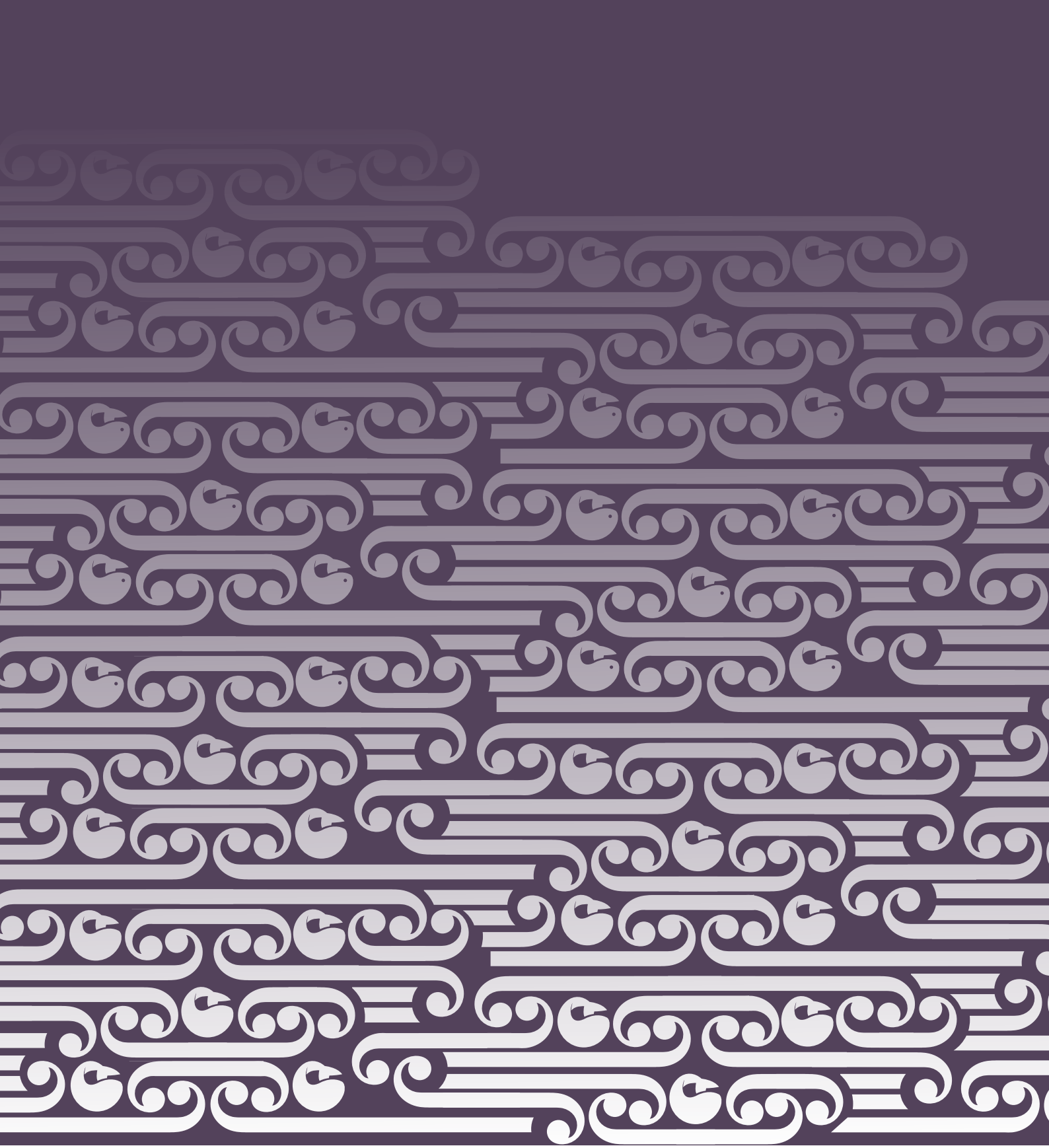

Our response to amendments to the Fisheries Act to ensure Aotearoa continues to meet its international fisheries obligations

Te Ohu Kaimoana

This is our response to amendments to the Fisheries Act to ensure Aotearoa continues to meet its international fisheries obligations

1. This document provides our comments on the consultation: Amendments to the Fisheries Act to ensure Aotearoa continues to meet its international fisheries obligations.

2. In this response we acknowledge the intentions to strengthen Part 6A of the Fisheries Act and in general, support the direction driving this consultation. However, from our perspective there are other matters within Aotearoa's international fishing regime that could have been incorporated into this consultation.

3. In terms of the matters that have been consulted on, we support the Crowns efforts to act against IUU fishing. However, we are less certain about the merit of the proposed amendments to the Fisheries Act that will impact the ability for our domestic vessels to obtain or retain a high seas fishing permit (HSFP). Our understanding is that there is potential for unintended consequences for our domestic operators as a result of the proposed amendments to Part 6A.

4. We agree that meeting international fisheries and compliance standards and avoiding risks that impact Aotearoa's ability to meet requirements for high export markets are reasonable goals. However, in law we note the obligations that sit alongside treaty settlement obligations under Section 5 of the Fisheries Act. Aotearoa has one of the most extensive fisheries management regimes in the world and is currently well aligned with international fishing best practice. So, the improvements here are likely to be at the margin. Yet the crown has not taken sufficient steps to meet the settlement obligations when it comes to the management of catch limits on the high seas.

5. We note the consultation document highlights Aotearoa's commitment for long term conservation and sustainability but has no reference to the utilisation aspect of the fisheries act. Section 8 of the fisheries act clearly states its purpose is to provide for utilisation of fisheries resources while ensuring sustainability. Utilisation and sustainability play equal roles in our fisheries management system.

6. We further note the consultation document states, "New Zealand has a good record of fisheries management and compliance". Considering this statement, we question the Ministry's decision to reward good behavior by introducing new requirements that have the potential for unintended consequences for Aotearoa's vessels that operate on the high seas and in the waters of other coastal states.

7. We do not intend our response to conflict with or override any response provided independently by Iwi, through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs).

We are Te Ohu Kaimoana

8. Te Tiriti o Waitangi (Te Tiriti) guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over our own affairs. It is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use of 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).

9. The obligations under Te Tiriti and the Māori Fisheries Deed of Settlement (the Fisheries Deed of Settlement) apply to the Crown whether or not there is an explicit reference to Te Tiriti in the 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". Of particular note are the comments in the Barton-Prescott case, that "since the Treaty of Waitangi was designed to have general application, that general application must colour all matters to which it has relevance, whether public or private and…whether or not there is a reference to the treaty in the statute."[1]

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

11. 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, in order 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
    d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

12. We work on behalf of 58 mandated Iwi organisations (MIOs)[2] who represent Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs.

[1] Barton-Prescott v Director-General of Social Welfare [1997] 3 NZLR 179, 184.

[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.

The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns 50% of the Sealord Group.

13. Our interest arises from 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 and the Te Tiriti o Waitangi. 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 Tangaroa: rights are an extension of responsibility.

Our advice is based on Māori principles

The significance of Tangaroa to Te Ao Māori

14. The relationship Māori have with Tangaroa is intrinsic, and the ability to benefit from that relationship was and continues to be underpinned by whakapapa. Tangaroa is the son of Papatūānuku, the earth mother, and Ranginui, the sky father. When Papatūānuku and Ranginui were separated, Tangaroa went to live in the world that was created and has existed as a tipuna to Māori ever since.[3]
15. Protection of the reciprocal relationship with Tangaroa is an inherent part of the Deed of Settlement – it's an important and relevant part of modern fisheries management for Aotearoa.

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

16. 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 Deed of Settlement (see Figure 1). 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.

17. Māori rights in fisheries can be expressed as a share of the productive potential of all aquatic life in Aotearoa's waters. They are not just a right to harvest, but also to use the resource in a way that provides for social, cultural and economic wellbeing.

[3] Waitangi Tribunal. "Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity." Te taumata tuatahi (2011).

18. 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: rights are an extension of responsibility. It speaks to striking an appropriate balance between people and those we share the environment with.

19. In accordance with this view, "conservation" is part of "sustainable use", that is, it is carried out in order to sustainably use resources for the benefit of current and future generations. The Fisheries Act's purpose is to "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.

Our views

Addressing the proposals in the consultation:

Prevention of IUU Fishing and prohibiting operations and support of IUU listed vessels

20. We support the proposal that will enable greater powers to fisheries officers to detain and onboard confirmed and suspected IUU vessels. Our only feedback on this matter is that Aotearoa must ensure that when expanding these powers, they consider their obligations under international law.

21. Te Ohu Kaimoana also supports the recognition of final RFMO IUU lists under our law. If there is clear cut evidence of a domestic vessel participating in IUU fishing, we believe that the chief executive should have the power to deliver effective action under the Fisheries Act. We are hesitant however to support the chief executive's decision-making being influenced by the inclusion of vessels on draft RFMO IUU lists. This stance is expanded on in paragraph 28.

Authorisation to Fish on the High Seas and other States' waters

22. We are concerned that there may be a range of unintended consequences that need to be addressed in order to make the proposed approach manageable for our domestic vessels. We refer to the issues raised in the Microsoft teams meeting that took place on the 5th of November between industry and the Ministry[4]:
    - There will need to be further consideration on how the Fisheries Act will be used to manage the activity of our domestic vessels fishing within international jurisdictions, and clarify the implications where regulations differ from ours. There may be circumstances where a Aotearoa flagged vessel has not complied with regulations that are recognised by our government but have acted within the laws of the state's waters where the fishing has occurred. This is not to say that an operator will not defer to our domestic expectations, but that should not be a matter for the Government to require in those situations.

[4] Fisheries Act Amendments Industry Consultation Minutes – 5 November 2021. Supplied by MPI email on 19 November 2021.

- Requiring Aotearoa flagged vessels to acquire multiple permits has the potential to cause administrative issues and operational mishaps.
- The consultation document refers to needing a HSFP to fish within the waters of another state EEZ. We cannot see the utility of this approach as the vessel will not be fishing on the high seas.

23. Amending section 113D to expand the grounds for declining a HSFP will ensure greater management of vessels fishing outside of Aotearoa's exclusive economic zone. However, these amendments will require further discussions on implementation and workability for domestic operators, as the grounds to delay a permit need to be more carefully evaluated.

Effective Action in the Event of a Fisheries Violation

24. We consider that in order to make this proposal work, there may need to be a fast-track process inserted into the Fisheries Act, to allow the operator to defend a potential loss or suspension of a HSFP. There may also need to be a clear definition of what suffices as 'effective action' and if prosecution is required to be concluded for 'effective action' to be achieved.

25. We refer to the case of the Amaltal Apollo, where this vessel was placed on the provisional IUU list for the south pacific regional fisheries management organisation (SPRFMO). It took 2 years for the vessel to be taken off the draft IUU list, as consensus could not be reached on whether Aotearoa had taken 'effective action' against the vessel. This highlights the length to which a domestic vessel owner can be in limbo while RFMO procedures are dealt with. In the case of the Amaltal Apollo, we consider that the government had taken the appropriate 'effective action' and so the vessel should have been taken off the draft list. However, this was not agreed by all parties in the international forum. It was apparent to us that political games were being played at the expense of the vessel owners. On the basis of that experience along, we would caution against placing any reliance on a draft IUU list.

Next steps

26. Te Ohu Kaimoana welcome the opportunity to discuss these proposals further. We are aware that this is the first step of a process and that there needs to be ongoing discussions before decisions are made and implemented.

Nāku noa, nā

Lisa te Heuheu
Te Mātārae

Te Ohu

Kaimoana