

**IN THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA  
I TĀMAKI MAKĀURAU ROHE**

**IN THE MATTER**

of an appeal under Clause 14 (1) of the  
First Schedule of the Resource  
Management Act 1991

**AND IN THE MATTER**

of the proposed Northland Regional Plan

**BETWEEN**

**THE ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW ZEALAND  
INCORPORATED**

*Appellant*

**AND**

**NORTHLAND REGIONAL COUNCIL**

*Respondent*

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**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF  
NEW ZEALAND INCORPORATED**

17 June 2019

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To: The Registrar  
Environment Court  
Auckland

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird'; 'the Society') appeals against decisions of Northland Regional Council on the Proposed Northland Regional Plan (the proposed plan).
2. Forest and Bird made a submission and two further submissions on the proposed plan change.
3. Forest and Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Forest and Bird received notice of the decision on 6 May 2019.
5. The decision was made by the Bay of Plenty Regional Council.

#### **KEY TOPICS OF APPEAL**

##### **Marine Protected areas**

6. Forest & Bird is seeking the inclusion of policies and rules to provide for marine protection, in particular, whether rules can be included in the plan that protect the habitat of threatened and at risk species and for species to recovery in degraded areas. This follows from the series of decisions of the Environment Court and High Court about whether this was lawful under the RMA.
7. The High Court ruled that a coastal plan could include rules to protect indigenous biodiversity from the adverse effects from fishing. This High Court decision was appealed to the Court of Appeal, and it is scheduled of hearing in July 2019.
8. In reliance on the High Court decision, Forest & Bird is seeking policies and rules to provide for the protection of ecological and/or cultural values, including in relation to:
  - a. The following areas:

- i. Te Paki Stream in the west around the top of the North Island including Parengarenga Harbour, including the southern head of this harbour to the east, all out to 12 NM limit.
  - ii. Oruaiti river in the north to the Takou river in the south and out to the 12 NM limit.
  - iii. Tapeka Point to Nine Pin across to Motukokako. Including Motukokako and Rakaumangamanga in the north to Taupiri Nui in the south including all the islands in between and out to the 12 nm mile limit.
  - iv. Mokau in the north to Titi Island in the south and out to the 12 NM limit.
- b. rocky reefs from the adverse effects associated with kina barrens created where fishing removes large lobster and snapper, the natural predators of kina, resulting in kina thriving and out-competing other species.
  - c. To protect indigenous species threatened or at risk species and give effect to Policy 11 of the NZCPS.

#### **Significant ecological area and significant bird areas**

9. There is a significant problem in the way in which the Council has chosen to:
  - a. fulfil its obligations under s 6(c) of the RMA:
  - b. give effect to the NZCPS and RPS.
10. The Council has distinguished between Significant Ecological Areas (SEA) and Significant Birds Areas (SBA). SEAs are given a higher level of protection than SBAs.
11. This has some unintended consequences. The most notable issue is with respect to fairy terns, which are the most endangered bird species in New Zealand and which rely on mangroves as feeding habitat.
12. The habitat for the fairy tern at Mangawhai is a SBA and an SEA, not for fairy terns but for cockle beds. The effect of this is that protection is afforded to
13. In giving significant bird habitat a lower level of protection than other significant areas is contrary to s 6(c), the NZCPS and RPS.

14. The protection afforded significant ecological areas is also inadequate, particularly in relation to permitted activity rules and where council has limited its control or discretion.

### **National Policy Statement for Freshwater Management**

15. The plan does not give effect to the National Policy Statement for Freshwater Management (NPSFM).

### **National Planning standards**

16. Forest & Bird have some concerns with the lay out the plan and that the structure of provisions could be improved to clarify intent and application. The National Planning Standards have set out a number of formatting requirements and MfE has provided additional guidance on this. This includes that chapters are to be set by topic and include all relevant objectives, policies and then rules within each topic chapter. In particular for the coastal environment<sup>1</sup>, that:

- a. The Coastal environment chapter must set out the approach to managing the coastal environment and giving effect to the New Zealand Coastal Policy Statement.
- b. Any specific provisions relating to the coastal environment which are located in other topic chapters must be cross-referenced in the Coastal environment chapter.
- c. The Coastal marine area section must be included unless a separate regional coastal plan or proposed regional coastal plan exists for the region.

17. Forest & Bird seek that the Plan is reworked into the format required by the National Planning Standards as part of this appeal process so that the amendments to address submissions are certain. If Council were to undertake a reformatting after appeals are resolved this could raise numerous issues if intent is accidentally changed.

### **Landscapes**

18. The Plan does not provide for protection of Natural landscapes as required by the NZCPS, nor has it identified Outstanding natural landscapes from the RPS within the Plan. This does not provide for Council's functions within the Coastal environment

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<sup>1</sup> National Planning Standards 2019, 3 Regional Plan Structure Standard, Directions for Part 2, point 10.

landward of the CMA. In particular those activities within the CMA can have adverse effects on natural landscapes beyond the CMA. It is unclear how the Plan provisions, which include reference to Outstanding natural landscapes (Policies D.2.6, D.2.15 and D.2.17) and outstanding natural seascapes (Objective F.1.11) are implemented through the plan rules.

#### **PARTS OF DECISION APPEALED, REASONS FOR APPEAL, AND RELIEF SOUGHT**

19. The parts of the decision that Forest and Bird is appealing relate to the key topics above and following provisions, and includes consequential amendments to other plan provisions as necessary for consistency and to give effect to relief sought as set out in the Table 1 below.

20. In addition to the reasons set out in the table below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:

- a. do not give effect to relevant provisions of the Northland Regional Policy Statement (RPS);
- b. do not give effect to the New Zealand Coastal Policy Statement ;
- c. do not give effect to the National Policy Statement for Freshwater Management;
- d. are not consistent with Part 2 of the Resource Management Act ('the Act');
- e. do not implement the Council's functions under s 30 of the Act; and/or
- f. do not represent best resource management practice.

21. In addition key matters of appeal above, the parts of the decision appealed, reasons for the appeal and relief sought are set out in the table below. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal. Forest & Bird also seeks any consequential changes made necessary by the relief set out in Table 1 below.

## **Attachments**

22. The following documents are attached to this notice of appeal:

- a. A copy of the Council's decision (Appendix A)
- b. A list of names and addresses of persons to be served with a copy of this notice (Appendix B); and
- c. A copy of Forest and Bird's original submission to the Proposed Plan Change 9 to the Bay of Plenty Regional Natural Resources Plan (Appendix C).
- d. A copy of Forest and Birds further submissions (Appendix D)

23. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the appellant on request.

Dated: 21 November 2018



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## **Advice to recipients of copy of notice of appeal**

[How to become party to proceedings](#)

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

**Advice**

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

**Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).**

**TABLE 1 - PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF SOUGHT**

\*Please note that all amendments under “relief sought” are on the decision “clean version” of the Plan

	PROVISION	REASONS FOR APPEAL	APPEAL – RELIEF SOUGHT
	Definitions		
1.	Adaptive management	The term “enable” has specific meaning in a policy context which while not applicable within a definition could be confusing. As such an alternative term is proposed.	Amend the definition of “Adaptive management” as follows: “A means of managing activities whose effects are uncertain and the outcome of methods to avoid, remedy or mitigate those effects is also uncertain; primarily through the setting of consent conditions that <del>enable</del> <u>allow</u> activities to be managed in response to monitoring of the effects of the activity <u>to meet specific outcomes/objectives/limits from methods used to address those effects.</u> ”
2.	Earthworks	The definition is poorly drafted as exemptions should be contained in the rules not the definition. It also conflicts with the National Planning Standards.	Amend the definition to be consistent with the National Planning Standards.  Ensure that permitted and controlled rules include conditions and matters for control to avoid the placement of fences in inappropriate locations.
3.	Functional need	The definition is not consistent with National Planning Standards	Amend the definition to be the same as the National Planning Standards:  “ <u>means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.</u> ”
4.	Land preparation	Excluding activities is problematic when applying the definition in rules which provide for activities otherwise restricted by s14 and 15 of the RMA.  The proposed definition is also uncertain in terms of	Amend the definition of “as follows: “Land preparation ( <i>in relation to sediment effects on water quality</i> ) The disturbance of <del>earth</del> by machinery for planting, replanting, tending or harvesting pasture or crops. It



		'sediment control measures' and 'drainage' which do not directly relate to the first part of the definition.	includes blading, contour ploughing, ripping, mounding, stepping, contouring, bunding and <del>sediment control measures and drainage associated with the activity but does not include direct drilling.</del>
5.	Natural wetland	This does not give effect to the RPS	Delete definition and rely on RMA definition
6.	Passive discharge	<p>The definition is uncertain as to whether it only applies in relation to contaminated land, so that the term can be defined for other purposes or circumstances in the region if needed. If this is the case it should be amended to meet the National Planning Standards</p> <p>The plan still needs a definition for "diffuse discharge" to support the implementation of Policy D.4.5 which provides direction to manage diffuse discharges under transitional policy A4 of the NPSFM and to give effect to the NPS FM.</p>	<p>Amend to read:</p> <p><i><u>"Passive discharge (in relation to contaminated land)</u></i></p> <p>The movement of contaminants from contaminated land that are entrained in soil or groundwater through groundwater or surface water movement or the movement of soil gas vapour."</p> <p>Add a new definition as follows:</p> <p><i><u>"Diffuse discharge</u></i></p> <p><u>Is the movement of contaminants entrained in soil or from diffuse contaminants on the surface of land to a groundwater aquifer, river, lake or wetland through the movement of groundwater or surface water runoff."</u></p>
7.	Quarrying	Definition poorly drafted as the word "quarrying" it refers to an activity, whereas the definition refers to a "place"	<p>Amend the definition</p> <p><u>"Quarrying Site</u></p> <p>A place where open surface extraction of rock material from the ground occurs, <u>and includes the areas where quarrying and associated activities occur, including the removal and placement of overlying earth, and the stacking, crushing, conveying, storing, depositing and treatment of the excavated material and the removal and placement of unwanted materials."</u></p> <p>Amend the definition of Excavation by deleting the word "quarrying".</p>

8.	Vegetation clearance	The definition is poorly drafted as exemptions should be contained in the rules not the definition.	Amend the definition of “vegetation clearance” as follows: “The cutting, burning, crushing, removal or destruction of vegetation <u>and includes direct drilling when this results in the removal of native vegetation.</u> <del>but does not include clearing:</del> 1) <del>hedges and amenity plants, or</del> 2) <del>vegetation along fences and around dams and ponds, or</del> 3) <del>vegetation around network utilities, or</del> 4) <del>vegetation alongside roads and tracks, or</del> 5) <del>vegetation that is infected by an unwanted organism as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.”</del>
9.	Wetland enhancement	Due to the national significance and rarity of wetlands a “net approach” is not appropriate, and does not equate to enhancement.	Amend the definition as follows: “Action likely to increase the area or ecological function of a wetland.”
	Rules		
10.	Various	The Decision added reference to “all relevant conditions of” C.1.8 Coastal works general conditions, C.2.3 General conditions and C.4.1.9 Land drainage and flood control general conditions.	Delete all references to “all relevant conditions of” where it appears before “C.1.8 Coastal works general conditions” in the rules
11.	Various	The decision has added a matter of discretion for “The positive effects of the activity” to a number of restricted discretionary rules in the Coastal activities rules.	Add a matter of discretion for “effects on indigenous biodiversity”, where not already include, in restricted discretionary activity in the rules of C.1 Coastal activities, where a matter is included for “positive effects”.

		The consideration of such benefits in the absence of a matter of discretion for council to consider effects on indigenous biodiversity creates inconsistency with Policy 11 of the NZCPS and Policy 4.4.1 of the RPS.	
12.	C.1.1.3: Temporary coastal structure – permitted activity	<p>The scope of the rule is not clearly set out in the description at the start of the rule or the Avoidance of doubt clauses. For example:</p> <ul style="list-style-type: none"> <li>a. the inclusion of “removal” in Condition 6 is not stated in the description of avoidance of doubt and is therefore not clearly within the scope of the rule.</li> <li>b. Condition 3 is confusing as it introduces repair and maintenance which are not specifically provided for in description of the activity at the start of the rule. This can be classified by relating need for the temporary structure to repair and maintenance for RSI.</li> <li>c. Disturbance is listed in the avoidance of doubt clauses but not in the rule description.</li> <li>d. The rule provide for deposition of a substance which may be necessary to undertake the activities which are provided for in the rule.</li> </ul> <p>The scope of a rule in terms of the subject of the rule and the s12, s13, s14 or s15 should be clearly set out in the description of the rule. The Avoidance of doubt clauses create uncertainty through duplication in some cases and inconsistency in</p>	<p>Amend Rule C.1.1.3 as follows:</p> <p><u>“The erection, placement, alteration, <del>or extension or removal</del> of a temporary coastal structure and any associated disturbance of or deposition of a substance in the bed</u> in the coastal marine area and any occupation of the common marine and coastal area by the structure are permitted activities, provided:</p> <ul style="list-style-type: none"> <li>1) the temporary coastal structure is not an aquaculture activity, and</li> <li>2) the Regional Council’s Compliance Manager and the Regional Council’s harbourmaster are given at least 10 working days’ notice (in writing or by email) of the start date of construction or placement of the structure, and</li> <li>3) other than for activities involving a temporary coastal structure necessary for the repair or maintenance of regionally significant infrastructure, the temporary coastal structure does not exceed an area of 10 square metres (excluding any anchor(s) and anchor line(s) <del>and any structure being used for construction, repair or maintenance purposes</del>), and</li> <li>4) the temporary coastal structure does not exceed a two metre vertical projection above mean high water springs or the foreshore (excluding any structure being used for construction or maintenance purposes), and</li> </ul>

		<p>others.</p> <p>Temporary structures and associate activities can have more than minor effects on significant ecological areas, particularly bird breeding area. The conditions do not provide for the protection required by Policy 11 and 13 of the NZCPS of by the RPS Policy 4.4.1. Forest &amp; Bird provided information and mapping of important bird breeding areas in its submission however they way this has been incorporated loses the identification of seabird colonies.</p>	<p>5) the <b>temporary coastal structure</b> does not include advertising or marketing signage, and</p> <p>6) other than for temporary scaffolding, weather protection wrap or fencing associated with the repair or maintenance of <b>regionally significant infrastructure</b>, the <b>temporary coastal structure</b> is not in the coastal marine area for a period exceeding a total of 30 days or part days during a 12- month period, inclusive of the placement and removal, and</p> <p>7) the <b>temporary coastal structure</b> is removed within seven days of the completion of the event or use, and</p> <p>8) the <b>temporary coastal structure</b> does not prevent existing public access to and along the foreshore, and</p> <p>9) the <b>temporary coastal structure</b> is not in a mapped Site or Area of Significance to tangata whenua (refer <a href="#">I Maps   Ngā mahere matawhenua</a>), and</p> <p>10) all relevant conditions of <b>C.1.8 Coastal works general conditions</b> are complied with; and</p> <p><u>x) the activity is not within an identified significant ecological area mapped significant ecological areas; and</u></p> <p><u>y) the activity is not undertaken undertaken within any Significant Bird Areas during the period of 1 August and 31 March (inclusive).</u></p> <p><b><del>For the avoidance of doubt this rule covers the following RMA activities:</del></b></p> <p><del>• Erection, placement, alteration or extension of a <b>structure</b> in, on, under or over any foreshore or seabed and any incidental disturbance of the foreshore or seabed (s12(1)).</del></p>
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			<p>• <del>Occupation of the common marine and coastal area with a structure (s12(2)).</del></p> <p>Add conditions to limit the deposition of substances to those that will not have a detrimental effect to marine life or life supporting capacity of water.</p>
13.	C.1.1.5: Signs – permitted activity	The conditions are not adequate to achieve Policy 11 of the NZCPS where lighting may adversely affect birds. It is still not clear whether a sign (other than safety info) can be lighted outside business hours.	<p>Add a new condition to Rule C.1.1.5 as follows:</p> <p><u>“6) any lighting of signs (other than necessary for safety) is not continued after business hours or during the hours of 10pm to 5am.”</u></p>
14.	C.1.1.7: Reconstruction, maintenance or repair of a structure – permitted activity	<p>Repair and reconstruction effects could be similar to effects of constructing a new structure. Effects that could be minor effects need to be avoided for consistency with Policy 11 of the NZCPS. This is not appropriate as a permitted activity.</p> <p>Access to the site needs to be addressed where it could adversely affect a significant area.</p>	<p>Add the following conditions to Rule C.1.1.7:</p> <p><u>“x) the activity is not undertaken in and Significant Bird Areas during the period of 1 August and 31 March (inclusive);</u></p> <p><u>y) Access to the structure is via formed road or does not result in any disturbance of the foreshore or seabed.”</u></p>
15.	C.1.1.9: Additions & alterations to structures – permitted activity	The Avoidance of doubt note extends the scope of the rule to include disturbance of the foreshore and seabed. This could result in adverse effects on marine mammals and birds inconsistent with Policy 11 of the NPZ. For example disturbance activities with noise or vibration effects affecting marine mammals; could destroy habitat important to threatened species; could disturb or destroy bird breeding areas.	<p>Add the following conditions to Rule C.1.1.9:</p> <p><u>“x) the activity is not within a Significant Ecological area;</u></p> <p><u>z) the activity is not undertaken in and Significant Bird Areas during the period of 1 August and 31 March (inclusive).”</u></p>
16.	C.1.1.10: Removal of structures – permitted activity	The activities could adversely affect Seabirds, particularly during the breeding period.	<p>Add the following conditions to Rule C.1.1.10:</p> <p><u>“x) the activity is not undertaken in and Significant Bird Areas during the period of 1 August and 31 March (inclusive).”</u></p>

17.	C.1.1.12: Structures in the Whangarei City Centre Marine Zone – controlled activity <b>Now C.1.1.13</b>	Council should retain scope to consider effects on natural character or indigenous biodiversity outside protected sites.	Add “ <u>Effects on indigenous biodiversity</u> ” as a matter of control.
18.	C.1.1.18: Hard protection structures for reclamations associated with regionally significant infrastructure – discretionary activity <b>Now C.1.1.23</b> Hard protection structures associated with regionally significant or core local infrastructure	Reclamation is likely to have adverse effects on significant indigenous biodiversity and would be inconsistent with Policy 11 NZCPS.  It will also have adverse effects on other protected areas and values.  There is no justification in higher order planning documents for allowing infrastructure to adversely affect protected areas	Add condition excluding hard protections structure activities from significant ecological areas and all other significant marine areas.
19.	C.1.1.22: Structures within a significant marine area – non-complying activity <b>Now C.1.1.27</b>	Marinas can have significant effects on indigenous biodiversity, including indigenous bird species and should be avoided in important bird habitat areas.	Make the rule apply in Significant Ecological Areas and Significant Bird Areas.
20.	C.1.2.8  New mooring in a Mooring Zone with limited shore-based facilities – restricted discretionary activity <b>Now C.1.2.9</b>	The rule does not give effect to the NZCPS.  The mooring areas Mangawhai harbour are within a Significant Bird Area. The critically endangered NZ Fairy Tern known colony is along the adjacent coastline and within other areas of Mangawhai harbour.	Add further matters of discretion as follows:  “ <u>x) effects on natural character</u> <u>y) effects on indigenous biodiversity</u> <u>z) measures to avoid adverse effects on seabird breeding.</u> ”

21.	<b>C.1.2.10</b> Mooring in a Coastal Commercial Zone or the Marsden Point Port Zone - restricted discretionary activity	As written the rule does not give effect to the NZCPS.  Areas of the Marsden Point Port Zone should be included in the Significant Ecological Areas. It is also partly within Significant Bird areas. The Coastal Commercial Zone is within and adjacent to Significant Bird Areas. Both are within the Significant Marine Mammal and Seabird Bird Area and close to High Natural Character areas.	Add further matters of discretion as follows:  <u>"x) effects on natural character</u> <u>y) effects on indigenous biodiversity</u> <u>z) measures to avoid adverse effects on seabird breeding.</u>
22.	C.1.2.11 New moorings in significant areas – non-complying activity  <b>Now C.1.2.13</b>	The rule does not give effect to the NZCPS.  Inconsistent use of the term "significant areas" in rule titles creates uncertainty. This is because areas identified in the rules vary. For example, sometimes SEAs are included and other times not.	Add to the list of areas in Rule C.1.2.13 as follows:  <u>"6) Significant Ecological Areas;</u> <u>7) Areas of High Natural Character."</u>
<b>C.1.3 Aquaculture</b>			
23.	C.1.3.1  Re-consenting aquaculture (not finfish) – controlled activity	The rule does not give effects to Policy 11, 13 or 15 of the NZCPS  Aquaculture can have adverse affect on outstanding natural landscapes. The application of the rule is uncertain as these areas are identified in the RPS but not within the regional plan.	Identify Outstanding Natural Landscapes in the CMA and add them to condition 2).  Amend condition 2) by adding:  <u>"e) area of High Natural Character."</u>  Add a matter of control as follows:  <u>"X) adverse effects on Outstanding Natural Landscapes</u> <u>Y) adverse effects on adjacent Significant Ecological Areas</u> <u>Z) Adverse effects on adjacent area of Outstanding or High Natural Character."</u>  Amend Matter of Control 1) and 2) as follows:  <u>"1) Measures to <del>avoid or mitigate</del> minimise adverse effects on reefs and biogenic habitats.</u>

			<p>2) <del>Management practices</del> <u>Measures to avoid or mitigate minimise adverse effects on marine mammal and seabirds, including minimising interactions with the marine farm, including such as entanglement.</u></p> <p>Make consequential changes to amend similar matters of control or discretion in other rules consistent with the changes sought above to 1) and 2)</p>
24.	<p>C.1.3.2</p> <p>Re-consenting aquaculture (not finfish) in a significant area – restricted discretionary activity</p>	<p>The rule does not give effects to Policy 11, 13 or 15 of the NZCPS.</p> <p>Policy 14 of the NZCPS is also relevant; it sets out to promote restoration and rehabilitation of natural character and includes number of consideration for the continuation of activities.</p> <p>Aquaculture can have adverse affect on outstanding landscapes identified in the RPS but not within the regional plan.</p>	<p>Add to the areas where the rule applies:</p> <p><u>“Area of High Natural Character”</u></p> <p>Amend the Matters of Discretion as follows:</p> <p>“1) Effects on...</p> <p><u>e) Outstanding Natural Landscapes;</u></p> <p><u>f) Significant Bird Areas</u></p> <p><u>1A) Effects on the characteristics, qualities and values that contribute to High Natural Character areas identified on the Maps.</u></p> <p>2) Effects...</p> <p>3) <u>Adverse effects on Marine mammals and seabirds, including minimising interactions with the marine farm, such as including entanglement. ...”</u></p>
25.	<p>C.1.3.3</p> <p>Realignment of existing aquaculture – restricted discretionary activity</p>	<p>The matters of discretion do not ensure that adverse effects on marine mammals and seabirds will be addressed consentient with the NZCPS.</p>	<p>Amend matter of discretion 3 and follows:</p> <p><u>“3) Adverse effects on Marine mammals and seabirds, including minimising interactions with the marine farm, such as including entanglement.”</u></p>



26.	<b>C.1.3.6</b> Aquaculture outside areas with significant values – discretionary activity	<p>The rule does not give effect to Policy 15 of the NZCPS or Policy 4.4.1 of the RPS.</p> <p>The application the rule is uncertain in terms of Policy 11 of the NZCPS and Policy 4.4.1 of the RPS.</p>	<p>Add Significant Bird Areas to the areas where rule does not apply.</p> <p>Add policy direction such that activities under this rule will need to assess effects on adjacent Outstanding Natural Landscapes.</p>
27.	C.1.3.11 Relocation of aquaculture within the Waikare Inlet and Parengarenga Harbour –discretionary activity	<p>The decision has changed the activity classification from non-complying to discretionary.</p> <p>Relocation is not appropriate to give effect to the NZCPS in identified SEA of Parengarenga Harbour.</p> <p>The application the rule is uncertain in terms of Policy 11 of the NZCPS and Policy 4.4.1 of the RPS.</p>	Delete Parengarenga Harbour from Rule C.1.3.11
28.	C.1.3.12 Small scale and short duration aquaculture in areas with significant values – non-complying activity	The rule does not give effect to the NZCPS	Delete Rule C.1.3.12
29.	C.1.3.13 New aquaculture in a Significant Ecological Area in the Kaipara Harbour – non-complying activity	<p>Most of the harbour is identified as SEA.</p> <p>Aquaculture is not appropriate in identified SEA's.</p> <p>The rule does not give effect to the NZCPS.</p>	<p>Delete Rule C.1.3.13</p> <p>Alternatively:</p> <p>Amend Rule C.1.3.13 to exclude the activity in identified SEA's.</p>
<b>C.1.4 Mangrove removal</b>			
30.	C.1.4.1 Mangrove seedling removal – permitted activity	The rule provides for adverse effects that must be avoided under do not give effect to Policy 11 of the NZCPS or Policy 4.4. 1 of the RPS.	<p>Amend the rule as follows:</p> <p>“C.1.4.1 Mangrove seedling removal – permitted activity</p> <p>The pulling, cutting or removing of mangroves in the</p>

			<p>coastal marine area or in the bed of a river and any associated damage or disturbance to the foreshore, seabed or bed of a river are permitted activities provided:</p> <ol style="list-style-type: none"> <li>1) the mangroves are less than 60 centimetres tall, and</li> <li>2) the mangroves are not under the canopy area of any existing mature mangrove, and</li> <li>3) the removal is by hand or using hand-held tools <del>(including motorised)</del>, and</li> <li>4) any removal by <del>motorised hand-held tools</del> is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and</li> </ol> <p><u>4x) the activity is not within:</u></p> <ol style="list-style-type: none"> <li><u>a) a Significant Ecological Area, or</u></li> <li><u>b) a Significant Bird Area, and</u></li> </ol> <p>5) the activities comply with <u>the all relevant conditions of</u> C.1.8 Coastal works general conditions.”</p> <p>Remove the note regarding vehicles under Rule C.1.5.1 so that vehicles are not permitted through an SEA or during bird breeding.</p>
31.	C.1.4.2 Minor mangrove removal – permitted activity	The rule provides for adverse effects that must be avoided under do not give effect to Policy 11 of the NZCPS or Policy 4.4. 1 of the RPS.	<p>Amend rule regarding artificial channels and rivers so that consent is required within Significant Ecological Areas.</p> <p>Amend the rule so that activities occur outside of bird breeding period of 1 August and 31 March (inclusive).</p>
32.	C.1.4.3 Mangrove removal –	The rule provides for adverse effects that must be avoided and does not give effect to Policy 11 of the	Delete condition 4)

	controlled activity	NZCPS or Policy 4.4. 1 of the RPS.	<p>Amend condition 5) as follows:</p> <p>“5) <del>200 square metres</del> if the activity is <u>not</u> located within a mapped (refer I 'Maps   Ngā mahere matawhenua'):</p> <p>a) Significant Ecological Area, or</p> <p><u>x) Significant Bird Area, or</u></p> <p>b) Outstanding Natural Character Area, and”</p>
33.	<p>C.1.4.4</p> <p>Mangrove removal in the Whangārei city centre marine zone and the Coastal Commercial Zone – restricted discretionary activity</p>	<p>Matter of discretion 1 is uncertain as the activity in river beds is not identified in the rule description and s13 is not identified in the Avoidance of doubt note. The consideration of effects on indigenous biodiversity should not be limited to the CMA if riverbeds are included.</p> <p>There is some overlap between these zones and natural character overlays which needs to be considered within the matters of discretion.</p>	<p>Clarify the rule with respect to the beds of rivers.</p> <p>Include additional matters of discretion:</p> <p>“<u>x) The timing of the activity to avoid adverse effects on bird breeding.</u></p> <p><u>y) Effects on Outstanding and High Natural Character.”</u></p>
34.	<p>Add new rule</p> <p>Mangrove removal in significant sites – non-complying activity</p>	<p>Mangrove removal in significant sites is likely to have effects that are contrary to Policy 11 and 15 of the NZCPS and Policy 4.4.1 of the RPS.</p> <p>The appropriate activity status for such activities is non-complying</p>	<p>Add a new non-complying rule as follows:</p> <p><b><u>“C.1.4.6 Mangrove removal in significant areas – Non-complying activity</u></b></p> <p><u>The removal or pruning of mangroves in the coastal marine area, that is not a:</u></p> <p><u>1) permitted activity under rule C.1.4.1 'Mangrove seedling removal – permitted activity', or</u></p> <p><u>2) permitted activity under rule C.1.4.2 'Minor mangrove removal – permitted activity', or</u></p> <p><u>3) controlled activity under rule C.1.4.3 'Mangrove removal – controlled activity', or</u></p>

			<p>4) <u>restricted discretionary activity under rule C.1.4.4 'Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity',</u></p> <p><u>and the activity is in any mapped (refer Maps):</u></p> <ol style="list-style-type: none"> <li>1) <u>Significant Ecological Area, or</u></li> <li>2) <u>Significant Bird Area, or</u></li> <li>3) <u>Site or Area of Significance to Tangata Whenua, or</u></li> <li>4) <u>Area of Outstanding Natural Character,</u></li> </ol> <p><u>is a non-complying activity.”</u></p>
C.1.5 Dredging, disturbance and disposal			
35.	<p>C.1.5.1</p> <p>Use of vehicles on beaches and other activities that disturb the foreshore and seabed– permitted activity</p>	<p>Vehicle access for boat launching should be specifically provided for boat so that appropriate conditions are set outside of this rule.</p> <p>The rule is very uncertain. It is not clear how a person driving a vehicle would know whether they complied with the conditions.</p> <p>The rule does not provide adequate protection to birds during breeding period.</p> <p>The rule is contrary to Policy 11 and 15 of the NZCPS and Policy 4.4.1 of the RPS.</p>	<p>Amend the rule so that vehicles on beaches, other than for emergency response, are:</p> <ol style="list-style-type: none"> <li>a) not permitted in Significant Ecological Areas.</li> <li>b) In areas not identified as significant they are restricted during bird breeding period of 1 August and 31 March (inclusive).</li> </ol>
C.1.8 Coastal works general conditions			
36.	<p>C.1.8 Coastal works general conditions</p>	<p>The application of the general conditions is uncertain. C.1.8 states that the conditions apply in C.1.1 rules which apply to structures. However, a</p>	<p>Delete the general conditions and provide specific conditions in relevant rules.</p> <p>Alternatively redraft the C.1.7 general coastal conditions to</p>

		<p>number of other rule in C.1.2, C.1.4 and C.1.5 rules also rely on these conditions. The proposed wording is clearer.</p> <p>The conditions are inadequate to address:</p> <ul style="list-style-type: none"> <li>• effects on bird breeding in SBA</li> <li>• effects from deposition of material</li> </ul> <p>The rules are uncertain as they rely on people understanding whether they have disturbed a bird or the foreshore/bed.</p> <p>The mangrove provisions allow for removal in identified significant bird areas, SEA's and ONC. This is inconsistent with the provisions relating to mangrove removal under C.1.4 or where vegetation clearance is provided under the structure rules.</p> <p>The lighting and noise conditions do not address effects on marine mammals or seabirds.</p> <p>The potential for unintended effects where the extent of disturbance of remove is not stated in the condition to primary rules.</p> <p>Overall the conditions are not appropriate to give effect to the NZCPS or RPS.</p>	address the reasons for appeal.
C.2 Activities in the beds of lakes and rivers and in wetlands			
37.	<p>C.2.1.1</p> <p>Introduction or planting of plants in rivers and lakes – permitted activity</p>	<p>Planting should not be permitted in the active channel/bed of the river or lake as this would create additional sediment discharges and effects on indigenous species such as mudfish and river breeding birds.</p> <p>Planting of exotic species should not be permitted in</p>	<p>Amend Condition 5) by deleting the words “are managed by the landowner or occupier to ensure that they”</p> <p>Add outstanding freshwater bodies to Condition 7)</p>

		significant ecological areas or outstanding natural freshwater water bodies.	
38.	C.2.1.12 Freshwater structures – controlled activity Now <b>C.2.1.10</b>	The Council needs to have a matter of control to ensure that it can manage effects on indigenous biodiversity in the beds of water bodies, for example, breeding birds	In Matter of control 3), replace “aquatic ecosystem health” with “ <u>indigenous biodiversity</u> ”
C.2.2 Activities affecting wetlands			
39.	C.2.2.1 Wetland management and enhancement – permitted activity	Wetland habitats have been severely depleted throughout NZ. Remaining wetlands are the strong hold for many of our rare and endangered species.  The rule is poorly drafted. The avoidance of doubt provision does not avoid doubt but seems to broaden the scope of the rule from the damage, destruction disturbance or removal of vegetation in a wetland to damage, destruction disturbance or removal of the wetland itself.	Amend Condition 20 so that only indigenous plants are introduced.  Amend the avoidance of doubt provision so that it is limited to the scope of the rule itself (as in Rules C.2.2.4 and C.2.2.5).  Add a new condition that the activity is not for the purposes of extracting kauri from the wetland.  Amend Policy D.4.23 to recognise that extraction of kauri from a wetland is not an activity of ecological benefit.
40.	C.2.2.2 Structures in wetlands – permitted activity	The rule is too broad. Discretion must be applied as to whether a structure is appropriate or not in significant wetlands.	Delete Condition 3(c).
41.	C.2.3 General conditions	Visual clarity can adversely affect fish and bird feeding.  Water is a potential vector for kauri dieback disease spread.  The wording is uncertain and unenforceable.	Amend the following conditions:  1) d) “any conspicuous change in the colour or visual clarity within the <u>zone of reasonable mixing</u> must not occur for longer than 12 hours per day <u>for no more than 10 consecutive days</u> .”  3) a) “machinery must be clean and leak free <u>prior to entering the bed of the waterbody and be cleaned and dried upon leaving the site, and</u> ”

			<p>5) "All plant, machinery, equipment or material operating or used in a water body, must be free of plant contaminants, seeds or vegetative material, <del>which is capable of germinating or reproducing pest species.</del>"</p> <p>9) "The vegetation and the bed of any <b>natural wetland</b> are not disturbed to a depth <u>greater than 0.5m</u> or an extent greater than that required to give effect to the permitted activities, <u>except where a different limit is set out in the conditions of the rule.</u>"</p> <p>10) "Any indigenous vegetation damage, destruction, disturbance, <u>clearance</u> or removal is limited to the minimum extent necessary to give effect to the permitted activities."</p> <p>Add a new condition to restrict any re-alignment of a river.</p> <p>Add a condition that the activities are not undertaken during the period of 1 August and 31 March (inclusive).</p> <p>Add a condition to limit the deposition of a substance to appropriate locations.</p>
C.3 Damming and diverting water			
42.	C.3.1.1 Off-stream damming and diversion – permitted activity	Condition 5 is not certain enough for a permitted rule.	Delete the words "to the extent it may adversely affect the wetlands natural ecosystem" from Condition 5
43.	C.3.1.3 Existing in-stream dam – permitted activity	As this rule effectively means such dams will not require consent into the future, dams in significant ecological areas or outstanding freshwater bodies will need to be excluded. Dams in those areas should be consented so that effects on significant and outstanding values of continuing the activity can be	Add a condition that the rule does not apply in outstanding water bodies

		considered as a restricted or discretionary activity.	
44.	C.3.1.5 Existing in-stream large dam – controlled activity	The rule is inconsistent with the RPS. To ensure council can carry out functions for the maintenance of indigenous biodiversity a further matter of control is required.	Add a condition to exclude dams in significant ecological areas and outstanding freshwater bodies from this rule.  Add matter for control:  “6) effects on indigenous biodiversity.”
C.5 Taking and using water			
45.	C.5.1.6 Replacement water permits for registered drinking water supplies - controlled activity  Now <b>C.5.1.8</b>	The consideration of indigenous biodiversity needs to be broadened so that effects on values can be considered by council.	Amend matter for control 3)c) or add a new matter: “effects on indigenous biodiversity.”
46.	C.5.1.8 Supplementary allocation - restricted discretionary activity  Now <b>C.5.1.10</b> High flow allocation - restricted discretionary activity	It is inappropriate to provide for allocation of supplementary flows until council has set up an allocation regime which avoid over allocation.	Delete Rule C.5.1.10
47.	C.5.1.11 – C.5.1.13 Waters take below a minimum flow or water level  Now <b>C.5.1.13</b> and <b>C.5.1.14</b>	These rules are not robust enough to ensure that minimum flows are properly enforced and takes will not be allowed that go below minimum flows	Include provisions so that applications to take below minimum flows or water levels is prohibited  Reinstate Rule C.5.1.13 Water takes that will exceed an allocation limit – prohibited activity, as notified.
C.8.1 Stock exclusion			
48.	C.8.1.1 Access of livestock to the bed of a	It is not appropriate to continue to allow livestock to contaminate waterways with pollutants, such as	Reinstate reference to damage in Condition 1).  Include significant wetlands in the requirement for effective



	water body or permanently flowing watercourse – permitted activity <b>Now C.8.1.1</b>	faecal pathogens, nitrates, and sediment. This has implications for human health as well as the indigenous biodiversity.  Condition 1 is misleading as there is no way to prevent such damage if stock have access to a wetland. The condition is meaningless and unenforceable.	stock exclusion, regardless of size.
49.	C.8.1.3 Access of livestock to a significant wetland, an outstanding freshwater body, and the coastal marine area  – non-complying activity <b>Now C.8.1.4</b>	Protection required by s6(c) and Policy 11 of the NZCPS should be included under this rule. Significant wetlands should not have been removed.	Reinstate reference to significant wetlands
<b>D.2 General</b>			
50.	Add a new Policy and rule regime: regarding protection of SEAs from effects of fishing	The proposed plan does not provide any protection to SEA's from the adverse effects of fishing.  Fishing is having dramatic effects on SEAs, in particular by creating "kina barrens", where fishing removes large snapper and lobster which allows kina to thrive and create areas barren of life. Research shows that, where fishing is not allowed, the ecosystem recovers as large snapper and lobster and predate on kina. This allows the kelp beds to recover.	Add policies and rules to protect SEAs from the adverse effects of fishing including:  (a) at Te Pahi Stream in the west around the top of the North Island including Parengarenga Harbour, including the southern head of this harbour to the east, all out to 12 NM limit.  (b) at Oruaiti river in the north to the Takou river in the south and out to the 12 NM limit.  (c) at Tapeka Point to Nine Pin across to Motukokako. Including Motukokako and Rakaumangamanga in the north to Taupiri Nui in the south including all the islands in between and out to the 12 nm mile

			<p>limit.</p> <p>(d) at Mokau in the north to Titi Island in the south and out to the 12 NM limit.</p> <p>(e) to protect Northland rocky reefs</p> <p>(f) to protect indigenous species threatened or at risk species and give effect to Policy 11 of the NZCPS</p> <p>(g) the inclusion of policy and methods for additional areas to be identified and protected (via a plan change) in conjunction with community and tangata whenua.</p>
51.	D.2.1 Rules for managing natural and physical resources	This policy is unbalanced in that it “enables use and development” but does not recognise that the higher order document include the require activities are avoided in some situations	Delete Policy D.2.1.
52.	<b>D.2.8</b> Appropriateness of regionally significant infrastructure proposals	<p>This policy is unclear and contrary to case law. The reference to appropriateness appear to link to s 6(a) and 6(b) and are not relevant in terms of s6(c).</p> <p>The Courts have indicated that appropriateness is to be determined with what it to be protected.</p> <p>The policy is also contrary to the NZCPS as it provides for effects that have to be avoided under Policies 11, 13, 15 and 16.</p> <p>The provision for offsets is inconsistent with Policy 4.4.1 of the RPS in the coastal environment.</p>	Delete Policy D.2.8.
53.	D.2.4 Resource consent duration <b>Now D.2.12</b>	The matters contained in 5 are not relevant as: the consent can be transferred to someone with a prior compliance record and who does not volunteer	Delete Condition 5).

		to undertake good management practice does not.	
54.	<b>D.2.15</b> Managing effects on natural character, outstanding natural landscapes and outstanding natural features	<p>The policy does not give effect to the requirement in the NZCPS that significant adverse effects on natural landscapes, natural features and natural character are avoided and other effects are avoided remedied or mitigated</p> <p>The policy is uncertain in terms of Outstanding natural landscapes under s6(b) of the RMA.</p>	<p>Include requirements that significant adverse effects on natural landscapes, natural features and natural character are avoided and other effects are avoided remedied or mitigated.</p> <p>Include in Table 15, Outstanding natural landscapes identified in the RPS, within the coastal environment and outside the coastal environment where they include or are adjacent to freshwater bodies.</p>
55.	<p>D.2.7 Managing adverse effects on indigenous biodiversity</p> <p><b>Now D.2.16</b></p>	<p>The words “<i>other than areas of mangroves to be pruned or removed for one of the purposes listed in D.5.22</i>” in Policy D.2.7(b)(ii) do not give effect to Policy 11 of the NZCPS or Policy 4.4. 1 of the RPS.</p> <p>Policy D.2.7(3) does not give effect to Policy 11 of the NZCPS or Policy 4.4.1 of the RPS.</p> <p>Policy D.2.7(5) to contrary to Policy 4.4.1 of the RPS and Policy D.2.7(1A) and (1B).</p>	<p>Delete the words “<i>other than areas of mangroves to be pruned or removed for one of the purposes listed in D.5.22</i>” from Policy D.2.7(b)(ii).</p> <p>Delete Policy D.2.7(3).</p> <p>Add new clause (4) “<u>e</u> the characteristics and values of Outstanding and High natural character in the coastal environment.”</p> <p>Add new clause (4) “<u>f</u> Significant Marine Mammal and Seabird Areas.”</p> <p>Add the words “<u>Subject to D.2.7(1A) and (1B)</u>” to the start of D.2.7(5).</p> <p>Add a new policy for “Maintain indigenous biodiversity”</p>
56.	<p>D.2.8 Precautionary approach to managing effects on significant indigenous biodiversity</p> <p><b>Now C.2.18</b></p>	<p>The deletions of Policy D.2.8 (2)-(4) do not give effect to Policy 11 of the NZCPS or Policy 4.4. 1 of the RPS.</p>	<p>Reinstate Policy D.2.8 as notified.</p>
	D.4 Land and water		

57.	Notified Policy D.4.1 Water quality standards for rivers	The decision does not give effect to the NPSFM	Reinsert Notified Policy D.4.1 and include standards that give effect to the NPSFM.  Identify all the FMUs and indicate their current status, set thresholds and targets if the status is below the bottom line, and put together a timeline and plan to meet the thresholds or targets.  Add values for dissolved oxygen, Escherichia coli, periphyton, Macroinvertebrate Community Index (MCI), dissolved inorganic nitrogen (DIN), and dissolve reactive phosphorus (DRP).
58.	Notified Policy D.4.2 Water quality standards for lakes	The decision does not give effect to the NPSFM	Reinsert Notified Policy D.4.1 and include standards that give effect to the NPSFM  Add the following attributes: cyanobacteria (mm <sup>3</sup> /L) and Escherichia coli (E.coli/100 mL), MCI and add appropriate standards for them.
59.	Notified Policy D.4.3 Coastal Water quality standards	The decision does not give effect to the NPSFM or NZCPS	Reinsert Notified Policy D.4.3 and include standards that give effect to the NPSFM and NZCPS.
60.	Notified Policy D.4.4 Coastal sediment quality standards	The decision does not give effect to the NPSFM or NZCPS	Reinsert Notified Policy D.4.4 and include standards that give effect to the NPSFM and NZCPS.
61.	Policy <b>D.4.1</b> Maintaining overall water quality	The decision does not give effect to the NPSFM	Delete “overall” from the title of the policy  Add the words “or contribute to an exceedance or further exceedance” after “further exceed”.
62.	Notified Policy D.4.13 Achieving freshwater quantity related	The deletion of this policy is contrary to the NPSFM	Reinsert Policy D.4.13 as notified

	outcomes		
63.	D.4.14 Minimum flows for rivers  Now <b>D.4.12</b> Minimum flows and levels	Policy D.4.12(2) undermines minimum flows and is contrary to the NPSFM	Delete D.4.12(2)
64.	Notified Policy D.4.15 Minimum levels for lakes and wetlands	The decision does not give effect to the NPSFM	Reinsert Policy D.4.15
65.	Notified Policy D.4.16 Allocation limits for rivers	The decision moves this to an appendix and it should be retained as a policy.	Reinstate as a policy and include appropriate allocation limits
66.	Notified D.4.17 Allocation limits for aquifers	The decision moves this to an appendix and it should be retained as a policy.	Reinstate as a policy and include appropriate allocation limits
67. D	<b>D.4.16</b> Water User Groups	This does not give effect to the NPSFM	Delete Policy D.4.16
68.	D.4.27 Wetlands - requirements  Now <b>D.4.22</b> Natural Wetlands-requirements	The decision does not give effect to the NPSFM	Delete “natural” from the policy name. At 1) reinstate “must” instead of “should”
69.	D.4.31 Land preparation, earthworks and vegetation clearance  Now <b>D.4.26</b>	Land preparation, earthworks and vegetation clearance can have effects on ecosystems beyond aquatic ecosystems that are within the jurisdiction of the Regional Council.	In clause (2)(c) replace “aquatic species” with “indigenous biodiversity”.
70.	D.4.32 Exceptions to	The proposed text does not give effect to the NPSFM	Delete clauses (1) and (4)

	livestock exclusion requirements Now <b>D.4.28</b>		
	D.5 Coastal		
71.	D.5.1 Aquaculture - benefits	The additional words “and enable” are create a conflict with the obligations to avoid in Policies D.2.6, D.2.6A, D.2.7 and D.2.26.	Delete the words “and enable” from Policy D.5.1.
72.	D.5.2 Aquaculture avoid adverse effects	The decision adds the words “In addition to the other requirements to avoid adverse effects” This is supported but the policy could be improved by identifying the “other requirements to avoid” that the new words at the start of the policy refer to.	Add the words, “ <u>including those contained in Policies D.2.14, D.2.15, D.2.16 and D.5.29</u> ” after the words “In addition to the other requirements to avoid adverse effects”.
73.	D.5.8 Coastal Commercial Zone and Marsden Point Port Zone Purpose	This policy overrides directive policies in the NZCPS and RPS regarding indigenous biodiversity.	Delete policy D.5.8  Alternatively at the start of the policy, add the words, subject to D.2.14, D.2.15, D.2.16 and D.5.29.
74.	D.5.9 Coastal Commercial Zone and Marsden Point Port Zone	This policy override directive policies in the NZCPS and RPS regarding indigenous biodiversity.	At the start of the policy, add the words, subject to D.2.14, D.2.15, D.2.16 and D.5.29.
75.	D.5.10 Whangārei City Centre Marine Zone	This policy overrides directive policies in the NZCPS and RPS regarding indigenous biodiversity.	Delete policy D.5.10  Alternatively at the start of the policy, add the words, subject to D.2.14, D.2.15, D.2.16 and D.5.29.
76.	D.5.13 Marinas – managing the effects of marinas Now <b>D.5.15</b>	Policy would be improved by the same addition as for Policy D.5.2	Add the words “ <u>In addition to any other requirement to avoid adverse effects</u> ” to the start of the policy.  Add a note, such as Policies D.2.14, D.2.15, D.2.16 and D.5.29
77.	D.5.17 Marina Zones –	This policy overrides directive policies in the NZCPS	Delete policy D.5.17

	purpose	and RPS regarding indigenous biodiversity.	Alternatively at the start of the policy, add the words, subject to D.2.14, D.2.15, D.2.16 and D.5.29.
78.	D.5.18 Dredging, disturbance and deposition activities Now <b>D.5.22</b>	The policy does not give effect to the NZCPS.	Add the words “In addition to any other requirement to avoid adverse effects including D.2.14, D.2.15, D.2.16 and D.5.29.” to the start of the policy.
79.	<b>D.5.20</b> Reclamation	These policies do not give effect to Policy 10 of the NZCPS.	Delete Policy D.5.20
80.	<b>D.5.21</b> Unlawful reclamation	These policies do not recognise the adverse effects that may be associated with the activity may contravene policies in the NZCPS, RPS and elsewhere in this plan.	Delete Policy D.5.21
81.	D.5.26 Mangrove removal – purpose	The policy needs to be clearer on the circumstances when consent can be considered.	Amend Policy D.5.26 as follows: “Mangrove <u>management</u> <del>removal – purpose</del> Subject to Policy D.2.16, <u>consideration of</u> resource consent for mangrove pruning or removal: 1) <del>may be granted when it is</del> <u>limited to circumstances</u> where it is necessary to maintain, restore or improve one or more of the following:...”
82.	D.5.27 Mangrove removal – adverse effects	The policy is inconsistent with Policy D.2.7.	Add the words “Subject to Policy D.2.16” at the start of the policy.
83.	D.5.29 Significant surf breaks	This policy does not give effect to Policy 16 of the NZCPS	Delete the word “significant” from D.5.26(2)
E Catchments			

84.	E.0.7 Access of livestock to the bed of a water body or permanently flowing watercourse in the Mangere catchment – permitted activity	No proper basis for a different rule in this catchment	Make subject to general stock exclusion rules
F Objectives			
85.	F.1.1 Freshwater quantity	The objective is uncertain as to how intermittent and ephemeral water quantity is to be managed.	Amend the objective to provide for management in intermittent and ephemeral rivers and streams. Amend clause 2) by deleting the word “natural”.
86.	F.1.2 Water quality	The objective is uncertain in terms of management outcomes for maintenance and protection of indigenous biodiversity.	Amend the objective to provide for the maintenance and protection of indigenous biodiversity. Amend clause 2) by deleting the word “natural”.
87.	F.1.3 Indigenous ecosystems and biodiversity	The objective does not give effect to the NZCPS or the RPS	Amend the wording to provide for the protection of indigenous biological diversity in the coastal environment.
88.	F.1.4 Enabling economic well-being	The objective does not recognise that some time resources have to be protected and maintained rather than managed for an economic outcome. The wording is not consistent with the sustainable purpose to s5 RMA.	Amend the objective as follows: “ <u>The use and development of Northland’s natural and physical resources are managed is efficient and effective in a way that is attractive for business and investment that will improve the economic and social well-being of Northland and its communities.</u> ”
89.	F.1.5 Regionally significant infrastructure	The objective is not consistent with section 5 and 6 of the RMA or Policies and 11, 13 and 15 of the NZCPS.	Amend Objective F.1.5 as follows: “Recognise the national, regional and local benefits of <u>regionally significant infrastructure</u> and renewable energy generation and enable their effective development, operation, maintenance, repair, upgrading and removal <u>in appropriate locations.</u> ”



90.	F.1.7 Use and development in the coastal marine area	The objective is inconsistent with the NZCPS. It does not promote integrated management of the coastal environment.	Include an objective for integrated management in the coastal environment, recognising that use and development in the CMA can have adverse effects landward and vis versa.
91.	F.1.9 Natural hazard risk	The objective does not provide an outcome for natural systems.	Add an outcome for natural systems: <u>“8) anticipating and providing for landward migration of coastal biodiversity values affected by sea-level rise and natural hazard events.”</u>
I Maps   Ngā mahere matawhenua			
92.	Significant Ecological Areas	<p>The information basis for each different map layers is not distinguished.</p> <p>The mapped areas are not adequate to give effect to policy 11 of the NZCPS.</p> <p>The removal of SEA layer over the Marsden Point Zone is inconsistent with the RPS and Policy 11 of the NZCPS.</p>	<p>Separate the Map layer and Descriptions for each map overlay.</p> <p>Include the Important Bird Area maps in the SBA layer including identified bird colonies. See Attachment A to this appeal.</p> <p>Reinstate the SEA layer over the Marsden Point Zone.</p>
93.	Outstanding natural features	This map layer is incomplete as it does not include the identification of outstanding landscapes. The maps layers are inconsistent with the RPS and do not give effect to Policy 15 of the NZCPS.	Amend the Maps to include a layer for Outstanding Natural Landscapes from the RPS.

Please see Attachment A - Important Bird Areas

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# Attachment A - Important Bird Areas

NZ M002	North Eastern North Island
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Location	New Zealand, Northern North island
IBA criteria (see page 14)	A1, A4ii, A4iii
Area	73,040 km <sup>2</sup>
Year of Assessment	2013

## IBA trigger species:

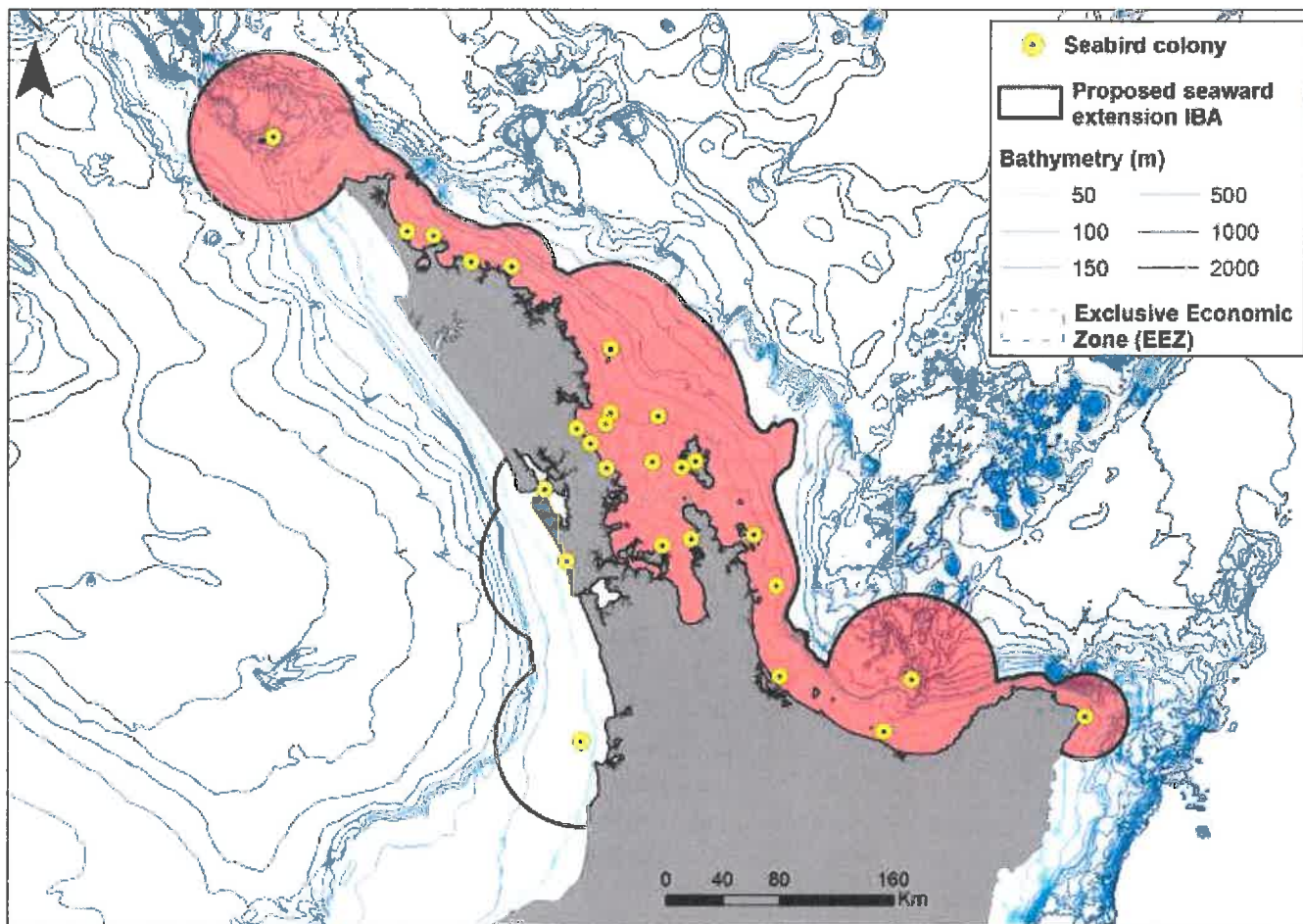
Species	Tracking	Supporting data	Activity	IBA	IUCN
Buller's Albatross <sup>1</sup>			Passage to colony	A1	VU
Black Petrel <sup>1</sup>	GLS, GPS	Observations	Foraging, passage	A1, A4ii	VU
Buller's Shearwater <sup>2</sup>	GLS	Observations	Foraging, congregations, passage	A1, A4ii	VU
Flesh-footed Shearwater <sup>2</sup>		Observations	Foraging, congregations, passage	A4ii	LC
Fluttering Shearwater <sup>2</sup>	GLS	Seaward extension (30km), observations	Foraging, congregations, passage	A4ii	LC
Cook's Petrel <sup>1</sup>	GLS	Observations	Passage, congregations	A1, A4ii	VU
Pycroft's Petrel <sup>1</sup>	GLS	Observations	Passage	A1, A4ii	VU
Grey-faced Petrel <sup>1</sup>	GLS, GPS	Observations	Passage	A4ii	LC
Fairy Prion <sup>2</sup>		Seaward extension (135km), observations	Foraging, congregations, passage	A4ii	LC
White-faced Storm Petrel		Observations, seaward extension (35km)	Foraging	A4ii	LC
NZ Storm Petrel		Observations, seaward extension (35km)	Foraging	A1, A4ii	EN
Common Diving Petrel <sup>2</sup>	GLS	Observations, seaward extension (20km)	Foraging	A4ii	LC
Australasian Gannet	GPS	Observations, seaward extension (60km)	Foraging	A4ii	LC
NZ Fairy Tern <sup>3</sup>		Seaward extension (5km)	Foraging (in-shore)	A1, A4ii	VU
Species group (multiple species including a number not listed above)		Observations		A4iii	

<sup>1</sup> Species with pelagic ranges. Foraging extends well beyond the seaward extension shown here, however, this mIBA will capture passage to colonies and some observed feeding.

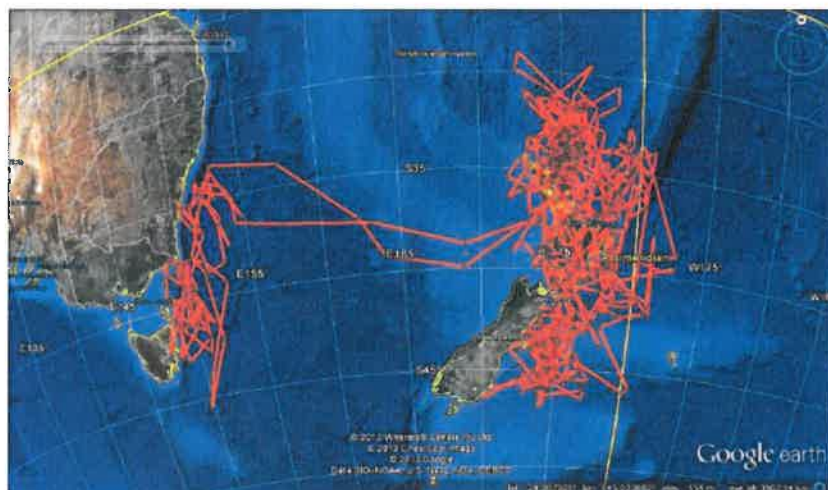
<sup>2</sup> Species observed regularly feeding within the area shown. They also, however range widely during breeding. As new tracking becomes available it is likely pelagic mIBAs will be added to the network (i.e. outside the seaward extension IBA).

<sup>3</sup> Included in Waipu, Mangawhai, Pakiri, Firth of Thames and Maketu coastal IBAs.

Threatened species (IUCN) breeding outside the region recorded in North Eastern waters: Antipodean Albatross (VU), Northern Royal Albatross (EN), Southern Royal Albatross (VU), Salvin's Albatross (VU), White-capped Albatross (NT), Buller's Albatross (NT), Black-browed Albatross (EN), Campbell Albatross (VU), Grey Petrel (NT), White-necked Petrel (VU), Providence Petrel (VU), Mottled Petrel (NT), Gould's Petrel (VU).



Protected area	Designation	Area (km <sup>2</sup> )	Relationship with IBA
Hauraki Gulf	MPA Cable Zones	879	Protected area contained within site
Poor Knights Islands, Mimiwhangata, Cape Rodney - Okakari Point (Goat Island), Tawharanui, Long Bay - Okura, Te Makutu (Waiheke Island), Te Whanganui-A-Hei (Cathedral Cove), Tuhua (Mayor Island), Te Paepae o Aotea (Volkner Rocks).	Marine Reserve/ MPA Marine Park	101.2	Protected area contained within site



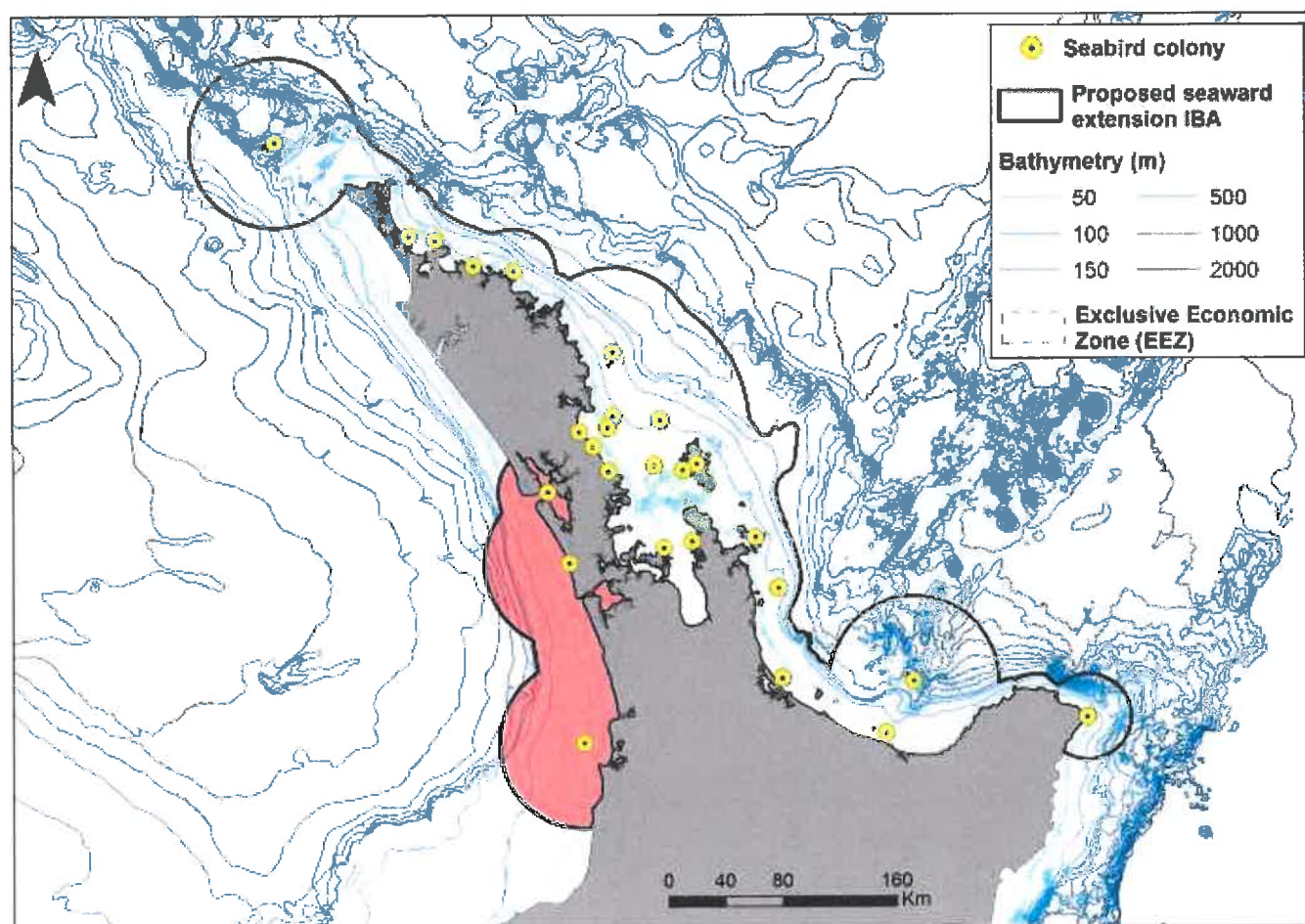
Left. Tracking of a female Fluttering Shearwater from Burgess Island, Mokohinau Islands through one year showing the extent of foraging during breeding and movement post-breeding. *Source: Graeme Taylor, Matt Rayner.*

Location	New Zealand, west coast North island
IBA criteria (see page 14)	A4ii
Area	14,993 km <sup>2</sup>
Year of Assessment	2013

## IBA trigger species:

Species	Tracking	Supporting data	Activity	IBA	IUCN
Australasian Gannet		Seaward extension (60km)	Foraging	A4ii	LC
NZ Fairy Tern <sup>1</sup>		Seaward extension (5km)	Foraging (in-shore)	A1, A4ii	VU

<sup>1</sup> Included in Papakanui Spit and Kaipara Harbour IBAs which include coastal waters.



Protected area	Designation	Area (km <sup>2</sup> )	Relationship with IBA
West Coast North Island	MPA Cable Zone	322	Protected area contained within site
West Coast North Island Sanctuary	Marine Mammal Protection	11,935	Protected area overlaps with site



NZ009	Waipu Estuary	North Auckland
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Location	New Zealand, North Auckland - Hauraki Gulf (mainland)
Central coordinates	35.994798°S, 174.483699°E
IBA criteria	A1, A4ii
Area	340 ha
Altitude	0 - 5m
Year of Assessment	2013

**Populations of IBA trigger species:**

Species	Season	Period	Population estimate (pairs)	IBA criteria	IUCN cat.	NZ Threat Class.
NZ Fairy Tern	Breeding	2010-2013	1-2	(A1, A4ii)	VU	Nationally Critical
NZ Dotterel (Northern Red-breasted Plover)	Breeding/ non-breeding	2010-2012	4-7	A1	NT	Nationally Vulnerable
Australasian Bittern	Resident		Present	A1	EN	Nationally Endangered

<sup>1</sup> The New Zealand Threat Classification System recognises subspecies and the NZ Fairy Tern is likely NZ's rarest taxon; hence its inclusion here and in subsequent sites.

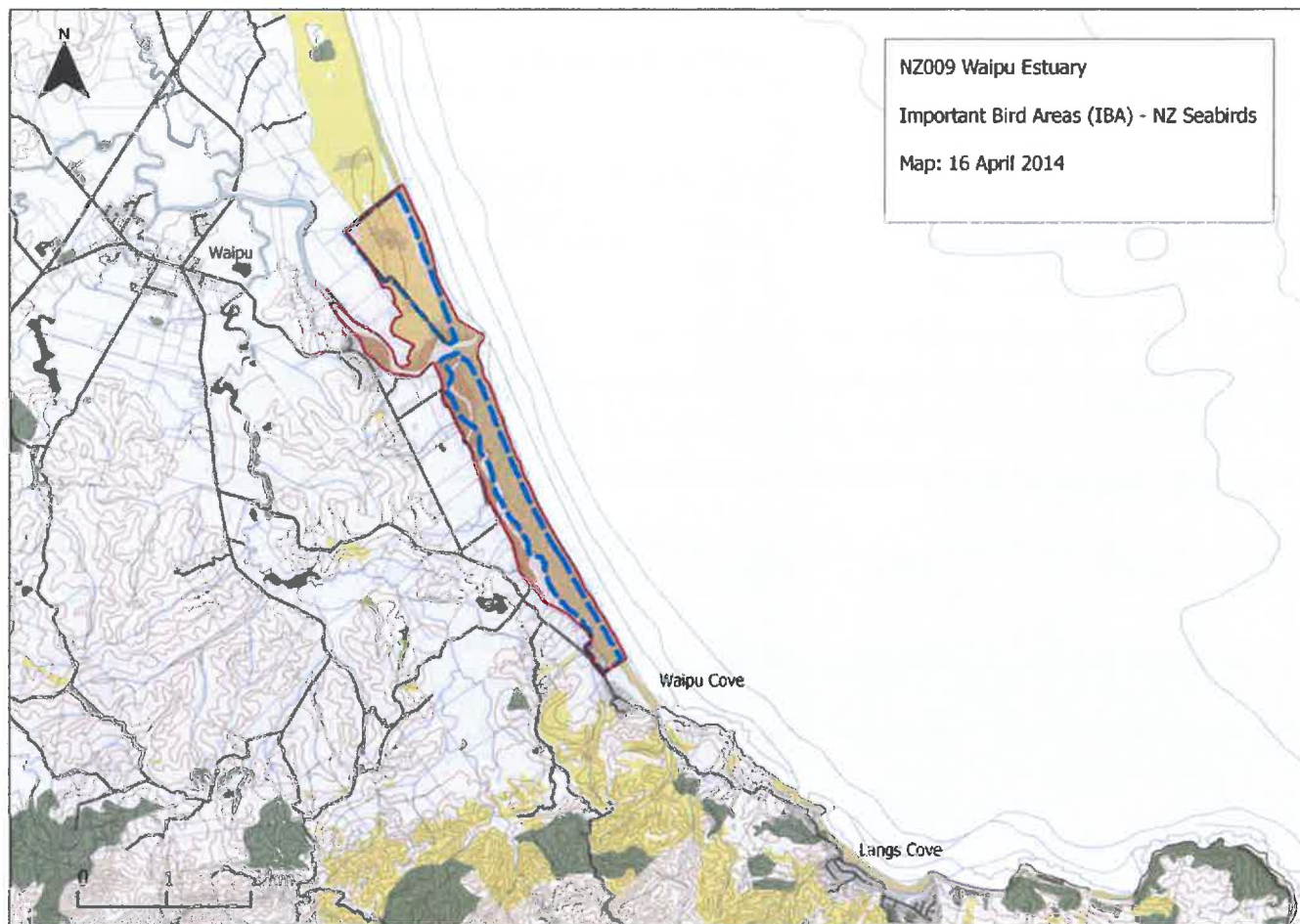
Black-billed Gulls (EN) are present during non-breeding periods.

**Ornithological information:** Besides the trigger species the following are confirmed breeding or resident within the site: Paradise Shelduck, Australasian Harrier, Mallard, Banded Rail, Pukeko, Variable Oystercatcher, Spur-winged Plover, Caspian Tern, White-fronted Tern, NZ Kingfisher, Welcome Swallow, North Island Fernbird, Grey Warbler, Silvereye, Skylark. Other species recorded: Australian Pelican, Australasian Gannet, Black Shag, Pied Shag, Little Shag, Little Black Shag, White-faced Heron, Reef Heron, Royal Spoonbill, Cattle Egret, Black Swan, South Island Pied Oystercatcher, Pied Stilt, Banded Dotterel, Pacific Golden Plover, Turnstone, Red-necked Stint, Red (Lesser) Knot, Eastern Bar-tailed Godwit, Far-eastern Curlew, Southern Black-backed Gull, Red-billed Gull, Little Tern, Rock Pigeon, Ring-necked Pheasant, Blackbird, Song Thrush, Yellowhammer, Chaffinch, Greenfinch, Goldfinch, House Sparrow, Starling, Common Myna, Australian Magpie.

Protected area	Designation	Relationship with IBA
Waipu	Wildlife Refuge Reserve	Protected area contained with site

IUCN Habitat	Habitat detail	Extent (% of site)
Marine Neritic (Submergent Nearshore)	Estuary	Major
Marine Intertidal	Beach, Sand spit; Saltmarsh, rush	Major
Marine Coastal / Supratidal	Sand Dunes, marram grass, some Pingao revegetated areas	Major
Forest	Mangrove	Major
Artificial aquatic	Breakwater/groyne	Minor



#### Threats to the site (pressure) - IUCN Classifications

Threat Level	Notes	Timing	Scope	Severity
Invasive & other problematic species, genes & diseases	Invasive alien species - cats, rats, hedgehogs	Happening now	Majority/most of area/population (50-90%)	Slow but significant deterioration
Human intrusions and disturbance	Recreational activities by beach and estuary users - includes dogs.	Happening now	Majority/most of area/population (50-90%)	Imperceptible deterioration
Pollution	Run-off and sedimentation from adjacent properties and farmland.	Happening now	Some of area/population (10-49%)	Imperceptible deterioration

#### References:

Ornithological Society of NZ (OSNZ/Birds NZ) National Wader Database 2013.

Robertson, C.J.R., Hyvönen, P., Fraser, M.J., Pickard, C.R. 2007. *Atlas of bird distribution in New Zealand 1999-2004*. Ornithological Society of New Zealand, Inc. Wellington.

NZ010	Mangawhai	Hauraki Gulf
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Location	New Zealand, Hauraki Gulf (mainland)
Central coordinates	36.086964°S, 174.596309°E
IBA criteria	A1, A4ii
Area	1001 ha
Altitude	0 -42m
Year of Assessment	2013

**Populations of IBA trigger species:**

Species	Season	Period	Population estimate (pairs)	IBA criteria	IUCN cat.	NZ Threat Class.
NZ Fairy Tern	Breeding		1-4	A1, A4ii	VU	Nationally Critical
NZ Dotterel (Northern Red-breasted Plover) <sup>1</sup>	Resident	2009-2012	43-47 individuals <sup>2</sup>	A1	NT	Nationally Vulnerable
Australasian Bittern	Resident		Present	A1	EN	Nationally Endangered

<sup>1</sup> Both NZ Fairy Tern and Black-billed Gulls (EN) have nested at Te Arai.

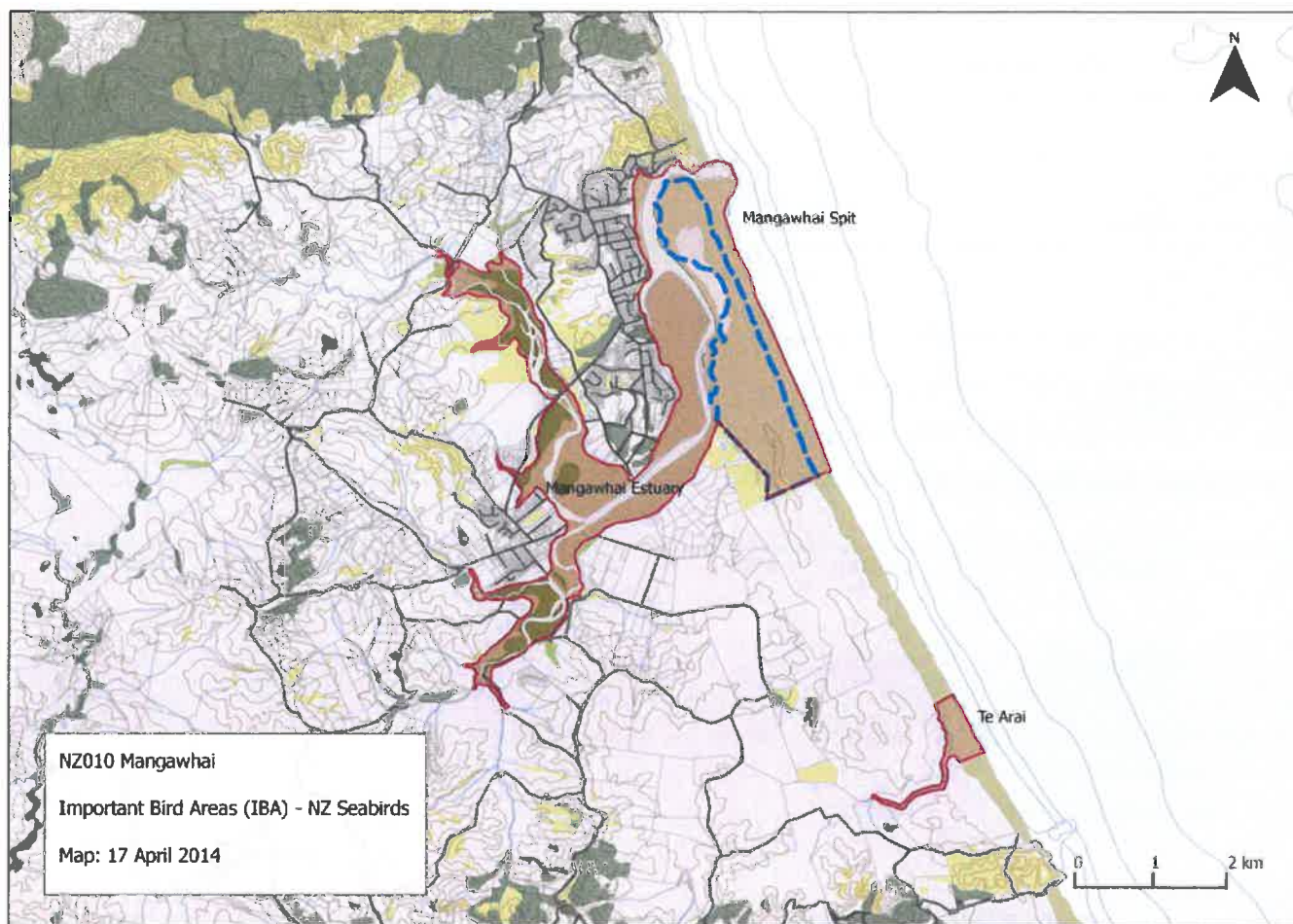
<sup>2</sup> Resident population increases during non-breeding period.

**Ornithological information:** Besides the trigger species the following are confirmed breeding or resident at this site: Paradise Shelduck, Australasian Harrier, Banded Rail, Pukeko, Variable Oystercatcher, Spur-winged Plover, Caspian Tern, NZ Kingfisher, Welcome Swallow, North Island Fernbird, Grey Warbler, Silvereye, Ring-necked Pheasant, Skylark, Hedge Sparrow, Blackbird, Song Thrush, Yellowhammer, Chaffinch, Greenfinch, Goldfinch, Redpoll, House Sparrow, Starling. Other species recorded: Australian Pelican, Australasian Gannet, Black Shag, Pied Shag, Little Shag, Little Black Shag, White-faced Heron, Reef Heron, Little Egret, Royal Spoonbill, Mallard, NZ Shoveler, South Island Pied Oystercatcher, Pied Stilt, Banded Dotterel, Southern Black-backed Gull, Red-billed Gull, White-fronted Tern, Cattle Egret, Pacific Golden Plover, Turnstone, Red-necked Stint, Red (Lesser) Knot, Eastern Bar-tailed Godwit, Siberian Tattler, Little Tern, Black Swan, Rock Pigeon, Common Myna, Australian Magpie. NB: Shore Plover (EN) A1 - one recent record.

Protected area	Designation	Relationship with IBA
Mangawhai	Wildlife Refuge Reserve	Protected area contained with site

IUCN Habitat	Habitat detail	Extent (% of site)
Marine Neritic (Submergent Nearshore)	Estuary	Major
Marine Intertidal	Beach, Sand spit; Saltmarsh, rush	Major
Marine Coastal/Supratidal	Sand Dunes, marram grass, some Pingao revegetated areas; Coastal Brackish/Saline Lagoons	Major
Forest	Mangrove	Major
Artificial aquatic	Bridges, launching ramps	Minor



#### Threats to the site (pressure) - IUCN Classifications

Threat Level	Notes	Timing	Scope	Severity
Invasive & other problematic species, genes & diseases	Invasive alien species - cats, rats, hedgehogs	Happening now	Some of area/ population (10-49%)	Moderate to rapid deterioration
Human intrusions and disturbance	Recreational activities by beach and estuary users - includes dogs.	Happening now	Some of area/ population (10-49%)	Slow but significant deterioration
Natural system modifications	Mangrove clearance; associated channel dredging in harbour	Happening now	Some of area/ population (10-49%)	Moderate to rapid deterioration
Residential and commercial development	Coastal development - mainly housing around the fringes of the harbour (relates to entry below); also potential marina development	Happening now	Some of area/ population (10-49%)	Slow but significant deterioration
Pollution	Run-off and sedimentation from adjacent properties and farmland.	Happening now	majority/most of area/population (50-90%)	Slow but significant deterioration



## References:

Ismar, S.M.H., Trnski, T., Beauchamp, T., Bury, S., Wilson, D., Kannemeyer, R., Bellingham, M., Baird, K. 2013. Foraging ecology and choice of feeding habitat of the Critically Endangered New Zealand fairy tern, *Sternula nereis davisae*. *Bird Conservation International*.

Ornithological Society of NZ (OSNZ/Birds NZ) National Wader Database 2013.

Robertson, C.J.R., Hyvönen, P., Fraser, M.J., Pickard, C.R. 2007. *Atlas of bird distribution in New Zealand 1999-2004*. Ornithological Society of New Zealand, Inc. Wellington.

