



Briefing: Hauraki Gulf / Tīkapa Moana Marine Protection Bill: Approval of Departmental Report to Select Committee

To	Minister of Conservation	Date submitted	18 March 2024
Action sought	Approve the Departmental Report	Priority	High
Reference	24-B-0106	DocCM	DOC- 7595443
Security Level	In Confidence		

Risk Assessment	<p>Low</p> <p>The proposals in the Bill balance competing interests, though some Select Committee submitters may consider their concerns have not been adequately addressed.</p> <p>The Legislation Design and Advisory Committee has raised improvement points regarding the Bill's Treaty clause and interaction of the Bill with the Marine and Coastal Area (Takutai Moana) Act.</p>	Timeframe	<p>21 March 2024</p> <p>Feedback is required by this date to allow for submission of the Report to the Select Committee on 22 March 2024.</p>
Attachments	<p>Attachment A – Recommendations in the Departmental Report for your approval</p> <p>Attachment B – Draft Departmental Report</p>		

Contacts	
Name and position	Cell phone
Ruth Isaac, Deputy Director-General, Policy and Regulatory Services	S9(2)(a)
Sam Thomas, Director, Policy	9(2)(a)

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Hauraki Gulf / Tīkapa Moana Marine Protection Bill is currently before the Environment Select Committee (the Committee). Hearing of oral submissions is due to conclude Thursday 21 March 2024.
2. The Department has developed a draft Departmental Report (the Report) to the Committee, providing our recommendations for changes to the Bill, including in response to submissions received during the Select Committee process. We seek your agreement to our recommendations (**Attachment A**) and your approval of our Departmental Report (**Attachment B**).
3. Most of the Department’s recommendations for changes are minor or technical in nature, for example, to provide greater clarity in the Bill or to address a drafting error. This briefing draws your attention to several matters that are more substantive in nature and/or that may attract a higher degree of stakeholder interest (this includes matters where we recommend no change to the Bill). These matters are additional to those we recently advised you on, including not providing an exemption for the harvest of kina within the protected areas [24-B-0105 refers]. In summary, these matters are:
 - 1) Clarity of te Tiriti o Waitangi / Treaty of Waitangi clause;
 - 2) Interaction with the Marine and Coastal Area (Takutai Moana) Act 2011;
 - 3) Adding a list of Department of Conservation (DOC) functions under the Bill;
 - 4) The intersection of the permitting regime with resource consents;
 - 5) Exemptions to the permitting regime;
 - 6) The review clause;
 - 7) Providing a process for adding new protected areas;
 - 8) Amendments to the proposed boundaries of the protected areas;
 - 9) A new power for rangers to require removal of structures; and
 - 10) The use of fisheries measures as an alternative to marine protection.
4. Last week, the Legislation Design and Advisory Committee provided their advice on the Bill, raising three matters: The interaction of the Bill with the Marine and Coastal Area (Takutai Moana) Act 2011 and the Resource Management Act 1991; the Bill’s Treaty clause; and the infringement and offence regime. We address each of these in this briefing.
5. The Report is due with the Committee on 22 March 2024, with the Committee scheduled to begin considering the Report on 28 March 2024. This is pending Cabinet’s decision on your proposal for the Bill to continue to progress through the House (Cabinet Legislation Committee meeting scheduled for 21 March 2024; 24-B-0120 refers).
6. The Committee is due to report back to the House on 29 May 2024.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Indicate your decision for each proposed change to the Bill as provided in Attachment A	Yes / No
b)	Note that the Departmental Report (Attachment B) currently reflects the recommendations in Attachment A	
c)	Approve the Departmental Report (Attachment B) for submission to the Environment Select Committee, noting that officials will make any necessary changes to reflect your decisions on the recommendations in Attachment A	Yes / No
d)	Note that the Bill's continued progression through the House is subject to a Cabinet Legislation Committee decision scheduled for 21 March 2024	
e)	Note that there will be an opportunity for you to propose amendments to the Bill should the Bill progress to a second reading and Committee of the whole House stage	
f)	Note that officials are available to meet with you to go through any aspects of the Bill or Departmental Report	

S9(2)(a)

Date: 18/03/2024

Date: / /

Ruth Isaac
Deputy Director-General, Policy and
Regulatory Services
For Director-General of Conservation

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. This briefing seeks your approval of the Departmental Report to the Environment Select Committee on the Hauraki Gulf / Tīkapa Moana Marine Protection Bill.

Background and context – Te horopaki

2. The Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) was introduced to the House and referred to the Environment Select Committee (the Committee) in August 2023. Over 7,000 public submissions were received on the Bill.
3. The Committee heard oral submissions through February-March 2024.
4. The Department is required to produce a Departmental Report (the Report) to the Committee. The Report responds to public submissions made on the Bill. It includes an analysis of issues raised by submitters and any recommendations for changes to the Bill.
5. The Department and the Parliamentary Counsel Office are also recommending some changes, including to correct drafting errors and clarify aspects of the Bill. Such changes include amending the names of several protected areas to reflect the correct geographical names, correcting technical errors in the maps of the protected areas, and drafting amendments to reflect the policy intent.
6. We recently met with the Legislation Design and Advisory Committee (LDAC), who have now provided their advice on the Bill. They have raised three matters with us:
 - a) The interaction of the Bill with the Marine and Coastal Area (Takutai Moana) Act (MACA) 2011 and the Resource Management Act (RMA) 1991 (specifically, a lack of clarity about overlapping rights under the regimes, which increases the risk of litigation);
 - b) The Bill's Treaty clause (advising that the Bill should include operative provisions that give greater clarity to how the principles of the Treaty of Waitangi will be given effect to); and
 - c) The infringement and offence regime (recommending that the Bill better identify what is prohibited and ensuring the regime achieves this).
7. LDAC's concerns regarding MACA can be addressed in part by clarifying in the Bill how MACA rights and interests would be considered during the permitting process, in particular where a resource consent under the RMA is required in addition to a permit under the Bill. Further advice on this is provided below.
8. We do not recommend changes to the Treaty clause at this time. Further advice on this is below. LDAC's concerns regarding the infringement and offence regime can be addressed through clarification of the policy intent in the Bill; the Report includes a recommendation to achieve this.
9. We have drafted the Report to reflect our previous recommendations to you on the following matters: a no compensation clause; prohibition of particular fishing methods; issues relating to biodiversity objectives; provision for harvest of kina (where we propose not to include a blanket exemption to kina harvest); permit exemptions; and whether to include the proposed Hākaimangō-Matiatia (Northwest Waiheke) Marine Reserve in the Bill [24-B-0105 refers]. Your decisions on these matters are required for incorporation in the Report.
10. On 21 March 2024, the Cabinet Legislation Committee will consider your proposal for the Bill to continue to progress through the House [24-B-0120 refers].

The Bill proposals offer novel and effective solutions to substantive challenges

11. The Bill interacts with some contentious issues, including fishing rights and customary fishing. The proposals balance a range of interests. The commercial aspects of the Fisheries Settlement will not be undermined by the establishment of the protected areas; the proposal explicitly recognises and provides for customary fishing. Once in place, nearly 20% of the Gulf will be in some form of marine protection, with an estimated impact on only about 3% of total commercial catch in the region.
12. However, some submitters continue to raise concerns regarding the provision for customary fishing in the Bill and regarding the potential effect of the proposals on rights established under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and related Deed of Settlement.
13. The use of special legislation was raised as a concern by some submitters, as was the capacity of the Department to implement and manage the proposed protected areas (for example, to undertake compliance and law enforcement).
14. We do not consider that further changes are required to the Bill to address these matters, as they were substantively considered during development of the Bill and the protection proposals within it (for example, through consultation and engagement processes, and through the Economic Impact Assessment we commissioned).
15. Our Report and our responses to the Committee's request for additional advice (appended to the Report) have addressed these issues.

Proposed changes to the Bill will effectively address identified issues

16. A full list of our proposed recommendations is provided in Attachment A; we seek your approval of these.

Clarity of te Tiriti o Waitangi / Treaty of Waitangi clause (recommendation 3 in Attachments)

17. LDAC's advice on the Bill's Treaty clause was that more descriptive operative provisions should be included to clarify how the Bill gives effect to the principles of the Treaty. We note that the Bill includes a range of mechanisms designed to give effect to the Treaty (such as decision-making criteria on permits; how biodiversity objectives would be developed; the recognition of mātauranga Māori in Ministerial decision making on regulations). Including more descriptive operative provisions in conservation legislation is a larger policy challenge to be addressed.
18. The Treaty clause in this Bill reflects section 4 of the Conservation Act 1987 (Conservation Act) but has been modernised to also include the phrase 'Te Tiriti o Waitangi'. This allows for the suite of case law and interpretation of the Conservation Act to be applied in relation to this Bill. This clause is also supported by Te Arawhiti.
19. We do not recommend any changes to this clause at this time. However, officials will further consider how to provide for more descriptive operative provisions within the Bill. These could be included in an Amendment Paper following the Select Committee process if desired.

Marine and Coastal Area (Takutai Moana) Act 2011 provisions (recommendations 9 and 10 in Attachments)

20. LDAC has advised that the Bill's MACA provisions (clause 8 of the Bill) create a lack of clarity across interactions between the Bill, MACA and the RMA. This includes in the situation where activities within the protected areas require both a resource consent and a permit under the Bill.

21. We agree with this advice, and propose amendments to the Bill's MACA provisions. The proposed amendments align with the original policy decisions taken by Cabinet to protect MACA rights and interests. We propose to exempt from the prohibitions (within high protection areas and seafloor protection areas) the exercise of protected customary rights or rights held by a customary marine title group under MACA. This will mean that these activities can take place without requiring a permit under the Bill.
22. We also propose requiring that where other statutory authorisations are needed (such as a resource consent), then no decision on a permit under the Bill can be made until that authorisation is obtained. This will ensure that consideration of MACA matters is made under the RMA before a permit under the Bill can be issued. Regardless of whether a resource consent is also required, the Director-General will also still be required to consider the anticipated effects of the activity on the rights and interests of whānau, hapū and iwi that exercise kaitiakitanga in the protected area. The principles of te Titiri o Waitangi / the Treaty of Waitangi will also need to be given effect to.

Functions of the Department of Conservation (recommendation 79 in Attachments)

23. We propose to add a new clause to the Bill, to provide a non-exhaustive list of functions of the Department in relation to the Bill. Adding such a clause would assist with addressing submitters' recommendations to better highlight the importance of matters such as science and monitoring, and assist with ensuring that management functions such as monitoring, boundary marking and research are provided for.
24. As drafted, the Bill does not include a list of functions of the Department. While the Department's broad functions are listed in section 6 of the Conservation Act, they do not refer explicitly to marine areas. Adding a list of DOC functions to the Bill will clarify the Department's functions in relation to the high protection areas (HPAs) and seafloor protection areas (SPAs) to be established by the Bill.

Permitting under different regimes (recommendation 33 in Attachments)

25. A small number of submitters, including Auckland Council, have suggested that requiring resource consents under the RMA, and a permit under the Bill to undertake otherwise prohibited activities, creates unnecessary complication and inefficiency and have proposed that only a consent under the RMA should be required. Waikato Regional Council (also affected by the proposals), however, does not consider this matter to be concerning and is comfortable with the Bill permitting provisions.
26. We do not propose any change to the Bill in this regard. A permitting regime is needed in the Bill as there will be activities that do not require a consent under the RMA, but may involve a prohibited activity under the Bill (such as some restoration activities). If a council were to be the only decision maker on activities in an SPA or HPA, this would create significant risks for you and the Department given your and the Department's statutory responsibilities for these areas.
27. Some activities will fall under both regimes, however based on consenting data over the last 30 years in the proposed protected areas, we anticipate this to be less than one application per year. The Department intends to coordinate with councils to ensure the permitting system is as simple as possible for applicants. Officials could consider further options to support coordination between the regimes for an Amendment Paper if desired.

Exemptions to the Bill's prohibitions (recommendations 25-30 in Attachments)

28. Some submitters have proposed additions to the list of activities that are exempt from the Bill's prohibitions. These additions include activities of councils, and the laying and maintenance of submarine cables and pipelines.
29. While we acknowledge the importance of these activities, we do not consider that they should automatically be exempted from the prohibitions in the Bill (and from requiring a

permit under the Bill). The Bill's permitting system already provides an avenue for activities that are necessary and cannot occur elsewhere (which could provide for essential infrastructure).

30. Some activities, such as the construction of wastewater discharge pipes or installation of pipelines, could have more than minor effects on the marine environment and the values to be protected by the Bill. The Bill ensures that the Director-General of Conservation is informed of such activities and is able to attach conditions to permits as necessary.
31. Submissions were also received requesting an exemption for some recreational fishers, for example for residents of Kawau Island and the owners of Takangaroa Island. Such carve-outs could affect the viability of the protection areas and create compliance challenges. We therefore do not recommend including such carve outs in the Bill.

Review clause (recommendations 63-65 in Attachments)

32. The Bill provides for a review after 25 years (or earlier on Ministerial agreement). Some submitters have suggested that 25 years is too long and also that the review process is not adequately described.
33. We do not consider a change to the timeframe for the review is necessary. This is because the Bill provides for a review at any time and the Department will be able to adjust its day-to-day management regime to respond to a range of management issues. Additionally, 25 years likely provides an adequate period of time for ecological changes to take place within the protection areas, providing useful information to inform the review process.
34. However, if a shorter review period was desired, we have identified in our Report that a review period shorter than 25 years (but no shorter than 10 years) could be prescribed. We have also identified that the Bill could require the Department to produce a 5-yearly report on research and monitoring, to inform ongoing management and potentially act as a trigger for a review prior to the mandatory 25-year review.
35. The Bill is not prescriptive around the review process and matters such as what changes could result from the review. This will provide for greater flexibility in the future and not constrain the nature of any proposed changes resulting from the review. This also allows for consideration of any advances in marine management approaches and knowledge and views of the next generation.
36. We recommend a change to the review reporting clause, so that the legislation will require Ministers to produce a review report within 2 years of the review being initiated. The Bill currently requires a review report, but is silent on when it should be presented to the House.

Providing a process for adding new protected areas (recommendation 74 in Attachments)

37. Some submitters suggested that the Bill should provide a mechanism for the establishment of additional protected areas in the future.
38. The Bill establishes protected areas that were developed as part of a lengthy, stakeholder-led process; the Bill is not intended to provide a legislative mechanism for new protected areas.
39. Effectively establishing new, strategic and timely marine protection is a national issue, and the existing Marine Reserves Act 1971 (the primary tool for advancing new marine protection) is not fit-for-purpose. Future reform of this Act would be a more appropriate vehicle to advance new marine protection, both in the Gulf and nationally.

Amendments to boundaries of the proposed protected areas (recommendation 66 in Attachments)

40. Some submitters proposed amendments to the boundaries of the proposed protected areas, to enhance biodiversity protection and/or mitigate the impacts on users (in particular fishers). For example, the New Zealand Rock Lobster Industry Council proposed changes to the boundaries of some protected areas to exclude areas of importance for commercial lobster fishing.
41. All the proposed protected areas under this Bill were selected following an extensive social and scientific process. They effectively protect biodiversity and reflect a range of uses and interests. They will increase the level of protection in the Gulf to nearly 20%, with an estimated impact on 1-3% of commercial catch. We are therefore not proposing to recommend any changes to the boundaries or management regime of the proposed protected areas.

New power to remove structures (recommendation 76 in Attachments)

42. Under the Bill, while it would be offence to erect a structure without a permit, there is currently no power proposed to require an offender to remove the structure or remedy the site. We propose to amend the Bill to provide a new power for rangers to order the removal of a structure and recover costs if the Department must remove the structure itself.

The use of fisheries measures as an alternative to marine protection

43. Many submitters raised that fisheries management measures should be used instead of or in addition to the marine protected areas proposed in the Bill. Suggestions were made for fishing method closures (in particular, to close the Gulf to bottom trawling), changes to bag limits, seasonal closures and a range of other measures.
44. The Bill addresses a range of pressures on the Gulf. To deliver the proposed protection and the management regime using existing legislation would require the use of several overlapping legislative tools, not only the Fisheries Act 1996, but other legislation managed by both central and regional government.
45. The Bill is one of a number of initiatives to address the declining health and mauri of the Gulf. Other initiatives include the Hauraki Gulf Fisheries Plan. The proposals by submitters for fisheries management measures are outside the scope of the Bill; Fisheries New Zealand is working through implementing a number of actions relating to fisheries management through the Hauraki Gulf Fisheries Plan.

Risk assessment – Aronga tūraru

46. The Cabinet Legislation Committee (LEG) is to consider whether to progress the Bill on 21 March 2024. This is a standard process for all Bills initiated under the previous Government. A decision not to proceed will need to be carefully managed, given the public expectations for change and growing frustrations with the pace of new protection in the Gulf [24-B-0120 refers].
47. Some submitters have raised substantive concerns regarding components of the Bill, broader marine protection policy matters and/or the approach taken by the Government to addressing the decline in health and mauri of the Hauraki Gulf. As with any such process, should the Bill proceed, and should submitters consider that their concerns have not been addressed, it is possible that litigation is pursued. We consider the Government's position on these matters to be robust.
48. LDAC has raised a concern that the Bill's provisions relating to MACA and the Treaty create a lack of clarity, increasing the risk of litigation. LDAC has also identified some areas in the Bill relating to infringements and offences that lack clarity. They have therefore recommended that DOC seek Crown Law advice on all these matters. As

above, we are proposing some changes to the Bill's MACA provisions and the infringement and offence regime to address these concerns. We do not intend to seek Crown Law advice on these matters at this stage, given the timeframes for providing our Report to the Committee.

49. Should you have concerns with any content of the Bill following the Committee's report back to the House, you may wish to propose amendments to the Bill. An Amendment Paper (AP; formerly called a Supplementary Order Paper or SOP) can be prepared by Parliamentary Counsel Office (PCO), at your request, and considered at the Committee of the whole House stage. This may also provide an avenue for further addressing LDAC's advice on the Bill should that be required. We will provide further advice on this process and your options following the Committee's report-back.

Treaty principles (section 4) – Ngā mātāpono Tiriti (section 4)

50. The Bill has been designed to give effect to Māori rights and interests. The Bill includes a Treaty clause modelled on section 4 of the Conservation Act. The Bill also includes a clause relating to its interaction with the Marine and Coastal Area (Takutai Moana) Act 2011. The Bill provides for customary non-commercial fishing to continue to be exercised in the proposed high protection areas.
51. The Department engaged with mana whenua in developing the proposals in the Bill. We are confident that Māori rights and interests are protected and given effect to through this Bill.
52. However, submitters (in particular Te Ohu Kaimoana, fishing industry bodies and some iwi) raised concern regarding the effect of the Bill on rights established under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and related Deed of Settlement. Our additional advice to the Committee on this matter is appended to the Report. As noted, we consider the Bill does not undermine the Fisheries Settlement.
53. The Hauraki Māori Trust Board / Pare Hauraki Fishing Trust submitted that the Bill clashes with the Pare Hauraki Collective Redress Deed 2018, in particular section 21, on the basis that "the proposals do not facilitate the exercise by the iwi of Hauraki of kaitiakitanga, rangatiratanga and tikanga manaakitanga (section 21.5.3 Pare Hauraki Collective Redress Deed) or the broader negotiations that are contemplated in respect to Tikapa Moana." While the Bill does not deliver on the aspirations for co-governance referred to in section 21.5.3 of the Pare Hauraki Collective Redress Deed, the Bill is designed to provide for the exercise of kaitiakitanga and acknowledges customary rights.
54. LDAC's advice on the Bill's Treaty clause was that more descriptive operative provisions should be included to clarify how the Bill gives effect to the principles of the Treaty. Officials will further consider how to provide for more descriptive operative provisions. This could be included in an Amendment Paper following the Select Committee process if desired.

Consultation – Kōrero whakawhiti

55. The Department has worked with Fisheries New Zealand and the Parliamentary Counsel Office on aspects of the Report.
56. We have not engaged further with submitters outside the Committee process (in line with Select Committee Guidelines).
57. LDAC has reviewed our summary in this briefing of their emailed advice on the Bill.

Financial implications – Te hiraunga pūtea

58. The Department has funding in place for implementation of the marine protection proposals, should the Bill proceed in line with the current draft of the Bill and our recommendations for any amendments. This funding comprises:
 - Approximately \$10.5m over the first four years; and
 - Ongoing operational costs of just over \$3m per year.
59. We will advise you should the Committee propose any changes to the Bill that we consider will have unfunded financial implications for the Department.

Legal implications – Te hiraunga a ture

60. The Report will inform the Committee's report back to the House on the Bill, including any proposals for changes to the Bill.

Next steps – Ngā tāwhaitanga

61. Your feedback and approval of the Departmental Report is required by 21 March 2024. Should you not agree to any of the recommendations in Attachment A, we will update the Report accordingly. You may wish to consult Ministerial colleagues on the Report's recommendations.
62. On 21 March 2024, the Cabinet Legislation Committee will consider your proposal for the Bill to continue to progress through the House.
63. The Report is due with the Committee on 22 March 2024; the Committee will begin considering the Report on 28 March 2024.
64. The Committee is due to report back to the House on 29 May 2024. At that stage, Members will debate the Bill and vote on any changes recommended by the Committee. If the second reading is agreed, the Bill will proceed to the Committee of the whole House stage.
65. At the Committee of the whole House stage, you (and other Ministers and Members) are able to move amendments via introducing an Amendment Paper. The third reading and Royal assent stages would follow.
66. We will keep your office informed should the Bill continue to progress through the Parliamentary process.

Attachments – Ngā tāpiritanga

Attachment A – Recommendations in the Departmental Report for your approval

Attachment B – Draft Departmental Report

ENDS

Attachment A – Recommendations in the Departmental Report for your approval

Rec	Clause	Recommendation	Decision
1	1	No change recommended to the title of the Bill	Yes / No
Part 1: Preliminary provisions			
2	3	No change – do not refer to the 30 by 30 initiative in the Bill’s purpose	Yes / No
3	4	No change to the Bill’s te Tiriti o Waitangi/Treaty of Waitangi clause	Yes / No
4	5	Amend the definition of potting to clarify the policy intent that only the use of pots that are capable of catching fish or aquatic life and any other device capable of catching, holding or storing lobsters (not aquatic life more broadly) are in scope	Yes / No
5	5	Amend the definition of bottom longlining to clarify that only lines with seven or more hooks are in scope	Yes / No
6	5	No change – ‘Māori’ or ‘tangata whenua’ are not defined in the Bill	Yes / No
7	26	No change – retain the definition of ‘protected area’ in clause 26	Yes / No
8	5	Amend the Bill so that terms used to refer to marine reserves, SPAs and HPAs are used clearly and consistently	Yes / No
9	8, 20	Replace Cl 8(2)(b) with an exemption to the prohibitions in the Bill for the exercise of the protected customary rights or rights held by a customary marine title group under the Marine and Coastal Area (Takutai Moana) Act 2011; and with an amendment to clause 20 to ensure protected customary rights and customary marine title rights are protected	Yes / No
10	29	As part of the permitting process, require that where other statutory authorisations are needed (such as a resource consent under the Resource Management Act 1991), the Director-General of Conservation cannot make a decision on a permit application under the Bill until those statutory authorisations are granted, and that a permit application can be declined if other statutory authorisations are not granted	Yes / No
Part 2: Protected areas			

Rec	Clause	Recommendation	Decision
11	10	Do not change the overarching provisions for marine reserves	Yes / No
12	12, 16	Amend the purpose of SPAs and HPAs to reflect that: <ul style="list-style-type: none"> - Indigenous benthic habitats (or, for HPAs, biodiversity) are to be maintained and restored; and - Degraded habitats are to be restored to their indigenous state, rather than maintained 	Yes / No
13	14	No change – do not add further activities to the list of prohibitions in SPAs	Yes / No
14	14 and throughout Bill	Do not change the use of the term “prohibited”	Yes / No
15	14	No change – do not allow Danish seining to occur in HPAs or SPAs	Yes / No
16	15	No change – do not change the additional prohibitions for the Mokohīnau Islands SPA	Yes / No
17	18	No change – do not add the word “benthic” to clause 18(2)(h)	Yes / No
18	18	Prohibit bottom-trawling, Danish seining, dredging, and other bottom-impacting fishing methods including for customary fishing in high protection areas	Yes / No
19	18	No change – recreational fishing remains prohibited in HPAs	Yes / No
20	19	No change – retain the term ‘customary fishing’ in the Bill	Yes / No
21	19	No change – retain the definition of customary fishing in the Bill	Yes / No
22	19	No change – provisions for customary non-commercial fishing are unchanged	Yes / No
23	20	Amend the Bill to be clear that the small-scale removal of natural material does not include living material	Yes / No
24	20	No change – do not add a definition of non-commercial purpose as relates to clause 20	Yes / No
25	21	No change – do not add a provision that activities otherwise prohibited may be undertaken if for restoration purposes	Yes / No
26	21	No change – do not add a blanket exemption for kina removal in HPAs	Yes / No

Rec	Clause	Recommendation	Decision
27	21	No change – do not exempt activities undertaken by councils from the permitting provisions in the Bill	Yes / No
28	21	No change to the permitting provisions relating to consented activities under the Resource Management Act	Yes / No
29	21	Delete subclause 21(g)	Yes / No
30	21	No change - the installation, maintenance, or repair of submarine telecommunications cables are not exempt from prohibitions	Yes / No
31	5	Add 'submarine cable' to the definition of structure	Yes / No
Part 3: Permits, enforcement, and regulations for protected areas			
32	27	No change – no provision added to set fees for permit applications	Yes / No
33	27	No change – the permitting system is not removed from the Bill	Yes / No
34	27	No change – do not add a requirement that biodiversity objectives are set before permitting can occur	Yes / No
35	27	No change – do not add a clause requiring the Director-General to monitor the exercise of permits	Yes / No
36	27	No change – do not require reporting conditions on permits related to marine research	Yes / No
37	28, 29	No change - do not change the Bill to specifically provide for clear roles of tangata whenua in decision making for permits	Yes / No
38	29	Amend the Bill to provide clarity that the purpose of a protected area should be considered when making permit decisions	Yes / No
39	29	No change – do not add wording to specify that public consultation can occur on permit applications beyond the existing text in clauses 28, 29, and 30	Yes / No
40	30	No change to the language in clause 30 on managing adverse effects on rights and interests of tangata whenua	Yes / No
41	30	No change – do not add the word 'absolutely' to clause 30	Yes / No

Rec	Clause	Recommendation	Decision
42	32	Clause 32 is clarified to include amended/new biodiversity objectives	Yes / No
43	33	Amend clause 33(1) to include the ability for anyone who was consulted by the Director-General as per 28(1)(b) to appeal a decision	Yes / No
44	37	Remove "email address" from cl 37(1)(b)	Yes / No
45	38	No change to compliance and enforcement provisions	Yes / No
46	41	Remove the phrase 'by at least' from clause 41	Yes / No
47	41	No change to the definition of 'commercial purpose' in the Bill	Yes / No
48	42	No change to the offences regime to provide for an offence when breaching a condition of a permit	Yes / No
49	42	Amend clause 42 to be clear on the mens rea element of the offences regime	Yes / No
50	47	No changes to increase specificity of the infringements regime	Yes / No
51	48	Delete clause 48	Yes / No
52	55	No change to clause 55 to include where infringement fees will be paid	Yes / No
53	57	Delete clause 57 as currently drafted and replace with a reference to part 4, subpart 6 of the Search and Surveillance Act 2012	Yes / No
54	63	Delete clause 63(2)(b) as currently drafted and replace with a new clause modelled on the relevant provision in the Fisheries Act 1996	Yes / No
55	65	No change – do not amend clause 65 to include all the purposes for which regulations can be made under the Bill	Yes / No
56	65	Amend the Bill to provide for the Minister to be satisfied that consultation with affected parties occurred when appropriate for clause 65(1)(c)	Yes / No
57	65	Amend the Bill to provide for the Minister to be satisfied that biodiversity objectives are developed with whānau, hapū, and iwi that exercise kaitiakitanga in the seafloor protection area and are based on best available information, including mātauranga Māori for clause 65(1)(d)	Yes / No

Rec	Clause	Recommendation	Decision
58	66	No change – biodiversity objectives are not further defined in the Bill	Yes / No
59	66	Amend the Bill so that biodiversity objectives (for both SPAs and HPAs) are required to be developed within two years of the Bill's enactment	Yes / No
60	66	No change – 'default' biodiversity objectives are not provided for in the Bill	Yes / No
61	66	Amend clause 66(1)(b) and 66(2)(b)(iii) to contain the word 'reasonably'	Yes / No
62	66	Amend the Bill to provide that the Minister must be satisfied that relevant or affected parties have been appropriately consulted in the development of biodiversity objectives and associated regulations, not including regulations that impact customary fishing	Yes / No
63	68	No change to the review clause to require more frequent reviews	Yes / No
64	68	No change – the Bill does not provide for an Order in Council process for amendments following review	
65	68	Require that a report on the review must be presented to the House within 2 years of the review being initiated	Yes / No
Recommendations by marine protection area			
66	Schedules 2, 3 and 4	No changes to boundaries of HPAs, SPAs or marine reserves	Yes / No
67	Schedule 4	No change – Slipper Island residents are not provided with customary non-commercial rights	Yes / No
68	Schedule 4	Change the name of the 'Rotoroa Island High Protection Area' to 'Pakatoa and Tarahiki / Shag islands High Protection Area'	Yes / No
69	Schedule 4	No change – recreational fishing is not provided for in the Mokohīnau Island HPA	Yes / No
70	Schedule 4	No change – recreational fishing is not provided for in the Aldermen Island HPAs	Yes / No
71	Schedule 4	No change – the Aldermen Islands HPA is not changed to an SPA	Yes / No
72	27, 28, 29, 30	No change – do not proactively permit small-scale fishing in Kawau Bay protection areas	Yes / No

Rec	Clause	Recommendation	Decision
73	27, 28, 29, 30	No changes to permitting regime as it applies at Kawau, as permit applications will be assessed on a case-by-case basis	Yes / No
Recommendations on other issues raised in submissions			
74	n/a	No change – a clause that provides for the establishment of additional protected areas is not included in this Bill	Yes / No
75	n/a	No change – a clause that provides for the monitoring of protection areas to be required is not included in this Bill	Yes / No
76	n/a	Amend the Bill to provide a power for rangers to order the removal of a structure, and recover costs if the Department must remove the structure itself	Yes / No
77	n/a	Insert a clause that specifies that anchoring can occur in HPAs and SPAs as long as it occurs in a manner where the disturbance is unlikely to have a more than minor adverse effect on aquatic life	Yes / No
78	n/a	Insert a 'no compensation' clause	Yes / No
79	n/a	Add clauses to specify the Department of Conservation's functions in the Bill	Yes / No
80	n/a	No change – the Bill does not include the proposed Hākaimangō-Matiatia (Northwest Waiheke) Marine Reserve	Yes / No

Attachment B – Draft Departmental Report

Attachment B is publicly available