protection Area***

[199] Area C has been the most problematic for the Court. We recognise the enormous values around Cape Brett, and Motu Kōkako (the hole in the rock) area. We acknowledge the holistic connection between land and sea, the navigation point for Hawaiki and the number of seabirds and marine mammals that use the area as well as the benthic and fisheries' value.

[200] Given the complex nature of the underlying rocks and reefs, we are satisfied that the area is not easily fished on a commercial basis. Accordingly, a marine protection area would not have significant impact on the fisheries industry parties or Te Ohu and its interests. This depends on how far the control would go beyond the immediate rocks. In this regard, the concern is the significant distance from the shore that the applicants are seeking to control for a marine protected area.

[201] We conclude that protection can be justified around the rocks and reefs of Cape Brett. But thereafter, we consider that benthic controls can be limited to a hundred metre depth of water, from benthic high-water springs, to the metric depth of 100 metres along the shoreline. Even then, the intent is to protect the significant elements of the biodiversity while allowing other activities including recreational fishing, motoring and other anchorage and the like to occur.

[202] In that regard, we would not continue control all the way to Mimiwhangata. We have already concluded that we would include the controls as sought for Mimiwhangata. We would protect the marine area and reefs to a depth of 100 metres around the coast to just south of Whangamumu Harbour before Elliot Bay. This

would mean that there would be a good portion of ecotone to a greater depth including within a buffer area of Mimiwhangata and thus, rocky reef areas for biodiversity over a range between Mimiwhangata, Cape Brett and of course the inner harbours. We consider that Mimiwhangata would provide an appropriate exemplar for protection for ecotones and it is not necessary to protect the entire coastline from Cape Brett down to Mimiwhangata.

[203] By approaching the matter in the way we do, we believe that the areas will reinforce one another and allow areas for refuge from Maunganui Bay, around Cape Brett to the 100 metre depth, and thereafter Mimiwhangata and its buffer. Combined these create interconnected areas which will provide for the biodiversity values that the RMA seeks to protect under s 32AA.

[204] Although we recognise there may be benthic values in the deep water, the evidence was that the area had already been well trawled and we therefore consider that the level of higher biodiversity value is likely to be lower than other places in Northland which are less fished.

[205] Essentially the proposition was that because we do not know the biodiversity values in these deeper waters, we should treat the matter with caution and protect them. With respect that would simply mean that all areas would be protected and lead to the derogation of the social, cultural and other values that the Act also seeks to protect.

[206] We have concluded that those biodiversity values must be established by evidence rather than the absence of proof. Without evidence as to the values within these deeper areas beyond the 100 metres, we have concluded that there is an insufficient basis for this Court to interfere at this stage.

[207] We recognise, however, the Fisheries Act does have broader powers in this regard and the ban on scallop dredging, for example, may have benefits in these deeper waters anyway. Any controls over Dutch and seine trawling may have similar benefits to the benthic environment.

[208] We recognise that protection of the biodiversity values is the key outcome and that similar or wider controls to those we are recommending could be done through the Fisheries Act, or through both the RMA and the Fisheries Act. However, we have no direct evidence on these values in the deeper waters and are unable to reach any conclusions as to the values that are involved in them.

### **Overall conclusion**

[209] The outcome of this is that we consider there is clear evidence to support both Areas A as Protected Areas under the RMA in the Regional Plan.

[210] We conclude that

- (a) the Fisheries Act adequately protects Area B (and wider areas); and
- (b) there is insufficient evidence to satisfy us that we should impose controls over all of Area C.

[211] However, we are satisfied that there should be controls on inner shore areas to 100 metre depth around Cape Brett and to south of Whangamumu Harbour. This will protect the most valuable area identified in the evidence (Cape Brett) and will be reinforced by the Mimiwhangata (Area A) and its buffer, which will be protected. We attach as “**Appendix 3**” a draft map showing area C. The exact boundaries need to be established (preferably by agreement) and endorsed by the Court.

### **Outcomes**

[212] For the reasons we have gone into in some detail, we conclude that in the current circumstances the Fisheries Act 1996 provides adequate protection for biodiversity values of Area B (Ipipiri/Inner Bay of Islands) and for the deeper waters in Areas C (Rakaumangamanga Moana Mara Tipu Rohe/ Te Au o Morunga Protection Area). Accordingly, we make no orders beyond 100 metres deep in Areas C and nor for Area B.

[213] In relation to Areas A (Mimiwhangata Rāhui Tapu and Maunganui Bay – Oke

Bay Rāhui), we conclude there are significant biodiversity values that should be properly protected under the RMA. This does not prevent further protection under the Fisheries Act but recognises the high diversity values of both of these areas. In that regard, we conclude we should protect both areas sought namely Maunganui Bay – Oke Bay Rāhui Tapu and also the Mimiwhangata Rāhui Tapu area and its buffer area. We see little purpose in separating these two although there may be reasons if it is related to harvesting by tangata whenua. We leave that to be finalised in the wording.

[214] As far as Area C is concerned, we concluded on balance that the biodiversity values should be protected around Cape Brett which we show to be generally delineated in a plan annexed hereto as “**Appendix 3**”, including the rocky reefs to a depth of 100 metres. The limits of Area C will generally follow the Significant Ecological Area boundaries to 100 metres depth and include the rocky reefs from north of Maunganui Bay, around Cape Brett, to south of Whangamumu Harbour where it should terminate. The southern limit on the eastern side should be just north of Elliott Bay and to the north of Maunganui Bay on the western side. The maps will need to be redrawn as will the particular rule applying.

[215] We conclude that the wording of the regional provisions in this regard proposed by the Council are largely appropriate but minor wording changes for areas and for controls will need to be included.

[216] Again, for our part, we would see any ability to delegate powers under s 33 or s 36 of the RMA should be encouraged and noted within the provisions wherever possible.

### **Final comment**

[217] We note that there are significant issues in the Bay of Islands relating to biodiversity. The effect of climate change is yet unknown on its values.

[218] It would be fair to say that the Court has taken an incremental approach to protection in this case, recognising as it does the significant tikanga issues which arise as well as the interrelationship between the Fisheries Act and the RMA.




[219] In the event that increased protection of these areas is not achieved, then it appears both the Minister and the Council may need to consider further controls to seek to protect these areas. We note in particular the potential continuing loss of dolphins in the harbours and the need to improve water quality generally going into the Bay of Islands.

[220] These issues are beyond the scope of this hearing but nevertheless formed part of the holistic view of the biodiversity of this area which must include both the land-based activities and contaminants coming from them and the associated ocean biodiversity values.

[221] I comment that the parties have been cooperative in their approach particularly between the Crown and the regional authority and with tangata whenua groups including iwi, hapū and whanau.

[222] We assume costs will not be in issue.

For the Court:



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**J A Smith**  
**Environment Judge**



**Appendix 1: Proponent's relief as provided at hearing**

# **BOIMP / NGATI KUTA PROVISIONS**

(23 July 2021)

## **F OBJECTIVES**

### **F.1.x Te Hā o Tangaroa Protection Areas**

Protect from inappropriate use, disturbance and development the characteristics, qualities and values that make up Te Hā o Tangaroa Protection Areas.

[or]

Protect from inappropriate disturbance, use and development the mauri and taonga species and their habitats, and customary values that make up Te Hā o Tangaroa Protection Areas.

### **F.1x Investigate Possible Future Te Hā o Tangaroa Protection Areas**

Investigate and identify areas that may qualify as further Te Hā o Tangaroa Protection Areas and implement measures for those areas that will protect them from inappropriate use, disturbance and development.

## **D POLICIES**

### **D.2.x Te Hā o Tangaroa Protection Areas – manage adverse effects**

In Te Hā o Tangaroa Protection Areas

- (1) Avoid adverse effects of activities on the identified characteristics, qualities and values of Te Hā o Tangaroa Protection Areas – Sub Areas A
- (2) Avoid, remedy or mitigate adverse effects of activities on the identified characteristics, qualities and values of Te Hā o Tangaroa Protection Areas – Sub Areas other than Sub Areas A
- (3) In areas identified as [Protection Areas] encourage and support initiatives from tāngata whenua and the community generally for the restoration or enhancement of marine areas of cultural, ecological and natural character significance

### **D.2.x Future Te Hā o Tangaroa Protection Areas**

- (1) Consider proposals from tāngata whenua and the community to identify, investigate and monitor areas of the coastal marine area that are, or are likely to be, adversely affected by activities (including fishing).

- (2) Where Te Hā o Tangaroa Protection Areas have been identified, introduce the further marine spatial planning mechanisms that may be required to protect and restore them.

## **C RULES**

### **C.1.9 Te Hā o Tangaroa Protection Areas**

*Note: The rules in this section do not apply to aquaculture activities (refer C.1.3 Aquaculture)*

*Note: Further regulations apply under the Fisheries Act 1996*

*Note: By operation of s 10(d) Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, these rules do not prevent customary (non-commercial) fishing provided for in regulations made in accordance with Part 9 of the Fisheries Act 1996.*

#### **C.1.9.1 Temporary or permanent minor damage or destruction or removal of fish, aquatic life or seaweed in a Te Hā o Tangaroa Protection Area – permitted activities**

The following activities in a Te Hā o Tangaroa Protection Area involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed are permitted activities, subject to any other applicable rules:

- (a) All Sub-Areas (Sub-Area A, Sub-Area B and Sub-Area C)
- i. Kina/sea urchin harvest (or Kina/sea urchin management);
  - ii. Mussel re-seeding
  - iii. Resource consent monitoring undertaken in accordance with resource consent conditions;
  - iv. Marine biosecurity incursion investigation and/or response;
  - v. Wildlife rescue;
  - vi. Monitoring and enforcement carried out by a regulatory agency;
  - vii. Mooring, anchoring and hauling small vessels ashore;
  - viii. Scientific research, conservation activities and monitoring undertaken by, under the supervision of, or on behalf of, the following entities:
    - Crown research Institutes;
    - Recognised Māori research entities;
    - Tertiary education providers;
    - Regional Councils;
    - Department of Conservation;
    - Ministry for Primary Industries;
    - An incorporated society having as one of its objectives the scientific study of marine life or natural history, or the study of matauranga Māori.

- (b) In Sub-Area B (in addition to those listed in (a)):

Any activity involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed that is not a prohibited activity in Section C.1.9 of this Plan.

- (c) In Sub-Area C (in addition to those listed in (a)):

Any activity involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed that is not a prohibited activity in Section C.1.9 of this Plan.

### **C.1.9.2 Temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed in a Te Hā o Tangaroa Protection Area - prohibited activities**

The following activities in a Te Hā o Tangaroa Protection Area involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed that is not a permitted activity in Section C.1.9 of this Plan, are prohibited activities:

- (a) In Sub Area A:

Any activity involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed that is not a permitted activity in Section C.1.9 of this Plan.

- (c) In Sub-Area B:

- a. Bottom trawling;
- b. Bottom pair trawling;
- c. Danish seining;
- d. Purse seining,
- e. Scallop or other dredging.

- (d) In Sub-Area C:

- a. Bottom trawling;
- b. Bottom pair trawling;
- c. Danish seining;
- d. Purse seining,

## MAPS

Map Layer	Description
<p><i>Te Hā o Tangaroa Protection Areas</i></p>	<p>These areas are overlays within identified Significant Ecological Areas, Significant Bird Areas, Significant Marine Mammal and Seabird Areas, Sites and areas of significance to tangata whenua or Outstanding or High Natural Character areas. The areas have been identified as being particularly vulnerable to environmental or cultural degradation such that specific protection is justified, focused on avoiding adverse effects arising from extraction of flora and fauna, and disturbance of the seabed.</p> <p>Te Hā o Tangaroa Protection Areas may overlap. This recognises that a major basis for identifying these areas relates to the various Northland hapū rohe moana. In some areas these rohe moana are shared.</p> <p>Te Hā o Tangaroa Protection Areas are broken down into sub-areas which have different combinations of characteristics, qualities and values and appropriate levels of protection from activities that may permanently or temporarily damage these characteristics, qualities and values – (see the Te Hā o Tangaroa Protection Area Schedules).</p>

## *Schedule of Characteristics, qualities and values - Te Hā o Tangaroa Protection Areas*

### **Te Hā o Tangaroa Protection Area: Rakaumangamanga-Ipipiri**

The Rakaumangamanga –Ipipiri protection area, otherwise referred to as the Bay of Islands marine management area, is located in the marine areas generally east of Tapeka Point, encompassing the area around Motuarohia, Moturoa and Urupukapuka Islands south to the mainland, the area between a line from Moturahurahu Island and Kariparipa Point and the mainland and an area eastwards out past the enclosed bay encompassing a radius of 6 nautical miles off Cape Brett, and around Cape Brett extending, also at approximately a 6 nautical mile width, to a line eastwards of Taupirinui Bay. The degree of marine area management in the Rakaumangamanga –Ipipiri Rohe Moana varies within three sub-areas, being Sub-Area A— Maunganui Bay - Oke Bay Rāhui Tapu, Sub Area B – Ipiripiri Moana Mara Tipu Rohe and Sub-Area C – Rakaumangamanga Moana Mara Tipu Rohe.

Ngati Kuta and Patukeha Hapu of Te Rawhiti are the two resident hapu. Their customary area is from Tapeka to Cape Wikiwiki, across to Motukokako (and all the islands in-between) down to Taupirinui and out the 200-mile economic exclusion zone.

The hapu are fisher people by tradition. By tradition all Maori lived inside nature. They saw themselves as another part of nature and studied the natural world to understand its dynamics. They describe the characteristics, values and qualities as follows:

Taonga species are symbols of the sea and their way of life and were not fished by the hapu. Our Taonga – Kaitiaki species are:

- **Papahu / Dolphin:** represents the souls of our people lost at sea. They live in the spirit of the dolphin and are a protector from harm.
- **Ururoa / Hammerhead Shark:** they represent the fighting spirit of Maori to endure.
- **Pakarua / Stingray:** traverse the inner harbours of Bay of Islands and coastal waters to other harbours, thereby connecting our coastal hapu.

“Fishing activities which catch our taonga species (as target or bycatch) or damage their habitat or reduce their food supply, are diminishing our wairua (spiritual world). Culturally it continues to be important not to fish our taonga species. We want them to be protected to restore the mauri of our moana. Therefore, indiscriminate bulk harvesting methods that catch Pakarua / stingrays, papahu / dolphins and uruo / hammerhead sharks must stop in our rohe moana”.

Sub-Area A— Maunganui Bay - Oke Bay Rāhui Tapu	Characteristics, Values and Qualities	Existing or Potential Adverse Effects
	<p><b>Cultural</b></p> <p>“In Te Ao Maori everything is interconnected. The hapu have always known the Maunganui Bay- Kohangaatara Point area to be a critical part of the interlinked ecosystems of the Bay of Islands and waters beyond.</p> <p>Maunganui Bay is a focus and symbol of the hapus’ heritage and connection to the Bay of Islands. It is seen as symbolising their presence the cultural connection for their people. Above Maunganui Bay is the pinnacle Rakaumungamunga which is a waypoint of the Polynesian triangle which the navigators used to search for as they neared Aotearoa. Mountains are used by Maori to mark and define territory and, here, Rakaumungamunga was a key part of the hapu maps. This was a place where chiefs were baptised, and recited karakia before their forays. From Maunganui Bay they would go out and return through the hole in Motukokako saying their karakia. Voyagers, and later resident Maori utilised Maunganui Bay and Ohututea Bay next to it which has a freshwater spring through a cave”.</p>	<p>“Overfishing. The traditional fishery was empty and resulted in the mauri of Maunganui Bay becoming so depleted by overfishing that the hapu placed a rahui on it.</p> <p>An example of Maunganui Bay’s critical part of an interlinked ecosystem is kingfish, which spawn at Brampton Reef, the juveniles then migrating down through the Veronica Channel to the Waikare inlet. As they grow bigger they migrate back out to Maunganui Bay and Cape Brett, where the currents and upwellings bring nutrients to feed many schooling species in “work ups” that the adult kingfish feed on. So, Maunganui Bay is an important part of the life cycle of the kingfish. But that cycle has been broken as a result of overfishing at certain stages, and their food sources also being overfished, or the habitats they need at various stages being degraded and not supporting them”.</p>



	<p>Note: Clarification regarding cultural values may be available in hapu management plans, which should be consulted for further information.</p>	
<b>Ecology</b>		
	<p><b>Maunganui Bay</b></p> <ul style="list-style-type: none"> <li>• Habitats include shallow reef, reef edge and soft bottom habitats-</li> <li>• Maunganui Bay contains rare and unusual species resulting from the Bay's relatively sheltered waters close to Cape Brett which intercepts the East Auckland current (which carries turtles, tropical fish and invertebrates). These include: green turtle, Indo-Pacific sergeant, oblong sunfish, striated frogfish, Spanish lobster, blue knifefish, golden-ribbon grouper, snake eel, banded coral shrimp, striped angler fish, yellow-banded perch (subtidal caves). Other unusual species include: crested weedfish, giant boarfish</li> <li>• High reef fish diversity (off Cape Brett is the second highest in Northland).</li> <li>• Feeding area for bottlenose dolphin and orca</li> <li>• Rich invertebrate cover on the sunken Canterbury frigate including: feather star, variety of bryozoans and sponges -</li> <li>• Regenerating populations of reef fish after ten years of a no-take regime including for snapper (which can be either resident or migratory)</li> </ul>	<p>Up until around 2010 green lipped mussel beds were extensive around Moturahurahu (except on the south side) and in the outer sections of Karerarera and Whapukapirau Bays. Over the last decade green-lipped mussel beds have been removed sequentially throughout the eastern Bay of Islands.</p>

	<ul style="list-style-type: none"><li>• Safe place for pelagic fish species including northern kahawai, kingfish, trevally, tunas, koheru</li><li>• Sufficient current at headlands/islands to maintain a primarily resident population of blue maomao</li><li>• Contains examples of urchin barrens reverting algal forest cover</li><li>• Contains a variety of arches and caves. In some of these low light levels enable organisms and communities to survive in shallow water (e.g. variety of bryozoans and other encrusting fauna)</li></ul> <p><b>Remainder of Area A outside of Maunganui Bay</b></p> <ul style="list-style-type: none"><li>• Several special or unusual areas including a deep cave (south of Whakapae Bay), a shallow cave in outer Oke Bay (eastern side), and two small arches in Karewarewa Bay. The deep cave south of Whakapae Bay is up to 8.5m deep and has a break through arch at one end. It includes jewel anemones, encrusting sponges, orange golf ball sponges and white branching bryozoans. Just to the west of Kahangaatara Point there is a high north-west facing arch with water depths of 2-7m. The northern wall cover includes s jewel anemones, long tusk bryozoans, branching white bryozoans, encrusting sponges, orange golf ball sponges and <i>Ancorina</i> sponges</li><li>• The algal communities, which are significantly depleted in the Oke Bay-Moturahuru area, some areas would be enhanced if the main predators, especially large snapper (Tamure) and</li></ul>	
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	<p>rock lobster (Koura), of urchins could recover sufficiently to allow the regrowth of tall algal forests or kelp</p> <ul style="list-style-type: none"> <li>• The shallow reefs in Karerarera and Whapukapirau Bays contain notable areas of tall coralline turfs which until 2018 also contained relatively abundant green-lipped mussels (Kutai)</li> </ul> <p>Note: Refer also to the relevant Regional Plan Assessment Sheets for Significant Ecological Areas, Significant Bird Areas and Significant Marine Mammal Area.</p>	
<b>Natural Character</b>		
	<ul style="list-style-type: none"> <li>• Maunganui Bay is part of a unit of ONC extending to and around Cape Brett. The remainder of the area in the proposed Maunganui Bay to Oke Bay Rahui Tapu and Buffer Zone has been mapped as being of HNC</li> <li>• Ecological communities are more natural than those immediately outside of this area-</li> <li>• Larger snapper and rock lobster than exist outside the bay</li> <li>• Fish populations (e.g. snapper) have a more natural age structure and population density than exist outside the bay</li> <li>• Areas of rocky urchin barrens reverting to the more natural state of a tall brown algal forest.</li> <li>• high water quality and clarity</li> <li>• natural hydrology and geomorphology</li> <li>• catchment of primarily regenerating and mature indigenous forest</li> </ul>	<p>For Maunganui Bay, where fishing is prohibited except for kina harvesting,) there is a risk that the current temporary restrictions under S186A of the Fisheries Act will not be renewed. If this happens the gains over the last ten years of no fishing would likely -be quickly lost: This would lead to:</p> <ul style="list-style-type: none"> <li>• a decrease in snapper and rock lobster abundance and size</li> <li>• ecological communities becoming less natural</li> <li>• increase in the extent of urchin barrens</li> <li>• decrease in other fish species that are attractive to line and/ or spear fishing</li> </ul>

	<ul style="list-style-type: none"> <li>• Absence of structures except for the sunken frigate (from which all pests were removed before sinking) and several buoys to prevent anchoring damage to the fragile benthic communities now covering the surface of the sunken frigate</li> <li>• Natural sounds predominate except during summer busy periods</li> </ul>	
<b>Sub Area B – Ipiripiri Moana Mara Tipu Rohe</b>	<b>Characteristics, Values and Qualities</b>	<b>Existing or Potential Adverse Effects</b>
	<p><b>Cultural</b></p> <p>“In Te Ao Maori everything is interconnected. Ipiripiri is a shallow water ecosystem that feeds the whole Bay of Islands by providing habitat to multiple species in the seagrass beds. Each ecosystem connects with the other ecosystems, and the seagrass beds of Ipiripiri underpin them all. Piper schools, crabs, octopus, scallops and juvenile fish of several species including tamure/snapper and kanae/mullet, and the juvenile of the hapus’ taonga pakarua/stingrays, are all part of that whole ecosystem. Piper is particularly important because it feeds a lot of other species of the ecosystem”.</p> <p>Note: Clarification regarding cultural values may be available in hapu management plans, which should be consulted for further information.</p>	
	<b>Ecology</b>	

	<ul style="list-style-type: none"> <li>• Generally healthy subtidal sea grass meadows are unusually widespread in the south-west facing bays on the islands</li> <li>• Generally healthy intertidal seagrass beds are unusually common in the Rawhiti (mainland) bays</li> <li>• Rhodolith beds are unusually widespread in some of the channels between the islands and between some islands and the mainland</li> <li>• Previously contained widespread beds of scallops and horse mussels, now largely gone</li> <li>• Previously relatively widespread intertidal and subtidal reef green-lipped mussels, now largely gone</li> <li>• Feeding and nursery area for bottlenose dolphins</li> </ul> <p>Note: Refer also to the relevant Regional Plan Assessment Sheets for Significant Ecological Areas, Significant Bird Areas and Significant Marine Mammal Area</p>	<ul style="list-style-type: none"> <li>• over the decade until 2021 beds of scallops largely removed by excess harvesting including dredging</li> <li>• beds of horse mussels largely destroyed by scallop dredging</li> <li>• intertidal and subtidal reef green-lipped mussel beds now all but gone, primarily due to excess harvesting</li> <li>• subtidal sea grass beds are at risk from dredging and anchoring</li> </ul>
<b>Natural Character</b>		
	<ul style="list-style-type: none"> <li>• Most of the area is ranked as being of high natural character – the areas excluded are: <ul style="list-style-type: none"> <li>○ an area to the east of Tapeka Point that is not identified as highly natural because of the deposition of large amounts of suspended sediment in the deeper “Rawhiti Basin” (sheltered area deeper than 10</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• deposition of large amounts of suspended sediment from the inner Bay of Islands catchments (such as the Kawakawa) in the deeper “Rawhiti Basin”</li> <li>• a reduction in water clarity closer to Tapeka Point as much of the water from the Kawakawa catchment - including 339,000 tonnes per year of suspended sediment - flows east at Tapeka Point with</li> </ul>

	<p>metres, preventing resuspension of sediment, not at Rawhiti settlement itself)</p> <ul style="list-style-type: none"> <li>○ oyster farm in Paroa Bay</li> <li>○ moorings areas in Jacks Bay, Waipiro Bay and Te Uenga Bays</li> </ul> <ul style="list-style-type: none"> <li>• Relatively clear water between the islands</li> <li>• In the area ranked as being of high natural character there are few permanent marine structures apart from the occasional jetty or small wharf (Motuarohia, Motukiekie, Otehei Bay on Urupukapuka (which is now a larger wharf)</li> <li>• Largely natural hydrology and geomorphology</li> <li>• Mostly natural seafloor, albeit modified by past dredging (primarily for scallops) in some places</li> <li>• Very few introduced species apart from Pacific oyster (primarily in Paroa Bay in which the oyster farm is excluded from the area of high natural character, but also some other mainland bays)</li> <li>• Generally healthy natural intertidal and subtidal sea grass and rhodolith beds</li> <li>• Other ecological communities are composed of native species</li> </ul>	<p>sediment being deposited in the “Rawhiti Basin” (that area to the east of Tapeka excluded from the high natural character ranking)</p> <ul style="list-style-type: none"> <li>• There can be a large number of boats anchored (so not permanent structures) at times in different bays depending on the time of year and weather (especially wind speed and direction)</li> <li>• While there is a relatively high level of restriction on the types of fishing activity (particularly for bulk harvesting methods) this is largely_offset by the relatively high level of non- commercial fishing effort, facilitated by the accessibility and shelter in a range of weather conditions</li> </ul>
<p><b>Sub-Area C – Ipipiri-</b></p>	<p><b>Characteristics, Values and Qualities</b></p>	<p><b>Existing or Potential Adverse Effects</b></p>

<b>Rakaumangamanga Moana Mara Tipu Rohe</b>		
	<b>Cultural</b>	
	<p>“The whole marine environment has always been part of the Maori way of life. It was a food cupboard for all Maori, and they would manage it and control it and look after it according to the seasons. There were many species which were important as food, and also as taonga, that had complex interactions and were managed holistically. In Te Ao Maori everything is interconnected. Pelagic ecosystems are a significant part of the marine environment for the hapu. The pelagic “work-ups” exemplify Te Ao Maori and are essential to support healthy mauri and wairua in the hapus’ moana. When the fish are schooling, the birds are flocking as well. Bird colonies need the “work-ups” created by the large pelagic fish, as they bring the small fish species, krill and other invertebrates to the surface for the birds to feed on. The currents and upwellings bring the nutrients and plankton, and then within the work-up everything is feeding on everything else.</p> <p>The tourist economy in the Bay of Islands is built on its natural character. While part of the tourism and lifestyle is recreational fishing, most people go out there to look feel and touch rather fish. People expect to see the natural character in all its glory, including a living sea. Hapu strongly believe that biodiversity needs to be maintained at a level that it can sustain that sort of interaction with the public. The marine ecosystems are</p>	<ul style="list-style-type: none"> <li>• “The cycle of the pelagic species has been broken”.</li> </ul>

	<p>a very important part of what people come to see and enjoy.”</p> <p>Note: Clarification regarding cultural values may be available in hapu management plans, which should be consulted for further information.</p>	
<b>Ecology</b>		
	<ul style="list-style-type: none"> <li>• This area covers a diversity of habitats, ecological communities and ecological values</li> <li>• The area of highest biodiversity value is the area around Cape Brett- Motukokako. Cape Brett intercepts the East Auckland current (which carries turtles, tropical fish and invertebrates from warmer waters)-</li> <li>• There are a number of rare and unusual species including: green turtle, mado, Spanish lobster, blue knifefish, golden-ribbon grouper, snake eel, banded coral shrimp, yellow-banded perch (subtidal caves)</li> <li>• One or more seals are usually present</li> <li>• There are a range of unusual habitats including a large deep cave, and a large arch which commercial powered catamarans regularly travel through (“the widely advertised trip to the “Hole in the Rock”). The arch and cave (in Motukokako) both have diverse and beautiful encrusting flora and fauna including diverse bryozoans, sponges, and anemones. The fish species in the cave include pink maomao, golden snapper and mado and yellow-banded perch.</li> </ul>	<p>Risks include:</p> <ul style="list-style-type: none"> <li>• excessive harvesting of fish, changing fish population abundance and sizes</li> <li>• changing pelagic and demersal fish behaviour by intensive fishing activity</li> <li>• damaging harvesting methods for soft bottom ecosystems</li> <li>• damaging harvesting methods in areas containing coral species</li> <li>• change in shallow rocky reefs (urchin barren increase) resulting from urchin increases as they respond to reductions in their predators</li> </ul>



	<p>These species are not commonly seen elsewhere on the mainland-</p> <ul style="list-style-type: none"><li>• There can be extensive schools of pelagic and demersal fish including combinations of blue maomao, pink maomao, sweep, blue mackerel, trevally, kahawai, kingfish, blue knifefish, parore, koheru. Such schools are unmatched anywhere between Cape Wiwiki and Taupirinui and beyond</li><li>• High reef fish diversity (off Cape Brett is the second highest in Northland)</li><li>• The entire area is an important feeding area for bottlenose dolphin</li><li>• The entire area is within a globally Important Bird Area (IBA). It is an important feeding and breeding area for a number of seabird species a number of which are both threatened and at risk. A number of these at-risk and threatened seabird species are reliant on the presence of workups of fish schools, especially during the breeding season for feeding.</li><li>• Various coral species are found in this area, including species that are extremely long-lived.</li></ul> <p>Note: Refer also to the relevant Regional Plan Assessment Sheets for Significant Ecological Areas,</p>	
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	Significant Bird Areas and Significant Marine Mammal Area	
<b>Natural Character</b>		
	<ul style="list-style-type: none"> <li>• There is an area of mapped ONC that extends from Maunganui Bay to an area immediately around Cape Brett. Adjoining this to the west is a larger area of HNC extending to Cape Wiwiki and south to an area north of Tapeka Point.</li> <li>• There is a small inshore unit of ONC from Cape Brett to the entrance of Whangamumu Harbour. This has steep bathymetry and high levels of exposure which increases resilience to urchin browsing effects. There is very high water quality compared to natural state, minimal vessel traffic and little or no anchoring. There is a high degree of resilience to non-natural sounds and a visual experience of outstanding natural character</li> <li>• Elsewhere the area contains offshore reefs and soft sediment ranked as having HNC-</li> </ul>	<ul style="list-style-type: none"> <li>• In most of this area there are few controls on bulk and other fishing methods-</li> <li>• Some sediment from the inner Bay of Islands travels around Cape Brett to at least Whangamumu Bay (although not into the ONC area immediately south of Cape Brett)</li> </ul>

<b>Te Hā o Tangaroa Protection Area: Te Au o Morunga</b>		
<b>Characteristics, Values and Qualities</b>		<b>Existing or Potential Adverse Effects</b>
<i>[To be addressed by Te Uri o Hikihiki]</i>		

# TE URI O HIKIHIKI PROVISIONS

## **Policies**

**Version dated 23 July 2021**

### **Te Mana o Tangaroa Protection Areas – Northland Regional Plan**

These provisions will protect the:

1. Mimiwhangata Rahui Tapu (**Area A**) (Totally closed area as proclaimed by Hopeke Piripi in 2003)
2. Mimiwhangata Rahui Tapu Buffer areas (**Buffer Areas**)
3. Te Au o Morunga (**Area C**)

(jointly referred to “**Te Mana o Tangaroa Area**” and further identified in Map marked X).

## **F OBJECTIVES**

### F.1.1A Te Mana o Tangaroa Protection Area

Protect from inappropriate use, disturbance and development the characteristics, qualities and values that make up Te Mana o Tangaroa Protection Areas

### F.1.1B Investigate Additional Te Mana o Tangaroa Protection Areas

Investigate areas that may qualify as further Te Mana o Tangaroa Protection Areas and implement measures for those areas that will protect them from inappropriate disturbance, use and development.

## **D POLICIES**

### D.2.1A Manage adverse effects In Te Mana o Tangaroa Protection Areas:

1. Avoid adverse effects of activities on the identified characteristics, qualities and values of Te Hā o Tangaroa /Te Mana o Tangaroa Protection Areas –Area A and Buffer Areas;
2. Avoid, remedy or mitigate adverse effects of activities on the identified characteristics, qualities and values of Te Mana o Tangaroa Protection Area. C
3. Restore or enhance areas of cultural significance, including significant cultural landscape features and culturally sensitive landforms and the mauri of coastal waters, where customary activities are restricted or compromised.

D.2.2A. To provide for partnerships with the active involvement of tāngata whenua in management of the coastal environment when activities may affect their taonga, interests and values.

D.2.3A Enable tāngata whenua to actively co-manage Te Ha o Tangaroa and Te Mana o Tangaroa Management Areas within the CMA of their rohe moana.

D2x

(1) Consider proposals from tangata whenua and the community to identify, investigate and monitor areas of the coastal marine area that are, or are likely to be, adversely affected by activities (including fishing).

(2) Where Te Mana o Tangaroa Protection Areas have been identified, introduce the further marine spatial planning mechanisms that may be required to protect and restore them.

### **Policy XX**

Council will partner with tangata whenua for additional spatial mechanisms for the coastal marine area that identify and protect:

- (a) Areas or sites of cultural, biodiversity and/or natural character value that may require additional protection and/or restoration;
- (b) Areas or sites of cultural, biodiversity and/or natural character value that are, or are likely to be, adversely affected by activities (including fishing), and options to manage such activities for the protection of cultural, biodiversity and/or natural character values.

When considering such a proposal, and whether or not to implement it through a plan change process or other means, Council will take into account relevant matters including the following:

- (a) Te Tiriti o Waitangi Settlement processes;
- (b) Whether there are outstanding applications for customary recognitions under the Marine and Coastal Area Act;
- (c) Whether the group has undertaken consultation with other tangata whenua;
- (d) Whether the proposal is supported by a relevant iwi or hapu management plan;
- (e) The level of support for the proposal from the community and other tangata whenua that have a relationship with the area;
- (f) Urban development capacity and current and future infrastructure needs;
- (g) The extent to which the proposal provides for the social, economic and cultural well-being of the wider community, including consideration of current and future public access, and existing uses and activities; and

(h) Whether a collaborative approach to resource management is appropriate in accordance with Method XXX of the RPS.

Advice note:

A Schedule 1 process will be required to incorporate any planning outcomes in a statutory framework, such as a regional, district or city plan.

*Implementation responsibility: Tangata whenua, the community, Regional Council, city and district councils, the Department of Conservation and the Ministry of Primary Industries.*

**APPENDIX 1**  
**Rules only**  
**Version dated 23 July 2021**

**Te Mana o Tangaroa Protection Areas – Northland Regional Plan**

**C RULES**

**C.1 Coastal activities**

**C.1.9 Te Mana o Tangaroa Protection Areas**

*Note: The rules in this section do not apply to aquaculture activities (refer C.1.3 Aquaculture)*

*Note: Further regulations apply under the Fisheries Act 1996*

*Note: By operation of s10(d) Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, these rules do not prevent customary (non-commercial) fishing provided for in regulations made in accordance with Part 9 of the Fisheries Act 1996.*

*Note: Any Kina take is a permitted activity but must also comply with Fisheries (Amateur Fishing) Regulations 2013. These regulations restrict limit of kina to 50 per person. Regulations can be found at:*

<https://www.legislation.govt.nz/regulation/public/2013/0482/latest/whole.html>

**C.1.9.1 Temporary or permanent minor damage or destruction or removal of plants or animals in a Te Mana o Tangaroa Protection Area – permitted activities**

The following activities in a Te Mana o Tangaroa Protection Areas involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed are permitted activities, subject to any other applicable rules:

(a) All Areas (Area A, Buffer Areas and Area C)

1. Kina/sea urchin management.
2. Resource consent monitoring undertaken in accordance with resource consent conditions.
3. Marine biosecurity incursion investigation and/or response.
4. Wildlife rescue.
5. Monitoring and enforcement carried out by a regulatory agency.
6. Mooring, anchoring and hauling small vessels ashore.
7. Scientific research, conservation activities and monitoring undertaken by, under the supervision of, or on behalf of, the following entities:
  - i. Crown research Institutes.
  - ii. Recognised Māori research entities.
  - iii. Tertiary education providers.
  - iv. Regional Councils.
  - v. Department of Conservation.

- vi. Ministry for Primary Industries
  - vii. An incorporated society or trust having as one of its objectives the scientific study of marine life or natural history, or the study of matauranga Māori.
8. Mussel bed reseedling.

(b) In Area C (in addition to those listed in (a)):

Any activity involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed that is not a prohibited activity in Section C.1.9 of this Plan.

### **C.1.9.2 Temporary or permanent damage or destruction or removal of plants or animals in a Te Mana o Tangaroa Protection Area – prohibited activities**

The following activities in a Te Mana o Tangaroa Protection Area involving the temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed that is not a permitted activity in Section C.1.9 of this Plan, are prohibited activities:

#### **In Sub Area A**

Any activity involving the temporary or permanent damage of the seabed or destruction or removal of fish, aquatic life or seaweed that is not a permitted activity in Section C.1.9 of this Plan.

#### **In Buffer Areas**

Any activity involving the temporary or permanent damage of the seabed or destruction or removal of fish, aquatic life or seaweed that is not a permitted activity in Section C.1.9 of this Plan

#### **In Sub Area C:**

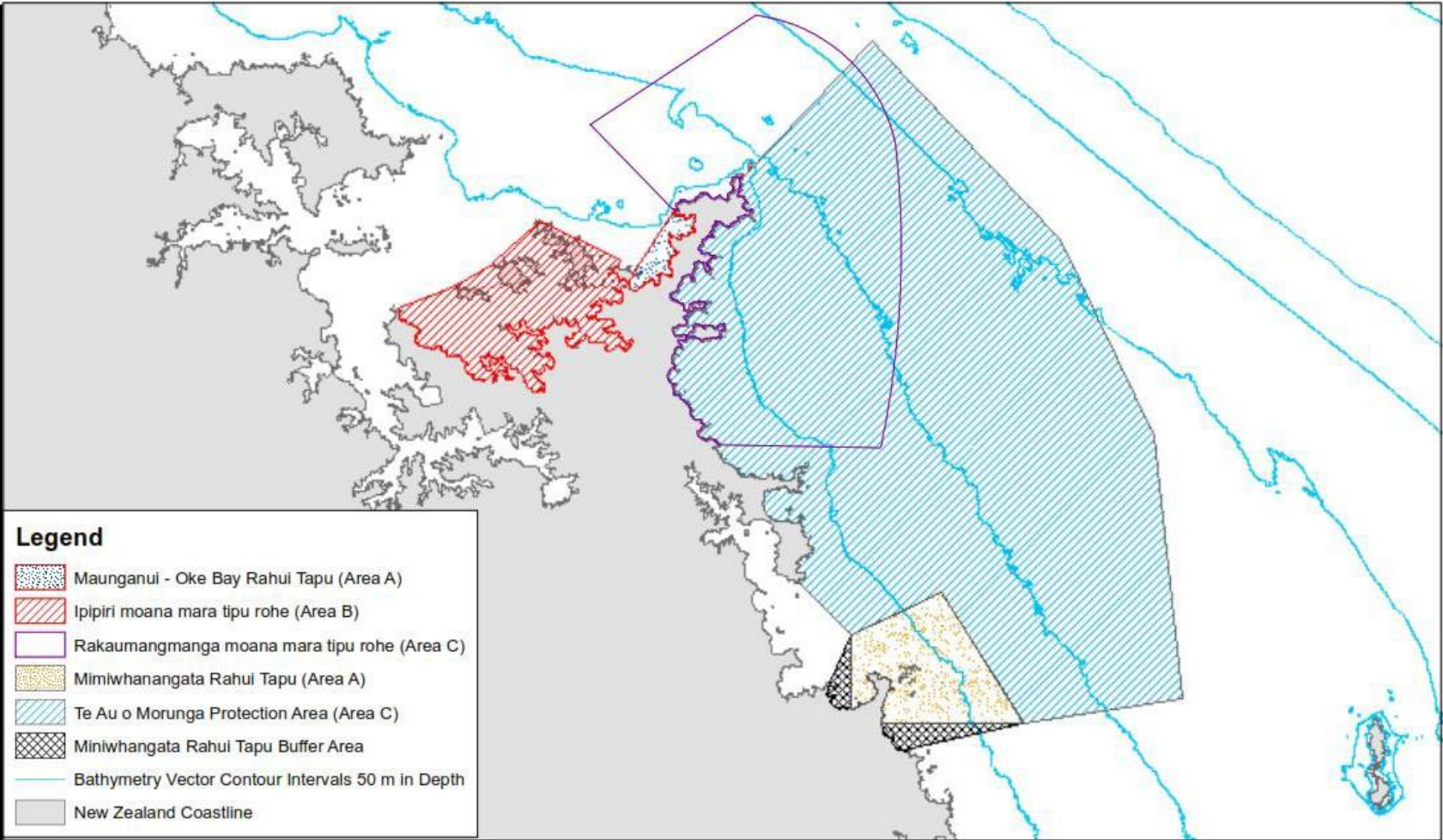
- a. Bottom trawling.
- b. Bottom pair trawling.
- c. Danish seining.
- d. Purse seining,



<p><i>Te Mana o Tangaroa Protection Areas</i></p>	<p>These areas are overlays within identified Significant Ecological Areas, Significant Bird Areas, Significant Marine Mammal and Seabird Areas, Sites and areas of significance to tangata whenua or Outstanding or High Natural Character areas. The areas have been identified as being particularly vulnerable to environmental or cultural degradation such that specific protection is justified, focused on avoiding adverse effects arising from extraction of flora and fauna, and disturbance of the seabed.</p> <p>Te Mana o Tangaroa Protection Areas may overlap. This recognises that a major basis for identifying these areas relates to the various Northland hapū rohe moana. In some areas these rohe moana are shared.</p> <p>Te Mana o Tangaroa Protection Areas are broken down into sub-areas which have different combinations of characteristics, qualities and values and appropriate levels of protection from activities that may permanently or temporarily damage these characteristics, qualities and values – (see the Te Mana o Tangaroa Protection Area Schedules).</p>
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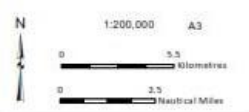
## **Appendix 2**

Mapped Marine Protected Area (Te Uri o Hikihiki and Ngāti Kuta) as  
provided at hearing



**Proposed Marine Protection Area (MPA) –  
Te Uri o Hikihiki and Ngāti Kuta**

Created by: Ingrid Strömehann  
Contact: [ingrid@biomaptic.com](mailto:ingrid@biomaptic.com)  
Date: 8/06/2021  
Project: MPA: Ngāti Kuta and Te Uri o HIKI HIKI

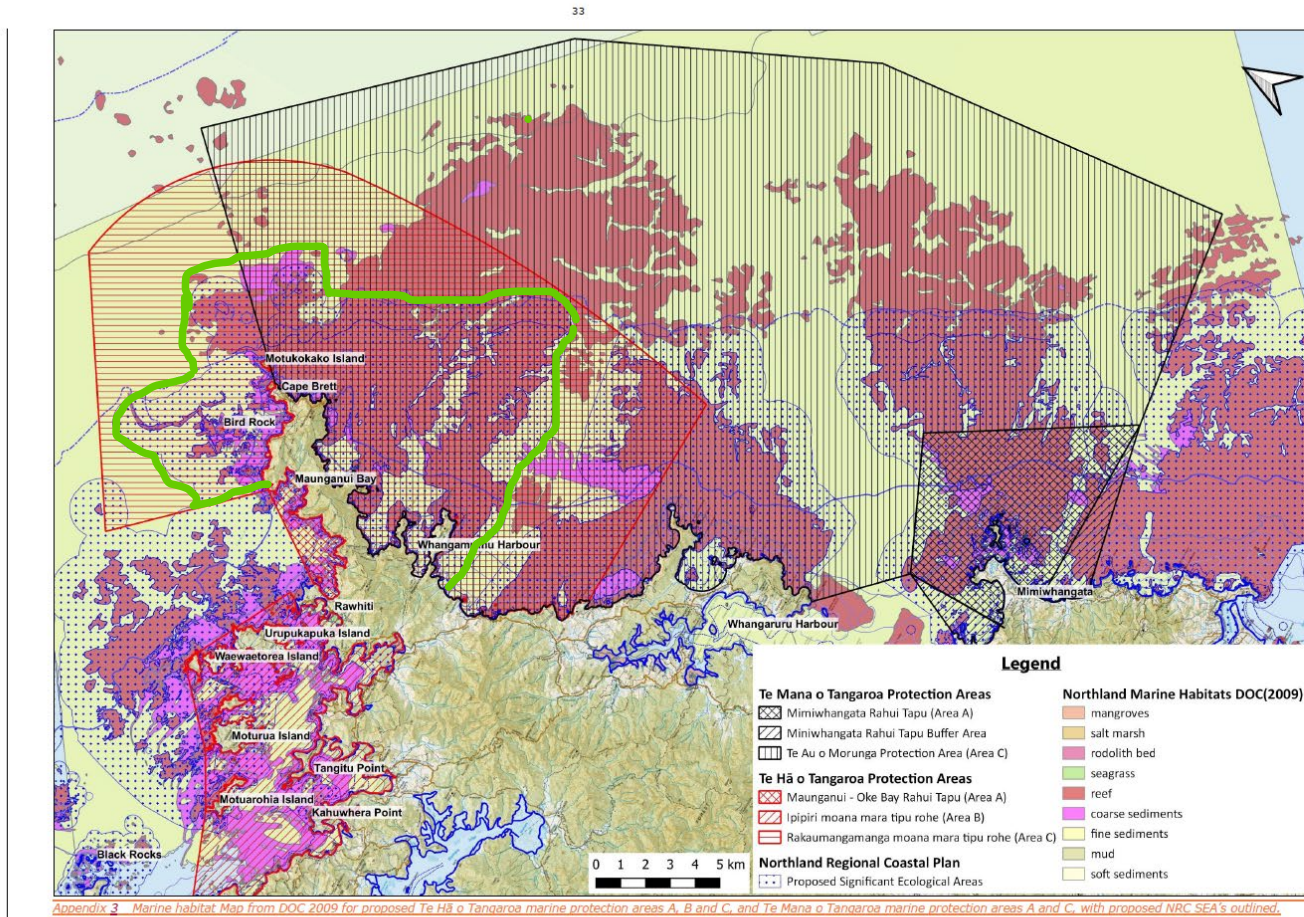


Bathymetry vector contour interval 50 m NIWA 2016  
NZ Coastlines and Islands Polygons (Topo 1:50k)

**Biomaptic**  
TE ŪKĀPAPA KĀHĀRE HĀWAŪKI  
[www.biomaptic.com](http://www.biomaptic.com)

Appendix 3. Draft Area C - Rakaumangamanga Moana Mara Tipu Rohe/ Te Au o Morunga Protection Area

EB.1471



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Area C

