

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2015] NZEnvC 077

**IN THE MATTER** of an appeal under Clause 14 of the First  
Schedule of the Resource Management Act  
**(the Act)**

**BETWEEN** MOTITI ROHE MOANA TRUST  
(ENV-2013-AKL-000069)  
Appellants

**AND** BAY OF PLENTY REGIONAL  
COUNCIL  
Respondent

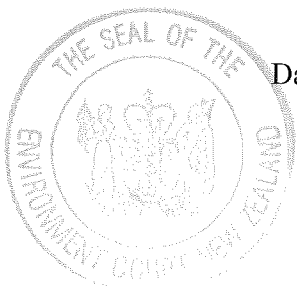
**AND** LOWNDES ASSOCIATES MATAATUA  
DISTRICT MAORI COUNCIL  
MOTITI AVOCADOS LIMITED  
RANGIWEA MARAE COMMITTEE ON  
BEHALF OF TE WHANAU A  
TAUWHAO  
Section 274 parties

Held: On the papers, in chambers at Auckland

Court: Environment Judge JA Smith  
Environment Commissioner SK Prime  
Environment Commissioner JA Hodges

Appearances: Mr Enright for Motiti Rohe Moana Trust and Mataatua District  
Māori Council  
Ms S Wooler for Bay of Plenty Regional Council  
Mr S Ryan for Lowndes Associates  
Mr N Swallow for Motiti Avocados Limited  
Mr J Gear for Rangiwaewa Marae Committee

Date of Decision: 28 April 2015



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**FINAL DECISION OF THE ENVIRONMENT COURT**

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- A. The wording of the attributes in relation to recent waters identified as ‘*high natural Character*’ are confirmed as set out in Appendix 1, hereto, in particular the Maori translation thereof**
- B. There has been no application for costs, and accordingly this Court makes no order for costs.**

**REASONS FOR DECISION**

**Introduction**

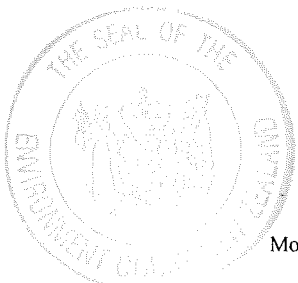
[1] This is the final chapter in a series of decisions in relation to the Motiti Moana Trust’s appeals to the regional policy statement. The Court settled the English wording for the tributes by decision of the 23<sup>rd</sup> of February 2015, and made directions for the parties to finalise the Maori translation and make comments on that, together with any application for costs.

[2] No applications for costs have been filed. The regional council have filed a memorandum attaching a certified translation made by Mr Patrick McGarvey, a licensed translator. Mr McGarvey was instructed to retain as much of the original Maori i.e. (respect its style) and to translate into English as accurately as possible.

**Progress**

[3] In accordance with the directions the translation was performed by Mr McGarvey and forwarded to the other parties on the 16<sup>th</sup> March 2015. The comments received were:

- (a) Motiti Moana trust advised by email that it had other statutory deadlines and proceedings requiring attention but that the first column in the attributes table had not been translated and that there were some spelling errors;



- (b) Lowndes associates advised that there was no objection to the translation itself, but that it had an issue with the Tokeroa inclusion in the marine abiotic processes column, (final paragraph) and that this was incorrect in that Tokeroa was not included in the map;
- (c) Motiti Avodados has confirmed that it had no issues with the translation.

### **The attributes table translation and spelling errors.**

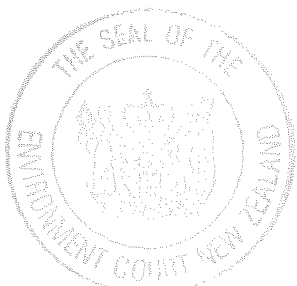
[4] The council has retained its translation from Mr McGarvey after confirming with him its correctness. The Council has not translated the first column, as that is not in the attributes but a description of the area concerned. In the circumstances of this case we acknowledge that the first column is not attributes but description and therefore was not intended to be subject to the translation requirement.

[5] As far as any potential for small errors, including spelling, these are matters that still will have occurred, and can be corrected by the Council under its slips provisions. They do not require a decision of this Court. Accordingly, we see nothing arising from the Motiti Rohe Moana's comments to delay the finalisation of the Plan.

### **Tokeroa Inclusion**

[6] The decision of the Court [2015] NZEnvC 22, at paragraph 46 required the removal of the reference to "Tokeroa" from Column 1 on the basis that it was incorporated in another feature. In later reference to Tokeroa, the abiotic column was retained as being part of a list of the named high subsurface pinnacles within the Motiti marine area. Again we agree with the Council that its retention is appropriate, and that it was not the subject of any direction of this Court. Accordingly, we intend to make no changes as a result of that.

[7] This being the case we see no bar to the inclusion of the attributes into the relevant appendix as set out in Appendix 1 to this decision. We make directions accordingly.



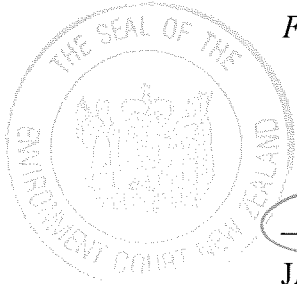
## Costs

[8] No party has filed an application for costs in accordance with the Court's directions. This does not 'on the face of it' appear to us to be an appropriate case for the award of costs.

[9] Under those circumstances, the Court has concluded that it should finalise these proceedings and the Plan as soon as possible, and confirms that the regional policy statements be amended by the inclusion within it of Appendix 1, in the appropriate attributes portion of the Plan, without further formality. No application for costs having been made, there is no order for costs.

**SIGNED** at AUCKLAND this.....<sup>28<sup>th</sup></sup>..... day of .....<sup>April</sup>.....2015

*For the Court*



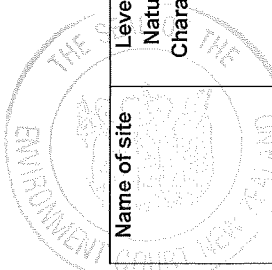
JA Smith  
Environment Judge

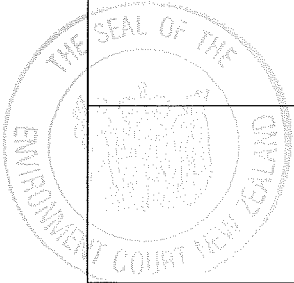
Te Ingoa o te Wāhi		Aro i te Moana - Marine Natural Character Assessment			Ngā āhuatanga motuhake - Attributes (with elements that enhance or diminish natural character)		
Name of site	Level of Natural Character	General description of the area	Elements that describe natural character	Marine biotic processes	Marine abiotic processes	Landcover & Use	Perceptual
<p>Motiti Natural Environment Area Map 21a</p> <p>This table includes the water, sand and rocky bottoms and the cluster of reefs to the north west of Motiti, and east near to Motunau island.</p> <p>The Motiti Natural Environment Area also includes the Coastal Marine Area surrounding Motiti Island, the islands of Motunau and Motuhaku and surrounding Te Tau o Taiti /Astrolabe reef.</p>	<p><b>Teitei</b></p> <p><b>High</b> (default)</p> <p>Kāore anō kia aromatawaihia katoatia tēnei wāhi. Kua tohua ngā wāhanga hei āhuatanga tūturu i roto i rohe o Rohe Moana me te whakarite i te taumata o te āhua tūturu.</p> <p>This area has not been assessed as an integrated whole.</p> <p>Component parts are identified as natural features within the Motiti Natural Environment Area and</p>	<p>1. E kapi ana te rohe i ngā wai tata ki te 200m atu i te takutai o te Moutere o Motiti, ka neke mai i te 5 ki te 15 kiromita ki te moana e uru mai ai ngā tokarārangi iti ake.</p> <p>The area covers the waters beyond approximately 200m off shore from Motiti Island, extending between 5 and 15 kilometres seaward to take in a number of smaller reefs.</p> <p>2. The isolated position of the area around Motiti in the Bay of Plenty renders the sense of its remoteness.</p> <p>Nā te noho wehe o</p>	<p>1. Ko ngā tokarārangi tūturu, ngā motu me ngā kohatu i roto i ētahi rohe ka horoia, ka tiakina e Te Moananui-a-Kiwa. Nā ētahi o ngā para paenga, parataio i ahu mai i te paenga o te MV Rena me te paenga o te Taioma, ā, me te pokea e ngā mahi hi ika i whakarerekēhia ai te āhua tūturu.</p> <p>Natural reefs, islands and rocks within an area washed and sustained by the Pacific Ocean. Some wreckage and debris as a result of the grounding of the MV Rena, the Taioma wreck and fishing pressure modify natural character.</p> <p>2. Ngā Tauranga ita kukume o te hukarere o ngā Aturere.</p> <p>The anchors that connect to the winds and tides, pathway of the yellow-fin tuna</p> <p>3. Ko te hononga o te</p>	<p>1. E huhua ana te tini a Tangaroa i te papamoana me te moana, otiā he maha, he kanorau.</p> <p>An abundance of biological life exists in the seabed and ocean surrounding the reefs which is characterised by relatively high populations and diversity.</p> <p>2. I waho atu i te taha moana ko ngā toka me te nohoanga o ngā momo ika maha, arā ko ngā uri a Tangaroa e noho ana i te papamoana.</p> <p>Further out from the foreshore are the breeding rocks and habitat of the many species of fish which are the descendants of Tangaroa who occupy the sea floor.</p> <p>3. He maha ngā tokarārangi me ngā wāhi whakahirahira, nohoanga hoki mō ngā tino momo, arā – Tāmure; Kahawai; Maomao; Tarakihī; Moki; Araara; Parore; Haku; Aturere; Kūparu; Kumukumu; Patikiriri; Mango;</p>	<p>1. Kāore he whakarerekētanga o ngā ngaru o te moana, te rere o te wai, te ia rānei o Tangaroa me ngā tauira kawenga parataiao o te Rohe Moana.</p> <p>No modification to the natural wave action, water movements or currents of the open coastal water body and sediment transport patterns surrounding Motiti.</p> <p>2. He tino kaha te pātuki o ngā ngaru ki te Rohe Moana. I ngā wāhi pāpaku he kōhatu mai i ngā kirikiri, i ngā wai hōhonu he putunga parataiao me ngā rauiti mai i te whenua.</p> <p>The Motiti Natural Environment area is affected by a moderately high wave-energy environment. Near-shore substrate is coarser than deeper waters which tend to accumulate sediments and finer grained materials from land.</p>	<p>Kāore i te hāngai</p> <p>Does not apply</p>	<p>1. Ko te whakaaro he wāhi moana tūturu, pūnaha tokarārangi i pā kinohia e te paenga o te Rena, ngā ipu nui me ngā parataiao.</p> <p>Perceptions are of a natural marine area, reef system impacted by the Rena wreckage, containers and debris.</p> <p>2. Ko te āhuatanga o te wai tai he riporipo tōna tohu ki te tangata i uta mā te ahunga me te kaha o te rere o te wai – mā te tae, te reka, me te rongo i te ahunga o te hau.</p> <p>The tidal waters are characterised by the rippling currents signalling to the people in the land through the direction and strength of flow – through the colour, through the taste, and feel of the direction of the wind.</p> <p>3. Ko te tirohanga atu he pūnaha tūturu me ngā tauira tūturu, whakahaere me ngā āhuatanga e mārama ana, e noho rererekē ana i ētahi atu wāhi.</p> <p>Perceptions are of a natural system with natural patterns, processes and elements apparent and distinctive of its</p>



<p>Advice note: The natural character attributes in the Motiti Natural Environment Area identified in Map 21A are separately assessed for Astrolabe, AR – above the 75m contour, Motohaku Island (SCH), Motonau Island, MŌTŪ and Motiti Island margin (Motiti) in appendix J and identified in Map 21.</p>	<p>ascribed a ranking of natural character. E taunakitia ana kia whakamātautautia te wāhi whāiti hei whakarite i te āhua tūturu o ngā wāhi motuhake o te rohe taha moana. Site specific examination is recommended to determine the natural character of specific areas of the coastal marine area.</p>	<p>Motiti i roto i te Moana a Toi ka noho pāmamao mai.  3. E mōhio whānuitia ana ko te Rohe Moana te 'pātaka kai' o te hūhua o ngā uri a Tangaroa.  The Motiti Natural Environment area is renowned as a 'food cupboard' for its abundant marine life.</p>	<p>whenua ki ngā motu iti me ngā tokarārangi; ko te wai moana e herehere katōa ana i ēnei. Ko te wai e pā ana ki Motiti ko taua wai anō o ngā motu iti me ngā tokarārangi. Ko te wai moana e papaki ana i nga motu iti me ngā tokarārangi ko taua wai moana anō e pari ana ki ngā motu iti me ngā tokarārangi. Kāore e uru mai ana he wai rerekē. It is a connectedness of the natural landscape features, the small islands and the reefs; it is the ocean water which binds them together. The ocean water that touches Motiti is the same water that touches the small islands and the reefs. There is no different water entering the area.</p>	<p>Wheke; Kōura; Pāua; Kuku; Tipa; Tio; Kina; Rori; Karengo. There are numerous significant reefs and special places and habitats for many prized species including – Tamure (snapper); Kahawai; Maomao; Tarakihī; Moki; Araara (trevally); Parore; Haku (yellow-tail Kingfish); Aturere (tuna); Kuparu (John Dory); Kumukumu (gurnard); Patikiri (sole); Mango (sharks); Wheke (octopus); Koura (crayfish); Paua (abalone); Kuku (mussels); Tipa (scallops); Tio (oysters); Kina (urchins); Rori (sea cucumbers); Karengo (seaweeds).</p>	<p>3. He whakarerekētanga nā te paeanga o te Rena, ngā para me ngā kino o ngā parataiao. Some modification due to the presence of Rena wreckage, debris and sediment contamination.</p>	<p>formation.</p>
			<p>4. E pā kinohia ana te tini a Tangaroa me ngā rauropi e ngā ahumahi hī ika me te nui haere o te huringa hī ika. Populations and biomass are severely impacted and threatened by commercial fishing and increasing recreational and charter fishing.</p>	<p>5. Kei te Rohe Moana te oranga mō ngā manu moana me ngā manu whenua. The Motiti Natural Environment area supports a range of seabirds and shorebirds.</p>		
			<p>4. Ko ngā āhuatanga moana me te pupuhi o te hau, ngā ngaru, te rere o te wai, ngā ia, ngā ika me ngā manu. Dynamic coastal processes including wind and wave action, water movements, currents, fish and bird life.</p>			
			<p>5. Ko te taiao tūturu e tino kītea ana. The natural environment dominates.</p>			

Name of site	Level of Natural Character	General description of the area	Elements that describe natural character	Marine biotic processes	Marine abiotic processes	Landcover & Use	Experiential/Perceptual
<p><b>nga Tokararangi</b> ko Okarapu, ko te Porotiti, ko Te Papa,</p> <p>Okarapu (reef) (Oka), Te Porotiti (reef) (TePo), Te Papa (reef) (Papa)</p> <p><b>Map 21a</b></p>	<p><b>Kohure Outstanding</b></p>	<p>1. Ka ara mai ēnei tokararangi mai i ngā wai 40-50m te hōhonu ki te 30 me te 10m ki raro. Ka huihui mai ngā ika ki te kai, he nui te toiora moana e noho ana ki ngā nohoanga kanorau, haumako hoki o ngā tokararangi. These rocky reefs rise from the sea floor in water 40-50m deep to between 30 and 10m depth. Fish congregate to feed on the relative abundance of marine life supported by the diverse and rich reef habitats.</p> <p>2. He maha ngā āhuatanga hira me ngā tokatū moana i raro i te moana, pēnei i ngā tokararangi, ngā taunga ika me ngā kai moana. There are many significant features and landmarks below sea level</p>	<p>1. He pērā anō mō te Rohe Moana i runga ake. As for Natural Environment Area above.</p>	<p><i>I tua atu i ngā whakamāramatanga mō te Rohe Moana (i runga ake) ka whakapikihia e ēnei kaupapa e whai ake te āhua tūturu:</i></p> <p>In addition to the descriptions for Mottiti Natural Environment Area (above) the following elements increase natural character:</p> <p>1. He tino ora ngā wai o te taha moana, ā, ko ōna tokararangi te nohoanga o ngā momo ika rerekē o te papa me roto i te moana, ngā tipu moana me ngā rauropi i raro i te moana.</p> <p>Highly dynamic coastal waters with reefs supporting a variety of pelagic and demersal fish species, macrophytes and benthic organisms.</p> <p>2. He maha ngā momo ika rerekē me ētahi atu momo a Tangaroa e tino huhua ana, rerekē hoki. A wide variety of representative fish species and other marine communities with relatively high abundance and diversity.</p>	<p><i>I tua atu i ngā whakamāramatanga mō te Rohe Moana (i runga ake) ka whakapikihia e ēnei kaupapa e whai ake te āhua tūturu:</i></p> <p>In addition to the descriptions for Mottiti Natural Environment (above) the following elements increase natural character:</p> <p>1. Ko te whakaaro he wāhi moana tūturu, pūnaha tokararangi i pā kinohia e te paenga o te Rena, ngā ipu nui me ngā parataiao. Perceptions are of a natural marine area, reef system impacted by the Rena wreckage, containers and debris.</p> <p>2. Ko te āhuatanga o te wai tai he riporipo, ā, koinei te tohu ki te tangata i uta mā te ahunga me te kaha o te rere o te wai – mā te tae, te reka, me te rongoi i te ahunga o te hau. The tidal waters are characterised by the rippling currents signalling to the people in the land through the direction and strength of flow – through the colour, through the taste, and feel of the direction of the wind.</p> <p>3. Ko te tirohanga atu he pūnaha tūturu me ngā tauira</p>	<p>1. Kāore i te hāngai. Does not apply</p>	<p>1. Te tukituki o ngā ngaru i ngā tokararangi. Ko te pupuhatanga o te wai te tohu o te pūnaha tokararangi mai i runga o te moana. Breaking waves across the reef outcrops. Spectacular water spouts provide visual evidence of reef system from the surface of the water.</p> <p>2. He pātaka kai ngā tokararangi, ā, e mōhioia ana he mātāpuna oranga. The reefs are perceived as a food storehouse and is experienced as a source of sustenance.</p> <p>3. He wāhi e haerehia ana ngā tokararangi, he tino pai mō te ruku me te hī ika, atu i tēnei he wāhi tino pāmamao. Some level of activity around the reefs, as popular dive and fishing locations, otherwise a high level of remoteness exists within the area.</p> <p>4. He Papa hi ika, mataitai, taunga ika mo nga hapu o te Moutere o Mottiti. There are many significant features and landmarks below sea level including reefs, fishing spots and food resources utilised by the people of Mottiti.</p>





including reefs, fishing spots and food resources.

tūturu, whakahaere me ngā āhuatanga e mārama ana, e noho rerekē ana i ētahi atu wāhi.

Perceptions are of a natural system with natural patterns, processes and elements apparent and distinctive of its formation.

4. Ka whakarej ake te rere o te wai i ngā tokarārangi i te āhua tūturu.

Water movement around the reefs enhance natural character.

5. Ka noho māori tonu te hanganga o ngā tokarārangi. E tohu ana te takoto o ngā toka i tōna waihangatanga mai i ngā mahi puia me te moana.

E tohu ana ngā tihi, ngā mata kōhatu poutū, ngā ana me ngā toma i raro moana me ngā toka nui i ngā mahinga tūturu.

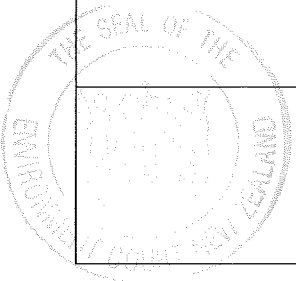
The physical structure of the reefs remain in a natural state. Rock formations are expressive of the formative natural processes created by volcanic activity and the ocean.

Pinnacles, vertical rock faces, underwater caves and tomes and large boulders are distinctive of the natural processes.

6. He wai tai tino akiaki i ngā tihi, i puta ai ngā hanganga tokarārangi whakameremere, ngā ana me ngā rua kōura.

Highly dynamic coastal waters





				<p>around the pinnacles, creating striking reef structures, caves and crayfish holes.</p> <p><i>7. Ka rangona i ngā tihi maunga o te Rohe Moana me ōna tokarārangi ko Okarapu, Te Porofiti, Te Papa, me Tokeroa.</i></p> <p>The mountain pinnacles of the Mottli Natural Environment Area are experienced with their reefs as Okarapu, Te Porofiti, Te Papa, and Tokeroa</p>		
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