



## Briefing: Next steps for the Hauraki Gulf / Tikapa Moana Marine Protection Bill

<b>To</b>	Minister of Conservation	<b>Date submitted</b>	14 June 2024
<b>Action sought</b>	Decisions on matters for potential Amendment Papers for the Hauraki Gulf / Tikapa Moana Marine Protection Bill	<b>Priority</b>	Normal
<b>Reference</b>	24-B-0283	<b>DocCM</b>	DOC-7659441
<b>Security Level</b>	In Confidence		

<b>Risk Assessment</b>	Low Some decisions may delay the implementation of the Hauraki Gulf / Tikapa Moana Marine Protection Bill	<b>Timeframe</b>	05 July 2024
<b>Attachments</b>	Attachment A – Draft speech notes for second reading of the Hauraki Gulf / Tikapa Moana Marine Protection Bill Attachment B – Map of Cape Rodney – Okakari Point Marine Reserve		

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## Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) is currently being considered by the Environment Select Committee (the Committee) and their report back on the Bill is due 20 June 2024.
2. This briefing seeks your decisions on matters that may be considered for Amendment Papers for the Bill. We recommend you:
  - note that you will receive further advice in the next few weeks on adding to the current general Treaty clause a list of the provisions in the Bill that give effect to the principles of the Treaty, following feedback from the Legislation and Design Advisory Committee;
  - progress the two marine reserve extensions as marine reserves (rather than high protection areas);
  - maintain the 25-year duration of the review clause, noting that the Committee have indicated support to include a mechanism in the Bill to provide for more frequent (five yearly) reporting on high protection areas and seafloor protection areas; and
  - maintain the current title of the Bill.
3. You will receive further advice on a possible Amendment Paper following the Committee's report back on 20 June 2024. You will also receive an update following officials' meetings with Ngāi Tai ki Tāmaki and Paul Majurey.
4. This briefing also provides you with next stages of progression of the Bill and speech notes for the second reading which may occur as early as 27 June 2024 (see Attachment A).
5. Officials are available to meet with you to discuss the matters in this briefing, or any other aspect of the Bill.

### We recommend that you ... (Ngā tohutohu)

		Decision
a)	<b>Note</b> that you will receive further advice in the next few weeks on adding to the current general Treaty clause a list of the provisions in the Bill that give effect to the principles of the Treaty, following feedback from the Legislation Design and Advisory Committee	Noted
b)	<b>Agree</b> to continue to progress the marine reserve extensions as marine reserves	Yes / No
c)	<b>Note</b> that the Committee are considering (and have indicated support for) a mechanism to provide for more frequent (five yearly) reporting periods of the marine protection areas, in line with your previous feedback, and officials will provide you with an update on this matter following the Committee report	Noted
d)	<b>Agree</b> to maintain the current title of the Bill	Yes / No
e)	<b>Note</b> that the second reading of the Bill may occur as soon as 27 June 2024 and draft speech notes are in Attachment A	Noted

f)	<b>Note</b> that officials may provide you with an updated version of the speech following the Committee's report back on the Bill, should there be any unexpected proposed changes you wish to address	Noted
g)	<b>Note</b> officials are meeting with Ngāi Tai ki Tāmaki and Paul Majurey in the week of 24 June 2024 to discuss implementation of the marine protection areas	Noted

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Date: 14/06/2024

Ruth Isaac  
Deputy Director-General Policy and  
Regulatory Services

Date: / /

Hon Tama Potaka  
**Minister of Conservation**

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## **Purpose – Te aronga**

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1. To seek your decision on potential matters to progress through Amendment Papers.
2. To update you on the next steps for progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill.
3. To provide you with draft speech notes for the second reading of the Bill (Attachment A).

## **Background and context – Te horopaki**

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4. The Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) is currently being considered by the Environment Select Committee (the Committee). Hearings have concluded, the Departmental Report has been presented and the Committee has considered the revision-tracked version of the Bill. The Committee's report back on the Bill is due 20 June 2024.
5. On 28 March 2024 you provided your feedback on the recommendations in the Departmental Report to be provided to the Committee [24-B-0106 refers]. The Departmental Report fully reflected your feedback. For your more substantive feedback that could not be resolved in time for inclusion in the report, it was agreed that officials would provide you further information to be considered for Amendment Papers.
6. These matters include:
  - operational implementation of the Treaty clause (i.e. how the Bill will give effect to the principles of the Treaty);
  - consideration of changing the two marine reserve extensions to high protection areas (HPAs);
  - amendment of the duration of the 25-year review clause; and
  - amendment of the title of the Bill.
7. This briefing addresses these matters and gives you an update on next stages for progressing the Bill, including the second reading of the Bill which may occur as soon as 27 June 2024. Attachment A contains draft speech notes for the second reading.

## **Matters for consideration for Amendment Papers**

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### ***Operational implementation of the Treaty clause***

8. The Bill currently has a general Treaty clause, modelled on section 4 of the Conservation Act 1987. The clause reads: *This Act must be interpreted and administered so as to give effect to the principles of te Tiriti o Waitangi / the Treaty of Waitangi.*
9. In your feedback to officials on the Departmental Report [24-B-0106 refers], you noted that the Treaty clause may need to set out operational provisions. This was in response to feedback from the Legislation Design and Advisory Committee (LDAC), who suggested that further work be done by officials to identify and work through what Treaty obligations are engaged by the Bill, and what operative provisions may be needed to make the Treaty clause more specific. The Department of Conservation's experience also supports more specificity around Treaty obligations in the law.
10. We have developed a list of the provisions that engage the Treaty clause in the Bill, specifying how the Bill will give effect to the principles of the Treaty.

11. We are currently consulting with Te Arawhiti on how effectively these provisions in the Bill provide specificity to the general Treaty clause. This consultation is expected to be completed by early July 2024; we will provide you with advice shortly afterwards.
12. LDAC and Te Arawhiti guidance highlight the importance of developing Treaty provisions in new legislation through engagement with Māori. We do not consider the proposed list would require engagement with Māori, as it does not represent changes to policy.
13. Given there is no change to policy under this approach, approval from Cabinet is likely not required for this proposed change. However, given the high level of interest in Treaty provisions in legislation, you may wish to socialise this change with your colleagues.
14. We note that the Government is reviewing the way the Treaty is referenced and provided for across all legislation. We acknowledge that the Treaty clause may be subject to change once the broader review of Treaty provisions in legislation has been completed.

### ***Consideration of changing the marine reserve extensions to high protection areas***

15. Marine reserves are no-take protection areas. HPAs provide a similar level of protection, however, they provide for customary practices including non-commercial customary fishing as regulated under the Fisheries Act 1996. HPAs also provide for certain specific activities that have been permitted under the Bill to occur in these areas.
16. In November 2022, the then Minister of Conservation and Minister for Oceans and Fisheries decided to progress the extensions to the Cape Rodney – Okakari Point and Te Whanganui-o-Hei / Cathedral Cove Marine Reserves as marine reserves rather than HPAs [22-B-0741 refers].
17. This decision was largely due to the proven effectiveness of marine reserves, the perceived public support for a mixed overall package for the Gulf containing both HPAs and marine reserves (rather than only one of them), and the ease of compliance.
18. You have indicated that you would like to further consider whether the extension to these two marine reserves should be an HPA, as mana whenua of these areas have indicated their preference for an HPA, as opposed to a marine reserve.
19. HPAs allow for greater take (i.e. by providing for customary fishing). We do not consider this would detrimentally impact the biodiversity values of the sites; as such, we consider either marine reserve extensions or HPAs to be satisfactory tools.
20. However, extensions as HPAs will create additional compliance and enforcement challenges because they will abut existing marine reserves (with different rules). These challenges have been demonstrated in Taranaki where a marine reserve borders the Ngā Motu/Sugar Loaf Islands Marine Protected Area, and the rules of these adjoining areas differ. This has led to some confusion by the public and as such requires increased signage, education and advocacy.
21. This confusion by the public is expected to be particularly high at Cape Rodney – Okakari Point Marine Reserve as the boundary is curved, rather than a straight line (see Attachment C). This may result in non-commercial customary fishers unintentionally fishing in the marine reserve.
22. These compliance challenges carry additional costs that have not been accounted for. As such, if you do decide to progress the extensions as HPAs, additional funding will

be required. The estimated additional unfunded cost per annum is approximately \$300,000.<sup>1</sup>

23. On balance, we recommend you proceed with the extensions being marine reserves (as currently provided for in the Bill) due to the practicality of compliance and enforcement of having the same protection type over an area.
24. Should you decide to propose changing the extensions to HPAs, this would require Cabinet agreement as this would be a substantive change to the Bill. This will add additional time before implementation of the Bill but will not affect delivery this term.

### ***Amending the review clause***

25. The Bill provides for a Ministerial review of the operation, effectiveness, and management of seafloor protection areas (SPAs) and HPAs and prescribes requirements relating to the review. The Bill currently provides for a review after 25 years and then every 25 years thereafter, or at any other time at the discretion of Ministers.
26. You have previously suggested that a more frequent review period may be appropriate, particularly at the start, to assess how effective the marine protection areas are.
27. The Committee has indicated that it supports maintaining a 25-year review clause and adding mandatory 5-yearly reporting by DOC on research and monitoring. This would provide for an understanding of how the protection areas are performing much more frequently (every 5 years) and can trigger any necessary actions. The Committee has also indicated it will recommend retaining the provision for a review at any time (on Ministerial direction).
28. We do not consider the Committee's proposed additional reporting requirements will have funding implications (the proposed reporting requirement is light-touch, and there is a suitable annual monitoring and reporting budget).
29. Given the likely direction of the Committee in response to your concern, we recommend no decisions at this stage on the review period. We can provide you with an update on this matter following the Select Committee report.

### ***Amending the title of the Bill***

30. Several submitters have requested that the title of the Bill be expanded to include Te Moananui-ā-Toi, or a variation of this (Te Moananui-a-Toi, Te Moananui-o-Toi, Te Moananui-ō-Toi). You have indicated that you would like to see Te Moananui-ā-Toi included. You made this indication without being provided the context of there being a range of variations on the name.
31. We have sought advice from Land Information New Zealand (LINZ). They have reiterated that Hauraki Gulf / Tīkapa Moana is a Treaty settlement name, so care must be taken not to breach this settlement through any title changes.
32. LINZ also advised that the inclusion of any variation of Te Moananui-ā-Toi in the name of the Bill should be consulted on with all mana whenua in the region.
33. We recommend that the title is not changed.

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<sup>1</sup> The additional costs primarily include additional staff, costs associated with increased hours on the water and costs associated with increased boundary markers.

## **Next stages for progressing the Bill**

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### *Further advice*

34. Following the Committee's report back we will provide you with additional advice on proposed changes and any further matters you may wish to consider for Amendment Papers.

### *Second reading*

35. The second reading of the Bill will occur no sooner than the third working day following the Committee's report back on 20 June 2024. This may occur as early as 27 June 2024.
36. At this stage the Bill is debated with up to 12 speeches. As the Minister responsible for the Bill, you will give the first speech. Draft speech notes are provided in Attachment A. Officials may provide your office with an updated version of the speech following the Committee's report, should there be any unexpected proposed changes you wish to address.
37. Following the debate, the House votes to adopt the Bill before it, along with any amendments proposed by the Committee.
38. Other amendments are not considered at this stage.

### *Committee of the whole House*

39. The Committee of the whole House is when any Amendment Papers are considered. This can occur as early as the next sitting day following the second reading but may occur at any time after the second reading depending on when the Leader of the House gives it House time. You may work with the Leader of the House on the timing of this stage, based on time required to develop any Amendment Papers.
40. Officials will support you with the development of any Amendment Papers, based on your decisions on the matters raised in this paper and on matters that may arise from the Committee report back on the Bill.
41. Any proposed changes that are 'more than minor' or deviate from the original policy intent will require Cabinet approval (for example, a decision to amend the marine reserve extensions to HPAs). This will likely extend timeframes for implementing the Bill, i.e., the earliest an Amendment Paper requiring Cabinet approval could be submitted to the Clerk for consideration at the Committee of the whole House is 22 October 2024.
42. The Government may also choose to refer any significant changes back to Select Committee for further consideration.
43. Any Amendment Papers will be voted on by the House at the Committee of the Whole House. If the proposed changes are agreed in the vote, they will be incorporated into the Bill by the Parliamentary Counsel Office.
44. Note that other Members of the House may also put forward Amendment Papers with their proposed changes to be voted on.
45. Following this stage, the Bill is read for the third time before being submitted by the Clerk for submission for the Royal assent. We will provide you with further detail on these stages closer to the time.

## **Risk assessment – Aronga tūraru**

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46. A decision to propose changing the marine reserve extensions to HPAs will be supported by mana whenua, but require some new funding to account for the additional compliance costs (through reprioritisation within Vote Conservation) and will be opposed by parts of the general public. Some of the latter risk can be managed

through clear communications about the expected benefits of the HPA tool. This change would also require a Cabinet decision.

47. A decision to include a variation of 'Te Moananui-ā-Toi' within the title of the Bill will need to be adequately consulted on, which will require time. If consensus cannot be achieved, some mana whenua may oppose the decision on which variation of the name is chosen. There is also the risk that using a different name than 'Hauraki Gulf / Tīkapa Moana' would be in breach of the Ngā Mana Whenua o Tāmaki Makaurau Collective settlement unless agreed to by the collective. We are not aware of any significant concerns over the current title of the Bill.
48. Should you want to progress a matter that requires Cabinet decision, this will extend the timeframes until the Committee of the whole House stage.
49. Officials will be meeting with Ngāi Tai ki Tāmaki and Paul Majurey the week of 24 June 2024. There are limitations on the matters we can discuss while the Bill is still being considered. We will not be able to discuss matters related to Amendment Papers as this could be seen as giving preferential treatment to some submitters on the Bill over others. However, we expect a fulsome discussion about the operationalisation of the protection areas, including expectations of mana whenua concerning their involvement when developing the biodiversity objectives for each site.

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

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50. Adding a list of provisions to the Treaty clause in the Bill will provide clarity to how the Bill will give effect to the principles of the Treaty, addressing the issues raised by LDAC.

#### **Consultation – Kōrero whakawhiti**

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51. We engaged with Te Arawhiti on the contents on this paper.

#### **Financial implications – Te hīraunga pūtea**

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52. A decision to change the two marine reserve extensions to HPAs would require additional resourcing.

#### **Legal implications – Te hīraunga a ture**

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53. Your decisions on the matters for consideration for Amendment Papers may lead to changes to the Bill.

#### **Next steps – Ngā tāwhaitanga**

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54. We will provide you with further advice on potential Amendment Papers following the Committee's report back.
55. You have asked officials to meet with Ngāi Tai ki Tāmaki and Paul Majurey, to understand their perspectives on the implementation of the Bill. These hui are set up to occur the week of 24 June 2024 (following the Committee report back) – we will provide you with an update following the hui.
56. We will provide you with further advice on the Treaty clause operational provisions in the week of 15 July 2024.
57. Following your decisions in this paper and subsequent advice, officials will provide you with Amendment Papers that reflect these decisions.
58. The second reading will be held no sooner than 27 June 2024. Draft speech notes are provided in Attachment A. Officials may provide your office with an updated version of



the speech following the Committee's report, should there be any unexpected proposed changes you wish to address.

59. The Committee of the whole House will be held at a time determined by the Leader of the House. This stage can be delayed if time is needed to develop Amendment Papers, including if Cabinet decisions are required.
60. The third reading occurs following the Committee of the whole House at a date arranged by the Office of the Clerk.

**ENDS**

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## **Attachment A: Draft speech notes for second reading of the Hauraki Gulf / Tīkapa Moana Marine Protection Bill**

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- I move that the Hauraki Gulf / Tīkapa Moana Marine Protection Bill be now read a second time.
- The purpose of this Bill is to contribute to the restoration of the health and mauri of the Hauraki Gulf / Tīkapa Moana, Te Moananui-a-Toi and to acknowledge customary rights within seafloor protection areas and high protection areas.
- It establishes 19 new marine protection areas that, in addition to existing marine reserves and the cable protection zones, will nearly triple the protection in the Gulf. These areas are a critical contribution to protecting biodiversity and reversing the decline we have seen in the Gulf.
- The Bill is designed to support the Gulf with modern marine protection measures that reflect the needs of both the environment and the people.
- The Gulf has a diverse array of habitats, including kelp forests and fragile fields of corals, which support a great variety of fish, seaweeds and other species. It also sees many migratory and transient species such as leatherback turtles, manta rays and humpback whales.
- Aotearoa New Zealand is known as the seabird capital of the world. One third of all seabirds that breed in Aotearoa, nest in the Hauraki Gulf.
- The Gulf is an important area to New Zealanders. It has sustained the social, cultural, and spiritual wellbeing of mana whenua for centuries.
- It supports the largest metropolitan area in New Zealand, and plays a critical role in our economy. It is a global tourism hotspot, boasting spectacular holiday destinations like the Coromandel and Hauraki Gulf islands. Approximately 70% of all recreational fishing in Aotearoa is carried out in the Gulf. A recent assessment put the value of the Gulf at 100 billion dollars.
- The population of the Coromandel has been steadily increasing and Auckland has almost doubled since 1990. Forecasts indicate that by 2030, more than 2.8 million people will be living within 80km of the Gulf. This brings with it increases in recreational fishing, discharges, and land-based pressures.
- Climate change impacts are predicted to include increasing heat waves, invasive species and more frequent storm events. The Gulf is already battling the invasive pressures of the invasive seaweed, *Caulerpa*.
- We must take action now.
- I would like to acknowledge the many years of work that have gone into this Bill, starting from the Sea Change – Tai Timu Tai Pari Marine Spatial Plan. Mana whenua, organisations, businesses, local government, and individuals have all had significant roles in ensuring that this Bill is the best that it can be.

- I also acknowledge the excellent work of the Environment Committee in considering this Bill and the roughly 7,000 submissions received on it. I thank the submitters for sharing their views on the Bill, which have helped improve it too.
- The Committee have recommended changes to the Bill, focused on making these protection areas more effective and efficient. I support these recommendations. Some highlights that merit our attention include:
  - Creating greater clarity around the process for developing biodiversity objectives. We are ensuring that these objectives are developed collaboratively for both high protection areas and seafloor protection areas. We are also ensuring that the biodiversity objectives will be developed in a timely manner, that is, within 2 years of the Bill being implemented.
  - Making it clear in the Bill that careful anchoring can occur within seafloor protection areas and high protection areas.
  - We're going to carefully monitor the effectiveness of the new high protection areas and seafloor protection areas. These are new tools, and unlike marine reserves, they allow for some taking within the ocean, so we're going to make sure they work. A report will be published at least every 5 years detailing the outcomes of monitoring and research to date.
  - Cutting some of the bureaucracy and making it easier for Councils to continue to fulfil their roles in protection areas, by ensuring they do not require permits to monitor or enforce a regional coastal plan or resource consents, or to undertake activities relating to environmental monitoring.
  - Clarifying customary rights, by ensuring that protected customary rights and customary marine title rights as provided for under the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld. This includes exempting any activity carried out under those rights from the prohibitions in the Bill; that is, these rights are uninterrupted. The Bill also ensures that the establishment of seafloor protection areas and high protection areas do not impact on any existing application for rights in these areas.
  - Requiring affected people to be consulted on any new future management actions proposed in the High Protection Areas, so that anyone who might be impacted has a say.
- I commend this Bill to the House.

**Attachment B: Map of Cape Rodney – Okakari Point Marine Reserve**

