



**Te Ohu Kaimoana's response
to MFAT on the Secretariat for
the Convention on Biological
Diversity's draft documents for
the Post-2020 global biodiversity
framework**

Te Ohu
Kaimoana


This is our response to the draft documents for the Post-2020 global biodiversity framework

1. This document provides our comments on the draft Post-2020 global biodiversity framework in preparation for the third meeting of the open-ended working group.
2. Our response builds on the responses we provided to:
 - The Secretariat of the Convention on Biological Diversity in April 2019 on matters to consider in a new global Framework ([see here](#))
 - The Ministry of Foreign Affairs and Trade on 10th January 2020 on area-based conservation measures ([see here](#)).
 - The Ministry of Foreign Affairs and Trade on 5th February 2020 on the zero draft of the global biodiversity framework (see [here](#)).
 - The Secretariat for the Convention on Biological Diversity on 25th July 2020 on the draft documents for the Post-2020 global biodiversity framework ([see here](#)).
3. We have structured our response as follows:
 - First, we summarise our purpose and interest in the framework
 - Second, we outline our general concerns
 - To conclude, we provide specific comments on the draft text and recommend alternatives or additions where appropriate.
4. If you have any questions or comments, please contact Te Taiawatea Moko-Mead (TeTaiawatea.MokoMead@teohu.maori.nz).
5. We do not intend our response to conflict with or override any response provided independently by iwi (the indigenous tribes in Aotearoa/New Zealand) through their Mandated Iwi Organisations (MIOs) and Asset Holding Companies (AHCs).

We are Te Ohu Kaimoana

6. 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 practised 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). It is also a critical part of our role enshrined in the Māori Fisheries Act 2004.
7. 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 the governing statute which is, in terms of New Zealand's fisheries management regime generally, 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". In the context of engagement with iwi on fisheries management matters, or matters that impact fisheries management, Te Tiriti o Waitangi is a paramount consideration given fisheries are a taonga protected under article 2.
8. Te Ohu Kai Moana Trustee Limited (Te Ohu Kaimoana) was established to protect and enhance Te Tiriti o Waitangi and the Fisheries Deed of Settlement. The Fisheries Deed of Settlement and the Māori Fisheries Act 2004 (the Māori 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.
9. Our statutory purpose, set out in section 32 of the Māori Fisheries Act 2004, 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."

10. We work on behalf of 58 mandated iwi organisations (MIOs)¹ who represent iwi throughout Aotearoa. Asset holding companies (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.

General concerns

The role of iwi/Māori in the negotiation process and implementation

11. Māori, as the indigenous people of Aotearoa, provide significant leadership in addressing biodiversity decline. This has been recognised in *Te Mana o Te Taiao* developed by the Department of Conservation, and the *Global Assessment Report on Biodiversity and Ecosystem Services* issued by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.
12. The Theory of Change proposed in the latest draft framework recognises economic, social and financial models need to be transformed to stabilise the trends leading to biodiversity loss over the next 10 years.² It also states that implementation will be done "in partnership among organisations at the global, national and local levels to leverage ways to build a momentum for success"³.
13. If these statements, which we agree with, are to be implemented, the Government needs to honour its commitments and statutory obligations to work in partnership with Māori. These commitments are enshrined in Te Tiriti o Waitangi, Treaty settlements with iwi/Māori, national legislation, and international obligations, including the United Nations Declaration on the Rights of Indigenous Peoples. As we have stressed in previous responses, the Government should not undermine these obligations by preventing Māori from engaging directly on the form and content of international obligations New Zealand ratifies or negotiates on behalf of Aotearoa, including the Post-2020 Global Biodiversity Framework under the United Nations Convention on Biological Diversity.

¹ MIO as defined 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.

² CBD/WG2020/3/3, p3, para 5.

³ Ibid, p4, para 7.

14. Fundamental changes that should be made to ensure the Government does not undermine its commitments to Iwi/Māori include:

- a. Provide for Treaty partner representation on the official delegation consistent with the New Zealand Government's statutory obligations⁴ and international commitments⁵ to Iwi/Māori. This is a critical part of the obligation of partnership with Māori, as reflected in several decisions. As contained in the Ngawha Geothermal Resources Report 1993, the Tribunal stated that:

... with the Treaty principle of partnership, the needs of both cultures must be provided for, and compromise may be needed in some cases to achieve this objective. At the same time, the Treaty guarantee of rangatiratanga requires a high priority for Māori interests when proposed works may impact on Māori taonga.

- b. Work in partnership with Iwi/Māori through an agreed process to co-develop policies and practices that seek to operationalise the targets.

15. Transformational change also needs to actively support the coming together of many knowledge systems, including mātauranga Māori and science using collaborative governance models and devolved management. This was a critical part of the Waitangi Tribunal's analysis in Wai 262, which recognised a Treaty-based interest in the treatment of mātauranga Māori in science.

16. We are concerned that the failure of successive governments to work with Māori to develop agreed partnership processes has contributed to biodiversity loss. Greater collaboration with Māori will support the Ministry of Foreign Affairs and Trade to negotiate a transformational framework that supports our people, environment, and ocean.

Rights-based approaches

17. The Theory of Change also signals the framework "will be implemented taking a rights-based approach...". As we have said previously, promoting a rights-based approach is highly appropriate to the Aotearoa context. The challenge for Aotearoa is to ensure we do not agree to a set of targets and implementation measures that undermine our rights and

⁴ See Te Tiriti o Waitangi, Fisheries Deed of Settlement, Fisheries Act 1996, Public Service Act 2020.

⁵ See United Nations Declaration on the Rights of Indigenous Peoples: Article 3, 18, 19, 26(1) and (2), 28 and 29(1)

responsibilities under Te Tiriti or our fisheries regime. We think the draft as it stands still has the potential to do so (see specific comments below).

Tools vs outcomes

18. In our February (see [here](#)) and July 2020 responses ([see here](#)), we made the following recommendations for the new global framework:
 - a. Focus on environmental outcomes as opposed to the application of specific management tools
 - b. Don't support fixed targets for the use of particular management tools. Instead, promote the development of sustainable management regimes over 100% of the global oceans and retain flexibility on the use of area-based management measures as part of that approach
 - c. Leave allocation decisions for individual countries to determine in light of the risks they are managing, the status of information on biodiversity in their jurisdictions, their commitments to their indigenous peoples and their economies and cultural and social values.

19. These recommendations were based on our concern about focusing previous drafts on specific management tools rather than the environmental results sought. The proposed global application of specific tools such as spatial planning and protected areas fail to acknowledge the different management systems countries have implemented, which reflect their unique economic, social, environmental and cultural contexts.

20. We are encouraged to see the removal of some of the targets that concerned us, such as the proposal contained in the Zero Draft that at least 10% of land and sea areas should be under "strict protection". However we continue to have concerns about the risk that other targets will undermine the integrity of our fisheries management system. A 'targets-based' approach is also problematic because it creates an incentive to simply identify areas where "protection" can be imposed, rather than acting on a principled basis and considering whether these tools are required or appropriate for an area for Aotearoa.

The need to integrate the management of terrestrial and marine biodiversity

21. A critical issue for marine management in Aotearoa is the need to better manage the effects of land use on marine biodiversity. In our view, this is the most pressing issue for the protection of marine biodiversity. Creating protected areas in the marine environment will do little to address this problem.

22. We have no doubt this will also be a priority in other countries and recommend specific references be made in the framework to address the effects of sedimentation on marine environments.

Specific comments

Target 2 – Integrated biodiversity-inclusive spatial planning

23. In our February 2020 comments, we expressed concern about using the term "spatial planning" to address "sea-use change". Nevertheless it remains in the most current draft.
24. While Target 2 is one of a package of targets under the heading "Reducing threats to biodiversity", our experience of "marine spatial planning" processes to date is that they are political and are used by particular interest groups to negotiate the different uses and values that should be allocated in marine spaces (including no-take marine protected areas), rather than develop solutions to biodiversity protection based on specified threats or risks.
25. Our concern is heightened by the definition of spatial planning in the latest draft, which confirms that this process is largely political⁶.
26. We continue to be concerned this kind of approach will undermine the integrity of fisheries management and our rights and responsibilities under Te Tiriti. In our previous comments, we recommended using more flexible wording, such as "integrated management regimes". We are aware that the Fishing Industry submission proposes replacing the words "spatial planning" with "strategies". We would also support this alternative.
27. We also noted in our previous comments that the term "wilderness" risks imposing a western view of the environment on indigenous peoples. We recommend removing the word "wilderness".

⁶ "Spatial planning is generally understood as a method or public process for analysing and allocating the spatial and temporal distribution of activities in a given environment in order to achieve various objectives, including social, economic and ecological (such as biodiversity) that have been specified through a political process." CBD/WG2020/3/3/Add.2, p3

Target 3 – Protected areas and other effective area-based conservation measures

28. We continue to be concerned about applying a target of 30% of the marine environment under protected areas. In our view, we need to aim to manage 100% of the marine environment well if biodiversity is to be protected from risks and threats.
29. The marine environment is dynamic – so solutions to managing risks to marine biodiversity need to be flexible and responsive to change. As we have mentioned in our previous responses, fixed targets for implementing management tools are unhelpful. The existing Aichi targets have already led to a "race" to establish large MPAs that do not target biodiversity at the highest risk with appropriate management measures. Action targets should retain enough flexibility on using different tools - which may include different effective area-based management measures – to ensure that risks and threats to biodiversity are identified and managed.
30. Rather than focus on a % of global sea areas under "protected areas", critical elements of a new set of area-based action targets could include an increase in area covered by marine management regimes that achieve the following elements:
- a. Manage risks to biodiversity/structure and function of marine ecosystems
 - b. Integrate specific area-based conservation measures across the seascape
 - c. Manage the cumulative effects of different activities in the marine environment
 - d. Recognise indigenous approaches to management
 - e. Are based on the best available science and traditional knowledge of indigenous peoples and local communities
 - f. Provide for adaptive approaches as new information comes to hand.
31. This approach would enable governments to design the way their management systems and tools deliver on these elements and support Aotearoa/New Zealand to strengthen our existing marine and fisheries management regime consistent with Te Tiriti and the Deed of Settlement. It would also provide us with the opportunity to position ourselves as a global leader by making an active commitment to support indigenous-led management approaches to protecting biodiversity.

Target 9 – Customary sustainable use by Indigenous Peoples and Local Communities

32. We generally support this target. However, we wish to emphasise that "customary sustainable use" includes both commercial and non-commercial components. There is a tendency to fossilise traditional knowledge of Indigenous Peoples in the targets. We reiterate that our relationship with the environment is dynamic and evolves with each passing generation.

Enabling conditions – Indigenous Peoples and Local Communities

33. We recommend that the New Zealand Government propose an additional enabling condition that focuses on giving effect to the rights of Indigenous peoples consistent with the United Nations Declaration on the Rights of Indigenous Peoples. We note that UNDRIP duly recognises national agreements with indigenous peoples such as Te Tiriti o Waitangi and other Treaty Settlements. Currently, indigenous peoples and local communities are included in the same paragraph as the whole of society approach.

34. We suggest that this condition is supported by referencing the *Global Assessment Report on Biodiversity and Ecosystem Services* issued by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. In its findings, they note:

'Regional and global scenarios currently lack and would benefit from explicit consideration of the views, perspectives and rights of Indigenous Peoples and Local Communities, their knowledge and understanding of large regions and ecosystems, and their desired future development pathways. Recognition of the knowledge, innovations and practices, institutions and values of Indigenous Peoples and Local Communities and their inclusion and participation in environmental governance often enhances their quality of life, as well as nature conservation, restoration and sustainable use.'

Target 21 – Equitable and effective participation in decision making

35. We are pleased to see this target included in the framework.

Te Ohu
Kaimoana

