

# Petition of Todd Muller, MP for Bay of Plenty: “Review the proposed ban on fishing on the Astrolabe Reef”

Environment Select Committee  
17 May 2021

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## **Petition request**

That the House of Representatives urgently review the proposed ban on fishing on the Astrolabe, Okarapu, Brewis Shoal, Schooner and Plate Reefs off Motiti Island and pass legislation to ensure that the Ministry of Fisheries has primacy over protecting coastal fish stocks. Please see Appendix 3 for a map depicting the affected areas.

## **Petition reason**

The Bay of Plenty Regional Council was taken to court by The Motiti Trust, supported by NZ Forest and Bird, because Council had not included management of marine biodiversity, particularly in the waters around Motiti Island, in its long term plan. The local council argued that fish stock assessment and management was more appropriately overseen by the Ministry of Fisheries.

The Motiti Trust were concerned about the reopening of Astrolabe Reef to fishing after the Rena clean up and they applied for a Fisheries Act sec1186a temporary closure. MPI did not respond to this application and the fishing ban was lifted.

Motiti Trust requested the Bay of Plenty Regional Council to close the Astrolabe reef under biodiversity and cultural protection sections of the RMA Act, to be actioned by the Regional Coastal Plan. The Regional Council judged this would be in conflict with the jurisdiction of the Fisheries Act and could not do this.

The appeal was upheld and through the process the Environment Court ruled in favour of the application of a complete no-take ban of fishing on the Astrolabe, Schooner Okarapu, Brewis Shoal and Plate Reefs surrounding Motiti Island.

We express our opposition to the Environment Court process. We believe the views of local recreational and commercial fishers, divers, spearfishers and affected iwi were not taken into account in the legal challenge of our Regional Council by a small group. Therefore it is undemocratic and in our view does not reflect the principles of natural justice.

We seek that Parliament directs the Ministers of Local Government, Fisheries and Conservation to prioritise that Ministry of Fisheries has primacy over rationing fishing to protect fish stocks in New Zealand.

## **Background**

My petition is made as the Member of Parliament for Bay of Plenty on behalf of the recreational fishers in my electorate. We believe that access to New Zealand's fishing resources should be managed by the Ministry for Primary Industries' Fisheries division and not by regional councils.

I have received hundreds of written comments from affected recreational users expressing their concern about the safety, economic and democratic impacts of the planned closure; a selection of these are included here as Appendix 1 and many commenters would appreciate the opportunity to submit personally to the Select Committee.

Contrary to some comments in the media and during the court case, the campaign to close these reefs does not reflect the wishes of all Motiti residents or landowners, nor iwi, as noted in Appendix 4.

## **Lack of Consultation**

The Minister of Conservation approved the Bay of Plenty Regional Coastal Environment Plan without consulting with the thousands of people in and around the Bay of Plenty who have traditionally enjoyed recreational access to the reefs off Motiti Island.

According to the Bay of Plenty Regional Council, “This is a unique and complex case, established by the Environment Court. As a result, there has not been specific public consultation, as the proposed protection areas were not part of the Regional Coastal Environment Plan when the last scheduled review and public consultation took place in 2015.”

Recreational and commercial fishers, divers, spearfishers and affected iwi have been left out of the consultation process, resulting in a decision via The Environment Court that they do not believe is based upon robust evidence. This case was brought by a few people, including Forest and Bird, who do not represent the wider community who have historically accessed these reefs on a recreational basis to gather seafood.

My petition seeks to defer the closure of this recreational fishing resource until affected users have been provided with a democratic opportunity to share their perspectives and concerns.

## **Evidence**

We are not aware of any evidence, science or systematic monitoring that shows recreational fishers have been responsible for depletion in marine life. We are, however, aware of long term data that in fact shows the reverse – the rock lobster stocks are thriving and apex predators are also increasing in population which indicates a healthy fishery.

Fish stocks naturally fluctuate due to a number of factors and we question the necessity of an outright ban when the current quota system is capable of managing take numbers and adjusting when necessary. My petition signatories request evidence that the biodiversity of this region is genuinely under threat by recreational access to these waters.

Bay of Plenty Regional Council themselves have noted on their website <https://www.boprc.govt.nz/your-council/news/news-and-media-releases/media-releases-2021/may-2021/new-motiti-protection-area-effective-from-11-august> “This marine protection area is the only one of its kind in Bay of Plenty and a really important and unique opportunity for us to better understand the health of the marine environment and the ecosystems it supports.

"We've already begun monitoring these reefs and the taonga species that call it home but once in place we'll be looking to establish a benchmark so in the future we can see if the protections are working."

Robust data on the fisheries stock around the reef is not in place; the council now have to establish it. The supporters of this petition are very concerned that this decision was made with limited data.

### **Safety aspect of boaties having to travel farther afield**

The close proximity of these reefs to the safe launch and return points traditionally used by boaties is key to their safe operation. Boaties are seriously concerned that the extra distance they'll have to travel after the closure will put people's safety at risk in a marine environment subject to sudden weather changes. Boaties do not venture out in rough weather but they often have to return in it, or else take the risk of being stuck out at sea for several days until weather clears.

The waters off Motiti Island have not been included in the no-take zone, which leads to a concern that the island will be overrun by boats who choose not to take the longer journey.

### **Economic Impacts**

There is a fear that local businesses will be negatively impacted by the lack of attractive fishing areas that offer comparable experiences to those currently available around the reefs.

For local fishers, the prospect of an 80 km round trip to Mayor Island may be unattractive due to increased fuel costs, time constraints and the earlier mentioned safety factors.

Local tourism businesses may suffer a downturn in bookings for accommodation and entertainment when fishers choose other regions for fishing holidays.

Any reduction in recreational fishing numbers will impact suppliers of bait, tackle, fishing gear, fuel and boats.

Regional Council ratepayers will have to fund this additional enforcement activity which is preventing their access and use of an area that they traditionally enjoyed the use of and wish to continue the use as recreational and commercial fishers, divers and spearfishers.

Thank you for accepting this written evidence. I look forward to learning when my constituents and I may present verbal evidence to the Environment Select Committee on this petition.

## Appendix 1: Written comments from affected coastal fishers

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As Chairman of the Motiti Landowners Association, no landowners on Motiti Island were consulted about the intention of closing the reefs surrounding the island. All processes up to today have been non transparent.

Hugh Sayers and T A Sayers are the driving force behind the Motiti Rohe Moana Trust and are not landowners on Motiti.

It is very likely that recreational fishes and divers that frequent the reefs will converge onto Motiti, which will deplete resources, therefore, justify the Motiti Rohe Moana Trust to close Motiti Island, this was their intention when they first applied for the closure of the reefs.

The lifestyle and living on Motiti will be compromised if a reserve will be put in place.”

**Ross Green, Lisa Green, Rose Faulkner**

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Hello Todd. I agree totally with all said regards to stop Motiti ban. But please also point out that the proposal will cause lives to be lost. Simply because it forces people out to Mayor Island waters (22miles off shore) in boats that are not up to it. Thing is, we never go out in rough weather, we only return in it. And the smaller boats that have little option after the closure will take the risk. And lives will be lost. Mark my words. Personally I have done over 200 trips to Mayor myself, and more often than not returned early or had to stay over (5days longer on one occasion. No food for 4 days). People will have little choice. Only Rabbit and Karewa islands and Mayor will remain open. Motiti will be hammered if this goes through without closure. The original intention as I understand it, was only to keep the Purse Seiners out. The reefs are far from depleted! I am a free diver and have been since 1976 out of Tauranga. The reefs have abundant life, but even so, occasionally when there is no current, or at different times, no fish are present to be seen. But they are still about! There is amazing abundance of fish on the reefs. But being Pelagic, they move about rather than staying put. Please add safety to one of the concerns regarding this proposed closure. Thank you. **Gary Ellis**

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Thank you for the update.

A Court Case where the "EVIDENCE" offered was Hearsay and Spurious.

Where 6 members of one Hapū on Motiti override the other 24 residents and members of other Hapū on Motiti and are the only ones listened to by the Court.

Where a Verdict is reached and a Ruling made

Upon which a Public Body (BOPRC) then states they will, at some point, start surveying to ASCERTAIN what is the Actual Ecological Situation regarding the Reefs in the Lockout Area.

Because NOBODY actually knows!

Is a TRAVESTY.

WHOEVER HEARD of Court Case where the EVIDENCE was sought after the VERDICT?

This whole Matter is a Farce and a Stain upon Due Process.

How can the People have faith in the Law when it is administered and dispensed in this Manner?

Thanks,

Kind Regards,

**Thomas Rutter**

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Thanks for the work on this Todd.

As you rightly point out our marine environment needs protection and careful management. I am certainly not against marine protection or reserves but this proposal is outrageous. It will only have the effect to significantly deplete the small remaining areas that are accessible to the many small craft that can't make the outer Islands and reefs such as Major Island.

I understand the reverse argument would be that the protected reefs would feed out to other areas. While this is correct I don't believe it would sustain what would be taken due to the lack of options to spread out both fisherman and divers. Motiti that is already depleted would be severely thrashed by both.

In 2001 I undertook the project to sink the Taioma tug behind Motiti and make this a marine reserve. At great personal cost and with massive community support the project was completed and although it is a voluntarily reserve I believe it has worked extremely well, there are fish and crays all over it.

As a diver and fisher here in the Bay for 41 years I do not support this ruling making nearly all of the main reefs in the area around Motiti off limits. It would make more sense to protect say Astrolabe and the entire area around Motiti Island. Protection of both Astrolabe and Motiti would be enough to replenish stock to other reefs. While I don't hold any qualifications in marine studies I would be interested to see the studies and results by whoever made the ridiculous proposal to close the areas listed.

Again I would certainly support protecting some areas as I have witnessed first-hand the benefits of the Poor Nights and Goat Island reserves. I also witnessed the short time frame for Astrolabe reef to recover significant stock when this was closed due the Rena disaster.

Your continued push on this subject is much appreciated by all I talk to and if there is anything I can do to help let me know.

Thanks

**Steve Weidmann**

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Good evening Todd

I just attended a committee meeting of the Mount Sport Fishing Club and we read the letter where the minister has signed off on the closed reef areas around Motiti Island.

In a way the postponement of the public meeting is probably a good thing as it gives us time to prepare ourselves and other clubs to voice our views and objections publicly. I am surprised at the public complacency over this matter but we all know that being excluded from the hearings put the majority of us who will be affected at an extreme disadvantage.

To this day people I have spoken to about the proposed closure were unaware that it was happening and how it would impact on the general recreational sector.

Our club Mount Maunganui Sport Fishing Club will be pushing people to sign the petition and we will organize ourselves so speakers will be orderly.

I look forward to catching up with you.

Kind regards

**Steve Penn**

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The New Zealand Sport Fishing Council Submits that while it is technically correct that people could have submitted in opposition to the Motiti proposals and joined the Environment Court appeal, this misses the point as to whether adequate consultation in fact occurred to satisfy the requirements of natural justice.

The starting point is that when MRMT made their submission to the review of the Bay of Plenty Regional Coastal Plan, it was generally understood that there was not jurisdiction under the RMA to control fishing activity. The general fishing public were understandably not on the lookout for submissions to this process that could result in large scale fishing closures. Such measures were generally understood to be the domain of the Fisheries Act. The MRMT submission was accordingly rejected in decision report of the Bay of Plenty Regional Council on the basis that it was not within their powers. When the regulator themselves thinks that they don't have the power to close areas to fishing, how is the general public supposed to pre-empt this and become involved?

It was only through a protracted court battle through to the Court of Appeal that jurisdiction was confirmed under the RMA to impose the large area closures proposed by MRMT. This is simply not a process that any person can become involved in. It requires significant resourcing and adequate notice to participate in Court processes.

Beyond the Council hearing process and the Environment Court appeals there was no opportunity for people to have a say on the proposed closures. No attempts were made by the Regional Council or MRMT to advise the public of what was proposed. The general public have been taken unawares by this process and it is disingenuous to say that because people had a technical legal ability to be heard that consultation was adequate. Consider it this way, if notice had been given to the general public, would they have sat on their hands and done nothing? The backlash once the decision became public news is evidence enough that consultation was woefully inadequate.

Kind Regards

**Bob Gutsell, President, New Zealand Sport Fishing Council Inc.**

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Hi Todd

Thanks for organising this petition. This is a really big deal for recreational fishers, and sets a terrible precedent. The area covers most of my favourite fishing spots which I've fished for decades. So of course that bothers me. But there's no credible reason for establishing this ban and many good reasons not to.

There's no suggestion that the local stocks are being depleted any more or less than elsewhere, and if this was the justification then there are better ways to manage this than what's being suggested. Closing such a big area just puts more fishing pressure on the few remaining really productive fishing areas which will tip them over the edge and cause real environmental damage. It's much better to spread the take across bigger areas rather than concentrate it.

My biggest concern is around safety. There are thousands of people who fish these areas regularly. The reefs are a real asset, they are productive and in close proximity to launch sites. Families can fish these reefs within a short boat ride from safety. Without access to these reefs boats need to travel much further to engage in similar fishing. That means more people will travel further out where they can get in real danger quickly if the weather turns.

The court found economic benefits to the region from more diving. The diving is already good and awesome at Mayor Island but the economic significance pales compared to what recreational fishers already contribute. Think of every boat in the region plus the spend on tackle and bait.

Anyway, just want to repeat my thanks to you for taking this on.

Hope all is well for you and the family

**Mark Stuart**

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Hi Todd

In response to your submission i have read through the full transcripts of the court hearing and it leaves a lot to be desired as was only attended by a few parties and T A Sayers who was the proponent of the action he implies that it is supported by the Motiti Islanders which it is not.

As you will be aware Simon Bridges attended a meeting with interested parties including the island's people who were not supporting the action and were not aware the hearing was taking place and along with no public consultation should not have been allowed.

Reading the transcript it is obvious that it was held with distorted views by supposed experts based on unscientific evidence regarding fish stocks and the expression of KINA BARRENS as the measure of depletion this method has no proven track record and has never been used before anywhere in the world so the case was based on the assumption of these proponents that have close ties to Forest and Bird who I believe had a big part to play in the funding of this saga. When I read that the counsel for the regional council stated to the court that this hearing was being held in a cupboard without public consultation I believe this says it all.

**Regards Doug Stewart, Tauranga Sport Fishing Club**

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Hi Todd, I am Russ Hawkins (Ex Te Aroha) like you but 25yrs older.

I am extremely concerned regarding the proposed closures of the majority of off shore reefs for up to ten years at a time.

This will definitely impact many businesses involved in the fishing/charter and tourism industry.

I have personally fished and dived this area for the past 50 years and on a regular basis (50,000 nautical miles covered in my own boat in the past 20 years.)

There has been a lot of misinformation regarding the state of the fishery and other benthic areas.

All these areas being proposed are very important to the general public just to go and catch a feed, not "decimate" as in some reports.

You and I know that it is far more important to spread the fishing areas than perhaps have a small area that will have more fishers concentrated on the resource.

Instead of going on about what I have personally observed over the past 50 years, I would very much like to have a quick chat with you or Simon about this issue.

To my knowledge there has been no scientific evidence or research carried out to support the proposal.

**Additional comment from Russ:**

I am Russ Hawkins a resident of Mount Maunganui for the past 50 yrs.

I believe in total honesty and would be prepared to in a Court of Law state that the below evidence to be true.

I have carried out over 5000 dives in our local areas and reef systems over those 50 years.

In the past 20 years I have run my own Charter Fishing business and have covered as can be verified from the GPS on my vessel at over 53000 nautical miles. So I have been lucky enough to see what happens on top of and under the ocean.

Approximately three to four years ago a spokesperson from the Motiti Rohe Moana Trust stated at a public meeting of the Mount Maunganui Underwater Club on the proposals to close the reef areas in question that "This proposal would NOT affect recreational fishers and divers. It was solely to stop Bulk Fishing methods such as purse seining, bottom trawling, gill netting and commercial rock lobster fishing. The main thrust to protect the "benthos" the ocean floor from damage by some of these trawlers in particular and increase the abundance of fish. Of course the general feeling was what a great idea, How wrong we were!

Letter from the BOP Regional Council dated 23rd August 2019. Stating in brief

"When a final decision is released we will need to discuss the outcome with those parties involved in the Court proceedings, which includes the Crown/MPI and the Motiti Rohe Moana Trust as well as other stakeholders not involved in that process ,which includes recreational fishing interests and Tangata Whenua. I would be more than happy to talk to you and other sport fishing groups at that time, when we have greater certainty and before any rules are in place that may prevent fishing activity in certain areas."

(Copy of full e mail available if required)

At no stage was there any meeting at all with any user groups or stake holders.

The two remaining Commercial Cray Fish quota holders were not invited or informed at all on what the proposal was and they have fished these areas for the past thirty years Incidentally they have already had their Quotas cut by two thirds. One Skipper stated that if the areas were closed he would lose 70 % of his usual fishing grounds. This again would put more pressure on the remainder.

4. Press release dated Friday May 1st. BOP Times.

The regional Council admit " There had not been specific public consultation" (BOP Times Copy available to confirm)

After the Environment Courts ruling the areas to be closed were then altered from as far as I know from 1 kilometre around each reef system to much larger areas by the attendees at

the Court by mediation. In a lot of these cases some of the areas are purely miles of sand and generally do not hold fish of any significance at all.

There is NO scientific evidence that these areas have been depleted and in fact the recreational pressure is very small as mother nature prevents any vessel from going there for up to six months of the year.

I personally talked to Captain Roger King who was one of the experts during the “Rena” salvage operation in 2011, over a period of two years and he stated that they were lucky to be able to work for six months of the year owing to sea conditions. On many occasions particularly over the past twenty years whilst do fishing charters I am lucky to see one or two other vessels during the whole trip usually covering close to 30 nautical miles each day and sometimes none at all.

7. The proposal if implemented would have absolutely no effect on the marine life except for cray fish and in fact a quote from a member from the Waikato University Marine Section stated “it is not a fisheries tool”. This whole process has been very poorly handled and I even wonder if there was a case would it stand up in a court of law?

8. If I could see a benefit to Marine Eco system and the fishery in general based on proper scientific evidence I would totally support it.

9. I can assure you that there are a lot of very angry people including Fishing related businesses and many other stakeholders whether recreational or commercial and some Motiti Islanders that do not support this new law.

10. Finally I believe we have been misled, perhaps not intentionally but we the stakeholders and other user groups have never been given a fair chance to even meet or consult with the proponents. It appears democracy has not happened at all.

**Russ Hawkins**

[REDACTED]

## Appendix 3

Map of the three areas making up the Motiti Protection Areas

