

Oceans Secretariat Briefing: Ministerial consultation on the Hauraki Gulf Marine Protection Bill and associated Cabinet paper

To	Minister for Oceans and Fisheries Minister of Conservation		Date submitted	29 June 2023
Risk Assessment	Low Prompt ministerial feedback is required to ensure deadlines are met for introduction of the Bill in August.		Priority	High
MPI reference	B23-0482		DocCM	DOC-7378111
DOC reference	23-B-0291			
Security Level	In Confidence			

Action sought	Approve Hauraki Gulf Marine Protection Bill and associated Cabinet paper for Ministerial consultation.	Timeframe	By 6 July 2023 (to ensure the Bill can be introduced to the House mid-August).
Attachments	Attachment A: Cabinet paper – The Hauraki Gulf / Tīkapa Moana Marine Protection Bill: Approval for Introduction Attachment B: The Hauraki Gulf / Tīkapa Moana Marine Protection Bill Attachment C: Changes to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill following feedback from Ministers and agencies Attachment D: Maps of the marine protection areas		

Contacts	
Name and position	Cell phone
DOC Contact/s	
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Executive summary – Whakarāpopoto ā kaiwhakahaere

1. On 2 February 2023, the Department of Conservation issued drafting instructions to the Parliamentary Counsel Office (PCO) for legislation to implement marine protection in the Hauraki Gulf. Officials are working to a timeline of the Hauraki Gulf Marine Protection Bill (the Bill) being introduced to the House in mid-August 2023.
2. On 12 June 2023 you received a draft Cabinet paper which seeks agreement for the Bill to be introduced to the House, and draft Bill. You approved the Department of Conservation to carry out interagency consultation from 19-23 June 2023 [22-B-0183/B23-0362 refers].
3. The feedback from agencies was minor and they are generally supportive of the Bill. You (Minister for Oceans and Fisheries) also provided some comments on the Bill and Cabinet paper. Some of the feedback requires additional minor decisions. We recommend that:
 - the title of the Bill is 'Hauraki Gulf /Tikapa Moana Marine Protection Bill';
 - 'trawling that makes contact with the seabed' is prohibited in Seafloor Protection Areas;
 - the definition of mining prohibited in Seafloor Protection Areas includes exploring and prospecting as defined under the Crown Minerals Act 1991;
 - you decide if the 25-year review clause includes only High Protection Areas and Seafloor Protection Areas, or if it also includes the marine reserves;
 - the Bill will exempt ships which have immunities under the United Nations Convention on the Law of the Sea from prohibitions or regulations under the Bill;
 - 'dumping, depositing, and discharge of waste and other matters' is prohibited in Seafloor Protection Areas; and
 - the Bill includes a provision to give groups with protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 the power to grant permission over whether an application should be considered by the Director-General.
4. An updated Cabinet paper is provided for your review (see **Attachment A**). A draft version of the Bill is also provided for your review (see **Attachment B**). The version of the Bill attached to this briefing is the same version you received on 12 June 2023. However, this briefing includes the changes to be made to the Bill, following feedback from agencies and Ministers (see **Attachment C**).
5. We are unable to provide an updated version of the Bill because PCO were instructed to deprioritise this work. You have instructed us to continue with the work anyway. For the Bill to be introduced prior to the general election, PCO will need to make the changes in **Attachment C** and any further changes you request by 7 July.
6. This would allow for Ministerial consultation from 10-21 July 2023 (two weeks) and three days following that to incorporate any changes before lodging on 27 July. If PCO are unable to prioritise the Bill in the next few days, there is a significant risk that those deadlines will not be met. A shorter ministerial consultation period may be necessary or consultation would need to proceed without the final Bill.

We recommend that you ... (Ngā tohutohu)

	Decision
Note that PCO resource is required immediately to allow the Bill to be introduced before the general election.	
Agree that the name of the Bill is “Hauraki Gulf / Tīkapa Moana Marine Protection Bill”.	☒ Yes / No
Agree that ‘trawling that makes contact with the seabed’ is prohibited in Seafloor Protection Areas.	☒ Yes / No
Agree that the definition of mining prohibited in Seafloor Protection Areas includes exploring and prospecting as defined under the Crown Minerals Act 1991.	☒ Yes / No
Agree to the 25-year review clause in the in the Hauraki Gulf / Tīkapa Moana Marine Protection Bill applies to either: i) The High Protection Areas and Seafloor Protection Areas only (option 1); or ii) The High Protection Areas and Seafloor Protection Areas, and the marine reserves (option 2)	☒ Option 1 / Option 2
Agree to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill exempting ships which have immunities under the United Nations Convention on the Law of the Sea from prohibitions or regulations under the Bill.	☒ Yes / No
Agree that ‘the dumping, depositing, or discharge of waste or other matter’ is prohibited in seafloor protection areas.	☒ Yes / No
Agree that the Bill includes a provision to give groups with protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 the power to grant permission over whether an application should be considered.	☒ Yes / No
Provide feedback on the draft Cabinet paper seeking introduction of the Bill to the House (see Attachment A).	
Provide any further feedback on the Hauraki Gulf Marine Protection Bill (see Attachment B).	

Agree to carry out Ministerial consultation on the Cabinet paper and Hauraki Gulf Marine Protection Bill from 10-21 July (or less if necessary).

☒ Yes / No

Date: 29 / 6 / 2023

Ruth Isaac
Deputy Director-General, Strategy and Policy
For Director-General of Conservation

Date: 04/07/2023

Hon Willow-Jean Prime
Minister of Conservation

s 9 (2)(a)

Date: 29 / 6 / 2023

Rob Gear
Acting Director, Fisheries Management
Fisheries New Zealand

Date: 7 / 7 /

Hon Rachel Brooking
Minister for Oceans and Fisheries

Proactively released by the Department of Conservation

Purpose – Te aronga

1. This paper seeks the following in advance of ministerial consultation on the Hauraki Gulf Marine Protection Bill (the Bill) beginning on 10 July:
 - your agreement to minor policy changes that arose from Minister and agency feedback;
 - your feedback on a draft Cabinet Paper (see **Attachment A**) which seeks approval to introduce the Bill; and
 - your feedback on the Hauraki Gulf Marine Protection Bill (see **Attachment B**).

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. 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 that would see the Bill introduced to the House in mid-August 2023.
4. On 12 June 2023 you received the briefing *Policy decisions and Cabinet paper for the Revitalising the Gulf marine protection proposals* [22-B-0183/B23-0362 refers]. You agreed to all recommendations, including on additional policy decisions. Some of these decisions require Cabinet approval as they were not specifically addressed in Cabinet decisions in December 2022. Cabinet approval for these decisions will be sought in the Cabinet paper seeking introduction of the Bill in mid-August. You (Minister for Oceans and Fisheries) also provided some comments on the Bill and Cabinet paper.
5. The Department of Conservation carried out interagency consultation from 19-23 June 2023. Feedback was minor and agencies are generally supportive of the Bill. Some feedback requires additional minor decisions which are sought in this briefing.
6. PCO were recently instructed to deprioritise the Bill. You have instructed us to continue with the work anyway. While the Bill is near completion, for it to be introduced prior to the general election, PCO will need to make the changes in **Attachment C** and any further changes you request by 7 July.
7. This would allow for Ministerial consultation from 10-21 July 2023 (two weeks) and three days following that to incorporate any changes before lodging on 27 July. If PCO are unable to prioritise the Bill in the next few days, there is a significant risk that those deadlines will not be met.
8. An updated Cabinet paper seeking agreement for the Bill to be introduced to the House is provided for your review (see **Attachment A**). The Cabinet paper has been drafted as if the additional decisions outlined in this paper have been agreed to.
9. The Cabinet paper includes a draft Regulatory Impact Statement (RIS) for the development of regulations for infringement offences. 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).
10. The RIS has incorporated feedback from a Regulatory Impact Assessment Panel but is not yet final. The final RIS will be provided in time for Ministerial consultation on the Cabinet paper and Bill.

11. A draft version of the Bill is provided for your review (see **Attachment B**). As outlined above, PCO were instructed to deprioritise this Bill and the version attached is the same version you received on 12 June 2023 [22-B-0183/B23-0362 refers]. However, we have provided a description of the changes to be made to the Bill following the feedback received from Ministers and agencies (see **Attachment C**), should PCO prioritise it in time for ministerial consultation.

Decisions following inter-agency consultation

12. Most of the feedback received from Ministers and agencies was minor and included seeking clarification or strengthening the language of definitions and processes in the Bill. This feedback will be provided to PCO (see **Attachment C**).
13. Some feedback requires additional minor decisions. These decisions will be reflected in the Cabinet paper seeking introduction of the Bill to the House in August 2023.

Title of the Bill

14. In December 2022, Cabinet did not agree to a name for the Bill, but did note *'that new legislation to create them (High Protection Areas and Seafloor Protection Areas) would be required, i.e. the Hauraki Gulf Marine Protection Bill'*.
15. The New Zealand Geographic Board advised that the official name for the Hauraki Gulf is 'Hauraki Gulf / Tīkapa Moana'. This is a Treaty settlement name from Ngā Mana Whenua o Tāmaki Makaurau Collective. The New Zealand Geographic board have advised that not using the official name would be in breach of the Treaty settlement.
16. We recommend that the name of the Bill is updated to be the "Hauraki Gulf / Tīkapa Moana Marine Protection Bill".

Definition of bottom trawling in the prohibitions for seafloor protection areas

17. In December 2022, Cabinet agreed to activities to be prohibited in seafloor protection areas. One of these activities is 'bottom trawling' [CAB-22-MIN-0599.02 refers].
18. The current version of the Bill defines bottom trawling as use of a trawl net that is operated by being drawn over the bed of any waters by 1 or more vessels underway.
19. Following feedback from you (Minister for Oceans and Fisheries) and advice from Fisheries New Zealand, we recommend that the prohibited activity be changed in the Bill from 'bottom trawling' to 'trawling that makes contact with the seabed'.
20. This would prohibit bottom trawling but would also prohibit mid-water trawling that incidentally touches the seabed. Fisheries New Zealand advises that this would be appropriate as midwater trawling activities may impact the seabed and doing so would conflict with the purposes of this Bill.

Definition of mining in prohibitions for seafloor protection areas

21. In December 2022, Cabinet agreed for 'mining' to be prohibited in Seafloor Protection Areas [CAB-22-MIN-0599.02 refers]. Cabinet did not agree a definition of mining.
22. In June 2023, you agreed to mining being prohibited in High Protection Areas, and for the definition of mining to include prospecting and exploration as defined in the Crown Minerals Act 1991 [23-B-0183/B23-0362 refers]. This decision did not explicitly apply to Seafloor Protection Areas.
23. For the avoidance of doubt, and in response to feedback from the Ministry for Business, Innovation and Employment, we are seeking an explicit decision from Ministers on this definition for Seafloor Protection Areas. We recommend that the definition for mining as prohibited in Seafloor Protection Areas includes prospecting and exploration as defined in the Crown Minerals Act 1991.

Marine reserve extensions in the 25-year review clause

24. You previously agreed to our recommendation to include a 25-year review for the marine protection implemented under this Bill [22-B-0183/B23-0362 refers].
25. You have a choice about whether this clause applies to the marine reserves as well as the High Protection Areas and Seafloor Protection Areas. Review clauses are commonly used for marine reserves. The existing Cape Rodney – Okakari Point and Whanganui a Hei marine reserves (which these new marine reserves will be extensions of) do not have review clauses.
26. We are seeking your decision on whether the review clause applies to:
 - The High Protection Areas and Seafloor Protection Areas only; or
 - The High Protection Areas, Seafloor Protection Areas, and the new marine reserves.

Mechanism for exempting foreign ships from the requirements under the Bill

27. The Ministry of Foreign Affairs and Trade (MFAT) noted that domestic regulations cannot apply to ships which have immunities under the United Nations Convention on the Law of the Sea (UNCLOS Art 32) e.g., foreign warships or governmental ships.
28. MFAT also noted that these immunities need to be specified in legislation as there is no overarching Act to account for this.
29. We recommend the Bill includes a clause to exclude ships with immunities under UNCLOS from prohibitions or regulations under the Bill.

Definition of dumping in prohibitions for seafloor protection areas

30. In December 2022, Cabinet agreed to activities to be prohibited in Seafloor Protection Areas. One of these activities is 'dumping' [CAB-22-MIN-0599.02 refers].
31. We recommend that the definition of the prohibited activity be 'the dumping, depositing, or discharge of waste or other matter'.
32. This captures a range of harmful activities like discharging waste and littering. It removes uncertainty on whether an activity is dumping versus depositing or discharging and therefore prohibited or not.

Updates to the permitting regime

33. You previously agreed that the Bill will include a permitting regime whereby the Director-General of Conservation can grant permits for otherwise prohibited activities. You also agreed that the Bill will specify the matters the Director-General must consider when making a decision on a permit application [22-B-0183/B23-0362 refers].

Consideration of rights and interests under the Marine and Coastal Area (Takutai Moana) Act 2011

34. In December 2022, Cabinet noted that the Bill will not impact on 'protected customary rights' as defined in the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act). Currently the permitting regime in the Bill does not specifically address how protected customary rights will be considered by the Director-General.
35. We recommend that the Bill is updated so that groups with protected customary rights or who hold customary marine title under the MACA Act, have the power to grant permission over whether an application should be considered by the Director-General. This will not apply to 'accommodate activities'¹ as defined under the MACA Act. The clause in the Bill will use the appropriate sections of the MACA Act (s 55 and s71) as a

¹ Accommodated activities are those that are expressly excluded under section 64(1) from the exercise of an RMA permission right or a conservation permission right by a customary marine title group and are within the scope of the activities provided for by section 64(1)

template. We consider that this gives effect to the intent of the Bill not impacting on these rights.

Applicant information

36. The briefing you received on 12 June 2023 stated that the Bill would stipulate what information the applicant must provide [22-B-0183/B23-0362 refers].
37. We have since been advised by PCO that the process for stipulating information the applicant must provide, sits more appropriately outside of legislation e.g., in a form on the DOC website. This allows more flexibility to update the form and request additional information etc.
38. The Bill will guide what information is required by an applicant by stipulating the matters to be considered by the Director-General when making a decision on a permit e.g., the anticipated effects of the activity on the protected area and on the rights and interests of whānau, hapū, and iwi who exercise kaitiakitanga in the protected area.

Approval for Ministerial consultation

39. The attached Cabinet Paper seeks approval for the Bill to be introduced to the House. Pending PCO resourcing to finalise the Bill, we recommend that you carry out Ministerial consultation from 10-21 July (two weeks) as this will allow the Bill to be introduced before the general election.
40. The draft RIS attached to the Cabinet paper reflects the Regulatory Impact Assessment Panels first round of feedback regarding regulations for the infringement regime. We expect the final RIS to be ready by 7 July 2023 for Ministerial consultation beginning 10 July 2023.
41. The attached Bill is not final due to PCO deprioritising it. However, changes to be made to the Bill following the feedback received from Ministers and agencies are provided in **Attachment C** and have been provided to PCO.
42. PCO have not yet attached the maps to the Bill. The version of the Bill to be used for Ministerial consultation will contain placeholder maps. Final maps will be developed following the development of Survey Office Plans and will be completed before the Committee of the Whole.
43. Following your feedback, we intend to provide you with a final version of the Bill by 7 July 2023, ready for Ministerial consultation beginning 10 July 2023. This is dependent on PCO's availability to work on the Bill. Otherwise, ministerial consultation could be shortened, or begin without the final version of the Bill.

Risk assessment – Aronga tūraru

44. There are no significant risks associated with the other minor policy decisions.

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

45. The official name of the Hauraki Gulf (Hauraki Gulf / Tīkapa Moana) is a Treaty settlement name from Ngā Mana Whenua o Tāmaki Makaurau Collective. The New Zealand Geographic board have advised that not using the official name would be in breach of the Treaty settlement.

Consultation – Kōrero whakawhiti

46. Officials consulted with the Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Land Information New Zealand, New Zealand Geographic Board, Ministry of Business, Innovation and Employment, Ministry of Transport, Ministry of Justice, the New Zealand Defence Force, Maritime New Zealand, and the Department of Internal Affairs. The Department of Prime Minister and

Cabinet was informed. Auckland Council and Waikato Regional Council were also consulted.

Financial implications – Te hīraunga pūtea

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

Legislative implications – Te hīraunga a ture

48. If you agree to the minor changes discussed in this paper, these will be reflected in the Hauraki Gulf Marine Protection Bill.

Next steps – Ngā tāwhaitanga

49. Assuming PCO prioritises the Bill, we are seeking your decisions and feedback by 6 July to ensure the Cabinet paper and Bill is ready for Ministerial consultation on 10 July. Any delay will risk not meeting deadlines for introduction of the Bill to the House prior to the general election.
50. We will incorporate any feedback from Ministerial consultation and lodge the Cabinet paper on 27 July for LEG committee 3 August.

Attachments – Ngā tāpiritanga

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

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

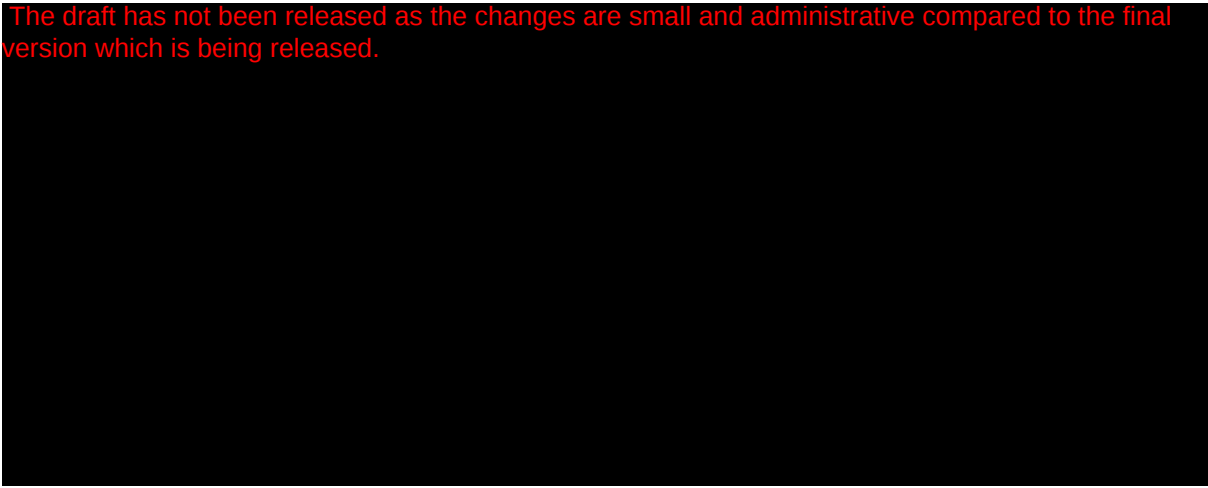
Attachment C: Changes to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill following feedback from Ministers and agencies

Attachment D: Maps of the marine protection areas

ENDS

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

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



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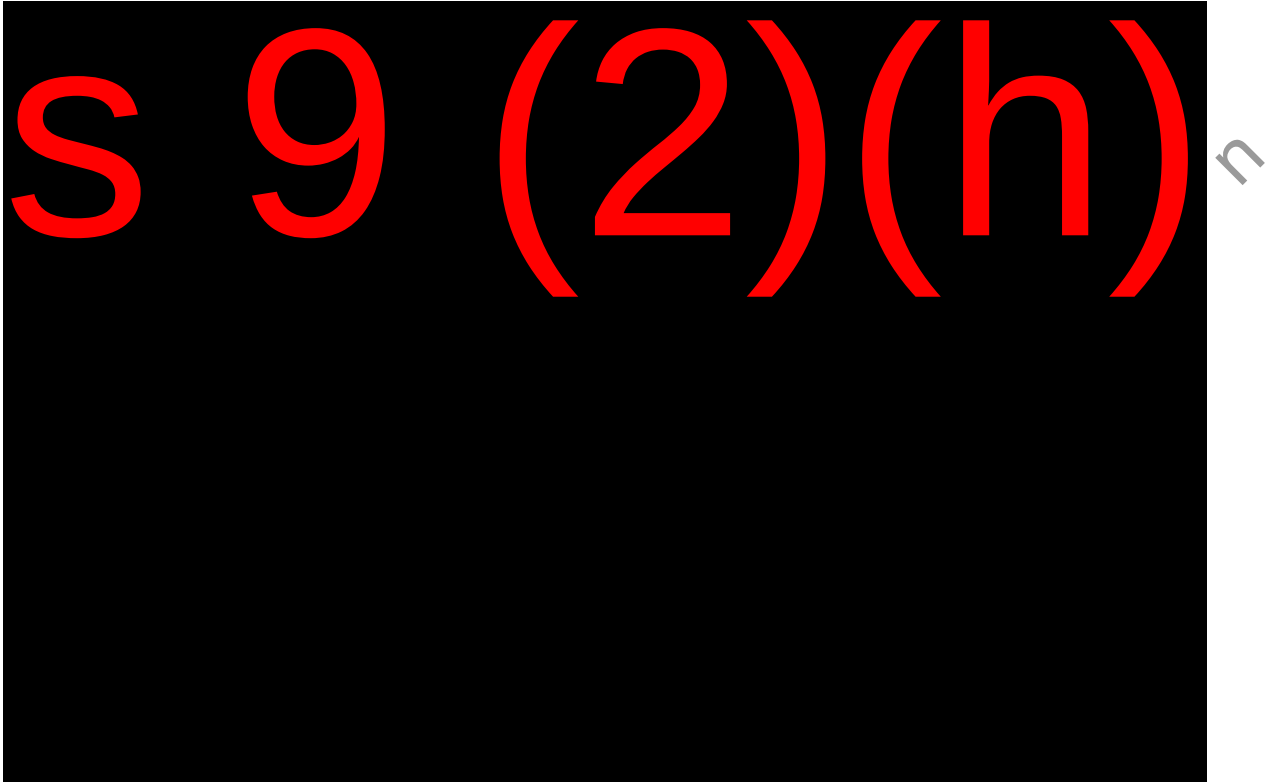
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