

Oceans Secretariat Briefing: Outstanding policy decision and Cabinet paper for the Hauraki Gulf / Tikapa Moana Marine Protection Bill

To	Minister of Conservation Minister for Oceans and Fisheries	Date submitted	4 August 2023
Risk Assessment	Low Prompt ministerial agreement is required to ensure the Cabinet paper can be lodged on 10 August 2023.	Priority	High
MPI reference	B23-0571	DocCM	DOC-7414388
DOC reference	23-B-0358		
Security Level	In Confidence		

Action sought	Agree to an outstanding policy decision for the Hauraki Gulf / Tikapa Moana Marine Protection Bill.	Timeframe	By 7 August 2023 (to ensure the Cabinet paper can be lodged on 10 August 2023).
Attachments	Attachment A: Cabinet paper: The Hauraki Gulf / Tikapa Moana Marine Protection Bill: Approval for Introduction Attachment B: The Hauraki Gulf / Tikapa Moana Marine Protection Bill		

Contacts	
Name and position	Cell phone
DOC Contact/s	
Amelia Smith, Manager – Marine Policy	s 9 (2)(a)
MPI Contact/s	
Jacob Hore, Manager – Inshore Fisheries North, Fisheries New Zealand	s 9 (2)(a)

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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. On 29 June 2023, we provided you with substantive changes for the Parliamentary Counsel Office (PCO) to incorporate into the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill), following feedback from interagency consultation.
2. PCO has now made those changes and provided a near-final draft of the Bill. Only final editing is required, assuming you agree to the decision outlined in this briefing. A final draft of the Cabinet paper is provided in **Attachment A** and the near-final draft of the Bill is provided in **Attachment B**.
3. We have also conducted further analysis of some of the changes. Following this, we recommend that the Bill does not include a provision for rights-holders under the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act) to grant or refuse permission over whether an application for a permit within a protected area should be considered by the Director-General of the Department of Conservation.
4. Further analysis has revealed that this goes beyond the rights laid out within the Takutai Moana Act. This would set an unintended policy precedent for marine protection permitting regimes, and we have not considered or analysed the implications. We consider this is a question that warrants attention, however, this is better considered and addressed through wider marine protected areas legislative reform. Wider reform would allow the national implications to be fully analysed and considered.
5. The attached Cabinet paper and Bill are ready for Ministerial consultation, assuming you agree to the decision in this briefing.
6. Officials are working to the timeframe of the Cabinet paper and Bill being lodged on 10 August 2023 for consideration by the Cabinet Legislative Committee on 17 August 2023. Depending on the availability of House time, this may enable introduction of the Bill prior to the general election.

We recommend that you ... (Ngā tohutohu)

	Decision
<p>Agree that the Bill does not include a provision to give groups with protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 the power to grant or refuse permission over whether a permit application should be considered.</p>	<p><input checked="" type="checkbox"/> Yes / No</p>

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Date: 04 /08 /2023

Ruth Isaac Sam Thomas on behalf of
Deputy Director-General, Strategy and
Policy
For Director-General of Conservation

Date: 08 /08 /2023

Hon Willow-Jean Prime
Minister of Conservation

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Date: 04 /08 /2023

Emma Taylor
Director, Fisheries Management
Fisheries New Zealand

Date: / /

Hon Rachel Brooking
Minister for Oceans and Fisheries

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Purpose – Te aronga

7. This paper provides you with the Cabinet paper seeking introduction of the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) and near-final version of the Bill for Ministerial consultation.
8. It also seeks your agreement to a clarified recommendation around the powers in the Bill of protected customary rights (PCR) or customary marine title (CMT) holders within the permitting regime.

Background and context – Te horopaki

9. On 12 June 2023, we informed you that the Parliamentary Counsel Office (PCO) had deprioritised drafting of the Bill [23-B-0183/B23-0362 refers]. On 29 June 2023 we provided you with the substantive changes to be incorporated in the Bill following feedback from interagency consultation [23-B-0291/B23-0482 refers].
10. Officials have further analysed these changes to the Bill and a further policy decision is required.
11. PCO has completed the substantive changes to the Bill and produced a near-final draft. The Cabinet paper is provided in **Attachment A** and the near-final draft of the Bill is provided in **Attachment B**. The Cabinet paper and Bill are drafted as if the decision outlined in this paper has been agreed to.
12. Following truncated ministerial consultation beginning the week of 7 August 2023, it is possible to lodge the Bill and Cabinet paper for Cabinet-Legislative Committee on 10 August 2023, for consideration on 17 August 2023. Depending on the availability of House time, this may enable introduction of the Bill prior to the general election.

Policy decision: how the permitting regime recognises rights under the Marine and Coastal Area (Takutai Moana) Act 2011

13. On 29 June 2023, you agreed that the Bill would include a provision that gives groups with protected customary rights (PCR) or customary marine title (CMT) under the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act), the power to grant or refuse permission for an application for a permit within a protected area to be considered by the Director-General of the Department of Conservation (DOC) [23-B-0291/B23-0482 refers].
14. Further analysis has shown that, while the Takutai Moana Act provides for similar powers in relation to activities in conservation areas that are not marine reserves, this type of provision does not exist for activities in marine reserves.¹ As such, granting these powers would go beyond the rights laid out within the Act, and would set a precedent for permitting regimes within all marine protection areas. Officials have not considered or fully analysed the national impacts of this. This is an issue that is better addressed through marine protected areas legislative reform where the wider implications can be considered.
15. We recommend that the Bill does not include a provision to give groups with PCR or CMT under the Takutai Moana Act the power to grant or refuse permission for a permit application to be considered. Importantly, this does not remove any existing right that are provided for PCR and CMT holders.
16. The Bill will continue to recognise PCR and CMT holders in the permitting regime by requiring the Director-General to consider the anticipated effects of an activity on the

¹ The Takutai Moana Act enables CMT holders to give or decline permission, on any grounds, for the Minister or Conservation or Director-General of DOC to proceed to consider an application made under section 5 of the Marine Reserves Act 1971 to declare or extend a marine reserve. However, it does not grant this same power for consideration of permits within marine reserves.

rights and interests of whānau, hapū, and iwi that exercise kaitiakitanga in the area. This includes those who hold PCR or CMT under the Takutai Moana Act.

Risk assessment – Aronga tūraru

17. It is possible that PCR or CMT applicants and holders may wish to see the inclusion of a power to grant or refuse permission for an application for a permit to be considered. However, this would go beyond the rights provided for under the Takutai Moana Act and was not sought during consultation. Not including this provision therefore does not impact on any existing right afforded under the Takutai Moana Act.
18. There are risks if you choose not to retain this proposed provision. It may set a precedent for existing and future marine protected areas, and we have not conducted an analysis to understand the full implications. We consider it is a question that warrants attention, however, it is more appropriate for this to be addressed through future marine protected areas legislative reform.

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

19. Not including a power for PCR or CMT holders to grant permission over whether an application for a permit should be considered or not, will not impact on any existing right held by Māori.

Consultation – Kōrero whakawhiti

20. Officials contacted all groups with applications for PCR or CMT under the Takutai Moana Act to engage on the marine protection proposals. No engagement occurred specifically regarding rights under the Takutai Moana Act, although some applicants were engaged with as representatives of iwi.
21. On the Cabinet paper, officials consulted with the Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Land Information New Zealand, New Zealand Geographic Board, Ministry of Business, Innovation and Employment, Ministry of Transport, Ministry of Justice, the New Zealand Defence Force, Maritime New Zealand, and the Department of Internal Affairs. The Department of Prime Minister and Cabinet was informed. Auckland Council and Waikato Regional Council were also consulted.

Financial implications – Te hīraunga pūtea

22. There are no financial implications associated with the content of this paper.

Legislative implications – Te hīraunga a ture

23. The Hauraki Gulf / Tīkapa Moana Marine Protection Bill is drafted as if the decision outlined in this paper has been agreed to. If you do not agree, officials will instruct PCO to update the Bill accordingly. This may impact on the timeframe to lodge the Cabinet paper on 10 August 2023.

Next steps – Ngā tāwhaitanga

24. We have provided you with the Cabinet paper seeking introduction of the Bill and near-final Bill (see **Attachments A and B**). These documents are written as if you have agreed to the decision in this paper. If you do not agree, officials will instruct PCO to update the Bill accordingly. This may impact on the timeframe to lodge the Cabinet paper on 10 August 2023.
25. The Cabinet paper and Bill will be updated following Ministerial consultation. Final versions of these papers are expected to be lodged on 10 August for Cabinet Legislative

Committee. Depending on the availability of House time, this may enable introduction of the Bill prior to the general election.

Attachments – Ngā tāpiritanga

Attachment A: Cabinet paper: The Hauraki Gulf / Tīkapa Moana Marine Protection Bill:
Approval for Introduction

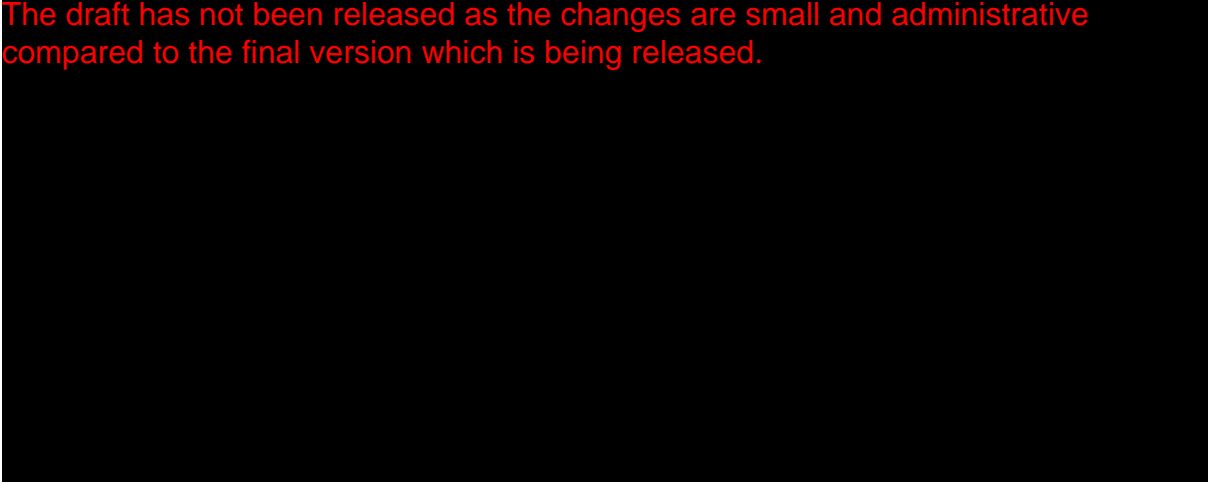
Attachment B: The Hauraki Gulf / Tīkapa Moana Marine Protection Bill

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Attachment A: Cabinet paper - The Hauraki Gulf / Tīkapa Moana Marine Protection Bill: Approval for Introduction

The draft has not been released as the changes are small and administrative compared to the final version which is being released.



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