

Dredging, disturbance and disposal in the coastal marine area

**Recommendations in response to
submissions on the Proposed Regional Plan
for Northland - Section 42A hearing report**

Date: 3/07/2018
Author: Michael Day
Version: Final

Table of contents

Purpose and format of the report.....	3
Report author	4
About the Dredging, disturbance and disposal provisions	4
Overview of submissions.....	5
Rule C.1.5.1 - Activities on foreshore areas and use of vehicles on beaches: permitted activity.....	6
Submissions and analysis	6
Recommendation	9
Evaluation of recommended changes.....	10
Rule C.1.5.10 Maintenance dredging: controlled activity	10
Submissions and analysis	10
Recommendation	13
Evaluation of recommended changes.....	13
Disposal of dredge spoil material and other waste in the coastal marine area.....	14
Submissions and analysis	14
Recommendation	18
Evaluation of recommended changes.....	19
Policy D.5.20: Dredging, disturbance and deposition – effects on areas with significant values	20
Submissions and analysis	20
Recommendation	21
Evaluation of recommended changes.....	21
Other matters	22
Appendix A - Response to other matters raised in submissions	23

Purpose and format of the report

1. This report provides the hearing panel the rationale for the recommended changes to the dredging, disturbance and disposal provisions in the Proposed Regional Plan for Northland (the Plan) in response to submissions. The recommended changes are set out in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
2. The recommendations made in this report are my recommendations and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. My recommendations may change as a result of presentations and evidence provided to the hearing panel. It's expected the hearing panel will ask authors to report any changes to their recommendations at the end of the hearing.
4. The recommendations focus on changes to the Plan provisions. If there is no recommendation, then it's to be assumed that the recommendation is to retain the wording as notified.
5. Generally, the specific recommended changes to the provisions are *not* set out word-for-word in this report. The specific changes (including scope for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
6. This report is structured with a focus on the key matters for the *dredging, disturbance and disposal* provisions raised in submissions. The key matters are:
 - Activities on foreshore areas and use of vehicles on beaches
 - Maintenance dredging
 - Dredge spoil disposal
 - Policy D.5.20: Dredging, disturbance and deposition – effects on areas with significant values
7. Matters covered by submissions that fall outside the key matters are addressed in the “*Other matters*” section in less detail.
8. Generally, further submitters are not referred to as they are in support or opposition of original submissions (they cannot go beyond the scope of the original submissions). The exception is where a further submission raises reasons that have not been raised in the submissions and are material to the analysis.

9. The approach of addressing matters raised in submissions (rather than addressing submissions and/or and submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.
10. This report should be read in conjunction with section 8.9 – *Dredging and Disturbance* in the Section 32 report.

Report author

11. My name is Michael Day and I have overall responsibility for this report. I work as the Resource Management Manager for the Northland Regional Council (regional council). For further details about my qualifications and experience, refer to the s42 report: *General approach*. The following council staff have assisted me with the preparation of this report:
 - Stuart Savill, Consents Manager, Northland Regional Council
 - Laura Shaft, Coast Care Co-ordinator, Northland Regional Council
12. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

About the Dredging, disturbance and disposal provisions

13. The relevant provisions in the Proposed Regional Plan for dredging, disturbance and disposal addressed in this report are:

Definition

- Maintenance dredging
- Beach scraping

Rules

- C.1.5.1 Activities on foreshore areas and use of vehicles on beaches – permitted activity
- C.1.5.2 Small-scale sampling and scientific investigation – permitted activity
- C.1.5.3 Sampling and scientific investigation – permitted activity
- C.1.5.4 Removal of nuisance marine plant debris – permitted activity
- C.1.5.5 Removal or recovery of wrecked vessels – permitted activity
- C.1.5.6 Clearing of stormwater pipe outlets – permitted activity
- C.1.5.7 Clearing artificial watercourses – permitted activity
- C.1.5.8 Clearing tidal stream mouths – permitted activity

- C.1.5.9 Burial of dead animals – permitted activity
- C.1.5.10 Maintenance dredging – controlled activity
- C.1.5.11 Beach scraping – restricted discretionary activity
- C.1.5.12 Dredging and disturbance activities – discretionary activity
- C.1.5.13 Disposal of certain waste in coastal marine area – discretionary activity
- C.1.5.14 Other dredging and disturbance activities – non-complying activity

Policies

- D.5.18 Dredging, disturbance and deposition activities
- D.5.19 Disposal of dredge spoil
- D.5.20 Dredging, disturbance and deposition – effects on areas with significant values

14. This report focuses on dredging, disturbance and deposition activities, regulated by section 12(1)(c),(d),(e) and (g) of the RMA. It also addresses the dumping of waste or other matter in the coastal marine area from ships, aircraft or offshore installations – these activities are regulated by Section 4 of the Resource Management (Marine Pollutions) Regulations 1998, but are included in the Proposed Plan for information purposes.
15. This report does not address the removal of mangroves (this is covered in the mangroves s42A report), nor does it cover coastal dune restoration (this is covered in the land disturbance s42A report).

Overview of submissions

16. A total of 126 submission points were made on the dredging, disturbance and disposal provisions.
17. The submitters can be broadly grouped as:
 - Councils (Auckland Council, Kaipara, Whangarei and Far North District Councils)
 - Tangata whenua groups
 - Government agencies
 - Environmental protection groups
 - Infrastructure providers
 - Individuals/others

Rule C.1.5.1 - Activities on foreshore areas and use of vehicles on beaches: permitted activity

Submissions and analysis

18. There were 13 submissions on rule C.1.5.1. Additionally, there were another five submissions that related to activities on foreshore areas.
19. Three submitters (Far North District Council, MLP LLC and Waiaua Bay Farm Limited) supported the rule as notified.
20. Bay of Islands Maritime Park Inc have requested that the rule specify areas where vehicle use is not permitted. Bream Bay Coast Care Trust have requested that vehicles on Ruakaka, Uretiti and Waipu Beaches are prohibited except for specific purposes such as emergencies and surf lifesaving. Royal Forest and Bird Protection Society NZ have requested a new condition that “vehicles do not enter a mapped areas of ecological significance or Important Bird Areas”. Vision Kerikeri oppose a permitted activity for vehicles on all beaches and believe that they should be restricted to the area of beach between a road and boat launching area and to beaches that are designated roads.
21. I understand the use of vehicles on beaches is a divisive topic, with those who support the ability to use vehicles (freely) on beaches and those that wish to restrict (or prohibit) the use of vehicles on beaches for a number of reasons (including risk to public health and safety and risk of harm to ecological systems such as shellfish beds and bird habitats). In my opinion, enforceability and the practicality of controlling potential adverse effects is a major consideration in determining whether to restrict/prohibit the use of vehicles on beaches.
22. I note that Under the Local Government Act 2002 and the Land Transport Act 1998, Northland’s district councils have the ability to put in place bylaws to manage (including prohibit) vehicles on beaches. Whangarei District Council and the Far North District Council have ‘Control of Vehicles on Beaches Bylaws’, which prohibit the use of vehicles on several beaches or parts of beaches. My understanding is the key reason behind the bylaws is public safety. I consider that this is a more appropriate mechanism to prohibit/restrict the use of vehicles on beaches – as opposed to rules within planning documents promulgated under the Resource Management Act.

23. With regards to requests to exclude vehicles from mapped areas of significant habitat value and mapped significant ecological areas, I note that the entire length of 90 Mile Beach is a significant ecological area (toheroa habitat) and most of Ripiro Beach and Mitimiti Beach are also significant ecological areas (also toheroa habitat). This equates to the vast majority of Northland's west coast's driveable beaches being covered by significant ecological area notations, with 90 Mile and Ripiro beaches being the two most popular beaches in Northland for vehicle use. I therefore do not consider it appropriate or practical to prohibit the use of vehicles in significant ecological areas.
24. However, in response to the submission point from Bay of Islands Maritime Park Inc, I recommend an amendment to condition 1, that there is to be no disturbance or damage to seagrass meadows within mapped significant ecological areas. I consider that 'elevating' this requirement will assist with ensuring protection of significant ecological areas. I am also recommending to insert the words 'or roosting' into condition 4), so that there is no disturbance of indigenous or migratory bird nesting 'or roosting' sites. I also recommend the inclusion of a new condition, stating that 'vehicles do not drive over pipi and cockle beds'. I consider that the inclusion of these provisions will assist with giving effect to policies 11 (Indigenous biodiversity) and 20 (Vehicle access) of the NZCPS and is the most appropriate 'package' to promote the sustainable management of natural and physical resources with regards to the use of vehicles on beaches.
25. Several submitters (Fire and Emergency NZ and New Zealand Defence Force) have requested that specific reference to 'recreational' activities are deleted from the rule so that it applies to all activities. Fire and Emergency NZ also want the inclusion of a new condition that is specific for emergency services vehicles so they do not have to comply with the rest of the conditions. NZ Defence Force have requested to make it clear that the rule does not preclude the use of vehicles associated with temporary military training activities.
26. I support the request to delete reference to 'recreational' activity, meaning that the rule will now read 'Any activity on the foreshore...'. This is because I consider that Fire and Emergency NZ raised a valid point that as notified, the rule is not clear that it permits emergency services (such as fire engines) from using beaches to respond to an emergency. Removing reference to recreational activities will add clarity to the rule, whilst still focusing on ensuring that activities do not cause adverse effects. I do not support the request to clarify that clause 2) does not preclude vehicles associated with temporary

military training activities because as mentioned above, the rule is recommended to apply to all vehicles on beaches.

27. I note that Policy 20 (1) of the New Zealand Coastal Policy Statement specifically excludes emergency vehicles. I agree with Fire and Emergency NZ that there may be valid reasons (such as responding to a vehicle crash or attending a fire) why emergency services vehicles may not be able to avoid driving on sensitive areas, such as shellfish beds, or accessing beaches from places that are not authorised access points. I consequently recommend amending the rule to provide exceptions for emergency services vehicles that are responding to an emergency.
28. Heritage NZ have requested a new condition that there is no damage to a mapped Historic Heritage Area. I concur with the submitter that the rule would benefit from the inclusion of a condition relating to activities not causing damage to mapped Historic Heritage Areas. I therefore support the requested relief.
29. Whangarei District Council and Kaipara District Council are requesting the following relief:
- Define foreshore (in the context of this rule)
 - Clarification on the jurisdiction of this rule above mean high water springs
 - The inclusion of a new rule to address vehicle use/activities than do not comply with rule C.5.1.1
 - The exclusion of vehicles from areas of significant habitat value.
30. I do not consider there is a need to define foreshore as this is defined in part 2 of the RMA. I also do not consider there is a need to clarify jurisdiction of the rule above mean high water springs because this rule is a s12 RMA rule – meaning that it only applies within the coastal marine area. I have outlined my views on excluding vehicles from areas of significant habitat value above.
31. I support the request to include a rule for activities that do not comply with the requirements of C.1.5.1. This is because as notified, there was no rule for activities that fail to comply with rule C.1.5.1. The proposed amendment therefore adds clarity to the Proposed Plan.

32. Lourie D is seeking the following:
- Amend rule to refer to 'passive' recreational activities and delete reference to 'disturbance of the foreshore or seabed by the use of vehicles'
 - Inclusion of a new controlled activity rule for recreational and commercial vehicles on beaches
 - Outline how the council intends to give effect to Policy 20 (Vehicle Access) of the New Zealand Coastal Policy Statement.
33. I do not consider it appropriate or necessary for this rule to only apply to passive activities. As discussed above, I am recommending that this rule applies to any activity on the foreshore. I consider that it does not matter what type of activity is occurring (e.g. passive activity or vehicle use), the key issue is whether or not the activity can comply with the listed conditions and therefore be undertaken without causing more than minor adverse effects.
34. I do not support the request for a controlled activity rule for vehicles on beaches. In response to other submissions, I am recommending the inclusion of a discretionary activity rule for activities that cannot comply with this permitted activity rule. Therefore activities (including use of vehicles on beaches) that are unable to comply with the requirements of rule C.1.5.1 will require consent as a discretionary activity.
35. I consider that rule C.1.5.1 gives effect to Policy 20 of the New Zealand Coastal Policy Statement as it provides a framework to 'control' the use of vehicles on beaches/foreshore areas. I note the wording of Policy 20 of the NZCPS is control as opposed to 'prohibit' or 'exclude'. I consider that 'give effect to' means to 'implement'. I believe that the conditions of rule C.1.5.1, such as requiring no damage to shellfish beds or disturbance to seagrass meadows in mapped significant ecological areas, no disturbance of bird nesting sites, no damage to mapped site of significance to tangata whenua or historic heritage areas and requiring that access to the foreshore is only via authorised access points implements the requirements of Policy 20 of the NZCPS.

Recommendation

36. *Amend C.1.5.1 Activities on foreshore areas and use of vehicles on beaches – permitted activity* by:
- Deleting reference to 'recreational' activities.

- Amend clause 1) as follows - there is no damage to shellfish beds and no disturbance or damage to seagrass meadows within mapped Significant Ecological Areas (refer Maps) and outside these areas, there is no destruction of shellfish beds or indigenous vegetation.
- Insert a new clause 6) stating - there is no damage to a mapped Historic Heritage area (refer Maps).
- Providing exemptions for emergency services vehicles providing an emergency response.
- Clarify in the note for the rule that district councils can prohibit vehicle use beaches.

Evaluation of recommended changes

37. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.9 of the Section 32 report and therefore do not require further evaluation.

Rule C.1.5.10 Maintenance dredging: controlled activity

Submissions and analysis

38. There were 14 submissions on rule C.1.5.10.
39. Two submitters (Far North District Council and Kaipara District Council) are requesting the inclusion of a new matter of control relating to 'acid sulphate soils'. All relief sought relating to acid sulphate soils is addressed in the standalone s42A report on Acid Sulphate Soils. No further analysis is required here.
40. Four submitters (Auckland Council, Far North Holdings Limited, Northport Ltd and MLP LLC) support the rule as notified.
41. Heritage NZ have requested the rule become a restricted discretionary activity and that effects on historic heritage that has not yet been assessed for significance is included in the matters of discretion. They have also requested to delete the requirement that applications are precluded from notification.
42. I do not support amending the activity status for maintenance dredging to restricted discretionary. I note that by definition, this activity will only involve dredging to previously

approved levels. I do not support the requested condition relating to effects on historic heritage that has not yet been assessed for significance. Again, this is because this rule relates to dredging activities that have already been through a capital dredging consent process. I believe that all potential impacts on historic heritage should have been determined at this stage, noting that maintenance dredging is 'maintaining' previously consented levels. Finally, regarding the request to delete the preclusion from notification clause, I note that the submitter has not provided any reasoning or justification as to why this is not appropriate. I am therefore unable to consider this request.

43. Johnson A has requested the rule is amended to a permitted activity with the following conditions:
- Notify the council of an intention to dredge.
 - A maximum of 500m³ can be removed from within 200m of an existing consented coastal marine structure in one 12-month period, and a limit of 1.0m below existing level.
 - Notify the council regularly, recording the loads on a council supplied load sheet which would include any environmental monitoring requirements.

44. I do not support this relief sought as I don't consider that maintenance dredging should be a permitted activity and I note that maintenance dredging (by definition) would not allow applicants to dredge areas previously consented or to dredge to depths greater than previously consented.

45. Two submitters (LaBonte' A & R and Mangawhai Harbour Restoration Society Inc) have requested to include provisions for work carried out by the Mangawhai Harbour Restoration Society or establish a marine zone with rules specific to Mangawhai Harbour that covers existing, on-going, and future restoration and maintenance works in the Harbour. Mangawhai Harbour Restoration Society are also requesting that the following amendment:

Maintenance dredging (~~excluding disposal of dredge spoil~~) (excluding the dumping of dredge spoil) is a controlled activity.

46. I support in part the request to delete the reference to 'excluding disposal of dredge spoil'. However, I am not recommending to include the request to refer to 'dumping' of dredge spoil. This is because this rule only applies to maintenance dredging, which is defined in the Proposed Regional Plan. The rule does not actually apply to any type of dumping/disposal activities (these are covered by other rules) and therefore there is no

need to refer to any other activities. In fact, I consider that having reference to dumping or disposal activities in the rule may actually result in confusion for plan users.

47. I do not support the request to establish a marine zone with rules specific to Mangawhai Harbour. The submitters have not demonstrated why this is appropriate and I am therefore unable to assess this request.
48. I note that there appears to be 'unease' as both submitters consider that maintenance dredging would be excluded in mapped significant ecological areas (and would fall to being a non-complying activity). As notified, the maintenance dredging rule applies anywhere in the coastal marine area, which has previously been subject to capital dredging – this includes Mangawhai harbour. For clarity, I note that one of the matters of control are 'effects on mapped significant ecological areas' but the rule does not preclude maintenance dredging in these locations.
49. Refining New Zealand are requesting to amend condition 4) by inserting the word 'dredging' before activity and by deleting condition 7) relating to effects on mapped places.
50. I support their amendment to condition 4) as it provides clarity that this matter of control relates to the dredging activity. I do not support their request to delete condition 7 as I consider that, depending on the location of the dredging, there might be valid reasons to impose conditions on the consent to manage effects/impacts of these mapped features/locations. This is because while maintenance dredging allows material to be excavated from the bed of the coastal marine area to previously consented levels, it is likely that there will be maintenance dredging occurring within areas that have (subsequently) been mapped as outstanding and/or significant. By this I mean that the 'original' capital dredging application may have occurred prior to the NZCPS 2010 being in existence and/or prior to the mapping of significant areas occurring. Therefore, I consider that it is entirely appropriate for 'effects on mapped' areas to be included within the matters of control.
51. Royal Forest and Bird Protection Society NZ are seeking to clarify that the rule only applies to lawfully established activities. They are also seeking to amend the rule to provide scope for council to decline consent where effects on significant indigenous biodiversity or outstanding natural character are inconsistent with Policy 11 and 13 of the NZCPS. They are also seeking to amend the preclusion from notification requirements.

52. I do not consider there is a need to clarify that this rule applies to lawfully established activities. Maintenance dredging is maintaining previously consented (approved) levels. I have discussed notification requirements in my response to Heritage NZ above, noting that the rule as notified is controlled, it is precluded from notification. I have also discussed how I do not consider that a restricted discretionary activity status is more appropriate than a controlled activity status. I consider that a controlled activity status provides the desired level of certainty for applicants, noting that applications cannot be declined. The rule as notified has a matter of control for effects on mapped significant ecological areas. I consider that this is appropriate to ensure that effects on indigenous biodiversity will be minimised, again noting that this rule only allows applicants to dredge to previously approved levels. Over and above this, the application will fall to either a discretionary or non-complying activity, depending on the location of the proposed works.
53. Two submitters (Tautari R and Patuharakeke Te Iwi Trust Board Inc) are seeking to include the follow matter of control: Effects on tangata whenua and their taonga.
54. I acknowledge that this is a controlled activity rule and therefore the ability to impose conditions on the consent is restricted to the matters over which control is reserved. I therefore recommend including the relief sought by the submitter in the rule so these matters can be considered.

Recommendation

55. Amend C.1.5.10 Maintenance dredging – controlled activity by:
- Deleting the specific reference to exclusion of dredge spoil.
 - Inserting a new matter of control relating to effects on tangata whenua and their taonga.
 - Inserting the word ‘dredging’ in matter of control 4) to clarify what this relates to.

Evaluation of recommended changes

56. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.9 of the Section 32 report and therefore do not require further evaluation.

Disposal of dredge spoil material and other waste in the coastal marine area

Submissions and analysis

57. There were 4 submissions on rule C.1.5.13 (disposal of certain waste in coastal marine area) and there were 9 submissions on policy D.5.19 (disposal of dredge spoil material). Additionally, Mangawhai Harbour Restoration Society have requested a new 'controlled' activity rule relating to the deposition of dredge spoil for ecological enhancement / restoration purposes.
58. Starting with rule C.1.5.13, Northport Ltd and Refining New Zealand have supported the rule as notified.
59. LaBonte' A & R have requested to amend the rule to provide recognition that dredge material in Mangawhai Harbour is not waste material and is instead used for the purposes of restoration, maintenance and enhancement of the foreshore. Similarly, Mangawhai Harbour Restoration Society are seeking to amend the rule so that it refers to the 'dumping' of waste... rather than 'disposal' of waste.
60. I support the relief sought from Mangawhai Harbour Restoration Society Inc (MHRS). As notified, the rule contains a note as follows - *This rule repeats the requirements of Regulation 4(2) of the Resource Management (Marine Pollution) Regulations 1998, which specifies that these activities must be treated as a discretionary activity in a regional coastal plan. It therefore is included for convenience and information purposes.*
61. Regulation 4(2) of the Marine Pollution Regulations specifically refers to the dumping (my emphasis) of certain waste and other matter. These regulations are promulgated pursuant to section 360(1)(a) and (ha) to (hh) of the Resource Management Act 1991 (RMA). Section 2 of the RMA states that dumping means (in relation to waste or other matter), means the deliberate disposal. Therefore, for clarity, I consider that this rule should apply to the dumping (deliberate disposal) of certain waste in the coastal marine area.
62. Turning to the LaBonte submission, I do not dispute that dredge spoil (specifically sand) from the Mangawhai Harbour Restoration Society's activities is used for the purposes of restoration, maintenance and enhancement of the foreshore and to replenish the Mangawhai Spit. This aside, it is my opinion that regardless of 'what' the material is used

for, the Marine Pollution Regulations are clear that dumping (deliberate disposal) of certain 'waste' (which includes dredge material) from a ship in the coastal marine area is deemed to be a discretionary activity in any regional coastal plan or proposed regional coastal plan¹. In my opinion, the council has 'no choice' but to state that any activity (regardless of whether it is undertaken for environmental enhancement purposes) that falls within the definition of certain waste is a discretionary activity.

63. Turning to Policy D.5.19, Bay of Islands Maritime Park Inc are seeking to amend clause 3) so that it only applies to public benefit reclamations. McConchie A has requested to not allow sand to be exported out of the Mangawhai area. Neither of these submitters have provided any reasoning to support their requests and I am therefore unable to consider them.
64. LaBonte' A & R have requested that condition 1) is amended as follows: *it is for beach maintenance, replenishment, enhancement or ecological restoration*, or... Mangawhai Harbour Restoration Society Inc have requested the following:
- All references in the policy to 'disposal' are deleted and replaced with 'dumping'.
 - The title is amended to Dumping of dredge spoil and other waste material.
 - Amend clause 1) as follows *it is for beach maintenance, replenishment, enhancement or ecological restoration*, or
 - Amend clause 2) as follows *it is for restoration, maintenance or enhancement of..*
65. I support the relief sought from LaBonte' A & R and Mangawhai Harbour Restoration Society. As noted above, I support rule C.1.5.13 referring to the dumping (deliberate disposal) of dredge spoil and other waste. I therefore believe that policy D.5.19 should reference the same. I also support the suggested changes to clauses 1) and 2) relating to beach 'maintenance' and 'enhancement'. I consider that these activities are environmentally/ecologically beneficial and will help to give effect to Policy 26 of the New Zealand Coastal Policy Statement regarding restoration of natural defences against coastal hazards, as well as Policy 4.4.2 (Supporting restoration and enhancement) of the RPS.
66. Two submitters (Patuharakeke Te Iwi Trust Board Inc and Tautari R) are seeking that the policy is amended to read *Discourage the disposal of dredge spoil and other waste in the*

¹ See Section 4(2)(a) of the Resource Management (Marine Pollution) Regulations 1998.

coastal marine area. I do not support this. The submitters have not provided any reasoning or demonstrated why it is appropriate.

67. Royal Forest and Bird Protection Society have requested that these activities should not be anticipated in areas with significant indigenous biodiversity. I do not consider that this policy is the most appropriate location (policy) to contemplate whether or not the disposal of dredge spoil material is appropriate in areas with significant indigenous biodiversity. As notified, there are specific policies (such as D.2.7) that manage adverse effects on indigenous biodiversity.
68. Northport Ltd have requested that clause 3) is amended as follows: *it is associated with a reclamation, or the disposal of dredging material associated with regionally significant infrastructure*.
69. Refining New Zealand have requested the insertion of a new clause 4) as follows: *it is associated with the operation of Regionally Significant Infrastructure, will not adversely affect a mapped Nationally Significant Surfbreak, Regionally Significant Anchorage, Outstanding Natural Feature, Area of Outstanding Natural Character, Site or Area of Significance to Tangata Whenua or Historic Heritage Area, and will not otherwise generate unacceptable adverse effects*. They have also requested an amendment to clause 1) to recognise that it might be appropriate to replenish other geomorphological features such as banks and spits.
70. I support the relief sought by Refining NZ and Northport Ltd relating to the inclusion of the disposal of dredge spoil associated with the operation of regionally significant infrastructure. Specifically, I support the relief sought by Refining NZ, noting that the operation of regionally significant coastal infrastructure might involve capital and or maintenance dredging, which naturally involves the dumping/disposal of dredge spoil. I consider the proviso that the disposal will not adversely affect a mapped significant ecological area or any other mapped significant/special area means that it is appropriate to include the recommended text. I also support Refining NZ's relief regarding an amendment to clause 1) to recognise that the dredge spoil disposal might be for the replenishment of other geomorphological features beyond what might be considered a 'beach'.
71. Turning to the request from the Mangawhai Harbour Restoration Society (MHRS) for a new (controlled activity) rule relating to depositing of dredge material for beneficial

purposes, my thoughts are as follows: While I consider that the Resource Management (Marine Pollution) Regulations 1998 (specifically clause 4) is clear that the 'dumping' of dredge spoil in the coastal marine area is required to be treated as a discretionary activity in regional coastal plans, this 'activity' is regulated by s15A of the Resource Management Act 1991 (see below):

Restrictions on dumping and incineration of waste or other matter in coastal marine area

(1) No person may, in the coastal marine area,—

(a) Dump any waste or other matter from any ship, aircraft, or offshore installation; or

(b) Incinerate any waste or other matter in any marine incineration facility— unless the dumping or incineration is expressly allowed by a resource consent.

72. However, regional councils can regulate the deposition of material on the foreshore or seabed, via section 12 (restrictions on use of coastal marine area), specifically s12(1)(d) and can also regulate the placement of material on land, via a section 9 rule.
73. I do agree with MHRS that the deposition of sand for the purpose of maintaining, enhancing and restoring foreshore and dune areas is a different activity to the 'dumping' of waste, such as sewage sludge and fish processing waste. I am supportive of a new rule but I believe that this new rule needs to be clear that it is not merely repeating Regulation 4 of the Marine Pollution Regulations 1998.
74. I do not support a controlled activity status for this potential rule because I consider that there needs to be scope to decline an application if potential adverse effects are more than minor. I therefore consider that a restricted discretionary activity rule is more appropriate. I also consider that the rule should only apply to the deposition of certain material for specified beneficial purposes. I consider this will minimise any potential for adverse effects associated with the activity.
75. I consider that the rule should only apply to the deposition of sand, shell, shingle or other natural material originating in the coastal marine area, with the intended design purpose being one or more of the following beneficial end uses: beach replenishment/renourishment, environmental/ecological enhancement or restoration or enhancement of natural coastal defences from coastal hazards.

76. I consider this will directly give effect to Policies 14 (Restoration of natural character) and 26 (Natural defences against coastal hazards) of the New Zealand Coastal Policy Statement.

Recommendation

77. Amend rule *C.1.5.13 Disposal of certain waste in coastal marine area – discretionary activity* by:

- Replace “disposal” with “dumping (deliberate disposal)”

78. Amend policy *D.5.19 – disposal of dredge spoil material* by:

- Renaming the policy “Dumping (deliberate disposal) of dredge spoil and other waste material”.
- Replace all references to “disposal” and replace with “dumping (deliberate disposal)”
- Amend clause 1 as follows: it is for beach maintenance, enhancement or replenishment (or the replenishment of other geomorphological features such as banks or spits), or..
- Amend clause 2 as follows: it is for restoration, maintenance or enhancement.
- Insert a new clause 4 as follows: it is associated with the operation of regionally significant infrastructure and will not adversely affect a mapped (refer [Maps](#)) significant ecological area, nationally significant surfbreak, area of outstanding natural character, outstanding natural feature, site or area of significance to tangata whenua or historic heritage area.

79. Include a new ‘restricted discretionary’ rule for – *Deposition of material for beneficial purposes* and a new definition as outlined below:

Deposition of material for beneficial purposes - The placement of sand, shell, shingle or other natural material (taken from within the coastal marine area) in the coastal marine area or on land, where the intended design purpose is associated with one of more of the following beneficial end uses:

1. beach replenishment/renourishment
2. environmental/ecological enhancement

3. restoration or enhancement of natural coastal defences from coastal hazards.

Excludes:

- deposition of dredged material or solid matter for reclamation purposes
- dumping (deliberate disposal) of waste or other matter
- creation of hard protection structures

Evaluation of recommended changes

80. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.9 of the Section 32 report and therefore do not require further evaluation.

Policy D.5.20: Dredging, disturbance and deposition – effects on areas with significant values

Submissions and analysis

81. There were 19 submissions on Policy D.5.20, ranging from supporting it as notified, supporting certain clauses, through to deleting certain clauses and to deleting the policy in its entirety. Most submissions were somewhere in the middle, either requesting additional 'beneficial' activities be included within the policy or requesting amendments to the policy to give effect to higher order policy documents such as the NZCPS, which requires that adverse effects on the values and characteristics of significant ecological areas, outstanding natural character areas, outstanding natural features and nationally significant surf breaks are to be avoided.
82. While this policy as notified is called 'Dredging, disturbance and deposition – effects on areas with significant values', what it actually seeks to achieve is to ensure that decision makers recognise that within 'significant areas', these activities are likely to have adverse effects on the values and characteristics of 'significant areas' but the activity *may* be being undertaken for beneficial purposes. Essentially, it sought that decision makers undertake a 'balancing act' when determining whether consent applications within significant areas may be considered appropriate. The policy is not focused on effects on areas with significant values, rather it outlines a number of beneficial activities (associated with dredging, disturbance or deposition) that might occur within 'significant areas'.
83. I consider that recent court decisions (such as NZHC 3080 between Royal Forest and Bird Protection Society and Bay of Plenty Regional Council, which decision closely followed the King Salmon decision) have clarified that more prescriptive or directive policies are to be given greater weight in decision making or when resolving the conflict between policies within a document. Following on from this, while I consider that context is relevant when considering whether an activity will have an adverse effect, the requirement to 'avoid' adverse effects is not contextual – it applies regardless of the circumstances. Consequently, I consider that Policy D.5.20 does not give effect to policies 11, 13 or 15 of the NZCPS or relevant policies in the RPS.
84. This aside, I accept that the Proposed Regional Plan currently does not contain policy direction to recognise the benefits of dredging, disturbance and deposition activities in the coastal marine area outside of mapped 'significant areas'. Several submitters (such as Northport and Refining NZ) have sought that the plan recognise the potential benefits of

these activities through policy guidance. After weighing up all relevant factors, I consider the most appropriate response is to recommend the deletion of policy D.5.20, which is the relief sought by Patuharakeke Te Iwi Trust Board and Tautari R.

85. However, I consider that policy D.5.20 outlines a number of environmentally or socially beneficial activities associated with dredging, disturbance or deposition activities, which should be included within a new policy that outlines these activities (within the coastal marine area in general – not just within ‘significant’ areas) may be necessary for a number of beneficial activities. I consider the new policy should list the beneficial activities and these should be:

- The continued operation of existing infrastructure
- To maintain or improve access and navigational safety within the coastal marine area
- For beach re-nourishment or replenishment activities
- In association with the deposition of material for beneficial purposes (as defined above), including the restoration or enhancement of natural systems and features that contribute towards reducing the impacts of coastal hazards.
- To protect, restore or rehabilitate the significant values associated with a mapped ‘significant area’.

Recommendation

86. Delete Policy *D.5.20: Dredging, disturbance and deposition – effects on areas with significant values* and insert new policy on benefits of dredging, disturbance and deposition activities.

Evaluation of recommended changes

87. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.9 of the Section 32 report and therefore do not require further evaluation.

Other matters

88. Refer to Appendix A for the summary of submission points, analysis and recommendations made on the Dredging, disturbance and disposal provisions not addressed in the key matters sections of this report.

Appendix A - Response to other matters raised in submissions

Note – this table does not include the summary of submission points, analysis and recommendations made on the <topic> provisions addressed in the key matters sections of the report.

Provision	Summary of main submission points	Discussion	Recommendation
<p>Labonte A&R requested a definition for 'shellfish'</p> <p>In turn, this would affect:</p> <ul style="list-style-type: none"> - C.1.5.1 Activities on foreshore areas and use of vehicles on beaches – permitted activity - C.1.8 Coastal works general conditions - Condition 7 (limited to SEA areas) Condition 20 (associated with mangrove removal) - Any SEA area identifying significant values of shellfish beds 	<p>Inclusion of a shellfish density and shellfish bed area threshold:</p> <p><i>“Where living and dead specimens of bivalve species cover 30% or more of the seabed in imaging surveys covering 100 m2 or more, contribute 30% or more by weight or volume to the catch in a single grab sample or dredge tow.”</i></p>	<p>Percentage cover is an unusual measurement for shellfish density. The scale usually used is number of individuals per square metre (density).</p> <p>The operative Regional Coastal Plan includes references to shellfish beds and does not have a density or area trigger and this does not appear to have been problematic in any way.</p> <p>Other reasons for not including a shellfish density definition include:</p> <ul style="list-style-type: none"> • Northland has a number of important shellfish species. Any definition would need to have densities for each of these species and this would become overly complex (e.g. scallop, cockle and pipi would all be very different), • the majority of shellfish, live below the surface, so a 30% area cover would be of little use, • empty shells / dead shellfish, on the surface is not always a good indication that there is a shellfish bed beneath, • the ecological value of a shellfish bed is not directly proportional to the density of shellfish, for example the shellfish species, bed location and associations with other species, may be important. <p>Therefore, I do not believe a new definition is required.</p>	<p>No change.</p>

Provision	Summary of main submission points	Discussion	Recommendation
Definition – beach scraping	Royal Forest and Bird Protection Society NZ have requested amendments to the definition to add clarity.	I support the request to delete ‘generally sand’ as this does create uncertainty but I do not support the request to delete ‘usually by mechanical equipment’ as I consider this is an integral part of the definition.	Amend definition as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes</i> .
Definition – maintenance dredging	Several submitters supported this definition. Johnson A comments that maintenance dredging is always going to be covered under the consent process but does not actually offer an alternative definition.	I do not support any change to the definition of maintenance dredging. This proposed definition is identical to the definition of maintenance dredging in other plans throughout the country (such as Auckland and Bay of Plenty).	No change.
General submission	Ashby J requested that dredging for the purposes of getting mooring blocks to sit below surface of seabed should allowed at the discretion of the Harbour Master.	I do not support a permitted activity status for small scale dredging. I consider that any dredging in the coastal marine area needs to be subject to the resource consent process so that all potential adverse effects can be considered and appropriate conditions attached to the consent.	No change.
General submission	Bream Bay Coast Care Trust requested that consideration should be given to excluding Whangarei Racing Club from training horses on Ruakaka beach.	The submitter has not provided any reasons why they want horses excluded from using Ruakaka beach. I consider that this activity should fall under the control of rule C.1.5.1 and would therefore need to comply with all conditions of this rule to be a permitted activity.	No change.
General submission – new rule	CEP Services Matauwhi Ltd requested a new restricted discretionary activity rule providing for maintenance dredging within any special area or any area which meets any of the criteria for significance listed in Appendix 5 of the Regional Policy Statement.	I do not support the relief sought by the submitter. I note that maintenance dredging (by its definition) is maintaining previously dredged areas to previously consented levels. I note that effects on mapped ‘significant’ areas is a matter of control, and I believe that these potential adverse effects can be appropriately managed (through conditions of consent) without resorting to a more restrictive activity classification. A controlled activity cannot be declined whereas a restricted discretionary activity can.	No change.
General submission	Johnson A commented that conditions for dredging consents	I consider that the plan is not the appropriate avenue to direct what the conditions of consents for the quantum of	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	(capital and maintenance) need to be defined by area and dredge depth, not by volume.	dredging activities should be. This should be done on a site-by site, case-by-case basis depending on the characteristics of each application.	
General submission – new rule	Kaipara District Council and Whangarei District Council requested a new rule to address the effects of vehicle use which does not comply with rule C.1.5.1.	I agree with the submitters that there is currently a gap in the Plan regarding activities that cannot comply with rule C.1.5.1. I therefore recommend adding this to the discretionary activity ‘catch all’ rule that is C.1.5.12.	Amend rule C.1.5.12 as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>
General submission	McConchie A stated that no sand should be permitted to be exported from Mangawhai for commercial gain and no dredging should be permitted within Mangawhai harbour primarily for the passage of recreational vessels.	The submitter has not provided any evidence or reasons why the plan should be amended.	No change.
General submission – new rule	Refining NZ requested a new restricted discretionary activity rule for dredging and disturbance activities associated with regionally significant infrastructure	I do not support the submitters requested relief. I note that any maintenance dredging is proposed to be a controlled activity but capital dredging as notified, is proposed to either be a discretionary or non-complying activity. I consider this is more appropriate than a restricted-discretionary activity because capital dredging has the potential to cause significant adverse effects and potentially, adverse effects that may not be anticipated. I therefore consider there is a risk that if capital dredging was a restricted discretionary activity that key matters might be overlooked (from the matters of discretion) and therefore not be able to be considered during any consent process.	No change.
General submission – new rule	Northport Ltd requested a new discretionary activity rule for dredging and disturbance activities within their proposed Coastal	I do not support the submitters requested relief. I note that capital dredging within the coastal commercial zone will be a discretionary activity. I also note that the s42A report for coastal structures has not recommended that the Whangarei harbour commercial shipping channel be	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	Commercial Port Zone or commercial shipping channels.	incorporated into the planning maps. Regardless of this, my understanding is that any capital dredging within the recommended shipping channel would be a discretionary activity as well because it is not subject to any significant area mapping overlays.	
General submission – new rule	New Zealand Defence Force requested a new rule permitting minor disturbance of the foreshore or seabed	I do not consider there is a need for a new ‘stand-alone’ rule for minor disturbance activities. This is because my recommended amendments to rule C.1.5.1. involve deleting explicit reference to ‘recreational’ activities, meaning the rule now applies to any activity on the foreshore. This rule covers damage, destruction or disturbance of the foreshore or seabed, meaning it will cover minor disturbance activities.	No change.
General submission	New Zealand Fairy Tern Charitable Trust sought to amend the dredging rules as necessary to implement Option B as outlined in the Section 32 Report or at the very least roll over the status quo.	The submitter is essentially asking for a more restrictive regime for dredging and disturbance activities. The section 32 evaluation report outlined why Option C is the preferred option, essentially striking a balance between enabling the economic and social well-being of communities to be enhanced and protecting environmental bottom lines. The submitter has not provided any additional evidence to persuade me that option C is not the most appropriate management approach.	No change.
General submission	Whangarei District Council request amendments to rules C.1.5.7, C.1.5.8 and C.1.5.10 to address the effects of acid sulphate soils	This will be addressed in a separate report.	See the acid sulphate soils s42A report.
General submission	Russell Landcare Trust request amendments to the rules to make the drawing up of sand from the beach for dune restoration and the use of diggers and other machinery on beaches ‘permitted activities’.	I consider that the drawing up of sand from beaches for dune restoration activities is covered by the proposed ‘restricted-discretionary’ beach scraping rule (C.1.5.11). I consider this is the most appropriate activity status and it should not be permitted. I note that coastal dune restoration activities are permitted under rule C.8.4.1.	No change.

Provision	Summary of main submission points	Discussion	Recommendation
General submission	Vaughan J requested that dredging in the Mangawhai harbour should be made a non-complying activity because of its significant ecological areas.	I note that certain parts of Mangawhai harbour have been identified as mapped Significant Ecological Areas. Capital dredging within these locations will be a non-complying activity. Other capital dredging will be a discretionary activity, which can be declined if potential adverse effects are deemed to be excessive. I do not recommend any changes as a result of this submission point.	No change.
General submission	Te Rununga o Whaingaroa state that they are opposed to human burial at sea within their rohe. They are also opposed to scattering of ashes for cremation and believe the plan needs to include a rule stating that this must take place at least 2km off-shore.	The submitter has not provided any evidence as to why their proposed amendments are appropriate. I am therefore not in a position to consider the requests. I have sought the views of Keir Volkerling who has developed the tangata whenua provisions for the Proposed Plan and he agrees with my view.	No change.
C.1.5.2 C.1.5.3	New Zealand Transport Agency requested some minor changes to amalgamate rules C.1.5.2 and C.1.5.3 into a single rule and to delete C.1.5.3.	I agree with the submitter that there is merit in amalgamating the two rules together. The relief sought does not change the meaning or intent of any of the rules and I therefore support the relief sought.	Amalgamate rules C.1.5.2 and C.1.5.3.
C.1.5.3	Heritage NZ requested an amendment to state the activity must not occur within a mapped Historic Heritage Area.	I agree with the submitter that the potential for adverse effects upon Sites or Areas of Significance to Tangata Whenua are similar in scale and degree to those upon mapped Historic Heritage Areas. In light of the relief sought be New Zealand Transport Agency above, I support the relief sought by the submitter and consider that it should be incorporated into the plan.	Add Sites or Areas of Significance to Tangata Whenua to list of mapped areas that rule C.1.5.2 applies to.
C.1.5.4	The Minister of Conservation sought to amend the rule as follows: <ul style="list-style-type: none"> <i>The removal of nuisance marine plant debris washed onto a beach where it restricts safe and legally established public walking</i> 	The submitter requests amendments to the rule, arguing that as drafted, it is too subjective for a permitted activity rule.	Amend rule C.1.5.4. as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>

Provision	Summary of main submission points	Discussion	Recommendation
	<p><u>access to is significantly adversely affecting amenity or access to and use of the beach, is a permitted activity</u></p> <ul style="list-style-type: none"> • Delete “amenity” from the rule. • Add a new condition: <u>6) The activity does not cause adverse effects on intertidal shellfish, particularly the juveniles of species such as tuatua and toheroa.</u> 		
<p>C.1.5.4 C.1.5.5 C.1.5.6 C.1.5.7 C.1.5.8</p>	<p>Miru M and Tinopai RMU Limited are seeking to include a new clause within these rules to essentially state that if the activity is located within a Site of Significance to tangata whenua, tangata whenua should be consulted/notified.</p>	<p>The submitters are requesting an amendment to certain permitted activity rules so that tangata whenua are consulted/notified if the activity is occurring within a site of significance to tangata whenua. I consider that this will assist with giving effect to Part 2 of the RMA, specifically section 6(e) and (f). Noting that these are permitted activities and that applicants need as much certainty as possible, I consider that this should apply within ‘Sites or Areas of Significance to Tangata Whenua’ as mapped in the Proposed Regional Plan for Northland.</p>	<p>Amend rules C.1.5.4, C.1.5.5, C.1.5.6, C.1.5.7 and C.1.5.8 as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i></p>
<p>C.1.5.5</p>	<p>Ngati Ruamahue of Whangaroa requested that they are notified of wrecks being removed if it is within their rohe.</p>	<p>See discussion above in relation to Miru M and Tinopai RMU Limited. I consider that tangata whenua should be notified if the activity is occurring within a mapped Site or Area of Significance.</p>	<p>Amend rule C.1.5.5. as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i></p>
<p>C.1.5.6</p>	<p>GBC Winstone requested that specific reference to stormwater pipe outlets is deleted and instead the rule addresses clearing of authorised pipe outlets.</p>	<p>I consider that the submitter raises valid points in that unblocking pipes is a way of avoiding significant risks and it is the efficiency of the operation of the pipe that is being provided for. Therefore so long as people undertaking clearing of pipes can comply with the standards and terms,</p>	<p>Amend rule C.1.5.6. as outlined in the <i>Proposed Regional Plan for Northland –</i></p>

Provision	Summary of main submission points	Discussion	Recommendation
		it should not matter which type of outlet pipe is being cleared.	<i>S42A recommended changes.</i>
C.1.5.6	<p>Kaipara District Council and Whangarei District Council requested an amendment to the rule as follows:</p> <ul style="list-style-type: none"> Increasing the extent of the clearance area to create a free-draining path to the sea to include a 5m buffer. Delete clause 3) there is no disturbance of indigenous or migratory bird nesting sites. 	I consider that the rule (as notified) strikes the most appropriate balance between enabling infrastructure (pipe outlets) to be maintained and environmental protection (considering that it is a permitted activity rule). The submitters do not introduce reasons why the path should include a buffer area and why disturbance of bird nesting sites should be permitted. I therefore do not support the requested amendments.	No change.
C.1.5.6	Morrison G & P requested to delete clause 5).	I do not agree with the relief sought by the submitters as the intention of this rule is to clear/remove material from pipe outlets in the coastal marine area. I consider that to not require vegetation and visibly contaminated material be removed from the coastal marine area would be counter intuitive. I note that the submitters also do not demonstrate why an amendment is appropriate.	No change.
C.1.5.6	Refining New Zealand requested that clause 4) is amended by adding the words <u>to the extent practicable</u> at the end of the sentence.	I do not support the relief sought by the submitter – primarily because as this is a permitted activity rule, I consider it requires a high degree of certainty. I believe that the requested relief does not provide that certainty and will result in a higher chance of adverse environmental effects.	No change.
C.1.5.6	<p>Royal Forest and Bird Protection Society NZ requested the following amendments to the rule: Change rule to refer to ‘authorised’ pipe outlets x) <u>any removal of mangroves complies with Rule C.4.1.2, and</u> y) <u>all other vegetation clearance only occurs within 1m of the outlet and is</u></p>	<p>I do not support the request to amend rule to only refer to ‘authorised’ pipe outlets. This is because the focus of the rule is clearing material that has accumulated/blocked the outlet, not whether or not the actual pipe is authorised or not.</p> <p>I support the request regarding mangroves as this should reduce any confusion regarding interpretation of rules.</p> <p>I do not support requested clause y) as the proposed rule is clear that the extent of clearance shall be limited to that</p>	Amend rule C.1.5.6. as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>

Provision	Summary of main submission points	Discussion	Recommendation
	<p><i>minimises to the extent required to enable the stormwater discharge from the pipe, and</i></p> <p>...</p> <p><i>5) all removed or cleared vegetation under conditions X and Y, rubbish and visibly contaminated material is removed from the coastal marine area, appropriately disposed of, and</i></p> <p>...</p>	<p>required to create a free-draining path from the outlet to the sea.</p> <p>Regarding clause 5), I consider that referring to 'cleared' vegetation will ensure the rule is easier to interpret. I also consider that requiring the material/vegetation to be appropriately disposed of will lead to less risk of adverse environmental effects.</p>	
C.1.5.7	<p>Bay of Islands Maritime Park Inc requested that above a minimum size clearing artificial watercourses should be a controlled activity so that guidance can be provided on ways to minimise damage to residual ecological values.</p>	<p>I do not support the relief sought by the submitter. I consider that the requirement that the original profile (width and depth) of the artificial water course is not exceeded, along with the requirement to notify council prior to work being undertaken, will ensure that potential for adverse environmental effects will be minimised and that a permitted activity is the appropriate activity status.</p>	No change.
C.1.5.7	<p>Ngati Ruamahue of Whangaroa stated that clearing is of concern to them and they would expect to be consulted on this matter.</p>	<p>See discussion above in relation to Miru M and Tinopai RMU Limited. I consider that tangata whenua should be notified if the activity is occurring within a mapped Site or Area of Significance.</p>	Amend rule C.1.5.7. as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>
C.1.5.8	<p>Kaipara District Council requested the same amendments to this rule that they sought to rule C.1.5.6 above.</p>	<p>My conclusions are the same in relation to this rule as in relation to rule C.1.5.6 above.</p>	No change.
C.1.5.8	<p>Bay of Islands Maritime Park Inc and Eastern Bay of Islands Preservation Society have requested to change the rule to a controlled activity so conditions can be applied to</p>	<p>I consider that clauses 1) and 2) of the rule relating to the extent of clearance and the purpose of clearance as well as the requirements of condition 8) of the general coastal conditions relating to no damage to shellfish beds and disturbance/damage to seagrass meadows within mapped</p>	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	minimise damage to natural and ecological character areas.	significant ecological areas, will ensure that potential effects on significant areas will be minimised. I therefore consider that permitted activity is the appropriate activity status if applicants can comply with the standards and terms.	
C.1.5.8	Royal Forest and Bird Protection Society NZ are seeking the same relief for rule C.1.5.8 as they have sought for rule C.1.5.6	Regarding mangroves, I do not consider this to be the same in relation to clearance of pipe outlets (which may well contain mangroves) and tidal stream mouths (which generally do not contain mangroves, especially mature mangroves). I do not support including any reference to mangroves in this rule because the mangrove clearance rules do not allow for the clearing of mangroves from tidal stream mouths. My conclusions with regards to the clearance of vegetation and material from the coastal marine are the same as C.1.5.6 and I support this recommended addition.	Amend rule C.1.5.8 as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes</i> .
C.1.5.8	New Zealand Transport Agency requested an amendment to clause 2) as follows: <i>the clearance is for the purpose of avoiding flooding of adjacent land and infrastructure or</i>	I do not support the requested amendment. The proposed rule focuses on avoiding flooding of land – assuming that infrastructure is located on land then it would be covered by the rule.	No change.
C.1.5.9	The Minister of Conservation requested a new condition 3) as follows: <u>3) The activity avoids adverse effects on all indigenous species</u>	The submitter does not provide any reasons why they are requesting this amendment other than impacts on indigenous vegetation and biodiversity have not been considered. I do not support the requested change as I consider that the coastal general conditions (specifically 8, 9 and 10) will ensure that potential adverse effects associated with this (positive activity) will be no more than minor.	No change.
C.1.5.9	Ngati Ruamahue of Whangaroa stated that the burial of deal animals is significant to them and they would expect to be consulted on the matter.	I do not recommend amending the rule to require tangata whenua to be formally notified before animals are buried as there are situations where the animals/marine mammals are required to be buried as quickly as possible, meaning waiting for a notification period would not be practicable. I	No change.

Provision	Summary of main submission points	Discussion	Recommendation
		am also mindful that any rules in the Proposed Plan need to manage potential adverse effects	
C.1.5.11	Heritage NZ have requested an additional matter of discretion as follows: <i>7) <u>Effects on historic heritage that has not yet been assessed for significance.</u></i>	I do not support the relief sought because the proposed rule already includes effects on any mapped Historic Heritage Area or Site. I do not consider it appropriate for the matters of discretion to refer to effects on historic heritage yet to be assessed for significance because of the lack of certainty.	No change.
C.1.5.11	Royal Forest and Bird Protection Society NZ are requesting the rule is changed to full discretionary and to include a non-complying rule for beach scraping in significant areas.	I consider that 'restricted discretionary' is the most appropriate activity status for beach scraping. I note that applications can be declined if adverse effects are deemed to be excessive. I note that matters of discretion include effects on natural processes, effects on indigenous biodiversity as well as effects on mapped significant ecological areas. I do not support a more restrictive activity status.	No change.
C.1.5.11	Tautari R and Patuharakeke Te Iwi Trust Board Inc requested that effects on tangata whenua and their taonga are added to the matters of discretion.	Acknowledging that this is a restricted discretionary activity rule and therefore council's power to decline or grant consent and to impose conditions on the consent is restricted to the matters over which discretion is restricted, I recommend including the relief sought by the submitter in the rule so these matters can be considered.	Amend rule C.1.5.11. as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>
C.1.5.12	CEP Services Matauwhi Limited requested that all other special areas and any area which meets any of the criteria for significance listed in Appendix 5 of the RPS are listed in the rule.	I do not support the submitters requested relief because this rule refers to <u>mapped</u> special areas. I do not consider it appropriate to refer to areas that have not been mapped in this rule because it lacks the requisite level of certainty required.	No change.
C.1.5.12	Heritage NZ requested the inclusion of Historic Heritage Sites (alongside Historic Heritage Areas).	Noting that other rules in this section refer to effects on any mapped Historic Heritage Areas <u>or Sites.</u> (my emphasis) I consider this rule should be amended to refer to Historic Heritage Sites as well.	Amend rule C.1.5.12. as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes.</i>

Provision	Summary of main submission points	Discussion	Recommendation
C.1.5.12	LaBonte' A & R are seeking to amend the rule to provide recognition that dredge material in Mangawhai Harbour is not waste material and is instead used for the purposes of restoration, maintenance and enhancement of the foreshore	Rule C.1.5.12 does not cover the disposal/deposition of dredge material. This is addressed by rule C.1.5.13.	No change.
C.1.5.12	Northport Ltd requested the addition of the following: <u>9) discretionary activity under rule C.1.5.12 B 'Dredging and disturbance activities in the Coastal Commercial Port Zone or commercial shipping channels.</u>	As mentioned above, I have not recommended the inclusion of the new rule that Northport have requested, therefore I am not recommending the incorporation of their relief sought.	No change.
C.1.5.12	Mangawhai Harbour Restoration Society Inc are seeking to amend the rule as a consequence of the new rule sought by the submitter relating to the non-commercial deposition of dredge spoil	My view on the proposed new rule by Mangawhai Harbour Restoration Society is discussed above.	No change.
C.1.5.12	Royal Forest and Bird Protection Society NZ requested to amend conditions 9) and 10) to include further significant and outstanding areas, including all significant areas that meet the RPS criteria, bird areas and outstanding landscapes.	I do not recommend any changes to the rule as a result of this submission point. I note that there are no mapped outstanding landscapes within the coastal marine area within this plan and the rule already includes significant ecological areas. As mapped, significant bird areas essentially include every estuary and harbour in the region, I do not consider it appropriate to include them in this category for this activity.	No change.
C.1.5.14	La Bonte' A & R and Mangawhai Harbour Restoration Society Inc request that activates that restore and maintain the Mangawhai Spit	I have addressed these points in detail in the key matters above (maintenance dredging and dredge spoil disposal). I will re-iterate that any maintenance dredging will be a controlled activity and I consider that any dredge spoil	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	are positively enabled by the Plan (rather than non-complying)	disposal in the coastal marine area will be a discretionary activity – regardless of where it is disposed.	
C.1.5.14	Northport Ltd are seeking a consequential amendment to the rule to include reference to the new discretionary activity rule they have proposed.	As mentioned above, I have not recommended the inclusion of the new rule that Northport have requested, therefore I am not recommending the incorporation of their relief sought.	No change.
C.1.5.14	Refining New Zealand support the rule subject to removal of the following from the planning maps: Mair Bank Significant Ecological Area Significant Marine Mammal and Seabird Area overlay from the Whangarei Harbour and Bream Head.	The relief sought by the submitter does not actually relate to this rule. Any amendments to maps with regards to significant marine areas will be addressed in the <i>Significant natural and historic heritage</i> s42A report.	No change.
C.1.5.14	Royal Forest and Bird Protection Society NZ requested the rule be amended to capture additional requested areas in rule C.1.5.12	See response to submitter's submission on rule C.1.5.12 above.	No change.
Policy D.5.18	Bay of Islands Maritime Park Inc requested the policy is amended to state that dredging activities should be avoided except where necessary to maintain access to community facilities. Also states that extensive private dredging should be avoided and dredging should be avoided where it causes ongoing ecological damage.	No reasons are given by the submitter why the rule should be amended.	No change.
Policy D.5.18	McConchie A requested amendments to prevent significant dredging in Mangawhai Harbour.	The submitter has not provided any reasoning to support the request.	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	Also requests to provide for bare minimum volume of dredging to retain a natural harbour primarily for non-motorised activity in Mangawhai.		
Policy D.5.18	New Zealand Fairy Tern Charitable Trust requested the section is amended to implement the heavier regulatory approach (Option B).	The submitter has not demonstrated why the heavy regulatory approach is more appropriate than the preferred option.	No change.
Policy D.5.18	Royal Forest and Bird Protection Society NZ suggested these activities should not be anticipated in areas with significant indigenous biodiversity.	The submitter does not give any reasons other than the policies are not consistent with the requirements of the NZCPS. I note that policies D.2.7 and D.2.8 of the notified plan focus on 'Managing adverse effects on indigenous biodiversity' and 'Precautionary approach to managing effects on significant indigenous biodiversity'.	No change.
Policy D.5.18	Refining New Zealand requested the policy be amended by adding the following: <u><i>While recognising that dredging, disturbance and deposition activities are necessary:</i></u> <u><i>1) for the continued operation of existing infrastructure, and</i></u> <u><i>2) to provide for the expansion of infrastructure and community facilities, and</i></u> <u><i>3) to maintain and improve access and navigational safety, and</i></u> <u><i>4) for replenishment activities.</i></u>	The submitter seeks recognition of the benefits associated with dredging, disturbance and deposition activities, given the role that such activities play in the well-being of the Northland Region. I agree that there are circumstances/situations where dredging, disturbance and deposition activities <u>may</u> be necessary and that there is merit in recognising this through policy. I note that recognition alone does not mean that the activity overall will be considered appropriate and any resource consent application (for discretionary or non-complying activities) will need to consider all policies in the plan. I consider that these activities may be necessary for the continued operation of existing infrastructure, to maintain and improve access and navigation safety within the coastal marine area and for beach re-nourishment or replenishment activities.	Insert a new policy called <i>Benefits of dredging, disturbance and deposition activities</i> , as outlined in the <i>Proposed Regional Plan for Northland – S42A recommended changes</i>
Policy D.5.18	Tautari R and Patuharakeke Te Iwi Trust Board Inc have requested the policy is amended by adding the following:	The relief that the submitters have requested is identical to Policy D.1.1 (When an analysis of effects on tangata whenua and their taonga is required) except for item 4) relating to GMOs.	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	<p><u>3) cause:</u> <u>a) adverse effects on mahinga kai and access to mahinga kai; or</u> <u>b) any damage, destruction on and loss of access to wāhi tapu, sites of customary value and other ancestral sites and taonga which Māori have a special relationship with, or</u> <u>c) adverse effects on indigenous biodiversity where it impacts on the ability of tangata whenua to carry out cultural and traditional activities, or</u> <u>d) adverse effects on tāiapure, mataitai or Māori non-commercial fisheries, or</u> <u>e) adverse effects on protected customary rights, or</u> <u>f) adverse effects on Sites and Areas of Significance to Tangata Whenua mapped in the Regional Plan (refer / 'Maps').</u></p>	<p>I have discussed this with Keir Volkerling who has developed the tangata whenua provisions for the Proposed Plan. Mr Volkerling notes that the concerns are addressed within the tangata whenua provisions.</p>	