SUBMISSION

To

The Local Government and Environment Select Committee
on the Marine Reserve Amendment Bill

From

TE OHU KAI MOANA
TREATY OF WAITANGI FISHERIES COMMISSION

www.tokm.co.nz

Friday, 28 February 2003
0.0 Executive Summary

Te Ohu Kai Moana submits that we:

1. **Agree** with the need for a review of the Marine Reserves Act 1971 to accommodate international obligations to protect biodiversity and to properly recognise and provide for the Treaty of Waitangi, the Principles of the Treaty, the Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

2. **Very strongly disagree** with the approach that has been taken, which effectively reallocates space for other uses rather than to protect biodiversity, and which will impact negatively upon the Fisheries Settlement to accommodate other uses and values.

3. **Strongly recommend** an alternative well-planned risk-based approach is taken to maximise biodiversity protection, in collaboration with Iwi, while minimising the negative impact upon the fisheries settlement.

4. **Very strongly recommend** that if the Government wants to reallocate space to accommodate other uses and values that this is a significant departure from the purpose of this review, and that this issue can only be addressed in an overarching agreement with Maori for managing the marine environment.

Summary of Recommendations

1. The Marine Reserves Bill must accommodate current and future settlements between Maori and the Crown. This is a serious omission in the Bill that must be addressed. Important high level principles are needed for decision-makers to ensure that they do not:
   - prevent Maori from exercising their customary relationship with Tangaroa (the oceans)
   - erode or prevent the full implementation of existing and future settlements
   - prejudice the settlement of outstanding claims.

2. The Marine Reserves Bill must provide clear and unambiguous guidelines for decision-makers about how the Treaty Principles are to be applied to ensure that the correct balance and priorities are given effect in the new legislation.

3. The Information Principles must be consistent with the “precautionary approach” in the Rio Declaration by including consideration of both:
   - the threats to biodiversity; and
   - costs of establishing any mitigation measure – from the range of possible options

4. The Principles in the Bill must not attempt to address re-allocative matters and would be better placed to address ecological dynamics in conjunction with threats and costs.
5. That all references to re-allocative purposes are removed and the purpose restricted to providing for biodiversity protection where it is warranted and needed. That is, where there are a range of risks that cannot be addressed through any other reasonable means.

6. That the Bill must provide for comprehensive assessment of both threats/risks to biodiversity and the costs (see discussion on least costs in Appendix 3) to both the Government and existing rights holders before an informed decision can be made about choosing the best tool at the least cost.

7. That the Marine Reserves Reform be held in abeyance until the Oceans Policy and Marine protected Areas Strategy have addressed the higher-level principles and guidelines for re-allocation of use and protection of marine biodiversity.

8. That despite our recommendation (above) should this reform continue, the new legislation must be implemented in a well planned and co-ordinated manner. That such a planned and co-ordinated approach must be based on:
   - Identifying baseline information about ecotypes
   - Identifying threats and assessing the risks to those ecotypes
   - Assessing the mitigation options to ensure the least costs approach is used
   - Providing for Maori Input and Participation through the whole process of establishment, management, monitoring and review

9. That the Director – General must prepare the proposal and consult with both Iwi and Hapu and other interested parties before choosing the best method/least cost mitigation option

10. That the proposal must contain a plan of the marine area together with a draft management plan, monitoring and evaluation targets or milestones.

11. That Marine Reserves undergo a complete review of their effectiveness in achieving the purpose and principles of the Act no later then 10 years after they were first established and every 10 years thereafter.

12. That the marine area is returned to a sustainable use mode of operation when the Marine Reserve has achieved the purpose of the Act. That the harvesting activity is managed under customary fishing provisions of the Fisheries Act unless otherwise agreed to by the tangata whenua concerned.

13. That the current provisions for customary harvest are acknowledged and provided for within existing marine reserves.

14. That all existing marine reserves and applications (notified or not) should be re-evaluated under the new purpose and principles proposed in this submission.

Robin Hapi
Chief Executive Officer
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1.0 Introduction

This submission is from Te Ohu Kai Moana – the Treaty of Waitangi Fisheries Commission. We wish to appear before the Committee to speak to our submission. We can be contacted through:

Tania McPherson
Te Ohu Kai Moana
(04) 499-5199

We wish that the following appear in support of our submission:

Robin Hapi (Chief Executive)
Tania McPherson (Senior Policy Analyst – Customary Fisheries)
Iwi representatives
Commissioners

1.1 Te Ohu Kai Moana

Te Ohu Kai Moana originated as a result of litigation against the Crown taken by four Maori parties, which resulted initially in the interim Maori Fisheries Act 1989 and, the then, Maori Fisheries Commission. Subsequent negotiations led to a full and final settlement of the commercial fishing claims before the Waitangi Tribunal through the Deed of Settlement and the Treaty of Waitangi (Fisheries Clams) Settlement Act 1992. The [Treaty of Waitangi] Fisheries Commission or Te Ohu Kai Moana was established at this same time in place of the Maori Fisheries Commission.
Te Ohu Kai Moana is a statutory organisation which accounts to both Iwi and Parliament with the following purpose and values:

**Statement of Purpose: Te Ohu Kai Moana exists to:**
- Facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing;
- Secure the growth, development, allocation and transfer to Iwi of assets in recognition of the rights confirmed and guaranteed by the Treaty of Waitangi;
- Ensure fisheries are managed in a manner consistent with the rights guaranteed and confirmed by the Treaty of Waitangi;
- Secure proper recognition of Maori Customary Fishing Rights and to promote these rights with Hapu / Iwi.

**Statement of Values: Te Ohu Kai Moana acknowledges:**
- The Treaty of Waitangi is the foundation for Te Ohu Kai Moana’s operation and activities;
- It will act in a manner consistent with that of a Kaitiaki for the assets it controls;
- It will act in accordance with its accountability provisions promulgated to Iwi;
- It will pursue the development and standing of Maori through Iwi in terms of Rangatiratanga over fisheries; and
- The fisheries settlement must ultimately be for the benefit of all Maori.¹

**Te Ohu Kai Moana Current Asset Base**
Maori, through Te Ohu Kai Moana, are key commercial stakeholders in New Zealand’s seafood industry. Maori have a substantial interest in over 300,000 tonnes of quota representing some 35% of the Total Allowable Commercial Catch (TACC), as well as shares in fishing companies and cash. The value of these assets amounts to around $700 million. In relation to these interests, Te Ohu Kai Moana’s responsibilities include:
- stewardship of Maori assets
- allocation of assets to Maori
- sale of ACE
- developing new Maori Fisheries legislation
- input into fisheries policy and management issues
- training and development.

As you will be aware, Te Ohu Kai Moana is planning to begin the process of allocating fisheries assets and benefits that it holds on behalf of Maori from the end of this year.

Alongside rights and interests to commercial fisheries, Maori also have traditional non-commercial interests in fisheries. Te Ohu Kai Moana seeks to integrate commercial and non-commercial fishing interests to minimise any conflicts and maximise the value of the settlement thereby protecting the integrity of the settlement. Hence, Te Ohu Kai Moana’s interest in making a submission to the Marine Reserves Bill which looks set to significantly undermine the integrity of the fisheries settlement.

1.2 The Treaty of Waitangi

The relationship between Article I, II and III of the Treaty of Waitangi is at the centre of debate concerning all Government reforms that involve decision-making at both the policy reform and operational levels. This includes the development of the Marine Reserves Bill.

The Context of the Treaty Partnership

The principal parties to the Treaty are Maori and the Crown. The preamble of the Treaty outlines the context in which the ‘increasing number of foreign nationals’ were entering the country. Thus, the Crown and Maori agreed to extend citizen protection to the Tribes in light of the increasing amount of disorderly behaviour being experienced as a result of the influx of foreign visitors and the possibility of annexation by the French. Therefore, through the Treaty of Waitangi, Maori have a special partnership relationship with the Crown that is distinct and unique from that of general citizenship status. Part of the Treaty relationship involves a duty by the Crown and natural resource decision-makers to undertake active protection of the Article II rights of Maori. This includes both acknowledged existing settlements and future claims settlements.

A Framework for the Treaty of Waitangi

The Treaty recognises the rights and duties of the Crown, Maori and citizens and provides the framework within which these rights and duties can be applied. No one Article can be considered in isolation – the relationship between all three must be considered.

![The Treaty of Waitangi Table]

**Table:**

<table>
<thead>
<tr>
<th>Article 1</th>
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Fig. 1 Framework showing where environmental sustainability, law and order, Treaty Settlements, and citizen privileges including use and enjoyment feature in the separate Articles of the Treaty.
Clearly, Te Ohu Kai Moana has a fundamental concern with protecting and enhancing the Article II rights of Maori secured and guaranteed by Te Tiriti o Waitangi: “te tino rangatiratanga...o ratou whenua o ratou kainga me o ratou taonga katoa”, or the “full and undisturbed possession of their lands and estates fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession”\(^2\).

Applying the Articles of the Treaty of Waitangi

The Crown must balance the rights and obligations contained within the separate Articles of the Treaty when exercising its powers. Under Article I of the Treaty, the Government has the right to make laws. This includes the right to make laws for resource conservation. However, in finding the most appropriate options, regard should be had to Articles II and III.

Under Article II, Maori are guaranteed their tino rangatiratanga – tribal authority over tribal resources. This includes a right to manage and develop resources in accordance with tribal practices subject to Article I (i.e. as long as they are practiced within sustainable limits). In today’s terms, Article II of the Treaty involves a ‘bundle’\(^3\) of rights including ownership (sometimes referred to as “customary title” or “aboriginal title”) and rights of access, use and management. These rights are exercised by the collective groupings of whanau, hapu and Iwi.

Some of these elements have been given recognition in the law. For example, the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 provides for Maori rights of access to, and management of fish. Other elements of the ‘bundle’ continue to be pursued by Maori through different processes (see Information Box 1). Under Article III, Maori hold rights of citizenship. These include rights to be treated equitably and fairly as with all citizens.

Rational for Priorities when Operating the Articles of the Treaty

Te Ohu Kai Moana acknowledges that the Crown has the right to make laws for environmental sustainability (including conservation) under Article I of the Treaty that are designed to ensure people’s use of natural resources occur within sustainable limits. Environmental sustainability including the protection of biodiversity from threats that undermine its long-term viability must have the highest possible priority accorded to it when situations involving competition for limited resources arise.

In the event of conflict between different forms of use (i.e. extractive and non-extractive) over and above sustainability limits the Crown must examine its Treaty obligations for guidance. In this context the options chosen to conserve resources must have the least possible impact on Article II Treaty rights (and arguably Article III rights), while achieving the objective of sustainability.

Maori fishing rights include commercial and customary non-commercial aspects. These rights are distinct from both recreational or amateur fishing ‘rights’ which we regard as privileges because there is no such equivalent settlement with the Crown validating them as perpetual property rights. These activities form components of

\(^{2}\) The Treaty of Waitangi (extracts from the English and Maori versions)

\(^{3}\) See the Marine Farming Report from the Waitangi Tribunal
Article III under the general category of 'public use and enjoyment'. We submit that under the Treaty, the Crown maintains the right, and indeed duty, to withdraw or withhold those privileges to accommodate Article I sustainability limits or Article II Treaty Settlements.

Maori commercial and customary non-commercial rights are also unique because together they form the substance of a treaty settlement package under Article II of the Treaty. Te Ohu Kai Moana submits that enduring treaty settlements are certainly in 'the public's best interest' if law and order is to be maintained (see fig 1). Te Ohu Kai Moana has always argued⁴ that the utilisation of resources within sustainable limits is an over-riding priority.

If sustainability of natural resources takes first priority in decisions about the use and allocation of resources, we submit that non-commercial customary interests take second priority, ahead of other interests (including Maori commercial interests). In the Treaty settlement context, Maori commercial interests must take third priority behind customary and sustainability needs because together they are both derived from Article II settlements with the Crown and provide the basis of a full and final settlement.

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Fig 2. Showing how priority should be accorded when situations involving conflict over limited resources arise.

⁴ Te Ohu Kai Moana, (2002) Ahu Whakamua, p15
1.3 The Quota Management System

Te Ohu Kai Moana support the submission put forward by SeaFIC that commercial interests have more clearly defined rights and responsibilities that are a mechanism designed to further the objectives of the Fisheries Act 1996 (i.e. utilisation while ensuring sustainability). As pointed out above these property rights have been given legitimacy in the process of arriving at a full and final settlement. ITQ now forms the basic currency upon which Maori access entitlement to compensation.

The purpose of the Fisheries Act is to provide for the utilisation of fisheries resources while ensuring sustainability. The main mechanism for achieving the purpose of the Act is a rights based tool – the Quota Management System (QMS). The successful operation of the QMS relies upon the maintenance of the incentives provided by secure commercial fishing rights in the form of individual transferable quota. As the Seafood Industry Council (SeaFIC) notes in their submission, quota owners must constantly safeguard both the fish stocks that quota represents and the environment that sustains the stocks. If the security of these rights is eroded, then the incentives provided by ITQ for responsible, long term investment in the sustainability of fisheries resources and the marine environment will be weakened. Hence, these rights must be protected from encroachment of other uses and values if the QMS is to maintain its integrity.

The Crown made a deliberate decision to develop New Zealand's fisheries within a rights-based (QMS) context and this was a basis upon which Maori agreed to settle their fisheries claim. Therefore, the QMS is the means by which Maori through Te Ohu Kai Moana receive access to quota. To fragment the integrity of the QMS by establishing marine reserves over highly productive fisheries would also lead to fragmentation of the fisheries settlement.

1.4 The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

The Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 settled Maori claims to fisheries resources by:

- Allocating commercial fisheries assets to Maori - including access to quota as it enters the QMS, Cash to help purchase quota and Shares
- Providing for customary fisheries - including both recognition and provision for (non-commercial) use and management
- Providing for input and participation by Maori in the management and conservation of New Zealand's fisheries.

Implementation of the Fisheries Settlement may be measured according to these three key components (see Appendix 1). The effect that "no-take" marine reserves will have on these measures is almost impossible to quantify without knowing more details about the target sites. Understanding what the components of the fisheries settlement are and how far they have progressed will help the Committee to gain an appreciation for the extent of the problem we are attempting to address. Needless to say, by far, we are most concerned about the full implementation of the fisheries settlement (and maintaining its integrity) not merely its component parts.
Box 1. Facts about New Zealand in the Global Market

A Big Asset!

New Zealand has the fourth largest EEZ in the world (behind Indonesia, Australia and USA) at 1.3m sq. nautical miles\(^1\) or 4.46 million sq. km. The EEZ covers an area 15 times New Zealand’s land mass. The total land mass (including all off-shore islands) is 270 500 sq. km.

Fishable Waters

While New Zealand has one of the largest EEZ’s in the world this does not translate into being one of the most productive fisheries in the world. New Zealand contributes only approximately 1 percent of total global fish production\(^2\).

Why?

The difference appears to be related to two main reasons including the lack of nutrient rich waters limiting productivity of New Zealand’s fisheries\(^3\) and the inability of fishers to access the available fish stocks because they are either:
- Too deep to fish with current fishing technology (33.9\%) or
- Subject to administrative restrictions imposed by Government (2.6\% seamount closures, 15.3\% regulatory restrictions, 15.2\% FMA 10 closure)

The overall effect of these combined limitations is that around 43\% of the EEZ is currently unavailable for fishing. This reduces the original estimate of 4.46 million sq. km (EEZ) to 2.54 million sq. km.

What’s left?

In summary

Fish stocks and hence fishing activity is not distributed randomly or homogenously.

The implications of closing an additional 10\% of the EEZ, if targeting highly productive fishing grounds (including traditional fishing grounds) is likely to have a significant adverse impact upon the productivity of the fishing community.

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\(^1\) New Zealand Official Yearbook 2000.
\(^2\) SeaFIC website [www.seafood.co.nz]
\(^3\) FAOSTAT Database at: http://apps1.fao.org/servlet/Xteservlet
\(^4\) ibid
2.0 Essential Principles for Marine Reserves

For the purpose of the Marine Reserves Bill Te Ohu Kai Moana make the distinction between generic High Level Treaty of Waitangi Principles and Operational Treaty Principles specifically for the Marine Reserves Bill. The high level principles are well documented. However, the application of Treaty Principles in the past has not gone far enough into specific operational matters to make it possible for what is arguably the strongest legislative provision in natural resources management to be realised. That is to “give effect to the principles of the Treaty of Waitangi”. Therefore, we recommend that the new legislation contain such specific principles to guide decision-makers in applying the principles in the new Marine Reserves legislation.

2.1 Maori Values and Principles

In August 2000, Te Ohu Kai Moana made a submission to the Ministerial Advisory Committee on Oceans Policy (MACOP). In that submission we set out the environmental management approach that Maori have adopted after generations of living in one territory and a set of concepts and values that guide human behaviour in the environment and which are common to Maori. For example, in Maori terms, all living things are the descendants of Ranginui (the “Sky Father”) and Papatuanuku (the “Earth Mother”) and are thus related through whakapapa. Maori developed a set of concepts and rules that guide the way these relationships are handled, including mauri, kaitiakitanga, tapu, noa, rahui, mana, whanaungatanga, rangatiratanga and manaakitanga. As the Oceans Policy now seems to have come to a standstill we urge the Committee to consider our submission on the Oceans Policy in light of the Marine Reserves Bill being progressed ahead of it (see Appendix 2).

Despite the fact that the Oceans Policy or the Marine Protected Areas Strategy may address the development of principles which might otherwise have provided better guidance on how competing interests can or should be reconciled, Te Ohu Kai Moana believe this reform cannot continue without addressing some central matters which underlie the continuing reform of the way the marine environment is managed. Therefore, Te Ohu Kai Moana supports the inclusion of a set of principles at the front end of the new Marine Reserves legislation.

In practical terms, Maori approach the management of resources in a way that uses some, develops some, and rests some, ensuring that the mauri of all resources is kept in balance. Permanent preservation without utilisation was not and is still not a feature of Maori resource management. Maori continue to advocate this sustainable utilisation approach to marine management, based on a responsible environmental ethic and adaptive management. This approach forms the basis for Te Ohu Kai Moana’s policies on environmental management.

The customary relationship between Maori and Tangaroa (the sea and all the resources it contains) is an active one. If that relationship is permanently severed by preventing contact, use and involvement with the resource, then traditional knowledge, kaitiakitanga and te tino rangatiratanga will also be damaged and eventually lost. Where the Crown seeks to sever that relationship, it has a duty to

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consider the effects on Maori of doing so, and be able to justify such a decision in terms of the Treaty of Waitangi.

2.2 Essential High Level Treaty of Waitangi Principles

Maori continue to assert their relationship with Tangaroa through a number of means including claims before the Courts, the Waitangi Tribunal, existing legislation such as the Resource Management Act 1991 and the Fisheries legislation.

Information Box 2. Examples of Maori Interests and what is at stake

The Iwi of Te Tau Ihu applied to the Courts for recognition of their customary ownership of the Foreshore and Seabed. The Maori Land Court found in favour of their claim in the first instance. However, the Claim then proceeded to the Court of Appeal who heard Iwi argue their case in July 2002. In this case the appeal decision is yet to be released. Te Ohu Kai Moana has been supporting this claim and the final results of such a claim may have a significant effect on any Marine Reserve.

A group of Maori elders from six tribes formulated the Flora and Fauna claim to the Waitangi Tribunal in 1988 because they were concerned over the increasing loss of native plants and animals, the destruction of ecosystems and the continuing erosion of matauranga Maori (traditional Maori knowledge). The claim directly raises issues of Maori ownership, management, decision making and kaitiki obligations concerning New Zealand’s natural environment and resources, including the marine and coastal estate. Issues concerning the status and role of Maori in matters of access, use, maintenance and preservation of New Zealand’s indigenous biological diversity have been the subject of extensive evidence to the Waitangi Tribunal from both local and international expert witnesses, including Maori elders. The claim is expected to be completed hearing this year and reported on in 2004. Again the result of this claim, if successful, will have a significant impact on ownership and management of “bio-diversity”.

The Waitangi Tribunal recently found in relation to the Marine Farming Claims that the Crown had breached four principles of the Treaty of Waitangi including:
- Failure to protect Maori Rangatiratanga and their right to development
- Failure to actively protect Maori interests to the fullest extent practicable
- Failure to consult adequately
- Failure to provide redress

The Tribunal also recommended that the Government investigate the nature of the Maori interest in marine farming, create protections for those interests and ensure a continuing participation in the industry. This is indicative of the types of issues that are likely to arise in relation to Marine Reserves becoming established.
Recommendations: Essential High Level Treaty Principles

1. The Marine Reserves Bill must accommodate current and future settlements between Maori and the Crown. This is a serious omission in the Bill that must be addressed. Important high level principles are needed for decision-makers to ensure that they do not:
   - Prevent Maori from exercising their customary relationship with Tangaroa (the oceans)
   - Erode or prevent the full implementation of existing and future settlements
   - Prejudice the settlement of outstanding claims.

Specific Amendments:

That a new clause is added to the front end of the new legislation and the following additions are made to clauses 5 and 6 to protect current and future claims as outlined in the principles above.

New clause

The establishment, review and monitoring of any marine reserve shall be without prejudice to any rights and interests deriving from Maori customary or aboriginal title or the Treaty of Waitangi, where those rights exist any marine reserve status shall accordingly be revoked, unless Maori agree otherwise.

cl. 5 Application of this Act

(3) And, this Act must be interpreted so that it does not restrict or inhibit the effective and full implementation of the;

   (a) Treaty of Waitangi Fisheries Claims Settlement Act; or
   (b) the Deed of Settlement dated the 23rd of September 1992; or
   (c) the Fisheries South Island (Customary Fishing) Regulations; or
   (d) the Fisheries (Kaimoana Customary Fishing) Regulations; or
   (e) any other policies or regulations made under the Fisheries Act 1996 to implement the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

cl. 6 Application of other Acts

(2) If there is any inconsistency between this Act and any legislation passed to further the settlement of Treaty of Waitangi claims including the Treaty of Waitangi Fisheries Claims Settlement Act, those Settlement Acts or provisions shall prevail.
3.0 **Operational Principles for Marine Reserves**

While the need for a ‘without prejudice’ clause in the Bill is discussed earlier in this submission in relation to protecting future claims and established settlements, there is also a need to consider explicitly at an operational level how Treaty Principles should be treated within the Marine Reserves Bill. This includes all decision making processes including; establishment, monitoring, management and review of any marine reserve.

3.1 **Treaty Based Decision-Making Principles**

Te Ohu Kai Moana notes the separation of the principles of the Bill under section 8, 9 and 10 from the Treaty of Waitangi clause at section 11. We also note the operational practice of the Fisheries Act being reflected in the Marine Reserves Bill, with the requirement in several key decision making sections that decisions must be consistent with both the purpose and the principles of the Act.

While Section 4 of the Conservation Act contains the strongest Treaty clause of any natural resources legislation, requiring the Minister to "give effect to the principles of the Treaty of Waitangi", this has not to our knowledge been manifest at the operational level. Therefore, it is with some concern for operational reality that we submit - all decision making clauses in the Bill need to include a requirement to take specific Treaty Principles into account and to also be consistent with those principles.

There appear to be two possible ways of achieving this; either by making additional specific reference to them throughout the text of the Bill (i.e. decisions must be consistent with the Purpose, Principles and Treaty Principles), or alternatively there could be a set of Treaty Principles specific to this new legislation that are included in the decision making process. We believe the former method would be to cumbersome. For simplicity and to ensure comprehensiveness we recommend moving the Treaty clause to the front of the Principles section so as to make it part of the suite of principles that must be consistently considered.
Recommendation: Specific Treaty based decision-making principles

2. The Marine Reserves Bill must provide clear and unambiguous guidelines for decision-makers about how the Treaty Principles are to be applied to ensure that the correct balance and priorities are given effect in the new legislation.

Specific Amendments

That a new clause is added to the principles section of the Bill and the following re-ordering is made to the principle clauses.

cl. 8  Principles to be taken into account

A person performing a function or duty under this Act must take into account the principles specified in sections 9, 10, 11, and 12.

cl. 9  Treaty based decision-making principles

This Act shall so be interpreted and administered as to give effect to –

(a) Article I of the Treaty of Waitangi where the Crown has the right and duty to protect the long-term sustainability of biodiversity and to maintain law and order when situations involving competition for limited natural resources arise, but only to the extent needed to protect the resource while allowing the fullest expression of Article II that is consistent with this.

(b) Article II of the Treaty of Waitangi where the Crown has the duty to protect the integrity of any Treaty Settlements involving natural resources as a priority before re-allocating access or use to citizens under Article III for public use and enjoyment.

(c) Article II where Maori have the right to utilise their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment.

(d) Article III where citizens have the right to enjoy the benefits of biodiversity subject to proper provision being made under subsections sections 9(a), (b) and (c).

Before making any decision including to establish, manage or review a marine reserve under this Act the Minister must provide for the input and participation of tangata whenua having -

(a) an interest in the biological diversity concerned; and

(b) have particular regard to Kaitiakitanga
3.2 Information Principles for Marine Reserves

The information principles originate from the precautionary approach developed by the international community.6

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<td>“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (emphasis added)</td>
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<td><strong>“Information principles (Fisheries Act 96)</strong> – All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles:**</td>
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<td>(a) Decisions should be based on the best available information:</td>
</tr>
<tr>
<td>(b) Decision makers should consider any uncertainty in the information available in any case:</td>
</tr>
<tr>
<td>(c) Decision makers should be cautious when information is uncertain, unreliable, or inadequate:</td>
</tr>
<tr>
<td>(d) The absence of, or any uncertainty in, any information <strong>should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.”</strong></td>
</tr>
<tr>
<td><strong>“Decision-making principles (Marine Reserves Bill)</strong>**</td>
</tr>
<tr>
<td>(1) Decisions should be based on the best available information.</td>
</tr>
<tr>
<td>(2) Decision makers should consider the extent and nature of any uncertainty in information.</td>
</tr>
<tr>
<td>(3) The fact that information is uncertain or incomplete does not, of itself, justify postponing or not making a decision <strong>about establishing a marine reserve.</strong></td>
</tr>
<tr>
<td>(4) If information is uncertain or incomplete, a decision concerning management of a marine reserve that may adversely affect a marine community should tend to protecting and preserving that community.”** (emphasis added)</td>
</tr>
</tbody>
</table>

The information principles proposed in the Marine Reserves Bill resemble those in the Rio Declaration and the Fisheries Act except to the extent that the principles:

- are biased “decision-making principles” rather than principles to ensure that a decision is made. They are being proposed here as a principle to be used to create marine reserves when there is insufficient information
- fail to consider threats
- fail to consider cost effectiveness

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Recommendations: Information Principles

3. That the Information Principles must be consistent with the “precautionary approach” in the Rio Declaration and the principles must include consideration of both:
   - the threats to biodiversity and
   - costs of establishing any mitigation measure – from the range of possible options.
Specific Amendments:

That clause 11(c) is amended to remove the bias apparent and that clause 11(d) is amended to include consideration of threats and costs. Note also the accompanying definitions provided for interested persons and least costs (discussed in Appendix 4 of this submission)

cl. 11  Information principles
(a) Decisions should be based on the best available information.
(b) Decision makers should consider the extent and nature of any uncertainty in information.
(c) The fact that information is uncertain or incomplete does not, of itself, justify postponing or not making a decision about whether or not to establish a marine reserve.
(d) Decision makers should consider after examining all protection mechanisms, whether -
   (ii) a marine reserve will provide the most effective form of protection from the known threats; and
   (iii) will do so at the least cost (including all costs) to interested persons and the Government

cl. 3  Interpretation

Interested persons, in relation to a proposal, means a person or persons likely to have a significant interest in the proposal and includes –
(a) Iwi and Hapu who are tangata whenua; and
(b) Te Ohu Kai Moana; and
(c) Any other interested person or their representative

New clause

least cost means all current and future costs (to both Government and Interested Parties) associated with the establishment, implementation, monitoring and review of marine reserves including any transitional or displacement costs.
3.3 Ecological Principles

Clause 9 of the Bill attempts to deal with ecological dynamics, including temporal and spatial scales. A set of ecological principles at the front end of the Act would be better placed alongside the proposed Treaty and Information Principles to help guide decision-makers when assessing the viability and reality of establishing a reserve. These principles would help to integrate the alternative purpose that we have proposed with the practical reality of the well planned approach to avoid the ad-hoc creation of Marine Reserves.

Te Ohu Kai Moana submits that marine reserves principles (see clause 9) should not be expected to:

- **restore** marine communities and ecosystems to a natural state because this assumes:
  - that humans are not part of the natural world; and
  - that fisheries legislation is not capable of protecting biodiversity of fishing related threats – this is clearly incorrect
- **protect** or maintain historic material which should be dealt with under the historic places legislation
- **provide for** scientific and educational purposes unless this is consistent with the purpose and principles of the Act
- **facilitate** or provide for use and enjoyment, or protect the quality of the experience because this suggests a re-allocation of use rights
Recommendations: Ecological Principles

4. That the Principles in the Bill must not attempt to deal with re-allocative matters and would be better placed to address ecological dynamics in conjunction with threats and costs.

Specific Amendments:

That the Principles in cl 9 are renamed as Ecological Principles which are clearly focused on ecological areas or ecotypes. All references to re-allocative matters are removed and replaced with threat identification, mitigation options and least cost requirements.

cl. 12 Ecological Principles
cl. 9 Principles

The principles are as follows:

(a) a marine reserve should include the range of habitats and marine communities that distinguish the marine area in which the Marine reserves is situated and should be ecologically distinguishable areas or ecotypes that are of a size, design, and condition (or potential condition) that can be reasonably expected to –

a. provide effective protection from identifiable threats for the populations, marine communities, and natural ecological processes occurring within them by excluding any active use of those areas; and

b. reflect the known composition and ecological patterns and processes of the habitat or marine community; and

c. provide protection from threats at the least cost (taking into account all costs) upon interested parties and the Government

(b) the marine communities and ecosystems in a marine reserve should be maintained in, or restored to, a natural state;

(c) historic material in a marine reserve should be protected;

(d) recognition should be given to the importance of protecting undisturbed marine areas for scientific and educational purposes, and or research contributing to Te Ira-Tangaroa, to gain a better understanding of the marine environment;

the use and enjoyment of marine reserves should be allowed, if consistent with the purpose of this Act, and appropriate provision should be made to facilitate that use and protect that quality of the experience.
4.0 A Purpose for Marine Reserves

Te Ohu Kai Moana submits (see Appendix 3) that the purpose of the Marine Reserves Bill:

1. is unclear; and
2. pre-empts and is inconsistent with the development of higher level strategies and policies that were intended to provide a clearer frame-work for decision making
3. is inconsistent with the terms of reference approved by Cabinet for this review which required recognition and reflection of the statutory obligations to Maori under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
4. will not result in protecting marine biodiversity from known threats identified by the international community
5 is not correctly placed nor consistently treated amongst other spatially derived developments in the marine environment

The Bill if enacted in its present form:
• will have a marginal, if any, effect on protecting biodiversity;
• result in poorly co-ordinated and inconsistent treatment of the Fisheries Settlement across reforms;
• will have the effect of re-allocating space in the marine environment for non-fishing related access and use;
• will have the effect of targeting traditional fishing grounds; and therefore
• will compete with Mataitai reserves; and will have a significant negative impact on the integrity of the fisheries settlement

Te Ohu Kai Moana submits there is a major risk that if enacted in its present form, the Bill will conflict with and undermine the principles of the Treaty of Waitangi and the full implementation of the Treaty of Waitangi (Fisheries Claims) Settlement Act. It will very likely see the launching of modern claims against the Crown for failure to deliver upon the full and final settlement of one set of Treaty claims before embarking on the creation of another grievance.

Recommendations: The Purpose

5. That all references to re-allocate purposes are removed and the purpose restricted to providing for biodiversity protection where it is warranted and needed. That is, where there are a range of risks that cannot be addressed through any other reasonable means.

6. That the Bill must provide for comprehensive assessment of both threats/risks to biodiversity and the costs (see discussion on least costs in Appendix 3) to both the Government and existing rights holders before an informed decision can be made about choosing the best tool at the least cost.
Specific Amendments:

That the purpose be amended to ensure that marine reserves are tightly focused on the protection of rare and unique biodiversity from a range of threats that can not already be managed under existing legislation (if applied correctly) and at the least cost. That additional definition for the terms “protect”, “biodiversity” and “least cost” are added to cl 3 interpretation. That clause 67(2)(b), 67(3), 67(4)(a) and (b) under the Ministers Decision-making test be struck out completely.

c.l. 7 Purpose

The purpose of this Act is to conserve protect indigenous marine biodiversity in New Zealand’s foreshore, internal waters, territorial sea and exclusive economic zone for current and future generations, by preserving and protecting within marine reserves –

(a) representative examples of the full range of marine communities and ecosystems that are common or widespread; and

(a) outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and

(b) natural features that are part of the biological and physical processes of the marine communities and ecosystems referred to in paragraphs (a) and (b), in particular those natural features that are outstanding, rare, unique, beautiful or important -

Where the biodiversity of those marine communities and ecosystems is under threat from a range of risks; and

Where a marine reserve would provide the least cost method of satisfactorily reducing those risks compared with the combined use of measures imposed under other statutes.

c.l. 3 Interpretation

biological diversity (biodiversity) means the variability among living organisms from all sources including marine and other aquatic ecosystems and the ecological complexes off which they are part; this includes diversity within species, between species and of ecosystems.


least costs means all current and future costs (to both Government and Interested Parties) associated with the establishment, implementation, monitoring and review of marine reserves including any transitional or displacement costs.

protect means preventing the irreversible loss of biodiversity.

If the term “preserve” is to be included in the purpose then we suggest a definition from the Concise Oxford Dictionary that elaborates upon the word intrinsic. Intrinsic in the context of this purpose would be more fittingly described as “essential”. So that intrinsic means “essential” components of biodiversity.
Specific Amendments (continued)

cl. 67 Minister's decision

(1) The Minister must decide whether -
(a) to accept an application and recommend to the Governor-General the making of an Order in Council under section 71, with or without conditions under section 69; or
(b) to decline the application.

(2) The Minister may recommend the making of an Order in Council under section 71 only if the Minister is satisfied that the marine reserve proposed by the application as it may be amend under section 68, with any conditions that may be imposed under section 69, -
(a) meets the purpose and is consistent with the principles of this Act; and
(b) is in the public interest, and a draft management plan has been prepared; and
(c) will have no undue adverse effect on any of the following:
   (i) the relationship of Iwi or hapu who are tangata whenua, or who have customary access, and their culture and traditions, with the marine area concerned;
   (ii) the ability of Iwi or hapu who are tangata whenua, or who have customary access, to undertake customary food gathering to the extent provided for in any enactment authorised by any enactment;
   (iii) commercial fishing, fisheries management or fishing rights
   (iv) recreational fishing
   (v) recreational use
   (vi) economic use and development:
   (vii) any estate or interest in land in or adjoining the proposed marine reserve:
   (viii) navigation rights:
   (ix) education and research:
   (x) the use of the area by the New Zealand Defence Force:
   (xi) other matters considered relevant by the Minister.

(3) An adverse effect is not undue under subsection (2)(c) if the Minister is satisfied that the benefit to the public interest in establishing the marine reserve outweighs the adverse effect - the multiple and cumulative risks to biodiversity:
(a) can be addressed to the extent provided for in any other enactment; and
(b) can be mitigated by means of any agreement reached between the proposer and the parties adversely affected by the establishment of a marine reserve.

(4) In considering the public interest under subsection (3), the Minister must have regard to -
(a) the benefit of preserving and protecting marine communities and ecosystems to conserve indigenous marine biodiversity; and
(b) any benefits that may arise directly from the establishment of the marine reserve that the Minister considers relevant.
5.0 Implementing a Planned Approach to Marine Reserves

While The Government has developed an arbitrary goal for protection – 10%\(^7\) of the EEZ, there is however:

- No means of determining if a Marine Reserve is being established for Biodiversity protection purposes or **re-allocative purposes**

- No underlying **information** on our marine biodiversity (what it is? where else is it? how it differs from other parts (i.e. bio-types)?).

- No assessment of what risks exist or will potentially affect biodiversity or what **range of tools** are available to address those risks.

- No strategy on **how we protect** this 10% (we understand that a strategy will soon be released but will have no statutory force).

- No assessment of the **costs and benefits** of establishing a marine reserve to both people (including interested parties and the Government) and biodiversity so as to be able to determine the **least cost/best method** option.

- No strategy to provide for the **Maori input and participation** in the establishment, management and review of marine reserves that will become established within their rohe moana.

Te Ohu Kai Moana strongly objects to the Marine Reserves Act being developed ahead of the Governments Oceans Policy and the Marine Protected Areas Strategy. Te Ohu Kai Moana further strongly objects to an arbitrary goal of 10% of the EEZ being protected in the absence of a more rational approach to protection that might otherwise be developed in the OP or the MPAS.

Marine Reserves are only one of many tools, alongside Mahinga Mataitai, Taiapure, Temporary Closures or Fishing Restrictions which may be established under the Fisheries Act. But we do not yet have an agreed strategy for identifying the job that needs to be done, or the best tool for the job.

A higher level strategy, including objectives, principles and priority for action\(^8\), needs to be developed before the Marine Reserves tool is “sharpened”. Principles of this type should not be included in the Marine Reserves Act; rather they are more appropriately placed within the MPAS and guided by the Governments Ocean Policy.

The Government is committed to developing a Marine Protected Areas Strategy. This strategy must identify:

- What needs to be protected and why
- How decision-makers should identify the best tool for the job

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\(^7\) See the New Zealand Biodiversity Strategy

\(^8\) Best Practice Protected Areas Guidelines Series No. 3, 1999. http://wcpa.nos.noaa.gov/pubs/publications.html#guidelines
Information Box 4. Fiordland’s Biodiversity Investigations

The Guardians of Fiordland recently released a draft management strategy containing the following marine investigation information. The strategy identifies the types of biodiversity that the Guardians considered valuable together with perceived threats to that biodiversity. The results demonstrate that very little, if any, of the threats to biodiversity is from fishing or fishing related impacts.

<table>
<thead>
<tr>
<th>Location</th>
<th>Value</th>
<th>Perceived Threats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bligh Sound</td>
<td>• Red and Black coral colonies</td>
<td>• Confined area with threats from Divers</td>
</tr>
<tr>
<td></td>
<td>• Abundance of sponges</td>
<td>• Increasing Visitor numbers</td>
</tr>
<tr>
<td></td>
<td>• Unique habitat</td>
<td>• Anchoring on the rock’s</td>
</tr>
<tr>
<td>George Sound</td>
<td>• Large sea pens and tube anemones</td>
<td>• No perceived threats</td>
</tr>
<tr>
<td>Caswell Sound</td>
<td>• Coral and starfish</td>
<td>• No perceived threats</td>
</tr>
<tr>
<td>Charles Sound</td>
<td>• Red and Black coral colonies</td>
<td>• Increase visitor numbers</td>
</tr>
<tr>
<td></td>
<td>• Abundance of fish and rock lobster</td>
<td>• Anchoring</td>
</tr>
<tr>
<td>Bradshaw Sound</td>
<td>• Diverse wall community associated with the sill</td>
<td>• Anchoring on the sill</td>
</tr>
<tr>
<td>Doubtful Sound</td>
<td>• High biodiversity</td>
<td>• Visitor numbers</td>
</tr>
<tr>
<td></td>
<td>• High currents</td>
<td>• Diver damage</td>
</tr>
<tr>
<td>Breaksea Sound</td>
<td>• Suspension Feeding Communities</td>
<td>• Anchoring</td>
</tr>
<tr>
<td></td>
<td>• No perceived threat</td>
<td></td>
</tr>
<tr>
<td>Acheron Passage</td>
<td>• Spectacular rock wall habitats</td>
<td>• Visitor numbers</td>
</tr>
<tr>
<td></td>
<td>• Sill or rock reef</td>
<td>• Diver damage</td>
</tr>
<tr>
<td>Dusky Sound</td>
<td>• High Biodiversity</td>
<td>• Anchoring</td>
</tr>
<tr>
<td></td>
<td>• Suspension Feeding Communities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Historic value and baseline monitoring opportunities</td>
<td></td>
</tr>
<tr>
<td>Chalky Inlet</td>
<td>• Black corral Trees</td>
<td>• Visitor Numbers</td>
</tr>
<tr>
<td>Preservation Inlet</td>
<td>• Abundant Gorgonians</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Sea Pens</td>
<td>• Visitor numbers</td>
</tr>
<tr>
<td></td>
<td>• Scallops</td>
<td>• Diver damage</td>
</tr>
<tr>
<td></td>
<td>• Holothurias</td>
<td>• Scallop Pot storage</td>
</tr>
<tr>
<td></td>
<td>• Red Coral</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• White Brachiapods</td>
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</tbody>
</table>
Recommendations: Implementing a Planned and Co-ordinated Approach

7. That the Marine Reserves Reform be held in abeyance until the Oceans Policy and Marine protected Areas Strategy have addressed the higher-level principles and guidelines for re-allocation of use and protection of marine biodiversity.

8. That despite our primary recommendation (above) should this reform continue, the new legislation must be implemented in a well planned and Co-ordinated manner. That such a planned and co-ordinated approach must be based on:

- Identifying baseline information about ecotypes
- Identifying threats and assessing the risks to those ecotypes
- Assessing the mitigation options to ensure the least costs approach is used
- Providing for Maori Input and Participation through the whole process of establishment, management, monitoring and review.

Note: The overall approach we are suggesting is provided in more detail in Appendix 4.
Specific Amendments

That the following list of additions and modifications are made to the Bill (see the rational in Appendix 4).

New clause  least costs means all current and future costs (to both Government and Interested Parties) associated with the establishment, implementation, monitoring and review of marine reserves including any transitional or displacement costs.

New clause  The Minister must provide for the input and participation of tangata whenua in the establishment, management and review of a marine reserve, irrespective of the establishment of any formal management body or advisory board, including:

a) Providing sufficient information and background materials as may be reasonably expected to keep abreast of relevant events taking place within and affecting the reserve area:

b) Providing sufficient technical support and communication materials for the purpose of interpreting any scientific or technical material:

c) Providing sufficient time and resources to respond in an informed manner to any request for information or comment:

d) Providing sufficient funding to assist with the development of carrying out any work including the writing of any reports or submissions.

Addition to cl. 3 Interpretation

tangata whenua, in relation to a particular area, means the Iwi, or hapu, that holds mana whenua mana moana over that area

Addition to cl. 46 Interpretation

(d) Interested persons (suggest that all definition clauses are moved to cl 3 Interpretation at the front of the new legislation see page 17 for our suggested definition of Interested persons)

Addition to cl. 42 Submissions and consultation

(5) The Minister must provide for oral submissions to be recorded and heard from representatives of tangata whenua where they elect to do so at a location agreed to between the parties.

Note: Attached as Appendix 5 is Te Ohu Kai Moana’s Iwi Contact List.
6.0 Establishing and Managing Marine Reserves

Management Plans

To ensure that a Marine Reserve, if established for the purpose of protecting biodiversity from identifiable and manageable threats, is effective in addressing the risks a draft management plan should be prepared as a component of the proposal. That the Management plan must contain specific strategies and objectives to achieve the purpose of the Act. This is to ensure that all marine reserves are established with clear plans to implement and are thus are consistent with the purpose and principles.

In the event that there is no management body or advisory committee established for the marine reserves at the time of its establishment, then by default the Director-General should become responsible for ensuring that a plan is drafted.

If a Marine Reserve is established (after consideration of all costs and benefits) the draft management plan must then be approved within no less than three years. This will ensure that momentum is being maintained on progressing the specific objectives. If the plan is incomplete or not approved within three years of becoming established then the marine reserve should be revoked so that other mitigation options might be again considered.

A monitoring and assessment procedure must be established to determine if the Marine Reserve, once established, is progressing objectives toward the purpose and principles and shifting the use’s of the area back to a sustainable use ethic or mode of operating. Regular and appropriate monitoring of all marine life inside the Marine Reserve must underpin the continuation of any Marine Reserve. Passive lock out provisions are simply not sufficient, given the displacement of current rights holders, within the context of a marine reserve.

Monitoring information is essential in evaluating progress towards the specific objectives and strategies. If there is insufficient monitoring information to evaluate if the reserve is meeting its purpose and the principles then the marine reserve must according be revoked so that other mitigation options may be considered.

Periodic adjustment to strategies and objectives must occur within the ten year time frame and not wait until the review period before attempts at improvement. Thus, we submit that ten years is sufficient time to evaluate if a marine reserve is the most effective tool for protecting biodiversity.

**Recommendations: Establishing Marine Reserves**

9. That the Director - General must prepare the proposal and consult with both Iwi and Hapu and other interested parties before choosing the best method/least cost mitigation option.

10. That the proposal must contain a plan of the marine area together with a draft management plan, monitoring and evaluation targets or milestones.
Specific Amendments

Amendment to cl 46 Interpretation

applicant means-
(a) the person who makes a proposal that is authorised to proceed as an application; or
(b) the Director-General only.

Amendments to cl. 37 Who must prepare management plans

(1) A management body that is appointed the manager of the marine reserve must prepare a management plan for the marine reserve within 3 years of its appointment.

(2) An advisory body for a marine reserve or, if there is no advisory body, the Director-General must prepare a management plan for the marine reserve if preparation of a management plan is required by-
   (a) a conservation management strategy; or
   (b) the Minister, after consultation with the Director-General and any advisory body for the marine reserve.

(1) A management body or advisory body that is appointed the manager of a marine reserve or, if there is no management body or advisory body, the Director General must prepare a management plan that is approved by the Minister for the marine reserve within 3 years of the establishment of that marine reserve.

Recommendation cl 48 Consultation and consideration during preparation of proposals

In preparing a proposal under section 47, the Director-General or the proposer, as the case may be, must, –

(a) if practicable, consult-
   (i) Iwi or hapu who are tangata whenua of the marine area concerned; and
   (ii) Iwi or hapu who claim a customary interest in the marine area concerned; and
   (iii) interested persons; and.

(b) keep a record of that consultation; and

(c) consider ways of avoiding or mitigating adverse effects on existing uses of the marine area concerned if those ways do not compromise the purpose of this Act and are consistent with the principles.
Specific Amendments (continued)

Amendment to cl 49 Contents of proposal

(1) A proposal must-
(a) describe the location and boundaries of the marine area proposed as a marine reserve; and
(b) contain a draft management plan stating how the proposed marine reserve will meet the purpose and principles of this Act; and
(c) contain the names and addresses of those who were consulted under section 48(a), and summarise the matters raised by them; and
(d) contain a statement of the extent (if any) to which the matters raised or considered during consultation under section 48 have been addressed in the proposal.

(2) A proposal must not relate to a marine area –
(a) for which a lease or licence under the Marine Farming Act 1971 is in force; or
(b) that is included in a Taiaupū local fishery or Matatūai reserve declared under the Fisheries Act 1996; a traditional fishing ground of the tangata whenua despite any legal status; or
(c) that is a site of spiritual or cultural significance to the tangata whenua despite any legal status.

(3) Sites subject to section 49(2)(b) and (c) may continue as a proposal providing that the tangata whenua agree.

Amendment to cl 36 Management plan

(1) The purpose of a management plan is to –
(a) implement a relevant conservation management strategy the purpose and principles of this Act; and
(b) establish detailed objectives and policies for the integrated management of a marine reserve, ecological monitoring and review targets or milestones; and
(c) evaluate the effectiveness of the marine reserve in achieving the purpose of this Act.
Specific Amendments (continued)

Amendment to cl 52(2) plan of marine area

(2) The plan must -

(a) ...
(b) ...
(c) ...
(d) describe the nature and extent of the marine life contained within the proposed area
(e) describe the nature and extent of risks or threats posed to that marine life
(f) describe the proposed conservation objectives and strategies that are anticipated
(g) describe the monitoring and evaluation techniques that will be put in place to ensure that the objectives and strategies will serve the purpose of the Act.
(h) Describe any contingency measure that will be taken in the event of failing to meet specified target conservation objectives.
7.0 Reviewing Marine Reserves

Recommendations
11. That Marine Reserves undergo a complete review of their effectiveness in achieving the purpose and principles of the Act no later then 10 years after they were first established and every 10 years thereafter.

12. That the marine area is returned to a sustainable use mode of operation when the Marine Reserve has achieved the purpose of the Act. That the harvesting activity is managed under customary fishing provisions of the Fisheries Act unless otherwise agreed to by the tangata whenua concerned.

Specific Amendments
cl. 45 Review of, or amendments to, management plans

(1) ...
(2) A management plan –
   (a) must be reviewed entirely or in part if so required by the Minister, by the plan preparer, or the Director-General in the absence of the plan preparer, not less than every 10 years after the establishment of the marine reserve
   (b) must be reviewed entirely by the plan preparer not less than 10 years after the date of its approval (or a later date that the Minister determines, after consultation with the plan preparer).
(3) ...
(4) ...
(5) If no later than 20 working days after the plan has been reviewed and it has been found that the management plan has not met the purpose and principles of the Act the marine reserve status shall be revoked by order in council.
8.0 Transitional Provisions for Marine Reserves

It is not clear to us if the existing marine reserves will become no take marine reserves under the transitional provisions or if they will retain their current status. As an absolute minimum we would not expect to see any acknowledged and ongoing customary rights unilaterally extinguished as a result of the review of the Marine Reserves Act.

Despite that position we also submit that biodiversity protection is the ultimate aim of this review and as such threats to that biodiversity must be identified and managed accordingly. Therefore, we suggest that the better position would be to review all existing and proposed marine reserves in line with the risk approach as outlined earlier in our submission.

Existing Marine Reserves

There are currently sixteen* Marine Reserves already established under the Marine Reserves Act 1971. The Bill proposes all marine reserves will be strictly no take:

- cl. 13 Activities restricted in all marine reserves
  1. No person may take marine life from a marine reserve unless authorised to do so by –
     - the manager of the marine reserve for management or biosecurity purposes; or
     - a concession granted under section 18 for scientific research, or for research contributing to Te Ira Tangaroa

The interpretation section of the proposed Bill defines marine reserves as follows:

"marine reserve means –
  (b) a marine area constituted as a marine reserve under section 4 of the Marine Reserves Act 1971; and
  (c) a marine reserve declared by an Order in Council made under section 71 that remains in force."

Although this has not been made clear to us we interpret this to mean that all of the existing marine reserves will become no take marine reserves despite the fact that this may not have been the case under the Marine Reserves Act 1971. Therefore, this change represents a unilateral extinguishment of any customary fishing rights within existing marine reserves.

Te Ohu Kai Moana submits that if existing marine reserves are to be brought into the new legislation, including the new purpose that we propose in this submission, they should be subject to a re-evaluation under the new purpose and principles. This would also make it necessary to develop a draft management plan. If existing marine reserves do not meet the requirements of the new legislation they should have their Marine Reserves status removed and be returned to a sustainable use mode of operation.

If this recommendation is not accepted then Te Ohu Kai Moana submit that existing customary rights under existing legislation can not be extinguished without the prior

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* see appendix 6.
10 this would remove marine reserves that were established for Article III public use type activities.
informed consent of the tangata whenua of the rohe moana concerned. We do not believe that you can have it both ways, either Marine Reserves are established under the establishment criteria in the 1971 Act and its accompanying purpose or they are not. If not, they must be subject to the new criteria with the new purpose and principles.

**Recommendations: Protecting Current/Ongoing Customary Rights**

13. That the current provisions for customary harvest are acknowledged and provided for within existing marine reserves.

**Specific Amendments**

That the following list of additions and modifications are made to the Bill to protect current customary rights.

**cl. 4 Act binds the Crown**

(1) This Act binds the Crown
(2) However, this Act does not apply to -
(d) a marine reserve established under the Marine Reserves Act 1971.

**cl. 13 Activities restricted in all marine reserve.**

(1) No person may take marine life from a marine reserve unless authorised to do so by –

... 
(c) the kaitiaki appointed by the tangata whenua of the rohe moana concerned where the marine reserve was established under the Marine Reserves Act 1971.

**cl. 18 Minister may grant concession**

The Minister must not grant a concession in a marine reserve for –
(a) the commercial or recreational take of marine life;
**Existing Applications**

The Bill proposes that those applications that have been “notified” will be treated under the Marine Reserves Act 1971 criteria for establishment. Concurrence is still required but this must happen within two years of the new act coming into effect. It is not clear what will happen after the end of the two years. Will a new application have to be put in under the new purpose and establishment criteria? Or will the existing application be evaluated under the new criteria?

We understand that existing applications that have not yet been notified will be treated as applications under the new legislation including the new purpose, process for establishment and management. Te Ohu Kai Moana supports this approach to ensure greater consistency. This will ensure that all marine reserves are created for the same consistent and valid Article I purpose of returning the area to a sustainable use mode of operation and not for reallocation of space for other Article III use and enjoyment activities.

**Recommendations**

14. That all existing marine reserves and applications (notified or not) should be re-evaluated under the new purpose and principles proposed in this submission.

**Specific Amendments**

That the following clause replaces the existing clause 132 to ensure that all existing marine reserves are re-evaluated under the new purpose.

**cl. 132 Existing applications for marine reserves**

All existing applications for marine reserves, whether made on or before the commencement of this act, shall henceforth be treated as proposals under section 47 of the 2002 Act, and Part 4 of the 2002 Act applies accordingly.
Appendix

Appendix 1. The Treaty of Waitangi (Fisheries Claims) Settlement Act – a brief summary of the progress that has been made to date on implementing the components of the settlement

Appendix 2. Submission to the Ministerial Advisory Committee on Oceans Policy

Appendix 3. The Purpose of the Marine Reserves Bill – What’s wrong with it?

Appendix 4. Implementing a Well Planned and Co-ordinated Approach

Appendix 5. Iwi Contact List

Appendix 6. List of Existing Marine Reserves
Appendix 1.

The Treaty of Waitangi (Fisheries Claims) Settlement Act – a brief summary of the progress that has been made to date on implementing the components of the settlement

The Treaty of Waitangi (Fisheries Claims) Settlement Act settled Maori claims to fisheries resources by:

- Allocating commercial fisheries assets to Maori - including access to quota as it enters the QMS, Cash to help purchase quota and Shares
- Providing for customary fisheries - including both recognition and provision for (non-commercial) use and management
- Providing for input and participation by Maori in the management and conservation of New Zealand’s fisheries.

Each of these components of the settlement will be briefly reviewed below.

**Commercial fisheries**

The Settlement is made up of two sets of commercial assets known as Pre-Settlement Assets (PRESA) and Post Settlement Assets (POSA). Together, PRESA and POSA represent a substantial set of Maori economic assets. PRESA are those assets secured in the 1989 interim settlement. They are those held by Te Ohu Kai Moana as at 6 January 1993, and consist of quota, shares in Moana Pacific Fisheries Limited and cash. Under the interim settlement, 10% of species managed within the QMS at that time were to be allocated to Maori. A certain amount of cash was provided to the Maori Fisheries Commission to enable it to secure 10% of all those species that the Crown had been unable to secure at that time.

**Progress:**

As at the beginning of 2003, there still remains a quota shortfall as far as relevant species are concerned\(^1\).

POSA are those assets that result from the Deed of Settlement signed on 23 September 1992 which finally settled Maori commercial fisheries claims (called the ‘Sealord deal’). They consist of quota, shares in a number of fisheries companies and cash. As part of POSA, Maori are to obtain 20% of any new species that are introduced into the QMS.

**Progress:**

There has been some progress in introducing new species since October 2002, and there is now a plan to introduce 50 new species into the QMS over the next few years, however some species which are priority for Maori have still not been introduced and others will require delicate handling because of their cultural and spiritual values.

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\(^1\) Ahu-whakarnua pp. 161-166
Customary (non-commercial)

The Settlement requires the Minister of Fisheries to consult with tangata whenua and develop policies to help recognise and provide for use and management practices. There is an ongoing obligation on the Crown (including all its agents) to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance. To date this obligation has resulted in the following provisions.

- Taiapure
- Temporary Closures or Method Restrictions (sometimes referred to as Rahui)
- Customary harvest
- Mataitai Reserves

By their nature these provisions are local and spatially based.

Progress:

Progress with the implementation of the North Island regulations has been particularly slow. The reasons for this are discussed later in this submission. There are no Mataitai Reserves established in the North Island at present (more than 10 years after the fisheries settlement).

Progress in the South Island has been better (presumably because of the integration with the Ngati Tahu Settlement Act and the establishment of overall rohe moana boundaries).

However, there does not appear to have been a great deal of progress being made with establishing Mataitai Reserves even in the South Island. There are only two small Mataitai Reserves established to date. They include Rapaki Mataitai Reserve in Littleton harbour and Koukourarata Mataitai Reserve in Prot Levy – Banks Peninsula. In the meantime, the existing temporary provisions for customary access (“Regulation 27”) have recently been under review.

Input and Participation (in the management and conservation of New Zealand’s fisheries).

This component of the Settlement is not, as yet, well developed nor implemented either in fisheries management or fisheries conservation. However in general, input and participation is interpreted as a step beyond consultation at all levels of policy development and implementation. It contains a more proactive involvement on the part of both Treaty partners to act in good faith and to ensure the integrity of the Fisheries Settlement. The inclusion of the obligation to provide Maori with input and participation in conservation is significant to this reform and should not be overlooked or understated.

Progress:

To date, progress in this area has also been slow but there are now new developments underway including:
• the Ministry of Fisheries Treaty Strategy; and
• Te Ohu Kai Moana’s Maori Fisheries Policy forum

We are not aware of any initiative taken by the Department of Conservation to protect or enhance the rights secured by Maori in the fisheries settlement.
Appendix 2.

Submission to the Ministerial Advisory Committee on Oceans Policy

Summary

Te Ohu Kai Moana’s vision for the oceans is:

Sustainable development: growth that builds economic, social and cultural strength while maintaining healthy ecosystems.

The following goals and principles are essential to the achievement of Te Ohu Kai Moana’s vision:

<table>
<thead>
<tr>
<th>Goals</th>
<th>Duties and principles</th>
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| Maintain the relationship between Maori and Tangaroa | - Recognise Maori customary and commercial rights to fisheries and oceans  
- In the allocation of rights to use the oceans, avoid, remedy or mitigate the effects of this use on Maori rights and those of other existing rights/consent holders  
- Meet partnership responsibilities - recognise the Treaty of Waitangi and its principles, and work with Iwi/hapu through appropriate representatives  
- Recognise and provide for the relationship of Maori and their traditions with their ancestral lands, water, sites wahi tapu and other taonga  
- Support kaitiakitanga – recognise the role of Iwi/hapu in management of the oceans |
| Healthy ecosystems | - Recognise that land and the sea are related.  
- Use a consistent geographical framework for decision-making, based on ecosystem characteristics, and recognising the connection between land and the sea |
| Provide for utilisation within sustainable limits | - Recognise the presumption to allow utilisation of oceans resources within sustainable limits  
- Reflect our responsibility to mokopuna (grandchildren) by ensuring that we all have a continuing duty to minimise adverse effects  
- Use an effects-based approach to management  
- Implement a comprehensive approach to risk assessment  
- Take a precautionary approach in decision-making, and an adaptive approach to management  
- Use the most appropriate management tools  
- Ensure information that benefits everyone is funded by everyone. |
| Co-operation in the pursuit of holistic management | - Delegate responsibility to appropriate decision-makers  
- Encourage participation by all interested parties |
Key issues for Maori include:

- Te Ao Maori needs to be taken seriously
- Maori rights are a priority – we are not just another interest group
- the Crown needs to ensure that Maori rights under the Treaty of Waitangi are recognised
- these include the rights of Iwi/hapu to practice their tikanga
- Iwi/hapu want a greater role in management of the marine environment
- everything in the environment is related so we need a more holistic approach to management
- relationships between Iwi/hapu, and central/local government agencies are variable and need to be improved.

Te Ohu Kai Moana has put forward our vision, goals, duties and principles as a means of ensuring that these issues are addressed.

Te Ohu Kai Moana agrees with the view of the Ministerial Advisory Committee on Oceans Policy (MACOP) that the vision, goals and principles that will underpin an Oceans Policy are the “tahuhu” for marine management. On that basis, no decisions on other related marine reviews (such as the review of aquaculture, recreational fishing rights and the Marine Reserves Act) should be made until the tahuhu is in place.

Te Ohu Kai Moana would also expect that before the Government makes any final decisions about the vision, goals and principles that should guide an Oceans Policy, Maori and the public have an opportunity to comment on any proposals made by the MACOP, or any preliminary views held by the Government.

Maori wish to see a clear reflection of the partnership envisaged in the Treaty of Waitangi given expression in the on-going development and implementation of the Oceans Policy. Te Ohu Kai Moana requests the opportunity to discuss and develop options for giving expression to that partnership with the MACOP, appropriate Ministers and officials.
1.0 Introduction

Te Ohu Kai Moana welcomes this opportunity to put before the Ministerial Advisory Committee on Oceans Policy (MACOP) this submission on the vision, goals and principles that should guide the management of New Zealand’s oceans. As a nation, it is timely to be asking ourselves about the beliefs and values that should guide our conduct in the marine environment.

In this submission, Te Ohu Kai Moana makes use of the words “Maori”, “Iwi” and “hapu”. In using “Maori”, Te Ohu Kai Moana implies that Maori rights are exercised through the representative structures of Iwi, hapu and whanau.

2.0 The Kaupapa of Te Ohu Kai Moana

Te Ohu Kai Moana was established as a result of litigation against the Crown taken by four Maori parties, which resulted in the Maori Fisheries Act 1989. Subsequent litigation and negotiations led to the second phase of legislation in 1992 which brought to a close and finally settled Maori commercial fishing claims before the Waitangi Tribunal.

Te Ohu Kai Moana is a statutory organisation which accounts to both Iwi and Parliament with the following purpose and values:

Statement of Purpose: Te Ohu Kai Moana exists to:

- Facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing;
- Secure the growth, development, allocation and transfer to Iwi of assets in recognition of the rights confirmed and guaranteed by the Treaty of Waitangi;
- Ensure fisheries are managed in a manner consistent with the rights guaranteed and confirmed by the Treaty of Waitangi; and
- Secure proper recognition of Maori Customary Fishing Rights and to promote these rights with Hapu / Iwi.

Statement of Values: Te Ohu Kai Moana acknowledges:

- The Treaty of Waitangi is the foundation for Te Ohu Kai Moana’s operation and activities;
- It will act in a manner consistent with that of a Kaitiaki for the assets it controls;
• It will act in accordance with its accountability provisions promulgated to Iwi;
• It will pursue the development and standing of Maori through Iwi in terms of Rangatiratanga over fisheries; and
• The fisheries settlement must ultimately be for the benefit of all Maori.²

Te Ohu Kai Moana is aware that the New Zealand Seafood Industry Council (SeaFIC) has made an oral presentation to the MACOP about the seafood industry. The presentation highlighted examples of the industry’s activities, and the resulting economic and social contribution that the industry has made, particularly to New Zealand’s regional coastal communities.

Te Ohu Kai Moana does not intend to repeat that information, but refers to the documentation provided by SeaFIC at the time, and also to SeaFIC’s written submission. Nevertheless we do wish to emphasise that Maori, through Te Ohu Kai Moana, are key commercial stakeholders in New Zealand’s seafood industry. Maori have a substantial interest in over 300,000 tonnes of quota representing some 35% of the Total Allowable Commercial Catch (TACC), and therefore provide a substantial contribution to New Zealand’s economy.

In relation to these interests, Te Ohu Kai Moana’s responsibilities include:

• stewardship of Maori assets
• allocation of assets to Maori
• leasing quota
• developing new Maori Fisheries legislation
• input into fisheries policy and management issues
• training and development.

Alongside rights and interests to commercial fisheries, Maori also have traditional non-commercial interests in fisheries. Te Ohu Kai Moana’s approach has been consistent, that is to seek to integrate commercial and non-commercial fishing interests and develop and manage fisheries to minimise any conflicts. In the event that this is not possible, however, Te Ohu Kai Moana has always argued that non-commercial interests take first priority, within sustainable harvest constraints, over other interests. In this context, Maori commercial interests would take second priority.

3.0 The Treaty of Waitangi

Maori already had rights to use and manage resources for a full range of uses at the time the Treaty of Waitangi was signed. These included the right to harvest natural resources for sustenance, ceremonial and trading purposes (equivalent to commercial uses in today’s economy). The term Maori “customary” rights implies this full range of uses.

Clearly, Te Ohu Kai Moana has a fundamental concern with protecting and enhancing the rights of Maori secured and guaranteed by Te Tiriti o Waitangi: “te tino rangatiratanga...o ratou wenua o ratou kainga me o ratou taonga katoa”, or the “full and undisturbed possession of their lands and estates fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession”.

The Treaty recognises the rights and duties of the Crown, Maori and citizens, and provides the framework within which these rights and duties can be negotiated.

Through the Treaty of Waitangi, Maori have a special relationship with the Crown. Part of the relationship involves a duty by decision-makers to undertake active protection of the Article 2 rights of Maori. For some issues, Maori have negotiated settlements to address claims they have made under the Treaty. These include the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 which provides for Maori commercial and non-commercial fishing rights. Maori also assert that their Article 2 rights include water, the foreshore and seabed and other oceans resources such as petroleum.

Article 2 of the Treaty also guarantees Maori the right to manage resources in accordance with their own values and tikanga.

While the Treaty of Waitangi affirms Maori rights and values, the rights of indigenous peoples have also been acknowledged internationally through conventions and agreements to which New Zealand is a party. These include the Convention on Biological Diversity, in which Article 8 (j) states:

> Each contracting party shall, as far as possible and appropriate:

> Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application, with the approval and involvement of the holders of knowledge, innovations and practices and encourage equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

On the matter of innovation, it should be noted that the Waitangi Tribunal has found that Maori were major developers of resources in western terms before 1840, at a time when custom reigned. There is nothing in Maori tradition which dictates that those practices handed down should not be developed to suit the circumstances – as long as they are practised within sustainable limits.

Te Ohu Kai Moana works to enhance Maori rights and values in relation to all aspects of fisheries and the marine environment. To varying degrees, some existing laws provide for Maori rights and the relationship between Maori and the environment, along with Maori management practices. These include the Resource Management Act 1991, the Conservation Act (1987), Maori Fisheries Act (1989), the Treaty of

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Waitangi (Fisheries Claims) Settlement Act (1992) and the Fisheries (Kai Moana Customary Fishing) Regulations (1998). However these provisions, taken together, do not represent a comprehensive and consistent approach to Maori values and rights. In addition, Maori continue to express concern that where provisions exist in legislation, recognition by decision-makers is patchy and in many cases inadequate.

Te Ohu Kai Moana notes that the Government has identified as one of its key goals the need to uphold the principles of the Treaty of Waitangi. We also understand that Ministers are committed to ensuring that both the process to develop an Oceans Policy and the content of the policy are consistent with the provisions of the Treaty. Te Ohu Kai Moana would expect an Oceans Policy to provide for Maori values and rights to be treated consistently across all decisions, both in law, and its implementation.

In the remainder of this submission, Te Ohu Kai Moana provides an overview of:

- the Maori values and principles that underpin Maori resource management
- answers to the questions posed by the MACOP
- a proposed vision, goals and principles to shape the content of the policy

Te Ohu Kai Moana also proposes that Maori, alongside the Crown, should be key players and directly participate in the development of stages 2 and 3 of the policy.

4.0 He Matapuna

The exercise on which the MACOP has embarked involves asking New Zealanders about their vision, values, goals and principles for managing our oceans. Maori have a well established set of values that govern relationships between people, and between people and the natural world.

In Maori terms, all living things are the descendants of Ranginui (the “Sky Father”) and Papatuanuku (the “Earth Mother”) and are thus related through whakapapa. Maori developed a set of concepts and rules that guide the way these relationships are handled. These include:

- Mauri
- Kaitiakitanga
- Tapu
- Noa
- Rahui
- Mana
- Whanaungatanga
- Rangatiratanga
- Manaakitanga
- Koha
- Utu

In providing the MACOP with a brief explanation of these concepts, Te Ohu Kai Moana would like to emphasise that together these concepts contain spiritual and physical elements which are interdependent, and compartmentalisation is artificial.
Nevertheless some form of explanation is necessary for the purposes of this submission.

Everything in the natural world possess mauri, a “special power possessed by Io which makes it possible for everything to move and live in accordance with the conditions and limits of its existence. Everything has mauri, including people, fish, animals, birds, forests, land, seas and rivers: the mauri is that power which permits these living things to exist within their own realm and sphere.”

Mauri is protected by kaitiaki. Kaitiakitanga is a broad notion applied in different situations. “The root word in kaitiakitanga is tiaki, which includes aspects of guardianship, care and wise management. The prefix kai denotes the agent by which tiaki is performed. Kaitiaki therefore stands for a person and/or other agent who performs the tasks of guardianship. Kaitiakitanga is the practice of guardianship.”

The set of principles and practices that is used to maintain mauri is called tikanga. The attention paid to tikanga ensures that harmony with the universe is maintained. Observation of tikanga became the practice of kaitiaki.

Mana can be described as the enduring, indestructible power of the gods. In modern times mana has taken on various meanings:

- **Mana atua**: the sacred power of the gods.
- **Mana tupuna**: this power or authority handed down from generation to generation. Those who inherit mana must carry out the various rituals and duties to maintain this power.
- **Mana whenua**: the power associated with the possession of lands: it is also the power associated with the ability of the land to produce ... by the power of mana mauri, all things have the potential for growth and development towards maturity. There is another aspect to the power of land: a person who possesses land has the power to produce a livelihood for family and tribe and every effort is made to protect those rights.
- **Mana tangata**: the power acquired by an individual according to his or her ability and effort to develop skills and to gain knowledge in particular areas.

Rangatiratanga is the process of exercising mana at the level of Iwi or hapu depending upon the issue at hand. If an issue is of interest to the Iwi as a whole, then members of the Iwi, through their mandated representative structures, would expect to be involved. The same principle applies at the hapu and whanau level.

Manaakitanga implies a duty to care for others, in the knowledge that at some time, others will care for you.

If I share with you the bounty of my fish or my eel or kumara crop, then I affirm that sense of us all being part of one another. The return need not be

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6 Te Puni Kokiri, as above
7 Barlow, Cleve: pp 61-62
immediate. There is simply faith that one day that which one has contributed will be returned.⁸

The concepts of koha (gift) and utu (reciprocity) are closely related. All three are about building and maintaining relationships in a balanced way.

Whanaungatanga is the process through which Maori, through their kinship ties, meet their obligations toward each other and to the natural world. It is “the basic cement that holds things Maori together”.⁹

Human action is regulated through the concepts of tapu and noa. Tapu loosely means “sacred” or “set apart under ritual restriction”. It is a “state of being deriving from close contact with beings or forces from the spiritual realm…Noa, the other half of the pair is a state of being which is removed from close contact with spiritual beings or forces and hence free from ritual restriction.”¹⁰

Rahui is a temporary form of restriction. It can be used to preserve the mauri of natural resources such as birds or fish. Rahui equates to the concepts of “conservation” and “protection” – however it is something that is applied on a temporary basis to enable resources to recover and be utilised. A rahui may be placed on an area in which someone has died, or where the potential of a resource is being obstructed.

Maori adopted this approach and principles after generations of living in one territory and learning to live within natural limits. They learnt through a process of trial and error to understand how their activities affected each other, and the environment in which they lived. On that basis, they managed resources in a way that used some, developed some and rested some, ensuring that the mauri of all resources was kept in balance. Permanent preservation without utilisation was not and still is not a feature of Maori resource management.

Maori continue to advocate this sustainable utilisation approach to marine management, based on a responsible environmental ethic and adaptive management.

5.0 Questions posed by the MACOP

During their consultation process, the MACOP has posed a series of questions to Maori and the public of New Zealand. Drawing on the values and principles outlined above as well as feedback obtained since the consultation process commenced, Te Ohu Kai Moana has developed the following responses to the questions, based upon the kinds of issues that Maori might be expected to raise.

⁸ Ritchie, James (1992): “Becoming Bi-cultural”, p 75
⁹ Ritchie, James, as above, p 67
What do you value most about our oceans?

- The ocean is the realm of Tangaroa. It sustains us and is provided for us to act as kaitiaki for our future generations;
- The oceans shape our identity. This is apparent in the influence of the ocean in our tribal histories, including the history of our migration to Aotearoa;
- The ability for us to maintain our relationship with Tangaroa is crucial – not only in terms of our livelihood, but also in terms of our culture. Our culture is maintained through direct and active involvement in the use of resources. Where we are unable to obtain resources that we value, the knowledge that we associate with them dies;
- The maintenance of that relationship is equivalent to the concept of sustainable use (that can continue as we all learn to work within limits that Maori have learned over many generations in Aotearoa);
- There is also a principle of reciprocity - its not just what the Ocean can do for you, equally it is what can you do for the Oceans - the oceans must be cared for and nurtured like a garden - Te Maara a Tangaroa. In practice, this means working with the cycles of nature, for example, recognising what can be taken and what should be left for us to use in future;
- To maintain the integrity of the fisheries settlement, it is critical that any management system allows Maori to continue to use the fisheries assets that have been returned to us, and those the Crown has promised to deliver.

How does your lifestyle benefit from your own use/enjoyment of our ocean?

- As noted above, the maintenance of our identity and culture depends upon our ability to access the resources of the sea. Kai moana – food that is used for subsistence, ceremonial and commercial purposes - forms a central part of the Maori way of life;
- That is not to say that Maori are restricted to the use of “bone fish-hooks”. We have every right to develop our practices to suit the circumstances – as long as they are carried out within sustainable limits;
- In today's economy, trading includes commercial fishing, which provides a basis for Iwi and hapu to support their people, and in doing so, strengthen tribal structures to address contemporary needs;
- The survival of Maori values and culture is dependent on ongoing access to the marine environment and its resources, both through non-commercial and commercial means. The ability of Maori to collect kai moana for cultural and sustenance purposes, as well as commercial activity, must be preserved.

How does your lifestyle benefit from other people’s use of our ocean?

- The ocean is a source of employment and recreation; it is estimated that there are over 2000 Maori employed in the commercial fishing industry;
- Maori recognise that we, along with other New Zealanders, benefit indirectly from other uses of the oceans (e.g. cables for electricity). However in making decisions on what activities can take place in the oceans, the indirect benefits that accrue to
us must also be balanced against the direct effects on us of allowing such activities.

**How does what you do affect the oceans now, and in the long term?**

- Maori resource management practices have adapted in the knowledge that the taking of kai moana has an effect on the marine environment. That does not mean that kai moana should not be taken. Rather, the harvesting of resources must be carried out in such a way that their mauri is maintained. This principle applies equally to non-commercial and commercial harvest.

**When and why should our oceans be used?**

**When and why should the oceans be conserved?**

**Which uses of the ocean are acceptable or unacceptable to you?**

- Our oceans are there for all to use, but as kaitiaki not plunderers;
- To Maori, conservation means wise use, and does not mean that oceans should be “locked up” like a big aquarium;
- Maori do not appreciate single-minded preservationists telling us how to use our resource and trying to limit our customary use rights;
- The relegation and non-recognition of Maori practices - for example, rahui to have control and management within the marine environment - is not acceptable to Maori;
- Discharge of sewage is unacceptable as are other practices that endanger the domain of Tangaroa. Examples of other practices that we are concerned about include coastal subdivision, which increases pressure on our inshore waters and fisheries;
- It is possible to utilise the gifts of Tangaroa without endangering the sustainability of the resource – that is what kaitiakitanga is about.

**If your values are in conflict with someone else's, in what circumstances are you prepared to make compromises?**

- The exercise of all rights must be within sustainable limits – there will be a need to constrain use accordingly;
- Article Two Treaty rights have precedence over other rights and interests;
- Tino rangatiratanga means that Iwi/hapu must have a substantive input into management of the resource. However, Maori have not and do not seek to deny others access to the oceans;
- Both kawanatanga and rangatiratanga contain a duty to ensure the sustainability of marine resources. This means that we all have an interest in sustaining everything in the domain of Tangaroa;
- At the same time, the right of the Crown to exercise kawanatanga rests on the guarantee that it made to Maori in relation to rangatiratanga, including the values that go with it;
- Our view of what is sustainable may not always accord with the views of others. In some circumstances concerning our customary rights, we do not see the need to compromise with those who would force their view of the world onto us.
Who should make decisions about the oceans?
How should decisions be made?

- Iwi and hapu have a unique relationship with the Crown through the Treaty of Waitangi. There needs to remain an ability for the Crown and Maori to set the overall principles and priorities for managing the marine environment;
- Article Two of the Treaty guaranteed that tino rangatiratanga would be maintained. Consequently Iwi/hapu should always have an important role in deciding how our oceans are used, especially the inshore waters;
- Decision-making should be made at the level of the community affected, but must also be consistent with the biological scale of the resources being utilised;
- Maori are concerned to ensure that any person or body to whom decision-making power is delegated (as part of kawanatanga) is empowered to interact with Iwi/hapu in a partnership role. For example, you can expect that Maori would oppose any expansion of the role of local authorities without an associated expansion in their duties to act in partnership with Iwi/hapu in accordance with the principles of the Treaty of Waitangi;
- Decisions must be made in a transparent process and outcomes must be consistent with the Treaty of Waitangi. Agreements reached by applying that principled approach will be more durable.

Should the interests of future generations be considered?

- Of course the interests of future generations should be considered -- that is also what kaitiakitanga is about; this is not a modern concept.

What might the oceans be like in 20 years? in 50 years?

- We would wish the realm of Tangaroa to be in such a state that we can continue to maintain our interaction with it and thus maintain and strengthen our people and culture.

Te Ohu Kai Moana attended most of the hui held by the MACOP. Many of the above concerns were expressed. In our view, they can be summarised in the following key messages:

- Te Ao Maori and the Maori world view need to be taken seriously
- Maori rights are a priority -- we are not just another interest group
- the Crown needs to ensure that Maori rights under the Treaty of Waitangi are recognised, including the rights of Iwi/hapu to practice their tikanga
- Iwi/hapu want a greater role in management
- everything in the environment is related so we need a more holistic approach to management
- relationships between Iwi/hapu, and central/local government agencies are variable and need to be improved.
6.0 Te Ohu Kai Moana’s vision for our oceans

Te Ohu Kai Moana’s vision for the oceans is:

Sustainable development: growth that builds economic, social and cultural strength while maintaining healthy ecosystems.

Te Ohu Kai Moana believes that at the broadest level, all New Zealanders would aspire to this goal. However, in achieving the goal, the following kinds of questions will need to be addressed:

- What obligations and duties should apply to all New Zealanders?
- Upon what basis will the relationship between ecological, social and economic concerns or interests be managed?
- How will differences in philosophies and culture be reconciled?
- Whose particular interests should have priority where interests conflict or overlap?
- How should the effects of allocation decisions on Maori and other rights be managed?
- How should decision-making be approached in the absence of good information?
- Who should pay for information and in what circumstances?
- How can we best ensure that in monitoring the effects of our activities on the marine environment, the results are used to enable us to adapt what we do as new information comes to light?

As noted, Te Ohu Kai Moana’s interest in Oceans Policy relates to Maori commercial and non-commercial fishing rights. We believe that Maori involvement in the seafood industry can make a major contribution to the ability of Iwi/hapu to exercise their responsibilities towards their members, and to the environment. We also believe that maintenance of Maori fishing rights is essential if Iwi/hapu are to maintain the knowledge and tikanga associated with marine resources. The challenge for Te Ohu Kai Moana, and for Maori, is to ensure that:

- management of both non-commercial and commercial fisheries is consistent with Maori values, and aspirations for the future;
- fisheries can be managed in an integrated way;
- the ability of Maori to exercise their rights is accorded priority against other uses and interests in the marine environment.

Te Ohu Kai Moana believes that Maori will be better placed to meet these challenges and achieve the vision if the following goals, duties and principles are central to the Oceans Policy.

Te Ohu Kai Moana agrees with the MACOP’s description of the Oceans Policy’s vision, goals and principles as a “tahuhu” for all marine management. We therefore strongly recommend that the Government make no decisions on other related reviews.
(including the review of aquaculture, recreational fishing rights and the Marine Reserves Act) until the tahuhu is in place.

**Goal: To maintain the relationship between Maori and Tangaroa**

As noted in the answers to the MACOP’s questions (section 5), Maori identity and culture is dependent upon Maori being able to maintain their relationship with all elements of the environment including Tangaroa. This relationship has a spiritual aspect which is manifest in kinship links to all beings, and to the gods.

Maori have always argued that environmental sustainability comes first, and that their relationship with Tangaroa (and other elements of the environment) incorporates sustainability. Te Ohu Kai Moana believes that Maori must be able to define sustainability in accordance with their tikanga, and that the Treaty of Waitangi provides for them to do so.

The following duties and principles must be incorporated in the Oceans Policy framework to ensure that Maori are able to maintain their unique relationship with Tangaroa.

Duties and principles:

- Recognise Maori rights to fisheries and oceans.

Te Ohu Kai Moana understands that the Government, in developing an Oceans Policy, is not intending to renegotiate those rights that have been secured by Treaty settlements, specifically those enshrined in the Treaty of Waitangi (Fisheries Claims) Settlement Act. However, a number of other reform processes (relevant to aquaculture, recreational fishing rights and the Marine Reserves Act) will further define rights and responsibilities held in the marine environment. Each of these has the potential to erode the fisheries settlement.

As Te Ohu Kai Moana has already emphasised, the Treaty of Waitangi (Fisheries Claims) Settlement Act (1992) gives Maori fishing rights priority. However not all decision-makers whose decisions can have an effect on these rights are explicitly required to have regard to the settlement. For example the Resource Management Act 1991 makes no mention of the settlement, and neither does the Marine Reserves Act 1971. This situation needs to be rectified in the Oceans Policy and associated reforms.

In addition Maori have other rights associated with the marine environment including the foreshore, seabed and minerals (amongst others) that still remain to be appropriately recognised by the Crown. Thus an important principle that must be acknowledged is the need to ensure that neither Oceans Policy nor subsequent decision-makers acting under its ambit:

- prejudice the settlement of outstanding claims
- erode or prevent the full implementation of existing and future settlements.
These issues highlight the need for the first stage of the Oceans Policy to be completed before decisions on related marine reviews are made.

➢ *In the allocation of new rights to use the oceans, avoid, remedy or mitigate the effects of this use on Maori and other rights/consent holders*

Hand in hand with the recognition of Maori rights is the need to give those rights priority against other rights when situations involving conflict arise. The only situations in which compromise should occur are:

- where environmental sustainability is under threat (here Article 1 must prevail over Article 2)
- where any proposed displacement of Maori rights is recognised, and compensation provided (Article 2 rights are appropriately recognised).

Te Ohu Kai Moana does not believe that any management or allocation system should lock us into an inflexible process. Policy must allow for dynamic change but in a principled way that promotes respect and doesn’t malign people’s rights and interests.

There is potential, over time, for new allocation decisions to be made. These could include:

- allocation of fish stocks
- allocation of rights to space (including the establishment of marine reserves where they are not necessary for sustainability purposes).

These decisions will always have the potential to affect existing rights/consents.

Iwi have always maintained that in restoring a right, new grievances should not be created. Te Ohu Kai Moana proposes that to maintain the integrity of existing rights (and any Treaty settlements), any displacement should recognise the degree of displacement and provide appropriate compensation.

For example, Te Ohu Kai Moana does not agree with the proposition that ITQ holders have no spatial rights to those areas in which their catch is targeted. If that were the case, their rights of access would have no basis. The issue is - what effect does a new allocation have on the ability of ITQ holders to access their quota entitlement? The same question would apply to any other existing use.

A principled approach to the allocation of marine resources is required, in which:

- Maori rights are treated as a priority
- the effects of allocation on the rights of existing users are “avoided, remedied or mitigated”.

Each statute should recognise rights granted under other statutes as having the equivalent of existing use rights.
Criteria, or a “test” for assessing the effects of decisions on existing rights, and providing appropriate remedies, would need to be developed.

Te Ohu Kai Moana considers that this approach should generally be used. Aside from the issue of sustainability, Maori must retain an ability to veto proposals that would effectively extinguish their non-commercial fishing rights.

➢ Meet partnership responsibilities – recognise the Treaty of Waitangi and its principles, and work with Iwi/hapu through appropriate representatives

Both local and central government must make more strenuous efforts to work with the properly mandated representatives of hapu and Iwi. Over a decade, Te Ohu Kai Moana has gone to unprecedented lengths to identify Iwi and their representative organisations. Seventy eight Iwi have been recognised and the organisations representing almost all of those Iwi mandated. Te Ohu Kai Moana strongly recommends that all central government agencies and local government should, in the first instance, always contact the mandated Iwi organisation on all natural resource matters. That organisation will refer matters on where appropriate. Te Ohu Kai Moana will make available our list of mandated Iwi organisations.

By working with Iwi/hapu, decision-makers can ensure that they have the correct information about the implications for Maori of any decisions they make. This should apply in the case of policy developed at a local, regional, or national level, and also to policy on New Zealand’s interests at an international level. In some cases, Iwi/hapu may need to be resourced to work with decision-makers.

The challenges facing Iwi in decision-making process has been demonstrated during the Oceans Policy consultation process, which coincided with consultation on the Local Government Reform. In many cases, the same individuals were trying to cover these different consultation processes at the same time. Unless Iwi/hapu are adequately resourced to participate – whether working in co-operation with agencies or stakeholders, the level of interaction necessary for effective decision-making may well suffer (see also the principle: “Encourage participation by all parties”).

➢ Duty to recognise and provide for the relationship of Maori and their traditions with their ancestral lands, water, sites, wahi tapu and other taonga

This duty on decision-makers is already enshrined in the Resource Management Act 1991. In general, it has been applied to land-based resources and recognises that the relationship exists regardless of land ownership. In referring to Maori tradition, it also gives weight to Maori values and management practices. While the relationship and related practices are exercised at a local tribal level, the Treaty of Waitangi gives them national significance.

The relationship is equally relevant in the marine environment, and should guide all decision-making. It should extend to all statutes and in practice, greater focus should be given to the duty in the marine context under the Resource Management Act 1991.
Duty to support kaitiakitanga - recognition and support for the role of Iwi/hapu in the management of our oceans

There are many instances where management responsibility, for the reasons already outlined, should rest primarily with Iwi/hapu. This principle has already been applied in some instances (for example in relation to provision for the appointment of tangata tiaki for customary fisheries) but is not recognised or implemented in a comprehensive way.

The same principle needs to apply in the case of decision-making within kawanatanga. Iwi/hapu expect any decision-maker to work in partnership with them. This will, in many cases, require that resources are provided to Iwi/hapu to allow them to meet the responsibilities that they must exercise in the interest of the wider community.

Goal: Healthy ecosystems

Duties and principles:

➢ Recognise that the land and the sea are related

➢ Use a comprehensive geographical framework for decision-making, based on ecosystem characteristics, and recognising the relationship between the land and the sea

Much concern has been expressed by Maori during the MACOP’s consultation round about the effects of land use and discharges on the inshore waters and habitats that support customary and commercial fisheries. Greater recognition must be given to the effects of these uses, not only on the marine environment but also on marine users.

A comprehensive geographical framework for management would greatly assist decision-makers to assess the cumulative effects of different activities in the same environment, and to manage them in an integrated way. The most appropriate scale for management needs to reflect the biological scale of the key resources that are the subject of decision. This is an ecosystems approach. Te Ohu Kai Moana is enthusiastic about work the Ministry for the Environment is doing to develop a “marine environment classification system”, which could form the basis for a comprehensive framework. Information about the environment should integrated within this framework.

As information is able to be built into such a framework, it would allow decisions to be considered in context, and their implications for the wider marine environment to be understood (see also the principle: “Implement a comprehensive approach to risk management”).
Goal: Provide for utilisation within sustainable limits

As Te Ohu Kai Moana notes in section 4 of this submission, Maori manage resources in a way that uses some, develops some and rests some, ensuring that the mauri of all resources is kept in balance. Maori continue to advocate this sustainable utilisation approach to resource management, based on a responsible environmental ethic and adaptive management.

Duties and principles:

- Recognise the presumption to allow utilisation of oceans resources within sustainable limits

"Utilisation" includes a range of levels of activity including minimum take, development and enhancement. The Fisheries Act 1996 and the Resource Management Act 1991 contain a presumption to allow utilisation of renewable resources within sustainable limits.

New Zealand is also party to the United Nations Convention on the Law of the Sea (UNCLOS), which enables 200 nautical mile Exclusive Economic Zones (EEZs) to be brought within the jurisdiction of states. Various articles of UNCLOS provide opportunities for states to utilise marine resources for economic benefit, and obligations to protect them. The articles include:

- article 61, which imposes an obligation on member states to ensure that the living resources in their EEZs are not endangered by over-exploitation
- article 62, which requires states to promote optimum utilisation of the living resources of their EEZs.

- Reflect our responsibility to mokopuna (grandchildren) by ensuring that we all have a continuing duty to minimise adverse effects

All users (direct and indirect) have a responsibility to minimise their adverse effects on the environment, including the marine environment. This applies as much to land users who pollute inshore kai moana, as it does to anyone harvesting renewable resources or mining non-renewable resources. Over time, we should be looking to minimise our "footprint".

- Use an effects-based approach to management

In developing a philosophy for managing the marine environment we need to take an effects-based approach. This would mean that any activity that causes an impact on

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11 Parliamentary Commissioner for the Environment (1999) Setting a Course for a Sustainable Future; the Management of New Zealand’s Marine Environment, p25
the environment should be subject to the requirement on users to minimise those impacts. No sector should have holidays at the expense of the environment. Good knowledge of marine ecosystems should support decisions on impacts and actions to mitigate them. This approach is consistent with Maori environmental management, and has been already adopted in key legislation such as the Resource Management Act 1991, and the Fisheries Act 1996.

Implement a comprehensive approach to risk assessment

In Te Ohu Kai Moana’s view, New Zealand still has some way to go to develop a comprehensive risk-based approach to management of the marine environment, including fisheries. In the absence of such a framework, many sustainability decisions under the Fisheries Act are made in an ad hoc fashion, and appear to be largely driven by political pressure to constrain fishing activity as much as possible, rather than any real and comprehensive risk assessment.

The development of a draft seamounts strategy is one example. In this case, the Ministry of Fisheries developed a strategy for protecting seamounts, however the strategy did not appear to have any clear objectives. A selection of seamounts was closed to certain types of fishing activity, but the decision was based on scanty information about remaining benthic communities. In addition, the strategy contained no apparent strategy to carry out research into the nature of those communities, or the effects of trawling upon them.

This example also illustrates that risk assessment needs to go hand in hand with a clear understanding of the scale of impact that is appropriate to the circumstances, as is the case on land. For example, on land, it is accepted that some areas can be completely modified to enable cities to grow, or farming to take place, while in other areas such as national parks or highly erosion prone areas, a more limited range of activities is appropriate.

In the seamount example, it is not clear how far the marine communities that exist upon the seamounts are unique. With the help of a research programme and a comprehensive geographical framework, it is possible that these communities will be found to be duplicated in many different areas. It is not clear from the strategy what the long term prospects for fishing around the seamounts would be, should the effects be found to be reversible, or the benthic communities upon them to be relatively common.

The same risk assessment approach should apply in the case of all marine resources. The critical question is: what is an acceptable level of impact on the broader marine environment? Te Ohu Kai Moana considers that the overall marine system, including species’ populations, must be maintained at a level that does not endanger their viability. We do not consider that complete protection is warranted where viability is not adversely affected. Rather, questions that need to be asked include: how abundant is a particular species? Is its population under threat? Has the population grown to a point that its relationship with other species and habitats is out of balance? These issues need to be addressed honestly, and not hidden behind unquestioned assumptions.
➢ *Take a precautionary approach in decision-making, and an adaptive approach to management*

Te Ohu Kāi Moana agrees that the absence of information should not prevent decision-makers from acting. In some cases a decision-maker might allow for use while monitoring and adapting how that use is carried out. In other circumstances, they might implement a temporary closure to enable research to be done. In either case, monitoring and research are crucial if adaptive management is to succeed. It is important in adopting such an approach that the management measures are appropriate to the level of risk, taking into account the impact that the measure will have on people’s rights and activities.

To refer again to the seamount issue, simply imposing closures without further investigation will not provide for improved management. As we noted in our submission to the Minister of Fisheries on this matter: “it will not tell us whether what was done was useful or not – whether it was too little or too much...the success of precautionary closures as a management measure is based in part on whether we are able to improve the quality of information available and therefore develop more appropriate management measures based on better information”.

➢ *Use the most appropriate management tools*

Te Ohu Kāi Moana believes that New Zealand’s fisheries management system contains the elements needed to manage the effects of harvest on the marine environment. This does not mean that there isn’t room for improvement as we continue to monitor and test the effects of what we do.

The Quota Management System (QMS) with its ability to vary the TAC after taking account of stock recruitment is one modern expression of working with ecosystems and the cycles of nature. Ongoing success of our fisheries management system will depend upon our ability to gather good information as we go about "the business and activity of fishing", and to adapt our management practices accordingly.

**As part of the fisheries settlement, the QMS is the agreed vehicle to allow Maori commercial fishing rights to be exercised. In making any changes to this system therefore, care must be taken not to devalue the “currency” of the fisheries settlement.**

The “toolkit” for managing the marine environment is wider that the QMS. Management tools within New Zealand’s marine management system are many and varied, and range from fishing method restrictions and closures, catch limits such as TACs and bag limits, mataitai and taipure to marine reserves and marine mammal sanctuaries. However there is at present no over-arching framework to guide decision-makers to the best tool for the job, and to ensure that they look beyond their particular “patch” (whether that be “conservation”, “fisheries management” or “resource management”) and to make their decisions in context.

Over-arching policy developed under the Oceans Policy should contain a series of tests (similar to s 32 of the Resource Management Act 1991) to direct decision-makers to the most appropriate statutory and non-statutory tool (or combination there-
of) that provides the most cost effective and efficient means of achieving the policy’s goals. The questions that need to be asked include:

- what outcome is to be achieved?
- what is the best way of achieving it given the risks that need to be managed (recognising that doing nothing may achieve the outcome)?

For example, there appears to be a growing view that we must have more marine reserves, but with no clear reasons why. If a marine area requires protection from a specific fishing activity such as trawling, or set netting, then a fisheries management tool (under the Fisheries Act) should be implemented. Should the area require protection from land use effects such as agricultural run-off, then the Resource Management Act or non-regulatory measures should be the appropriate tool to mitigate or remedy that risk. However, should the area need protecting from a myriad of risks then a rahui on all activities, or a marine reserve may be the most appropriate tool to use.

In choosing the right tool, much will depend upon the role and significance of an area (or species) in supporting the long-term sustainable utilisation of marine resources, the nature of the risks that need to be managed, and the time-scale that is necessary to manage them.

As a general principle, management should be focussed on outcomes, not rules. Government decision-makers should intervene no more than necessary to achieve the outcome. Incentives should be created for participants to work together to achieve outcomes and resolve differences in a principled way, rather than relying on bureaucracy to do things for them (see also the principles: “In the allocation of rights to use the oceans, avoid, remedy or mitigate the effects of this use on Maori rights and those of other existing rights/consent holders”; “Encourage participation by all interested parties”).

In choosing the most appropriate tool, care should also be taken to ensure that Iwi/hapu are involved in assessing the options (see the principle: “Meet partnership responsibilities”).

➢ Ensure that information that benefits everyone is paid for by everyone

The current approach that is taken in regard to the provision of information across the environment is not dealt with consistently. The information required by all agencies with responsibility for the marine environment should be obtained and managed in a more co-ordinated way than it is at present.

Consistent principles should be applied in determining who pays for information and in what circumstances.

In the view of Te Ohu Kai Moana, an important principle must be that information required to underpin planning for use of the marine environment is supported through “public good” research. Depending upon who makes decisions, the “public” may
constitute either ratepayers or tax-payers. In achieving sustainable development, public good information would provide the context for deciding what kinds of constraints or rules should apply to particular groups of activities. Those who benefit directly from particular activities should be responsible for meeting the costs of monitoring the effects of those activities.

### Goal: Co-operation in the pursuit of holistic management

### Duties and principles:

- **Delegate responsibility to appropriate decision-makers**

Within the Crown, it is important to involve the right Ministers/Ministries or other agencies in decision-making. For example, the Minister of Conservation has a primary role in coastal management under the Resource Management Act. The Act manages the effects of utilisation, whereas the Minister of Conservation’s wider responsibilities are more closely associated with “conservation for preservation”, than “conservation for utilisation”. This role may be more appropriate for the Minister for the Environment, who is required to take a broader view of the environment, and whose Ministry works closely with local government on other aspects of the Act. Alternatively, a new “Minister of Sustainable Development” could take a broader view of the links between the economic, social, cultural and environmental aspects of sustainable development.

As noted earlier, Iwi/hapu continue to express concern that the performance of local government in building relationships with them is variable. Reasons for this include:

- inadequate legal mandate
- lack of skills and resources
- lack of guidance.

It will be necessary for the Crown to ensure that any decision-makers, whether central or local government, have the capability (legal mandate, resources and skills) to work in partnership with Iwi/hapu. This is an issue that should be addressed in related reviews such as the Local Government Review.

- **Encourage participation by all interested parties**

Many different people and agencies make decisions that affect the same environment. A co-operative approach to information gathering, decision-making and monitoring is cost-effective and creates the opportunity for integrated management where each understands the cumulative effects of activities in the marine environment. This is equally relevant for stakeholders as it is for government agencies.

Management is essentially about influencing people who use the environment. Obtaining the co-operation of interested parties to develop rules, gather and share information and monitor the effects of their activities will make the task of implementation more effective than forcing unwilling parties to comply.
Te Ohu Kai Moana has made it clear in other submissions (for example in our response to MFish's recreational fisheries discussion document “Soundings”) that we strive to work with all groups to co-operate successfully in managing fish stocks. Success means that fish stocks will be maintained or enhanced for the benefit of all parties. However it is critical that priority of rights be clear at the outset to provide a clear framework and incentives for management, as well as clarity of outcomes.

There are a number of challenges in encouraging interested parties to participate. The first concerns the mandate that people hold to represent collective interests, and whether they have the resources to participate. Te Ohu Kai Moana has already referred to the process it has developed and implemented in recognising representatives of Iwi. If a co-operative approach is to succeed, then other collective interests will also need to identify appropriate representatives and find ways to support them.

The second concerns the range of demands placed upon Iwi/hapu, as noted earlier, and the need to support their participation (see principle: “Meet partnership responsibilities”).

Rights-holders/users need to know that it is worth their while working co-operatively with others. They need to have confidence that where they put effort into seeking solutions to resource management problems, and demonstrate that they are doing so, their efforts are not wasted (see also the principle: “Use the most appropriate management tools”).

7.0 Where to from here?

On 14th August 2001, Te Ohu Kai Moana held a hui of Iwi/hapu representatives to discuss a working draft of this submission. Those who attended were supportive of the kaupapa that we set out in the draft. However they also wanted us to comment on their concerns that Stage One of the Oceans Policy process did not provide them with enough time to consult with their members and develop substantive submissions. In addition, they did not consider that communication about the process was sufficient, and strongly recommended far greater use of avenues such as Maori radio in future stages.

Those who attended the hui were adamant that Maori must be actively involved in the development of the Oceans Policy, and that consultation is not enough. Maori wish to see a clear reflection of the partnership envisaged in the Treaty of Waitangi given expression in the ongoing development and implementation of the Oceans Policy.

Te Ohu Kai Moana strongly recommends that options for involving Maori, through appropriate representatives, be developed as part of the planning for, and participation in the next stages of the policy. Options could include a Joint Working Party with Crown representatives, and support for wananga on issues that need to be addressed as part of the policy.

Finally, Te Ohu Kai Moana would expect that before the Government makes any final decisions about the vision, goals and principles that should guide an Oceans Policy, Maori and the public have an opportunity to comment on any proposals made by the
MACOP, or any preliminary views held by the Government. This approach is consistent with other major reforms, such as the Resource Management Law Reform, and consultation on options to protect biodiversity on private land.

Te Ohu Kai Moana intends to continue taking a very active interest in the development of the Oceans Policy. We request the opportunity to discuss and develop further options with the MACOP, appropriate Ministers and officials.
Appendix 3.

The Purpose of the Marine Reserves – What’s wrong with it?

1. The Purpose is not clear

The proposed purpose states:

Purpose
The purpose of this Act is to **conserve** indigenous marine biodiversity in New Zealand’s foreshore, internal waters, territorial sea and exclusive economic zone for current and further generations, **by preserving and protecting** within marine reserves:

(a) representative examples of the full range of marine communities and ecosystems that are common or widespread; and

(b) outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and

(c) natural features that are part of the biological and physical processes of the marine communities and ecosystems referred to in paragraphs (a) and (b), in particular those nature features that are outstanding, rare, unique, beautiful, or important.

To paraphrase the simple translation of this section reads to us as follows:

To conserve biodiversity by preserving and protecting areas which are either common or special and part of the community or ecosystem.

The words preserve and protect are defined in the interpretation section of the Act as:

**Preserve** means maintain intrinsic value, as far as practicable

**Protect**:

(a) means maintain in the current state as far as practicable or restored to some former state; and

(b) includes augmentation, enhancement, and expansion necessary or desirable to achieve maintenance or restoration

In each case the emphasis seems to be on maintaining or restoring some quality or state which is not specified but should be applied to the areas described in the subsections that follow. The word conserve is not defined in the interpretation section of the Bill; however, the definition of conservation provided in the Conservation Act 1987 states:

**Conservation** means the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations

If we take the definition provided in the Conservation Act the sentence seems circular and would translate into:

To conserve/preserve biodiversity so that the public may enjoy it now and in the future

The purpose as stated in the Bill raises a number of questions:
What is marine biodiversity being protected from?
Is a marine reserve the best tool for this?
Will all benefit from protection within a marine reserve or is the position enhanced for some?

The definition provided in the Conservation Act suggests that:

- The public will benefit through their ability to appreciate and undertake recreation
- Future generations will benefit by having their options safeguarded.

However, what options are being safeguarded that cannot be provided through other means? We can only assume that the ability of the public to appreciate biodiversity and carry out recreational activities are the intended types of “options”, because other options (such as the ability to continue fishing into the future) are safeguarded by other means (e.g. Fisheries Act provisions). This therefore suggests a change of use rights from fishing to recreation.

The second part of the purpose section (subsections (a) to (c)) seems to suggest that a marine reserve can be positioned anywhere. The list is comprehensive including both special unique areas as well as common representative areas. Therefore the simple overall interpretation of areas in which marine reserves may be positioned would translate into:

Areas of every conceivable type

Put together the final purpose seems to be:

To conserve biodiversity of every conceivable type to provide for appreciation and recreational enjoyment by the public now and in the future

Or alternatively it might read:

To stop fishing so that recreational activities can take place

In this context, marine reserves appear to be a tool to re-allocate space to new uses, rather than a well targeted and clearly focussed environmental sustainability tool. If this is what the Crown intends, this has not been made clear. Furthermore, this is not a legitimate forum for the creation of legislation to enable that to happen. That, we were promised was to be Oceans Policy territory.

2. The Purpose pre-empts and is inconsistent with higher level strategies and policies
The discussion document entitled *Tapui Taimoana: Reviewing the marine Reserves Act 1971* set out the reasons for the review as follows\(^\text{12}\):

"The Government is reviewing the MRA to ensure that it remains relevant and effective in the light of changes in how we value, use and manage our marine environment. The New Zealand *Biodiversity Strategy*\(^\text{13}\) also called for a review of the MRA to better provide for the protection of marine biodiversity... However, repealing the Act is not being considered. Nor is this review intended to review or change other legislation and regulations governing customary food gathering, recreational fishing, or commercial fishing rights, although it does ask whether marine management mechanisms can be better co-ordinated."

In light of this, the following issues are relevant:

- The way we value, use and manage our marine environment is a question that goes directly to the centre of the *Oceans Policy*, which has yet to be developed with the full participation of Maori.
- The *Biodiversity Strategy* also contains many other related objectives that have not been taken into account, including better co-ordination of mechanisms for marine management and the relationship that Maori\(^\text{15}\) have with biodiversity.
- The Biodiversity Strategy is also an attempt to meet the requirements of the *Convention on Biological Diversity* which also contains other important components related to indigenous peoples\(^\text{16}\) that have not been considered.
- Within the Biodiversity Strategy an objective was developed to provide for a network of *Marine Protected Areas*. This too was intended to provide for better co-ordination of marine management tools.

Each of these neglected issues is discussed below.

### 2.1 Oceans Policy

The Oceans policy was promoted as the means by which New Zealand would achieve an overarching set of high level principles and guidelines that would steer us in the correct direction to implement management decisions in the marine environment and therefore reduce conflict. It was also intended to coordinate and consolidate marine statutes and implementation. To date the Oceans Policy has established a vision statement and four goals for achieving the vision:

**Vision statement:**

*Healthy Oceans*: New Zealanders understand marine life and marine processes, and accordingly take responsibility for wisely managing the health of the ocean and its contribution to the present and future social, cultural, environmental and economic wellbeing of New Zealand.

**Goals:**

\(^{12}\) *Tapui Taimoana: Reviewing the marine Reserves Act 1971*, p. 5

\(^{13}\) The New Zealand Biodiversity Strategy is discussed later in the context of a national response to the Convention on Biological Diversity.

\(^{14}\) See also later discussion on planning and co-ordination and objective 3.2 of the Biodiversity Strategy related to co-ordinated marine management.

\(^{15}\) See Theme Seven of the Biodiversity Strategy

\(^{16}\) See Article 8(j) and 10(c) of the CBD
New Zealanders having confidence in, supporting and participating in the wise management, stewardship and sustainability of New Zealand's oceans.

Ecological integrity and abundant biodiversity within New Zealand's oceans.

New Zealand's oceans providing the best value for New Zealand society now and in the future.

A framework that identifies the nature and extent of the rights and responsibilities of each Treaty partner in relation to the marine environment.\(^{17}\)

Te Ohu Kai Moana notes that the Government has identified as one of its key goals, the need to identify the nature and extent of the Treaty Partnership in relation to the marine environment. We also understand that Ministers are committed to ensuring that both the process to develop an Oceans Policy and the content of the policy are consistent with the provisions of the Treaty. Te Ohu Kai Moana would expect an Oceans Policy to provide for Maori values and rights to be treated consistently across all decisions, both in law, and in practice. The development of the Marine Reserves Bill, in its current form and ahead of the Oceans Policy, is inappropriate and inconsistent with the commitment made to this process by the Crown.

2.2 The New Zealand Biodiversity Strategy

The foreword of the Biodiversity Strategy makes the following statement:

"The New Zealand Biodiversity Strategy fulfils in part, commitments New Zealand made under the Convention of Biological Diversity.\(^{18}\)

"The purpose of the Strategy is to establish a strategic framework for action, to conserve and sustainably use and manage New Zealand's biological diversity." \(^{19}\)

While the Biodiversity Strategy does require a review of the Marine Reserves Act it also requires the development of a network of marine protected areas using a range of appropriate mechanisms. The guide for choosing the correct type of protection mechanisms is currently being drafted within the context of the Marine Protected Areas Strategy. In this strategy Marine Reserves are only one of a number of legislative means by which the overall purpose of protecting biodiversity is being considered.

We have noted with great concern the manner in which political parties are volleying for support with slogans promising 10% to 20% of New Zealand's marine environment as the target for marine reserves. This is a very disturbing, if opportunistic, manner in which to treat the seriousness of the resulting legislation.

2.3 The Convention on Biological Diversity

The central international Convention in relation to the Marine Reserves Reform is the Convention on Biological Diversity, in which:

Article 1 states:

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\(^{17}\) Letter dated 30 August 2002 from Lindsay Gow, Chair of the Oceans Policy Steering Group

\(^{18}\) Foreword in The New Zealand Biodiversity Strategy, February 2000

\(^{19}\) ibid, Executive Summary
The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

In addition, Article 8(j) and 10(c) specifically relate to how indigenous peoples should be treated in relation to natural resource management and use:

**Article 8 (j) states:**

Each contracting party shall, as far as possible and appropriate:

...Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application, with the approval and involvement of the holders of knowledge, innovations and practices and encourage equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices...

**Article 10 (c) states:**

Each Contracting Party shall, as far as possible and as appropriate:

...Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;...

Protecting natural resources from harm, degradation or destruction, for the benefit of future generations is consistent with the concept of Kaitiakitanga. Clearly sustainability of natural resources is central to the continuation of all life. However, the ultimate aim of Maori resource management is to provide for sustainable use while protecting biodiversity from harm. This is consistent with Article 1 of the Convention on Biological Diversity.

The proposed purpose of the new legislation anticipates that conservation and sustainable use are opposing and opposite ends of a continuum. Te Ohu Kai Moana submits that this is not the case and that the international community have agreed to very clearly set out guidelines on how integrating two or more objectives can be achieved in good faith.

“The fundamental criterion for success is to bring in from the beginning every significant sector that will affect, or be affected by, the MPA”

If biodiversity is in danger from harm or destruction then the threats to that biodiversity must be identified and managed appropriately. Therefore, in these circumstances Te Ohu Kai Moana supports measures that can be put in place to protect marine biodiversity that are consistent with the levels of risk. This is a sensible and practical way to proceed that allows all rights to be taken into account including

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21 Ditto, p. 21
traditional cultural practices that are compatible with conservation and sustainable use.

2.4 Marine Protected Areas Strategy

In the absence of an Oceans Policy for New Zealand:

- how can the Marine Reserves reform be allowed to proceed without guidelines that apply consistent standards across spatial reforms (e.g. Marine Reserves, Mataitai Reserves, "Recreational Rights" and Aquaculture)?; and
- how are Treaty Settlements (including the fisheries settlement) protected and monitored to ensure that they maintain their integrity?

These tasks would logically have been completed prior to the introduction of a Marine Reserves Bill, so that better co-ordination across all protection mechanisms could be achieved.

An important component of the Marine Protected Areas Strategy is to develop a guide which will establish what kind of protection is needed in any given situation and how to choose from the range of protection tools available. The completion of this task would also have helped to provide a better understanding of the legislative gap that exists for marine biodiversity protection and therefore help to correctly scope out the purpose of the Marine Reserves Act, thus providing for better co-ordination and reduction of conflict.

The much talked about 10% to 20% target also creates a perverse incentive for the agency responsible for it, to use it to use it for maximum effect despite existing rights holders – as though it were a currency for trade or savings in a bank account. We can foresee a future of doom for long stretches of coastline with limited access and therefore becoming targets for the most effective way to spend a percentage of the savings account. We can also foresee a future of scaremongering the “little people” into swapping their traditional fishing grounds (because they contain the most species richness) for barren wastelands, a practice already recorded in the history of this country.

3 The Purpose will not protect biodiversity from known threats

The international community\(^{22}\) has already identified the four main areas which have contributed to the loss of biological diversity. These include:

- Habitat destruction,
- Pollution,
- Inappropriate introduction of foreign plants and animals
- Over harvesting

Therefore all of these major threats must be carefully considered when developing a tool or suite of tools that will protect marine biodiversity form harm.

The World Conservation Union (IUCN) have developed a comprehensive set of guidelines\(^{23}\) on Marine Protected Areas in support of the Convention on Biological Diversity to help signatory nations implement conservation measures consistent with their national legislation. Good planning and implementation information is available in these guidelines that do not seem to have been sourced as part of the review of the Marine Reserves legislation. We highly recommend them to the select committee as a means of finding a more fitting approach to biodiversity protection than that which is currently being proposed in the Bill. Clearly the recommendations and analysis contained within these guidelines is (as it should be) generic.

As the oldest and by far the largest conservation organisation in the world, the IUCN guidelines and policies are highly influential around the globe. Indeed the conservation reforms of the 1990’s were largely based on the IUCN model. The reality is that now NZ is out of step with international development in conservation policies which place more emphasis on interactive use with the environment (the Maori and indigenous perspective) than it does on complete alienation models.

4. **The Purpose is inconsistent with the terms of reference for the review**

The terms of reference\(^{24}\) for this review agreed to by Cabinet required that:

> Marine reserves establishment and management will be carried out in a way consistent with the Crown’s obligations to Maori pursuant to the principles of the Treaty of Waitangi and which recognises and reflects the statutory obligations to Maori under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Conservation Act 1987.

While it is arguable whether or not the Bill provides for the direction given by cabinet in relation to the principles of the Treaty of Waitangi (see the Treaty Section 11 of the Bill), this is clearly not the case in relation to the fisheries settlement. The instruction requires both recognition of, and reflection of, the Settlement Act. However, The Fisheries Settlement is not referred to in the Bill. Of particularly grave concern the decision-making processes that are contained within the Bill (in particular clause 67) will legislate to facilitate what might otherwise be considered a breach of the settlement. Even before the Maori Fisheries Bill is in the house, this new legislation will take away the long awaited fruits of that full and final settlement.

5. **The Purpose is inconsistent with the Treaty obligations**

- Is the purpose of a Marine Reserve specifically to protect biodiversity under Article I of the Treaty of Waitangi? (from some known or identifiable threat or even a multitude of threats) Or;

- Is the purpose to provide access (or use of the natural environment) for public use and enjoyment under Article III? (i.e. to spatially reallocate access from the fishery for other activities and values such as ecotourism, tertiary or research industry, or public use and enjoyment etc).

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\(^{24}\) Extract from the terms of reference for the Review of the Marine Reserves Act 1971.
If it is the former, the Crown must work actively with Maori to develop appropriate opportunity for Maori input and participation in establishing, managing and reviewing Marine Reserves. This will be discussed in more detail later in this submission.

If it is the latter the Crown must give serious consideration to the implications upon the Fisheries Settlement (and arguably also the integrity of the rights-based fisheries management system) and be prepared to reconcile or re-negotiate the terms of those contracts with affected parties. Te Ohu Kai Moana also submits that such a reform is inappropriate within the context of this Bill. We reiterate that this subject can only be addressed equitably and fairly within the context of an over-arching principled agreement (i.e. the Oceans Policy).

Te Ohu Kai Moana is supportive of the need to review the Marine Reserves Act 1971, and the way in which Marine Reserves are established and managed. A review of the Act is long overdue in light of the trends evidenced in more recent legislative reforms and policy developments. The Marine Reserves Act has not kept pace with the negotiated agreements between the Treaty partners including:

- the Maori Fisheries Act 1989; and
- the 1992 fisheries Deed of Settlement; and
- the Treaty of Waitangi (Fisheries Claims) Settlement Act, and
- the “Customary Fishing Regulations” for both the North and the South Islands; and

The review of the Act should therefore be based upon all of these contemporary developments to bring it into line with the Government's Treaty obligations and agreements. The Marine Reserves Act is sorely out of line with these contemporary rights-based marine management developments. However, having waited this long, there appears to be no compelling reason for haste now.

6 The Purpose will result in Marine Reserves targeting traditional fishing grounds

There is considerable reason to be concerned about the threat that the Bill, in its present form, will pose to the protection of traditional fishing grounds provided for under the fisheries settlement.

The customary regulations are not providing for the protection of traditional fishing grounds because of the problems with implementation causing significant delays. This is a particular problem in the North Island where as at the 30th of September 2001 there have been no Mataitai (traditional fishing grounds) established since the Settlement was finalised in 1992. In the South Island there is a marginal difference with only 2 Mataitai Reserves having been established in the same period. This suggests that something is seriously wrong with delivering on this component of the settlement.

If the Marine Reserves Bill proceeds in its current form the results will be that:
Marine Reserves are going to target these same areas because traditional fishing grounds are areas that contain the most species richness (i.e. biodiversity).

While Marine Reserves can not become established (under the Bill) when a Mataitai reserves already exists, it is not possible to establish a Mataitai reserve until all disputes are resolved. This is highly likely to result in Marine Reserves becoming established ahead of Mataitai Reserves.

Compared to the process (including funding and timeframes) proposed in the Marine Reserves Bill Maori will have to jump ten times higher to establish Mataitai Reserves than is proposed for Marine Reserves in the race for space that has already begun.

Compare the time frames, standing requirements, funding and decision making tests between Mataitai Reserve and Marine Reserve establishment.

Te Ohu Kai Moana submit that if the legislation progresses in its current form the effect will be the targeting of traditional grounds thus a significant threat to the fisheries settlement, its implementation and integrity.
Appendix 4.

Implementing a Well Planned and Co-ordinated Approach

Knowledge about the key threats to marine biodiversity should help inform the in progress Marine Protected Areas Strategy, until such time as the Oceans Policy which is currently being developed, provides high level guidance. It is submitted that the Marine Protected Areas Strategy, in turn, should guide where and how Marine Reserves are established and managed amongst other natural resource management tools. Unfortunately, the Marine Reserves Bill has been progressed ahead of both the Oceans Policy and the Marine Protected Areas Strategy.

In the absence of those planning and guiding policies and having noted the ad-hoc approach that has been proposed in the Bill for Marine Reserve establishment Te Ohu Kai Moana reiterate that an important generic obligation on the Crown is to make informed decisions. This includes being informed, as far as possible about the following types of information.

Marine Information Systems

There is a need to establish some type of bio-region even if they have to change later. Examples include FMA’s or QMA’s under the Fisheries Act. There are at least two marine classification systems currently under development that can help with the overall planning process for evaluating:

- If a marine reserves is needed, to protect unique or special types of biodiversity
- If so, of the available choices, where is the best choice site (relate to least impact arguments)

The development of a Marine Classification Systems is also consistent with the information and ecological principles proposed for inclusion in the front end of the new legislation.

The collection of this type of information is slow and we know very little about the marine environment. However, it is essential that we continue to improve our knowledge and gain better information about the state of the marine environment, this is particularly important in the long-term if we wish to sustain use of these resources.

Threats

The need to provide for both biodiversity protection under international Treaties (i.e. Convention on Biological Diversity) and national Treaties and Legislation (i.e. Treaty of Waitangi and the Treaty of Waitangi Fisheries Claims Settlement) require reconciliation where there is inconsistency.

Protecting natural resources from harm, degradation or destruction, for the benefit of current and future generations is consistent with the concept of Kaaitiakitanga. It is also consistent with both, Article 1 of the Convention on Biological Diversity and
Article I the Treaty of Waitangi. The ultimate aim of Maori resource management is to provide for use while protecting biodiversity from harm.

The approach that has been taken in attempting to integrate other objectives (i.e. providing for other uses by reallocating space under the guise of biodiversity protection), and at the same time unilaterally extinguishing Article II Treaty rights is inconsistent with the Crowns obligations.

If biodiversity is in danger from harm or destruction then the threats must be identified and managed appropriately. Therefore, in these circumstances Te Ohu Kai Moana supports measures put in place to protect marine biodiversity that are consistent with the level of risk.

Te Ohu Kai Moana submits that this risk based approach is consistent with the Crowns Article I Treaty right to ensure sustainable limits as a first priority. The approach suggested in the Marine Reserves Bill which allows anyone to apply for a Marine Reserve is ad hoc and does not mitigate the negative impacts upon the Fisheries Settlement. Neither is it an effective way of managing people’s expectations or minimising conflict when expectations can not be met.

**Major Threats Already Identified**

Having decided upon a bio-type classification system as a sound planning foundation we need then to look at the threats to biodiversity within each type or region. The international community\(^{25}\) has already identified the four main areas that have contributed to the loss of biological diversity. These include:

- habitat destruction,
- pollution,
- the inappropriate introduction of foreign plants and animals
- over harvesting

Therefore **all of these major threats** (which may be multiple or cumulative) must be carefully considered when developing a tool or suite of tools that will protect marine biodiversity form harm.

A “no take” marine reserve will not, on its own, deliver the appropriate tool to protect biodiversity from all of these known threats. It will only stop fishing! Fishing and fishing related impacts are already managed under the Fisheries Act. Under the Fisheries Act there are a full range of measures that may be taken to control fishing including excluding fishing. Therefore, the Marine Reserve Act should not seek to duplicate what the Fisheries legislation already provides for (i.e. to fill the legislative gap discussed earlier).

**Risk Assessment**

Then need to assess the risks within each region against the key threats (identified above). This would involve an assessment of:

- the severity and intensity of the risks
- are the threats multiple or cumulative
- which ones can we actually do something about and which not
- of those we can mitigate which are the most important?

**Mitigation Options**

Once we have a good understanding of the size and shape of the problem that we are trying to address through the risk assessment we then need to examine the tools that are available to help us remedy the problem. A number of tools have already been designed and each for a specific purpose including:

- Fisheries Act 1996
- Resource Management Act 1991
- Marine Mammals Protection Act 1978
- Wildlife Act 1953
- Others

**Choosing the Correct Tool**

What is needed is a specific tool that is correctly placed amongst other natural resource management tools that will provide a distinctive focus for biodiversity protection – where it is needed and warranted. That is, where no existing management tool provided under existing statute will, on its own, achieve the level of protection necessary.

Therefore while we submit that the purpose of the Marine Reserves Act must be tightly focused or restricted to biodiversity protection - from threats/risks so that it does not duplicate or overlap existing tools such as those already available under the Fisheries Act 1996 or the Resource Management Act 1991, the mechanisms must clearly be capable of addressing all key threats.

Te Ohu Kai Moana submits the adoption of mechanisms modelled on section 32 of the Resource Management Act 1991. This would ensure that decision makers:

- undertake a comprehensive assessment of alternative protection mechanisms and their associated costs and benefits.
- Choose the tool that will provide maximum protection for biodiversity while minimising the costs to interested persons; and
- produce an assessment of the likely benefits that will accrue from Marine Reserves for the purpose of negotiating access and benefit sharing.

Should a marine reserve prove necessary this latter assessment could also be used in the mitigation negotiations as part of implementing the Marine Reserves.
If identifying and prioritising the treatable threats to biodiversity is the genuine aim, then the full range of realistic options for mitigation and the plan for recovery must occur with linkages to other natural resource management legislation and policy for proper integration to occur.

**Least Cost / Best Method Approach**

Once the threats to biodiversity for any given area have been identified and their risks characterised a planned approach is needed to establish where else that biodiversity is located hence the need for a marine classification system. If there are many sites containing the same or similar ecotypes decision-makers should consider the need for a marine reserve in light of the known distribution of other similar types. Where there is more than one alternative site decision makers should consider which site will have the least impact upon existing rights holders, and do so in consultation with them.

Once a site has been selected the next step is to consider whether a Marine Reserve is the most appropriate form of protection given the threats which have already been identified. It may well be, that in many cases a marine reserve will have little value to add to the objective of protecting specific ecotypes. This of course is all dependent upon the types of threats.

If after a decision has been made to establish a marine reserve because it has been found to be the best means of addressing the specific threats to marine biodiversity the next step is then to assess the total costs associated with implementing, monitoring and reviewing marine reserves. By costs we refer to all costs both on existing rights holders and the Government. These costs must be investigated and quantified so as to provide for transparent and informed decision making.

**Recommended new clause**

*Least costs* means all current and future costs (to both Government and Interested Parties) associated with the establishment, implementation, monitoring and review of marine reserves including any transitional or displacement costs.

**Settlement Act Requirements for Input and Participation**

The Treaty of Waitangi (Fisheries Claims) Settlement Act contains an obligation on the Crown to provide for Maori participation in the Management and Conservation of New Zealand’s fisheries. Providing for participation does not simply translate to holding consultation hui and sending out requests for submissions on Marine Reserve proposals. It must also provide Maori with the capacity to respond in an informed and comprehensive manner, and for those responses to hold weight in the policy development process. The Bill does not provide any practical processes, funding or timeframes for dealing consistently with this matter. Therefore, Te Ohu Kai Moana submits that the following new clause be added into section 4 as a generic requirement across all establishment, management and review provisions.

**Recommended new clause**
The Minister must provide for the input and participation of tangata whenua in the establishment, management and review of a marine reserve, irrespective of the establishment of any formal management body or advisory board, including:

- Providing sufficient information and background materials as may be reasonably expected to keep abreast of relevant events taking place within and affecting the reserve area;
- Providing sufficient technical support and communication materials for the purpose of interpreting any scientific or technical material;
- Providing sufficient time and resources to respond in an informed manner to any request for information or comment;
- Providing sufficient funding to assist with the development of carrying out any work including the writing of any reports or submissions.

We note also that the Marine Reserves Bill contains no definition of tangata whenua despite the fact that the term appears in the text on numerous occasions. This definition is important because it will determine who will be included or more importantly who will be excluded from participation. The intent should be to include all those with an interest in a particular rohe moana and not to deliberately exclude any one group or type of group.

Recommended new clause

\textit{tangata whenua}\textsuperscript{26}, in relation to a particular area, means the Iwi, or hapu, that holds mana whenua mana moana over that area.

As a matter of interest it has become Te Ohu Kai Moana’s practice to refer all requests for submissions, on marine reserves proposals, received by us to the relevant Iwi. Iwi can then liaise with the relevant Hapu or Marae depending on the nature and size of the marine reserve being considered before a final submission is returned. It has also become a far too frequent practice that government departments including the Department of Conservation have forgotten to provide us with vital information (including requests for submission and background material) so that we may respond appropriately.

As outlined earlier in this submission it is critically important to ensure that all those who have established rights either under article II or III have the opportunity to be fully informed about any potential application and hence opportunity to make a legitimate submission. The inclusion of a clause similar to that proposed here is also consistent with the use of interested person’s provisions which currently exist in the Fisheries Act\textsuperscript{27}

Recommended Amendment

\textit{Interested persons} in relation to a proposal, means a person or persons likely to have a significant interest in the proposal and includes –

(a) Iwi and Hapu who are tangata whenua

\textsuperscript{26} Modified from the RMA
\textsuperscript{27} See section 12 of the Fisheries Act 1996
(b) Te Ohu Kai Moana (or any organisation responsible for monitoring the implementation of the Deed of Settlement)
(c) Any other interested person or their representative

There is also a need for the Minister to provide for oral submissions to be recorded and heard from representatives of tangata whenua where they elect to do so. There should be a degree of flexibility in establishing an appropriate venue for such submission and ideally this should be agreed to between the parties concerned.

**Recommended addition**

**cl. 42 Submissions and consultation**

(5) The Minister must provide for oral submissions to be recorded and heard from representatives of tangata whenua where they elect to do so at a location agreed to between the parties.

**International and National Obligations on Prior informed Consent**

Article 8(j) of the CBD requires states to obtain the approval and involvement of the holders of traditional knowledge. This is consistent with the principles of the Treaty of Waitangi. Knowledge about biodiversity and traditional fishing grounds is part of the traditional knowledge referred to in the CBD.

Additionally, because of the impacts that a Marine Reserve will have to the fisheries settlement and tribal cultural identity the prior informed consent must be sought from those who will be affected including Te Ohu Kai Moana, Iwi/hapu. This includes both the need for and the correct tool for protecting biodiversity. Te Ohu Kai Moana notes that the Bill proposes to remove the concurrence role of the Minister of Fisheries in the establishment process.

In the absence of this concurrence role and in accordance with the settlement obligation for input and participation we assert that the concurrence role *de-facto* of Article II is returned to Maori including TOKM/Iwi/Hapu.
Appendix 5.

Iwi Contact List
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RONAN
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Ngati Kuri Trust Board
Te Manawa o Ngati Kuri
5399 Main North Road Ngataki
Rd4 KAITAIA (09)409-8151
Te Runanga o Whaingaroa
PO Box 88
Kaeo
NORTHLAND (09)405-0340
Te Runanga-a-iwi o Ngati Kahu
PO Box 392
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KAITAIA (09)408-3013
Te Runanga a Iwi o Ngapuhi
PO Box 263
KAIKOHE (09)401-0084
Te Runanga o Te Rarawa
PO Box 361
KAITAIA (09)408-1971
Ngati Wai Trust Board
PO Box 1332
WHANGAREI (09)430-0939
Te Runanga o Ngati Whatua
PO Box 1784
WHANGAREI (09)438-2870

HAURAKI/WAIKATO/KING COUNTRY
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Waikato Raupatu Lands Trust
Private Bag 542
NGARUAWAHIA (07)824-8689
Maniapoto Maori Trust Board
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TE KUITI (07)878-6234
Raukawa Trust
Private Bag 8
TOKOROA (07)885-0260

TE ARAWA/TAUPO
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Tuhourangi Runanga a Iwi
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ROTORUA (07)349-0216
Te Runanganui o Tapuika me Waitaha
PO Box 572
Te Puke
TE PUKE (07)573-6448
Te Runanga o Ngati Rangitaneorere
Te Ngae Road
ROTORUA (07)349-7807
Te Runanga o Ngati Rangitahi
4 Nesbitt St
Matata RD4
WHAKATANE (07)322-2079
Te Runanga o Ngati Pikiao Trust
PO Box 2341
1225 Pukuatua St
ROTORUA (07)348-5384
Ngati Tuharetoa Marine Fisheries Comm.
P.O. Box 126
TAUPO (07)377-9901
Te Kotahitanga o Te Arawa Waka
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1192 Haupapa St
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Ngati Tarawhai Trust Board
P.O. Box 464
ROTORUA (07)362-4636
Te Maru o Rangiwewehi
P.O. Box 971
ROTORUA [07] 347-2266

BAY OF PLENTY
Ngatiereangi Iwi Inc.
PO Box 4369
MT MAUNGANUI (07)575-3765
Ngati Ranginui Iwi Society Inc.
PO Box 2526
TAURANGA (07)571-0934
Ngati Pukenga Iwi ki Tauranga Inc.
612 Welcome Bay Rd
RD5
TAURANGA (07)544-4413
Te Runanga o Ngati Awa
PO Box 76
WHAKATANE (07)307-0760
Whakatohea Maori Trust Board
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OPOTIKI (07)315-6150
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<th>Phone Number</th>
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<tr>
<td>Te Runanga o Ngati Kuia Charitable Trust</td>
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<td>Ngati Mutunga O Wharekauri</td>
<td>PO Box 62</td>
<td>Waitangi</td>
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<td>Ngati Koata No Rangitoto ki te Tonga Trust</td>
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<td>NELSON</td>
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<tr>
<td>Hokotehi Moriori Trust</td>
<td>P.O. Box 188</td>
<td>CHATHAM ISL.</td>
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Appendix 6.

List of Existing Marine Reserves

Established Marine Reserves

1. Poor Knights Island 1981
2. Kermadec Islands 1990
4. Tuhua (Mayor Island) 1992
5. Whanganui A Hei (Cathedral Cove) 1992
7. Piopiotahi (Milford Sound) 1993
8. Te Awaatu Channel (The Gut) 1993
9. Tonga Island 1993
10. Westhaven (Te Tai Tapu) 1994
11. Long Bay-Okura 1995
12. Motu Manawa-Pollen Island 1995
13. Te Angiangi 1997
14. Pohatu 1999
15. Te Tapuwae o Rongokako 1999
16. Auckland Islands 2003