

Cabinet Paper Talking Points

| | | | |
|------------------------|--|--------------|-------------|
| To | Minister of Conservation | | |
| Date of meeting | 26 September 2024 | | |
| Cabinet Paper | Report back on the Hauraki Gulf / Tikapa Moana Marine Protection Bill | | |
| GS tracking # | 24-K-0027 | DocCM | DOC-7756832 |
| Minister lead | Minister of Conservation | | |
| Committee | Legislation Committee | | |
| DOC Contact/s | Ruth Isaac, Deputy Director-General Policy and Regulatory Services, s 9(2)(a) Emma Hill, Senior Policy Advisor, s 9(2)(a) | | |
| Security Level | In Confidence | | |

Recommendations

The Minister of Conservation recommends that the Committee:

- note that in June 2024, the Cabinet Legislation Committee invited a report back seeking decisions on amendments to the Bill, including in relation to clause 4 (the Treaty of Waitangi clause), and the interaction between customary fishing and the protected areas established under the Bill [LEG-24-MIN-0132];
- agree to retain the current Treaty of Waitangi clause with additional 'signposting' provisions;
- agree that the Treaty of Waitangi clause states that all Treaty of Waitangi settlements will be upheld;
- agree that the provision for customary non-commercial fishing (as regulated under the Fisheries Act) is retained;
- agree to retain the prohibition on bottom trawling, dredging, and Danish seining fishing methods in seafloor protection areas and high protection areas, even for customary non-commercial fishing;
- agree that regulation of customary non-commercial fishing is out of the scope for regulations developed under clause 66 of the Bill;
- agree that the requirement to consult with the Minister for Oceans and Fisheries is removed for regulations developed under clause 66 of the Bill;
- agree that the regulation of customary non-commercial fishing is out of scope for regulations developed under clause 67 of the Bill;
- agree that the requirement to consult with the Minister for Oceans and Fisheries is removed for regulations developed under clause 67 of the Bill;
- agree that the requirement for biodiversity objectives and associated regulations to be developed collaboratively with mana moana is amended to require consultation with mana moana;
- note that, with these proposed changes, customary non-commercial fishing will be regulated through the Fisheries Act only;
- agree that provisions that acknowledge rights under the Takutai Moana Act are retained;
- agree that the 'no compensation' clause (clause 9A) in the Bill is removed.

Next steps

- agree to progress the above changes through introducing an Amendment Paper at the Committee of the Whole House stage on the Bill; and
- authorise the Minister of Conservation to issue drafting instructions to the Parliamentary Counsel Office for an Amendment Paper reflecting the above changes.

Key points

- The Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) will contribute to the restoration of the health and mauri of the Hauraki Gulf / Tīkapa Moana (the Gulf) by establishing 19 new marine protection areas. This will almost triple the area of marine protection in the Gulf.
- 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.
- Since then, the Minister for Oceans and Fisheries has also raised potential amendments (raised with him by the Seafood Industry) and you have met and discussed these with him, and received further advice. You have indicated that you do not wish to progress any further amendments.

Treaty of Waitangi clause

- The Cabinet paper proposes that the current Treaty of Waitangi clause is retained (which mirrors the Treaty of Waitangi clause in the Conservation Act 1987), with the addition of signposting provisions that will highlight how this clause will be operationalised through the Bill.

Customary fishing

- The Cabinet paper proposes that customary non-commercial fishing is removed from the scope of any regulation making power in the Bill. With this amendment, customary non-commercial fishing in high protection areas will be regulated under the Fisheries Act 1996 only.
- This is not expected to have a significant negative impact on the effectiveness of the high protection areas.

Marine and Coastal Area (Takutai Moana) Act 2011

- The Cabinet paper proposes that the provisions that acknowledge rights held under the Marine and Coastal Area (Takutai Moana) Act 2011 are retained.

'No compensation' clause

- The Cabinet paper proposes that the 'no compensation' clause is removed from the Bill. It was inserted only for the avoidance of doubt.
- While we do not consider it likely that compensation will be payable, the removal of this clause provides an opportunity for affected parties to test this option if they consider that they have been adversely affected.

Next steps

- Changes agreed to by Cabinet will be incorporated into an Amendment Paper drafted by the Parliamentary Counsel Office. This Amendment Paper will be considered, and voted on, at the Committee of the Whole House stage.

Appendix 1: Talking points

About the Bill

- The Hauraki Gulf / Tīkapa Moana (the Gulf) is a taonga of natural, economic, recreational, and cultural importance. The Gulf is one of the most important ecological areas in the world. It is home to an extraordinary diversity of plants and animals, some of which are found nowhere else on the planet.
- Aotearoa is known as the seabird capital of the world. One third of all seabirds that breed in Aotearoa, nest in the Gulf. The Gulf also sees many migratory or transient species including leatherback turtles, manta rays and humpback whales.
- Reports over the last 20 years have shown the Gulf to be in an ongoing state of environmental decline. There has been significant habitat and biodiversity loss, localised fisheries depletion including for Snapper/tāmure and Tarahiki and an increase in invasive species introductions and spread, e.g., Caulerpa.
- Marine protection is crucially needed to reverse the environmental decline in the Gulf. It is expected that the proposed marine protection will create conditions whereby snapper density will increase by at least 400%, kōura (rock lobster) will increase by 20% and kina barrens – large seafloor areas largely devoid of large seaweeds and where kina are the dominant grazing species – will decrease by 30% relative to adjacent fished areas by 2030.
- The Bill is the result of an extensive social and scientific process over 10 years. I consider the Bill appropriately provides for the protection of marine biodiversity, which is critically needed in the Gulf, while balancing the impact on users of the Gulf and providing for Māori rights and interests.
- The Environment Select Committee has reported back on the Bill, recommending it is passed.

About the proposed changes

- In June 2024 the Committee requested that I report back seeking decisions on amendments to the Bill, including in relation to the Treaty of Waitangi clause, and the interaction between customary fishing and the protected areas established by the Bill.
- I am seeking Cabinet decisions on these matters and on the removal of the 'no compensation' clause.

Treaty of Waitangi Clause

- The proposed change to the Treaty of Waitangi clause ensures consistency with other conservation legislation, while also providing greater clarity as to how the Bill gives effect to the Treaty of Waitangi through the signposting provisions.
- I acknowledge that a review of Treaty of Waitangi clauses in legislation is currently underway. While this may result in a change in approach to how the Treaty of Waitangi is referenced within the Bill in the relatively short

term, I don't want to try to anticipate the findings of that review by making a more significant change in approach at this time.

Customary non-commercial fishing

- I consider it appropriate that customary non-commercial fishing continues to be regulated through the Fisheries Act only. I therefore recommend that any references to customary non-commercial fishing being regulated through the Bill are removed.
- Due to the limited scope of customary non-commercial fishing, I do not anticipate any significant impact on the biodiversity outcomes of the protection areas.

Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act)

- I propose that rights held under the Takutai Moana Act will be able to continue to be exercised within high protection areas and seafloor protection areas. The scope of these rights is limited and does not include any fishing activities.
- I do not anticipate the provision of these rights will have any significant impact on biodiversity outcomes.
- Retention of these rights supports the purpose of the Bill which includes the acknowledgment of customary rights.
- This provision does not apply to marine reserves established under the Bill.

No compensation clause

- Compensation would likely not be available to fishers as the marine protection would not involve the taking of a property rights (though it may have an effect on the exercise of those rights).
- Removal of this clause provides for parties to test a claim for compensation if they choose to.

Next steps

- Following your decisions, these changes will be included in an Amendment Paper drafted by the Parliamentary Counsel Office. The Amendment Paper will be considered, and voted on, at the Committee of the Whole House stage.

Appendix 2: Questions and Answers

| | |
|---|---|
| Question 1: <i>Why introduce legislation with a Treaty of Waitangi clause that would automatically be subject to review?</i> | |
| Answer | <p>The approach taken by the Bill is consistent with Treaty of Waitangi clauses across conservation legislation. This is important as the application of section 4 (the Treaty of Waitangi clause in the Conservation Act 1987) is a key focus for DOC and is informed by case law.</p> <p>While I acknowledge that the review into Treaty clauses is underway, I don't think it's appropriate to anticipate the findings of that review by making more substantive changes at this time. This is particularly the case when such changes would see the Bill become out of step with other Conservation legislation and create more uncertainty about DOC's obligations as a Treaty partner.</p> |
| Question 2: <i>What impact will customary fishing rights have on the biodiversity outcomes of the Bill?</i> | |
| Answer | <p>The Bill provides for customary take that is currently regulated under the Fisheries Act. This gives effect to the Fisheries Deed of Settlement 1992 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.</p> <p>This means that only customary take that has been authorised by a tangata kaitiaki or other authorised person can occur. Currently customary take can only be authorised for the purpose of hui and tangi.</p> <p>All mana whenua who have been engaged with the development of this Bill have been clear that they want to see the health and mauri of the Gulf being restored and to continue to exercise their role as kaitiakitanga. This is demonstrated by the number of rāhui (customary practice that restricts people from gathering kai or accessing an area) being laid throughout the Gulf.</p> |
| Question 3: <i>What is the economic impact of the Bill likely to be?</i> | |
| | <p>The Bill will increase protection in the Gulf to around 18%, but an Economic Impact Assessment carried out by MartinJenkins found that commercial fishing in the proposed marine protection areas accounts for only 1-3% of total fishing in all quota management areas (QMAs) that include the Gulf.</p> <p>Annual revenue from fish caught within the proposed protection areas was estimated at \$4.2-\$5.2 million over the two-year study period, based on market price. This was approximately 2%-3.5% of the revenue generated by catch across all QMAs that include some or all of the Gulf.</p> |

| | |
|---|--|
| | <p>It is possible that the actual impact on revenue will be less than this as some fishers will be able to shift their fishing operations. Also, it is expected that marine protection will have a positive effect on fish numbers in the Gulf which will benefit fishers outside of these areas.</p> <p>For the majority of fishers, catch landed from the proposed protected areas was less than 10% of their total catch.</p> |
| <p>Question 4: <i>How will this be funded?</i></p> | |
| | <p>Implementation of the marine protection will cost approximately \$10.5 million over four years with ongoing operational costs of just over \$3 million per year.</p> <p>The first year of funding for the 2024/25 financial year (\$1.605m) is through the International Visitor Conservation and Tourism Levy.</p> <p>The following years have been funded through reprioritisation of \$3.41m- \$3.51m from the Predator Free 2050 Strategy Budget 2022 funding increase. This still gives approximately \$21.5m per year in additional funding from Budget 2022 for the Predator Free 2050 Strategy.</p> <p>The funding will provide for establishment costs of the marine protection areas including signage and boundary markers, as well as on-going costs including education/awareness, compliance, and customary support. A major focus in the first two years will be on developing biodiversity objectives with mana whenua and education.</p> |
| <p>Question 5: <i>Why is this Bill being used instead of existing legislation, e.g., the Fisheries Act 1996?</i></p> | |
| | <p>The Bill provides for the management of a broader range of activities than just fishing, e.g., the management of discharges and deposits, impacts of structures and damage to the seabed.</p> <p>DOC and Fisheries New Zealand have concluded that the purpose of the Bill cannot be delivered solely under the Fisheries Act.</p> <p>No existing legislation can deliver on the high protection areas proposed, i.e., the Marine Reserves Act 1971 would not enable customary non-commercial fishing to occur as intended under these proposals in order to give effect to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The Bill introduces new tools, high protection areas and seafloor protection areas, that have unique rules that balance protection with limited use.</p> |

ENDS