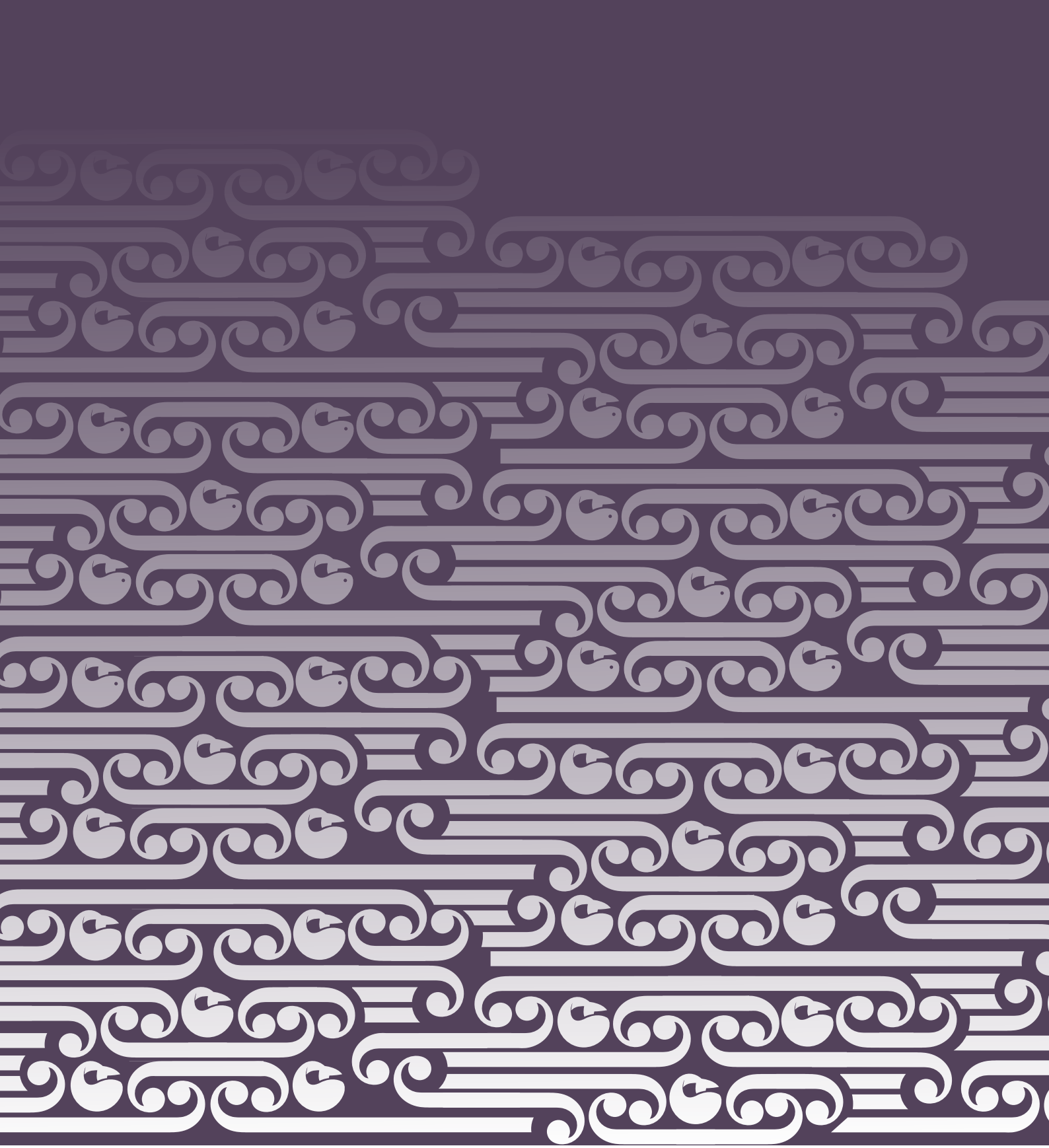

Te Ohu Kaimoana's response on the exposure draft of the Natural and Built Environments Bill (and accompanying parliamentary paper)

Te Ohu Kaimoana

Contents

This is our response to the exposure draft of the Natural and Built Environments Bill and accompanying parliamentary paper

1. E te Komiti Whiriwhiri Taiao, tēnei te mihi ki a koutou i tēnei ahuatanga o te wā. This document provides Te Ohu Kaimoana's response to the exposure draft of the Natural and Built Environments Bill and accompanying parliamentary paper (the Bill).

2. Our role in this reform process arises from our responsibility to protect the rights and interests of Iwi/Māori under Te Tiriti o Waitangi (Te Tiriti) and the Fisheries Deed of Settlement[1] (the Fisheries Settlement) 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 marine and fisheries policy.

3. To support this written response, we wish to present our views to the Environment Select Committee, aligned with the tikanga of kanohi ki te kanohi. Our response throughout this document can be assumed to be within the context of Te Ohu Kaimoana's role in the Māori Fisheries Settlement and Māori Commercial Aquaculture Claims Settlement, unless specifically addressed otherwise.

4. We have structured our response as follows:
    - First, we set out who we are
    - Second, we describe Te Hā o Tangaroa kia ora ai taua, as the foundation of our advice.
    - Third, we outline our interest, our response to the Bill, matters not included in the Bill and our suggested amendments to the Bill.

5. We do not intend our response to conflict with, or override, any response provided independently by Iwi and hapū, or through their Mandated Iwi Organisations (MIOs)[2] and/or Asset Holding Companies (AHCs). We offer our views as a contribution to the development of policy in relation to fisheries, marine aquaculture, and freshwater matters without prejudice[3].

We are Te Ohu Kaimoana

6. Te Tiriti guaranteed Māori tino rangatiratanga over their 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).

7. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to protect and enhance Te Tiriti and the broader Fisheries Settlement. The Fisheries Settlement as well as the subsequent Maori Fisheries Act 2004 (MFA) and the Maori Commercial Aquaculture Claims Settlement Act 2004 (MCACSA), are expressions of

[1] Māori Fisheries Deed of Settlement 1992. The Deed is given effect to by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Maori Fisheries Act 2004

[2] MIO as referred to in The Māori 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.

[3] Our usual approach is to seek iwi views before making a submission of this nature. Unfortunately, there was not the time to do that in advance of the closing date for our response.

the Crown's legal obligation to uphold Te Tiriti, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.

8. Te Ohu Kai Moana Trustee Limited is the trustee of two trusts:
    - Te Ohu Kai Moana Trust (established under the MFA in November 2004), and
    - Māori Commercial Aquaculture Settlement Trust (established through the MCACSA in January 2005).

Purpose of the Trusts

9. The statutory purpose of Te Ohu Kai Moana Trust, 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 Deed of Settlement,
    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.

10. The purpose of the Māori Commercial Aquaculture Settlement Trust is to:
    a. receive settlement assets from the Crown or regional councils;
    b. hold and maintain settlement assets on trust until they are transferred to an Iwi Aquaculture Organisation (IAO)[4] ;
    c. allocate settlement assets to Iwi in accordance with the Act;
    d. facilitate steps by Iwi to meet the requirements for the allocation of settlement assets; and
    e. perform any functions that are necessary or desirable to facilitate consultation between the Crown and IAOs, Mandated Iwi Organisations, and Recognised Iwi Organisations for the purposes of sections 8 to 18 of the Act.

11. We work on behalf of 58 MIO's who represent all Māori throughout Aotearoa. AHC's 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.

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

12. The reciprocal relationship that Māori have with Tangaroa is underpinned by whakapapa. Protection of this relationship with Tangaroa as well as the multiple facets to this relationship are inherent parts of Māori identity. In a contemporary context, the Fisheries Settlement is an expression of the management and protection of fisheries, freshwater, and marine aquaculture resources, which is a facet of the relationship with Tangaroa.

13. 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 environmental policy and other policies that may affect the rights of iwi under the Settlement. In essence, Te Hā o Tangaroa kia ora ai tāua highlights the importance of the interdependent relationship Māori have with Tangaroa to ensure mutual health and wellbeing.

14. 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 as well as his mauri: rights are an extension of responsibility.

[4] An organisation can only become an IAO if it is a Mandated Iwi Organisation under the Maori Fisheries Act 2004 and it constitutional documents include provisions that authorise it to act on behalf of the Iwi it represents in relation to aquaculture settlement matters.

Our interest in the Bill

15. There is growing awareness and concern over the impacts that human land-based activities have on the marine ecosystem. The connectivity between the land and sea means that onshore activities have flow-on effects on freshwater and marine environments—negative impacts such as nutrification and sedimentation affect the ability of Māori to maintain their relationship with Tangaroa. The principles of Te Hā o Tangaroa kia ora ai tāua require a reciprocal relationship with the moana and aquatic life. Degradation of the marine ecosystem directly reduces people's ability to sustain their economic, cultural, and social wellbeing from the marine environment.

16. We have serious concerns for the health of the marine environment and the consequential impact on the relationship between Māori and Tangaroa. With the coordination of the Oceans and Fisheries portfolio with a wider Oceans and Marine Ministers Group, we understand our concern over the impact of land-based activities on the aquatic environment is shared with the Crown.

Fisheries interest

17. Māori act as kaitiaki through whakapapa and engage in a reciprocal relationship with Tangaroa. Tangaroa sustains our mauri and in turn it is our responsibility to care for the mauri of Tangaroa and all its in habitants. It is explicit in the Fisheries Act 1996 (Fisheries Act) that it is necessary to "avoid, remedy or mitigate adverse effects of fishing on the aquatic environment" as well as "maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations". We see this as part of the role of kaitiaki. We note that while fisheries sustainability is managed under the Fisheries Act, fish stocks and fish habitats are critically dependent on the quality of the surrounding aquatic environment which is currently managed under the Resource Management Act 1991 (RMA) and will in future be managed under the Natural and Built Environment Act.

18. The effects of land-based activities have a direct influence on the health of Tangaroa, particularly in regulating the level of sediments, nutrients and other contaminants entering the coastal environment. We consider that the management of these types of effects on fisheries habitats has been inadequate under the RMA, and we look to the Bill to significantly improve the quality of fisheries habitats and coastal waters.

19. The 2019 decision of the Court of Appeal in *Attorney-General v The Trustees of the Motiti Rohe Moana Trust* (the Motiti Decision)[5] raises some uncertainties over the management of fisheries, as the Court of Appeal ruled that regional councils have jurisdiction to control fishing impacts on biodiversity in certain circumstances. The interface between the Fisheries Act and the RMA is currently unclear and costly for all parties and we see this as a critical issue for the Bill to resolve. To the extent that fisheries issues may be included within the scope of the final Bill, the Crown has a responsibility to protect and uphold the rights confirmed in the fisheries settlement and ensure that the Natural and Built Environment Act does not undermine the integrity of the fisheries management regime, creates strong incentives for environmental responsibility, and provides adequate opportunities for Iwi partnership and participation.

Marine aquaculture interest

20. In 2004 Ministers of the Government stated that Aquaculture was the "unfinished business of the Fisheries Treaty Settlement" and, to address that, the Government promoted, and Parliament enacted the Maori Commercial Aquaculture Claims Settlement Act 2004. The MCACSA legislated that the Government had and has ongoing obligations to provide Iwi with space or other assets representative of, or equivalent to, 20% of any marine space approved for aquaculture in a region after 22nd September 1992. Because applications for marine aquaculture are approved by regional councils under the RMA, the MCACSA requires that the Crown must satisfy its settlement obligations with all the Iwi of a region collectively.

[5] *Attorney-General v the Trustees of the Motiti Rohe Moana Trust & Ors [2019] NZCA 532 [4 November 2019]*

21. The Crown, as a treaty partner, should work in partnership with Iwi Aquaculture Organisations to seek their feedback on resource management reform. As Trustee of the Māori Commercial Aquaculture Settlement Trust, we emphasise our role in engaging with Iwi Aquaculture Organisations. Through such engagement you will gain the voice and advice of Iwi Aquaculture Organisations, so that a greater product is generated.

22. With the growth of open ocean aquaculture[6], many open ocean ventures will fall within the coastal marine area (12 nautical mile boundary); however, future aquaculture ventures will take place outside of the Coastal Marine Area, within New Zealand's Exclusive Economic Zone[7]. All areas of aquaculture including open ocean are of interest to iwi and Te Ohu Kaimoana. Throughout this process, consideration needs to be given to management regimes of aquaculture within and outside of the 12 nautical mile boundary process as well as the development of open ocean aquaculture management.

Our response to the Bill

23. The Bill contains key elements to test with the public, however there is still a lot of work that needs to be done (including further work on the policy to inform the legislative drafting). This drafting process provides an opportunity for us to provide early comment on those matters both within and yet to be included in the Bill, to ensure amendments can be made before it is formally introduced into the House of Representatives.

24. We note that the matters included within the draft Bill will be the main focus of the Select Committee inquiry. The Select Committee will examine the draft with reference to the reform objectives and seek feedback on the exposure draft from the public[8]. The following outlines more detailed matters of particular concern to us.

The Government's reform objectives

25. We note that one of the Government's reform objectives is to "protect and where necessary restore the natural environment, including its capacity to provide for the well-being of present and future generations". This is mapped against the issue with the RMA, in that it has contributed to the natural environment being under significant pressure and degraded through unsustainable use, e.g., 4000 native species under threat.[9]

26. Though we recognise that there is pressure and degradation on the natural environment caused by the current RMA framework, we consider the proposed reform objectives should not override positive sustainable management practices that currently exist across environmental legislation.

27. It is encouraging to see the Government taking a more focused approach in protecting and restoring the environment mai i ngā maunga ki te moana (from mountains to sea) under this Bill. However, we stress that this must be consistent with Te Tiriti, and in a way that upholds existing and future settlements (including the Fisheries Settlement). It is important to align existing environmental legislation, namely the Fisheries Act, that help to meet this objective as well as enable beneficial relationships to exist between people and the environment, particularly the whakapapa relationship between iwi, hapū and Tangaroa.

Purpose (clause 4)

28. Te Oranga o Te Taiao mirrors many of the same principles as Te Hā o Tangaroa kia ora ai tāua, particularly the health of the taiao, the whakapapa relationship between Māori and te taiao and the essential relationship between the health of te taiao and its capacity to sustain all life. With that said, we support

[6] Open ocean aquaculture has been identified as a sustainable growth pathway for the aquaculture industry in the New Zealand's Government Aquaculture Strategy 2019. https://www.mpi.govt.nz/dmsdocument/15895-The-Governments-Aquaculture-Strategy-to-2025

[7] Activities in this area are currently provided for in the Exclusive Economic Zone and Continental Shelf Act.

[8] The scope of the inquiry is set out in the Terms of Reference (Appendix 1) of the Natural and Built Environments Bill: Parliamentary paper on the exposure draft

[9] Table of objectives included in paragraph 12 of the Introduction and background of the Natural and Built Environments Bill: Parliamentary paper on the exposure draft

inclusion in the purpose clause to enable Te Oranga o Te Taiao to be upheld. We suggest the drafting be amended to require Te Oranga o Te Taiao to be upheld (rather than to enable it). It is also important that Te Oranga o Te Taiao can be reflected regionally (rather than have a rigid definition that is at a national level).

29. It is also clear that further work is required to ensure that Te Oranga o te Taiao will be upheld across the entire system. We expect that the legislative provisions within the Bill will provide the foundation for Te Oranga o te Taiao (in this context) and enable the relationship of iwi/hapū with Te Taiao (and in turn Tangaroa) and related tikanga to be recognised and upheld. In our view, the cumulative effect of these provisions – together with the provision requiring decision-makers under the Bill to give effect to principles of Te Tiriti – represents a significant step beyond the current position under the RMA. The retention of Te Oranga o Te Taiao within the purpose, and its implementation throughout the Bill and subordinate instruments, is crucial to deliver transformational change.

30. There are several ways Te Oranga o Te Taiao could be upheld. However, there must be ongoing engagement on definitions of "kaitiakitanga" and "mātauranga" to ensure these are terms founded in and expressed through tikanga and assist with furthering the purpose of the Bill to uphold Te Oranga o te Taiao. The term 'iwi and hapū' should be retained and used throughout the Bill and subordinate instruments.

31. It will also be important that the implementation of Te Oranga o te Taiao upholds its integrity and purpose, which is not only the well-being of the natural environment, its interconnectedness and life sustaining capacity but also the intrinsic relationship between iwi and hapū and te Taiao. For Te Oranga o te Taiao to be upheld iwi and hapū must co-develop implementation processes, frameworks and plans with the Crown and Local Authorities.

32. We are concerned that clause 5 (1) (b) refers only to the "use" of the environment in supporting the wellbeing of current generations without compromising the wellbeing of future generations. It is important to recognise that well-being encompasses both the use and the protection of the environment.

Te Tiriti o Waitangi (clause 6)

33. We support section 6 of the Bill that requires all persons exercising powers and performing functions and duties under the Bill to give effect to the principles of the Te Tiriti o Waitangi.

34. It will be important to ensure that this obligation is also given further expression through the Natural and Built Environment Act. For example, by ensuring that there are appropriate mechanisms for iwi and hapū decision-making throughout the various processes in the Bill (some of which are yet to be developed). We outline our concerns with upholding Treaty Settlements further in our response.

Environmental limits (clause 7)

35. The Bill states that mandatory environmental limits will be set for air, biodiversity (including habitats and ecosystems), coastal waters, estuaries, freshwater, and soil. It is unclear what 'limits' are intended to be set at a national and regional level in accordance with the drafted Part 3 provisions of the National Planning Framework (NPF), what other related legislation these limits will influence and who will input into this process. What is clear in the drafting, is that the power to make decisions on environmental limits will lie with the Minister of the Environment (the Minister) or regional planning committees (in line with prescribed requirements of the Minister). The Bill notes that limits will draw on a range of knowledge sources, including mātauranga Māori, and that a precautionary approach will be taken (and therefore incomplete or uncertain data will not be a barrier to setting limits).

36. New Zealand has a comprehensive and integrated fisheries management framework that applies to all aquatic life in the aquatic environment, this includes marine, estuarine and freshwater habitats. That

framework protects and gives effect to Treaty rights and interests, and provides tools required to respond appropriately to the effects of fishing and address concerns for ensuring sustainability of aquatic life, including protecting indigenous biodiversity.

37. Management of fisheries resources through the Quota Management System (QMS) is a key process enabled by the Fisheries Act, consistent with the Fisheries Settlement agreed to between the Crown and Māori in 1992[10]. The Fisheries Act, in turn, provides for the Minister of Oceans and Fisheries to approve a range of plans that enable fine-scale management within the parameters of the QMS and the sustainability measures that support it. This framework allows for more flexibility to set limits and/or restrictions on fishing to achieve the purpose and principles of the Fisheries Act, and in doing so achieve positive environmental outcomes for the aquatic environment.

38. Marine aquaculture is currently managed through the RMA to protect the environmental effects of breeding, hatching, cultivating, rearing, or on growing of fish, aquatic life, or seaweed. Changes to the environmental limits could impact on existing and new aquaculture ventures to reach new standards. This should be considered when setting new requirements as this would have an economic impact to businesses that will have a flow on effect to mental health and social decline in the people.

39. In addition to this, while the RMA is concerned with marine aquaculture within 12 nautical miles, any changes to the resource management regime need to be aligned with the future of marine aquaculture that will extend beyond the 12 nautical mile boundary.

40. We consider that the concept of environmental limits for the coastal environment, if carefully implemented, could be consistent with Te Hā o Tangaroa kia ora ai taua. However, these should be set to manage the adverse effects of non-fisheries activities within the coastal environment. The management of fishing activities that have effects on fisheries are already provided for in the Fisheries Act, consistent with the Fisheries Settlement.

41. These points need to be the subject of further consideration (in terms of legal drafting) and policy development, particularly in making sure that the special provisions made for Māori interests guaranteed by the Fisheries Settlement and recognised under the Fisheries Act are not undermined. We are very clear that the Fisheries Settlement must be upheld and protected in the establishment of a new Bill, and clear delineations made between the functions, roles and purposes of the new Bill and the Fisheries Act.

Environmental outcomes (clause 8)

42. We observe that there is intended to be an "outcomes-based approach" for both environmental and development objectives – a shift away from the current focus on avoiding adverse effects. The Bill looks to promote several environmental outcomes in the NPF and regional plans to achieve the purpose of the Act, including:
    - the quality of air, freshwater, coastal waters, estuaries, and soils is protected, restored, or improved:
    - ecological integrity is protected, restored, or improved:
    - outstanding natural features and landscapes are protected, restored, or improved
    - areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved:
    - in respect of the coast, lakes, rivers, wetlands, and their margins,—
        - public access to and along them is protected or enhanced; and
        - their natural character is preserved:
    - the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected;
    - the mana and mauri of the natural environment are protected and restored:

[10] Under Section 4.2 of the Fisheries Deed of Settlement, Maori endorsed the QMS and acknowledged that it is a lawful and appropriate regime for the sustainable management of commercial fishing in New Zealand.

- cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values
- protected customary rights are recognised:
- the protection and sustainable use of the marine environment:

43. The environmental outcomes expressed in the Bill are proposed to be interpreted through the lens of Te Oranga o te Taiao (to ensure that where outcomes may conflict, an approach or interpretation that enables Te Oranga o te Taiao is upheld). We would add that this should also extend to embracing Te Hā o Tangaroa kia ora ai tāua. In addition, the Bill should aim achieve these environmental outcomes in harmony with related legislation. Doing so would likely align with uphold Te Tiriti and recognise and provide for the relationship Māori have with Tangaroa and the wider taiao.

National Planning Framework (NPF) and Natural and Built Environments Plans (NBEP's) (Part 3 & 4)

44. Whilst the concept of a National Planning Framework is reasonably necessary, the process to develop the content of the National Planning Framework is currently not clear. In that regard, we consider the co-development of, and regional input into, a national direction setting framework is critical. Relevant to the consideration of National level matters, Te Oranga o te Taiao, Te Mana o te Wai and Te Hā o Tangaroa kia ora ai tāua can act as korowai across the new system and included in the setting of any National direction.

45. The purpose of National and Built Environment Plans (clause 20) should be to achieve the purpose of the Act, provide a framework for the integrated management of the region that the plan relates to, and include provisions to resolve conflict between environmental outcomes.

46. We consider the clauses relating to the content and consideration of plans are incomplete and need to be the subject of more detailed policy development. Where they exist, environmental plans prepared by iwi and hapū must be given effect by planning committees in the design of content for National and Built Environment Plans.

Matters not included within the Bill

47. There are a number of matters that will ultimately be included in the National and Built Environments Act but are not in the Bill. We note that the Select Committee has been asked to collate a list of ideas for making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user and less complex, compared to the current system. The responses below address our key concerns:

Upholding the Fisheries Settlement

48. We consider that there is much about the Bill that remains unclear, particularly when it comes to upholding Te Tiriti and the Fisheries Settlement. In particular, activities not limited to land-based activities, that adversely affect the freshwater and marine environment on which fisheries and aquaculture depend. As well as activities or uses that are governed under the RMA that directly or inadvertently prevent Māori from accessing their fisheries.

49. The potential impact and alignment with other relevant legislation, including but not limited to the Fisheries Act, is not explicitly outlined in the Bill (specifically the parliamentary paper). The Crown has a responsibility to protect and uphold the rights confirmed in the fisheries settlement and we must assist the Crown to discharge its obligations under the Deed of Settlement and Te Tiriti.

50. The existing RMA provides protection for existing rights granted or recognised under its own provisions, however, does not explicitly recognise rights granted under other legislation. The only reference to any

form of rights in the drafted Bill is in clause 8(i), which looks to promote an environmental outcome that 'protected customary rights are recognised'. We continue to be concerned at the lack of priority shown by successive Governments on the issue of recognising iwi/Māori rights and interests, and more specifically Māori customary (commercial and non-commercial) fishing rights. The Bill has the potential to continue and perpetuate that failure and undermine any future recognition and provision of Māori customary (commercial and non-commercial) fishing rights. We strongly urge for these rights to be recognised, protected, and provided for within the next drafting of the Bill as well as explicitly recognise rights granted under other legislation.

51. The quota management system provided for within the Fisheries Act is a rights-based system and formed the basis for part of the Fisheries Settlement. If the RMA fails to recognise rights guaranteed under the Fisheries Act it can undermine the Fisheries Settlement. In our view the final Bill should contain an explicit requirement for decision-makers to assess the effects of their policies, plans and consent decisions on the rights protected by Te Tiriti settlements, including the Fisheries Settlement and the MCASCA.

52. The use of a right-based system in the Fisheries Act underpins a system for which rights holders take responsibility for managing their shared resource. This is stated in the purpose of the Fisheries Act, where ensuring sustainability includes "avoiding, remedying or mitigating adverse effects of fishing on the aquatic environment."[11] The purpose of the RMA and the Bill at clause 5(2)(c) mirrors the purpose of the Fisheries Act, however it does so in a broader sense. The purpose of the RMA lends itself to all environments and activities where the Fisheries Act specifically manages the impacts of fishing activities on the aquatic environment. We see the provisions for managing the effects of fishing being better managed under the Fisheries Act as this legislation is specifically designed to do so. Additionally, the government agency who enact the Fisheries Act (Fisheries New Zealand) are purposefully equipped and mandated to manage the impacts of fishing alongside rights holders. The management of fisheries impacts on the aquatic environment should sit within the legislation that specifically provides for those impacts and delivers the rights-based system that protects and incentivises the responsibilities of the rights holders.

Interface with the Fisheries Act is clear

53. The RMA reform provides an opportunity to simplify the resource management regime by removing duplication with the Fisheries Act. We recommend that clear boundaries should be drawn between the Bill and the Fisheries Act.

54. The rationale for the 'clean line' approach is that:
    - Removing duplication with the Fisheries Act better achieves the Government's reform objectives – for example- it improves system efficiency and effectiveness, reduces complexity, and gives better effect to the principles of Te Tiriti o Waitangi than alternative solutions;

    - There is no need for the Bill to address adverse environmental effects of fishing or protection of biodiversity from fishing-related impacts, as management of these effects is fully addressed in the scope and operative provisions of the Fisheries Act. Any desired improvements in marine biodiversity protection more generally should be achieved under the Government's proposed marine protection reforms which we expect will provide a framework to ensure that the marine biodiversity is effectively managed under an integrated statutory regime with no unnecessary duplication or gaps;

55. For the avoidance of doubt, we agree that decision-makers should still be able to exercise functions under

[11] Part 2 Section 8 of the Fisheries Act

the Bill to manage effects of fishing where these functions do not duplicate controls capable of being lawfully imposed under the Fisheries Act (e.g., noise, placement of moorings, control of odour).

56. We note that if, contrary to our recommended solution, fishing can be controlled under the Bill, then the Bill will require explicit provisions to safeguard the Fisheries Settlement.

The Strategic Planning Act

57. Improving how we plan for future growth and development within agreed environmental limits is a fundamental part of the reforms. While the details of the Strategic Planning Act are still to be developed and agreed by Ministers, the purpose is to set long-term (i.e., 30-year) outcomes and objectives for a spatial area (i.e., a region) and to integrate resource management planning, infrastructure provision and investment decisions, including for the coastal marine area.

58. We understand that Regional Spatial Strategies are likely to precede any process to develop National and Built Environment Plans and would likely 'set the scene' for how natural resources (i.e., water, land etc) are utilised. We are aware that there are overlaps with the way that natural resources are protected (or restored) and allocated within environmental limits.

59. The RMA Review Panel recommended that spatial planning should be extended into the coastal marine area primarily to promote integration between land use, the coastal environment and water quality[12]. While we acknowledge this aspirational aim and note that there is scope to improve integration across resource boundaries under the Bill and Strategic Planning Act, we advocate for a more strengthened management regime for terrestrial activities to alleviate pressure off the coastal environment.

60. We promote that Iwi and hapū, through their MIO/IAO and/or AHC's, must be engaged at an early stage in any spatial planning process that is employed to develop Regional Spatial Strategies.

Suggested amendments to the Bill

61. In our view, it is critically important that Te Tiriti o Waitangi and Treaty settlements (including the Fisheries Settlement) are upheld and respected by the Crown in any new legislative framework that is adopted.

62. It is preferable in our view that Māori, as beneficiaries of the Fisheries Settlement, have a single, comprehensive legislative framework that governs the management of the effects of fishing. This was, in our view, what was contemplated by the Fisheries Settlement in 1992. We note that in the subsequent development of the Fisheries Act 1996 a range of related natural resource legislation was amended to align with that act. The Resource Management Act 1991 was not one of the Acts amended and so we do not consider that Parliament explicitly intended it to impact on the management of fishing in the way it now does subsequent to the Motiti decision.

63. However, should the Select Committee determine that the Motiti decision has standing then our expectation is that then Maori fishing rights, the Fisheries Settlement and the Treaty of Waitangi (Fisheries Settlement) Act 1992 must be upheld and protected.

64. In line with our view, we offer the following suggested amendments to the draft Bill, noting that our position in respect of the Bill is reserved until it is in final form:

[12] Resource Management Review Panel (2020). *New Directions for Resource Management in New Zealand*. Report of the Resource Management Review Panel. June 2020.

a. Under clause 5, 'Purpose of the Act', insert a new clause 5(1)(c) as follows:

5 Purpose of this Act

(1) The purpose of this Act is to enable—

(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and

(b) people and communities to use the environment in a way that supports the well-being of present generations without compromising the wellbeing of future generations; and

(c) the Crown to recognise, respect and uphold Te Tiriti o Waitangi.

b. Insert a new clause 6 as follows:

6 The Crown to uphold rights and interests guaranteed in existing and future Treaty Settlements

Nothing in this Act shall affect Māori fishing rights, the Fisheries Settlement nor the Treaty of Waitangi (Fisheries Settlement) Act 1992.

Nothing in this Act shall affect rights and interests of Maori in regard to their existing and future Treaty Settlements

Conclusion

65. We have a significant interest in the reform of the resource management system and its relationship with the Fisheries Act, the Maori Fisheries Act, the Maori Commercial Aquaculture Claims Settlement Act and the Resource Management Act. In combination, these Acts reflect a full range of rights and interests that derive from Te Tiriti and the Fisheries Settlement. In addition, we have a close working relationship with the Te Wai Māori Trust and share their aspiration for improved management of our freshwater resource and the habitats it supports

66. We are concerned about the effect of any potential changes to the Bill on the Fisheries Settlement and encourage officials to working directly with Settlement entities such as ourselves. We welcome the opportunity to engage further, kānohi ki te kānohi and would like to speak to our response to this Bill.

Nāku noa, nā

Lisa te Heuheu
Te Mātārae, Te Ohu Kaimoana