BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 067

IN THE MATTER	of the Resource Management Act 1991
AND	of appeals pursuant to clause 14 of the First Schedule to the Act
BETWEEN	MOTITI ROHE MOANA TRUST
	(ENV-2015-AKL-134)
	NGĀTI MĀKINO HERITAGE TRUST
	(ENV-2015-AKL-140)
AND	NGĀTI RANGINUI IWI INCORPORATED SOCIETY
	(ENV-2015-AKL-141)
	Appellants
AND	BAY OF PLENTY REGIONAL COUNCIL
	Respondent

Court: Environment Judge JA Smith
Environment Judge DA Kirkpatrick
Environment Commissioner ACE Leijnen
Environment Commissioner SK Prime
Environment Commissioner M Pomare

Hearing: at Mount Maunganui, 27 November to 1 December and 4-7 December 2017

Appearances: RB Enright and RG Hazen for Motiti Rohe Moana Trust (MRMT) and Royal New Zealand Forest & Bird Protection Society Inc (Forest & Bird) (s 274 party)
JM Pou for Ngāti Mākino Heritage Trust (Ngāti Mākino), Ngāti Ranginui Iwi Incorporated Society (Ngāti Ranginui)
MH Hill for Bay of Plenty Regional Council (the Regional Council)
JM Prebble and NC Anderson for Attorney-General for Ministry of Primary Industries (MPI)
ME Casey QC and SJ Ryan for Lowndes (s 274 party)
VJ Hamm and KJ Jordan for Motiti Avocadoes, s 274 party
Port of Tauranga, Ford Landholdings, Te Tumu Kaituna 14 Trust, and Te Tumu Landowners Group) abide the decision of the Court
No appearance for Federated Farmers NZ Inc or Department of Conservation

Date of Decision: 11 May 2018
Date of Issue: 11 May 2018

INTERIM DECISION OF THE ENVIRONMENT COURT

A: On an interim basis, the Court concludes that changes to the Regional Coastal Plan would be appropriate as follows:

1. The damage, destruction, removal of flora and fauna within the three Marked Areas of the Motiti Natural Environment Management Area (**MNEMA**) in the Bay of Plenty proposed Regional Coastal Environment Plan (**PRCEP**) shall be prohibited. (See Map Annexure **A**.)

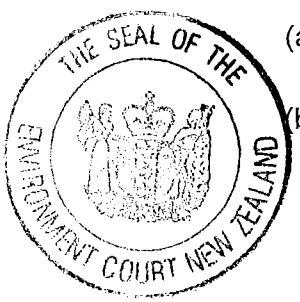
2. The imposition of controls within the balance of the MNEMA, in particular in relation to fishing methods that may damage the benthic environment or where they impact particularly on sea birds or other marine mammals, shall be part of the investigation and reporting undertaken in accordance with Methods 19A and 19AA of the Plan, taking into account the values already recognised and provided for in terms of the Regional Policy Statement and Plan. Those in Exhibit **B** are broadly acceptable, subject to finalisation.

B: The biodiversity, natural character and cultural values of an area in the CMA are able to be recognised by multiple methods under both the RMA and other legislation. It is intended that the Marked Areas are interim measures while various bodies seek to adopt an integrated approach to the avoidance of adverse effects on those values, and that a plan change or other mechanisms may be introduced in due course, either as part of the review process included in this plan, or by other bodies in conjunction with the Regional Council and other parties.

C: This decision is subject to:

(a) the appeal on jurisdiction being resolved; and

(b) wording being finalised to achieve the decision to be incorporated within the



Plan.

D: To this end the Court directs:

1. The Council is to draft appropriate provisions and circulate those within thirty (30) working days.

2. The draft provisions are to be circulated to the parties for comment, and the parties have thirty (30) working days to provide their responses to the Council.

3. The Council is then to assemble the comments and provide to the Court and parties its prepared provisions, including:

   (a) what aspects currently require decisions of superior courts; and

   (b) its reasons for adopting the provisions rather than those proposed by other parties.

   This shall be provided to the Court within a further twenty (20) working days.

4. The Court will consider the documents and any decision or pending decision of Superior Courts on jurisdiction. It may then issue further minutes/directions or convene a telephone conference.

E: Costs are reserved, pending substantive resolution of the appeal.

REASONS FOR INTERIM DECISION

Introduction

[1] Given the outstanding and high values recognised within the Motiti Natural Environment Management Area (**MNEMA**)[1] in the Regional Policy Statement and subsequently in the Bay of Plenty proposed Regional Council Environment Plan (**PRCEP**), should the Court include further controls within the PRCEP to avoid adverse effects on those values?

[2] The answer to this question involves matters of some considerable complexity, both in relation to the various values identified, and also in relation to the interaction of various legislation and most particularly the Fisheries Act 1996 and the Resource Management Act

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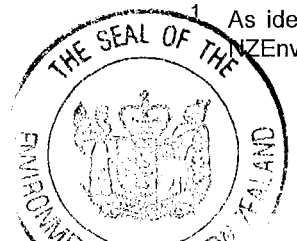
1 As identified in *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2015] NZEnvC 22 and [2015] NZEnvC 77.



1991 (**RMA**). The New Zealand Coastal Policy Statement 2010 (**NZCPS**) overlays and informs much of the debate in relation to the area in question.

Background

Inter-related issues

[3] Cultural concerns and impact on fisheries, reefs, toka and islands with high cultural value have been the subject of concern within the Bay of Plenty for a considerable period.

[4] As we will discuss later in this decision, issues similar to those now raised were discussed in the context of the 2003 Regional Coastal Plan. Issues relating to co-management have arisen in respect of the Kaituna river, the Waitahanui river and, most recently, in relation to the Maketū Ongatoro estuary. Issues have also been highlighted in a number of cases relating to the Tauranga moana rohe (which includes part of this area) in the decisions relating to channel work for the Tauranga port and numerous other decisions within the Bay of Plenty.

[5] The PRCEP, which is the basis of this appeal, has been subject to a number of inter-related appeals, including Natural Heritage matters now the subject of a High Court decision (**the Infrastructure decision**).[2] The Infrastructure decision, delivered on 12 December 2017 after the conclusion of this hearing, discusses the NZCPS in relation to Outstanding Biodiversity, but in the context of infrastructure consents within such areas.

[6] Several parties suggested that seeking controls over MNEMA in this case was something of a side wind, and not communicated through the various planning processes. As is clear from reference to these decisions, these cultural and ecological issues continue to be argued in various ways. The area involved in this appeal includes the Ōtāiti reef, on which the Rena grounded in 2011. As a result, the Regional Council, Commissioners for the Council, and the Court have dealt with substantive proceedings in relation to that vessel.[3]

[7] During the course of the Rena consent application, considerable effort was put into examining the reef and its biodiversity, resulting in more detail relating to the Marine Area in both Change 1 to the Regional Policy Statement (**RPS**), and the proposed Regional Coastal Plan (**PRCEP**).

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2 *Royal Forest & Bird Protection Society of NZ Inc v Bay of Plenty Regional Council* [2017] NZHC 3080.

3 *Ngai te Hapu v Bay of Plenty Regional Council* [2017] NZEnvC 169.

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[8] Nevertheless, the issues relating to this coastal area have been extant for a considerable period and were highlighted in a number of decisions relating to Motiti, both as it involved the District Plan and also regional consents sought by Wills & Ors as early as 2008.[4] Motiti had been the subject of earlier commentary by the Environment Court from around 1997.

[9] We conclude that the issues arising in these appeals, and in relation to the Coastal Marine Area, cannot be viewed in isolation from their surrounding environmental context. There have been a great many cases dealing with the interface between the rivers and the sea in this area, including the Kaituna river (Rotoiti diversion wall case) and District Plan cases (Tarawera River, Matatā cases and Kawerau Pulp and Paper) and, more recently, in relation to the Ongatoro estuary at Matatā. Issues in relation to land use, its inter-relationship with both freshwater and the marine area have also been the focus of a number of cases, including in relation to the Regional Policy Statement (Waitahuna river), values and attributes for toka reefs, values in relation to various coastal areas, at Maketū. The Court has made interim determinations in relation to claims for Areas of Significant Cultural Value (**ASCV**) in the Coastal Marine Area around Maketū, extending towards the MNEMA in that case.[5]

[10] There have been issues in relation to infrastructure within Significant Biodiversity A areas within the PRCEP, the subject of a recent appeal decision from the High Court,[6] and decisions in relation to activities permitted within various overlays, including Biodiversity A, B and areas of significant cultural value.[7] This has led into issues in relation to iwi management. These have been the subject of interim decisions of this Court, appeals to the High court such as the Rena decision and also preliminary issues and declarations in relation to this appeal.[8] The Motiti Island Plan has, of course, led to consideration of a number of aspects of the marine area that were identified in various schedules to that Plan, and have been the subject of significant cultural notation and evidence, particularly by Mr Nepia who also gave evidence in this case.

[11] Unrelated to the PRCEP, the Tauranga Moana iwi, in 2016, completed a joint

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4 *Wills v Bay of Plenty Regional Council* [2010] NZEnvC 98 and [2010] NZEnvC 325.

5 *Berkett v Minister of Local Government*, A6/97. In particular, the reference at page 4 as to the Taumaiti island being the possible site of former Pa Matarehu. In the interim decision A103/95, the Court also addressed (page 4) claims of Waahi Tapu in more detail. See also *Te Komiti Taiao o Ngāti Awa v Bay of Plenty Regional Council*, A138/99.

6 Above at n 2.

7 *Ngāti Mākino Heritage Trust & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 072.

8 Rena (above), strike out in these proceedings *Motiti Rohe Moana [2016]* NZEnvC 190. Declarations in the Environment Court *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 190; High Court *Attorney General v Trustees of Motiti Rohe Moana Trust* [2017] NZRMA 370; and leave to appeal to Court of Appeal on declaration.

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management plan that encompasses coastal and marine areas of the harbour, but also extends out and includes some of the areas the subject of this appeal. In addition to this, there are a number of applications and claims before the Waitangi Tribunal in respect of marine areas that include aspects of, or the whole of, the MNEMA the subject of this appeal.

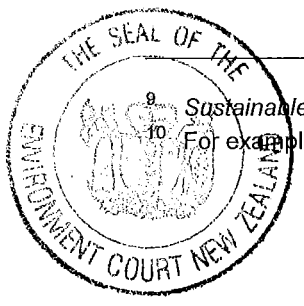
[12] Many of these decisions of the Court have been the subject to higher court decisions, including cases such as the Port of Tauranga, which addressed dredging and excavation of the toe of Mauao (**Mount Maunganui**), which contains ONF and ONL overlays as well as areas of significant cultural value.

[13] Ongoing issues before this Court have included arguments as to whether or not there can be a proper demarcation between fresh water, marine areas and land. An example of where this discussion has been relevant has been in respect of the ASCV 7 area the subject of interim decision of this Court in relation to this PRCEP. In that case it was argued that the areas of significant cultural value should extend within the PRCEP inland, given some of the areas of Ongatoro estuary have either traditionally or are currently within the marine area. Demarcation between district land areas and regional marine and fresh water areas are not always the subject of simple evaluation and decision.

An eco-system approach

[14] Many of the distinctions drawn within the RMA are not ones that are easily susceptible of analysis in terms of a Māori world view. Even based upon an approach to land and water as in the RMA, many of the areas within the Bay of Plenty have been the subject of extensive modification to drain lands (ie Matatā, Ongatoro and many parts of Papamoa).

[15] As this Court discussed in the Matatā wastewater decision,[9] much of the coastal area was previously swampland representing areas of rich biodiversity due to the connection of land, fresh water and salt water. This in itself represented complex eco-systems from hilly forested areas that contained and collected fresh water, to the marshlands and swamps of the lower-lying areas, (which might be described as the alluvial plains), often fed and altered by river action and the outlets and connection with the sea. These eco-systems (often referred to as ecotones to reflect the diversity and interconnectedness) provided a rich food source for Māori, and led to the creation of many pa sites along coastal areas[10].



9 *Sustainable Matatā v Bay of Plenty Regional Council* [2015] NZEnvC 90.
10 For example, *Carrus Corporation Ltd v Bay of Plenty Regional Council* A067/2009

[16] Relevant for the purposes of this hearing, there is evidence of consistent occupation by Maori for centuries between Mauao (Mt Maunganui) and Maketū. This in turn has led to a number of iwi and hapu having a continuing interest in this area, and it being the subject of dispute, warfare and changes in occupation during various periods both pre- and post-European. Accordingly, not only has there been, and currently is, a rich eco-system created by the confluence of land, fresh water and sea water; but also a heavy overlay of Maori interests within this area, together with the imposition of more recent European occupation and interest.

[17] In relation to the marine area itself, the range of interests is intensified by the large embayment of the Bay of Plenty, with the deep water drop-off being some kilometres out to sea (and beyond Motiti). Islands such as Whakaari (Bell) Island are situated on the edge of this drop-off, and give rise to a rich variety of fish species, including pelagic and in places tropical fish. The islands and reefs have in themselves become areas for the concentration of fish, leading to the Bay of Plenty being regarded both by Maori and by European as a rich food basket for kai moana.

The fishing industry appeals

[18] This is not the first decision in respect of this particular appeal. The Court has previously considered the issue of scope and whether the appeal itself was within the scope of the original submission and the plan change.[11] That decision was not appealed.

[19] A subsequent application was made for the Court to make a declaration as to the extent to which the Court might, in terms of the RMA, control fishing techniques and methods. While concluding that the RMA could not control fishing *per se*, the Environment Court did conclude that the RMA empowered rules to avoid adverse effects on biodiversity or in particular cases to achieve particular resource management purposes.[12]

[20] This decision was appealed to the High Court. Although the High Court felt it unnecessary to make any declaration, it nevertheless upheld the reasoning of this Court and the power for a regional plan to include such controls in certain circumstances.[13] We understand from counsel for the Minister for Primary Industries (**MPI**), that this decision is being appealed to the Court of Appeal, although at the time of the hearing no application for

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[11] *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 190.
[12] Trustees of the Motiti Rohe Moana v Bay of Plenty Regional Council [2016] NZEnvC 240.
[13] *Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2017] NZHC 1429; [2017] NZRMA 370.

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leave had been granted. [14]

[21] The parties agreed that, given the need to finalise the PRCEP, the Court should proceed on the basis that the High Court decision applied and that this Court should issue only an interim decision at this point until the appeals have been finalised. MPI sought leave to participate in the hearing on this basis, given they had not given earlier s 274 notice. This leave was granted, although MPI made application close to the hearing.

[22] Although they were not a party and had not given any notice of intention to appear, the New Zealand Rock Lobster Industry Council (**NZRLIC**) forwarded a memorandum towards the end of this hearing. This sought to make a submission in relation to the evidence notwithstanding that it acknowledged that it is not a party to the proceedings. The Court inquired if anyone appeared before the Court to support this memorandum, seek to explain it, or join as a party. No party appeared on behalf of NZRLIC, and it appears that the memorandum was filed with the intent to insert it into the proceedings without making any application. Given that there was no appearance before the Court, and that the hearing had reached a late stage (the evidence being nearly concluded), we conclude that we have to disregard the memorandum.

The natural heritage appeals

[23] One of the appeals dealing with issues similar to that in this case related to the wording in relation to natural heritage, and in particular whether or not regional infrastructure, use or development, within areas of biological diversity A (meeting the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement (**NZCPS**)) should be full discretionary activity or non-complying activity. The Court concluded that the most appropriate status for the activity was full discretionary with clear criteria to avoid adverse effects on the values and attributes of the Biodiversity A areas. This matter was appealed to the High Court (**the Infrastructure decision**) and a decision was issued shortly after the conclusion of this hearing.[15] The High Court held that the Environment Court erred in its interpretation and application of the *King Salmon*[16] decision and various provisions of the NZCPS, the RPS and the PRCEP. The appeal was remitted to the Environment Court to reconsider in light of that judgment. In his final submissions, filed after the release of this High Court decision, Mr Enright submitted on

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[14] *Attorney-General v Bay of Plenty Regional Council,* [2018] NZCA 67. The Court of Appeal granted leave to appeal on four questions of law on 21 March 2018.

[15] Above at n 2.

[16] *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38.

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the High Court decision, and notes that it is relevant to Policies 11, 13 and 15 of the NZCPS. Mr Enright refrains from further comment because no other party has had an opportunity to consider that decision.

[24] We have considered whether it is appropriate for us to adjourn this matter to allow further opportunity for comment on that decision in relation to this appeal. In the end, we have concluded that it is not necessary at this stage to do so, given:

(a) this decision is intended to be interim;

(b) this decision is already subject to review and further consideration, if necessary, in relation to the proceedings before the Court of Appeal;

(c) the conclusions in relation to the Infrastructure decision do not currently appear to have a significant bearing on the outcome of this decision.

[25] All parties agree that there is an obligation in terms of the policy to avoid adverse effects on at least the values and attributes of an area to which NZCPS Policies 11(a), 13(1)(a) and 15(a) apply and arguably to avoid the areas themselves. In practical terms the distinction between the values and attributes and the areas in this case, at least in relation to Significant Indigenous Biodiversity A, are not of any particular moment.

The Court's approach

[26] The issue for this case is whether or not the investigation and consequent provisions in relation to that obligation for protection under the NZCPS should be left to a process beyond the PRCEP or should be contained within the PRCEP. If provision should be made, the question would then be what are appropriate provisions to achieve the objectives and policies of the RCEP and implement the higher order documents..

[27] There is a lack of clarity in relation to the effect of the NZCPS when it comes to incorporation within regional policy statements and documents. The meaning of the Supreme Court decision in *King Salmon*[17] has been the subject of various decisions. Some of those are currently the subject of appeal to the Court of Appeal, including *RJ Davidson Family Trust v Marlborough District Council.*[18] There is also commentary by the Court of Appeal in *Man*

[17] Refer to 2 above.
[18] *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

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o'War Station Ltd v Auckland Council.[19]

[28] Given the general uncertainty of the legal position and the importance of this issue to the local iwi, MPI and fishing industry, we adopt the following approach:

(a) discuss the relevant context of the RMA, particularly sections 5 and 8 as they relate to the obligations under the Act, s 32 and the relevant parts of sections 67 and 68;

(b) consider the relevant provisions of the NZCPS, especially the provisions in Policies 11(a) and (b), 13, 14 and 15(a) and (b). These relate particularly to indigenous vegetation, natural character and natural features and landscapes;

(c) examine how this is being implemented in relation to these issues under the operational Regional Policy Statement (**RPS**), and in particular the values and attributes identified in respect of the areas within the MNEMA and the various other provisions of the RPS that identify the potential adverse effects on these values and attributes, including fishing; and

(d) consider the most appropriate PRCEP provisions to give effect to the NZCPS and the relevant objectives and policies of the RPS.

[29] In light of that context, we then intend to address the factual circumstances in relation to this area, and the various overlays that apply within it and how the provisions of the various policy statements and plans seek to address the issues under the RMA.

Summary of the issues

[30] To assist in what is now an extended task, we understand that all the parties agree that there has been a consistent approach in the application of the RMA, through the NZCPS, the RPS and the PRCEP, in identifying significant indigenous biodiversity, outstanding natural features, outstanding natural landscapes, NZCPS Policies 11(a), 15(a) and 15(b) areas, and areas of significant cultural value.

[31] The Tāngata Whenua values are also consistently recognised, including taonga values. NZCPS policy 2(f) in particular (ii) and (iii) identify methods for management,

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[19] *Man o' War Station Ltd v Auckland Council* [2017] NZCA 24.

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maintenance and protection of taonga, as well as rules regulations and bylaws to ensure sustainability of fisheries resources. NZCPS Policy 15(c) speaks of identifying natural features and landscapes, including shared and recognised values (15(c)(vii) and cultural and spiritual values to Tāngata Whenua (15(c)(viii)).

[32] We do not consider that there was any doubt, nor did any witness dispute, that the PRCEP seeks to avoid adverse effects on the identified values and attributes of significant bio-diversity A-identified areas under Policy 11(a). Where the PRCEP identified significant indigenous biodiversity (A areas), the issue is whether the PRCEP avoids adverse effects on the area/or adverse effect on the values and attributes through its methods and rules.

[33] The RPS and PRCEP must avoid adverse effects under 11(a) in relation to significant biodiversity and under 15(a) in relation to outstanding natural features and landscapes. Both the RPS and PRCEP recognise Significant Biodiversity and Outstanding Natural Features and Landscapes within the MNEMA. Overlaying this, and including these features, are the MNEMA (and ASCV 25), including Cultural significance.

[34] At issue is whether there has been an appropriate response within the PRCEP to Policies 11, 13 and 15 – particularly Policy 11(a) in relation to significant biodiversity, 13(1)(a) in relation to Natural Character, and 15(a) and (c) in relation to outstanding natural features and landscapes. It appears to be accepted by all parties and their witnesses that the RPS does adopt an appropriate response.

[35] The next question is whether or not the plan provisions of the PRCEP implement the objectives and policies of the RPS, and thus give effect to the NZCPS. We do not understand the argument to be that the RPS does not give any effect to the NZCPS, but rather that the PRCEP does not go far enough in giving effect to the NZCPS and to implementing the objectives and policies of the RPS. The focus is primarily on the methods and rules to avoid adverse effects.

[36] As we understand the evidence for the Regional Council, they too seek to avoid adverse effects on the values and attributes of the areas identified, particularly under Policies 11(a), 13(1)(a) and 15(a). Policies 11(b) 13(1)(b) and 15(b) require the avoidance of significant adverse effects on the areas under Policies 11(b), 13(1)(b) and 15(b) of the NZCPS. They also say that the PRCEP implements the objectives and policies of the RPS. The further questions then are:

(a) whether the PRCEP can deal with issues relating to fisheries (even as part of an eco-system); and

(b) whether the deferment to a later process is an appropriate mechanism in the PRCEP to avoid adverse effects.

[37] The NZCPS policies 11(a)(, 13(1)(a) and 15(a) seek to avoid adverse effects. Sections 6(a) and 6(b) of the RMA seek to protect the natural character of the coastal environment, natural features and landscapes from inappropriate subdivision, use and development. However, s 6(c) seeks to protect (without qualification) areas of significant indigenous vegetation. This includes marine flora. How the NZCPS policies" to avoid adverse effects" and the RMA policies "to protect" interrelate is relevant to this appeal.

[38] The appellants, supported by iwi, say that, for the MNEMA, there is sufficient evidence to justify a response now. It appears to be conceded by all the parties that a later process will need to be undertaken as a priority to identify the steps necessary to avoid adverse effects throughout the rest of the coastal environment. However, in practical terms no party before us sought immediate controls outside the MNEMA, and we have no jurisdiction to consider it given that there is no appeal before us.

[39] We conclude that we cannot impose rules where there are no appeals, and our jurisdiction is founded upon an appeal. Given the strikeout decision and its conclusion that this appeal related only to the MNEMA area, there has been no broader appeal beyond the MNEMA. Nor has any other party argued that another appeal is sufficient to give grounds for such an extension at this time.

[40] Accordingly, whether there is merit in other coastal marine areas in the PRCEP having controls is not a matter we can property consider at this stage. Nor was any particular evidence advanced to us in that regard.

[41] We do not understand the recent Infrastructure decision in the High Court[20] to state that this Court is given jurisdiction to make new or different rules outside the scope of any appeal, or to consider whether the non-contested provisions meet or give effect to the NZCPS or implement the objectives and policies of the RPS. Accordingly, although we appear to have broad powers of inquiry in respect of areas within the scope of an appeal, this does not give

[20] Refer to 2 above at paragraph [23].

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to us any initiating jurisdiction beyond the scope of the appeal.

Summary of relevant statutory instruments

New Zealand Coastal Policy Statement 2010 (NZCPS)

[42] We were directed to the following Policies as being most relevant:

Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage, particularly sub clause (f):

(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 mātaitai or other non-commercial Māori customary fishing;

Policy 6 Activities in the coastal environment, particularly sub clause (1)(j)

(1) In relation to the coastal environment:

.....

(j) where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value

Policy 11 Indigenous biological diversity (biodiversity):

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[6]

(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;

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(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.

[6] Naturally rare: as defined in the Glossary:

Naturally rare Originally rare: rare before the arrival of humans in New Zealand

Policy 13 Preservation of Natural Character and in particular sub clause (1)

(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:

(c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and

(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.

(2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include such matters as:

(a) natural elements, processes and patterns;

(b) biophysical, ecological, geological and geomorphological aspects;

(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;

(d) the natural movement of water and sediment;

(e) the natural darkness of the night sky;

(f) places or areas that are wild or scenic;

(g) a range of natural character from pristine to modified; and

(h) experiential attributes, including the sounds and smell of the sea; and their context or setting.

Policy 14 Restoration of natural character:

Promote restoration or rehabilitation of the natural character of the coastal environment, including by:

(a) identifying areas and opportunities for restoration or rehabilitation;

(b) providing policies, rules and other methods directed at restoration or rehabilitation in regional policy statements, and plans;

(c) where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:

(i) restoring indigenous habitats and ecosystems, using local genetic stock where practicable; or

(ii) encouraging natural regeneration of indigenous species, recognising the need for

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effective weed and animal pest management; or

(iii) creating or enhancing habitat for indigenous species; or

(iv) rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarsh; or

(v) restoring and protecting riparian and intertidal margins; or

(vi) reducing or eliminating discharges of contaminants; or

(vii) removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993; or

(viii) restoring cultural landscape features; or

(ix) redesign of structures that interfere with ecosystem processes; or

(x) decommissioning or restoring historic landfill and other contaminated sites which are, or have the potential to, leach material into the coastal marine area.

Policy 15 Natural features and natural landscapes with particular reference to sub clause

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and

(b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;

including by

(c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing soil characterisation and landscape characterisation and having regard to:

(i) natural science factors, including geological, topographical, ecological and dynamic components;

(ii) the presence of water including in seas, lakes, rivers and streams;

(iii) legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;

(iv) aesthetic values including memorability and naturalness;

(v) vegetation (native and exotic).

(vi) transient values, including presence of wildlife or other values at certain times of the day or year;

(vii) whether the values are shared and recognised;

(viii) cultural and spiritual values for tāngata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;

(ix) historical and heritage associations; and

(x) wild or scenic values;

(d) ensuring that regional policy statements, and plans, maps or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and

(e) including the objectives, policies and rules required by (d) in plans.

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The Operative Bay of Plenty Regional Policy Statement (RPS)

[43] The Regional Policy Statement (**RPS**) objectives and policies sit in a hierarchy above the Regional Coastal Environment Plan. It was generally agreed that the RPS gives effect to those parts of the NZCPS that are relevant in this case. A "cross-check" against the NZCPS undertaken by Ms Lucas and Mr Reaburn supported that analysis.

Natural Character

[44] The relevant values of the area and features the subject of these proceedings are described in the RPS as[21]:

> (a) The Motiti Natural Environment (MNE) is delineated and shown on Map 21a in Appendix I, which identifies High Natural Character and Outstanding Natural Character areas (another map appears in Map 21) ...
> (b) The natural character attributes and values of the islands and reefs shown on the Maps 21 and 21a are described in Appendix J ...

[45] A summary of the islands and reefs which are specifically addressed in the RPS Natural Character provisions is provided in the following table:

MNE The named islands and reefs encompassed are set out below but the MNE includes all of the islands and reefs and water within its boundary although Motiti island above MHWS is not shaded as part of the MNE	**Natural Character category**	**Map(s)**
Ōtāiti (Astrolabe Reef)	Outstanding Natural Character	21 and 21a
Motuhaku Island (Schooner Island)		
Motunau Island		
Te Porotiti (reef)		21a
Okaparu (reef)		
Te Papa (reef)		
Motiti Island margin (which incorporates the water and many small islands and reef systems around it)	High Natural Character	21 and 21a
Entire MNE except Motiti Island above MHWS	High Natural Character	

[21] Reaburn Rebuttal [3.7]

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[46] The RPS specifically addresses Natural Character but leaves the detail of identification and rating of landscape qualities, indigenous flora and fauna (biodiversity) to the relevant regional plan or district plan. It provides guidance including tools (criteria for assessing matters of national importance in the Bay of Plenty region) in Appendix F. Relevantly Set 1 of Appendix F addresses Natural Character, Set 2 Natural Features and Landscapes, Set 3 Indigenous Vegetation and Habitats of Indigenous Fauna, Set 4 Maori Culture and Traditions and Set 5 Historic Heritage. All of these matters are relevant to the plan provisions addressed in this decision. The BOPRC relies on Appendix F in the formulation of the proposed PRCEP. It is clear that this is a reference in the RPS to the mandatory requirements of Policy 15(d) of the NZCPS.

[47] The parties noted that some attributes and values are inconsistently described and provided for between the RPS and provisions of the PRCEP. RPS Maps 21 and 21a are attached as Annexure **C.** The relevant attributes contained in Appendix J are attached as Annexure **D**. Again, we are in no doubt that, as these provisions relate to natural features and landscapes, they address NZCPS Policy 15(d) and (e).

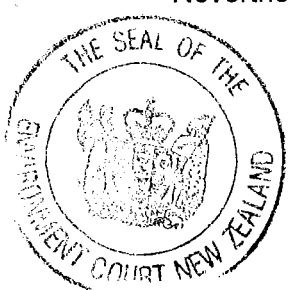
PRCEP Natural Character

[48] The PRCEP relies on the RPS and its schedule for the identification of areas of Outstanding Natural Character and these are identified on the PRCEP Maps. These are ONC located within the MNEMA, being the spatial area (or precinct) the subject of this appeal. These respond to the NZCPS requirements of Policy 13(1)(c) and (d) to identify, and map, areas that require objectives, policies and rules.

Areas of Significant Cultural Value

[49] The starting point for the appellants is the now confirmed spatial identification of Areas of Significant Cultural Value (**ASCV**) in PRCEP. The relevant reference is ASCV 25 (Map 43b). This ASCV is described as Motiti Island and associated islands/reefs and shoals and appears in Schedule 6 of the PRCEP.

[50] The RMA engages cultural values in several places in Part 2, including ss 6(e), 7(a) and 8. The wording does not follow the "protect" format used in other sections but "recognise and provide for" in s 6(e), "have particular regard to" in s 7(a) and "take into account" in s 8. Nevertheless, the obligations are clear and reflected in the NZCPS, RPS and ASCV.



[51] In part, this reflects the cultural values recognised in the RPS and in reference to NZCPS Policies 2(f)(ii) and (iii), 2(g), 14(c)(viii) and 15(c)(vii) and (viii). The following description taken from that schedule assists in understanding the importance of this area:

> Tāngata whenua of Motiti are Ngāi te Hapū, Te Patuwai and Te Whānau a Tauwhao ki Motiti.
>
> Motiti Island has a long history of Maioriori and Māori occupation beginning from the ancient 'Uru' ancestors and the arrival of the ancestral migration canoe, Te Arawa waka haurua, which landed at Maketū directly on-shore from Motiti. The first occupant was the esteemed Tohunga, Ngatoroirangi who named the parts of the island and lived there with Waitaha descendants.
>
> There are 30 distinct pā sites, 18 settlements and 20 ancient monuments that are situated throughout Motiti Island and the seabed and foreshore. These areas are located and coded in the "Motiti Island Native/Cultural Policy Management & Administration Plan 2012"; however, the detailed cultural and historical data information regarding wāhi tapu and wāhi taonga is found in the Cultural Heritage Wāhi Tapu document held exclusively in the care of "Korowai Kāhui o Te Patuwai Native Tribal Council". Access to this information is restricted.
>
> Motiti Island Management Plan identifies the reefs surrounding Motiti as mahinga kai, the fish species that was harvested and their cultural and spiritual significance.
>
> The seabed and foreshore boundaries of Ngāti Te Hapū extend out to seven significant historical ocean landmarks anchored to the bottom of the ocean floor. This relates to a proverb that link together the territorial boundary of Moutere o Motuiti.
>
> *Ngā Tauranga tai kukume o te hukarere o ngā Aturere* (the anchors that connect to the wind and the tides – that pathway of Aturere). Significant wāhi tapu heritage sites are located within the seabed and foreshore boundaries. Sites in the coastal marine area in close proximity to Motiti Island are identified in Appendix 3 to the Motiti Island Environmental Management Plan (MIEMP). Other wāhi tapu sites in the coastal marine area are identified in the Motiti Island Native/Cultural Policy Management & Administration Plan.

and

> Otāiti is a reef within an area culturally known as Te Maamangi of particular cultural and spiritual significance to Te Patuwai, Ngāti Whakahemo, Ngāti Te Hapū and Ngāti Awa. The source of the mauri (spiritual essence) of Otāiti stems from ancient 'Uru' ancestors and rituals performed by the (high priest) of Te Arawa waka haurua Ngatoroirangi, who spent his last years at Motiti Island. Ōtāiti is a significant historical site of Te Arawa and is connected to the ancestor tohunga Ngatoroirangi who gave it its name. Ōtāiti marks the outer gateway to the moana o Te Arawa. It is connected to the geothermal pathways discovered by Ngatoroirangi.
>
> Te Patuwai, the hapū on Motiti Island (of Mataatua waka origins) continue to regard Otāiti as a toka tipua (reef imbued with spiritual and sacred qualities) alongside Mōtū Haku Island to the north east that holds the same status. Otāiti, Mōtū Haku and the Oromai Tāngata ancient rock monuments, that link to a spiritual rock at the rear of Motiti Island named Kopu Whakaari, with the same reverence iwi and hapū on the mainland have towards their maunga or mountain. These areas are also significant traditional fisheries "kāinga mahinga ika and mahinga mataitai".

[52] Within the area of ASCV 25 sits another, ASCV 9, specifically relating to Motunau Island (also known as Plate Island) identified on Map 44b. It is described as follows:

> Motunau Island is a Māori-owned wildlife sanctuary protected under the Wildlife Act 1953 – gazetted under the Wildlife Sanctuary (Motunau Island) Order 1969. It is rated as a site of Special Wildlife Interest.
>
> Motunau Island traditionally was a mahinga kai area within living memory, Tītī (mutton bird) was taken from the island. The rotation of harvesting enabled whānau and hapū access. Although the numbers of Tītī from Motunau were never in large numbers as those taken from Whakaari Island, they were nonetheless an important local mahinga kai and had significant cultural value to Ngāti Whakahemo whānau and hapū.
>
> Motunau Island remains in the ownership of Ngāti Whakahemo whānau. It is administered by DoC and three kaitiaki of Ngāti Whakahemo Iwi. Motunau is of high heritage significance to Ngāti Whakahemo as it is part of their 'pātaka kai'.

> Taonga tukuiho - this site is linked to the study of stars – the road map to the Pacific Ocean used by...[The sentence does not conclude]

[53] While there is a continuing dispute as to whether s 6 (e), s(a) and 8 mandate specific methods and rules, we conclude that in particular areas they may warrant controls. However, such controls would occur under s 30(1)(d) of the RMA (for the marine area at least) rather than being a reflection of significant indigenous biodiversity under s 30(1)(ga). Nevertheless, as is clear in this case, cultural values and attributes can include significant indigenous biodiversity on the evidence. The ASCV descriptions demonstrate the importance of the area to the settlement of the Bay of Plenty, and the importance of the resources here for sustaining life as a food source. They also reflect aspects of s 6(e), 7(a) and 8 of the RMA.

Natural Features and Landscapes

[54] In addition to ASCV 25, the PRCEP also identifies several outstanding and regionally significant Natural Features and Landscapes (identified as ONFL 44) which are located within the same spatial precinct. The description of these features is set out in Schedule 3 of the PRCEP which includes an evaluation of their attributes based on "current case law" and the criteria in Appendix F of the RPS as well as "the modified Pigeon Bay Criteria".[22]

Biodiversity

[55] Also co-located within this spatial precinct are several identified significant Indigenous Biological Diversity Areas (**IBDA**). These are listed in Schedule 2 of the Plan and also identified on the 43 and 44 series maps. The criteria for the listing of these areas are based on Policies 11(a) and (b) of the NZCPS (although we also note that Appendix F Set 3 would have applied). Sites and areas listed as IBDA – A reflect NZCPS Policy 11(a) and those listed as IBDA – B reflect Policy 11(b) of the NZCPS.

Objectives polices and rules in the PRCEP

[56] Outstanding natural features and landscapes, areas of the coastal environment with outstanding natural character and areas of significant indigenous biodiversity are addressed under the chapter on Natural Heritage in the PRCEP. Objectives and policies are located under this heading (NH Objectives Part Two at 2.2 and Policies Part Three at Section 4). The ASCV are addressed under the heading of Iwi Resource Management (IW Objectives Part Two at 2.4 and Policies Part Three at Section 3).

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[22] *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* (2000) NZRMA 59.

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[57] However, in the PRCEP, rules pertain to a type of activity proposed rather than the policy category in which the location of the activity is proposed. The only zoned areas included in the PRCEP are the Harbour Development Zone (HDZ) and the Port Zone (PZ) and these zones have their own objectives and policies.

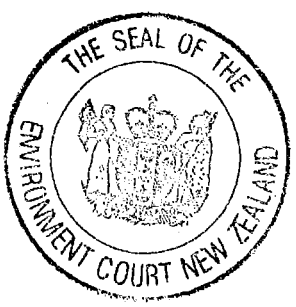
[58] Apart from these two zoned areas, the manner in which the Plan operates is to identify the category of activity (eg: structure, occupation of the Coastal Marine Area, disturbance, deposition or extraction, discharge, reclamation, taking, damming or diversion, and aquaculture), and then apply standards/rules depending on the specific attributes of the location where it is intended to carry out the activity. In this way, the ONC and Natural Heritage provisions operate as an overlay to the rules and influence the status of the activity and how it might be assessed.

[59] As the Plan was originally notified, the only exception to this regime was the ASCV. This annotation did not carry with it a change to status of any activity, but rather added the need to consider Maori cultural matters once a requirement for a consent was triggered by another provision of the plan. Appeals to the PRCEP, now separately resolved, will provide for the operation of this overlay in a similar manner to the ONFL and ONC overlays.

[60] Importantly, in this appeal the appellants seek to introduce essentially a third "zone" to manage the area ASCV 25, identified and labelled as the Motiti Natural Environment Management Area (**MNEMA**). The boundary of the proposed MNEMA closely resembles the RPS Motiti Natural Area (MNE), although it extends further to the north of Motuhaku Island and cuts in closer to the reefs/rocks at Te Porotiti, Okaparu, Omaroa, and Otawahao.

[61] In summary, the area the subject of the appeal accommodates a number of attributes of both national, regional and local significance. We set those out in the following table (they are spatially located on the PRCEP Maps 43a – 43c and 44a – 44a and b). However, not all of the Area is identified as significant or outstanding under Policy 11(a) or 15(a). Nevertheless, the whole Area has high values as sea, landscape and as to cultural significance.

[62] We list the elements of MNEMA as follows:



Location	ONC Category	ONFL category	IBDA Category	ASCV
Ōtāiti (Astrolabe Reef)	Outstanding Natural Character	Outstanding	A76	ASCV 25
Motuhaku Island (schooner Island)		Outstanding		
Motunau Island		Outstanding	A77 (the island) A78 (the marine area)	ASCV 9 and 25
Te Porotiti (reef)		Outstanding – part of Ōtāiti identified feature		ASCV 25
Okaparu (reef)				
Te Papa (reef)		NA		
Motiti Island margin (which incorporates the water and many small islands and reef systems around it)	High Natural Character	Outstanding	Motiti Island A75 Motiti Islets B132	
Motuputa Island (located within the Motiti Island margin)			A79	
Taumaihi Island (located within the Motiti Island margin)			B133	

[63] As noted, Ōtāiti, Motohaku and Motunau, and the reefs of Te Porotiti, Okaparu and Te Papa have the highest value for natural character, while Ōtāiti and Motunau have notations as IBDA-As as well as being within an ONFL. We exclude Motiti Island itself, as it is not the subject of this appeal. Motiti Island margins, including the rocks and small islets around it, contains a mixture of IBDA-A and B and is rated as ONFL. However, together these reefs, shoals, islets and margins with the water between them make up a High Natural Character area and an ONFL. These features are considered to have a *high degree of aesthetic coherence relating to the vegetation patterns surrounding Motiti Island's margin and the entire coverage of the smaller islands.*

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[64] In terms of natural science factors *the small islands along with the associated reefs and shoals, supporting marine and coastal habitats are not common within the region, but are not rare or threatened in the New Zealand context*".[23] Motiti Island is the only island within this ONFL with manmade modifications.

[65] The following extracts from the values descriptions of ONFL 44 (Schedule 3 PRCEP) assist in understanding the importance of the features identified within this general marine precinct:

> *Aesthetic values*:
> High:
>
> Naturalness: Motiti Island is heavily modified for agricultural, horticultural and residential activities. The area identified within the ONFL supports the interface of native vegetation cover on land unsuitable for farming, along the coastal fringe. Indigenous vegetation consists of a narrow fringe of good quality Pohutakawa forest around the coastal margin of the land with moderate diversity and regional significance. It is an excellent example of natural processes. The island's coastal margins support a range of seabirds, shorebirds and other native bird species.
>
> Motuhaku and Motunau Island are unmodified and have national significance. They are an excellent example of natural processes with no modifications to the coastal processes
> Moderate to High:
>
> Intactness: Motiti Island margins remain largely intact. The remaining islands are highly intact. The majority of the reefs and shoals are intact with some wrecks, including the remains of the wreckage MV Rena on Ōtāiti /Astrolabe Reef
>
> *Transient values*:
> The seasonal changes of the indigenous vegetation (i.e. Pohutakawa) and associated terrestrial and marine wildlife is valuable. The dynamic character of open water and coastal marine processes, such as tides, swells, currents, water clarity, fish and seabird migration reflect the highly transient nature of the environment.
>
> *Shared and recognised values:*
> Highly recognised and valued. The waters, shoals and rocky outcrops surrounding Motiti are widely recognised for their natural science, aesthetic and recreational values – particularly as places to dive and fish. There are strong tangata whenua associated values with these features. The presence of shipwrecks including the MV Rena and Tahoma, are also recognised features of the maritime history of the area.
>
> *Māori values*:
> Kainga, mahinga kai, taunga ika. Motiti has a rich Māori history. The island and surrounding island and reefs have ancestral interests to various hapū and tribes of the Bay of Plenty area. The coastal marine area is identified as an area of Significant Cultural Value (ASCV 25) in Schedule 6.

[66] We have also drawn on some of the elements that describe the natural character and the attributes of the MNE covering the area (RPS Appendix J) which assist in illustrating the overlapping attributes under the categories of special identification which appear in the RPS and PRCEP. By way of general description (emphasis added):

1. The area covers the waters beyond approximately 200m off shore from Motiti Island, extending between 5 and 15 kilometres seaward to take in a number of smaller reefs.
2. The isolated position of the area around Motiti in the Bay of Plenty renders the sense of its

[23] RPS Schedule 3 ONFL 44

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remoteness.

3. The Motiti Natural Environment area is renowned as a 'food cupboard' for its abundant marine life.

In addition, for Okaparu (reef) (Oka), Te Porotiti (reef) (Te Po), Te Papa (reef) (Papa):

1. These rocky reefs rise from the sea floor in water 40- 50m deep to between 30 and 10m depth. Fish congregate to feed on the relative abundance of marine life supported by the diverse and rich reef habitats.

2. There are many significant features and landmarks below sea level including reefs, fishing spots and food resources.

Elements that describe natural character:

1. Natural reefs, islands and rocks within an area washed and sustained by the Pacific Ocean. Some wreckage and debris as a result of the grounding of the MV Rena, the Taioma wreck and fishing pressure modify natural character.

2. The anchors that connect to the winds and tides, pathway of the yellow–fin tuna.

3. It is a connectedness of the natural landscape features, the small islands and the reefs; it is the ocean water which binds them together. The ocean water that touches Motiti is the same water that touches the small islands and the reefs. There is no different water entering the area

4. Dynamic coastal processes including wind and wave action, water movements, currents, fish and bird life.

5. The natural environment dominates.

[67] The attributes address marine biotic and abiotic processes, landcover and use and terrestrial biotic and perceptual values. These attributes may enhance or diminish natural character. We have set out extracts from the marine biotic processes (emphasis added):

Marine biotic processes:

1. An abundance of biological life exists in the seabed and ocean surrounding the reefs which is characterised by relatively high populations and diversity.

2. Further out from the foreshore are the breeding rocks and habitat of the many species of fish which are the descendants of Tangaroa who occupy the sea floor.

3. There are numerous significant reefs and special places and habitats for many prized species including – Tamure (snapper); Kahawai; Maomao; Tarakihi; Moki; Araara (trevally); Parore; Haku (yellow-tail Kingfish); Aturere (tuna); Kuparu (John Dory); Kumukumu (gurnard); Patikirori (sole); Mango (sharks); Wheke (octopus); Koura (crayfish); Paua (abalone); Kuku (mussels); Tipa (scallops); Tio (oysters); Kina (urchins); Rori (sea cucumbers); Karengo (seaweeds).

4. Populations and biomass are severely impacted and threatened by commercial fishing and increasing recreational and charter fishing.

5 The Motiti Natural Environment area supports a range of seabirds and shorebirds.

In addition, for Okaparu (reef) (Oka), Te Porotiti (reef) (Te Po), Te Papa (reef) (Papa):

1 Highly dynamic coastal waters with reefs supporting a variety of pelagic and demersal fish species, macrophytes and benthic organisms.

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2. A wide variety of representative fish species and other marine communities with relatively high abundance and diversity.

[68] For marine abiotic processes:

1. No modification to the natural wave action, water movements or currents of the open coastal water body and sediment transport patterns.
2. The Motiti Natural Environment area is affected by a moderately high wave-energy environment. Near-shore substrate is coarser than deeper waters which tend to accumulate sediments and finer grained materials from land.
3. Some modification due to the presence of *Rena* wreckage, debris and sediment contamination.

In addition, for Okaparu (reef) (Oka), Te Porotiti (reef) (Te Po), Te Papa (reef) (Papa) (emphasis added):

1. Perceptions are of a natural marine area, reef system impacted by the Rena wreckage, containers and debris.
2. The tidal waters are characterised by the rippling currents signalling to the people in the land through the direction and strength of flow – through the colour, through the taste, and feel of the direction of the wind.
3. Perceptions are of a natural system with natural patterns, processes and elements apparent and distinctive of its formation.
4. Water movement around the reefs enhance natural character.
5. The physical structure of the reefs remain in a natural state. Rock formations are expressive of the formative natural processes created by volcanic activity and the ocean. Pinnacles, vertical rock faces, underwater caves and tomes and large boulders are distinctive of the natural processes.
6. Highly dynamic coastal waters around the pinnacles, creating striking reef structures, caves and crayfish holes.
7. The mountain pinnacles of the Motiti Natural Environment Area are experienced with their reefs as Okaparu, Te Porotiti, Te Papa, and Tokeroa.

[69] Perceptual values specifically attributed to Okaparu (reef) (Oka), Te Porotiti (reef) (Te Po), Te Papa (reef) (Papa) include (emphasis added):

2. The reefs are perceived as a food storehouse and is experienced as a source of sustenance.
3. Some level of activity around the reefs, as popular dive and fishing locations, otherwise a high level of remoteness exists within the area.
3. There are many significant features and landmarks below sea level including reefs, fishing spots and food resources utilised by the people of Motiti.

[70] Otāiti attributes (with elements that enhance and diminish natural character) are separately listed in the PRCEP schedule and in respect of water include (emphasis added):

1. No modification to open coastal water body surrounding the reef.
2. The reef breaks the water surface at low tide creating large breaking waves in rough seas.
3. Reef has regional significance for seal use and fish communities with high abundance and diversity.
4. Some modification due to the presence of Rena wreckage and sediment contamination.

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IBDA-Attributes

[71] The IBDA-Attributes are set out in Schedule 2 of the PRCEP Table 1 IBDA-A and Table 2 IBDA-B. We set these out in the table extracts below.

From Table 1: Indigenous Biological Diversity Areas A - Areas that meet the criteria listed in Policy 11(a) of the NZCPS

Indigenous Biological Diversity Area **A**	New Zealand Threat Status * - NZCPS Policy 11(a)(i)	International Threat Status * - NZCPS Policy 11(a)(ii)	Threatened or rare ecosystems and vegetation types - NZCPS Policy 11(a)(iii)	Habitat of indigenous species at limit of natural range or rare - NZCPS Policy 11(a)(iv)	Nationally significant area - NZCPS Policy 11(a)(v)	Biodiversity values protected by legislation - NZCPS Policy 11(a)(vi)
Motiti Island IBDA-A75	Flora: Lepidium oleraceum (Threatened-Nationally Vulnerable), New Zealand spinach (At Risk-Naturally Uncommon). Avifauna: Caspian tern (Threatened - Nationally Vulnerable), North Island kākā (Threatened - Nationally Vulnerable), Pied shag (Threatened-Nationally Vulnerable), Red-billed gull (Threatened-Nationally Vulnerable), White-fronted tern (At Risk-Declining), Northern diving petrel (At Risk-Relict), Variable oystercatcher (At Risk-Recovering).	Kākā (Endangered).	Pohutukawa forest and treeland, coastal cliffs, and sandfields.		Regionally significant	Unprotected.

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Indigenous Biological Diversity Area **A**	New Zealand Threat Status * - NZCPS Policy 11(a)(i)	International Threat Status * - NZCPS Policy 11(a)(ii)	Threatened or rare ecosystems and vegetation types - NZCPS Policy 11(a)(iii)	Habitat of indigenous species at limit of natural range or rare - NZCPS Policy 11(a)(iv)	Nationally significant area - NZCPS Policy 11(a)(v)	Biodiversity values protected by legislation - NZCPS Policy 11(a)(vi)
Astrolabe Reef IBDA-A76			Ecosystem uncommon in NZ as it has both tropical fish and a strong pelagic school fish component. Coastal rock stack ecosystems (pinnacles) are naturally rare ecosystems in New Zealand.		Regionally significant	Unprotected.
Motunau (Plate Island) IBDA-A77	Avifauna: Reef heron (Threatened-Nationally Vulnerable), Pied shag (Threatened-Nationally Vulnerable), Red-billed gulls (Threatened-Nationally Vulnerable), Northern little blue penguin (At Risk-Declining), White-fronted tern (At Risk-Declining), Fluttering shearwater (At Risk-Relict), New Zealand white-faced storm petrel (At Risk-Relict), Northern diving petrel (At Risk-Relict)		High quality examples of indigenous vegetation on an offshore island.		Nationally Significant	Protected (Plate Island Wildlife Sanctuary, Department of Conservation).

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Indigenous Biological Diversity Area **A**	New Zealand Threat Status * - NZCPS Policy 11(a)(i)	International Threat Status * - NZCPS Policy 11(a)(ii)	Threatened or rare ecosystems and vegetation types - NZCPS Policy 11(a)(iii)	Habitat of indigenous species at limit of natural range or rare - NZCPS Policy 11(a)(iv)	Nationally significant area - NZCPS Policy 11(a)(v)	Biodiversity values protected by legislation - NZCPS Policy 11(a)(vi)
	Herpetofauna: Pacific gecko (At Risk-Relict), Northern tuatara (At Risk-Relict).					
Motunau (Plate Island) – marine area IBDA-A78	Fluttering shearwater (At Risk-Relict), White-fronted tern (At Risk-Declining).		Regionally threatened ecosystem containing surface schooling trevally, kahawai and blue maomao. Trevally and kahawai schools are usually accompanied by fluttering shearwater and white fronted terns. Contains a rift in the middle of the island containing a range of deep water species in shallow water (less than 5 metres). Species include cup sponges, hydroids and bryozoans. This is the only example in the Bay of Plenty region.		Nationally Significant	

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Indigenous Biological Diversity Area **A**	New Zealand Threat Status * - NZCPS Policy 11(a)(i)	International Threat Status * - NZCPS Policy 11(a)(ii)	Threatened or rare ecosystems and vegetation types - NZCPS Policy 11(a)(iii)	Habitat of indigenous species at limit of natural range or rare - NZCPS Policy 11(a)(iv)	Nationally significant area - NZCPS Policy 11(a)(v)	Biodiversity values protected by legislation - NZCPS Policy 11(a)(vi)
Motuputa Island IBDA-A79	Flora: Cook's scurvy grass (Threatened-Nationally Vulnerable) (1994).		Highest quality offshore rock stack in Motiti Ecological District.		Regionally Significant	Unprotected.

** The threat status of species may change over time, and can be classified differently nationally compared to internationally. It is recommended plan users consult the New Zealand Threat Classification System lists (available from the Department of Conservation website) to obtain the most up to date information on the New Zealand Threat Status and the International Union for Conservation of Nature and Natural Resources (IUCN) Red List of Threatened species (available from the website http://www.iucnredlist.org) for the most up to date information on the International Threat Status.*

From Table 2: Indigenous Biological Diversity Areas B - Areas that meet the criteria listed in Policy 11(b) of the NZCPS

Indigenous Biological Diversity Area **B**	Areas of predominately indigenous vegetation - NZCPS Policy 11(b)(i)	Habitats important during vulnerable life stages - NZCPS Policy 11(b)(ii)	Ecosystems and habitats vulnerable to modification - NZCPS - Policy 11(b)(iii)	Habitats and areas important to migratory species - NZCPS Policy 11(b)(v)	Ecological corridors - NZCPS Policy 11(b)(vi)
Motiti Islets IBDA-B132	Coastal herbfields, pohutukawa-karo treeland and coastal rockland.		Coastal herbfields, pohutukawa-karo treeland and coastal rockland.		
Taumaihi Island IBDA-B133	Pohutukawa forest, flaxland, bracken fernland and coastal herbfields.		Pohutukawa forest and coastal herbfields.		

What does all this mean in terms of policy directives in the PRCEP?

[72] In summary, the area the subject of the proposed spatial identification and rules is significant in many and important ways. Policy direction is aligned to various identified Issues (eg Integrated Management (issue 1 and 2A), Natural Heritage (issue 3 and 3A), Iwi Resource Management (issues 14 – 17A). Mr Reaburn focuses us squarely on the relevant issues and guidance in Section 5 of his evidence. We append those relevant objectives and policies and methods as Annexure **E**.

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[73] Mr Reaburn concludes at para 5.13 that:

> If it is to be accepted that:
>
> (a) Fishing has and continues to result in significant adverse effects on marine ecology, including and affects indigenous biodiversity maintenance and / or
>
> (b) Fishing has and continues to result in significant adverse effects on resources or areas of spiritual, historical or cultural significance to tangata whenua;
>
> I consider that the adverse effects arising from fishing must be avoided.

[74] He identifies that:

> The only rules that touch on this issue are Rules DD 15 and 15A. They do not specifically address fishing, although they do manage disturbance, deposition and extraction in IDBA (A) and ONC areas which could occur as the result of some fishing activities. There are no other rules that manage fishing and no specific policy that relates to the control of fishing.

[75] Mrs Noble for the Council, notes (and Mr Reaburn accepts this) that when the Council prepared its plan it understood that it did not have jurisdiction to control fishing activities. Mr Reaburn concludes (at para 5.15) that:

> On that basis, it appears that consideration was not given to the major role fishing plays in degrading marine ecology and adversely affecting waahi tapu, waahi taonga and mauri. I consider that has resulted in an inadequate response to ensuring a method is in place to meet the plan's objectives and policies.
>
> In my view that is a gap that needs to be filled.

Conclusions as to the relevant planning documents

[76] IBDA-A Areas are intended to reflect areas of significance in terms of Policy 11(a) of the NZCPS. This is supported through the RPS, which lists a series of areas with their values and attributes. This is generally repeated in the PRCEP. To the extent there is some variance between these documents the parties acknowledge that there should be a synthesis, particularly as to the area of the MNEMA. The areas of outstanding natural features and landscapes have been relatively well settled through these documents. To the extent there is any difference between them, then accumulation of the content from both the RPS and the PRCEP should be undertaken to synthesise these into a single relevant area.

[77] The ONC areas include Ōtāiti (Astrolabe), Te Papa, Te Porotiti and Okaparu, Motuhaku and Motunau. The protection under 13(1)(a) is from inappropriate subdivision, use and development. It is clear that the natural values of the areas derive from not only significant indigenous values (Motunau and Ōtāiti), but also the flora, fauna and underlying geological structure.

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[78] The ASCV 25 is essentially the same as the MNEMA, and it is intended that they be co-extensive. The question, therefore, for this Court is how the provisions in the PRCEP should properly give effect to the RPS and NZCPS objectives and policies? In particular, we note that the Motiti Island Plan (District Plan) includes provisions that identify particular values and attributes – usually cultural, but sometimes relating to features, landscapes or biodiversity – which also inform a broader understanding of the various identifications within the Regional Policy Statement and Regional Plan as overlain by the Motiti Island Plan to the extent it includes marine areas.

[79] We now undertake a more detailed analysis in respect of the areas within the MNEMA.

The MNEMA

[80] Firstly, it can be seen that within the MNEMA, the entire area around Motiti Island is identified as having high natural character, while Motunau (Plate Island), Motuhaku (Schooner Island), Ōtāiti (Astrolabe reef), Te Papa, Te Porotiti and Okaparu are all identified as having outstanding natural character in the RPS. The PRCEP identifies all of these, except Te Papa, including the area around Motiti Island, as ONFL 44. A more detailed illustration in Map 43a indicates that, in particular, this includes Taumaihi Island at the southern end of Motiti Island, and an area of ocean around that.

[81] The ecological map proposed for the MNEMA shows (at Map 43b) Ōtāiti/Astrolabe reef, Motunau Island and the coastal area only of Motiti Island, including several water-ways, are identified as IBDA-A areas, consisting of A75 (Motiti), A76 (Astrolabe reef), A77 and A78, Motunau Island with Tahamaihi Island identified as Biodiversity Area B133 and Motiti Islets identified as Biodiversity Areas B132. There is further identification of specific cultural values at VX12, VX13, VX15, VX16 and VX17 on Ōtāiti, Okaparu, Rua o Tāne (south of Taumaihi Island), Mataraakita (Motunau Island) and Tokoroa (south-west of Motunau Island) respectively. For current purposes, the IBDA-A and -B rankings for Motiti island itself relate to terrestrial species within the coastal environment, in particular Pohutakawa. The appellant was not seeking that this area be protected from fishing, but that this area be included within the scope of the MNEMA.

[82] Beyond this, there are areas that clearly have a concatenation of various overlays both in respect of features, landscapes, cultural value and biodiversity. Te Papa, Te Porotiti and Okaparu reefs are outstanding in terms of natural features and landscapes, but are not identified as an IBDA-A or -B area. Motuhaku Island is also shown as having Outstanding

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Natural Character and ONFL (part of ONFL 44) but is not IBDA A or B. It is difficult to imagine any higher protective status under the RMA than that afforded to Ōtāiti or Motunau (ONC, ONFL, IBDA-A and ASCV 25).

[83] We have concluded that the MNEMA clearly contains within it areas that have a range of outstanding values. These are variously expressed as Natural Character features, landscapes or IBDA-A areas. Beyond that there are significant values of a cultural nature including bio-diversity generally, and a number of toka and reefs are identified as having particular values and attributes, notwithstanding that they are not listed separately within the ONFL or IBDA-A or IBDA-B areas.

[84] We have concluded that the RPS and PRCEP present a strong attempt by the Council to differentiate between the various values and attributes demonstrated within the MNEMA area. It is acknowledged that the area as a whole contains significant cultural value, and within it there are areas that have outstanding values or significance.

[85] Two areas that were not the subject of any form of argument as to outstanding values were Motunau Island and Ōtāiti (Astrolabe). We understood from the evidence of all of the witnesses, including those for the Regional Council and MPI, that the values of these areas were recognised in a number of ways. This indicated their ecological value, their Biodiversity and Natural values as eco-systems, as outstanding natural features (often including geological) and their significance in cultural terms.

[86] Much was made of evidence indicating that Ōtāiti and even Motiti were included within various areas of claimed rohe and Waitangi Tribunal claims or in other policy and management documentation. What this demonstrates to the Court is that the attributes of these areas have a shared and common cultural recognition, almost inevitably not only for their values but for the potential kai moana that could be yielded from these areas. Motunau island has a structure within it, for example, which allows very deep sea fish to be found near the surface, but there were also various references to geological structures that are not only regionally but nationally rare.

Evidence of biodiversity and habitat

[87] Evidence was given about Ōtāiti reef and the fact that pelagic fish and tropical fish were often found in this area and that there was a mixing of currents, including deep-sea water currents, that gave rise to particular and different conditions. Many of those values are

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expounded on at some length within the terms of the RPS, and even in the PRCEP. The provisions of the RPS were inserted as a result of appeal and after extensive hearings.[24]

[88] It would be fair to say that as a result of the MV Rena grounding considerable attention has been paid to Ōtāiti and therefore there is significantly more scientific information available in relation to it than in respect of the other areas. We note that the RPS and the PRCEP discuss, in various places (including the examples we have already identified), the impact of fishing upon the area in general.

[89] After hearing from many witnesses in the case, we are able to say that, in the areas of IBDA-A, particularly Ōtāiti reef, there is some evidence to demonstrate the impacts of fishing upon this area. Extensive evidence was given as to the increase in fish abundance as a result of the grounding of the Rena, when the harbourmaster had an exclusion zone in place around Ōtāiti. This was particularly marked in the period after the clean-up and prior to the uplifting of the exclusion area. Application for further closure of the area to protect the fishery was made to MPI during this time, but this was declined by the Minister.[25]

[90] We are satisfied, as a matter of fact from the evidence we have heard, that the closure of the area around the reef did lead to an increase in fish populations. This was despite evidence that fishing continued as normal beyond the 3 nautical mile (radius) area closed by the Harbourmaster.

[91] We are not required to determine that the effect of fishing within Ōtāiti reef or Motunau reef is a significant adverse effect, given that NZCPS Policies 11(a) and 13(1)(a) require adverse effects be avoided. Beyond the immediate IBDA-A area we accept that the effects of fishing are likely to have had impact (adverse effect) on the IBDA-A areas identified. Our reasoning is that the IBDA-A area values are supported by eco-systems, which include a hierarchy and inter-relationship between the various species in place.

[92] We accept that bird species, for example, depend upon the abundance of fish (particularly during the nesting period) to provide fishing close to their nesting areas. These nesting areas include Motuhaku and Motunau Island. In respect of Ōtāiti, we note by way of example that sea lions would depend upon fishing in the immediate vicinity to reduce their fishing effort as they use the reef for resting during low tide periods.

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[24] *Motiti Rohe Moana Trust v Bay of Plenty Regional Council*, [2015] NZEnvC 022 – re RPS provisions.

[25] Minister's decision dated 6 June 2017, under the hand of Hon N Guy, Minister of Primary Industries, Appendix D of evidence of AF Hill for MPI.

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[93] As we will discuss shortly, the question of fishing effort is an issue not only for the fishing industry in New Zealand, but also for all species that are required to expend energy to recover food. In turn, the hierarchy of species within the ecosystem depend upon the availability of sub-species, and this devolves through the eco-tone to the various herbivorous and flora species that are available in the immediate area.

[94] Furthermore, we heard evidence that many fish species (for example, snapper) and lobsters utilise not only rocky areas immediately around areas such as Ōtāiti and Motunau, but at times move into the more sandy areas further from the rocks. We were told that this was for mating and spawning purposes for fish, and for feeding purposes for lobster.

[95] There did not seem to be a significant argument by the experts that the greater the area around outstanding features or significant biodiversity areas that are protected, the greater the number of species and the abundance of species within the significant area. Nevertheless, we acknowledge that this support or buffer area is not in itself outstanding or significant, but would support the outstanding/significant values within the immediate area of Motunau island, Motuhaku and Ōtāiti in particular. To a lesser extent, it also supports the outstanding natural features of the Okaparu reef and Brewis shoals/Te Porotiti system, and Taumaihi island. Although Motuputa island is identified as IBDA-A A79, it is described as being located within the Motiti island margin.

[96] We have identified beyond the IBDA-A areas themselves the values and attributes of a number of other features. It can be seen that the identification of the relative abundance of marine life, reef habitats, fishing spots and food resources are identified together with fishing pressure that modify that natural character.

[97] The relationship with the landscape features is also noted, as well as the dynamic processes of these habitats. This is further described, in relation to the eco-tones, in descriptions such as "reef supporting a variety of pelagic and demersal fish species, macrophytes and benthic organisms" and "fish species and other marine communities with high abundance and diversity".

[98] The various fauna associations with natural structures are identified in such things as pinnacles reef structures, caves and crayfish holes and mountain pinnacles of Motiti experienced with the reefs. In short, although some of these areas have not been identified in themselves as IBDA-A areas it is clear that they contain eco-systems (or eco-tones) that include outstanding natural features, landscapes, cultural values and significant biological

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diversity. Although those have not reached the status of identification under Policy 11(a) or 15(a) the NZCPS, they nevertheless fall within Policy 11(b) and also relate to areas identified as outstanding under Policies 13 and 15.

[99] In respect of the Taumaihi Island area, some of this is included within the Motiti IBDA-A area and Taumaihi Island itself is identified as an IBDA-B (Policy 11(b)) area. Nevertheless, there was significant evidence given to this Court as to its cultural value, including its occupation by an eponymous ancestor of considerable status on the Te Arawa canoe (Ngātoroirangi).

[100] Furthermore, the Motiti Island Management Plan identifies a number of beaches in the immediate area of Taumaihi Island of considerable cultural and of some ecological interest. On the other hand, the area does not contain any outstanding natural features or landscape identified in the RPS or PRCEP, and there is the wreck of the former tug Taioma utilised for diving in the near vicinity.

Effects on natural character

[101] Policy 13(1)(a) also requires the avoidance of adverse effects on natural character. Ōtāiti (and Te Papa, Te Porotiti, Okaparu), Motuhaku and Motunau all have RPS listing as ONC. Adverse effects of inappropriate use (inter alia) must be avoided. There is an issue as to whether removal of flora and fauna is inappropriate. As shown in Annexure **D**, this relates to how those Outstanding Natural Character values are recognised and provided for in the PRCEP.

Fisheries and their management

[102] MPI joined the proceedings to provide evidence relating to effects on fisheries management. The evidence was given by Mr Andrew Hill of the Ministry of Primary Industries in relation to fisheries management and policy. His evidence related to two areas:

(a) the potential implications arising from the MRMT proposal for fisheries management under the Fisheries Act 1996 in the Bay of Plenty; and

(b) potential implications arising from the MRMT proposal for mechanisms implementing the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (**the Fisheries Settlement Act**).

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[103] The Ministry also called Dr Deborah Freeman, a marine ecologist, on the basis of a request from the appellant that she be available to answer questions from the Council and the Court. Dr Freeman had been involved in preparing reports and presenting evidence in relation to the application to leave the wreck of the Rena on Ōtāiti reef before the hearing commissioners.

[104] MPI submitted that the proposal would affect commercial fishers, recreational fishers and customary activities, and appears to offend s 30(2) of the RMA. MPI counsel submitted:

> This is relevant as the Council must prepare and change any regional plan in accordance with its functions under s 30. The direction to give effect to any national policy statement or regional policy statement is subject to that jurisdictional limit.

Jurisdictional overlap between RMA and the Fisheries Act

[105] It appears to be common ground among all parties before the Court that there is a jurisdictional overlap between the RMA and the Fisheries Act. There is in fact nothing unusual in this regard, as there are many other acts that overlap with functions under the RMA, such as the Building Act 2004 and the Health Act 1956. MPI made the submission that the Fisheries Act *occupies the field* in relation to fisheries (and arguably the coastal marine area) and therefore takes precedence in the event of any conflict. In particular, MPI counsel submitted:

> In the event of any potential uncertainty or conflict, especially with respect to the utilisation of fishery resources, the Fisheries Act occupies the field. The RMA must in such circumstances be read down (if necessary) to avoid conflict between the two; that is the general must give way to the specific.

[106] Further, MPI counsel submitted that Regional Councils cannot (subject to some provisos) exercise their functions to manage the utilisation of fishery resources or the effects of fishing on the biological sustainability of the aquatic environment as a resource for fishing needs. In particular, this prevents regional councils from imposing direct controls over the way fishing is conducted (methods, techniques, size of fish, etc), and the rate of fishing, which is the purview of the Fisheries Act. Thus, the control under s 12 RMA over natural and physical resources is limited by s 30(2) and s 30(1)(ga) RMA.

[107] MPI counsel also says that the Regional Council cannot control the adverse effects of fishing to avoid, remedy or mitigate adverse effects such as intrinsic values of the environment. Thus, MPI says that only the effects of externalities of fishing on the environment that are not subject to Fisheries Act control can be regulated under the RMA for other purposes which may include the intrinsic values or character of a place, relying on the decision of the High Court to

that effect.[26] Importantly, MPI then stated:

> Fundamentally to the present proposal, if the adverse effect complained of is at its heart related to biomass of fish in the water, then whether that is also stated as being for intrinsic values, natural character or landscape, it is a control subject to the Fisheries Act. In the case of overlap or uncertainty, the Fisheries Act takes precedence and occupies the field.

[108] MPI counsel noted that this is subject to two provisos as set out by the High Court:

(a) Regional Councils cannot exercise functions in respect of matters Māori where this is inconsistent with the special provision made for Māori under the Fisheries Act; and

(b) Regional Councils may exercise functions which control fishing or the effects of fishing to ensure maintenance of indigenous biological diversity but only to the extent strictly necessary to perform that function. It must be for that purpose per se, and confined to this object.[27]

[109] Ms Hill for the Regional Council, in her final submissions, discusses the potential for a gap in the rules within the PRCEP relating to the taking of fauna or flora for the purposes of lawful harvest, and the damage and destruction of the sea bed when that is occurring. She states:

> The PRCEP rules "gap" is managed by other regulations (under the Fisheries Act, the Wildlife Act, Marine Mammals legislation and District Plan rules addressing habitat protection in the landward coastal environment). Part 1 of the PRCEP explaining the integrated management approach and roles of other agency makes the approach clear.

[110] Ms Hill goes on to say that the Council's function of maintaining indigenous biodiversity through objectives, policies and methods under s 30(1)(ga) does not require rules in the PRCEP. She acknowledges that there are three sensitive areas within the proposed MNEMA being the regionally threatened eco-system at Motunau (including the rift), the naturally rare coastal rock stack eco-system pinnacles of Ōtāiti and the threatened native fauna which breed at Motunau and Motiti. We take it that she would accept the sensitivity of the coastal edge IBDAs identifying around Motiti island, but these were not the focus of this hearing. Ms Hill stated in her final submissions:

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[26] *AG v Trustees of Motiti Rohe Moana Trust* [2017] NZHC 1429 at [109], [111] and [113].
[27] Above at [129] and [130].

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> The amended proposal is considerably more focussed on Council's s 30(1)(ga) RMA function of maintaining indigenous bio-diversity. This reduces but does not resolve Council's concerns with the original proposal.

[111] She subsequently states that the Council accepts that provisions aimed at those aspects of the Appellant's proposal would have the purpose of maintaining indigenous biological diversity in the MNEMA, and controls which might duplicate the Fisheries Act regime could be imposed by the Court subject to it being demonstrated (based on the evidence) and considered strictly necessary for that purpose. However, she goes on to submit that the broader controls over the taking of flora and fauna, with the disturbance of the sea bed incidental to those activities in relation to areas that are IBDA-A or IBDA-B, or are identified as ONFLs or having outstanding or high natural character, or with significant cultural values, would not be justified in terms of the case law or the proper interpretation of the relevant legislation.

[112] Ms Hill reminds the Court of the following statement in the High Court's declaration decision:[28]

> Notwithstanding s 32 a regional council may perform its function at s 30(1)(ga) to maintain indigenous bio-diversity within the SMA, but only to the extent strictly necessary to perform that function.

Are rules appropriate to fill the gap?

[113] The appellant's position was that Ms Noble, for the Council, had conceded that there was a gap in the rules' framework. Mr Enright states this as relating to the control of taking of indigenous flora and fauna resulting in adverse effects to outstanding/significant values in the MNEMA. He identifies that there are essentially two alternatives before the Court – leave the gap in place, potentially for review through a further process as identified in Methods 19A and 19AA of the PRCEP, or prohibition. As Mr Enright properly says, no party has sought in submissions or in terms of the appeal for consenting options.

[114] We acknowledge that the drafting of 19AA was still somewhat open by the completion of the hearing. However, there was agreement that this method is an appropriate one to deal with further amendments to the Plan in the future. We have attached the method (Annexure **B**) as it was provided to us in closing with the various versions of the parties annotated on it. We are hopeful that, in finalising the provisions required by this decision, the parties can agree

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[28] *Idem* at [20].

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on the wording.

[115] Exclusion zones may be suitable for a future case but are not advanced on the facts of this case. Any arguments related to the form of control appropriate for areas identified under NZCPS Policy 11(a) are avoided in this case because the appellant is seeking prohibited status. Arguably, the High Court decision in *Royal Forest & Bird v Bay of Plenty Regional Council*[29] in relation to natural heritage might apply, but the prospect of a discretionary activity does not arise in this area.

[116] Moreover, the remedy sought by the appellant before the Court has narrowed so that it does not address fishing techniques and methods per se, but simply the removal of any flora and fauna. There is currently no appeal before this Court that seeks particular controls over any other areas beyond those already the subject of the natural heritage appeal, and aspects of the iwi management issues before the Court. Although this decision may be a precursor to a wider review of the Plan, depending on the decisions of superior courts in relation to aspects of the matters, for current purposes no party suggested that this decision would have application outside the MNEMA.

[117] To the extent that the MPI submission is that the Fisheries Act takes precedence over the legislature in the same space, we disagree. The RMA, Wildlife Act, Reserves Act and other legislation all, to some extent, overlap in the marine area.

[118] It is not our place to comment further on the declaration issues on appeal to the superior courts. We note that this hearing has proceeded on the assumption (based on decisions to date) that the RMA can still impose controls in limited circumstances.

[119] There is international and national concern at the ongoing loss of biodiversity (particularly marine) and clear evidence of the interconnection of habitat, flora and fauna. Given such clear evidence as to the value of the identified marine ecosystems in this case, we conclude the RMA imposes a duty to maintain important indigenous biodiversity where necessary. We accept that "strictly necessary" requires a direct connection between the relevant objectives and policies in place and the method sought.

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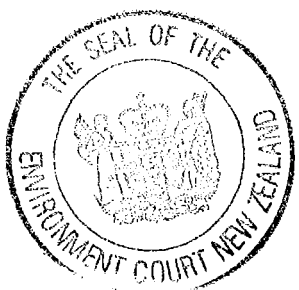
[29] Refer to 2 above.



Examination of the various areas

Indigenous Bio-Diversity Areas - A

[120] These areas, identified under NZCPS Policy 11(a) include:

(a) Motunau island and its marine area; and

(b) Ōtāiti;

[121] Having regard to all of the documentation already before us, we are satisfied that there is compelling evidence that these eco-systems, which include flora and fauna, meet the criteria under NZCPS Policy 11(a) and, accordingly, are correctly recorded. There is, therefore, imperative direction in terms of that policy to avoid adverse effects on these areas.

[122] The areas themselves covered by the IBDA-Are relatively small. The evidence before the Court was that, for the avoidance of adverse effects within the identified area, a broader area needed to be protected to act as a buffer to protect the flora and fauna of the identified area. There was significant debate among the experts as to how large that area should be. Nevertheless, Dr de Luca, called for the Council, acknowledged that the larger the area, the more effectively it would protect those values. Nevertheless, all witnesses acknowledged that any wider area for protection was in itself somewhat arbitrary.

[123] Given the viability of including the geological elements of the features that support the IBDA-A areas, and the need for a connection to other areas such as the sandy bottom, we conclude that there needs to be an examination of the wider area to be included. The argument by the witnesses for the appellant for a circle of 3 km in diameter was that this had the least edge, and therefore minimised potential edge effect. Nevertheless, it was accepted that elongated features around Motunau and Ōtāiti, in particular, might enable the inclusion of other reef structures that seem to be connected, in an ecological sense, to the key features of the IBDA.

[124] In this regard, the appellants had suggested a double circle around Motunau island and various circles around the area known as Okaparu, Te Porotiti and Te Papa (Brevis Shoals). This view is supported by the fact that most of these other features are identified as either outstanding natural character, natural features or landscapes, or a multiple of these. In this regard, we conclude that in considering the area that requires protection to avoid adverse effects on the IBDA-A area we can take into account the wider range of features when setting

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these boundaries.

[125] In the end, we have concluded that an area around Motunau island, including the shelf areas similar to that shown on Map Annexure **A**, should be included. In relation to Ōtāiti, however, we consider that its connection with the other features to the southwest are of some importance and we would connect Ōtāiti with those features, in particular Te Porotiti, Okaparu and Te Papa. Although forming a sausage-like shape, the protection more correctly identifies the geological feature and the inter-connection of this area with the IBDA-A area on Ōtāiti. This is shown on **A** also. We note, in particular, that the IBDA-A in that area identifies seals and a wide range of other species, and accordingly the broader area would be necessary to avoid adverse effects on the IBDA-A areas.

Areas beyond the IBDA-A areas

IBDA-B areas

[126] There was a strong proposition put to us that there should be protection put around Taumaihi island on the southern end of Motiti, which is identified as an IBDA-B area. We are not satisfied that it is strictly necessary to protect these areas at this stage, particularly as the other three areas will have protection. We note, in particular, that these areas are less likely to be subject to commercial fishing because of the shallow inshore nature. For example, a fishing vessel could not fish between Taumaihi island and the mainland, and there is also the Taioma wreck in the vicinity. Until there is further clarification of the law in relation to areas under Policies 11(b), 13(1)(b) and 15(b), we are reluctant to utilise s 30(2) in general rather than the more specific provisions under s 30(1)(ga) relating to significant indigenous biodiversity. This may be more appropriate after further studies and clarification of the Law.

Outstanding Natural Character Areas

[127] The comments relating to IBDA-A areas apply to Motunau and Ōtāiti, which are also Outstanding Natural Character Areas under the RPS. Motuhaku Island, Te Porotiti, Te Papa and Okaparu are also ONC. Appendix J lists values and attributes for the ONC areas. Map 21a lists all these features and ONC within the PRCEP MNEMA as High Natural Character, with Ōtāiti/Astrolabe also shown on Map 21.

[128] Annexure **D** shows these in Natural Character Attributes which are extensive when read through as a whole. Taken from it, the following values are within the MNEMA:

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(a) biological life on seabed and ocean surrounding reefs;

(b) the flora and fauna has relatively high population and diversity;

(c) there are many important habitats for flora and fauna;

(d) dynamic process, wave, currents on fish and bird life.

[129] In the Outstanding areas additions are:

(a) pelagic and demersal fish, macrophytes and benthic organisms (ecosystem, flora and fauna);

(b) activity as popular dive and fishing locations, and some pressure on ecosystem as a result.

[130] There is a significant correlation between the ONC and scheduled IBDA-A area descriptions, but an emphasis on Terrestrial flora and fauna. While Ōtāiti is not an island (it is covered at high tide) it is still an IBDA-A. Reference to the ONC provisions reinforces our view that an area around Motunau and Ōtāiti should be protected to capture the outstanding natural characteristics listed. It reinforces our view that the ONC status of Ōtāiti extends the ONL and IBDA-A to include Te Papa, Te Porotiti and Okaparu.

[131] This leaves Motuhaku and Taumaihi, which are not IBDA-A. Motuhaku is ONL while Taumaihi is IBDA-B. We have concluded that the further identified ONC values in Table 19 are so significant they justify including Motuhaku as an area to protect flora, fauna and habitat. We agree that an area of around 1 km at the centre of Motuhaku would include the key features and a protection buffer. For the reasons we have already given, we conclude that Taumaihi does not currently identify three main habitat, flora and fauna values sufficient to require further protection.

ONFL

[132] All the areas are correctly identified are ONFL. The exception is Te Papa, although it forms part of the reef collective of Okaparu and Te Porotiti. Given this relationship and its ONC features, we conclude those features should be joined, with a modest area around them (around 1 km). This would result in a buffer protection area.

[133] Taumaihi is included in the Motiti ONFL. We have concluded that the focus of ONFL is on physical rather than ecosystem values and attributes. We conclude that there is not sufficient evidence to currently require protection of Taumaihi under s 30(ga).

[134] While protection might be justified in controls under s 30(1)(d) in appropriate cases, we have concluded that the ONFL is not directly related to a method to maintain indigenous biodiversity under s 30(1)(ga). Thus, we conclude that the IBDA-A and ONC policies and objectives descriptions give a sufficiently clear commitment to maintaining indigenous biodiversity whereas the sites identified in the ONFL and IBDA-B notations do not go this far in the current wording of the PRCEP.

ASCV 25

[135] The ASCV 25 covers the same area as the MNEMA for practical purposes. There is no doubt the area has significant cultural values. The values identified include historical (ancestors, battles), natural features, tribes and communities, and biological diversity and fishing among others.

[136] These cultural values include many of those reflected in the RPS and PRCEP scheduling, as well as those identified in the Motiti Island Management Plan. Not every feature or value is derived only from Biological Diversity. Many cultural values include the rich ecotones and ecosystems on and around the island. However, the values recognised in the ASCV are the perceived values to those holding Kaitiaki or other cultural assertion within the area. Although the cultural values are derived from the feature (i.e. significant biological diversity) it is clear from the other scheduling that they are widely acknowledged.

[137] We conclude that the identification of the area as ASCV does not in itself create a direct connection to maintaining indigenous biological diversity under s 30(1)(ga), but clearly some of the ASCV attributes are common to that classification of this environmental resource. These values may require further investigation of provisions under s 30(1)(ga) or 30(1)(d) but at this stage there is insufficient information to justify all of the ASCV 25 for protection under s 30(1)(ga).

MNEMA – High Natural Character

[138] It follows that the High Natural Character (HNC) attribute may also identify values in relation to indigenous biodiversity. The MNEMA includes areas around the islands

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encapsulating areas of outstanding natural character. Many of the MNEMA HNC descriptions are relevant to these areas of outstanding natural character such as:

(i) Abundance of biological life in the seabed and ocean **surrounding the reefs.**

(ii) **Natural reefs and beach** within area washed and sustained by the Pacific Ocean.

(iii) Site specific examinations are recommended to determine the natural character of specific areas...

(iv) The small islands and reefs in the area which binds them together.

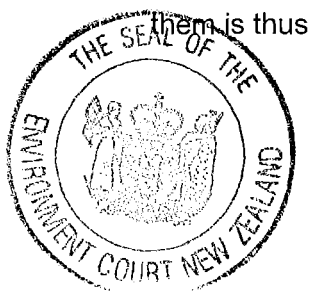
(emphasis added)

[139] The overarching theme of the HNC areas is the support for feature areas of ONC status. However, the need to protect the ONC and IBDA-A does include a curtilage to ensure the protection of the whole ecosystem. In terrestrial cases, this normally requires a buffer area for indigenous vegetation. A similar curtilage area is often applied in the case of historic heritage. Whether further protection within the MNEMA is justified under s 30(1)(d) requires further consideration.

Overall conclusion on protection

[140] We conclude there is sufficient evidence, objectives, policies, and descriptions of attributes and values to warrant protection of indigenous flora and fauna on and around Ōtāiti (including Te Papa, Te Porotiti and Okaparu), Motunau and Motuhaku based on the recognition of biodiversity and natural character values in the RPS and PRCEP. We conclude that the values include a reasonable area around these sites to include the various ecotones and geological features.

[141] We conclude there is insufficient direct evidence, objectives, policies and descriptions to reach the same conclusion as to Taumaihi or other parts of MNEMA at this stage. Further work is required to identify and attribute values for other features with the MNEMA or the MNEMA itself. We leave open the question whether these could be added under s 30(1)(ga) or addressed under s 30(1)(d). For current purposes, the areas we have identified have a direct connection with the maintenance of biological diversity under s 30(1)(ga). Protection of them is thus "strictly necessary" under the RMA.



Controls in relation to the Fishery

[142] The appellant sought broader controls in respect of the balance of the MNEMA area, in particular in relation to fishing activities such as dredging.

[143] Considering the fishing industry evidence, it was clear that the proposed MNEMA is a very small area within a very large fisheries catchment. The relevant fisheries management catchment starts at North Cape and goes to East Cape, and contains many square kilometres of fishing area. Diagrams shown to us of fishing effort would indicate that the area inshore of the drop-off is more popular for fishing, and that would mean that more fishing effort is put into the close inshore areas (including the MNEMA) than further out to sea. Nevertheless, there are many thousands of square kilometres of fishing area.

[144] In particular, we note that when the Harbourmaster imposed a 3 nautical mile (around 16km) constraint around Ōtāiti there is no evidence pointed to by MPI or given to us in evidence suggesting that there was any significant change in the quota takes. It appears simply to have displaced fishing effort elsewhere in the catchment. Given that the MNEMA itself represents an infinitesimal proportion of the fishing management area, any impact is likely to be undetectable. Certainly no evidence has been given to us of any impact.

[145] The controls currently proposed by the Court represent only a small proportion of the MNEMA (less than 30km^2). When one further analyses this in terms of the impact in relation to the areas that we are now considering for controls, we note the following:

(a) These are all essentially reef structures. Although some fishing methods could be utilised around them, there would be difficulties with certain methodologies (including dredging and netting). We are not suggesting that netting has not occurred, but it makes it less likely that these methods would be commonly utilised;

(b) Given that these areas are proximate to areas for avifauna and also other species such as seals, there is a prospect of higher by-catch in these areas. The MPI was not able to provide us with any specific information on the MNEMA area, but we attach as Annexure **F** the information that was provided to us as to by-catch in this area shown by years. Some of these figures are concerning. We note that several species are critically endangered. The list includes seals, dolphins and penguins. There is no way in which we were able to ascertain whether any of these species were taken within the MNEMA or around the IBDA-A areas. However, Dr Stirneman for Forest & Bird noted that some by-catch species roost, or are found within the

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MNEMA. Dr Stirneman emphasises the contribution of coastal birds and seabirds to marine ecosystems, and notes the continuing declines.

[146] Several of the experts, including Ms de Luca for the Regional Council, suggested that protected fishing reserves should constitute a percentage of the total catchment area. Within this particular Fishing subcatchment (009 and 010), it was suggested that there was currently something in the order of 1% reserves, including part of the area around Tuhua (Mayor island) and Paepae. Suggestions were made that something in the order of 10% of the total area would be appropriate as reserve. Even with the inclusion of the new biodiversity areas we have spoken of, the total area of reserves within even this sub-catchment is well below the 10% figure given to us by the expert witnesses.

[147] It seems to us that further evaluation under Method 19A and 19AA of the PRCEP may identify other areas that are appropriate for protection. Clearly MPI has the powers under the Fisheries legislation to create reserves in these areas. In this regard, a request by the appellant for temporary closure around Ōtāiti was declined by the Minister.

[148] Whether or not a protection reserve or management constraint will make any difference to fishing stocks is not a matter for this Court to decide. Our obligation is to ensure that there are provisions to maintain biological diversity that give effect the NZCPS and the RPS, and achieve the objectives and policies of the PRCEP. Both the RPS and the PRCEP seek to avoid adverse effects on those areas of significant biological diversity and outstanding natural character. We are satisfied in this case that this requires the protection of areas around these sites sufficient to ensure that the significant indigenous biodiversity in these identified areas does not suffer adverse effects. The control involved is not related to fishing, although it would include fish along with other fauna within the area of the control.

Enforceability

[149] The Regional Council gave evidence that such a control would be very expensive to implement and enforce. Evidence was given for MPI that enforcement in respect of the existing reserves has proved difficult, and it was not until recent camera installations that offending in this area has been prosecuted. For our part, we consider that the question of whether there should be a rule is separate from the question of its enforceability. We also consider that enforceability can improve with public education, and with improvements in technology.

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[150] We recognise that it is necessary to achieve a balance between preservation of the natural environment in areas where that is justified and its utilisation where that is appropriate. This is a tension that exists not only in the ocean but also within all of the land-based areas of New Zealand. The RMA seeks to balance these interests in a way that provides for the sustainable management of the natural and physical resources for inter-generational benefit and social, economic and cultural wellbeing and health and safety.

General evaluation

[151] Section 32AA requires an evaluation as necessary given the changes envisaged in accordance with s 32 of the Act. This requires that the changes, which are evaluated under s 32, but must be undertaken at a level of detail that corresponds to the scale and significance of the changes. Section 32AA points out that this can be undertaken as part of the decision-making record.

[152] It is premature to undertake a full s 32 report, as this is an interim decision only and final wording would need to be evaluated. Nevertheless, we have already noted that the RMA, NZCPS, Regional Policy Statement and settled provisions of the objectives and policies of the Regional Coastal Plan all militate towards the active protection and enhancement of outstanding natural features, landscapes and significant indigenous vegetation.

[153] The values and attributes of the MNEMA area are not in dispute in this case as they have been well-documented, especially in relation to significant indigenous biodiversity areas A, outstanding natural character and outstanding natural features and landscapes. The balance of the MNEMA is categorised as having either high natural character or having indigenous vegetation of value, though not reaching the standard of significant.

[154] We have concluded, in general terms, that the plan does have a lacuna in relation to protection and enhancement of areas of significant indigenous biodiversity, outstanding natural character and outstanding features and landscapes within the MNEMA. The Regional Council and the MPI say that this lacuna is filled by the Fisheries Act, which gives the Ministry power to control fishing and fisheries, including flora and fauna.

[155] Notwithstanding this, the MPI have to date refused to intervene and take steps to protect this area, notwithstanding the undisputed values recognised not only through the plans but by the ecologists, including those called for the Ministry.

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[156] The mere overlapping of functions between statutes does not itself give primacy to one over the other. There are many examples within the resource management area where there are multiple jurisdictions, not only between various statutes, ie the Building Act, the Reserves Act, the Public Works Act, but also between courts. There are also overlapping functions for declarations between the High Court and the Environment Court, and for stay of proceedings (Rule 35.10, District Court rules). As the declaration decision noted, the Fisheries Act does overlap the RMA, and it was intended that each recognise the other and work together in a pragmatic way. We conclude the functions are intended to be complementary, and interlinked with actions under each intended to take into account and respect the other Act.

[157] Our understanding of the Acts is that, where a particular Act makes a provision, the other Act takes this into account in undertaking rights and duties under it. For example, at Tuhua (Mayor Island) there is a marine reserve put in place under the Fisheries Act. That is a matter which this Court properly has regard to. If there were marine reserves in this area, the Court would take this into account in assessing whether the obligations under the RMA and the Regional Coastal Plan were being achieved. Common examples of this inter-relationship relate to all ports in New Zealand where the port zoning excludes commercial fishing. Alternatively, these matters are controlled by the Harbourmaster. This interaction and overlapping is a common feature. Another prime example is in relation to mussel farming, which require both resource consent and consents from MPI under the Fisheries Act.

[158] Of course, we are unable to reach any conclusion as to the interrelation on this occasion given that that is a matter on appeal to the Court of Appeal, and the outcome of this decision will in part be dependant on the outcome of that. It is acknowledged that we should assume for this decision that there is the power for a council to impose such controls in appropriate cases.

Section 32 analysis

[159] To assess what is the most appropriate response we now undertake a general assessment under s 32. Relying on the guidance from *Colonial Vineyard v Marlborough District Council*,[30] we see the issues as follows:

(a) the council carrying out its function and purpose of the Act in this case under section 66 - 68 of the RMA;

[30] [2014] NZEnvC 55.

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(b) in accordance with the principles of Part 2 under s 66(1)(b);

(c) give effect to the National Policy Statement, the New Zealand Coastal Policy Statement under s 66(1)(ea) and s 67(3)(b);

(d) give effect to the Regional Policy Statement under s 67(3)(c);

(e) have regard to MPI's interest in the coastal marine area under s 66(2)(b);

(f) have regard to the actual or potential effect on the environment of the activities, in particular any adverse effects under s 68(3);

(g) the most appropriate method for achieving the objectives and policies of the Regional Coastal Plan, having regard to efficiency and effectiveness and benefits and costs under s 30(1)(b) and (2)(a) and (b); and

(h) the risk of acting or not acting under s 32(2)(c).

Carrying out the Council's function and purpose

[160] At the heart of the Council's function under s 30(1)(a) is methods to achieve integrated management of natural and physical resources of the region. This includes preparation of objectives and policies in relation to actual or potential effects, objectives and policies and methods for maintaining indigenous biological diversity (s 30(1)(ga)). Arguably, under ss 30(1)(d) and (4), subject to ss (2) (this topic is currently on appeal), as well as issues in relation to (ga). We do not wish to revisit this issue for current purposes, except to note that, if there is such power then, currently, it is clear that the Council has not sought to introduce methods, although the issues are recognised in the objectives and policies. This recognition is under the NZCPS, RPS and PRCEP. The introduction of methods in the PRCEP in relation to outstanding natural features and landscapes is less clear and appears to arise more directly under s 30(1)(d), and is not relevant for this analysis.

[161] It is for this reason that the Court has sought to investigate what methods may be appropriate to achieve the policies and objectives in relation to those areas identified as containing IBDA-A and ONC. In this regard, we have concluded that the power under s 30(1)(ga) is to maintain indigenous biodiversity. In appropriate circumstances, this may include an area beyond the site itself, to create either a protective or buffer zone. Such an approach has parallels in the protection of significant indigenous vegetation, with buffer zones being planted. It is even more pointed in relation to aquatic biodiversity, where there is clear

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evidence that fish circulate through an area and use different parts of that area for different purposes. We have already cited examples relating to seal feeding grounds, bird feeding grounds, fish spawning and crayfish feeding. We also are satisfied that the area of broader biodiversity is a factor supporting the indigenous biodiversity within the IBDA-A areas. This means surrounding feeding grounds, different substrate and features, i.e. pinnacles, rocky crevices, to support a variety of biodiversity that supports the significant biodiversity within the core area.

According with Part 2

[162] In reaching a decision as to the most appropriate provisions, we are guided by the NZCPS, RPS and undisputed objectives and policies of the PRCEP. The Supreme Court[31] has discussed the NZCPS policies, in particular 13(1)(a) and (b) and 15(1)(a) and (b). Both of these policies relate to s 6 RMA, and refer to ss 6(a) and 6(b) in particular. As noted by the Supreme Court, ss 6(a) and (b) preserve or protect areas from inappropriate subdivision, use and development. Section 6(c) protects areas of significant indigenous vegetation absolutely.[32]

[163] The Court noted "In this way, s 6 underscores the point made earlier that protection of the environment is a core element of sustainable management."

[164] In *McGuire v Hastings District Council*, Lord Cooke for the Council said:

> ...The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and these include particular sensitivity to Maori issues. By s 6, in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, **and protection of natural and physical resources**, shall recognise and provide for various matters of national importance, including "(e) [t]he relationship of Maori and their culture and traditions with their ancestral **lands, water, sites, waahi tapu [sacred places', and other taonga** [treasures]".
>
> [22] By s 7 particular regard is to be had to a list of environmental factors, beginning with "(a) Kaitiakitanga [a defined term which may be summarised as guardianship of resources by the Maori people of the area]". By s 8 the principles of the Treaty of Waitangi are to be taken into account. These are strong directions, to be borne in mind at every stage of the planning process. The Treaty of Waitangi guaranteed Maori the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they desired to retain...

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[31] *McGuire v Hastings District Council* (2001) NZRMA 557.

[32] *Environmental Defence Society v NZ King Salmon* (2014) NZRMA 195 at [28] and [61].

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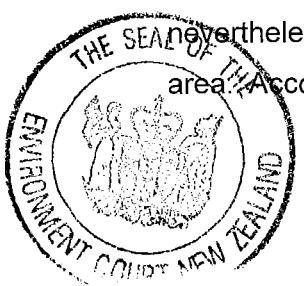
[165] We have already identified various parts of the NZCPS that reflect the provisions of ss 6(e), 7(a) and 8 of the Act in Part 2. These relationships, roles and attributes are clearly recognised, not only in the NZCPS but also the RPS and the Objectives and Policies of the PRCEP. Nor do we understand the Supreme Court to suggest that ss 6(e), 7(a) and 8 are subservient to s 6(a), (b) and (c). In this case, however, these values overlay each other in MNEMA to varying degrees.

[166] We do not understand the Supreme Court decision to have derogated from *McGuire*, although they do not discuss the Privy Council decision. Both decisions reinforce Part 2 of the Act and its single purpose. We do not understand the Supreme Court to suggest that the NZCPS overrides Part 2 of the Act, but that the NZCPS gives effect to Part 2 in more detail. In this case there is no doubt as to a unity of purpose between Part 2 (and s 6(c) in particular) and NZCPS and the coastal policies 11, 13 and 15 generally, and specifically Policy 11(a).

[167] In this case we are unanimous that the NZCPS objectives and policies mandate the maintenance of the indigenous biodiversity of the three identified areas. We have concluded that protection is the most appropriate method to achieve the outcome.

[168] In reaching the conclusion, we are not faced with conflicting provisions of Part 2 of the Act or within the NZCPS. The only limit suggested is that in s 30(2). Pending further planning work (if valid under the declaration under appeal) further controls within the MNEMA might be justified. However, at this stage, the evidence as to the concatenation of values including significant indigenous biodiversity values is clear and unequivocal. That being the case, we conclude that applying Part 2 of the RMA militates the same conclusion as our more specific evaluation, namely maintenance of the significant indigenous biodiversity values by protection of the three areas identified. While this is under s 30(1)(ga) of the Act, there are no conflicting values that are not addressed by the proportionate response adopted.

[169] It is in this regard that we see the injunction under Part 2 (s 6c in particular) as reflected in the NZCPS (Policy 11(a) in particular) as going beyond just protecting any particular item itself, but in appropriate cases protecting it by maintaining a broader view of biodiversity. We are satisfied from the ecological evidence that the IBDA-A areas are supported by broader areas beyond them, which create habitat not only for mammals and birds, but also for fish species and the other molluscs, sponges and fauna that make up the ecotones within these areas. While not in themselves reaching the standards of significant, these surrounding areas nevertheless display features that support biodiversity elements of the significant indigenous area. Accordingly, we have concluded that to achieve protection of the significant biodiversity



areas -A themselves, a broader context needs to be taken into account.

[170] In this regard, we accept that there is no particular physical area that is established. The appellants suggested three kilometres; other witnesses suggested as little as one. The general consensus of the ecologists was that the larger the area, the better the core values of the significant indigenous area would be protected.

[171] For our part, we have concluded that we should try and include the broader substrate and combination of elements that support the significant area. In this regard, this is rocky reefs, pinnacles, some areas with crevices and rocks, and some area of sandy bottom. It is for this reason that we conclude that the entire MNEMA should not at this stage be included, but rather that areas around each of the core three features we have discussed (Motunau and Motuhaku/Schooner Islands), and a broader range of the reef structure around Ōtāiti, is appropriate. Although we note that areas such as Taumaihi and other reef structures to the south and west were identified by the parties, we do not consider that there is sufficient evidence to satisfy us that these should be protected as significant areas of indigenous biodiversity. They have been rated as having high natural character rather than outstanding, and on Taumaihi at least there is IBDA B classification.

[172] Until there is greater clarity about the RMA Plan response in relation to broad areas displaying high character as opposed to meeting the categories of significance, we conclude that the obligation under 30(1)(ga) is to protect the significant areas (by reference to NZCPS) and the immediately supporting ecotones surrounding them. This is entirely consistent with Part 2 of the Act.

Give effect to the National Policy Statement

[173] In this regard, we have had particular regard to the NZCPS. Whilst we recognise that there are a series of objectives and policies, we note that objectives 1, 2 and 3 of the NZCPS support provision in this case, particularly as kaitiaki support the imposition of controls. We recognise the public open space qualities and recreational opportunities identified in objective 4 and the broader enablement of the people and communities under objective 6. It is for this reason we have taken a balanced approach.

[174] In protecting the three areas we have identified, we recognise that this does not preclude recreational fishing or diving over other areas within the MNEMA. It would also not prevent commercial fishing in those areas. This includes, importantly, the diving wreck of

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Taioma to the south. In particular, we recognise that recreational opportunities in the significant areas would not be prevented, only certain activities (the removal of flora or fauna).

[175] We conclude this gives the potential for recreational sightseeing diving where species are not taken but can be photographed or viewed. This will mean that divers would still be able to utilise the Rena wreck, although they could not remove flora or fauna. This would be compared with the area to the southwest of the island and south where diving and fishing would be permitted. For example, the Taioma wreck would enable recreational spear fishing. Also, recreational and cultural fishing around the island itself and over most of the waters within the MNEMA would still be allowed, providing in particular for cultural fishing.

[176] Although we recognise that those who hold kaitiaki acknowledged that a control over removal of flora and fauna would also apply to them, they too recognised the tension between the cultural taking of kai moana and the importance of preserving their taonga for the future. We consider that the potential of protecting these key areas provides a proper balance, not only in environmental terms, but in cultural terms. This will allow kaitiaki to continue to use kai moana, although it will limit them from certain areas – particularly to the north and east.

[177] We have concluded that this is a proportionate response to the issues, recognising the inherent tension we have identified in the objectives of the NZCPS. The policies of the NZCPS reflect the same approach, and we recognise that the area is identified as of significance in cultural terms under policy 3, and that the Court should adopt a precautionary approach where effects of activities are unknown or little understood.

[178] In this regard, the introduction of protection for the removal of flora or fauna over part of the MNEMA gives an opportunity to examine the outcomes of the approach, and particularly assess whether or not the rules are:

(a) workable;

(b) have an impact upon biodiversity; and

(c) further the purposes of the RMA (and possibly the Fisheries Act).

[179] In our view, this creates a potential for integration and collaboration between MPI and the Regional Council, and also with other parties having an interest in this area. We recognise that the tensions that exist here are ones that are reflected elsewhere in New Zealand and worldwide with challenges to the marine biodiversity. We consider that the achievement of

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Policies 11, 13, 14 and 15 of the NZCPS would be further enabled by this proportionate response while recognising the need to maintain other public interests in the area such as fishing and diving.

Give effect to the Regional Policy Statement

[180] We have already identified the attributes and values recognised in relation to this area in the RPS, and the particular threats arising to flora and fauna generally. The Outstanding Natural Character sites are identified within the MNEMA which is of high Natural Character generally. In taking a proportionate response, we recognise that this will displace commercial and recreational fishing (whether from vessels or by divers) from these three significant areas. We are satisfied that the displacement is not unreasonable, given there are other areas around Motiti that would still be available.

[181] Most particularly, we consider that the values and attributes recognised in the RPS will be recognised in appropriate methods under s 30(1)(ga), given that the RPS leaves the implementation of the objectives and policies to the Regional Coastal Plan.

Actual and potential effects on the environment

[182] The ecologists appeared to recognise there is a potential for significant benefits if areas are closed to the removal of flora and fauna. Preventing the removal of fish species close to IBDAs may lead to the better protection of the mammal and bird species in the area. Whilst we recognise that there may be some difficulties with enforcement, we are aware from previous cases that most of the significant areas in question are visible from Motiti island itself. High resolution cameras would be able to view people entering this area and staying in this area. We also recognise that these issues of enforcement are not only difficulties for the Regional Council controls, but are ones that the MPI has had in enforcing the marine reserves. We understand from witnesses for the MPI that the introduction of high resolution cameras has enabled the prosecution of persons fishing within the marine reserves in the recent past.

[183] We do recognise that during the initial period there is likely to be a continuing incursion into this area, particularly from recreational vessels. Nevertheless, we have concluded that the need for further education and enforcement cannot be a reason not to act. The first stage will be for the tangata whenua, particularly kaitiaki, to embrace the controls and seek to encourage others to do so. The appointment of honorary fishery officers might assist in this regard, as would an ongoing education process. We note that similar difficulties have arisen around Mt Maunganui with the Taiapure area, but consider that engagement with recreational

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boating, fishing and diving clubs will likely see a gradual embrace of any changes. We say this because we see significant tourist and recreational opportunities from creating protections around the IBDA areas. If this does lead to an increase in fish and predators, ie dolphins, seals etc, this in turn will increase sightseeing opportunities, especially for tourism.

[184] Overall, we see the adverse effects of protection of the three significant areas as minimal. In this regard, we consider that the displacement of commercial and recreational fishing is likely to be minimal. In the context of the catchment area for MPI, it is negligible. No evidence was produced to us of any change during the period that the area was closed for Rena. We see, on the other hand, significant opportunity for positive effects, particularly for tourism and recreational diving, where opportunities for fishing can be provided for within the MNEMA and also opportunities for sightseeing only. Overall, we have concluded that the effects are likely to be positive, on balance, particularly in the medium to long term.

Appropriateness, having regard to efficiency and effectiveness including benefits and costs

[185] As is already clear, we have concluded that there is significant potential for economic benefit to tourism in particular, and recreational diving. The opportunity to combine a visit to one of the world's more significant wrecks, with the viewing opportunities for biodiversity, including pelagic fish, in our view has the potential for significant long term economic gain for the Tauranga region.

[186] On the other hand, we consider that the displacement of commercial and recreational fishing to other areas around Motiti is likely to be minimally affected. One of the features that several witnesses noted was the "halo" effect of such bans around marine reserves. There has been some recent evidence in relation to Goats Island to support the contention that species that breed within the reserve areas can repopulate areas beyond it, and therefore create ongoing fishing stock. While we recognise that potential, at this stage we do not consider the evidence to prove this to be conclusive.

[187] Overall, however, we are satisfied that the displacement of commercial and recreational fishing is so minor as to be regarded as minimal. The areas in question from our calculations yield an excluded area of around 30km^2. When taken in the context of even the Bay of Plenty area within the shelf, this is significantly less than 0.1 percent. When we take it in regard to the other reserve areas under the Fisheries Act, it leads to a modest increase, but well below the 10 percent of catchment suggested by ecologists for protection of marine life.

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[188] We also recognise that when talking about efficiency and effectiveness and benefits and costs, there is anecdotal evidence supported by many of the Māori witnesses as to the ongoing depauperisation of aquatic biodiversity. There was evidence in relation to kina barrens, which have taken over and reduced the marine flora through the depauperisation of the fish species who predate on the kina.

[189] We conclude that the assessment of efficiency and effectiveness and benefits and costs may include economic issues, but it looks at the matter in much broader terms. Although the effectiveness of the areas for removal of flora and fauna will depend upon the extent of compliance, this is also true of all marine reserves. In terms of the benefits and costs, we consider that in the medium to long term there are likely to be more benefits in terms of the potential for tourism and recreational diving/viewing than there are in terms of reduction of fishing potential. There may even be the possibility of an overall biodiversity increase seeded from such areas.

[190] We note that there has been no special management of this area for fishing purposes by MPI, and this is simply included as part of the entire subcatchment, which is treated as part of the catchment as a whole for reporting purposes. Given that the closure in the past led anecdotally to witness evidence of a significant increase in population around Ōtāiti, and the fact that we have had no evidence of reduction in fish catch for the catchment, we must conclude that the costs, if any, are minimal.

Risk of acting or not acting

[191] The Court was disturbed to see the level of by-catch of protected animals reported as by-catch by the MPI in Annexure **F**. Some of these species are critically endangered. MPI does not retain figures as to the particular places in which these species were taken, or has not disclosed those to the Court. We are unable, therefore, to clarify whether the seals that have been lost were those which hauled out on Ōtāiti reef and Mt Maunganui, and whether the bird species involved include birds nesting within the IBDA areas identified around Motunau and Motuhaku.

[192] We also received data showing the fishing levels for various species in relation to the MPI stock assessment model. We attach as Annexure **G** the Snapper graphs of reported commercial landing and stock trajectory, which illustrate the decline of this species. While not endangered, the illustration is consistent with the concern for the loss of biodiversity generally in the marine area segment, which includes the Bay of Plenty.

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[193] We recognise that including relatively small areas to protect the IBDAs, this does not necessarily include all of the habitat for these mammals and bird species, and may not substantially change the risk. Nevertheless, we note the evidence of several of the ecologist witnesses that fishing effort is as real for mammals and birds as it is for the fishing industry. In short, when birds are nesting, they will seek to feed as close to their nest as possible. For seals and other mammals around Ōtāiti, they would seek in the first instance to feed adjacent to the island or reef before venturing further. An increase in aquatic biodiversity around the IBDAs themselves should reduce fishing effort and thus maintain the species closer to their nesting or haulout areas. Overall, we see a continuing decline within the IBDA-A areas as unacceptable, and a real risk of not acting.

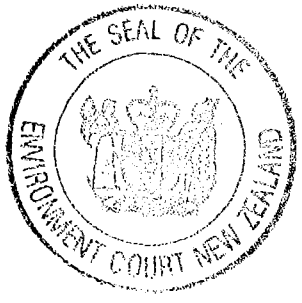
[194] We consider that the risk of acting in relation to a relatively small area is small, but gives the opportunity to begin monitoring both as to compliance and also as to any changes in species. In particular, we note that ongoing monitoring in respect of the area around Ōtāiti has been taking place as an outcome of the Rena wreck. Although that consent is currently on appeal to the High Court, there is the potential for ongoing research (by the Regional Council or others if necessary) to review species' abundance as part of such ongoing monitoring given the establishment of clear baselines.

Overall conclusion

[195] The key purpose of actions under the RMA is to achieve sustainable management of physical and natural resources.

[196] We conclude that the protection of the areas we have identified, focussed in each case around the IBDA-A areas in the PRCEP and ONC areas in the RPS, with the MNEMA gives the potential to maintain, protect and even possibly enhance these significant areas. The protection from removal of flora and fauna for areas and Ōtāiti (including Te Papa, Te Porotiti and Okaparu) Motunau (including reef structure nearby) and Motuhaku.

[197] Given the combination of cultural, natural character, outstanding natural features and landscapes and biodiversity, we consider that an appropriate response in terms of the Regional Coastal Plan is warranted. More particularly, we do not consider that the protection of the IBDA-A and ONC sites and the area around it is precluded given s 30(1)(ga), but recognise that this is an issue on appeal.



[198] In the event that a superior court conclude that such provisions can be imposed, we conclude that rules could be crafted which adopt a proportionate approach as described by us to prevent the removal of flora and fauna within the significant areas outlined.

[199] At this stage we do not think there is sufficient justification in terms of the Regional Coastal Plan to justify the imposition of controls outside those particular areas. We do not preclude that such provisions could be considered and imposed in the future, but this would require a more detailed assessment and approach within each of these areas. This might be undertaken through the adoption of a spatial plan approach, but at this stage the only area before us is that for the MNEMA.

Concluding comments

[200] Having concluded that there should be such areas protected by rules, we acknowledge that this decision must be interim and must await decisions of principle from superior courts.

[201] Nevertheless, the Court is concerned that the further consideration of these issues may be delayed unnecessarily. It does appear to us appropriate that the Council should consider how it might incorporate such provisions within the Plan in light of the suggested solution of the appellant Exhibit B, and the conclusions of this Court.

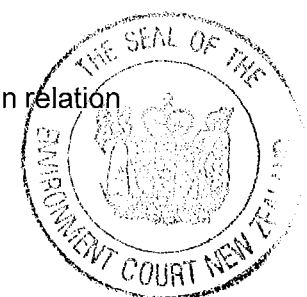
[202] We appreciate that any such discussions would have to be without prejudice to any position that may be resolved in other proceedings. It may be that the parties can reach a practical outcome for the purposes of this case, given the recognition during the hearing that the appellant's position had narrowed somewhat and the Court's conclusion to focus any areas of protection around NZCPS Policy 11(a) areas.

[203] We note the following directions:

A: On an interim basis, the Court concludes that changes to the Regional Coastal Plan would be appropriate as follows:

1. The damage, destruction, removal of flora and fauna within the three Marked Areas (Annexure **A**) of the Motiti Natural Environment Management Area (**MNEMA**) in the Bay of Plenty proposed Regional Coastal Environment Plan (**PRCEP**) shall be prohibited.

2. The imposition of controls within the balance of the MNEMA, in particular in relation



to fishing methods that may damage the benthic environment or where they impact particularly on sea birds or other marine mammals, shall be part of the investigation and reporting undertaken in accordance with Methods 19 and 19AA of the Plan, taking into account the values already recognised and provided for in terms of the Regional Policy Statement and Plan.

B: The biodiversity, natural character and cultural values of an area in the CMA are able to be recognised by multiple methods under both the RMA and other legislation. It is intended that the Marked Areas are interim measures while various bodies seek to adopt an integrated approach to the avoidance of adverse effect on those values, and that a plan change or other mechanisms may be introduced in due course, either as part of the review process included in this plan, or by other bodies in conjunction with the Regional Council and other parties.

C: This decision is subject to:

(a) the appeal on jurisdiction being resolved; and

(b) wording being finalised to achieve the decision to be incorporated within the Plan.

D: To this end the Court directs:

1. The Council is to draft appropriate provisions and circulate those within thirty (30) working days (including Map(s) text and 19AA).

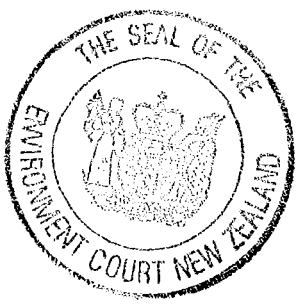
2. The draft provisions are to be circulated to the parties for comment, and the parties have thirty (30) working days to provide their responses to the Council.

3. The Council is then to assemble the comments and provide to the Court and parties its prepared provisions, including:

(a) what aspects currently require decisions of superior courts; and

(b) its reasons for adopting the provisions rather than those proposed by other parties.

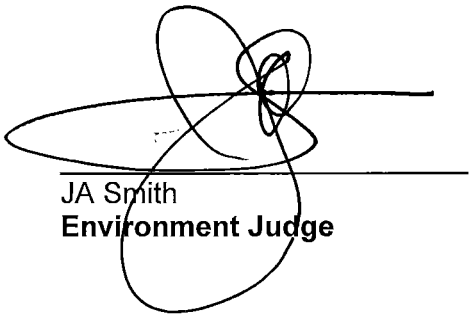
This shall be provided to the Court within a further twenty (20) working days.



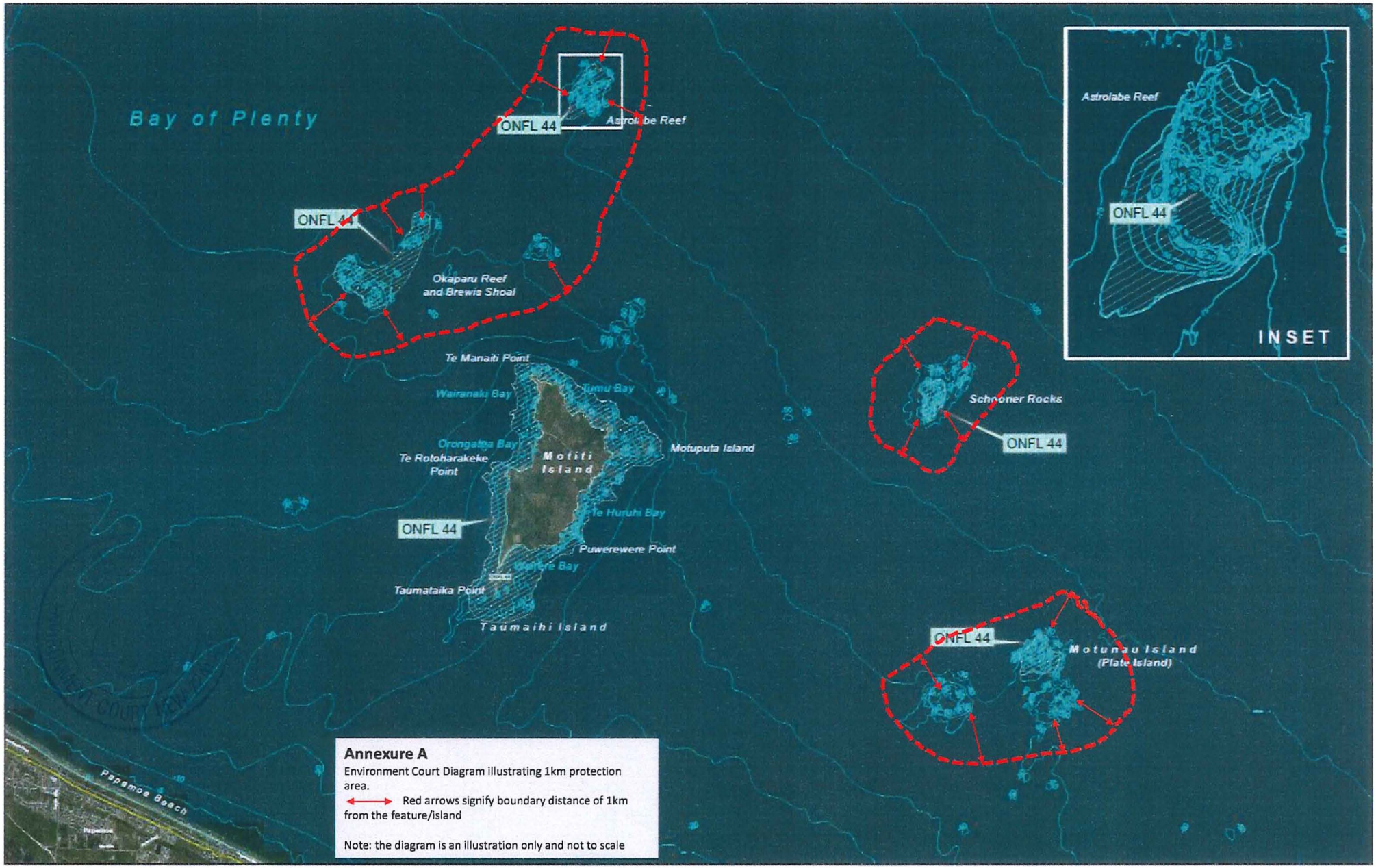
4. The Court will consider the documents and any decision or pending decision of Superior Courts on jurisdiction. It may then issue further minutes/directions or convene a telephone conference.

E: Costs are reserved, pending substantive resolution of the appeal.

For the court:



JA Smith
Environment Judge

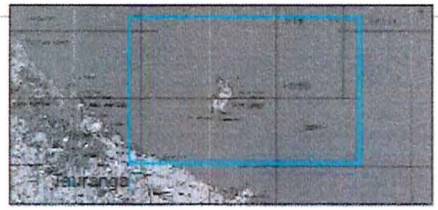


Annexure A

Environment Court Diagram illustrating 1km protection area.

↔ Red arrows signify boundary distance of 1km from the feature/island

Note: the diagram is an illustration only and not to scale



Bay of Plenty REGIONAL COUNCIL

Projection Information
This map is drawn in the New Zealand Map Grid Projection, a minimum error conformal projection.
Horizontal datum: NZGD2000

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43a_Motiti Island

Proposed Regional Coastal Environment Plan - Landscape

Published May 2015
GIS_459085

Position of the parties in relation to the marine spatial planning appeal topic as of 5 December 2017

The attached provisions from the Proposed Bay of Plenty Regional Coastal Environment Plan (relevant excerpts only) incorporate changes resulting from:

- Decisions issued by the Environment Court.
- Consent orders issued by the Environment Court in order to resolve appeals, and draft consent orders lying with the Court pending the resolution of other appeals.
- Wording proposed by the Regional Council in response to the direction contained in the interim decision on the Iwi Resource Management topic.
- Wording proposed by the Regional Council to address the outstanding matters to be determined under the Iwi Resource Management topic.
- Wording proposed by the Regional Council in relation to the Marine Spatial Planning topic.
- Wording proposed by all other aprties in relation to the Marine Spatial Planning topic.

Key:

Wording which is not underlined reflects the Decisions Version as amended by settled appeals (consent orders) and final or interim decisions of the Environment Court. Where decisions have been appealed these are indicated by a footnote.

Wording proposed by **BOPRC** in relation to the Iwi Resource Management topic (still to be determined following the Court's interim decision):
New text is shown underlined, ~~deleted text appears as strikethrough~~. Text is not highlighted.

Wording proposed in relation to the Marine Spatial Planning topic and accepted by all parties:
New text is shown underlined, ~~deleted text appears as strikethrough~~. Text is highlighted in green.

Wording proposed in relation to the Marine Spatial Planning topic in the amended evidence of Grame Lawrence for **MRMT** (and not agreed by all other parties):
New text is shown underlined, ~~deleted text appears as strikethrough~~. Text is highlighted in blue.

Wording proposed in relation to the Marine Spatial Planning topic in evidence of **BOPRC** (and not agreed by all other parties):
New text is shown underlined, ~~deleted text appears as strikethrough~~. Text is highlighted in yellow.

Wording proposed in relation to the Marine Spatial Planning topic in evidence of **MAL** (and not agreed by all other parties):
New text is shown underlined, ~~deleted text appears as strikethrough~~. Text is highlighted in magenta.

Wording proposed in relation to the Marine Spatial Planning topic in position statement of **NMHT & Ngāti Ranginui** (and not agreed by all other parties):
New text is shown underlined, ~~deleted text appears as strikethrough~~. Text is highlighted in orange.

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(d) Improve the capacity of dune systems and other ecosystems to withstand coastal hazards and relevant climate change effects.

(e) Promote well-formed public access ways and restrict ad hoc access in sensitive environments, through provision of information, signage, education and involvement of communities and tangata whenua.

(f) Implement protocols with tangata whenua that have particular regard to the role of kaitiaki and pūkenga in the management of coastal resources;

(g) Promote tangata whenua needs for papakāinga, marae, kura moana whare matauranga, whare wānanga and associated developments in the coastal environment and facilitate provision for these developments where appropriate

Implementation responsibility: Regional Council.

1.5 Cultural and Historic Heritage

Method 16 Map or otherwise identify customary interests protected under the Marine and Coastal Area (Takutai Moana) Act 2011.

Implementation responsibility: Regional Council.

Method 17 Work with tāngata whenua, heritage agencies, and city and district councils to determine the most appropriate means of protecting sites of cultural heritage value without the need for their explicit identification.

Implementation responsibility: Regional Council.

Method 17B: Regional Council will, on a case-by-case basis, consider the transfer and/or delegation of RMA functions, powers or duties, in relation to the management of those characteristics which have been identified in the CMA as being of special value to tangata whenua.

Implementation responsibility: Regional Council.

Method 18A Work with tāngata whenua to identify degraded cultural sites in the coastal environment which tāngata whenua wish to restore for natural heritage and cultural reasons.

Implementation responsibility: Regional Council.

Method 19 In consultation with tāngata whenua and other heritage agencies organisations or groups that have an interest in historic heritage and maritime history, maintain and update the regional heritage inventory in Schedule 7. This will include a review of Appendix 2: List of Heritage Places for Information Only in the Coastal Historic Heritage Review Project: Historic Heritage Inventory 2006 to determine whether any places should be included in Schedule 7.

Implementation responsibility: Regional Council.

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New Method 19AA: Council will consider proposals from tāngata whenua ~~to investigate the development of~~ for additional spatial mechanisms for the coastal marine area when a proposal is submitted that will:

i. Enable tāngata whenua to exercise kaitiakitanga in accordance with matauranga Māori;
ii. Identify sites of significance or special value to Māori for protection and/or restoration;
iii. Give certainty to future planning decisions;
iv. Provide for the social, economic and cultural well-being of tangata whenua having regard to the wider community; and
v. Make appropriate provision for current and future public access, infrastructure needs and existing uses and activities.

When considering ~~whether to investigate~~ such a proposal, and whether or not to implement it through a plan change process, Council will take into account:

(a) Current and future Treaty Settlements;
(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 hapū management plan;
(e) The level of support for the proposal from the community and other tāngata whenua that have a relationship with the area;
(f) Current trends including urban development capacity and current and future infrastructure needs; and
(g) The extent to which the proposal provides for the social, economic and cultural well-being of the wider community.

~~Advice Note~~

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

Implementation responsibility: Tangata whenua and Regional Council.

Method 19A: In consultation with tangata whenua:

(a) Review Schedule 6 Areas of Significant Cultural Value;
(b) Identify areas or sites in the coastal environment of significance or special value to Maori;
(c) Identify cultural landscapes and features in a manner consistent with Policy 15(c)(viii);
(d) Investigate the planning mechanisms and other methods available to provide protection to identified areas and sites and support customary activities in ASCV;
(e) Investigate the planning mechanisms and other methods available to support the social, economic, cultural and recreational aspirations of tangata whenua in the coastal environment;

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(f) Identify options for providing for the expression of the relationship tangata whenua as kaitiaki have with their identified taonga such as water, wāhi tapu and kaimoana.

The review, identification and investigation should:

(a) Incorporate matauranga Maori as directed by NZCPS Policy 2(c);

(b) Use the assessment criteria contained in the RPS Appendix F: Set Maori culture and traditions; and

(c) Give consideration to the most appropriate provisions in the Plan for addressing matters arising out of the review.

Implementation responsibility: Regional Council.

1.6 Recreation and Public Space

Method 20 Support and work with community groups, tāngata whenua and recreation agencies to manage recreation issues, particularly in high use areas, and promote the use of non-statutory and Local Government Act enforcement options where this is the most effective method for achieving the objectives and policies.

Implementation responsibility: Regional Council.

Method 21A: Regional Council will work with tangata whenua to identify those areas of the coast which may need to have public access limited, to protect significant iwi values that are vulnerable to disturbance.

Implementation responsibility: Regional Council and tangata whenua.

Method 21 Work with city and district councils to:

(a) Avoid any new, and rationalise existing, informal access ways.

(ab) Identify appropriate vehicle access points and restrictions in the coastal environment consistent with RPS Method 71.

(b) Identify priorities for taking management or enforcement actions where vehicle access is causing damage or safety concerns, including working with New Zealand Police and territorial authority staff to enforce Rules and Bylaws at a level sufficient to avoid damage or accidents.

(c) Ensure official public access ways are marked and provide related public information on the location of access ways.

(d) Provide the most appropriate and effective methods to control vehicle use on beaches, foreshore, seabed and adjacent public land, including through the use of district plan or reserve plan provisions, or Local Government Act or Reserves Act bylaws.

(e) Provide and maintain formal boat launching facilities, recognising the demand for and the constraints of providing such services.

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Annexure C – RPS Maps 21 and 21A. Motiti Natural Environment (MNE) is delineated and shown on Map 21a in Appendix I, Regional Policy Statement

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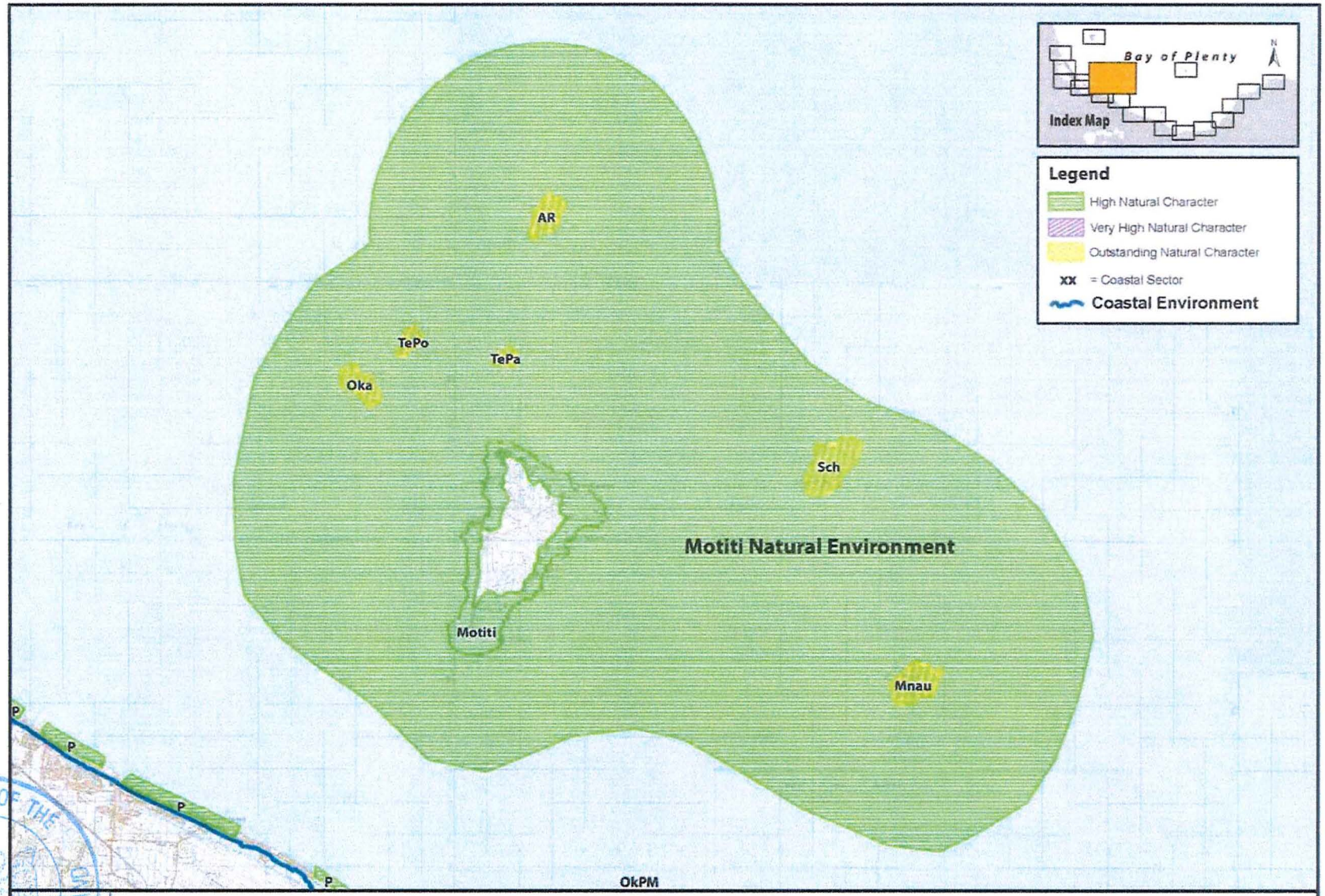

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REGIONAL POLICY STATEMENT (GIS-458847, December 2014) Map 21a of 35

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Coastal Environment & Natural Character

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Annexure D – Natural Character Attributes RPS

Appendix J – Natural Character Attributes

Explanation
The following table contains attributes and elements. The attributes are titled: water, land cover and land use, terrestrial biotic, abiotic systems and landform, perceptual and are described below:

Water
Includes the water body of the CMA (including surf breaks) and landforms within the active coastal interface and below MHWS (e.g. rocks, reefs, stacks, channels). This attribute also includes habitats, biota and natural processes. The attribute excludes water bodies above MHWS and considers the degree of modification such as changed water courses, earthworks, presence of built structures and earthworks. This attribute also includes any previously identified significant marine environments.

Abiotic systems and landform
This attribute includes the degree of activeness of the tide, waves and current as well as wind and terrestrial coastal formation, erosion and river mouth processes including sedimentation.

Land cover and land use
This attribute includes land cover and associated land use including the composition, distribution, and condition of land cover including visible presence of indigenous and exotic species. This attribute also includes settlements, roads and other built forms.

Terrestrial biotic
The attribute includes estuaries, wetlands and terrestrial areas and is driven by ecological factors. It includes expression/appearance of natural ecological processes ranging from dominant to non-existent. Diversity of species, communities and habitats are a part of this attribute.

Perceptual
This attribute concerns the experience in seeing /feeling and perceiving the coastal environment. It includes aromas, aesthetics, auditory, sense of wilderness, remoteness, isolation and includes ephemeral human activity such as recreation, commercial activities, fishing and marine activities.

				Attributes (with elements that enhance and diminish natural character)				
Name	**Level of natural character**	**General description of area**	**Elements that describe natural character**	**Water**	**Land cover and land use**	**Terrestrial biotic**	**Abiotic systems and landform**	**Perceptual**
		the feature.						
Motuhaku Island (Sch) Map 21	Outstanding	The offshore island of Motuhaku is a relatively small rocky islands with some coastal vegetation located upon the upper plateau of the islands.	1 Vertical rocky cliffs demonstrating the natural coastal processes. 2 Native flora and fauna dominate these islands and contribute to the remoteness.	1 Highly dynamic coastal waters around the steep cliffs, creating caves and striking rock formations around the island.	1 No structures or man-made landuse practices occur on the island.	1 The island coastal margins support a range of seabirds, shorebirds and other native bird species.	1 Excellent example of natural processes with no modifications to the coastal processes.	1 Very low level of activity and visible built form. 2 A high sense of remoteness and wilderness are gained from its distance from shore and unmodified state.
Motunau Island (Mnau) Map 21	Outstanding	The offshore island of Motunau is relatively small rocky islands with some coastal vegetation located upon the upper plateau of the islands.	1 Vertical rocky cliffs demonstrating the natural coastal processes. 2 Native flora and fauna dominate these islands and contribute to the remoteness.	1 Highly dynamic coastal waters around the steep cliffs, creating caves and striking rock formations around the island.	1 No structures or man-made landuse practices occur on the island.	1 The island coastal margins support a range of seabirds, shorebirds and other native bird species. The Island is unmodified and has regional significance. 2 Plate (Motunau) Island is unmodified and has national significance.	1 Excellent example of natural processes with no modifications to the coastal processes.	1 Very low level of activity and visible built form. A high sense of remoteness and wilderness are gained from its distance from shore and unmodified state.
Motutau Island	Outstanding	Motutau Island also	1 Vertical rocky	1 No modification	1 No structures or	1 The indigenous	1 Excellent example	1 Very low level

				Attributes (with elements that enhance and diminish natural character)				
Name	**Level of natural character**	**General description of area**	**Elements that describe natural character**	**Water**	**Land cover and land use**	**Terrestrial biotic**	**Abiotic systems and landform**	**Perceptual**
Astrolabe Reef (AR) (Map 21)	Outstanding	Astrolabe Reef is located 25 km northeast of Tauranga, some 7 km north of Motiti Island. The volcanic reef structure rises some 70 – 75 m from the seabed and breaks the surface at low tide. The extent of the reef is broadly mapped at points between the sandy bed and the volcanic structure. The reef is renown for its abundant marine life and is a regular haulout for NZ fur seals. More recently the reef is renown nationally for the grounding of the now shipwreck *Rena*.	1 Dominant volcanic processes and formation of subtidal reef system. 2 Dynamic coastal processes occurring. 3 The natural environment dominates the reef with the only visible modification due to the grounding and wreckage of the Rena.	1 No modification to open coastal water body surrounding the reef. 2 The reef breaks the water surface at low tide creating large breaking waves in rough seas. 3 Reef has regional significance for seal use and fish communities with high abundance and diversity. 4 Some modification due to the presence of Rena wreckage and sediment contamination.	1 Does not apply.	1 Does not apply.	1 Water movement around the reef enhances natural character. 2 The physical structure of the reef remains largely unmodified. The rock formation is expressive of the formative natural processes created by volcanic activity and the ocean. 3 Vertical rock faces, underwater caves and tomes and large boulders are distinctive of the natural processes. 4 The Rena shipwreck has damaged a small part of the overall physical reef structure.	1 Some level of activity around the reef, as a popular dive and fishing location, otherwise a high level of remoteness exists around the reef. 2 Activities related to the Rena grounding. 3 Breaking waves across the reef outcrops with remnant of ship wreck below the waterline 4 Perceptions are of a natural reef system impacted by the Rena grounding and wreckage. The wreck is now not visible above water and perceptual values relate to the underwater experience of visitors.

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Aro i te Moana - Marine Natural Character Assessment				*Ngā āhuatanga motuhake* - Attributes (with elements that enhance or diminish natural character)			
Te Ingoa o te Wāhi	*Ko te toitū o ngā āhuatanga taketake o te wāhi*	*He pitopito kōrero mō ngā āhuatanga o te wāhi*	*Ko ngā mana atua, mana tangata hoki i pū mai ai ngā āhuatanga taketake*	*Te Wai tai - Takutai Moana* Coastal Water & Seabed		*Te Korowai o Papatūānuku me ōna āhuatanga ahurei*	*Ngā āhuatanga tuku iho*
Name of site	*Level of Natural Character*	*General description of the area*	*Elements that describe natural character*	*Marine biotic processes*	*Marine abiotic processes*	*Landcover & Use Terrestrial Biotic*	*Perceptual*
Motiti Natural Environment Area Map 21a This table includes the water, sand and rocky bottoms and the cluster of reefs to the north west of Motiti, and east near to Motunau island. The Motiti Natural Environment Area also includes the Coastal Marine Area surrounding Motiti Island, the islands of Motunau and Motuhaku and surrounding Te Tau o Taiti /Astrolabe reef. *Advice note: The natural character attributes in the Motiti Natural Environment Area identified in Map 21A are separately assessed for Astrolabe, AR – above the 75m contour, Motohaku Island (SCH), Motonau Island, MŌTŪ and Motiti Island margin (Motiti) in appendix J and identified in Map 21.*	*Teitei* High (default) *Kāore anō kia aromatawaitia katoatia tēnei wāhi. Kua tohua ngā wāhanga hei āhuatanga tūturu i roto i te Rohe Moana me te whakarite i te taumata o te āhua tūturu.* This area has not been assessed as an integrated whole. Component parts are identified as natural features within the Motiti Natural Environment Area and ascribed a ranking of natural character. *E taunakitia ana kia whakamātautautia te wāhi whāiti hei whakarite i te āhua tūturu o ngā wāhi motuhake o te rohe taha moana.* Site specific examination is recommended to determine the natural character of specific areas of the coastal marine area.	1 *E kapi ana te rohe i ngā wai tata ki te 200m atu i te takutai o te Moutere o Motiti, ka neke mai i te 5 ki te 15 kiromita ki te moana e uru mai ai ngā tokarārangi iti ake.* The area covers the waters beyond approximately 200m off shore from Motiti Island, extending between 5 and 15 kilometres seaward to take in a number of smaller reefs. 2 *The isolated position of the area around Motiti in the Bay of Plenty renders the sense of its remoteness.* Nā te noho wehe o Motiti i roto i te Moana a Toi ka noho pāmamao mai. 3 *E mōhio whānuitia ana ko te Rohe Moana te 'pātaka kai' o te huhua o ngā uri a*	1 *Ko ngā tokarārangi tūturu, ngā motu me ngā kohatu i roto i tētahi rohe ka horoia, ka tiakina e Te Moananui-a-Kiwa. Nā ētahi o ngā para paenga, parataio i ahu mai i te paenga o te MV Rena me te paenga o te Taioma, ā, me te pokea e ngā mahi hī ika i whakarerekēhia ai te āhua tūturu.* Natural reefs, islands and rocks within an area washed and sustained by the Pacific Ocean. Some wreckage and debris as a result of the grounding of the MV Rena, the Taioma wreck and fishing pressure modify natural character. 2 *Ngā Tauranga tia kukume o te hukarere o ngā Aturere.* The anchors that	1 *E huhua ana te tini a Tangaroa i te Pāpāmoana me te moana, otirā he maha, he kanorau.* An abundance of biological life exists in the seabed and ocean surrounding the reefs which is characterised by relatively high populations and diversity. 2 *I waho atu i te taha moana ko ngā toka me te nohoanga o ngā momo ika maha, arā ko ngā uri a Tangaroa e noho ana i te Pāpāmoana.* Further out from the foreshore are the breeding rocks and habitat of the many species of fish which are the descendants of Tangaroa who occupy the sea floor. 3 *He maha ngā tokarārangi me ngā wāhi whakahirahira,*	1 *Kāore he whakarerekētanga o ngā ngaru o te moana, te rere o te wai, te ia rānei o Tangaroa me ngā tauira kawenga parataiao o te Rohe Moana.* No modification to the natural wave action, water movements or currents of the open coastal water body and sediment transport patterns surrounding Motiti. 2 *He tino kaha te pātuki o ngā ngaru ki te Rohe Moana. I ngā wāhi pāpaku he kōhatu mai i ngā kinikini, i ngā wai hōhonu he putunga parataiao me ngā rauiti mai i te whenua.* The Motiti Natural Environment area is affected by a moderately high wave-energy environment. Near-shore substrate is coarser than	*Kāore i te hāngai.* Does not apply	1 *Ko te whakaaro he wāhi moana tūturu, pūnaha tokarārangi i pā kinohia e te paenga o te Rena, ngā ipu nui me ngā parataiao.* Perceptions are of a natural marine area, reef system impacted by the *Rena* wreckage, containers and debris. 2 *Ko te āhuatanga o te wai tai he riporipo tōna tohu ki te tangata i uta mā te ahunga me te kaha o te rere o te wai – mā te tae, te reka, me te rongo i te ahunga o te hau.* The tidal waters are characterised by the rippling currents signalling to the people in the land through the direction and strength of flow – through the colour, through the taste, and feel of the direction of the wind.

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		Tangaroa. The Motiti Natural Environment area is renowned as a 'food cupboard' for its abundant marine life.	connect to the winds and tides, pathway of the yellow–fin tuna. 3 *Ko te hononga o te whenua ki ngā motu iti me ngā tokarārangi; ko te wai moana e herehere katoa ana i ēnei. Ko te wai e pā ana ki Motiti ko taua wai anō o ngā motu iti me ngā tokarārangi. Ko te wai moana e papaki ana i nga motu iti me ngā tokarārangi ko taua wai moana anō e pari ana ki ngā motu iti me ngā tokarārangi. Kāore e uru mai ana he wai rerekē.* It is a connectedness of the natural landscape features, the small islands and the reefs; it is the ocean water which binds them together. The ocean water that touches Motiti is	*nohoanga hoki mō ngā tino momo, arā – Tāmure; Kahawai; Maomao; Tarakihi; Moki; Araara; Parore; Haku; Aturere; Kuparu; Kumukumu; Patikirori; Mango; Wheke; Kōura; Pāua; Kuku; Tipa; Tio; Kina; Rori; Karengo.* There are numerous significant reefs and special places and habitats for many prized species including – Tamure (snapper); Kahawai; Maomao; Tarakihi; Moki; Araara (trevally); Parore; Haku (yellow-tail Kingfish); Aturere (tuna); Kuparu (John Dory); Kumukumu (gurnard); Patikirori (sole); Mango (sharks); Wheke (octopus); Koura (crayfish); Paua (abalone); Kuku (mussels); Tipa (scallops); Tio	deeper waters which tend to accumulate sediments and finer grained materials from land. 3 *He whakarerekētanga nā te paenga o te Rena, ngā para me ngā kino o ngā parataiao.* Some modification due to the presence of *Rena* wreckage, debris and sediment contamination.		3 *Ko te tirohanga atu he pūnaha tūturu me ngā tauira tūturu, whakahaere me ngā āhuatanga e mārama ana, e noho rerekē ana i ētahi atu wāhi.* Perceptions are of a natural system with natural patterns, processes and elements apparent and distinctive of its formation.

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			the same water that touches the small islands and the reefs. There is no different water entering the area. 4 *Ko ngā āhuatanga moana me te pupuhi o te hau, ngā ngaru, te rere o te wai, ngā ia, ngā ika me ngā manu.* Dynamic coastal processes including wind and wave action, water movements, currents, fish and bird life. 5 *Ko te taiao tūturu e tino kitea ana.* The natural environment dominates.	(oysters); Kina (urchins); Rori (sea cucumbers); Karengo (seaweeds). 4 *E pā kinohia ana te tini a Tangaroa me ngā rauropi e ngā ahumahi hī ika me te nui haere o te hunga hī ika.* Populations and biomass are severely impacted and threatened by commercial fishing and increasing recreational and charter fishing. 5 *Kei te Rohe Moana te oranga mō ngā manu moana me ngā manu whenua.* The Motiti Natural Environment area supports a range of seabirds and shorebirds.			

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Aro i te Moana - Marine Natural Character Assessment				*Ngā āhuatanga motuhake* - Attributes (with elements that enhance or diminish natural character)			
Te Ingoa o te Wāhi	*Ko te toitū o ngā āhuatanga taketake o te wāhi*	*He pitopito kōrero mō ngā āhuatanga o te wāhi*	*Ko ngā mana atua, mana tangata hoki i pū mai ai ngā āhuatanga taketake*	*Te Wai tai - Takutai Moana* Coastal Water & Seabed		*Te Korowai o Papatūānuku me ōna āhuatanga ahurei*	*Ngā āhuatanga tuku iho*
Name of site	*Level of Natural Character*	*General description of the area*	*Elements that describe natural character*	*Marine biotic processes*	*Marine abiotic processes*	*Landcover & Use Terrestrial Biotic*	*Perceptual*
nga Tokararangi ko Okarapu, ko te Porotiti, ko Te Papa, Okarapu (reef) (Oka), Te Porotiti (reef) (TePo), Te Papa (reef) (Papa).	Kohure Outstanding	1 *Ka ara mai ēnei tokarārangi mai i te Pāpāmoana i ngā wai 40-50m te hōhonu ki te 30 me te 10m ki raro. Ka huihui mai ngā ika ki te kai, he nui*	1 *He pērā anō mō te Rohe Moana i runga ake.* As for Natural Environment Area above.	*I tua atu i ngā whakamāramatanga mō te Rohe Moana (i runga ake) ka whakapikihia e ēnei kaupapa e whai ake te āhua tūturu:* In addition to the	*I tua atu i ngā whakamāramatanga mō te Rohe Moana (i runga ake) ka whakapikihia e ēnei kaupapa e whai ake te āhua tūturu:* In addition to the	1 *Kāore i te hāngai.* Does not apply	1 *Te tukituki o ngā ngaru i ngā tokarārangi. Ko te pupuhatanga o te wai te tohu o te pūnaha tokarārangi mai i runga o te moana.*
Map 21a		*te toiora moana e noho ana ki ngā nohoanga kanorau, haumako hoki o ngā tokarārangi.* These rocky reefs rise from the sea floor in water 40-50m deep to between 30 and 10m depth. Fish congregate to feed on the relative abundance of marine life supported by the diverse and rich reef habitats. 2 *He maha ngā āhuatanga hira me ngā tokatū moana i raro i te moana, pēnei i ngā tokarārangi, ngā taunga ika me ngā kai moana.* There are many significant features and landmarks below sea level including reefs, fishing spots and food resources.		descriptions for Motiti Natural Environment Area (above) the following elements increase natural character: 1 *He tino ora ngā wai o te taha moana, ā, ko ōna tokarārangi te nohoanga o ngā momo ika rerekē o te papa me roto i te moana, ngā tipu moana me ngā rauropi i raro i te moana.* Highly dynamic coastal waters with reefs supporting a variety of pelagic and demersal fish species, macrophytes and benthic organisms. 2 *He maha ngā momo ika rerekē me ētahi atu momo a Tangaroa e tino huihui ana, rerekē hoki.* A wide variety of representative fish species and other marine communities with relatively high abundance and	descriptions for Motiti Natural Environment (above) the following elements increase natural character: 1 *Ko te whakaaro he wāhi moana tūturu, pūnaha tokarārangi i pā kinohia e te paenga o te Rena, ngā ipu nui me ngā parataiao.* Perceptions are of a natural marine area, reef system impacted by the *Rena* wreckage, containers and debris. 2 *Ko te āhuatanga o te wai tai he niponipo, ā, koinei te tohu ki te tangata i uta mā te ahunga me te kaha o te rere o te wai – mā te tae, te reka, me te rongo i te ahunga o te hau.* The tidal waters are characterised by the rippling currents signalling to the people in the land through the direction and strength of flow –		Breaking waves across the reef outcrops. Spectacular water spouts provide visual evidence of reef system from the surface of the water. 2 *He pātaka kai ngā tokarārangi, ā, e mōhiotia ana he mātāpuna oranga.* The reefs are perceived as a food storehouse and is experienced as a source of sustenance. 3 *He wāhi e haerehia ana ngā tokarārangi, he tino pai mō te ruku me te hī ika, atu i tēnei he wāhi tino pāmamao.* Some level of activity around the reefs, as popular dive and fishing locations, otherwise a high level of remoteness exists within the area. 4 *He Papa hi ika, mataitai, taunga ika mo nga hapu o*

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				diversity.	through the colour, through the taste, and feel of the direction of the wind. 3 *Ko te tirohanga atu he pūnaha tūturu me ngā tauira tūturu, whakahaere me ngā āhuatanga e mārama ana, e noho rerekē ana i ētahi atu wāhi.* Perceptions are of a natural system with natural patterns, processes and elements apparent and distinctive of its formation. 4 *Ka whakarei ake te rere o te wai i ngā tokarārangi i te āhua tūturu.* Water movement around the reefs enhance natural character. 5 *Ka noho māori tonu te hanganga o ngā tokarārangi. E tohu ana te takoto o ngā toka i tōna waihangatanga mai i ngā mahi*		*te Moutere o Motiti.* There are many significant features and landmarks below sea level including reefs, fishing spots and food resources utilised by the people of Motiti.

					puia me te moana. *E tohu ana ngā tihi, ngā mata kōhatu poutū, ngā ana me ngā toma i raro moana me ngā toka nui i ngā mahinga tūturu.* The physical structure of the reefs remain in a natural state. Rock formations are expressive of the formative natural processes created by volcanic activity and the ocean. Pinnacles, vertical rock faces, underwater caves and tomes and large boulders are distinctive of the natural processes. 6 *He wai tai tino akiaki i ngā tihi, i puta ai ngā hanganga tokarārangi whakameremere, ngā ana me ngā rua kōura.* Highly dynamic coastal waters around the pinnacles, creating striking reef structures, caves and crayfish holes.		
					7 *Ka rangona i ngā tihi maunga o te Rohe Moana me ōna tokarārangi ko Okarapu, Te Porotiti, Te Papa, me Tokeroa.* The mountain pinnacles of the Motiti Natural Environment Area are experienced with their reefs as Okarapu, Te Porotiti, Te Papa, and Tokeroa.		

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Annexure E Relevant Objectives and Policies in the PRCEP (referenced in Reaburn EIC)

OBJECTIVE	Issue	Content
1	INTEGRATED MANAGEMENT	Achieve integrated management of the coastal environment by: (a) Providing a consistent, efficient and integrated management framework; (b) Adopting a whole of catchment approach to management of the coastal environment; (c) Recognising and managing the effects of land uses and freshwater-based activities (including discharges) on the coastal marine area; (d) Enabling kaitiakitanga; (e) Planning for and managing: (i) cumulative effects; and (ii) the effects of climate change; (f) Promoting the sustainable management of the Bay of Plenty coastal fisheries; and (g) Providing for the future urban growth management areas identified in Appendix E of the RPS without compromising other regionally significant values of the coastal environment. **Comment [MR11]:** Consent order dated 4 May 2016 ENV-2015-348-000029, 30 and 31 Urban Growth Management and Infrastructure
2	NATURAL HERITAGE	Protect the attributes and values of: (a) Outstanding natural features and landscapes of the coastal environment; and (b) Areas of high, very high and outstanding natural character in the coastal environment; from inappropriate subdivision, use, and development, and restore or rehabilitate the natural character of the coastal environment where appropriate. **Comment [JN12]:** Te Tumu parties: Appeal withdrawn – mediation agreement 28 April 2016 (Draft Consent Documents Natural Heritage)
2A		Safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems by: (a) Protecting Indigenous Biological Diversity Areas A, (b) Maintaining Indigenous Biological Diversity Areas B; (c) Promoting the maintenance of indigenous biodiversity in general; and (d) Enhancing or restoring indigenous biodiversity where appropriate. **Comment [RMB13]:** Te Tumu parties: Appeal withdrawn – mediation agreement 28 April 2016 (Draft Consent Documents Natural Heritage)

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3		Prevent the further loss of the quality and extent of rare and threatened habitats in the coastal environment of the region. These include coastal forest, seagrass beds, saltmarsh wetlands and sand dunes.
4		Enable the restoration and rehabilitation of the natural heritage of the coastal environment, including: (a) Kaimoana resources; and (b) Natural heritage landforms or features that would increase resilience to natural hazards.
12	IWI RESOURCE MANAGEMENT Comment [JN144]: Ngati Makino appeal seeks new objectives relating to the aspirations of Iwi Māori and marine spatial tools. UNRESOLVED	The active involvement of tāngata whenua in management of the coastal environment when activities may affect their interests and values.
13		Tāngata whenua are able to undertake customary activities in the coastal marine area, and access to sites used for cultural practices, gathering kaimoana, mahinga mātaitai and areas of cultural significance is maintained or enhanced.
14		The protection of those taonga, sites, areas, features, resources or attributes of the coastal environment (including the Coastal Marine Area) which are either of significance or special value to tāngata whenua (where these are known).
15		The restoration of areas of cultural significance, including mahinga mātaitai, and the mauri of coastal waters, where customary activities or the ability to collect healthy kaimoana are restricted or compromised.
16		Where appropriate, cultural health indicators are used that recognise and express Māori values, and tāngata whenua are involved in monitoring the state of the coastal environment and impacts of consented activities.
17		Appropriate mitigation or remediation is undertaken when activities have an adverse effect on the mauri of the coastal environment, areas of cultural significance to tāngata whenua or the relationship of tāngata whenua and their customs and traditions with the coastal environment.

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POLICY		
NH 4	NATURAL HERITAGE	Adverse effects must be avoided on the values and attributes of the following areas: (a) Outstanding Natural Character areas (as identified in Appendix I to the RPS); (b) Outstanding Natural Features and Landscapes (as identified in Schedule 3); (c) Any Indigenous Biological Diversity Area A (as identified in Schedule 2, Table 1); and Adverse effects must be avoided on taxa that meet the criteria listed in Policy 11(a)(i) or (ii) of the NZCPS. A summary of values and attributes for areas of Outstanding Natural Character is provided in Appendix J to the RPS. Values and attributes for Indigenous Biological Diversity Area A and Outstanding Natural Features and Landscapes are set out in Schedules 2 and 3 to this Plan respectively. **Comment [JN29]:** Ngāti Mākino appeal points are UNRESOLVED. To be heard under the Iwi resource management topic.
NH 8A		There should be no net loss of the quality and extent of seagrass beds, saltmarsh wetlands and bird roosting sites in the coastal environment as a result of subdivision, use and development. Where a biodiversity offset is proposed, it should be developed in a manner consistent with the principles contained in Schedule 13. **Comment [JN46]:** Agreed at mediation on 29 April 2016 in relation to the Forest and Bird appeal on Policy NH 6. (Draft Consent Document 18 Natural Heritage)
NH 9A		Recognise and provide for Māori cultural values and traditions when assessing the effects of a proposal on natural heritage, including by: (a) Avoiding significant adverse effects, and avoiding, remedying, mitigating or offsetting other effects, on habitats of indigenous species that are important for traditional or cultural purposes; and on cultural and spiritual values associated with natural features and natural landscapes; (b) Avoiding, remedying or mitigating cumulative adverse effects on the cultural landscape; (c) Assessing whether restoration of cultural landscape features can be enabled; and (d) Applying the relevant Iwi Resource Management policies from this Plan and the RPS.

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IW 1	IWI RESOURCE MANAGEMENT	Proposals which may affect the relationship of Māori and their culture and traditions must recognise and provide for: (a) Traditional Māori uses, practices and customary activities relating to natural and physical resources of the coastal environment such as mahinga kai, mahinga mātaitai, wāhi tapu, ngā toka taonga, tauranga waka, taunga ika and taiāpure in accordance with tikanga Māori; (b) The role and mana of tāngata whenua as kaitiaki of the region's coastal environment and the practical demonstration of kaitiakitanga; (c) The right of tāngata whenua to express their own preferences and exhibit mātauranga Māori in coastal management within their tribal boundaries and coastal waters; and (d) Areas of significant cultural value identified in Schedule 6 and other areas or sites of significant cultural value identified by Statutory Acknowledgements, iwi and hapū resource management plans or by evidence produced by tāngata whenua and substantiated by pūkenga, kuia and/or kaumatua, and (e) The importance of Māori cultural and heritage values through methods such as historic heritage, landscape and cultural impact assessments. **Comment [JN51]: Consent Order dated 30 September 2016.**
IW 2		Avoid significant adverse effects on resources or areas of spiritual, historical or cultural significance to tāngata whenua in the coastal environment identified using criteria consistent with those included in Appendix F set 4 to the RPS, and remedy or mitigate other adverse effects on these areas. Where significant adverse effects cannot be avoided, remedied or mitigated, it may be possible to provide positive effects that offset the effects of the activity.
IW 8		Tāngata whenua shall be involved in establishing appropriate mitigation, remediation and offsetting options for activities that have an adverse effect on areas of significant cultural value (identified in accordance with Policy IW 1(d)).
METHOD		
3A	NATURAL HERITAGE	Support research to identify areas in the Bay of Plenty region where ecosystems and biodiversity values are being, or are likely to be, adversely effected by fishing activities, and investigate the options available to manage such activities for the protection of indigenous biodiversity.

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OBJECTIVE	Issue	Content

1	INTEGRATED MANAGEMENT	Achieve integrated management of the coastal environment by: (a) Providing a consistent, efficient and integrated management framework; (b) Adopting a whole of catchment approach to management of the coastal environment; (c) Recognising and managing the effects of land uses and freshwater-based activities (including discharges) on the coastal marine area; (d) Enabling kaitiakitanga; (e) Planning for and managing: (i) cumulative effects; and (ii) the effects of climate change; (f) Promoting the sustainable management of the Bay of Plenty coastal fisheries; and (g) Providing for the future urban growth management areas identified in Appendix E of the RPS without compromising other regionally significant values of the coastal environment. **Comment [MR11]:** Consent order dated 4 May 2016 ENV-2015-348-000029, 30 and 31 Urban Growth Management and Infrastructure
2	NATURAL HERITAGE	Protect the attributes and values of: (a) Outstanding natural features and landscapes of the coastal environment; and (b) Areas of high, very high and outstanding natural character in the coastal environment; from inappropriate subdivision, use, and development, and restore or rehabilitate the natural character of the coastal environment where appropriate. **Comment [JN12]:** Te Tumu parties: Appeal withdrawn – mediation agreement 28 April 2016 (Draft Consent Documents Natural Heritage)
2A		Safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems by: (a) Protecting Indigenous Biological Diversity Areas A, (b) Maintaining Indigenous Biological Diversity Areas B; (c) Promoting the maintenance of indigenous biodiversity in general; and (d) Enhancing or restoring indigenous biodiversity where appropriate. **Comment [RMB13]:** Te Tumu parties: Appeal withdrawn – mediation agreement 28 April 2016 (Draft Consent Documents Natural Heritage)

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3		Prevent the further loss of the quality and extent of rare and threatened habitats in the coastal environment of the region. These include coastal forest, seagrass beds, saltmarsh wetlands and sand dunes.
4		Enable the restoration and rehabilitation of the natural heritage of the coastal environment, including: (a) Kaimoana resources; and (b) Natural heritage landforms or features that would increase resilience to natural hazards.
12	IWI RESOURCE MANAGEMENT	The active involvement of tāngata whenua in management of the coastal environment when activities may affect their interests and values.
13		Tāngata whenua are able to undertake customary activities in the coastal marine area, and access to sites used for cultural practices, gathering kaimoana, mahinga mātaitai and areas of cultural significance is maintained or enhanced.
14		The protection of those taonga, sites, areas, features, resources or attributes of the coastal environment (including the Coastal Marine Area) which are either of significance or special value to tāngata whenua (where these are known).
15		The restoration of areas of cultural significance, including mahinga mātaitai, and the mauri of coastal waters, where customary activities or the ability to collect healthy kaimoana are restricted or compromised.
16		Where appropriate, cultural health indicators are used that recognise and express Māori values, and tāngata whenua are involved in monitoring the state of the coastal environment and impacts of consented activities.
17		Appropriate mitigation or remediation is undertaken when activities have an adverse effect on the mauri of the coastal environment, areas of cultural significance to tāngata whenua or the relationship of tāngata whenua and their customs and traditions with the coastal environment.
POLICY		

Comment [JM14]: Ngati Makino appeal seeks new objectives relating to the aspirations of iwi Māori and marine spatial tools.

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NH 4	NATURAL HERITAGE	Adverse effects must be avoided on the values and attributes of the following areas: (a) Outstanding Natural Character areas (as identified in Appendix I to the RPS); (b) Outstanding Natural Features and Landscapes (as identified in Schedule 3); (c) Any Indigenous Biological Diversity Area A (as identified in Schedule 2, Table 1); and Adverse effects must be avoided on taxa that meet the criteria listed in Policy 11(a)(i) or (ii) of the NZCPS. A summary of values and attributes for areas of Outstanding Natural Character is provided in Appendix J to the RPS. Values and attributes for Indigenous Biological Diversity Area A and Outstanding Natural Features and Landscapes are set out in Schedules 2 and 3 to this Plan respectively. **Comment [JN29]:** Ngāti Makino appeal points are UNRESOLVED. To be heard under the Iwi resource management topic.
NH 8A		There should be no net loss of the quality and extent of seagrass beds, saltmarsh wetlands and bird roosting sites in the coastal environment as a result of subdivision, use and development. Where a biodiversity offset is proposed, it should be developed in a manner consistent with the principles contained in Schedule 13. **Comment [JN46]:** Agreed at mediation on 29 April 2016 in relation to the Forest and Bird appeal on Policy NH 8. (Draft Consent Document 18 Natural Heritage)
NH 9A		Recognise and provide for Māori cultural values and traditions when assessing the effects of a proposal on natural heritage, including by: (a) Avoiding significant adverse effects, and avoiding, remedying, mitigating or offsetting other effects, on habitats of indigenous species that are important for traditional or cultural purposes; and on cultural and spiritual values associated with natural features and natural landscapes; (b) Avoiding, remedying or mitigating cumulative adverse effects on the cultural landscape; (c) Assessing whether restoration of cultural landscape features can be enabled; and (d) Applying the relevant Iwi Resource Management policies from this Plan and the RPS.

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IW 1	IWI RESOURCE MANAGEMENT	Proposals which may affect the relationship of Māori and their culture and traditions must recognise and provide for: (a) Traditional Māori uses, practices and customary activities relating to natural and physical resources of the coastal environment such as mahinga kai, mahinga mātaitai, wāhi tapu, ngā toka taonga, tauranga waka, taunga ika and taiāpure in accordance with tikanga Māori; (b) The role and mana of tāngata whenua as kaitiaki of the region's coastal environment and the practical demonstration of kaitiakitanga; (c) The right of tāngata whenua to express their own preferences and exhibit mātauranga Māori in coastal management within their tribal boundaries and coastal waters; and (d) Areas of significant cultural value identified in Schedule 6 and other areas or sites of significant cultural value identified by Statutory Acknowledgements, iwi and hapū resource management plans or by evidence produced by tāngata whenua and substantiated by pūkenga, kuia and/or kaumatua; and (e) The importance of Māori cultural and heritage values through methods such as historic heritage, landscape and cultural impact assessments. **Comment [JN51]:** Consent Order dated 30 September 2016.
IW 2		Avoid significant adverse effects on resources or areas of spiritual, historical or cultural significance to tāngata whenua in the coastal environment identified using criteria consistent with those included in Appendix F set 4 to the RPS, and remedy or mitigate other adverse effects on these areas. Where significant adverse effects cannot be avoided, remedied or mitigated, it may be possible to provide positive effects that offset the effects of the activity.
IW 8		Tāngata whenua shall be involved in establishing appropriate mitigation, remediation and offsetting options for activities that have an adverse effect on areas of significant cultural value (identified in accordance with Policy IW 1(d)).
METHOD		
3A	NATURAL HERITAGE	Support research to identify areas in the Bay of Plenty region where ecosystems and biodiversity values are being, or are likely to be, adversely effected by fishing activities, and investigate the options available to manage such activities for the protection of indigenous biodiversity.

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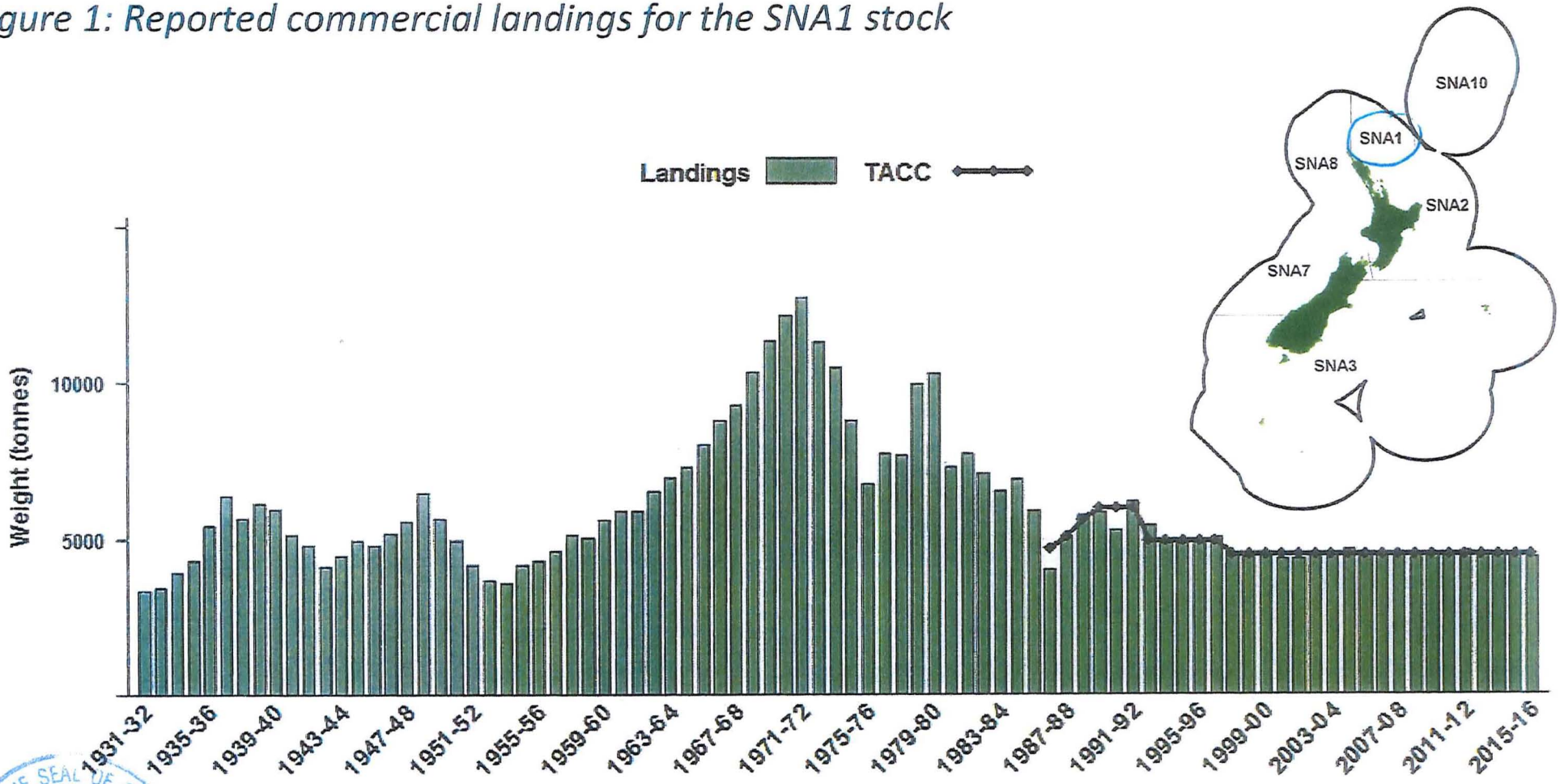
Annexure F Information as to numbers by-catch in this area

Bycatch table

	Fishing Year							
Species common name	2010	2011	2012	2013	2014	2015	2016	2017
Albatrosses (Unidentified)	1	2			1	2	4	2
Australasian gannet						1		
Baleen whales					1			
Bamboo coral				8.9				
Black (Parkinson's) petrel	2				2		1	2
Black corals						1		
Boobies and Gannets					1		2	
Bottlenose dolphin		1						
Buller's and Pacific albatross								1
Common diving petrel					2		138	2
Common dolphin				1	4	3	1	44
Coral (Unidentified)					200		22	14
Fairy prion			2					
Flesh-footed shearwater	4	1			19	6	12	1
Fluttering shearwater		4						
Leatherback turtle	1	1		8	2	7	7	
Mid-sized Petrels & Shearwaters				1				
New Zealand fur seal	1		2	1	1	4		11
Orca				1				
Petrels, Prions and Shearwaters	1	1	3		13	5	73	21
Seagull					1			
Seals and Sealions	2				8	4	1	1
Shy albatross	3		1				15	
Sooty shearwater	5			2		3	5	1
Southern black-browed albatross					1			
Southern royal albatross							3	
Wandering (Snowy) albatross					1	4		
White pointer shark						1	1	3

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Figure 1: Reported commercial landings for the SNA1 stock



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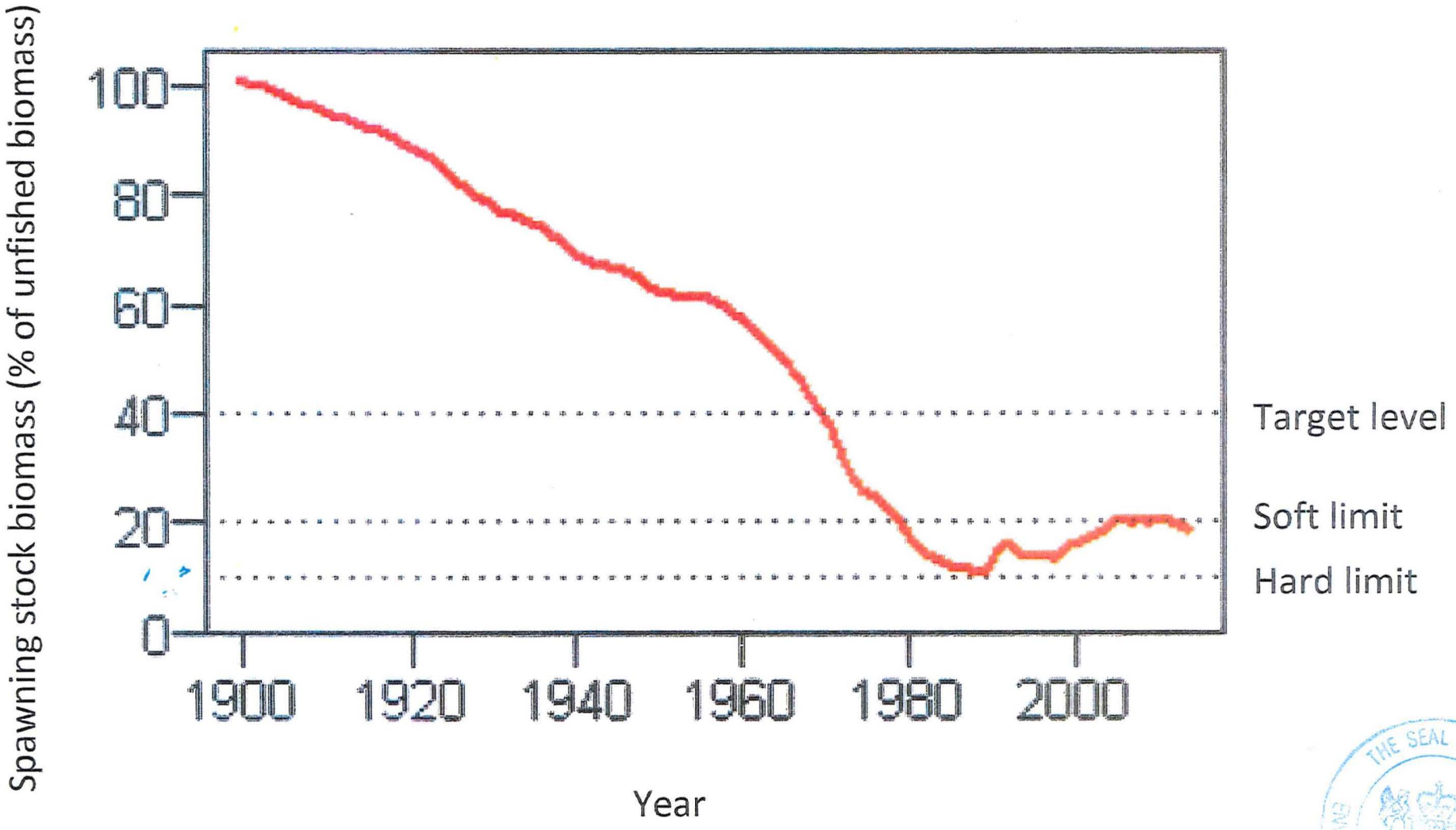
Annexure G

Figure 2: Trajectory of SNA1 abundance (1900- Present) from 2015 stock assessment model



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