

Departmental Disclosure Statement

Kaikōura (Te Tai-o-Marokura) Marine Management Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Conservation and the Ministry for Primary Industries jointly.

The Department of Conservation and the Ministry for Primary Industries certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

6 March 2014.

Contents

Contents.....	2
Part One: General Policy Statement	3
Part Two: Background Material and Policy Information	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features	9

Part One: General Policy Statement

General policy statement

The Bill establishes the following coastal and marine management measures for Kaikōura (Te Tai ō Marokura):

- a marine reserve;
- a whale sanctuary;
- a fur seal sanctuary;
- 5 customary fisheries areas (2 taiāpure-local fisheries and 3 mātaitai reserves);
- an advisory committee;
- amended amateur fishing regulations specific to the Kaikōura marine area.

Background

The Bill seeks to protect and manage the marine environment in Kaikōura whilst providing economic benefits and opportunities for present and future generations.

The genesis of the Bill is the Kaikōura Marine Strategy 2012 (the Strategy), developed by Te Korowai o Te Tai ō Marokura/the Kaikōura Coastal Marine Guardians (Te Korowai). The phrase te korowai refers to the cloak of a chiefly person laid over something to ensure its care and protection.

The strategy was the result of 7 years of effort by Te Korowai (encompassing iwi, representatives from local marine industries, tourism operators and environmental groups) who set out a vision for the area and reached a consensus on how the coastal and marine environment should be managed.

Te Korowai describes the process of negotiating the suite of management measures in the strategy as a “gifts and gains” process (where parties offer a concession in one area to achieve a gain elsewhere) —“The gifts were to the sea, to the future and to our community. The gains are everybody’s”.

The Government has agreed to implement a number of the coastal and marine management measures proposed by Te Korowai, but instead of a marine mammal sanctuary there will be 2 species-specific sanctuaries to protect whales and the NZ fur seal.

The Bill implements the various management measures together as one integrated package. The measures that are not contained in the Bill will be implemented through two *Gazette* notices which will come into force shortly after the Bill comes into force.

Te Korowai

Te Korowai has made a valuable and sustained contribution towards achieving integrated management of Kaikōura.

Their vision is that, “by perpetuating the mauri and wairua of Te Tai ō Marokura, the Kaikōura community, as kaitiaki of Tangaroa’s tāonga, is sustaining a flourishing, rich, and healthy environment where opportunities abound to sustain the needs of present and future generations.”

Te Korowai’s core objectives for seeking integrated management in Kaikōura are that—

- traditional fishing areas of special significance to Ngāti Kurī (the Ngai Tahu hapu with mana moana in this area) are restored and maintained and traditional knowledge and customs are utilised to protect the fisheries of Te Tai ō Marokura;
- the marine treasures are protected so that future generations can experience the wonders that we have today;
- there are abundant fish for present and future generations;
- the quality of the coastal and marine environment is sustained and enhanced.

In 2013, the Minister of Conservation and the Minister for Primary Industries agreed to implement key elements of the Kaikōura Marine Strategy developed by Te Korowai.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	[YES]
1. Kaikōura Coastal Marine Values and Uses: A characterisation report, Te Korowai o Te Tai o Marokura, May 2008: http://www.teamkorowai.org.nz/docs/Kaikōura_Coastal_Marine_Values_and_Uses_Second_edition_Low_Res.pdf 2. Proposed Kaikōura Marine Strategy 2011 http://www.teamkorowai.org.nz/docs/TK_Summary_of_submissions_and_decisions_document.pdf 3. Kaikōura Marine Strategy: Summary of Submissions and Decisions Document, 2011 http://www.teamkorowai.org.nz/docs/TK_Summary_of_submissions_and_decisions_document.pdf 4. Kaikōura Marine Strategy 2012 - Sustaining our sea, Te Korowai o Te Tai o Marokura: http://www.teamkorowai.org.nz/docs/Kaikōura_Marine_Strategy_lo_res.pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	[NO]
However, the Convention on Biological Diversity which MPI and DOC are signatories to will help achieve Target 11 (the marine reserve) and Target 18 (customary fishing areas). Refer (http://www.cbd.int/sp/targets/)	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	[YES]
Implementing key components of the Kaikōura Marine Strategy, Ministry for Primary Industries and the Department of Conservation, December 2013. This RIS is available at: http://www.doc.govt.nz/about-doc/role/legislation/guides-and-bylaws/regulatory-impact-statements/ http://www.mpi.govt.nz/news-resources/publications?PublicationType=Regulatory%20Impact%20Statement http://www.treasury.govt.nz/publications/informationreleases/ris/index.htm	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	[NO]
The proposed regulatory options were not considered likely to have significant impacts or risks. Therefore, the RIS did not meet the threshold for RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
The RIS was not amended to reflect the creation of the species-specific sanctuaries (namely the whale sanctuary and the New Zealand Fur Seal sanctuary), rather than a marine mammal sanctuary as proposed by Te Korowai. Whilst the mechanisms to give effect to these sanctuaries have been amended since the RIS was developed, these tools will achieve a similar effect to the marine mammal sanctuary but will be more consistent with policy that is being developed between agencies on integrated marine management and protection.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	[NO]
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	[YES]
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	[NO]
(a) Whilst there is expected to be displaced fishing activity and potential impact on the petroleum and seabed minerals sector there will be economic benefits from increased marine tourism. The Impact Analysis section of the RIS has more details on this (refer 2.3 above for link).	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	[YES]
(b) the nature and level of regulator effort put into encouraging or securing compliance?	[YES]
(a) and (b) Effective compliance of the marine management tools proposed in the Bill is necessary for the benefits of these tools to be realised. Proposed compliance for these tools is discussed as part of the Implementation Plan in the RIS (refer 2.3 above for link).	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The key international conservation conventions to which New Zealand is a signatory have been internally reviewed by the Agencies:

- Legal section
- International Relations team and
- Policy group.

Agencies are satisfied that policy to be given effect by the proposed legislation is consistent with New Zealand's international obligations, in particular:

- Convention on Biological Diversity (CBD)
- Convention on the Conservation of Migratory Species of Wild Animals (CMS)
- Memorandum of Understanding for the Conservation of Cetaceans and their Habitats in the Pacific Islands Region
- International Convention for the Regulation of Whaling
- Convention on International Trade in Endangered Species (CITES)

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Te Rūnanga o Ngāi Tahu and the local hapu, Ngāti Kurī, were key members of Te Korowai and were closely involved in the preparation of the Kaikōura Marine Strategy 2012.

Te Puni Kōkiri, the Office of Treaty Settlements and Post Settlement Commitments Unit (Ministry of Justice) have been consulted throughout this process.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	[YES]
The Ministry of Justice has completed a Bill of Rights Act vetting of the Bill and concluded that no provisions limiting the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 were identified.	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	[YES]
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	[NO]
(a) The Bill provides for offences and penalties in respect of the proposed sanctuaries. These are closely modelled on those in the Marine Mammals Protection Act 1978. The Bill also provides for offences, infringement offences and penalties in respect of the amended amateur fishing regulations. These are closely modelled on existing provisions in the Fisheries (Amateur Fishing) Regulations 2013.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	[YES]
An earlier draft of these provisions provided for further penalties where an offence was a continuing offence. This mirrored an equivalent provision in the Marine Mammals Protection Act 1978. DOC and Justice have agreed that it is not necessary to include such a provision in the Bill and have removed the provision accordingly.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	[NO]
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	[YES]
Te Korowai undertook extensive consultation on the Draft Kaikōura Marine Strategy prior to finalising this and presenting it to Government for consideration. MPI and DOC also undertook targeted consultation with key stakeholders during development of the RIS. Refer Consultation and targeted stakeholder engagement section of the RIS (refer 2.3 above for link).	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	[YES]
The management mechanisms created through the Bill each replicate or closely resemble existing marine management mechanisms in place under the Fisheries Act 1996, the Marine Reserves Act 1971 and the Marine Mammals Protection Act 1978. These mechanisms have been tested and assessed as part of agency business as usual.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	[NO]
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	[NO]
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	[NO]
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	[YES]
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	[NO]
(a) The offences and penalties are closely modelled on the Marine Mammals Protection Act 1978 and the Fisheries (Amateur Fishing) Regulations 2013. Statutory defences are available.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	[YES]
In relation to the newly created sanctuaries, the Bill will protect the Crown and any officer against proceedings in respect of any action undertaken for the purposes of carrying out the provisions of the Bill provided that the Crown and the officer have acted in good faith and with reasonable care. These provisions are contained within existing powers within the Marine Mammals Protection Act 1978.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	[NO]
No new powers are created or amended.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	[YES]
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The Bill contains provisions that enable relevant Ministers to impose, amend, vary or revoke restrictions to apply within the species-specific sanctuaries and to authorise exceptions processes for research of national significance or for emergency responses. These provisions are closely modelled on existing provisions within the Marine Mammals Protection Act 1978 and the Seismic Code (which is incorporated in regulations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012).

4.8. Does this Bill create or amend any other powers to make delegated legislation?	[NO]
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	[YES]
The Bill will establish two new species-specific sanctuaries; a whale sanctuary, and a New Zealand fur seal sanctuary that are novel in their formation. This approach is better aligned to a shift in public policy being explored by DOC officials to develop a more flexible marine protected areas regime that provides for the establishment of sanctuaries for specific species and habitat management.	
The Bill provides processes for managing these areas, amending or revoking the sanctuaries and offence and penalty provisions. While these sanctuaries are not being created under any existing primary legislation, the mechanism will be closely modelled on that contained in the Marine Mammals Protection Act 1978.	
The Marine Mammals Protection Act 1978, and regulations made under that Act, will apply to the mammals living in these sanctuaries just as they apply to all marine mammals throughout New Zealand.	