



Response from Te Ohu Kaimoana
to the Resource Management
(Freshwater and Other Matters)
Amendment Bill– June 2024

Te Ohu
Kaimoana


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We are Te Ohu Kaimoana

1. Te Ohu Kai Moana was established to protect and enhance the Māori Fisheries Settlement. The Māori Fisheries Settlement, the Maori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004 (**MCACSA**) 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.
2. The Te Ohu Kaimoana Kāhui structure is below as figure 1. All entities under the group were established pursuant to the Māori fisheries settlement (commercial and non-commercial).

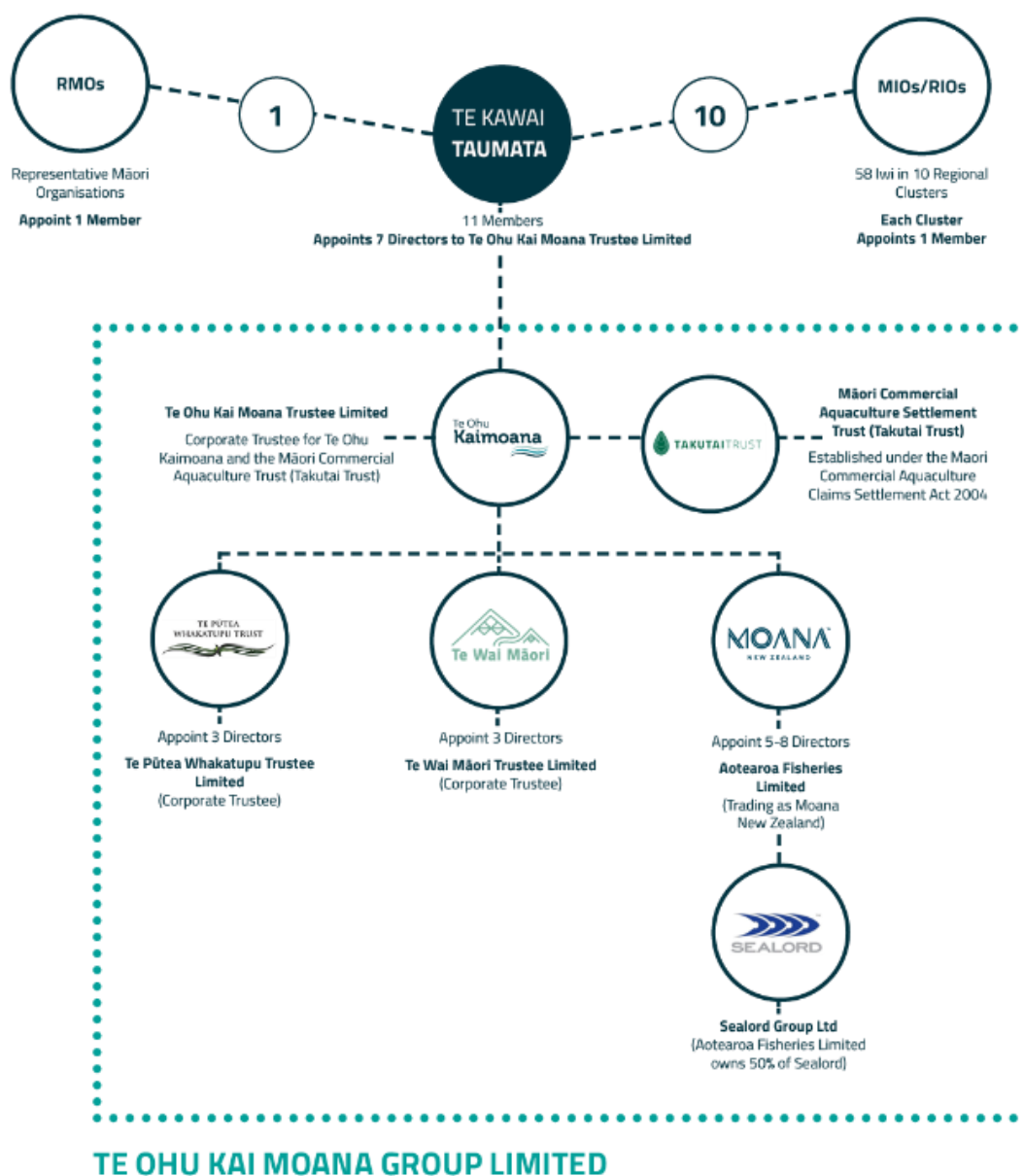


Figure 1: Te Ohu Kaimoana Kāhui structure

3. The 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:
 - a. ultimately benefit the members of Iwi and Māori generally; and
 - b. further the agreements made in the Fisheries Deed of Settlement; and
 - 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”.¹
4. The Māori Aquaculture Settlement Trust (**Takutai Trust**), an entity within the Te Ohu Kaimoana kāhui, was established to assist the Crown and iwi to reach agreement on the form of aquaculture settlement assets and enable these to be provided to iwi at a regional level to satisfy the Crown’s obligations under MCACSA. As part of this, the Trust receives and holds settlement assets from the Crown, assists iwi in regions to reach agreement on the allocation of the settlement assets, before finally transferring the assets to iwi in accordance with the allocation agreement.
5. We work on behalf of 58 Mandated Iwi Organisations (**MIOs**), Recognised Iwi Organisations (**RIOs**) and Iwi Aquaculture Organisations (**IAOs**) who in turn represent iwi throughout Aotearoa. Our work on behalf of Iwi is not only to protect their rights and interests but to enable them to progress their aspirations within the marine environment.

¹ Maori Fisheries Act 2004, section 32

Te Ohu Kaimoana's interest in the Resource Management (Freshwater and Other Matters) Amendment Bill

6. Our interest in the Resource Management (Freshwater and Other Matters) Amendment Bill (the **Bill**) arises from our responsibility to protect the rights and interests of iwi in fisheries and aquaculture, in a manner that furthers the agreements in the Fisheries Deed of Settlement and assists the Crown to discharge its obligations under the Deed and Te Tiriti o Waitangi / Treaty of Waitangi (**Te Tiriti**).
7. Te Tiriti 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 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.
8. 'Te Hā o Tangaroa kia ora ai tāua' expresses the special relationship that iwi, hapū and whānau have with the aquatic environment, including speaking to the interdependent relationship with Tangaroa to 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.² 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 and Aquaculture Settlements are expressions of this interdependent relationship.
9. 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 is 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.
10. Our key concern is to ensure that the Bill protects and upholds the commitments made by the Crown to iwi in the Māori Fisheries and Aquaculture Settlements, as well as the over-arching commitments set out in Te Tiriti and the enduring health of Tangaroa.

² Further information on Te Hā o Tangaroa kia ora ai tāua can be found at Appendix 2.

Response to the Resource Management (Freshwater and Other Matters) Amendment Bill

11. This document provides Te Ohu Kaimoana's response to the Bill, which was introduced on the 23rd of May 2024.
12. Our approach to this response reflects Te Ohu Kaimoana's role in the Māori Fisheries Settlement.³
13. To support this response, we also wish to present our views *kanohi ki te kanohi* to the Primary Production Select Committee.
14. Our response is structured in the following way:
 - Our Position (opposed)
 - Freshwater impacts
 - This includes a statement regarding the amendments to the hierarchy of obligations in the NPSFM, the low slope map and associated requirements from the stock exclusion regulations, the intensive winter grazing provisions in the NES-F
 - National Direction
 - Concluding remarks
15. A summary of our concerns and recommended solutions can be found in appendix one.
16. This document is not intended to conflict with, or override, any iwi response made through their MIOs and IAOs or Asset Holding Companies (**AHC**). These are statutorily recognised entities with responsibility for Fisheries and Aquaculture Treaty Settlement assets on behalf of their iwi members. Our responsibilities as the trustee of the two settlements, referred to above, are separate and distinct but complementary to those of iwi and hapū who hold *mana whenua* and *mana moana* and are beneficiaries of those settlements through those statutorily recognised entities.

³ 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 given effect through Part 9 of the Fisheries Act 1996), the Maori Fisheries Act 2004, and the Maori Commercial Aquaculture Claims Settlement Act 2004.

Our Position

17. Firstly, we note the short timeframe the Crown has provided for submissions on this Bill. It has made it extremely difficult to undertake a full analysis of the proposal and consider the positive or negative effects it might have. It is because of this lack of engagement, that we believe the Crown has undermined the rangatiratanga of iwi/ Māori and failed in its obligations as a Treaty Partner under Te Tiriti o Waitangi. This has been a recurring theme with the coalition government, who have inadequately engaged iwi on the previous legislation, that has been rushed through the house.
18. Te Ohu Kaimoana opposes the Bill in its current form. We have outlined below our key concerns and recommendations.

Impacts to Freshwater

19. It is improper to consider the natural world as a series of distinct environments. Freshwater environments are physically and intrinsically linked to coastal environments. It is in that regard that we provide the following comments.
20. This response is framed through a ki uta ki tai, from the mountains to sea, lens. As Te Ohu Kaimoana we are concerned about the effect these changes to freshwater management will have for the receiving marine environment. The purpose of Te Ohu Kaimoana is to “advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities.”⁴ Therefore, any threat to the fisheries has direct implications for Te Ohu Kaimoana under the Māori Fisheries Settlement. Land-based activities and freshwater use can significantly impact the quality of freshwater and receiving marine environments if not managed appropriately. Contaminated freshwater flows out to the coastal marine space, directly affecting our marine fisheries and ocean health.
21. We support the Te Wai Māori Trust submission which includes a more detailed response regarding the impacts the Bill will have on freshwater bodies, freshwater fisheries, and human health. Te Wai Māori was established under the Māori Fisheries Act 2004 to advance Māori interests in freshwater fisheries.

Amendments to National Policy Statement for Freshwater Management 2020 - Te Mana o te Wai

The Bill proposes to “exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (the NPSFM 2020) from resource consent application and decision-making processes until the NPSFM 2020 is replaced.”⁵

⁴ Maori Fisheries Act 2004, section 32

⁵ Resource Management (Freshwater and Other Matters) Amendment Bill 2024

22. Te Mana o te Wai is the central decision-making framework in national freshwater policy. It has a hierarchy of obligations that prioritises the health and wellbeing of waterbodies and freshwater ecosystems first. The second priority is the health needs of people (such as drinking water) and the third is the ability of people and communities to provide for their social, economic, and cultural wellbeing.⁶
23. By removing the hierarchy in resource consents and resource consent decision-making, the government is saying they do not value the health and wellbeing of our freshwater systems and their sustainability for future use over immediate consumptive use. This Bill puts our freshwater and coastal marine systems at risk.
24. Te Ohu Kaimoana support the Te Wai Māori submission which opposes the Bill.
25. The hierarchy of obligations was introduced in 2020 to stop further degradation of freshwater resources. The proposed removal of the hierarchy means that councils no longer need to prioritise the health and wellbeing of waterbodies and freshwater ecosystems or the health needs of people when making decisions on resource consents.
26. It is clear that land-based activities which degrade the quality of freshwater systems, in turn degrade the downstream receiving environments, which impacts our fisheries. Therefore, we request that the hierarchy of obligations is not repealed.

Amendments to Stock Exclusion Regulations 2020 – Low slope map

The Bill proposes to “revoke the Resource Management (Stock Exclusion) Regulations 2020 in relation to sloped land”

27. The Stock Exclusion Regulations 2020 require the exclusion of livestock (cattle, pigs and deer) from rivers wider than one metre, lakes, and natural wetlands, and were designed to manage the risks of livestock entering and contaminating waterways. This is enforced by a map of low slope land, which identifies the land across Aotearoa where animals must be excluded from water bodies by the 1st of July 2025. The proposed Bill seeks to repeal the stock exclusion requirements from waterbodies on low slope land.
28. We are concerned that repealing these provisions will mean there is no national direction on what qualifies as land where stock should be excluded from waterways. This means that heavy stock will have continued access to continued access to rivers, lakes and natural wetlands which will continue to degrade and contaminate freshwater and receiving and marine environments.
29. We support Te Wai Māori’s submission which points out the problems associated with leaving the management of stock exclusion to freshwater farm plans and or regional plan rules. It is clear that

⁶ National Policy Statement for Freshwater Management 2020 pg. 6

the voluntary farm plan regime has not worked to date. It is evident that a strong regulatory framework is needed to prevent contaminated freshwater from flowing out to marine environments which can negatively impact our fisheries and the entire marine ecosystem. Therefore, we recommend that the low slope map and associated requirements to exclude stock, continue to apply.

National Environmental Standards for Freshwater Regulations 2020 – Winter grazing

The Bill “repeals the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing from the NES-F”.⁷

30. The proposed Bill also repeals intensive winter grazing regulations.
31. Intensively winter-grazed paddocks are known to increase the risk of sediment runoff into waterways, which in turn has consequences on the aquatic life found within them. Intensively grazed winter cattle trample their paddocks, which in conjunction with high rains, can result in pugging. The consequence of this is the increased discharge of nutrients, sediment and microbial pathogens into surface and ground water. It is our understanding that the regulations and associated conditions for intensive winter grazing outlined in the National Environmental Standards for Freshwater (**NES-F**), set out how to appropriately manage livestock during winter to ensure the environment is not degraded through processes such as pugging, and that freshwater, and subsequently the receiving marine environment, is not contaminated by runoff.
32. By repealing the regulations regarding intensive winter grazing the government is putting the health of our freshwater systems at risk. This is a concern for Te Ohu Kaimoana, as any impact on the health of the freshwater system, has direct flow on implications downstream on the quality of the fisheries habitats and coastal environment. To date, the Resource Management Act has not adequately managed these types of effects on fisheries habitats, however these regulations were a step in the right direction. The proposed Bill does not provide any reassurance that environmental protections will be incorporated, nor enforced should these rules be repealed.
33. Te Ohu Kaimoana reiterates Te Wai Māori’s submission and recommendations that intensive winter grazing is regulated so that fisheries habitats and the coastal marine environment are protected. We do not support repealing the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing from the NES-F. Instead, we recommend that these regulations and associated conditions are retained.

⁷ Resource Management (Freshwater and Other Matters) Amendment Bill 2024

National Direction

The Bill proposes to “make amendments to speed up the process to prepare or amend national direction under the RMA”.⁸

34. The proposed Bill seeks to make amendments to how national direction is prepared and amended. Namely the Bill will:

- remove the now redundant board of inquiry process to provide a clear default process for preparing a national direction.
- makes it easier to make simple updates to national direction.
- removes unnecessary prescription from the process to make or amend a national direction.
- amends evaluation report requirements as they relate to a national direction to make them more flexible and less onerous.⁹

35. The Ministry for the Environment released a Supplementary Analysis Report (**SAR**) to support the drafting of the Bill. The SAR assesses the impacts that the proposed Bill will have. The SAR detailed that “the removal of the explicit reference to assessment of cultural effects from the evaluation report may reduce the level of impact analysis on matters considered important to Iwi/Māori. However, the Crown would continue to consider submissions from Iwi/Māori and s6(e), 7(a) and 8 matters of the RMA, which would assist to mitigate this risk.”¹⁰

36. Changes to national direction are extremely sensitive as they have direct implications for Iwi/Māori. We note the Part 2 matters provided as a catch-all in the SAR does not capture the full ambit of cultural effects and, removing the reference to an assessment of cultural effects from the evaluation report will only limit scrutiny of the impacts on Iwi / Māori and local communities who are most impacted by national direction changes.

37. Te Ohu Kaimoana opposes the proposed amendment to remove the reference to the assessment of cultural effects in the evaluation report and recommends the current language pertaining to the assessment of cultural effects in the evaluation report is retained. Moreover, amendments to national direction must provide for commercial and non-commercial customary fisheries, and aquaculture perspectives to ensure they do not cut across the Māori Fisheries Settlement.¹¹

⁸ Resource Management (Freshwater and Other Matters) Amendment Bill 2024

⁹ Resource Management (Freshwater and Other Matters) Amendment Bill 2024

¹⁰ Supplementary Analysis Report: Streamlining National Direction Processes 2024, pg. 13

¹¹ The full framework of deeds and legislation to give effect to the agreements between the Crown and Māori in the

38. Additionally, the amendments are changing from “those notified must be given adequate time and opportunity to make a submission on the subject matter of the proposed national direction;” to “those notified must be given what the minister considers to be adequate time and opportunity to make a submission on the subject matter of the proposal.” This means it is now up to the minister to determine how long they will give iwi to make submissions on proposed national directions. This is an unnecessary overreach of ministerial powers and has the potential to result in a process where iwi / Māori cannot meaningfully participate. It also doesn’t give any certainty or consistency in terms of timeframes for their participation. The current wording “adequate time and opportunity” is fair and just, to encourage public participation while balancing the need for efficiency in the national direction preparation process. Te Ohu Kaimoana opposes the proposed amendment to qualify the time and opportunity given to make submissions on proposals by the discretion of the minister and recommends the current unqualified wording is retained.

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 given effect through Part 9 of the Fisheries Act 1996), the Maori Fisheries Act 2004, and the Maori Commercial Aquaculture Claims Settlement Act 2004.

Concluding remarks

39. This submission serves to identify key issues within the Bill that need to be addressed. Our intention in raising these issues whilst also providing key recommendations and suggested ways forward to resolve these issues, is to provide guidance and support to rectify what we see as critical areas or concerns.
40. From our understanding, the intention of this Bill is to reduce regulatory burden by making targeted amendments to the Resource Management Act 1991 and national direction. Whilst we appreciate the necessity to reduce the burden that onerous processes place on government, we are also acutely aware that certain processes are in place for good reason.
41. We note that the processes that are proposed to be removed or amended, impact the ability for iwi/ Māori to meaningfully engage. Additionally, the proposed Bill seeks to repeal legislation that was enacted to protect our taonga freshwater and natural environments. This does not align with the intention of the Bill, rather it diminishes the integral elements of other legislation, that allow for robust engagement and protection of resources, under the guise of reducing the burden.

Appendix One: Table of Recommendations

Concern/ Context	Recommendations
Exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 from resource consent application and decision-making processes.	The hierarchy of obligations is <u>not</u> repealed.
Amendments to the Resource Management (Stock Exclusion) Regulations 2020 in relation to sloped land – removing the low slope land map.	The low slope map and associated requirements to exclude stock are retained.
Repealing the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing from the NES-F.	These regulations and associated conditions are retained.
The proposed removal of the explicit reference to assessment of cultural effects from the evaluation report.	The current language in the Resource Management Act (1991) pertaining to the assessment of cultural effects in the evaluation report is retained.
Proposed replacement of section 46A(4)(b).	The current unqualified wording in the Resource Management Act (1991) on the length of time to make a submission on the proposal is retained.

Appendix Two: Te Hā o Tangaroa kia ora ai tāua

WHAKAPAPA

Māori descend from Tangaroa and have a reciprocal relationship with our tupuna

The concept of “Te Hā o Tangaroa Kia Ora Ai Tāua” underpins the work of Te Ohu Kaimoana.

This statement means “the breath of Tangaroa sustains us” and refers to the ongoing Māori relationship with Tangaroa – including his breath, rhythm and bounty.

Recognising our ongoing interdependent relationship acknowledges the Māori worldview that humanity is descended from Tangaroa and all children of Ranginui and Papatuanuku. We are part of the ongoing cycle of life.

The concept of ‘Te hā o Tangaroa kia ora ai tāua’ is underpinned by whakapapa, tiaki, hauhake and kai.

Whakapapa recognises that when Māori (and by extension Te Ohu Kaimoana as an agent of Iwi) are considering policy affecting Tangaroa we are considering matters which affect out tupuna – rather than a thing or an inanimate object.

HAUHAKE

Māori have a right and obligation to cultivate Tangaroa, including his bounty, for the betterment of Tangaroa (as a means of managing stocks) and support Tangaroa’s circle of life

We recognise that as descendants of Tangaroa, Iwi Māori have the obligation and responsibility to Tiaki – care for our tupuna so that Tangaroa may continue to care and provide for Iwi.

Our right and obligation of hauhake (cultivation) is underpinned by our tiaki obligations and responsibilities to Tangaroa. Ultimately our right to kai – to enjoy the benefits of our living relationship with Tangaroa and its contribution to the survival of Māori identity – depends upon our ability to Tiaki Tangaroa in a meaningful way.

Te Hā o Tangaroa underpins our purpose, policy principles and leads our kōrero every time we respond to the Government on policy matters. It is important to us that the Government understands the continuing importance of Tangaroa and recognises the tuhonotanga that Māori hold as his uri.

All decisions and advice offered by Te Ohu Kaimoana on fisheries is underpinned by this kōrero to ensure the sustainability of Tangaroa’s kete for today and our mokopuna yet to come.

TE HĀ O
TANGAROA
KIA ORA
AI TĀUA

TIAKI

Māori have an obligation to care for Tangaroa, his breath, rhythm and bounty, for the betterment of Tangaroa and for the betterment of humanity as his descendants

KAI

Māori have a right to enjoy their whakapapa relationship with Tangaroa through the wise and sustainable use of the benefits Tangaroa provides to us