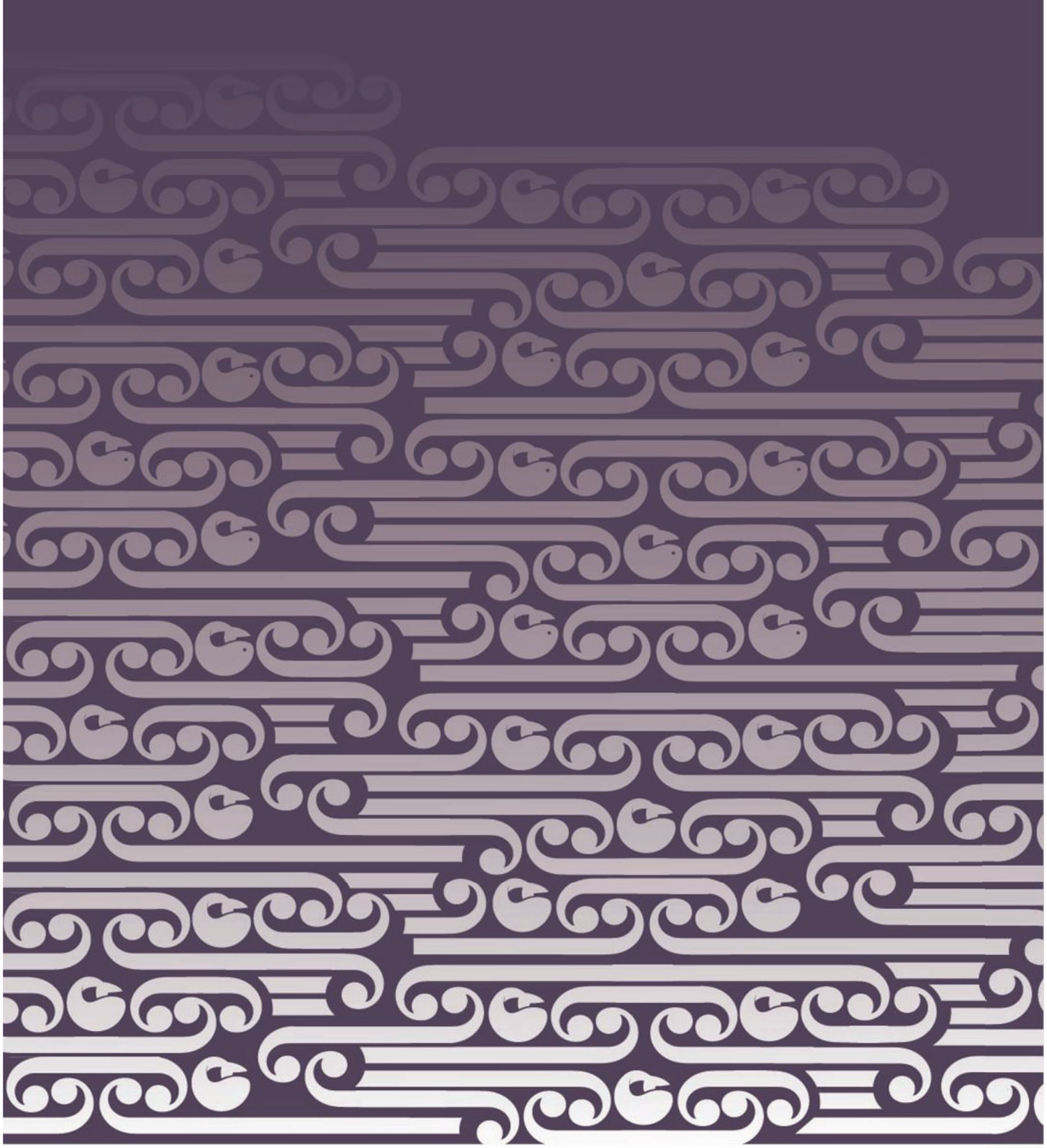

Response to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill

Te Ohu Kaimoana

Contents

Executive Summary

This document provides Te Ohu Kaimoana's response to the Hauraki Gulf/ Tīkapa Moana Marine Protection Bill (the Bill) which was introduced to Parliament on 22 August 2023.

The Bill as it is currently drafted prohibits the use of some customary fishing rights and inappropriately imperils other customary rights and interests of Iwi/ Māori, (and in doing so poses a threat more broadly to customary rights recognition and protection throughout Aotearoa), all the while failing to use appropriate tools to achieve effective biodiversity protection.

It is from this position that we participate in this Select Committee process but we wish to make clear that we do not support the Bill and consider that it should be withdrawn.

Introductory comment and principle with respect to Fisheries Settlement

Firstly, we would like to acknowledge that Tīkapa Moana is an area of significance, culturally, biologically and economically. Given its significance, it is important that the right methods are used to provide for the best results, while ensuring the special relationship Māori have with Tīkapa Moana is maintained.

Sea Change - Tai Timu Tai Pari sought to develop a collaborative approach involving iwi to solve some of the challenges facing Tīkapa Moana by developing a marine spatial plan to 'guide the sharing, use and stewardship of the Gulf.' The proposal for the marine protected areas as provided for by this Bill originated in this process and the subsequent response by the previous Government.

During this ***Sea Change*** process, the following principle was required by iwi and agreed to by the whole Stakeholder Group,

> "**Guiding the implementation of the plan will be the preservation of the integrity and value flowing from the current and future Treaty settlements. Accordingly, none of the Sea Change proposals, restrictions, actions or other measures will diminish or detract from any commercial or non- commercial Treaty settlements or related interests of any kind, whether capable of being held or exercised individually or collectively."** [1]

Despite this clear principle, this Bill sets out the approach to these marine protected areas by the previous Government which appears to ignore the Māori Fisheries Settlement[2] –this seems a remarkable position given the origins of these proposals themselves as well as the known response of iwi katoa to the similar Rangitāhua (Kermadec) proposals.

Use of bespoke legislation removes and threatens settlement rights

The Bill claims that in establishing the marine protection areas through bespoke legislation, the Government recognises customary rights and interests of Māori provided for by the Fisheries Settlement. We strongly disagree. As stated above, the Bill prohibits the use of some customary fishing rights and

[1] Tai Timu Tai Pari- Sea Change- Hauraki Gulf Marine Spatial Plan 2017, pg 21.
[2] The full framework of deeds and legislation to give effect to the agreements between the Crown and māori in the Fisheries Settlement involves the (now repealed) Maori Fisheries Act 1989, the 1992 Fisheries Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (which also includes the customary fisheries management regulations give effect through Part 9 of the Fisheries Act 1996), the Maori Fisheries Act 2004, and the Maori Commercial Aquaculture Claims Settlement Act 2004.

inappropriately imperils other customary rights and interests – using bespoke legislation removes all the disciplines agreed as part of the Fisheries Settlement when considering such issues. Those disciplines included that, if fishing was the stressor, the Fisheries Act should be used and, if reserves/ prohibited areas were being considered, then the concurrence of the Minister with responsibility for fisheries was needed. The Minister is required in that role to specifically consider the impact of the Marine Reserve proposal on the exercise of Fisheries Settlement rights and interests and only grant concurrence if those rights and interests were not unduly affected. We do not accept the removal of those disciplines.

The Bill offers conditional protection of customary fishing rights only if they align with the biodiversity objectives set by DOC in agreement with Māori for each site. Provisions in the Bill propose that the Department of Conservation through its Minister can make further regulations that prohibit customary non-commercial fishing in High Protection Areas. We consider that the Department of Conservation has no place in determining or limiting customary rights recognised under the Fisheries Deed of Settlement and Te Tiriti o Waitangi. Te Tiriti guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is Māori acting with authority and independence over their own affairs.

We will oppose any attempt to restrict or appropriate the management of customary rights, such as proposed in the Bill.

Poor engagement with iwi and Kaitiaki

There has been poor engagement by DOC with Māori in relation to these significant marine protection proposals. Further, there is a lack of a detailed approach to agreeing the biodiversity objectives. This raises the impracticability of DOC's proposal to gain agreement on the biodiversity objectives for each site with Māori. It is unclear who would be included in these conversations, how they would be supported to participate (given we have been told by DOC officials that compensation for time and mātauranga contributed in developing these objectives wouldn't be provided). Further, the Bill contains no clarity on what level of consensus between Māori, and then between Māori and DOC would be required to determine 'agreement' on the biodiversity objectives and subsequent limiting of rights.

The Fisheries Act is the appropriate legislative tool to manage fishing activities

We propose that instead of the proposals in the Bill, tools within existing legislation such as the Fisheries Act should be used to achieve the aspirations of the Bill, while ensuring that those rights recognised under the Settlement are protected.

The threat the Bill poses to customary rights demonstrates the danger of using special bespoke legislation to achieve marine protection aspirations. If it is deemed that fishing activities are the threat to biodiversity protection, then the Fisheries Act is the appropriate legislative tool to manage those activities. There is no clear rationale for the introduction of the Bill considering the Fisheries Act provides a number of mechanisms to manage fisheries activities which provide for the ability to ensure protection of biodiversity through appropriate controls on fishing while still enabling levels of customary commercial and non-commercial use consistent with achieving that protection.

The passing of this Bill would set a dangerous precedent nationwide, demonstrating that obligations under the settlement, or others can be bypassed and undermined by introducing bespoke legislation.

Integrated least-cost protection of biodiversity

The purpose of the Hauraki Gulf Marine Park Act 2000 was to enable integrated management of Tīkapa Moana. The previous Government's response to the perceived threats to this body of water have been anything but integrated. At the surprise announcement by the Minister regarding the introduction of the Bill, the Minister also advised that the Hauraki Gulf Fisheries Plan (the Fisheries Plan) had been approved. The Fisheries Plan aims to significantly contribute to the health of Tīkapa Moana at a lesser cost for fisheries impacts. A proposal that proposes to protect biodiversity is being consulted on at the same time as this select committee process.

We consider the Fisheries Plan should be used to manage fishing risks to biodiversity first and foremost with subsequent examination of whether any additional protection such as that proposed in the Bill at some discrete locations is required. It is unclear why this is not being progressed rather than the current approach of two different Government agencies developing parallel and overlapping initiatives in isolation which seek to achieve the same outcome. In combination these represent a highest-cost approach to biodiversity protection.

Cumulatively both initiatives carry significant precedent setting aspects and when combined collectively could undermine the active and real relationship Māori have with the moana which is expressed through tino rangatiratanga and kaitiakitanga. The Crown's approach to date fails to achieve the goal of protecting biodiversity at a least cost to those whose livelihoods rely on a reciprocal relationship with Tangaroa.

Māori to lead the management of their moana

A Māori led approach to marine management was envisioned in both Te Tiriti o Waitangi and the Fisheries Settlement, as well as affirmed recently with the almost unanimous rejection by all MIOs of the Crown's Rangitāhua (Kermadec) Ocean Sanctuary Proposal. At the same time MIOs agreed to determine an indigenous-led approach to oceans management and to begin the development of an indigenous- led framework that can help guide and determine how to manage the reciprocal relationship that Māori and wider Aotearoa have with our ocean and fisheries going forward.

It is this approach which should be moved forward and supported by Government rather than multiple agencies seeking to control large swathes of the Gulf leaving Hauraki Māori with little to no ability to continue to exercise their kaitiakitanga and rangatiratanga in relation to this important body of water.

While this is being developed there are a number of tools which exist under the Fisheries Act to support the expression of this rangatiratanga and if, as part of the development, it is decided that these tools are insufficient, there is the ability under the Fisheries Act to amend these tools to make them better fit-for-purpose or develop new nuanced tools.

This is our response to the Hauraki Gulf/ Tīkapa Moana Marine Protection Bill

1. This document provides Te Ohu Kaimoana's response to the Hauraki Gulf/ Tīkapa Moana Marine Protection Bill (the Bill) which was introduced to Parliament on 22 August 2023.
2. This response arises from our responsibility to protect the rights and interests of iwi/ Māori under Te Tiriti o Waitangi (Te Tiriti), the Fisheries Deed of Settlement (the Fisheries Settlement) in a manner consistent with 'Te Hā o Tangaroa kia ora ai tāua'.
3. Te Hā o Tangaroa kia ora ai tāua is our guiding principle and translates to the 'breath of Tangaroa sustains us.' It is an expression of the unique and lasting connection Māori have with the environment and contains the principles Te Ohu Kaimoana uses to analyse and develop modern marine and fisheries policy.[3]
4. To support this response, we also wish to present our views kanohi ki te kanohi to the Environment Committee.
5. We have structured our response as follows:
    i. First, we set out who we are and provide an overview of the Fisheries Settlement,
    ii. Secondly, we detail the reasons for our interest in the Hauraki Gulf/ Tīkapa Moana Marine Protection Bill and explain the concept of Te Hā o Tangaroa kia ora ai tāua which underpins our advice;
    iii. Third, we outline our views on the Bill; and conclude with final remarks and our recommendations.
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), Iwi Aquaculture Organisations (IAOs) or Asset Holding Companies (AHCs), or other statutorily recognised entities with responsibility for Treaty Settlement assets on behalf of their iwi members.
7. Our responsibilities as the trustee of the Fisheries and Aquaculture Settlements are distinct but complementary to Māori who hold mana whenua and mana moana and are beneficiaries of the settlements through those statutorily recognised entities.

We are Te Ohu Kaimoana

8. Te Ohu Kai Moana and Te Ohu Kai Moana Trustee Limited (Te Ohu Kaimoana) were created ultimately out of the Māori Fisheries Settlement 1992 between Māori and the Crown. The purpose of Te Ohu Kai Moana is to protect and enhance the interests of Māori and further the agreements set out in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Fisheries Settlement) and later settlements reached under the Māori Commercial Aquaculture Claims Settlement Act 2004, both of which are recognition in law of the Crown's obligation to

[3]Further information on Te Hā o Tangaroa kia ora ai tāua can be found at Appendix 1.

uphold Te Tiriti o Waitangi.

9. The full purpose of Te Ohu Kai Moana is to "advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities in order to:

    I. ultimately benefit the members of Iwi and Māori generally

    II. further the agreements made in the Deed of Settlement

    III. assist the Crown to discharge its obligations under the Deed of Settlement and Treaty of Waitangi

    IV. contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."[4]

10. Through the Fisheries Settlement, the Crown recognised the full extent of Māori customary rights to fishing and fisheries by:

    I. Providing funds for Māori to buy a 50% stake in Sealord Group Ltd which, as one of the largest fishing companies in New Zealand at the time, was a major owner of fisheries quota,

    II. Undertaking to provide Māori with 20 percent of commercial fishing quota for all new species bought within the QMS,

    III. Undertaking to ensure the appointment of Māori on statutory fisheries bodies, and

    IV. Agreeing to make regulations to allow self-management of Māori fishing for communal subsistence and cultural purposes.

11. We work on behalf of MIOs, Recognised Iwi Organisations (RIOs), Joint Mandated Iwi Organisations (JMIOs) and Iwi Aquaculture Organisations (IAOs) who in turn collectively represent all Māori. We work on behalf of Iwi not only to protect their rights and interests but to enable them to progress their aspirations within the moana.

Te Ohu Kaimoana's interest in the Bill

12. Te Tiriti recognised and guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is Māori acting with authority and independence over their 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 and enjoyment of future generations. This view endures today and is embodied within our framework and guiding principle Te Hā o Tangaroa kia ora ai tāua.

13. 'Te Hā o Tangaroa kia ora ai tāua' expresses the special relationship that Māori have with the aquatic environment, including speaking to the interdependent relationship with Tangaroa to

[4] Section 32 of the Maori Fisheries Act 2004.

ensure their health and well-being. This expression underpins our purpose, policy principles and leads our kōrero to ensure the sustainability of Tangaroa's kete for today and our mokopuna yet to come.[5] It is important that the Government understands the continuing importance of Tangaroa and recognises the tuhonotanga that Māori hold as his uri. In a contemporary context, the Māori Fisheries Settlement is an expression of this interdependent relationship.

14. Iwi/ hapū rights are an extension of their kaitiaki responsibility, a responsibility to use the resources in a way that provides for social, cultural and economic well-being, and in a way that is not to the detriment of Tangaroa or other children of Tangaroa. It speaks to striking an appropriate balance between people and those we share the environment with. Management and protection of fisheries, freshwater and marine aquaculture resources are some elements of this reciprocal relationship.

15. Our interest in the Bill stems from our responsibility to protect the rights and interests of Māori in fisheries in a manner that furthers the agreements in the Deed of Settlement and aligns with the rights recognised through Te Tiriti.

16. When Māori agreed to the Fisheries Settlement, they were aware of the Fisheries Act and its agreed development. Māori agreed that for commercial fishing the Quota Management System provided the right long-term incentives to ensure sustainability. They understood and endorsed the need to restrict catch by all fishers if the stocks were below accepted thresholds.

17. Māori were also aware at the time of the Marine Reserves Act, the purpose of marine reserves and the provisions therein. They were also aware that the process of approving any Marine reserve required the Minister to be satisfied that a marine reserve would not interfere unduly with commercial fishing as well as not unduly interfere with or adversely affect any existing usage of the area for recreational purposes. In practice this led to the Minister requiring the concurrence of the Minister with responsibility for fisheries to agree that the marine reserve proposals will not have an adverse effect on Fisheries rights and interests.

18. In addition, Māori were also aware that the Marine Reserves Act permitted the Minister to exercise his discretion and prohibit all fishing or allow certain fishers and methods of fishing in a marine reserve and were aware that this discretion had been exercised to allow customary non-commercial fishing. As part of the Fisheries Settlement, it was agreed that the Minister with responsibility for fisheries would specifically consider the impact of the Marine Reserve proposal on the exercise of Fisheries Settlement rights and interests.

19. By proposing bespoke legislation such as the introduction of the Bill, it removes all the disciplines agreed as part of the Fisheries Settlement. It's questionable whether this legislation recognises the Fisheries Settlement and reflects the expectation of adherence to a relationship of partnership.

20. Te Ohu Kaimoana considers that the Bill as drafted has the potential to threaten the customary

[5] Further information on Te Hā o Tangaroa kia ora ai tāua can be found at Appendix 1.

rights and interests of Iwi/ Māori and poses a challenge more broadly to customary rights recognition and protection in Aotearoa, all while failing to use appropriate tools to achieve effective biodiversity protection. It is in this capacity that we participate in this Select Committee process.

Our advice on the Bill

21. Firstly, we would like to acknowledge that Tīkapa Moana is an area of significance, culturally, biologically and economically. Te Ohu Kaimoana is committed to the ongoing positive relationships between Māori and Tangaroa, including the protection of fisheries and the ecosystems they depend on for future generations.

22. The protection of marine biodiversity within Tīkapa Moana should be seen as part of a broader conversation about environmental management, where the right tools are applied to achieve the desired outcomes without undue impacts on other activities.

23. As part of the Sea Change process where this protection proposal originated out of, the following principle was required by iwi and agreed by the whole Stakeholder Group, "***guiding the implementation of the plan will be the preservation of the integrity and value flowing from the current and future Treaty settlements. Accordingly, none of the Sea Change proposals, restrictions, actions or other measures will diminish or detract from any commercial or non- commercial Treaty settlements or related interests of any kind, whether capable of being held or exercised individually or collectively***.[6]"

24. Despite this clear principle, this Bill and the approach of the previous Government continues to deviate from preserving the settlement – in practice it either has not considered it or dismissed it as being unimportant, both of which would seem remarkable given the known response of iwi katoa to the similar Rangitāhua (Kermadec) proposals.

25. Further, we do not believe that the biodiversity protections desired through the implementation of the Bill will be realised through the tools proposed. The Bill reflects an approach to biodiversity protection at the highest cost, with the least protections realised. The Seafood New Zealand Inshore Council submission speaks to this point also and we largely agree and support their response.

26. Our response to this Bill focuses on the following key high-level matters within the Bill, which we see as a failure to enhance and protect the reciprocal relationship Māori have with Tangaroa and as such the intent and integrity of the fisheries settlement:

    a. The Department of Conservation has no place in determining or limiting customary rights recognised under the Fisheries Deed of Settlement and Te Tiriti o Waitangi;

    b. DOC engagement on this kaupapa with Māori has been poor to date;

    c. If fishing is considered to be the activity threatening biodiversity, then the Fisheries Act is the

[6] Tai Timu Tai Pari- Sea Change- Hauraki Gulf Marine Spatial Plan 2017, pg 21.

appropriate Act to manage the effects of fishing rather than the introduction of bespoke legislation; and

d. Duplication of protection efforts fails to protect biodiversity at a least-cost approach.

27. It is for all these reasons that we do not support the Bill and recommend that it be withdrawn.

The Department of Conservation has no place in determining or limiting customary rights recognised under the Fisheries Deed of Settlement and Te Tiriti o Waitangi

28. The effect of 'protection mechanisms', such as those enabled through this Bill need to be assessed recognising the full extent of their effects on Māori interests, where those interests are extensive and complex.

29. The Fisheries Settlement addressed Māori claims regarding their customary fishing rights – that included recognition that the customary rights had both commercial and non-commercial components. While non-commercial fishing rights continue to be subject to the principles of the Treaty of Waitangi, the Fisheries Settlement also provided for the promulgation of regulations to recognise and provide for customary food gathering by Māori. These regulations were to provide for the special relationship between tangata whenua and those places which are of importance for customary food gathering.

30. Customary food gathering as defined within the regulations refers to "the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, being the taking of fish, aquatic life, or seaweed or managing of fisheries resources, for a purpose authorised by Tangata Kaitiaki/ Tiaki, including koha, to the extent that such purpose is consistent with Tikanga Māori and is neither commercial in any way nor for pecuniary gain or trade.[7]"

31. Tangata whenua act in accordance with these regulations to manage customary food gathering within the area/ rohe moana for which they are tangata whenua. Tangata kaitiaki / Tiaki appointed under these regulations may authorise any individual to undertake customary fishing activities from within the whole or any part of the area/ rohe moana, for which the Tangata Kaitiaki/ Tiaki has been appointed.

32. The Bill states that one of its purposes is to "acknowledge customary rights within seafloor protection areas and high protection areas.[8]" Instead, what the Bill actually does in practice is conditionally acknowledge and limit protection of these rights while prohibiting others, stating that traditional non- commercial food gathering (customary fishing) "can only occur if the fishing activity is not contrary to any restrictions determined by the biodiversity objectives for the site.[9]"

33. We see this Bill as an attempt by the Department of Conservation to determine and limit what

[7] Fisheries (Kaimoana Customary Fishing) Regulations 1998, section 2 cl 1.
[8] Hauraki Gulf/ Tīkapa Moana Marine Protection Bill, Part 1 Cl 3.
[9] Hauraki Gulf/ Tīkapa Moana Marine Protection Bill, explanatory note, customary fishing in high protection areas and seafloor protection areas.

is deemed acceptable customary fishing practices within Tīkapa Moana. This is inappropriate. It is not for DOC to define, manage or limit customary rights if they do not align with the biodiversity objectives to be established within each marine protected area. The management of customary activities is the exclusive role of tangata whenua and Tangata kaitiaki/ Tiaki.

34. If the Bill is progressed in its current form, a precedent would be set that will enable future Crown agencies to introduce bespoke legislation to bypass protections and undermine the promises made in the Treaty Settlements and rights guaranteed under Te Tiriti o Waitangi. Further, while we support that all rights recognised under the Marine and Coastal Area Act 2011 continue to be able to be exercised within the HPA and SPAs, regardless of the sites' biodiversity objectives, it is unclear why this settlement process and associated rights are being upheld through this process and those rights under the Fisheries Settlement are being undermined.

35. We have tried to alert the Department of Conservation to the danger of using special legislation such as this to achieve marine protection ends, rather than using the existing tools under the Fisheries Act to manage the effects of fishing while ensuring the protection of customary rights and the settlement. These concerns have been stressed in our written response to the public consultation process on these marine protection area proposals and in subsequent hui with DOC officials.

Iwi engagement on marine protection within Tīkapa Moana has been poor to date

36. In addition to our opposition to the Bill's attempts to circumnavigate Treaty rights and obligations on the Crown, we also call out the impracticalities of what is proposed by the Bill in relation to the setting of these biodiversity objectives in agreement with Māori given DOCs poor engagement with Māori on this kaupapa to date. This further highlights the danger of this special legislation and the need to use tools which recognise and provide the necessary protections to these rights.

37. When we met with DOC officials following the end of the consultation period on the marine protection proposals, we were provided with a list of hapū and iwi DOC had engaged with in relation to the marine protection proposals which the Bill enables.

38. This list was far from comprehensive and represented engagement with a very small subset of Māori likely to be affected by this proposal. Further, engagement had only occurred with one of the MIOs recognised as representative entities under the Māori Fisheries Act 2004.

39. Engagement is required with the MIOs whose rohe moana falls within the boundaries of the Hauraki Gulf Marine Park, but also those who have their rohe moana within the wider fisheries area (due to spill over consequences of displaced efforts). All Māori that stand to have their rights impacted through this process should have been meaningfully engaged with, in both an individual and collective way.

40. The DOC approach to engagement in relation to this kaupapa appears to be haphazard and based on a premise of talking with the willing rather than a concentrated effort to bring affected

parties to the collective table to determine solutions and garner feedback. If this is the approach and associated uptake for engagement on proposals as significant as the establishment of these marine protection areas, it again raises the impracticalities of the proposal for DOC and Māori to agree the biodiversity objectives for each area.

41. No clarity has been provided on how DOC would attempt to find agreement on these biodiversity objectives, nor how DOC would identify those iwi whose rohe moana is likely to be impacted by spill-over increases in activity if customary fishing is prohibited. Who will be included in these conversations? How would they be supported to participate (given we have been told by DOC officials that compensation for time and mātauranga contributed in developing these objectives wouldn't be provided). Further, the Bill fails to identify who exactly DOC propose to talk to and what degree of involvement and consensus would be required to determine 'agreement' on the biodiversity objectives and subsequent limiting of rights.

42. While we recognise it would be up to Iwi/ Māori to determine and communicate their views on 'customary use' and the proposed biodiversity objectives for the areas, Te Ohu Kaimoana also has a role in protecting the intent and integrity of the Fisheries Settlement. Protection of settlement interests should not be provided for only through processes of participation, but as a principle that must be given effect in all decisions. The proposed Act binds the Crown and as it has been reminded all DOC activities must be effected under the umbrella of s4 of the Conservation Act 1987 – "to give effect to the principles of the Treaty of Waitangi"

43. DOC's poor engagement with Māori to date on this significant kaupapa, as well as the lack of a detailed approach to the agreeing of these biodiversity objectives highlights further that DOC cannot be trusted to influence any aspects of the customary rights guaranteed to Māori. Instead, tools within existing legislation such as the Fisheries Act should be used to achieve the aspirations of the Bill while ensuring that those rights recognised under the Settlement are protected.

44. As we have established throughout this response, Iwi and Te Ohu Kaimoana will oppose any attempts by the Crown to pass legislation that extinguishes Māori rights and interests.

The Fisheries Act is the appropriate legislative tool to manage fishing activities

45. There is no clear rationale in the marine protection proposals which indicate a need for the new Hauraki Gulf/ Tīkapa Moana Marine Protection Bill with its risk to customary rights and interests, rather than utilising existing legislation such as the Marine Reserves Act 1971 and the Fisheries Act 1996 which jointly ensure the integrity of the Fisheries Settlement is maintained.

46. The use of mechanisms under the Fisheries Act aligns with the agreements made under the Fisheries Settlement and better provides for the ability to ensure protection of biodiversity through appropriate controls while still enabling levels of customary commercial and non-commercial use consistent with that protection. In fact, a key purpose of the Fisheries Act is to

"make better provision for the recognition of Māori fishing rights secured by the Treaty of Waitangi."[10]

47. Te Ao Māori does not embrace a view that its relationship with Tangaroa is to create permanent non-use as proposed by these stagnant marine protection proposals. Rather the opposite, with our kaitiaki responsibilities being to ensure mauri by balancing that use and resting areas on a temporary basis if and where there are concerns. We are concerned that once in place there is no flexibility in the locations and extent of these marine protected areas.

48. Further, the Fisheries Settlement clarified the Treaty duty the Crown has to develop policies to help recognise use and management practices, as well as provide for the protection and scope for the exercise of rangatiratanga in respect of traditional fisheries. In an area of such significance to Māori, such as Tīkapa Moana it is the Māori of Tīkapa Moana who should be leading the marine management within their rohe moana.

49. A Māori led approach to marine management was envisioned in both Te Tiriti o Waitangi and the Fisheries Settlement as well as affirmed recently with the almost unanimous rejection by MIO of the Crown's Rangitāhua (Kermadec) Ocean Sanctuary Proposal. Instead, MIO sought to determine an indigenous-led approach to oceans management. MIOs and AHCs have met to begin the development of an indigenous-led framework or approach that can help guide and determine how to manage the reciprocal relationship that iwi and wider Aotearoa have with our ocean and fisheries going forward.

50. It is this approach which should be progressed and supported by Government rather than multiple agencies seeking to control large swathes of Tīkapa Moana undermining the rangatiratanga of Hauraki Gulf mana whenua.

51. We understand this approach is still in development and it may be some time before this framework is ready to be actioned. However, in the meantime there are a number of tools which exist under the Fisheries Act to support the expression of rangatiratanga including (but not limited to):

    a. Iwi–led and developed fisheries plan approved under s11A of the Fisheries Act.

    b. Implementing a Mātaitai reserve and bylaws.

    c. Implementing a Taiāpure-local fishery.

    d. Imposing a temporary closure under sections 186A and 186B.

    e. Use by a tangata kaitiaki/tiaki of Regulation 14 (sustainability measures) of the Kaimoana Regulations.

    f. The ability to nominate any person to the Chief Executive to be appointed as an honorary fishery officer under the Fisheries Act.

52. If it is deemed that this package of tools is insufficient to provide for the desired protection outcomes for Tīkapa Moana, there is the ability under the Fisheries Act to amend these tools to make them better fit-for-purpose or develop new nuanced tools, rather than looking to introduce bespoke legislation which cuts across protections but also the rangatiratanga and

[10] The Fisheries Act 1996 Part 2 cl 8.

kaitiakitanga of Iwi/ Māori.

Duplication of protection efforts fail to protect biodiversity at a least cost approach

53. One fisheries tool that has been used to respond to concerns in the Hauraki Gulf is the Hauraki Gulf Fisheries Plan, which sets out a package of discrete management actions to deliver the desired biodiversity and fisheries management objectives. We support the use of this tool to manage the effects of fisheries, and it is unclear why the proposals in the Bill have been developed in isolation of this plan, particularly given it has been developed at the same time as the proposals in the Bill. It is important that this response addresses both mechanisms (the actions set out in the Hauraki Gulf Fisheries Plan as well as the Bill) as the Bill and its impacts can't be understood in isolation.

54. The Fisheries Plan aims to significantly contribute to the desired outcomes of this proposal at a lesser cost for fisheries impacts. It is unclear why the Fisheries Plan which is a fisheries management tool is not being used to manage fishing risks to biodiversity and then determine if additional protection such as that proposed in the Bill is required, rather than the development of two parallel and overlapping actions to address the health of Tīkapa Moana.

55. Within the Fisheries Plan, one action aimed to limit bottom contact fishing methods to specific areas. Regardless of our position on this proposal, it is unclear why the biodiversity proposed to be protected through these 'bottom fishing access zones' has not informed the placement, scale or extent of the protected areas to be established through the enactment of this legislation. The scale of the bottom fishing access zones should be informing the areas proposed to be protected through the Bill and vice versa if this is to be an integrated plan as proposed.

56. This duplication of approach fails to represent a least-cost approach to those whose livelihoods rely on a reciprocal relationship with Tangaroa in Tīkapa Moana. Both proposals carry significant precedent setting aspects and when combined collectively represent a real challenge to the tino rangatiratanga and kaitiakitanga of the mana whenua of Tīkapa Moana.

57. Further collectively they engender significant disruption to both customary non-commercial and commercial fishing activities within Tīkapa Moana, acting to threaten the integrity and intent of the Fisheries Settlement. This Includes the attempts to limit customary rights and make them subservient to proposed 'biodiversity objectives' as well as severely restricting the ability of commercial fishers to operate in Tīkapa Moana which will have a significant impact on the fisheries settlement assets a number of MIO rely upon for their daily operations.

Closing remarks

58. In its current form, the Bill prohibits and inappropriately imperils those customary rights affirmed to Iwi/ Māori and poses a significant threat to customary rights recognition and protection across all of Aotearoa.

59. It does this while ignoring the numerous tools enabled through the Fisheries Act which better provide for the ability to ensure protection of biodiversity through appropriate controls on fishing

while still enabling levels of customary commercial and non-commercial use consistent with that protection.

60. The passing of this legislation would set a dangerous precedent nationwide, demonstrating that obligations under the settlement, Te Tiriti or others can be circumnavigated by introducing bespoke legislation in favor of using existing appropriate tools to meet the same objectives.

61. Further, the current approach by two Government agencies to develop parallel and overlapping initiatives which seek to achieve the same outcome in isolation does not represent a least-cost approach to biodiversity protection for those who rely on the reciprocal relationship with Tīkapa Moana.

Recommendations

62. We oppose the advancing of this Bill. The Bill undermines the customary rights affirmed to Māori through Te Tiriti o Waitangi and reaffirmed through the Fisheries Settlement, and seeks to diminish the future role of mana whenua in the management of Tīkapa Moana.

63. The Fisheries Plan should be used to manage fishing risks to biodiversity first and foremost and then determining if additional protection such as that proposed in the Bill is required. If it is then required, and the stressor to biodiversity is fishing then other mechanisms enabled under the Fisheries Act should be used.

64. Māori have signaled their desire to develop an indigenous approach to oceans management. They should be enabled to practice their kaitiakitanga and rangatiratanga, and have this supported by central government.

Appendix One: Te Hā o Tangaroa kia ora ai tāua