

## In Confidence

Office of the Minister of Conservation

Cabinet Legislation Committee

## Progressing the Hauraki Gulf / Tīkapa Moana Marine Protection Bill

### Proposal

- 1 This paper seeks approval to proceed with the Hauraki Gulf / Tīkapa Moana Marine Protection Bill 2023 (**Attachment A** contains the version of the Hauraki Gulf / Tīkapa Moana Marine Protection Bill introduced in August 2023).

### Policy

- 2 The Hauraki Gulf / Tīkapa Moana (the Gulf) is recognised as a taonga of natural, economic, recreational, and cultural importance. The Gulf has a diverse array of habitats, including biologically important dog cockle beds, kelp forests and fragile fields of coral. One third of all seabirds that breed in New Zealand nest in the Gulf. A recent assessment by the New Zealand Institute of Economic Research put the economic value of the Gulf at \$100 billion.
- 3 However, State of the Gulf reports over the last 20 years have shown it to be in an ongoing state of environmental decline.<sup>1</sup> There are increasing kina barrens (areas where an overabundance of kina graze the seaweed to leave behind almost bare reef), habitat loss and localised fisheries depletion, e.g. snapper and tarakihi. Lobsters (kōura) are regarded as functionally extinct in the Gulf, meaning they have been reduced to an extent where they do not play their usual role in the Gulf's marine ecosystems. Snapper are increasingly being caught with 'milky white flesh', thought to be the result of nutritional deficiencies.
- 4 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 initiated over 10 years ago and published 8 years ago. Since then, the application for Hākaimango-Matiatia (Northwest Waiheke) Marine Reserve has been lodged, a number of rāhui have been established and the Hauraki Gulf Forum has called for 30% of the Gulf to be protected.
- 5 Marine protection is needed to reverse the environmental decline in the Gulf. The Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill) will give effect to new marine protection areas that will regulate activities that can have harmful effects in the marine environment. It will increase marine protection in the Gulf from 6.7%<sup>2</sup> to around 18%.

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<sup>1</sup> Every three years, the Hauraki Gulf Forum produces a report on the state of the Hauraki Gulf environment. The reports can be found at <https://gulfjournal.org.nz/state-of-the-gulf>

<sup>2</sup> Existing marine protection in the Gulf consists of 0.3% in marine reserves and 6.4% in cable protection zones.

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- 6 The marine protection proposals in the Bill will work alongside other initiatives to address the declining health and mauri in the Gulf, including the Hauraki Gulf Fisheries Plan<sup>3</sup> led by Fisheries New Zealand. The marine protection proposed under this Bill and actions in the Hauraki Gulf Fisheries Plan are complementary and address a different range of pressures impacting the Gulf.
- 7 The marine protection proposed under this Bill will manage a broad range of pressures including fishing, the management of discharges and dumping, impact of structures and damage to the seabed. This will improve the health and mauri of these areas and build resilience to threats such as invasive species and climate change impacts.
- 8 Marine protection is a proven tool for biodiversity management both domestically and internationally. It is expected that the proposed legislation, if passed, will create conditions whereby snapper density will increase by at least 400%, kōura (rock lobster) will increase by 20% and kina barrens will decrease by 30% relative to adjacent fished areas by 2030.

### Protection that balances impacts and provides for rights and interests

- 9 The Bill is the result of an extensive social and scientific process. 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.
- 10 The Bill will increase marine protection in the Gulf by 11.5%. An Economic Impact Assessment carried out by MartinJenkins found that 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. This means we can protect the most significant biodiversity at minimal cost.
- 11 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.
- 12 Around 12%-14% of permit holders who fish in QMAs that include the Gulf fished in the proposed protected areas. But, for the majority of fishers, catch landed from the proposed protected areas was less than 10% of their total catch.
- 13 I acknowledge that some fishers will be affected by the proposals in the Bill, but on balance I consider the impact justifiable in the context of the purpose of the Bill to restore the health and mauri of the Gulf.
- 14 The Bill provides for Māori rights and interests through:
- 14.1 the Tiriti o Waitangi / Treaty of Waitangi clause modelled on the Conservation Act 1987 which stipulates *'This Act must be interpreted and administered so as to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi'*;

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<sup>3</sup> The Hauraki Gulf Fisheries Plan was released in August 2023 and sets long-term outcomes to guide the management of fisheries in the Hauraki Gulf Marine Park over the next five years.

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- 14.2 ensuring that nothing in the Act limits or otherwise affects any protected customary rights or rights held by customary marine title groups under the Marine and Coastal Area (Takutai Moana) Act 2011; and
- 14.3 providing for non-commercial customary fishing to continue to be exercised under regulations made under section 186 of the Fisheries Act 1996, regulations made under section 297 of the Fisheries Act 1996 for the purpose of section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or subpart 5 of Part 2 of the Fisheries (Amateur Fishing) Regulations 2013. The conditions on access to high protection areas to fish for customary purposes will be specified in regulations, which will be developed collaboratively with whānau, hapū, and iwi who exercise kaitiakitanga in the area.

What the Bill will deliver

- 15 In December 2022 the Environment, Energy and Climate Committee agreed that the Bill would:
- 15.1 establish two marine reserves (covering 0.2% of the Gulf), one adjacent to the existing Cape Rodney – Okakari Point Marine Reserve (Leigh/Goat Island), and one adjacent to the Te Whanganui o Hei / Cathedral Cove Marine Reserve. This will in effect extend the two existing marine reserves. These marine reserves will protect the marine environment by providing the same protections as the existing marine reserves, including prohibiting all fishing and other impactful activities;
- 15.2 establish 12 high protection areas (HPAs) (covering 5.8% of the Gulf) to protect and restore marine ecosystems. HPAs will regulate a range of activities including commercial and recreational fishing, but will provide for customary fishing with the following provisions:
- customary fishing must align with the biodiversity objectives for a site;
  - customary fishers will require authorisations under the existing customary fisheries framework established under the Fisheries Act 1996; and
  - there will be a legislative mechanism whereby Ministers can, if necessary, apply additional management actions should customary fishing conflict with the biodiversity objectives of a site; and
- 15.3 establish five seafloor protection areas (SPAs) (covering 5.5% of the Gulf) to protect seafloor habitats and communities by prohibiting bottom impacting fishing activities (e.g. bottom trawling, Danish seining) and other activities such as dredging, sand extraction, and mining [CAB-22-MIN-0599.02].
- 16 The two marine reserves will be treated as if they were declared by an Order in Council made under section 4(1) of the Marine Reserves Act 1971. Once in place, these marine reserves will be managed entirely under the Marine Reserves Act 1971 and will be subject to the same rules and provisions as the existing, contiguous marine reserves. No other parts of the Bill will apply to the marine reserves.

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- 17 In August 2023, the Legislation Committee agreed that the Bill would:
- 17.1 contain an offences and penalties system and the details of that system;
  - 17.2 provide powers for rangers modelled on the Marine Reserves Act 1971;
  - 17.3 provide for a permitting regime whereby activities that are otherwise prohibited can be permitted for, e.g. maintenance of infrastructure, activities for scientific study or restoration activities;
  - 17.4 contain a Treaty provision modelled of the Conservation Act 1987; and
  - 17.5 contain a 25-year review of the SPAs and HPAs [LEG-23-MIN-0151].
- 18 In August 2023, the Bill was introduced to the House following Cabinet Committee approval [CAB-23-MIN-0387] and referred to the Environment Select Committee (the Committee). The Department of Conservation provided its initial briefing to the Committee in December 2023 and hearings to consider oral submissions concluded on 21 March 2024. The Committee are now considering the Departmental Report. The committee's report is due to be published on 20 June 2024.
- 19 The Bill has the highest ranking of legislative bids within my Conservation portfolio and has been submitted as a category 4 (to be passed by end of 2024).

### *Development of regulations*

- 20 Regulations outlining the infringement offences, fees, notice, and notice reminders will be developed in time for commencement of the Act.
- 21 No regulations are required in order for the Bill to be implemented. The Bill creates regulation-making powers for a range of purposes, including:
- 21.1 providing for setting biodiversity objectives for SPAs and for HPAs;
  - 21.2 the regulation of activities (including customary fishing) to the extent necessary to give effect to the biodiversity objectives of HPAs;
  - 21.3 prescribing offences for the breach of the regulations;
  - 21.4 prescribing infringement offences for the breach of the regulations; and
  - 21.5 providing for anything incidental that is necessary for giving effect to the Act.

### **Consultation**

- 22 All Government Parties and Ministers have been consulted on this paper. Wider public consultation and targeted consultation on the proposals has occurred over the last several years, through the wider Sea Change work and the recent Select Committee process.

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## Timeline for progress

- 23 The Environment Select Committee consideration of the Bill has concluded. Over 7,000 submissions were received on the Bill.
- 24 The Committee's report to the House was made on 20 June 2024. The next step is the second reading of the Bill and, if successful, the Committee of the whole House where the Bill will be considered in detail and proposed changes are voted on. I expect there will be changes proposed e.g. increased recognition of sedimentation as being a key issue in the Gulf.

## Proactive Release

- 25 I intend to proactively release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Conservation portfolio is responsible for the following bill reinstated in the 54<sup>th</sup> Parliament:
  - 1.1 The Hauraki Gulf / Tīkapa Moana Marine Protection Bill 2023
- 2 **note** that the purpose of the Hauraki Gulf / Tīkapa Moana Marine Protection Bill 2023 is to establish new marine protection areas to contribute to the restoration of the health and mauri of the Hauraki Gulf / Tīkapa Moana, while acknowledging customary rights;
- 3 **agree** that the Hauraki Gulf / Tīkapa Moana Marine Protection Bill 2023 continue to progress through the House.

Authorised for lodgement

Hon Tama Potaka

Minister of Conservation