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Departmental Briefing



Department of Conservation
Te Papa Atawhai



Fisheries New Zealand
Tini a Tangaroa

In Confidence

DOCCM: DOC-7256223

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MPI ref: B23-0362

To: Minister of Conservation
Minister for Oceans and Fisheries

Date: 12 June 2023

Subject: Policy decisions and Cabinet paper for the *Revitalising the Gulf* marine protection proposals

Action sought: Agree to policy decisions for the Hauraki Gulf Marine Protection Bill and provide feedback on the draft Cabinet paper seeking introduction of the Bill to the House.

Time Frame: By 19 June 2023 (to ensure the Bill can be introduced to the House mid-August).

Risk Assessment: No significant risks associated with decisions. Prompt ministerial feedback is required to ensure deadlines are met for introduction of the Bill in August.

Department's Priority: High

Level of Risk: Low

Contacts

Name and position	Cellphone	First contact	Principal author
Sam Thomas, Director – Policy, Department of Conservation	s 9 (2)(a)	✓	
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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. In December 2022, Cabinet agreed to marine protection proposals for the Hauraki Gulf, building on those in *Revitalising the Gulf: Government action on the Sea Change Plan (Revitalising the Gulf)* [CAB-22-MIN-0599.02, 22-B-0741/B22-0681 refer].
2. Cabinet authorised the former Minister of Conservation to issue drafting instructions to the Parliamentary Counsel Office (PCO) for the Hauraki Gulf Marine Protection Bill (the Bill).
3. Cabinet did not approve a compliance and enforcement regime, a permitting regime, a 25-year review clause, or a Treaty provision for the Bill at this time. The Department of Prime Minister and Cabinet advised that approval for these decisions could be sought in the Cabinet paper seeking introduction of the Bill in mid-August.

Compliance and enforcement regime (see Item 1)

4. We recommend that the Bill provides powers to rangers modelled off the Marine Reserves Act 1971. We recommend that the offences and penalties system is similar to the Marine Reserves Act 1971 but is updated to be more in line with modern conservation legislation.

Permitting regime (see Item 2)

5. We recommend that the Bill includes a permitting regime whereby the Director-General of Conservation can grant permits for otherwise prohibited activities. The Bill will specify what matters must be considered when making a decision on a permit application.

Inclusion of a 25-year review clause (see Item 3)

6. We recommend that the Bill includes a 25-year review clause to assess the operation, effectiveness, and management of the marine protection measures.

Inclusion of a Treaty provision (see Item 4)

7. We recommend that the Bill includes a Treaty clause similar to section 4 of the Conservation Act 1987.

Minor and technical decisions (see Items 5-7)

8. Cabinet authorised the Minister of Conservation and the Minister for Oceans and Fisheries to make minor or technical changes to policy decisions on issues that arise during legislative drafting, consistent with the general intent set out in the Cabinet paper.
9. This briefing seeks your agreement on the following decisions:

How non-fishing customary activities are managed in the Bill (see Item 5)

10. Cabinet agreed to allow fishing and non-fishing customary practices within the proposed High Protection Areas (HPAs). The draft Bill allows for customary fishing to continue in High Protection Areas (with some provisions). To give effect to the allowance of non-fishing customary practices, we recommend that the Bill:
 - will not impact on 'protected customary rights' as defined in the Marine and Coastal Area (Takutai Moana) Act 2011 (as previously agreed by Cabinet); and
 - allows the small-scale removal of natural materials [22-B-0120/B22/0275 and CAB-22-MIN-0599.02 refer].

The additional prohibitions on potting and bottom longlining in the Seafloor Protection Area at the Mokohīnau Islands (see Item 6)

11. Cabinet previously agreed that there would be additional prohibitions in the Mokohīnau Seafloor Protection Area (SPA) due to the presence of protected and particularly sensitive species [CAB-22-MIN-0599.02 refers]. Following an analysis of both the impact

of fishing activities on these protected and sensitive species, and the impact of additional prohibitions on fishers, we recommend the additional prohibitions take the following form:

Potting and bottom longlining are prohibited in the SPA except for within 0.5 nautical miles (nm) of the mean high-water springs of all islands and rocks, and in the South-West section of the SPA.

Other technical matters (see Item 7)

12. Some of the decisions are technical and largely draw on existing precedent. These decisions are (see Item 7 and **Attachment A** for more detail):
 - what activities are prohibited in High Protection Areas;
 - what activities are exempted from prohibitions in both Seafloor Protection Areas and High Protection Areas;
 - the process for establishing the two new marine reserves directly adjacent to existing marine reserves;
 - the exclusion of the Bill from being listed in Schedule 1 of the Conservation Act 1987; and
 - consequential amendments to other legislation.
13. A draft Cabinet paper (**Attachment B**) and a draft of the Hauraki Gulf Marine Protection Bill (the Bill) (**Attachment C**) are provided for your review.
14. The Cabinet paper and the Bill are currently drafted as if the decisions outlined in this paper have been agreed to. If you do not agree to any recommendations in this paper, the Cabinet paper and the Bill will be updated accordingly.
15. A Regulatory Impact Statement (RIS) is being drafted for the development of regulations for infringement offences.
16. You will be provided with updated versions of the Bill and Cabinet paper, and the final RIS, on 10 July for Ministerial consultation from 10-21 July. We will then incorporate any feedback and lodge the Cabinet paper on 27 July for the 3 August Cabinet Legislation Committee meeting.
17. We understand that recently, the Leader of the House advised the Parliamentary Office Counsel (PCO) to deprioritise Bills that are a priority Category 4. As such, we understand that PCO are no longer prioritising this Bill but have signalled they will attempt to support its progress where resources allow. We consider that the Bill is largely completed and ready to progress. The Department will be working closely with PCO with a view to having the Bill ready for introduction to the House in August. However, note there is a significant risk with PCO resourcing to achieve this deadline.

We recommend that you ... (Ngā tohutohu)

		Reference	Decision
a)	<p><u>Agree</u> that the Bill will include an offences and penalties system that includes:</p> <ul style="list-style-type: none"> • strict liability infringement offences covering all prohibited activities, and that these have a maximum fee of \$1,000 and no imprisonment; • strict liability criminal offences covering prohibited non-commercial activities, with a maximum fine of \$100,000 and no imprisonment, but an ability to impose community-based sentences; • strict liability criminal offences covering prohibited commercial activities, with a maximum fine of \$200,000 and no imprisonment, but an ability to impose community-based sentences; • mens rea criminal offences covering all prohibited activities, with a maximum fine of \$250,000 and maximum 3-month imprisonment term; • mens rea criminal offences for other offences, with a maximum fine of \$100,000 and maximum 3-month imprisonment term; and • a body corporate liability clause modelled on existing conservation legislation. 	Item 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b)	<u>Agree</u> that the Bill includes provisions for the power of rangers modelled on the Marine Reserves Act 1971.	Item 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
c)	<u>Agree</u> that the Bill includes provisions for Court ordered forfeiture of property, aquatic life, and natural materials, or proceeds from the sale of aquatic life or natural materials related to an offence undertaken in a High Protection Area or Seafloor Protection Area.	Item 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
d)	<u>Agree</u> that the Bill will include a permitting regime whereby the Director-General of Conservation can grant permits for otherwise prohibited activities.	Item 2	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
e)	<u>Agree</u> that the Bill will specify the matters the Director-General must consider when making a decision on a permit application.	Item 2	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
f)	<u>Agree</u> that the Bill will include a 25-year review of the marine protection measures.	Item 3	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
g)	<p><u>Agree</u> that the Bill will include the following Treaty provision:</p> <p>This Act shall so be interpreted and administered as to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.</p>	Item 4	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
h)	<u>Agree</u> that the Bill will allow for protected customary rights as defined under the Marine and Coastal Area (Takutai Moana) Act 2011.	Item 5	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

i)	<p><u>Agree</u> that potting and bottom longlining will be prohibited in the Mokohīnau Seafloor Protection Area except for within 0.5 nautical miles of the mean high-water springs of all islands and all rocks, and in the South-West section (see Attachment D).</p>	Item 6	<input checked="" type="checkbox"/> Yes / No
j)	<p><u>Agree</u> that the Bill will include the following prohibitions in High Protection Areas:</p> <ul style="list-style-type: none"> • fishing; • aquaculture activities; • the removal of natural material (e.g., sand, shells, driftwood); • introduction of any living organism; • the dumping, depositing, or discharge of waste or other matter; • mining activity, including prospecting and exploration, as defined in the Crown Minerals Act 1991; • the construction, alteration, extension, removal, or demolition of a structure (including a ship); • the causing of vibrations (other than the vibrations caused by the propulsion of a ship) in a manner that is likely to have more than a minor adverse effect on aquatic life; • the disturbance of aquatic life, their habitat, or water column in a manner that is likely to have a more than minor adverse effect on aquatic life; • the destruction or damage of the seafloor or subsoil in a manner that is likely to have an adverse effect on the seafloor or subsoil; • the landing of an aircraft; and • the causing of an explosion. 	Item 7	<input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No
k)	<p><u>Agree</u> that the Bill will include the following exemptions to prohibitions in High Protection Areas and Seafloor Protection Areas:</p> <ul style="list-style-type: none"> • customary fishing (in High Protection Areas only); • any action taken under the Biosecurity Act 1993; • any activity with a Resource Management Act consent at the date of the Bill receiving the Royal Assent, until the expiry date of the consent; • any activity permitted under Department of Conservation administered legislation; • any activity under the Resource Management (Marine Pollution) Regulations 1998; 	Item 7	<input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No

	<ul style="list-style-type: none"> emergencies involving risk to human safety or protection of the environment; any other action taken in response to marine oil spills or other pollution; any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security; transit shipping that complies with the London Convention; and, small-scale removal of natural materials including sand, rocks and shells by anyone. 		<input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No <input checked="" type="checkbox"/> Yes / No
l)	<u>Agree</u> that the marine reserve extensions will be established as new marine reserves directly adjacent to the existing marine reserves.	Item 7	<input checked="" type="checkbox"/> Yes / No
m)	<u>Agree</u> that the Hauraki Gulf Marine Protection Act will not be included in Schedule 1 of the Conservation Act 1987.	Item 7	<input checked="" type="checkbox"/> Yes / No
n)	<u>Agree</u> that the Bill will make a consequential amendment to the Crown Minerals Act 1991 to include Seafloor Protection Areas and High Protection Areas in Schedule 4 of that Act.	Item 7	<input checked="" type="checkbox"/> Yes / No
o)	<u>Agree</u> that the Hauraki Gulf Marine Protection Act will be included in the Schedule of the Environment Act 1986.	Item 7	<input checked="" type="checkbox"/> Yes / No
p)	<u>Agree</u> that the Hauraki Gulf Marine Protection Act will be included in section 7(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 to include reference to the management regime established by this Bill.	Item 7	<input checked="" type="checkbox"/> Yes / No
q)	<u>Agree</u> that permits obtained under the Hauraki Gulf Marine Protection Act will be included in section 89(2) of the Fisheries Act 1996.	Item 7	<input checked="" type="checkbox"/> Yes / No
r)	<u>Agree</u> that the Hauraki Gulf Marine Protection Act will be included in Schedule 1 of the Hauraki Gulf Marine Park Act 2000.	Item 7	<input checked="" type="checkbox"/> Yes / No
s)	<u>Agree</u> that the Bill will make a consequential amendment to sections 33(2), 37(1) and 37(2) of the Hauraki Gulf Marine Park Act 2000 to include reference to the protection areas.	Item 7	<input checked="" type="checkbox"/> Yes / No
t)	<u>Agree</u> that the relevant sections of the Hauraki Gulf Marine Protection Act will be included in the Schedule of the Search and Surveillance Act 2021.	Item 7	<input checked="" type="checkbox"/> Yes / No
u)	<u>Agree</u> that the Bill will make a consequential amendment to section 2(1) of the Summary Proceedings Act 1957 to include infringement notices issued under the Hauraki Gulf Marine Protection Act in the definition for infringement notices.	Item 7	<input checked="" type="checkbox"/> Yes / No
v)	<u>Agree</u> that the Bill will make a consequential amendment to regulation 11 of the Resource Management Act (Marine Pollution)	Item 7	<input checked="" type="checkbox"/> Yes / No

	Regulations 2011 to prohibit discharge of untreated sewage within 200m of a High Protection Area.		
w)	<u>Agree</u> that the Bill will make a consequential amendment to Rule 8.5(1)(ab) of the Land Transport (Road User) Rule 2004 to include rangers as defined in the Hauraki Gulf Marine Protection Act.	Item 7	<input checked="" type="checkbox"/> Yes No
x)	<u>Provide feedback</u> on the draft Cabinet paper seeking introduction of the Bill to the House (see Attachment B).	Item 8	
y)	<u>Approve</u> inter-agency consultation on the Cabinet paper to begin as soon as possible.		<input checked="" type="checkbox"/> Yes No
z)	<u>Provide feedback</u> on the Hauraki Gulf Marine Protection Bill (see Attachment C)		

s 9 (2)(a)

Date: 12/06/2023

Sam Thomas
 Director, Policy
 For Director-General of Conservation
 Department of Conservation

Date: / /
 16 June 2023

Hon Willow-Jean Prime
 Minister of Conservation



s 9 (2)(a)

Date: 12 /6 / 2023

Emma Taylor
 Director, Fisheries Management
 Fisheries New Zealand

Date: / /

Hon Rachel Brooking
 Minister for Oceans and Fisheries

Proactively released by the Department of Conservation

Purpose – Te aronga

1. This paper seeks:
 - your agreement to minor and technical policy changes for the Hauraki Gulf Marine Protection Bill (see Items 1-7 and **Attachment A**);
 - your feedback on a draft Cabinet Paper (see **Attachment B**) seeking Cabinet agreement to introduce the Hauraki Gulf Marine Protection Bill (the Bill) to the House. The Cabinet paper also seeks Cabinet approval to issue drafting instructions to the Parliamentary Counsel Office for regulations under the Bill; and
 - your feedback on the Hauraki Gulf Marine Protection Bill (see **Attachment C**).

Background and context – Te horopaki

2. In December 2022, Cabinet agreed to marine protection proposals for the Hauraki Gulf, building on those in *Revitalising the Gulf: Government action on the Sea Change Plan (Revitalising the Gulf)* [CAB-22-MIN-0599.02, 22-B-0741/B22-0681 refer].
3. As agreed by Cabinet, the 19 new marine protection areas include:
 - a) 12 High Protection Areas (HPAs) to protect, enhance and restore the full range of marine communities and ecosystems, and outstanding, rare, distinctive, or nationally important marine habitats, to protect the mauri of the Gulf. HPAs will provide for customary fishing by tangata whenua;
 - b) five Seafloor Protection Areas (SPAs) to maintain, restore and protect ecologically important habitats, while allowing for compatible uses. SPAs will protect seafloor habitats and communities susceptible to damage from activities such as bottom contact fishing, sand extraction and mining; and
 - c) two marine reserve extensions to the Whanganui A Hei (Cathedral Cove) and Cape Rodney – Okakari Point Marine Reserves.
4. Cabinet authorised the former Minister of Conservation to issue drafting instructions to the Parliamentary Counsel Office (PCO) for new legislation to implement the marine protection proposals. Drafting instructions were issued to PCO on 2 February 2023. Officials are working to a timeline so the Hauraki Gulf Marine Protection Bill (the Bill) can be introduced in August 2023.
5. Some policy aspects were not approved by Cabinet in December 2022 and are decisions that require Cabinet approval: e.g., the details of a compliance and enforcement regime. Cabinet approval for these decisions can be sought in the Cabinet paper seeking introduction of the Bill in mid-August.
6. These policy decisions reflect common clauses in conservation legislation and are non-controversial. However, because previous Cabinet decisions did not explicitly agree to these policy aspects, the Department of Prime Minister and Cabinet advised that approval was required from Cabinet. This will be sought in the Cabinet paper seeking introduction of the Bill in mid-August.
7. Cabinet authorised the Minister of Conservation and the Minister for Oceans and Fisheries to make minor or technical changes to policy decisions on issues that arise during legislative drafting, consistent with the general intent set out in the Cabinet paper (see Items 1-7) [CAB-22-MIN-0599.02, 22-B-0741/B22-0681 refer].
8. This briefing seeks your agreement on the outstanding policy decisions as well as minor and technical changes that arose during drafting of the Bill.
9. A draft Cabinet paper seeking agreement for the Bill to be introduced to the House is provided for your review (see **Attachment B**). The Cabinet paper has been drafted as

if the decisions outlined in this paper have been agreed to. If you do not agree to any recommendations in this paper, the Cabinet paper will be updated accordingly.

10. The PCO has provided a draft version of the Bill for inter-agency and Ministerial consultation (**see Attachment C**). A draft of the Bill was received on 12 June 2023, and as such, there may be minor changes made as the Bill is reviewed by the PCO, the Department of Conservation, and Fisheries New Zealand.
11. The Bill is currently drafted as if the decisions outlined in this paper have been agreed to. If you do not agree to any recommendations in this paper, the Bill will be updated accordingly.
12. Officials are currently drafting a Regulatory Impact Statement (RIS) for the development of regulations for infringement offences.
13. These regulations are necessary for the operationalisation of the Bill and include detail that is more appropriate in secondary legislation than in the Bill itself. The Cabinet paper will seek agreement for the Minister of Conservation to issue drafting instructions to PCO for the regulations (this will not impact the timeframes for progressing the Bill, including its planned introduction to the House by August).
14. We understand that recently, the Leader of the House advised the Parliamentary Office Counsel (PCO) to deprioritise Bills that are a priority Category 4. A Category 4 Bill is a Bill to be referred to select committee before the 2023 general election. While this Bill has been classified as Category 4, the intention is to have the Bill introduced to the House before the House rises, rather than reaching the select committee stage.
15. We understand that PCO are no longer prioritising this Bill but have signalled they will attempt to support its progress where resources allow. We consider that the Bill is largely completed and ready to progress. The Department will be working closely with PCO with a view to having the Bill ready for introduction to the House in August. However, note there is a significant risk with PCO resourcing to achieve this deadline.

Item 1 Approach to compliance and enforcement

16. Cabinet agreed that both DOC Warranted Officers and Ministry for Primary Industry/Fisheries New Zealand (FNZ) Fisheries Officers would be granted powers to monitor and enforce activities in the HPAs and SPAs. These powers include collecting evidence of non-compliance to pass on to the respective agency for investigation and further action [CAB-22-MIN-0599.02 refers].
17. Cabinet approval is required for a compliance and enforcement regime to be included in new legislation. We have been advised by the Department of Prime Minister and Cabinet that these approvals can be sought in the Cabinet paper seeking introduction of the Bill in mid-August.
18. The compliance and enforcement regime will be modelled on the Marine Reserves Act 1971, with appropriate updates to modernise the legislation and make it fit-for-purpose. This will enable consistency in the way marine protection is monitored and enforced in the Hauraki Gulf which will provide clarity for the public and those undertaking compliance activities.

Offences and penalties system

19. **We recommend that the offences and penalties system in the Bill includes:**
 - **strict liability infringement offences covering all prohibited activities in SPAs and HPAs, and that these have a maximum fee of \$1,000 and no imprisonment (A in the table below);**
 - **strict liability criminal offences covering prohibited non-commercial activities in SPAs and HPAs, with a maximum fine of \$100,000 and no**

imprisonment, but an ability to impose community-based sentences (B in the table below);

- **strict liability criminal offences covering prohibited commercial activities in SPAs and HPAs, with a maximum fine of \$200,000 and no imprisonment, but an ability to impose community-based sentences (B in the table below);**
- **mens rea criminal offences covering all prohibited activities in SPAs and HPAs, with a maximum fine of \$250,000 and maximum 3-month imprisonment term (C in the table below);**
- **mens rea criminal offences for other offences, with a maximum fine of \$100,000 and maximum 3-month imprisonment term (D in the table below) and**
- **a body corporate liability clause modelled on existing conservation legislation.**

	<i>Offence</i>	<i>Type</i>	<i>Purpose</i>	<i>Maximum fine</i>	<i>Maximum imprisonment term</i>
A	Infringement	Strict liability	All	\$1,000 fee	None
B	Criminal	Strict liability	Non-commercial	\$100,000	None, but ability to impose community-based sentences
			Commercial	\$200,000	
C	Criminal	Mens rea	All	\$250,000	3-month
D	Criminal	Mens rea	Other offences	\$100,000	3-month

20. The proposed offences and penalties system is similar to the Marine Reserves Act but is updated in the following ways:

- The Bill includes a mens rea element for imprisonment terms (as opposed to strict liability). The Court must consider that the offence was undertaken knowingly to impose an imprisonment term. The approach taken in the Bill is current best practice and reflects feedback from the Ministry of Justice and Legislation Design Advisory Committee guidance.
- The Bill simplifies the penalties for prohibited activities in protection areas to a three-tiered system, rather than a prescriptive list of penalties. This better enables penalties to be proportionate to the level of harm. We consider this approach appropriate as the prohibitions in the Bill have a broad scale of potential impacts and there is not a practical way to differentiate activities and potential level of harm in the Bill (except activities undertaken for commercial vs. non-commercial purposes). Guidance for compliance staff on what compliance action is appropriate will be captured in internal policy.
- The maximum penalty applies to all prohibited activities, rather than just commercial fishing. The tiered approach in the Marine Reserves Act limits non-fishing offences to a maximum penalty of \$50,000. We consider this is inappropriate as some non-fishing activities have the potential to have significant detrimental impacts (e.g., mining, large-scale discharge of waste).
- Non-commercial offences can incur a \$100,000 strict liability penalty. The proposed system addresses the discrepancy between existing terrestrial and marine

legislation, where marine-based penalties are significantly lower than terrestrial penalties. For example, cutting down a tree in a reserve can incur a \$100,000 fine,¹ whereas non-commercial fishing in a marine reserve is limited to a penalty of \$10,000.

- Other offences are mens rea offences and can incur a maximum \$100,000 penalty and/or a 3-month imprisonment term. These offences include activities such as harassing or impersonating a ranger, or knowingly being in possession of illegally-sourced aquatic life. This is updated from the Marine Reserves Act to align with other conservation legislation and the other penalties in the Bill.
 - The Bill includes a corporate liability clause similar to the Wildlife Act 1953, whereby directors and managers of a body corporate can be liable for an offence. This is a mens rea offence whereby the prosecution must prove that the director or manager authorised the offence or could reasonably be expected to know an offence was being committed and failed to take all reasonable steps to prevent it from occurring.
21. Some of the proposed changes to the offences and penalties system from the Marine Reserves Act will create discrepancy between protection areas in the marine space. However, the Marine Reserves Act penalties have not been updated since the Fisheries Act 1996 passed 27 years ago, and other conservation legislation penalties were updated in 2019. We therefore think it would be inappropriate to copy and paste from the outdated Marine Reserves Act and instead propose to bring this new marine legislation up to date.
22. Infringement offences will be modelled on the Conservation (Infringement Offences) Regulations 2019 (which the infringement offences in the Marine Reserves Act are modelled off). Details for the infringement offences will be established through regulations created under the Bill. These will capture minor offences such as low volume take of fish in conflict with prohibitions or littering. Infringement offences will be strict liability and as such, will not include imprisonment terms. The infringement offences and fee will be stipulated in regulations (see Item 8 for more information). We will consult with the Ministry of Justice on the infringement offences and will seek your decision on these before issuing drafting instructions to PCO.

Powers of rangers

23. **We recommend that the Bill includes provisions for the power of rangers modelled on the Marine Reserve Act** to ensure consistency in how marine protection is monitored and enforced in the Hauraki Gulf and more broadly. These provisions will provide rangers with the following powers:
- to order a person thought to be or about to commit an offence under the Bill to refrain from the prohibited activity;
 - to apprehend a person who is/has committed an offence against the Bill;
 - to require information from someone thought to have committed an offence, or for the purpose of monitoring compliance with the Bill; and
 - to seize property, aquatic life and natural materials, or proceeds from the sale of aquatic life or natural materials related to the offence undertaken.
24. These powers are subject to Part 4 (excluding sub-part 3) of the Search and Surveillance Act 2012.
25. The powers of rangers will apply outside HPAs and SPAs when a ranger believes, on reasonable grounds, that an offence has been committed against the Bill. This is updated from the Marine Reserves Act, which limits rangers' powers to 'fresh pursuit'. We consider that this update is necessary for enforcing the protection areas, as it

¹ Reserves Act 1977

enables rangers to use information such as security camera footage when monitoring compliance with the Bill.

26. **We recommend that the Bill includes provisions for Court-ordered forfeiture** of property, aquatic life, and natural materials, or proceeds from the sale of aquatic life or natural materials related to the offence undertaken in an HPA or SPA, for all offences. The inclusion of Court ordered forfeiture aligns with existing conservation legislation and will enable effective enforcement of the prohibitions within the Bill.

Item 2: Permitting regime

27. There will be some instances where activities that are prohibited in SPAs or HPAs may have sufficient rationale to occur e.g., permits for undertaking mātauranga Māori activities or scientific study, active restoration, or maintenance of existing infrastructure.
28. **We recommend that this Bill contains a permitting regime whereby the Director-General of DOC can grant (and change, review, revoke, and transfer) permits for otherwise prohibited activities.**
29. **We recommend that the Bill specifies the matters the Director-General must consider when making a decision on a permit application.** The matters to be considered are proposed to be:
- the anticipated effects of the activity on the SPA or HPA and the biodiversity objectives;
 - whether the activity can take place only within the SPA or HPA;
 - if the anticipated effects are negative, reasons why the activity is necessary and can only occur within the SPA or HPA area;
 - any measures that can be undertaken to avoid, remedy, or mitigate any adverse effects of the activity; and
 - the impact of the activity on the rights and interests on whānau, hapū, and iwi that exercise kaitiakitanga in the area.
30. To ensure that the Director-General has the necessary information to make an informed decision on granting or declining a permit application, the Bill would stipulate the information that the applicant must provide when applying for a permit. The information includes:
- the anticipated effects of the activity. If the anticipated effects are negative, why the activity is necessary and can only occur within the High Protection Area or Seafloor Protection Area;
 - a description of the activity;
 - the anticipated effects of the activity on the rights and interests of whānau, hapū, and iwi that exercise kaitiakitanga in the area; and
 - a summary of any consultation carried out and any conditions suggested by those consulted to address any concerns.
31. The Director-General would have the discretion to refuse any application even if these requirements have been met.
32. The granting of a permit from the Director-General would not negate the need for an applicant to have a permit/consent required under any other legislation e.g., the Resource Management Act 1991, for an activity in the area.
33. The provision of powers for the Director-General to grant a permit in specific circumstances is a common provision in other conservation legislation e.g., the

Conservation Act 1987, Reserves Act 1977, and the Marine Mammals Protection Act 1978.

Item 3: Inclusion of a review clause

34. A review clause is a commonly used tool for marine reserves and supports an adaptive management approach which also reflects mātauranga Māori.
35. Reviewing regulatory systems at regular intervals is considered good practice as outlined in the Government Expectations for Good Regulatory Practice.² The International Union for the Conservation of Nature (IUCN) recommend that formal reviews be undertaken after the establishment of any marine protection area and at regular intervals afterwards to determine if the objectives have been met.
- 36. We recommend the inclusion of a 25-year review clause for the marine protection implemented under this Bill.**
37. The review would be carried out by the Minister of Conservation and the Minister responsible for the administration of the Fisheries Act 1996, and would include review of the operation, effectiveness, and management of the marine protection. The review would require consultation with whānau, hapū, and iwi, that exercise kaitiakitanga in the area and will allow for interested persons to make a submission
38. Examples of marine protection that have review clauses are the Kaikōura (Te Tai o Marokura) Marine Management Act 2014, Fiordland (Te Moana o Atawhenua) Marine Management Act 2005, Te Tapuwae o Rongokako Marine Reserve, and Te Angiangi Marine Reserve.
39. The intent of the review clause in this instance is not to determine if the marine protection should continue, rather it is to ensure the protection remains effective and to inform any improvements. Any recommendations as a result of the review will be provided to the Minister of Conservation for consideration. If the Minister of Conservation deems it necessary to make changes to the marine protection to meet the objectives of the Bill (e.g., a boundary amendment to improve protection), this would require an amendment to the Act and/or the Regulations. The Minister of Conservation must then present a report on the review to the House of Representatives.
40. This review clause will not prevent the Minister of Conservation from carrying out a review at any time if deemed appropriate.

Item 4: Inclusion of a Treaty provision

41. Excluding the Bill from Schedule 1 of the Conservation Act will mean that section 4 (the Treaty of Waitangi clause) of the Conservation Act would not apply. We therefore recommend that the Bill includes a Treaty clause similar to section 4 of the Conservation Act. The same approach is being taken with the Ngā Whatu-a-Māui Ocean Sanctuary Bill.
- 42. We recommend that the Bill includes the following Treaty provision:**
This Act shall so be interpreted and administered as to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.
43. The Conservation Act Treaty clause is one of the strongest in legislation as it directs those administering the Conservation Act to “give effect” to the principles of the Treaty. The application of this clause is a key focus for DOC and continues to be informed by case law. By modelling the Treaty provision in the Bill on section 4, with modernisation

² [Government Expectations for Good Regulatory Practice \(treasury.govt.nz\)](https://www.treasury.govt.nz/publications/government-expectations-for-good-regulatory-practice)

to include te Tiriti o Waitangi, the suite of case law and interpretation of the section 4 clause can be applied to the Bill.

44. Including the proposed Treaty clause would mean that any person undertaking an activity under the Bill, such as issuing permits or developing regulations, would need to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. We consider that this reflects the purpose of the Bill.

Minor policy changes

Item 5: Management of non-fishing customary activities

45. In May 2022, the former Minister for Oceans and Fisheries and the former Minister of Conservation agreed to a definition of customary practices³ to be allowed for in HPAs, following consultation with tangata whenua. Ministers also agreed that the legislation should provide for customary practice management plans to be developed for each HPA or group of HPAs in the future, by tangata whenua with the support of Government, should tangata whenua so choose. The purpose of customary practice management plans is to outline any additional customary practice management measures within HPAs [22-B-0120/B22/0275 refers].
46. Communication material provided to tangata whenua during engagement in late 2022 reflected this intent of allowing for customary practices under the broad definition.
47. Following this engagement, in December 2022, Cabinet noted that:
- the Bill will not impact on 'protected customary rights' (PCRs) as defined in the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act), nor will it impact on any applications under the MACA Act;⁴
 - fishing customary practices could continue within HPAs under existing customary fishing regulations; and
 - non-fishing customary practices can continue within HPAs, including small scale removal of natural materials such as shells and stones [CAB-22-MIN-0599.02 refers]. Cabinet did not agree to a specific, exhaustive definition of non-fishing customary practices (in line with tangata whenua feedback, which strongly opposed an exhaustive definition in legislation).
48. Officials have developed legislation that gives effect to this direction. However, because Cabinet did not agree to a specific and exhaustive definition of 'non-fishing' customary practices, it is possible that certain practices that some iwi might consider 'customary practices' are excluded. We consider this risk to be low, given the allowance for protected customary rights (PCRs), customary fishing, and the provision for small-scale removal of natural material in the Bill which is expected to provide for a significant proportion of non-fishing customary practices such as the removal of stones for hāngī, and launching of waka.

³ Customary practices definition: Customary activities undertaken by tangata whenua in high protection areas which align with the purpose of high protection areas, are consistent with tikanga, and/or support tangata whenua to develop and express mātauranga and wānanga; and do not include recreational or commercial fishing but provide for customary non-commercial fishing.

⁴ This is appropriate as all the protected areas are within the coastal marine area and therefore within the jurisdiction of the MACA Act. The exercise of customary practices under the MACA Act must be undertaken according to tikanga and by those who hold customary rights, rather than being a general practice available to all Māori. The MACA Act provides a comprehensive regime to enable the identification of who holds customary rights in a location, what rights are held and any limitation on how rights can be exercised.

49. To date, no additional customary practices have been identified. There will be an opportunity for any concerns to be raised through the select committee process about customary practices that are unintentionally impacted.
50. We consider that attempting to incorporate a broad, non-exhaustive definition of 'non-fishing customary practices' into the legislation for exemption would create significant legislative and administrative challenges, including around compliance and enforcement.

Item 6: Additional prohibitions in the Seafloor Protection Area at the Mokohīnau Islands

51. Cabinet agreed to additional prohibitions in the Mokohīnau Islands SPA due to the presence of protected and particularly sensitive species which are not known to be present in other SPAs e.g., black corals and gorgonians (a type of soft coral).
52. The additional prohibition Cabinet agreed to was a total prohibition on set netting and on 'potting and bottom longlining, except within specified areas that would have minimal impact on fragile and protected species' [CAB-22-MIN-0599.02 refers].
53. Officials have considered the presence of protected and fragile benthic (seabed) species alongside feedback received during engagement on the importance of the area for potting and bottom longlining fishers.
54. From the analysis, **we recommend the additional prohibitions take the following form:**

*Potting and bottom longlining are prohibited in the SPA except for within 0.5 nautical miles (nm) of the Mean High-Water Springs of all islands and rocks, and in the South-West section of the SPA (see **Attachment D**).*

55. The impact of allowing bottom longlining and potting to occur in the permitted areas would be minimal. This is due to the limited size of this area and the lack of evidence of the presence of protected and sensitive species in this excluded area (e.g., black corals generally occur at depths greater than 50m so are very unlikely to be present within 0.5nm of an island or rock in these locations).
56. The impact on fishers of the additional prohibitions is as reduced as possible without undermining the purpose of the SPA. There is a small overlap between the areas local fishers indicated were important for their fishing operations and the areas where the additional prohibitions are

Item 7: Other technical policy decisions

57. The body of this paper provides a high-level overview of each of the recommendations for technical decisions proposed since Cabinet decisions in 2022. These decisions are related to the operationalisation of the policy intent previously outlined, and largely draw on existing precedent. Further analysis on each of these matters is provided in **Attachment A**.

Prohibitions in High Protection Areas

58. We recommend that the following activities are prohibited in HPAs (note that there are some exemptions to these prohibitions – see below):

- fishing;
- aquaculture activities;
- the removal of sand, shingle, shell, or other natural material;
- introduction of any living organism;
- the dumping, depositing, or discharge of waste or other matter;

- mining, including prospecting and exploration, as defined in the Crown Minerals Act 1991;
- the construction, alteration, extension, removal, or demolition of a structure (including a ship);
- the causing of vibrations (other than the vibrations caused by the propulsion of a ship) in a manner that is likely to have more than a minor adverse effect on aquatic life;
- the disturbance of aquatic life, their habitat, or water column in a manner that is likely to have a more than minor adverse effect on aquatic life;
- the destruction or damage of the seafloor or subsoil in a manner that is likely to have an adverse effect on the seafloor or subsoil;
- the landing of an aircraft; and
- the causing of an explosion.

Exemptions to prohibitions

59. We recommend that the Bill exempts the following activities from prohibitions in both SPAs and HPAs:

- customary fishing (in High Protection Areas only as agreed by Cabinet);
- any action taken under the Biosecurity Act 1993;
- any activity with a Resource Management Act consent at the date of the Bill receiving the Royal Assent, until the expiry date of the consent;
- any activity permitted under Department of Conservation administered legislation;
- any activity under the Resource Management Act (Marine Pollution) Regulations 1998;
- emergencies involving risk to human safety or protection of the environment;
- any other action taken in response to marine oil spills or other pollution;
- any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security;
- transit shipping that complies with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972); and,
- small-scale take of natural materials, including sand, rocks and shells by anyone.

Mechanism for marine reserve extensions

60. We recommend that the new marine reserves are established directly adjacent to the existing marine reserves as opposed to revoking and re-establishing the existing marine reserves with new boundaries.

Exclusion of the Bill from being listed in Schedule 1 of the Conservation Act 1987

61. We recommend that the Hauraki Gulf Marine Protection Act is not included in Schedule 1 of the Conservation Act 1987.

62. This will mean that the Treaty Clause of the Conservation Act will not apply to the Hauraki Gulf Marine Protection Act. However, the Act will have its own Treaty clause (see Item 4).

Consequential amendments to other legislation

Crown Minerals Act 1991

63. We recommend that both SPAs and HPAs are included in schedule 4 of the Crown Minerals Act 1991.

Environment Act 1986

64. We recommend including the Hauraki Gulf Marine Protection Act in the schedule in the Environment Act 1986. Other Acts listed which are administered by DOC include the Conservation Act, the Hauraki Gulf Marine Park Act, and the Marine Reserves Act.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

65. We recommend that the Hauraki Gulf Marine Protection Act is included in section 7(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 to include reference to the management regime established under the Hauraki Gulf Marine Protection Act.

Fisheries Act 1996

66. We recommend including reference to permits obtained under the Hauraki Gulf Marine Protection Act in section 89(2) of the Fisheries Act.

Hauraki Gulf Marine Park Act 2000 (HGMP Act)

67. We recommend that the Bill makes minor amendments to the HGMP Act to include reference to the protection areas established under the Bill.

Search and Surveillance Act 2012

68. We recommend that the Bill makes an amendment to the Schedule of the Search and Surveillance Act to include reference to the relevant powers of rangers for monitoring and compliance purposes.

Summary Proceedings Act 1957

69. We recommend that infringement notices issued under the Hauraki Gulf Marine Protection Act are included in the definition of 'infringement notice' in the Summary Proceedings Act.

Resource Management (Marine Pollution) Regulations 2011

70. We recommend that HPAs are added to regulation 11 of the Resource Management (Marine Pollution) Regulations to prohibit untreated sewage being discharged within 200m of an HPA.
71. SPAs would not be included in this provision as discharges are not prohibited in SPAs due to the relatively small impact discharge activities have on the seafloor.

Land Transport (Road User) Rule 2004

72. We recommend that the Bill makes minor amendments to Rule 8.5(1)(ab) of the Land Transport (Road User) Rule to include reference to rangers as defined in the Hauraki Gulf Marine Protection Act.

Item 8 Cabinet paper and development of regulations under the Bill

73. The attached Cabinet Paper seeks approval from Cabinet for the Bill to be introduced to the House (see **Attachment B**). We recommend you approve inter-agency consultation on the Cabinet paper to begin as soon as possible.
74. The Cabinet Paper seeks approval from Cabinet for the Minister of Conservation to issue drafting instructions to PCO for the development of regulations. The regulations to be drafted are for infringement offences, fees, notices, and reminder notices.
75. These provisions are in regulations, as opposed to the Bill, as they relate to operationalisation aspects of legislation that are commonly subject to change. Having these provisions in regulations makes any necessary future changes simpler.
76. The regulations are necessary to be in place at the time of commencement of the Bill to allow for appropriate compliance and enforcement activities.

Risk assessment – Aronga tūraru

77. Most of these decisions relate to the operationalisation of the policy and there are minimal risks associated with these decisions.
78. Tangata whenua may expect the Bill to explicitly allow for all activities that could be conceived as non-fishing customary activities and be disappointed that it does not (Item 5 refers). However, we consider this risk minimal given the allowance for (in addition to customary fishing) protected customary rights (PCRs), the provision for small-scale removal of natural material, and customary activities such as the launching of waka. The select committee process will be an opportunity for any specific concerns by tangata whenua to be raised.
79. Impacted fishers may oppose the additional prohibitions in the SPA at the Mokohīnau Islands (Item 6 refers). Officials have consulted with local fishers and considered their feedback on areas important to them and are only including the additional prohibitions where it is most necessary.
80. There has been some general opposition to the marine protection proposals. Feedback from the fishing sector was that they generally supported actions being taken to address the declining health and mauri of the Gulf, but they did not support the marine protection proposals. Some members of the public were opposed to the provision for customary fishing within High Protection Areas [22-B-0741/B22-0681 refers].
81. We understand that PCO are no longer prioritising this Bill but will attempt to support its progress where resources allow. There is a significant risk with PCO resourcing to achieve introduction of this Bill to the House.

Next steps

82. We are seeking your decisions on these issues by 16 June to ensure the Bill is ready for introduction in August. Any delay will risk not meeting deadlines for introduction of the Bill to the House prior to the general election.
83. Following your decisions, we will relay any changes to the Bill to PCO and update the Cabinet paper if required.
84. Following your approval, we will conduct inter-agency consultation. As we have been working closely with other agencies throughout the policy development and drafting of the Bill, we do not anticipate any new issues to be raised through this engagement.
85. We will provide you with updated versions of the Bill and Cabinet paper, and the Regulatory Impact Statement on 10 July for Ministerial consultation from 10-21 July (two weeks). We will then incorporate any feedback from Ministerial consultation and lodge the Cabinet paper on 27 July for LEG committee 3 August.

Consultation – Kōrero whakawhiti

86. Fisheries New Zealand, Te Arawhiti, Maritime New Zealand, the Ministry of Business, Innovation and Employment, the Ministry of Justice, and Biosecurity New Zealand were consulted on the proposals in this briefing.

Attachments – Ngā tāpiritanga

Attachment A: Technical policy decisions

Attachment B: Cabinet Paper

Attachment C: The Hauraki Gulf Marine Protection Bill

Attachment D: Map of the proposed SPA at the Mokohīnau Islands

Proactively released by the Department of Conservation

Attachment A: Technical policy decisions

Prohibitions in High Protection Areas

1. Cabinet agreed that HPAs would regulate a wide range of pressures by prohibiting (among other activities) all fishing (commercial and recreational but not customary fishing), dumping, harmful discharges, and the take of natural material [CAB-22-MIN-0599.02 refers].
2. **We recommend that the following activities are prohibited in HPAs** (note that there are some exemptions to these prohibitions – see below):
 - fishing;
 - aquaculture activities;
 - the removal of sand, shingle, shell, or other natural material;
 - introduction of any living organism;
 - the dumping, depositing, or discharge of waste or other matter;
 - mining, including prospecting and exploration, as defined in the Crown Minerals Act 1991;
 - the construction, alteration, extension, removal, or demolition of a structure (including a ship);
 - the causing of vibrations (other than the vibrations caused by the propulsion of a ship) in a manner that is likely to have more than a minor adverse effect on aquatic life;
 - the disturbance of aquatic life, their habitat or water column in a manner that is likely to have a more than minor adverse effect on aquatic life;
 - the destruction or damage of the seafloor or subsoil in a manner that is likely to have an adverse effect on the seafloor or subsoil;
 - the landing of an aircraft; and
 - the causing of an explosion.
3. These prohibitions are based on activities that are known to, or have the potential to, have a negative impact on the marine environment, including the species within it. The prohibitions also largely reflect those in the Marine Reserves Act 1971. This is both to ensure that HPAs offer a comparable level of protection as marine reserves, and for simplicity for those undertaking activities within these areas and those enforcing rules in these areas.

Exemptions to prohibitions

4. It is necessary and practical to include exemptions to the prohibitions in the Bill for reasons such as health and safety, maintenance of critical infrastructure, and the ability to appropriately respond to environmental pressures (e.g., marine pests).
5. By exempting an activity from the prohibitions, the activity will not require a permit under the Hauraki Gulf Marine Protection Act to occur.
6. **We recommend that the Bill exempts the following activities from prohibitions in both SPAs and HPAs:**
 - customary fishing (in High Protection Areas only as agreed by Cabinet);
 - any action taken under the Biosecurity Act 1993;

- any activity with a Resource Management Act consent at the date of the Bill receiving the Royal Assent, until the expiry date of the consent;
 - any activity permitted under Department of Conservation administered legislation;
 - any activity under the Resource Management Act (Marine Pollution) Regulations 1998;
 - emergencies involving risk to human safety or protection of the environment;
 - any other action taken in response to marine oil spills or other pollution;
 - any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security;
 - transit shipping that complies with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972); and,
 - small-scale take of natural materials, including sand, rocks and shells by anyone.
7. We consider that these exemptions will not have significant negative impacts on the biodiversity or integrity of the HPAs or SPAs, and in some cases (for example, biosecurity response) will have positive impacts on biodiversity.
8. Further rationale for exempting activities under the Biosecurity Act 1993, the Resource Management Act 1991, the Marine Mammals Protection Act 1978, the Wildlife Act 1953, the Resource Management Act (Marine Pollution) Regulations 1998, and the small-scale take of natural materials from HPAs, including sand, rocks and shells by anyone is described below.

Exemption for activities under the Biosecurity Act 1993

9. New Zealand's marine environment is at constant risk of marine pests being introduced and/or spreading. This is particularly true for the Hauraki Gulf where there is high vessel movement into and around the region (vessels are a primary cause of introduction and spread of marine pests).
10. Biosecurity New Zealand is the agency responsible for identifying, eradicating, and managing marine pests. Biosecurity activities are managed under the Biosecurity Act 1993.
11. Some of the prohibitions listed in this Bill could impact on biosecurity activities. For example, if an eradication response to a new marine pest in the Hauraki Gulf was initiated, eradication activities could not occur within an HPA without a permit from the Director-General of Conservation. This is due to a prohibition of disturbing aquatic life within an HPA.
12. Exempting activities under the Biosecurity Act 1993 will remove the barrier of a permit needing to be issued before biosecurity activities can occur. We consider that exempting biosecurity activities in the protection areas presents a low risk to meeting the objectives of the Bill, and in some cases will support positive outcomes for biodiversity e.g., by the removal of a harmful marine pest species such as Caulerpa.

13 We recommend that any activity carried out under the Biosecurity Act 1993 is exempt from prohibitions in SPAs and HPAs.

Exemption for activities under the Resource Management Act 1991

14. There is a range of activities currently consented under the Resource Management Act 1991 (RMA) within the areas proposed for protection. Some of these activities will conflict with the prohibitions made under the Bill.

15. We have assessed the existing activities and whether and how they might continue when the marine protection is implemented. We have considered the balance between ensuring that the proposed HPAs and SPAs have the best opportunity to achieve the conservation outcomes sought, and not unduly interfering with existing uses.
16. **We recommend that all approved consents as at the date of the Bill receiving the Royal Assent are exempt from the prohibitions until their expiry date, at which time they will require a permit under the Bill.**
17. The existing consents in the areas proposed to be high protection areas include:
 - moorings at Slipper Island;
 - a consent to occupy the coastal marine area with a wharf on Tiritiri Matangi Island held by DOC;
 - a consent to redistribute sediment on a beach at Motutapu, to protect a highly significant archaeological site held by Auckland Council; and
 - a consent to run an existing submarine power cable in the Kawau HPA held by Vector.
18. The existing consents in the areas proposed to be seafloor protection areas include:
 - 30 consents for wharves, jetties, boat ramps, and related infrastructure on Kawau Island;
 - two consents to occupy the coastal marine area with infrastructure such as stairs and a seawall held by Auckland Council; and
 - two consents authorising construction of wastewater infrastructure and discharge of treated wastewater at Red Beach and Army Bay.
19. We consider that these existing consented activities are likely to have minimal impacts on the marine environment. For example, many of these activities are for infrastructure that is already constructed, and it is the construction phase where the impacts on the marine environment are the highest.
20. Requiring a further permitting process at this stage is unlikely to achieve additional benefits. For some activities (such as the discharge of treated wastewater), a requirement to remove or move the infrastructure would have more significant environmental impacts than allowing the activity to continue.
21. When consents have expired, the consent holder will be required to reapply for the consent under the RMA as normal, and also apply for a DOC permit if the activity would otherwise be prohibited under the relevant HPA/SPA conditions.
22. Applications for consents that have been applied for, but not granted, at the time of the Bill's passage will require a permit under the Bill once it comes into effect (if the activity is in conflict with a prohibition).
23. There is a small risk that, following the announcement of this policy, there may be a larger-than-normal influx of consent applications. DOC will work with Councils to ensure that anyone applying for a resource consent prior to the Bill's enactment understands that it is possible that they would need to apply for a DOC permit in future. This may in itself be a disincentive from applying for a consent at a particular site, and the applicants may look to undertake the activity in another location if possible.

24. If considered necessary, DOC could make a submission on any notified resource consent application in the areas proposed for protection, under section 96(1) of the RMA. Submissions of this type could outline the possible impacts on biodiversity at the site of the proposed activity, as well as make recommendations for any conditions to reduce biodiversity impacts. While there is no guarantee that DOC's recommendations would be taken on board, we do consider that proactive engagement, the timeframes for assessing consent applications, and the ability to submit on applications, provide useful safeguards against the risk that harmful activities would occur within HPAs/SPAs.

Exemption for activities under the Marine Mammals Protection Act 1978 and the Wildlife Act 1953

25. DOC permits activities under the Wildlife Act and the Marine Mammals Protection Act (MMPA). **We recommend that activities that are permitted other under DOC-administered legislation are exempt from the prohibitions and therefore do not require an additional permit under the Bill.** This is because DOC already comprehensively assesses applications for permits under these Acts and manages the effects of these activities through appropriate conditions.
26. Types of activities permitted under the MMPA in the Hauraki Gulf include marine mammal research (e.g., collection of tissue samples), tourism activities (e.g. whale watching), and holding of marine mammal parts/specimens.
27. There are not currently any activities permitted under the Wildlife Act in the areas proposed for protection. However, it is possible that this could occur in future, as some marine species protected under Schedule 7 of the Wildlife Act occur in the Hauraki Gulf.

Exemption of some shipping activities under the Resource Management (Marine Pollution) Regulations 1998

28. The Resource Management (Marine Pollution) Regulations 1998 (the Regulations) control discharges and dumping from ships in the territorial sea and give effect to international conventions. The Regulations strike a balance between protecting the marine environment and enabling ships to conduct normal operations.
29. **We recommend that all activities under the Resource Management (Marine Pollution) Regulations 1998 are exempt from prohibitions under the Bill.**
30. The Regulations give effect to international conventions, and while states can control activities in a manner beyond these conventions, this would need to be justified in international fora based on environmental effects and outcomes. We consider that the environmental impacts of allowing these activities to continue in SPAs and HPAs would be minimal, and therefore do not justify moving away from international conventions. The particular importance of the Hauraki Gulf for shipping activity, including trade and the supply chain, is also a relevant consideration.
31. There are multiple other avenues where more stringent requirements for vessels could be explored, for example through voluntary agreements with the shipping industry, via councils' coastal plans, through the developing National Planning Framework, or through New Zealand's existing participation and advocacy in international fora.

The small-scale take of natural materials from HPAs, including sand, rocks and shells by anyone

32. Cabinet noted that non-fishing customary practices can continue within HPAs, including small-scale removal of natural materials such as shells and stones [CAB-22-MIN-0599.02 refers].
33. To avoid significant administrative and compliance challenges, **we recommend that the allowance of small-scale removal of natural materials is not limited to the removal being for customary practices, but that such removal can be carried out by anyone.**

34. The regulation of this activity in the Bill will be modelled on similar allowances in the marine reserves on the West Coast of the South Island i.e., a person must not use any machinery or cutting equipment, and must not, in one day, remove a greater weight than they can carry on their own in one trip.
35. We consider this approach to be much easier to administer, and the risk of this activity impacting on the purpose of the Bill or the biodiversity objectives for an area to be low. These activities are most likely to occur on populated coastline and the SPAs and HPAs have relatively small areas of populated coastline.

Mechanism for marine reserve extensions

36. Cabinet agreed to extend the existing Cape Rodney – Okakari Point and Whanganui A Hei (Cathedral Cove) marine reserves by way of establishing new marine reserves, and that this be done through the Bill rather than through processes under the Marine Reserves Act [CAB-22-MIN-0599.02 refers].
37. **We recommend that the new marine reserves are established directly adjacent to the existing marine reserves** as opposed to revoking and re-establishing the existing marine reserves with new boundaries.
38. This option is far simpler and less administratively complex, both in terms of establishing the marine reserves, and for the on-going management of the areas.
39. These new areas would be established as if declared by an Order in Council made under section 4(1) of the Marine Reserves Act 1971.

Exclusion of the Bill from being listed in Schedule 1 of the Conservation Act 1987

40. Schedule 1 of the Conservation Act lists 24 Acts that are administered by the Department of Conservation. However, there are some Acts administered by the Department that are not included, such as the Hauraki Gulf Marine Park Act 2000 and the Kaikōura (Te Tai o Marokura) Marine Management Act 2014.
41. Those Acts that are not included are generally those to which the conservation planning documents (general policy, strategies and management plans) do not apply and where there are unique management features which do not include Conservation Boards.
42. The Hauraki Gulf Marine Protection Act will be a discreet piece of legislation that includes a unique management approach, including regulations reflecting biodiversity objectives developed with tangata whenua. The Act will also contain its own permitting regime based on activities and not Crown ownership which underlies the Conservation Act concession process.
43. The approach taken in the Hauraki Gulf Marine Protection Act does not align with the provisions in the Conservation Act, and as such, **we recommend that the Hauraki Gulf Marine Protection Act is not included in Schedule 1 of the Conservation Act 1987.**
44. This will mean that the Treaty Clause of the Conservation Act will not apply to the Hauraki Gulf Marine Protection Act. However, the Act will have its own Treaty clause (see Item 4).

Consequential amendments to other legislation

Crown Minerals Act 1991

45. Schedule 4 of the Crown Minerals Act 1991 states the land to which access restrictions for mining activities apply. Marine reserves are included in this schedule.
46. As the Bill will prohibit mining activity in both SPAs and HPAs, **we recommend that both SPAs and HPAs are included in schedule 4 of the Crown Minerals Act 1991.**

Environment Act 1986

47. The Schedule of the Environment Act 1986 lists the Acts for which the Parliamentary Commissioner for the Environment has particular powers in relation to consents/permits.¹ As the Bill includes a permitting regime, **we recommend including the Hauraki Gulf Marine Protection Act in the Schedule of the Environment Act 1986**. Other Acts listed which are administered by DOC include the Conservation Act 1987, the Hauraki Gulf Marine Park Act, and the Marine Reserves Act 1971.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

48. Section 7 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) stipulates the meaning of 'marine management regime' within the EEZ Act and lists marine management regimes that apply to the territorial sea, exclusive economic zone and continental shelf. This includes the Marine Reserves Act and the Hauraki Gulf Marine Park Act.
49. Areas that are included in 'marine management regimes' must be given consideration when regulations are made under the EEZ Act.
50. **We recommend that the Hauraki Gulf Marine Protection Act is included in section 7(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012** to include reference to the management regime established under the Hauraki Gulf Marine Protection Act.

Fisheries Act 1996

51. Section 89(1) of the Fisheries Act 1996 prohibits the take of aquatic life without authority of a current fishing permit. Section 89(2) of the Fisheries Act provides exceptions to the prohibition of the take of aquatic life, including where other authorisations exist. The Marine Reserves Act 1971 is included in the list of exceptions.
52. As the Bill will include a permitting regime that may allow for the take of aquatic life for non-fishing purposes (e.g., for mātauranga, scientific research, habitat restoration), **we recommend including reference to permits obtained under the Hauraki Gulf Marine Protection Act in section 89(2)**.

Hauraki Gulf Marine Park Act 2000 (HGMP Act)

53. The HGMP Act applies to all areas within the Hauraki Gulf including the Marine Park. The HGMP Act requires management of the Hauraki Gulf to recognise and give effect to the purpose² of the HGMP Act including the integrated management of all resources.

¹ This includes the Commissioner's rights in proceedings relating to consents, such as calling evidence, examining witnesses, and payment of costs. Section 21 of the Environment Act 1986 refers.

² The purpose of the Hauraki Gulf Marine Park Act is to— (a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments: (b) establish the Hauraki Gulf Marine Park: (c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments: (d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands:

(e) establish the Hauraki Gulf Forum.

54. The SPAs and HPAs will be within the Hauraki Gulf, therefore the HGMP Act applies to these areas and reference should be made to these in the HGMP Act. **We recommend that the Bill makes minor amendments to the HGMP Act to include reference to the protection areas established under the Bill.** The amendments recommended are:
- to include the Hauraki Gulf Marine Protection Act in Schedule 1. This will allow for the recognition of the contribution of the marine protection established in this Bill to the overall objectives of the HGMP Act. It will also mean that when persons exercise powers under the Bill, they will need to have particular regard to the national significance and the management of the Hauraki Gulf;
 - to include HPAs and SPAs in their own subsection of s33(2). This clause states what areas the Hauraki Gulf Park consists of e.g., wildlife refuges, reserves etc. Adding HPAs and SPAs to this clause will give these areas further recognition within the HGMP Act; and
 - to include HPAs and SPAs in their own subsection of s37(1) and s37(2). These clauses specify that those who control or administer land, foreshore, seabed, marine reserve etc in the Hauraki Gulf must recognise and give effect to the purpose of the HGMP Act. Adding HPAs and SPAs to this clause will require those that administer these areas to give effect to the purpose of the HGMP Act. This will further recognise the contribution of the marine protection to the purpose of the HGMP Act.
55. The proposed amendments will require that the Bill will give effect to the purpose of the HGMP Act and to have particular regard to the national significance and management of the Hauraki Gulf. We consider that the Bill already gives regard to these aspects and therefore the inclusion of the Bill in Schedule 1 of the HGMP Act will not create any additional steps when administering the Bill.
56. The Bill contributes to achieving the purpose of the HGMP Act and as such we consider it prudent to include reference to the Bill at relevant sections in the HGMP Act. Doing so acknowledges the significance of the new marine protection areas, and the way in which they can contribute to achieving the overall objectives for the Park.

Search and Surveillance Act 2012

57. The Schedule of the Search and Surveillance Act (the Schedule) lists sections of Acts to which all or part of Part 4 of the Search and Surveillance Act applies. The Marine Reserves Act and other regulatory conservation legislation are included in the Schedule.
58. The Bill will provide rangers with powers related to the enforcement and monitoring of compliance within HPAs and SPAs (Item 1 refers). The relevant sections of the Search and Surveillance Act are Part 4 (excluding subpart 3).
59. **We recommend that the Bill makes an amendment to the Schedule in the Search and Surveillance Act to include reference to the relevant powers of rangers for monitoring and compliance purposes.**

Summary Proceedings Act 1957

60. Section 2(1) of the Summary Proceedings Act includes a definition of 'infringement notice', with reference to other Acts including the Marine Reserve Act. As the Bill will establish infringement offences which will include the issuing of infringement notices, it is necessary to add reference to the Hauraki Gulf Marine Protection Act.
61. **We recommend that infringement notices issued under the Hauraki Gulf Marine Protection Act are included in section 2(1) of the Summary Proceedings Act 1957.**

Resource Management (Marine Pollution) Regulations 2011

62. Regulation 11 of the Resource Management (Marine Pollution) Regulations states the distance from a marine area where ships can discharge untreated sewage e.g., must be more than 500m seaward from mean high-water springs and more than 200m from a marine reserve.
63. **We recommend that HPAs are added to regulation 11 of the Resource Management (Marine Pollution) Regulations to prohibit untreated sewage being discharged within 200m of an HPA.**
64. SPAs would not be included in this provision as discharges are not prohibited in SPAs due to the relatively small impact discharge activities have on the seafloor.

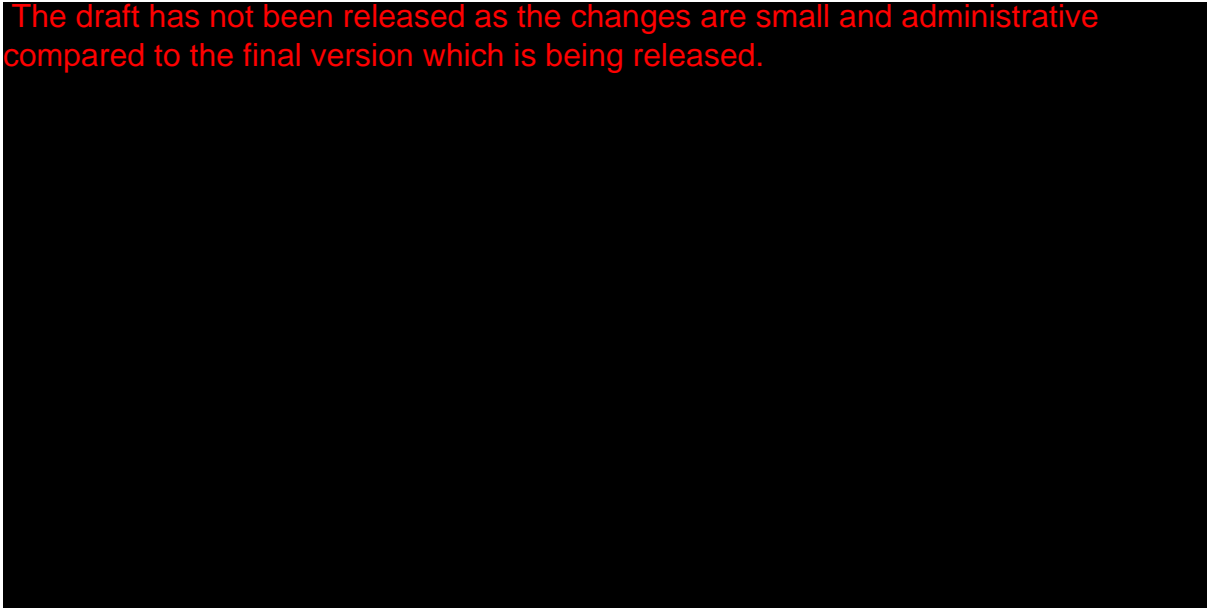
Land Transport (Road User) Rule 2004

65. The Bill will provide rangers with the power to stop vessels for compliance and enforcement purposes. To do this, rangers may need to use beacons fitted to a vehicle or vessel. These beacons indicate to other vessels that the vehicle is operated by a ranger with a power to stop.
66. Rule 8.5(1) of the Land Transport (Road User) Rule 2004 prohibits the operation of a beacon. Provisions of this Rule stipulate exemptions to this and includes reference to the Marine Reserves Act 1971.
67. **We recommend that the Bill makes minor amendments to Rule 8.5(1)(ab) of the Land Transport (Road User) Rule 2004 to include reference to rangers as defined in the Hauraki Gulf Marine Protection Act.**

Proactively released by the Department of Conservation

Attachment B: Cabinet paper

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



Proactively released by the Depart

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Proactively released by the Depart

Attachment D: Map of the proposed SPA at the Mokohīnau Islands

Note draft version not published. Final version published in this set.

