

Further Marine Biodiversity Protection Options

Your views matter

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Further Marine Biodiversity Protection Options

Your views matter

Marine biodiversity, including indigenous species, habitats and ecosystems can be adversely impacted by activities in the coastal marine area. Some of these activities use techniques or practices that result in disturbance of the foreshore and seabed, or affect marine life.

Waikato Regional Council is seeking your views on whether the Waikato Regional Coastal Plan should restrict particular activities in some areas to protect indigenous species, habitats and ecosystems, including fish and other marine life.

What is this about

Protecting marine biodiversity within the coastal marine area has been a common theme raised by Waikato communities throughout the Waikato Regional Council's coastal plan review. Ecosystem health and biodiversity loss has also been at the core of other issues raised by the community concerning declining water quality, aquaculture and fishery practices, seabed disturbances, the protection of social/recreational values and the recognition of mātauranga Māori and other cultural practices.

While the operative coastal plan has policy on significant biodiversity areas, what we've heard from communities is that its scope is very limited. The current review of the coastal plan therefore provides an opportunity to introduce provisions to provide greater protection of areas of significant biodiversity value from the effects of human activities.

The new coastal plan proposes policies and rules to protect significant indigenous biodiversity areas that meet the requirements of the New Zealand Coastal Policy Statement 2010 (Policy 11) and the operative Waikato Regional Policy Statement 2016.

Such policies require the avoidance of certain effects, and rules are proposed that require resource consent for most activities. Based on community feedback, the council is proposing to prohibit seabed mining and petroleum exploration, and prohibit moorings for vessels in significant indigenous biodiversity areas. Council is also aware that central government's *Revitalising the Gulf* programme Hauraki Gulf is currently considering areas to protect marine biodiversity and control the effects of fishing.

Until recently, fishing related activities have been largely managed under the Fishing Act 1996. However, recent case law has determined that councils **can** manage some activities that affect marine biodiversity, such as fishing and the gathering of shellfish and other marine life, in coastal plans under the Resource Management Act 1991.

However, restrictions on fishing techniques and measures are normally controlled under the Fisheries Act rather than the Resource Management Act. See the 'Motiti Island decision' section below.

Council is aware that central government's *Revitalising the Gulf* programme Hauraki Gulf is currently considering areas to protect marine biodiversity and control the effects of fishing. More detail can be found in the 'Revitalising the Gulf' section below.

What we're seeking feedback on

Should more be done to regulate activities that may impact on marine biodiversity?

There are no rules in the operative coastal plan directly relating to the general protection of marine biodiversity; however, there are provisions that seek to protect areas of significant indigenous biodiversity value. The new coastal plan will identify and map areas of significant value to support their management.

Waikato Regional Council is considering whether the new coastal plan **should go further** with rules that require **activities that disturb the foreshore and seabed to be avoided** in areas identified as having significant biodiversity value in the coastal marine area. The purpose of these rules would be to protect areas identified as being vulnerable to such disturbance/s.

We are interested in views on what policy/rule options may, or may not, be appropriate within Ecologically Significant Marine Areas.

What is proposed

Proposed policies – Areas vulnerable to disturbance activities

To protect significant marine species, habitats and ecosystems, the council is suggesting inserting policies related to protecting and a new coastal plan schedule listing areas of significant biodiversity value (Schedule 7c - Ecologically Significant Marine Areas Vulnerable to Disturbance activities). The "list" would only contain areas where there is sufficient information to support additional protections. Council will also work with communities to help with identifying areas of significant biodiversity value.

For the new Waikato Regional Coastal Plan, the following policy and method are proposed to be included.

ECO-P10 Avoiding activities that disturb vulnerable ecologically significant areas

Within identified vulnerable ecologically significant marine areas, activities that disturb the foreshore and seabed or adversely affect indigenous biodiversity values must be avoided.

ECO-M1 Identifying vulnerable ecological areas in Schedule 7c

Council will identify and insert areas into a new schedule – *Schedule 7c: Ecologically significant marine areas vulnerable to disturbance activities*, where there is sufficient information to support the protection of these areas.

Proposed rule options – Prohibiting disturbance activities or the taking of plants and animals

Council will also consider options that may limit commercial and/or recreational activities, such as fishing and kaimoana gathering. Potential options to be considered include:

Option 1: Leave to other legislation (no new rules)

This approach would see no new rules included in the coastal plan. The impacts of fishing activities on indigenous biodiversity, including bottom trawling and scallop dredging would be left to central government to manage.

Areas important enough to protect from fishing activity would be managed through other mechanisms such as taiāpure, mātaītai or other methods under the Fisheries Act or by creating marine protected areas, including marine reserves, under the Marine Reserves Act 1971.

Option 2: Prohibit disturbance of the seabed or foreshore in specifically identified and mapped areas

This approach would see activities such as dredging, bottom trawling and deposition prohibited within any Ecologically Significant Marine Areas that are included in Schedule 7c. Other activities would be able to continue, subject to other legislation, such as the Fishing Act 1996.

In this instance, dredging and bottom trawling includes using a dredge, fishing net or other device which comes into contact with the seabed and marine life to collect fish and kaimoana (shellfish).

Option 3: Prohibit the taking of all plants and animals in specifically identified and mapped areas

This approach would see the removal of marine life become a prohibited activity for Ecologically Significant Marine Areas in Schedule 7c.

Such a rule would cover catching, taking or harvesting of marine life, so no one could take any fish, kaimoana or other plants or animals within the area. This is similar to having a 'no take' marine reserve.

Option 4: Allow some activities in specifically identified and mapped areas

This approach would see some activities prohibited, but others allowed. Activities that could be allowed may include anchoring of vessels, or the removal of identified problematic species.

Of course you may not support any of these options, and would prefer Council takes no action or adopts a different approach. **We want to hear your views.**

What areas could be protected (if any)

Council would also like to hear about what areas may be identified as Ecologically Significant Marine Areas

One suggestion we have heard is the area around the Mercury Islands (near Whitianga on the Coromandel Peninsula), which could include Kawhītu (Stanley Island), Moturehu (Double Island) and Whakau (Red Mercury). This area has been identified as an area of Outstanding Natural Character and as a Significant Indigenous Biodiversity Area by scientists.

Giving feedback

We would welcome your feedback through an online feedback form, or you can send us your views at our email address healthyenvironments@waikatoregion.govt.nz.

It is important to note that no decisions have been made as we want to hear more from our stakeholders and community on this issue. The second-generation Proposed Waikato Regional Coastal Plan will be prepared and notified for public submissions, where anyone can make a submission and be heard. This is a formal process that provides opportunities for further input.

Statutory context

Resource Management Act 1991 (RMA)

The RMA 2003 amendment inserted a definition of biological diversity and a new function for regional councils. Section 30(1)(ga) requires regional councils to identify in plans how biodiversity will be maintained, including the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity.

New Zealand Coastal Policy Statement 2010 (NZCPS)

Policy 11 requires the protection of indigenous biodiversity by avoiding adverse effects on species and habitats described in 11(a) and avoiding significant adverse effects or avoiding, remedying or mitigating other adverse effects on species and habitats described in 11(b).

Waikato Regional Policy Statement (RPS)

Policy 11.4 requires the identification and protection of significant indigenous biodiversity using the criteria in Table 11-1, and to maintain or enhance other biodiversity.

Other relevant matters

Motiti Island decision

The Court of Appeal Motiti decision¹ on the Bay of Plenty Regional Coastal Environment Plan saw a prohibition rule imposed by the courts on the taking of all plants and animals in three discrete areas around Motiti island. This decision clarified the relationship between the Fisheries Act 1996 and the Resource Management Act 1991 and raised expectations that regional councils will manage the adverse effects of fishing on indigenous biodiversity, often without comprehensive information on the values being protected.

The court included five considerations that give guidance on whether any options are more likely to be RMA or Fisheries Act controls, and must be carefully considered for each protection option considered:

- **Necessity** – whether the objective of the control is already being met through measures implemented under the Fisheries Act

¹ Attorney-General v Trustees of the Motiti Rohe Moana Trust [2017] NZHC 1429 and [2017] NZHC 1886

- **Type** – refers to the type of control. Controls that set catch limits or allocate fisheries resources among fishing sectors or establish sustainability measures for fish stocks would likely amount to fisheries management
- **Scope** – a control aimed at indigenous biodiversity is likely not to discriminate among forms or species. This means specific controls on the taking or disturbance of individual species such as lobster or scallops is a Fisheries Act control
- **Scale** – the larger the scale of the control the more likely it is to amount to fisheries management
- **Location** – the more specific the location and the more significant its biodiversity values, the less likely it is that a control will contravene section 30(2) of the RMA.

Information on the Motiti marine protected area can be found [here](#).

Revitalising the Gulf

Biodiversity protection in the coastal marine area is closely intertwined with fisheries management, and there are a number of agencies with responsibilities for both these matters. Central government's *Revitalising the Gulf* programme has two main workstreams that influence marine biodiversity protection.

- The **Marine Protected Areas workstream**, led by the Department of Conservation with support from the Ministry for Primary Industries (MPI), is currently engaging iwi on a number of proposed areas for future protection. This engagement concerns customary activities within the new protected areas.
- The **Area Based Fisheries Plan workstream** under the Fisheries Act 1996 is focussed on removing trawl fishing, except within limited areas or “trawl corridors”, from the Hauraki Gulf. MPI is also engaging with iwi and the fishing sector.

These two workstreams will provide extra protection for marine species and ecosystems within the Hauraki Gulf, but their location and scope may change as a result of consultation or ministerial decision-making. It is important that any actions by the council both align with and avoid conflicting with the outcomes of this protection.