

26 July 2022

Waikato Regional Council  
Coastal Plan Review

## Coastal Plan Review

### A Submission to the Waikato Regional Council July 2022

1. Thank you for the opportunity to submit on the draft Coastal Plan and the Further Marine Biodiversity Protection Options paper issued by the Waikato Regional Council (the Council).

#### Fisheries Inshore New Zealand

2. Fisheries Inshore represents more than 80% by value and volume of the inshore finfish, pelagic and tuna fisheries of New Zealand. We were formed in November 2012 as part of the restructuring of industry organisations at that time. Our role is to address national issues on behalf of the sector and to work directly with, and on behalf of, our members in both the development of measures and their application at a regional level. In doing so we also work collaboratively with our regional committees, other industry organisations, Seafood New Zealand, Ministry for Primary Industries (MPI) and the Department of Conservation.
3. Our key outputs are:
  - the development of, and agreement to, appropriate policy frameworks, processes and tools to assist the sector to manage inshore, pelagic and tuna fishstocks more effectively,
  - to minimise the sector's interactions with protected species and associated ecosystems; and
  - to work positively with other fishers and users of marine space where we carry out our harvesting activities.
4. Fisheries Inshore also works closely with other commercial stakeholder organisations that represent other sectors of the fishing industry – viz., Deepwater Group, Rock Lobster Industry Council, Paua Industry Council, the Federation of Commercial Fishermen - and our industry umbrella group – Seafood New Zealand. We also work alongside Te Ohu Kaimoana – the Maori Fisheries Trust.
5. Fisheries Inshore is currently engaged in Court proceedings related to two draft coastal plans, viz, the Northland Regional Council and the Marlborough District Council:
  - The Northland Regional Council draft plan sought to identify areas of significant biodiversity but then did not any specific rules. A number of appellants sought plan rules to protect local biodiversity in the Bay of Islands to Mimiwhangata region. Fisheries Inshore has opposed the appellant's relief. Following an Environment Court hearing, the parties were requested by the Court to seek a consensus tikanga-based solution to the issue. Fisheries Inshore has engaged in a positive and constructive manner in that process which has yet to report to the Court.
  - The Marlborough District Council proposed a number of provisions for the protection of areas of indigenous biodiversity. Their process to identify and justify the significant areas was to be commended. Notwithstanding their outcomes, a number of parties appealed the draft plan seeking greater protection for seabirds. Fisheries Inshore participated in a mediation process to address the matters under appeal. The mediation process has been largely positive with the appellants in large being satisfied with the mediation outcomes and subsequently withdrawing their appeals. One appellant party remains.
6. Any queries in respect of this submission should be directed to Laws Lawson, Executive Chair Fisheries Inshore at either [Laws@inshore.co.nz](mailto:Laws@inshore.co.nz) or on 021 529 701.

## Our Wider Position

7. Fisheries Inshore remains committed to the protection of areas of significant marine biodiversity but requires a scientifically rigorous and well-justified proposal to be implemented. Our position in the above proceedings, as in other matters concerning the protection of marine biodiversity, is that where fishing is the activity creating the risk to indigenous biodiversity, any additional protection required should be regulated using the tools under the Fisheries Act rather than a Resource Management Act (RMA) based initiative.
8. We do not deny the legal powers of the councils to take action under the RMA provisions nor wish to stymie their initiatives to protect local marine biodiversity. We simply do not accept that the RMA approach provides the most appropriate mechanism for controlling fishing activity.
9. Fisheries Inshore has a strong requirement that adverse effects need to be demonstrated before any prohibitions are placed on commercial fishing activity. We require a strong analytical base and recognition of existing regulations to support the need for any prohibitions. In general we would support the concept that areas of outstanding marine biodiversity might warrant extremely high levels of protection, including “no take” zones if appropriate but as biodiversity value declines so to would the need for high levels of protection. We also require that the form of protection is appropriate to and focused on the risk profile of different forms of fishing activity.
10. The Motiti judgement provided some useful guidelines in the indica of necessity, type, scope, scale and location:
  - Necessity means whether the objective of the control is already being met through measures implemented under the Fisheries Act;
  - 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;
  - 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 s 30(2).
11. However, those indicia have yet to be given a detailed judicial testing or airing to provide substance for their use.
12. The judgement also made it clear that the effect of RMA s30(2) is that a regional council may control fisheries resources in the exercise of its RMA s30 functions including the listed RMA s30(1)(d) functions provided it does not do so to manage those resources for Fisheries Act purposes. We consider that to prevent any conflict with the Fisheries Act, Councils would be better placed to address their biodiversity protection needs through the Fisheries Act, which has greater flexibility and applicability to the control of fishing activity. For Fisheries Inshore, the Fisheries Act brings with it the need for a solution compatible with the purpose of “utilisation of fisheries resources while ensuring sustainability”. For the Council, the use of the Fisheries Act also brings with it the extensive monitoring and compliance powers of Fisheries New Zealand, services which would otherwise need to be provided at council cost.
13. In the case of the Northland Regional Council, we were able to frame a possible solution which addressed the concerns of the appellants in the context of the Fisheries Act.
14. There are a number of existing Fisheries Act regulations which serve to protect areas of marine biodiversity. These can be found in the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986<sup>1</sup> and the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986<sup>2</sup>. These existing protection measures should be taken into account in any Council consideration of significant sites.
15. Fisheries Inshore also requests that you approach FNZ for maps with the distribution and characteristics of fishing activity you consider may adversely affect indigenous biodiversity. We would expect that to include bottom trawling and dredging. Our previous experiences have highlighted to us the generally poor understanding of the location and impacts of fishing activity in the wider world and the propensity for communities to seek restrictions on fishing activity that is either not present in areas sought to be protected or has no impact that might be labelled adverse. To avoid that embarrassment, we would request that in considering which fisheries might pose a risk to marine biodiversity in specific sites, the Council should use a GIS tool that overlays fishing activity by type of gear with the sites and with the nature of the seabed. We would expect that (as has happened elsewhere), there will be little overlap between mobile bottom

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<sup>1</sup> <https://www.legislation.govt.nz/regulation/public/1986/0216/43.0/DLM105101.html>

<sup>2</sup> <https://www.legislation.govt.nz/regulation/public/1986/0222/latest/DLM113841.html>

contacting fishing activity and the areas of high biodiversity value and a high overlap between such fishing and a soft sediment seabed of mud, sand and gravel. The inshore trawl sector operates with small, relatively low powered vessels, with small gear and simply does not trawl or Danish seine on rough reef structures which are likely to damage the nets. Areas of high biodiversity value are most commonly associated with reef structures, not fished by mobile bottom contacting gear. The need for restrictions on such gear to protect areas of outstanding biodiversity value is minimised by the absence of fishing.

16. We would also expect that, if the Council wants to proceed with measures to protect indigenous biodiversity under the RMA, the Council would address all activities that would cumulatively create adverse effects on that biodiversity and include measures in the plan to ensure all those causes are addressed commensurate with the risk the individual stressor raises - either through regulatory, assistance and support or services to minimise and mitigate those adverse effects.
17. We note that the RMA itself is under review and think it might be unwise for a Council to pursue a coastal planning process in the absence of final legislation to which the plans would be subject.

## Draft Policies and Rules

### Significant Indigenous Biodiversity Areas

18. The draft plan contains two classes of Significant Indigenous Biodiversity Areas:

- *The SIBA-A: Significant Indigenous Biodiversity Areas A*

*Areas which due to their physical form, scale or inherent indigenous biodiversity values, are considered to be the most valuable to threatened species, critical habitat and vulnerable ecosystem types. They are considered to be most vulnerable to any adverse effects of inappropriate use and development.*

- *SIBA-B: Significant Indigenous Biodiversity Areas B*

*These are areas that have indigenous biodiversity significance and values which do not warrant an SIB-A identification as they generally include more resilient ecosystem types or ecosystem types that are generally more widespread throughout the region.*

19. The SIBA-A: Significant Indigenous Biodiversity Areas A are better characterised as being Outstanding Indigenous Biodiversity Areas. They are easily recognised as being materially different to the SIBA-B sites with a differentiation in protection for such sites. Outstanding sites are usually identified by all for their existing reputation.
20. Fisheries Inshore has significant issues with the notion of SIBA-B sites. Areas that are resilient are, by definition, not at adverse risk from anthropogenic activity. Areas that are generally more widespread throughout the region cannot all, by definition, be significant areas. Fisheries Inshore would expect the Council to assess the areas they consider contain ecosystem types that must be maintained, prioritise them for their value and then using the Motiti indicia identify the most significant area to be protected. SIBA-B sites do not universally need protection - the most valuable of them could be protected while others could be monitored for adverse effects.
21. We have not commented on the potential sites proposed by the Council and cannot do so until the Council provides the scientific analyses and selection criteria that underpin the proposed sites.
22. Fisheries Inshore cannot accept the conflation of "Threatened Species" and "Species at Risk" and then considered this grouping to be 'threatened species'. While it is becoming common practice for those who do not have the background to conflate the two categories, the 2008 New Zealand Threat Classification System manual and the technical paper<sup>3</sup> makes it quite clear that the two categories are distinct, should not be generally grouped and require different management responses:  
*"Major changes include: •*
  - *A clearer separation between:*
    - *Taxa that are actively threatened with extinction and so require active management*
    - *Taxa that are at risk of extinction but not in any immediate danger, and so require monitoring"*
23. Fisheries Inshore cannot accept that taxa that are assessed in an "At Risk" class are at an adverse effect from anthropogenic activity that needs to be mitigated or avoided. Such taxa are not in any immediate danger and are only at risk of extinction should circumstances change.

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<sup>3</sup> <https://www.doc.govt.nz/globalassets/documents/science-and-technical/bbb9.pdf>

## Integrated management of resources

24. We strongly endorse that coastal resources and activities are managed in an integrated manner that recognises the inter-relationships between resources and people (IM-O1) and that the mauri and life-supporting capacity of coastal waters, the foreshore and seabed, and the air above is safeguarded from the adverse effects of use and development (IM-03).
25. Our commitment to sustainability of our environment leads us to strong support for the following principles set out in IM-P9
  - Improve and safeguard the coastal environment for future generations
  - Monitor the state of the environment and impacts of activities
  - Enhance resources or degraded areas

and our belief is that the protection of values in the coastal marine area does not preclude appropriate use and development which provides for the cultural, social and economic wellbeing of communities, and which ensures the resilience of marine ecosystems (IM-P12).

26. We commend the adoption of an adaptive management regime that uses evidence-based decision-making that assesses whether the environmental risk and consequences are achieving desired baselines and adapts management responses consistent with performance (IM-P17).

## Ecosystems and Indigenous Biodiversity

27. We support the objectives for the Ecosystems and Indigenous Biodiversity policies:
  - ECO-O1 Protect ecosystems and indigenous biodiversity Ecosystems and indigenous biodiversity in the coastal marine area is maintained, enhanced and restored, and areas of significant indigenous biodiversity in the coastal marine area are protected.
  - ECO-O2 Prevent loss of ecosystems and indigenous biodiversity The decline in habitat quality and extent, populations of rare and threatened species and their habitats, and ecosystem processes in the coastal marine area is prevented.

but we suggest that based on experience elsewhere the Council to take a pragmatic cautious perspective to the restoration of ecosystems. There have been significant environmental changes that will preclude complete restoration of ecosystems to their previous state. The marine coastal space has been subjected to such significant deposits of terrestrial sediment that mean full restoration is beyond reach. The immediate need should be to curtail any further degradation and aim for some enhancement over time.

28. We note that the Council seeks in Policy ECO-P2 – Avoid significant adverse effects in SIBA-B areas – to include habitats that are important to marine mammals, seabirds and shorebirds including roosting and feeding areas and migratory routes. We will contest strongly the inclusion of any rules that further restrict fishing because of alleged impacts on any roosting and feeding area and migratory routes in marine SIBA-B sites. We can understand the desire to potentially include nesting areas of threatened species which are particularly easily unsettled by human presence but roosting and feeding areas and migratory routes are an overstretch and should be removed from consideration. For the avoidance of doubt, Fisheries Inshore contends that the risks from commercial fishing to seabirds, marine mammals (including Maui and Hector's dolphins), marine reptiles and fish have been mitigated to the extent required by the Crown and there is no necessity for the Council to contemplate additional controls for those species.
29. Fisheries Inshore notes and commends the Council that in seeking to reduce adverse effects in respect of habitats of indigenous species in the coastal environment:
  - The areas that are important for the recreational, commercial or cultural purposes (ECO P2) and
  - Uses were lawfully established prior to the plan establishment,may all continue, provided there has been no change to the scale and significance of effects associated with that activity (ECO-P4).
30. We agree that it is critical that the Council consider the impact that any proposed initiatives will have on current users and their rights and be satisfied that the benefits strongly outweigh the costs before applying regulatory controls.

## Water Quality

31. Fisheries Inshore commends the Council's desire to address the issue of water quality and its impacts on the coastal space as set out in the objectives:

- WQ-O1 Maintain high water quality Water quality is maintained where it is good and improved in degraded areas.
  - WQ-O2 Protect the mauri and life supporting capacity of coastal water The life-supporting capacity, mauri and values of coastal water is protected and, where appropriate, enhanced.
32. We have consistently raised concerns that the standards for water quality fails to contain settings for acceptable levels of nutrient and sediment sourced from terrestrial anthropogenic activities on estuarine and coastal habitats and ecosystems. The coastal space itself is largely inert in impacting water quality – it is the impacts of terrestrial loads of discharges and pollutants that impact on the water quality of the coastal space.
  33. This situation is recognised in the absence of rules for activities within the coastal space but we seek in any integrated management regime that appropriate policies, rules and thresholds are applied to activities, such as agriculture, horticulture, forestry, land development and land use, to protect the coastal environment from any degradation. It is pointless to refer to the harbours, areas of low energy flow and the Firth of Thames as being degraded without seeking to place immediate curbs on the inflow of further pollutants and sedimentation that have already caused and will, if unchecked, continue to degrade coastal water quality and biodiversity.
  34. The near-shore coastal marine space and our harbours often form the source of the food chains for the marine ecosystems. If they are allowed to be subject to pollutants and sediment beyond the capacity of the environment to process those loads, continued degradation of the coastal space will occur and the Council will have failed its most basic objective to Improve and safeguard the coastal environment for future generations.

## Further Marine Biodiversity Protection Options

35. The Council has not drafted a complete set of rules in respect of the protection of the marine protection. It has determined appropriate policy statements but seeks input and guidance through this consultation from interested parties to assist with establishing the role and governance desired for Council intervention.
36. In respect of the issues raised in the Further Marine Biodiversity Protection Options paper, Fisheries Inshore makes the following comments:

### Proposed policies – Areas vulnerable to disturbance activities

#### **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*

37. Fisheries Inshore cannot support the draft policy as proposed.
38. The proposition is to avoid/remove any activities that **either** disturb the foreshore and seabed **or** adversely affect indigenous biodiversity. If an activity disturbs the foreshore or seabed but does not adversely affect indigenous biodiversity, there should be no reason for the removal of its presence. The wording of the policy overstretches the objective and need for biodiversity protection.
39. We also note that the policy does not distinguish whether the areas in concern should be the SIBA-A or Outstanding Areas or the less significant SIBA-B areas. The term avoid is used in the definition of SIBA-A areas only. We believe that management response should be carried into policy ECO-P10 and any avoidance of the seabed or foreshore disturbance should be limited to the SIBA-A outstanding sites.
40. The policy should not apply to the less significant SIBA-B sites.

#### **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.*

41. Method ECO-M1 is to give effect to the policy ECO-P10. If ECO-P10 has a more limited application to outstanding sites, then the same consideration needs to be given in the creation of Schedule 7c. Only those outstanding sites vulnerable to disturbance activities should be listed.

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

42. The Council has asked for comments on four options that might be used to regulate disturbance
  - **Option 1: Leave to other legislation (no new rules)** – i.e., the impacts of fishing activities on indigenous biodiversity would be left to central government to manage

- **Option 2: Prohibit disturbance of the seabed or foreshore in specifically identified and mapped areas** – i.e., activities such as dredging and bottom trawling would be prohibited within any Ecologically Significant Marine Areas listed in Schedule 7c
  - **Option 3: Prohibit the taking of all plants and animals in specifically identified and mapped areas** – i.e., the area would essentially become a no take marine reserve
  - **Option 4: Allow some activities in specifically identified and mapped areas** – i.e., some activities would be prohibited, but others allowed (e.g., anchoring of vessels, removal of identified problematic species).
43. The options listed within the consultation have different objectives and different applicability. The Council will need to identify the objectives it seeks in order for submitters to be able to provide considered comment. The areas identified might require different forms and levels of protection and thus use site-specific tools.
44. If the intent is to restrict mobile bottom contact fishing from areas, then as stated earlier, Fisheries Inshore has a strong preference that any prohibitions or constraints to be applied to fishing activity should be enabled under the Fisheries Act. Furthermore as indicated, we consider a more advantageous approach would be to seek assistance from Fisheries New Zealand in the selection and protection of sites of outstanding significance rather than pursue an autonomous course. We note the extent of existing restrictions on fishing and in particular the mobile bottom contact sector as evidence of Government taking the lead and taking such action as is required and appropriate.
45. We note that as part of the continued work associated with the Government's *Revitalising the Gulf* the Council has a representative working with FNZ, DoC and an advisory group on measures to assist with the protection of biodiversity and habitats in the Hauraki Marine Gulf Park. In addition the Council is no doubt aware of additional areas that the Crown through the Department of Conservation is advancing as a new form of marine protected areas also as part of the Government's *Revitalising the Gulf*. ]
46. If the Council wishes to address issues such as deposition of external substances, which we take to include terrestrial sediment and run-off, then the Council will need to establish rules under RMA provisions. Given the prevalence of sedimentation in the shallower marine coastal areas and the parlous state of the Firth of Thames, we consider the arresting of sedimentation to be the priority area of attention for the Council given its responsibilities for this. However we are not in favour of the Council using its powers under the RMA to control in any way the impacts of commercial fishing and in particular mobile bottom contacting fishing on marine biodiversity. The Council simply does not have the experience, resources and processes to regulate and undertake compliance activity for such fishing.
47. If there are areas of outstanding ecological value which the Council considers needs the greatest degree of protection, then the Council should explore the option of how "no take" conditions might be achieved. We would encourage they review the use of Fisheries Act or Marine Reserves Act opportunities before embarking on using RMA powers to achieve the desired outcomes. Fisheries Act and Marine Reserves Act provisions have a successful track record in achieving the desired outcomes.
48. In the event that the Council seeks to employ a combination of protection measures such as listed in option 4, then it may need to combine tools from a variety of regulatory frameworks.
49. We are unable to give the Council any greater guidance until it provides the objectives it seeks to achieve. To the extent that any objectives relate to the management of fishing activity, Fisheries Inshore would advocate for the use of the Fisheries Act, for it was specifically constructed as to provide tools for addressing the adverse effects of fishing activity.

#### Potential areas that could be identified for greater marine protection in the Waikato Regional Coastal Plan

50. The Council has asked for comments in respect of the potential for the Mercury Group of Islands to be identified for greater marine protection as an Ecologically Significant Marine Area and any other areas.
51. On the basis of the material available on the Mercury Group, Fisheries Inshore does not support that the Mercury group, either part thereof or in full, should be established as a "no-take" SIBA-A area but could support that mobile bottom contact fishing, viz bottom trawling, Danish seining and dredging, could be excluded using Fisheries Act provisions but that support would be dependent on the distance offshore.
52. We note that the Council proposes to implement an extensive area of Outstanding Natural Character from the north and east of Red Mercury then stretching to Mercury Island and then extending to the Coromandel coast from Opito Bay to Matapaua Bay. We have read the Boffa Miskill report<sup>4</sup> and remain unconvinced

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<sup>4</sup> <https://www.waikatoregion.govt.nz/services/publications/tr201605/>

that the analyses and the QNNCE classification system used have any substance to support them. They are highly subjective, personal assessments of the individuals undertaking the assessments. Without some strong evidence as to the natural character and biodiversity of the area, Fisheries Inshore cannot support such a large contiguous area being considered to be Outstanding Natural Character and thus worthy of high levels of protection.

Yours

A handwritten signature in blue ink, appearing to read 'Laws Lawson', with a long horizontal flourish extending to the right.

Laws Lawson  
Executive Chair  
Fisheries Inshore