

**MANAGEMENT OF OYSTER RESERVES IN THE KAIPARA  
HARBOUR**

**Initial Position Paper**

**22 December 2005**

# MANAGEMENT OF OYSTER RESERVES IN THE KAIPARA HARBOUR

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## Summary

- 1 The Te Uri o Hau Claims Settlement Act 2002 (Settlement Act 2002) records a settlement reached by the Crown and Te Uri o Hau Governance Entity<sup>1</sup>. The Settlement Act 2002 provides for the Minister of Fisheries to recommend to the Governor General the making of Oyster Reserve regulations to manage the existing 'Maori Oyster Areas' in the northern part of the Kaipara Harbour. This paper sets out to consult about the nature and extent of these proposed Oyster Reserve regulations.

## Background

- 2 On 17 October 2002, the Crown settled the historical claims of Te Uri o Hau<sup>2</sup> (a hapu of the northern Kaipara Harbour). A deed of settlement agreed to by the Crown and Te Uri o Hau was formalised by the Settlement Act 2002.
- 3 As part of the Settlement Act 2002, the Crown agreed to restore to Te Uri o Hau access to traditional foods and food gathering areas. In particular, the cultural redress package recognised the customary non-commercial relationship between Te Uri o Hau and oysters within the existing 'Maori Oyster Areas' of the Kaipara Harbour.
- 4 The Crown agreed that the Minister of Fisheries would recommend to the Governor General regulations to be made under Part IX<sup>3</sup> and section 297 of the Fisheries Act 1996.
- 5 In addition, regulation 9(e) (the current regulation) of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 prohibits non-Maori from taking oysters within the Maori Oyster Areas of the Kaipara Harbour. Historically, amendments have broadened the concept of regulation 9, whereas the new proposal allows the Crown to acknowledge the special association of Te Uri o Hau with the Oyster Reserves, confirmed in the Settlement Act 2002.
- 6 The regulations propose to meet the Te Uri o Hau treaty settlement obligations under the Settlement Act 2002, in relation to the Oyster Reserves in the northern part of the Kaipara Harbour.

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<sup>1</sup> **Te Uri o Hau Governance Entity** means an appropriate body ratified by Te Uri o Hau (by a process agreed by Te Uri o Hau and the Crown) to receive the redress referred to in the 'Deed of Settlement to settle Te Uri o Hau Historical Claims 2000'.

<sup>2</sup> **Te Uri o Hau** means every individual who can trace descent from one or more ancestors who exercised customary rights arising from descent from Haumoewaarangi and/or the tribal groups of Te Uri o Hau, Ngai Tahu, Ngati Tahinga, Ngati Rangi, Ngati Mauku, Ngati Kauae, Ngati Kaiwhare, and Ngati Kura; and predominantly within Te Uri o Hau Area of Interest from 1840.

<sup>3</sup> Refer to Annex 1: Summary of **Part IX** of Fisheries Act 1996

## ***History of the Kaipara Harbour Oyster Reserves***

- 7 In the early 20<sup>th</sup> century Maori dominated the oyster trade in New Zealand. Harvest pressure and the burning of oysters for lime were two key reasons that contributed to the localised depletion of oysters in most harbours of the North Island. To address this sustainability concern in the Kaipara Harbour, Bay of Islands, Hauraki Gulf and Coromandel, the Government placed various restrictions on the take of oysters. The Government developed a system for managing the picking of oysters and providing these to wholesalers.
- 8 The restriction on taking oysters was of concern to Maori because it deprived them of a (formerly) profitable activity, while denying them access to local kaimoana resources that were customarily used to feed their families. The matter was raised in Parliament by one of the first Maori Ministers of Parliament and as a result areas were set aside and declared to be 'Maori Oyster Reserves' for the 'enjoyment of natives of the district', the natives being Te Uri o Hau in the Kaipara Harbour. These included six areas in the Kaipara Harbour, two areas in the Whangaroa Harbour and one area each in the Bay of Islands, Whangaruru Harbour and Manukau Harbour.
- 9 The legislation establishing Oyster Reserves provided that only Maori who were resident in the immediate vicinity (essentially tangata whenua) were permitted to take oysters from each area. The Fisheries Amendment Act 1965 (s 12) broadened the concept of the reserves by renaming these 'Maori Oyster Fishery Areas', by allowing any Maori to take oysters in these areas, and by having the Minister appoint local committees of management. Under these changes committees were appointed, the oyster beds were maintained and managed, oysters were sold and the money used to cultivate or grow more oysters. These changes were made without consultation.
- 10 The Fisheries Act 1983 repealed the 1965 Act and removed the authority for Te Uri o Hau to manage the Oyster Reserves in the Kaipara Harbour. Regulation 9 of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986, re-confirmed the original oyster reserve areas by labelling these 'Maori oyster fisheries' and stated "No person who is not a Maori shall take any oyster from the following areas". The Settlement Act 2002 returned the authority to Te Uri o Hau to manage the Oyster Reserves as originally intended.
- 11 The proposed regulations seek to address the need to provide committee management by Te Uri o Hau over the Oyster Reserves in the Kaipara Harbour. While the purpose of this paper is to discuss the implementation of regulations to support the management of the Oyster Reserves in the northern part of the Kaipara Harbour, it is MFish's intent to similarly review other 'Maori oyster fisheries' in the upper North Island over the medium term.

## **Proposed Oyster Reserve Regulations**

- 12 The Settlement Act 2002 provides for the Minister of Fisheries to recommend to the Governor-General new regulations under Part IX of the Fisheries Act 1996.
- 13 The proposed regulations provide for a management committee nominated by Te Uri o Hau Governance Entity to manage non-commercial gathering of oysters within the

Oyster Reserves. These regulations apply to three species of oysters commonly known as rock oyster, pacific oyster, and dredge oyster.

- 14 In addition, the proposed regulations provide for the management committee to: propose restrictions and prohibitions regarding oysters within the Oyster Reserves to the Minister of Fisheries; to request that the Minister of Fisheries recommend to the Governor General the making of regulations to allow for commercial fishing of oysters; and to authorise any person to take oysters from any area within the Oyster Reserves and to release those oysters within any other part of the Oyster Reserves, for the purpose of enhancing the stock within any of the Oyster Reserves.

### ***Relationship between these regulations and others***

- 15 Regulation 9(e) (the current regulation) of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 will be revoked. Regulation 9(e) prohibits non-Maori from taking any oysters in the Oyster Reserves (formerly known as Maori Oyster Areas) of the Kaipara Harbour.
- 16 Regulation 23 of the Fisheries (Amateur Fishing) Regulations 1986 will cease to apply to the Oyster Reserves in the Kaipara Harbour. Regulation 23 prohibits any person from opening any oyster while it adheres to the object on which it grew, or discarding the shell of the oyster near any other oysters.
- 17 The proposed regulations will prevail over the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (Kaimoana Regulations). The Kaimoana Regulations cover non-commercial customary fishing and recognise customary fishing rights of tangata whenua as conferred by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 18 Regulation 4 of the Kaimoana Regulations will be amended accordingly. Regulation 4 defines the relationship between the Kaimoana Regulations and other regulations.
- 19 The proposed regulations will prevail over fisheries regulations relating to oysters within the Oyster Reserves, whether these other regulations apply to commercial, recreational, or customary Maori fishing of oysters from within the Oyster Reserves. However, it is not proposed that the regulations will affect the authority provided by fisheries legislation to take aquatic life, including oysters, for other purposes, such as emergency measures<sup>4</sup>, education, scientific research, and gear trials, or under other legislation for purposes such as food safety, or biosecurity.

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<sup>4</sup> **Emergency measures** - If satisfied that there is or has been (a) An outbreak of disease; or (b) A serious decline in the abundance or reproductive potential of one or more stocks or species; or (c) A significant adverse change in the aquatic environment, the Minister may, by notice in the Gazette, impose such emergency measures in respect of any stocks or areas affected, or both, as the Minister considers necessary or expedient in the circumstances. Before giving notice under subsection (1) of this section, the Minister shall, to the extent reasonably practicable in the circumstances, consult such persons or organisations as the Minister considers are representative of the classes of persons having an interest in the stock or area affected, including Maori, environmental, commercial, and recreational interests. The Minister shall ensure that all emergency measures imposed under this section are publicly notified.

- 20 In addition, the Settlement Act 2002 provides for Oyster Reserve regulations to be made despite section 10(d) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Section 10(d) notes that the claims of Maori in respect of non-commercial fishing are to be provided for in regulations made under section 89 of the Fisheries Act 1983 (i.e. principally the Kaimoana Regulations).
- 21 The proposed Oyster Reserve regulations envisaged by the Settlement Act 2002 prescribe the following:

### ***Defining and describing the location of the Oyster Reserves***

- 22 There are six Oyster Reserves in the Kaipara Harbour<sup>5</sup> and they are located in the following areas:
- a) The Arapaoa River between Wakaiti and Tahupo Creek;
  - b) The Arapaoa and Otamatea Rivers between Te Kopua Point and Waipako;
  - c) The Otamatea River between Batley Wharf and Tanoa Point;
  - d) The Otamatea River between Paparoa Point and Onoke Point;
  - e) The Oruawharo River (Motu Ngaio\*)<sup>6</sup> between Raekau Wharf (Te Raekau\*) and Waingopai (Waingohe\*) Creek; and
  - f) The Wairoa River between Pouto Wharf (Pouto Point\*) and Sail Point.
- 23 The boundaries of the Oyster Reserves will be further defined by latitude and longitude coordinates in the proposed regulations, as required. The Oyster Reserves extend over an area between relevant landmarks and from the mean low water mark to the mean high water mark.

### ***Establishment of Management Committee(s):***

- 24 The proposed regulations will empower Te Uri o Hau Governance Entity to nominate a management committee(s) to manage customary non-commercial food gathering of oysters within the Oyster Reserves.
- 25 The proposed regulations will provide for the management committee(s) to prepare a management plan or strategy for the Oyster Reserves. The management plan will need to be consistent with the purpose and the principles of the Fisheries Act 1996.

### ***Powers to authorise taking of oysters within the Oyster Reserves***

- 26 The regulations propose to recognise and provide for customary non-commercial food gathering of oysters by any person authorised to do so by the management committee in respect of the Oyster Reserves to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade. The recreational harvest by any other persons within the Oyster Reserves will be excluded.

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<sup>5</sup> Refer to Map 1: Location of the six **Oyster Reserves** in the Kaipara Harbour.

<sup>6</sup> Note: These areas may be locally known in recent times by the name indicated in brackets e.g. Waingopai also known as Waingohe.

- 27 A representative of the management committee is required to complete an ‘authorisation form’ before oysters can be taken from the Oyster Reserves for customary non-commercial purposes. Oral authorisations are permitted at the discretion of the management committee and must be formalised by a representative of the management committee in a written authorisation at the same time that the oral authorisation or consent is given. An oral authorisation may be required where the harvester was unable to forecast an urgent need such as a funeral (tangihanga).
- 28 In the case where an oral authorisation has been given to take oysters from an Oyster Reserve, the harvester will not possess a written copy of the authorisation. Instead the representative of the management committee will provide the harvester with a unique sequential ‘authorisation number’ and the harvester must be aware of the quantities, species, and all other conditions on the authorisation. A Fishery Officer will be able to match this authorisation number (held by the harvester) with the written copy (held by the management committee) to ensure the oysters taken are legal.
- 29 Where the representative of the management committee issues an authorisation to take oysters, MFish proposes that this authority shall be valid for a limited time.
- 30 MFish notes that the most suitable period required should reflect ability for the harvester to be able to access and take their oysters (i.e. considering tides and weather) and to prevent the misuse of an authorisation (i.e. using an authorisation to take more oysters than permitted on several different occasions). Two options are suggested for consultation:
- a) A maximum period of 48 hours; or
  - b) A maximum period of 72 hours.
- 31 The management committee can request restrictions or prohibitions for the taking of oysters from within the whole or part of the Oyster Reserves for any purpose that Te Uri o Hau Governance Entity considers necessary for the utilisation, while ensuring sustainability, of the oyster resources in the Oyster Reserves. Any proposed restrictions or prohibitions would be subject to approval by the Minister of Fisheries to ensure that the restriction or prohibition proposed is consistent with the purpose of the Fisheries Act 1996.
- 32 The Te Uri o Hau Deed<sup>7</sup> provides for the management committee to request that the Minister of Fisheries recommend to the Governor General the making of regulations to allow for commercial fishing of oysters by quantity or time period within the Oyster Reserves. Such commercial fishing must be conducted in accordance with the Fisheries Act 1996 and the relevant commercial fishing regulations applying under the Act.
- 33 Where the Minister has approved commercial taking of oysters within the Oyster Reserves, the Te Uri o Hau Deed provides under the Marine Farming Act 1971 that the management committee can give advice to the Minister of Fisheries on whether or not a marine farming lease or licence should be issued or extended. MFish notes that there is only one oyster ‘lease’ within the Oyster Reserves at present.

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<sup>7</sup> Te Uri o Hau Deed refers to the Te Uri o Hau Deed of Settlement 2000

- 34 However, there is no ability for the Minister of Fisheries to issue or extend lease or licences under the Marine Farming Act 1971, given the passing of the Fisheries Amendment Act (No.3) 2004 (Aquaculture reforms). Marine farming in new areas is now a prohibited activity under the Resource Management Act 1991. Before farming can take place the relevant regional council must formally designate the area under a regional coastal plan as an Aquaculture Management Area (AMA).
- 35 If the chief executive of MFish considers that marine farming would have an adverse effect on fishing, in part or all of a proposed AMA, then that part or all of the area cannot be designated as an AMA. Te Uri o Hau may submit to the chief executive of MFish advice about any adverse effects on the ability to fish for oysters within the Oyster Reserves. However, the Regional Council is the primary avenue for Te Uri o Hau to lodge submissions about the initial consideration of a proposed AMA. Consequently, the intent of the Te Uri o Hau Deed is best achieved through submissions to the Council in the first instance.

### ***Enhancement of oyster fishery within Oyster Reserves***

- 36 The proposed regulations provide for the management committee nominated by Te Uri o Hau Governance Entity to authorise any person to take oysters from any area within the Oyster Reserves and to release those oysters within any other part of the Oyster Reserves, for the purpose of enhancing the stock within any of the Oyster Reserves.

### ***Record-keeping and reporting***

- 37 The management committee(s) nominated by Te Uri o Hau Governance Entity will be required to keep accurate records of the quantities of oysters taken within the Oyster Reserves. These records will be required to be submitted to MFish within an agreed timeframe.
- 38 MFish proposes that there will be a requirement for copies of catch information to be retained and provided to MFish as essential inputs to oyster management and compliance. Catch information will support Fishery Officer work and management needs concerning the Oyster Reserves.
- 39 Three options are being considered for the management committee to supply an aggregate report about oyster catch information to MFish. Catch information is important to help to quantify customary take as well as to provide more complete information on total take of oysters. The periods proposed are:
- a) Quarterly, or
  - b) Six-monthly, or
  - c) Annually.
- 40 The period over which reporting is required to be completed will depend on the expected use of the authorisations, whether there is any administrative advantage in reporting at a particular interval, and how quickly information can be submitted to MFish and integrated into management reviews of oysters.

- 41 The management committee will be required to hold a meeting with Te Uri o Hau by calling a Hui each year to report on matters relevant to the effective management of oyster gathering authorised by the management committee. The Hui will discuss matters including, reporting on the number of authorisations granted for the period, and any restrictions or prohibitions in force for that period.

### ***Proposed offences and penalties***

- 42 The Te Uri o Hau Deed of Settlement provides for the proposed regulations to include offences and penalties. The proposed offences and penalties would be a key driver to improve management of the Oyster Reserves and would act as a deterrent to those operating without the authority of a representative of the management committee, and where there is evidence to identify illegal activity by the fisher or the issuer occurring. The proposed offences include:
- Failure to obtain an authorisation from a representative of the management committee of an Oyster Reserve i.e. taking oysters without an authorisation or enhancing an area without an authorisation;
  - Taking an excess quantity of oysters other than that prescribed, using an illegal method to take oysters, taking oysters from an area not recorded on the authorisation, taking oysters outside the period that the authorisation was valid;
  - Taking oysters for sale or pecuniary gain i.e. anyone who issues or receives an authorisation or harvests oysters under these proposed regulations cannot trade the oysters, exchange the oysters for money, or accept any form of payment.
  - Failing to comply with a restriction or prohibition within the Oyster Reserves,
  - Recordkeeping and reporting offences such as material errors on authorisations and where the authorising agent does not have the authority to issue the authorisation, for example, authorisations issued by a person not representing the management committee, omissions, retrospective authorisations (issued by the management committee after the oysters have been taken), and record-keeping requirements including timeframes and location.
- 43 Should such an offence be committed, penalties depending on the seriousness of the offence will apply:
- a) Infringement fees - non-commercial first offences relating to harvest or possession other than:
    - i) Offences categorised as ‘serious non-commercial offences’;
    - ii) Offences where a greater maximum is necessary to allow an appropriate penalty to be imposed because of aggravating features;
    - iii) Administrative offences that do not directly relate to harvest, possession, or disposal of fish but which allow effective administration and enforcement of the proposed regulations and the Fisheries Act 1996; or

- b) A maximum of \$10,000 - non-commercial first time offences and serious non-commercial offences, administrative commercial offences that do not directly relate to harvest, possession or disposal of oysters; or
- c) A maximum of \$20,000 – ‘serious non-commercial’ offending, repeated non-commercial offending (i.e. twice within a period of 3 years); or
- d) A maximum of \$100,000 – Repeat commercial offending, all other commercial offending other than that mentioned in previous categories.

## **Consultation**

### ***Developing regulations***

- 44 MFish has been working together with Te Uri o Hau Governance Entity to develop the proposed regulations for the Oyster Reserves in the Kaipara Harbour. This collaboration is consistent with the obligations set out in the Te Uri o Hau Deed and Settlement Act 2002.
- 45 MFish and the Te Uri o Hau Governance Entity notes the Te Uri o Hau Deed lists the essential components required for the proposed regulations and therefore were part of the negotiation and settlement consultation process in the late 1990s.
- 46 In the interest of making robust and enduring regulations that can be effectively implemented, this consultation paper has been prepared by MFish to consult with Iwi and hapu.

## **Statement of the Net Benefits of the Proposal**

### ***Benefits***

- 47 The main benefits of making Oyster Reserve Regulations in northern part of the Kaipara Harbour are:
- a) Enabling management for the use of oysters within the six Oyster Reserves;
  - b) Delivering on Crown treaty obligations set out in the Te Uri o Hau Settlement Act 2002 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
  - c) Providing a defined relationship with the local hapu (Te Uri o Hau) to improve the future management of oysters within the Oyster Reserves.

### ***Costs***

- 48 Signage, brochures and education about the proposed regulations and the management of oysters within the Oyster Reserves will be important to ensure that the regulations are well known and adhered to. Signage for the six Oyster Reserves may be subject to non-notified resource consent fees.
- 49 The development of a database may be required to store aggregated oyster catch information derived from the management committee for each of the Oyster Reserves. A database could improve accessibility and compliance for MFish.

50 There are no significant costs arising from the proposed regulations.

## **Administrative Implications**

- 51 Regulatory amendments will be required to the following regulations as part of making regulations for the Oyster Reserves Regulations in the northern part of the Kaipara Harbour:
- a) Regulations 9(e) of the Fisheries (Auckland and Kermadec Amateur Fishing) Regulations 1986 - revoke accordingly;
  - b) Regulation 4 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 - amend accordingly;
  - c) Regulation 23 of the Fisheries (Auckland and Kermadec Amateur Fishing) Regulations 1986 - amend accordingly.
- 52 Regulations may be required under s 297 of the Fisheries Act 1996 in the future, should the management committee wish to exercise their right to request commercial fishing within the Oyster Reserves or part of the Oyster Reserves.
- 53 'Authorisation books' to permit the take of oysters within the Oyster Reserves will be required. MFish intends to work together with the management committee(s) to produce 'authorisation books'.
- 54 There are no systems or other significant administrative implications arising from the proposed regulations.

## **Conclusion**

- 55 The proposed Oyster Reserve Regulations intend to meet a treaty settlement recorded in section 100 of the Te Uri o Hau Claims Settlement Act 2002. The proposed regulations also provide for better management of oysters within the six Oyster Reserves.

## **Preliminary Recommendation**

- 56 MFish recommends that:
- a) The proposed (Te Uri o Hau) Oyster Reserve Regulations be adopted, to meet the Oyster Reserve obligations contained within the Te Uri o Hau Settlement Act 2002.

# **ANNEX ONE: SUMMARY OF PART IX - FISHERIES ACT 1996**

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## **TAIAPURE-LOCAL FISHERIES AND CUSTOMARY FISHING**

Part 9 is comprised of sections 174 to 186 of the Fisheries Act 1996.

### **Section 175 to 185 - Taiapure Local Fisheries:**

The object of sections 175 to 185 is to make taiapure – local fishery, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either as a source of food or for spiritual or cultural reasons. Part 9 seeks to make better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

Part 9 empowers the Minister of Fisheries to recommend declaration of a taiapure-local fishery and to make an appointment of a committee of management for each taiapure-local fishery after consultation with the Minister of Maori Affairs.

A committee of management appointed for a taiapure-local fishery may recommend to the Minister the making of regulations under the Fisheries Act for the conservation and management of the fish, aquatic life, or seaweed in the taiapure-local fishery.

### **Section 186 - Customary Fishing:**

The object of s 186 is to make regulations recognising and providing for customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mātaītai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade.

Section 186 provides for ways to:

- Declare the relationship between such regulations and general fishing regulations;
- Empower the Minister to declare by notice any part of New Zealand fisheries waters to be a mātaītai reserve;
- Provide for such matters as may be necessary including general restrictions and prohibitions in respect of the taking of fish, aquatic life, or seaweed
- Empower any Maori Committee constituted by or under the Maori Community Development Act 1962, any marae committee, or any kaitiaki of the tangata whenua to make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed:
- Empower any such Maori Committee, marae committee, or kaitiaki to allow the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of the marae concerned, notwithstanding any such bylaws;
- Every restriction and every prohibition imposed on individuals by such bylaws shall apply generally to all individuals.

**Section 186A (Temporary closure of fisheries other than South Island):**

The object of s 186A is to temporarily close any area of New Zealand fisheries waters or temporarily restrict or prohibit the use of any fishing method in respect of any area of New Zealand fisheries waters (other than South Island fisheries waters) and any species of fish, aquatic life, or seaweed.

The Minister may impose such a closure, restriction, or prohibition only if he or she is satisfied that it will recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights by improving the availability or size (or both) of a species of fish, aquatic life, or seaweed in the area subject to the closure, restriction, or prohibition; or recognising a customary fishing practice in that area.

**Section 186B (Temporary closure of fisheries in the South Island):**

The objective of s 186B is similar to s 186A. But, s 186B only applies to fisheries waters in the South Island fisheries waters.

# ANNEX TWO: MAP SHOWING THE LOCATION OF THE SIX OYSTER RESERVES IN THE KAIPARA HARBOUR

