

**Northland Regional Plan – Topic 14 – Marine Protected Areas
Planning Expert Conference on 21 June 2021 - Joint Witness Statement (JWS)
ENV-2019-AKL-000117**

Unless authorised otherwise by the Court, this JWS is confidential to the experts and the parties and their counsel

Witnesses who participated and signed their agreement to the content of this Joint Witness Statement (“JWS”) on 21 June 2021 are:

Name	Employed or engaged by	Signature
Dr Mark Bellingham	Te Uri o Hīkīhiki Hapū and Ngāti Manuhiri	
Murray Brass	Minister for Oceans and Fisheries, Minister for Conservation	
James Griffin	Northland Regional Council	
Dr Phil Mitchell	Fishing Industry Parties, Te Ohu Kai Moana, Te Rununga A Iwi o Ngāpuhi and Ngātiwai Trust Board	
Peter Reaburn	Bay of Islands Marine Park Inc and Royal Forest and Bird Protection Society of NZ Inc	

Facilitator: Environment Commissioner Jim Hodges

Recorder: Polly Smith

Environment Court Practice Note

When signing this JWS, the experts confirm that they have read the Environment Court Consolidated Practice Note 2014 and in particular Section 7 (Code of Conduct, Duty to the Court and Evidence of an expert witness) and Appendix 3 - Protocol for Expert Witness Conferences - and agree to be bound by it. They also confirm that

they were familiar with all relevant information prior to the start of conferencing unless stated otherwise in this JWS.

Statement of Agreed Facts

The experts agree with the Agreed Statement of Facts – Planning, dated 21 June 2021, attached to this JWS.

Definitions

The experts referred to in this JWS are the planning experts listed above unless stated otherwise.

BACKGROUND

1. A brief background is set out in the JWS Ecology.
2. When preparing this JWS, the experts focused on planning matters relevant to the proposals of the Appellants to protect and restore areas from the Bay of Islands to Mimiwhangata (refer to the Map in Attachment 1 of the JWS Ecology¹) from the actual and potential adverse effects of fishing activities.
3. Mr Reaburn and Dr Bellingham advised that the extent and boundaries of the proposed protection areas were determined by Ngāti Kuta and Te Uri o Hikihiki.

CONFERENCE OUTCOMES

4. What appeal relief and provisions sought did the experts use as the basis of this JWS Planning?
 - (a) As noted above, the experts relied on the map included in the JWS Ecology (which incorporated the change in relief sought by the Appellants on 8 June 2021) for the areas now sought to be protected.

¹ The Map is the updated version provided by Bay of Islands Maritime Park Inc, Royal Forest and Bird Protection Society Inc, Ngāti Kuta Te Uri o Hikihiki immediately prior to conferencing on 8 June 2021.

- (b) The experts used the provisions sought by the appellants and Ngāti Kuta included as Appendix A of Mr Reaburn's evidence in chief, subject to the caveat as outlined in 13(a).
5. What outcomes of the ecology expert conference did the planning experts take into account in particular?
- (a) The experts agree that there is nothing in the JWS Ecology that changes the opinions expressed in their primary evidence.
6. What outcomes of the fisheries expert conference did the planning experts take into account in particular?
- (a) The experts agree that there is nothing in the JWS Fisheries that changes the opinions expressed in their primary evidence.
- (b) Mr Brass notes that some fisheries experts are proposing to update their estimates of the value of fishing given the change in area covered by these proposals.
7. What are the key planning instruments and provisions of relevance to the appeals?
- (a) A complete list of planning instruments and provisions is included in the Agreed Statement of Facts – Planning, dated 21 June 2021.
- (b) The experts agree that the following provisions of the Act are **particularly relevant**:
- i. Sections 5, 6(a), 6(c), 6(e), 6(f), 6(g), 7(a) and 8
 - ii. Section 30
 - iii. Section 32
 - iv. Section 66
- (c) The experts agree that the following provisions of the NZCPS are **particularly relevant**:
- i. Objectives 1, 2, 3 and 6.

- ii. Policies 2, 6, 11, 13 and 14.
- (d) The experts agree that the following provisions of the Regional Policy Statement are **particularly relevant**:
- i. Objectives 3.4, 3.5, 3.12 and 3.14.
 - ii. Policies 4.4.1, 4.6.1, 4.7.1 – 4.7.3, 8.1.1 – 8.1.4 and 8.3.1.
- (e) Dr Bellingham considers that Policy 6.1.3 of the Regional Policy Statement is also **particularly relevant**.
- (f) The experts agree that the following provisions of the Proposed Regional Plan are **particularly relevant**:
- i. Objectives F1.3 (indigenous ecosystems and biodiversity), F1.5² (enabling economic wellbeing), F1.9 (tangata whenua role in decision making), F1.12 (natural character).³
 - ii. Policies D2.17 (natural character), D2.18 (biodiversity) and D2.20 (precautionary approach).⁴
- (g) The experts agree that the provisions relating to tangata whenua in section D1 of the Proposed Regional Plan relate to resource consent processes, as opposed to policy issues.
- (h) The experts agree that there are a number of iwi management plans and these are referred to in individual evidence. Mr Reaburn and Mr Griffin consider that the Ngāti Kuta iwi management plan has **particular relevance** as set out in their evidence.
8. Do the experts consider any issues of scope arise from the new provisions sought?

² Subject to appeal.

³ There has been a change in numbering and the above utilises the numbering from the May 2021 Appeals Version.

⁴ There has been a change in numbering and the above utilises the numbering from the May 2021 Appeals Version.

- (a) The experts agree that two questions of scope potentially arise namely:
 - i. The extent to which the proposed provisions conflict with the Fisheries Act; and
 - ii. The extent to which the proposed provisions are within the scope of submissions and appeals (see also 9 below).
 - (b) The experts agree that except where related to planning issues discussed in this JWS these are matters for legal submissions.
9. Do the experts consider any process issues arise as a result of the new provisions sought, including in terms of consultation?
- (a) The experts agree that as a matter of good process parties that have relevant interest in particular provisions would be engaged or consulted at the earliest possible time in that process.
 - (b) Dr Mitchell considers that the submissions on the Proposed Regional Plan sought new policies and rules that were not anticipated by the Māori Fishing Interest Parties and the Fishing Industry Parties that were not able to be addressed at the Council hearing. The section 42A report did not address the possible inclusion of rules prohibiting fishing and types of fishing, and there was no public process as envisaged by Schedule 1 of the RMA particularly with respect to section 4A (iwi authority consultation).
 - (c) The other experts note that original submissions, albeit without detail, sought controls on fishing. These submissions were publicly notified using the Schedule 1 process. There are a wide range of interests involved in the process and a number of these have joined in response to these appeals.
10. Is the first objective (Protection) as sought by the Appellants appropriate for inclusion in the Proposed Regional Plan?
- (a) The experts note that at the time of conferencing there were three wording options proposed, all of which are intended to achieve similar outcomes.
 - (b) The experts agree that if an objective is necessary, they would recommend wording along the following lines:

Protect from inappropriate use, disturbance and development the characteristics, qualities and values that make up [protection area name(s) to be agreed by the parties].

- (c) The experts, apart from Dr Mitchell, agree that it is appropriate to include this objective in the Proposed Regional Plan.
 - (d) The experts agree that this objective would need to be accompanied by a schedule of characteristics, qualities and values.
 - (e) Dr Bellingham considers that the wording of the objective is appropriate on the understanding that the schedule will include identification of customary values, mauri and taonga species and their habitats, and other relevant matters.
 - (f) Dr Mitchell agrees that if there is to be an objective he would agree with the wording in (b) above. However, given the evidence he has reviewed he is not satisfied that the objective is necessary, and does not consider that fishing activities would be “inappropriate”, given:
 - i. The principles of the Treaty of Waitangi (particularly in respect of redress);
 - ii. The role of tangata whenua as kaitiaki;
 - iii. The mechanisms under the Fisheries Act to manage the effects of fishing; and
 - iv. The lack of robust section 32 analysis that considers all the realistically available options.
11. To what extent do the proposed new provisions conflict with the protection provisions of the Fisheries Act?

- (a) The fisheries experts addressed this question in paragraph [5] of the JWS Fisheries, and recorded that “There would be significant overlaps between existing fisheries restrictions and the proposed protection measures”.
- (b) The planning experts agree that there are overlaps. To identify these overlaps and to respond to them appropriately in terms of detailed provisions would require a thorough process involving experts from multiple disciplines with knowledge of both the RMA and the Fisheries Act.

12. Is the second objective (Possible Future Areas) as sought by the Appellants appropriate for inclusion in the Proposed Regional Plan?

- (a) The proposed second objective is:
 - Investigate and identify areas that may qualify as further [protection areas] and implement measures for those areas that will protect them from inappropriate use, disturbance and development.
- (b) Mr Reaburn and Dr Bellingham consider it is very likely that other areas would warrant investigation and explicit acknowledgement of that should be included in the Proposed Regional Plan.
- (c) Mr Griffin acknowledges that it is likely that other areas will warrant investigation, however, he does not consider the proposed objective is necessary for the reasons outlined in paragraphs 63 – 66 of his evidence in chief. Mr Brass supports that view.
- (d) Dr Mitchell does not support the second objective for the reasons outlined in 10(f) above.

13. Are the proposed rules appropriate from a planning perspective?

- (a) Dr Bellingham and Mr Reaburn stated that the Appellants and supporting s274 parties have set out proposed permitted and prohibited activity rules in relation to fishing activities. They will endeavour to provide the Court with a single proposed rule package in rebuttal evidence, as generally set out in Appendix A of Mr Reaburn’s evidence.

- (b) Dr Bellingham and Mr Reaburn consider that the rule package is necessary regardless of any Fisheries Act controls.
- (c) Mr Griffin considers that based on (a) above the proposed rule package is generally appropriate, however, further refinement is necessary, and considers that kina management should be left to the Fisheries Act.
- (d) Mr Brass considers that a rule package along the lines outlined in (a) above may be appropriate in conjunction with Fisheries Act controls, but agrees with Mr Griffin that further refinement is necessary.
- (e) Dr Mitchell considers that until the overlap issues between the RMA and the Fisheries Act are resolved it would be difficult to finalise rules with any certainty. For this reason, and the reasons outlined in 10(f) above, he does not support the proposed rule package.