

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2023] NZEnvC 086**

IN THE MATTER OF

appeal under clause 14 of the First  
Schedule of the Resource Management  
Act 1991

BETWEEN

BAY OF ISLANDS MARITIME  
PARK INCORPORATED

(ENV-2019-AKL-117)

ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF  
NEW ZEALAND  
INCORPORATED

(ENV-2019-AKL-127)

Appellants

AND

NORTHLAND REGIONAL  
COUNCIL

Respondent

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

Hearing: On the papers  
Last case event: 20 April 2023

Date of Decision: 11 May 2023

Date of Issue: 11 May 2023

---

**FINAL DECISION AND REPORT OF THE ENVIRONMENT COURT  
TO THE MINISTER OF CONSERVATION**

---

A: The provisions and updated map set out in Annexure A are approved and

Topic 14: Marine Protected Areas



recommended to the Minister for inclusion in the regional plan.

- B: The Additional Provisions sought by appellants relating to future areas and the provisions of ss 33 – 36 of the Resource Management Act are not included for the reasons set out in this decision.
- C: Costs are not sought in this case and no order is made
- D: Pending further order of this Court (currently in preparation), the interim order for confidentiality of certain evidence to the Court of fishing effort continues in force (attached as Annexure C).

## REASONS

### Introduction

[1] On 4 November 2022 the court issued a decision<sup>1</sup> regarding Topic 14 – Marine Protected Areas, in the proposed Northland Regional Plan (**Proposed Plan**).

[2] The court concluded:<sup>2</sup>

... 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.

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.

As far as Area C is concerned, we concluded on balance that the biodiversity values should be protected around Cape Brett ..., 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

---

<sup>1</sup> [2022] NZEnvC 228.

<sup>2</sup> [2022] NZEnvC 228 at [A] – [D] and [212] – [215].

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.

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.

[3] The parties worked to prepare final provisions and maps in accordance with the Court's decision.

[4] It now appears that all matters are agreed excepting the provisions for investigation and protection of further areas in the future, and co-management and/or partnership between the Council and tangata whenua.

[5] The Court will first address the areas of agreement before moving to the matters that remain in issue between the parties.

### **Agreed provisions**

[6] The agreed provisions are as follows:

- (a) F.1.16 Te Hā o Tangaroa Protection Areas;
- (b) D.2.21 Te Hā o Tangaroa Protection Areas – manage adverse effects;
- (c) C.1.10 Te Hā o Tangaroa Protection Areas;
- (d) C.1.10.1 Temporary or permanent minor damage or destruction or removal of fish, aquatic life or seaweed in Te Hā o Tangaroa Protection Area – permitted activities;
- (e) C.1.10.2 Temporary or permanent damage or destruction or removal of fish, aquatic life or seaweed in a Te Hā o Tangaroa Protection Area – prohibited activities;
- (f) Maps – Te Hā o Tangaroa Protection Areas: Rakaumangamanga Rahui Tapu, Mimiwhangata Rahui Tapu, Ngā Au o Morunga Mai, Rakaumangamanga Protection Area; and
- (g) Schedule of Characteristics, qualities and values – Te Hā o Tangaroa

### Protection Areas.

[7] In terms of mapping, the parties have proposed to “straighten” the boundary line of Area C. The purpose of straightening the line is to make the Proposed Plan easier to apply “on the water”. Straight boundaries will be easier for people to understand and adhere to, and easier to monitor and enforce.

[8] The agreed provisions and the updated map with the proposed boundary line of Area C straightened are set out in **Annexure A**.

[9] In its decision the Court concluded that there were significant biodiversity values that should be protected. The Court recognised the close connection between ecological values and Tikanga and that the values themselves and the human impacts on these values are very similar.

[10] We accept that the agreed provisions are intended to enable fauna and flora a chance to regenerate. The Schedule of Characteristics, qualities and values reflects the evidence presented at the hearing. It gives a voice to local knowledge and interests, and reflects the biodiversity values the RMA seeks to protect.

[11] In its earlier decision the Court provided a draft map showing Area C but exact boundaries needed to be established and endorsed by the Court.<sup>3</sup> The parties have agreed the boundaries for Area C. The Court accepts that straightening of the boundary line of Area C is appropriate for the reasons given by the parties.

[12] The Court has considered the final set of provisions and the updated map as set out in Annexure A and is satisfied that it is in order to approve them.

### **Outstanding issues**

[13] Ngāti Kuta Ki Te Rāwhiti Hapū, Bay of Islands Maritime Park, Royal Forest and Bird Protection Society of New Zealand Incorporated (together **Ngāti Kuta/BOIMP/RFB**), and Te Uri o Hikihiki Hapū seek objectives and policies relating to:

---

<sup>3</sup> [2022] NZEnvC 228 at [210] – [211].

- (a) investigating additional marine protected areas in the future; and
- (b) co-management and/or partnership between the Council and tangata whenua.

This is opposed by the Northland Regional Council and a number of other parties.

[14] The additional objectives/policies now sought have been narrowed down to:

- (a) F.1.x Investigate Possible Future Te Hā o Tangaroa Protection Areas;
- (b) D.2.x Future Te Hā o Tangaroa Protection Areas; and
- (c) an Advice Note.

[15] Te Uri o Hikihiki Hapū sought additional provisions relating to partnership and co-management, although they appear to have abandoned these as they are not sought in the final memorandum.

[16] The detail of the parties' positions on each of the outstanding provisions are summarised in **Annexure B**.

[17] We summarise the different positions of the parties below.

### **Parties' positions**

[18] The Regional Council notes that in its decision the Court stated:<sup>4</sup>

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.

[19] The Council's position is that the decision clearly and unambiguously endorsed the provisions put forward by the Council which do not include the additional objectives and policies relating to investigating future marine protected areas and

---

<sup>4</sup> [2022] NZEnvC 228 at [D] and [215].

partnership with tangata whenua as sought by Ngāti Kuta/BOIMP/RFB, and Te Uri o Hikihiki Hapū.

[20] The Council submits that it maintained its position throughout the hearing that it supported the core provisions but did not support additional provisions. The Council further submits that the additional provisions are in part directed at the Councils function under the RMA to consider and prepare regional planning documents. Those are statutory powers requiring exercise of Council discretion that cannot be usurped.

[21] The Minister for Oceans and Fisheries and the Minister of Conservation (together **the Crown**) supports the position of the Council.

[22] Ngāti Kuta/BOIMP/RFB submits that it is not clear which provisions were being referred to by the Court in its decision. These parties point to the suite of provisions annexed to the decision, being those provisions sought by the appellants and supporting hapū.

[23] Ngāti Kuta/BOIMP/RFB do not agree with Council's assertion that the provisions present challenging legal and planning issues. Te Uri o Hikihiki Hapū adopts the position (and rationale) of Ngāti Kuta/BOIMP/RFB that the Court decision was not referring to the provisions supported in Council's evidence and legal submissions, but instead to the provisions attached to the decision.

### ***Future Areas***

[24] The Council submits that the additional provisions should be rejected. In the event that the Court did intend to approve the additional provisions, the Council submits that amendments should be made.

[25] In respect of identifying new areas, the Council submits, a single policy could achieve the desired outcome, without purporting to direct the outcome of the Council's statutory role. The Council submit that its alternative wording for D.2.x (as seen in Annexure B) appropriately ensures that identifying biodiversity, cultural

and/or natural character values is the first step in any future process, before consideration of how activities (including fishing) might be adversely affecting those values. This better aligns with the approach in *Motiti* and these proceedings.<sup>5</sup>

[26] In respect of identifying new areas, the Council submits that Objective F.1.x is not necessary and consider that the agreed objective (Objective F.1.16 Te Hā o Tangaroa Protection Areas) is broad enough to support a policy seeking to identify and investigate future areas.

[27] Ngāti Kuta/BOIMP/RFB submit it is commonplace for plans to say that a Council will identify and protect features of environmental value – it is implicit that this will require a future plan change, which will be assessed on its merits. Such a policy does not direct the content of the future plan change, which remains subject to the Schedule 1 process.

[28] Ngāti Kuta/BOIMP/RFB:

- (a) do not object to the amendments Council have suggested to Policy D.2.x;
- (b) maintain that if that policy is included, the additional objective F.1.x is still required; and
- (c) do not object to the Advice Note suggested by Council.

[29] Te Uri o Hikihiki Hapū submit tangata whenua need to have an avenue to propose new areas for protection and which relate to the Council's objectives, policies, and methods for maintaining indigenous biological diversity.

[30] Ngāti Kuta/BOIMP/RFB and Te Uri o Hikihiki do not object to the amendments Council have suggested to Policy D.2.x(1), subject to several drafting amendments. These parties support the inclusion of D.2.x(2).

---

<sup>5</sup> *Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2019] NZCA 532.

### *Co-management/Partnership*

[31] In respect of the provisions relating to partnership and co-management the Council and the Crown do not support the inclusion of the provisions relating to partnership and co-management. If provisions are to be included, these parties consider it should be limited to an advice note that identifies the availability of the relevant processes to implement partnership and co-management.

[32] Te Uri o Hikihiki Hapū submit the function of the Council imposed by s 30(1)(ga) is an ongoing obligation. They submit that s 8 RMA confirms that the exercise of regional council functions in s 30 RMA are subject to consideration of Treaty principles as mandatory consideration. The Supreme Court in *King Salmon* confirmed the substantive and procedural importance of s 8 RMA.<sup>6</sup>

[33] Te Uri o Hikihiki Hapū submit maintenance of biodiversity (under s 30(1)(ga) RMA) is inherent to rangatiratanga and the exercise of kaitiakitanga, and is an ongoing responsibility for tangata whenua. Treaty principles under s 8 RMA include exercise of rangatiratanga and the duty of active protection of taonga. This includes protection of taonga species and their habitat. Treaty principles of Participation and Partnership are also relevant.

[34] In response, while the Council agrees with Te Uri o Hikihiki that the Treaty of Waitangi is relevant to the exercise of its functions under the RMA, it rejects the argument that the combination of s 30(1)(ga) and s 8 RMA mandates that the additional provisions relating to investigating additional marine protected areas must be included in the Proposed Plan. The Council notes there are available avenues under the RMA for tangata whenua to propose new areas for protection, including private plan change requests. The RMA provides statutory processes for those to be implemented, which cannot and should not be superseded.

[35] The Council considers the RMA provides statutory processes for implementing

---

<sup>6</sup> *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [88]: "... Moreover, the obligation in s 8 to have regard to the principles of the Treaty of Waitangi will have procedural as well as substantive implications, which decision-makers always have in mind, including when giving effect to the NZCPS..."



transfer of powers, joint management or a Mana Whakahono a Rohe agreement, which cannot be usurped by including planning provisions on appeal.<sup>7</sup> The Council maintains that provisions in the Proposed Plan are not the appropriate place to implement partnership arrangements. They appear to attempt to bind the Council to a particular outcome in the future.

### *Scope*

[36] BOIMP appealed Section C Rules and Section D Policies. BOIMP's notice of appeal stated that the Proposed Plan did not contain policies addressing the Regional Council's role in protecting marine ecosystems from the adverse effects of fishing activities. BOIMP noted that Northland's rocky reefs are examples of marine ecosystems whose natural character and biodiversity values have been considerably reduced from the natural state. BOIMP sought the inclusion of provisions addressing the preservation of natural character and the Regional Council's role in protecting marine ecosystems. BOIMP's notice of appeal sought to:

Include policies and/or rules to provide for the following:

To provide a supportive process for considering nominations from organisations, and especially tangata whenua, of marine areas needing protection and restoration that they require being included in the Regional Plan. An additional option would be to use marine spatial planning to identify priority areas such as significant ecological sites where fishing method restrictions are required to protect and restore benthic environments and prevent damage to marine mammals and seabirds.

[37] RFB's notice of appeal referred to marine protected areas. RFB sought the inclusion of policies and rules to provide for marine protection, in particular, whether rules can be included in the plan that protect the habitat of threatened and at-risk species and for species recovery in degraded areas.

[38] RFB and BOMIP both filed s 274 party notices supporting each other's appeals.

[39] Ngāti Kuta joined both appeals as a s 274 party. Ngāti Kuta expressed an interest in the part of the proceedings where policies and rules are sought under Section D.5

---

<sup>7</sup> RMA, ss 33, 36B and 58L-58U. See also *Hauraki Maori Trust Board v Waikato Regional Council* CIV-2003-485-999, 4 March 2004 at [20] and [21].

Coastal Policies to address the Regional Councils role in protecting marine ecosystems from adverse effects and maintaining marine biodiversity. The notice stated that Ngāti Kuta would support inclusion in the Regional Plan of protection for Maunganui Bay, the sub-tidal seagrass beds inside the Islands, around Te Rāwhiti peninsula, and the ecological and cultural values in and around Motukokako and Cape Brett.

[40] Te Uri o Hikihiki Hapū also joined both appeals as a s274 party. Te Uri o Hikihiki Hapū generally supported the relief sought by the appellants.

[41] The submissions for Ngāti Kuta/BOIMP/RFB presented at the hearing state:<sup>8</sup>

The appellants and Ngāti Kuta seek the inclusion in the proposed Northland Regional Plan of spatial marine management provisions to protect the ecological, natural character and cultural values of an area described as Te Hā o Tangaroa. In summary, the provisions sought are:

- a. ...
- b. ...
- c. Two objectives:
  - i. An objective of protection of the characteristics, qualities and values from inappropriate use, disturbance and development.
  - ii. A “future focussed” objective of investigating areas that may qualify as further Te Hā o Tangaroa protection areas and implanting measures for those areas that will protect them from inappropriate disturbance use and development.
- d. Policies to manage effects of activities on the identified characteristics, qualities and values of the sub-areas within Te Hā o Tangaroa, and policies to consider proposals from tangata whenua and the community for new areas for protection (linking to the second, future-focussed objective).
- e. ...

[42] The reply submissions for Ngāti Kuta/BOIMP/RFB presented at the hearing have a section on future-focussed policy. The reply submissions stated:<sup>9</sup>

---

<sup>8</sup> Submissions of counsel for Ngāti Kuta ki te Rāwhiti Hapū, Bay of Islands Maritime Park Inc and the Royal Forest and Bird Protection Society of New Zealand Inc, dated 12 July 2021.

<sup>9</sup> Reply submissions of counsel for Ngāti Kuta ki te Rāwhiti Hapū, Bay of Islands Maritime Park Inc and the Royal Forest and Bird Protection Society of New Zealand Inc, dated 6 August 2021 at [17] and [21].

It is important that a policy to consider proposals from tangata whenua and the community for new areas for protection is included. The pNRP should not give the impression that there has been a comprehensive process to investigate all areas of Northland's CMA where protection of fishing may be justified.

...

The purpose of policies is to guide decisions. A policy encouraging consideration of new protection proposals does not unlawfully fetter Council's discretion, it provides guidance as to how that discretion is exercised. ...

[43] The submissions for Te Uri o Hikihiki Hapū presented at the hearing, state they support the relief sought by the Appellants, particularly the policy and rule framework sought to manage the effects of fishing in the CMA. Te Uri o Hikihiki Hapū generally adopted the evidence and submissions of Ngāti Kuta/BOIMP/RFB.

[44] A Joint Memorandum of counsel dated 29 July 2022 provided a summary of parties' post-hearing positions. Attached to the Joint Memorandum was the "Proponent's relief as provided at hearing". This attachment set out provisions sought by Ngāti Kuta/BOIMP, including F.1.x Investigate Possible Future Te Hā o Tangaroa Protection Areas, and D.2.x Future Te Hā o Tangaroa Protection Areas. The attachment also set out provisions sought by Te Uri o Hikihiki, including F.1.x Investigate Additional Te Mana o Tangaroa Protection Areas, D.2.x Future Te Hā o Tangaroa Protection Areas, and provisions for co-management and/or partnership between the Council and tangata whenua.

[45] We conclude that there is no doubt that at least the BOIMP appeal sought provisions for future identification of areas. The co-management/partnership/delegation issue was also reasonably alive in the appeals. Both issues were pursued before the court albeit largely in submissions.

[46] The issue therefore is whether the court reached a conclusion to include such provisions or whether it should do so in this decision.

### ***Evaluation***

[47] We are unanimous that it was never the Courts intention to include additional provisions which would dictate to the Council what to consider in future planning

processes. We agree with the core provisions and the changes to these agreed by the parties and which are attached as Annexure A.

[48] However, for future steps we concluded we should proceed with caution as we discuss shortly. We conclude the decision is clear on this issue. If this was not clear, we conclude that such provisions are not the most appropriate method to adopt in this regional plan for the reasons we now discuss.

[49] Regarding investigating future areas, there are range of issues that would need to be addressed. These include ecological and cultural values, fisheries interests, tikanga, the current state of fisheries controls, and the impact of climate change on biodiversity values. Such issues are complex with a high degree of public interest. These require proper discussion and evaluation.

[50] We acknowledge that the Minister for Oceans and Fisheries has recently moved to provide greater protection. These include recent controls on scalloping and those proposals currently out for consultation by Ministry of Fisheries on bottom trawling.

[51] We recognise the pressure on Councils responding to numerous national policy changes and requirements, including water quality and freshwater issues. This has been discussed in a number of decisions on the Northland Regional plan in relation to mangroves and freshwater management, fencing and setbacks for farming and other areas. We are mindful to avoid making more work for Council.

[52] Consequently, this Court is unanimous that it was not its intention to provide a mechanism for future selection of sites within this Plan. Clearly, this is a matter that can be considered for the next round of the Regional Plan, or on a plan change basis if necessary

[53] As discussed in our decision, we reiterate that co-management/partnership/delegation of powers under s 33 or s 36 of the RMA is encouraged. These are statutory processes which are available to enable the transfer or delegation of council powers (sections 33 – 34A of the Resource Management Act 1991), joint management (section 36B of the Resource Management Act 1991) and participation

arrangements (sections 58L-58U of the Resource Management Act 1991).

[54] Those processes, as well as memoranda of understanding or other contractual arrangements could be used to provide for shared management of the Te Hā o Tangaroa Protection Areas. However, inclusion of reference to or copies of legislative provisions does not assist with Plan interpretation or understanding. Often the wording is slightly different, and the advice note approach can be prolix and unhelpful.

[55] Given the rapidly changing nature of the legal and management landscape, we are satisfied that the current provisions – those in Annexure A – when operative, will provide a sound basis for the future protection of this area.

[56] If protection of other areas is required then, Ocean and Fisheries already hold power to use controls and have shown that they are now prepared to review matters within the Bay of Islands. For example, issues of particular concern were raised relating to dolphin numbers, but these matters have been clearly exposed prior to this Court hearing, and a Marine Mammal Sanctuary is now in force.

[57] Furthermore, if these controls are successful the Council can consider a wider application within the region not just within the Bay of Islands. A new plan or a plan change could be advanced enabling a more detailed assessment of the Region or parts thereof in a public process.

[58] As far as issues of co-management are concerned, we reiterate again the provisions of ss 33 – 36 are available. If these matters remain unaddressed in a future plan/plan change it could be a subject of direct appeal. To include them at this time, however, appears to us unnecessary and to do no more than state the obvious. At this stage the Regional Plan does not include any further specific provisions in relation to co-management or delegation. However these can be considered by the Council when appropriate in due course. If matters are raised in future plans, then this matter can be revisited by the Court if necessary. It could consider whether and how it might address ss 33 – 36 in an appropriate plan provision.

[59] Accordingly, we consider that the message of the original decision – now

reinforced by this final decision – will make it clear that the Council needs to consider ss 33-36 when an appropriate circumstance arises.

## **Conclusion**

[60] Overall, we have concluded that the changes in Annexure A reflect the decision of this Court and its intention to provide a measured response to the issues raised for the purpose of this Plan.

[61] Matters are being reviewed by Oceans and Fisheries, and can be reviewed by the Council, if necessary, in due course. We are satisfied that the three areas currently protected give a firm foundation for improvement of these areas and, through their protection, to the balance of the Bay of Islands.

[62] These provisions achieve a measured balance between the interests of tangata whenua, residents, recreational users, commercial fishers, the Minister for Oceans and Fisheries, and the proper role and responsibilities of the Regional Council in this area.

[63] Overall, we are satisfied that the changes in Annexure A are ones supported by plan provisions and the appeals filed, and represent the most appropriate provisions in terms of s 32AA of the Act when measured against the other alternatives. We are also satisfied they better meet the purpose of the Act.

[64] We conclude that further provisions about future areas and a notification about co-management and delegation are neither necessary nor appropriate in terms of this plan change.

[65] No applications for costs have filed and nor do we consider it appropriate, given the public importance of these issues. Accordingly, costs are to lie where they fall and the changes to the Plan are approved as per Annexure A.

[66] Finally, the Crown and Minister of Fisheries has sought a final confidentiality order in relation to some sensitive business data. We granted an interim order, which is annexed as **C**, some time ago and this application relates to similar information.

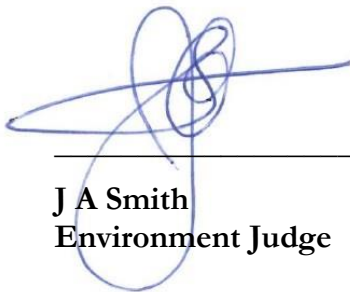
Pending the decision on that issue the order will continue until replaced or discharged by this Court.

**Outcome**

[67] We conclude:

- (a) the provisions and updated map set out in Annexure A are approved;
- (b) these final provisions are also made in terms of a report to the Minister of Conservation under clause 15(3)(a) of the First Schedule to the Act;
- (c) the Additional Provisions sought by appellants relating to future areas and the provisions of ss 33 – 36 of the Resource Management Act are not included for the reasons set out in this decision;
- (d) costs are not sought in this case and no order is made; and
- (e) pending further order of this Court (currently in preparation), the interim order for confidentiality of certain evidence to the Court of fishing effort continues in force (attached as **Annexure C**).

For the Court:



---

**J A Smith**  
Environment Judge



## Annexure A: Agreed provisions and maps

# F.1 Objectives

## F.1.16 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.

# D Policies

## D.2.21 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: Rakaumangamanga Rahui Tapu and Mimiwhangata Rahui Tapu
- 2) Avoid, remedy or mitigate adverse effects of activities on the identified characteristics, qualities and values of Te Hā o Tangaroa Protection Area: Ngā Au o Morunga Mai Rakaumangamanga Protection Area
- 3) 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

# C Rules

## C.1.10 Te Hā o Tangaroa Protection Areas

### **Notes:**

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

*Further regulations apply under the Fisheries Act 1996 in relation to kina/sea urchin harvest and mussel re-seeding.*

*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 50-52 of the Fisheries (Amateur Fishing) Regulations 2013.*



## C.1.10.1 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:

- 1) Te Hā o Tangaroa Protection Areas: Rakaumangamanga Rahui Tapu; Mimiwhangata Rahui Tapu; and Ngā Au o Morunga Mai Rakaumangamanga Protection Area
  - a) Kina/sea urchin harvest (or Kina/sea urchin management);
  - b) Mussel re-seeding
  - c) Resource consent monitoring undertaken in accordance with resource consent conditions;
  - d) Marine biosecurity incursion investigation and/or response;
  - e) Wildlife rescue;
  - f) Monitoring and enforcement carried out by a regulatory agency;
  - g) Mooring, anchoring and hauling small vessels ashore;
  - h) Scientific research, conservation activities and monitoring undertaken by, under the supervision of, or on behalf of, the following entities:
    - A hapū or iwi;
    - 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 .
- 2) In Te Hā o Tangaroa Protection Area: Ngā Au o Morunga Mai Rakaumangamanga Protection Area (in addition to those listed in 1) above):
  - 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.1.10 of this Plan.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Damage, destruction or disturbance of the foreshore or seabed (s12(1)).
- Use of the coastal marine area (s12(3)).

## C.1.10.2 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 are prohibited activities:

- 1) In Rakaumangamanga and Mimiwhangata Rahui Tapu areas:
  - a) Any activity that is not a permitted activity in Rule C.1.10.1 of this Plan.
- 2) In Ngā Au o Morunga Mai Rakaumangamanga Protection Area:
  - a) Bottom trawling;
  - b) Bottom pair trawling;
  - c) Danish seining; or
  - d) Purse seining.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Damage, destruction or disturbance of the foreshore or seabed (s12(1)).
- Use of the coastal marine area (s12(3)).

## I Maps

Map layer	Description
Te Hā o Tangaroa Protection Areas: Rakaumangamanga Rahui Tapu, Mimiwhangata Rahui Tapu and Ngā Au o Morunga Mai Rakaumangamanga Protection Area	<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 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

## Rakaumangamanga Rahui Tapu and Ngā Au o Morunga Mai Rakaumangamanga Protection Area

Ngati Kuta and Patukeha Hapū of Te Rawhiti are the two resident hapū of the areas identified as Rakaumangamanga Rahui Tapu and Ngā Au o Morunga Mai Rakaumangamanga Protection Area. Their rohe moana under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 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. There are other hapū who also have an interest in this rohe moana.

Ngati Kuta and Patukeha are fisher people by tradition. By tradition all Māori 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 hapū. 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.
- **Uruoa / Hammerhead Shark:** they represent the fighting spirit of Māori to endure.
- **Pakarua / Stingray:** traverse the inner harbours of Bay of Islands and coastal waters to other harbours, thereby connecting our coastal hapū.

*“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 uruoa / hammerhead sharks must stop in our rohe moana”.*

Characteristics, Values and Qualities	Existing or Potential Adverse Effects
<b>Rakaumangamanga Rāhui Tapu</b>	
<b>Cultural</b>	
<p>“In Te Ao Māori everything is interconnected. The hapū 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 hapūs’ heritage and connection to the Bay of Islands. It is seen as symbolising their presence the cultural connection for their people. Above</p>	<p>“Overfishing. The traditional fishery was empty and resulted in the mauri of Maunganui Bay becoming so depleted by overfishing that the hapū placed a rāhui 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</p>

<p>Maunganui Bay is the pinnacle Rakau-mungamunga which is a waypoint of the Polynesian triangle which the navigators used to search for as they neared Aotearoa. Mountains are used by Māori to mark and define territory and, here, Rakaumungamunga was a key part of the hapū 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 Māori utilised Maunganui Bay and Ohututea Bay next to it which has a freshwater spring through a cave”.</p> <p><b>Note:</b></p> <p><i>Clarification regarding cultural values may be available in hapū management plans, which should be consulted for further information.</i></p>	<p>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 lifecycle of the kingfish.</p> <p>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><b>Ecology of 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</li> <li>• 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 under a rahui including for snapper (which can be either resident or migratory) but providing for kina harvest.</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 Whapūkapirau 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 (eg. variety of bryozoans and other encrusting fauna)</li> </ul>	
<p><b>Ecology of the remainder of the area - 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.</li> <li>• 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 jewel anemones, long tusk bryozoans, branching white bryozoans, encrusting sponges, orange golf ball sponges and Ancorina sponges</li> <li>• The algal communities, which are significantly depleted in the Oke Bay-Moturahurahu area, some areas would be enhanced if the main predators, especially large snapper (Tamure) and rock lobster (Koura), of urchins could recover sufficiently to allow the regrowth of tall algal forests or kelp</li> <li>• The shallow reefs in Karerarera and Whapūkapirau Bays contain notable areas of tall coralline turfs which until 2018 also contained relatively abundant green-lipped mussels (kutai)</li> </ul> <p><b>Note:</b> Refer also to the relevant Regional Plan Assessment Sheets for Significant Ecological Areas, Significant Bird Areas and Significant Marine Mammal and Seabird Areas.</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 Rakaumangamanga Rāhui Tapu 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 of Maunganui Bay.</li> <li>• Fish populations (eg. snapper) have a more natural age structure and population density than exist outside of Maunganui Bay.</li> <li>• Areas of rocky urchin barrens reverting to the more natural state of a tall brown algal forest in Maunganui Bay.</li> <li>• high water quality and clarity</li> <li>• natural hydrology and geomorphology</li> <li>• catchment of primarily regenerating and mature indigenous forest</li> <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>	<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.</p> <p>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>
<b>Ngā Au o Morunga Mai Rakaumangamanga Protection Area</b>	
<b>Cultural</b>	
<p>“The whole marine environment has always been part of the Māori way of life. It was a food cupboard for all Māori, 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.</p> <p>In Te Ao Māori everything is interconnected. Pelagic ecosystems are a significant part of the marine environment for the hapū. The pelagic “work-ups” exemplify Te Ao Māori and are essential to support healthy mauri and wairua in the hapūs’ moana.</p>	<ul style="list-style-type: none"> <li>• “The cycle of the pelagic species has been broken”.</li> </ul>

<p>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.</p> <p>Hapū 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 a very important part of what people come to see and enjoy.”</p> <p><b>Note:</b></p> <p><i>Clarification regarding cultural values may be available in hapū management plans, which should be consulted for further information.</i></p>	
<p><b>Ecology</b></p>	
<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,</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>sponges, and anemones. The fish species in the cave include pink maomao, golden snapper and mado and yellow-banded perch.</p> <ul style="list-style-type: none"> <li>• These species are not commonly seen elsewhere on the mainland.</li> <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.</li> <li>• 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><b>Note:</b> <i>Refer also to the relevant Regional Plan Assessment Sheets for Significant Ecological Areas, Significant Bird Areas and Significant Marine Mammal and Seabird Area</i></p>	
<p><b>Natural Character</b></p>	
<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. The water quality is very high compared to</li> </ul>	<ul style="list-style-type: none"> <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>



<p>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</p> <ul style="list-style-type: none"> <li>• Elsewhere the area contains offshore reefs and soft sediment ranked as having HNC</li> </ul>	
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

### Mimiwhangata Rahui Tapu and Ngā Au o Morunga Mai Rakaumangamanga Protection Area

Characteristics, Values and Qualities	
<b><u>Tāngata Whenua - Statement of values by Te Uri o Hikihiki</u></b>	
<b>Te Hā o Tangaroa Protection Areas</b>	<p>A Taumata Kaumātua (congress of elders) called Te Au o Morunga of Te Uri o Hikihiki gathered customary knowledge of the rohe moana of Ngatiwai along the currents on the horizon (Te Au o Morunga) that links the resident hapu, Te Uri o Hikihiki to the home of their tupuna in Hawaiki. They sought protection of the Te Au o Morunga and Mimiwhangata areas in their customary area.</p> <p>Te Uri o Hikihiki use the word Mauri rather than kaitiaki. With a focus on four Mauri that are sensitive to changes in the marine ecosystem:</p> <p>1 Tūkaiaia (mollymawk)  He au here Toroa whai mai ra ki au' "The current on the horizon links me to the Albatross, follow Me" (Patere o Ngatiwai (Saying of Ngatiwai) Tūkaiaia is a small albatross and is seen along the Northland coast feeding with other seabirds, fish and dolphins. They still breed at Manawatāwhi, on the Three Kings Islands north-west of Te Rerenga wairua (Cape Reinga).<del>Reinga</del>.</p> <p>2 Tuatara  Tuatara live on rat-free islands in Tai Tokerau and the Hauraki Gulf and share burrows with nesting seabirds. They live up to 100 years old and have been in Aotearoa for 200 million years.</p> <p>3 Whai Repo (electric ray)  Whai Repo lives on the sandy sea floor of Tai Tokerau and the Hauraki Gulf. They feed on fish, which they stun with a 50-volt electric current.</p> <p>4 Tautahi (white pointer)  <i>"He rei ngā niho, he paraoa ngā kauae"</i>  To wear the tooth of a great fish, you must have the jaw to hold it, and the knowledge that accompanies it. This top predator lives in these areas, but they are moving between Aotearoa, New Caledonia and Australia regularly. They feed on fish and seals, and occasionally feed on dolphins and small whales. Female tautahi come into Pārengarenga and Kaipara Harbours, and shallow coastal waters to give birth.</p> <p>Our Mauri are a point of reference to tell the whakapapa and creation story that gives us our identity as Ngātiwai. The origin of these species</p>

denotes our role within Te moana nui and that gives us our rights of succession and responsibilities within Te moana nui. A Ngātiwai whakatauki that demonstrates our connection to both land and sea states “*Ngātiwai ka tu ki uta, Ngātiwai ka noho ki te moana*”. The literal translation means, “Ngātiwai stands on the shore, but Ngātiwai lives on the sea”. From a metaphorical perspective, “we are the guardians of the incoming and outgoing tides”.

The controls on fishing and other activities below avoid damage to our Mauri, their habitats, and the marine environment in which they live.

### **Mimiwhangata Rahui Tapu**

#### Cultural Values - Statement of values by Te Uri O Hikihiki

“Ka te tangi a Tūkaiaia, kei te moana, ko Ngātiwai kei te moana e haere ana, ka tangi a Tūkaiaia kei tuawhenua, ko Ngātiwai kei tuawhenua e haere ana” Ko tēnei whakatauki, mo te iwi o Ngātiwai, he uri nō ngā tūpuna maha i noho ki te taha moana, i mōhio rātou, ki ngā tauranga, ngā tapu, me ngā mātaimai o tēnei wāhi. Koiānei te take, te kōrero i runga ake nei, “ko Ngātiwai” he tamariki nō te moana. O rātou taniwha he ika, he mango, he whai, he kaahu, he tuatara. Ki ahau nei, kia kaha tātou ki te tiaki a tātou kai moana, ahakoa he aha, nā te mea kei te ngaro haere, hore kau e tino nui ana ngā kai mātaimai inaiānei, kaua e tūkinotia. Kei memeha, kei ngaro. Ki tōku nei whakaaro, me whakatū he “Rāhui Tapu”, mo ngā tau rua tekau, rua tekau ma rima ranei, kia tupu ai he rimurimu hei whangai i ngā ika, ngā koura, ngā kina pāua me ērā atu kai mātaimai o te moana. Hei aha? Hei whāngai i o tātou uri kei te tupu ake. He moemoeā tēnei, mo tātou e Ngātiwai. Nā reirā, e ngā uri, me haere atu tātou ki te tautoko i te kaupapa i raro i ngā manaakitanga maha ā to tātou nei Matua-i-te-Rangi.

“When the Mollymawk cries out at sea, Ngātiwai tribe is on the move at sea. When the Mollymawk cries over the land, Ngātiwai move inland. We are children of the sea. We need to take care of our sea food, no matter what they are, because they are becoming very scarce or near to extinction, because of the shortage of food for them. Even rare species of fish are gradually disappearing. I, myself feel that there should be a ban, a Rāhui Tapu placed for at least twenty to twenty-five years, to allow the sea weed to regenerate so the rare species of fish, crayfish, kina, pāua etc. will return and grow, for our future generations to come. This is a desire, a dream for us Ngātiwai. Let us go forth together to support this great project under the guiding influence of our Creator”

(Houpeke Piripi, Kaumatua of Ngātiwai Iwi and the hapū of Te Uri O Hikihiki. November 12, 2003)

Our Kaumātua have selected Mimiwhāngata as a protected marine area, as it has relatively healthy marine life that could recover quickly. Although it is somewhat limited by recreational fishing that is allowed.

Mimiwhangata is an important focus for Ngātiwai, and it has been under customary management for hundreds of years. Under the Northland

Regional Plan we look forward to working with NRC to exercise kaitiakitanga to restore the mauri, under the Resource Management Act.

From sharing knowledge about the marine life at Mimiwhāngata and its customary management, the kaumātua and scientists have recognised that this special place needed special protection for its role in showing people what healthy marine ecosystems can be like and that with appropriate management it is possible to restore their mauri.

Mimiwhāngata is a unique area of Tai Tokerau; due to the wide range of habitats and the relative low level of exploitation there. It was one of the last areas on the Tai Tokerau coast where coastal Hapū, Marae and Whānau actively managed the kaimoana according to tikanga.

A large number of species of fish have been found there. They are largely reef fish, with the pelagic species (kingfish, kahawai, koheru, trevally and snapper) moving up and down the coast and at times taking up residence on the reefs between Mimiwhāngata and Motukokako, and further south.

They also include a range of subtropical species, including foxfish, combfish and tropical surgeonfish, rare species – such as ivory coral, red-lined bubble shell, callianassid shrimp, spotted black grouper, sharp-nosed puffer and sabretooth blenny. This aspect of Mimiwhāngata is similar to other ‘special’ places in the outer coast such as Tawhitirahi (Poor Knights Islands), which are bathed in the warm offshore East Auckland (North-west Pacific) current. This current brings subtropical species to northern waters and provides suitable habitat for their establishment. A number of these subtropical species e.g. manta ray, whale shark and turtles are being seen further south in the outer Hauraki Gulf with climate change. Te Au o Morunga is named for this “Current on the Horizon”.

### **Ecology**

Since the 1950s Mimiwhangata’s marine environment has been extensively fished. The Kaumatua of Te Au o Morunga witnessed a significant decline in both the abundance and size of fish and shellfish, from the 1950s until the 1980s. Recreational fishing under marine park fisheries regulations did not halt this decline. (No commercial fishing was allowed in the Marine Park.) Traditional knowledge held by Te Uri o Hikihiki covers a much longer time span and tells of a far greater degree of biodiversity decline.

Mimiwhangata Rahui Tapu extends approximately five kilometres offshore and includes significant areas of reef and soft-bottom habitat beyond the current one kilometre Marine Park boundary. The boundaries attempt to include all the major habitats at Mimiwhangata in protected area. This includes the sand areas to the north and south of the main deep reef. These soft-bottom habitats have a very different range of invertebrate communities, as compared to the reef habitats, and are also important feeding areas for large mobile predatory species. It is important to include these soft-bottom and sand areas around reef edges, as many marine organisms periodically move out from reef habitats to these sand areas. These boundaries will allow for maximum protection of biodiversity, and

for organisms to move freely between habitats at different stages of their life cycle, benefiting from full protection.

Mimiwhangata has an extensive historical scientific record of its marine area, spanning the years 1972 to 1986. In 1971 the eastern shore of Rimariki Island had a fish community of unmatched richness in New Zealand, with many species of wrasse (Sandagers parrotfish, spotties, red pigfish, green, orange and banded parrotfish), black angelfish, leatherjackets, red moki, kelpfish, marblefish and a high density of grandfather hapuku. Recent studies (from 2001 to 2004) indicate no real recovery of species abundance since the surveys of the 1970s and 1980s and include some notable declines in abundance of certain species. Packhorse crayfish are now uncommon with no large individuals seen in recent years. Red crayfish numbers have not recovered with few large animals. Despite the Marine Park being introduced, fish abundance has not improved since the mid-1970s' surveys.

Comparisons of fish abundance inside the Mimiwhangata Marine Park with reference sites outside the Park, and with Marine Reserves in similar habitats such as Pakiri (Leigh/Cape Rodney to Okakari Point), support the view that fish abundance in the Marine Park remains depressed by continued recreational fishing. A major habitat change has occurred at Mimiwhangata where kelp forests have been dramatically reduced. This is a fundamental change, as the forests are so productive and important as nursery areas for many marine species. Kelp forest decline and the expansion of "kina barrens" are effects now known to be largely influenced by the removal of predators of kina from the reef systems. At Mimiwhangata, large snapper and crayfish are the significant predators of kina. In natural balance, the snapper keep kina numbers in check and their impact on the kelp. If the current rate of kelp forest decline were to continue, the shallow reef areas would become a sea-desert compared to its natural state.

The marine environment is a mosaic of different habitats; beach, sand flats, kelp forest, rocky shore or sponge garden, and each plays its own part in keeping the whole marine environment healthy. Each habitat is home to a different set of plants and animals. For example, cockles and tuatua thrive on sandy beaches while paua and mussels live in rocky places that are washed by ocean waves. These different habitats often work together. Estuaries and shallow rocky reefs serve as nursery habitats for many species of ocean fish. Most marine animals use more than one habitat during their lives, making each habitat important for survival. Mimiwhangata has a special environment. In the 1970s, scientific studies revealed that Mimiwhangata contained examples of almost every shallow marine habitat on Northland's eastern coast. Recent studies have examined the deeper areas offshore. These deep reefs off Rimariki Island extend 3.5 kilometres to the east and are up to 100 metres deep. The centre of this reef area is highly broken, with gulleys, crevices and protruding rock in excess of 5 metres high. At 33-37 metres in depth, the reef community makes a dramatic transition to a community dominated by filter feeding invertebrates. Beyond this depth, the kelp forests of the shallow reef areas no longer grow due to lack of light. Soft corals and sponges dominate this deep reef invertebrate community.

In biological terms, this deep reef habitat is very rich in both diversity and abundance. Known as "high-relief deep reefs", the contour of this habitat

is especially complex, consisting of gulleys and pinnacles averaging three metres or more in height. The physical complexity of this reef system (and the passing currents) increases the diversity and abundance of the reef. Surrounding it are large areas of low-relief reef and patch reef areas, where reefs are broken by sand and cobble bottom. This reef system is representative of northeast coast near-shore reef systems, to a depth of 100 metres.

**The natural character of the land adjoining the Mimiwhangata Rahui Tapu are ONC and HNC areas:**

(Note that none of the Outstanding or High Natural Character Areas in the Northland RPS south of Motukokako (Cape Brett) cover any of the Coastal Marine Area.)

**Paparahi Point 16/42, 43, 44** Steep headland and coastal faces with mixed broadleaved forest with pohutukawa and totara; mixed broadleaved shrubland; introduced grasses & shrubland. Unfenced. Coastal headlands & faces with pohutukawa treeland; introduced grasses & native shrubs. Several steep rocky islets. Mixed broadleaved shrubland with low pohutukawa forest

**Mimiwhangata 16/18, 29, 35, 36, 38** Coastal cliffs and adjoining native forest areas on hill slopes. Pohutukawa forest & treeland, mixed broadleaved shrubland with flax, kanuka dominant shrubland Headlands, hill faces and slopes with totara-mixed broadleaved forest (with puriri, taraire & pohutukawa); and kanuka dominant shrubland & forest. Campsite largely excluded. Small raupo- Baumea wetland. Unit includes beach & small area of rock platform and a small islet.

**Rimariki Is 16/30, 31, 32, 33** Larger island with steep NE cliffs and some recent slips. Pohutukawa forest, mixed broadleaved shrubland, coastal tussocks, coastal astelia.

Rocky island. Pohutukawa and mixed broadleaved low forest and shrubland. Lower faces with coastal tussocks and prostrate mixed broadleaved shrubland. Series islets to east & north

**Tauranga Kawau Pt 16/01** - Steep coastal faces and cliffs and hill slopes with mixed broadleaved forest (pohutukawa) and kanuka dominant shrubland and low forest with some totara. Several large slips. Main access ways and houses largely excluded. Some wilding pine poisoning. Unit excludes pine block

**Te Au o Morunga**

This is the outer part of the customary area of Te Uri o Hikihiki that extends out into the ocean beyond the 12 nm limit of the regional plan. This outer area has significant areas of high relief and low relief reefs, that also occur in the Mimiwhangata Rahui Tapu. Between the reefs are sandy seabed areas which are habitat for the whai repo (electric ray) and one of the Ngatiwai Mauri. These reef areas and sandy seabed are sensitive to damage from bottom trawling

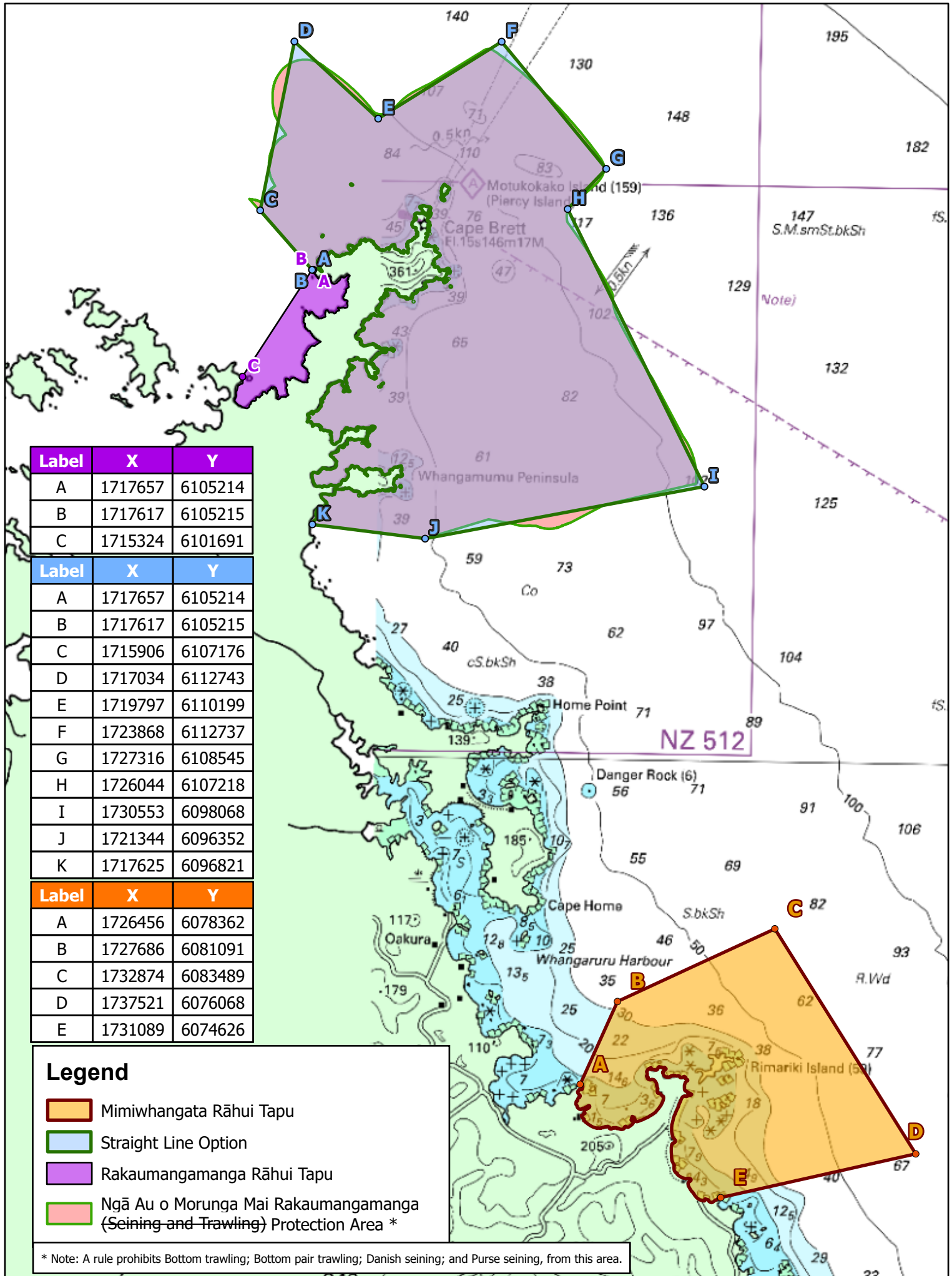
This area of high biodiversity covers a diversity of habitats, ecological communities and ecological values that extend from Rakaumangamanga (Cape Brett) to Tawhitirahi (Poor Knights Islands). Rakaumangamanga, Mimiwhangata and Tawhitirahi all intercept the tropical East Auckland

	<p>current (which carries turtles, tropical fish and invertebrates from warmer waters).</p> <ul style="list-style-type: none"> <li>• Schooling fish attract large numbers of seabirds, gannets, albatross species, petrels, shearwaters, gulls and terns. Whales, dolphins and large pelagic fish 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.</li> <li>• The nutrients from the feeding seabirds is then brought back to their breeding and roosting grounds along the coast. This guano enriches the soils, invertebrate communities, coastal vegetation. Top-order predators such as the tuatara share the seabird burrows and feed on weta, lizards and dead seabirds in these enriched soils.</li> <li>• There are a number of rare and unusual species including: whale shark, manta ray, green turtle, mado, Spanish lobster, blue knifefish, golden-ribbon grouper, snake eel, banded coral shrimp, yellow-banded perch (subtidal caves)</li> </ul> <p>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.</p> <p><b>The natural character of the land adjoining the Te Au o Morunga Protection Area are ONC and HNC areas:</b>        (Note that none of the Outstanding or High Natural Character Areas in the Northland RPS cover only a small part of the Coastal Marine Area aof this Te Mana o Tangaroa Protection Area.)</p> <p><b>Cape Brett 00/02</b> Marine subtidal unit with little intertidal zone. Extreme level of exposure and natural disturbance regime. Only part of mainland New Zealand swept by the subtropical East Auckland current on a regular basis. Creates very high level of diversity of marine life, including rare tropical vagrants. Strong tidal currents generated by the Cape Brett peninsular concentrate marine plankton, planktivorous fish and predatory fish and birds in high abundance. Fishing pressure can be high for relatively short periods of calmer conditions, but the pelagic basis of the fishery facilitates relatively quick recovery.</p> <p><b>Cape Brett 13/06</b> Steep cliffs along the shore with taller hills inland. Kanuka dominant shrubland &amp; forest - tallest in upper gullies. Some mixed broadleaved species including northern rata. Very occasional pine. In more sheltered valleys the mixed broadleaved species include pohutukawa &amp; puriri. Near the water margins there are grasses &amp; flaxes. Unit runs to the Brett predator fence.</p> <p><b>Whangamumu, Whangamumu Peninsula &amp; Whangamumu South 13/12, 13, 14, 15, 16, 18, 19, 14/08 16, 19</b></p> <p><b>Whangaruru 15/03, 09, 11, 61, 69-</b> Steep hill slopes with mixed broadleaved forest, kanuka dominant shrubland &amp; forest. Includes a wetland on west (margin with farm). Excludes introduced trees on western margin</p>
	<p><b>Ecology</b></p>
	<p>Refer to the relevant Regional Plan Assessment Sheets for:</p>

	<ul style="list-style-type: none"><li>- Significant Ecological Areas</li><li>- Significant Bird Areas</li><li>- Significant Marine Mammal and Seabird Areas.</li></ul>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Map showing comparison between Court's decision and straightened  
boundary line of Area C**



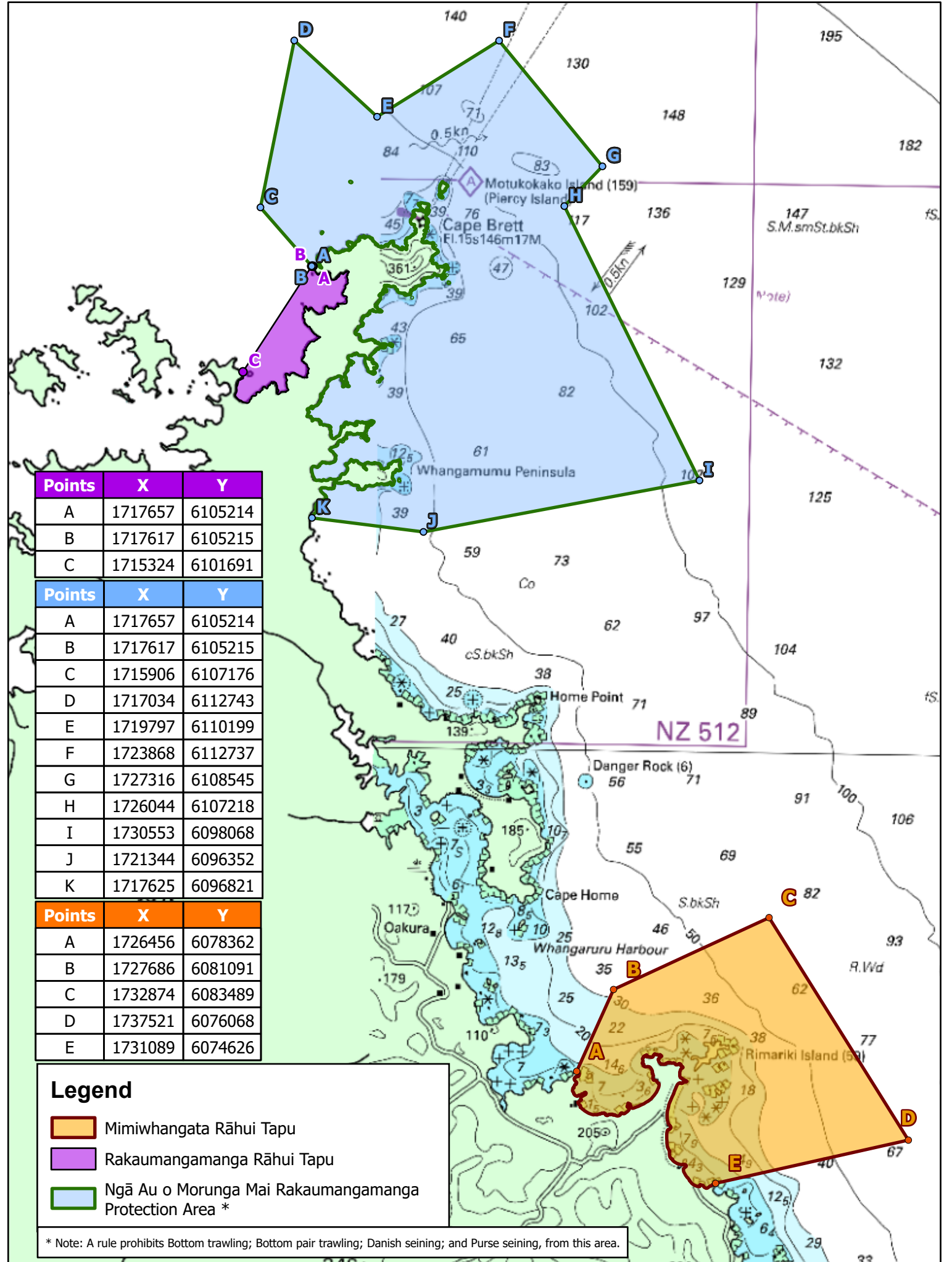


### Legend

- Mimiwhangata Rāhui Tapu
- Straight Line Option
- Rakaumangamanga Rāhui Tapu
- Ngā Au o Morunga Mai Rakaumangamanga (Seining and Trawling) Protection Area \*

\* Note: A rule prohibits Bottom trawling; Bottom pair trawling; Danish seining; and Purse seining, from this area.

**“Clean” version of map showing straightened boundary line of Area C**



Points	X	Y
A	1717657	6105214
B	1717617	6105215
C	1715324	6101691

Points	X	Y
A	1717657	6105214
B	1717617	6105215
C	1715906	6107176
D	1717034	6112743
E	1719797	6110199
F	1723868	6112737
G	1727316	6108545
H	1726044	6107218
I	1730553	6098068
J	1721344	6096352
K	1717625	6096821

Points	X	Y
A	1726456	6078362
B	1727686	6081091
C	1732874	6083489
D	1737521	6076068
E	1731089	6074626

**Legend**

- Mimiwhangata Rāhui Tapu
- Rakaumangamanga Rāhui Tapu
- Ngā Au o Morunga Mai Rakaumangamanga Protection Area \*

\* Note: A rule prohibits Bottom trawling; Bottom pair trawling; Danish seining; and Purse seining, from this area.

## Annexure B – parties preferred version of outstanding provisions

	Northland Regional Council Minister for Ocean and Fisheries Minister of Conservation	Ngati Kuta/BOIMP/RFB	Te Uri o Hikihiki Hapu
<b>Objective F.1.x</b>	<p>The parties submit this objective is not required. However, if the Court is minded to include the objective, the parties support the following wording:</p> <p><b>F.1.x Future Te Hā o Tangaroa Protection Areas</b> Where areas qualify as further Te Hā o Tangaroa Protection Areas, enable the protection of their characteristics, qualities and values from inappropriate use, disturbance and development.</p>	<p>These parties maintain that if a policy is included, the additional objective F.1.x is required:</p> <p><b>F.1.x Investigate Possible Future Te Ha o Tangaroa Protection Areas</b> 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.</p>	<p>Agree with Ngati Kuta/BOIMP/RFB that F.1.x is required:</p> <p><b>F.1.x Investigate Possible Future Te Ha o Tangaroa Protection Areas</b> 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.</p>
<b>Policy D.2.x</b>	<p>These parties submit that Policy D.2.x(1) is not required. However, if the Court is minded to include Policy D.2.x(1), the parties supports the following wording:</p> <p><b>D.2.x Future Te Hā Tangaroa Protection Areas</b> (1) Consider proposals from tāngata whenua and the community to identify areas of the coastal marine area whose biodiversity, cultural and/or natural character values may qualify them as future Te Hā o Tangaroa protection Areas and which</p>	<p>Consider Policy D.2.x is required.</p> <p>The parties do not object to the Council/Crown version of Policy D.2.x(1).</p> <p>Proposed the following for Policy D.2.x(2): (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.</p>	<p>Consider Policy D.2.x is required.</p> <p>Do not object to the Council/Crown proposed amends to Policy D.2.x(1), subject to additional drafting amendments.</p> <p>Propose additional drafting amendments to Policy D.2.x(2):</p> <p><b>D.2.x Future Te Ha o Tangaroa Protection Areas</b> (1) Reasonably and promptly consider proposals from tangata whenua and the community to identify areas of the coastal marine area whose biodiversity, cultural and/or natural character values may qualify</p>

	<p>are, or are likely to be, adversely affected by activities (including fishing).</p> <p>These parties do not support the inclusion of Policy D.2.x(2).</p>		<p>them as future Te Hā o Tangaroa Protection Areas and which are, or are likely to be, adversely affected by activities (including but not limited to fishing).</p> <p>(2) Where Te Hā o Tangaroa Protection Areas have been identified in accordance with Policy D.2.x(1) above, introduce the further marine spatial planning mechanisms that may be required to protect and restore them.</p>
<p><b>Advice Note</b></p>	<p>These parties do not support the inclusion of the provisions relating to partnership and co-management. However, if the Court is minded to include a provision, these parties considers that it should be limited to an advice note:</p> <p><b>Advice Note</b> There are statutory processes available to enable the transfer or delegation of council powers (sections 33 – 34A of the Resource Management Act 1991), joint management (section 36B of the Resource Management Act 1991) and participation arrangements (sections 58L-58U of the Resource Management Act 1991). Those processes, as well as memoranda of understanding or other contractual arrangements could be used to provide for shared management of the Te Hā o Tangaroa Protection Areas.</p>	<p>Do not object to the Council/Crown proposed Advice Note</p>	<p>Advice Notice is acceptable</p>

## **Annexure C – confidentiality order**

IN THE ENVIRONMENT COURT  
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKAUARAU

IN THE MATTER OF      Resource Management Act 1991  
  
AND                              of an appeal under clause 14(1) of  
                                         Schedule 1 of the Act  
  
AND                              an application for joinder by Te  
                                         Runanga o Ngāti Rēhia under section  
                                         274 and section 281 of the Act  
  
AND                              an application for confidentiality orders  
                                         under section 279(3) and 42(2) of the  
                                         Act

BAY OF ISLANDS MARITIME  
PARK INCORPORATED

(ENV-2019-AKL-117)

THE ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INCORPORATED

(ENV-AKL-2010-127)

Appellant

AND                              NORTHLAND REGIONAL  
                                         COUNCIL

Respondent

Court:                              Judge J A Smith sitting alone under s 279 of the Act

Considered:                      on the Papers

Appearances:                    Parties as per Annexure A

Date of Issue:                   14 May 2021



---

## DIRECTIONS OF THE ENVIRONMENT COURT

---

### Background

[1] This matter relates to the upcoming Marine Protected Areas hearing relating to the Proposed Northland Regional Plan, also known as Topic 14. This will be commencing on Monday, 12 July 2021.

[2] In the last week, a series of orders and requests have been sought by parties in relation to this hearing. As such, I make out the following **directions** regarding each application in turn.

### Application for Extension by Te Ohu Kai Moana Trustee Limited and Fishing Industry Parties

[3] Orders for extensions for time for filing evidence have already been granted for the Fishing Industry Council and Te Ohu Kai Moana Trustee Limited by previous direction. Te Ohu Kai Moana Trustee Limited and the Fishing Industry Parties have now applied for another extension for a different witness.

[4] Both parties intend to utilise the same witness, Dr Mitchell. Dr Mitchell's brief relies on the evidence of Mr Simon West, a witness for the Fishing Industry Parties who had already been granted an extension.

[5] Accordingly, it follows that the extension should be granted in respect of the evidence also. No parties opposed that application. It is made accordingly for Dr Mitchell to file evidence by **21 May 2021**.

### Application for Confidential Orders by Fishing Industry Parties and Minister for Oceans and Fisheries

[6] The next issue is an application for confidentiality by the Fishing Industry Parties and the Minister for Oceans and Fisheries, particularly relating to Ministry



information as to fishing method and catches within the area of interest. The applicants for the orders are concerned that this information could be utilised in a commercial sense by other parties or could be a breach of privacy arrangements between the Ministry and the individual operators.

[7] The Court is unable to assess either the information itself or the strength of ongoing confidentiality at this stage. However, all parties have now agreed that a confidentiality order can be made on reasonable terms in the interim.

[8] From the Court's perspective, it cannot constrain the Court's enquiry or decision, and this is not the purpose of the interim order. The interim order is to prevent the distribution of the information by media, social media or other means, only to parties involved directly in the hearing that is Counsel, expert witnesses and parties to the proceedings. Given this, an order is annexed as **B**, which takes effect as an interim order and will be reviewed either at the hearing or as required.

#### **Application for late joinder by Te Runanga o Ngāti Rēhia**

[9] The final issue is that application for late joinder by Te Runanga o Ngāti Rēhia. This rūnanga has filed a late application for joinder on the basis that these proceedings either affect directly or indirectly their interests in the marine areas.

[10] The application is of course made very late, but the applicant has made it clear that their late involvement cannot delay the commencement of the hearing. Accordingly, they are aware that other parties have been granted extensions to file evidence to the 21 May. They wish to file two briefs (Described as affidavits in their memorandum on behalf of Ngāti Rēhia) by the same date.

[11] No other parties objected, and it appears to be entirely reasonable that they should join provided they do not affect the steps to a hearing. The extension granted is in accordance with other parties and therefore does not materially interrupt the conduct towards hearing.

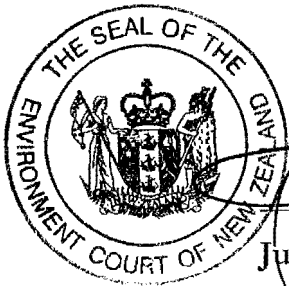
[12] I am unable to judge the question of prejudice to the applicant at this stage but

acknowledge their interest in the proceedings and this is confirmed by the consent of other parties to their involvement. Given the widespread range of interests that are represented, it appears to be reasonable they should join given it will not interfere with the process to hearing itself.

[13] Accordingly, the waiver is granted under s 274 and they are directed to file their evidence by 21 May along with other parties. The rūnanga is reminded that they are to comply with other directions towards hearing and should consult the other parties towards the estimates as to hearing time required, and also how the various cases might be presented and in what order.

[14] The rūnanga is also reminded that they are also covered by the interim confidentiality order just made in this decision along with all other parties.

For the Court:



  
Judge J A Smith

Environment Judge

# A

## Annexure A – List of Parties

S Gepp for Bay of Islands Maritime Park Incorporated

P Anderson for Royal Forest and Bird Protection Society of New Zealand Incorporated

M J Doesburg and E S Lake for Northland Regional Council

A Hill for the Fishing Industry Parties (s 274 Party)

R Dixon for the Minister of Oceans and Fisheries (s 274 Party)

M Wikaira for Te Ohu Kai Moana Trustee Limited (s 274 Party)

S Shaw for Patuharakeke Te Iwi Trust Board (s 274 Party)

R Ashton for New Zealand Sport Fishing Council (s 274 Party)

R Gardner for Federated Farmers of New Zealand (s 274 Party)

A Hills for Aquaculture New Zealand, Moana New Zealand Limited and The New Zealand Oyster Industry Association (s 274 Party)

J Pou for Manuhiri Kaitiaki Charitable Trust (s 274 Party)

M Downing for the Minister of Conservation (s 274 Party)

L Bullen, N McIndoe and E Hudspith for Ngatiwai Trust Board and Te Runanga A Iwi O Ngāpuhi (s 274 Party)

R Enright and R Haazen for Te Uri o Hikihiki Hapu (s 274 Party)

**B**

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND  
I MUA I TE KŌTI TAIAO O AOTEAROA  
KI TAMAKI MAKAU**

**UNDER** Decision No [2021] NZEnvC  
the Resource Management Act 1991

**IN THE MATTER** an appeal pursuant to clause 14 (1) of  
the First Schedule to the Act

**BETWEEN** BAY OF ISLANDS MARITIME  
PARK INCORPORATED  
(ENV-2019-AKL-000117)

THE ROYAL FOREST & BIRD  
PROTECTION SOCIETY OF  
NEW ZEALAND  
INCORPORATED  
(ENV-2019-AKL-000127)

Appellants

**AND** NORTHLAND REGIONAL  
COUNCIL  
Respondent

Court: Environment Judge J A Smith sitting alone under section 279 of  
the Act, in Chambers at Auckland

Date of Decision: 14 May 2021

Date of Issue:

---

**INTERIM ORDER FOR CONFIDENTIALITY**

---

[A] Pursuant to sections 279(3)(c) and 42(2) of the Resource Management Act 1991 and rule 6(a) District Court (Access to Court Documents) Rules 2017, the Environment Court makes an interim order that the evidence in chief set out at [B], which contains information related to catch and position of commercial fishing effort, and commercially sensitive information regarding the revenue and profits of certain fishing operators (the **confidential**

information) may be disclosed to the Court, counsel, the parties, and the parties' witnesses on the following terms:

- (a) Publication or communication of the confidential information in whole or in part to those other than the Court, counsel and the parties' witnesses is prohibited;
- (b) The briefs of evidence containing confidential information may only be made available to the public if they have been redacted to exclude any confidential information;
- (c) That part of the hearing at which confidential information is likely to be referred shall be held with the public excluded, if requested. The exclusion of the public does not apply to any party;
- (d) These orders apply to any brief of evidence which refers to or quotes from the confidential information. The brief of evidence:
  - (i) Is to be kept on the Court file and is to have a notice attached notifying the reader that it contains confidential information; and
  - (ii) Is not to be uploaded to the Environment Court's, nor any other, website;
- (e) The transcript produced from that part of the hearing at which the information in the confidential information is discussed is to be distributed to the parties, their witnesses, and counsel only (but not made public) and is to remain on the Court file and is to be marked "confidential" with a copy of this order attached;
- (f) Any exhibits or other materials containing or referring to confidential information which may be produced during the course of the hearing are to be kept on the Court file with a notice attached marking them as "confidential" and subject to the same treatment described at (a) to (c) above;

(g) The Court files are not to be searched, inspected or copied without leave of the Court.

[B] These orders apply to the briefs of evidence produced by the following witnesses which contain confidential information:

(a) The Fishing Industry Parties' fisheries management witness (Mr Thomas Clark);

(b) The Fishing Industry Parties' ecology witness (Mr Simon West);

(c) The Fishing Industry Parties' factual witnesses (being commercial fishers operating in the area) (Mr Mark Semmens, Mr Bruno Bell, Mr Tyler Jobe, Ms Cindy Bailey, Mr David Moore and Mr Mark Ngata);

(d) The Minister's witness addressing impact on fisheries and fishing resources (Mr Jacob Hore).

[C] For clarity this interim order does not apply to the Court's transcript.

[D] These are interim orders and will be revised at hearing or a further decision is issued.

[E] Leave is reserved for any party to make an application to amend these orders (if necessary).

---

Judge J A Smith  
Environment Judge

IN THE ENVIRONMENT COURT  
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU

Decision No. [2021] NZEnvC 102

IN THE MATTER OF

appeals under clause 14(1) of Schedule 1  
of the Resource Management Act 1991

AND

an application for confidentiality orders  
under section 279(3) and 42(2) of the  
Act

BETWEEN

BAY OF ISLANDS MARITIME  
PARK INCORPORATED

(ENV-2019-AKL-000117)

ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF  
NEW ZEALAND  
INCORPORATED

(ENV-2019-AKL-000127)

Appellants

AND

NORTHLAND REGIONAL  
COUNCIL

Respondent

Court: Environment J A Smith sitting alone under s 279 of the Act

Considered: On the papers

Date of Decision: 19 July 2021

Date of Issue: 19 July 2021

---

CONFIDENTIALITY ORDER OF THE ENVIRONMENT COURT

---



Royal Forest and Bird Protection Society of New Zealand Incorporated v Northland  
Regional Council

A: Pursuant to sections 279(3)(c) and 42(2) of the Resource Management Act 1991 and rule 6(a) District Court (Access to Court Documents) Rules 2017, the Environment Court makes an order that the evidence set out in **Appendix A**, which contains information related to catch and position of commercial fishing effort, and commercially sensitive information regarding the revenue and profits of certain fishing operators (the **confidential information**) may be disclosed to the Court, counsel, the parties, and the parties' witnesses on the following terms:

- (a) Publication or communication of the confidential information in whole or in part to those other than the Court, counsel and the parties' witnesses is prohibited;
- (b) The briefs of evidence containing confidential information may only be made available to the public if they have been redacted to exclude any confidential information;
- (c) That part of the hearing at which confidential information is likely to be referred shall be held with the public excluded, if requested. The exclusion of the public does not apply to any party;
- (d) These orders shall apply to any brief of evidence which refers to or quotes from the confidential information. The brief of evidence:
  - (i) Is to be kept on the Court file and is to have a noticed attached notifying the reader that it contains confidential information; and
  - (ii) Is not to be uploaded to the Environment Court's, nor any other, website;
- (e) The transcript produced from that part of the hearing at which the information in the confidential information is discussed is to be distributed to the parties, their witnesses, and counsel only (but not made public) and is to remain on the Court file and is to be marked "confidential" with a copy of this order attached;
- (f) Any exhibits or other material containing or referring to confidential



information which may be produced during the course of the hearing are to be kept on the Court file with a notice attached marking them as “confidential” and subject to the same treatment as described at (a) to (c) above;

(g) The Court files are not to be searched, inspected or copied without leave of the Court.

B: These orders apply to the briefs of evidence as set out at **Appendix A**.

C: These orders apply for the duration of the hearing.

D: Leave is reserved for any party to make an application to amend these orders (if necessary).

## REASONS

### Introduction

[1] These proceedings relate to the Marine Protected Areas hearing on the Proposed Northland Regional Plan, also known as Topic 14. The hearing commenced on Monday, 12 July 2021.

[2] On 14 May 2021, the Court granted interim confidentiality orders over the evidence of some of the Fishing Industry Parties’ and Minister of Oceans and Fisheries witnesses.<sup>1</sup> The information relates to fishing method and catches within the area of interest. The applicants for the orders were concerned that this information could be utilised in a commercial sense by other parties or could be a breach of privacy arrangements between the Ministry and the individual operators.

### The application for confidentiality orders

[3] Counsel filed a joint memorandum seeking the confidentiality orders continue

---

<sup>1</sup> Minute dated 14 May 2021, Attachment B.

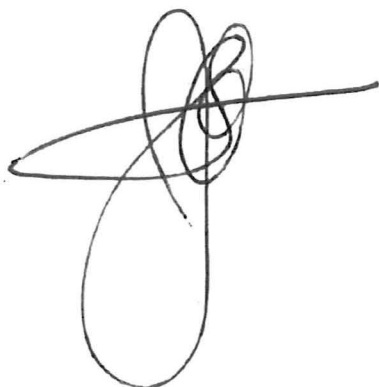
for the duration of the hearing.<sup>2</sup>

[4] The Fishing Industry Parties and Minister of Oceans and Fisheries set out in Appendix A the parts of their witnesses' briefs of evidence that contain confidential information.

[5] Without prejudice to the position that the information is not confidential, counsel for the other parties to these proceedings consent to confidentiality orders being made over the parts of the evidence detailed in Appendix A.

### Orders

[6] The application for the confidentiality orders to continue is granted.



---

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



---

<sup>2</sup> Joint memorandum of counsel dated 13 July 2021.

**APPENDIX A – CONFIDENTIAL INFORMATION CONTAINED IN EVIDENCE**

**Jacob Hore Evidence in Chief (Fisheries Activities) [EB Tab 42]**

1 Figure 2

2 Figure 3

3 Appendix 2

**Thomas Clark Evidence in Chief (updated 22 June) [EB Tab 48]**

4 Paragraphs:

4.1 [89] to [91] inclusive;

4.2 [93] to [103] inclusive;

4.3 [105] to [107] inclusive.

4.4 [109];

4.5 [118];

4.6 [126];

4.7 [135] to [136] inclusive;

4.8 [147].

5 Maps: all maps in Mr Clark's evidence

6 Tables: all tables in Mr Clark's evidence

**Simon West Evidence in Chief (updated 22 June) [EB Tab 49]**

7 Figures:

7.1 Struck out Figure 3;

7.2 Struck out Figure 4;

8 Appendices:

8.1 Appendix 4;

8.2 Appendix 5;

8.3 Appendix 7.

**9 Mark Semmens Evidence in Chief [EB Tab 47]**

Paragraphs:

9.1 [10] to [11] inclusive;

9.2 [13];

9.3 [16] to [18] inclusive.

**10 Mark Ngata Evidence in Chief [EB Tab 46]**

Paragraphs:

10.1 [26] to [28] inclusive;

10.2 Table at paragraph [26];

10.3 Map at paragraph [28]

**11 Graeme Bailey Evidence in Chief [EB Tab 45]**

Paragraphs:

11.1 [16] to [20] inclusive;

11.2 [22] to [24] inclusive;

11.3 [32];

11.4 [36].

**12 Agreed Statement of Facts on Fishing Issues [EB Tab 72]**

Paragraphs:

12.1 [19] to [21] inclusive;

13 Tables at paragraphs [19.3] and [20.3].

14 Maps on pages 8, 9, 11, 12, 13, 14.