



**Te Ohu Kaimoana's Response to
the East Coast Tarakihi TAC/TACC
Review for 1 October 2021**

Te Ohu
Kaimoana


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Executive Summary

1. E te Minita, tēnei te mihi ki a koe i tēnei ahuatanga o te wā. This document provides Te Ohu Kaimoana's advice for your review of the TAC/TACC for east coast tarakihi for the 2021/22 fishing year.
2. Our role in this review process arises from our responsibility to protect the rights and interests of wi/Māori under Te Tiriti o Waitangi and the Fisheries Deed of Settlement¹ in a manner consistent with Te Hā o Tangaroa kia ora ai tāua. Te Hā o Tangaroa kia ora ai tāua translates to the 'breath of Tangaroa sustains us'. It is an expression of the unique and lasting connection Māori have with the environment. It contains the principles we use to analyse and develop modern fisheries policy.
3. Te Ohu Kaimoana have been involved in the east coast tarakihi rebuild since the first stock assesment in 2018 indicated that the stock had been significantly depleted since the 1970s. We have been actively engaged in the development and implementation of the Eastern Tarakihi Rebuild Plan (the Rebuild Plan) and remain committed to the ongoing rebuild.
4. We endorse the position and supporting rationale provided by Fisheries Inshore New Zealand (Fisheries Inshore) in their submission. We do not support the options provided in Fisheries New Zealand's Initial Position Paper (IPP). This submission is provided on a without prejudice basis. This is particularly given our involvement in the appeal of the recent High Court tarakihi decision, which we consider to be wrong in law. Nothing in this submission should be taken to detract from the position we take on appeal.

¹ Māori Fisheries Deed of Settlement 1992. The Deed is, in part, given effect to by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Māori Fisheries Act 2004.

This is our response to the east coast tarakihi review

5. This paper contains our response to Fisheries New Zealand's proposals to review the Total Allowable Catch (TAC) and Total Allowable Commercial Catch (TACC) for east coast tarakihi.
6. We do not intend for our response to conflict with or override any response provided independently by iwi, through their Mandated Iwi Organisations (MIOs) or Asset Holding Companies (AHCs).
7. We recognise that the proceedings and subsequent judgment of the High Court regarding the Royal Forest and Bird Protection Society of New Zealand Incorporated v Minister of Fisheries (the judgment) has meant that the timeframe available for Fisheries New Zealand to prepare an Initial Position Paper (IPP) and conduct consultation is suboptimal to usual process. We further note that the time for Te Ohu Kaimoana to prepare a response to the IPP is consequently also suboptimal.
8. In developing our response, we actively engaged with Fisheries New Zealand officials and Fisheries Inshore to analyse the best available information for east coast tarakihi. Once we had formed an agreed position with Fisheries Inshore members including iwi settlement entities, we sought wider input from MIOs and AHCs. Given the shortened timeframe for this to occur within, the timeframe for that input was consequentially limited.

We are Te Ohu Kaimoana

9. Te Tiriti o Waitangi (Te Tiriti) guaranteed Māori tino rangatiratanga over our taonga, including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over our affairs. It is practiced by living according to tikanga and mātauranga Māori and striving to ensure that the land and resources (including fisheries) are protected for future generations. This view endures today and is embodied within our framework Te Hā o Tangaroa kia ora ai tāua (the breath of Tangaroa sustains us).
10. The obligations under Te Tiriti and the Māori Fisheries Deed of Settlement (the Fisheries Deed of Settlement) apply to the Crown whether there is an explicit reference to Te Tiriti in governing statute, in this case, the Fisheries Act 1996 (the Fisheries Act). These obligations are also confirmed in the Public Service Act 2020, section 14 (1) "the role of the public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi".
11. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance Te Tiriti and the Fisheries Deed of Settlement. The Fisheries Deed of Settlement and the Maori Fisheries Act 2004 (the Maori Fisheries Act) that followed it are expressions of the Crown's legal obligation to uphold Te Tiriti, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.

12. Our statutory 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, to:
- a) ultimately benefit the members of iwi and Māori generally,
 - b) further the agreements made in the Fisheries Deed of Settlement,
 - c) assist the Crown to discharge its obligations under the Fisheries 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 Fisheries Deed of Settlement."
13. We work on behalf of 58 MIOs² who represent iwi throughout Aotearoa. AHCs hold Māori Fisheries Settlement Assets on behalf of their MIOs. Those assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited (trading as Moana New Zealand), which owns 50% of Sealord Group Limited.
14. Our role in this review process arises from our responsibility to protect the rights and interests of iwi/Māori under Te Tiriti and in accordance with the Fisheries Deed of Settlement. Māori rights in fisheries are not just a right to harvest but also to use the resource in a way that provides for social, cultural and economic wellbeing now, and for future generations. Te Hā o Tangaroa kia ora ai tāua, the basis for our advice, does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility.

We base our advice on Te Hā o Tangaroa kia ora ai tāua

16. The reciprocal relationship that Māori have with Tangaroa is underpinned by whakapapa. Protection of this relationship with Tangaroa is an inherent part of our identity as Māori. There are multiple facets to the relationship with Tangaroa, all of which are inherent parts of Māori identity. In a contemporary context, the management and protection of fisheries resources, as a facet of the relationship with Tangaroa, is expressed through the Fisheries Deed of Settlement.
17. Te Hā o Tangaroa kia ora ai tāua is an expression of the unique and lasting connection Māori have with the environment. It contains the principles we use to analyse and develop modern fisheries policy and other policies that may affect the rights of iwi under the Fisheries Deed of Settlement. In essence, Te Hā o Tangaroa kia ora ai tāua highlights the importance of our interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.

² MIO as defined 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.

18. In accordance with this view, "conservation" is part of "sustainable use", it is carried out to sustainably use resources for the benefit of current and future generations. The Fisheries Act's purpose is "to provide for the utilisation of fisheries resources while ensuring sustainability." The purpose and principles of the Act echo Te Hā o Tangaroa kia ora ai tāua.

The Four Pou

19. The concept of Te Hā o Tangaroa is underpinned by four pou; whakapapa, tiaki, hauhake and kai. The four pou are interconnected and form the approach we take to deliver outcomes for iwi.

Whakapapa – Māori descend from Tangaroa and have a reciprocal relationship with our tipuna. Whakapapa recognises that when considering policy affecting Tangaroa, we are considering matters that affect our tipuna.

Tiaki – Māori care for Tangaroa, his breath, his rhythm and bounty, for the betterment of Tangaroa and the benefit of humanity. We recognise that as descendants of Tangaroa, we have the responsibility to tiaki our tipuna so that Tangaroa may continue to care and provide for us.

Hauhake – Māori have a right and obligation to cultivate Tangaroa, including his bounty, to better Tangaroa and support Tangaroa's circle of life. This right and obligation of hauhake is underpinned by our tiaki responsibilities to Tangaroa.

Kai – Māori have a right to enjoy our whakapapa relationship with Tangaroa through the wise and sustainable use of the benefits Tangaroa provides to us. Ultimately our right to kai, to enjoy the benefits of our living relationship with Tangaroa, and its contribution to Māori identity depends on our ability to tiaki Tangaroa.

The outcomes we seek

- Whakapapa connections are recognised and enable Māori tino rangatiratanga and mana motuhake through bottom-up approaches.
- Healthy fisheries maintain and support Māori culture and identity.
- Intergenerational knowledge held by our whanau/hapū/iwi is respected, so that future generations inherit a healthy taiao.
- Our knowledge of fisheries is maintained through the continuation of our relationship with Tangaroa – where to fish, how to fish and how to prepare fish for our people.
- Healthy kai comes from a healthy environment – pollutant free kai supports the health of our people.
- Fisheries are developed in a way that supports an ongoing relationship with Tangaroa.
- Tangaroa provides us kaimoana so we can manaaki our people – sustenance supports livelihoods.

- Tino rangatiratanga of self and body through healthy kaimoana.
- Holistic protection of Tangaroa so that he may provide for all his tamariki.

Our approach

20. Fisheries Inshore lodged an appeal of the judgment on 13 July, and on 19 July, applied for a stay of further Ministerial decision-making regarding the catch limits for the east coast tarakihi fishery until its appeal of the recent High Court judgment is decided by the Court of Appeal (the Stay). Te Ohu Kaimoana, third respondent to these proceedings, have supported both the appeal and the Stay. Submissions are due to be filed by FINZ and the Crown on Thursday 11 August, and Te Ohu Kaimoana's submissions on the 12th, and Forest & Bird's submissions a week later.
21. We understand that the application for the Stay will not be heard until 25 August - which is post conclusion of this consultation. Therefore our response is provided in the context of our continued support of the Stay.
22. In relation to the challenges and constraints surrounding this review, we agree with the points made in the Affidavit of Monique Andrew on behalf of Fisheries New Zealand³. The affidavit raises the issues with the development of the IPP and the options within it under the limited timeframe available. Further, Ms Andrew notes that the consultation period for the review has been half of the normal timeframe; this limits the ability for representative interests to provide input under s12 of the Act. In the case of MIOs, the timeframe allowed has been entirely insufficient.
23. The sustainability of the east coast tarakihi stock is of paramount importance to Te Ohu Kaimoana. We refer to Ms Andrew's Affidavit:
- "...that a delay in responding to the judgment is not likely to result in an increased risk of sustainability to the East Coast tarakihi stock. The stock is projected to increase under the current catch limits."⁴*

Our position

24. In the lead up to the 2019 October Sustainability round, Te Ohu Kaimoana developed the Rebuild Plan alongside industry. The Rebuild Plan committed industry to a maximum 20 year rebuild timeframe for the east coast tarakihi fishery. Our commitment to this timeframe has not faltered.

³ Affidavit of Monique Andrew in support of applications for stay 30 July 2021 CIV-2019-485-752.

⁴ Affidavit of Monique Andrew in support of applications for stay 30 July 2021 CIV-2019-485-752 para27.

25. We do not support the options provided in the IPP as they are based on Fisheries New Zealand's interpretation of the High Court judgment which we do not agree with. Further, the full judgement is subject to appeal.
26. The High Court judgment found that the Minister is obliged to explicitly declare the "period appropriate to the stock" and that period must be defined exclusively by having regard to the biological characteristic of the stock and any environmental conditions affecting the stock. Further, the sustainability measures ordered by the Minister would have to be consistent with a reasonable probability within that 'period'.
27. Each fishery has unique biological characteristics and ecological circumstances. Both the Purpose of the Act and Section 13 anticipate this diversity and the corresponding imperative to identify and apply customised sustainability measures – one of which can be the TAC. Further, a case by case consideration of what is critical for determining a "period appropriate to the stock" is required. Inevitably this leads to a range, with one end of that range defined by the timeframe that would allow a rebuild in the absence of fishing. This has become known as T_{min}.
28. But in order to determine the other end of the range of options for determining a rebuild, other matters must be weighed up by the Minister that take into account that fishing will be occurring through a rebuild period. This is what is anticipated in the definition of "ensuring sustainability" as part of the purpose of the Act. In our view the Act provides for a range of matters to be considered in determining the actual rebuild period, and it is not unreasonable to settle on a 20 year rebuild timeframe.
29. Notwithstanding our concerns over the Fisheries New Zealand interpretation of the judgment, we are aware that the updated advice is that current catch limits may not enable the fishery to rebuild as per the commitments of the Rebuild Plan (which is based on a maximum of a 20 year rebuild timeframe⁵). We therefore endorse the 10% reduction in catch limits⁶ for TAR1E, TAR2, TAR3 and TAR7E from 1 October 2021 that is being supported by Fisheries Inshore in order to rebuild the east coast tarakihi stock to the default of 40% B0 by 2038 with 55% probability.⁷
30. We have provided substantial input and feedback to the development of the submission from Fisheries Inshore. We therefore point to their submission for detailed rationale and analysis of our position.

⁵ The effect on increasing mesh size and therefore age at first capture cannot be estimated by will almost certainly act to shorten the expected timeframe.

⁶ In some cases the required catch limits only relate to the eastern part of a TAC/TACC (ie TAR1E and TAR7E).

⁷ A 10% catch limit reduction is projected to rebuild the biomass to 41.7% B0 with 55.3% probability (see **Fisheries Inshore New Zealand's submission**).

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