Te Ohu Kaimoana's response to the Department of Conservation and Ministry for Primary Industries on the proposed South East Marine Protected Areas

Te Ohu Kaimoana

Introduction

1. This document provides Te Ohu Kaimoana's response to the proposed South East Marine Protected Areas (SEMPA). Our interest in the matter relates to our responsibility to protect the rights and interests of Iwi in the Deed of Settlement and assist the Crown to discharge its obligations under the Deed of Settlement 1992 and Te Tiriti o Waitangi.[1] To achieve our purpose, we are guided by the principles of *Te Hā o Tangaroa kia ora ai tāua*.

2. We work on behalf of 58 Mandated Iwi Organisations (MIOs), who represent Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.

3. In addition to our 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". We play a key role in assisting MIOs to achieve that goal.

4. As is the case with all of our responses to the Government, we do not intend for this response to derogate from or override any response or feedback provided independently by Iwi, through their MIOs[2] and/or AHCs. In this case we wish to acknowledge that given the location of the proposals the Government should work in partnership with Ngāi Tahu when making any final decisions on next steps.

Te Hā o Tangaroa kia ora ai tāua

5. 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

[1] Our 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."

[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

modern fisheries policy, and other policies that may affect the rights of Iwi under the Deed of Settlement.

6. 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.

7. 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 Aotearoa/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.

8. 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, including maintaining the viability of associated and dependent species such as seabirds (s 9(a)). This should be the underlying driver of any marine protection initiative.

9. *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% human exclusion do not align with kaitaikitanga.

10. 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, The Maori Fisheries Act 2004, and the principles of the Settlement.

Our response

11. The key question from Te Ohu Kaimoana's perspective is: "how do we better protect the marine environment from different pressures, so we can continue to access our fisheries resources in a way that protects our relationship with Tangaroa?" Our perspectives are based on Te Āo Māori and the concept *Te hā o Tangaroa kia ora ai tāua*, which explains the way Māori manage their relationship with the marine environment. This approach is enshrined in Te Tiriti o Waitangi and the Deed of Settlement entered into between the Crown and Māori.

12. Under this view, conservation and protection measures are part of "sustainable use". They are carried out to use resources for the benefit of current and future generations and act as a check on our extractive use. 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*.

What is the rationale for the SEMPA proposal?

13. The consultation document on the South East Marine Protected Areas (SEMPA) identifies several pressures facing the marine environment that are causing a decline in marine biodiversity, including "activities on land and in the sea and climate change". According to the document, these pressures "have led to a decline in biodiversity and in the condition of marine habitats, and their cumulative effects amplify the threat to biodiversity in our marine environment and make it less resilient". The proposed network is intended to "provide a safeguard for the marine environment, allowing it to cope with future pressures, such as climate change".

14. These proposals are based on the Government's existing Marine Protected Areas (MPA) Policy. The purpose of the Policy is to: "protect marine biodiversity by establishing a network of MPAs that is comprehensive and representative of Aotearoa/New Zealand's marine habitats and ecosystems".

15. Te Ohu Kaimoana continues to question the rationale for establishing a network of MPAs under the current MPA policy and consequently under the SEMPA proposals: what is biodiversity being protected from, and for what purpose? It is necessary to establish what we are to protect the marine environment from, and why.

Identifying the right tool for the job

16. The starting point for any discussion about the management of environmental pressures should begin by identifying the tools needed to manage them, and lastly, any gaps that may need to be addressed.

17. For example, responses to the risks of fishing pressure must focus on what needs to be done under the Fisheries Act in light of the Deed of Settlement Aotearoa/New Zealand has a comprehensive, science-based and well-developed fisheries management system that encompasses all of the main commercial and non-target species. Further the Fisheries Act requires that any adverse effects of fishing on the aquatic environment to be avoided, remedied, or mitigated. If the effects of fishing are of concern, they can be addressed through the Act using other tools including catch limits, gear technology, mitigation approaches and so on.

18. If an MPA implements fishing restrictions greater than what is required to ensure sustainability under the Fisheries Act, agreement of Iwi should be required.

19. Pressures from land need to be addressed through the Resource Management Act. A network of MPAs will not address land-based pressures. Nor will it provide resilience against climate change. In all decision-making, adapting to the effects of climate change needs to be considered.

MPAs can have adverse consequences for existing management regimes

20. Marine protected areas and in particular no-take areas displace fishing effort and jeopardise sustainable fisheries management. Displaced fishing effort can:

a. increase the risk of local depletion
b. negatively impact the abundance of surrounding fish stocks
c. slow down stock rebuild rates where relevant
d. preclude future TAC increases which goes against the purpose of the Fisheries Act for sustainable utilisation
e. increase the risk of spatial conflict between fisheries sectors by forcing them to operate in a reduced area.

21. The proposal as it stands also undermines the future use of customary tools such as mātaitai. Before the Minister of Fisheries can declare a mātaitai reserve, he/she must be satisfied of a number of things, including that the reserve will not "prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species". Due to the closures proposed in the consultation document this 'prevent test' is likely is to always be triggered, reducing or removing Ngāi Tahu's ability to establish mātaitai.

The Crown should implement its international obligations in light of its obligations under Section 4 of the Conservation Act and Te Tiriti o Waitangi

22. Aotearoa's international obligations are set out on page 7 of the consultation document. The Crown's obligations to Māori are set out on page 10. We are concerned that the Crown does not consider options for meeting its international obligations in light of its obligations under Section 4 of the Conservation Act and Te Tiriti o Waitangi.

23. The obligations of signatories to the Convention on Biological Diversity can be met in different ways by individual countries, depending upon:
    a. their commitments to indigenous peoples
    b. the risks they are managing
    c. the status of information on biodiversity and ecosystems in their jurisdictions
    d. their economies and cultural and social values
    e. the management frameworks they already have in place that may already achieve the obligations of the Convention

24. Te Tiriti o Waitangi and settlements arising from te Tiriti have a unique global context in that te Tiriti 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 to protect those rights 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 agreements 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[3].

25. 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 Māori to pursue such action but also an obligation of the New Zealand Government to follow such a path.

26. Further Aotearoa/New Zealand's fisheries management system and associated legislation provides a management framework that delivers biodiversity outcomes. It is essential that the context of marine resource management in Aotearoa/New Zealand accounts for the Treaty partnership obligations as well as the existing management regime.

The lack of a clear rationale for the MPA policy has made it difficult to implement for the South East Marine Protection Forum to implement marine protection proposals

27. Two independent reviews[4] of the South East Marine Protected Area Forum process highlighted inconsistencies and difficulties faced by the Forum in understanding and applying the MPA policy. This lack of clarity divided the Forum. Members were unable to resolve their different interpretation of the Policy, evident in the final recommendations for two options: Network 1 and Network 2.

28. This highlights how unfit the current MPA policy is in its current form. Te Ohu Kaimoana has promoted its concerns on MPA policy through its responses to proposals over the years and has been engaging with the Department of Conservation on its review of Aotearoa/New Zealand's approach to Marine Protection. We think it would be more appropriate to fully review the Governments approach to marine protection first, rather than using outdated legislation such as the Marine Reserves Act 1971 that is not fit for purpose to rush through a flawed process.

The Crown must recognise Ngai Tahu's concerns

29. We have outlined our concerns with the MPA Policy as a whole. However, we acknowledge that the SEMPA proposals are in Ngāi Tahu's rohe – so the Crown must work in partnership with Ngāi Tahu.

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

[4] Lessons Learned Report: South-East Marine Protection Forum Department of Conservation July / October 2018. The review was completed by Pat Thorn, Caravel Group (NZ Ltd) and Sue Powell, Tregaskis Brown Ltd. Using different processes to protect marine environments, Office of the Auditor General, June 2019.

30. Key issues Ngāi Tahu has raised in response to the consultation document include the need for:
    - co-management of the proposed MPAs between Ngāi Tahu and the Crown
    - regular review to determine that the proposed network is an appropriate tool for management
    - generational review of the proposed MPA network
    - ensuring Ngāi Tahu rangers to manage the network of MPAs.

31. These issues highlight the importance to Ngāi Tahu of retaining their rangatiratanga over their rohe moana as the consultation document does not speak to the partnership that should exist between the Crown and Māori. Until all of Ngāi Tahu's concerns are addressed this consultation should not progress.

32. Ngai Tahu's concerns include the effects of the proposed MPA 'D1 Te Umu Koau' on their rights and interests. We recommend that the D1 proposal in its current state should be declined for the following reasons:
    a. The displacement of fishing from D1 is likely to cause localised depletion in the surrounding areas particularly for species which show a strong preference for particular habitat – rock lobster, pāua, blue cod and eels. In the case of these stocks, fishers will be forced to move into different fishing grounds.
    b. D1 is a site of critical importance to the rock lobster fishery and the economic impacts which will severely effect fishers and their families are greatly underestimated in the consultation document.
    c. The consultation document does not take into consideration the financial consequences that will be felt following the economic implications of COVID-19. This is concerning as the regional economies of Otago and Southland have declined dramatically in the wake of COVID-19. The economic prospects for these two regions have been identified as having the weakest regional outlooks.
    d. There is no evidence to support D1 being an appropriate site for scientific study. Moeraki mātaitai contains marine habitats that are similar to those in D1 which would offer the opportunity to study unfished rock lobster populations.

Overall conclusion

33. The consultation document fails to prioritise the Crown's obligation under Te Tiriti o Waitangi, provide adequate rationale for the proposal, articulate the benefits of a network in light of cumulative impacts on the marine environment, nor fully comprehend the impacts MPA's have on the existing fisheries management regime in Aotearoa. In our view, current MPA legislation and associated policy is not fit for purpose, which has been highlighted in the South East Marine Protection Forum process. Hence, the South East MPA proposals lacks a legislative and policy grounding.

Nāki noa, nā

Dion Tuuta
Chief Executive

Te Ohu
Kaimoana