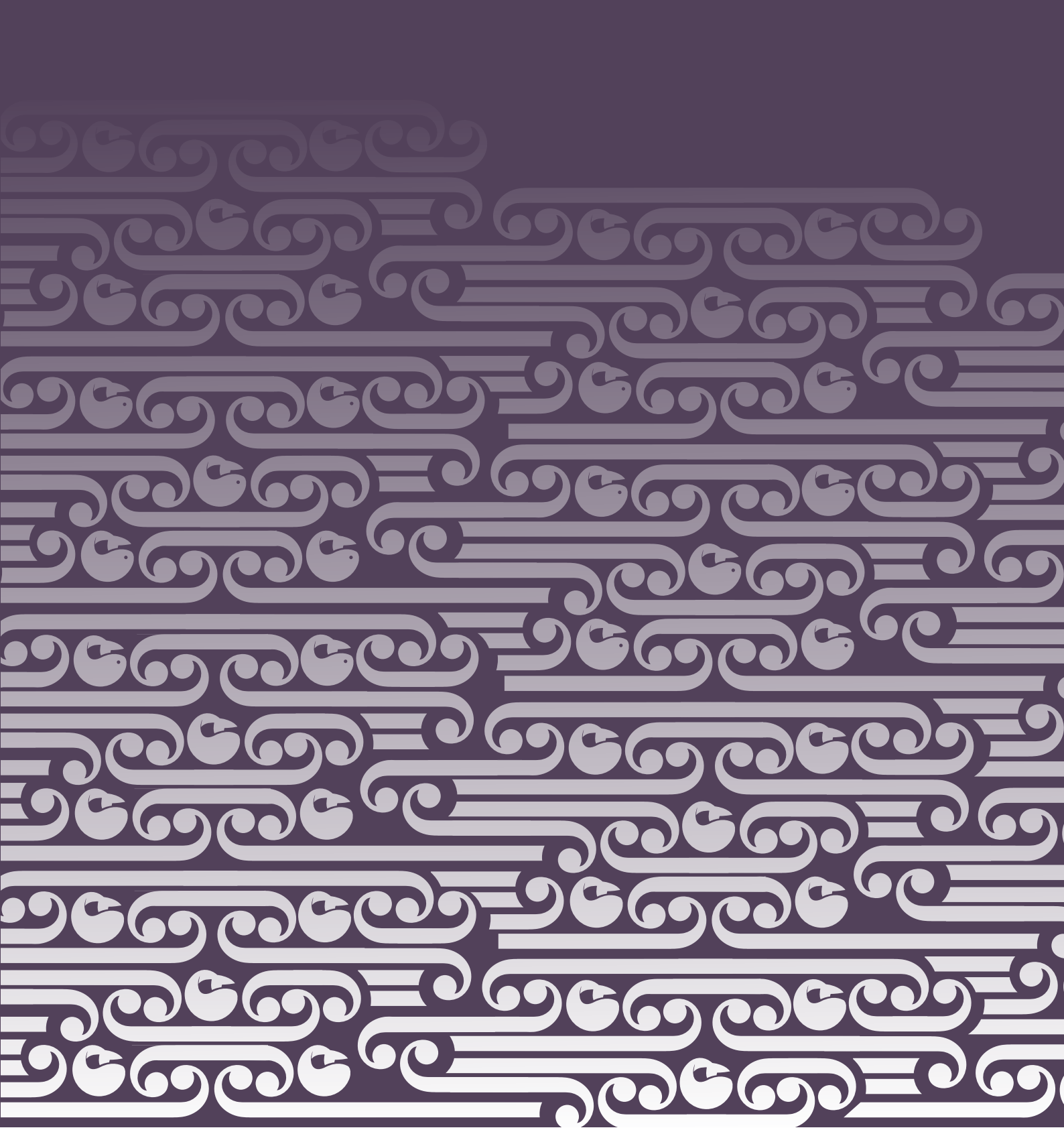

Te Ohu Kaimoana's preliminary views to the Ministry of Foreign Affairs and Trade on negotiations on a new Global Framework for Biological Diversity

Te Ohu Kaimoana

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Introduction

1. Te Ohu Kaimoana welcomes the opportunity to provide you with our views on the key issues to be covered in the upcoming negotiations on a new post 2020 global framework for biodiversity by parties to the Convention on Biological Diversity (the Convention). Te Ohu Kaimoana's particular interest is in fresh water and marine biodiversity that includes and supports our fisheries.

About Te Ohu Kaimoana

2. 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."

3. Mandated Iwi Organisations (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".

4. In light of this direction, we are providing you with our preliminary views on key issues to be-covered in the impending negotiations on a new post 2020 global framework for implementing the Convention on Biological Diversity (the Convention). We have also contributed to the New Zealand Government submission to the Convention. The primary focus of our paper is aquatic biodiversity, which includes and supports our fresh water and marine fisheries resources.

Noho ora mai rā,

Dion Tuuta
Te Mātārae - Chief Executive
Te Ohu Kaimoana

1. Guiding Princples

1.1 - Te Hā o Tangaroa kia ora ai tāua

5. Prior to the colonisation of Aotearoa by the British Crown, Māori enjoyed complete authority over their fisheries resources. Te Ao Māori's relationship with Tangaroa, and ability to benefit from that relationship, was and remains underpinned by whakapapa – descent from Ranginui, Papatūānuku and their children.

6. The signing of Te Tiriti o Waitangi in 1840 affirmed Māori tino rangatiratanga over their taonga including fisheries which was an essential affirmation of the traditional Māori world view. This world view endures in the modern day. Te Tiriti o Waitangi and the 1992 Maori Fisheries Settlement are built on a much deeper foundation of Māori whakapapa connection to and relationship with Tangaroa.

7. In the modern context, when considering or developing fisheries-related policy, Te Ohu Kaimoana is guided by the principle of 'Te Hā o Tangaroa kia ora ai tāua' - the breath of Tangaroa sustains us. In this context Tangaroa is the ocean and everything connected to and within, on and by the ocean. This connection also includes humanity, one of Tangaroa's descendants.

8. Ko 'Te hā o Tangaroa kia ora ai tāua', highlights the importance of an interdependent relationship with Tangaroa, including his breath, rhythm and bounty and how those parts individually and collectively sustain humanity. The guiding principles underpinning 'Te hā o Tangaroa kia ora ai tāua' highlight how we ensure that we foster and maintain our relationship with Tangaroa.

1.1.1 - Tangaroa

9. Tangaroa is the God of the Sea and everything that connects to the sea. He is the divinity represented through Hinemoana (the ocean), Kiwa (the guardian of the Pacific), Rona (the controller of the tides – the moon) and the connection with other personified forms of the Great Divine. For some tribes, he is also the overlord for all forms of water, including freshwater and geothermal as well as saltwater.

1.1.2 - Te Hā

10. Te Hā means, breath and to breathe. Te Hā o Tangaroa represents the breath of Tangaroa, including the roar of the ocean, the crashing of waves on the beach and rocks, the voice of the animals in and above the ocean and of the wind as it blows over the ocean, along the coast and the rocks and through the trees that stand along the shoreline. Through our whakapapa to Tangaroa, we as humanity, we as tangata whenua, are the human voice for Tangaroa.

11. When Tangaroa breathes it is recognised through the ebb and flow of tide and the magnetism of the moon. This magnetism is recognised as the kaha tuamanomano (the multitudinal rope of the heavens). Therefore, we must also be mindful of the lunar calendar when working with Tangaroa and his various modes.

1.1.3 - Purpose and Policy Principles

12. Te hā o Tangaroa ki ora ai taua provides Te Ohu Kaimoana with guidance on key principles which should underpin our consideration of modern fisheries policy.

- **Whakapapa:** Māori descend from Tangaroa and have a reciprocal relationship with our tupuna;
- **Tiaki:** To care for Tangaroa, his breath, rhythm and bounty, for the betterment of Tangaroa in order to care for humanity as relatives;
- **Hauhake:** To cultivate Tangaroa, including his bounty, for the betterment of Tangaroa (as a means of managing stocks) and for the sustenance of humanity; and
- **Kai:** To eat, enjoy and maintain the relationship with Tangaroa as humanity.

13. Whakapapa as a principle recognises that when Māori (and Te Ohu Kaimoana as an extension of Iwi Māori) are considering Tangaroa, we are considering the wellbeing of our tupuna (ancestor) – rather than a thing or inanimate object. Therefore, the obligation and responsibility of Tiaki – caring for Tangaroa – comes from our descent from our Tupuna. Similarly, the responsibility and obligation of Hauhake (cultivation) is underpinned by our Tiaki obligations to Tangaroa in order to Tiaki humanity.

14. Ultimately, humanity's right to Kai – to enjoy the benefits of our whakapapa relationship with Tangaroa – are dependent upon our ability to Tiaki and Hauhake and how we uphold the responsibility and obligation in a modern and meaningful way to maintain legitimacy through practicing Tiaki, Hauhake and Kai.

2. Executive summary

15. In preparing its position on the negotiations, the Government should work in partnership with Iwi through Te Ohu Kaimoana. A partnership approach is envisaged by the Treaty of Waitangi and the Fisheries Settlement and is the appropriate way of ensuring that the Crown and Iwi can formulate a position that furthers rather than undermines the Fisheries Settlement.

16. We are developing our thinking on the way Maori rights in fisheries are affected by the Convention. This response is a preliminary one, and we are considering developing our ideas into a more substantive paper to be submitted to the Convention Secretariat by 15 April 2019.

17. The potential applicability of our indigenous approach to management provides a strong case for a wider engagement with indigenous peoples and local communities to develop a common position outlining biodiversity commitments as part of the process of developing the updated framework for implementing the Convention. Such an engagement is beyond the resources of Te Ohu Kaimoana but is an initiative which we would support and potentially help lead.

18. This response touches on the key issues, based on our role under the Maori Fisheries Act, and guided by the Maori Fisheries Strategy agreed to by Iwi in 2016.

19. In negotiations to establish to implement the new framework, the New Zealand Government should develop its position in the context of the following:

    a. The obligations of the Convention in relation to indigenous peoples, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

    b. Te Hā o Tangaroa Kia Ora Ai Tāua (Maori World View) as a basis for the way Maori manage their relationship with the marine environment. This approach is enshrined in the Treaty of Waitangi and the Fisheries Settlement between the Crown and Maori and is reflected in the purpose and principles of the Fisheries Act 1996.

    c. Our fisheries management system, guided by the purpose and principles of the Fisheries Act with its sustainable utilisation focus, is consistent with the objectives of the Convention

    d. Protection of marine biodiversity from fisheries effects is integrated through New Zealand's fisheries management system (but we need to do a better job of ensuring the impacts of other activities on fisheries and marine biodiversity are more effectively managed under other relevant regimes)

    e. The benefits of building on the rights and responsibilities-based approach to fisheries management in New Zealand, which creates the incentive for rights holders to take responsibility for managing the effects of fishing on all marine biodiversity.

f. The proposal to establish an ocean sanctuary within New Zealand waters around the Kermadec Islands has foundered in political and legal debate and serves to highlight the growing need to reconcile indigenous rights and interests in fisheries and other aquatic life. In the case of Māori, their indigenous rights in natural resources as they exist today are founded in the Treaty of Waitangi but have found effect and definition in Settlements arising from the Treaty.

e. Through these processes, Māori rights in fisheries are now expressed as a share of the productive potential of all aquatic life in New Zealand waters. Māori rights are not just a right to harvest, but also to utilise the resource in a way that provides for their social, cultural and economic wellbeing.

20. Māori take the view that the New Zealand Government should not be expropriating or attenuating any rights to aquatic resources allocated under Treaty settlements without express agreement. The New Zealand government has an obligation to protect and enhance those rights in partnership with Māori. This obligation does not only apply nationally but extends into the international arena, as does the reach of the Fisheries Act 1996 under which those rights are exercised.

21. Any agreement that might be reached with Māori that devalues, attenuates or alienates assets provided to Māori under the Settlements, must be agreed on a pan-Iwi basis, reflecting the framework of the Fisheries Settlement. Anything less risks trivialising and devaluing the complex process that led to the Settlement agreement between the Crown and Māori, and the rights allocated as a result. This is no simple process and requires a good governance and transparent democratic process. Lack of such agreement is at the heart of Māori objections to the establishment of a Kermadec Ocean Sanctuary.

3. The Convention on Biological Diversity and United Nations Declaration on the Rights of Indigenous Peoples

22. The current Convention on Biological Diversity (the Convention) provides a framework for States to meet its objectives in a flexible manner in light of their own cultural, economic and constitutional arrangements. The objectives of the Convention 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.

23. 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.

24. Further Articles of the Convention 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".

25. 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 New Zealand's fisheries management system and supported by the goals and objectives of the New Zealand Biodiversity Strategy 2000 – 2020. However, since the signing of the Convention and development of our own New Zealand Biodiversity Strategy, actions of previous governments have treated them as though they are unrelated and in some cases as though they are in conflict. We discuss this matter later in this response.

26. 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".

27. Aichi Target 18 further emphasises this obligation[1]:

    By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.

[1] *The Aichi Targets were agreed by the Parties in 2010 as part of a revised Strategic Plan for Biodiversity*

28. This obligation influences the way contracting parties might go about achieving the objectives of the convention. 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 quota management system (QMS) as the basis for management of commercial fisheries represents an innovation that sits comfortably with Māori resource management.

29. 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. Māori rights to use marine resources in accordance with their world view and associated customs is supported by the United Nations Declaration on the Rights of Indigenous Peoples and international agreement and practice for social cultural and economic development. The Declaration includes the right to use and develop lands, territories and resources, the right to fair treatment and redress and the right to the conservation and protection of the environment and its production capacity[2].

30. It is important therefore that marine protection and 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.

4. Te hā o Tangaroa kia ora ai tāua: the basis for conservation and sustainable use

31. Te Hā o Tangaroa Kia Ora Ai Tāua (Maori World View) as a basis for the way Maori manage their relationship with the marine environment. It is enshrined in the Treaty of Waitangi and the Fisheries Settlement between the Crown and Maori and is reflected in our Fisheries Act 1996.

32. Taking the perspective of a Māori world view, conservation is a component of sustainable use, and not an end in itself. The concept of Te Hā o Tangaroa Kia ora Ai Tāua focusses specifically on the relationship between Maori and Tangaroa (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. It is a view which is interwoven with rangatiratanga, guaranteed under Article Two of the Treaty of Waitangi in respect of taonga including fisheries. It is also supported by Article 8 (j) of the Convention and Aichi Target 8 referred to earlier.

[2] *http://www.un.org/en/genocideprevention/documents/atrocity- crimes/Doc.18_declaration%20rights%20indigenous%20peoples.pdf*

33. Under this view, "conservation" is part of "sustainable use", that is, it is carried out in order to use resources for the benefit of current and future generations. In relation to managing fisheries and the effects of fishing on biodiversity, the purpose and principles of our 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 – having a framework that requires this was a key reason for Māori and Iwi accepting the Quota Management System (QMS).

34. 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 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, utilisation means "conserving[3], 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 reasonability foreseeable needs of future generations

    b. Avoiding, remedying or mitigating the effects of fishing on the aquatic environment.

35. Moreover, section 9 of the Fisheries Act 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.

36. The agreements made between the Crown and Maori and documented in the Deed of Settlement support the proposition that the effects of fishing on biodiversity should be managed as part of the fisheries management regime to achieve the purpose of the Fisheries Act.

37. Section 5 of the Fisheries Act contains obligations in relation to international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, which enacts the Fisheries Settlement. Functions, duties and powers exercised under the Act are to be exercised in a manner consistent with both. In our view, to ensure consistency between the two, New Zealand's position should be guided by its obligations to Māori under the Treaty so that international agreements can be shaped to include Māori and indeed indigenous views on the way biodiversity should be managed.

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

5. Consistency of the Fisheries Act 1996 with the Convention

38. Our fisheries management system, guided by the purpose and principles of the Fisheries Act with its sustainable utilisation focus, is consistent with the objectives of the Convention.

39. The objective of conserving and sustainably utilising marine biodiversity can be achieved in various ways and using various tools. As long as their use is intended to meet the objectives of the convention, the way they are used should remain flexible and not prescriptive – enabling the parties to implement them in a way that is appropriate to their culture, economy and regulatory framework.

40. The key here is to identify the outcomes to be achieved and not require them to be achieved through a particular management regime or tool. Aichi Target 6 supports this approaching in stating:

    By 2020 all fish and invertebrate stocks and aquatic plans are managed and harvested sustainably, legally and applying ecosystem-based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.

41. Progress has been made to achieve these outcomes in New Zealand under the Fisheries Act, particularly through:

    a. The setting of catch limits for fisheries and the introduction of commercial fisheries into the QMS, managed through a Total Allowable Commercial Catch (TACC). Management of fish stocks is adaptive and catch limits are reviewed and adjusted to ensure they are sustainable. In addition, the allocation to Iwi of quota under the QMS enables Maori to exercise the commercial aspects of their customary fishing right

    b. Establishment of a regime to enable management of customary non-commercial fishing by kaitiaki. This was agreed as part of the Fisheries Settlement and provides a framework for Iwi and hapū to exercise the non-commercial aspects of their customary fishing right.

    c. development of National Plans of Action and Threat Management Plans for key species with which fisheries interact

    d. development of measures to mitigate the effects of fishing on biodiversity, such as sealion excluder devices, measures to avoid seabird captures and initiatives to develop new net technologies that are being developed to better avoid unwanted catch.

42. We acknowledge there is more to do –for example to identify the significant fisheries habitats that should be protected from any adverse effects of fishing. However, is important to note that the purpose and principles of the Fisheries Act make it fit for purpose. The emphasis needs to be on improving implementation. 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 here in New Zealand.

6. What do we mean by marine protected areas (MPAs) and what is their purpose?

43. The requirement to protect marine biodiversity from fisheries effects is integrated through New Zealand's fisheries management system.

44. The obligations under the Convention are specified broadly, in the knowledge that systems for management of the marine environment, including fisheries vary greatly across jurisdictions: from inadequate to sophisticated. The current Convention defines "protected area" as "a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives". This definition is quite capable of being applied under the Fisheries Act and in fact can be said to have been applied already. The whole of the Exclusive Economic Zone is subject to the Fisheries Act. Fish stocks are managed within quota management areas (QMAs) or fisheries management areas (FMAs) and fishing activity is subject to the environmental principles referred to earlier. Conservation objectives are achievable through various measures, such as catch limits and measures to manage the effects of fishing on other forms of marine biodiversity.

45. It is not clear at this stage what form the new global framework will take and we understand various suggestions have been made by the parties from adopting the Aichi Targets to measures such as full protection of 30% of all habitat types on land and sea by 2030.

46. One of the problems emerging with the language of "marine protected areas" (MPAs), is defining what is to be protected, the risks to be managed and the appropriate management response. In New Zealand and internationally there is a push from NGOs for the designation of MPAs in increasing percentages of the ocean. This is reflected in Aichi Target 11, which states:

    By 2020, at least 17 percent of terrestrial and inland water, and 10 percent of coastal and marine areas, especially of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures and integrated into the wider landscapes and seascapes.

47. Conservation of aquatic biodiversity and sustainable use of its components can be achieved in various ways and using various tools. Implementation should remain flexible and not prescriptive – enabling Parties to the Convention to implement them in a way that is appropriate to their culture, economy and regulatory framework.

48. The "Quick Guide to the Aichi Biodiversity Targets", in relation to Target 11, states that "the protected areas can include not only strict protected areas but also protected areas that allow sustainable use consistent with the protection of species, habitats and ecosystem processes". This statement envisages use of resources where harvested species are managed sustainably, the risks posed by harvest on other species are well managed, and underlying ecosystems on which they depend continue to function. However while the target appears to recognise these matters, the creation of thresholds such as 10% (or 30%) is not helpful if we are to develop a fully integrated system of management that ensures the effects of all activities on marine biodiversity are addressed.

49. In the New Zealand situation, the 10% target for protection of coastal marine areas is included in the current New Zealand Biodiversity Strategy. The approach being taken by previous governments to implementing marine protection initiatives, for example through the existing marine protected areas (MPA) policy and proposed Kermadec Sanctuary, treats marine protection as something distinct from the protection that may be applied through activity focussed management regimes 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 to address those threats.

50. Thus, there is potential for a new Convention to deliver large permanent MPAs, without considering how they contribute to the management of resources such as fisheries, both in areas under the jurisdiction of States and on the High Seas. This approach also effectively reduces the area in which fisheries may be accessed, so that future catch limits are reduced beyond what is necessary to achieve sustainable use.

51. In relation to biodiversity on the High Seas, we have already advised MFAT regarding the proposed convention for Biodiversity Beyond National Jurisdiction (BBNJ) that where there are important areas of biodiversity to protect on the High Seas, a risk-based approach in light of the effects of fishing (or any other activity) should be taken to determine what level of protection is appropriate and under what conditions that may change. For example, we note that under the South Pacific Regional Fisheries Management Organisation (SPRFMO), the approach to identification of areas that can and cannot be fished is negotiable over time, depending on the level of information that is available. In this regard, environmental assessment processes and implementation of area-based management approaches form part of an adaptive approach to managing large areas of ocean for which there may be little information.

52. Finally, the Fisheries Settlement means there is a broad principle that 20% of all national commercial fishing rights allocated to New Zealand should be made available to Maori. Once a national limit is established, 20% would transfer to Te Ohu Kaimoana for allocation to Iwi. We emphasise that New Zealand can only control our fishing activities on the High Seas via the Fisheries Act, so it is an important consideration for underpinning our position on the Convention targets as they may relate to the High Seas.

53. As long as the use of marine protection initiatives is intended to meet the objectives of the Convention, the way they are used should remain flexible and not prescriptive. For this reason, we don't favour including percentage thresholds as a strict requirement – particularly given the move to continually increase the percentage of MPAs in areas of the world that lack a legal framework based on rights and responsibilities.

54. 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 the 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 do 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[4].

55. 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[5].

[4] *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*

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

56. 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 Convention 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.

7. Building on our rights-based approach to fisheries

57. The position we have taken in relation to New Zealand's management regime is: where non fishing activities affect marine biodiversity, including habitats described earlier, action should be taken under the regimes that manage those activities. A clear example is the need for regional councils to control activities on land that affect fisheries and associated marine biodiversity.

58. 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. In New Zealand, solutions under the relevant legislation need to be deployed in appropriate ways that target relevant threats. For example, action needs to be taken on land to address sediments and nutrients that adversely affect marine biodiversity.

59. In this regard we note that Aichi Target 8 states:

By 2020, pollution, including from excess nutrients, has been brought to levels that are not detrimental to ecosystem function and biodiversity.
While New Zealand still faces challenges in addressing this issue, it remains a priority – particularly given its effect on our inshore fisheries.

61. Building on the rights-based approach to fisheries management in New Zealand, will create the incentive for rights holders take responsibility for managing the effects of fishing on marine biodiversity. This is much more effective than the stark alternative of open-access fisheries regimes.

62. As findings from our 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 strategy6 in New Zealand, supported by the new global biodiversity framework.

63. In this regard, Aichi Target 3 supports the evolution of such approaches:

> *By 2020, at the latest, incentives, including subsidies, harmful to biodiversity, are eliminated, phased out or reformed in order to minimise or avoid negative impacts and positive incentives for the conservation and sustainable use of biodiversity are developed and applied, consistent and in harmony with the Convention and other relevant international obligations, taking into account national socio-economic conditions.*

64. We note that in New Zealand no subsidies are provided to the commercial sector, which is in fact levied to pay for the services that benefit them. This includes fisheries stock assessments and measures to avoid, remedy or mitigate the effects of fishing on the aquatic environment including marine biodiversity. In addition, the introduction of species into the Quota Management System (QMS) and the allocation of Individual Transferrable Quota (ITQ) creates the incentives required for quota holders to take responsibility for the sustainable use of biodiversity, including fisheries resources and the ecosystems of which they are a part. As already discussed, the commercial aspect of Maori fishing rights is woven through this system.

[6] 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.

Figure 1: Te hā o Tangaroa kia ora ai tāua

Te Ohu
Kaimoana