



The wreck of the MV Rena:
culture, risk and resilience in impact assessment

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The wreck of the MV Rena and the subsequent resource consent processes, to enable the dumping and discharging of contaminants through abandoning the remnants of the wreck, created considerable division in the Bay of Plenty region, especially within iwi. Much of this conflict related to the nature of the effects, their monitoring and mitigation. The Rena case provides useful lessons for the impact assessment community.

Background

The basic facts of the wreck are as follows. On 11 October 2011, the 37,000 tonne MV Rena ran aground on Ōtāiti (previously commonly known as Astrolabe Reef). The reef is about 7km from Motiti Island and about 12km from the Bay of Plenty coast. Despite salvage efforts the Rena shifted and slowly broke apart, especially after storms in 2013 and 2015. Containers, plastic beads, oil, copper clove and Tributyl Tin (TBT – from the paint on its hull) were major contaminants discharged during this period with some TBT and possibly copper clove likely to continue to be discharged from the wreck's remains into the future.

There was a huge public response to the grounding of the Rena and the discharges of oil and other contaminants that washed up on the coast, and closed fishing grounds. Thousands of volunteers worked on beach clean-up activities, with tangata whenua at Maketu playing a lead role (Biswell 2014). In addition to the voluntary work, about \$900 million has been spent on salvage and clean up (making it the second most expensive salvage in the world) and it was estimated that further salvage to completely remove the wreck and debris could cost over \$450 million. Removing the remains of the wreck would be extremely difficult if not impossible, would be hazardous, and was considered likely to further damage Ōtāiti.

An application was made to dump (by abandonment) the remains of the Rena and allow ongoing discharges. The applicant was not the owner (an overseas company) and the intention is to transfer funds from the owner to the applicant (the Astrolabe Community Trust set up for this purpose) to monitor and take action to address any problems arising from the wreck's remains and associated discharges. The application was approved by a hearing panel of the Bay of Plenty Regional Council with a number of conditions and this was appealed to the Environment Court.

After grounding it became apparent that Ōtāiti was a very important wahi tapu. A number of iwi management plans were also completed, and decisions were made on relevant sections of the proposed regional coastal environment plan.



The effect of the grounding and associated discharges on the mauri of the area and on tangata whenua and kaitiaki was particularly evident, but the extent to which abandoning the wreck would continue to affect people was contested. Despite interest in the potential for the wreck to serve as a recreational dive site and an historic feature, there was initially almost universal agreement that the wreck should be removed.

Consequently, the owner (not the applicant) went to considerable efforts to consult particularly with tangata whenua. A consequence of this consultation was considerable additional removal of wreckage, beyond what had originally been considered feasible, and an unknown number of agreements were reached with various parties. At least some of these agreements included clauses requiring the affected party to publicly support the application to abandon the Rena. One included substantial funds to be provided to a trust based in Maketu whose trustees were assumed to represent the tangata whenua of the area, a matter that was contested. The essence of these agreements was included in the consent conditions by the Council and some of these conditions gave rise to aspects of the appeal.

Despite the initial general opposition to the application, by the time the appeal was heard at the Environment Court in March 2017 there were only two appellants and two parties in support of their appeals – referred to collectively as the ‘Iwi appellants’. There were many other groups, including hapu, that supported the application, primarily on the grounds that they did not wish to see further damage to Ōtāiti and the surrounding area caused by attempts to remove the remains of the Rena, they did not want people to lose their lives attempting further salvage, and that they considered Ōtāiti was restoring itself by colonising the wreckage. The trust funds would help to restore both the mauri of the area and the mana of affected tangata whenua.

Whether or not there needed to be a resource consent for abandoning an unconsented activity was an issue that the Court had to consider. The Court effectively agreed that there was value in having a consent to ensure that there was a means to monitor and inform the public, and where necessary to take action to address issues that might arise (e.g. due to further release of contaminants or storm or tsunami movement of wreckage). Moreover, the conditions provided a means to help restore the mana and kaitiaki role of tangata whenua through establishing a Kaitiaki Reference Group as part of the process of monitoring the site. [In reaching its decision to allow the application, the Court made a number of changes to the conditions of the consent.](#)



Photo credit: Joel Crump

Biophysical environment

There were two major problems for the assessment of the effects of a consent to dump and discharge. The first was that if a proposal had been made to dump the *Rena* and discharge in this particular setting, then it is improbable that any of the experts giving evidence in support of the applicant would have suggested that the effects of the dumping and discharging would not be significant. However, their assessments in light of the application were generally based in the context that the event had already happened and considerable effort had been made to address the wreckage and released contaminants and it was not feasible to do much more. Their focus was on the degree to which further discharges and effects of dumped wreckage would *further* adversely affect the environment. This was contrasted with the potential adverse effects of further attempts to remove the wreck and the potential to discharge further contaminants in pulses during that removal process, as opposed to longer term release (if any).

The appellants were concerned that accepting the level of discharges and damage would potentially set a precedent for what might be considered acceptable environmental effects in future applications for dumping and discharging from vessels. The Court's decision is quite clear that this should not be seen as a precedent. They also had concerns over the proposed monitoring regime and the lack of suitable control sites that could enable the effects of the *Rena* to be distinguished from more general changes in the marine environment.

The second and more difficult issue was the starting point for assessing the effects. This was tied to some complex legal questions that had troubled the Commissioners in the Council Hearing. Under the Marine Transport Act (MTA) notices had been issued requiring the removal of the wreck and these notices could be considered as deemed consents for work to remove the wreck, not to allow it to stay. When the last of those notices was lifted from 31 March 2016 the wreck and any activity related to it (including any attempt to remove it) effectively became (or remained) an unconsented activity. The appellants argued that the

existing wreck represented unconsented dumping and discharge, for which the applicants were trying to gain legitimacy rather than remove the wreck, so granting it would prevent alternatives such as removal being considered. They consequently took the view that the effects of the Rena commenced at the point of impact and any assessment of the effects had to start with the pre-impacted state of the environment.

The applicant argued that they did not need a consent at all as the wreck had been removed to the extent that was acceptable to lift the notices under the MTA. They were primarily seeking consent to provide a mechanism to meet commitments to the people of the region to provide ongoing management of the wreck. The position taken by the applicant and the Council, and some of their supporters, being that without the consent the Rena would become an unmanaged wreck.

The Court concluded that the 1 April 2016 state of the area was essentially similar to the state at the time of the hearing. Notably, rather than try to distinguish the consented (by the MTA notices) discharges from the unconsented discharges, all participants accepted that the cumulative loading over time should be the indicator of the effects of the discharges and that it was the cumulative change into the future that needed to be monitored against various trigger levels. Thus the conditions on the consent provided for monitoring that would enable actions should the levels of contaminants detected exceed those permitted by the consent.

Socio-cultural environment

Impacts on the socio-cultural environment lie at the heart of the Rena case. The social impacts were largely related to the effects on heritage and recreation values and were addressed in these sections of the assessment. The cultural issues revolved more around mauri, katiakitanga and mana. The owner paid for some cultural assessments of the impact of the grounding and subsequent actions to be undertaken by tangata whenua organisations and individuals. Some of these assessments included tangata whenua using a multi-criteria assessment technique known as the [‘mauri-o-meter’](#). There was no doubt that the mauri of Ōtāiti and the affected environment had been significantly diminished by the impact of the Rena and subsequent break-up and discharges, and to some extent by damage caused during removal of parts of the wreck. The question was more whether actions to restore the mauri of Ōtāiti were possible and if so how.

The cultural relationships of tangata whenau to Ōtāiti and the affected coastal areas derive from ancestral connections and active ongoing kaitiaki relationships that are intimately connected with the concern for mauri and manawhenua. The mauri of tangata whenua is affected by the diminishment of the mauri of Ōtāiti and with that comes a loss of health and mana. Mana is affected by the ways in which kaitiaki relationships are exercised and enabled. A complicating factor became the nature of the agreements reached by the owner with some of the tangata whenua, and their expression in the initial consents. There was considerable confusion over overlapping claims and jurisdictions. In effect, aspects of the consent conditions, while giving effect to agreements with some tangata whenua groupings, had caused offence to others.

The agreements had meant that while initially the majority of tangata whenua groups had been opposed to the application, by the time of the Court hearing the majority had reached positions where they were no longer in opposition to the application. The Court emphasised that this did not reduce the legitimacy of the concerns of the remaining tangata whenua in

opposition. In its interim decision the Court provided an opportunity for elders to resolve the matters at issue over the offending conditions (notably the provision of funds to the trust in Maketu).

For impact assessors the lessons are clear. The owner was largely successful through open engagement with tangata whenua groups on a face to face basis and the use of Māori experts, most of who had relationships with tangata whenua of the area (e.g. Sir Wira Gardner). This included offering to fund the cultural impact assessments (not all such offers were accepted) and facilitating the role of well-respected and technically skilled tangata whenua nominated representatives to assess the effects of the Rena and the salvage activities on Ōtāiti. They also provided for mana whenua to carry out appropriate rituals at the site.

However, it is also important to recognise the value of provisions in conditions that enable and facilitate the ongoing exercise of kaitiaki relationships, but also to be sure not to do so in a way that can be seen as adversely affecting the kaitiaki relationships of others. This is a difficult line to tread. The uniting point lies in the focus on mauri of the affected wahi tapu. In this respect the interest of the Court in the use of the mauri-o-meter may be significant for other future cultural impact assessments.

Conclusion - risk and resilience

It is important to acknowledge that this was an event of low probability, but high impact. Such events are specifically required to be considered when carrying out an assessment of a proposal under the Resource Management Act (RMA). The development of the port facilities at Tauranga pre-date the RMA requirements, so whether such issues as the possibility of a ship being wrecked due to the development of the Port were considered is a somewhat pointless topic at this stage. However, such issues should not be dismissed as fanciful, outside the RMA or unable to be mitigated.

There are a number of wrecks around the New Zealand coastline that are testament to a wreck being more probable than not. Therefore, it seems wise to adopt the consequences-focused approach being promoted for developing resilience to hazardous natural events (see, for instance, Saunders & Kilvington 2016). This would mean ensuring that the consequences of a wreck, rather than the probability of its occurrence, are considered in any impact assessment involving port facilities. It also highlights the need to consider the route by which vessels attracted to new facilities, or an event, might take, not just the area of high vessel congestion and most probable spill. In other words, when considering, for example, port developments to support an event like the America's Cup, the assessment needs to consider the potential effects of a wreck of one of the many vessels attracted to the event. Similarly, proposals to dredge port facilities to increase the capacity to have larger vessels come to the port, or to relocate a particular type of vessel from one port to another (e.g. from Auckland to Northland) should consider the consequences of a wreck. This means considering not just the sensitivity of the ecological environment, but also the social and cultural environment and the potential effects on mauri and mana of rare, but significant, events such as the wreck of the Rena.

Disclaimer

I appeared *pro bono* as an expert planning witness for the 'Iwi appellants' in the Environment Court appeal of the Bay of Plenty Regional Council's decision to grant consent to the abandonment of the wreck. The analysis here is subsequent to the decision of the Court and critically distanced from the evidence I presented.

Acknowledgement

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