



Briefing: Hauraki Gulf / Tīkapa Moana Marine Protection Bill – further advice and proactive release of documents

To	Minister of Conservation	Date submitted	18 July 2024
Action sought	Decisions on matters to be reported back to Cabinet, approval of matters to be included in an Amendment Paper and the proactive release of documents.	Priority	High
Reference	24-B-0317	DocCM	DOC-7687195
Security Level	In Confidence		

Risk Assessment	Medium Cross-party support for the Hauraki Gulf / Tīkapa Moana Marine Protection Bill may be contingent on some decisions sought in this paper.	Timeframe	31 July 2024
Attachments	Attachment A – Cabinet paper: Progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill Attachment B – Cabinet Minute: Progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill		

Contacts	
Name and position	Cell phone
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Executive summary – Whakarāpopoto ā kaiwhakahaere

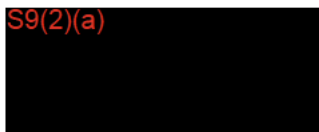
1. On 20 June 2024, the Environment Select Committee reported back on the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill), recommending it be passed.
2. On 27 June 2024, the Cabinet Legislation Committee considered the Cabinet paper 'Progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill'. You were invited to report back to Cabinet seeking policy decisions on amendments to the Bill, including on the Treaty clause and the provision of customary fishing. Your decisions are now required to enable the report back to Cabinet and preparation of an Amendment Paper.
3. We have identified four options in respect of the Treaty clause each of which differs according to the weighting you wish to place on: the alignment with the Conservation Act 1987, expectations from mana whenua and improved clarity. On balance we consider replacing the general Treaty provision with 'signposting' provisions is preferable as it provides clarity to how the Treaty of Waitangi is acknowledged through operational provisions and is most likely to achieve cross-party support.
4. We also seek your agreement that the Bill retains provisions that acknowledge and provide for rights under the Marine and Coastal Area (Takutai Moana) Act 2011.
5. In addition to the above, we seek your policy direction on how customary fishing should be provided for in the Bill. On balance we consider retaining the current provisions as drafted is preferable as this provides for customary fishing while also having mechanisms in place to manage the potential impact on biodiversity in collaboration with mana whenua.
6. There are further technical amendments that we recommend you agree are progressed through an Amendment Paper, mainly to clarify understanding and address unintended gaps in the Bill that we have since identified. These are that:
 - 'collaborative' development of biodiversity objectives with mana whenua is required 'to the extent reasonably practicable';
 - the prohibition on dumping, depositing, discharging and causing vibrations includes when the source of impact is outside the protection area;
 - the presence of a person is not required for a ranger to carry out entry, search and seizure activities; and
 - the addition of the word 'sediment' in the prohibition related to dumping, deposition and discharge, to further strengthen the language in the Bill in regard to sedimentation (noting this briefing provides you with information, as requested, on how the Bill more broadly addresses sedimentation).
7. As further Cabinet decisions are required, a condensed process will be necessary to achieve enactment of the Bill this calendar year.
8. As requested by you, we met with Ngāi Tai ki Tāmaki who conveyed they were generally pleased with the Bill. We have also met with Paul Majurey who conveyed that he had not yet had time to fully consider the Bill and would shortly be providing you with feedback directly.
9. We will continue to engage with Ngāi Tai ki Tāmaki and Paul Majurey on the approach for developing biodiversity objectives under the Bill and their involvement following enactment of the Bill.

We recommend that you ... (Ngā tohutohu)

		Decision
<i>Policy decisions for reporting back to Cabinet</i>		
1.	<p>EITHER</p> <p>i) Replace the general Treaty clause with 'signposting' provisions (preferred)</p> <p>OR</p> <p>ii) Retain the general Treaty clause</p> <p>OR</p> <p>iii) Retain the general Treaty clause and include 'signposting' provisions</p> <p>OR</p> <p>iv) Remove the general Treaty clause and do not include 'signposting' provisions</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
2.	<p>Either</p> <p>i) Retain the provisions for customary fishing as currently drafted (preferred)</p> <p>OR</p> <p>ii) Remove the provisions that create conditions under the Bill with which customary fishing must comply</p> <p>OR</p> <p>iii) Remove the provisions that create conditions under the Bill with which customary fishing must comply, except for the provision for the Minister of Conservation (in consultation with the Minister for Oceans and Fisheries and mana whenua) to recommend regulations on customary fishing as a 'backstop'</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
3.	<p>Either</p> <p>i) Retain the provisions in the Bill that acknowledge and provide for rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (preferred)</p> <p>OR</p> <p>ii) Remove the provisions in the Bill that acknowledge and provide for rights under the Marine and Coastal Area (Takutai Moana) Act 2011</p>	<p>Yes / No</p> <p>Yes / No</p>
<i>Technical decisions for inclusion in an Amendment Paper</i>		
4.	<p>Agree to amend the requirement for the collaborative development of biodiversity objectives with mana whenua to be required 'to the extent reasonably practicable'</p>	<p>Yes / No</p>

5.	Agree to amend the Bill so that dumping, depositing, discharging (in seafloor protection areas and high protection areas) and causing vibrations (in high protection areas) are prohibited whether the source of impact is inside or outside of the protection area	Yes / No
6.	Agree to amend the Bill so that the presence of the person who is believed to be committing, or has committed an offence, is not required for a ranger to carry out entry, search and seizure activities	Yes / No
7.	Agree to amend the Bill to include the word 'sediment' in the following prohibitions: <i>'the dumping, depositing, or discharge of waste, <u>sediment</u>, or other matter that is likely to have a more than minor adverse effect on aquatic life'</i>	Yes / No
Release of documents, timing and next steps		
8.	Note , subject to your decision on the recommendation above, you will receive a draft Cabinet paper to report back to Cabinet Legislation Committee	
9.	Note that due to requiring Cabinet approval of decisions, a condensed process is required to achieve enactment of the Bill this calendar year	
10.	Agree to the proactive release of the Cabinet paper 'Progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill'	Yes / No
11.	Agree to the proactive release of the Cabinet minute 'Progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill'	Yes / No
12.	Note that officials will continue to engage with Ngāi Tai ki Tāmaki and Paul Majurey	

S9(2)(a)



Date: 18/07/2024

Date: / /

Ruth Isaac
Deputy Director-General Policy and
Regulatory Services

Hon Tama Potaka
Minister of Conservation

Purpose – Te aronga

1. The purpose of this briefing is to:
 - seek your decisions on matters for inclusion in an Amendment Paper, including matters raised by the Cabinet Legislation Committee;
 - provide advice on how the Hauraki Gulf / Tikapa Moana Marine Protection Bill (the Bill) addresses sedimentation;
 - update you on hui officials held with Ngāi Tai ki Tāmaki and Paul Majurey; and
 - seek your approval to proactively release the Cabinet paper and Cabinet minute following Cabinet Legislation Committee on 27 June 2024.

Background and context – Te horopaki

2. On 14 June 2024, we briefed you on next steps for progressing the Bill and an Amendment Paper [24-B-0283 refers]. We noted that we would provide you with further advice on an Amendment Paper, following the Environment Select Committee's report back and further engagement with Te Arawhiti on the Treaty clause.
3. On 27 June 2024, the Cabinet Legislation Committee considered the Cabinet paper 'Progressing the Hauraki Gulf / Tikapa Moana Marine Protection Bill' (see Attachment A). You were invited to report back to Cabinet seeking policy decisions on amendments to the Bill, including to clause 4 (the Treaty clause), and the interaction between customary fishing rights and the protected areas established by the Bill [LEG-24-MIN-0132 refers] (see Attachment B).
4. The Environment Select Committee reported back on the Bill on 20 June 2024, recommending that it be passed.

Policy decisions to report back to the Cabinet Legislation Committee

Changes to the Treaty clause

5. The Bill currently recognises the principles of the Treaty of Waitangi through the general Treaty clause and the inclusion of operational provisions e.g. for customary fishing, collaboration and consultation with mana whenua, and consideration of anticipated effects on mana whenua rights and interests. These provisions were widely engaged on and generally supported by mana whenua. Therefore, no further operational provisions are required.
6. We have further considered the Treaty clause and have identified possible options. This follows consultation with Te Arawhiti's Treaty Provisions Oversight Group [24-B-0283 refers], and in reference to advice from the Legislation Design and Advisory Committee, and provisions in other legislation. These options fall within the two broad approaches of taking a 'general Treaty clause' approach or a 'signposting' approach, as described below. The options are finely balanced.

The 'general Treaty clause' approach

7. The general Treaty clause in the Bill reflects that of section 4 of the Conservation Act 1987, which requires DOC in its administration of that Act (and those Acts listed in its first schedule, e.g. the Marine Reserves Act 1971) to 'give effect to the principles of the Treaty of Waitangi'. The obligation in section 4 has been described by the Supreme Court as a powerful Treaty clause.¹
8. The application of section 4 is a key focus for DOC and is informed by case law. Section 4 provides a 'catch-all' mechanism recognising the Crown's Treaty of Waitangi

¹ *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122

obligations, including in contexts that may not have been anticipated at the time the legislation was developed.

9. The principles of the Treaty of Waitangi and their application are constantly evolving. The Court of Appeal has said: *'The Treaty obligations are ongoing. They will evolve from generation to generation as conditions change.'*²
10. Retention of the general Treaty clause has been signalled as important to mana whenua. For example, the submission by Ngāi Tai ki Tāmaki to the Environment Select Committee on the Bill stated *'Ngāi Tai ki Tāmaki expects this Bill to give effect to Te Tiriti o Waitangi as exemplified in Section 4 of the Conservation Act.'*
11. If there was no general Treaty clause in the Bill, recognition of the Treaty of Waitangi would continue to occur through targeted operational provisions, e.g. for customary fishing and collaboration and consultation with mana whenua. There will also likely be a general obligation on DOC to consider (but not 'give effect' to) Treaty of Waitangi principles in the administration of the operative Act.³
12. Section 4 of the Conservation Act will apply to the management of the marine reserves being established by this Bill, as they are to be treated as if they were declared under the Marine Reserves Act (to which section 4 of the Conservation Act applies).
13. DOC's original advice to include the general Treaty clause in the Bill reflected that it already applies to the marine reserves, and that despite some uncertainty on this point, it would not likely add additional obligations beyond the Court's general approach to these matters particularly in a Conservation context. We note, however, our view that more specific articulation of how obligations under the Treaty of Waitangi are intended to be provided for and met is a better approach in law.
14. There may be limited support in Government for a general Treaty clause in legislation i.e. the New Zealand National Party and New Zealand First coalition agreement outlines the intent to repeal or replace all references to the 'Principles of the Treaty of Waitangi' although Government policy decisions are yet to be made."

The 'signposting' provisions approach

15. The purpose of a 'signposting' approach is to highlight the ways in which an Act takes into account the Treaty of Waitangi. While it does not specifically add additional provisions, it can be useful in highlighting how the Treaty of Waitangi is taken into account.
16. Clause 7 of the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act) provides an example of legislation where the operational provisions related to the Treaty of Waitangi are 'signposted':

7 Treaty of Waitangi (te Tiriti o Waitangi)

In order to take account of the Treaty of Waitangi (te Tiriti o Waitangi), this Act recognises, and promotes the exercise of, customary interests of Māori in the common marine and coastal area by providing,—

- (a) in [subpart 1 of Part 3](#), for the participation of affected iwi, hapū, and whānau in the specified conservation processes relating to the common marine and coastal area; and
- (b) in [subpart 2 of Part 3](#), for customary rights to be recognised and protected; and
- (c) in [subpart 3 of Part 3](#), for customary marine title to be recognised and exercised.

17. Similar 'signposting' provisions that identify the operational Treaty provisions could be provided for in this Bill. As indicated, this would not change the policy of the Bill but

² *Te Runanga o Muriwhenua v Attorney-General* CA 1990 2 NZLR 641 at p.656 per Cooke P

³ The Legislation Design and Advisory Committee Guidelines note that due to its constitutional significance, in the absence of clear words to the contrary, the courts will presume that Parliament intends to legislate in a manner that is consistent with the principles of the Treaty and interpret legislation accordingly. However, this would not have the same effect of a general operative 'give effect' requirement, as a mandatory consideration.

provides a signal early in the legislation as to how the Treaty of Waitangi is acknowledged. An argument for this approach is that the Bill has been specifically developed in order to provide for a new model for marine protection that provides active protection for Treaty rights in specific ways. It isn't clear that any further requirements may be necessary or warranted that a catch all clause would provide for, and if there are gaps, these would be better added as specific operational provisions.

18. Te Arawhiti's Treaty Provisions Oversight Group has advised that '*it is not clear that signposting provisions in this instance, either within or alongside the existing clause 4, would achieve greater clarity or specificity about how the implementation of Treaty obligations are provided for in the Bill.*'
19. Our view is that the general Treaty clause potentially adds ambiguity about what is required, while 'signposting' provisions would provide additional clarity in this Bill.
20. 'Signposting' provisions can occur alongside the general Treaty clause (as per the now repealed Water Services Entities Act 2022), or in place of the general Treaty clause (as per the Takutai Moana Act).

We have identified four options for how you could address the Treaty clause

21. Option 1 (preferred): Replace the general Treaty clause with 'signposting' provisions. This option likely provides more clarity to how the Bill operationally gives effect to the Treaty of Waitangi and gives some expression to the expectations of mana whenua. However, it does not align with the drafting of the Conservation Act. While the removal of the general Treaty clause may be opposed by some mana whenua, this option continues to acknowledge the Treaty of Waitangi through operational provisions which are 'signposted' early in the legislation. Our view is that specific rather than general clauses are better in law.
22. Option 2: Retain the general Treaty clause as is. This option aligns with the Conservation Act and is most in line with the expectations of mana whenua but potentially generates more scope for interpretation about the Bill's meaning and how it should be implemented. Given that the design and operational provisions of the Bill make it clear how Treaty obligations are provided for in the Bill already, you may consider that the specific intentions are already articulated by Parliament and a catch all general clause is not required.
23. Option 3: Retain general Treaty clause and include 'signposting' provisions. This option provides alignment with the drafting of the Conservation Act and likely provides further clarity to how the Bill operationally gives effect to the Treaty of Waitangi.
24. Option 4: Remove the general Treaty clause and do not include 'signposting' provisions. This option does not align with the Conservation Act and does not set out how the Bill operationally gives effect to the Treaty of Waitangi. However, the operational provisions in the Bill implicitly continue to recognise the principles of the Treaty of Waitangi in their design and there will likely remain a general obligation on DOC to consider Treaty of Waitangi principles when administering the Act.⁴ Despite the retention of the operational provisions in the Bill, mana whenua may oppose this approach as it may be seen as not doing enough to acknowledge the Treaty of Waitangi.

Interaction between customary fishing rights and the protected areas

25. The Bill does not expand on existing customary fishing rights, rather it provides for customary fishing, as defined and regulated under the Fisheries Act 1996, to continue

⁴ The Legislation Design and Advisory Committee Guidelines note that due to its constitutional significance, in the absence of clear words to the contrary, the courts will presume that Parliament intends to legislate in a manner that is consistent with the principles of the Treaty and interpret legislation accordingly. However, this would not have the same effect of a general operative 'give effect' requirement, as a mandatory consideration.

in seafloor protection areas (SPAs) and high protection areas (HPAs) so long as it complies with the following conditions:

- bottom trawling, dredging and Danish seining fishing methods are not used⁵;
 - any regulations related to access for customary fishing that have been developed collaboratively with mana whenua and give effect to the biodiversity objectives (for HPAs only); and
 - any further regulations related to access for customary fishing made on the recommendation of the Minister of Conservation (for HPAs only, and in consultation with the Minister for Oceans and Fisheries and mana whenua).
26. While the Bill provides for the making of regulations which could include the regulation of customary fishing, there is no requirement for these to be developed. Communication and engagement with tangata kaitiaki (who issue authorisations for customary fishing) about any concerns related to the impact of customary fishing on biodiversity values could negate the need to develop any such regulations.
27. If the Bill does not contain these regulation making powers, there would be no express legislative mechanism to address any potential cumulative impact of customary fishing on biodiversity objectives.
28. Options for how customary fishing is provided for in the Bill include:
- Option 1 (preferred): retaining the provisions for customary fishing as currently drafted;
 - Option 2: remove the provisions that create conditions under the Bill with which customary fishing must comply (i.e. prohibition on certain methods and requirement for compliance with any developed regulations); or
 - Option 3: remove of the provisions that create conditions under the Bill to which customary fishing must comply, *except* for a provision that enables the Minister of Conservation (in consultation with the Minister for Oceans and Fisheries and mana whenua) to recommend regulations on customary fishing. The retention of this provision could be a useful 'backstop' should the cumulative impact of customary fishing be more than expected.
29. Our view remains that Option 1 (inclusion of these provisions in the Bill) balances the need for biodiversity protection while giving effect to customary fishing. While option 3 could also achieve this, we consider it is less preferable as it only retains the provision that can be triggered following evidence that customary fishing is impacting on biodiversity objectives. Option 3 removes the requirement for DOC to proactively collaborate with mana whenua to develop regulations related to customary fishing that give effect to the biodiversity objectives.
30. Fisheries New Zealand supports this approach in the Bill and mana whenua are generally supportive. However, Te Ohu Kaimoana and the Hauraki Māori Trust Board have expressed their opposition to the Bill containing 'conditions' on customary fishing.

Rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act)

31. Following the Cabinet Legislation Committee on 27 June 2024, you asked for further advice on how the Bill gives effect to rights under the Takutai Moana Act.

⁵ While bottom trawling and Danish seining are commercial methods, they can theoretically be used by a commercial fisher in an HPA who is collecting fish on behalf of a customary authorisation holder. If used, these methods will likely impact on the biodiversity values intended to be protected at these sites.

32. The Bill provides that nothing in the Bill will limit or otherwise affect the ability of an applicant group to obtain recognition of protected customary rights or customary marine title (section 8(2)). It is uncertain if the Bill would impact on the ability to obtain recognition and this clause is for avoidance of doubt.
33. The Bill also provides that any rights held under the Takutai Moana Act are exempt from prohibitions (clause 21(aaa)). As part of giving effect to this, the Bill provides that, before granting a permit, the Director-General of Conservation must be satisfied that rights under the Takutai Moana Act associated with granting approval or permission for activities to occur have been exercised (clause 30A). This provision does not create any additional requirements on an applicant but ensures that these rights are upheld.
34. Applications for rights under the Takutai Moana Act in the Hauraki Gulf are still being considered. The scope of rights that can be provided for are limited e.g. an applicant must be able to show that they have exercised an activity since 1840 and continue to exercise the activity in accordance with tikanga today. Some activities cannot be recognised e.g. there cannot be rights granted under the Takutai Moana Act for any fishing activities under the Fisheries Act (including customary fishing). Examples of rights that may be obtained include to collect hāngī stones and the launching of waka.
35. This limited scope means there is unlikely to be a significant impact on biodiversity objectives by exempting the exercise of these rights. An exemption aligns with the approach under the Resource Management Act 1991 where a person does not need a resource consent to carry out a protected customary right.
36. The limited scope of rights under the Takutai Moana Act also means that not exempting (i.e. prohibiting) the exercise of these rights would unlikely have a significant impact on rights holders. While the impact on rights holders may not be significant, the inability to exercise some of these rights may be opposed by mana whenua.
37. Options for how rights under the Takutai Moana Act are acknowledged in the Bill:
 - Option 1 (preferred): retain provisions that acknowledge rights under the Takutai Moana Act. This option is unlikely to have a significant impact on biodiversity objectives and will be supported by mana whenua. It will also support the purpose of the Bill which includes 'acknowledging customary rights within seafloor protection areas and high protection areas'; or
 - Option 2: remove provisions that acknowledge rights under the Takutai Moana Act. This option is unlikely to have a significant effect on rights holders but is unlikely to be supported by mana whenua.

Technical matters for an Amendment Paper

Changes to the process for developing biodiversity objectives

38. The Bill requires that biodiversity objectives are developed collaboratively with mana whenua within two years of the Bill being implemented. The two-year requirement is important as the biodiversity objectives play a key role in the permitting process, monitoring and reporting, and regulation of activities in HPAs.
39. There is a significant risk that the biodiversity objectives cannot be developed through a collaborative process within two years, despite best efforts, e.g. if this mahi is not able to be prioritised by mana whenua.
40. We recommend amending the requirement for 'collaborative development' to be 'to the extent reasonably practicable'. This will maintain a high threshold for the Crown to meet but will better support biodiversity objectives to be developed within the two years. We will work with the Parliamentary Counsel Office on drafting the appropriate text.

Clarifying Bill prohibitions

41. We recommend that the Bill is amended to prohibit the dumping, depositing or discharge, and the causing of vibrations that have a more than minor adverse effect on aquatic life, whether the source of the impact is inside or outside of the protection area – currently the source of impact must be inside the protection area.
42. This will extend the prohibition to include activities such as the discharge of sediment outside of a protection area where that sediment subsequently ends up inside the protection area, or the causing of vibrations immediately outside of an HPA that has a more than minor adverse effect on aquatic life inside the HPA. This amendment will better reflect the policy intent of the prohibition.

Clarifying the powers of entry, search and seizure

43. The Bill currently says in clause 39(2) that *'the ranger may, in the presence of a person, - (a) stop enter, and search any vehicle, vessel, aircraft, or structure in the control of the person; and (b) open and search any parcel, package, container, or luggage in the control of the person.'*
44. The wording *'in the presence of a person'* is considered outdated as an interpretation could be that the person who is believed to be committing, or has committed, an offence under the Bill must be present for the enter and search powers to be exercised. There are numerous scenarios where the person cannot be present or does not want to be present. The person could also be an incorporated body.
45. We recommend that the Bill is amended so that the presence of the person who is believed to be committing, or has committed, an offence is not required. This will not prevent a person being present if they wish to.

How the Bill addresses sedimentation

46. On 18 June 2024, you requested further information on how the Bill addresses sedimentation.
47. The Bill prohibits a range of activities that cause sediments to be resuspended⁶, including bottom trawling and construction. The exception is activities related to a submarine cable which are exempt from prohibitions under the Bill [24-B-0106 and 24-C-0002 refers].
48. The Bill also prohibits the discharge, dumping or deposition of waste or other matter (including sediments) that is likely to have a more than minor adverse effect on aquatic life. Pending your agreement to the proposed amendment above (see paragraphs 41-42) this prohibition will apply to activities that occur both inside and outside the protection areas. With sufficient evidence, it would be possible to prosecute for land-based sedimentation under this Bill.
49. You asked for the Bill to contain stronger language around sedimentation. We recommend a clarification amendment to include the word 'sediment' in the following prohibition: *'the dumping, depositing, or discharge of waste, sediment, or other matter that is likely to have a more than minor adverse effect on aquatic life'*.

Hui with Ngāi Tai ki Tāmaki and Paul Majurey

50. You instructed officials to meet with Ngāi Tai ki Tāmaki and Paul Majurey to discuss the Bill. As previously noted to you, there were limitations on what could be discussed while the Bill is progressing through the Parliamentary process [24-B-0283 refers].

⁶ Resuspension of sediment is the suspension and redistribution of previously deposited sediment particles.

51. Ngāi Tai ki Tāmaki were generally pleased with the Bill. They noted the mutual obligations for both mana whenua and the Crown created throughout the Bill, in particular in relation to the development of biodiversity objectives.
52. Paul Majurey stated that he had not yet had time to fully consider the Bill and that he would shortly be providing you with feedback directly. Paul noted that he did not support the provisions in the Bill that create conditions on customary fishing. This matter is discussed above in paragraphs 25-30. No other specific matters were raised at the time of the hui.
53. In coming months, officials will continue to work with Ngāi Tai ki Tāmaki, and other mana whenua on the approach for developing biodiversity objectives and their involvement following enactment of the Bill e.g. around compliance, monitoring and management of the areas.

Proactive release of documents

54. In line with Cabinet directives, we seek your review and approval for the proactive release of the Cabinet paper (Attachment A) and Cabinet minute (Attachment B) following Cabinet Legislation Committee on 27 June 2024. No redactions are proposed.

Risk assessment – Aronga tūraru

55. If you decide to remove the general Treaty clause from the Bill, there will likely be strong opposition from mana whenua.
56. If the decide to remove the provisions in the Bill that provide for the regulation of customary fishing, there is a risk that customary fishing could impact on biodiversity outcomes. There may be some opposition from the public and environmental groups to this change. This can be managed through effective communications.
57. If the provisions in the Bill that recognise rights under the Takutai Moana Act are removed, the Bill would likely not achieve the purpose of ‘acknowledging customary rights within SPAs and HPAs’. Mana whenua will likely see this as a removal of their rights and oppose this change.
58. Not progressing the proposed technical amendments may result in implementation and compliance issues in the future.

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

59. Any changes to the Treaty clause will result in differences in Treaty provisions between this Bill and the Conservation Act. Case law related to section 4 of the Conservation Act may not apply to this Bill.

Consultation – Kōrero whakawhiti

60. Te Arawhiti was consulted on the Treaty clause and Fisheries New Zealand was consulted on customary fishing matters.

Financial implications – Te hīraunga pūtea

61. There are no financial implications in this paper.

Legal implications – Te hīraunga a ture

62. Any Amendment Paper may lead to changes to the Bill.

Next steps – Ngā tāwhaitanga

63. Following your decisions on this paper, officials will provide you with a draft Cabinet paper for your report back to Cabinet.
64. A date for the second reading has not yet been set but could occur at any time. We previously provided you with draft speech notes [24-B-0283 refers]. Amendments to the Bill are not considered at that stage but you may wish to signal changes you intend to put forward in an Amendment Paper when you give your second reading speech.
65. We will continue to work with Ngāi Tai ki Tāmaki and other mana whenua on a process for developing biodiversity objectives. We will further advise you on this in October.
66. Below is a table showing the steps until enactment of the Bill. As Cabinet approval is required for proposed amendments, a condensed process is required for the Bill to be enacted this calendar year (e.g. shortened consultation for Cabinet Papers).

Step	Condensed process	Normal process
Your decisions on this paper	31 July 2024	31 July 2024
Cabinet paper on proposed amendments considered (consultation, LEG, and Cabinet)	5 August – 2 September 2024	5 August – 16 September 2024
Development of Amendment Paper (AP)	3 September – 8 October 2024 (minimum 5 weeks needed by PCO)	17 September – 21 November 2024 (minimum 5 weeks needed by PCO)
Cabinet paper on AP considered (consultation, LEG, and Cabinet)	9 October – 11 November 2024	22 November – TBD 2025
Final AP submitted to Clerk	15 November 2024	TBD 2025
Committee of the whole House	As early as 19 November 2024	TBD 2025
Third reading	As early as 20 November 2024 but likely no earlier than 10 December 2024	TBD 2025
Royal assent	As early as 17 December 2024	TBD 2025

ENDS

Attachment A: Cabinet paper: Progressing the Hauraki Gulf / Tikapa Moana Marine Protection Bill

Attachment A has been released separately in this package

Attachment B: Cabinet minute: Progressing the Hauraki Gulf / Tikapa Moana Marine Protection Bill

Attachment B has been released separately in this package