



NZCPS 2010 guidance note

Policy 5: Land or waters managed or held under other Acts

February 2019

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Policy 5 Land or waters managed or held under other Acts

- (1) Consider effects on land or waters in the coastal environment held or managed under:
 - (a) the Conservation Act 1987 and any Act listed in the 1st Schedule to that Act;
or
 - (b) other Acts for conservation or protection purposes;
and, having regard to the purposes for which the land or waters are held or managed:
 - (c) avoid adverse effects of activities that are significant in relation to those purposes; and
 - (d) otherwise avoid, remedy or mitigate adverse effects of activities in relation to those purposes.
 - (2) Have regard to publicly notified proposals for statutory protection of land or waters in the coastal environment and the adverse effects of activities on the purposes of that proposed statutory protection.
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Disclaimer: This guidance is intended as general guidance on implementing the New Zealand Coastal Policy Statement 2010 and has been written primarily for local government practitioners. It does not substitute for professional advice where and when that is needed and should not be taken as providing legal advice or the Crown's legal position. This guidance is not official government policy.

Overview of the policy

Policy 5 of the New Zealand Coastal Policy Statement (NZCPS) 2010 requires consideration of the effects of activities on land or waters in the coastal environment that are held or managed under Acts other than the Resource Management Act 1991 (RMA) for conservation or protection purposes. This includes, for example, land held under the Reserves Act 1977, Conservation Act 1987 or National Parks Act 1980, marine reserves under the Marine Reserves Act 1971, marine mammal sanctuaries under the Marine Mammal Protection Act 1978, and land protected under the Queen Elizabeth the Second National Trust Act 1977. It also includes Acts such as the Kaikoura (Te Tai o Makokura) Marine Management Act 2014, the Sugar Loaf Islands Marine Protected Area Act 1991, the Hauraki Gulf Marine Park Act 2000 and the Heritage New Zealand Pouhere Taonga Act 2014.

Having identified the purposes for which the land or waters are held or managed under those Acts, the RMA decision-makers who are writing plans or considering consents should avoid any adverse effects of activities taking place on, adjacent to or near to the land or waters that may be significant in relation to those purposes, and should otherwise avoid, remedy or mitigate the adverse effects of activities in relation to those purposes.

Policy 5 also directs that regard be had to publicly notified proposals for the statutory protection of land or waters in the coastal environment and the adverse effects of activities on such proposals.

Readers of this policy guidance note should also refer to the NZCPS 2010 Implementation Guidance Introductory Note,¹ which contains general information that is important for implementing the NZCPS 2010.

Rationale

A well-functioning coastal and marine system that delivers on the full range of societal objectives will require varying levels of protection across the landscape. Some outcomes can only be delivered by providing areas with high levels of protection from human activities (eg for studying natural systems or experiencing wilderness). The protection of land and waters is designed to protect specific aspects or features to deliver a range of outcomes to society, including economic outcomes. Legal protection under other legislation can often deliver outcomes that would be difficult to deliver through the RMA, including the permanent and full protection of marine areas from activities such as fishing.

Protected land and waters are embedded in broader landscapes and ecosystems, and are linked to other areas by natural processes, including the movement of organisms, geomorphological processes and currents. The land-sea interface is an important consideration for those species that use both marine and terrestrial environments.

¹ Department of Conservation 2018: NZCPS 2010 implementation guidance introductory note. Department of Conservation, Wellington. 12 p. www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/introductory-note.pdf

Therefore, management of the areas around protected land and waters needs to address any potential effects activities may have on the protected land and waters.

The protection of land and waters can also deliver outcomes that support the values and uses of adjacent areas. For example, a beach may be a far more attractive destination if it has protected indigenous vegetation behind it, a marine reserve may generate larvae that help maintain a rich biodiversity in adjacent waters, and a protected dune system will help to protect adjacent residences from natural hazards.

Related objectives, policies and provisions

This section covers the links between the various provisions of the NZCPS 2010, the RMA² and other legislation in terms of the management of land or waters managed or held under other Acts.

NZCPS 2010

The implementation of Policy 5 of the NZCPS 2010 requires careful consideration of all of the NZCPS 2010 objectives and policies. The table below outlines the key objectives and policies in relation to planning and decision-making regarding the management of land or waters managed or held under other Acts, as well as other provisions that are relevant.

Key related objectives and policies	Other related objectives	Other related policies
Objectives 1, 2, 3, 4, 6 and 7 Policies 2, 4, 6, 7, 11, 13, 15, 17 and 18	All other objectives	1, 3, 8-10, 12, 14 and 19-27

Objective 1

Objective 1 focuses on safeguarding the integrity, form, functioning and resilience of the coastal environment, and sustaining its ecosystems. The formal protection of land and waters, such as through the establishment of marine reserves, other reserves and national parks, can safeguard representative or significant natural ecosystems, or help with the functioning of broader systems (eg marine biodiversity or geomorphology). Therefore, the implementation of Policy 5 can assist in achieving Objective 1.

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www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html?search=ts_act_resource+management_rese&p=1&sr=1

Objective 2

Objective 2 seeks to preserve the natural character of the coastal environment and to protect natural features and landscape values. Protected land and waters are likely to be major contributors to natural character, natural features and landscapes. The location and nature of these areas can be important for identifying where various forms of development and subdivision would be inappropriate. Therefore, consideration of the direction in Policy 5 for management of the effects of activities on protected land and waters will be relevant when implementing Objective 2.

Objective 3

Objective 3 requires that the principles of the Treaty of Waitangi are taken into account, the role of tangata whenua³ as kaitiaki (guardians) is recognised and tangata whenua involvement in the coastal environment is provided for. This is linked to Policy 5, as protected land and waters are often recognised in Treaty settlements or contain values of significance to iwi. Policy 5 can therefore assist in implementing Objective 3.

Objective 4

Objective 4 seeks to maintain and enhance the public open space qualities and recreational opportunities of the coastal environment. Protected areas often provide the most enduring and extensive open spaces in a region, may contain important recreational facilities, and can be popular visitor destinations. Therefore, the implementation of Policy 5 is relevant to achieving Objective 4.

Objective 6

Objective 6 is concerned with enabling people and communities to provide for their social, economic and cultural wellbeing, and their health and safety through appropriate subdivision, use and development, recognising that protection does not preclude use. Protected land and waters often make important contributions to social and economic activities. For example, tourism operations often rely on protected areas, which consequently generate significant employment and business income within the local area, and directly or indirectly support the maintenance of services, such as transport services, schools and health facilities. Protected land and waters can also help maintain the conditions that are required for social and economic activities in other areas, eg water quality. Therefore, the implementation of Policy 5 will assist in fulfilling Objective 6.

³ Refer to the 'Glossary of terms and definitions' at the end of this report for a definition of 'tangata whenua'.

Objective 7

Objective 7 relates to ensuring that management of the coastal environment recognises and provides for New Zealand's international obligations regarding the coastal environment. Protected areas are a key means of fulfilling international obligations for the protection of natural and historic heritage, including the:

- Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) (1971)⁴
- United Nations Convention on Biological Diversity (1992)⁵
- International Charter for the Conservation and Restoration of Monuments and Sites (ICOMOS / The Venice Charter) (1964)⁶
- UNESCO World Heritage Convention (1972).⁷

Policy 2: The Treaty of Waitangi, tangata whenua and Māori heritage

Policy 2 seeks to provide mechanisms that allow consideration of the principles of the Treaty of Waitangi, and the connection and relationships that whanau, hapū and iwi/tangata whenua have with the coastal environment. This policy further highlights the importance of acknowledging the associations and roles that whanau, hapū and iwi/tangata whenua have in relation to the natural environment. Policies 2 and 5 are related because 'other legislation' often contains Treaty provisions (or is Treaty settlement legislation), and specific Treaty arrangements are often in place for protected land and waters.

Policy 4: Integration

Policy 4 requires integration through the coordinated management of natural and physical resources in the coastal environment and activities that affect the coastal environment. Methods for achieving integration in relation to protected land and waters include spatial planning approaches that recognise the contribution of those protected areas to RMA objectives, the coordinated management of activities that cross administrative boundaries, the development of non-regulatory tools (eg infrastructure provision), and working collaboratively with other resource managers (eg in relation to information collection and use).

Protected land and waters often have statutory management plans, which need to be considered in RMA planning.

⁴ www.un-documents.net/ramsar.htm

⁵ www.cbd.int/intro/

⁶ www.icomos.org/charters/venice_e.pdf

⁷ <https://whc.unesco.org/en/convention/>

Together, Policies 4 and 5 promote complementary planning and management between local authorities and the Department of Conservation (DOC) or other agencies that administer legislation that protects coastal land and waters, such as the Ministry of Primary Industries (MPI).

Policy 6: Activities in the coastal environment

Policy 6 refers to matters relating to the location and scale of activities in the coastal environment, such as infrastructure, energy generation, mineral extraction, built development and renewable energy generation. Policy 6 relates to Policy 5 through the following direct links where other legislation may provide the initial protection.

- Policy 6(1)(i), which seeks to protect the natural character, open space, public access and amenity values of the coastal environment.
- Policy 6(1)(j), which is concerned with buffering areas and sites of significant indigenous biological diversity or historic heritage value, where appropriate.
- Policy 6(2)(b), which recognises the need to maintain and enhance the public open space and recreational qualities and values of the coastal marine area.

Policy 7: Strategic planning

Policy 7 requires local authorities to consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment, and to identify where particular activities and development are inappropriate. Land and waters that are protected under other legislation can be relevant when considering where activities are inappropriate. For example, it would be inappropriate to provide for land-based activities that would discharge contaminants that could cause deteriorated water quality in a nearby marine reserve or anywhere that people are harvesting shellfish or fish. Conversely, where those areas provide specific opportunities and facilities (eg for recreational activities, such as boat-launching ramps), this should also be considered when determining where other land- and water-based activities should be provided.

Policy 11: Indigenous biological diversity (biodiversity)

Policy 11 focuses on the protection of indigenous biodiversity (refer to section 6(c) of the RMA) in the coastal environment. The protection of land and waters not only protects important habitats and populations, but may also contribute to the functioning of populations in adjacent areas, eg through the generation of larvae or the provision of feeding grounds. Policy 11(a)(vi) specifically requires avoidance of the adverse effects of activities on areas that have been set aside for the full or partial protection of indigenous biodiversity under other legislation, highlighting its links with Policy 5. Note that many indigenous species rely on both marine and terrestrial environments (eg seals, sea lions, penguins and seabirds).

Policy 13 Preservation of natural character

Policy 13 provides direction to preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development (refer to section 6(a) of the RMA). Local authorities are required to assess the natural character of a region or a district and Policy 13 requires the avoidance of adverse effects on areas that have been identified as outstanding and to avoid significant adverse effects of activities on the natural character in all other areas. Natural character crosses the Mean High Water Springs (MHWS), as do many of the biophysical and ecological values that contribute to it (Policy 13(2)). Policies 5 and 13 are related because most public conservation land that is protected under Acts specified in the Conservation Act is likely to have high natural character values.

Policy 15: Natural features and natural landscapes

Policy 15 addresses the requirements of section 6(b) of the RMA in relation to the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development. Policies 5 and 15 are related because most public conservation land that is protected under Acts specified in the Conservation Act is likely to have high natural values, including features and landscapes.

Policy 17: Historic heritage identification and protection

Policy 17 directs that historic heritage in the coastal environment should be protected from inappropriate subdivision, use and development. Historic heritage is frequently protected under other legislation, notably the Heritage New Zealand Pouhere Taonga Act 2014. Policies 17 and 5(1)(b) are related because of this link with other Acts for conservation or protection purposes.

Policy 18: Public open space

Policy 18 addresses the provision and enjoyment of public open space in and near to the coastal marine area, including its waters. Linkages with natural character, natural features, natural landscapes and amenity values are also recognised to ensure that the provision of open space is compatible with these other values. Protected land and waters are often important contributors to public open space in the coastal environment or provide important access routes to open space opportunities, and activities in other parts of the coastal environment can have negative effects on these open space values. The presence of humans can also have an impact, such as through the littering of beaches with plastic, which detracts from the open space values of an area. Consideration of the effects of activities on public open space and the direction that is given in Policy 18 are relevant to the implementation of Policy 5.

Resource Management Act 1991

Section 32 of the RMA requires evaluation reports that include an examination of whether the objectives of a proposal are the most appropriate way of achieving the purpose of the RMA. This involves identifying other reasonably practicable options for achieving the objectives. If land or waters are protected under other legislation, the duplication of provisions in RMA documents may not be needed and contrary provisions should be avoided.

Several sections of the RMA also require that when preparing or changing regional policy statements and regional and district plans, councils should have regard to any management plans and strategies that have been prepared under other Acts. This includes section 61, which relates to matters to be considered by regional councils (regional policy statements), section 66, which relates to matters to be considered by regional councils (regional plans including regional coastal plans), and section 74, which relates to matters to be considered by territorial authorities (district plans). The statutory management plans and strategies referred to in these sections of the RMA include conservation management strategies and reserve and other plans governing protected land and waters. Under these sections, councils must also take into account any relevant planning documents that are recognised by iwi authorities.

Section 61(2)(iii) of the RMA lists the following matter that is to be had regard to when preparing a regional policy statement:

... regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taipure, mahinga mataitai or other non-commercial Maori customary fishing).

Other legislation

What are the relevant statutes?

Policy 5(1)(a) refers to the Conservation Act 1987 and any Act listed in the 1st Schedule to that Act.⁸ Some of the Acts referred to in that Schedule do not apply to land or waters in the coastal environment (eg the Lake Wanaka Preservation Act 1973). The Acts that do apply generally or specifically to land or waters in the coastal environment include (as at January 2019) the:

- Conservation Act 1987
- Game Animal Council Act 2013
- Harbour Boards Dry Land Endowment Revesting Act 1991
- Kapiti Island Public Reserve Act 1897
- Marine Mammals Protection Act 1978
- Marine Reserves Act 1971

⁸ www.legislation.govt.nz/act/public/1987/0065/latest/DLM107200.html

- National Parks Act 1980
- Native Plants Protection Act 1934
- Ngāi Tahu (Tūtaepatu Lagoon Vesting) Act 1998
- Queen Elizabeth the Second National Trust Act 1977
- Reserves Act 1977
- Stewart Island Reserves Empowering Act 1976
- Sugar Loaf Islands Marine Protected Area Act 1991
- Tutae-Ka-Wetoweto Forest Act 2001
- Waitangi Endowment Act 1932-33
- Waitangi National Trust Board Act 1932
- Waitutu Block Settlement Act 1997
- West Coast Wind-blown Timber (Conservation Lands) Act 2014
- Wild Animal Control Act 1977
- Wildlife Act 1953.

This list will change if legislation is added to, or removed from, this Schedule.

Policy 5(1)(b) also refers to ‘other Acts for conservation or protection purposes’. Relevant Acts that apply in the coastal environment include (but are not limited to) the:

- Fisheries Act 1996
- Maori Fisheries Act 2004
- Heritage New Zealand Pouhere Taonga Act 2014
- Kaikōura (Te Tai o Makokura) Marine Management Act 2014
- Wellington Town Belt Act 2016
- Waitakere Ranges Heritage Area Act 2008
- Hauraki Gulf Marine Park Act 2000
- Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

There is also Treaty settlement legislation.

Plan development pre-consultation processes with iwi, DOC and other agencies should allow relevant special legislative provisions to be identified.

Land and waters held

The following land and waters that are held or managed under the Acts listed above and other statutes are of relevance include:

- Crown, local authority and private lands that are held as protected areas managed for conservation or other protection purposes. That includes national parks, conservation areas, most types of reserves, and areas protected under the Wildlife Act that are identified in the relevant regional policy

statement or regional plan as being within the 'coastal environment'. It also includes land that is held for protection purposes under a specific statute, such as the Wellington Town Belt.

- Marine areas that are subject to regulatory overlays for the protection of specific values, such as marine protected areas (established under the Marine Reserves Act or special legislation), marine mammal sanctuaries (established under the Marine Mammals Protection Act), marine parks (created under the Fisheries Act), cable protection zones (created under the Submarine Cables and Pipelines Protection Act 1996) and any areas that are protected for navigation purposes (eg under the Maritime Transport Act 1994). This is because Policy 5(1)(b) considers the effects on land or waters in the coastal environment that are held or managed under other Acts for conservation or protection purposes.
- Areas of private or Māori land over which the Crown or another public body holds an interest for the purpose of protection. This includes covenants under the QEII National Trust Act, covenants and kawenata under the Reserves and Conservation Acts, and areas where the Crown holds forest cutting rights for protection reasons.
- Areas of Crown land that are held under the Land Act 1948 and are affected by a Treaty settlement protocol or other instrument identifying a particular protection objective (eg nohoanga sites agreed through the Ngāi Tahu settlement along river edges in the coastal environment) or that have been identified in a Land Information New Zealand (LINZ) policy as having a protection purpose for administration.
- Historic sites in the coastal environment that are held or managed by Heritage New Zealand Pouhere Taonga or the Ministry of Culture and Heritage, such as Fyffe House in Kaikōura.
- Māori reservation land or land that is held by iwi in another protection category under Treaty settlement legislation where that land is in the coastal environment.
- Waters in the coastal environment that are subject to specific protection arrangements under Treaty settlement legislation, such as the lower reaches of the Whanganui River within the coastal environment, which is under the Te Aawa Tupa (Whanganui River Claim Settlement) Act 2017.
- Areas that have values that are specifically protected under statute or regulations, such as spawning sites for freshwater fishes (protected under section 26ZJ of the Conservation Act).

Details of some key statutes

- ***Marine Reserves Act 1971*⁹**: Marine reserves are specified areas of the sea and foreshore that are managed by DOC to preserve the habitat of marine life in its natural state primarily for scientific study. Marine reserves may be established in areas that contain underwater scenery, natural features or marine life of distinctive quality, or that are so typical, beautiful or unique that their continued preservation is in the national interest. A list of all of the marine reserves in New Zealand, as at February 2019, is included in Appendix 1.
- ***Marine Mammals Protection Act 1978*¹⁰**: DOC is responsible for establishing, administering and managing marine mammal sanctuaries, which can be established in New Zealand coastal waters to create a permanent refuge for marine mammals. Such sanctuaries may prohibit activities that are known to harm particular marine mammal species, such as dolphins, whales, seals and sea lions.

Marine mammal sanctuaries as at October 2018 include:

- Auckland Islands – also a marine reserve
- Banks Peninsula – also includes Akaroa and Pohatu Marine Reserves
- Catlins Coast
- Clifford and Cloudy Bay, Marlborough
- Te Waewae Bay, Southland
- West Coast North Island – also includes Tapuae and Parininihi Marine Reserves.

There are also two sanctuaries that are administered under the Kaikōura (Te Tai o Marokura) Marine Management Act 2014.

- Te Rohe o Te Whānau Puha Whale Sanctuary.
- Ōhau New Zealand Fur Seal Sanctuary.

Thus, New Zealand has a total of eight sanctuaries that provide special protection for marine mammals.

- ***National Parks Act 1980*¹¹**: National parks are established and administered through the National Parks Act. Parts of the following national parks are within the coastal environment and so are of relevance to Policy 5: Abel Tasman, Kahurangi, Westland Tai Poutini, Paparoa, Punakaiki, Mt Aspiring, Fiordland and Rakiura National Parks.

⁹ www.legislation.govt.nz/act/public/1971/0015/latest/DLM397838.html?search=ts_act%40bill%40regulation%40deemedreg_marine+reserves+act_resel_25_a&p=1

¹⁰ www.legislation.govt.nz/act/public/1978/0080/latest/DLM25111.html?src=qs

¹¹ www.legislation.govt.nz/act/public/1980/0066/latest/DLM36963.html?src=qs

- **Reserves Act 1977¹²**: Reserves that are protected under the Reserves Act and are within the coastal environment include land and waters administered by DOC, as well as land and waters administered by local authorities, boards, trusts, societies and other organisations that have been appointed to control and manage reserves or in whom reserves are vested. The extent of some nature reserves overlaps with the coastal marine area down to the Mean Low Water Mark, ie they are not only terrestrial.

Section 77A of the Reserves Act¹³ also allows for the creation of Ngā Whenua Rāhui kawenata¹⁴ to preserve and protect any Māori land or Crown land held under a Crown lease by Māori. Policy 5 is applicable where such land is within the coastal environment. The Ngā Whenua Rāhui Fund¹⁵ is a contestable Ministerial fund administered by DOC that aims to protect the natural integrity of Māori land and preserve mātauranga Māori by developing land covenants.

The types of reserves are set out in sections 17–23 of the Reserves Act (refer to Appendix 2).

- **Queen Elizabeth the Second National Trust Act 1977¹⁶**: This Act established the QEII National Trust¹⁷ to encourage and promote the provision, protection, preservation and enhancement of open space for the benefit and enjoyment of the present and future generations of the people of New Zealand. Open space ‘means any area of land or body of water that serves to preserve or to facilitate the preservation of any landscape of aesthetic, cultural, recreational, scenic, scientific, or social interest or value’. The Act allows for the establishment of QEII Trust covenants, which are registered on land titles and are legally binding. Policy 5 is relevant where such covenants are over land or waters in the coastal environment.
- **Wildlife Act 1953¹⁸**: This Act provides for the protection of certain wildlife. Land and waters that are protected through this Act include wildlife sanctuaries, wildlife refuges and wildlife management reserves, with the latter including any reserve under the Reserves Act 1977 that is classified as a Government purpose reserve for wildlife management and that is declared under section 14A of the Wildlife Act. Policy 5 applies where the land or waters that are protected under the Wildlife Act are within the coastal environment. Where a reserve, QEII covenant or protected area under the Wildlife Act is within the coastal

¹² www.legislation.govt.nz/act/public/1977/0066/latest/DLM444305.html?src=qs

¹³ www.legislation.govt.nz/act/public/1977/0066/latest/DLM444916.html?search=sw_096be8ed80b058c9_ka_wenata_25_se&p=1

¹⁴ Refer to the ‘Glossary of terms and definitions’ at the end of this report for a definition of ‘Ngā Whenua Rāhui kawenata’.

¹⁵ www.doc.govt.nz/get-involved/funding/nga-whenua-rahui/nga-whenua-rahui-fund/

¹⁶ www.legislation.govt.nz/act/public/1977/0102/latest/DLM8801.html

¹⁷ <https://qeiiinternationaltrust.org.nz/>

¹⁸ www.legislation.govt.nz/act/public/1953/0031/latest/DLM276814.html?search=ts_act%40bill%40regulation%40deemedreg_%e2%80%a2%09Wildlife+Act+1953_resel_25_a&p=1

environment, it is preferable to delineate the coastal environment to include all of that reserve, covenant or protected area. Refer to the guidance note for Policy 1 of the NZCPS 2010 (Extent and characteristics of the coastal environment).¹⁹

Some other Acts that protect or conserve land or waters and are therefore related to Policy 5 are listed below. This list is not exhaustive and relevant new legislation may be passed.

- ***Kaikōura (Te Tai o Makokura) Marine Management Act 2014***²⁰

The purpose of this Act is to recognise the local, national and international importance of the coast and sea around Kaikōura (**Te Tai o Marokura**) as a consequence of its unique coastal and marine environment and distinctive biodiversity and cultural heritage.

- ***Fiordland (Te Moana o Atawhenua) Marine Management Act 2005***²¹

This Act established the Fiordland (Te Moana o Atawhenua) Marine Area and eight marine reserves within that area. It also established the Fiordland Marine Guardians, who are tasked with providing advice on fisheries management, biosecurity, sustainable management, and marine preservation and protection in the area. The Act facilitates and promotes cooperation between the Guardians and management agencies to assist in achieving the integrated management of the Fiordland (Te Moana o Atawhenua) Marine Area.

- ***Hauraki Gulf Marine Park Act 2000***²²

The Hauraki Gulf Marine Park Act 2000 sets out a management regime for the waters and adjoining lands of the Hauraki Gulf, including the Firth of Thames and islands within the Gulf, such as Great Barrier Island (Aotea Island). The purpose of the Act includes integration of the management of the natural, historic and physical resources of the Hauraki Gulf, its islands and catchments, and recognition of the historic, traditional, cultural and spiritual relationships of tangata whenua with the Hauraki Gulf and its islands. The Act created the Hauraki Gulf Marine Park and established the Hauraki Gulf Forum.

For the coastal environment of the Hauraki Gulf, the Hauraki Gulf Marine Park Act requires that sections 7 and 8²³ be treated as a New Zealand coastal policy

¹⁹ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-1.pdf

²⁰ www.legislation.govt.nz/act/public/2014/0059/latest/DLM5851202.html

²¹ www.legislation.govt.nz/act/public/2005/0036/latest/DLM341226.html

²² www.legislation.govt.nz/act/public/2000/0001/latest/DLM52558.html?search=ts_act%40bill%40regulation%40deemedreg_Hauraki+Gulf+Marine+Park+ resel_25_h&p=1

²³ www.legislation.govt.nz/act/public/2000/0001/latest/DLM53132.html

statement issued under the Act. Section 10(2) of the Act states that if there is a conflict between sections 7 and 8 and the provisions of the NZCPS 2010, the NZCPS 2010 prevails.

- ***Heritage New Zealand Pouhere Taonga Act 2014***²⁴

Heritage New Zealand Pouhere Taonga was established by the Heritage New Zealand Pouhere Taonga Act 2014, the purpose of which is to ‘promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand’. This Act outlines the functions and powers of Heritage New Zealand Pouhere Taonga and the Māori Heritage Council, which include protecting archaeological sites, managing properties owned or controlled by Heritage New Zealand Pouhere Taonga, administering the New Zealand Heritage List/Rārangi Kōrero, including the National Historic Landmarks List/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu, and advocating for the conservation and protection of historic heritage.²⁵

Heritage New Zealand Pouhere Taonga is directly responsible for administering the archaeological provisions under Part 3 of the Act, many of which are in the coastal environment (eg shipwrecks). All pre-1900 archaeological sites, whether recorded or not, are protected by the provisions of the Act. It is unlawful to modify or destroy an archaeological site without prior authority from Heritage New Zealand Pouhere Taonga, even if the land on which the archaeological site is present is designated, a resource or building consent has been granted, or the activity is permitted under the relevant regional or district plan. For example, the Regional Coastal Plan: Kermadec and Subantarctic Islands Issue 3²⁶ contains prescriptive policies on historic and cultural heritage that were reviewed by Heritage New Zealand Pouhere Taonga during development of the plan (pages 32–34), and shows the locations of identified areas of cultural and historic heritage (Appendix 3: pages 101–106). Ngāi Tahu were also consulted during the drafting of these provisions.

When preparing or changing a regional policy statement or a regional or district plan, a regional council or territorial authority must have regard to any relevant entry on the New Zealand Heritage List/Rārangi Kōrero (under sections 61, 66 and 74 of the RMA).

²⁴ <http://legislation.govt.nz/act/public/2014/0026/latest/DLM4005414.html>

²⁵ Heritage New Zealand Pouhere Taonga has published general statements of policy on each of these functions; see www.heritage.org.nz/resources/statements-of-general-policy.

²⁶ Department of Conservation 2017: Regional coastal plan: Kermadec and subantarctic islands. Department of Conservation, Wellington. 148 p. www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2017/regional-coastal-plan-kermadecs-subantarctics.pdf

- *Treaty of Waitangi settlement legislation*

Treaty of Waitangi settlement legislation has been established as an outcome of negotiations between iwi and the Crown to settle historic grievances.²⁷

Settlements may involve protected land and waters in the coastal environment, and may be given effect through statutory acknowledgments, the joint governance of land and waters or the transfer of ownership of land to iwi. These matters can be relevant to the implementation of Policy 5 if the land or waters are in the coastal environment and are transferred to iwi subject to conservation and protection arrangements.

The Office of Treaty Settlement can provide information on the statuses of settlements in progress and those claims that have been settled.²⁸

Origins of the policy

Policy 5 of the NZCPS 2010 builds on policies 4.1.1 and 4.1.2 of the NZCPS 1994. Policy 4.1.1 required that the status of land and areas under the Conservation Act 1987 and other land and areas administered by DOC be taken into account when deciding whether to grant resource consents. Policy 4.1.2 required that the purpose of a proposal for statutory protection under conservation legislation administered by DOC be taken into account when deciding whether to approve a consent application.

The NZCPS 2010 extends those 1994 provisions. Policy 5 applies to land and waters that are protected by a wide range of statutory agencies under more than just the Conservation Act 1987, and requires RMA decision-makers at both the plan-making and resource consent stages to consider the effects of activities on existing and proposed statutory protected land and waters in the coastal environment.

The relationship between RMA decision-making and the management and status of protected land and waters was considered when preparing and consulting on the NZCPS 2010, and was documented in the Board of Inquiry's reports.²⁹

In accepting that Policy 5 should address protected land and waters beyond those that are protected under the Conservation Act 1987 and those Acts listed in its 1st Schedule, the Board noted that it would be difficult to identify all possible relevant statutes and that this list could change with time. Therefore, it recommended that the policy allow relevant statutes to be identified on a case-by-case basis and recommended the use of inclusive wording 'to ensure that no specific Acts are excluded'.

²⁷ www.waitangitribunal.govt.nz/

²⁸ www.ots.govt.nz/

²⁹ Board of Inquiry 2009: Proposed New Zealand Policy Statement (2008). Board of Inquiry report and recommendations. Volume 1: Findings, recommendations and recommended NZCPS (2009). 55 p. <https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/closed-consultations/nzcps/nzcps-2008-board-of-inquiry-vol-1.pdf>

The Board commented that it agreed with submissions arguing that the policy should cover conservation land and regional parks that are owned or managed by local authorities. When considering submissions that the policy could be understood to include consideration of the Hauraki Gulf Marine Park Act 2000 and Marine Reserves Act 1971 and any notified proposals for new conservation areas or reserves, even while at an early or formative stage, the Board stated that ‘the real issue is the weight that should be given to any such protections or proposed protections in any individual case’.

For further information, refer to Volume 2 of the NZCPS Board of Inquiry report.³⁰

Implementing the policy

When implementing Policy 5, it is necessary to consider the entire NZCPS 2010. Therefore, in addition to this guidance, readers should refer to the NZCPS 2010 Implementation Guidance Introductory Note,³¹ which covers the matters that are relevant in giving effect to the NZCPS 2010.

Three elements need to be addressed when implementing this policy.

- Identifying the relevant legislation, land and waters.
- Identifying the values or management purposes of the land and waters that are relevant to the coastal environment and the regional coastal planning work.
- Determining how the regional policy statement and regional plans, including the regional coastal plans or regional coastal environment or combined plans, will address those values.

The nature and extent of protected land and waters are of relevance to RMA decision-making, including decisions on regional policy statements, regional coastal plans, and regional and district plans, and when determining whether to approve resource consent applications.

If a proposed activity will have a significant effect, it is to be avoided, ie not allowed. However, if the adverse effect will be less than significant, the terms ‘avoid, remedy, or mitigate’ are applicable (refer to the *King Salmon* case³²).

Policy 5(1) applies when statutory protection is already in place under the Conservation Act and any Act listed in the 1st Schedule to the Conservation Act or any other Acts for conservation or protection purposes. Large-scale examples include

³⁰ Board of Inquiry 2009: Proposed New Zealand Coastal Policy Statement (2008). Board of Inquiry report and recommendations. Volume 2: Working papers. Pp. 60–68. www.doc.govt.nz/documents/getting-involved/consultations/closed-consultations/nzcps/NZCPS-2008-board-of-inquiry-vol-2.pdf

³¹ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/introductory-note.pdf

³² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38. www.courtsofnz.govt.nz/cases/environmental-defence-society-incorporated-v-the-new-zealand-king-salmon-company-limited-ors

the coastal reserve networks in the Bay of Islands, Marlborough Sounds and Fiordland National Park, while a local scale example would be an esplanade reserve vested under the Reserves Act 1977 in a local authority resulting from a subdivision application under the RMA. Future proofing protected areas in the face of climate change is important and should be considered.

It is important to note the wording of Policy 5(1)(b): ‘consider effects on land or waters in the coastal environment held or managed under ... other Acts for conservation or protection purposes’. This means that protection for purposes other than conservation are included.

Policy 5(2) is relevant when protection is proposed and has reached the stage of a publicly notified proposal, such as a proposed marine reserve. The weight that should be given to Policy 5(2) will depend on how far through the statutory process the proposal is – for example, a proposal that has just been notified will have considerably less weight than a proposal that is about to receive gazettal.

Regional policy statement and plan preparation

Information on protected land and waters for regional policy statements, plans and consents

Information (including mapping) that details the location and nature of protected land and waters, including the purpose for which they are held, will assist with regional and district planning, as well as the implementation of other NZCPS 2010 policies, particularly when determining the extent and characteristics of the coastal environment to give effect to Policy 1.³³ The identification and mapping of protected land and waters and the purpose for which they are held also provides important context for giving effect to Policy 4 (Integration),³⁴ Policy 6 (Activities in the coastal environment)³⁵ and Policy 7 (Strategic Planning).³⁶ It should be noted, however, that there may be instances where tangata whenua may not want to identify special areas.

Up-to-date information on the statuses of land and waters that are held or managed for conservation or protection purposes can be found online (such as through *Terraviva*³⁷ or *Landonline*³⁸) or by directly approaching the agency that manages the area. Some information is also available through DOCgis.³⁹

³³ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-1.pdf

³⁴ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-4.pdf

³⁵ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-6.pdf

³⁶ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-7.pdf

³⁷ <https://data.linz.govt.nz/group/survey-title/data/>

The relevant conservation management strategy will identify all land and waters that were administered by DOC within the geographic boundaries of the strategy at the time it was approved. The purpose of the conservation management strategy is to establish objectives for the integrated management of natural and historic resources, including any species that are managed by DOC under the legislation it administers.⁴⁰

Once an area has been identified and its classification has been determined (eg marine reserve, recreation reserve, national park), the purposes for which the land or water is held can be ascertained.

The statute under which the land or water is held will provide basic information on the purpose for which it is held. For example, in the Reserves Act, each classification is associated with primary and secondary purposes that are specified in the relevant section (eg section 17 for recreation reserves). Some key provisions are outlined in Appendix 2.

For some types of protected areas in the coastal environment, it may be necessary to also examine the Gazette notice under which the land and/or waters were protected (eg for ecological areas, which are protected for the value identified in the notice). In those cases, the administering agency should be able to provide that information.

For all national parks and all reserves that are administered by a local authority, the management plans that apply to the land will provide further direction on how they are to be managed.

Strategic and integrated planning

A strategic and integrated approach to management of the coastal environment will assist in implementing Policy 5. In practice, this approach involves the early identification of special values and areas that could be compromised or adversely affected by activities on adjacent land or waters. Integration will also provide the necessary processes to resolve matters early and a clear framework for decision-making.

One specific value of protected areas that should be considered in spatial planning is that they are often rich carbon sinks and important buffers which provide resilience to climate change effects in marine and coastal environments, including the effects of sea-level rise. These protected areas usually have limited permanent human occupation and can provide natural defences against coastal processes, as well as enabling the inland migration of important coastal values, such as estuarine edges. However, this only occurs if the statutory boundary extends inland sufficiently.

³⁸ www.linz.govt.nz/land/landonline

³⁹ <http://intmaps/rihmapviewer/?Viewer=DOCgis>

⁴⁰ This legislation includes the Wildlife Act 1953, Marine Reserves Act 1971, Reserves Act 1977, Wild Animal Control Act 1977, Marine Mammals Protection Act 1978, National Parks Act 1980 and Hauraki Gulf Marine Park Act 2000.

Objectives, policies, rules and other methods

Policy 5 does not state how any positive or adverse effects of activities on protected land and waters are to be managed. Such management could be through objectives, policies, rules or other methods. It is important that the analysis that is conducted under section 32 of the RMA shows how the provisions in plans will give effect to Policy 5.

The following examples highlight resource management issues that are relevant to the management of adverse effects on protected land or waters.

- The location and management of activities that may have adverse effects on adjacent protected areas. For instance, a fixed mooring or marine farm that is adjacent to a scenic reserve or other protected land of high natural value may adversely affect the natural character of that protected land and could increase the risk to indigenous fauna from the arrival of dogs, cats and rats on-board vessels or the introduction or spread of invasive species to marine environments via vessel hull fouling.
- The provision of access to protected areas and the location of activities that could help in managing or facilitate appreciation of a protected area. Protected areas are often held for multiple purposes. The ability to protect important indigenous flora and fauna in one part of the reserve while simultaneously providing for public access and enjoyment may require a regional coastal plan to provide for a jetty or anchorage at one location while restricting structures and anchoring adjacent to other coastal parts within the same reserve.
- Effects in the wider area that could spread into a protected area, such as discharges and harmful aquatic organisms. It is especially important to consider current and future discharges from land use activities that could adversely affect the water quality in nearby marine reserves and other estuarine and marine protected areas.
- Locating structures such as roads and buildings inland of protected coastal areas which prevent the landward migration of dunes, coastal wetlands and their terrestrial margins, in response to sea level rise.
- The way in which the protected area and its context will contribute to the preservation of natural character. Natural character can extend from inland catchments to protected areas adjacent to the coast across the intertidal area and into the coastal marine area and seabed. The land/sea and seabed interface is important for many natural processes, spans the habitat of many species, and contributes significantly to natural character. Natural character may be disrupted by structures or activities on the foreshore, seabed or sea surface outside the adjacent protected land.

The actual provisions that are appropriate for a regional policy statement or plan will depend on many things, including the nature and extent of the protected land or water, current and future use and development patterns, and potential threats or conflicts. Consultation with the administrator of the area, relevant resource users, tangata whenua and community interests will also be very important.

There are several ways in which adverse effects on protected land or waters as a result of activities on adjacent or nearby coastal environment land or in the coastal marine area can be addressed in regional policy statements and plans.

- Identifying protected areas through tools such as mapping overlays and schedules. Such protected areas will often be accorded a ‘conservation’ zone or similar (eg ‘heritage’).
- Providing direction through objectives and policies, including the classification or grouping of types of protected areas, the values and characteristics of those types of areas, and the factors that need to be recognised and provided for in the course of resource management decision-making when assessing the effects of proposed activities on the protected area.
- Making other regulatory provisions, such as the identification of zones, management areas and/or overlays, including rules setting out the following.
 - The consent status for particular activities – for instance, coastal water adjacent to protected coastal reserves may be identified in a regional coastal plan as being inappropriate for marine farming, or a different activity status or additional assessment criteria may be specified for proposed marine farms in such locations.
 - Performance standards for particular categories of activities – for example, land use activities that are close to the nesting sites of seabirds, such as Hutton’s shearwater, may warrant the inclusion of conditions that require night lighting to be minimised or shielded to prevent bird strike and disorientation.
 - Matters to guide the assessment of applications. The assessment criteria should be developed having regard to the values of the protected land or water, the purposes for which it is held, and the likely threats to its values. For example, a reserve that is held and managed for recreation purposes may only require assessment criteria in relation to the potential effect on public access, whereas a nature or scientific reserve would justify more comprehensive assessment criteria.
 - The information that needs to be provided as part of consent applications, including proposed actions to avoid, remedy and mitigate adverse environmental effects on protected areas. The required information should specifically address the purpose for which the land or water is protected and managed, and assess the proposal against this purpose and any management objectives.
- Referencing external documents that set out relevant information, including other management direction – for example, a management strategy or management plan.

Consideration of effects, including ‘Significant’ and ‘Other’ effects

The reference in Policy 5 to ‘avoid’ significant adverse effects was defined by the Supreme Court in *King Salmon*⁴¹ as meaning ‘not allow’ or ‘prevent the occurrence of’.

Inclusion of the terms ‘remedy’ and ‘mitigate’ indicate that developments that could have adverse effects on particular sites can nonetheless be permitted if those activities are remedied or mitigated, provided these adverse effects are not significant. If the effects will be significant, they must be avoided (ie not allowed). This is an important distinction.

Decision-makers need to choose between the terms ‘remedy’ and ‘mitigate’ and decide in their plan what standard is to apply to different adverse effects.

The assessment of whether effects are ‘significant’ will be influenced by the protection status of the protected land or water, the purpose for which it is held, its relationship with other protected areas within the locality, the effects of the proposed activity or activities, and the vulnerability of the land or water to change. The management objectives of any relevant statutory strategy or plan should also be considered.

The following guidance is intended to help in determining the extent to which an adverse effect is ‘significant’. This guidance has been adapted from an approach used in the Bay of Plenty Regional Council’s Operative Regional Policy Statement.⁴²

- **Status of resources:** The importance of the area both locally and regionally. Effects on rare or limited resources are usually considered more significant than impacts on common or abundant resources. For example, do they contain nationally uncommon ecosystems that are threatened?⁴³
- **Proportion of resource affected / area of influence:** The size of the area that will be affected by the activity. Activities that affect a large area or a large proportion of a limited area or resource will generally be considered significant.
- **Persistence of effect:** The duration and frequency of the effect. For example, long-term or recurring effects as permanent or long-term changes are usually considered more significant than temporary effects. This is related to the ability of the resource to recover after the activities have been completed.

⁴¹ www.courtsofnz.govt.nz/cases/environmental-defence-society-incorporated-v-the-new-zealand-king-salmon-company-limited-ors

⁴² <https://staging.boprc.govt.nz/plans-policies-and-resources/policies/operative-regional-policy-statement/>

⁴³ Holdaway RJ, Wiser SK, Williams PA 2012. A threat status assessment of New Zealand’s naturally uncommon ecosystems. *Conservation Biology* 4: 619–629.

<https://onlinelibrary.wiley.com/doi/full/10.1111/j.1523-1739.2012.01868.x>

- **Sensitivity of resources:** The effect on the area and its sensitivity to change. Impacts on sensitive resources are usually considered more significant than those on resources that are relatively resilient.
- **Reversibility or irreversibility:** Whether the effect is reversible or irreversible. Irreversible effects will generally be more significant, although this will also depend on the nature and scale of the effects.
- **Probability of effect:** The likelihood of an adverse effect resulting from the activity. Unforeseen effects can be more significant than anticipated effects. Adopting a precautionary approach may reduce the likelihood of adverse effects occurring. Refer to the guidance note for Policy 3 (Precautionary approach).⁴⁴
- **Cumulative effects:** The accumulation of impacts over time and space resulting from the combined effects of one activity/development or a number of activities. Cumulative effects can be more significant than any individual effect from an activity and can lead to the loss of multiple important sites.
- **Degree of change:** The type and degree of modification, damage, loss or destruction that will result from the activity. Activities that result in a high degree of change are generally more significant.
- **Magnitude of effect:** The scale and extent of possible effects caused by an activity – for example, the number of sites affected or the spatial distribution. Activities that have a large magnitude of effect are generally more significant.

The Department of Conservation has areas such as the following which are places that can be assessed for information about values⁴⁵:

- **Recommended Area for Protection (RAP)** Areas identified as important during the Protected Natural Areas Programme (1981-2000) which sought to identify an ecologically representative protected natural areas system. In later years, areas were given either Priority 1 or 2 status.
- **Site of Special Wildlife Interest (SSWI)** Compiles data from extensive surveys undertaken during the 1980s to identify good wildlife habitat. The emphasis is on those species that can be relatively rapidly located on a site.
- **Wetlands of Ecological and Representative Importance (WERI)** A computer database developed in the 1980s that contains records on approximately 3000 wetlands throughout New Zealand. Information includes: size; location; landownership; classification; modifiers and threats; buffer, wildlife and vegetation values; other ecological values; cultural values; significance; and sources of information.

⁴⁴ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-3.pdf

⁴⁵ <https://www.doc.govt.nz/about-us/science-publications/conservation-publications/land-and-freshwater/estuaries/estuarine-systems-in-the-lower-north-island-te-ika-a-maui/>

- **Waters of National Significance (WONI)** A nationwide assessment of 4706 river catchments, carried out during the early 2000s, in order to identify and rank those that best represent the full range of indigenous biodiversity. A river is listed as Type I if the majority of the catchment is assessed as nationally significant, Type II if it contains special features (such as a wetland) that are of significance.

Regulatory decision-making

RMA regulatory decision-making in respect of regional policy statements and plans is required to give effect to the NZCPS 2010, including Policy 5.⁴⁶ Furthermore, when making decisions on consents, decision-makers are required to have regard to Policy 5.⁴⁷ This includes considering effects on protected land and waters and having regard to the purposes for which the land and waters are held or managed to avoid any adverse effects of activities that are significant in relation to those purposes, and to otherwise avoid, remedy or mitigate the adverse effects of activities in relation to those purposes.

The nature and scale of an activity and the level of existing information will determine the amount of additional information that is required to make decisions on consent applications. The amount of information required will be informed by the relevant plan provisions and the assessment criteria in the plan.

An important factor to consider in regulatory decision-making is the degree of adverse effects on protected land and waters that need to be considered and whether these effects would constitute a ‘significant adverse effect’ for the purposes of Policy 5(1)(c). The result of this assessment will guide the extent of change that would be acceptable before ‘avoidance’ needs to be considered. Possible ways to address this issue are outlined in the previous section (‘Consideration of effects, including “Significant” and “Other” effects’).

For applications that may affect protected land or waters, early design considerations will be an important component of the pre-application process. In particular, it will be important to evaluate and consider whether the conditions that are attached to resource consents can address the intent of Policy 5 and the relevant regional policy statement and plan provisions. Careful design and design assessment processes can be useful for determining the appropriate conditions, including rehabilitation.

The following methods can be used to implement Policy 5 in regulatory decision-making.

1. **Effects assessment:** Decisions on a proposed activity that will or is likely to have adverse effects (including cumulative effects) on a protected land or water require a particularly careful effects assessment, having regard to the purposes for which the land or water is held or managed. Decision-makers may find the activity to be inappropriate at that location, especially if the effects are significant, because Policy 5(1)(c) requires that adverse effects

⁴⁶ Sections 62(3) and 67(3) of the RMA.

⁴⁷ Section 104(1) of the RMA.

which are significant in relation to the purpose for which the protected land or water is held or managed must be avoided.

2. **Early addressing of matters:** Incorporating best practice management considerations into the early design stages as part of the pre-application process can support assessments and decision-making. Opportunities for restoration of the values that are being protected should be considered among the management options if the adverse effects are less than significant. The guidance note for Policy 14 (Restoration of natural character)⁴⁸ sets out information and methods to achieve restoration.
3. **Design options:** The incorporation of good design and design assessment processes can support assessments and decisions around design options. Restoration or mitigation that is in keeping with the protected land or water and the purpose for which it is held or managed should be considered if the adverse effects are less than significant.
4. **Conditions:** Resource consent conditions will be key matters to evaluate and consider against Policy 5, as well as relevant regional policy statement and plan provisions. Integration with other NZCPS policies and other statutory requirements is desirable.

Proposed statutory protection

Policy 5(2) directs that regard be had to publicly notified proposals for statutory protection.

Some proposed changes to statutory protection will be publicly notified, such as the initiation of a section 8 process for creating a national park or a marine reserve. DOC and district councils should be able to advise of any public notifications that are relevant.

The weight that is to be given to the proposals in RMA, regional policy statement, plan and regulatory processes should be determined on a case-by-case basis and should consider the nature and scale of the proposal to protect or change the status of protection. This assessment will consider the information provided in support of the application and the implications of the change in the context of promoting the sustainable management purpose of the RMA and managing activities in the coastal environment. The most relevant consideration is how far through the statutory process the proposal is – a proposal that has only just been notified will carry a lot less weight under Policy 5(2) than one that only needs to be gazetted to come into effect.

⁴⁸ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-14.pdf

Related and ongoing work

Resource management plans and policy statements

Regional coastal plan: Kermadec and Subantarctic Islands (2017)

www.doc.govt.nz/get-involved/have-your-say/all-consultations/2011/regional-coastal-plan-kermadec-and-subantarctic-islands/

In September 2017, the Minister of Conservation approved the first regional coastal plan for the Kermadec and subantarctic islands. These offshore islands are formally protected and contain special values for management. The two key issues that are managed by this plan are the risk of a navigation incident resulting in an oil spill and the risk of non-indigenous marine pest species being introduced via vessel hull biofouling. The regional coastal plan proposes integrated planning with the conservation management strategies for the two groups of islands and provides an example of how a regional council could achieve this.

Examples of reserve management plans and a marine spatial plan

Abel Tasman Foreshore Scenic Reserve Management Plan: June 2012 (partially reviewed 2015)

www.doc.govt.nz/documents/about-doc/role/policies-and-plans/abel-tasman-foreshore-management-plan/abel-tasman-foreshore-scenic-reserve-management-plan.pdf

This plan, which was published by the Tasman District Council and DOC, provides guidance and direction for management of the Abel Tasman Foreshore Scenic Reserve.

Wellington City Council South Coast Management Plan (2002)

<https://wellington.govt.nz/your-council/plans-policies-and-bylaws/policies/south-coast-management-plan>

The role of this management plan is to direct or manage the use of land that has been classified as reserve land under the Reserves Act 1977. The objective is to provide guidance for day-to-day management and decision-making, and to establish the desired mix of values and uses for reserve land.

Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan

www.seachange.org.nz/

Sea Change is New Zealand's first marine spatial plan. This plan, which was released on 6 December 2016, was produced by a multi-sector Stakeholder Working Group after extensive community and iwi engagement, and was approved by the Project Steering Group (the mana whenua-agency governance group).

Marine protected areas

Marine Protected Areas Policy and Implementation Plan (December 2005)

www.doc.govt.nz/about-us/science-publications/conservation-publications/marine-and-coastal/marine-protected-areas/marine-protected-areas-policy-and-implementation-plan/

In 2005, DOC developed a marine protected areas policy and implementation plan that is still in effect today. The purpose of this non-statutory document is 'to protect New Zealand's marine biodiversity by establishing a comprehensive and representative network of marine protected areas'. Key goals of the policy are to establish a consistent approach for classifying marine habitats and ecosystems; to develop mechanisms for coordinating multi-agency approaches to marine protected areas; to establish an inventory of existing marine protected areas and assess whether the level of protection is sufficient; and to outline consistent processes for planning and establishing new marine protected areas.

In 2016, the New Zealand Government consulted on a proposal for new marine protected areas legislation.

www.doc.govt.nz/get-involved/have-your-say/all-consultations/2016/new-marine-protected-areas-act/

At the time of drafting this guidance, the current Government is yet to decide whether to proceed with the reform of marine protected areas legislation.

South-East Marine Protection Forum / Roopu Manaaki ki te Toka

<https://south-eastmarine.org.nz/>

The South-East Marine Protection Forum (the Forum) was a non-statutory body established by the Minister of Conservation and the Minister for Primary Industries in July 2014. The Forum represented the interests of tangata whenua, commercial fishing industry, recreational users, conservation groups, the tourism sector, marine scientists, local government and communities. The Forum was tasked with providing recommendations to the Government on a network of marine protected areas from South Canterbury to Waipapa Point in Southland. The Forum delivered its final recommendations to Government on 23 February 2018. DOC and Fisheries New Zealand have since provided joint-agency advice on the Forum's recommendations, which is currently under active consideration by the Ministers.

Resources

Relevant case law

Okura Holdings Limited v Auckland Council [2018] NZEnvC 87

www.environmentcourt.govt.nz/assets/Documents/Decisions/2018-NZEnvC-087-Okura-Holdings-Limited-v-Auckland-Council.pdf

In this case, a consent for residential rezoning was declined because of the potential effects on a marine reserve, regional park and scenic reserve. The proposed Auckland Unitary Plan recognised the sensitivity of the protected land and waters to adverse effects from adjacent development and the relevant policies in the plan gave effect to Policy 5 of the NZCPS 2010.

Environmental Defence Society Inc v The New Zealand King Salmon Company Limited [2014] NZSCV 38

www.courtsofnz.govt.nz/cases/environmental-defence-society-incorporated-v-the-new-zealand-king-salmon-company-limited-ors

The majority decision of the Supreme Court in the *King Salmon* decision is important with respect to the weight that should be accorded to NZCPS objectives and policies when considering plans and plan changes that are intended to give effect to the NZCPS, as well as the interpretation of certain RMA words and phrases.

More detail about the *King Salmon* case can be found in the NZCPS 2010 Implementation Guidance Introductory Note.⁴⁹

New Zealand Transport Agency, Porirua City Council and Transpower NZ Ltd re the Transmission Gully Project [2012] EPA BOI

<https://epa.govt.nz/assets/FileAPI/proposal/NSP000008/Boards-decision/Transmission-Gully-Final-decision-volume-1-Report-and-decision.pdf>

There is a brief mention of Policy 5 in this decision, although it was not a deciding factor.

⁴⁹ www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/introductory-note.pdf

Reports, websites and additional information

Department of Conservation

- Conservation General Policy (2005)
<https://www.doc.govt.nz/documents/about-doc/role/policies-and-plans/conservation-general-policy.pdf>
- General Policy for National Parks (2005)
www.doc.govt.nz/documents/about-doc/role/policies-and-plans/general-policy-for-national-parks.pdf
- Conservation management strategies and plans
www.doc.govt.nz/cms
- Marine reserves
www.doc.govt.nz/marinereserves
- Maps and geospatial services (includes DOCgis)
www.doc.govt.nz/maps

Note: information on the locations and statuses of reserve land and waters at the time of publication can also be found in conservation management strategies and plans (see above).

- National parks, conservation parks, forest parks and wildlife management reserves
<https://www.doc.govt.nz/parks-and-recreation/places-to-go/national-parks/>
<https://www.doc.govt.nz/parks-and-recreation/>
www.doc.govt.nz/
- Other marine protected areas, including marine mammal sanctuaries
www.doc.govt.nz/nature/habitats/marine/
- Nature Heritage Fund
www.doc.govt.nz/get-involved/funding/nature-heritage-fund/
- Ngā Whenua Rāhui
www.doc.govt.nz/ngawhenuarahui

Land Information New Zealand (LINZ)

- *Landonline*
www.linz.govt.nz/land/landonline

Ministry for Primary Industries

- Mātaitai reserves and taiāpure
www.mpi.govt.nz/law-and-policy/maori-customary-fishing/managing-customary-fisheries/customary-fisheries-management-areas/

Heritage New Zealand Pouhere Taonga

- New Zealand Heritage List/Rārangi Kōrero
www.heritage.org.nz/the-list/about-the-list

Queen Elizabeth II National Trust

www.qeiiinternationaltrust.org.nz/

Terralink

- Terraview
<https://data.linz.govt.nz/group/survey-title/data/>

Glossary of terms and definitions

NZCPS 2010 glossary

No relevant definitions.

Other definitions/explanations

Conservation

The preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

(Conservation Act 1987)

Conservation area

... any land or foreshore that is—

- a. land or foreshore for the time being held under this [Conservation] Act for conservation purposes; or
- b. land in respect of which an interest is held under this [Conservation] Act for conservation purposes.

(Conservation Act 1987)

Ngā Whenua Rāhui kawenata An agreement under section 77A of the Reserves Act 1977 that can be entered into by owners of Māori land or lessees of Crown land held under a Crown lease by Māori for the protection of important values.

Protection

In relation to a resource, means its maintenance, so far as is practicable, in its current state; but includes—

- a. its restoration to some former state; and
- b. its augmentation, enhancement, or expansion

(Conservation Act 1987)

Tangata whenua, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area

(Resource Management Act
1991)

Appendix 1

List of marine reserves in New Zealand, as at February 2019

	Area from GIS layer, using NZTM (km ²)	Year established
1 Akaroa Marine Reserve	5.124143	2014
2 Auckland Islands – Motu Maha Marine Reserve	5057.096416	2003
3 Cape Rodney-Okakari Point Marine Reserve	5.561405461	1975
4 Hautai Marine Reserve	8.54476437	2014
5 Hawea (Clio Rocks) Marine Reserve	4.019380289	2005
6 Hikurangi Marine Reserve	103.9548717	2014
7 Horoirangi Marine Reserve	9.079990626	2005
8 Kahukura (Gold Arm) Marine Reserve	4.74481608	2005
9 Kahurangi Marine Reserve	84.05676135	2014
10 Kapiti Marine Reserve	21.66553512	1992
11 Kermadec Islands Marine Reserve	7674.886883	1990
12 Kutu Parera (Gaer Arm) Marine Reserve	4.163392182	2005
13 Long Bay-Okura Marine Reserve	9.627256657	1995
14 Long Island – Kokomohua Marine Reserve	6.230724902	1993
15 Moana Uta (West Jacket Arm) Marine Reserve	20.12784219	2005
16 Motu Manawa-Pollen Island Marine Reserve	5.014944625	1995
17 Moutere Hauriri / Bounty Islands Marine Reserve	1046.327566	2014
18 Moutere Ihupuku / Campbell Island Marine Reserve	1131.334323	2014
19 Moutere Mahue / Antipodes Island Marine Reserve	2173.100012	2014
20 Parininihi Marine Reserve	18.45928362	2006
21 Piopiotahi (Milford Sound) Marine Reserve	7.155599843	1993
22 Pohatu Marine Reserve	2.339354166	1999
23 Poor Knights Islands Marine Reserve	19.22125087	1981
24 Punakaiki Marine Reserve	35.1912095	2014
25 Taipari Roa (Elizabeth Island) Marine Reserve	6.159664887	2005
26 Tapuae Marine Reserve	14.04990391	2008
27 Taputeranga Marine Reserve	8.545523065	2008
28 Taumoana (Five Finger Peninsula) Marine Reserve	14.8048561	2005
29 Tauparikākā Marine Reserve	0.164493235	2014
30 Tāwharanui Marine Reserve	3.942513745	2011
31 Te Angiangi Marine Reserve	4.439183067	1997
32 Te Awaatu Channel (The Gut) Marine Reserve	0.935747873	1993
33 Te Hapua (Sutherland Sound) Marine Reserve	4.526960911	2005
34 Te Matuku Marine Reserve	6.880992912	2005
35 Te Paepae o Aotea (Volkner Rocks) Marine Reserve	12.76566457	2006
36 Te Tapuwāe o Hua (Long Sound) Marine Reserve	36.91803727	2005

37	Te Tapuwae o Rongokako Marine Reserve	24.72307791	1999
38	Tonga Island Marine Reserve	18.28335074	1993
39	Tuhua (Mayor Island) Marine Reserve	10.55151047	1992
40	Ulva Island – Te Wharawhara Marine Reserve	10.79396878	2004
41	Waiau Glacier Coast Marine Reserve	45.60055476	2014
42	Westhaven (Te Tai Tapu) Marine Reserve	5.417851015	1994
43	Whanganui A Hei (Cathedral Cove) Marine Reserve	8.791524441	1992
44	Whangarei Harbour Marine Reserve	2.392269223	2006

A map of these reserves can be found at:

www.doc.govt.nz/nature/habitats/marine/marine-reserves-a-z/marine-reserves-map/%20%20%20%20

Appendix 2

Types of reserves

Recreation reserves

Section 17 of the Reserves Act 1977 sets out the purposes of recreation reserves. These purposes include providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and outdoor recreational activities, including recreational tracks in the countryside.

Historic reserves

Historic reserves are defined in section 18 of the Reserves Act. They have the purpose of protecting and preserving in perpetuity such places, objects and natural features, and such things thereon or therein contained that are of historic, archaeological, cultural, educational or other special interest.

Scenic reserves

The purposes of scenic reserves are set out in section 19 of the Reserves Act. These purposes include:

- (a) protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest:
- (b) providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest.

Nature reserves

The purposes of nature reserves are set out in section 20 of the Reserves Act. These purposes include protecting and preserving in perpetuity indigenous flora or fauna or natural features that are of such rarity, scientific interest or importance, or so unique that their protection and preservation are in the public interest.

Scientific reserves

The purposes of scientific reserves are set out in section 21 of the Reserves Act. These purposes include protecting and preserving in perpetuity ecological associations, plant or animal communities, types of soil, geomorphological phenomena, and like matters of special interest for scientific study, research, education and the benefit of the country.

Government purpose reserves

Government purpose reserves are defined in section 22 of the Reserves Act as follows.

- (1) Government purpose reserves have the purpose of providing and retaining areas for such government purpose or purposes as are specified in any classification of the reserve.
- (2) For the avoidance of doubt, and without limiting the purposes for which a government purpose reserve may be classified, it is hereby declared that a reserve may be classified as a government purpose reserve for wildlife management or for other specified wildlife purposes.

Local purpose reserves

Local purpose reserves are defined in section 23 of the Reserves Act. They are established to provide and retain areas for such local purpose or purposes as are specified in any classification of the reserve.

National reserves

National reserves are defined in section 13 of the Reserves Act. These reserves have values of national or international importance.

Wilderness areas

Reserves or parts of reserves may be set apart as wilderness areas, as outlined in section 47 of the Reserves Act. These areas are retained in a natural state, with no buildings, animals, roads, etc being permitted.