

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of Schedule 1 of the Act in relation to the Proposed Regional Plan for Northland

BETWEEN CEP SERVICES MATAUWHI LIMITED
(ENV-2019-AKL-000111)

YACHTING NEW ZEALAND INCORPORATED
(ENV-2019-AKL-000118)

MANGAWHAI HARBOUR RESTORATION SOCIETY
(ENV-2019-AKL-000110)

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

Environment Judge – sitting alone pursuant to section 279 of the Act
In Chambers at Auckland

CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) The appeals are resolved as they relate to the vessel definition and all appealed rules in section C.1.7, being:
 - (a) C.1.7.1 In-water cleaning of vessel hull and niche areas or structures – permitted activity (including new Appendix H.8A - In-Water



Cleaning Plan Specifications and new Appendix H.8B - Information requirements for recently cleaned vessels);

- (b) C.1.7.2 In-water cleaning of vessel hull and niche areas, structures and barges – controlled activity; and
- (c) C.1.7.3 Vessel hull maintenance on the foreshore – discretionary activity.

[2] There is one outstanding appeal point in the Marine pest section, a new rule sought by Mangawhai Harbour Restoration Society Incorporated for permitted marine pest removal.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[3] This order resolves these appeals as they relate to the rules that manage the introduction and spread of marine pests and the associated discharge of hazardous substances from anti-foul paint. The appeal points to be resolved by this order were assigned to Topic 1 – Coastal activities, subtopic Marine Pest Rules.

[4] The parties participated in Court-assisted mediation on the Marine Pests subtopic on 2-3 September, 24 October and 3-4 December 2019. As a result, the parties have reached agreement on the resolution of the following provisions under appeal:

Definitions

- (a) Definition of Vessel

Section C.1.7 Marine pests

- (a) Rule C.1.7.1 - In-water cleaning of vessel hull and niche areas or structures – permitted activity;
- (b) Appendix H.8A - In-Water Cleaning Plan Specifications;
- (c) Appendix H.8B - Information requirements for recently cleaned vessels;
- (d) Rule C.1.7.2 - In-water cleaning of vessel hull and niche areas, structures and barges – controlled activity; and



(e) Rule C.1.7.3 - Vessel hull maintenance on the foreshore – discretionary activity. In making this order the Court has read and considered the memorandum of the parties dated 28 February 2020, which proposes to resolve the appeals that relate to subtopic - Marine Pest Rules.

[5] In making this order the Court has considered and read the notices of appeal and the memorandum of the parties in support of this order dated 13 March 2020.

[6] The following parties filed a s 274 notice in relation to this matter, and signed the memorandum of the parties seeking this order:

- Minister of Conservation
- Royal Forest & Bird Protection Society
- Minister of Defence
- NZ Fairy Tern Charitable Trust

[7] The Court is making this order under s 279(1)(b) of the Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

[8] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.

[9] This order resolves the appeals as they relate to the vessel definition and all appealed rules in section C.1.7, being:

- (a) C.1.7.1 In-water cleaning of vessel hull and niche areas or structures – permitted activity (including new Appendix H.8A - In-Water Cleaning Plan



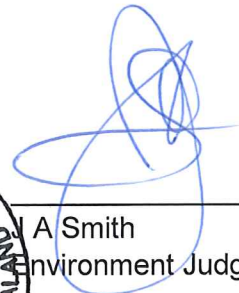
Specifications and new Appendix H.8B - Information requirements for recently cleaned vessels);

- (b) C.1.7.2 In-water cleaning of vessel hull and niche areas, structures and barges – controlled activity; and
- (c) C.1.7.3 Vessel hull maintenance on the foreshore – discretionary activity.

[10] There is one outstanding appeal point in the Marine pest section, a new rule sought by Mangawhai Harbour Restoration Society Incorporated for permitted marine pest removal.

[11] There is no order as to costs.

DATED at Auckland this 20th day of May 2020



A Smith
Environment Judge



Annexure A

B Definitions | Whakamāramatanga

<i>Vessel</i>	Every description of boat or craft, regardless of whether it has any means of propulsion, and includes but is not limited to: <ol style="list-style-type: none">1) a barge, lighter, raft, or other like vessel, and2) personal watercraft (jet ski) or paddle craft, and3) a sea plane or hovercraft, and4) a submarine or other submersible.
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C.1.7 Marine pests

C.1.7.1 In-water cleaning of vessel hull and niche areas or structures – permitted activity

In-water cleaning of vessel hull and niche areas or structures in the coastal marine area or a river is a permitted activity, provided:

- 1) ~~the~~ vessel or structure has not been in foreign territorial waters, unless:
 - a) since arrival in New Zealand it has been removed from the water and cleaned; ~~and~~ or
 - b) the vessel exceeds either a gross tonnage of 500 or 50m in length, and
 1. the vessel operator has an In-Water Cleaning Plan containing the details required by Appendix H.8A In-Water Cleaning Plan specifications; and
 2. the Regional Council's Biosecurity Manager is given at least 7 working days' notice (in writing or by email) of the dates in-water cleaning will occur and the notice includes a copy of the plan required by 1 b) 1. above; or
 - c) the vessel exceeds either a gross tonnage of 500 or 50m in length, and
 1. the vessel has been removed from the water and cleaned not more than 1 month before entering New Zealand waters, and
 2. the vessel has not berthed, anchored or moored for more than 7 consecutive days in any international locality since the clean required by 1)c) 1 above took place, and
 3. the Regional Council's Biosecurity Manager is given at least 7 working days' notice (in writing or by email) of the dates in-water cleaning will occur and the notice includes the information required by Appendix H.8B - Information requirements for recently cleaned vessels.
- 2) there is only light fouling or barnacles; or where C.1.7.1 1) b) applies:
 - a) no more than 15% of the vessel hull and niche areas may be covered in macrofouling (excluding any extent of slime and barnacles), and
 - b) macrofouling greater than 50 micrometres in diameter (excluding goose barnacles) must be captured and disposed of at an approved landfill.



- 3) the cleaning is not undertaken within 50 metres of a Significant Ecological Area (refer I Maps | Ngā mahere matawhenua), and
- 4) the vessel is not a barge, and
- 5) ~~there is only light fouling or barnacles on the vessel hull, hull niche areas, or structure, and~~
- 6) the in-water cleaning of the vessel or structure is undertaken in an in-water cleaning zone (refer I Maps | Ngā mahere matawhenua)¹ a Coastal Commercial Zone, a Marina Zone, a Mooring Zone, a consented grid (inter-tidal poles), or within 50-100 metres of a Mooring Zone, and
- 7) the cleaning method does not compromise existing anti-fouling, and
- 8) if any marine pest is found then:
 - a) all cleaning must cease, and
 - b) the Regional Council's Biosecurity Manager and the Ministry for Primary Industries must be notified immediately, and
 - c) cleaning must not resume until notification to do so is obtained from the Regional Council's Biosecurity Manager and the Ministry for Primary Industries.

For the avoidance of doubt this rule covers the following RMA activities:

- Deposition of material on the foreshore or seabed incidental to the activity (s12(1)).
- In-water cleaning of vessel hull and niche areas or structures in the coastal marine area (s12(3)).
- Deposition of material in or on the bed of a river incidental to the activity (s13(1)).
- Discharge of contaminants into water incidental to the activity (s15(1)).
- Discharge of a harmful substance from a ship or offshore installation into water incidental to the activity (s15B(1)).

Appendix H.8A - In-Water Cleaning Plan Specifications

An In-Water Cleaning Plan must include:

1. Clear identification of the vessel;
2. The date/s and location that cleaning will take place;
3. The Vessel's travel history for the three months prior to the date that cleaning will commence which must demonstrate that the vessel has not berthed, anchored or moored in any locality (domestic or international) for more than 7 consecutive days since the latest hull biofouling inspection, as required in 4 below;
4. The cleaning history of the Vessel's hull and niche areas since its departure from New Zealand waters including the date and reporting from the latest hull biofouling inspection (undertaken either on land or in-water) that shows:
 - a. the inspection was undertaken no more than three months prior to the date that cleaning will commence;

¹ Coastal Commercial Zone; a Marina Zone; a Mooring Zone and within 100 metres of a Mooring Zone (with the exception of Houhora Harbour mooring area, this excludes Significant Ecological Areas and saltmarsh and mangrove habitat in Ota Bay, Whangaroa).



- b. the vessel, hull and niche areas had a level of fouling no greater than a slime layer and/or Goose barnacles at the date of the report; and
- c. a representative sample of post clean photos of the vessel hull and niche areas, which at minimum includes photos from both the Port and Starboard sides of the ship and accessible niche areas, that demonstrate that 4(b) of this appendix has been met;
- 5. Contact details for the primary point of contact for the vessel while cleaning is taking place;
- 6. A biofouling management plan for the vessel, to be appended to the In-Water Cleaning Plan, that sets out:
 - a. A description of the different antifouling systems on-board, including the type of antifouling coating and any marine growth prevention systems in place; and
 - b. A description of the operating profile of the vessel, including typical operating speeds; and
 - c. The frequency of biofouling inspections and cleans that take place on the hull and niche areas of the Vessel;
 - d. The frequency for renewal or maintenance of the anti-fouling coating on any coated surfaces and demonstration that planned service life as specified by the manufacturer has not been exceeded; and
 - e. Recording requirements for any inspections and biofouling management measures undertaken; and
- 7. A description of the in-water cleaning methodology and protocols that will be followed during the clean, including:
 - a. details of in-water cleaning technologies to be used and measures to prevent compromise of the underlying coating and avoid, remedy or mitigate release of contaminants; and
 - b. if macro-fouling (excluding Goose barnacles) is present, details of a methodology that will be used to capture debris that is greater than 50 micrometres in diameter; and
 - c. confirmation that visual monitoring will be carried out while cleaning is underway, and that cleaning will cease immediately if:
 - i. Conspicuous oil or grease films, scums or foams or floatable suspended materials from the operation occur beyond 10 m of the vessel; or
 - ii. A conspicuous change of colour or clarity of water, or objectionable odour from the operation occur beyond 10 m of the vessel.

Appendix 8HB - Information requirements for recently cleaned vessels

The information provided must include:

1. Clear identification of the vessel;
2. The date/s and location that cleaning will take place;



3. The Vessel's travel history which must demonstrate that the vessel has not berthed, anchored or moored in any international locality for more than 7 consecutive days since the vessel was hauled out;
4. A cleaning report that demonstrates that the vessel has been hauled out and cleaned within one month before entering New Zealand waters;
5. A description of the different antifouling systems on-board, including documentary evidence (e.g. receipts) of the date the vessel was last antifouled, the type of antifouling coating, any marine growth prevention systems in place, and demonstration that planned service life as specified by the manufacturer has not been exceeded;
6. A description of the in-water cleaning methodology and protocols that will be followed during the clean, including details of in-water cleaning technologies to be used and measures to prevent compromise of the underlying coating and to avoid, remedy or mitigate release of contaminants.

C.1.7.2 In-water cleaning of vessel hull and niche areas, structures and barges – controlled activity

In-water cleaning of vessel hull and niche areas, structures that cannot comply with rule C.1.7.1, or any barge, is a controlled activity, provided:

- 1) the vessel, structure or barge has not been in foreign territorial waters, unless:
 1. since arrival in New Zealand it has been removed from the water and cleaned, ~~and~~ or
 2. the vessel exceeds either a gross tonnage of 500 or 50m in length and since arrival in New Zealand it has been cleaned to a level of fouling no greater than a slime layer and/or Goose barnacles; and
- 2) the cleaning is undertaken in a Coastal Commercial Zone, a Marina Zone, or within ~~50~~ 100 metres of a Mooring Zone (refer I Maps | Ngā mahere matawhenua), or in a consented grid, and
- 3) the cleaning is not undertaken within 50 metres of a Significant Ecological Area (refer I Maps | Ngā mahere matawhenua).

Matters of control:

- 1) Measures to avoid introduction or spread of marine pests, such as capture of fouling.
- 2) The method used to carry out the activity.
- 3) Effects on coastal processes in the vicinity of the site.
- 4) The timing of the activity in relation to tides, seasons or other activities.
- 5) Effects of disturbance, deposition and discharge associated with the activity, such as effects of anti-fouling debris.
- 6) Effects on ~~indigenous biodiversity and aquatic ecosystem health~~ and indigenous biodiversity.
- 7) Navigation and safety (including notification to the Regional Council's Harbourmaster and Maritime New Zealand).
- 8) ~~Capture and removal of fouling and anti-fouling debris.~~

For the avoidance of doubt this rule covers the following RMA activities:



- Deposition of material on the foreshore or seabed incidental to the activity (s12(1)).
- In-water cleaning of vessel hull and niche areas, structures or barges in the coastal marine area (s12(3)).
- Deposition of material in or on the bed of a river incidental to the activity (s13(1)).
- Discharge of contaminants into water incidental to the activity (s15(1)).
- Discharge of a harmful substance from a ship or offshore installation into water incidental to the activity (s15B(1)).

C.1.7.3 Vessel hull maintenance on the foreshore – discretionary activity

The cleaning, scraping, sanding, blasting, painting or anti-fouling of a vessel hull on the foreshore, are discretionary activities.

For the avoidance of doubt this rule covers the following RMA activities:

- Deposition on the foreshore or seabed incidental to the activity (s12(1)).
- Cleaning, scraping, sanding, blasting, painting or anti-fouling of a vessel hull on the foreshore (s12(3)).
- Discharge of contaminants onto or into land incidental to the activity (s15(1)).
- Discharge of a harmful substance from a ship onto or into land (s15B(1)).

