

APPEAL TO THE REGIONAL PLAN

Northland Regional Council Factsheet

NTB position to the appeal of the Regional Plan is:

“NTB supports the protection of biodiversity, but needs to be assured the extent of the proposed constraints on fishing are appropriate.”

Summary

There are current appeals to the Northland Regional Council (NRC) new Regional Plan (RP). Forest and Bird and the BOI Marine Park have appealed the Plan because the proposed plan does not provide any protection to Significant Ecological Areas (‘SEAs’) from the adverse effects of fishing.

NTB has attached as a party to the appeals. The Environment Court hearings for the appeal begin on 12 July.

The Appeal:

- Forest and Bird have lodged an appeal seeking restrictions on fishing. The appeal is based on protection of SEAs, but the areas of proposed protection extend out to 12 nautical miles
- The Bay of Islands Marine Park have appealed seeking similar restrictions within the Bay.
- The appeals aim to regulate fisheries under the Resource Management Act (RMA) and NOT the Fisheries Act.
- The appeals are based on protection of small inshore areas with high biodiversity values, but the restrictions proposed are by Forest and Bird and BOI Marine Park are extensive.

Parties to the Appeal:

Being a party to the appeal means that through the application of Forest and Bird and BOI Marine Park – you join their application to appeal the Regional Plan:

- Carmen Heteraka on behalf of Te Uri o Hīkīhiki is proposing an equivalent to a Marine Reserve at Mimiwhangata as a means of establishing a rāhui tapu.
- Rāhui has no direct equivalent in law, but there are some similar provisions under the Fisheries Act.
- We are not aware of wānanga or hui for establishing this rāhui tapu within Te Uri o Hīkīhiki or between the hapū who whakapapa to Mimiwhangata, nor Te Iwi o Ngātiwai

- Under the RMA any rāhui provisions would lack flexibility and tangata whenua control.
- Patuharakeke and Ngāti Manuhiri have also joined the appeal

Ngātiwai Trust Board – joining the appeal:

- Ngātiwai Trust Board joined the appeal:
 - NTB supports the protection of biodiversity, but needs to be assured the extent of the proposed constraints on fishing are appropriate.
 - There are some internal hui, wānanga that need to occur to ensure all hapū with interests in the SEA areas with contributions from Ngātiwai iwi whānui and that those in the SEA rāhui area are engaged and empowered to contribute in the development and implementation.
 - There are no costs for NTB involvement in the appeal.

Background information:

Resource Management Act (RMA) planning and appeals

- Any plan developed by a council under the RMA must go through a series of processes including iwi and public consultation.
- Appeals to a plan can be made to the Environment Court by parties who have made submissions to the plan.
- Appeals usually aim to change specific details such as wording, locations or quantities.
- Appeals are not required to go through consultation processes.
- Once an appeal is lodged other parties can attach to (or join) the appeal. These parties must establish for the Environment Court they have sufficient reasons for their involvement in the process. The attached parties cannot introduce proposals which are inconsistent with those of the actual appellants.
- Formal mediation is the first stage of an appeal. If this is not successful then the appeal goes to the Environment Court. For this appeal there was one mediation session which was not successful.
- Until recently RMA plans have not regulated fisheries activities. An Environment Court decision following the wreck of the Rena opened a limited range of fisheries related regulation under the RMA.

The Regional Plan ('RP') and the appellants

- In the RP a number of inshore areas have been identified with high biodiversity values – Significant Ecological Areas (SEAs)
- The SEAs were included in the RP before the Rena decision was made (Tauranga Moana). NRC therefore could not include any fisheries regulations in the RP.
- Forest and Bird have lodged an appeal seeking restrictions on fishing. The appeal is based on protection of SEAs, but the areas of proposed protection extend out to 12 nautical miles. This would appear to be a far broader scale than the Rena decision would allow, and Forest and Bird may be testing the possible scale of RMA fishing regulation.
- The Bay of Islands Marine Park have appealed seeking similar restrictions within the Bay.
- While the current appeals only apply to a part of the Northland Region, they have the potential to be applied around the rest of Northland and then the rest of the country.

The Fisheries Act and the Fisheries Settlement

- The settlement of fisheries Treaty claims in the Sealord's Deal applied to both commercial and non-commercial fisheries.
- Through the settlement iwi endorsed the Quota Management System (QMS) which is implemented through fisheries legislation.
- The fisheries settlement created a partnership between the Crown and iwi for fisheries management. This partnership does not exist in the RMA.

Fisheries legislation

- Fisheries regulation is managed mainly by the Fisheries Acts, but also by other statutes including the Conservation Act, the Marine Reserves Act, the Marine Mammals Act, and now also the RMA.
- Introduction of the QMS reversed collapse of a number of fish stocks, but as with any regulation the QMS is imperfect. Reforms of fisheries regulations are now being implemented to improve sustainability.
- The difference of purposes between the various statutes for fisheries management makes an integrated and co-ordinated process difficult and in practice often impossible to achieve. Only where there is special legislation, such as the Hauraki Gulf Marine Park Act, can this integration problem be addressed.

Mimiwhangata Marine Park

- The Mimiwhangata Marine Park is administered under Fisheries Act regulations. Commercial fishing is prohibited in the Park, and non-commercial fishing is allowed but has restrictions such as a ban on nets and long lines.
- NTB recently worked with Te Uri o Hikihiki on a proposal to develop a rāhui tapu area for the park. This work has not concluded.
- Te Uri o Hikihiki previously applied for Marine Reserve status for the area. Establishing a marine reserve requires a number of processes, including public consultation. The application was not successful. A Marine Reserve establishes a ban on fishing for the life of the reserve. A Marine Reserve status can only be lifted by Parliament.

Rāhui and legislation

- Tangata whenua use rāhui as a management tool. Fisheries rāhui are generally flexible, responding to shortage and abundance of fish stocks, or to event such as a drowning. The details of what is intended by a rāhui in any instance is determined by the relevant tangata whenua usually through wānanga or hui.
- Rāhui are not directly provided for in any legislation. The Fisheries Act regulations allow for temporary closures, which are often used as a form of rāhui.

The RMA and fisheries regulation

- The extent of RMA fisheries regulation from the Rena decision is limited (see the Appendix for details).
- The RMA cannot separately regulate for commercial and non-commercial fisheries in the same area (pursuant to s6 of the Fisheries Act).
- Any provision in an RMA plan need not be reviewed for ten years, and any private plan change to review a provision during that time can cost many thousand dollars.
- Tangata whenua co-management is possible under the RMA, but is difficult to achieve and is not proposed effectively in this plan appeal.

Hapū in the appeal

- Te Uri o Hikihiki has joined the appeal. They propose what is equivalent to a marine reserve in the Mimiwhangata Marine Park area to establish a rāhui tapu. They also propose fishing restrictions out to several miles off shore.
- We are not aware of any wānanga or hui to develop an understanding of what is meant by rāhui tapu in this context, or for the development of the appeal attachment.
- Patuharakeke and Ngāti Manuhiri have also joined the appeal.

The NTB response

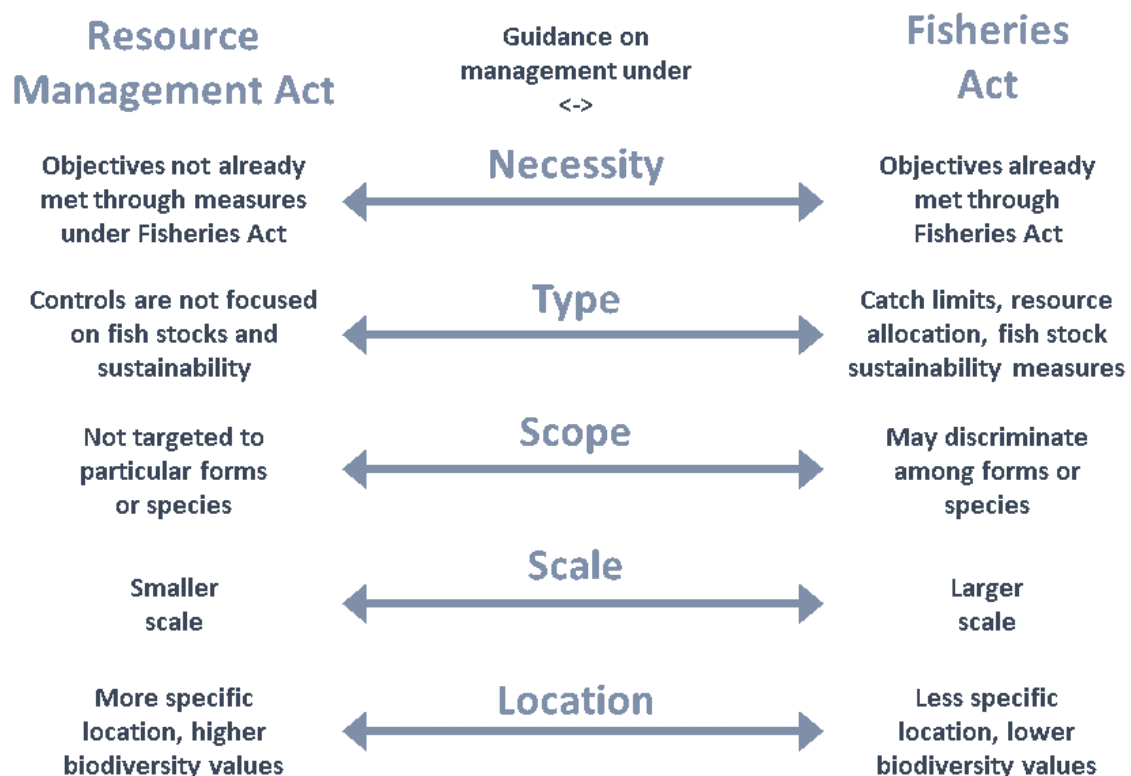
- NTB has an obligation to protect the value of the Fisheries Settlement. This applies to both commercial and non-commercial fishing activities. Consequently NTB needed to join the appeal. Te Ohu Kai Moana have also joined the appeal.
- Parties not in the appeal can have no influence on its processes.
- While NTB supports protection of the biodiversity in the SEAs, evidence to support the extent of proposed fisheries restrictions needs to be fully assessed.
- Ngātiwai hapū affected by proposals but not joined to the appeal are being represented by NTB.
- Current staff are able to manage the appeal processes, so there is no cost to NTB from its involvement.
- Te Ohu Kai Moana are providing legal representation and expert witnesses.

NTB position to the appeal of the Regional Plan is:

“NTB supports the protection of biodiversity, but needs to be assured the extent of the proposed constraints on fishing are appropriate.”

Appendix: The RMA and the Fisheries Act

From <https://www.pmcsa.ac.nz/2021/02/21/the-establishment-of-the-motiti-protection-areas-sets-a-new-precedent-for-local-coastal-management>



Appeals Hearing Timetable:

Witness/ legal submissions for other parties	Tentative date and time	Our witnesses who should be in attendance
Opening submissions for the Appellants/ Ngāti Kuta Venue: Comfort Hotel Flames, Onerahi	Monday 12 July – 10am for 3-4 hours	Whānau, uri (optional)
Opening submissions for Te Uri o Hīkīhiki	Wednesday 14 July - afternoon	NTB Board (consider attending) Everyone (optional)
Juliane Chetham Venue: Comfort Hotel Flames	Friday 15 July - morning	Everyone (optional) NTB Board (consider attending)
Murray Brass	Monday 19 July – morning/ afternoon	NTB Board (consider attending) Whānau, uri (optional)
Terrence (Mook) Hohneck Venue: Comfort Hotel Flames	Monday 19 July - afternoon	NTB Board (consider attending) Whānau, uri (optional)
Marae witnesses Venue: Mōkau Marae	Tuesday 20 July – Friday 23 July	Everyone (Important)

20 – 23 July Hearings at Mōkau Marae – should you wish to attend from Whangārei and coordinate travel. Please contact NTB Office on 094300939 to register your interest.

Proposed SEA areas:

