



**Te Ohu Kaimoana's response to  
the review of the Crown Minerals  
Act 1991**

Te Ohu  
**Kaimoana**  


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Tēnei te mihi maioha ki a koutou i tēnei tau hou

**RE: REVIEW OF THE CROWN MINERALS ACT 1991**

1. The purpose of this letter is to respond to the review of the Crown Minerals Act 1991. We understand that the deadline for our response to the Discussion Document was Monday 27 January 2020. We apologise for the delay in providing this letter to you. We hope it can be considered as a late response and welcome any future engagement on the review and in particular the matters set out below.
2. Our response deals primarily with Māori engagement and involvement in Crown minerals (page 45 to 54 of the Discussion Document).

**Te Ohu Kai Moana's mandate**

3. Te Ohu Kai Moana ('**Te Ohu**') is an entity established under the Māori Fisheries Act 2004. Our role is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities.<sup>1</sup> Our mandate includes a requirement to assist the Crown to discharge its obligations under the Māori Fisheries Deed of Settlement and Te Tiriti o Waitangi.
4. Te Ohu's primary concern is to ensure that the interests of the beneficiaries of the Māori fisheries settlement assets and designated Māori aquaculture settlement assets - Iwi and Māori - are protected and enhanced at all times.
5. As part of our role, Te Ohu represents 56 mandated Iwi organisations around Aotearoa, and 2 recognised Iwi organisations. These organisations represent and are accountable to their Iwi members for fisheries purposes under the Māori Fisheries Act 2004.

**Current protections for Maori interests**

6. Our key concern with the CMA is the fragile level of protection and lack of certainty it provides Māori as kaitiaki and tangata whenua, particularly in permit allocation decisions and ongoing engagement by permit holders. The CMA review provides an opportunity to strengthen Māori involvement in these decisions, as well as protection of current and future developmental Treaty rights.

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<sup>1</sup> Māori Fisheries Act 2004, s 32.

7. The current mechanisms that provide for Maori input and protection of interest are:
- a. Protections on a permit-by-permit basis through the Minerals Programme for Petroleum 2013 and the Minerals Programme for Minerals (Excluding Petroleum) 2013 ('Programmes').
  - b. Section 14(2)(c), which provides that a minerals programme **may** on request of an Iwi or hapu, exclude defined areas of land of 'particular importance' to the iwi or hapū's mana. This is supplemented by clause 3.1 of the Programmes.
  - c. Section 51(2), which provides that no person may without consent of the owners of the land, enter Māori land for the purpose of carrying out a minimum impact activity where the land is regarded as wāhi tapu by the tangata whenua.

#### Our concerns

8. The current statutory regime is piecemeal and inadequately protects Māori input and Treaty rights. We note as follows:
- a. The permit by permit protection and the ability to exclude areas of land are only reflected in the Programmes and not in the primary legislation. The Programmes can, at any time, be changed by the Governor-General on recommendation by the Minister.<sup>2</sup> This places Māori at the whim of the government of the day, and therefore the current 'soft' mechanisms are not a long-term solution that provides certainty to tangata whenua and Māori.
  - b. After being granted a permit, there is no incentive for a permit holder to continue to engage with Māori kaitiaki of the area. The current regime therefore can stymie the ability of Māori to exercise kaitiakitanga for future generations. This is exacerbated where Māori are not able to or do not have the resources to engage in the process for Māori input as set out in the Programmes.
  - c. The current statutory regimes do not protect the Treaty right to develop. It assumes that the basis of Māori participation and engagement is customary protection of land and waahi tapu rather than future use and development. Once a permit is granted it gives rights to permit holders, often for several decades. The Waitangi Tribunal on several occasions has acknowledged that right in the fisheries context in the *Muriwhenua Fishing Report* and the *Ngai Tahu Sea Fisheries Report*. In *Ngai Tahu* the Tribunal said:<sup>3</sup>  
'Rights beyond that arose from the inherent human right of development, a right that needed augmenting in the Maori case to offset the past impairment of their original industry and the loss of a developmental capacity, and to compensate for the depletion of their customary fishing areas. On that basis all Iwi have developmental rights and it could be that no custom restricts iwi from developing where they will in the open sea'.

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<sup>2</sup> Crown Minerals Act 1991, s 19.

<sup>3</sup> Ngai Tahu Sea Fisheries Report at p. 20

Although the comment was made in the fisheries context, the notion of Treaty protection of future use and development applies equally to the use and allocation of minerals.

### Our recommendations

9. Our recommendations are:

- a. that statutory amendments are made to the Crown Minerals Act 1991 to require applicants to consult with affected Māori (or at least to demonstrate a genuine attempt to consult with affected Māori) as part of the process of applying for a permit under the Act. The Programmes can give practical guidance to potential applicants on how to discharge this statutory obligation. This will give greater certainty in terms of process and outcome for both permit applicants and Māori kaitiaki; and
- b. that statutory amendments are made to recognise and protect the future right of Māori to develop resources, including Crown minerals, in their rohe. Māori would therefore be given an opportunity to assess any permit applications with their own future development in mind and demonstrate to the Minister that a potential future use exists for Māori in those minerals.

10. We welcome the opportunity to discuss any of these matters with you.

Ngā manaakitanga



Dion Tuuta  
**CHIEF EXECUTIVE**

Te Ohu  
**Kaimoana**

