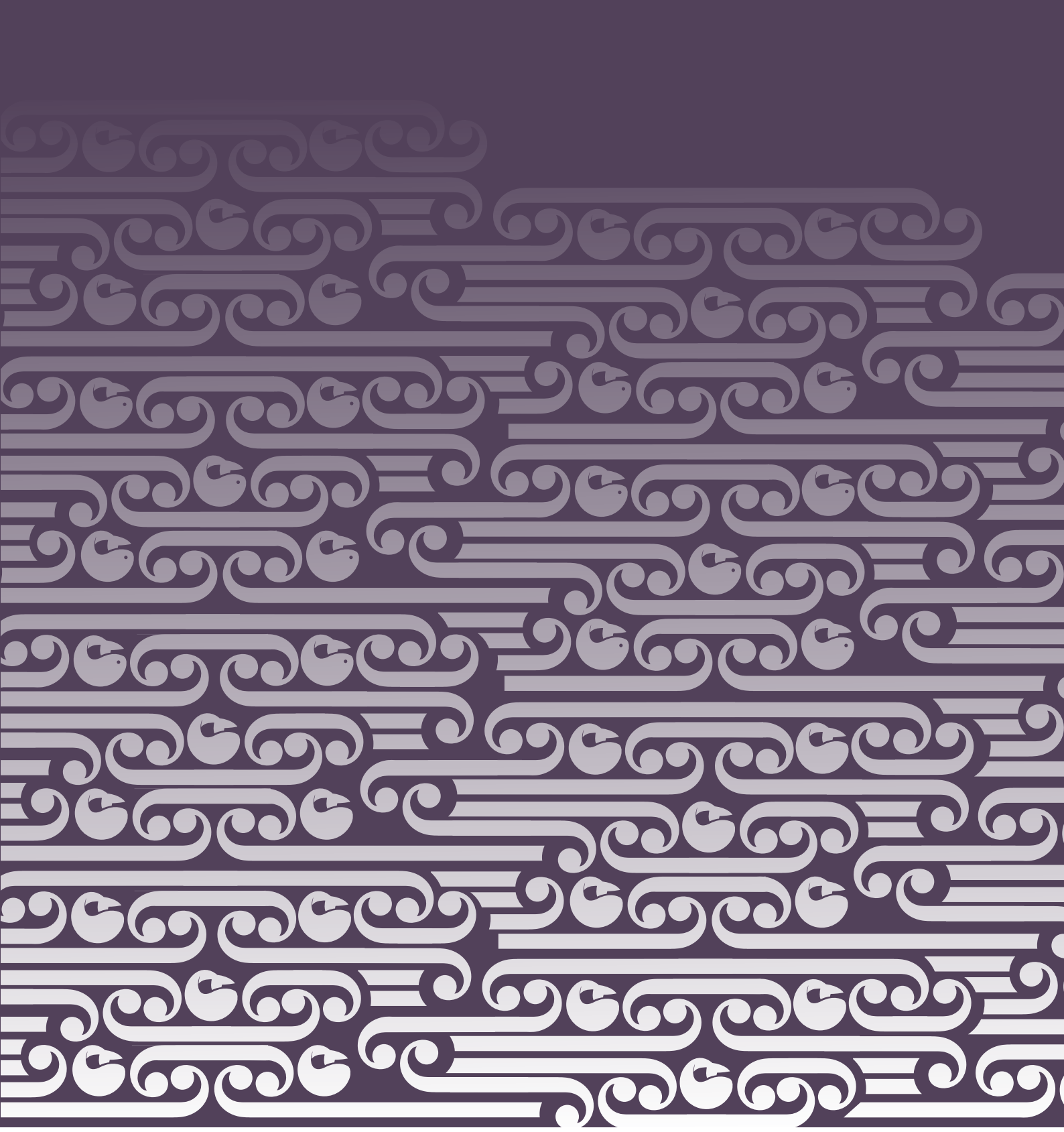

Te Ohu Kaimoana's preliminary views to the Department of Conservation on the development of a revised New Zealand Biodiversity Strategy

Te Ohu Kaimoana

Contents

Executive summary

1. This letter provides a brief and preliminary response to your request for ideas on the direction of a new Biodiversity Strategy.

2. Te Ohu Kaimoana agrees a strategic approach needs to be taken to protecting marine biodiversity. The current New Zealand Biodiversity Strategy 2000 – 2020 (NZBS 2000 - 2020) was a good start and given it is now to be reviewed, it is timely to reflect on those areas that need greater attention.

3. In this response, we focus on three key principles that need to be acted on more deliberately in the revised New Zealand Biodiversity Strategy (NZBS).
   These include:

   a. respect for the Treaty of Waitangi, Treaty settlements and, associated rights
   b. matching solutions to real problems and risks by applying the appropriate tools
   c. strengthening the links between different regimes that manage activities affecting marine biodiversity.

4. While the goals and principles of the NZBS 2000 - 2020 largely reflect these matters, its implementation has not addressed them adequately and they have neither properly recognised the Crown's Treaty obligations, nor the full potential of our own set of marine management institutions including the Fisheries Act 1996, to protect marine biodiversity,

5. As you know, we intend to hold a workshop on biodiversity with Mandated Iwi Organisations (MIOs) in Auckland on Tuesday 26 March and wish to obtain direction from them on their key priorities and the process they would like to see as the strategy is developed. The views outlined in this response may need to be updated following the workshop with MIOs.

About Te Ohu Kaimoana

6. Te Ohu Kaimoana was established to implement and protect the Fisheries Settlement. Its purpose, set out in section 32 of the Maori Fisheries Act 2004, is to "advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:

   - ultimately benefit the members of Iwi and Māori generally; and
   - further the agreements made in the Deed of Settlement; and
   - assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
   - contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

7. MIOs have approved a Māori Fisheries Strategy and three-year strategic plan for Te Ohu Kaimoana, which has as its goal "that MIOs collectively lead the development of Aotearoa's marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent".

8. One of the key strategies Iwi have directed Te Ohu Kaimoana lead is development of national and regional fisheries policy based on Māori principles. This includes a focus on policy being developed internationally in the knowledge that it influences policies developed here in Aotearoa.

9. Our more detailed response to your request for comments is set out below.

Noho ora mai rā,

Dion Tuuta
Te Mātārae - Chief Executive
Te Ohu Kaimoana

1. The Convention on Biological Diversity

10. The objectives of the Convention on Biological Diversity (CBD) are stated in Article 1 to be:

    …the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

11. The Convention recognises that States have the "sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction" (Article 3). It provides a framework for countries to achieve its objectives but provides flexibility in the way countries go about achieving them.

12. Further Articles of the CBD touch on the general actions to be taken but very much based on what is appropriate to each party. Under Article 6, contracting parties, including New Zealand, agreed, in accordance with their particular conditions and capabilities, to "develop national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt for this purpose, existing strategies, plans or programmes which shall reflect, interalia, the measures set out in [the] Convention, relevant to the Contracting Party concerned". In addition, they agreed to "integrate as far as possible and as appropriate, the conservation and sustainable of biological diversity into relevant sectoral or cross-sectoral plans, programmes or policies".

13. Article 8 requires each contracting party, "as far as possible and as appropriate, to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity" (Article 8 a) and "promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas " (Article 8 (e)). These two subsections can be seen to be complementary and indeed intertwined and are reflected in the goals and objectives of the New Zealand Biodiversity Strategy 2000 – 2020. However, since the signing of the CBD and development of our own NZBS, actions of previous governments have treated them as though they are unrelated and in some cases as though they are in conflict.

14. Of particular interest to Iwi, Article 8 (j) adds that each Contracting Party shall:

    Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval of and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge innovations and practices".

15. This obligation influences the way contracting parties might go about achieving the objectives of the CBD. In referring to "knowledge, innovations and practices" it can be seen to be flexible in approach and application – enabling indigenous practices to evolve to meet contemporary needs. The Fisheries Settlement and Māori agreement to the QMS as the basis for management of commercial fisheries represents an innovation that sits comfortably with Māori resource management.

16. The Treaty of Waitangi and settlements arising from that Treaty have a unique global context in that the Treaty not only provides a legal framework for recognition of indigenous rights to own and use natural resources but also carries with it an obligation on the State (i.e. the New Zealand Government) to protect those rights on into the future. It is important therefore that marine protection and broadly the development of strategies and mechanisms for protecting biodiversity within the marine environment are implemented in a manner that properly recognises and protects those interests. It is not only in the best interests of Maori to pursue such action but also an obligation of the New Zealand Government to follow such a path.

2. The New Zealand Biodiversity Strategy 2000 - 2020

17. The goals and principles of the NZBS 2000 – 2020, along with many of the National Targets in the New Zealand Biodiversity Action Plan 2016 – 2020 reflect the Treaty and take a flexible approach to the range of tools that can be applied to achieve them. However, implementation has not properly recognised the Crown's Treaty obligations, nor the full potential of our own set of marine management institutions, including the Fisheries Act 1996, to protect marine biodiversity. In addition, there has been a growing move to narrow the way marine protection initiatives are implemented rather than to assess the need for protection across the statutes that manage different activities affecting marine biodiversity.

18. A revised NZBS should aim to achieve the objectives of the CBD in a manner appropriate to the New Zealand context. We focus here on three key principles we consider need to be reflected in the revised NZBS, if it is to complement the institutional arrangements we already have. These include:

    a. respect for the Treaty of Waitangi, Treaty settlements and, associated rights
    b. matching solutions to real problems and risks by applying the appropriate tools
    c. strengthening the links between different regimes that manage activities affecting marine biodiversity.

    The goals and objectives of the current NZBS and updated Action Plan are intended to address these issues, but we consider there is still a lot of progress to be made.

3. Respect for the Treaty of Waitangi and Treaty Settlements

19. Goal 2 of the 2000 NZBS refers to the Treaty of Waitangi and aims to:

    Actively protect iwi and hapū interests in indigenous biodiversity and build and strengthen partnerships between government agencies and iwi and hapū in conserving and sustainably using indigenous biodiversity.

20. This goal is consistent with numerous responses we have made to the Government on fisheries and marine management as it affects the Fisheries Settlement. However, in our view, initiatives to protect marine biodiversity have not achieved the aspirations of this goal. To do so, a greater emphasis is needed in the following areas:

    a. Development of a partnership approach between the Crown and Māori when dealing with fisheries related matters that builds on the representative tribal organisations (MIOs) mandated under the Māori Fisheries Act
    b. Applying a Māori approach to the conservation and the sustainable use of indigenous biodiversity, which includes New Zealand's fisheries resources and associated ecosystems.

Developing a partnership approach

21. Māori hold customary rights to harvest fish which contain commercial and non-commercial elements. Both are protected by Article II of the Treaty of Waitangi. Māori claims to the full bundle of these rights were settled through the 1992 Fisheries Deed of Settlement. The Crown compensated Māori for the commercial aspect of these rights – including through a guaranteed percentage of quota for each stock - and undertook to ensure that the remaining non-commercial aspects would be given expression through regulations. Different parts of the settlement refer to "iwi", "hapū", "whānau" and "tangata whenua". In some instances, these groups have been treated as though they are unrelated and autonomous, rather than as part of a web of tribal relationships.

22. There are 58 MIOs representing all Māori, who own the Fisheries Settlement Commercial Assets (Individual Transferrable Quota and shares in Aotearoa Fisheries Ltd (AFL)[1] which, in turn, owns 50% of Sealord Group). Around 450 kaitiaki and tangata tiaki authorise customary fishing. The Te Ohu Kaimoana Board is appointed by MIOs through an electoral college structure and has a range of statutory responsibilities under the Settlement including responsibility for the appointment of the Board of AFL. We are aware that there is a view that the commercial elements of the Settlement including quota should be treated the same way as the commercial sector generally. However, the commercial settlement recognises that customary fishing rights contain a commercial element. The fact this is recognised through the quota management system (QMS), and iwi have a % share of the quota for each fish stock does not reduce the obligation of the Crown to ensure its policies do not undermine the integrity of the commercial as well as the non-commercial aspects of the Settlement.

[1] *Now trading as Moana New Zealand*

23. MIOs are not necessarily responsible for managing customary fishing for an Iwi as under the customary regulations, this typically rests with hapū and marae. This situation has the effect of undermining the efforts of Iwi and the tribal structures they are working to build. For example, the process for the Minister to appoint kaitiaki under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 is carried out with no reference to relevant MIOs, despite them being part of the same tribal structures, and having interests in the same fisheries. This has caused tensions within Iwi that need to be resolved by Iwi themselves. Wittingly or not, Crown agencies including DOC and MPI maintain and strengthen these divisions when they fail to work through MIOs. Consequently, the collective interests of Iwi, hapū and whānau in fisheries are undermined leading to poor outcomes for them overall. Crown agencies should avoid these outcomes by working through Te Ohu Kaimoana and MIOs in the development of fisheries and marine policy.

A Māori approach to conservation and sustainable use

24. The existing NZBS makes it clear that "understanding and valuing the Māori world-view is an essential step towards a bicultural approach to biodiversity management". We cannot agree more.

25. In our response to the Draft Convention on Biological Diversity National Report, we outlined the guiding principles we use to develop our advice, which are based on this world-view. The concept of Te hā o Tangaroa kia ora ai tāua which focusses more specifically on the relationship between Māori and Tangaroa, underpins our work (see Figure 1). The relationship between people and Tangaroa is one of mutual dependence. Tangaroa is not valued solely for its own sake, but as part of a web of active relationships based on whakapapa. By caring for Tangaroa, we gain the right to benefit from the resources he provides. This world view is shared by numerous indigenous peoples around the world.

26. In relation to managing fisheries and the effects of fishing on biodiversity, the purpose and principles of the Fisheries Act 1996 echo Te Hā o Tangaroa Kia ora Ai Tāua. There has never been any disagreement by beneficiaries of the Fisheries Settlement that quota rights secured under the Settlement are subject to a responsibility to ensure sustainability – this requirement was a key reason for Māori and Iwi accepting the QMS. Furthermore, Māori understand that the protection of biodiversity is an important subset of what sustainability means. This is clear in the way the Fisheries Act 1996 describes what it means to achieve its purpose to "provide for the utilisation of fisheries resources while ensuring sustainability". Under section 8 of the Fisheries Act 1996, utilisation means "conserving[2], using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being". Ensuring sustainability means:

    a. Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations
    b. Avoiding, remedying or mitigating the effects of fishing on the aquatic environment.

[2] *Under s 2, conservation means "the maintenance or restoration of fisheries resources for their future use; and conserving has a corresponding meaning"*

27. Moreover, section 9 of the Fisheries Act 1996 includes three explicit environmental principles that:

    a. associated or dependent species should be maintained above a level that ensures their long-term viability
    b. biological diversity of the aquatic environment should be maintained
    c. habitat of particular significance for fisheries management should be protected.

28. The agreements made between the Crown and Māori and documented in the 1992 Deed of Settlement support the approach of managing the effects of fishing on biodiversity as part of the fisheries management regime under the Fisheries Act 1996. We explore this matter further below.

Figure 1: Te hā o Tangaroa kia ora ai tāua

The concept of "Te Hā o Tangaroa Kia Ora Ai Tāua" underpins the work of Te Ohu Kaimoana.

This statement means "*the breath of Tangaroa sustains us*" and refers to the ongoing Māori relationship with Tangaroa – including his breath, rhythm and bounty.

Recognising our ongoing interdependent relationship acknowledges the Māori worldview that humanity is descended from Tangaroa and all children of Ranginui and Papatuanuku. We are part of the ongoing cycle of life.

The concept of 'Te hā o Tangaroa kia ora ai tāua' is underpinned by whakapapa, tiaki, hauhake and kai.

Whakapapa recognises that when Māori (and by extension Te Ohu Kaimoana as an agent of Iwi) are considering policy affecting Tangaroa we are considering matters which affect out tupuna – rather than a thing or an inanimate object.

We recognise that as descendants of Tangaroa, Iwi Māori have the obligation and responsibility to Tiaki – care for our tupuna so that Tangaroa may continue to care and provide for Iwi.

Our right and obligation of hauhake (cultivation) is underpinned by our tiaki obligations and responsibilities to Tangaroa. Ultimately our right to kai – to enjoy the benefits of our living relationship with Tangaroa and its contribution to the survival of Māori identity – depends upon our ability to Tiaki Tangaroa in a meaningful way.

Te Hā o Tangaroa underpins our purpose, policy principles and leads our kōrero every time we respond to the Government on policy matters. It is important to us that the Government understands the continuing importance of Tangaroa and recognises the tuhonotanga that Maori hold as his uri.

All decisions and advice offered by Te Ohu Kaimoana on fisheries is underpinned by this korero to ensure the sustainability of Tangaroa's kete for today and our mokopuna yet to come.

4. Matching solutions to problems and risks by applying the appropriate tools

29. The current NZBS contains two overlapping objectives and associated actions to manage coastal and marine biodiversity:

    d. Objective 3.4: Sustainable marine resource use practices: protect biodiversity in coastal and marine waters from the adverse effects of fishing and other coastal and marine resource users:

        i. Ensure implementation of the purpose and principles of the Fisheries Act 1996, including programs to sustain or restore harvested species and associated and depending species to ecologically sustainable levels, and integrate marine biodiversity protection priorities into programs for sustainable fisheries use, such as fisheries plans, using an ecosystem approach
        ii. Identify the coastal and marine species and habitats most sensitive to harvesting and other disturbances and put in place measures to avoid, remedy or mitigate adverse effects from commercial, recreational and Māori customary fishing activities.

    e. Objective 3.6: Protecting marine habitats and ecosystems: protect a full range of natural marine habitats and ecosystems to effectively conserve marine biodiversity using a range of appropriate mechanisms including legal protection

        i. Develop and implement a strategy for establishing a network of areas that protect marine biodiversity, including marine reserves, world heritage sites, and other coastal and marine management tools such as mataitai and taiapure areas, marine area closures, seasonal closures and area closures to certain fishing methods.
        ii. Achieve a target of protecting 10 percent of New Zealand's marine environment by 2010 in view of establishing a network of representative protected marine areas.

30. The updated Action Plan further supports these objectives with National Target 5: Biodiversity is integrated into New Zealand's fisheries management system, and National Target 13: A growing nationwide network of marine protected areas, representing more of New Zealand's marine ecosystems – which can be seen to come into conflict with the former.

31. The primary driver for biodiversity to be integrated into New Zealand's fisheries management system can be found in Section 9 of the Fisheries Act 1996, which sets out the environmental principles, as noted earlier. Thus, the requirement to manage the effects of fishing on biological diversity is already integrated into the fisheries management system. Key structures and processes to implement these principles include the Conservation Services Programme (CSP), Biodiversity Research Advisory Group (BRAG) and the Aquatic Environment Working Group (AEWG) as well as the sustainability measures process run annually through Fisheries New Zealand (FNZ).

32. As pointed out in the draft New Zealand Report on implementing the NZBS 2000-2020, progress has been made, particularly through the development of National Plans of Action and Threat Management Plans for key species with which fisheries interact. But there is more to do – particularly to identify significant fisheries habitats. An action to review the initiatives that have been taken under the Fisheries Act's environmental principles, identify the gaps, and to develop policy and research to address them should be included as a priority under the revised NZBS. We are aware that in the early 2000s, the then Ministry of Fisheries did substantial operational policy work on the "front end" of the Act, identifying what its principles, including the environmental principles, are capable of. This would be a good policy platform to return to.

What do we mean by Marine Protected Areas and what is their purpose?

33. The objective relating to marine protection, along with the updated target can be seen to overlap with and complement those relating to use of the Fisheries Act 1996 to manage the effects of fishing on marine biodiversity, although in our view the target of 10% is problematic as it is not based on risks and threats to marine biodiversity: indeed it is not clear what the percentage is based on. The approach taken by previous governments to implementing marine protection initiatives, for example through the existing marine protected area (MPA) policy and the proposed Kermadec Sanctuary, treats marine protection as a separate issue and applies protection tools without any deliberate process to explore the risks to biodiversity of different activities that occur in the areas concerned, or to consider appropriate tools that address those threats – particularly where large areas are proposed to be created as no-take areas.

34. The overall approach that has been taken and its implications are echoed in the findings of an international study commissioned by Te Ohu Kaimoana to analyse the impact of MPAs on Māori property rights in fisheries. The study begins with an overview of the international literature followed by a closer look at the situation in Aotearoa. While a final paper has yet to be published, key findings based on a review of the international literature are summarised below:

    a. **MPA definition:** vagueness and variation in MPA definition and goals makes critical analysis of their objectives and impacts on national constituent groups, where actual policy must take place, extremely difficult. It also hinders the design of alternative approaches, if warranted, to achieve reasonable biological goals.

b. **Durability of MPAs:** Although MPAs are called for by members of broad international organisations, such as UN agencies and worldwide NGOs to provide global public goods, they must be designed and implemented at the country level, affecting country citizens, budgets and use of natural resources. Advocates have general policy objectives that they promote, but they typically do not bear direct private costs from the restrictions imposed. By contrast, those who will bear the costs of implementation, with unclear benefits, will have very different objectives and incentives in mind. This does not bode well for long-term political durability of MPAs or of the economic and social returns from national marine resources affected.

c. **Criteria for establishment of MPAs:** there are no generally-understood criteria for the establishment of MPAs. Some may be pre-emptive, inserted into areas of partially pristine ecosystem conditions, whereas other are opportunistically created by advocates in areas of little current human exploitation or constituent involvement or reaction. The lack of specificity in criteria definition makes it difficult to evaluate the effects of any MPA on later human populations. Positive predicted outcomes are not based on rigorous trade-off analysis.

d. **Cost benefit and trade-off analyses:** Cost-benefit analyses of MPAs to assess trade-offs, particularly as they include precluded or restricted human activities, such as fishing or mining, are very rare in the literature. The absence of trade-off analyses is often justified in that ecosystem values are difficult to assess without extensive data and that in principle, they should not be valued in economic terms because they involve non-human values. However, there are longstanding established methods for valuing non-traded resources in economics. Polices are long-lasting when costs and benefits are distributed proportionately amongst parties. If not, those who bear more costs than benefits are made worse off and will resist, and those that bear more benefits than costs will promote.

e. **Integration with national laws and indigenous rights:** MPA proposals generally are presented in isolation of national policies and legal obligations. Nevertheless, they involve costs and potential benefits and hence, must be weighed in light of them along with other national objectives and responsibilities. For example, fishing communities and especially those with indigenous populations, often perform poorly relative to the national socio-economic criteria. Indigenous populations also have treaty guarantees that may be compromised. If MPAs inflict added costs, then these outcomes would be inconsistent with other policies. The practices of indigenous and other local parties can be an alternative to MPAs, achieving more ecosystem goals at lower cost. They are locally-based and understood, whereas MPAs typically are top-down initiatives.

f. **Compensation:** compensation to resource users affected by no-take MPAs or highly restricted access regulations is extremely rare. One rare example exists of compensation to fishers adversely affected by the Great Barrier Reef MPA re-zoning in Australia in 2004. Tourism benefits are estimated in total to be around thirty-six times greater than commercial fishing however it is important to underscore that the tourism benefits did not necessarily accrue to fishers or their communities. Distributional effects must be addressed in any cost-benefit analysis.

g. **Baseline assumptions:** the baseline alternative for MPAs is not defined. When open access and the race to fish dominates, then short time horizons prevail with excess labour and capital devoted to the fishery, low profitability, depleted targets stocks, high levels of bycatch, and little ecosystem preservation. MPA discussions typically point to these conditions as the source of human degradation of biological systems and justification for MPAs. But open access or traditional regulatory practices are being replaced by local, rights-based systems that result in different incentives for resource use. Alternatives to achieve agreed-upon ecological goals using rights-based systems are timely, less contentious and more effective.

35. In relation to the New Zealand situation, the authors conclude that MPA proposals – in particular the proposed Kermadec Ocean Sanctuary, are motivated by NGOs and political officials who seek to promote New Zealand as a leader in ocean conservation. However, there was little attention to programme evaluation in planning or in implementation and underlying causal mechanisms between establishment of the Sanctuary and claimed outcomes remain unclear. In addition, the proposal appears to violate the Fisheries Settlement, erode the security of fishing rights which could have ripple effects in the broader fisheries management regime – undermining incentives for marine stewardship, and eventually create the exact environmental and social problems that MPAs are intended to avoid. Finally, involving Māori and other resource users in collaborating on solutions rather than casting them as adversaries, draws upon their unique local, long-standing understanding of the resource and how to protect it.[4]

36. In summary, we need to revise our approach to marine protection. The level of protection required needs to be integrated through the regimes that manage different activities that have an adverse effect on biodiversity. The inclusion of an arbitrary percentage target such as 10% needs to be reconsidered both in the New Zealand revised strategy and during the negotiations to update the CBD itself. This type of target approach creates perverse incentives for countries to find the easiest ways to achieve it, in some cases designating large areas that do not need further protection as no-take areas, just to meet the target. This can also mean that areas containing biodiversity that is at risk do not receive the attention they need. By integrating marine protection across management regimes in this way, the objectives for marine protection become clear, monitoring programmes can be put in place, and corrections made along the way.

37. Te Ohu Kaimoana has proposed this approach for many years. Where fishing is a threat to biodiversity, the Fisheries Act 1996 should be used to address it. As already noted, this approach is already being taken across many species including marine mammals and seabirds. However, more work is needed, and complacency should be avoided.

38. We are not advocating a view that there is no problem. However, clarity is needed about what problems we need to address. Greater progress would be made to protect marine biodiversity from fishing if a review of progress under s 9 of the Fisheries Act 1996 was carried out to identify progress that's been made to implement the environmental principles and identify gaps that need to be addressed. As noted earlier, a strategic approach to protecting habitats of particularly significance to fisheries management is needed.

[3] *Libecap, G D, Arbuckle, M and Lindley, C: (in prep) An Analysis of the Impact on Māori Property Rights in Fisheries of Marine Protected Areas (MPA) and Recreational Fishing Outside the Quota Management System (QMS): Output 1: Marine Protected Areas and Ecosystem-Based Management – A Critical Global Overview*

[4] *Ibid: Output 2: An Analysis of Ecosystem-Based Management and Marine Protected Areas in New Zealand with Application to the Proposed Kermadec Sanctuary.*

Building on our rights-based system

39. As findings from the international study suggest, rights-based systems result in different incentives for resource use than open access or traditional regulatory systems, and these can respond to problems in a timelier and more effective way. Another approach available under the Fisheries Act is the use of Fisheries Plans, which provide the basis for rights holders to take responsibility for managing fisheries and the effects of fishing on the aquatic environment – including biodiversity. We consider priority also needs to be given to promoting this approach as part of a marine biodiversity strategy[5].

Effects of other uses and activities on fishing and fisheries habitats

40. Where areas are to be designated as "no-take" areas outside the framework of the Fisheries Act 1996, i.e. they are not required to meet the purpose of the Act, they can be said to amount to a re-allocation of an area to non-extractive use. Thus, the effect on existing users such as Iwi and other fisheries users needs to be assessed and any adverse effects avoided, remedied or mitigated. This principle is recognized in part under the Marine Reserves Act, in which the Minister of Fisheries must concur with a proposal before it can go ahead. In reaching his/her decision, the Minister must assess whether the proposal will have an undue adverse effect on fishing. These effects may include displacement of fishing effort into a smaller area, with a consequential impact of fish stocks. In these instances, if a proposal is to go ahead, one approach to avoiding, remedying and mitigating an adverse effect on fishing is to reduce the TACC and compensate fishers for the relevant loss in value.

41. Where activities regulated under other Acts adversely affect marine biodiversity, including habitats described earlier, action should be taken under those Acts. A clear example is the need for regional councils to control activities on land that affect such habitats. This leads to our third issue which is the need for better integration between regimes that manage activities affecting marine biodiversity.

[5] See s 11A of the Fisheries Act 1996. We would be happy to discuss with you the policy around this provision as well as its potential.

5. Strengthening the links between regimes that manage different activities affecting biodiversity

42. The current NZBS and updated Action Plan contain objectives that intend to create greater integration between management regimes, particularly at the regional level. Objective 3.3 of the NZBS, Sustainable coastal management, aims to protect biodiversity in coastal waters from the adverse effects of human activities on land and in the coastal zone, amongst other things, assessing the effectiveness of regional coastal plans in protecting marine biodiversity and recommending changes as part of the review of the New Zealand Coastal Policy Statement, and expanding programmes to mitigate the adverse effects of land use on coastal biodiversity, and incorporating marine biodiversity priorities into programmes for sustainable land use.

43. The updated Action Plan's National Target 15 aims to "achieve multiple benefits and greater biodiversity and ecosystem services through greater coordination, integration and collaboration". Implementation of this target is variable and there is more to be done better integrate the management regimes that have responsibilities in relation to marine and freshwater biodiversity.

44. The Fisheries Settlement affirmed Māori rights and interests in both marine and freshwater fisheries. Further, the connections through whakapapa between Māori and ecosystems in their rohe extend through our rivers and encompass the freshwater taonga that inhabit them. Various land-use practices that adversely affect the biodiversity of freshwater ecosystems flow downstream, ultimately affecting marine ecosystems and negatively affecting the rights and interests of communities and Māori. The integration of management regimes needs to account for the connection between terrestrial, freshwater, and marine environments and the connections these environments share with people. Solutions under the relevant legislation need to be deployed in appropriate ways that target relevant threats. Referring to the previous discussion on using the appropriate management tool for marine ecosystems, employing a permanent no-take marine reserve does nothing to address sedimentation and pollution flowing into the marine environment from freshwater ecosystems and land-use practices.

45. Progress to manage, restore and conserve inshore and freshwater ecosystems from changes caused by human activities onshore is a matter to be addressed under the Resource Management Act 1991 and will necessarily involve coordination between central and local government alongside those dependent upon the sustainable uses of marine resources. The job of making the different regimes work in concert still has some distance to go.

46. Other relevant regimes include the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (EEZ Act) which deals with activities outside the Territorial Sea that have the potential to affect fishing and fisheries habitats.

47. A systematic approach is needed to identify priorities for action. We have already noted in relation to fisheries management the need to develop policy and a research strategy to identify habitats of significance for fisheries management. Without a better understanding of these habitats we cannot be confident biological diversity is being maintained and the potential of fisheries resources to meet the reasonably foreseeable needs of future generations will be achieved.

Te Ohu
Kaimoana