

**Tasman Resource Management Plan
Efficiency and Effectiveness Evaluation**

**Chapter 20:
Effects of Craft Using the Surface of
Coastal Waters**

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Executive Summary

This report reviews the effectiveness and efficiency of the provisions in Chapter 20 'Effects of Craft Using the Surface of Coastal Waters' in the Tasman Resource Management Plan (TRMP).

The chapter is concerned with safe navigation, amenity values and natural values that are not compromised by the passage of craft.

Protection of amenity and natural values are an important requirement under the Resource Management Act (RMA), including matters of national importance relating to the preservation of the natural character of the coastal environment (s6(a)), and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c)). Section 7(c) of the RMA also requires council to have particular regard to the maintenance and enhancement of amenity values.

In contrast, navigation safety is addressed under the Maritime Transport Act 1994 and Tasman District Council's Navigation Safety Bylaw 2015. They are the predominant tools used by council for addressing navigation safety, with the Harbourmaster playing a central role. Effort has been placed on prevention of accidents by educating boat users, assisting with boating events, and enforcing legislative and bylaw provisions as required. Because navigation safety is not an objective that reaches an end point, but requires ongoing effort, this aspect of the chapter's objective is considered to be 'on-track to achieve'.

The work of the Harbourmaster also helps maintain amenity and natural values. For instance, enforcing speed regulations and keeping different water users separated to avoid conflict can have a positive effect on people's enjoyment of coastal waters, and reduce effects on the environment.

The concession process administered by the Department of Conservation under the Abel Tasman Foreshore Scenic Reserve Management Plan has also had a positive influence in managing effects of craft on amenity and natural values. The reserve is a small, but significant part of the district's natural environment and one that has the greatest pressure for craft activities.

Permitted activity rules in the TRMP enable the use of craft for navigation purposes, and the landing and take-off by aircraft, provided this is outside of the areas identified in Schedule 25D 'Areas with Nationally or Internationally Important Natural Ecosystem Values'. However, the extent to which the permitted activity conditions are complied with is unknown due to a lack of monitoring information. Additionally, the permitted activity conditions do not apply to the natural or amenity values of areas not listed on the schedule. Overall, the extent of rule-based control over the effects of craft on amenity and natural values is limited. There is also some overlap between Chapter 20 provisions addressing amenity and natural values with provisions in Chapters 21 and 24.

For these reasons the TRMP objective to maintain amenity and natural values is considered to be partially achieved.

Recommendations

The following recommendations provide a summarised assessment of the effectiveness and efficiency of the specific Chapter 20 provisions. They consider the need for change in the objective and policy framework and intend to inform the review of the TRMP. Refer to the body of this report for full analysis and detailed information from which these recommendations are drawn.

The recommendations provide an initial step in the plan review process. Subsequent information, including from iwi, political and public input, new information and legislative change will affect final proposals.

Objective	Recommendations
<p>General</p>	<p>Consider moving provisions from Chapter 20 to other coastal chapters:</p> <p>Policy 20.1.3.2 overlaps with Chapter 21, which addresses effects of structures and occupation on navigation safety.</p> <p>Policies 20.1.3.3 also overlaps with Chapter 21 re effects of structures, occupation and disturbance on natural character, habitat and amenity. Similarly, Chapter 24 deals with noise in the CMA.</p> <p>Consider effects of commercial activities:</p> <ul style="list-style-type: none"> • Identify whether commercial craft are causing adverse effects on amenity and natural values; if new provisions are necessary they should be consistent with (and not duplicate) the concession process for the Abel Tasman Foreshore Scenic Reserve and licensing regime under the Navigation Safety Bylaw. <p>Consider effects of occupation of craft:</p> <ul style="list-style-type: none"> • Identify whether an occupation rule is necessary for vessels anchoring in one place (outside of permitted mooring areas) for prolonged periods of time, thereby excluding others from using that space. • Review to give effect to the NZCPS 2010 requirements, especially for preservation of natural character.
<p>Objective 20.1.2</p> <p>Safe navigation, amenity values and natural values that are not compromised by the passage of craft, or by other activities on the surface of the water.</p>	<p>Review objective:</p> <ul style="list-style-type: none"> • Three issues are addressed in the objective – navigation safety and effects on amenity and natural values; consider breaking these down into separate objectives and identify whether they are more appropriately addressed in different chapters (as above). <p>Consider the practicalities of controlling effects of craft on natural and amenity values, including identification of the types of activities that might need to be managed and the best methods for doing so.</p>
<p>Policy 20.1.3.1</p> <p>Council will ensure that movements of craft or other activities on the surface of</p>	<p>Retain and consider an additional policy:</p> <ul style="list-style-type: none"> • A policy focused on aircraft landing on the sea would be appropriate given the TRMP regulates this activity; also

Objective	Recommendations
coastal waters do not create or aggravate risks to safe navigation, particularly in areas of intensive seasonal use of craft and in relation to the scale, intensity, frequency, duration and mix of activities.	consider the safety implications of aircraft landing away from sheltered water.
<p>Policy 20.1.3.2</p> <p>To avoid, remedy or mitigate adverse effects on safe navigation from structures, occupation or other uses of the coastal marine area, especially in established fishing areas, ports or their approaches, or in other intensively used coastal marine space.</p>	<p>Review to avoid duplication with Chapter 21:</p> <ul style="list-style-type: none"> • Effects of structures and occupation on navigation safety is addressed in Chapter 21 (e.g. Policies 21.2.3.1 & 21.2.3.3). • While there is some connection between the policy and rules that control structures, the rules do not directly address ‘effects of structures on navigation safety’.
<p>Policy 20.1.3.3</p> <p>To avoid, remedy or mitigate adverse effects on amenity values and natural values, including:</p> <p>(a) disturbance of wildlife or marine mammals;</p> <p>(b) disruption to natural quiet;</p> <p>(c) degrading the quality of experience of particular activities;</p> <p>from the scale, intensity, frequency, duration or mix of activities using craft.</p>	<p>Review, as policy’s intent is unclear:</p> <ul style="list-style-type: none"> • It is not clear what activities are being captured (in relation to craft activity) and whether or how they should be regulated. • TRMP discretionary activity rules for new structures address the range of effects in the policy, but permitted and controlled activity rules do not. A stronger objective-policy-rule framework is needed. • The TRMP has no noise standards in the CMA, so implementing point (b) might be difficult.

1. Purpose Statement

The purpose of this evaluation of the TRMP is to determine the effectiveness and efficiency of the provisions contained within it. It helps us understand if the TRMP provisions are doing what they're meant to do.

This evaluation process is a fundamental step in the policy review cycle and a requirement of the Resource Management Act. It informs good quality plan-making and helps maintain confidence and integrity in the process.

The results of this evaluation will inform the review of the Tasman Resource Management Plan.

What do the terms mean?

Effectiveness: *“assess the contribution ... provisions make towards achieving the objectives and how successful they are likely to be in solving the problem they were designed to address”*

Efficiency: *“measures whether the provisions will be likely to achieve the objectives at the lowest total cost to all members of society, or achieves the highest net benefit to all of the society”*

(Ministry for the Environment s.32 Guidance)

Key Evaluation Questions

What we need to keep in mind

- ✓ Are we focused on the right issues?
- ✓ Have we done what we said we'd do?
- ✓ Have we achieved what we said we'd achieve?
- ✓ How do we know our actions led to the outcome observed?
- ✓ Have we achieved that outcome at reasonable cost (could we have achieved it more cheaply)? (Enfocus, 2008)

2. Scope

2.1 Regional Plan Provisions Reviewed

The Tasman Regional Coastal Plan is made up of the following parts/chapters of the TRMP:

- Part III ‘Coastal Marine Area’¹ (Chapters 20-26);
- Part V ‘Water’ (parts of Chapters 30 and 31) relating to taking, diverting, using or damming coastal water); and
- Part VI ‘Discharges’ (Chapter 35 and part of Chapter 36) relating to coastal marine discharges).

Chapter 20 is the first chapter in Part III of the TRMP and addresses the effects of craft using the surface of coastal waters. It identifies three main issues:

1. Navigation and safety risks (e.g. from commercial and recreational craft operating in a confined area, placement of structures);
2. Disturbance to wildlife or marine mammals, or damage to habitat (e.g. through proximity, speed, noise or wash from craft);
3. Disruption of amenity values (e.g. through craft noise, competing use of space).

Abel Tasman National Park and Kaiteriteri Bay are noted as areas experiencing a significant amount of coastal craft use, particularly in the high (summer) season.

One objective and three policies have been adopted in addressing the chapter issues, as shown in Table 1 below.

Table 1: Scope of the Evaluation

Chapter 20	Objective	Policies
20.1 Craft Activity	20.1.2	20.1.3.1 – 20.1.3.3

The objective seeks to achieve “*Safe navigation, amenity values and natural values that are not compromised by the passage of craft, or by other activities on the surface of water*”. The three policies deal consecutively with risks to navigation from craft movements, risks to navigation from structures and occupation of the CMA, and effects on amenity and natural values.

Regulatory methods adopted in the TRMP to implement the policies include:

- TRMP rules (set out in Chapter 25) that manage (a) construction and operation of structures in the CMA; (b) amenity effects of craft use; and (c) disturbance or damage to plant or animal habitats caused by craft use.

1 The coastal marine area extends seaward of the line of mean high water springs to 12 nautical miles offshore and includes all foreshore, seabed and sea in that area and the air space above it

- A Navigation Safety Bylaw² that regulates (a) craft speed; (b) the reservation of space for particular uses (e.g. access lanes, water skiing, swimming); (c) safe handling and condition of commercial craft; and (d) a wide range of other operating and navigational requirements.

In support of the chapter's objective, a number of non-regulatory methods are set out:

- Investigation and monitoring of craft use at popular locations, the need for further reserved areas to cater for different water users, and to record all new coastal structures.
- Education and advocacy on safe boating practices and water safety.³
- A programme of maintenance of Council ramps (and other water access points), and navigational aids.

The environmental outcomes sought from implementation of the chapter rules and methods are:

- Maintenance of an acceptable level of navigational safety between craft, people and structures in the coastal marine area.
- Maintenance of amenity and natural values in the coastal marine area.

2.2 Timeframe of Evaluation

The evaluation was conducted from July 2019 to March 2020.

2.3 Summary of Methodology

Broadly, the methodology of this evaluation follows the Plan Outcomes Evaluation process. Plan Outcome Evaluation involves:

1. An examination of the outcomes being sought – what are the objectives trying to achieve?
2. Tracking how the plan has been designed to affect the outcomes – do the intentions in the objectives get carried through to the rules and methods? Are the provisions efficient?
3. Assessing if the provisions have been implemented – what evidence is there that the provisions are being applied to relevant activities?
4. Assessing relevant environmental trends and 'on the ground' data to conclude if the Plan has been successful in achieving its intentions. This includes consideration of the external factor influences such as legislative changes, national policy statements, case law, significant economic changes, demographics etc.

Throughout the evaluation, there is an emphasis on attributing the activities enabled or controlled by the TRMP to observed outcomes. However, attributing outcomes to the TRMP must always be viewed in the wider context of changes. These are noted where known, but it is beyond the scope of

- 2 TDC (Sept 2015). *Consolidated Bylaw, Chapter 5: Navigation Safety Bylaw*. <https://www.tasman.govt.nz/my-council/key-documents/more/bylaws-and-regulations/consolidated-bylaw/#e573>
- 3 TDC (July 2013). *Provisions for Moorings: Tasman Resource Management Plan Summary Guide No. 11*. <https://www.tasman.govt.nz/my-council/key-documents/tasman-resource-management-plan/guides/>; TDC (no date). *Boating and water sports in Tasman District 2018 / 2019*. <https://www.tasman.govt.nz/my-region/recreation/boating-and-fishing/>

this evaluation to capture all of the changes and influences that affect outcomes in our communities and environment.

Limitations with the Plan Outcome Evaluation approach also arise where environmental outcome data is poor, or where there are multiple factors driving outcomes. Time, resourcing and quality of data also affects the comprehensiveness of the evaluation.

To address some of these limitations, the evaluation process has included a ‘rapid assessment’ technique. The technique draws on the combined knowledge and expertise of local TDC staff, residents, community leaders, and topic experts to create an understanding of plan implementation, efficiency and outcomes. The rapid assessment outputs are supplemented with:

- Environmental data or expert reports where available
- Council data (e.g. water quality information, flow monitoring data, consenting and compliance database information, models, monitoring reports required by consent condition)
- Mapping and imagery (e.g. GIS, aerial imagery, LiDAR)
- Information or reports prepared during plan change processes (e.g. s.32 Reports, Issues and Options papers, technical reports, submissions, community meetings)

The data sources that have been used for evaluating Chapter 20 are shown in Table 2 below:

Table 2: Information Sources Used in Evaluation

Data source/s	Details and Notes
Rapid Assessment	<ul style="list-style-type: none"> • Meeting with policy staff held 26th September 2019 • Workshop with council staff held on 16th December 2019 • Meeting with consent staff held on 28th January 2020
Councillor input	<ul style="list-style-type: none"> • Workshop held on 20th May 2020
External reports	<ul style="list-style-type: none"> • Legal report for s35 review, Tasman Law, June 2019 • Iwi management plans • Abel Tasman Foreshore Scenic Reserve Management Plan 2012
Council reports	<ul style="list-style-type: none"> • Tasman Resource Management Plan Policy Mapping (Leusink-Sladen, 2019) • Navigation Safety Bylaw 2015 • Stage 2 of TRPS Efficiency and Effectiveness Review: Statutory Obligations (Mason, 2019)

2.4 Summary of Consultation

The following consultation has been undertaken during the preparation of this evaluation.

2.4.1 Tasman District Councillors

A workshop with elected Councillors was held on 20th May 2020 discussing key issues and recommendations identified for this chapter.

No additional matters were raised.

2.4.2 Tasman Environmental Policy Iwi Working Group

The iwi of Te Tau Ihu, as tāngata whenua, have a unique relationship with Tasman District Council. There are a number of legislative requirements which oblige us to engage more collaboratively with iwi and Māori - including provisions in the Resource Management Act, Local Government Act and Treaty of Waitangi settlement legislation. To support this a separate section 35 report with a focus on iwi/Māori provisions has been prepared. Please refer to that report for a record of consultation undertaken.

3. Effectiveness and Efficiency Evaluation

3.1 Context

The primary legislation affecting Chapter 20 is the Resource Management Act (RMA). The purpose of this Act is to promote the sustainable management of natural and physical resources (s5, RMA). Several matters of national importance under the RMA (set out in s6), which all councils must 'recognise and provide for', relate directly to the effects of craft:

- *s6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;*
- *s6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- *s6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;*
- *s6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;*
- *s6(g) the protection of protected customary rights.*

In support, the council must 'have particular regard to' several relevant matters in s7 of the RMA:

- *s7(c) the maintenance and enhancement of amenity values;*
- *s7(d) intrinsic values of ecosystems;*
- *s7(f) maintenance and enhancement of the quality of the environment.*

The RMA defines the Coastal Marine Area as meaning:

The foreshore, seabed, and coastal water, and the air space above the water—

(a) of which the seaward boundary is the outer limits of the territorial sea:

(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—

(i) 1 kilometre upstream from the mouth of the river; or

(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

3.1.1 Legislation Changes

The following amendments to the RMA have some bearing on Chapter 20 provisions. They will need to be taken into account when the TRMP is updated.

RMA Amendment: Protected Customary Marine Title Areas

A new matter of national importance, s6(g) *“The protection of protected customary rights”*, was added to the RMA following the enactment of the Marine and Coastal Area (Takutai Moana) Act (MACA) in 2011.⁴ RMA s61(2A) and s66(2A) were also amended to require regional councils to be ‘recognise and provide for’ relevant matters relating to customary marine title areas in regional policy statements and plans.

RMA S85A was amended so that plans must not permit activities that would have a ‘more than minor’ adverse effect on a recognised customary activity. Additionally, RMA S104(3)(c) was amended to restrict councils from granting a resource consent that would impact on wāhi tapu or cause ‘more than minor’ adverse effects on the exercise of a protected customary right (without written approval from the customary rights group).

Nine applications in the Tasman District have been made under MACA to have customary marine rights formally recognised. Decisions on these applications are pending. The effects of craft activity and related structures (e.g. moorings, jetties, wharves) on approved customary marine title areas may need to be included as a consideration under the TRMP provisions.

Ownership of Coastal Structures: MACA 2011

The MACA Act requires TDC to maintain an accurate record of the ownership of all coastal structures. While this is easy for coastal structures with resource consent, many other structures are historic and predate the current legislation; some are permitted with no recorded owner, others have simply been abandoned once they were no longer required. Council is therefore required to develop a process for determining the ownership of permitted, abandoned and unauthorised structures to meet the requirements of the MACA Act.

RMA Amendment: Coastal Occupation Charges

The Resource Management Amendment Act 1997 added a new RMA s64A, which sets out requirements for regional councils when considering whether to impose coastal occupation charges (e.g. for structures used by craft such as moorings). A statement must be included in the Regional Coastal Plan outlining whether or not a coastal occupation charging regime is being imposed and to date the TRMP is silent on the matter.

The Act directs that *“Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area”* (s64A(5)). Coastal occupation charges could therefore be included as a method in the TRMP to enhance outcomes relating to the effects on craft activities the environment.

The TRMP needs to be updated to include details about the councils’ coastal occupation charge regime, or to state that no regime will be imposed.

4 MACA also repealed the earlier Resource Management (Foreshore and Seabed) Amendment Act 2004.

3.1.2 National Directives

NZ Coastal Policy Statement 2010 (NZCPS)

National policy statements are instruments issued under the RMA. The NZCPS is the only mandatory national policy statement and is prepared by the Minister of Conservation. It sets out general objectives and policies for the sustainable management of New Zealand’s coastal environment, which the TRMP is required to give effect to (i.e. implement). The TRMP was made operative prior to the current NZCPS and for that reason only partially gives effect to the objectives and policies of the NZCPS.

With regard to effects of craft, the NZCPS is concerned with the preservation of natural character, protection of seascapes, the provision of public open space in the coastal environment, and management of vehicle access for boat launching. The NZCPS does not deal with navigation safety, which is instead addressed under the Maritime Transport Act 1994.

Relevant objectives and policies in the NZCPS 2010 that must be ‘given effect to’ include:⁵

Table 3: NZCPS Provisions Relevant to Craft Activities

NZCPS Objectives	
2.	To preserve the natural character of the coastal environment through recognising the characteristics and qualities that contribute to natural character.
3.	To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment.
4.	To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment.
6.	To enable people and communities to provide for their social, economic, and cultural wellbeing, recognising that some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the wellbeing of people and communities.
NZCPS Policies	
6.	<i>Activities in the Coastal Environment</i> , which recognises (amongst other matters): the contribution that use and development of the CMA can have to social, economic and cultural wellbeing; that some activities have a functional need to be located in the CMA; and that public open space and recreational qualities and values of the CMA need to be maintained and enhanced.
12.	<i>Harmful Aquatic Organisms</i> , which requires control of activities that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or spread.
13.	<i>Preservation of Natural Character</i> , which requires avoiding adverse effects of activities on the natural character of the coast.
15.	<i>Natural Features and Natural Landscapes</i> , which requires avoiding adverse effects of activities on natural features and landscapes (including seascapes) of the coastal environment.
18.	<i>Public Open Space</i> , which recognises the need for public open space, including for recreation, that is compatible with the natural values of the coastal environment.

5 NZCPS provisions are paraphrased here; for the full text see <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement-2010.pdf>

20.	<i>Vehicle Access</i> , which seeks to: control vehicle use to ensure safety of other users and to protect the natural coastal environment; identify and provide access to locations where vehicular access is required for boat launching.
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The TRMP provisions related to craft activities and related structures may need to be amended to take account of identified natural character, features and landscapes across the Tasman District coastline. This may require identifying locations where craft activity is to be restricted and/or structures such as mooring, jetties and wharves to be avoided. Existing and future locations for vehicle access to the CMA for launching of craft may also need to be re-assessed.

3.1.3 Relevant Plan Changes

The TRMP has had a constant programme of rolling reviews (variations and plan changes) since it was first notified. The changes have been introduced to address unintended outcomes, new issues, new priorities and legislative requirements.

As outlined in Table 4 below, there has been one private plan change that considered the effects of craft using the surface of coastal waters; in this case, noise associated with marine farm vessels. There is also a draft plan change relating to the mooring of craft, which is yet to be notified.

Table 4: Plan Changes Relating to Chapter 20

Plan Change or Variation	Description of change and key matters
<p>Private Plan Change 61: Wainui Bay Spat Catching</p> <p>Notified 12th March 2016; operative 14th December 2019</p>	<p>Wainui Bay Spat Catching group requested a change to the TRMP to create a specific aquaculture management area and related provisions in Wainui Bay. This private plan change sought to provide the marine farming industry with certainty that spat catching farms in Wainui Bay can continue beyond the current term of consent (2024). Amended policy and text recognised the national and regional importance of the area for spat catching. No new space or activities were proposed.</p> <p>Under the plan change, applications to continue aquaculture activities after 2024 were to be considered under controlled and restricted discretionary activity rules. Noise effects were proposed to be addressed through application of noise standards, prohibition on noise-producing activities on vessels, and limiting the hours of operation.</p> <p>However, on appeal, the Environment Court determined that aquaculture activities within Wainui Bay should be a fully discretionary activity where TDC could consider any and all relevant effects. The list of assessment matters included in PC61, including the noise standards, were removed as a consequence (discussed further below).</p>
<p>Proposed Moorings Plan Change</p> <p>CURRENT STATUS: Approved by Council in Feb 2020 for public consultation.</p>	<p>A proposed plan change which aims to:</p> <ul style="list-style-type: none"> ● Establish appropriately located Mooring Areas in the District. ● Provide for moorings in Mooring Areas as permitted activities, subject to conditions. ● Continue provision for moorings in locations outside of Mooring Areas as a discretionary activity. ● Require removal of unauthorised, abandoned or redundant structures in certain circumstances. ● Include provisions on multiple and public structures, efficient mooring systems, and flexibility in mooring type.

3.1.4 Relevant Case law

Relevant case law relates to the establishment of marine farming areas (known as Aquaculture Management Areas or AMAs) in Golden and Tasman Bays. Effects of noise from marine farm vessels on amenity and natural values was one of the concerns considered during the hearings, as was the role of the TRMP in regulating navigational safety.

Yachting NZ v Tasman District Council W78/2003

Yachting New Zealand appealed to the Environment Court against the inclusion of Chapter 20 in the Proposed TRMP. They argued that the provisions contained in the chapter either replicated or replaced controls identified in legislation other than the RMA, or were addressed in other TRMP chapters (specifically Chapters 21 and 24) and were therefore redundant in Chapter 20.

Specifically, Yachting NZ believed that the provisions addressing navigational safety should be deleted from the TRMP because the council's jurisdiction to control the safe use of craft is under separate legislation to the RMA and managed in the District via the (then) Harbour Bylaw⁶. With regard to the provisions addressing effects of craft on wildlife and amenity values, Yachting NZ believed these were adequately addressed in Chapter 21 provisions, including through rules managing effects of the location of structures relating to craft (such as wharves, jetties and boatsheds).

In response, TDC maintained that the RMA expressly allows the council to have regard to means in any other Acts to assist it in achieving the purpose of the RMA. As a consequence it was appropriate to consider the Harbour Bylaw as an alternative to plan rules given that it directly addresses the issue of navigation safety. The Council also argued that controlling activities on the surface of coastal waters is an explicit requirement of regional councils under the RMA and, therefore, the safe use of craft is a legitimate matter to address in the TRMP. The council concluded that:

...addressing the effects in the proposed plan by implementing policies and objectives relevant to the issues, but using alternative legislation to regulate the effects, clearly demonstrates that it has addressed the significant resource management issues of the region in accordance with its functions and obligations under the Act (p.8).

The Court therefore agreed with TDC and found that the provisions of Chapter 20 appropriately served the purpose of the Act and complied with its requirements. Because Abel Tasman coastline has one of the most significant concentrations of small craft use in the country, the Court concluded that *"it would be surprising if the coastal section of the PTRMP contained no discussion about the effects of that small craft use, no statement of the desired objective of navigation safety, and no policies directed at achieving that outcome (p.13).* Furthermore, *"a regional coastal plan which does not address issues as to navigational safety is deficient"* (p.14).

The Court also found that the methods used to achieve the objective of Chapter 20, including reliance on the Harbour Bylaw created under different legislation, were an appropriate and efficient way to achieve the council's function in relation to the surface of coastal waters. It noted that the RMA does not require the TRMP to rely solely on rules to implement its policies and objectives – they are an optional method of implementation.

6 The Council's Harbour Bylaw has since been replaced with the Navigation Safety Bylaw.

Golden Bay Marine Farmers & Others v Tasman District Council

With regard to aquaculture, four substantial reports were prepared by the Environment Court and signed off by the Minister of Conservation in *Golden Bay Marine Farmers v Tasman District Council*.⁷ These decisions established a new aquaculture planning framework in the region, providing for spat catching and mussel farming within specified AMAs in Golden and Tasman Bays and prohibiting aquaculture elsewhere (with the exception of Wainui Bay). It was noted that the AMAs were identified well offshore to manage effects of the aquaculture activities, particularly those related to landscape, natural character and amenity (including noise).

Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council

The Environment Court heard an appeal to Plan Change 61 by The Friends of Nelson Haven and Tasman Bay. The appeal sought the deletion of Wainui Bay as an AMA and retention of discretionary activity status for mussel farming at the Wainui Bay location. The main concern was that PC61 would not give effect to Policy 7(1) of the NZCPS with respect to effects on outstanding natural features and landscapes and areas of outstanding natural character, and to provide for their protection and preservation in the TRMP.

The Court noted a policy gap in the overall strategic approach to aquaculture in the TRMP that did not satisfy directives of Policy 7 NZCPS. In particular, the Court was faced with an area within the CMA of Golden Bay that had not been zoned either AMA or Aquaculture Exclusion Area (AEA), but, as the site of a long established and strategically important aquaculture activity of mussel spat catching and spat holding, had no strategic policy base against which an application for the activity to continue could be evaluated.

The court directed that a new Policy (22.1.3.2) be included to alter the planning framework for consideration of a mussel (spat) farming consent application in Wainui Bay. The changes made it clear that Wainui Bay sits outside of the AMA framework. Rule 25.1.4.4 was inserted to provide for mussel farming at the existing Wainui Bay sites as a discretionary activity under the TRMP.

Because the activity status was fully discretionary, the Court determined that there was no need for a list of assessment matters (including noise and other amenity effects) to be included in the TRMP. This is because all relevant matters needed to be considered by TDC and weighed appropriately, and the inclusion of a list risked “*applicants and decision-makers adopting a focus on the matters listed instead of fully considering all relevant matters*” (p.20, Final Decision).

The Court noted that TDC needed to provide more guidance in the TRMP on matters to be considered when granting marine farming consents, including effects on amenity values:⁸

In addressing PC61 as we have, we do not need to resolve the issues raised in the extensive evidence presented by expert witnesses and local people on the effects of mussel spat catching and spat holding activity at Wainui Bay, including effects on natural character, landscape and visual amenity and effects of noise and light on the amenity values of Wainui Bay. These matters remain for future consideration, whether in the form of a Schedule 1 process designed to give full effect to the NZCPS or through an

7 *Golden Bay Marine Farmers & Ors v Tasman District Council* W42/2001 (First Interim Report); W19/2003 (Second Interim Report); W10/2004 (Third Interim Report); and W89/2004 (Final Report); collectively the Golden Bay Marine Farmers reports (Kenderdine J presiding).

8 *Friends of Nelson Haven and Tasman Bay Inc v Tasman District Council* [2018] NZEnvC 130 (Final Decision) and 047 (Interim Decision) (Kirkpatrick J presiding).

application to consider a spat catching or spat holding activity at the Wainui Bay aquaculture sites on a discretionary basis (p.37).

In other words, the Judge has directed the issue of noise and other amenity effects arising from aquaculture activities at Wainui Bay back to TDC to address through a plan change and/or the resource consent process.

3.1.5 Relevant Iwi Management Plan Provisions

Both the RMA (s66(2A)) and NZCPS 2010 (Policy 2) require TDC to “take into account” any relevant iwi planning document recognised by the appropriate iwi authority (or hapū under the NZCPS) and lodged with the council, to the extent that its content has a bearing on resource management issues in the district.

Three Iwi Management Plans (IMPs) have been lodged with TDC by Iwi having interests in the Tasman District:⁹

1. Ngati Koata No Rangitoto Ki Te Tonga Trust Iwi Management Plan (2002)
2. Te Rūnanga O Ngāti Kuia, Pakohe Management Plan (2015)
3. Ngāti Tama ki Te Waipounamu Trust Environmental Management Plan (2018)

Two other IMPs prepared by Iwi with an interest in Tasman have been lodged with Nelson City Council:¹⁰

4. Nga Taonga Tuku Iho Ki Whakatu Management Plan (2004)
5. Te Ātiawa Ki Te Tau Ihu Iwi Environmental Management Plan (2014)

Relevant provisions in the IMPs will need to be taken into account when the TRMP is updated following the present review. Examples of IMP provisions relating to effects of craft are shown in Appendix 1 (18).

3.1.6 Other Factors

Navigation Safety Bylaw 2015¹¹

TDC’s Navigation Safety Bylaw is the predominant regulatory means by which the council manages the effects of craft activity on navigation safety. The bylaw must be complied with in addition to the Maritime Rules made under the Maritime Transport Act 1994, and it imposes additional obligations on craft users in order to ensure maritime safety in the Tasman District. The Harbourmaster enforces both the Maritime Rules and Bylaw provisions.

Under the bylaw, commercial vessel operators (including rental vessels) are required to obtain a license from Council in order to ensure that their operation is not likely to:

diminish the level of safety for other activities in the vicinity; or
cause congestion, or jostling for position, or any other unsafe practice, at points of embarkation/disembarkation or at any place en route.

9 <https://www.tasman.govt.nz/my-region/iwi/iwi-management-plans/>

10 <http://www.nelson.govt.nz/council/plans-strategies-policies/strategies-plans-policies-reports-and-studies-a-z/iwi-management-plans>

11 <https://tasman.govt.nz/my-council/key-documents/more/bylaws-and-regulations/consolidated-bylaw/>

The licensing regime also allows council to recover some of the cost from those that benefit from its maritime safety activities, i.e. maintenance of aids to navigation, policing of Maritime Rules, bylaw enforcement, education of vessel operators etc.

Abel Tasman Foreshore Scenic Reserve Management Plan 2012¹²

The Abel Tasman Foreshore Scenic Reserve was gazetted as scenic reserve on 25 January 2007. A large portion of the reserve adjoins land protected within Abel Tasman National Park, including the foreshore of all the islands in the park. The reserve comprises 774 ha of foreshore, which includes the estuaries and a narrow strip of land lying between the Mean High Water Mark and Mean Low Water Springs.

The primary purpose of designating the foreshore as scenic reserve was to maintain the quality of the visitor experience while protecting the natural features that make the Abel Tasman foreshore so special, including the scenic character of the coastline. The management plan is concerned with:

- continuing to allow the public and adjoining landholders to use and enjoy the area as they have for many years, with few constraints;
- maintaining and enhancing the experiences of visitors and adjoining landholders; and
- reducing and mitigating the effects of visitor use, particularly through management of commercial activities.

Permission is required from the Department of Conservation for certain activities in the reserve, by way of a 'concession', including for transport services and commercial guiding (motorised and non-motorised craft). The reserve management plan includes maximum numbers of clients, guides and watercraft allowed per trip, as well as the maximum number of visitors and watercraft per day, month and in total during the peak period of November – April as well as the off-peak period (May – October).

3.2 Internal Consistency of Provisions

A high level assessment was undertaken to determine internal consistency of overall TRMP provisions. This involved considering the strength of relationship between TRMP objectives, policies and related rules, from which general conclusions are drawn.¹³ This section provides a summary of that assessment.

Overall, the internal consistency of Chapter 20 provisions has been assessed as **weak** as shown in Table 5 below.

Policy 20.1.3.1 'navigation safety' is **weakly** implemented through the TRMP rules. This is because the rules relating to craft do not directly address navigation safety (i.e. managing the safe movement of craft on the surface of coastal water), which is instead implemented through the requirements of the council's Navigation Safety Bylaw.

Policy 20.1.3.2 'structures and navigation safety' is **weakly - moderately** implemented through the TRMP rules (25.1.2). The policy focus is on avoiding adverse effects on navigation from structures.

12 <https://www.doc.govt.nz/about-us/our-policies-and-plans/statutory-plans/statutory-plan-publications/conservation-management-plans/abel-tasman-foreshore-scenic-reserve-management-plan/>

13 Information in this section has come from a TDC commissioned report: Leusink Sladen, S. (Dec 2019). *Tasman Resource Management Plan Policy Mapping - Review of the Internal Consistency and Integrity of Plan Objectives, Policies and Rules Parts III – VI*.

While there is some connection between policy and rules that control structures, the rules do not directly address ‘effects of structures on navigation safety’.

Policy 20.1.3.3 ‘amenity and natural values’ is *moderately-weakly* implemented through the TRMP rules. Permitted and controlled activity rules do not address any of the effects listed in the policy (i.e. disturbance, disruption, degrading of amenity and natural values), although by implication the tight regulation of new structures may be said to. All new structures require a consent and discretionary activity rules do address a range of effects, including those listed in policies. The rule set is generally permissive of craft in the CMA, but regulates aircraft.

Table 5: Chapter 20 Summary of Internal Consistency

Objective	Internal Consistency	Comment
Objective 20.1.2 Safe navigation, amenity values and natural values that are not compromised by the passage of craft, or by other activities on the surface of water	Weak	The objective has three foci, two which concern navigation safety. Navigation safety is not strongly represented in Plan rules, covered by navigation safety bylaws. Regarding natural values, policy 20.1.3.3 is high level, stating that it’s Council’s policy to address all effects associated with craft on amenity and natural values. The extent of rule-based control over this is limited to structures that craft use. The rules are lightweight in the regulation of the effects of craft on character, amenity and natural values generally.

To improve the internal consistency of the current provisions it was recommended that:

- the navigation and safety bylaws be reviewed to ascertain if policies are/can be met,
- the concept of ‘natural character and amenity’ in rules be reviewed / reconsidered, in relation to the effects of craft on the surface of waters.

3.3 Evidence of Implementation

3.3.1 TRMP Rules relating to Passage of Craft

Table 6 shows the rules in Chapter 25 of the TRMP that relate to the passage of craft on the surface of coastal waters. They consist of two permitted activity rules, one for the use of craft for navigation purposes and the other for the landing and take-off by aircraft. If the permitted activity conditions cannot be met, a resource consent is required under the discretionary activity rules.

Table 6: Summary of Rule-Set for Chapter 20 Matters¹⁴

Chapter 25 CMA Rules	Description
Navigation	
25.3.2.1 – Permitted Activities	The use of any craft for navigation purposes is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:

¹⁴ Note: the Chapter 25 rules controlling structures in relation to craft is addressed in the Chapter 21 Evaluation Report.

	<p>(a) The activity is not restricted by any other applicable rule of Chapter 25 of this Plan.</p> <p>(b) The activity does not damage or destroy coastal marine habitat or species within the estuarine or intertidal areas identified in Schedule 25D.</p> <p>(c) The activity does not disturb coastal marine species in a manner that prevents animals or plants from occupying their usual habitat within the estuarine or intertidal areas identified in Schedule 25D.</p>
25.3.2.2 Discretionary Activities	The use of any craft for navigation purposes that does not comply with the conditions for a permitted activity.
Aircraft	
25.3.3.1 Permitted Activities	<p>Any aircraft landing or taking off is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:</p> <p>(a) The landing or takeoff is at least 500 metres seaward of mean high water springs in any area identified in Schedule 25D.</p> <p>(b) Clause (a) does not apply in emergencies, including:</p> <ul style="list-style-type: none"> (i) fire, accident and medical emergencies; (ii) responding to danger to life and property; (iii) emergency lighthouse servicing; (iv) conservation emergencies (under the direction of the Department of Conservation).
25.3.3.2 Discretionary Activities	<p>Any aircraft landing or taking off that does not comply with conditions for a permitted activity.</p> <p>Matters to which the Council has restricted its discretion include:</p> <ul style="list-style-type: none"> • Number or frequency of aircraft landings and takeoffs, separate from and in addition to any cumulative total of authorised landings and takeoffs in any location. • Amenity and natural values of the location, including the effects of noise, wash and wind- blast. • Period for engine running while the aircraft is on the foreshore or coastal water. • Navigation safety.

The conditions attached to the permitted activity rules require the passage of craft to avoid damaging, destroying or disturbing coastal marine habitat or species identified in the TRMP Schedule 25D, which is consistent with Chapter 20 objective. Similarly, the landing and take-off of aircraft also needs to avoid the areas listed in the schedule.

Schedule 25D identifies 22 coastal areas having nationally or internationally important natural ecosystem values. These include all of the estuaries in Tasman, as well as stretches of coastline, river deltas, and habitats for indigenous flora and fauna.

However, the extent to which these permitted activities are complied with, and therefore enable impacts on marine wildlife and natural values in the listed areas to be avoided, is unknown. This is due to a lack of monitoring information around the effects of permitted activities. Additionally, the permitted activity conditions do not apply to natural or amenity values outside of these scheduled areas.

3.3.2 The Role of Non-RMA Methods

Council staff report that the Navigation Safety Bylaw and Maritime Transport Act are very important tools for addressing navigation safety. The Harbourmaster plays a central role in ensuring safety while dealing with an uncontrolled environment and being responsive to whatever is happening on the water. Effort is placed on prevention of accidents by educating boat users, assisting with boating events, and enforcing legislative and bylaw provisions as required.

The concession process administered by the Department of Conservation under the Abel Tasman Foreshore Scenic Reserve Management Plan has also had a positive effect in managing effects of craft on amenity and natural values. The reserve is a small, but significant part of the district's natural environment and one that has the greatest pressure for craft activities.

3.3.3 Additional Matters

Three issues that were raised during rapid assessment meetings with council staff include occupation of craft, effects of commercial boating activities, and aircraft safety.

Commercial Activities

Staff report there are virtually no rules controlling passage of commercial craft beyond that required under the Abel Tasman Foreshore Scenic Reserve Management Plan. It is instead largely addressed as a navigation issue under the bylaw. However, staff questioned whether commercial activities are causing adverse effects on amenity and natural values that might need to be regulated, particularly as commercial vessels are typically bigger and operate more frequently than smaller private craft. If a case for regulation exists (i.e. rules in the TRMP), it would need to be consistent with the concessions system under the reserve management plan and not duplicate current efforts.

Occupation of craft

Another issue raised was the occupation of craft outside of consented mooring areas. Currently no resource consent is required for living on a boat and therefore no way to assess effects, such as on amenity or natural values, and impacts on other craft / water users. Consequently, it was suggested that the review consider whether an occupation rule is necessary to capture vessels anchoring in one place for prolonged periods of time.

Aircraft

Finally, a conflict between the TRMP objective of achieving safe navigation and maintaining amenity and natural values was highlighted. The TRMP provisions restrict float planes from landing within 500m of the shore in areas listed in Scheduled 25D, which restricts landing opportunities in sheltered waterways. However, float aircraft cannot always land safely at sea as the surface is often rough. Consequently the rule is forcing the activity outside of its potential safety margins; very calm conditions are needed for the rule to be complied with safely.

3.4 Effectiveness and Efficiency

This section provides an analysis of the efficiency and effectiveness of Chapter 20 of the TRMP. It focuses on the achievement of objectives contained within the chapter. The analysis draws on the information from earlier sections, including council reports and the opinion of experienced plan users.

Chapter 20 Objective	Analysis	Rating of Achievement
<p>Objective 20.1.2 Safe navigation, amenity values and natural values that are not compromised by the passage of craft, or by other activities on the surface of the water.</p> <p>Policy set 20.1.3.1 – 20.1.3.3</p>	<p>Safe Navigation Achieving navigation safety requires daily effort and is not something that can be considered to have been completed. For this reason the safe navigation aspect of Objective 20.1.2 is considered ‘on-track to achieve’ - the Harbourmaster has maintained safe navigation through implementation of the Navigation Safety Bylaw and Maritime Transport Act and this will be required on an ongoing basis. Council’s intention for the TRMP to use means provided in other legislation to achieve safe navigation has therefore proved to be effective and efficient.</p> <p>Amenity and Natural Values The work of the Harbourmaster also helps maintain amenity and natural values, as sought in Objective 20.1.2. For instance, enforcing speed regulations and keeping different water users separated to avoid conflict can have a positive effect on people’s enjoyment of coastal waters, and reduce effects on the environment. The Abel Tasman Foreshore Scenic Reserve Management Plan also plays an important role in managing effects of craft activities in the foreshore around the Abel Tasman National Park, including on amenity and natural values. Additionally, the TRMP rule requiring planes to land and take off out to sea helps reduce effects on amenity and natural values (although there is some conflict between this objective and safe navigation). Permitted activity rules enable the use of craft for navigation purposes, and the landing and takeoff by aircraft, provided this is outside of the areas identified in the TRMP Schedule 25D ‘Areas with Nationally or Internationally Important Natural Ecosystem Values’. However, the extent to which the permitted activity conditions are complied with is unknown due to a lack of monitoring information. Additionally, the permitted activity conditions do not apply to natural or amenity values for areas not listed on the schedule. For these reasons the TRMP objective to maintain amenity and natural values is considered to be partially achieved.</p>	<p>On track to achieve</p> <p>Partial achievement</p>

Appendix 1: Iwi Management Plan Provisions Relating to Effects of Craft

Examples of provisions from Te Tau Ihu Iwi Management Plans relevant to the matters addressed in Chapter 20 'Effects of Craft Using the Surface of Coastal Waters' are shown below. For the full text please refer the individual plans.

Effects of Craft

Boating in ecologically and/or culturally sensitive areas can cause noise pollution from motors, loudspeakers, and vessel horns.

Erosion of coastal margins from vessel wake can cause damage to sensitive coastal habitats, including kai moana beds, and may expose and damage waahi tapu sites.

Congestion on the water increases the potential for accidents and the risk of oil and fuel spills, and potential disruption of indigenous bird habitats and loss of key indicator species.

There is the potential for vessels to spread introduced pests when anchoring or mooring, particularly near offshore islands.

Discharges from commercial and recreational vessels (sewage, grey and ballast water containing contaminants) diminishes coastal water quality.

Desired Outcomes

Recognition of the role of tangata whenua as rangatira and kaitiaki of nga taonga tuku iho.

Tangata whenua, as kaitiaki, will be effective in ensuring that the mauri or essential life principle of the natural world within the rohe is maintained and enhanced.

Maintenance or enhancement of water quality in the coastal marine area at a level that enables the gathering or cultivating of shellfish for human consumption.

Sustaining the mauri of the coastal / marine resources in perpetuity.

Increase opportunities for tangata whenua to practice customs and traditions associated with the uri (descendants) of Tangaroa.

Culturally sensitive coastal marine environments are protected from the adverse effects of commercial surface water activities.