

# Coastal water space

How can we improve the management of coastal space in our regional plans? This is a summary of our initial ideas.

## What is coastal water space?

The Regional Coastal Plan sets out the way the coastal marine area<sup>1</sup> of Northland is managed<sup>2</sup> by dividing it up into six zones or marine management areas (which are managed for different purposes) and including rules within the respective zones to manage the potential adverse effects of activities. The six zones are as follows:

- Marine 1 (Protection)
- Marine 2 (Conservation)
- Marine 3 (Marine Farming)
- Marine 4 (Moorings)
- Marine 5 (Port Facilities)
- Marine 6 (Wharves)

This review looks at how the Regional Coastal Plan manages:

- Recreational activities (including public access and vehicle use along the foreshore/seabed)
- Dredging, extraction and depositing/disposal of material
- Disturbance of land in the coastal marine area (including use of heavy machinery)
- Aquaculture
- Moorings, marinas and vessel anchorage
- Placement and occupation of space for structures (excluding network utilities).

This review does not include:

- Reviewing the 'viability' of the Marine 1 (Protection) Management Area (see the significant natural heritage values topic).

## Overview of the regional plans review

This is one of 10 summary reports for the review of Northland's regional plans.

Northland has three regional plans:

- Regional Air Quality
- Regional Coastal Plan
- Regional Water and Soil Plan

We are required to review the regional plans every 10 years. We have reviewed all three regional plans at the same time.

The review is the first step to prepare a new regional plan. The review looks at:

- What we know about our resources and their use;
- Lessons learnt from administering the regional plans
- Current legal and policy drivers; and
- Feedback from key stakeholders and tangata whenua

The review concludes with options or recommendations for the new regional plan.

We've split the review up into 10 topics:

- Water quality
- Water quantity
- Marine ecosystems and biodiversity
- Coastal water space
- Air quality
- Significant natural heritage values
- Māori participation in resource management
- Natural hazards
- Infrastructure and mineral extraction
- Hazardous substances

For more information go to - [nrc.govt.nz/newregionalplan](http://nrc.govt.nz/newregionalplan)

<sup>1</sup> The area from mean high water springs to the 12 nautical mile (22.2 km) limit of New Zealand's territorial sea

<sup>2</sup> Excluding fishing and biosecurity controls on vessels moving around NZ (managed by Ministry of Primary Industries) and protection of marine mammals and marine protected areas (managed by the Department of Conservation)

- Network utilities and services in the coastal marine area (see infrastructure and mineral extraction topic).
- Discharges to water (see water quality topic)
- Removal and modification of indigenous vegetation (such as mangroves) (see marine ecosystems and biodiversity topic).
- Hard protection structures (covered by natural hazards topic).

## What needs to change in the regional plans?

Overall, the management regime set up by the Regional Coastal Plan has been successful in sustainably managing use and development within the coastal marine area over the last 10 years. However, there are new legal requirements and national policy statements that need to be taken into account. Additionally, implementation of the policies and rules over the past 10 years has found that some rules are not working as well as intended and that some parts of the Regional Coastal Plan are now outdated or redundant.

The hierarchical nature of documents prepared under the Resource Management Act (RMA) means that regional plans have to 'give effect' to higher level planning documents. There have been various changes to the RMA, new legislation and new policy documents relevant to the management of the coast, including:

- New Part 7A RMA (Occupation of Common Marine and Coastal Area).
- Marine and Coastal Area Act 2011 (which introduced the concept of common marine and coastal area into the RMA).
- A 'new' New Zealand Coastal Policy Statement (see below)
- The development of a Proposed Regional Policy Statement for Northland

### 1 Taking a strategic approach to use and development of the coast

Under the RMA, the only mandatory national policy statement is the New Zealand Coastal Policy Statement (coastal policy statement)". Councils are required to amend their plans to give effect to provisions that affect their respective documents as soon as practicable and councils, when considering an application for a resource consent and any submissions received, must have regard to any relevant provisions of the coastal policy statement.

The current coastal policy statement contains 29 policies and took effect in December 2010. The previous one came into effect in 1994 and our operative Regional Policy Statement and operative regional coastal plan were prepared under this regime.

The 'new' coastal policy statement includes policies on topics that the previous one didn't address. Examples include:

- Surf breaks of national significance (policy 16)
- Harmful aquatic organisms (policy 12)
- Aquaculture (policy 8)
- Ports (policy 9)
- Strategic planning (policy 7)

It is more directive than the previous one and focuses on 'avoiding' adverse effects, particularly in relation to significant values (such as outstanding natural character and threatened species), in order to address cumulative effects. It provides strong direction on the need for strategic planning to identify where particular activities are inappropriate and has a greater focus of the effects of climate change, in particular sea-level rise.

Additionally, it directs councils to amend their regional coastal plans to remove the requirement to classify activities as restricted coastal activities (policy 29). We have already given effect to this policy and amended our coastal plan to delete all references to restricted coastal activities.

As mentioned above, the operative regional coastal plan divides the management of the coastal marine area up into six marine management zones. However, the coastal policy statement has placed a greater emphasis on the co-ordinated management of activities within the coastal environment, particularly in situations where use and development and its effects above or below the line of mean high water springs will require, or is likely to require, associated use or development that crosses the line of mean high water springs<sup>3</sup>. In practice, what this is likely to mean is the regional council working closely with the district councils during the development of the next coastal plan to identify if there are particular areas of the region that would benefit from being re-zoned and having site-specific policies and rules to encourage (or discourage) certain types of developments and activities.

### 1.1 Possible changes to the regional plan

Arguably, the existing coastal plan already takes a strategic approach to managing the coastal marine area by dividing it up into six marine management areas. However, the active implementation of policies 4 and 7 of the coastal policy statement means that some refinements should be made. In particular, the creation of new 'zones' (marine management areas) such as a waterfront development zone (for places like Paihia and the Whāngārei Town Basin/harbourside area) or the creation of map overlays, identifying the special 'values' of a particular area and how they need to be managed (see "Significant natural heritage values" topic for a detailed discussion) would be a way to assist with managing cumulative effects as well as providing positive policy support to encourage the types of activities/developments envisaged by the zone.

The development of a single regional plan or a regional coastal environment plan<sup>4</sup> would be a way to give effect to all provisions in the coastal policy statement in an integrated manner and have a degree of control on activities that originate on land but have the potential to adversely affect activities in the coastal marine area. An example includes ensuring that development in the coastal 'environment' does not make water quality unfit for aquaculture purposes in the coastal marine area.

It would also mean that mapped resource areas (for example, outstanding natural landscape, outstanding/high natural character areas, heritage or biodiversity) could be treated consistently across 'arbitrary' jurisdictional boundaries - i.e. provide policy guidance to protect/preserve natural character and natural features/landscapes in the coastal environment from inappropriate development, rather than requiring separate policy guidance for these resource areas both above and below the line of mean high water springs<sup>5</sup> (see the Significant natural heritage values topic for further discussion on this). Additionally, management of coastal hazard risk would likely be improved (see the Natural hazards topic for further discussion on this).

Overall, it is recognised that our operative regional coastal plan does not sufficiently give effect to the coastal policy statement and needs to be amended. The rest of this report covers some of the new policy requirements (such as aquaculture and surf breaks of national significance), whilst other new policy requirements are covered in other reports.

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<sup>3</sup> See Policy 4 – Integration.

<sup>4</sup> Encompassing the landward extent of the coastal environment as 'mapped' through the proposed Regional Policy Statement for Northland as well as the coastal marine area.

<sup>5</sup> Regional councils have a requirement under s30(1)(a) of the RMA to establish policies to achieve integrated management of the natural and physical resources of the region.

## 2 Coastal occupation charging

Regional councils are required by the RMA<sup>6</sup> to decide whether or not to impose a coastal occupation charging regime (essentially a fee for the use of public space in the common marine and coastal area). There is no obligation to impose a regime but the new regional coastal plan must either; state that council decided not to include a regime, or set out the basis for coastal occupation charges and their use (no coastal occupation charges can be applied unless specified in the coastal plan).

With regards to the imposition of coastal occupation charges, if the regional council considers that a coastal occupation charges regime should not be included, a statement to that effect must be included in the new regional coastal plan. If the council decides to implement a coastal occupation charges regime then the new regional plan will need to set out:

- the circumstances when a coastal occupation charge will be imposed; and
- the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and
- the level of charges to be paid or the manner in which the charge will be determined; and the way the money received will be used.

Currently, resource consent holders are charged an annual monitoring fee and mooring holders are charged an annual mooring licence fee (a portion of which goes towards administration). However, no consent holders in Northland are charged a fee for 'occupying' space in the coastal marine area.

An occupation charge would be an annual fee, to be paid by any person, business or organisation that occupies public space in the common marine and coastal area. Charges would not apply to privately owned coastal marine area<sup>7</sup>, or to person carrying out a protected customary right, or to any person or group that holds customary marine title. It would be like a rental for occupying public space, similar to the concessions paid for occupying and using national parks and reserves. Charges would provide a form of compensation to the community for the loss of access to public space and its reduced amenity.

Any revenue from imposing coastal occupation charges has to be spent on the purpose of promoting the sustainable management for the coastal marine area. The potential income is significant as Northland currently has thousands of private structures in the common marine and coastal area (the most common being swing moorings). Revenue could therefore be used for such things as:

- Enhancement of marine water quality.
- Removal of derelict structures.
- Providing public facilities and improving public access to the marine area.
- Supporting groups involved in coastal restoration and enhancement

Importantly, there's very little legislative guidance on what occupation charges are (e.g. a rental or cost recovery) or how they should be set. Without a clear legal foundation for establishing the charges, development of a regime will be vulnerable to challenge. Inconsistency across the country is also likely, with each region deciding how much to charge (if anything). The potential for differing levels of charging could mean that marine activities may be discouraged in a region with high occupation charges and relocate to a

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<sup>6</sup> Section 64A of the RMA.

<sup>7</sup> There are small number of these e.g. Opuia, Bay of Islands

region with lower or no charges. Coupled with an inevitable high level of controversy, the plan change process will likely be costly and time consuming.

How charges would apply to any number of activities that occupy space is also problematic and quantifying loss of public good is extremely complex, meaning any regime is likely to be contentious and difficult to justify (for example, the same square metre charge for occupation of space in the Bay Of Islands or Sandy Bay is unlikely to be justified 5km offshore on the west coast). The relative costs and benefits of such a regime require careful analysis – it may be that the adverse economic impact and administrative cost outweigh any financial benefit/return. For these reasons, no council in New Zealand has implemented a coastal occupation charges regime to date<sup>8</sup>.

There were mixed views at the coastal water space key stakeholder workshop<sup>9</sup> regarding whether the regional council should develop a COC regime, with roughly half the stakeholders supporting the concept and the other half considering that it would be pointless.

## 2.1 Possible changes to the regional plan

Our initial view is that whilst in principle we support the concept of a coastal occupation charging regime, until such time as there is a nationally acceptable methodology that is consistently applied throughout the country, the relative costs will probably outweigh the relative benefits for Northland.

## 3 Dredging, deposition and disturbance of the foreshore and seabed

Currently, the key management approaches (in the Regional Coastal Plan) towards dredging and related activities are to:

- Discourage capital dredging and spoil disposal unless associated with a marina, port or commercial wharf – generally a ‘discretionary’ activity.
- Promote land-based disposal of dredged spoil from both capital and maintenance dredging (coastal marine area based disposal is a ‘discretionary’ or ‘non-complying’ activity).
- Allow (via resource consent) maintenance dredging (generally ‘controlled’ activity).
- Generally allow clearance of artificial land drainage channels and tidal stream mouths by district councils (typically controlled activities) to avoid flooding or release natural impoundments that may cause a public health risk.

The following are identified problems and lessons learnt from the rules:

- Resource consent is required for clearing the stormwater pipe outlets (for example, when they get blocked up with sand). As there is no specific rule, this is a discretionary activity, however the environmental effects of this activity are generally minor and it avoids significant risks. This activity is akin to the clearing of tidal stream mouths, but which is currently a controlled activity in most instances.
- As mentioned above, the clearing of tidal stream mouths by district councils is a ‘controlled’ activity. However, often the blocking of stream mouths and the need to clear them happens quickly – quicker than the time it takes to process a coastal permit.

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<sup>8</sup> Southland has coastal occupation charging but these were in existence prior to the RMA.

<sup>9</sup> This workshop was held on 21 October 2014. The workshop notes can be found at the following link - [http://www.nrc.govt.nz/upload/18187/Coastal%20water%20space%20workshop%20notes%20\(A695621\).pdf](http://www.nrc.govt.nz/upload/18187/Coastal%20water%20space%20workshop%20notes%20(A695621).pdf)

- There are no rules for clearing tidal stream mouths in Marine 4, 5 and 6 Management Areas (so automatically a discretionary activity) – again this appears to be over-regulating a generally benign activity which has controlled status in most other instances.
- The use of heavy machinery or equipment on the foreshore (for example, to either maintain and/or in association with the construction of structures) requires a consent in most instances. There are many instances where the adverse effects are minor or temporary<sup>10</sup>, and requiring resource consent in these instances is overly onerous. This is particularly the case for maintenance – construction of new structures requires a resource consent anyway, however maintenance of structures is generally a permitted activity.

### 3.1 Possible changes to the Regional Coastal Plan

- District council clearing of tidal stream mouths could be a permitted activity, subject to compliance with standards and conditions. This could either be for just Marine Management 1 and 2 Areas (currently ‘controlled’) or all marine management areas. Alternatively, it could be permitted in Marine Management 1 and 2 areas and ‘controlled’ in the other areas. Whangarei District Council has given strong support for this suggestion to make it ‘permitted’ for councils.
- Include rules relating to clearing of stormwater pipe outlets. Potentially ‘permitted’ (subject to compliance with standards/terms) for councils and small-scale public clearing (for example, no heavy machinery) or ‘controlled’ activity for non-council clearing. This was supported at the coastal water space key stakeholder workshop where there was a view that if a consent had been acquired for the stormwater pipe then it should be ‘permitted’ to maintain/clear it.
- Disturbance of foreshore and seabed – amend the activity status for use of heavy vehicles and machinery in association with the upgrade, maintenance or removal of structures (possibly ‘permitted’ subject to compliance with standards and terms for councils or approved contractors and ‘controlled’ activity for others). Whangarei district council are supportive of developing a permitted rule for the maintenance of structures that require heavy machinery (subject to the development of appropriate standards and conditions).

## 4 Moorings, marinas and vessel anchoring

There is a long history to the way that moorings (particularly swing moorings) have been managed in Northland. The ‘current’ approach<sup>11</sup> seeks to limit the proliferation of moorings around the coast by facilitating the concentration of moorings into Marine 4 (Moorings including Marinas) Management Areas and by discouraging moorings outside these areas. However, there are currently around 600 moorings (primarily swing) located outside of Marine 4 Management Areas (primarily in Marine 2 Management Areas). Around 50 per cent of these are un-consented (and therefore are technically required to apply for a coastal permit). The majority of these moorings have been in place since before the RCP become operative (2004).

The current rules make existing moorings in Marine 2 Management Areas ‘non-complying’ unless they are located within certain bays<sup>12</sup> and the current policy direction is likely to lead

<sup>10</sup> For example, the passing of heavy machinery over a sandy beach away from shellfish beds and important bird habitat is generally unlikely to have undue adverse effects.

<sup>11</sup> Which was determined through Plan change 1 (Moorings and Marinas) to the RCP and was declared operative on 1 August 2014.

<sup>12</sup> These moorings are classified as ‘discretionary’ activities.

to many of these existing moorings being declined consent when they apply (this would apply to both renewals and applications for new resource consent). In many cases, there are no mooring zones nearby or the mooring zones are full. Arguably, many of these unconsented moorings are only causing 'minimal' adverse effects.

Many existing mooring areas are at or near capacity (no space to accommodate additional moorings) and in many cases, also exceeding the capacity for the shore-based facilities and services to support them. Most of these mooring areas are located in and around the Bay of Islands, which illustrates the popularity of this area for moorings and recreational boating activities in general.

What this essentially means is that there is not enough space in existing Marine 4 Management Areas to accommodate all unconsented (swing) moorings located outside these areas, nor will there be enough space in the future to accommodate lots of 'new' moorings unless mooring use is intensified within mooring areas (by moving to a different mooring system) or additional Marine 4 Management Areas are created (see possible changes below).

In the Regional Coastal Plan, anchoring for more than 14 days in the same embayment, estuary or inlet is a discretionary activity (less than 14 days is permitted). The intention of this rule is to: a) allow recreational/commercial vessels to anchor (as a permitted activity) for a period of time where the activity is deemed to not be causing any adverse effects to other parties (including amenity and water quality effects) and b) ensuring that the activity is not occupying space in the coastal marine area (and consequently requiring a coastal permit to occupy 'space' in the common marine and coastal area) – RMA s12(2)(a).

The Regional Coastal Plan does not define embayment, estuary or inlet and therefore it is currently difficult to ascertain whether a vessel has been anchored for more than 14 days. In most parts of Northland's coast this is not a problem, but there are situations (such as within Whāngārei Harbour) where people have been flouting the 'permitted' rule and anchoring in the same location for extended periods of time, meaning they are 'occupying' public space within the common marine and coastal area (much as a structure does), therefore requiring a consent. The lack of appropriate definitions makes taking enforcement action difficult.

Additionally, yachts and other vessels are reliant on areas of safe anchorage during storms or in the event of vessel damage or gear failure. If not otherwise controlled, the expansion of mooring areas (or other structures) has the potential to inhibit the availability of safe/popular anchorage areas. Therefore, in the interests of safe navigation, some areas need to be set aside for recognised safe/popular anchorage<sup>13</sup>. These could be known as regionally significant anchorage areas.

#### **4.1 Possible changes to the Regional Coastal Plan**

Managing new moorings and existing moorings currently located outside of mooring zones will be a significant matter for the new coastal plan. There are some reasonably obvious changes, like creating new mooring zones in the Bay of Islands as identified in the Moorings and Marinas Strategy<sup>14</sup>. Additional options include:

- Additional new or expanded mooring zones to accommodate the projected increase in demand for new moorings and accommodate existing moorings (some or all) outside Marine 4 Management Areas; and/or

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<sup>13</sup> Plan Change 1 (Moorings and Marinas) to the regional coastal plan included boat anchorage policies that requires the council to recognise and provide for the use of recognised safe anchorages.

<sup>14</sup> Northland Regional Council Moorings and Marina Strategy, 2014

- The development of a standalone marina zone in recognition that they tend to have different effects than moorings; and/or
- Identify certain mooring areas that can be 'intensified' (such as moving from swing moorings to more intensive forms like trot moorings); and/or
- Relax the policies and rules for existing moorings outside mooring areas. This could be everywhere or in particular areas, for example, away from outstanding natural landscape/character areas and significant anchorages; and/or
- Maintain the status quo approach (concentrate new moorings into existing Marine 4 Management Areas and discourage them outside these areas).

At the coastal space key stakeholder workshop, there was support for the concept of maintaining the existing concentration policy with regards to the placement of new moorings but there was support for council to consider amending the policies and rules for existing moorings. There was also a lot of support for the development of a separate marina zone. There is no obvious 'solution' and more analysis is required (for example, assessing costs and benefits) before the council will be in a position to suggest a recommended approach.

Vessel anchorage – including definitions of 'embayment', 'inlet' and 'estuary' in order to provide certainty around the locations that vessels are allowed to anchor, will assist with restricting the ability for people to flout the 14 day permitted rule. Alternatively, re-anchoring could be required to be beyond a specified distance (for example, radius of 1000m).

The current 'rule' for permitted anchoring in Marine 4 Management Areas states that no one may stay overnight on their vessel while at anchor unless the vessel is equipped with a sewage treatment system, a sewage holding tank or portable toilet. Additionally, there is a five night limit unless:

- All sewage has either been disposed of at a sewage pump out facility; or
- Disposed of at an authorised disposal site; or
- The vessel has navigated into waters where the discharge of sewage from the vessel is permitted and has disposed of all its sewage into those waters.

This rule was added by Plan Change 1 and was specifically designed to avoid vessels discharging raw sewage into the coastal marine area. The new coastal plan could apply this rule to all vessels anchoring within Marine 1 and 2 Management Areas as well. This would also be useful for enforcement purposes if people are suspected of deliberately not complying with the 'permitted' rule with regards to staying in the same location for a period greater than 14 days.

Regionally significant anchorages - in consultation with appropriate parties, establish a register of recognised safe/popular anchorages (also known as regionally significant anchorages) around Northland's coast. Consultation to date with the yachting fraternity has indicated that there are some areas that are popular for day time anchoring, which might not necessarily be suitable for 'overnighting', while there are other areas that are suitable for both. These areas could be spatially mapped so as to be available on council's GIS system as well as the next coastal plan maps. Policies and rules can be drafted to ensure that use and development within or directly adjoining the regionally significant anchorage areas will not significantly inhibit the use of the area for anchorage.



## 5 Aquaculture

Over the last 15 years, there have been various changes to the way aquaculture is regulated in New Zealand. Plan Change 4 (notified October 2006) to the Regional Coastal Plan sets out the latest 'version' for how aquaculture is managed in Northland. It includes policies and rules for managing existing aquaculture and directing how and where new aquaculture is located. At the time of writing, council is awaiting an Environment Court decision on the most significant aspect, that being the location of areas where aquaculture will be prohibited (with some exceptions). The remaining aspects, the policies directing how and where new aquaculture is located outside prohibited areas and the rules for managing aquaculture within Marine 3 Management Areas (aquaculture areas), are still subject to unresolved appeals.

A key issue for the aquaculture industry is certainty around consenting of existing farms. Their preference is for consenting to be a controlled activity (within an aquaculture 'zone'). The argument being that the 'debate' about whether aquaculture is appropriate is had at the time of creating the Marine 3 Management Area, but recognising that there are some 'fine tuning' controls required for specific operations. This is the current approach in Plan Change 4.

A key challenge for the next coastal plan will be justifying the renewal of existing aquaculture (or consents for new space) in or close to 'outstanding' natural landscapes or natural character areas given the effect of the recent Supreme Court decision on King Salmon's proposals to establish salmon farms in the Marlborough Sounds (*Environmental Defence Society Inv v New Zealand King Salmon Company Ltd.*). In practical terms, what the decision means for aquaculture is that once councils have identified areas as 'outstanding', very little development will likely be acceptable in those areas, especially if it would result in adverse effects on the characteristics that contribute to the outstanding values.

The NZ Coastal Policy Statement 2010 requires councils to recognise the potential contribution of aquaculture to social, economic and cultural wellbeing of communities and to provide for it in appropriate places. Additionally, central government sees Northland as one of the key regions in the country with potential to develop more space for aquaculture. Plan Change 4 identifies large areas where aquaculture is prohibited<sup>15</sup>. There is a risk that having large areas of the coast 'prohibited' for aquaculture could be discouraging potentially suitable/appropriate types of aquaculture from being established.

A key issue therefore for the next coastal plan (especially for the aquaculture industry) will be the ability to establish new farms in appropriate places, as well as exploring opportunities to utilise new technologies and methods in areas that may not currently be identified as being suitable for aquaculture.

Additionally, there are currently around 30 existing marine farms that are not located within aquaculture areas (most are located within Marine 2 Management Areas and some in Marine 1 Management Areas). They are all consented but their consents will expire in either 2020 or 2025. A decision is needed to determine if it is appropriate for these 'out of zone' marine farms to continue to remain where they are located (and therefore be 're-zoned' to a Marine 3 Management Area) – such decisions will be guided by policies in the coastal policy statement and Proposed Regional Policy Statement.

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<sup>15</sup> While the Environment Court is yet to release its decision, it has released an interim decision.

## 5.1 Possible changes to the Regional Coastal Plan

- Look to strategically focus all aquaculture activities (including existing 'out of zone' aquaculture) into Marine 3 Management Areas. This could mean that if council/community deems that the adverse environmental effects of existing 'out of zone' aquaculture farms are appropriate, then the footprint of the marine farm could be re-zoned to a Marine 3 Management Area. This would be consistent with the coastal policy statement's requirement to provide for aquaculture activities in appropriate places.
- With regards to establishing new aquaculture areas within/adjacent to outstanding natural character areas or outstanding landscape areas, new policy direction and rules will likely make it very difficult for 'traditional' forms of marine farms to establish (such as mussel or oysters), however there could be opportunities for different or experimental types of marine farming to establish, especially if it can be demonstrated that adverse effects will be avoided<sup>16</sup>.
- With regards to renewals of existing aquaculture located within/adjacent to outstanding areas, new policies and rules could be drafted that give a 'leg up' to these farms by saying that it may be acceptable to allow activities that have minor adverse effects to occur (whilst still giving effect to policies 13 and 15 of the New Zealand Coastal Policy Statement) and to recognise that the 'outstanding' areas have been identified with the existing marine farms in or near them.
- Assuming that 'controlled' activity status is generally acceptable for new oyster and mussel farms in Marine 3 Management Areas (so long as the site is not within/adjacent to an 'outstanding' area), defining an appropriate activity status (likely to be either 'restricted-discretionary' or 'discretionary' activity) for experimental aquaculture and/or finfish farms in these areas will be required – this could be tested through the formal section 32 evaluation process. Either of these two types of activity status are considered appropriate because they can be viewed as a 'middle ground' between a controlled activity status (meaning that council can impose conditions but has to grant consent) and a non-complying activity status (which requires applicants to pass the RMA s104D 'gateway' test – adverse effects of activity will be minor or the activity will not be contrary to the objectives and policies of the plan – before the decision to grant/decline an application can be made).

## 6 Placement and occupation of space for structures

Under the RMA, the default is that resource consent (coastal permit) is required for the placement (construction) of any structure within the coastal marine area and an additional consent is required for the on-going occupation of space<sup>17</sup>. Currently in the Regional Coastal Plan, resource consent is generally required for the ongoing occupation of most structures (there are some exceptions for minor structures).

There are circumstances when the on-going occupation of space could be a 'permitted' activity (subject to compliance with standards/terms) because the effects have already been accepted as appropriate and the requirement to repeatedly renew the consent to occupy space achieves very little but imposes costs.

The New Zealand Coastal Policy Statement (coastal policy statement) now requires councils to identify in coastal plans, resources or values that are under threat or at significant risk from adverse cumulative effects – too many structures in a single bay or area have the

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<sup>16</sup> It could be possible for some types of aquaculture - such as geoduck (salt water clam) – to establish without causing adverse visual effects. Further investigation will obviously be required.

<sup>17</sup> Within the common marine and coastal area as defined in the Marine and Coastal Area Act 2011.

potential to lead to adverse cumulative visual effects and the new plan will need to take this into account through new policies and rules.

The coastal policy statement also discourages activities in the coastal marine area that do not have a functional need to be located there (also mirrored in the Proposed Regional Policy Statement), which will also need to be reflected in the new Regional Coastal Plan policies.

### **6.1 Possible changes to the Regional Coastal Plan**

The next Regional Coastal Plan could include new policies/criteria/rules to determine when the on-going occupation of space for structures is permitted (subject to compliance with standards and terms). This would likely be for smaller structures with minor environmental impacts and/or public good structures (for example, retaining walls under "x metres long, boat ramps less than x metres, footbridges, navigation aids or infrastructure structures). This approach has recently been adopted for existing moorings within Marine 4 Management Areas. This would reduce compliance costs and the need for 'renewal' consents but the requisite standards/terms would obviously need to be drafted to avoid the potential for undue adverse environmental effects to occur. There was considerable 'in principle' support for this concept at the coastal water space key stakeholder workshop but it was agreed that there would likely need to be tight parameters and/or criteria to determine which structures this could apply to.

To give effect to the coastal policy statement, new policies and rules to ensure that a proliferation of structures does not lead to adverse cumulative effects on special values, resources or coastal processes is required. This is likely to only be required where such structures are in high demand or the 'values' of a specific location are very sensitive to additional development. The new regional plan will therefore need to identify coastal processes, resources or values that are under threat or at significant risk from cumulative effects of structures and include provisions to manage these effects. This could include the creation of new zones that promote/discourage certain structures or new rules to 'prohibit' certain activities/structures from establishing in specific locations. Policy direction on functional need of structures and encouraging multiple use(s) will assist in managing cumulative effects.

To give effect to the coastal policy statement and Proposed Regional Policy Statement, the new plan will need to provide policy guidance and prescriptive rules to ensure that only those structures that have a functional need to locate in the coastal marine are located there unless it can be demonstrated that significant benefits will occur (such as the creation of jobs for local residents or regionally significant infrastructure).

## **7 Recreational activities**

There are currently no regional rules to control vehicle use on sand dunes and coastal margins above the line of mean high water springs but there are some beaches where recreational vehicles on dunes are potentially an environmental problem (for example, Baylys beach and Tokerau). The coastal plan 'permits' vehicle use on foreshore areas within Marine 1 and 2 Management Areas so long as indigenous vegetation is not destroyed and bird roosting sites are not disturbed, but the jurisdiction of this plan starts/ends at the line of mean high water springs. The Regional Water and Soil Plan manages activities (such as earthworks and vegetation clearance) within the Riparian Management Zone, which includes land adjacent to the coastal marine area but vehicle usage on sand dunes is not covered in this plan.

The New Zealand Coastal Policy Statement has introduced new policies regarding recreational activities, including the protection of surf breaks of national significance (Policy 16). These 'breaks' are listed in Schedule 1 to the New Zealand Coastal Policy Statement and some are in Northland (Ahipara). The new regional plan needs to recognise and provide for these policies.

The proposed Regional Policy Statement states that the new regional plan will identify surf breaks of national significance, and consider identifying surf breaks of regional significance.

Surf breaks are a finite natural resource and the source of recreation for a diverse and increasingly large range of participants. It is estimated that approximately 7% [310,000] of New Zealanders "surf" on a regular basis<sup>18</sup>.

The region has a variety of break types, including some that produce world class waves.

There is mounting evidence from New Zealand and internationally that suggests inappropriate development can adversely affect or in severe cases destroy surf breaks. The quality of a break can be affected by:

- seawalls (e.g. St Clair, Dunedin),
- jetties (e.g. Mission Bay, San Diego, California),
- boat ramps (e.g. Manu Bay, Raglan),
- piers (e.g. Oil Piers, Ventura, California), and
- beach nourishment (e.g. The Cove, Sandy Hook, New Jersey)
- dredging and dumping (it was significant concern with the Whangamata marina proposal)

The breaks likely to be regionally significant and most at risk are on sandbars at the mouth of estuaries e.g. Pataua Bar, Whananaki Bar and Houhora Bar. These sandbars are generally sensitive to change in flow and sedimentary regimes (e.g. from dredging, beach nourishment or hard protection works). The operative Regional Coastal Plan does not provide for the consideration of impacts on surfing and under the New Zealand Coastal Policy Statement, councils only are required to 'protect' the surf breaks of national significance.

## 7.1 Possible changes to the Regional Coastal Plan

The creation of a regional coastal environment plan or single regional plan would likely be an efficient and effective tool to improve the integrated management of the coastal marine area and adjacent land with regards to managing recreational activities such as vehicle use (as well as managing coastal hazard risk and structures/developments that straddle the line of mean high water springs). This is because it would enable the council to control use above and below the line of mean high water springs.

The new regional plan could 'prohibit' vehicles from using/accessing beaches in situations where they may cause:

- damage to dunes or other geological systems,
- damage to the habitats of fisheries resources, or
- harm ecological systems or indigenous flora and fauna (such as shellfish beds).

In reality, this would likely be very difficult to enforce and it is unsure if this option would pass the section 32 evaluation test. Another option could be merely to 'roll over' the current provisions in the Regional Coastal Plan and leave the remaining management of vehicles on

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<sup>18</sup> B Perryman for Bay of Plenty Regional Council, *Bay of Plenty Surf Break Study*, April 2011

beaches to a combination of district council bylaws (such as Whangarei District Council's Vehicles on Beaches Bylaw 2009) and existing non-regulatory approaches - such as working in collaboration with other parties (such as Northland Policy and the New Zealand Transport Agency) on a multi-agency safe beach driving education programme to promote safer and more environmentally conscious beach driving practices.

Given the small number of regionally significant surf breaks (estimated to be around 10 breaks) and their importance to the surfing public, it is recommended that the regionally significant surf breaks are mapped and policy put in place that recognise their value. It is anticipated that this will be a three step process:

- determine the criteria,
- apply the criteria which will rank the surf breaks
- determine appropriate threshold for "regionally significant".

Once the breaks are identified and mapped, it is likely that a two tier level of 'protection' will apply to surf breaks. A requirement to avoid 'adverse' effects of activities on access to and use of nationally significant surf breaks and to avoid 'significant' adverse effects of activities on use and enjoyment of regionally significant surf breaks.

Management measures could include controls on:

- Structures that could impede/affect the swell corridor or the break itself;
- Dredging related activities;
- Discharges/activities that affect water quality and recreational use of coastal waters; and
- Activities in the coastal environment that have the potential to adversely affect access to the surf breaks.