

Departmental Memo

To	Minister of Conservation	Date submitted	21 August 2024
GS tracking #	24-B-0412	DocCM	DOC- 7726382
Security Level	In Confidence		
From	Ewan Delany, Acting Deputy Director-General Policy and Regulatory Services: S9(2)(a)		
Subject	Report back on the Hauraki Gulf / Tikapa Moana Marine Protection Bill		
Attachments	Attachment A – Cabinet paper: Report back on the Hauraki Gulf / Tikapa Moana Marine Protection Bill		

Purpose – Te aronga

- To provide you with a draft Cabinet paper (Attachment A) seeking Cabinet’s agreement to policy decisions for Hauraki Gulf / Tikapa Moana Marine Protection Bill (the Bill) to be progressed through an Amendment Paper at the Committee of the Whole House stage.

Background and context – Te horopaki

- In August 2023, the Bill was introduced to the House and referred to the Environment Select Committee (the Committee). In June 2024, the Committee reported back on the Bill recommending that it be passed.
- In June 2024, the Cabinet Legislation Committee considered a Cabinet paper recommending that the Bill continue to be progressed through the House. At this meeting, the Committee requested that you report back seeking policy decisions on amendments to the Bill. These policy decisions are in relation to clause 4 (the Treaty of Waitangi clause) and the interaction between customary fishing and the protected areas established by the Bill.
- You received a briefing on these matters on 18 July [24-B-0317 refers] and on 15 August 2024, you met with DOC officials and indicated your preferred option for these matters raised by Cabinet. At this meeting, you also indicated that you wanted clause 9A (the ‘no compensation’ clause) to be removed from the Bill. As this is a more than minor change to the Bill, approval for this change is also sought in this Cabinet paper. Your decisions on your preferred options are reflected in a draft Cabinet paper (Attachment A).
- The Department of Conservation has consulted with Te Arawhiti, the Parliamentary Counsel Office (PCO), and Fisheries New Zealand on the draft Cabinet paper, due to their involvement and interest in the Bill.

Risk assessment – Aronga tūraru

Treaty of Waitangi clause

- Mana whenua have stated they want to be engaged on decisions around Treaty of Waitangi clauses in legislation and it is possible that they may oppose a change to the

existing Treaty of Waitangi clause given they have not been engaged or consulted with. However, as your preferred option is to keep the existing clause with the addition of signposting provisions, opposition may be minimal. Any option progressed that includes the removal of the existing Treaty of Waitangi clause is likely to be opposed by mana whenua.

Customary non-commercial fishing

7. The Cabinet paper includes the following recommendation for how customary non-commercial fishing is regulated under the Bill:

the regulation of customary non-commercial fishing is removed from within the scope of the regulation-making powers under clause 66. However, the 'back-stop' power remains where the Minister of Conservation can create regulations for customary non-commercial fishing (clause 67).

8. This proposed amendment raises the question as to whether biodiversity objectives and associated regulations under clause 66 (which would no longer be able to regulate customary non-commercial fishing) should continue to require collaborative development between Crown and mana whenua, or if consultation with mana whenua is sufficient.
9. Some mana whenua may be less inclined to engage in a collaborative development approach due to the resource-intensive nature of this approach and the lower likelihood that the biodiversity objectives will impact on customary non-commercial fishing.
10. We consider that collaborative development (status quo) remains appropriate as customary non-commercial fishing may be regulated through the 'back-stop' power, which is based on the biodiversity objectives. The Cabinet paper reflects retaining the status quo.
11. On 18 July, DOC recommended that an Amendment Paper include that the requirement for 'collaborative development' is amended to be 'to the extent reasonably necessary' [24-B-0317 refers]. With this amendment, collaborative development of biodiversity objectives and associated regulations could still be achieved, even if some mana whenua do not wish to engage.
12. There was strong opposition from a significant number of submitters to the provision for customary non-commercial fishing in the Bill. The proposed changes may increase this opposition. Some submitters (e.g. from the general public and some eNGOs) support the provision of customary non-commercial fishing on the basis that the regulation making powers in the Bill ensure biodiversity outcomes. These groups may also oppose the removal of this regulation making power.
13. Groups such as Te Ohu Kaimoana and some mana whenua may oppose this amendment as the ability to regulate customary non-commercial fishing remains through the 'back-stop' power.

Timeframes

14. On 18 July 2024, DOC provided you with a briefing that included a timeline for the Bill to be enacted by the end of the calendar year [24-B-0317 refers], including a need to have the paper considered by the Cabinet Legislation Committee on 29 August (lodged by 22 August). As this date has not been met there is an increased risk that the Bill will not be enacted this calendar year. Achieving enactment this calendar year is now dependent on the PCO being able to run a condensed process for drafting the Amendment Paper (there will be 3 weeks available to PCO when typically at least 5 weeks is needed).

15. There is growing public demand for new marine protection in the Gulf and ongoing frustration with the slow pace at which protection is proceeding. The original independent stakeholder-led Tai Timu Tai Pari Sea Change Hauraki Gulf Spatial Plan was first published over 10 years ago. Any further delays caused by the Bill not continuing to be progressed through the House could exacerbate growing frustrations and sense of lack of action.

Next steps – Ngā tāwhaitanga

16. Subject to your feedback on the draft paper we recommend consulting with Hon Shane Jones, Minister for Oceans and Fisheries, given his portfolio interests.
17. We recommend ministerial consultation take place over 22-30 August 2024. This is shorter than the usual two weeks required but is necessary for the Bill to be enacted this calendar year. Subject to feedback from ministerial consultation, the paper should be lodged by Thursday 5 September to be considered by the LEG committee on Thursday 12 September.

Attachments – Ngā tāpiritanga

18. Attachment A: Cabinet paper: Report back on the Hauraki Gulf / Tikapa Moana Marine Protection Bill

ENDS

Attachment A: Cabinet paper: Report back on the Hauraki Gulf / Tikapa Moana Marine Protection Bill

Attachment A has been released separately in this package