Te Ohu Kaimoana response to the Environment Select Committee on the COVID-19 Recovery (Fast-Track Consenting Bill) (Government Bill 277-1)

Te Ohu Kaimoana

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Introduction

1. This submission is made on behalf of Te Ohu Kaimoana Trust (**Te Ohu Kaimoana**), Te Wai Māori Trust (**Te Wai Māori**) and the Takutai Trust (collectively, the **Te Ohu Kaimoana Group**) by Te Ohu Kai Moana Trustee Limited, the corporate trustee of Te Ohu Kaimoana and the Takutai Trust. Given the truncated timeframes this Bill has been developed within, and the short timeframes for making submissions, we have opted to make one submission as a Group.

2. For completeness, and the Select Committee's benefit, we provide the following summary of Te Ohu Kaimoana, Te Wai Māori and the Takutai Trust:

    a. **Te Ohu Kaimoana** is the independent Māori Fisheries Trust established under the Maori Fisheries Act 2004 (the **Maori Fisheries Act**).[1] Te Ohu Kaimoana works on behalf of 58 mandated Iwi organisations (MIOs), who represent all Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Settlement Quota and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group. In addition to Te Ohu Kaimoana's statutory mandate, MIOs have approved our Māori Fisheries Strategy and three-year strategic plan, 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". Te Ohu Kaimoana plays a key role in assisting MIOs to achieve that goal. To achieve our purpose, we are guided by the principles of *Te Hā o Tangaroa kia ora ai tāua* (see the next section of this submission).

    b. **Te Wai Māori** is an independent Māori Trust established under the Maori Fisheries Act 2004 (the Maori Fisheries Act). The purpose of Te Wai Māori Trust is to advance Māori interests in freshwater fisheries (s 94, Maori Fisheries Act).[1] Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries. The core values of Te Wai Māori are te mana o te wai, whakapapa, and kaitiakitanga and represent the natural order of the Te Wai Māori Trust worldview. First and foremost, we value freshwater and all that is encompassed in its ecosystems.

    c. **The Maori Commercial Aquaculture Settlement Trust (the Takutai Trust)** is an independent Māori Trust established by the Maori Commercial Aquaculture Claims Settlement Act 2004

[1] Te Ohu Kaimoana's purpose, set out in section 32 of the Maori Fisheries Act, is to advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:

(a) Ultimately benefit the members of iwi and Maori generally; and
(b) Further the agreements made in the Deed of Settlement; and
(c) Assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
(d) Contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

(the **Aquaculture Settlement Act**) to support Iwi in relation to the aquaculture settlement. The Takutai Trust is responsible for facilitating agreement between the Crown and the Iwi Aquaculture Organisations (IAOs) of a region on the form and amount of settlement assets arising from the Crown's obligations under the Aquaculture Settlement Act, receiving those aquaculture settlement assets from the Crown and regional councils, facilitating agreement over allocation of those settlement assets between the IAOs of the region and then allocating and transferring those assets to relevant Iwi Aquaculture Organisations. Only MIOs can be IAOs.

3. Our interest in the Bill relates to our responsibilities to protect the rights and interests of Iwi in the Maori Fisheries Deed of Settlement (the **Deed**) and assist the Crown to discharge its obligations under:
    a. the Deed with respect to the Maori Fisheries Settlement;
    b. the Aquaculture Settlement (through the Aquaculture Settlement Act); and
    c. Te Tiriti o Waitangi.

4. We do not intend for this submission to derogate from or override any response or feedback provided independently by Iwi, through their Mandated Iwi Organisations (MIOs[2]), Iwi Aquaculture Organisations and/or Asset Holding Companies (AHCs).

5. The Te Ohu Kaimoana Group wishes to be heard in support of this submission.

6. Please direct any correspondence on our submission to Stevie-Rae Hart – contact details have been supplied at the time of providing this submission.

Ngā manaakitanga,

Dion Tuuta
Te Mātārae
TE OHU KAIMOANA

[2] MIO as referred to in the Maori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

Te Hā o Tangaroa kia ora ai tāua

7. Iwi/Māori have a unique and lasting connection with the environment. Our challenge is to ensure that this connection is maintained. *Te Hā o Tangaroa kia ora ai tāua* (the breath of Tangaroa sustains us) is an expression of a Māori World View. It contains the principles we use to analyse modern fisheries policy, and other policies that may affect the rights of Iwi under the Deed of Settlement. *Te Hā o Tangaroa kia ora ai tāua* is outlined in **Figure 1**.

8. In essence, *Te Hā o Tangaroa kia ora ai tāua* highlights the importance of humanity's interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.

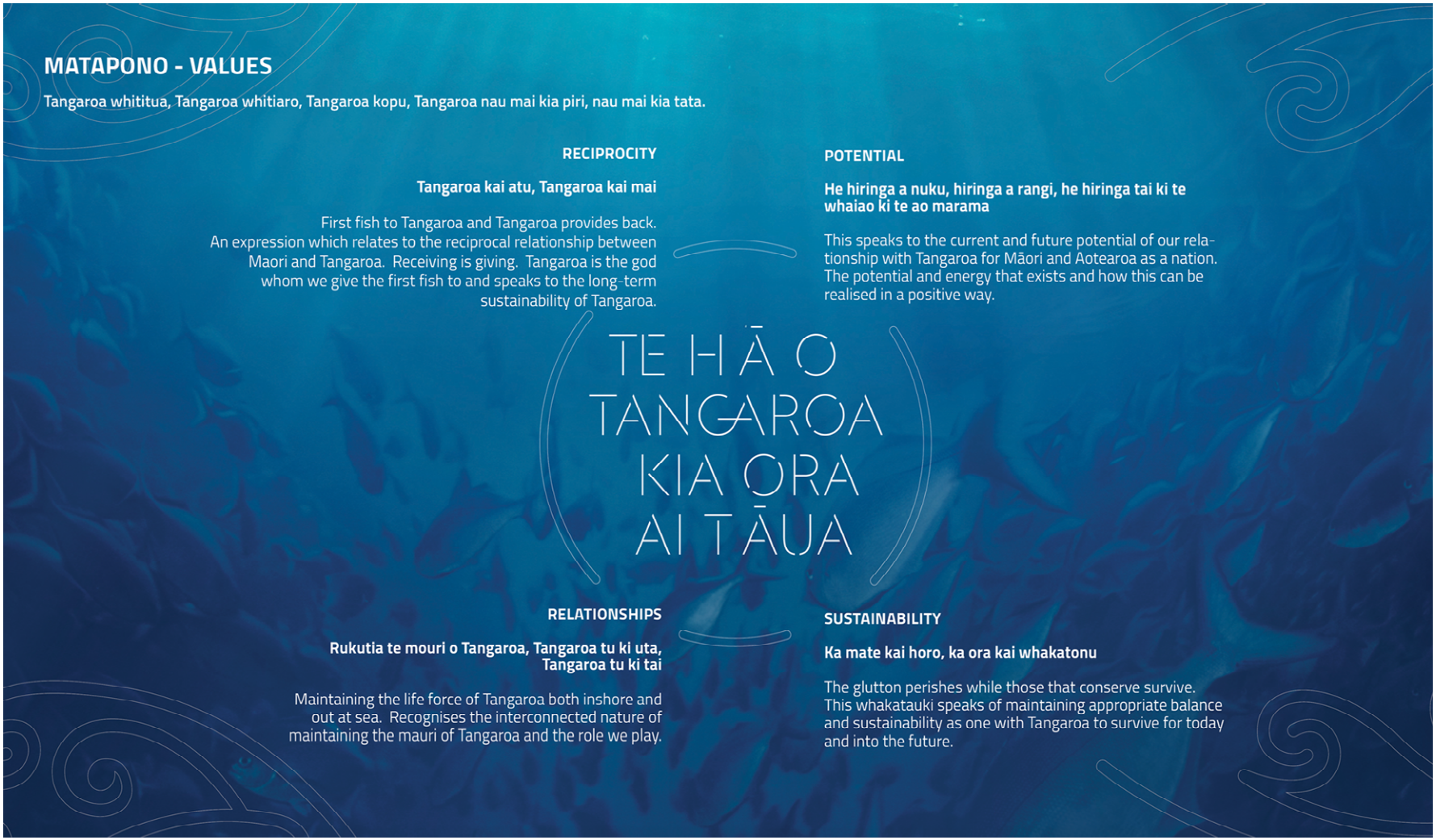
9. The Fisheries Settlement is an important and relevant part of modern fisheries management for Aotearoa. As a result, Māori rights in fisheries can be expressed as a share of the productive potential of all aquatic life in New Zealand waters. Māori rights are not just a right to harvest, but also to use the resource in a way that provides for their social, cultural and economic wellbeing.

10. The Fisheries Act complements and supports *Te Hā o Tangaroa kia ora ai tāua*. Our ability to maintain a reciprocal relationship with Tangaroa depends in part upon appropriate implementation of the Act.

11. *Te Hā o Tangaroa kia ora ai tāua* does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa. It speaks to striking an appropriate balance between people and those we share the environment with. When viewing human interactions with the environment, there are no absolutes in Te Ao Māori. Approaches that seek 100% utilisation or 100% preservation do not align with kaitaikitanga.

12. Kaitiakitanga relates to the management of resources – including use and protection. Effectively it refers to sustainable management and the utilisation of resources in a way and at a rate as to ensure that they are not diminished. This aligns with our legislation and the Fisheries Settlement.

Figure 1: Te Hā o Tangaroa kia ora ai tāua



The Bill

13. The Te Ohu Kaimoana Group's submission to the Bill is structured as follows:
    a. critical amendments required to ensure that the Maori Fisheries Settlement and Maori Commercial Aquaculture Settlement are upheld;
    b. overarching comments regarding the Bill and its development;
    c. submissions in opposition (with suggested amendments); and
    d. submissions in support.

Critical amendments required to uphold the Māori Fisheries Settlement and Māori Commercial Aquaculture Settlement

14. The Maori Fisheries Settlement is an integral part of New Zealand's Treaty settlement framework and, in recognising and providing for Maori fishing rights, is a vital aspect of New Zealand's fisheries management regime. It is important that all those who exercise functions and powers under the Bill understand the relevant principles and provisions of the Fisheries Settlement, including the Crown's obligations to uphold and further the aims of the settlement.

15. Noting the Te Ohu Kaimoana Group's purpose and focus, Te Ohu makes two critical submission in relation to the Maori Fisheries Settlement and Maori Commercial Aquaculture Settlement:

    a. Whilst the definition of Treaty Settlement includes Treaty Settlement Deed, and therefore arguably includes the Maori Fisheries Settlement (through the Maori Fisheries Deed), the Te Ohu Kaimoana Group's preference is to specifically include a reference to the Maori Fisheries Settlement.

    b. In addition, and potentially more critically, given the definition of "Treaty Settlement" in clause 7, the Māori Commercial Aquaculture Settlement (through the 2004 Act) would be excluded as there is no Deed and it is not a Settlement Act listed in Schedule 3 of the Treaty of Waitangi Act 1975.

16. The Māori Fisheries Settlement and Māori Commercial Aquaculture Settlement are Treaty settlements and need to be captured by the definitions in the Bill. This is required to achieve the obligation Cabinet has committed to, to "uphold Treaty Settlements".

17. Te Ohu suggests that the following Acts are also listed under the definition of "Treaty Settlement Act" in clause 7 to address this:

    a. Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
    b. Maori Commercial Aquaculture Claims Settlement Act 2004; and
    c. Maori Fisheries Act 2004

18. These amendments will also ensure that Te Ohu Kaimoana, Te Wai Maori and Takutai Trust are captured in the definition of "Treaty Settlement Entity" which will be important for activities occurring, or with effects, in the Coastal Marine Area (the **CMA**).

19. In alternative, the "existing interests" definition could be imported from the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. However, consequential amendments would also need to be made to incorporate an additional definition and it is our preference that the primary definition of Treaty Settlement be amended to capture the Maori Fisheries and Aquaculture settlements separately.

Overarching submissions

20. We record the following concerns with the Bill as drafted and the process for its development:

a. Purpose and sustainable fisheries management

The Te Ohu Kaimoana Group acknowledges the exceptional circumstances of the COVID-19 pandemic and its effects and the need for initiatives to assist economic recovery. The Te Ohu Kaimoana Group support the purpose of the Bill, being to urgently promote employment growth to assist New Zealand's recovery from the economic and social impacts of COVID-19 and to improve the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources (clause 4). However, we consider that it would be counter-productive if the employment and growth that the Bill seeks to promote is achieved at the expense of the quality of marine and freshwater environments and New Zealand's fisheries resources, or at the expense of existing sustainable economic activity such as fishing. Our submission seeks to strike the appropriate balance between multiple objectives.

b. Pace of the Bill's development and abridged Select Committee process:

This Bill has been developed at pace. In addition, only three working days have been provided for submissions to be prepared and lodged on the Bill and the Select Committee has only a week to consider the submissions made, formulate any amendments and produce its report. The Te Ohu Kaimoana Group considers that this truncated timeframe gives rise to a range of risks, particularly for Te Taiao (the environment), Te Hā o Tangaroa and for the rights and interests of Iwi.

These timeframes substantially limit public participation in the submission process, particularly from those who do not have the capacity or resources to participate (which is the case with many Iwi, hapū and whānau who are themselves suffering the economic effects of the recent COVID-19 lockdown). It also increases the risk of workability and implementation issues and other unforeseen effects arising from the Bill.

c. **Move away from natural justice and core resource management principles:**

While the Te Ohu Kaimoana Group acknowledges that economic recovery from the impact of COVID-19 is required and appreciates the underlying premise of streamlining processes to assist with that recovery, this Bill fundamentally and drastically changes the standard RMA processes. The Bill increases Ministerial powers, reduces public participation and limits appeal rights. RMA processes generally enable Iwi involvement to a much greater degree than this Bill provides.

This is concerning for the Te Ohu Kaimoana Group and we have suggested amendments throughout this submission to mitigate these concerns.

d. **Failure to recognise iwi rights and interests in freshwater (and other taonga):**

The Te Ohu Kaimoana Group, particularly Te Wai Māori, continues to be concerned by the lack of priority shown by successive Governments on the issue of recognising Iwi rights and interests in freshwater (and other taonga). This Bill has the potential to continue and perpetuate that failure and undermine any future recognition of Iwi rights and interests in freshwater. This Bill further stresses the importance of the Government urgently prioritising the resolution of Iwi rights and interests in freshwater.

In the interim, the potential effect of any projects on our waterways is a matter that the Te Ohu Kaimoana Group, particularly Te Wai Māori, considers should receive express recognition and protection under this Bill. This Bill should not be the vehicle through which the outcomes of important future freshwater reforms (many of which have already been signalled) can be avoided by those seeking to engage in activities that affect freshwater, freshwater fish and their habitat.

Submissions in opposition (with suggested amendments)

Definition of Treaty Settlement Act

21. As noted in paragraphs 13 - 18 in order to uphold Treaty Settlements, the Maori Fisheries and Maori Commercial Aquaculture Settlements should be explicitly referenced in the Bill.

22. Te Ohu suggests that the following Acts are also listed under the definition of "Treaty Settlement Act" in clause 7 to address this:

    a. Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
    b. Maori Commercial Aquaculture Claims Settlement Act 2004; and
    c. Maori Fisheries Act 2004.

Outcomes under the Bill

23. The Te Ohu Kaimoana Group is concerned that there is an absence of clear evidence that the Bill will, in fact, meet the Government's objective to stimulate the economy. This has been reinforced through the confirmation of the Listed Projects in Schedule 2 which we understand only involve an estimated 1200 jobs, which may in many respects represent accelerated employment rather than new jobs.

24. While the Te Ohu Kaimoana Group acknowledge that initiatives for economic recovery are required, this Bill fundamentally changes the standard RMA processes (which generally enable iwi involvement to a much greater degree), increases Ministerial powers, reduces public participation and limits appeal rights.

25. The Te Ohu Kaimoana Group considers that greater certainty in terms of the deliverable outcomes should be considered, including, for example, amending clause 33 of Schedule 6 to enable the Panel to include specific conditions on Listed Projects and Referred Projects regarding job creation expectations (in order to ensure that an applicant fulfils any representations made in its application). Such conditions would be beyond those to be applied under the RMA provisions currently referred to in clause 33 of Schedule 6.

Climate change and significant adverse environmental effects

26. Two of the matters that the Minister may consider when determining whether to refer a project to the Panel are whether a public benefit will result (section 19(d)) and whether there is potential for the project to have significant adverse environmental effects (section 19(e)).

27. The Te Ohu Kaimoana Group considers that the Minister has an extremely (and unduly) broad discretion in his 'gateway' decision under the Bill. While recognising the importance of rebuilding the economy quickly, there needs to be a balance. There is an absence of material incentives or prioritisation of projects that advance the Government's undertakings in relation to mitigating climate change and transition to a low emissions economy.

28. The Te Ohu Kaimoana Group therefore considers that greater safeguards around both significant adverse environmental effects, mitigating climate change and a transition to a low emissions economy need to be expressly included. In particular, the Te Ohu Kaimoana Group considers that:

    a. specific provisions could be included in the Bill in respect of requiring the climate change effects of proposed projects to be assessed and addressed by the applicant;

    b. mitigating the effects of climate change and transition to a low emissions economy should be mandatory considerations for the Minister to which he must have particular regard; and

c. no project should be referred to, or be able to be approved by, a Panel if it will have, or is likely to have, significant adverse environmental effects.

Notice to, and input from, Iwi and Treaty settlement entities when considering projects for referral

29. When considering whether to refer a project to the Panel, the Minister is not required to notify or seek comments from Treaty Settlement entities (noting the definition of Treaty Settlement entities includes MIOs) or Iwi authorities. The only relevant input at this 'gateway' stage is a report from Te Arawhiti. While this may have been more defensible if the Minister was not seeking any external input at this time and was just assessing the application on the papers, the Bill provides for the Minister to both notify and receive comment from relevant local authorities and other Ministers.

30. In these circumstances, the Te Ohu Kaimoana Group considers that there must also be provision for notification to and input from Treaty Settlement entities and Iwi authorities. This is warranted for the following reasons:

    a. the absence of such notice and input is plainly inconsistent with the principles of the Treaty of Waitangi;

    b. receiving comment from Iwi and Treaty settlement entities would assist with the Minister's decision (alongside the Te Arawhiti report);

    c. there remains a presumption in favour of grant of consent once a project is referred to the Panel and is important that the Minister is aware of Iwi comments at the 'gateway' stage (as the Minister's role at this stage has a substantive element and is not merely procedural); and

    d. it would provide early notice of the existence of a project that may be referred to a Panel and will allow Iwi and Treaty settlement entities more time to prepare to engage on the project (including selecting a potential nominee for appointment to the Panel), which is particularly important given the very compressed timeframe (10 working days) to provide feedback on a referred project to the Panel.

Fisheries / aquaculture specific submissions (and recommendations)

Seeking comment from the Minister of Fisheries

31. The Te Ohu Kaimoana Group considers it important that the Minister of Fisheries has the ability to comment on applications, where they occur within the CMA or are likely to have adverse effects on the CMA.

32. The advice of the Minister of Fisheries is relevant to all applications in the CMA and is also relevant to applications for terrestrial activities that have adverse effects in the CMA. The Minister of Fisheries is responsible for ensuring sustainability of fisheries resources under the Fisheries Act 1996 and is also responsible for ensuring the Crown meets its obligations under the Maori Fisheries Settlement.[3] These are important obligations in New Zealand's resource management regime and for those reasons it is not sufficient to rely on the discretion of the Minister for the Environment in inviting comment from the Minister of Fisheries. For applications in the CMA or for applications for terrestrial activities that have adverse effects in the CMA, the Minister of Fisheries himself/herself should have the responsibility for determining whether it is necessary to provide comment on a referral application.

33. For the same reasons, we consider that a panel should be obliged to invite comments from the Minister of Fisheries for listed or referred projects that occur in the CMA.

34. The Te Ohu Kaimoana Group recommend that clause 21(6), process after Minister receives application, should be amended by adding the following paragraph (in the appropriate order and amending those following accordingly):

    (f) Fisheries.

35. Similarly, Schedule 6 clause 17(4)(g), which sets out the parties that a panel must invite comment from, should be amended by adding the following paragraph after paragraph (v) (in the appropriate order and amending those following accordingly):

    (vi) Fisheries.

Clarification regarding aquaculture applications

36. There are authorisations listed in clause 20(3)(k). Whilst these are examples only, for clarity we consider that it would be informative to use this provision to clarify that any consents for aquaculture activities that may be granted under the Bill are still subject to the 'aquaculture decision' requirements in Part 9A of the Fisheries Act.

37. The Te Ohu Kaimoana Group recommend that clause 20(3)(k) of the Bill should be amended to read as follows:

    (k) a description of other legal authorisations… that the applicant considers may be required to commence the project (for example authorisations under the Public Works Act 1981 ~~or~~, concessions under the Conservation Act 1987 or aquaculture decisions under the Fisheries Act 1996).

[3] Fisheries Act section 5(b).

Protect habitat of particular significance for fisheries management

38. The Te Ohu Kaimoana Group are concerned that the Bill allows specified works to be undertaken in and adjacent to the CMA by New Zealand Transport Agency (NZTA) and KiwiRail without the need for a resource consent, for the next 15 years. We do not consider that permitted activity standards in Schedule 4 of the Bill provide adequate protection for fisheries habitat that may be adversely affected by these activities. If NZTA and KiwiRail were operating under the RMA, consent authorities would be obliged to achieve integrated management, which includes taking account of management regimes which promote sustainable management under other relevant legislation, including the Fisheries Act. Integrated management should be no less important to those exercising functions and powers under the Bill.

39. The Fisheries Act requires that '*habitat of particular significance for fisheries management [HPSFM] should be protected*' (section 9). HPSFM includes areas of particular importance for spawning, egg-laying and pupping of fisheries species. HPSFM may be identified in a relevant fisheries plan, or under other documentation prepared by Fisheries New Zealand. Threats to HPSFM may arise from activities that can be undertaken by NZTA and KiwiRail under the Bill, such as catchment-based activities resulting in increased sedimentation rates, marine and coastal engineering works, disposal of dredge spoils and the discharge of stormwater and other contaminants. In order to achieve integrated management and support the sustainable management of fisheries resources, the Bill should require that identified HPSFM is protected from the adverse effects of activities that are permitted under the Bill.

40. The Te Ohu Kaimoana Group recommend that Schedule 4 should be amended by adding a new clause after Schedule 4 clause 34, as follows:

> ***34A Significant fisheries habitat***
>
> *Any works within or adjacent to the coastal marine area must not damage or disturb areas that are identified as habitat of particular significance for fisheries management in accordance with section 9 of the Fisheries Act 1996.*

Limits to recognition of non-Treaty settlement Joint Management Agreements (JMAs), Mana Whakahono ā Rohe and non-Treaty settlement Iwi participation legislation

41. While obligations under Treaty Settlements are recognised in terms of the process and decision-making of Panels, JMAs entered into under the RMA that do not arise from Treaty settlements[4],

[4] There are currently JMAs under the RMA between Ngāti Tūwharetoa and Taupō District Council (2009) regarding consenting on Māori land and between Te Rūnanganui o Ngāti Porou and Gisborne District Council (2015) regarding decision-making in the Waiapu catchment.

Mana Whakahono ā Rohe[5] and non-Treaty settlement Iwi participation legislation[6] do not receive the same recognition. Instead, non-Treaty settlement JMAs, Mana Whakahono ā Rohe and non-Treaty settlement iwi participation legislation is only considered on the appointment and procedures of the Panel (Schedule 5, clause 5).

42. The Te Ohu Kaimoana Group considers that amendments should be made to clause 27, 29 and 31 of Schedule 6 to provide that a Panel is also required to consider and comply with any obligations arising under non-Treaty settlement JMAs, Mana Whakahono ā Rohe and non-Treaty settlement Iwi participation legislation when making its decision.

Panel Appointments

43. In relation to the appointment of Panels under Schedule 5, the Te Ohu Kaimoana Group has three concerns:

    a. First, where more than one nomination to the Panel is made by relevant Iwi authorities or no such nomination is made, clause 3 of Schedule 5 provides for a decision on appointment to be made by the Panel convenor in his/her discretion. The Te Ohu Kaimoana Group considers that any such decision, if required, should be made by the Panel convener with input from the Chief Judge of the Māori Land Court.

    b. Secondly, where a modified arrangement from that prescribed under any Treaty Settlement Act in terms of appointments of a Panel is to be agreed with the relevant Iwi authority, the Te Ohu Kaimoana Group does not consider that there should be a qualification in the Bill (as there presently is in clause 5 of Schedule 5) that such agreement cannot be unreasonably withheld.

    c. Thirdly, and related to the previous matter, giving effect to a modified arrangement should be added as a specific ground on which additional members may be appointed to a Panel under clause 3(6) of Schedule 5.

Te Mana o Te Wai

44. The Crown's recent announcements regarding the National Policy Statement for Freshwater Management (NPS-FM) provide, among other things, for Te Mana o Te Wai to be "given effect to" by relevant local authorities in making freshwater management decisions. While the Bill provides

[5] Being an iwi participation arrangement entered into under Part 5 Subpart 2 of the RMA (see section 7(2) of the Bill and section 58L of the RMA).

[6] 'Iwi participation legislation' is defined in the Bill (section 7(1)) with reference to the RMA which means it includes any legislation (other than the RMA) that provides a role for iwi or hapū in processes under the RMA (see section 58L of the RMA). However, not all iwi participation legislation is currently within the definition of a Treaty Settlement Act under the Bill. See, for example, the Hawke's Bay Regional Planning Committee Act 2015 which provides for iwi input in RMA processes.

for a Panel to "have regard to" any relevant provisions of a National Policy Statement (Schedule 6, clauses 27, 29 and 31), this is of a lesser weighting that "give effect to".

45. The Te Ohu Kaimoana Group considers that these provisions should be amended to require the Panel to "give effect to" Te Mana o Te Wai.

Other Panel Processes

46. The Panel process as set out in Schedule 6 is extremely truncated and the timeframes are extraordinarily tight. Some of the projects under consideration by the Panel will be for large-scale infrastructure that are usually subject to careful and robust scrutiny and judicial consideration. While time is an important matter under the Bill, the Te Ohu Kaimoana Group considers that there needs to be more formality around the Panel's processes and more time is needed to allow comments to be provided and appropriately considered.

47. In this respect, the Te Ohu Kaimoana Group considers that Schedule 6 of the Bill should be amended:

    a. to provide a minimum of 20 working days (not the present 10 working days) for Iwi authorities and Treaty settlement entities to provide written comment to the Panel; and

    b. to require the Panel to hold hearings at which submissions may be presented by the applicant and parties who have provided written comment (i.e., hearings should not be at the Panel's discretion as presently provided).

Life of the Bill

48. The Minister for the Environment has consistently (and publicly) stated that this Bill will have a two (2) year shelf life and will then be repealed. However, the effect of the transitional provisions in the Bill is that, provided an Order-in-Council for a project is issued within those two years, the provisions of the Bill will remain operative to enable that project to be considered and determined by the Panel. This means that the Panel process (and the operation of the Bill) will run well past two years and, in fact, allowing for any appeals and/or judicial reviews and potential re-hearings, processes under the Bill could continue for a number of years.

49. The Te Ohu Kaimoana Group considers that this should be acknowledged up front, not hidden in transitional provisions. The Te Ohu Kaimoana Group also considers that it would be preferable, in so far as possible to provide for decisions on projects to be made within the two years of the Bill, for there to be an earlier cut-off date of six (6) months prior to the Bill's repeal for an Order-in-Council to be issued referring a project to a Panel.

Appeals to the Supreme Court

50. The Bill presently provides only a limited right of appeal from decisions of the Panel to the High Court on points of law and then only one further right of appeal to the Court of Appeal. There is no provision for an appeal to the Supreme Court.

51. The Te Ohu Kaimoana Group considers that decision-making under Bill should be able to be considered by the Supreme Court. This could be achieved by enabling appeals directly from the High Court to the Supreme Court (as is presently the case with appeals from decisions of Boards of Inquiry). This is important as a matter of natural justice (particularly given the limit on appeals to points of law only) and the Supreme Court workload is generally less than that of the Court of Appeal such that it aligns with the streamlined approach under the Bill.

52. Given the unique circumstances of this legislation, while is seen by the Government to be of national importance, the Te Ohu Kaimoana Group considers that it is important that appeals are able to be considered by New Zealand's highest court.

53. The Te Ohu Kaimoana Group recommends that clause 42 of Schedule 6 of the Bill be amended to preserve rights to appeal to the Supreme Court directly from the High Court.

Submissions of support

54. The Te Ohu Kaimoana Group supports a number of key elements in the Bill which it submits must be maintained. In this respect, it is understood that many of these matters have been included in the Bill in their current form as result of the engagement of Iwi technicians alongside Crown officials in the development of the Bill.

Overarching Treaty Provision (clause 6)

55. The Te Ohu Kaimoana Group supports the overarching provision in section 6 of the Bill that requires all persons exercising functions and powers under the Bill to act in a manner that is consistent with both the principles of the Treaty of Waitangi and Treaty settlements. This is consistent with Cabinet's commitment to recognise the principles of the Treaty and uphold Treaty settlements in the Bill.

Purpose (clause 4)

56. The Te Ohu Kaimoana Group supports inclusion in the purpose clause in section 4 (alongside the recovery objectives) of the requirement to continue to promote the sustainable management of natural and physical resources. This is consistent with section 5(2) of the RMA.

Definitions (clause 7)

57. The Te Ohu Kaimoana Group supports the following definitions:
    a. **Relevant Iwi authority,** being any Iwi authority (as defined in the RMA) whose area of interest includes:

        - includes the area in which a project will occur; and
        - includes, overlaps with, or is immediately adjacent to, the area in which a proposed permitted work will occur.

    b. **Treaty Settlement entity**, particularly the inclusion of post-settlement governance entities, mandated Iwi organisations, Iwi aquaculture organisations, bodies, committees and other entities recognised or established under a Treaty Settlement Act, and entities or persons that are authorised to act for a natural resource with legal personhood.

    c. **Environment Judge**, particularly the inclusion of a Māori Land Court judge who has a warrant to sit in the Environment Court.

Ministerial Consideration of Projects for Referral

58. The Te Ohu Kaimoana Group supports the provisions in the Bill that require the Minister, in considering whether to refer a project to a Panel:

    a. must, before making such a referral decision, obtain and consider a report from Te Arawhiti which includes details of relevant Iwi authorities and Treaty Settlement entities, relevant Treaty Settlement arrangements and any relevant Treaty Settlement negotiations (clause 17);

    b. may not refer to a Panel a project involving an activity on land returned under a Treaty settlement without the landowner's consent (clause18(2)(b));

    c. may decline to refer a project to a Panel where directing the project to a panel would be inconsistent with a Treaty settlement (clause 23(5)(d)); and

    d. may decline to refer to a Panel a project involving an activity on land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes without the consent of the relevant iwi authority (clause 23(5)(e)).

59. The Te Ohu Kaimoana Group has noted earlier in this submission its concerns with the Minister's discretion.

Panel appointments (Schedule 5)

60. The Te Ohu Kaimoana Group supports the provisions in the Bill which provide that:

    a. where any procedural obligations in Treaty Settlement Acts, Mana Whakahono ā Rohe, JMAs or Iwi participation legislation that provides for Iwi or hapū to participate in the appointment of hearing commissioners for consent or designation processes:

        - such obligations must be complied with when convening a Panel (Schedule 5, clause 5(2)(a)); or

        - a modified arrangement may be agreed with the relevant Treaty settlement entity (Schedule 5, clause 5(2)(b));

    b. when convening a Panel:

        - relevant Iwi authorities may collectively nominate one member to each Panel (Schedule 5, clause 3(2)(b)); and

        - additional members may be appointed to a Panel if needed to accommodate matters unique to any relevant Treaty Settlement Act (Schedule 5, clause 3(6)(d));

    c. a Panel must, within its members, have expertise on tikanga Māori and mātauranga Māori (Schedule 5, clause 8(1)(c)); and

    d. a person who is not an accredited hearing commissioner may be appointed to a Panel if they have expertise in tikanga Māori and mātauranga Māori (Schedule 5, clause 8(3));

    e. membership of a particular Iwi or hapū (including an Iwi or hapū that is represented by an Iwi authority that must be invited by a Panel to comment on the application) does not make a person ineligible for appointment to a Panel (Schedule 5, clause 8(4)).

61. The Te Ohu Kaimoana Group has noted its concerns earlier in this submission with other matters relating to the appointment of Panels.

Panel consideration of Projects (Schedule 6)

62. The Te Ohu Kaimoana Group supports the provisions in the Bill which provide that:

    a. the application before the Panel must include an assessment of the proposed activity against the requirements of any relevant Treaty Settlement Act, a cultural impact assessment prepared by the relevant Iwi or hapū, and details of any consultation undertaken with Iwi and hapū (Schedule 6, clauses 9 and 13);

b. the Panel must give notice to and consider any comments provided by relevant Iwi authorities and Treaty Settlement entities (Schedule 6, clause 17);

c. the Panel must consider whether granting consent, subject to any conditions, would promote Part 2 of the RMA and the purpose of the Bill (Schedule 6, clauses 27(3)(a), 29(2)(a) and 31(6)(a));

d. the Panel must apply section 6 of the Bill (the overarching Treaty provision), rather than section 8 of the RMA (section 6 and Schedule 6, clauses 27(3)(b) and 29(2)(b) and 31(6)(b)); and

e. the Panel must apply any relevant legal obligations (ie, legal weighting) under a Treaty Settlement Act (Schedule 6, clauses 27(4), 29(10) and 31(8)).

63. The Te Ohu Kaimoana Group has noted its concerns earlier in this submission with other matters relating to the appointment of Panels other matters relating to the consideration of projects by Panels and these are identified and addressed later in this submission.

Permitted Works (Clauses 28-35 and Schedule 4)

64. The Te Ohu Kaimoana Group supports the provisions in the Bill in respect of Permitted Works which:

a. provide that such works are not permitted on any wāhi tapu, other site of cultural or historical significance or an outstanding water body (clause 31(3)).

b. require engagement with Iwi and hapū (section 32 and Schedule 4, clauses 5-7); and

c. require Iwi and hapū values and interests to be specifically provided for in the Schedule 4 standards, including the development of management plans for identified wāhi tapu, sites of cultural or historical significance and habitats of taonga species that may be affected by the Permitted Work or adjacent to the place where the Permitted Work is proposed (Schedule 4, clauses 5(3) and 7).

65. However, the Te Ohu Kaimoana Group has noted its concerns earlier in this submission with other matters relating to the provisions relating to Permitted Works and these are identified and addressed later in this submission.

Te Ohu

Kaimoana