



9(2)(a)

Dear 9(2)(a)

Thank you for the following request submitted under the Official Information Act 1982 (the Act) which was transferred from the Office of the former Minister for the Environment, Hon David Parker, to the Ministry for the Environment (the Ministry):

- *all advice, briefings and reports related to the creation of the Kermadecs Ocean Sanctuary received or prepared since 01/01/23.*
- *all correspondence to/from from Te Ohu Kaimoana on the creation of the Kermadecs Ocean Sanctuary.*
- *all correspondence to/from any iwiw/hapu related to the creation of the Kermadecs Ocean Sanctuary.*

Each part of this request has been interpreted to refer only to the time period since 1 January 2023.

As listed in the attached document schedule, 18 substantive documents (and their appendices) have been identified in scope of this request. Six substantive documents and one appendix have been provided to you in full. One appendix has been withheld in full under section 9(2)(h) of the Act. Information within 10 substantive documents and one appendix have been withheld under the following sections of the Act:

- a. 9(2)(a) - to protect the privacy of natural persons.
- b. 9(2)(f)(iv) - to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- c. 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.
- d. 9(2)(h) - to maintain legal professional privilege.
- e. 9(2)(j) - to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

Please note that decisions relating to some documentation in scope of your request (Documents 3, 4, 6, and appendices 6.1, 6.2, 6.3 and 11.2) require further consultation. As such, the Ministry is extending the timeframes to respond to your request by 10 working days under section 15A(1)(b) of the Act, as consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.

The Ministry will provide its further response to you on or before 29 January 2024. The extension period accounts for the period between 25 December 2023 and 15 January 2024, which are not counted as working days per section 2(1) of the Act. If we can respond before this date, we will of course do so without undue delay.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Ministerial Services team: ministerials@mfe.govt.nz.

Yours sincerely

A handwritten signature in black ink that reads "G. Wigley". The signature is written in a cursive, flowing style.

Glenn Wigley
General Manager – Waste and HSNO Policy
Ministry for the Environment | Manatū Mō Te Taiao

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	1 November 2023	Memo to Secretary for the Environment re Kermadec Ocean Sanctuary Bill from Hon David Parker, Minister for the Environment	Released in part	9(2)(f)(iv)
2	1 November 2023	Letter from Hon David Parker (Minister for the Environment) to Harry Burkhardt, Ngāti Kuri Trust Board/ Te Manawa o Ngāti Kuri	Released in part	9(2)(a)
3	1 November 2023	Letter from Hon David Parker (Minister for the Environment) to Te Ohu Kaimoana Chair	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024
4	1 November 2023	Letter from Hon David Parker to Peter Lucas-Jones, Te Rūnanga Nui o Te Aupōuri	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024
5	18 August 2023	Letter to Hon David Parker from Te Ohu Kaimoana Chair (Pahia Turia)	Released in full	N/A
6	9 August 2023	Cabinet paper CAB 175	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024
6.1	9 August 2023	Cab 175 Appendix 1	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024
6.2	9 August 2023	Cab 175 Appendix 2	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024

6.3	9 August 2023	Cab 175 Appendix 3	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024
7	15 June 2023	Letter to Minister Parker from Te Ohu Kaimoana Chair (Rangimarie Hunia)	Released in full	N/A
8	13 June 2023	Chronology of Kermadecs work for Minister Parker's office	Released in full	N/A
9	13 June 2023	Updated summary of revised proposal for Minister Parker's office	Released in full	N/A
10	9 June 2023	COR4067 Letter from Minister Parker to Harry Burkhardt, Ngāti Kuri	Released in part	9(2)(a)
11	30 May 2023	BRF 2862 Revised draft Cabinet Paper – Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill	Released in part	9(2)(a) 9(2)(g)(i) 9(2)(h)
11.1	30 May 2022	BRF 2862 Appendix 1 – Revised draft Cabinet paper: Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill	Released in part	9(2)(f)(iv) 9(2)(j)
11.1.1	22 November 2022	BRF 2862 Appendix 1 SOP Kermadec Ngā Whatu-a-Māui Ocean Sanctuary Bill-v4.4	Withheld in full	9(2)(h)
11.2	30 May 2023	BRF 2862 Appendix 2 – Draft Agreement between the Crown and Te Ohu Kaimoana	To be confirmed on or before 29 January 2024	To be confirmed on or before 29 January 2024
11.3	30 May 2023	BRF 2862 Appendix 3 – Revised Departmental Disclosure Statement	Released in full	N/A
12	21 April 2023	23-B-0014 Approach to discussions with northern iwi on management of Kermadec Islands Nature Reserve and Marine Reserve	Released in part	9(2)(g)(i) 9(2)(a) 9(2)(f)(iv) 9(2)(j)
13	20 April 2023	BRF 3118 Draft response to Ngāti Kuri Trust Board Letter – Kermadec Ocean Sanctuary	Released in part	9(2)(a) 9(2)(f)(iv) 9(2)(g)(i)

14	3 April 2023	Talking points for Minister Parker to call Rangimarie Hunia	Released in full	N/A
15	22 March 2023	Letter from Ngāti Kuri to Ministers Parker and Prime	Released in part	9(2)(a)
16	15 February 2023	BRF-2790 Approval of response to Te Ohu Kaimoana relating to the Kermadec Ocean Sanctuary	Released in part	9(2)(a) 9(2)(g)(i) 9(2)(h)
17	10 February 2023	BRF 2635 Options to progress the Kermadec Ocean Sanctuary Bill	Released in part	9(2)(a) 9(2)(h) 9(2)(g)(i)
18	20 January 2023	Aide memoire Update on proposed Ngā Whatu-a-Māui (Kermadec) Ocean Sanctuary	Released in part	9(2)(g)(i)

From: [OIA](#)
To: 9(2)(a)
Subject: Further information regarding your OIA request (reference OIAD-873)
Date: Monday, 5 February 2024 7:23:00 pm
Attachments: [Doc 6.1 Cab 175 Appendix 1 - Regulatory Impact Statement for the Ngā Whatu-a-Māui \(formerly Kermadec\) Ocean Sanctuary.pdf](#)
[Doc 6.2 Cab 175 Appendix 2 - Addendum to Ngā Whatu-a-Māui Ocean Sanctuary Final Regulatory Impact Statement.pdf](#)
[Doc 6.3 Cab 175 Appendix 3 - Revised Disclosure Statement.pdf](#)
[Doc 11.2 BRF 2862 Appendix 2 – Draft Te Ohu Crown draft agreement.pdf](#)
[Doc 3 Letter from Hon David Parker to Te Ohu Kaimoana Chair.pdf](#)
[Doc 4 Letter from Hon David Parker to Te Rūnanga Nui o Te Aupōuri.pdf](#)
[Doc 6 Cab 175 Next steps for Kermadec Ocean Sanctuary Bill.pdf](#)

Kia ora 9(2)(a)

I write regarding your Official Information Act request, reference OIAD-873.

As advised on 29 January 2024, the Ministry provided decisions on the remaining documentation in scope of your request (Documents 3, 4, 6, and appendices 6.1, 6.2, 6.3 and 11.2), and that we would provide these documents to you, in full or in part, without undue delay and no later than 5 February 2024.

As listed in the attached document schedule, the Ministry is now providing these documents to you, in full, and in part:

- The remaining substantive documents (Documents 3, 4 and 6) have been released in part, with some information redacted as out of scope of the request and some information withheld under the following sections of the Act:
 - a. 9(2)(a) - to protect the privacy of natural persons.
 - b. 9(2)(h) - to maintain legal professional privilege.
- Two appendices (Documents 6.2 and 11.2) have been released in part, with some information withheld under the following sections of the Act:
 - a. 9(2)(h) - to maintain legal professional privilege.
 - b. 9(2)(j) - to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
- The remaining two appendices (Documents 6.1 and 6.3) have been released in full.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Thank you very much for your patience.

Ngā mihi

Lachlan Brown (he/him)

Team Leader

Ministerial Services

Ministry for the Environment – Manatū Mō Te Taiao





1 November 2023

Memo to:

James Palmer
Secretary for the Environment

Kermadec Ocean Sanctuary

The Kermadec Ocean Sanctuary Bill did not proceed last parliamentary term. That followed a special general meeting of Te Ohu Kaimoana (Te Ohu) on 13 June 2023, which did not support a revised proposal for the sanctuary that had been worked up with Te Ohu.

Subsequent to a letter I received from Te Ohu on 18 August 2023, I had intended to engage further with iwi stakeholders about the Bill but the election period intervened. It will now be for the incoming Government to deal with the Bill.

I have written to Te Ohu, Ngāti Kuri and Te Aupōuri accordingly, as attached. You are free to share this correspondence with the incoming Minister for the Environment, together with the following reflections and thoughts on the Bill.

The revised proposal worked up with Te Ohu made a number of significant changes to address issues with the original 2016 Bill. In particular:

- commercial fishing permits and recreational fishing in the sanctuary would be suspended rather than extinguished
- as part of a review of the operation of the sanctuary, every 20 years the Crown and Te Ohu, acting in good faith, would independently decide on the future use of their respective annual catch entitlements for QMA10 fish stocks
- the no compensation clause was removed, leaving open the ability for Te Ohu to pursue a remedy if it wished to
- Te Kāhui o Ngā Whatu-a-Maui (Te Kāhui) would be established, with Te Ohu directly appointing members to Te Kāhui
- Te Arawhiti and the Department of Conservation would jointly administer the sanctuary legislation, with Te Kāhui overseeing a 20-year research programme for the sanctuary funded by the Crown.

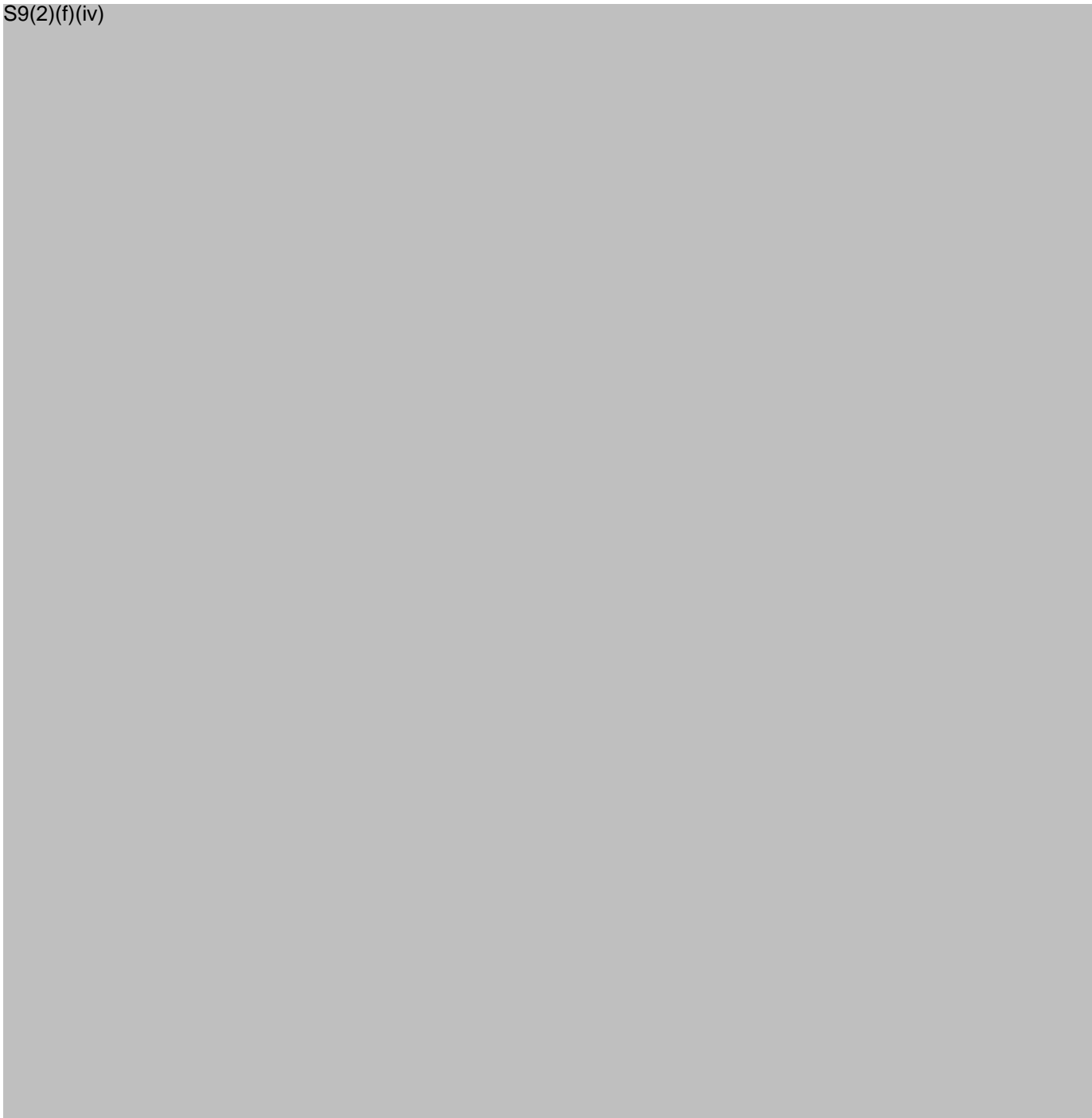
S9(2)(f)(iv)

S9(2)(f)(iv)

A handwritten signature in blue ink, appearing to read 'David Parker', is centered within a light gray rectangular box.

Hon David Parker
Minister for the Environment

S9(2)(f)(iv)



Hon David Parker BCom, LLB

Attorney-General

Minister for the Environment

Minister of Transport

Associate Minister of Finance



1 November 2023

Harry Burkhardt
Chairman
Ngāti Kuri Trust Board/Te Manawa o Ngāti Kuri

S9(2)(a)

E te rangatira, tēnā koe

Kermadec Ocean Sanctuary Bill

I want to thank you for your engagement with the Government on the Kermadec Ocean Sanctuary Bill over the last several years. I have appreciated your support to establish a sanctuary in the EEZ around the Kermadec Islands/Rangitāhua.

Since 2018 the Crown has engaged in good faith with Te Ohu Kaimoana (as well as Ngāti Kuri and Te Aupōuri) with a view to establishing the sanctuary in a manner that meets the Crown's Treaty of Waitangi/Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement.

As you will be aware, the Bill did not proceed in the last parliamentary term. It will now be for the incoming Government to deal with the Bill.

I have also written to Te Ohu, and attach that letter for your information.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'David Parker'.

Hon David Parker
Minister for the Environment

Copied to:

Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti
Hon Willow-Jean Prime, Minister of Conservation
Hon Rachel Brooking, Minister for Oceans and Fisheries



1 November 2023

Pahia Turia
Chair
Te Ohu Kaimoana
Email: S9(2)(a)

E te rangatira, tēnā koe

Kermadec Ocean Sanctuary

Thank you for your letter of 18 August 2023. As you are aware, the Kermadec Ocean Sanctuary Bill did not proceed in the last parliamentary term. I had intended to engage further with iwi stakeholders about the Bill but the election period intervened. It will now be for the incoming Government to deal with the Bill.

Since 2018 the Crown has engaged in good faith with Te Ohu Kaimoana (Te Ohu) with a view to establishing the sanctuary in a manner that meets the Crown's Treaty of Waitangi/Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement.

The Government was also mindful of New Zealand's international rights and duties under the UN Convention on the Law of the Sea (UNCLOS) to protect and preserve parts of the marine environment. Additionally, New Zealand has signed up to the global target under the UN Convention on Biological Diversity for 30 percent of the world's ocean being managed in protected areas by 2030, while recognising and respecting the rights of indigenous peoples.

Our relationship over the last few years enabled constructive discussions on the sanctuary proposal, conducted in a mutually respectful way. For this, I thank Te Ohu Board members and staff. Thank you also for your predecessor's acknowledgement of the considerable work that government officials had undertaken regarding the proposal.

I had understood we were close to agreement on the sanctuary, on the basis of a revised proposal that had been worked up with Te Ohu. I was disappointed that it was not supported at your special general meeting of 13 June 2023.

I have written to Ngāti Kuri and Te Aupōuri acknowledging their engagement with the Government on the sanctuary proposal. I have copied this letter to them, and to the Ministers for/of Māori Crown Relations: Te Arawhiti, Conservation, and Oceans and Fisheries.

In closing, I extend my best wishes for your term as Te Ohu Chair.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'David Parker'.

Hon David Parker
Minister for the Environment

Hon David Parker BCom, LLB

Attorney-General

Minister for the Environment

Minister of Transport

Associate Minister of Finance



1 November 2023

Peter-Lucas Jones
Chair
Te Rūnanga Nui o Te Aupōuri

S9(2)(a)

E te rangatira, tēnā koe

Kermadec Ocean Sanctuary Bill

I want to thank you for your engagement with the Government on the Kermadec Ocean Sanctuary Bill over the last several years.

Since 2018 the Crown has engaged in good faith with Te Ohu Kaimoana (as well as with Te Aupōuri and Ngāti Kuri) with a view to establishing the sanctuary in a manner that meets the Crown's Treaty of Waitangi/Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement.

As you will be aware, the Bill did not proceed in the last parliamentary term. It will now be for the incoming Government to deal with the Bill.

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Hon David Parker
Minister for the Environment

Copied to:

Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti
Hon Willow-Jean Prime, Minister of Conservation
Hon Rachel Brooking, Minister for Oceans and Fisheries

18 August 2023

Hon David Parker
Minister for the Environment
Parliament Buildings
WELLINGTON

Via email: David.parker@parliament.govt.nz

Tēnā koe e te Minita,

Objection to the Crown progressing the establishment of the Kermadec Ocean Sanctuary

I write to you as Chairperson of Te Ohu Kaimoana, and on behalf of our Board of Directors.

This morning an alarming article was published on Newsroom providing details to suggest that the Government is progressing to pass the Kermadec Ocean Sanctuary into law.¹ As you know, iwi are scheduled to meet kanohi ki te kanohi in less than a week, on the 24th August to discuss an indigenous led approach to marine management.

We committed in good faith to follow a process, including holding a Special General Meeting for iwi to consider the Crown's 'final offer' for the establishment of a Kermadec Ocean Sanctuary. Iwi leaders present at the meeting voted to reject the Sanctuary proposal. We promptly advised you of this result and importantly, that iwi decided further hui would be happening in the immediate future. That hui was confirmed and is only days away.

The media suggestion that the Government is preparing to push through legislation under urgency to establish the Sanctuary is repugnant. If it is proven to be correct, this a breach of the Crown's responsibility to act in good faith to protect the Fisheries Deed of Settlement and would result in an extinguishment of rights confirmed by the Deed.

¹ Jonathan Milne, 'Last-ditch bid to push through contentious Kermadec ocean sanctuary', Newsroom, 18 August 2023

I wish to remind you that 42 iwi organisations voted to reject the Crown's proposal to establish the Sanctuary, and iwi and Te Ohu Kaimoana will vehemently oppose any attempts to pass any legislation that extinguishes Māori rights and interests.

Noho ora mai rā

A handwritten signature in black ink, consisting of a large capital letter 'P' followed by a period and a stylized, cursive name that appears to be 'Pahia Turia'.

Pahia Turia

Chair

Te Ohu Kaimoana

Office of the Minister for the Environment

Chair, Cabinet Environment Committee

Next steps for Kermadec Ocean Sanctuary Bill

Proposal

- 1 This paper considers next steps for the Kermadec Ocean Sanctuary Bill 2016 as amended by a draft supplementary order paper (the Bill).¹

Executive summary

- 2 A Bill to create an ocean sanctuary (the sanctuary) in the Kermadec/Rangitāhua region, the Kermadec Ocean Sanctuary Bill (the Bill), has since 2016 been awaiting second reading. Since 2018, together with other Ministers, I have engaged with Te Ohu Kaimoana (Te Ohu) and northern iwi to establish the sanctuary.²
- 3 On 13 June 2023, Te Ohu held a Special General Meeting (Te Ohu SGM) which voted against a revised proposal (revised proposal) to create the sanctuary. This comprised the Bill as reported back to the House, as further amended in a draft supplementary order paper (draft SOP).
- 4 Te Ohu's vote against the revised proposal was unexpected because it had been indicated that they and the Government were close to agreement on the sanctuary, on the basis of the revised proposal.
- 5 The Prime Minister has announced that the Government will not be progressing the Bill before the 2023 General Election, and that the Government is willing to continue talking with Te Ohu about it.
- 6 Potential next steps in this regard include:
 - 6.1 Option 1: continue discussions with Te Ohu (and northern iwi) in the context of:
 - 6.1.1 the revised proposal/draft SOP and an updated draft SOP
 - 6.1.2 Te Ohu's view that an indigenous-led approach is required to the issue
 - 6.1.3 exploring how these positions may relate to each other
 - 6.2 Option 2: take no action until after the 2023 General Election.

¹ The term "Bill" in this paper generally refers to the Bill as reported back to the House in 2016, as further amended by a draft supplementary order paper.

² Te Ohu Kaimoana is the Māori fisheries organisation that, among other things, acts as trustee for fishing quota held by its mandated iwi organisations. "Northern iwi" refers to Ngāti Kuri, Te Aupōuri and Ngāi Takoto.

Background

- 7 The Kermadec/Rangitāhua region comprises about 620,000 square kilometres of ocean around the Kermadec Islands, and is of significant biodiversity value both nationally and globally. It is part of New Zealand's Economic Exclusion Zone (EEZ), and is the same area as Fisheries Management Area 10 (FMA 10).
- 8 The Kermadec Ocean Sanctuary Bill has been before the House of Representatives since 2016, and is awaiting second reading following report back with recommended amendments from the (then) Local Government and Environment Committee (select committee).
- 9 The reported back Bill failed to appropriately recognise the unique nature of Quota Management Area 10 (QMA 10) quota held by the Crown, and by Te Ohu as trustee for iwi beneficiaries. This quota is unable to be fished anywhere else. QMA 10 equates in area with FMA 10, with the Crown holding 84 percent of the quota in QMA 10 and iwi 16 percent.
- 10 In October 2021, the Cabinet Business Committee approved policy changes for the Bill [CBC-21-MIN-0111] and, in March 2022, the Cabinet Environment, Energy and Climate Committee approved additional changes [ENV-22-MIN-0014]. I have made further changes in accordance with the authority delegated to me as (then) Minister for Oceans and Fisheries and subsequently as Minister for the Environment [CBC-21-MIN-111].
- 11 Since 2018, together with other Ministers, I have engaged with Te Ohu, as well as with northern iwi (Ngāti Kuri, Te Aupōuri and, to a lesser extent, Ngāi Takoto), to establish the sanctuary in a manner that meets the Crown's Treaty of Waitangi/Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement between the Crown and iwi/Māori.
- 12 I have also been conscious of meeting New Zealand's international obligations under the UN Convention on the Law of the Sea (UNCLOS) to protect and preserve the marine environment (including rare and fragile ecosystems).
- 13 Additionally, the Government has signed up to the UN Convention on Biological Diversity³ global target of 30 per cent of the world's ocean being managed in protected areas by 2030, while recognising and respecting the rights of indigenous peoples.⁴ The sanctuary would represent a significant contribution to the target by New Zealand.
- 14 The sanctuary would align with International Union for Conservation of Nature (IUCN) guidelines as a Category 1b (Wilderness Area) marine protected area.

Te Ohu Special General Meeting

- 15 Te Ohu held a Special General Meeting on 13 June 2023 (Te Ohu SGM) for the 58 mandated iwi organisations who hold fisheries assets through the Māori Fisheries Act 2004, to consider and vote on the revised proposal for the sanctuary (see paras 24 to

³ The Kunming-Montreal global biodiversity framework 2022, target 3.

⁴ The 30 per cent target also includes other effective area-based conservation measures, and indigenous and traditional territories, where applicable.

- 43). The mandated iwi organisations present voted overwhelmingly against the revised proposal.
- 16 A media release from Te Ohu that day stated that leaders at the SGM “*said that an indigenous led approach, designed by iwi for iwi is the only pathway forward and a first step toward any form of future management arrangements for that area.*”
- 17 On 15 June 2023, Te Ohu Chair Rangimarie Hunia wrote advising me of the vote, and that it was taken “*for a range of reasons, primarily that they [the iwi present] individually and collectively consider that the proposal does not provide necessary protections to the rights guaranteed in the 1992 Fisheries Deed of Settlement as signed by Māori and the Crown.*”
- 18 The Chair’s letter also:
- 18.1 acknowledged “*the considerable work that your officials have undertaken with Te Ohu Kaimoana regarding the Kermadec Ocean Sanctuary proposal*”, and
- 18.2 advised that “*Iwi have directed Te Ohu Kaimoana to bring iwi together to wānanga on this kaupapa. Te Ohu Kaimoana is committed to holding that hui in the coming months.*”
- 19 The Te Ohu decision was unexpected because it had been indicated that they and the Government were close to agreement on the sanctuary.
- 20 The Government had used its best endeavours in good faith to secure agreement through close and extensive engagement with Te Ohu, along with discussions with northern iwi, to a revised proposal that met the Crown's Treaty obligations, including those arising from the 1992 Fisheries Settlement.
- 21 Te Ohu has invited iwi to a wānanga (meeting) in Wellington on 24 August 2023, to discuss an indigenous-led approach to marine management. Te Ohu’s Facebook page notes that, while the revised proposal was the catalyst, this wānanga is not to find a solution for that issue.
- 22 On 18 August 2023, new Te Ohu Chair Pahia Turia wrote to me in response to a media article on the sanctuary. Among other things, he referred to the upcoming wānanga and advised that iwi and Te Ohu would vehemently oppose any attempts to pass any legislation that extinguishes Māori rights and interests.
- 23 The Prime Minister has announced (19 August 2023) that the Government will not be progressing the Bill before the 2023 General Election, and that the Government is willing to continue talking with Te Ohu about it.

Revised proposal/draft SOP rejected by Te Ohu SGM

- 24 The revised proposal rejected by the Te Ohu SGM is outlined below. The revised proposal would be put into effect by the draft SOP, prepared by the Parliamentary Counsel Office (PCO). The key changes in the revised proposal are outlined below.

New name of the Act and sanctuary: Ngā Whatu-a-Māui Ocean Sanctuary

- 25 The name of the Bill and sanctuary is changed from the Kermadec Ocean Sanctuary to the Ngā Whatu-a-Māui Ocean Sanctuary. The name was proposed at a wānanga in July 2022 initiated by Te Ohu and attended by iwi representatives from around the

country. Ngā Whatu-a-Māui refers to the legacy of Māui and the area being the highway for the tūpuna (ancestors) of all Māori. 'Ngā whatu' refers to the rāhui stone (used to protect places) and also knowledge stored in receptacles.

Revised purpose of the Bill

- 26 The purpose of the (renamed) Ngā Whatu-a-Māui Bill is amended to recognise:
- 26.1 Māori rights and interests, including those relating to fisheries interests and the association of Ngāti Kuri and Te Aupōuri to Rangitāhua/the Kermadec Islands and adjoining marine reserve
- 26.2 the significance of the area, including for purposes of research, and the sharing of knowledge.

Fishing activity is suspended, not prohibited

- 27 Commercial fishing permits and recreational fishing in the sanctuary are suspended.⁵ As part of a review of the operation of the sanctuary, every 20 years the Crown and Te Ohu, acting in good faith, can independently decide on the future use of their respective annual catch entitlements for QMA 10 fish stocks (after first using best endeavours to agree on future use).⁶ The Crown would give effect to any decision by Te Ohu.
- 28 Separately, but at the same time, the Crown must make a determination about the future of other fishing suspended by the sanctuary (besides fishing for QMA 10 stocks) – for example, fishing for highly migratory species like tuna, and recreational fishing.
- 29 Te Ohu would have the ability to exercise a decision on the use of its QMA 10 quota, held on behalf of iwi mandated organisations, at the 20-year review. This reflects the Government's intent to uphold the 1992 Fisheries Settlement and that Te Ohu holds quota for QMA 10 fish stocks on behalf of iwi.
- 30 Customary non-commercial fishing rights are not affected (they continue to operate under customary fisheries regulations made under the Fisheries Act 1996).
- 31 Regardless of the ongoing status of fishing rights, the sanctuary would continue in perpetuity, with other activities continuing to be prohibited (including effectively seabed mining). However, any resumption of fishing would likely change the status of the area as a protected area, including its alignment with IUCN guidelines as a Category 1b (Wilderness Area) marine protected area.

Creation of new entity: Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui)

- 32 A new entity is created, Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui). Its functions will include:
- 32.1 developing a Crown-funded 20-year research plan for the sanctuary

⁵ The Bill introduced to Parliament in 2016 prohibited all forms of fishing in the sanctuary, in perpetuity.

⁶ QMA 10 encompasses the area of the sanctuary and adjoining marine reserve around the Kermadec Islands. The future use of QMA 10 fish stocks relates to the sanctuary area only.

- 32.2 commissioning research
 - 32.3 commissioning specific reports, including an independent review on the operation of the sanctuary every 20 years
 - 32.4 providing recommendations on the independent review report
 - 32.5 commissioning a report on legal personhood for the sanctuary, with the Crown required to respond to the report
 - 32.6 participating in an international outreach programme.
- 33 The membership of Te Ohu comprises; four members appointed by Te Ohu; four by the Crown; and one member each appointed by Ngāti Kuri and Te Aupōuri. The chair of Te Kāhui would alternate every 2.5 years between Crown/Ngāti Kuri and Te Aupōuri appointees together, and Te Ohu appointees, with a Te Ohu appointee being the first and last chair over the initial 20-year period of the sanctuary.
- 34 In exercising its functions, Te Kāhui must give effect to principles of Te Hā o Tangaroa, as described in the Bill. These principles relate to the use and protection of the oceans (ie of Tangaroa).
- 35 No changes are proposed to the Conservation Board responsible for the Kermadec Islands and existing adjoining marine reserve.⁷ Te Kāhui will have a function to liaise with this board in relation to the sanctuary area.

Prohibited activities

- 36 The Bill aligns with the effects-based approach of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). Accordingly, the Bill prohibits activities that adversely affect the seabed and water column and does not expressly refer to mining activities or seismic surveys. Specific prohibitions to mining activities will take place through consequential amendments to both the Crown Minerals Act 1991 and the EEZ Act.

Crown-funded research plan to be developed by Te Kāhui

- 37 The Bill provides for a 20-year Crown-funded research plan. Te Kāhui would be required to develop the plan. The Bill sets out the broad scope of the research plan, which encompasses:
- 37.1 characterising aquatic life
 - 37.2 monitoring changes in the abundance and distribution of aquatic life, including fish stocks (to inform future decisions about the viability of any fishery in the area)
 - 37.3 changes in oceanographic processes, including those associated with climate change
 - 37.4 characterising the association of aquatic life with geological features

⁷ The Kermadec Islands Marine Reserve, established in 1990, extends out 12 nautical miles from the Kermadec Islands (ie the territorial sea).

- 37.5 research on cultural heritage in relation to the sanctuary.
- 38 The research plan is an investment in broadening our understanding of the sanctuary area and will inform the 20-year review of the operation of the sanctuary.
- 39 Te Kāhui will undertake 5-yearly progress reports on the research plan and an interim review at 10 years. Having considered the research undertaken, Te Kāhui may change the research plan to give effect to the 10-year review findings.

Removal of 'no compensation' provision

- 40 The Bill, as introduced, prohibited claims for compensation. This provision has been removed. As a matter of general principle, parties should have the ability to pursue legal claims for any loss, damage, or adverse effect on rights or interests arising from decisions by the Crown.
- 41 There has been limited commercial fishing in FMA 10 over the last decade. Fishing for migratory fish species such as tuna can occur on the adjacent high seas, and in other areas of the EEZ (with most fishing being undertaken closer to mainland New Zealand).
- 42 The precedent effect of the bespoke elements of the Bill would be limited, given the unique situation presented by the proposed sanctuary.

Joint administration of the Act by the Department of Conservation and the Office for Māori Crown Relations: Te Arawhiti

- 43 The Department of Conservation (DOC) and the Office for Māori Crown Relations: Te Arawhiti will jointly administer the Act. The addition of Te Arawhiti was sought by Te Ohu and mandated iwi organisations, as a measure of assurance that Crown actions under the new legislation would remain cognisant of Māori interests and perspectives. DOC and Te Arawhiti will work through how joint administration will work, including as to matters of cost.

Updated draft SOP

- 44 I have considered how an updated draft SOP could respond to the Te Ohu SGM decision. While retaining most elements of the original draft SOP, an updated SOP would contain the main changes:
- 44.1 retention of a fishing zone in FMA 10 adjacent to the sanctuary; and
- 44.2 changes to the composition and appointment of Te Kāhui and its chair.

Retention of a fishing zone in FMA 10 adjacent to the sanctuary

- 45 A fishing zone would be retained, separate from but adjoining the sanctuary area. The fishing zone, of 40 nautical miles in width, would run along the entire western edge of the Kermadec/Rangitāhua region (FMA 10). The fishing zone was discussed with Te Ohu, Ngāti Kuri and Te Aupōuri, but was not part of the revised proposal considered by the Te Ohu SGM.
- 46 The sanctuary would then comprise approximately 12.5 per cent of New Zealand's exclusive economic zone (rather than 15 per cent). The provisions of the Bill would not

apply to the fishing zone. The existing benthic protection area which bans bottom impacting fishing methods would continue to apply in the fishing zone.

- 47 The fishing zone could help support New Zealand's catch history of highly migratory species for future country-based allocations, and act as a counter to foreign fishing fleets operating in close proximity to the FMA 10 part of the EEZ.
- 48 While the practical viability of the fishing zone is still to be established with Te Ohu and the fishing industry, the zone would in principle retain existing fishing rights in perpetuity in this part of QMA 10.⁸ The zone, along with the 20-year review of the suspension of commercial fishing within the sanctuary, would recognise the Crown's obligations to protect a biologically significant ecosystem while recognising Māori fisheries rights and the integrity of the 1992 Fisheries Settlement.
- 49 A decrease in the size of the sanctuary may disappoint some people, especially given the ability of highly migratory species to be fished elsewhere. There may also be concern that any increase in fishing in the zone could lead greater mortality of non-target protected species (particularly seabirds and turtles) and potential reduction in biodiversity values associated with the sanctuary.

Changes to the composition and appointment of Te Kāhui and its chair

- 50 The composition and appointment process for Te Kāhui would change in that Te Ohu would not have the ability to directly appoint four members, and a Te Ohu appointee would not act as first and last chair over the initial 20-year period of the sanctuary.
- 51 There would be four members appointed by the Crown, one member each appointed by Ngāti Kuri and Te Aupōuri, and four iwi/Māori members appointed by the Ministers of Conservation and Māori Crown Relations: Te Arawhiti. Prior to appointing the four iwi/Māori members, the Ministers of Conservation and Māori Crown Relations: Te Arawhiti would seek nominations from interested parties including Te Ohu and iwi for the proposed iwi/Māori appointees.
- 52 The chair of Te Kāhui would alternate every 2.5 years between Crown/Ngāti Kuri and Te Aupōuri appointees together, and iwi/Māori appointees.
- 53 In the event that nominations from Te Ohu and other interested parties were not forthcoming, Ministers would appoint the members directly.

Potential next steps

- 54 Potential next steps include:
- 54.1 Option 1: continue discussions with Te Ohu (and northern iwi) in the context of:
- 54.1.1 the revised proposal/draft SOP and an updated draft SOP
- 54.1.2 Te Ohu's view that an indigenous-led approach is required to the issue
- 54.1.3 exploring how these positions may relate to each other

⁸ This would in practice apply to the 16% of quota held in QMA 10 by Te Ohu as trustee for iwi, rather than the 84% of quota held by the Crown.

or

54.2 Option 2: take no action until after the 2023 General Election.

Associated agreement between the Crown and Te Ohu

- 55 In conjunction with the Bill, the intent was that the Crown would enter into an associated Agreement (Agreement) with Te Ohu prior to enactment of the Bill or following if necessary [CBC-21-MIN-0111].
- 56 An updated draft SOP would progress without the Agreement. Its absence would not impact the effective operation of the legislation, with matters that need to be legally enforceable being specified in the Bill or other legislation.

Legal issues

57 Two sets of proceedings in relation to the Bill exist at present – one filed by Te Ohu⁹ (currently stayed while the Bill is in the House) and the second by the New Zealand Fishing Industry Association (NZFIA)¹⁰, representing a group of fishing companies and other fishing interests (currently adjourned). In the absence of the Agreement, Te Ohu would not be obligated to withdraw its litigation.

58 s9(2)(h) [Redacted]

59 s9(2)(h) [Redacted]

60 s9(2)(h) [Redacted]

Out of scope [Redacted]

61 Out of scope [Redacted]

⁹ Te Ohu’s proceeding alleges that the Crown’s actions in promoting the Bill breached the 1992 Fisheries Deed of Settlement, and also that the Crown owed Te Ohu and iwi an enforceable duty of good faith under the Treaty of Waitangi and the 1992 Fisheries Settlement Deed and its enacting legislation, which the Crown breached.

¹⁰ The NZFIA seeks judicial review of the Minister of Fisheries’ decisions over the years to set nominal or nil TAC and TACC values for QMA10 quota. It also seeks declarations that benthic protection areas are “protected areas” for the purposes meeting NZ’s international obligations (one such area covers FMA 10).

Out of scope

62 Out of scope

Financial implications

63 The total cost of the sanctuary programme over 20 years is \$73.311m, with no further Cabinet decisions on funding required at this time.

64 Cabinet previously agreed [CBC-21-MIN-0111] that funding for implementing the sanctuary would be provided through:

64.1 the Between-Budget Contingency in 2021/22 for DOC support secretariat costs and Te Kāhui costs for the full first 20 years; and

64.2 the Natural Resource Cluster Budget 2022 for Te Kāhui research fund, agency compliance, monitoring, and enforcement, and permitting of marine scientific research for the financial years 2022/23 to 2025/26.

65 Budget 2022 secured:

65.1 \$14.57m for Vote Conservation: Implementation of marine protection and localised management actions, of which \$9.317m (OPEX) and \$2.523m (CAPEX) was allocated to the sanctuary. (The Minister of Conservation agreed to transfer the remaining \$2.732m, initially secured for Southeast Marine Protection and Sea Change in the Hauraki Gulf); and

65.2 \$1.536m under Vote Environment for compliance, monitoring and enforcement activities undertaken by the Environmental Protection Authority in relation to marine science research for the 2021/22 - 2025/26 financial years and \$0.385m for outyears.

Impact analysis

66 A Regulatory Impact Statement (RIS) was prepared for the Bill as introduced in 2016. An updated interim RIS was provided to Cabinet in October 2021. A Final RIS is attached at **Appendix 1**. An addendum to the Final RIS is attached at **Appendix 2**. The addendum was prepared to reflect the additional amendments proposed to be made to the Bill following the Te Ohu SGM on 13 June 2023.

67 The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Final RIS and addendum. The panel considers that the Final RIS meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the strengths and weaknesses of the options available and provides a convincing analysis of the reasons for the proposed changes to the Bill.

Climate Implications of Policy Assessment

68 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met.

Compliance

- 69 I consider that the proposed legislative amendments in the draft SOP comply with:
- 69.1 the principles of the Treaty of Waitangi (see paras 70 to 71)
 - 69.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 69.3 the disclosure statement requirements. A revised disclosure statement for the Bill, with the SOP amendments incorporated, is attached to this paper at **Appendix 3**
 - 69.4 the principles and guidelines set out in the Privacy Act 2020
 - 69.5 relevant international obligations and commitments, including the United Nations Convention on the Law of the Sea and the Convention on Biological Diversity
 - 69.6 the Legislation Guidelines (2021 edition) which are maintained by the Legislation Design and Advisory Committee, with one variation. The Bill contains a so-called 'Henry VIII' provision enabling the suspension of fishing rights created by statute to be amended or revoked by Order in Council. This approach is central to maintaining the integrity of the 1992 Fisheries Settlement. The Legislative Design and Advisory Committee consider that *"this appears to be one of those relatively rare occasions where the inclusion of a Henry VIII provision is an important part of the policy being presented to Parliament, in that it signals that the suspension of rights under the Bill is founded on mutual agreement"*.

Compliance with principles of Te Tiriti o Waitangi/Treaty of Waitangi

- 70 Since 2018 the Government has undertaken detailed and lengthy engagement with Te Ohu, and has engaged with Ngāti Kuri and Te Aupōuri, consistent with principles of the Treaty of Waitangi, to inform itself of the nature of the rights and interests affected by the sanctuary proposal.
- 71 The SOP would actively protect those rights, including the rights and redress secured under the 1992 Fisheries Deed of Settlement and enacting legislation, primarily by:
- 71.1 suspending commercial fishing within the sanctuary rather than permanently prohibiting it
 - 71.2 empowering Te Ohu, on behalf of iwi, to independently decide after 20 years, whether to amend or remove the suspension
 - 71.3 providing in an updated SOP for the proposed fishing zone which allows for the ongoing exercise of rights within QMA 10 (a proposed change additional to the revised proposal considered by mandated iwi organisations at the Te Ohu SGM)
 - 71.4 providing for customary non-commercial fishing within the Sanctuary.

Consultation

Departmental consultation

- 72 The Ministry for the Environment (MfE) was responsible for preparing this paper. MfE had previously worked with the Department of Conservation, Office for Māori Crown Relations: Te Arawhiti, and Ministry for Primary Industries/Fisheries New Zealand (MPI/FNZ) on the revised proposal considered the Te Ohu SGM.
- 73 MPI/FNZ was not consulted on proposed changes for an updated SOP, except to confirm that while the proposed fishing corridor was technically feasible, the extent to which it would provide for fishing to occur in practice was uncertain.
- 74 Other agencies consulted during the development of the proposals to amend the Bill and prepare this paper (except for the further changes proposed for an updated SOP) include: the Crown Law Office, Treasury, Environmental Protection Authority, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Transport, Maritime New Zealand, Ministry of Defence, New Zealand Defence Force, Land Information New Zealand, and Te Puni Kōkiri. The Department of Prime Minister and Cabinet was informed.
- 75 The Public Service Commission was consulted about the nature of the entity established by the Bill, Te Kāhui. Guidance was sought from the Legislative Design and Advisory Committee on proposed amendments to the Bill, which resulted in refinement to the process for reviewing the sanctuary every 20 years. The Cabinet Office was consulted on definitions in the Bill.

External engagement

- 76 Cabinet agreed to targeted engagement on the revised Bill with the parties most affected by the proposed sanctuary [CBC-21-MIN-0111].
- 77 Consistent with the Labour Party's Māori Manifesto 2020,¹¹ a partnership approach between the Crown and Te Ohu has underpinned work to develop the revised proposal to amend the Bill.
- 78 Ministers for/of the Environment, Oceans and Fisheries, Conservation, and Māori Crown Relations: Te Arawhiti have engaged with Te Ohu representatives over a number of years to progress work on the revised proposal. The Prime Minister, Ministers, and Te Ohu representatives met on 21 July 2021. Working groups of officials¹² and representatives from Te Ohu engaged extensively to develop and agree principles underlying the revised proposal. Te Ohu engaged with mandated iwi organisations to socialise the revised proposal and convey feedback to officials.
- 79 Engagement with Ngāti Kuri and Te Aupōuri has been ongoing over the past two years and included sharing the revised proposal (together with supporting materials), and SOP drafts. Meetings were conducted with Ministers and officials to discuss progress

¹¹ The manifesto states a commitment to "build on the work we have undertaken with Te Ohu Kaimoana and Māori to resolve the outstanding issues surrounding the Kermadecs".

¹² In 2020, an interagency officials' group was formed, led by the Ministry for the Environment, with officials from the Department of Conservation, the Ministry for Primary Industries/Fisheries New Zealand, the office for Māori Crown Affairs – Te Arawhiti, and the Ministry for Foreign Affairs and Trade.

on the Bill, the aspirations of these iwi for the sanctuary, and their feedback with respect to the materials shared.

- 80 Additionally, a copy of the draft SOP and summary of the revised proposal was provided to NgāiTakoto. Meetings were held to discuss feedback and the interests of NgāiTakoto in the sanctuary, albeit this engagement was less extensive than that conducted with Ngāti Kuri and Te Aupōuri.
- 81 Good faith engagement with Te Ohu, Ngāti Kuri, and Te Aupōuri resulted in substantive policy changes to provide for recognition of Māori rights and interests, in particular those recognised in the 1992 Fisheries Settlement and the association of iwi with the area (notwithstanding the subsequent decision of mandated iwi organisations against the proposed policy changes). However, not all changes proposed by Ngāti Kuri and Te Aupōuri have been addressed, as some of these did not align with measures agreed by the Crown and Te Ohu.
- 82 I did not engage with other affected fishing interests given that their position is not substantively altered by the proposed amendments to the Bill.
- 83 I have not engaged with Te Ohu and northern iwi (or other external parties) on the proposed updated SOP.

Associated regulations and instruments

- 84 The Bill enables the making of regulations for a range of administrative matters, mostly relating to the Bill's marine scientific research permitting regime.
- 85 The SOP would enable the making of Orders in Council to remove, amend, or reinstate the suspension of fishing. As a consequence of any such Orders in Council, changes under the Fisheries Act 1996 to fishing permits, deemed values and cost recovery levies may be made.

Parliamentary stages

- 86 A Bill to establish the Kermadec Ocean Sanctuary was introduced in the House on 8 March 2016. The select committee reported back on 22 July 2016. The Bill awaits its second reading.
- 87 The process to amend and enact the Bill has previously been agreed by Cabinet [CBC-21-MIN-0111]:
- 87.1 the Kermadec Ocean Sanctuary Bill, with the 2016 Select Committee recommendations, will be progressed to a second stage reading, with the Government voting in support of the recommendations
- 87.2 the proposed amendments to the Bill will be introduced by SOP and considered by the Committee of the Whole House
- 87.3 the Bill will then be progressed to a third reading and enactment.

Proactive Release

- 88 I propose to release this paper proactively on the Ministry for the Environment's website once decisions have been on options for the sanctuary, subject to any redactions as are appropriate under the Official Information Act 1982.

Recommendations

The Minister for the Environment recommends that the Committee:

Background

- 1 **note** that the Kermadec/Rangitāhua ocean region around the Kermadec Islands is:
 - 1.1 about 620,000 square kilometres in size
 - 1.2 of significant biodiversity value, both nationally and globally
 - 1.3 part of New Zealand's Economic Exclusion Zone (EEZ)
 - 1.4 the same area as Fisheries Management Area 10 (FMA 10) and Quota Management Area 10 (QMA 10)
- 2 **note** that a Bill to create an ocean sanctuary in the Kermadec/Rangitāhua region, the Kermadec Ocean Sanctuary Bill (the Bill), has been before the House of Representatives since 2016
- 3 **note** that the Bill is awaiting second reading following report back with recommended amendments from the (then) Local Government and Environment Committee (the select committee)
- 4 **note** that the Bill as reported back by the select committee failed to appropriately recognise the unique nature of fishing rights in the Kermadec/Rangitāhua region, with QMA 10 quota held by the Crown and by Te Ohu Kaimoana (Te Ohu), as trustee for iwi beneficiaries, not being able to be fished anywhere else
- 5 **note** that it is a priority, in establishing the sanctuary, that the Crown's Treaty of Waitangi/Te Tiriti o Waitangi commitments, including those arising from the 1992 Fisheries Settlement between the Crown and iwi/Māori, are met
- 6 **note** that it is also a priority that the sanctuary contributes to global ocean protection goals and targets, and to New Zealand's protection and preservation obligations under the United Nations Convention on the Law of the Sea

Revised proposal/draft SOP

- 7 **note** that policy changes to the Bill were approved by the Cabinet Business Committee on 6 October 2021 [CBC-21-MIN-0111], and the Cabinet Environment, Energy and Climate Committee on 31 March 2022 [ENV-22-MIN-0014]
- 8 **note** that further policy changes were made by the Minister for the Environment, following consultation with Ministerial colleagues, in accordance with the authority granted by the Cabinet Business Committee [CBC-21-MIN-111]
- 9 **note** that a draft supplementary order paper (draft SOP) was prepared by the Parliamentary Counsel Office to make the changes to the Bill referred to in recommendations 7 and 8

- 10 **note** that the draft SOP puts into effect a revised proposal for the Bill (revised proposal) following close and extensive engagement with Te Ohu, along with discussions with northern iwi (being Te Ohu, Ngāti Kuri, Te Aupōuri and, to a lesser extent, Ngāi Takoto)
- 11 **note** that the Bill would be renamed Ngā Whatu-a-Māui Ocean Sanctuary Bill
- 12 **note** that at a Te Ohu special general meeting on 13 June 2023 (Te Ohu SGM), mandated iwi organisations voted against the revised proposal
- 13 **note** that this decision was unexpected because it had been indicated that Te Ohu and the Government were close to agreement on the sanctuary
- 14 **note** Te Ohu's view that an indigenous-led approach to the sanctuary issue is required
- 15 **note** that the Prime Minister has announced that the Government will not be progressing the Bill before the 2023 General Election, and that the Government is willing to continue talking with Te Ohu about it

An updated draft SOP

- 16 **note** that in response to the decision noted at recommendation 12, the draft SOP could be updated as follows:
- 16.1 reducing the size of the sanctuary by retaining a fishing zone, 40 nautical miles in width, along the western boundary of the Kermadec/Rangitāhua region (also known as FMA 10 and QMA 10)
- 16.2 Te Kāhui comprising four members appointed by the Crown, one member each appointed by Ngāti Kuri and Te Aupōuri, and four iwi/Māori members appointed by the Ministers of Conservation and Māori Crown Relations: Te Arawhiti
- 16.3 the Ministers of Conservation and Māori Crown Relations: Te Arawhiti seeking nominations from interested parties including Te Ohu and iwi on the proposed iwi/Māori appointees
- 16.4 the Ministers of Conservation and Māori Crown Relations: Te Arawhiti appointing iwi/Māori members to Te Kāhui should nominations not be forthcoming from Te Ohu and other interested parties
- 16.5 the chair of Te Kāhui alternating every 2.5 years between Crown, Ngāti Kuri and Te Aupōuri appointees together, and iwi/Māori appointees
- 17 **note** that with the retention of a fishing zone in FMA 10, the size of the sanctuary would be reduced from around 15 per cent to 12.5 per cent of New Zealand's exclusive economic zone
- 18 **note** that the provisions of the Bill would not apply to the fishing zone
- 19 **note** that the Bill would be progressed without an associated agreement being entered into between the Crown and Te Ohu, as previously agreed to [CBC-21-MIN-0111]
- 20 s9(2)(h)

Funding

- 21 **note** that the total cost of the sanctuary programme over 20 years is \$73.311 million, with no further Cabinet decisions on funding required at this time other than those previously taken

Out of scope

- 22 Out of scope

Next steps

- 23 **agree** to:

23.1 Option 1: continue discussions with Te Ohu (and northern iwi) in the context of:

23.1.1 the revised proposal and an updated draft SOP

23.1.2 Te Ohu's view that an indigenous-led approach is required to the issue

23.1.3 exploring how these positions may relate to each other

or

23.2 Option 2: take no action until after the 2023 General Election.

Authorised for lodgement

Hon David Parker
Minister for the Environment

Appendix 1. Final Regulatory Impact Statement for the Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary Bill

Appendix 2. Addendum to Final Regulatory Impact Statement for the Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary Bill

Appendix 3. Revised Departmental Disclosure Statement for the Kermadec Ocean Sanctuary Bill

Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing final Cabinet decisions on a revised Bill for the Ngā Whatu-a-Māui Ocean Sanctuary</i>
Advising agencies:	<i>Ministry for the Environment (MfE)</i>
Proposing Ministers:	<i>Minister for the Environment</i>
Date finalised:	<i>14 June 2023</i>
Problem Definition	
<p>The Government intends to preserve the ecological integrity and biodiversity of the Kermadec/Rangitāhua region by establishing the Ngā Whatu-a-Māui Ocean Sanctuary (the sanctuary).¹</p> <p>The Kermadec/Rangitāhua region is of national and global significance. Its unique and relatively untouched nature makes it valuable to science and for furthering global understanding of the marine environment, ecosystems, and the ocean’s life-supporting processes, including as a monitoring site for the effects of climate change.</p> <p>Existing legislation manages human activities in the region largely independently of each other. Marine protection measures in the region include a fisheries benthic protection area² covering all of Fisheries Management Area 10 (FMA 10) and a marine reserve for the territorial sea around Rangitāhua/the Kermadec Islands. But, in the absence of an integrated approach, the ecological integrity of the region and its biodiversity may diminish over time with the emergence of new activities and threats.</p> <p>The intention to establish the sanctuary was announced by Rt Hon John Key at the United Nations General Assembly in September 2015. Parties with rights and interests in the area were informed immediately prior to the announcement. The Kermadec Ocean Sanctuary Bill was introduced to Parliament in 2016 and reported back by Select Committee. The Bill awaits its second reading.</p> <p>The amended Bill, as reported back by Select Committee in July 2016, fails to appropriately recognise the unique effect on fishing rights in the Kermadec/Rangitāhua region and the implications of prohibiting the exercise of those rights.³</p>	

1 Ngā Whatu-a-Māui refers to the legacy of Māui and the area being the highway for the tūpuna (ancestors) of all Māori. ‘Ngā whatu’ refers to the rāhui stone (used to protect places) and also knowledge stored in receptacles. The name was proposed at a wānanga (meeting) in July 2022 initiated by Te Ohu Kaimoana and attended by iwi representatives from around the country.

2 The Fisheries (Benthic Protection Areas) Regulations 2007 prohibit fishing activities (dredging and trawling within 100 metres of the seabed) in the Kermadec/Rangitāhua region (and elsewhere) that are most likely to have adverse effects on the area’s marine biodiversity.

3 Marine protected areas in other areas are only for parts of the Quota Management Area (QMA), meaning that fishing can still occur elsewhere in the QMA. In this case, the sanctuary in combination with the much smaller

Executive Summary

Why is government intervention required?

The Kermadec/Rangitāhua region is important from a national and global perspective due to its biodiversity and geology. Its unique and relatively untouched nature makes the region valuable to science and for furthering global understanding of our marine environment, ecosystems, and the ocean's life-supporting processes, including as a monitoring site for the effects of climate change.

The Kermadec/Rangitāhua region is also of cultural significance to Māori. Oral histories record the original waka of a number of iwi having passed through the region as part of the great oceanic voyages to Aotearoa. Māori also have economic interests, present and future, in the region as beneficiaries of the 1992 Fisheries Settlement.⁴

Existing legislation (see paras 42 - 49) manages human activities independently of each other and cannot address the range of competing interests in the region. In the absence of intervention, the Government is reliant on the current framework to deliver an integrated management response that recognises the global significance of the region and ensures that Māori rights and interests, including those arising from the 1992 Fisheries Settlement, are appropriately recognised.

If no action is taken, the ecological integrity and biodiversity of the region may diminish over time, as there is the potential for emerging activities and threats to adversely impact the region.

Establishing a sanctuary will also contribute to a network of large-scale ocean sanctuaries in the Pacific and make a significant contribution towards global marine protection goals and agreements, including the United Nations Convention on Biological Diversity's Kunming-Montreal Global Biodiversity Framework and its Target 3 to protect (inter alia) 30 per cent of the world's ocean by 2030.

Development of the Ngā Whatu-a-Māui Ocean Sanctuary Bill

The 2016 Bill process

Following the Rt Hon John Key's announcement at the United Nations General Assembly in September 2015 of the government's intent to create an ocean sanctuary, the Bill (currently known as the Kermadec Ocean Sanctuary Bill) was introduced to Parliament in 2016. It intended to establish a fully protected (no-take) marine protected area (MPA) in New Zealand's Exclusive Economic Zone (EEZ) around Rangitāhua/the Kermadec Islands aimed at preserving the area in its natural state in perpetuity.

The Local Government and Environment Select Committee held public hearings and invited submissions on the Bill. The Committee received 1165 submissions from various parties including the commercial fishing sector, iwi/Māori, environmental non-governmental organisations (eNGOs), the mining sector, and individuals (including research scientists

Kermadec Islands Marine Reserve would cover the entire QMA, meaning the right to fish in this QMA could not be exercised.

⁴ The 1992 Fisheries Deed of Settlement and the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992, together comprising the "Fisheries Settlement".

with knowledge of the Kermadec/Rangitāhua area). Some submissions raised concerns regarding a lack of consultation and that the Bill impacted on existing rights and interests including Fisheries Settlement quota allocations given as a redress to iwi.

The Select Committee reported back in July 2016 with several proposed changes to the Bill based on the submissions received.⁵ The Bill has not progressed to a second reading.

Te Ohu Kaimoana (Te Ohu)⁶ initiated a judicial review application in the High Court in response to the Bill (which has been stayed while the Bill is before the House).⁷ The New Zealand Fishing Industry Association (representing a collective of fishing interests) also initiated legal proceedings in relation to the Fishing Management Areas 10 (FMA10) allowable catch limits.⁸ These proceedings are currently also on hold while the Bill is before the House. A further claim was brought by Ngāti Mutunga o Wharekauri Asset Holding Company Limited and Te Whānau a Apanui Holding Company Limited, alleging that the establishment of the sanctuary and proscription of fishing within it would be a breach of their rights and freedoms under the New Zealand Bill of Rights Act 1990. The claim was struck out by the Court of Appeal.⁹

Developing the revised proposal

Since 2017, the Government has sought to develop an approach that establishes the sanctuary while ensuring that Māori rights and interests are recognised and protected.

In 2020, an interagency officials' group¹⁰ was formed to progress proposals to amend the Bill. The group has worked with Te Ohu to clarify and test proposals put forward by Te Ohu in 2020 to amend the Bill. Ministers and officials have also worked with Ngāti Kuri and Te Aupōuri, as iwi with associations to Rangitāhua and the adjoining marine reserve, including as expressed in their Treaty settlements.

The collaboration with Te Ohu (in its capacity as trustees of the quota allocated to Māori in QMA 10 under the 1992 Fisheries Settlement) has formed the basis of the revised proposal to amend the current Bill. Ministers and officials also discussed the revised proposal with Ngāti Kuri and Te Aupōuri, refining the proposal to address feedback. The revised proposal was also provided to Ngāi Takoto.

This final regulatory impact statement (final RIS) assesses two options for establishing the sanctuary

The overall objective of the Government is to meet the Crown's Treaty of Waitangi/Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement

5 https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR69634_1/kermadec-ocean-sanctuary-bill-120-2#RelatedAnchor.

6 The entity established under the Māori Fisheries Act 2004 to act as trustee for iwi and to advance the interests of iwi in the development of fishing and fisheries, to amongst other functions, further the agreements in the 1992 Fisheries Deed of Settlement.

7 *Te Ohu Kai Moana Trustee Ltd v Attorney General* [2016] NZHC1798.

8 *The New Zealand Fishing Industry Association and Ors v Attorney General* CIV-2016-485-270.

9 *Ngāti Mutunga o Wharekauri Asset Holding Company Ltd v Attorney-General* [2020] NZCA 2.

10 The group, led by the Ministry for the Environment, included officials from the Department of Conservation, the Ministry for Primary Industries/Fisheries New Zealand, the Office for Māori Crown Relations - Te Arawhiti, and the Ministry for Foreign Affairs and Trade.

between the Crown and Māori, while enabling a large-scale sanctuary to be established that contributes to global ocean protection goals and targets.

The RIS provides an assessment of two options against the status quo:

1. The 2016 Bill as reported back by Select Committee in July 2016
2. The revised proposal - the Ngā Whatu-a-Māui Ocean Sanctuary Bill.

The key differences between the 2016 Bill (option 1) and the revised proposal (option 2) include:

- **Name:** Ngā Whatu-a-Māui Ocean Sanctuary, reflecting the name proposed at a wānanga in July 2022, initiated by Te Ohu and attended by iwi representatives from around the country.
- **Purpose clause:** Expanded from a sole focus on the preservation of the natural state of the sanctuary area to the preservation of its ecological integrity and biodiversity. The purpose is also expanded to recognise Māori rights and interests in the sanctuary area, including fishing rights (as well as the association of Ngāti Kuri and Te Aupōuri with Rangitāhua and the adjoining Kermadec Islands Marine Reserve), the significance of the sanctuary area to Māori, its distinctive natural environment, and the potential for the sanctuary to contribute to science and mātauranga and promoting and sharing knowledge.
- **Administration:** The Department of Conservation (DOC) to share responsibility for administering the legislation with the Office for Māori Crown Relations – Te Arawhiti (rather than DOC alone).
- **Treaty clause:** The Bill is to include a standalone Treaty clause to require the Act to be interpreted and administered to ‘give effect to the principles of the Treaty of Waitangi’ rather than being listed on Schedule 1 of the Conservation Act and therefore relying on the Treaty clause in that piece of legislation (as option 1 does). Listing the Bill in Schedule 1 of the Conservation Act would also be incompatible with the bespoke management arrangements provided for in option 2 (for example, joint administration of the legislation and the establishment of Te Kāhui rather than a new Conservation Board).
- **Specific provisions on Māori rights and interests** that recognise:
 - the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the 1992 Fisheries Deed of Settlement, and the Māori Fisheries Act
 - the Bill does not extinguish or limit certain rights or duties that iwi or hapū may have under common law, or rights and duties that arise from the Treaty of Waitangi, under legislation, or under the Fisheries Settlement
 - the Bill does not limit the ability of any person to take proceedings in any court or tribunal.
- **Fishing:** All commercial and recreational fishing would be suspended (rather than prohibited). Unlike option 1, customary (non-commercial) fishing would be allowed under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, or any other non-commercial customary fishing regulations made under section 186 of the Fisheries Act 1996, or regulation 50 or 52 of the Fisheries (Amateur Fishing) Regulations 2013.

- **Prohibited activities:** Option 2 aligns with the effects-based approach of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) prohibiting a broader range of activities that affect the seabed, subsoil, or water column than option 1. As with option 1, consequential amendments through the Crown Minerals Act 1991 (CMA) prevent the granting of permits in relation to minerals, or applications for marine consent under the EEZ Act to undertake prohibited activities.
- **Establishment of Te Kāhui o Ngā Whatu-a-Māui:** In place of a new Conservation Board, option 2 establishes Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui), tasked with carrying out functions in the sanctuary area. Te Kāhui is to comprise 10 members; four members appointed by the Crown, four members appointed by Te Ohu, and one member appointed by each Ngāti Kuri and Te Aupōuri.
- **Marine scientific research:** Option 2 provides for a 20-year \$43 million Crown funded research plan to be developed and approved by Te Kāhui (no research plan under option 1). Te Kāhui must provide a progress report on the research plan at the end of each 5-year period, and an interim review of the plan after 10 years. Marine scientific research to be authorised by DOC rather than the Environmental Protection Authority (EPA), with changes to the process and the decision-making criteria.
- **Review of the operation of the sanctuary:** Te Kāhui to commission an independent review of the operation of the sanctuary every 20 years and provide this to the Crown and Te Ohu. Te Kāhui may provide recommendations on the findings of the review with respect to the suspension of fishing. The Crown (consulting broadly) and Te Ohu (on behalf of and in consultation with mandated iwi organisations) will use their best endeavours to collectively determine whether to continue, remove, amend, or reinstate the suspension of QMA 10 fishing quota. If they cannot make a collective determination, they will separately determine matters in relation to the use of their respective QMA 10 quota, having regard to the review report. The review decision will be given effect to by way of an Order in Council by the Governor-General, on the joint recommendation of the Minister of Conservation and the Minister for Oceans and Fisheries.

Alongside the Bill, the Crown and Te Ohu will enter into an associated Agreement. The Agreement will record the good faith endeavours of the parties regarding the establishment and operation of the sanctuary, as reflected in the Bill, including:

- the parties' undertaking not to use their respective QMA 10 fish stocks and quota for the initial 20-year period
- a process for considering a review under the Fisheries Act of the total allowable catch limits for QMA 10 fish stocks at the 10-year mark or subsequently at 15 years and 20 years, dependent on available information. If the Minister responsible for Fisheries elects to increase the Total Allowable Catch of a QMA 10 fish stock, the Crown and Te Ohu are to discuss the impact on existing rights and interests, including the value of Annual Catch Entitlement for the fish stock in question.

Elements of the Agreement, including the parties undertaking not to exercise their respective QMA10 catch entitlements for at least 20 years, would be given effect to through

the legislation (for example, by suspending fishing permits and providing for a 20-year review).

The counterfactual: Under the status quo (no sanctuary), the region includes a fisheries benthic protection area covering all of QMA 10 and a marine reserve for the territorial sea around Rangitāhua/the Kermadec Islands. The region is relatively unaffected by human activities, but without a sanctuary this may change in the future.

Options 1 and 2 have been assessed relative to status quo using multi-criteria analysis (see paras 147 – 159) of the following sub-objectives:

- preservation of ecological integrity and biodiversity
- recognition of Māori rights and interests
- contribution to global marine protection commitments
- promotion of marine scientific research.

Overall assessment of the impact of the preferred option

The results of the multi-criteria analysis of the options indicate that the revised proposal (option 2) best meets the overall policy objective and is the preferred option.

Although option 2 scores slightly lower than option 1 (the 2016 Bill) on biodiversity conservation (due to the 20-year review having the potential to influence future decisions related to fisheries management), it is rated significantly higher on recognising and providing for Māori rights and interests and cultural values. It also rates better on promoting research due to the inclusion of the 20-year Crown-funded research plan and the revised purpose statement.

Both options are rated positively against the status quo because they establish protections via the sanctuary and are intended to enable the sanctuary to be reported and recognised internationally as a marine protection instrument.

Our assessment of benefits and costs shows that both options have a minimal impact on the financial value obtained from commercial fishing and mining activities. The benefits of option 2, including the value provided by research on fish stocks that will inform any future decisions on fishing of QMA 10 stocks, offset the higher expected cost (relative to the status quo and option 1) associated with the management of the sanctuary and the 20-year research programme.

What we know about the views of Te Tiriti/ Treaty partners and stakeholders

A range of parties have an interest in the sanctuary and how it is established under statute. The parties most affected by the proposed sanctuary, include:

- iwi, as Treaty partners, recipients of quota allocated to them as redress and holders of customary fishing rights recognised under the 1992 Fisheries Settlement
- iwi with cultural, historical, spiritual, and traditional associations with Rangitāhua/ the Kermadec Islands in their migration to New Zealand
- Te Ohu as trustee of QMA 10 quota held on behalf of iwi

- highly migratory species (HMS) quota owners, fishers, and their representative organisations.

Other parties with an interest in the proposed sanctuary include:

- the shipping industry and subsea internet cable industry
- scientific research organisations
- eNGOs.

Submissions to Select Committee in 2016 (and litigation) highlighted views that there was a lack of consultation on the Bill as introduced, and that the Bill impacted on existing rights and interests including Fisheries Settlement quota allocations. The views of Te Ohu (in consultation with mandated iwi organisations) and Ngāti Kuri and Te Aupōuri have formed the basis of the Government's revised proposals (option 2).

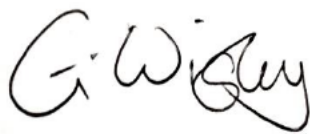
Other parties with an interest in the sanctuary area have not been directly consulted on the revised proposals, as the impact on their interests will not substantially differ as a result of proposed amendments to the Bill, and their views were received and considered during the 2016 Select Committee process. For example, HMS quota owners could not fish in the sanctuary (but can fish the same species elsewhere in New Zealand waters) and mineral companies would be unable to mine in the area under either the 2016 Bill or the revised proposal.

Limitations and Constraints on Analysis

The main constraints on this assessment are summarised below:

- there is limited quantitative data available in relation to the costs and benefits of the proposal
- the Government has taken a decision to create the sanctuary via a Bill. The analysis is limited to a consideration of which version of the Bill best achieves the policy objectives and other options to protect the region have not been explored.

Responsible Manager(s) (completed by relevant manager)



Glenn Wigley
Director, Regulatory and Policy
Ministry for the Environment

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	<i>The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) "Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary". The panel considers the document meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the strengths and weaknesses of the options available and provides a convincing analysis of the reasons for the proposed changes to the Bill</i>

Section 1: Diagnosing the policy problem

1. This section outlines the current state of the Kermadec/Rangitāhua region including its environmental features and its cultural significance and history.

The Kermadec/Rangitāhua region

Biodiversity and conservation value

2. The Kermadec/Rangitāhua region (see map below) is the northernmost part of New Zealand and our EEZ. The region is in the South Pacific Ocean, around 1,000 km northeast of New Zealand (about halfway between Tauranga and Tonga). The area contains the world's longest volcanic arc, the second deepest ocean trench (at 10 km deep) and is one of the most pristine places on earth. Almost the entire seabed in the Kermadec/Rangitāhua area extends to over 1,000 m deep, and more than a third of it is over 5,000 m deep.
3. The Kermadec/Rangitāhua region is important from a global perspective due to its distinctive biodiversity and geology. Many of the species that exist in and pass through the ocean around Rangitāhua/the Kermadec Islands exist only there, and some are critically endangered in other parts of the world, for example, some species of bryozoans and sea turtle. Some species are considered "living fossils", such as the giant deep water hydrothermal vent mussel.
4. The region is home to thousands of species of marine life. The list of species, habitats, and ecosystems in the region, many of which are unique, include:
 - chemosynthetic marine communities (life without light) present in the deep sea in the Kermadec/Rangitāhua region
 - over 30 submarine volcanoes and the ecosystems they provide for, including extremely acidic hydrothermal vents and a range of volcanic landforms
 - six million seabirds of 39 different species
 - 35 species of whale and dolphin (10 have been formally identified from the region)
 - three species of marine turtle (all endangered)
 - 530 fish species, many of which are unique
 - more than 250 species of corals and tiny animals called bryozoans (benthic suspension feeding invertebrates that form small coral-like colonies)
 - hydrothermal vent fauna new to science

- the use of the Kermadec/Rangitāhua trench as important migratory markers by humpback whales moving between the Pacific and Antarctic waters.
5. The Kermadec/Rangitāhua region's biodiversity and relatively unspoiled nature give it a crucial role in ocean ecosystems, including playing a role as a migration route and safe haven for far-ranging species (including seabirds, sharks, turtles and whales). This makes the region valuable to science and for furthering our global understanding of the marine environment, ecosystems, and the ocean's life-supporting processes. The region's biodiversity remains under-described, with each new voyage to the region discovering new records or new species.

Geological significance

6. The geology of the region is also of global significance due to the number of submarine volcanoes. Many of the volcanic centres along the Kermadec Arc are hydrothermally active. The fluids flowing from hydrothermal vents at these seamounts are of scientific interest due to their unusual chemistry. The role of hydrothermal plumes in supporting upper zooplankton communities is also of scientific research interest, given the potential role in maintaining the global carbon cycle.¹¹ In addition, there is recognition that deep seabed genetic resources able to thrive in extreme conditions hold great potential for various beneficial applications, including uses in the health sector, for industrial processes, and in the bioremediation of polluted industrial sites.¹²
7. The Kermadec Arc-Havre trough system, where oceanic arc systems were first identified, is considered the global archetype of oceanic subduction systems. It is an important source of information on tectonic kinetics, crustal magmatism, volcanic and hydrothermal activity, and geochemical processes. These geological processes include the generation and concentration of economically and technologically significant minerals.
8. The hydrothermal systems themselves may have potential as a future source of renewable energy.
9. The region is also of global significance in terms of the seismic activity and associated tsunami risk in the Pacific. The Hikurangi-Kermadec subduction zone is believed to be capable of generating tsunami of a similar scale to the 2011 Tōhoku, Japan¹³ event.

Cultural significance and history

10. In *Ko Aotearoa Tēnei* (the Waitangi Tribunal's report into the Wai 262 claim), Chapter 4 notes that relationships with the environment are fundamental to Māori. Parts of the environment are taonga (treasured things), for which iwi and hapū are obliged to act as kaitiaki (cultural guardians). Māori consider they descend from Tangaroa and have a reciprocal relationship with their tūpuna.
11. The Kermadec/Rangitāhua region is of particular importance to Māori because of the role the region played during their navigation to New Zealand from the Pacific. Oral histories record the original waka of a number of iwi having passed through the region as part of the journey of Māori to New Zealand. Rangitāhua plays a prominent role in oral traditions connected to the waka voyages of, among others, Kurahaupō, Aotea, Horouta, Mataatua and Tainui waka.
12. Ngāti Kuri and Te Aupōuri deeds of settlement with the Crown acknowledge their relationship/association with Rangitāhua/the Kermadec Islands and adjoining waters (see para 29). Ngāi Takoto do not have an equivalent statutory acknowledgment but have stated interests in the Kermadec Islands in the background to their deed of settlement.

¹¹ <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/kermadecs-geology>.

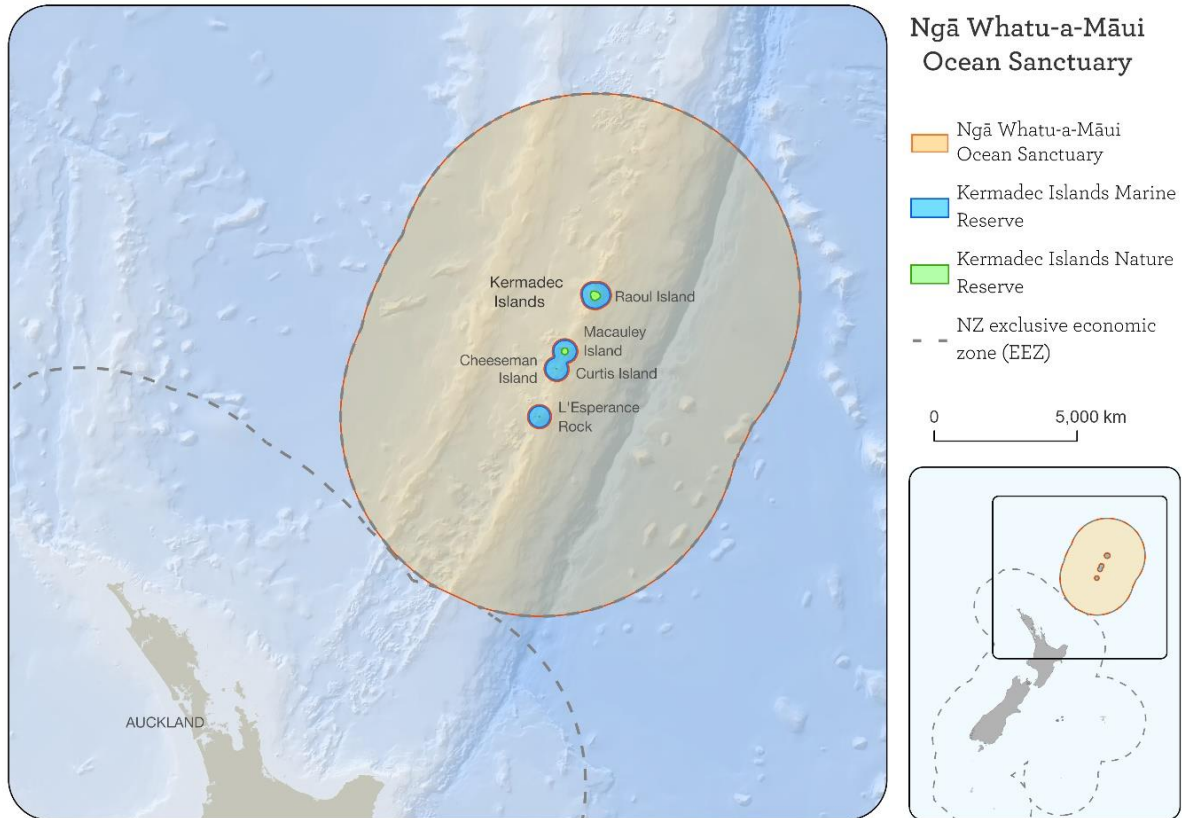
¹² *Ibid.*

¹³ UNDRR (2020). *Disaster Risk Reduction in New Zealand: Status Report 2020*.

Māori also have economic interests, future and present, in the region as beneficiaries of the 1992 Fisheries Settlement.

13. The New Zealand Government annexed Rangitāhua/the Kermadec Islands in 1887, with European settlers, including whalers, living on the islands from the early 19^h century until 1937. The islands are now uninhabited, except for Raoul Island Station, which is periodically manned by DOC.

Figure 1: The Kermadec/Rangitāhua region and islands including the proposed Ngā Whatu-a-Māui Ocean Sanctuary and the existing marine reserve



Status quo of human activities and regulatory context

14. This section provides a summary of the current state of human activities in the region, iwi/Māori rights and interests, and current regulatory settings in the Kermadec/ Rangitāhua region.

Fisheries

15. New Zealand's EEZ is divided into ten fisheries management areas (FMAs).¹⁴ The exact area proposed for the sanctuary is located within FMA 10 under the Fisheries Act 1996 (the sanctuary area would cover all of the EEZ within FMA 10).
16. All fishing is prohibited in the Kermadec Islands Marine Reserve, which covers the territorial sea surrounding Rangitāhua/the Kermadec Islands. In addition, a benthic protection area was created in 2007 that prohibits fisheries dredging and bottom trawling

¹⁴ Individual species are managed by Quota Management Areas (QMAs), which are based on administrative factors and biological factors. QMAs for individual species may align with a FMA or they may be smaller or larger than a given FMA. QMAs allow fish stocks to be managed at more appropriate levels than the ten FMAs that span New Zealand's waters.

within the Kermadec/Rangitāhua territorial sea and its surrounding EEZ waters (covering the seabed and 100 metres of water above the seabed).

Commercial fishing

17. When the Quota Management System (QMS) was established under the Fisheries Act 1996, quota was established in FMA 10 to cover the eventuality that commercially viable fisheries would be found to be present in the region. This quota is held predominantly by the Crown and Te Ohu in trust for iwi (see below).
18. The following categories of species are relevant to the management of fisheries in the region:
 - **QMS species that have a specific management area for the Kermadec/Rangitāhua area (QMA 10).** Quota, and hence catch allocated for such species, relates solely to this area. Te Ohu currently holds around 16 per cent of the quota as trustee for iwi. The allocation of quota by Te Ohu to iwi is predicated on there being a viable commercial fishery (currently the Total Allowable Commercial Catch for QMA 10 quota is set at nominal levels ~ 10 tonnes for each stock that is within the QMS). The Crown holds most of the remaining 84 per cent of this quota.
 - **QMS species that have a single quota management area for all New Zealand fisheries waters, mainly HMS** such as tuna and swordfish. The quota for these species has been allocated, including to iwi as part of the Fisheries Settlement.
 - **Non – QMS species.** These species can be caught in any area without Annual Catch Entitlement on obtaining a commercial fishing permit. Several tuna species of interest have yet to be introduced into the QMS and are able to be fished within the sanctuary area. If these species are introduced into the QMS, Te Ohu will receive 20 per cent of the quota as trustee to be subsequently allocated to iwi. In the past decade there has very been limited commercial fishing in the Kermadec/Rangitāhua region (see Tables 1 and 2 below).
19. Research expeditions and exploratory fishing conducted in the region prior to the establishment of the marine reserve and benthic protection area failed to identify any commercially viable fisheries. The FMA 10 fishery is presently considered commercially unviable as evidenced by the low level of catch over the past decade. Additionally, the waters in the region are oligotrophic (low in nutrients), biological productivity is low and larval connectivity with potential source populations in New Zealand and elsewhere in the southwest Pacific is low, meaning recruitment of many species is low or intermittent.
20. Quota for HMS can currently be fished in FMA 10. These species are not permanently resident in the region, moving between the high seas and other parts of the EEZ. For this reason, quota for these species can be targeted throughout the entire EEZ and is not specific to FMA 10.
21. A small proportion of HMS quota (less than 2 per cent for each species) is caught within FMA 10 (see Table 1).
22. From 2010-2015, the average annual HMS catch in FMA 10 was 20.10 tonnes and the average value of those landings was \$164,672. This compares to the average annual New Zealand catch from all fisheries of 449,000 tonnes and export value of \$1.53 billion (ie, 0.004 per cent by tonnage and 0.011 per cent by value).
23. The HMS caught in FMA 10 contributes to the income of the five commercial fishing companies currently active in FMA 10. However, their catch of HMS within FMA 10 accounts for less than 4 percent of their total catch.
24. There has been minimal catch reported for QMA10 species and non-QMS species in the period 2009-10 to 2021-2022.

Table 1: Average annual commercial highly migratory species catch taken from FMA10 (2010-15)

Species	QMS or Non-QMS	Annual catch from FMA 10 (tonne)	FMA 10 catch as a percentage of EEZ catch	FMA 10 export value (NZ\$)
Swordfish	QMS	11.1	1.3%	\$124,960
Blue shark	QMS	2.8	0.4%	\$367
Bigeye tuna	QMS	2.3	1.6%	\$31,202
Moonfish	QMS	1.2	1.3%	\$2,208
Albacore tuna	Non-QMS	0.7	0.0%	\$2,158
Other	Both	2.0	0.01%	\$3,777
TOTAL		20.1 t	0.1%	\$164,672

Table 2: FMA 10 catch in tonnes (a (-) indicates no record of catch)

Fishing Years (Oct – Sep)	QMA10 stocks	HMS (QMS stocks)	Non-QMS	Total
2009-2010	-	30	4.50	34.50
2010-2011	-	36	1.70	37.70
2011-2012	-	18.30	1	19.30
2012-2013	-	0.30	0.08	0.38
2013-2014	-	6	2	8
2014-2015	-	13.50	0.06	13.56
2015-2016	-	2	0.03	2.03
2016-2017	0.03	7.30	0.08	7.40
2017-2018	0.05	9	1.50	10.55
2018-2019	-	-	-	-
2019-2020	-	-	-	-
2020-2021	-	-	-	-
2021-2022	-	0.59	0.08	
TOTAL	0.08	122.99	11.03	134.02

25. The 1992 Fisheries Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 are foundational documents that represent the full and final settlement of fisheries claims by Māori. The deed endorsed the QMS and provided redress in settlement of Māori commercial fishing claims including:
- 20 per cent of all fishing quota for species brought into the QMS after the signing of the Deed
 - 10 per cent of fishing quota for existing QMS stock
 - cash compensation in limited cases where quota could not be allocated.
26. The commercial redress above is seen as a settlement asset that should be used and developed. For non-commercial fishing, Treaty obligations on the Crown continue. The Deed requires the Crown to make regulations to provide for customary food gathering and settlement legislation provides that customary food gathering only provides a defence to the extent those rights are provided in regulations made under the Fisheries Act 1996.

Customary (non-commercial) fishing

27. There are currently no iwi exercising customary fishing rights under the provisions of regulations made under the Fisheries Act 1996 in FMA 10.

Recreational fishing

28. Recreational fishing is minimal and limited to private vessels transiting the area (generally trolling by yachts sailing between New Zealand and the Pacific), although there is no information available on the amount of recreational effort or catch in FMA 10. Based on the information previously provided by Customs for the 2016 RIS, it is estimated that approximately 700 yachts pass through the region from the Pacific each year. Given COVID restrictions impacted travel and closed some borders, this likely decreased in recent years but is likely to increase again. There has been some recreational fishing for bass and kingfish on the Star of Bengal Bank, usually by vessels transiting through the area to Rangitāhua/the Kermadec Islands or islands in the tropical southwest Pacific.

Iwi/Māori rights and interests

29. Ngāti Kuri and Te Aupōuri claim an association with Rangitāhua/the Kermadec Islands and adjoining marine reserve. This association has been recognised by the Crown in deeds of settlement signed in 2014. The Statutory Acknowledgements for Ngāti Kuri and Te Aupōuri state that the iwi has a particular cultural, spiritual, historical, and traditional association with Rangitāhua/the Kermadec Islands. Furthermore, in their deed of settlement Ngāti Kuri and Te Aupōuri define their area of interest as extending out to Rangitāhua/the Kermadec Islands. These acknowledgements do not extend to the sanctuary area.
30. Te Aupōuri's deed of settlement states that "*Rangitāhua [Raoul Island] is especially significant to Te Aupōuri and other Māori in that it served as one of the only stop-over points that allowed migratory waka to make the long and dangerous journey between the Cook Islands and Aotearoa...In a spiritual sense for Te Aupōuri, Rangitāhua represents a link to Hawaiki, to a bygone era of long-distance ocean voyaging and discovery, and their earliest Polynesian origins.*"
31. The Ngāti Kuri and Te Aupōuri Treaty settlements contain operative provisions relating to fisheries management in the area, as well as Crown minerals and Taonga Tūturu protocols applying to the area. Ngāti Kuri is engaged in relevant research programmes, and both iwi have actively pursued their aspirations in relation to the sanctuary. The Te Hiku Conservation Relationship Agreement also includes a provision requiring DOC to notify parties to the agreement at an early stage in relation to proposals for new marine reserves

in their areas of interest and ascertain iwi views. In the attachment to the agreement, Ngāti Kuri and Te Aupōuri areas of interest include Rangitāhua/the Kermadec Islands.

32. NgāiTakoto does not have a statutory acknowledgement in relation to Rangitāhua/the Kermadec Islands in its Treaty settlement, but the background section of its deed of settlement identifies the Kermadec Islands as the location where their tūpuna repaired the Kurahaupō waka on their journey to Aotearoa.
33. Te Rarawa and Ngāti Kahu, as with Ngāti Kuri, Te Aupōuri and NgāiTakoto, are iwi of Te Hiku o te Ika who descend from those members of the crew of the Kurahaupō, who occupied Rangitāhua for a short period of time.
34. Specific acknowledgment by the Crown of mana whenua status, customary fisheries rights, and recognition of customary interests of iwi, hapū and whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 in relation to the Kermadec/Rangitāhua region has yet to occur. The Takutai Moana Act does not provide for recognition of customary interests beyond the boundary of the territorial sea (hence in relation to the sanctuary). That does not preclude takutai moana applicant groups from asserting customary rights or interests within the EEZ notwithstanding these cannot be recognised under this Act.

Minerals resources

35. There are known to be high levels of mineral prospectivity on the Kermadec/Rangitāhua volcanic arc, primarily base metals, particularly copper as well as gold and silver occurring as sulphide minerals, often in the form of seabed massive sulphides. There may also be other minerals relevant to high technology in these types of geological formations. These minerals are potentially valuable, but the resource is not yet fully understood and is situated at significant depths in the ocean which make accessing the minerals complicated and expensive. Almost the entire seabed in the Kermadec/Rangitāhua EEZ extends to over 1,000 m deep, and more than a third of it is over 5,000 m deep. The Kermadec-Tonga trench goes to more than 10,000 m below the surface.
36. Despite the difficulties, advances in seabed exploration and mining technology have resulted in interest from domestic and international investors seeking to identify and develop a range of submarine mineral deposits in the Kermadec/Rangitāhua region.
37. No comprehensive study of the mineral resource and potential economic value or biodiversity has been undertaken. In July 2014, GNS advised that a budget of \$18 million spent over five years would significantly enhance the current knowledge of the nature and extent of minerals resources focusing on the Kermadec/Rangitāhua volcanoes for seafloor massive sulphide deposits. Extending the work to cover the remaining Mineral Reservation area (412,000 square kilometres and as explained in para 48 below) is estimated to cost an additional \$15-20 million and would take three further years to complete.
38. No mining activity currently takes place in the region and there are no current minerals permits (prospecting, exploration, or mining) under the CMA.

Scientific research

39. The Kermadec/Rangitāhua region is rich in marine species (not necessarily commercial fish species) that are inherently valuable, both for their contribution to the sustainability of the world's marine biodiversity, and for the opportunities they offer for science to observe pristine marine ecosystems both now and in the future. Over 120 scientific papers have been published on the Kermadec/Rangitāhua region since 2010.
40. Several scientific and conservation research projects are currently being undertaken in the region, including whale tagging and biodiversity studies. In 2020, Auckland Museum and Ngāti Kuri received \$13.3 million in research funding through the Endeavour Fund

focusing on the biodiversity and ecosystems of Rangitāhua/the Kermadec Islands, alongside a mātauranga lens. Despite research interest, large areas of the region are virtually unexplored and it is highly likely that future surveys will reveal new and rare marine species.

Other activities

41. Other economic activities within the Kermadec/Rangitāhua region include shipping (vessels transiting the region) and the submarine cable industry (there are currently major transcontinental telecommunications cables laid through the region).

The current regulation setting

42. The New Zealand Government has been actively conserving Rangitāhua/the Kermadec Islands and surrounding region since the mid-1900s. The Kermadec Island Nature Reserve was created in 1939 to protect Rangitāhua/the Kermadec Islands, and the Kermadec Islands Marine Reserve was created in 1990 to protect the sea around Rangitāhua/the Kermadec Islands, establishing a no-take marine reserve from the shoreline out to the 12 nm territorial sea boundary (see Figure 1 above).
43. The EEZ surrounding Rangitāhua/the Kermadec Islands has more limited protection. The benthic protection area prohibits those fishing activities (dredging and trawling within 100 metres of the seabed) that are most likely to have adverse effects on the area's marine biodiversity. The benthic protection area covers the Kermadec/Rangitāhua region's territorial sea and surrounding EEZ seabed out to 200 nm.
44. A regional coastal plan for the Kermadec and Subantarctic Islands became operative in 2017 and is intended to promote the sustainable management of the natural and physical resources of the coastal marine area of the Kermadec and Subantarctic Islands. The Auckland Conservation Management Strategy contains objectives and policies relating to the Kermadec/Rangitāhua region (including the territorial sea and surrounding EEZ).
45. The policy framework of the Regional Coastal Plan (Kermadec and Subantarctic Islands¹⁵) is based on the outstanding natural character of the Islands' entire territorial sea (noting this is separate to the sanctuary area). The objectives are to:
 - preserve natural character
 - enable use that is consistent with the preservation of natural character
 - protect the indigenous biological diversity of the Kermadec and Subantarctic Islands and their coastal marine areas by avoiding the adverse effects of activities on all of the nationally significant indigenous flora and fauna communities present.

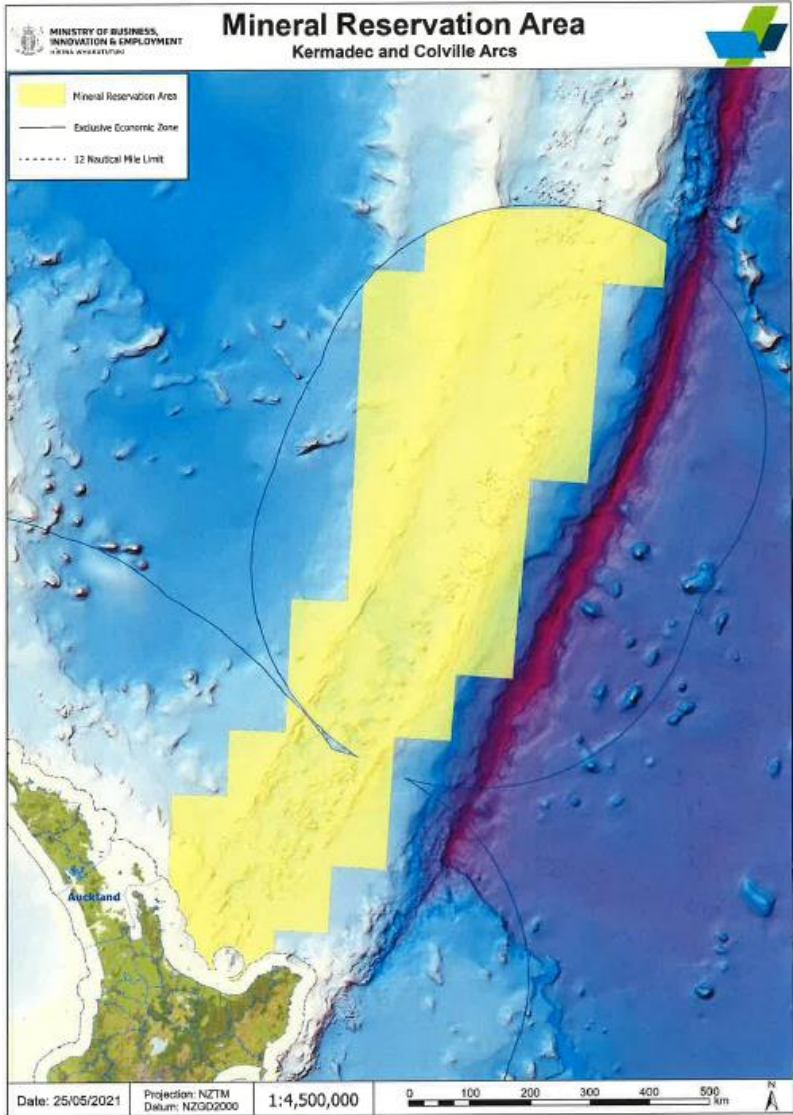
As such, the policies and rules of the Plan do not encourage development. They do, however, enable research consistent with the objectives and policies.

46. The EEZ Act regulates the environmental effects of most activities in the proposed sanctuary area, including the dumping of waste, but excluding fishing and other shipping operations. However, there are no active marine consents for commercial activities in the sanctuary area (for example, seabed mining consents) though this does not preclude persons from applying to undertake activities in the future (noting that the Government banned the granting of new offshore permits for oil and gas in 2018 and a mineral reservation is in effect for much of the area).

15 <https://www.doc.govt.nz/offshoreislandsrscp>.

47. Regulations under the EEZ Act do permit a number of activities in the EEZ subject to conditions (including in the Kermadec/Rangitāhua region) including:
- the laying, repair and removal of submarine cables and pipelines in the EEZ, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS)
 - the deposit on the seabed of any material jettisoned from space launch vehicles within a large area that encompasses the entire eastern half of New Zealand’s EEZ
 - marine scientific research, in accordance with UNCLOS.
48. A new Mineral Reservation over the Kermadec/Rangitāhua and Colville Arcs has been declared under section 28A of the CMA for three years, replacing a reservation that expired on 4 July 2021. The reservation means that permits for minerals will not be granted or extended in relation to this area (see Figure 2 below). The reservation has been in place since 2010, and the renewed reservation is in effect from 5 July 2021 to 4 July 2024.
49. The Wildlife Act 1953, which provides species-specific protections (for example, for black spotted grouper), and the Marine Mammals Protection Act 1978 also apply in the area.

Figure 2: Mineral Reservation area under the Crown Minerals Act 1991



Marine protection in New Zealand

50. New Zealand was world-leading in its enactment of the Marine Reserves Act 1971, which allows for the protection of marine areas in their natural state for the purpose of scientific study.
51. There are several existing tools that provide different forms of marine protection. No-take marine reserves are the highest level of marine protection able to be afforded but currently can only be applied in the territorial sea (without the use of bespoke legislation).
52. Currently, of New Zealand's marine and coastal area (these metrics are also used to report against international targets outlined below):
 - 0.4 per cent is protected by 44 no-take marine reserves (9.5 per cent of the territorial sea and 0.0 per cent of the EEZ)
 - 1.1 per cent is in Marine Mammal Sanctuaries
 - 0.1 per cent is in Type 2 marine protection measures (with bottom trawling, Danish seining and dredging prohibited, at a minimum)
 - 2 per cent is seamounts protected from trawl impacts
 - 27.9 per cent is protected from fishing impacts on the benthic (sea floor) marine environment.

International obligations relating to our marine area

53. New Zealand's main international commitments relating to marine protection sit under:
 - UNCLOS: New Zealand has a legal obligation to protect and preserve the marine environment (Article 192)
 - the Convention on Biological Diversity (CBD): New Zealand has a range of commitments under the CBD including global goals and targets under the Kunming-Montreal Global Biodiversity Framework. One of the targets, adopted at the Conference of Parties on 19 December 2022, seeks to ensure that at least 30 per cent of terrestrial, inland water, and coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures.
54. There are several other international obligations and rights that New Zealand must meet when introducing protection measures in the EEZ. These include, for example, UNCLOS rights of navigation and overflight, the laying of submarine cables and pipelines, and the undertaking of marine scientific research by other States and competent international organisations. The regulation of shipping (and related matters such harmful substance discharges) is governed by the international rules established by the International Maritime Organisation, which are given effect domestically under the Maritime Transport Act 1994.

Problem definition

55. The Government intends to preserve the ecological integrity and biodiversity of the Kermadec/Rangitāhua region by establishing the Ngā Whatu-a-Māui Ocean Sanctuary.
56. The region is of national and global significance. Its unique and relatively untouched nature makes the region valuable to science and for furthering our global understanding of the marine environment, ecosystems, and the ocean's life-supporting processes, including as a monitoring site for the effects of climate change.
57. Existing legislation manages human activities in the region independently of each other. Marine protection measures in the region include a fisheries benthic protection area covering all QMA10 and a marine reserve for the territorial sea around Rangitāhua/the Kermadec Islands. But, in the absence of a more integrated approach, the ecological integrity of the region and its biodiversity may diminish over time with the emergence of new activities and threats.
58. The intention to establish the sanctuary was announced by Rt Hon John Key at the United Nations General Assembly in September 2015. Parties with rights and interests in the area were only informed immediately prior to the announcement. The Kermadec Ocean Sanctuary Bill was introduced to Parliament in 2016 and reported back by Select Committee. The Bill awaits its second reading.
59. The amended Bill, as reported back by Select Committee in July 2016, fails to appropriately recognise the unique effect on fishing rights in the Kermadec/Rangitāhua region and the implications of prohibiting the exercise of those rights.

Objectives of the proposed sanctuary

60. The overall objective of the Government is to meet the Crown's Treaty of Waitangi/ Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement between the Crown and Māori, while enabling a large-scale sanctuary to be established that contributes to global marine goals and targets.
61. The proposed sanctuary will not include the existing marine reserve but, rather, will adjoin it, extending from 12 nm out to the 200 nm EEZ limit covering up to 620,000 km². This equates to about 15 per cent of New Zealand's EEZ.
62. The overall objective will be achieved by ensuring the following sub-objectives are met:
 - human use and anthropogenic impacts are controlled in the Kermadec/Rangitāhua region to preserve ecological integrity and biodiversity
 - iwi/Māori rights and interests (including cultural values) are recognised, protected, and provided for in the legislation and management framework for protecting the Kermadec/Rangitāhua region
 - the Ngā Whatu-a-Māui sanctuary contributes to global marine goals and targets and is managed in accordance with New Zealand's international obligations (as identified in paras 53 and 54)
 - marine scientific research in the Kermadec/Rangitāhua region is promoted and encouraged but is managed to ensure it does not negatively impact upon the overall objective.
63. There are also a number of operational issues to consider to ensure the region is preserved in its natural state now and in the future, including:
 - the management of the sanctuary
 - marine scientific research in the sanctuary
 - monitoring and enforcement in the sanctuary including monitoring of research.

Section 2: Deciding upon an option to address the policy problem

Impact Analysis

64. This impact analysis compares two proposed options for establishing a sanctuary against the status quo (counterfactual).
- Status quo – no sanctuary, existing protections and activity in region
 - Option 1 – 2016 Bill (as per the recommendations of the Local Government and Environment Committee)
 - Option 2 – proposed revision (amendments to the current Bill).
65. A detailed summary of the key elements of the two options (compared to the status quo) is provided in Appendix 1.

Status quo

66. The status quo consists of the current protections (as described in Section 1) in the Kermadec/Rangitāhua region including:
- the mineral reservation area over a portion of the EEZ in the region until July 2024 (as shown in Figure 2)
 - the benthic protection area which covers the territorial sea and EEZ
 - the marine reserve covering the territorial sea around the islands
 - protection measures in the territorial sea, under the Regional Coastal Plan, relating to biosecurity and oil spill risk
 - protection measures for specific species under the Wildlife Act 1953 (such as seabirds and black spotted grouper) and for marine mammals under the Marine Mammals Protection Act 1978.
67. Protections under the status quo would continue to prohibit only the use of bottom contacting fishing methods in the region proposed for a sanctuary. Other commercial and recreational fishing activity is likely to remain limited for the reasons stated previously (see paras 19 and 28). Existing protection measures for specific species and measures in the territorial sea would continue to apply.
68. Under current reporting arrangements the area would contribute to New Zealand's international reporting on marine protected areas. This would be via the benthic protection provided by the benthic protection area, rather than the high level of protection that would be afforded by the sanctuary.
69. Prospecting, exploration, and mining for minerals could occur in the future if the mineral reservation expires (subject to permitting processes under the CMA and/or consenting process under the EEZ Act). The region is known to have high levels of mineral prospectivity but the likelihood of activities commencing (in the absence of a sanctuary) is highly uncertain (therefore the potential economic benefits are difficult to ascertain). If mining did occur, however, it may pose a significant risk to the ecological integrity and biodiversity of the region and undermine the benthic protection provided by the benthic protection area (which applies to fishing only).
70. The region may also be of interest to other emerging industries (for example, marine geoengineering techniques that aim to mitigate climate effects such as iron seeding, CO₂ sequestration, or large-scale cultivation of seaweed). The likelihood of such activities

taking place is highly uncertain, particularly given the extreme depth and remoteness of the region. The potential impacts of such activities are unknown.

71. Scientific research would continue to be subject to the EEZ permitted activities regime meaning that it could take place subject to the requirements of relevant regulations. Research expeditions would likely continue but with no centralised, strategic approach to research in the region (research would continue to be subject to existing funding processes). There would continue to be limited coordinated effort to gather information to better understand this important area and support management decisions, and little coordination of research across the region's territorial sea and EEZ.

Option 1 – 2016 Bill

72. Option 1 establishes a full no take sanctuary in the Kermadec/Rangitāhua region that focuses solely on the preservation of the natural state of region.
73. The key elements of option include:
- **Name:** Kermadec/Rangitāhua Ocean Sanctuary.
 - **Purpose clause:** To preserve the natural state of the sanctuary area.
 - **Administration:** DOC to administer the Act and manage the sanctuary.
 - **Treaty of Waitangi clause:** No specific clause but would be subject to Treaty clause under section 4 of the Conservation Act 'to give effect to the principles of the Treaty of Waitangi'.
 - **Fishing:** All fishing prohibited including commercial, recreational, and customary fishing.
 - **Prohibited activities:** In addition to fishing, mining is prohibited as well as the removal of living or non-living natural material from the seabed or subsoil, the dumping of waste or other matter, the causing of harmful vibrations, and seismic surveying. Consequential amendments to the CMA prevent the granting of permits (in relation to minerals) or applications for marine consent under the EEZ Act to undertake prohibited activities.
 - **Entity:** Provides for establishment of a new Conservation Board for Rangitāhua/the Kermadec Islands and the existing marine reserve out to 12 nm around the islands and the sanctuary, with eight members appointed by Ministers, including one member nominated by Ngāti Kuri and one member nominated by Te Aupōuri. The Board would have responsibility for developing a Conservation Management Strategy.
 - **Marine scientific research:** Marine scientific research to be authorised by the EPA with limited grounds for declining applications – only on basis of significant adverse effects.
 - **Review of the operation of the sanctuary:** review at 25 years to consider extent to which the purpose of the Act has been achieved and any other matters that are required by a terms or reference.
74. There was significant opposition to the proposals outlined in option 1 as highlighted by submissions to Select Committee and the litigation initiated by Te Ohu, the New Zealand

Fishing Industry, and Ngāti Mutunga ki Wharekauri and Te-Whānau-ā-Apanui holding companies.

75. Many parties also expressed their support for the Bill during Select Committee, particularly eNGOs including Forest and Bird, the Pew Charitable Trusts and WWF New Zealand.

Impacts of option 1 – The 2016 Bill (as per the recommendations of the Local Government and Environment Committee)

Impact on commercial fishing

76. The maximum current financial loss is estimated at less than \$164,672 per year based on the average fishing quantity from 2010-2015, because:
- only minimal quota under the QMA for FMA10 has been fished in recent years (see Table 2)
 - current HMS fishing activity in the Kermadec/Rangitāhua region can continue in other areas of New Zealand's EEZ because the species being caught are HMS or national stocks
 - even if the sanctuary did not progress, there is little expectation that quota would be increased in the short to medium term due to the existing fishing prohibition in the marine reserve and the benthic protection area. The protection area prohibits dredge fishing and trawling within 100 m of the seabed.
77. However, there is an opportunity cost in creating a no-take sanctuary because when it is in place, it rules out potential future economic benefits from fishing in FMA 10.
78. For this reason, Te Ohu, iwi (as FMA 10 quota holders through the 1992 Fisheries Settlement) and commercial fishing companies see the Kermadec/Rangitāhua region as a potential commercial fishery (although the current quota weight equivalent available is low) and may consider that they will be disadvantaged by losing the option of future economic opportunities.
79. Any future benefits would be constrained by the same factors that currently constrain commercial returns.
80. Under this option, the Bill specifies that no compensation is payable by the Crown for any loss or damage, or any adverse effect on a right or interest (including the value of quota or a right to fish), arising from the enactment or subsequent operation of the Act.

Impact on customary fishing

81. There are currently no iwi exercising rights under the customary fishing regulations in FMA 10. However, the creation of the sanctuary under option 1 would preclude the future exercise of those rights.

Impact on recreational fishing

82. Currently, recreational fishing is limited to vessels transiting the area but such fishing would no longer be allowed in the area.

Impact on iwi/Māori rights, interests and values

83. Option 1 would extinguish all commercial and customary fishing rights within the sanctuary area (as outlined previously). This has the potential to undermine the 1992 Fisheries Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, although the current levels of fishing are minimal.
84. This option does recognise the relationship of Ngāti Kuri and Te Aupōuri with the Rangitāhua region by providing each a seat on the proposed Conservation Board. It also allows for an additional member to be nominated by the Minister for Māori Development.

Impact on minerals and petroleum resources

85. There is no expectation of an impact on petroleum resource, as offshore petroleum exploration is not permitted under the status quo.
86. The creation of the sanctuary would preclude all mining activities (prospecting, exploration, and mining) within the area. This would bring controls on mining in line with the prohibition on bottom contacting fishing within the existing benthic protection area.
87. The present economic impact of prohibiting mining in the sanctuary is negligible because there is no mining taking place.
88. Like the impact the sanctuary has on prohibiting fishing, prohibiting mining rules out future potential economic benefits from mining within the sanctuary. A prohibition would create some cross-sectoral consistency in terms of managing bottom impacts because bottom contacting fishing is already prohibited in the area.
89. By creating the sanctuary, the Government would be forgoing any potential royalties from future mining activities in the Kermadec/Rangitāhua region.

Impact on shipping sector and on vessels transiting the region

90. Under UNCLOS, New Zealand is required to allow freedom of navigation for ships within New Zealand's EEZ. Nothing under option 1 would prevent ships from navigating the sanctuary area and therefore vessels transiting the area would not be impacted.
91. Shipping operators would not be able to undertake prohibited activities including the dumping of waste in the sanctuary area. Option 1 does allow for emergency action to be taken by shipping operators (for example, emergency dumping of waste) that would otherwise constitute a prohibited activity.
92. The Maritime Transport Act would continue to play the primary role in managing shipping activities (except for dumping activity) in the proposed sanctuary area.

Impact on submarine cable industry

93. There would be no impact on the submarine cable industry which is exempted from the prohibited activity provisions of the Bill in line with UNCLOS obligations.

Impact on marine scientific research

94. Marine scientific research that involves a prohibited activity (such as the disturbance of, or the removal of living or non-living natural material from, the seabed or subsoil) would require approval from the EPA. Some research would still be subject to the EEZ permitted activity regime (which requires notification to the EPA and prescribes several conditions) if it does not involve a prohibited activity. This could create ambiguity for researchers about which regime applies in each circumstance and, in some cases, both regimes could apply (creating a duplication of process).
95. Under option 1, the EPA would only be able to decline an application for research if it is likely to have significant adverse effects on the environment. Likely, this would mean almost all research in the sanctuary area would be approved.
96. Transitional provisions would enable existing research that is currently underway to continue for up to a year, provided that the existing permitted activity regime has been complied with.

Impact on ecological integrity and biodiversity conservation

97. Option 1 would likely have significant benefits for the preservation of ecological integrity and biodiversity in the Kermadec/Rangitāhua region. It would expand on the current protection afforded by the Kermadec Islands Nature Reserve and Marine Reserve, the

benthic protection area, and the regional coastal plan which strictly controls activities in the territorial sea.

98. A sanctuary, as proposed under option 1, would make a significant contribution to New Zealand's national network of marine protected areas by representing a range of offshore habitats that are not currently represented within a highly protected area and contributing to aspects such as marine protected area network connectivity.

Impact on international marine protection goals and targets

99. Under option 1, the sanctuary would be established as an International Union for Conservation of Nature (IUCN) protected wilderness area (category 1b). Impacts of human activities and access would be managed to preserve the long-term ecological integrity of the area and its natural condition.
100. Preserving the sanctuary in its natural state now and in the future would contribute to fulfilling New Zealand's obligations under Article 192 of UNCLOS to protect and preserve the marine environment.
101. In relation to CBD targets mentioned previously, parties will be expected to contribute to the global target to conserve at least 30 per cent of land and sea areas by 2030. The sanctuary would make a significant contribution toward the global CBD target and to New Zealand's domestic biodiversity goals under Te Mana o te Taiao – Aotearoa New Zealand's Biodiversity Strategy.¹⁶ It would result in about 15 per cent of our EEZ being fully protected. It would also be seen as a major contribution by New Zealand to the long-term health and integrity of the Pacific Ocean.

Impact on other international obligations

102. New Zealand would continue to uphold its international obligations. The following activities will be allowed in the sanctuary in accordance with international law:
- navigation and overflight
 - marine scientific research (subject to approval)
 - laying of submarine cables and pipelines
 - harmful substance discharges from ships that comply with marine protection rules under the Maritime Transport Act.
103. For marine scientific research conducted by foreign states or competent international organisations (except for research conducted using wholly governmental vessels), the permitting regime would require researchers to obtain an approval from the EPA. Applications could only be denied by the EPA on the basis of significant adverse environmental effects. These applications would also be subject to the UNCLOS process administered by the Ministry of Foreign Affairs and Trade (MFAT) meaning two approvals are required (rather than one provided pursuant to UNCLOS under the status quo).
104. Imposing a complete prohibition on dumping is consistent with New Zealand's jurisdiction as provided for under UNCLOS. Emergency dumping that complies with the requirements of the EEZ Act can be authorised where the emergency poses an unacceptable risk, the dumping is necessary to remove the risk and where there is no feasible alternative.

16 Each country that is party to the CBD is required to have a national biodiversity strategy and action plan.

Option 2 – Proposed revision

105. This option was developed by officials in collaboration with Te Ohu, in response to its concerns regarding option 1. Officials have also engaged with iwi representatives of Ngāti Kuri, Te Aupōuri and, to a lesser extent, NgāiTakoto.
106. Following Cabinet decisions in March 2022 [CAB-22-MIN-0110 refers], an exposure draft of an amended Bill was prepared by the Parliamentary Counsel Office.
107. On 12 May 2022, Te Ohu sought feedback from mandated iwi organisations at its Annual General Meeting (AGM) on whether to support a revised sanctuary proposal (as outlined in the exposure draft). Following the outcome of the AGM, Te Ohu continued to engage with the Crown on issues which included:
 - administration of the legislation
 - membership and functions of Te Kāhui
 - name of the sanctuary
 - the scope of the 20-year review of the sanctuary’s operation
108. After the AGM, officials continued discussions with Te Ohu representatives on the outstanding matters, as well as new issues raised by Te Ohu. Alongside engagement with Te Ohu, targeted engagement also occurred with Ngāti Kuri, Te Aupōuri and, to a lesser extent, NgāiTakoto. This engagement resulted in further changes to the Bill including the:
 - name of the sanctuary
 - purpose of the Bill, to incorporate changes proposed by Ngāti Kuri and Te Ohu
 - membership and functions of Te Kāhui.
109. Te Ohu, Ngāti Kuri, and Te Aupōuri also held separate discussions on the name of the sanctuary and the membership of Te Kāhui, however no consensus on these issues emerged.
110. Te Ohu held a special general meeting on 13 June 2023 where mandated iwi organisations voted on whether to support the revised proposal to amend the Bill. (Refer addendum to this RIS.)
111. HMS quota holders were not consulted on the revised proposal, or the exposure draft, because the impact on their fishing activities is not substantially altered from the 2016 Bill (option 1) – fishing for HMS cannot occur under either option. These parties made submissions on the 2016 Bill (option 1) and their views were provided during the 2016 Selected Committee process. Those views have informed the assessment of impacts for both options.
112. The revised proposal includes the following amendments to the current Bill (further detail provided in Appendix 1):
 - **Name:** Ngā Whatu-a-Māui Ocean Sanctuary, reflecting the name proposed through a wānanga process in July 2022, initiated by Te Ohu and attended by iwi representatives from across New Zealand.
 - **Purpose clause:** Expanded from a sole focus on the preservation of natural state of the sanctuary area to the preservation of its ecological integrity and biodiversity. The purpose is also expanded to recognise Māori rights and interests including fishing rights (as well as the association of Ngāti Kuri and Te Aupōuri to Rangitāhua and the adjoining marine reserve), the significance of the sanctuary area to Māori, the

distinctive natural environment, and the potential for the sanctuary to contribute to science and mātauranga and promoting and sharing knowledge.

- **Administration:** DOC to share responsibility for administering the legislation with the Office for Māori Crown Relations – Te Arawhiti (rather than DOC alone).
- **Treaty of Waitangi clause:** The Bill includes a standalone Treaty clause to require the Act to be interpreted and administered to ‘give effect to the principles of the Treaty of Waitangi’ rather than being listed on Schedule 1 of the Conservation Act and therefore relying on the Treaty clause in that piece of legislation (as option 1 does). Listing the Bill in Schedule 1 of the Conservation Act would also be incompatible with the bespoke management arrangements provided for in option 2 (for example, joint administration of the legislation and the establishment of Te Kāhui rather than a new Conservation Board).
- **Specific provisions on Māori rights and interests** that recognise:
 - the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the 1992 Fisheries Deed of Settlement, and the Māori Fisheries Act
 - the Bill does not extinguish or limit certain rights or duties that iwi or hapū may have under common law, or rights and duties that arise from the Treaty of Waitangi, under legislation, or under the Fisheries Settlement
 - the Bill does not limit the ability of any person to take proceedings in any court or tribunal.
- **Fishing:** All commercial and recreational fishing would be suspended (rather than prohibited). Unlike option 1, customary (non-commercial) fishing would be allowed under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, or any other non-commercial customary fishing regulations made under section 186 of the Fisheries Act 1996, or regulation 50 or 52 of the Fisheries (Amateur Fishing) Regulations 2013.
- **Prohibited activities:** The Bill is aligned with the effects-based approach under the EEZ Act prohibiting a broad range of activities (than option 1) that affect the seabed and subsoil as well as the water column. Mining activities would, in effect, be banned through the Bill’s prohibition of activities that affect the seabed and water column and through consequential amendments to the CMA and the EEZ Act.
- **Establishment of Te Kāhui o Ngā Whatu-a-Māui:** Option 2 establishes Te Kāhui, tasked with carrying out functions in the sanctuary area (see Appendix 1, row 9). Te Kāhui is to comprise 10 members, with four members appointed by the Crown, four members appointed by Te Ohu and one member appointed by each Ngāti Kuri and Te Aupōuri.
- **Marine scientific research:** Option 2 provides for a 20-year \$43 million Crown-funded research plan to be developed and approved by Te Kāhui (no research plan under option 1). Te Kāhui must provide a progress report on the research plan at the end of each 5-year period, and an interim review of the plan after 10 years. Marine scientific research to be authorised by DOC rather than the EPA with changes to the process and the decision-making criteria (including strengthened iwi engagement provisions and consideration of Māori cultural values).
- **Review of the operation of the sanctuary:** Te Kāhui to commission an independent review of the operation of the sanctuary every 20-years and provide this to the Crown and Te Ohu. Te Kāhui may provide recommendations on the findings of the review with respect to the suspension of fishing. The Crown (consulting broadly) and Te Ohu

(on behalf of and in consultation with mandated iwi organisations) will use their best endeavours to collectively determine whether to continue, remove, amend, or reinstate the suspension of QMA 10 fishing quota. If they cannot make a collective determination, they will separately determine matters in relation to the use of their respective QMA 10 quota, having regard to the review report. The review decision would be given effect to by way of Order in Council by the Governor-General, on the joint recommendation of the Minister of Conservation and the Minister for Oceans and Fisheries.

113. There will be an associated Agreement between the Crown and Te Ohu for the Bill. The Agreement will record the good faith endeavours of the parties regarding the establishment and operation of the sanctuary, as reflected in the Bill, including:
- the parties' agreement not to exercise use of their respective QMA 10 quota Annual Catch Entitlement for at least the initial 20 years (noting that the Bill provides for a review of this agreement at 20 years)
 - the parties' agreement that at the 10-year review of the research plan, or subsequently at 15 and 20 years, subject to the availability of relevant information, there is a consideration of a review under the Fisheries Act of the total allowable catch limits for QMA 10 fish stocks of greatest interest. If the Minister responsible for Fisheries elects to increase the Total Allowable Catch of a QMA 10 fish stock, the Crown and Te Ohu are to discuss the impact on existing rights and interests, including the value of Annual Catch Entitlement for the fish stock in question
 - DOC and Te Ohu to provide joint secretariat support to Te Kāhui in the exercise of its functions
 - the intention of Te Ohu (on behalf of iwi) to withdraw its litigation regarding the establishment of the sanctuary
 - the Crown to fund the operation of Te Kāhui and the research fund
 - the Crown and Te Ohu to reserve their respective positions on the creation of marine protected areas in New Zealand's EEZ and the ability any such areas to affect existing rights and interests.
114. The Bill also enables the Minister of Foreign Affairs and Trade to develop an international outreach programme in relation to the sanctuary. Te Kāhui would participate in this programme.

Impacts of Option 2 – Proposed revisions (to the 2016 Bill)

Impact on commercial and recreational fishing

115. The immediate economic impact is the same as option 1. All commercial and recreational fishing within FMA 10 will be suspended until changed as a result of any review decision (at 20-year intervals). This means fishing for some QMA10 quota may occur after the 20-year review if that is the decision taken by Te Ohu (on behalf of iwi) or the Crown. Some future benefit may arise from commercial fishing.
116. This option would not specifically prevent a party seeking compensation because of the creation of the sanctuary, leaving the issue to the courts to determine.
117. The Crown-funded research programme will also look at fish stocks in the sanctuary area, which can be used to inform future decisions on the viability of these stocks and what a sustainable catch for various stocks may be.

Impact on customary fishing

118. Unlike option 1, customary (non-commercial) fishing would not be adversely impacted. Customary fishing would continue to be regulated under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, or any other non-commercial customary fishing regulations made under section 186 of the Fisheries Act 1996, or regulation 50 or 52 of the Fisheries (Amateur Fishing) Regulations 2013.

Impact on iwi/Māori rights, interests, and values

119. This option is intended to meet the Crown's Treaty of Waitangi/Te Tiriti o Waitangi obligations, including those arising from the 1992 Fisheries Settlement between the Crown and Māori. The significance of the Fisheries Settlement and Māori rights and interests is recognised through a revised purpose clause, a Treaty clause and specific provisions in relation to the Fisheries Settlement.
120. The review of the operation of the sanctuary at 20 years would also retain the ability for the Crown and Te Ohu (or its successor) to decide on the exercise of fishing rights for their respective holdings of QMA 10 fish stocks.
121. By establishing the new entity, Te Kāhui, the relationship between iwi and the Crown would be strengthened. Te Kāhui would comprise 10 members, with four appointments by the Crown, four appointments by Te Ohu, and one appointment each by Ngāti Kuri and Te Aupōuri. The chair would be appointed on an alternating basis by the Crown and Māori/iwi members. Te Ohu would appoint the first and last chair for the initial 20-year period.
122. In exercising its functions, Te Kāhui would be required to give effect to the principles of Te Hā o Tangaroa as defined in the Bill (tiaki, whakapapa, kai, hauhake).¹⁷ Te Hā o Tangaroa reflects a Māori worldview acknowledging the role of guardianship and protection of Tangaroa and the right to sustainably use Tangaroa's resources. Te Kāhui would be required to develop guidance on the meaning and application of the principles.
123. Te Kāhui would also be empowered to report annually on the Māori-Crown relationship as it relates to the management of the sanctuary. It would undertake 5 yearly progress reports and a 10-year interim review of the research programme.
124. Māori cultural values would also be considered in the Ngā Whatu-a-Māui permitting regime, through the development of Te Kāhui's research plan and the review of the sanctuary.

Impact on mineral resources

125. These would be the same as for option 1.

Impact on shipping sector and on vessels transiting the region

126. The same as for option 1, the rights of navigation and overflight and shipping interests would not be impacted by the sanctuary.

17 Te Hā o Tangaroa principles are defined in the Bill as:

- i. tiaki: the obligation to care for Tangaroa, his breath, rhythm, and integrity, for the betterment of Tangaroa and of Māori as his descendants
- ii. whakapapa: the reciprocal obligations between Tangaroa and Māori
- iii. kai: the right to sustainable use of the benefits of Tangaroa deriving from the whakapapa relationship with Tangaroa
- iv. hauhake: the right and obligation to cultivate Tangaroa for the betterment of Tangaroa and supporting the circle of life of Tangaroa.

Impact on submarine cable industry

127. The same as for option 1; the laying, repair, and removal of submarine cables and pipelines in the EEZ would continue to be permitted and regulated under the EEZ Act, in accordance with UNCLOS.

Impact on marine science research

128. A broader range of research activities would require authorisation in the sanctuary than under option 1. This is because the prohibited activities list would be expanded to align with the EEZ regime (and additional activities in the water column), meaning the EEZ regime for research would no longer apply in the sanctuary area (it would be overridden by the revised Bill).
129. In practice, this provides an advantage over option 1, as it creates a single regime for managing and authorising research in the sanctuary area. The Director-General of Conservation would have authority to grant approvals for any marine scientific research involving prohibited¹⁸ or suspended activities. The permitting process (run by DOC in consultation with other agencies and Te Kāhui) would ensure that any research involving prohibited (ie, activities that affect the seabed or water column) or suspended activities would be undertaken in a manner consistent with the purpose of the Act, including by imposing terms and conditions to manage any adverse effects on the environment or Māori cultural values (see para 133).
130. Research permitting could be streamlined relative to option 1, given DOC also manages research authorisations relating to protected marine species and the adjacent marine reserve.
131. As with option 1, research currently underway and permitted under the EEZ Act could continue for up to a year under transitional provisions.
132. Marine scientific research applications would be assessed in terms of the purposes of the Act, necessity of the activity and its benefits, effects of proposed activity on the environment and Māori cultural values. This may have a dampening impact on some research activity and a stimulatory effect on other types of research but the extent of this is uncertain. However, Te Kāhui's research plan provides an additional level of funding that is likely to have an overall positive impact on research in the sanctuary area.
133. Research that does not involve prohibited or suspended activities would not require authorisation from the Director-General of Conservation. However, researchers would still be required to engage with iwi with regional knowledge and notify DOC, the EPA and Te Kāhui of their planned activities. This would provide DOC and Te Kāhui with a full view of research undertaken in the sanctuary and enable DOC and the EPA to confirm that the notified research does not require a permit. It would also provide iwi with an opportunity to provide input to research in the sanctuary that does not require a permit.
134. The engagement and notification process would not be burdensome (guidance to researchers as part of implementation would be provided) and is unlikely to prevent any research activity from being undertaken. Such a notification process may assist with building collaboration, by enhancing visibility of research activity in the region.

¹⁸ The Bill prohibits activities that impact the seabed/subsoil or water column but does not apply a de minimis test. This means even small-scale activities with minor or negligible effects would be prohibited in the sanctuary unless a research permit is granted by the Director-General of Conservation.

Impact on biodiversity conservation

135. This option would have the same benefit for the preservation of the ecological integrity and biodiversity of the Kermadec/Rangitāhua region, as option 1, over the sanctuary's first 20 years. There is the potential that some commercial fishing may recommence after the 20-year review and some customary fishing rights may be exercised. Other activities that could potentially occur within the region (for example, seabed mining) would continue to be prohibited.
136. The Crown-funded research programme would contribute to our understanding of the biodiversity and ecology in the region, with potentially significant benefits to conservation outcomes. The nature of the research to be undertaken is directed in legislation as being to:
 - characterise aquatic life (including fish stocks) in the sanctuary and monitor changes in their abundance and distribution
 - monitor changes in oceanographic processes, including those associated with climate change
 - characterise the associated of aquatic life and species with geological formations, where appropriate
 - conduct research on cultural heritage.
137. The weighting of research across these areas (ie, how much research is focused on fish stocks versus other marine life) is subject to an independent decision by Te Kāhui. It would be required to consult with the public, relevant government agencies, and Te Ohu (who will provide the views of mandated iwi organisations), and Ngāti Kuri and Te Aupōuri authorities in the development of the research programme.
138. The research permitting process will ensure that research relating to the above topics (such as characterising marine life) does not have adverse effects on biodiversity.
139. The proposed 20-year review also provides an opportunity to understand the biodiversity of the region to inform the consideration of future management options.
140. The shorter review of 20 years (reduced from 25 years) should not impact significantly on biodiversity conservation. Under this option, the purpose of the review is wider, and includes consideration of future management options (including fishing activities), as well as biodiversity and global conservation outcomes.
141. The 20-year review will inform future decisions by the Crown and Te Ohu (on behalf of iwi) on whether to subsequently exercise their respective QMA 10 fishing rights. At present, the catch limits for QMA 10 stocks do not provide for a viable fishery. Currently, fishing for many of these stocks would involve the use of bottom impacting methods which are already precluded in the area (under the benthic protection area and would continue to be even if quota is exercised in the future (as the protection regulations would remain in place).
142. Provision for customary (non-commercial) fishing is expected to have a negligible impact on biodiversity conservation as there is currently no customary fishing being applied for or authorised in the area.

Impact on international marine protection goals

143. The same as for option 1, the sanctuary would establish an IUCN protected wilderness area (category 1b). However, future changes to the sanctuary, including those as a result

of any review decision relating to fisheries, could change the alignment of the sanctuary with the IUCN protected categories.

144. The sanctuary, now and in the future, will contribute to fulfilling New Zealand's obligations under Article 192 of UNCLOS to protect and preserve the marine environment, and contribute toward the CBD global target of 30 per cent marine protection.

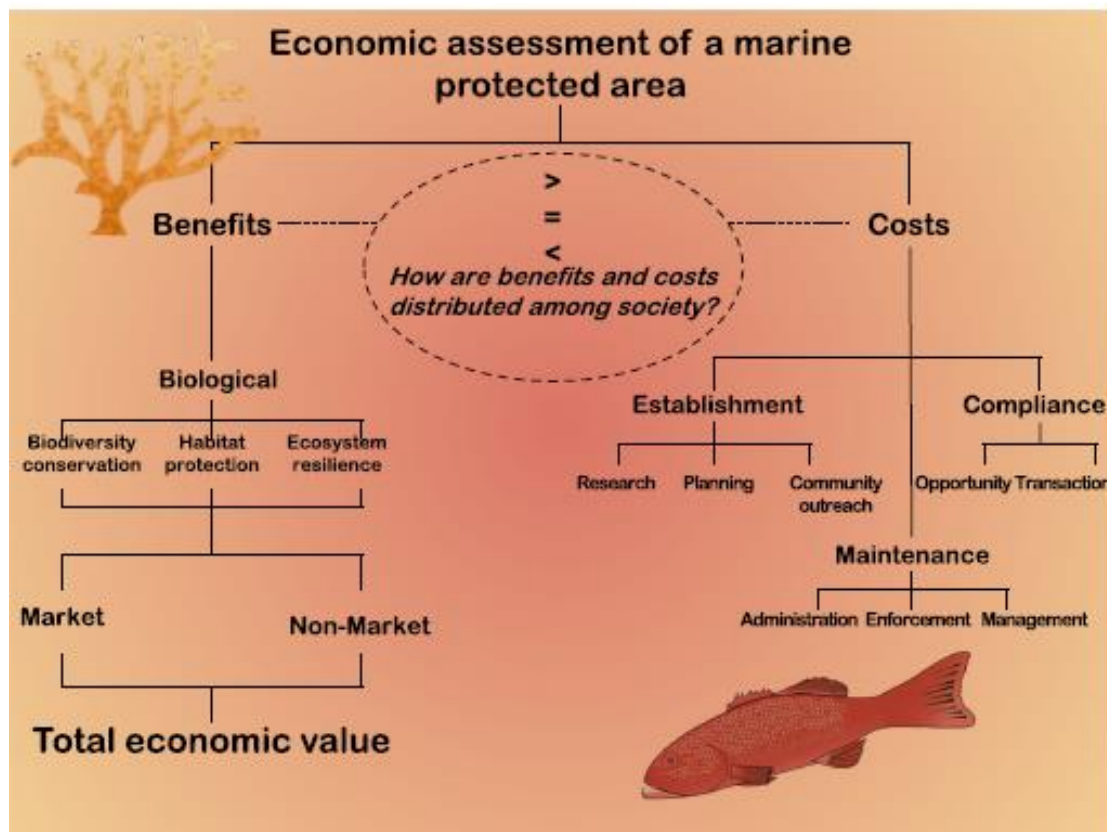
Impact on other international obligations

145. The same as for option 1, the same activities (shipping, overflight, cable laying, marine scientific research) will be allowed in the sanctuary in accordance with international law.
146. For marine scientific research conducted by foreign states or competent international organisation (except for research conducted using wholly governmental vessels), the permitting regime would require researchers to obtain an approval from DOC (rather than the EPA). The decision-making criteria as described in para 133 would apply, and the Director General of Conservation would be required to act in a manner consistent with UNCLOS when determining an application. As with option 1, these applications would also be subject to the UNCLOS process administered by MFAT. MFAT and DOC would operate in close consultation when assessing such permits to avoid unnecessary duplication and complexity.

What criteria will be used to compare options to the status quo?

147. We compare options against the policy objectives (Table 3) and then assess direct and indirect economic impacts (Table 4).
148. Criteria group 1 is based on the sanctuary's overall objectives and sub-objectives:
- preservation of ecological integrity and biodiversity
 - recognition of Māori rights and interests
 - contribution to global marine protection commitments
 - promotion of marine scientific research.
149. Criteria group 2 is based on potential economic benefits and disbenefits, and costs of the sanctuary's management (under either option) using the OECD total economic value framework (TEV).
150. TEV is one of few international standards recognised as a tool to measure the natural capital component of the Treasury's living standard framework. Figure 3 provides a summary of the TEV for economic assessment of marine protected areas.

Figure 3 Framework for assessing the potential economic costs and benefits of the sanctuary



Source: Davis et al. (2019)¹⁹

19 Davis, KJ., GMS. Vianna, JJ. Meeuwig, MG. Meekan, and DJ. Pannell. 2019. Estimating the economic benefits and costs of highly protected marine protected areas. *Ecosphere* 10(10), e02879, October 2109. Available from: <https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/ecs2.2879>.

151. Potential benefits and disbenefits of the sanctuary's options are:

- direct use - fisheries and mining activities
- indirect use - functional benefits arising from ecosystem functions, for example, the potential role in maintaining the global carbon cycle
- option value - future direct and indirect use. Although individuals or firms are not using the resource, they might be prepared to pay for the right to use the services of the resource at some later date.
- non-use values - for future generations and protection of endangered species.

152. Potential management costs of the sanctuary's options are:

- establishment
 - research
 - planning
 - community outreach
- maintenance costs
 - administration
 - enforcement
 - management
- compliance
 - fishing opportunities
 - mining opportunities
 - transactions.

How do the options compare to the status quo/counterfactual?

153. In Table 3 below, we utilise a multi criteria analysis to compare the two options against the policy objectives for the sanctuary and then assess direct and indirect impacts.

154. Table 4 outlines the direct and indirect impacts of each option, and who is impacted, using the same scoring criteria as above. Both options are rated positively against the status quo because they establish protections via the sanctuary. However, compared to option 1 (current Bill), option 2 (revised proposal) rates slightly lower on biodiversity conservation but is expected to provide for a greater recognition of Māori rights and interests (including cultural values) and provides the option value benefit due to the inclusion of the 20-year review. These benefits offset the higher expected costs associated with the management of the sanctuary and the research programme.

Table 3: Multi Criteria Assessment: Policy objectives

Key for qualitative judgements:			
++	much better than doing nothing/the status quo/counterfactual ,	+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual		
-	worse than doing nothing/the status quo/counterfactual,	--	much worse than doing nothing/the status quo/counterfactual

Criteria	Option 1: 2016 Bill	Option 2: Proposed revision to the 2016 Bill
Objectives		
Ecological integrity and biodiversity conservation	<p>++</p> <p>By addressing limitations in the current protection framework, option 1 provides significant biodiversity benefits.</p>	<p>+</p> <p>Option 2 includes a research programme that will enhance understanding of the biodiversity of the region, with the programme linked to the review of the operation of the sanctuary. Under option 2, the review provides for independent decisions by the Crown and Te Ohu (on behalf of iwi) about the use of their respective QMA 10 quota. Some commercial fishing could commence in the future subject to review decisions.</p>
Māori rights/interests and cultural values	<p>-</p> <p>Provides for the establishment of a Conservation Board for the entire Kermadec/Rangitāhua region including the islands and territorial sea. Iwi representation would include one member nominated by Ngāti Kuri, one by Te Aupōuri, and one nominated by the Minister for Māori development.</p> <p>Would extinguish all commercial and customary fishing rights within the sanctuary area) This has the potential to undermine existing treaty settlements.</p>	<p>++</p> <p>Express recognition of Māori rights through amended purpose, specific addition of a Treaty clause, recognition of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and other provisions relating to Māori rights and interests.</p> <p>Provides for a new entity, Te Kāhui, to be established, with functions relating to the sanctuary area. Te Kāhui will comprise 10 members, with four appointments by the Crown, four appointments by Te Ohu, and one appointment each by Ngāti Kuri and Te Aupōuri.</p> <p>Te Kāhui will be responsible for giving effect to Te Hā o Tangaroa (principles relating to the use and protection of the oceans), and in developing and applying guidance on the use of the constituent principles: tiaki, whakapapa, kai, hauhuke.</p> <p>Te Kāhui will develop and approve the Crown funded research plan and commission the research for the purposes of the plan. It will also report on the Māori-Crown relationship in the context of the sanctuary.</p>

Criteria	Option 1: 2016 Bill	Option 2: Proposed revision to the 2016 Bill
		<p>The research plan will provide for:</p> <ul style="list-style-type: none"> • incorporation of te ao Māori and mātauranga Māori • involvement of Māori research experts • consideration of taonga species, areas of significant cultural value, and the role of iwi/hapū as kaitiaki • research on cultural heritage. <p>The review of the operation of the sanctuary on a regular 20-year basis (commissioned by Te Kāhui), retains the ability for the Crown and Te Ohu to decide on the future exercise of fishing rights for respectively held QMA 10 fish stocks. The review also requires a consideration of how the management of the sanctuary has contributed to the preservation and recognition of Māori rights and interests.</p> <p>Option 2 also allows for customary (non-commercial) fishing.</p>
International obligations	<p>++</p> <p>Meets New Zealand’s international obligations to protect the marine environment and enhances New Zealand’s reputation regarding protection of the marine environment.</p>	<p>+</p> <p>Similar to option 1, but recognition and status of sanctuary may be impacted if a decision to commence some commercial fishing is taken after the 20-year review, or if there are any changes to the management regime in the interim period.</p>
Marine scientific research	<p>0</p> <p>Requires researchers to obtain a permit from the EPA for research involving prohibited activities. Some research would also be required to comply with the EEZ permitted activity regulations (in addition to or instead of obtaining a Kermadecs sanctuary permit). Expected to have a minimal impact on research activity in the region because similar application processes exist in marine reserves.</p>	<p>++</p> <p>As with option 1 researchers would be required to obtain permits to undertake research involving prohibited or suspended activities, although the permitting functions sits with the Director-General of Conservation rather than the EPA. A wider range of research would be captured by this provision given the alignment of the prohibited activity list with the EEZ regime, but a single process would apply in the sanctuary.</p> <p>The need to comply with a permitting process would be more than offset by the \$43 million Crown-funded research plan that Te Kāhui will develop. Research funded by the plan will help develop our collective understanding of the sanctuary area and will inform management decisions to be taken at the end of the 20-year period regarding the operation of the sanctuary. It will provide a significant new source of funding for research in the area.</p>
Overall assessment	3	6

Table 4: Multi Criteria Assessment: Benefits & disbenefits, and costs of managing the sanctuary

Key for qualitative judgements:			
++	much better than doing nothing/the status quo/counterfactual ,	+	better than doing nothing/ he status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual		
-	worse than doing no hing/the status quo/counterfactual,	--	much worse than doing nothing/the status quo/counterfactual

Criteria		Option 1: 2016 Bill	Option 2: Proposed revision to the 2016 Bill
Benefits & disbenefits			
Direct and indirect use values	Fisheries and mining activities	<p>0</p> <p>The impact on activities of fishers and miners is expected to be minimal. Financial loss of fisheries is estimated at less than \$164,672 per year based on the five year fishing average from 2010-15.</p> <p>The impact on mining compared to the status quo is unchanged as a mineral reservation prohibiting the issue of any prospecting, exploration or mining permits under the CMA has been in place since 2010 across the proposed sanctuary area. The foregone economic benefits are largely unknown due to lack of minerology understanding.</p>	<p>+</p> <p>Similar as option 1, however there is the possibility of some fishing in the future, subject to review decisions. Research programme may also provide value to fishing given dedicated pool of funding.</p>
	Functional benefits arising from ecosystem functions - biodiversity	<p>++</p> <p>As per Biodiversity objective in Table 3.</p>	<p>+</p> <p>As per Biodiversity objective in Table 3. Opens possibility for future fishing activities that may impact ecosystem function.</p>
	Functional benefits arising from ecosystem functions – other public good science	<p>0</p> <p>Permitting process is unlikely to be onerous and not dissimilar to existing processes in marine reserves.</p>	<p>+</p> <p>The existence of a 20-year research plan provides a significant, dedicated source of research funding which will encourage research activity. Permitting process is not expected to pose a significant barrier to research.</p>

Criteria		Option 1: 2016 Bill	Option 2: Proposed revision to the 2016 Bill
Option value – Future direct and indirect use		-- As the sanctuary would be established in perpetuity, there is no option value.	- Option 2 provides for a review every 20 years and therefore an option for capturing the value of fisheries. The research programme and the sanctuary's review as key components of this option provide an opportunity to understand the biodiversity of the region to inform consideration of future options.
Non-use values	Values for future generations	++ This option aims to preserve the area in its natural state for future generations. As per Table 3 for Biodiversity objective.	++ Same as option 1.
	Protection of endangered species	++ As per Table 3 for Biodiversity objective.	++ Same as option 1.
Māori rights/interests and cultural values		0 As per Table 3.	++ As per Table 3.
Costs			
Establishment: Research, planning and community outreach		0 Similar or about the same as status quo.	-- The proposed research programme to be funded by the Government, is estimated to cost \$43 million over the 20-year period. In addition, there will be planning and community outreach costs which are expected to be higher under option 2.
Maintenance: Administration, enforcement and management		- There will be a cost (including value of time) for applying for approval to undertake research in the region. Costs would also be incurred to set up and run a Conservation Board and a CMS. Likely these costs would be lower than option 2.	-- Total financial costs of the administration of the sanctuary are estimated to be around \$23 million over 20-years (comprising agency related costs and administration costs of Te Kāhui).
Compliance costs: Fishing and mining opportunity costs, and transactions		- • Fishers face an opportunity cost equal to the loss of profits that result from banning fishing within the sanctuary. Since there are	- Same as option 1.

Criteria	Option 1: 2016 Bill	Option 2: Proposed revision to the 2016 Bill
	<p>no active fishers in the region, the sanctuary would marginally affect fishing quota holders.</p> <ul style="list-style-type: none"> • There are no active miners in the region. • Transaction costs are borne by fishers, scientists, miners and others in the course of the sanctuary's administration. <p>Transaction costs include the costs of time spent learning about the sanctuary and its implications, completing any required paperwork, reporting, holding discussions with DOC and Te Kāhui, and obtaining legal advice.</p>	
Overall assessment	2	3

Operation costs

155. The operation of the sanctuary under option 2 (the revised proposal) involves three areas of cost:

- Te Kāhui administration costs
- research plan costs
- agency costs associated with permitting process, secretariat support to Te Kāhui, and compliance related activities.

156. The financial cost estimates for the operation of the sanctuary under option 2 are outlined in Table 5 below.

Table 5: Estimate of the financial costs of the sanctuary

Costs (\$ million) - estimates	20-year total
Te Kāhui costs	5
Agency related costs (including secretariat for Te Kāhui, compliance, research permitting)	25
20-year research fund (estimate)	43
Total Costs	73

157. A detailed estimate for the financial cost of the operation of the sanctuary under option 1 is not available, but we can assume the cost over a 20-year period would be significantly lower than option 2. This is because option 1 does not include a Crown-funded research plan which comprises most of the cost outlined in Table 5. Agency related costs associated with managing the sanctuary (for example, research permitting and compliance, monitoring and enforcement activities) would also likely be lower under option 1, and it is expected that a Conservation Board would incur less cost than Te Kāhui given its narrower functions. The 2016 RIS estimated that the development of a CMS would incur costs of up to \$180,000, and per annum costs for creating and servicing the Conservation Board would cost around \$90,000²⁰ (equivalent to \$1.8 million over 20 years – based on 2016 costings).

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

158. The results of the multi-criteria analysis of the two options indicate that option 2 (the revised proposal) best meets the policy objectives and is the preferred option. Option 2 is rated significantly better than the status quo and option 1 in providing for and recognising Māori rights and interests and cultural values, and in relation to promoting research (due to the research plan). Option 2 scores slightly lower on conservation measures, due to the review having the potential to affect future management decisions and enable some commercial fishing.

159. Our assessment of benefits and costs show both options have a minimal financial impact on fishing and mining activities. Option 2 provides an option value (for capturing the value of fisheries) benefit due to the inclusion of the 20-year review. The benefits of option 2 offset the higher expected costs of the research programme and the management of the sanctuary (compared to the status quo and option 1).

20 Regulatory Impact Statement: <https://www.treasury.govt.nz/sites/default/files/2016-01/ris-mfe-eko-mar16.pdf> Establishment of Kermadec Ocean Sanctuary, Ministry for the Environment, 2016.

Section 3: Implementation plan

How will the new arrangements be implemented?

160. The sanctuary will be implemented through the creation of a Ngā Whatu-a-Māui Ocean Sanctuary Act, by amending the Kermadec Ocean Sanctuary Bill which was introduced to Parliament in 2016.
161. The legislation will suspend commercial fishing within QMA/FMA 10 by way of amending fishing permits. It will also suspend all fishing in the sanctuary area under the provisions of the Fisheries (Amateur Fishing) Regulations 2013 or associated amateur fishing regulations. These activities will be suspended until changed as a result of any review decision.
162. Customary fishing carried out under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, or any other non-commercial customary fishing regulations made under section 186 of the Fisheries Act 1996, or regulation 50 or 52 of the Fisheries (Amateur Fishing) Regulations 2013 will be able to be undertaken in the sanctuary.
163. The Act will be jointly administered by DOC and the Office of Māori Crown Relations: Te Arawhiti. DOC will have responsibility for approving marine scientific research within the sanctuary (in consultation with the Ministry for Primary Industries/Fisheries NZ (MPI), the EPA, and Te Kāhui).
164. The EPA will have primary responsibility for compliance, monitoring and enforcement (CME) in the sanctuary (consequential amendments in the Bill add new offences to the EEZ Act, which already contains the necessary provisions for the EPA to undertake its EEZ CME functions). This will include the monitoring of research permits to confirm compliance with permit conditions. The EPA is best placed to undertake these functions given its role under the EEZ Act where it holds responsibility for consenting and CME in relation to specific activities in the EEZ, including marine scientific research under the EEZ permitted activity regime. MPI's role in relation to compliance under the Fisheries Act 1996 will also continue to apply.
165. International researchers will be required to obtain two approvals in the sanctuary area: a permit from the Director General of Conservation and an approval from MFAT under the UNCLOS application process. The exception is research conducted by wholly governmental vessels which will only require an UNCLOS approval from MFAT (in line with New Zealand's obligations under UNCLOS). DOC and MFAT will consult with each other (and other parties including MPI, the EPA and Te Kāhui) when assessing international research applications.
166. Te Kāhui will be established as a new entity with functions relating to the sanctuary area.
167. DOC will establish the required systems and recruit the personnel to support the research permitting and secretariat functions (the latter is to be shared with Te Ohu). This will include supporting the establishment of Te Kāhui and working to establish its work programme. Setting up the research permitting function will include developing guidance for research applicants and documentation such as application forms and standard terms and conditions. Communications and engagement support will also be deployed.

How will the new arrangements be monitored, evaluated, and reviewed?

168. Te Kāhui will establish a 20-year research plan focussed on aquatic life, including highly migratory species, and to monitor threats and changes over time. It will not encompass all research in the sanctuary undertaken by other parties (such as independent research conducted by GNS, universities, or individual iwi, or marine scientific research conducted on behalf of other states or competent international organisations pursuant to the provisions of UNCLOS).

169. DOC, MPI/FNZ, and MfE will provide technical science advice to Te Kāhui as required and by way of agreement between Te Kāhui and agencies (as approved by Ministers). These arrangements will be more efficient than Te Kāhui independently contracting these services, given the expertise and knowledge of current research planning within government agencies. Te Kāhui will also be able to independently contract its own advice for some functions.
170. DOC will continue to exercise specific responsibilities under other legislation, such as the development of population management plans and research permitting under the Marine Mammals Protection Act 1978 and Wildlife Act 1953. Both DOC and the EPA will share information for the purposes of undertaking their respective functions.
171. Te Kāhui will also commission an independent review report on the operation of the sanctuary at 20 years (with 5-yearly progress reports on the research plan and an interim review at 10 years), retaining the ability for the Crown and Te Ohu to decide on the exercise of fishing rights for QMA 10 fish stock quota that they respectively hold. Te Kāhui will be able to provide recommendations on its future funding in light of the findings of the independent review report, with the Crown and Te Kāhui to discuss in good faith the nature and funding level of the research plan in light of 20-year review process. Te Kāhui can also (via its annual report) report on the Māori-Crown relationship as it relates to the sanctuary, providing an opportunity for both parties to address any issues as they arise.

Appendix 1: Detailed summary of policy options

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
1. Name of sanctuary	No sanctuary in the EEZ	Kermadec/Rangitāhua Ocean Sanctuary	Ngā Whatu-a-Māui Ocean Sanctuary
2. Administration of the Act	N/A	DOC would administer the Act and manage the sanctuary	DOC and the Office for Māori Crown Relations – Te Arawhiti will jointly administer the Act
3. Purpose	N/A	The purpose of this Act is to preserve the Kermadec/Rangitāhua Ocean Sanctuary in its natural state	<p>The purpose is to provide for:</p> <ul style="list-style-type: none"> • the establishment of the sanctuary • the preservation of the biodiversity and ecological integrity of the sanctuary • recognition of Māori rights and interests in the sanctuary area including those relating to fisheries • recognition of the association of Ngāti Kuri and Te Aupōuri to Rangitāhua and adjoining marine reserve, including as expressed in their Treaty settlements or otherwise. <p>and recognition of the following attributes of the sanctuary area:</p> <ul style="list-style-type: none"> • its significance to Māori • its distinctive natural environment • its potential to contribute to: <ul style="list-style-type: none"> (i) science and mātauranga; and (ii) the promotion and sharing of knowledge
4. Term	N/A	In perpetuity with a 25-year review	The sanctuary is established with a review of the operation of the sanctuary at 20-year intervals

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
5. Treaty clause	N/A	No specific clause, but would be subject to Treaty clause under section 4 of the Conservation Act 'to give effect to the principles of the Treaty of Waitangi'	<p>Specific Treaty clause based, in part, on section 4 of the Conservation Act 1987; to require that the Act be interpreted and administered so as 'to give effect to the principles of the Treaty of Waitangi'.</p> <p>Unlike option 1, the Bill will not be listed on Schedule 1 of Conservation Act 1987.</p>
6. Express recognition of Māori rights and interests in the Bill	N/A	N/A	<p>In addition to the purpose, the Bill provides several specific clauses relating to Māori rights and interests and the continued application of relevant law.</p> <p>The Bill sets out that, unless expressly provided:</p> <ul style="list-style-type: none"> • nothing limits or repeals any provision of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and its Deed, the Fisheries Act 1996, or the Māori Fisheries Act 2004 • persons acting under the Bill must do so in a manner consistent with Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 • nothing extinguishes, limits or affects the rights or duties that iwi or hapū may have at common law, including rights under aboriginal title or customary rights, and rights or duties under tikanga or custom • nothing extinguishes or limits the rights and duties of the Crown under common law • nothing extinguishes or limits the rights or duties of the Crown or iwi and hapū under common law that arise from the Treaty of Waitangi, under legislation, or under the Fisheries Settlement

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
			<ul style="list-style-type: none"> nothing in the Bill limits the ability of any person to take proceedings in any court of tribunal for matters provided for in the Bill nothing in the Bill is to be interpreted as affecting any right or duty of the Crown in regulating the EEZ or continental shelf.
7. Prohibited activities	<p>Any take or disturbance of marine life including fishing is prohibited in the current marine reserve (see below) within the territorial sea.</p> <p>Mineral reservation declared (through to July 2024) over the Kermadec/Rangitāhua and Colville Arcs meaning that no new permits for minerals will be granted or extended in relation to the defined geographic area</p> <p>Restrictions under the Regional Coastal Plan</p>	<p>Establishes a “no-take” sanctuary, prohibiting certain activities including fishing, mining activities, dumping and disturbance of the seabed and seismic surveying.</p> <p>Consequential amendments:</p> <ul style="list-style-type: none"> prevent the granting or extending of permits in the sanctuary area under the CMA prohibit a person applying for marine consents for Kermadec/Rangitāhua prohibited activities under the EEZ Act 	<p>The Bill will also align what is prohibited with the restricted activities listed under the EEZ Act. This will mean that any activities in the sanctuary that would otherwise be managed by the EEZ Act (if the sanctuary was not in place) would be prohibited. This goes further than option 1 and will apply a general prohibition across a broader range of activities that might otherwise impact the seabed or water column (noting some activities that result in impacts in the water column will also be listed as prohibited).</p> <p>In effect, the Bill will prohibit all activities listed in option 1 except for commercial and recreational fishing, which is suspended. Customary (non-commercial) fishing carried out under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, or any other non-commercial customary fishing regulations made under section 186 of the Fisheries Act 1996, or regulation 50 or 52 of the Fisheries (Amateur Fishing) Regulations 2013 will be unaffected.</p> <p>Marine scientific research involving prohibited or suspended activities will require authorisation.</p> <p>As with option 1, consequential amendments through the CMA prevent the granting of permits in relation to minerals, or marine consents under the EEZ Act to undertake prohibited activities.</p>

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
8. Fisheries	<p>Current measures in EEZ:</p> <ul style="list-style-type: none"> • A benthic protection area prohibits some fishing activities (dredging and bottom trawling up to 100 metres above the seabed) out to 200 nautical miles • Customary fishing and recreational fishing permitted outside marine reserve in EEZ. <p>Kermadec Islands Marine Reserve from the shoreline out to the 12 nautical mile (nm) territorial sea boundary</p>	All fishing is prohibited including commercial, recreational, and customary fishing	<p>All fishing will be suspended (rather than prohibited). This suspension does not apply to non-commercial customary fishing under the Fisheries (Kaimoana Customary Fishing) Regulations 1998; or any other non-commercial customary fishing regulations made under section 186 of the Fisheries Act 1996; or regulation 50 or 52 of the Fisheries (Amateur Fishing) Regulations 2013. Alongside the Bill, there is an associated agreement between the Crown and Te Ohu (on behalf of iwi), who are the only holders of QMA 10 quota, not to use their respective holdings of annual catch entitlement for QMA 10 fish stocks (the Bill gives effect to this agreement through the suspension of commercial fishing permits).</p> <p>The Crown and Te Ohu will each retain the right to review the exercise of their respective QMA 10 fisheries quota rights on review of the operation of the sanctuary at 20-year intervals, having regard to the findings of the review report and any recommendations of Te Kāhui. Te Ohu and the Crown must use best endeavours to collectively determine whether or not to exercise these rights, but if a collective determination is not possible, separate determinations will be made for respectively held QMA 10 quota and the Crown must give effect to Te Ohu's decision.</p> <p>Any future commercial fishing (in whatever form – species, method, area) will require a decision (via an Order in Council) to remove, amend, or reinstate suspended fishing. Any decision leading to an Order in Council is linked to the 20-year review.</p>

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
<p>9. Management arrangements</p>	<p>Existing marine reserve under the Marine Reserves Act 1971</p> <p>Auckland Conservation Board has jurisdiction for the islands and the territorial sea. The Auckland Conservation Management Strategy applies relevant policies and objectives for the islands and territorial sea.</p> <p>The Regional Coastal Plan: Kermadec and Subantarctic Islands, includes marine protection measures for the Territorial Sea.</p>	<p>Provides for establishment of a new Conservation Board for Rangitāhua/the Kermadec Islands and the existing marine reserve out to 12 nm around the islands and the sanctuary, with eight members appointed by Ministers, including one member nominated by Ngāti Kuri and one member nominated by Te Aupōuri.</p>	<p>Establishes a new entity, Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui) tasked with carrying out functions in the sanctuary area as set out in the Bill. Te Kāhui will comprise ten members, four appointed by the Crown, four by Te Ohu, and one each by Ngāti Kuri and Te Aupōuri.</p> <p>Members are appointed for 5-year terms, and the chair for 30 month terms. The chair will alternate between Crown appointed members and Māori/iwi appointed members, with a Te Ohu appointee acting as the first and last chair for the initial 20-year period.</p> <p>DOC and Te Ohu jointly are to provide secretariat support to Te Kāhui.</p>
<p>10. Entity with functions under the Bill</p>		<p>The Conservation Board would have responsibility for developing a Conservation Management Strategy</p>	<p>Core functions of Te Kāhui will be to:</p> <ul style="list-style-type: none"> • develop and approve a 20-year research plan (see row 12) and commission relevant research • commission a report every 20 years on the operation of the sanctuary (Te Kāhui may provide recommendations on the findings of the review with respect to the suspension of fishing.) • advise Crown bodies on any policy matters and applications relating to the sanctuary

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
			<ul style="list-style-type: none"> • liaise with any Conservation Board with responsibility in the sanctuary, the Kermadec Islands Marine Reserve or the Kermadec Islands • promote and share knowledge about the sanctuary • participate in any international programme developed by the Minister of Foreign Affairs and Trade • develop and apply guidance on the meaning and application of the principles of Te Hā o Tangaroa <p>Functions also include:</p> <ul style="list-style-type: none"> • within 5 years of establishment, provide a report to the Minister of Conservation and Minister of Māori Crown Relations; Te Arawhiti with recommendations on the suitability of legal personhood being conferred on the sanctuary • prepare an annual report and financial statements to be tabled in Parliament • report annually on the Māori-Crown relationship as it relates to the management of the sanctuary as part of its annual report.
11. Recognition of Māori rights and interests in research and management			<p>The Bill requires that Te Kāhui, when carrying out its functions, must ensure that effect is given to the principles of Te Hā o Tangaroa.</p> <p>Te Hā o Tangaroa principles (tiaki, whakapapa, kai, hauhake) relate to the use and protection of the oceans and reflect a Māori worldview acknowledging the role of guardianship and protection as well as the use of Tangaroa’s resources.</p> <p>When developing the research plan for the sanctuary, Te Kāhui must incorporate te ao Māori and mātauranga Māori, and include consideration of designated taonga species, areas of cultural</p>

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
			<p>significance to iwi and hapū, and the role of iwi and hapū as kaitiaki. It must also consider whether there should or could be engagement and co-design of research programmes with iwi and involve Māori research experts.</p> <p>Māori cultural values will also be considered in decision making on marine scientific research permits (see below).</p>
<p>12. Approach to marine scientific research undertaken in the sanctuary</p>	<p>No overarching strategic approach to research in the Kermadecs/Rangitāhua region. Research providers undertake independent research on case-by-case basis depending on available funding</p> <p>No specific provision for Crown funded research in the Kermadec EEZ</p>	<p>No change to status quo</p> <p>No requirement that research will inform the review of the operation of the sanctuary, although could form part of the Terms of Reference</p>	<p>Provides for a 20-year Crown funded research plan, the scope of which will include:</p> <ul style="list-style-type: none"> • characterising aquatic life (including fish stocks) in the sanctuary and monitor changes in its abundance and distribution • monitoring changes in oceanographic processes, including ocean warming and acidification associated with climate change • characterising the association of aquatic life and communities of species with geological formations • undertaking research on cultural heritage in relation to the sanctuary <p>Progress reports on the research plan are to be undertaken after each 5-year period with an interim review of the plan to be undertaken after 10 years. In developing the plan, Te Kāhui is required to incorporate the use of te ao Māori and mātauranga Māori. The Bill specifies consultation requirements for development of the research plan.</p> <p>Research will inform the review of the operation of the sanctuary at 20-year intervals.</p>

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
<p>13. Marine scientific²¹ research approval process</p>	<p>In the EEZ, regulated under the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Permitted Activities) Regulation 2013 administered by the EPA.</p> <p>Marine scientific research is a permitted activity subject to certain conditions in the regulations.</p> <p>Within the territorial sea, marine scientific research is subject to the Marine Reserves Regulations 1993 and may also require resource consent.</p> <p>Research may also require a Special Permit under the Fisheries Act 1996.</p>	<p>Marine scientific research applications would be made to the EPA (if research would otherwise be prohibited by the Act).</p> <p>EPA to grant or decline an application (with potential conditions) primarily based on the effects of the research on the environment. Grounds to decline limited to whether an activity is likely to have significant adverse effects on the environment.</p> <p>Marine scientific research conducted by foreign states or competent international organisations would also be subject to the UNCLOS process administered by MFAT meaning two approvals are required (rather than one provided pursuant to UNCLOS under the status quo).</p> <p>Wholly governmental vessels would remain outside the scope of the Bill.</p>	<p>All applications for marine scientific research involving prohibited or suspended activities (including Te Kāhui commissioned research) will be made to DOC and decided by the Director-General of Conservation. Research other than for prohibited or suspended activities would also be notified to DOC, the EPA and Te Kāhui.</p> <p>Marine scientific research is assessed on the basis of:</p> <ul style="list-style-type: none"> • consistency with the purposes of the Act • anticipated benefits of the research • necessity for the research to be undertaken in the sanctuary area • effects on the environment • effects on Māori cultural values <p>In determining an application, the Director General of Conservation must also act consistently with New Zealand’s obligations under international law, including the UNCLOS.</p> <p>The Director General of Conservation will consult with MPI, the EPA and Te Kāhui when considering applications. It must also consult MFAT when considering applications from other states and competent international organisations.</p> <p>International research applicants would also need to obtain a separate approval from MFAT (in addition to the Ngā Whatu-a-Māui permit) under UNCLOS.</p> <p>Research conducted by wholly governmental vessels would remain outside the scope of the Bill.</p>

²¹ Marine scientific research generally refers to research in any field (for example geology, volcanology, biology, ecology, chemistry) that is undertaken in the marine area (ie, the oceans).

Options	Status Quo	Option 1: 2016 Bill	Option 2: Proposed revision (amendments to the 2016 Bill)
14. Review of operation of Act	N/A	25-year review to be conducted by a review panel (appointed by Ministers) to determine whether the purpose of the Act has been achieved and any other matters specified in a terms of reference (to be determined).	<p>Te Kāhui to commission an independent review of the operation of the sanctuary every 20-years to:</p> <ul style="list-style-type: none"> • evaluate the aquatic life in the sanctuary, including fish stocks • assess the contribution of the sanctuary to global conservation of oceans • evaluate future management options (including fishing) within the sanctuary • assess how the sanctuary or its management has contributed to the preservation or recognition of te ao Māori and mātauranga Māori, designated taonga species, areas of cultural significance to iwi and hapū, and the role of iwi and hapū as kaitiaki. <p>Te Kāhui to provide the review report to the Crown and Te Ohu and may provide recommendations on the findings of the review with respect to the suspension of fishing. The Crown and Te Ohu will separately decide (while using best endeavours to reach a collective decision) on future use of their respective QMA 10 quota in the sanctuary. The Crown must give effect to Te Ohu’s decision.</p> <p>When taking decisions on use of QMA 10 quota, the Crown and Te Ohu must have regard to the review report and recommendations of Te Kāhui on the findings of the review report. The Bill sets out consultation requirements for the Crown and Te Ohu when taking these decisions. The review decision will be given effect to by way of Order in Council by the Governor-General, on the joint recommendation of the Minister and the Minister for Oceans and Fisheries.</p>

Addendum to Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary

Purpose of Document	
Decision sought:	<i>Additional analysis produced for the purpose of informing final Cabinet decisions on a revised Bill for the Ngā Whatu-a-Māui Ocean Sanctuary</i>
Advising agencies:	<i>Ministry for the Environment (MfE)</i>
Proposing Ministers:	<i>Minister for the Environment</i>
Date finalised:	<i>11 July 2023</i>
Problem Definition	
The problem definition for this addendum remains unchanged from the Final Regulation Impact Statement for the Ngā Whatu-a-Māui Ocean Sanctuary (Final RIS) of 14 June 2023.	
Executive Summary	
<p>This is an addendum to the Final RIS and the two documents should be read together.</p> <p>The Final RIS provides an assessment of two options to progress the Kermadec Ocean Sanctuary:</p> <ol style="list-style-type: none">1. The 2016 Bill as reported back by Select Committee in July 20162. The revised proposal - the Ngā Whatu-a-Māui Ocean Sanctuary Bill. <p>The second, and preferred, option ('option 2 original') was developed in collaboration over several years with Te Ohu Kaimoana (Te Ohu) in its capacity as trustees of the quota allocated to Māori in Quota Management Area 10 (QMA 10) under the 1992 Fisheries Settlement and informed by engagement with Te Aupōuri and Ngāti Kuri. Feedback received from this collaboration formed the basis of a revised proposal to amend the Kermadec Ocean Sanctuary Bill (now named the Ngā Whatu-a-Māui Ocean Sanctuary Bill) (the Bill).</p> <p>On 13 June 2023 Te Ohu held a Special General Meeting (SGM) for the 58 mandated iwi organisations (MIOs), who hold fisheries assets through the Māori Fisheries Act 2004, to consider and vote on whether to support the revised proposal to amend the Bill ('option 2 original'). The MIOs present at the SGM voted overwhelmingly to oppose the proposal. Following the SGM, Te Ohu advised the Minister for the Environment that the MIOs who voted opposed the proposal for a range of reasons, primarily because they consider the proposal does not provide necessary protections to the rights provided in the 1992 Fisheries Settlement.</p> <p>Subsequent to the SGM, several material amendments to 'option 2 original' of the Final RIS have been proposed, these being:</p> <ul style="list-style-type: none">• to reduce the size of the sanctuary with the inclusion of a 40 nautical mile fishing zone on the western edge of the Kermadec/Rangitāhua region (refer figure 1)• to amend the composition and appointment process of Te Kāhui and rotation of	

the chair

- the associated agreement to the Bill, between the Crown and Te Ohu Kaimoana, will not be progressed.

These amendments to 'option 2 original' (the preferred option) of the Final RIS are set out in the analysis below as 'option 2 amended'.

Responsible Manager



Glenn Wigley
Director, Regulatory and Policy
Ministry for the Environment

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry for the Environment

Panel Assessment & Comment:

The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) "Addendum to Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary". This is to be read alongside the "Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary", which the panel has previously assessed to meet the quality assurance criteria.

The panel considers the addendum meets the quality assurance criteria for regulatory impact analysis. It clearly identifies how the revised proposal performs against the policy objectives and how this has changed since the Te Ohu Special General Meeting. We note that there is a lack of detailed information about the benefits and risks of the fishing zone, and this could be investigated further.

Analysis of 'option 2 amended'

Reduction in size of sanctuary area

1. A fishing zone separate to, but adjoining, the sanctuary area will be retained within Fisheries Management Area 10 (FMA 10), slightly reducing the size of the sanctuary area. This would be 40 nautical miles in width and would run along the entire western edge of the Kermadec/Rangitāhua region (also known as FMA 10), adjacent to the high seas. The fishing zone would be excluded from the sanctuary area and the provisions of the Bill would not apply to this zone. As a result, the area of the fishing zone would not be involved in any research commissioned by Te Kāhui.
2. The Final RIS 'option 2 original' did not include analysis or assessment of the fishing zone. The idea of a fishing zone was discussed with Te Ohu, Ngāti Kuri and Te Aupōuri

in 2022, but was not part of the proposal to revise the Bill that was considered by MIOs at the Te Ohu Special General Meeting on 13 June 2023.

3. Fishing for highly migratory species by New Zealand fishing vessels could occur, however the practicalities of fishing within the zone have not been tested with the fishing industry. While the fishing zone could contribute to New Zealand's catch history for purposes of regionally based fisheries allocations for highly migratory species and act as a potential counter to foreign fishing fleets operating in close proximity to New Zealand's exclusive economic zone (EEZ), there is no fishing of consequence by New Zealand vessels in the area and this is unlikely to change in the near future. Highly migratory species are managed as single New Zealand stocks with most fishing being undertaken in New Zealand waters closer to the mainland.
4. There has not, as yet, been an assessment of the costs and benefits of the fishing zone and consequential reduction of the size of the sanctuary, including the commercial viability of the fishing zone, the ability of New Zealand to maintain catch history of highly migratory species, the protected species interactions associated with fishing activity, or the range of biodiversity values associated with the area.
5. There are impacts associated with reducing the size of the sanctuary and retaining a fishing zone. The retention of a fishing zone mirrors the current status quo option in the Final RIS where no sanctuary is established (albeit at a much-reduced scale). The associated risks do not have a material impact on the assessment of the options set out in the Final RIS.
6. The status quo and 'option 2 amended' would impact on biodiversity values (albeit the latter being of much lesser scale) associated with the Kermadec area. A fishing zone involving targeting of highly migratory species through longline, purse seine and troll methods would likely result in some mortality of non-target species. For example, between 2003 and 2019, there were 77 observed captures of birds in surface longline fisheries in the Kermadec area (as a whole), and three observed captures of turtles.¹ Sea turtle captures in the highly migratory species fishery more widely have increased in recent years.
7. There has been no purse seine fishing effort in FMA10 to date. While purse seine fishing without the use of fish aggregation devices² has relatively low protected species captures, there have been recent captures of protected spine-tailed devil rays throughout other areas of New Zealand waters, and this should be taken into consideration.
8. The fishing zone would reduce the size of the sanctuary from about 614,200 sq km to about 516,900 sq km; or from about 15 percent of New Zealand's marine area (territorial sea and EEZ) to about 12.5 percent of that area.
9. The existing benthic protection area which bans bottom impact fishing methods will continue to apply in the fishing zone. Additionally, seabed mining on the Kermadec arc is subject to the Mineral Reservation Area.
10. Although slightly reduced in size, the sanctuary is consistent with the Government's obligations under the United Nations Convention on the Law of the Sea 1982 to protect and preserve the marine environment, including measures necessary to protect and preserve rare or fragile ecosystems as well as the habited of depleted, threatened or

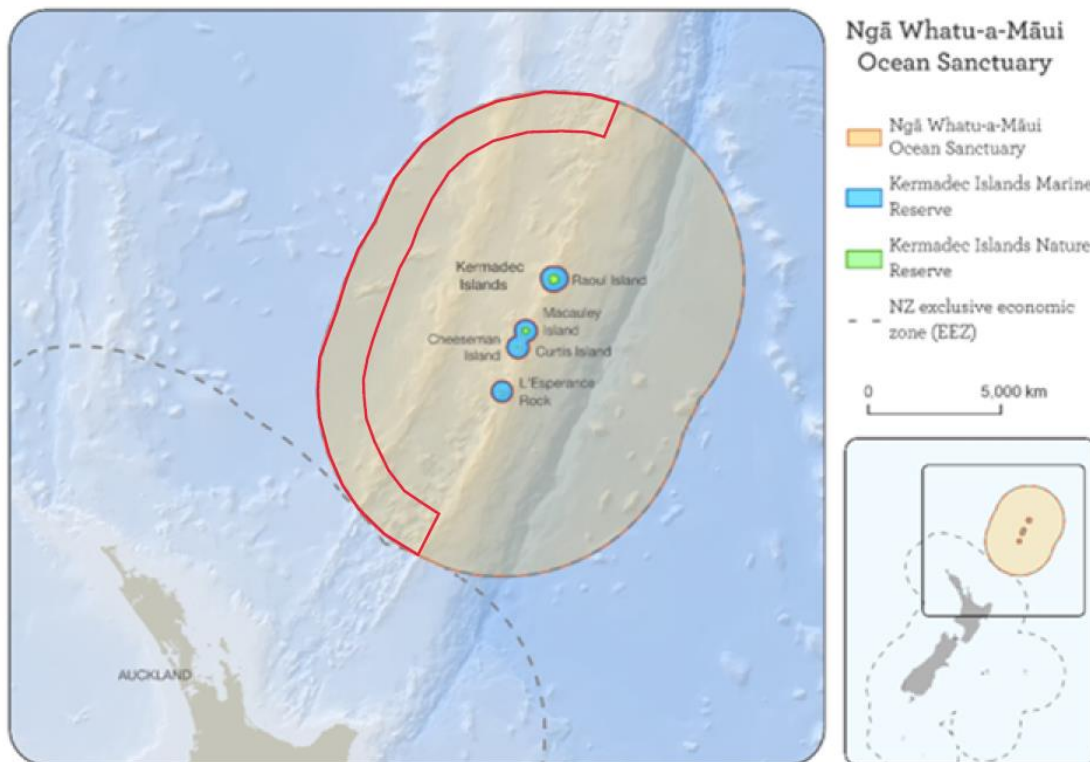
¹ Observed captures were of albatrosses (33), Antipodean albatross (12), grey-faced petrel (11), Antipodean and Gibson's albatrosses (5), Gibson's albatross (4), white-headed petrel (2), white-chinned petrel (2), grey petrel (2), fulmars, petrels, prions and shearwaters (2), black-browed albatrosses (2), sooty shearwater (1), and black petrel (1). It's worth noting that seabird mitigation requirements have improved over this time for longline fisheries.

² Any object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with.

endangered species and other forms of marine life.³

11. As a result of this reduction in the size of the sanctuary 'option 2 amended' will have slightly less benefit with respect to the preservation of ecological integrity and biodiversity than the 'option 2 original', however the benefits still exceed those of the status quo option in which there is no sanctuary.

Figure 1: The Kermadec/Rangitāhua region and islands including the proposed Ngā Whatu-a-Māui Ocean Sanctuary, with red marking on the western side indicating the fishing zone



Te Kāhui – change in membership and appointments process

12. The Final RIS provides detail of the establishment of Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui), a new entity tasked with carrying out functions in the sanctuary area (Final RIS page 26, para 121, and Appendix 1, row 9).
13. Under the 'option 2 amended', Te Kāhui is to comprise four members appointed by the Crown, one member each appointed by Ngāti Kuri and Te Aupōuri, and four iwi/Māori members appointed jointly by the Minister of Conservation and the Minister for Māori Crown Relations: Te Arawhiti. Before appointing the iwi/Māori members, the Ministers seek nominations from Te Ohu and any other interested parties, with the Ministers having discretion to determine the persons appointed. The chair of Te Kāhui will alternate between Crown, Ngāti Kuri and Te Aupōuri appointees together, and iwi/Māori appointees.
14. This composition is an amendment from 'option 2 original' in which the four iwi appointments would be made by Te Ohu, and the first and last chair would be a Te Ohu appointee.
15. Engagement on the composition of Te Kāhui was undertaken between the Crown and Te Ohu, Ngāti Kuri and Te Aupōuri, and between the latter parties themselves as part of discussions on the proposal to amend the Bill. No consensus emerged from these discussions. While these discussions were wide ranging and canvassed a number of

³ United Nations Convention on the Law of the Sea 1982, Articles 192 and 194.

potential options with regard to composition of Te Kāhui and the appointments process, the membership and appointment process under 'option 2 amended' was not consulted on.

16. The amendments continue to provide for strong iwi participation in Te Kāhui.
17. Under 'option 2 amended', the membership of Te Kāhui will continue to be required to reflect an appropriate mix of skills and experience, having consideration of te ao Māori, tikanga Māori, matāuranga Māori, fisheries management, marine science and research, and the law, and the extent of knowledge of the region associated with the sanctuary. No change has been made to the skills and experience factors that appointers must consider when making appointments.
18. Given the continued role of iwi/Māori in Te Kāhui membership, there is no change to the assessment of the proposal against Māori rights and interests objectives, as provided in the Final RIS.

Associated agreement between the Crown and Te Ohu Kaimoana

19. Alongside the Bill, it had been intended that the Crown and Te Ohu would enter into an associated agreement to record the good faith endeavours of the parties regarding the establishment and operation of the sanctuary (Final RIS, para 113).
20. Following Te Ohu's Special General Meeting on 13 June 2023, the associated agreement will no longer proceed. s9(2)(h)
21. The non-exercise of QMA 10 Annual Catch Entitlement held by the Crown and Te Ohu is retained through the suspension of commercial fishing permits and the Crown is to fund the operation of Te Kāhui and the research fund.
22. Te Ohu continues to have roles in the operation of the Bill. For example, Te Ohu must:
 - a. be consulted on:
 - i. the development of the research plan by Te Kāhui, and in turn Te Ohu must consult with mandated iwi organisations, with Te Kāhui required to have particular regard to the views of Te Ohu
 - ii. taonga species identified for purposes of the research plan
 - b. be provided with:
 - i. the 5-year progress report and 10 year interim review of the research plan
 - ii. the annual report prepared by Te Kāhui
 - iii. the recommendations of the Te Kāhui on the 20-year review report.
23. Having no associated agreement does not impact on the effective operation of the Bill.

Updated multi criteria assessment

24. The following table updates 'Table 3: multi criteria assessment against policy objectives' in the Final RIS. For this, an additional column was provided to assess the changes made to 'option 2 amended'. The Final RIS assessments for 'option 1' and 'option 2 original' remain unchanged.
25. The overall score for Māori rights and interests in 'option 2 amended' has been re-assessed from 'option 2 original' in light of the slightly reduced size of the sanctuary area and mandated iwi organisations voted against supporting the proposal to amend the Bill at Te Ohu's Special General Meeting on 13 June 2023.

Table 1: Updated Multi Criteria Assessment: Policy objectives

<i>Criteria</i>	Option 1: 2016 Bill	Option 2 original: Proposed revision to the 2016 Bill	Option 2 Amended:
Objectives			
Ecological integrity and Biodiversity conservation	++	+	+ the reduction in size of the sanctuary will have slightly less benefit for the preservation of ecological integrity and biodiversity than the 'option 2 original'.
Māori rights/interests and cultural values	-	++	++ The reduction in the size of the sanctuary provides, in theory, the opportunity for commercial fishing to be undertaken within a narrow part of FMA10, although the viability of this has not been tested with fishers.
International obligations	++	+	+ the reduced size of the sanctuary does not significantly impact on New Zealand's contribution to global marine protection goals and targets. This is due to the presence of the existing benthic protected area measures for FMA 10 as a whole, the existing marine reserve around the Kermadec/Rangitāhua islands, and the sanctuary being of a size equating to approximately 12.5% of New Zealand's EEZ.
Marine scientific research	0	++	++ no substantive change, a Crown funded research plan is retained alongside other research initiatives in the region.
Overall assessment	3	6	6

Revised Departmental Disclosure Statement

Ngā Whatu-a-Māui Ocean Sanctuary Bill

A revised departmental disclosure statement for a Bill the government is proposing to amend by supplementary order paper seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Ngā Whatu-a-Māui Ocean Sanctuary Bill, formerly the Kermadec Ocean Sanctuary Bill, dated 26 February 2016, can be found at this link [bill-government-2016-120.pdf \(legislation.govt.nz\)](https://legislation.govt.nz/bill-government-2016-120.pdf).

This revised disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

22 June 2023

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The Main Areas of Change to the Original Disclosures

This is a revised disclosure statement for the Ngā Whatu-a-Māui Ocean Sanctuary Bill.

A revised disclosure statement incorporates the content of the original disclosure statement for the Bill, but also includes and highlights the changes needing to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the revised disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement include:

- the general policy intent of the Bill and additional 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.

Part One: General Policy Statement

The purpose of this Bill remains to establish a new marine protected area in New Zealand's exclusive economic zone around the Kermadec Islands (Rangitāhua). The marine protected area is to be named Ngā Whatu-a-Māui Ocean Sanctuary (the sanctuary). The area of the sanctuary comprises the waters and underlying seabed and subsoil extending from the boundary of the current Kermadec Islands Marine Reserve to the 200 nautical mile limit of New Zealand's exclusive economic zone surrounding the Kermadec Islands on the eastern side and to 160 nautical miles on the western side, with a 40 nautical mile fishing zone.

A fishing zone separate to, but adjoining, the sanctuary area will be retained. This will be located along the entire western edge of the Kermadec/Rangitāhua region (also known as Fisheries Management Area 10), adjacent to the high seas. The fishing zone would be excluded from the sanctuary area and the provisions of the Bill would not apply to this zone.

Amendments to the Bill provide for recognition of Māori rights and interests in the establishment of the sanctuary, consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and its Deed.

The purpose of the Act is amended by substituting the preservation of the ecological integrity and biodiversity of the area for preservation of the sanctuary in its natural state. The purpose is amended to also recognise Māori rights and interests, including those relating to fisheries interests and the association of Ngāti Kuri and Te Aupōuri to Rangitāhua and adjoining marine reserve; and the significance of the area, including for purpose of research and the sharing of knowledge.

The operation of the sanctuary will be reviewed at 20-year intervals. Commercial fishing permits and recreational fishing in the sanctuary are suspended, subject to a decision following the 20-year review. The Crown and Te Ohu Kaimoana (Te Ohu) can independently decide on the future use of their respective annual catch entitlements for QMA10 fish stocks at the end of a review period. The Crown must give effect to Te Ohu's decision on Te Ohu's QMA10 stocks, but otherwise makes its own decisions on all other fishing suspended under the Act. Customary Māori fishing rights are retained and will continue to operate under customary fisheries regulations made under the Fisheries Act 1996.

Activities, other than fishing, that involve dumping, the disturbance of the seabed, subsoil and/or aquatic life, including as a result of vibrations (other than that associated with propulsion of a vessel), that are likely to have an adverse effect on aquatic life, are prohibited. Existing exemptions are retained, including for marine scientific research, passage of vessels, and activities specifically regulated under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Marine scientific research involving activities that would otherwise be prohibited must be approved by the Director-General of Conservation. Decisions must consider a broad set of criteria - the effects, benefits, and necessity of the proposed research, and Māori cultural values. Research conducted under the terms of the United Nations Convention of the Law of the Sea 1982 will continue to be approved by the Secretary of Foreign Affairs and Trade and be subject to a permit granted by the Director General of Conservation (unless the ship is owned or operated by a State other than New Zealand for wholly government purposes).

A new entity is created, Te Kāhui o Ngā Whatu-a-Māui, comprising Crown, iwi, Ngāti Kuri and Te Aupōuri members. The functions of Te Kāhui include: the development of a (Crown-funded) research plan, the commissioning of research, the commissioning of specific reports (including a 20-yearly review report), involvement in an international outreach programme for knowledge sharing purposes, and providing recommendations on the 20-yearly review report.

The prohibition on claims for compensation has been removed from the Bill. This is consistent with the general principle that parties should have the ability to pursue legal claims for any loss, damage, or adverse effect on rights or interests arising from enactment of a Bill.

The Department of Conservation and the Office for Māori Crown Relations: Te Arawhiti will jointly administer the Act.

The Act incorporates a stand-alone Treaty of Waitangi provision instead of listing the Act on Schedule 1 of the Conservation Act 1987.

The Environmental Protection Authority is responsible for enforcement under the Act, other than with respect to fishing related offences which rests with the Ministry for Primary Industries.

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
<p>A number of reports by the PEW Charitable Trusts have either informed, or are relevant, to the Bill. These reports include:</p> <p>Kermadecs Profile: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/pewkermadecsprofile.pdf</p> <p>The Kermadecs – Science Symposium Proceedings: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/kermadec_symposium_aug_2010_proceedings.pdf</p> <p>The Kermadecs – Fact Sheet: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/kermadec-fact-sheet.pdf?la=en</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>Although the Bill does not seek to give effect to New Zealand action in relation to an international treaty, it is consistent with the following international obligations:</p> <p>The United Nations Convention on the Law of the Sea (including article 192) - this can be accessed at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf</p> <p>The Convention on Biological Diversity (CBD). (The sanctuary will contribute to global protection goals and targets, including as part of the Kunming-Montreal Global Biodiversity Framework, adopted by parties to the CBD in December 2022.) The convention can be accessed at https://www.cbd.int/convention/text/</p> <p>The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 – information on the convention can be accessed at Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (imo.org)</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The proposals were considered in:</p> <p>The RIS Establishment of a Kermadec Ocean Sanctuary, authored by the Ministry for the Environment (February 2016). The RIS can be accessed at Regulatory Impact Statement: Establishment of a Kermadec Ocean Sanctuary (treasury.govt.nz)</p> <p>The Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary, authored by the Ministry for the Environment (13 June 2023). Accessible at: Regulatory Impact Statement for the Ngā Whatu-a-Māui Ocean Sanctuary</p> <p>Addendum to Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary, authored by the Ministry for the Environment (11 July 2023). Accessible at: Addendum Regulatory Impact Statement for the Ngā Whatu-a-Māui Ocean Sanctuary</p>	

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
<p>The RIS did not meet the threshold for Treasury RIA Team assessment. Rather, the RIS and the Addendum were assessed by the Ministry for the Environment's RIA Panel.</p> <p>The panel's full quality assurance statements are as follows:</p> <p>The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Final RIS. The panel considers the document meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the strengths and weaknesses of the options available and provides a convincing analysis of the reasons for the proposed changes to the Bill.</p> <p>The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) "Addendum to Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary". This is to be read alongside the "Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary", which the panel has previously assessed to meet the quality assurance criteria. The panel considers the addendum meets the quality assurance criteria for regulatory impact analysis. It clearly identifies how the revised proposal performs against the policy objectives and how this has changed since the Te Ohu Special General Meeting. We note that there is a lack of detailed information about the benefits and risks of the fishing zone, and this could be investigated further.</p>	

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?	NO
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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

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?	YES
Information on the use of annual catch entitlements for quota management area 10 (QMA10) fish stocks is available at Establishment of a Kermadec Ocean Sanctuary Ministry for the Environment	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
Due to the current low state of activity in the Kermadec region, there is little likelihood of the costs or benefits of the sanctuary being impacted by the level of compliance with the obligations and standards and/or the nature and level of regulator effort put into encouraging or securing compliance. Any New Zealand vessel that is capable of commercial fishing in the sanctuary area is subject to geospatial position tracking and reporting. Foreign fishers in the area adjacent to the sanctuary are generally compliant and unlikely to change behaviour.	

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?

During the development of the Bill, the Ministry for the Environment worked with the Ministry of Foreign Affairs to ensure that the Bill is consistent with New Zealand's international obligations relating to:

- The United Nations Convention on the Law of the Sea (including article 192)
- The Convention on Biological Diversity (specifically target 11 and new global goals and targets developed under the Kunming-Montreal Global Biodiversity Framework)
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972
- The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972

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?

Since Select Committee consideration of the Bill in 2016, the Ministry for the Environment, together with a cross-agency working group, has engaged extensively with Te Ohu on the nature of the Fisheries Settlement and the rights held by Te Ohu on behalf of iwi in relation to QMA 10 fish stocks. The Ministry also engaged with Ngāti Kuri, Te Aupōuri and (to a lesser extent) NgaiTakoto about their interests in relation to the sanctuary area.

The Ministry for the Environment has worked with the Office for Māori Crown Relations: Te Arawhiti to ascertain the nature of interests, in the form of Treaty analysis and also with Te Puni Kōkiri in relation to the consideration of Māori cultural values for purposes of marine scientific research.

These discussions have resulted in amendments to the Bill to recognise Māori rights and interests, including protection of the 1992 Fisheries Settlement, the association of Ngāti Kuri and Te Aupōuri to Rangitāhua and adjoining marine reserve, and consideration of cultural values. Refer also to section 3.6.

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

There are no implications arising from the Bill. This Bill is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

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
<p>The offence provisions, which rely on existing offence provisions in other Acts, are found at: Section 41 of the Bill (amending the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 by inserting a new 134EA and 134EB into that Act). Section 89 of the Fisheries Act 1996 creates an offence to contravene any condition placed on any commercial fishing permit by the chief executive of the Ministry assigned who has assumed responsibility for the Fisheries Act (this includes the suspension of commercial fishing permits for purposes of sections 9A and 9B of the Bill). Sections 228 and 232 of the Fisheries Act 1996 also specify general offences relating to the breach of conditions and the buying, selling and possession of fish contrary to the Act.</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted prior to introduction of the Bill on the new offence and penalty provisions and whether the Bill is consistent with the Bill of Rights Act 1990.</p>	

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
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

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
<p>Te Ohu and representatives of Seafood New Zealand (SNZ) were consulted on the policy to be given effect by the original Bill, as introduced to the House in 2016. Te Ohu and SNZ expressed concerns about the impact of the sanctuary on fishing rights allocated to iwi under the Fisheries Settlement.</p> <p>A working group of officials from the Ministry for the Environment, the Ministry for Primary Industries/Fisheries New Zealand, the Department of Conservation and the Office of Māori Crown Relations: Te Arawhiti and representatives from Te Ohu have engaged extensively to develop and agree principles underlying the revised proposal. Te Ohu has engaged with mandated iwi organisations to socialise the revised proposal and convey feedback to officials.</p> <p>Ongoing engagement with Ngāti Kuri and Te Aupōuri in the period 2021-23 included sharing the revised proposal (together with supporting materials), and an exposure draft of the supplementary order paper. Meetings were conducted with Ministers and officials to discuss progress on the Bill, the aspirations of these iwi for the sanctuary, and their feedback with respect to the materials shared.</p> <p>A copy of the exposure draft and summary of the revised proposal was provided to NgāiTakoto. Meetings were held to discuss feedback and the interests of NgāiTakoto in the sanctuary, however this engagement was less extensive than that conducted with Ngāti Kuri and Te Aupōuri.</p> <p>Substantive policy changes have been made to the Bill as a result of this consultation providing for recognition of Māori rights and interests. These policy changes include: the name of the Bill and sanctuary, an expanded purpose statement, the non-derogation of existing legislation, the establishment of a new entity, the membership of the entity, consideration of Māori cultural values for purpose of marine scientific research in the sanctuary, the creation of a research plan, and the 20-yearly review of the sanctuary.</p> <p>On 13 June 2023 Te Ohu held a Special General Meeting where mandated iwi organisations voted on whether to support the revised proposal to amend the Bill. Te Ohu advised that a strong majority opposed the revised proposal, primarily on the basis that the mandated iwi organisations present at the meeting did not consider the proposal provided necessary protections to the rights provided for in the 1992 Fisheries Settlement.</p> <p>Subsequent to the decision of mandated iwi organisations, several amendments were made to the Bill that have not been the subject of external consultation, including establishment a 40 nautical mile fishing zone on the western side of the sanctuary area and the composition of the body established under the Bill.</p>	

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
<p>The Ministry has worked directly with the Crown Law Office, the Department of Conservation, the Environmental Protection Authority, the Ministry for Primary Industries/Fisheries New Zealand, the Office for Māori Crown Relations: Te Arawhiti, the Ministry for Foreign Affairs and Trade, Maritime New Zealand, the Ministry for Business, Innovation, and Employment, the Ministry of Justice, the Ministry of Transport, Te Puni Kōkiri, the Treasury, and the Public Service Commission on the development of the Bill.</p> <p>Officials also engaged with the Legislation Design Advisory Committee late 2021 and the Cabinet Office.</p>	

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 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
Offences created in the Bill, which are linked to the Bill under both the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Fisheries Act 1996, are strict liability offences.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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?	YES
The Bill creates a decision-making power (by Order in Council) to remove, amend, or reinstate the suspension of commercial fishing permits and recreational fishing under the Fisheries Act 1996 as they relate to quota management area 10/fisheries management area 10, as a result of decisions made at the 20-yearly review of the sanctuary. The power also provides for subsequent changes to be made to deemed values and cost recovery levies under the Fisheries Act 1996.	

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
See 4.6.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>This Bill creates a new regulation making powers for the Governor-General, on the recommendation of the Minister of Conservation and the Minister for Māori Crown Relations: Te Arawhiti, to make regulations to make regulations:</p> <ul style="list-style-type: none">a) specifying terms and conditions that apply to marine scientific research permits; andb) providing for any other matters contemplated by this Bill and necessary for its administration or for giving it full effect. <p>This power is to allow further detail to be provided by the Ministers to ensure the Bill can be implemented as intended.</p> <p>The Bill also creates a new regulation making power for the Ministers responsible for the Bill to make regulations allowing the Director-General of Conservation, the Environmental Protection Authority, and the chief executive of the Ministry of Primary Industries to recover fees and costs incurred in the exercise of their functions under the Bill that are not otherwise covered by an appropriation provided by Parliament.</p> <p>The Bill also creates a decision-making power to remove, amend, or reinstate the suspension of commercial fishing permits and recreational fishing under the Fisheries Act 1996 (see 4.6).</p>	

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 prohibitions and other regulatory features of this Bill will be enforced under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and Fisheries Act 1996.	

15 June 2023

Hon. David Parker
Parliament Buildings
Wellington

By email only: d.parker@ministers.govt.nz

E te Minita, tēnā koe

Outcome of Te Ohu Kaimoana Special General Meeting to consider the Kermadec Ocean Sanctuary proposal.

I would like to acknowledge the considerable work that your officials have undertaken with Te Ohu Kaimoana regarding the Kermadec Ocean Sanctuary proposal.

On behalf of iwi, the board of Te Ohu Kaimoana undertook to provide you with an update on the outcome of the Special General Meeting of iwi held on Tuesday 13 June 2023, where iwi considered their collective position on the Crown's proposal to establish a sanctuary in FMA10.

There was a large turnout of iwi from throughout Aotearoa, and after considerable discussion, the meeting voted strongly in opposition to the proposal for a range of reasons, but primarily that they individually and collectively consider that the proposal does not provide necessary protections to the rights guaranteed in the 1992 Fisheries Deed of Settlement as signed by Māori and the Crown.

Iwi have directed Te Ohu Kaimoana to bring iwi together to wānanga on this kaupapa. Te Ohu Kaimoana is committed to holding that hui in the coming months.

Noho ora mai rā



Rangimarie Hunia
CHAIR

Chronology of work on Kermadec Ocean Sanctuary Bill since 2018

	Date	Event/item of work
1.	23 Mar 2023	Te Ohu AGM scheduled – rescheduled to 13 June
2.	3 Feb 2023	Te Ohu advised MIOs will not vote on revised proposal at AGM. SGM to be held approx. three weeks after instead.
3.	26/27 Jan 2023	Te Ohu Board strategy meeting, Kermadec proposal on the agenda
4.	20 Jan 2023	Delays in Te Ohu holding SGM for MIO consideration of revised proposal – advice to Ministers from officials
5.	19 Dec 2022	Te Ohu advised officials that it would not be proceeding with SGM scheduled for 20 January. An AGM will be scheduled for March.
6.	14 Dec 2022	Discussions between Crown officials and Te Ohu on ACE (Te Ohu seeking payment for quota)
7.	6 Dec 2022	Te Ohu Board meeting (Agreed to support revised proposal subject to resolving ACE issue)
8.	31 Oct 2022	Crown response to 4 issues raised in Te Ohu’s aide memoire (27 Oct)
9.	27 Oct 2022	Te Ohu Aide Memoire to Te Arawhiti/Crown: Undertaken a legal and policy review of the proposed agreement. Consistency with s 32 of the Māori Fisheries Act requires amendments. Seeking: acknowledgement that Te Ohu doesn’t support the initiative, acknowledgement the sanctuary prevents full exercise of Māori fishing rights; separate funding for Te Kahui for the Crown to provide consideration to MIOs by purchasing ACE, research plan to cover fisheries, equal representation for Te Ohu on Te Kahui. Supports the agreement being submitted to Waitangi Tribunal.
10	19 Sep 2022	SGM planned by Te Ohu but not held. Te Ohu indicated there were resourcing constraints for initiating the SGM.
11	6 Sep 2022	Summary of key aspects of revised proposal shared by Crown with Ngāti Kuri. Noted that Crown was working with TPK on Wai 262 considerations to strengthen consideration of Māori cultural values in Bill.
12	26 Aug 2022	Call between Lil Anderson and Rangimarie Hunia. SGM planned for week of the 19 th Sept. Crown providing final summary of proposal for inclusion in the packs. Te Ohu will identify people to conduct a review of the proposal from legal and policy perspective. Discussions with Ngati Kuri and Te Aupouri are ongoing.
13	Aug 2022	Summary of revised proposal sent to Te Ohu 26 Aug 2022. Crown officials and Te Ohu had a series of meetings throughout August on: purpose statement, process for deciding on future use of QMA 10, potential steps for Te Kahui appointments, Nga Whatu-a-Maui long paper received from Te Ohu, draft agreement
14	21 Jul 2022	Ministerial hui (separate engagements) with Te Ohu, Ngāti Kuri and Te Aupōuri to discuss the exposure draft of the revised Bill. Minister followed up with letters reiterating what he had heard in the meeting.

15	19 Jul 2022	Telephone call between Glenn Wigley (MfE) and Harry Burkhardt (Ngāti Kuri).
16	18 Jul 2022	Ministerial hui with Te Ohu, Ngāti Kuri and Te Aupōuri, week of 18 th . As follow up officials providing material to Te Ohu on proposed process for future decision making on QMA 10 and the rahui.
17	4 Jul 2022	Te Ohu initiated wānanga, facilitated by Che Wilson. Name and narrative vision for the sanctuary developed.
18	May – Dec 2022	Series of meetings between Crown officials group and Te Ohu representatives
19	June 2022	Series of discussions with Te Ohu and Crown officials focussed on DOC and Minister of Conservation roles, research permitting, Te Kahui roles and responsibilities and membership, shared vision/purpose, rahui rather than tuku, legal personhood, administration, name of sanctuary, review mechanism, vision, Kāhui skills
20	16 Jun 2022	Letter from Minister Parker to Rangimarie Hunia Delegating engagement to Principals group, noting officials also discussing Bill with northern iwi.
21	15 Jun 2022	Officials hui with Ngāti Kuri (in Auckland)
22	7 Jun 2022	Letter from Te Ohu to Minister Parker. Following AGM support for continued discussions with the Crown, Te Ohu appointing a subcommittee for negotiations. Expectation is that these meetings are at Ministerial level. Any agreement in principle will be subject to MIO approval at SGM in late 2022
23	31 May 2022	Zoom call between Crown officials and Ngāti Kuri.
24	24 May 2022	Ministerial hui (Minister Parker) with Te Ohu Board
25	23 May 2022	Officials – Te Aupōuri hui
26	6 May 2022	Exposure draft of Supplementary Order Paper to amend Bill shared with Te Ohu, and later with 3 northern iwi.
27	12 May 2022	Te Ohu Annual General Meeting held – agreed to work further with Crown on revised proposal. Press Release: Iwi commit to ensuring best possible outcome for Rangitāhua Ocean Sanctuary – Te Ohu Kaimoana
28	April 2022	Minister Parker phone calls with northern iwi
29	22 Mar 2022	Officials meeting with Te Aupōuri
30	1 Mar 2022	Officials hui with Te Aupōuri representatives
31	Jan-Feb 2022	Officials and Te Ohu worked to refine policy approaches following discussions on issues of concern in the exposure draft
32	7 Dec 2021	Ministerial Hui with Te Ohu Board (as part of Te Ohu end of year board meeting)
33	Dec 2021	Te Ohu outlined key areas of bill requiring further discussion to officials
34	6 Jul 2021	Meeting between Prime Minister Ardern, Minister Parker and Te Ohu Board

35	29 Jun 2021	Glenn Wigley (MFE) meeting with Te Aupouri and NgaiTakoto.
36	May 2021	Series of meetings between interagency group (MFE, MPI, DOC, Te Arawhiti and MFAT) and Te Ohu
37	12 May 2021	Ministerial hui with Te Ohu
38	2021	Terms of Agreement between Te Ohu and MfE for working together on revised proposal, signed.
39	Aug 2020	Draft SOP prepared by Te Ohu
40	May 2020	Informal discussions between Minister Parker's office and representatives/ personnel from Te Ohu and Ngāti Kuri
41	17 Jul 2018	Letter from Te Ohu to Ministers Parker and Davis attaching proposal on the sanctuary for consideration
42	18 Jun 2018	Ministerial hui with Te Ohu
43	23 Feb 2018	Ministry of Justice Briefing: Proposed Kermadec/Rangitāhua Ocean Sanctuary: resetting the relationship

Summary of revised proposal – as at 8 June 2023

Key revisions to proposal to be provided for in Bill and/or associated Agreement between the Crown and Te Ohu Kaimoana (Te Ohu). As discussed with Te Ohu, still subject to Ministerial and Cabinet approval.

<p>1.0</p>	<p>New name</p>	<ul style="list-style-type: none"> • Ngā Whatu-a-Māui Ocean Sanctuary Bill – reflecting the name and vision developed at the wānanga held and attended by iwi in July 2022.
<p>3.0</p>	<p>Revised purpose statement</p>	<p>The purpose of the Bill will provide —</p> <p>(a) for the establishment of Ngā Whatu-a-Māui Ocean Sanctuary; and</p> <p>(b) that the sanctuary is to be managed so as—</p> <p style="padding-left: 40px;">(i) to preserve the ecological integrity and biodiversity of the sanctuary;</p> <p style="padding-left: 40px;">(ii) to recognise Māori rights and interests in the area of the sanctuary, including;</p> <p style="padding-left: 80px;">(A) those relating to fisheries - the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1996, the Māori Fisheries Act 2004; <u>and</u></p> <p style="padding-left: 80px;">(B) the association of Ngāti Kuri and Te Aupōuri with Rangitāhua and the adjoining marine reserve, including as expressed in their Treaty Settlements</p> <p>(c) to recognise certain attributes of the sanctuary area;</p> <p style="padding-left: 40px;">(i) its significance to Māori; and</p>

		<p>(ii) its distinctive natural environment; and</p> <p>(iii) its potential to contribute to-</p> <p>(A) science and mātauranga; and</p> <p>(B) promoting and sharing knowledge.</p>
4.0	Extended role of Te Kāhui	<p>Increased role for Te Kāhui to be set out in the Bill, including:</p> <ul style="list-style-type: none"> • Te Kāhui to be tasked with providing a report to Government on the suitability of legal personhood being conferred on the sanctuary, with the Government required to respond within two years of the report. • Te Kāhui to explicitly have a function of promoting and sharing knowledge – not just research and knowledge gathering. • The Bill will require Te Kāhui to give effect to the principles of Te Hā o Tangaroa (<i>tiaki, whakapapa, kai, and hauhake</i>) and develop guidance on the meaning and application of these.
5.0	Te Kāhui to control research programme, and funding in order of \$40m	<ul style="list-style-type: none"> • Te Kāhui is to be responsible for developing and implementing a new 20-year, Crown-funded marine scientific research plan. Research will help inform decisions about the future management of the sanctuary. • Te Kāhui will control a research fund in the order of \$40m over 20 years. • The Crown will fund the full costs of Te Kāhui and its Secretariat support. • Te Kāhui to be set up to be enabled to leverage additional third-party funding and

		to be able to apply for additional (including Crown) science funding
6.0	The Bill will set out the types of research that must be covered by the plan	<p>The Bill will set out the types of research that must be covered by the plan:</p> <ul style="list-style-type: none"> • characterising aquatic life, including fish stocks • monitoring changes in the abundance and distribution of aquatic life, including fish stocks • monitoring changes in oceanographic processes, including ocean warming and acidification associated with climate change • characterising the association of aquatic life and communities of species with geological formations, and • describing the cultural heritage in relation to the sanctuary. • The research conducted under the research plan must be used for the purposes of the review of the research plan
7.0	Te Kāhui to consult with Te Ohu in developing the research plan	<p>The Bill will require:</p> <ul style="list-style-type: none"> • Te Kāhui to consult with Te Ohu in developing the research plan (along with iwi, Government agencies and the public). • Te Ohu must seek the views of MIOs and inform Te Kāhui of those views. Te Kāhui is to have particular regard to views of MIOs as expressed by Te Ohu.
8.0	Annual reporting, 5-yearly progress report, and 10-year	<p>The Bill will require:</p> <ul style="list-style-type: none"> • Te Kāhui to prepare and provide its own annual report to Ministers and Te Ohu.

	<p>interim review of research plan.</p>	<ul style="list-style-type: none"> • Te Kāhui to develop and provide a 5-yearly progress report and 10-year interim review of the research plan. The reports would be provided to Te Arawhiti, DOC and Te Ohu. • Te Kāhui must consult iwi, relevant government agencies, and members of the public generally when undertaking the interim review • Te Kāhui may change the research plan to give effect to its findings at 10 years.
<p>9.0</p>	<p>Total Allowable Catch review(s)</p>	<p>The Agreement will provide that:</p> <ul style="list-style-type: none"> • At the 10-year milestone (the 10-year interim review of the research plan), the best available information (including the research conducted for purposes of the research plan) is used as the basis for a discussion between Te Ohu and the Crown to identify QMA 10 fish stocks of greatest interest and the possible material change that could result from any TAC¹/TACC² review • for the priority stocks, a TAC review under section 13 of the Fisheries Act is conducted (involving public consultation of a proposal to change the TAC/TACC, noting there can be no pre-determination of whether there will be a legal or factual basis for the TAC/TACC to increase) • if the TAC review results in a decision by the Minister responsible for Fisheries to

¹ Total allowable catch

² Total allowable commercial catch

		<p>change the TAC/TACC, there is a discussion between Te Ohu and the Crown</p> <ul style="list-style-type: none"> • the discussion would focus on the impact on rights and interests, including consideration of the value of ACE of QMA 10 fish stocks • the revised supplementary order paper (SOP) to amend the Bill does not preclude Te Ohu (and other affected parties) pursuing legal claims for compensation if discussions with the Crown at 10 years did not reach a successful resolution and Te Ohu believed there was a basis for such a claim • If there is insufficient information at 10 years, a further TAC/TACC review can occur at 15 years and at 20 years depending on the availability of information
<p>10.0</p>	<p>Strengthened role for Te Kāhui in international outreach</p>	<p>Te Kāhui is tasked with participating in any international programme developed by the Minister of Foreign Affairs and Trade, in consultation with the Minister of Conservation and the Minister responsible for Fisheries. . The role would be developed over time, working closely with MFAT, MPI and DOC once Te Kāhui is established. .</p>
<p>11.0</p>	<p>Membership of Te Kāhui</p>	<p>Te Kāhui will comprise 10 members;</p> <ul style="list-style-type: none"> • four members nominated by the Minister of Conservation and the Minister for Māori Crown Relations on behalf of the Crown • four members appointed by Te Ohu Kai Moana • one member appointed by Ngāti Kuri

		<ul style="list-style-type: none"> • one member appointed by Te Aupōuri • The members appointed by Te Ohu will elect the first chair and the chair for the last term of the 20 year period. The chair will otherwise rotate between two groupings: the Te Ohu appointed members and all other members (note, 2.5 year terms for chair). <p>The Agreement will include a statement along the lines of:</p> <ul style="list-style-type: none"> • Ngati Kuri and Te Aupouri have an existing Crown recognised association and ongoing involvement in the Rangitahua Islands and adjoining marine reserve. Accordingly, the Crown has agreed to provide separate representation on Te Kahui, with 1 seat for each iwi. • In allocating two seats to Ngāti Kuri and Te Aupōuri appointees, the Crown does not imply that the two iwi have a greater interest in customary or customary-commercial fisheries in the Sanctuary area, or any other part of the EEZ, compared to other iwi.
<p>12.0</p>	<p>Appointments to Te Kāhui to be skills-based</p>	<p>Bill will set out that members of Te Kāhui are to collectively hold the following skills and expertise:</p> <p>tikanga Māori, te ao Māori, mātauranga Māori, fisheries management, and marine science and research. Also legal expertise/experience and knowledge of the region.</p>

<p>13.0</p>	<p>Conservation Board will be removed from the Bill</p>	<p>Note - Provisions relating to the Kermadec/Rangitāhua Conservation Board will be removed from the Bill</p>
<p>14.0</p>	<p>Shared roles</p>	<p>The Bill will set out that:</p> <ul style="list-style-type: none"> • Te Arawhiti and DOC will jointly administer the Act. • Crown appointments to Te Kāhui to be made jointly by the Minister for Crown Māori Relations: Te Arawhiti and Minister of Conservation. <p>The Agreement will set out that:</p> <ul style="list-style-type: none"> • Te Ohu and DOC to share role of providing Secretariat support for Te Kāhui.
<p>15.0</p>	<p>Core function DOC will retain</p>	<ul style="list-style-type: none"> • DOC retains the regulatory function of administering a permitting system for research in the sanctuary that involves a prohibited or suspended activity, with a requirement to consult and work closely with others, particularly Te Kāhui. <ul style="list-style-type: none"> ○ Other research must be notified to DOC ○ DOC must consider whether the research is consistent with the purpose of the Act, the benefits of the research, the necessity for it to be conducted in the sanctuary, the effects on the natural environment. • Agreement will confirm that: <ul style="list-style-type: none"> ○ Te Kāhui will be consulted (either directly by MFAT or via DOC) on applications from other countries (under international law) seeking to

		<p>undertake research in the sanctuary for wholly governmental purposes. Te Kāhui will have a say in the conditions that should be imposed on that research.</p>
16.0	Continuing application of existing law	<p>The Bill will provide for:</p> <ul style="list-style-type: none"> • the Continuing application of (a) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the 1992 Deed of Settlement under that Act: (b) the Fisheries Act 1996: (c) the Māori Fisheries Act 2004 - unless expressly provided for in the Bill — . • Treaty of Waitangi/Tiriti o Waitangi - The Bill must be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.
17.0	Sanctuary to be reviewed every 20 years	Sanctuary to be created with a review of its effectiveness to be undertaken every 20 years
18.0	QMA 10 fish stocks - for first 20 years or longer	<p>For QMA 10 fish stocks</p> <ul style="list-style-type: none"> • Te Ohu (acting on behalf of iwi) agree not to use the QMA 10 ACE it holds, for at least an initial 20-year period. (The Crown agrees that the QMA 10 quota and ACE it holds is also not used). • The Bill will place conditions on commercial fishing permits to suspend fishing for QMA 10 fish stocks. • The Bill also suspends all recreational fishing and the exercise of commercial fishing permits for all other fish stocks

		<p>(QMS and non-QMS) within the area of the sanctuary.</p> <ul style="list-style-type: none"> • Customary fishing is not suspended, consistent with section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act.
19.0	Te Kāhui to commission independent review at 20 years	<p>The Bill will prescribe that:</p> <ul style="list-style-type: none"> • Te Kāhui is to commission an independent review of the operation of the sanctuary and provide it to Ministers and Te Ohu 18 months before the expiry of the initial 20-year term. • The overall purpose of the review is to provide recommendations that inform decision making in relation to the sanctuary, including the decision on the future use of QMA 10 fishing quota. • The Bill sets out matters that must be included (as a minimum) in the review – but it is for Te Kāhui to commission the report • Te Kāhui may provide recommendations to the responsible Ministers and Te Ohu on the findings of the review carried out. • Te Kāhui to provide recommendations on funding for the next 20-year period in light of the findings of the independent review report
20.0	Right to decide on future to use QMA10 fishing quota at 20 years – expressly set out in Bill	<ul style="list-style-type: none"> • The Crown is required to consult iwi and others (including the public) before making a decision on the recommendations in the review report; • Te Ohu is to consult iwi on the future use of Te Ohu's QMA 10 ACE.

		<ul style="list-style-type: none">• Te Ohu and the Crown will use their best endeavours to come to a collective decision on the review including the future use of QMA 10 fishing quota/ACE to which each has ownership rights.• Both parties would commit to acting reasonably and in good faith towards the other.• If Te Ohu and the Crown are not able to reach agreement, they may choose to enter into a mediation process to reach a common position in good faith• In making decisions, Te Ohu and Ministers will consider the independent review report and any recommendations of Te Kāhui on the report.• Te Ohu will consult iwi, who will decide on the future use of QMA 10 fishing quota.• If the Crown and Te Ohu (on behalf of iwi) cannot agree, then Te Ohu and Ministers may each make their own decision on the future use of QMA 10 fishing quota to which each has ownership rights.• After making its own decision on the future use of QMA 10 fishing quota to which it has ownership rights. Te Ohu (on behalf of iwi) will let the Crown know of its decision. The Crown is required to give effect to this decision.• Giving effect to a decision by Te Ohu (on behalf of iwi) to use its QMA 10 quota/ACE would see the Crown making an Order in Council on the use of permits and related
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		administrative provisions about the granting of fishing permits under the Fisheries Act in relation to the QMA 10 fish stocks.
21.0	The ‘no compensation’ clause to be removed	The Bill removes the prohibition on pursuing legal claims for compensation
22.0	Operation of the sanctuary – including Te Ohu to provide shared secretariat support to Te Kāhui	<p>the Agreement will provide for:</p> <ul style="list-style-type: none"> • The Department of Conservation to enter into contracts for services with Te Ohu to provide shared secretariat support services to Te Kāhui, once Te Kāhui is established. • The Department of Conservation to enter into a Memorandum of Understanding with Te Kāhui, once Te Kāhui is established, that provides a framework for how the two entities will work together to carry out their legislative functions
23.0	Existing Legal Positions	<p>The Agreement will provide that:</p> <ul style="list-style-type: none"> • Te Ohu is to discontinue its current litigation regarding the Bill • the Crown and Te Ohu reserve their respective positions on the creation of protected areas in the Exclusive Economic Zone of Aotearoa New Zealand; and the ability of any such protected area to affect existing rights and interests, including in relation to fishing
24.0	Area of the Sanctuary	<ul style="list-style-type: none"> • Area known as QMA 10 under the Fisheries Act, minus the existing marine reserve (out to 12 nautical miles) around the Rangitāhua/Kermadec Islands

Not Government Policy

		<ul style="list-style-type: none">• The benthic protected areas in QMA 10 under the Fisheries Act remain in place
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COR4067

9 June 2023

Harry Burkhardt
Chairman
Ngāti Kuri Trust Board/Te Manawa o Ngāti Kuri

S9(2)(a)

E te rangatira, tēnā koe

Engagement on the Kermadec Ocean Sanctuary Bill

You wrote to me on 22 March 2023 about ongoing engagement on the Kermadec Ocean Sanctuary Bill, and we have spoken since.

I want to thank you for the contribution you personally and Ngāti Kuri have made over many years to establish an ocean sanctuary around the Kermadec Islands/Rangitāhua.

As you are aware, the Crown has worked closely with Te Ohu Kaimoana, as the trustee of all iwi who are the beneficiaries of fishing assets allocated under the 1992 Fisheries Deed of Settlement, to appropriately recognise iwi fishing rights and interests for purposes of the Bill.

Ministers and officials have also worked with Ngāti Kuri and Te Aupōuri, and I reiterate our commitment to continue doing so.

Together, these discussions have led to many changes to the Bill. Several of these changes were discussed with you in August 2022.

Consequently, a number of the proposals referred to in your letter are in the revised proposal. These include:

- Ngāti Kuri and Te Aupōuri seats on the Kāhui established under the Bill
- the skills and experience of appointees to that body
- changes to the purpose statement to reflect the association of Ngāti Kuri and Te Aupōuri with Rangitāhua and the preservation of the ecological integrity of the sanctuary
- Ngāti Kuri and Te Aupōuri being consulted about specific activities under the Bill, namely applications for research permits, the content of the research plan, and the review of the sanctuary
- a commitment to appropriately resource Te Kāhui to fulfil its functions under the legislation over a 20 year period.

I recognise there are several areas where your suggestions do not align with the current proposal. These include the name of the sanctuary, the prohibition of commercial fishing (this being suspended rather than prohibited), a review term of 25 years (this being 20 years), and the composition and chair of Te Kāhui. These decisions reflect the Crown's intent to find the right balance and recognise Māori rights and interests as a whole for the purposes of the Bill.

In respect of Te Ohu, proposed changes to the Bill are to be considered by mandated iwi organisations at the upcoming special general meeting (SGM) on 13 June 2023.

Following the Te Ohu SGM, I would welcome the opportunity to discuss the progress of the Bill with you. The Government's intent is to enact legislation this term to establish the sanctuary.

I understand that the Minister of Conservation, Hon Willow-Jean Prime, has responded to you separately about the Kermadec Islands Nature Reserve and Marine Reserve.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'David Parker', written in a cursive style.

Hon David Parker
Minister for the Environment

Copy to: Hon Willow-Jean Prime, Minister of Conservation

Revised draft Cabinet Paper – Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill

 Ministry for the Environment Manatū Mo Te Taiao	Ministry for Primary Industries Manatū Ahu Matua 	 Te Arawhiti THE OFFICE FOR MĀORI CROWN RELATIONS	 Department of Conservation Te Papa Atawhai
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Date Submitted:	30 May 2023	Tracking #: BRF-2862	
Security Level	Policy and Privacy Classification	MfE Priority:	High

	Action sought:	Response by:
To: Hon David PARKER, Minister for the Environment	Provide feedback on the draft Cabinet paper and draft Agreement between the Crown and Te Ohu Kaimoana	6 June 2023
CC: Hon Willow-Jean PRIME, Minister of Conservation	For information	
CC: Hon Kelvin DAVIS, Minister for Māori Crown Relations: Te Arawhiti	For information	
CC: Hon Rachel BROOKING: Minister for Oceans and Fisheries	For information	

Actions for Minister's Office Staff	Return the signed report to MfE
Number of appendices and attachments: Three	Appendix 1: Revised draft Cabinet paper: Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill Appendix 2: Draft Agreement between the Crown and Te Ohu Kaimoana Appendix 3: Revised departmental disclosure statement for the Kermadec Ocean Sanctuary Bill

Position	Name	Cell phone	1st contact
Principal Author	Stuart Brodie – Ministry for the Environment	s9(2)(a)	
Director	Glenn Wigley – Ministry for the Environment	s9(2)(a)	✓
Deputy Director-General	Ruth Isaac – Department of Conservation	s9(2)(a)	
Deputy Director-General	Dan Bolger – Fisheries New Zealand	s9(2)(a)	
Deputy Chief Executive	Warren Fraser – Office for Māori Crown Relations: Te Arawhiti	s9(2)(a)	

Draft Cabinet Paper – Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill

Key Messages

1. This briefing provides you with a revised draft Cabinet paper: *Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill*, initially provided to you on 29 November 2022 (appendix 1). The briefing also provides the following appendices for lodging with the Cabinet paper:
 - a. draft of the Agreement between the Crown and Te Ohu Kaimoana (Te Ohu) (appendix 2)
 - b. draft revised departmental disclosure statement (appendix 3).
2. These documents reflect the revised proposal as discussed and agreed with Te Ohu representatives, and the policy decisions approved by Cabinet in October 2021 [CBC-21-MIN-0111 refers], March 2022 [ENV-22-MIN-0014 refers] and by you through delegated authority [BRF 2006 refers].
3. This briefing also seeks your decisions on several minor amendments identified during drafting of the supplementary order paper (SOP), including;
 - a. amendments to the rotation of the chair for Te Kāhui
 - b. s9(2)(g)(i) [REDACTED]
 - c. enabling Te Kāhui to take decisions by simple-majority decision if decisions cannot be reached by consensus
 - d. clarifying the contracts entered into by Te Kāhui that require a contestable process
 - e. ensuring that the regulation empowering provision specifies the method by which any subsequent fees or charges are to be calculated
 - f. clarifying transitional provisions relating to existing permits for the area
 - g. enabling Te Kāhui to provide recommendations on funding for the next 20-year period in light of the findings of the independent review report
 - h. removing reference to a vision for the sanctuary.
4. A formal assessment of the sanctuary against the International Union for Conservation of Nature (IUCN) protected area guidelines has been undertaken by officials. Officials assess

that the sanctuary, as proposed in the SOP, will contribute to global protection goals and targets and best aligns with IUCN Category 1b (Wilderness Area) protected area.

Te Ohu Special General Meeting and feedback on draft SOP/Agreement

5. As you are aware, Te Ohu has rescheduled its Special General Meeting (SGM) to 13 June 2023 for mandated iwi organisations (MIOs) to consider and vote on the revised proposal to amend the Kermadec Ocean Sanctuary Bill (the Bill). The draft Cabinet paper has been prepared on the basis that a positive outcome will result at the SGM.
6. In April, we provided the draft SOP and associated Agreement between Te Ohu and the Crown to Te Ohu representatives for discussion purposes. Te Ohu's feedback centred on two matters: removal of reference to the vision from the SOP and Agreement, and its preference that the chair rotate between the two quota holders whose interests are directly affected (Te Ohu and the Crown).

Chair rotation for Te Kāhui

7. s 9(2)(g)(i) [Redacted]
8. We note the SOP provides for Te Ohu to be first and last chair, leading up to the 20-year review.
9. s 9(2)(g)(i) [Redacted]
10. s 9(2)(g)(i) [Redacted]

Sharing the draft SOP and Agreement, Cabinet paper

11. Te Ohu has requested to share the draft Agreement and SOP with MIOs before its SGM.
12. A limited purpose waiver of privilege to release the draft SOP to representatives of Te Ohu, Ngāti Kuri and Te Aupōuri was granted by you as Attorney-General on 9 December 2022, with the express condition that the SOP was not shared with MIOs. We seek your approval for the draft Agreement to be shared with MIOs and for officials to request a further waiver be prepared by Crown Law to allow the SOP to be shared with MIOs for purposes of the SGM discussion.

13. To date the current draft SOP has not been shared with Ngāti Kuri and Te Aupōuri, s9(2)(g)(i). Given the delays in holding this hui, and Te Ohu's request for the broader sharing of the SOP, we seek your approval to do so now.
14. Te Ohu has also requested that we provide it with the draft Cabinet paper. We seek your approval to provide Te Ohu a redacted version of the Cabinet paper (ie, the policy content only) before Te Ohu's SGM.

Timeline and next steps following the SGM

15. To enable the Bill to be enacted this parliamentary term, we suggest that the Cabinet paper is lodged on 15 June for consideration by ENV Cabinet Committee on 22 June. Given the timing of the Te Ohu SGM, consultation with Ministers could occur on the assumption that no changes result from the SGM, with an oral update provided to the Committee.
16. If MIOs do not vote in support of the proposal, it is unlikely that the Te Ohu Board will publicly support the SOP being progressed or enter into the Agreement with the Crown. A decision will be required as to whether to proceed to a second reading of the Bill and introduction of the SOP without the express support of Te Ohu. We suggest you discuss this with your colleagues during Ministerial consultation. We will provide further advice post-SGM as needed.
17. If further time is required, the paper could be lodged on 22 June for consideration by LEG on 29 June.

Recommendations

18. We recommend that you:
- a. **Note** that officials will consult with your office on the lodgement date once the outcome of the Te Ohu SGM on 13 June is known
 - b. **Note** that if MIOs do not vote in favour of the revised proposal at Te Ohu's SGM, a decision will be required as to whether to progress the Bill in the absence of Te Ohu's express support
 - c. **Note** that the sanctuary, as proposed in the SOP, is assessed as contributing to global protection goals and targets as an International Union for Conservation of Nature (IUCN) Category 1b (Wilderness Area) protected area
 - d. **Agree** that the chair of Te Kāhui is to rotate between
 - i. s 9(2)(g)(i)

Yes/No

OR

ii. s 9(2)(g)(i)

Yes/No

OR

iii. s9(2)(g)(i)

Yes/No

e. s9(2)(g)(i)

Yes/No

f. **Agree** that Te Kāhui is required to try to reach decisions by consensus but, if that is not possible, the chair can authorise decision-making by simple majority

Yes/No

g. **Agree** that the requirement that contracts entered into by Te Kāhui on a contestable process relate to reports and Crown-funded research

Yes/No

h. **Agree** that the regulatory empowering provision to specify the method by which fees and charges must be calculated, consistent with the wording of section 144 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Yes/No

i. **Agree** that transitional provisions relating to marine scientific research already being conducted in the sanctuary area when the Ngā Whatu-a-Māui Act comes into force also apply to special permits granted under sections 97(1)(a)(i), (ii) and (iv) of the Fisheries Act 1996 and research permits granted under the Marine Mammals Protection Act 1978 and the Wildlife Act 1953

Yes/No

j. **Agree** that no special permit may be granted under the Fisheries Act to conduct research in the sanctuary area on any fish stocks that are subject to a suspension on fishing under the Ngā Whatu-a-Māui Act

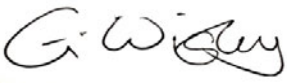



Yes/No

k. **Agree** that Te Kāhui is to provide recommendations on funding for the next 20-year period in light of the findings of the independent review report

Yes/No

- l. **Agree** that the SOP remove express reference to a vision relating to the sanctuary
Yes/No
- m. **Agree** that Te Ohu be permitted to share the draft Agreement with MIOs
Yes/No
- n. **Agree** that officials request advice from Crown Law on preparing a further waiver for submission to the Attorney-General to enable Te Ohu to share the draft SOP with MIOs
Yes/No
- o. **Agree** that officials provide the draft SOP to Ngāti Kuri and Te Aupōuri, in accordance with the limited purpose waiver of 9 December 2022
Yes/No
- p. **Agree** that officials provide a redacted version of the draft Cabinet paper to Te Ohu prior to Te Ohu's SGM
Yes/No

Signature

Glenn Wigley Director, Waste and Resource Efficiency - Regulatory and Policy Ministry for the Environment	
Ruth Isaac Deputy Director-General, Strategy and Policy Department of Conservation	
Dan Bolger Deputy Director-General Fisheries New Zealand	
Warren Fraser Deputy Chief Executive, Strategy, Policy and Legal Office for Māori Crown Relations: Te Arawhiti	
Hon David PARKER Minister for the Environment	Date:

Purpose

1. This briefing provides you with a revised draft Cabinet paper: *Approval to a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill* and supporting material and seeks your decisions on several minor amendments identified during drafting of the SOP and following a review by Te Ohu representatives.

Context

2. The draft SOP incorporates policy changes to the Bill approved by the Cabinet Business Committee on 6 October 2021 [CBC-21-MIN-0111 refers], and the Cabinet Environment, Energy and Climate Committee on 31 March 2022 [ENV-22-MIN-0014 refers], together with further policy decisions [BRF-2006 refers].
3. Given Cabinet did not approve the further policy decisions, as this power was previously delegated to you in your capacity as Minister for Oceans and Fisheries [CBC-21-MIN-0111 refers], it is appropriate that a policy-focused committee take decisions on the Cabinet paper (although, if necessary, the Cabinet paper could be considered by the Cabinet Legislation Committee). This will allow for a greater level of policy scrutiny.
4. As you are aware, Te Ohu's SGM for MIOs to consider and vote on the revised proposal, scheduled for 11 May, was postponed due to weather conditions at that time making travel difficult. It has now been notified for 13 June. Given the Cabinet paper should ideally be lodged on 15 June, ahead of ENV on 22 June, this delay impacts on the ability of officials to reflect the outcome and feedback from the SGM in the draft Cabinet paper.
5. If MIOs do not vote in favour of the revised proposal at the SGM, it is unlikely that the Te Ohu Board will support the SOP or sign the associated Agreement. s 9(2)(h)
[REDACTED]
6. A decision will be required as to whether the Government will seek to progress the Bill without Te Ohu's express support. s9(2)(g)(i)
[REDACTED]
We will provide further advice post-SGM as needed.

Additional drafting matters

7. In drafting the SOP, several additional minor policy decisions have been identified as necessary to clarify aspects of Bill:

Chair rotation

8. Cabinet agreed that the chair for Te Kāhui was to rotate between two groupings – Crown and iwi/Māori [CBC-21-MIN-0111 refers] (see SOP, clause 26C).

9. You previously agreed that Te Kāhui is to comprise a total of ten members, with four members each to be appointed by the Crown and Te Ohu and one member each to be appointed by Ngāti Kuri and Te Aupōuri [BRF 2006 refers]. s 9(2)(g)(i)

10. s 9(2)(g)(i)

11. s 9(2)(g)(i)

12. s 9(2)(g)(i)

13. s9(2)(g)(i)

14. s 9(2)(g)(i)

15. s 9(2)(g)(i)

Fall back option for decisions by simple majority

16. We propose that Te Kāhui be required to try to reach decisions by consensus but, if that is not possible, the chairperson can authorise decision-making by simple majority (SOP, clause 26D(3)).
17. This is intended to ensure Te Kāhui works as a group to take decisions, but to have a mechanism in place to avoid a deadlock. The SOP provides that Te Kāhui will determine its own procedures regarding quorum and proxy votes of members.
18. Te Ohu has expressed comfort with this change on the basis that the chair does not retain a casting vote (this provision had earlier been removed from the SOP).

Contracting processes

19. Te Kāhui is required to award all contracts on a contestable basis (SOP, clause 26). For clarity, we propose that this applies solely to the reports and Crown-funded research commissioned by Te Kāhui and not administrative services such as legal advice, catering, or printing.

Cost recovery provisions

20. The SOP provides for the making of regulations to enable the recovery of costs by the Director-General of Conservation, the Environmental Protection Authority, or the chief executive of the Ministry for Primary Industries, not otherwise appropriated for by Parliament, by applicants and permit holders under this Act in connection with the performance of the relevant functions by those bodies (SOP, clause 27(2)(b)). We propose that the empowering provision also specify the method by which costs are to be calculated,¹ consistent with the wording of section 144 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.² At present, the provision refers to hourly charges.

Transitional provisions for marine scientific research

21. The SOP retains transitional provisions specified in the original Bill that apply to permits for marine scientific research in the sanctuary area when the Act comes into force. A one-year grace period is provided for this research to be completed. For clarity, we now

¹ This change complies with the Legislative Design and Advisory Committee's 2021 Legislation Guidelines.

² Section 144 states that costs may be recovered by one or more of the following methods:

- a. fixed charges
- b. charges based on a scale or formula or at a rate determined on an hourly or other unit basis
- c. charges for actual and reasonable costs spent in or associated with the performance of a function or service
- d. estimated charges, or charges based on estimated costs, paid before the performance of the function or service, followed by reconciliation and an appropriate further payment or refund after performance of the function or service
- e. refundable or non-refundable deposits paid before performance of the function or service.

propose that the transitional provisions apply to all research, including fisheries research being conducted pursuant to special permits under sections 97(1)(a)(i), (ii), and (iv) of the Fisheries Act 1996 (SOP, Schedule 1, Part 1, clause 2A) and permits granted under the Marine Mammals Protection Act 1978 and the Wildlife Act 1953.

Special permits under the Fisheries Act

22. We also propose adding new provisions (SOP, clauses 9D and 9E) to ensure no researcher can apply to the Chief Executive of the Ministry for Primary Industries for a special permit under the Fisheries Act to conduct research in the sanctuary area on any fish stocks that are subject to a suspension on fishing under the Bill. This prohibition would cease to apply if a fish stock was permitted to be fished following any decision on QMA 10 fisheries following an initial 20-year period.

Funding

23. Funding decisions for the sanctuary are outlined in the draft Cabinet paper attached (see paragraphs 32-34).
24. Te Ohu representatives (during their review of the draft SOP and Agreement) have sought greater certainty about future funding beyond the first 20 years. To address this, we recommend making it explicit in the SOP that Te Kāhui can provide recommendations on funding as part of the 20-year review report. We consider that there is merit in Te Kāhui offering its views on funding in light of the findings of the independent review report, without binding the Crown.

Vision

25. Proposed changes to the SOP and Agreement relating to the vision are set out below.

Legal personhood

26. Te Kāhui is tasked with producing a report to the Minister of Conservation and the Minister for Māori Crown Relations: Te Arawhiti (the Ministers) with recommendations on the suitability of legal personhood being conferred on the sanctuary, with the Crown required to respond to such report within two years (SOP, clauses 24(1)(i), (2)). Te Ohu has signalled some disquiet about such a report, even though this matter was agreed to at their request, given uncertainty about how legal personhood would impact on subsequent application of the Fisheries Act (post-review decisions). No change to the current wording of the SOP has been requested or proposed at this time.

Agreement between Te Ohu and the Crown

27. The revised draft Cabinet paper (appendix 1) and draft Agreement (appendix 2) address the outcome of the Quota Management Area 10 (QMA 10) and Annual Catch Entitlement (ACE) discussions between officials and Te Ohu and reflect your decisions on this matter [BRF 2790 refers].

28. The current draft Agreement (note we are still iterating this with Te Ohu representatives) contains:
- a. the parties' agreement not to exercise use of their respective QMA 10 annual catch entitlements and quota for at least the initial 20 years
 - b. the process for any review of the total allowable catch limits for QMA 10 fish stocks under the Fisheries Act [BRF 2790 refers]
 - c. the Department of Conservation and Te Ohu providing joint secretariat support to Te Kāhui in the exercise of its functions
 - d. the intention of Te Ohu (on behalf of iwi) to withdraw its litigation regarding the establishment of the sanctuary
 - e. the Crown and Te Ohu to reserve their respective positions on the creation of marine protected areas in New Zealand's Exclusive Economic Zone and the ability of any such areas to affect existing rights and interests.

Request from Te Ohu to remove reference to the 'vision' from SOP and Agreement

29. A vision/narrative for Ngā Whatu-a-Māui was developed by a Te Ohu-initiated wānanga of iwi representatives in July last year. Te Ohu has recently signalled a preference that reference to the vision be removed from the SOP and the Agreement, due to concerns (in the lead up to the SGM) that there is insufficient buy in from iwi for this to be adopted and uncertainty as to its application.
30. Currently, the SOP provides a function for Te Kāhui to assume custody of the vision and publish it on a publicly accessible website (SOP, clause 24C). Te Ohu notes it would be comfortable with Te Kāhui developing the vision if a mandate is obtained from iwi (presumably at the Te Ohu SGM) but suggest this may occur regardless of reference to the vision in Agreement or the SOP.
31. We recommend removing reference to the vision from the SOP (as currently drafted) and the Agreement. Should the need for a vision arise, the SOP provides for Te Kāhui and the Minister of Conservation to agree in writing to new functions being undertaken by Te Kāhui (SOP, clause 24(3)).
32. We will provide an update on the state of discussions on the Agreement prior to lodgement of the Cabinet paper. If needed, there is the potential that the Agreement is entered into after enactment of the Bill. However, we recommend it is signed before the Bill is enacted.

Assessment of Sanctuary against the IUCN protected area guidelines

33. A formal assessment of the sanctuary against the International Union for Conservation of Nature (IUCN) protected area guidelines has been undertaken by officials. The Marine

Protected Area Science Advisory Group (Advisory Group)³ reports that the sanctuary, as proposed in the SOP, will contribute to global protection goals and targets and best aligns with IUCN Category 1b (Wilderness Area) protected area.⁴ The sanctuary, however, will not fully meet New Zealand's contribution to global targets.

34. The Advisory Group also noted that future changes to management settings could change the alignment of the sanctuary with the IUCN Protected Areas Categories. The Advisory Group recommends that a re-evaluation of the sanctuary occur as part of the 20-year review. This could be done once future management settings have been confirmed, or at any time when significant changes are made to management settings in the interim period.

Te Ohu seeking to share the SOP and draft Agreement with MIOs

35. Te Ohu has requested permission to share the draft Agreement and SOP with MIOs. A limited purpose waiver of privilege to release the draft SOP to representatives of Te Ohu, Ngāti Kuri and Te Aupōuri was granted by you as Attorney-General on 9 December 2022, with the express condition that the SOP was not shared with MIOs.

36. We seek your approval for the draft Agreement to be shared for this purpose and for officials to request advice on a further waiver of privilege be prepared by Crown Law to allow the SOP to be shared with the 58 MIOs prior to Te Ohu's SGM. s 9(2)(g)(i)

37. s 9(2)(g)(i)

39. Officials also propose that the SOP be shared with Ngāti Kuri and Te Aupōuri representatives (Harry Burkhardt and Peter-Lucas Jones), pursuant to the waiver of

³ A marine science advisory group dealing with issues relating to marine protected areas. The group is led by DOC and supported by marine scientists from the Ministry for the Environment and the Ministry for Primary Industries.

⁴ While there is currently no *obligation* under the Convention on Biological Diversity to apply guidance on marine protected areas from the IUCN for national reporting, the Convention does *encourage* countries to apply the IUCN guidance.

9 December 2022. s 9(2)(g)(i)

40. In addition, Te Ohu has requested that we provide it with the draft Cabinet paper. We seek your approval to provide Te Ohu a redacted version of the Cabinet paper (the policy content only) before Te Ohu's SGM.

Next steps

41. Following your decisions and feedback on the attached documents in the appendices, we will provide further instructions to the Parliamentary Counsel Office (PCO) for further amendments to the SOP and provide your office with an updated Cabinet paper for Ministerial consultation.
42. To enable the Bill to be enacted this term, we recommend that you consult with your Ministerial colleagues on the draft Cabinet paper assuming a positive outcome from Te Ohu's SGM and on options should this not eventuate.
43. Following the outcome of the SGM on 13 June we will provide you with an update on the MIO's vote, an updated draft Cabinet paper, SOP and the Final RIS for lodging on 15 June.
44. Alternatively, we can provide further advice on the range of options the Crown could take if matters remain unresolved following the Te Ohu SGM, in a timeframe that allows for the draft Cabinet paper to be lodged on 15 June 2023, for ENV Cabinet Committee on 22 June or lodged on 22 June for LEG on 29 June.
45. Following Cabinet decisions, sitting dates of 18th-20th and 25-27th July provide the earliest opportunity to progress to a second reading of the original Bill and introduction of the SOP in the House.
46. The revised departmental disclosure statement for the Bill, incorporating any changes, will be provided to PCO for publication on introduction of the SOP to the House.
47. We will provide the draft *Final Regulatory Impact Statement: Ngā Whatu-a-Māui (formerly Kermadec) Ocean Sanctuary* to your office in the week of 5 June, to be finalised post-SGM.
48. We will continue to work with Te Ohu to finalise the draft Agreement and prepare for the parties to sign prior to the House considering the Bill in July.

The CA is the only one of its kind in the world. It is a unique and important part of the New Zealand legal system. The CA is a court of final appeal and its decisions are binding on all other courts. The CA is a court of final appeal and its decisions are binding on all other courts.

Appendix 1: Revised Draft Cabinet paper: Approval to amend the Kermadec Ocean Sanctuary Bill through a supplementary order paper

Appendix 2: Draft Agreement between the Crown and Te Ohu Kaimoana

Appendix 3: Revised Departmental Disclosure Statement for the Kermadec Ocean Sanctuary Bill

In Confidence – Litigation Privilege

Office of the Minister for the Environment

Cabinet Environment, Energy and Climate Committee

Approving a supplementary order paper to amend the Kermadec Ocean Sanctuary Bill

Proposal

- 1 This paper seeks approval to introduce a supplementary order paper (SOP) to amend the Kermadec Ocean Sanctuary Bill 2016 (the Bill) and authorisation to finalise and enter into an associated Agreement with Te Ohu Kaimoana (Te Ohu) on behalf of the Crown.

Context

- 2 The Kermadec/Rangitāhua region is of national and global significance of about 620,000 square kilometres around the Kermadec Islands, with significant biodiversity values present.
- 3 A Bill to create an ocean sanctuary in the Kermadec/Rangitāhua region, the Kermadec Ocean Sanctuary Bill, has been before the House of Representatives since 2016, and is awaiting second reading following report back with recommended amendments from the (then) Local Government and Environment Committee.
- 4 The Bill reported back by the Select Committee fails to appropriately recognise the unique nature of Quota Management Area 10 (QMA 10) quota held by the Crown and by Te Ohu, as trustee for iwi beneficiaries, not being able to be fished anywhere else.
- 5 I have engaged with Te Ohu, as well as Ngāti Kuri, Te Aupōuri and, to a lesser extent, Ngāi Takoto, to establish a sanctuary, as proposed in the SOP, in a manner that meets the Crown's Treaty of Waitangi/Te Tiriti o Waitangi commitments, including those arising from the 1992 Fisheries Settlement between the Crown and iwi/Māori, while contributing to global ocean protection goals and targets.
- 6 In October 2021, the Cabinet Business Committee approved policy changes [CBC-21-MIN-0111 refers] and in March 2022, the Cabinet Environment, Energy and Climate Committee approved additional changes [ENV-22-MIN-0014 refers]. I have made further changes in accordance with the authority delegated to me as then Minister for Oceans and Fisheries and subsequently as Minister for the Environment [CBC-21-MIN-111 refers]. The SOP (Appendix 1) incorporates these changes.
- 7 The sanctuary, as proposed in the SOP, is assessed as aligning with International Union for Conservation of Nature (IUCN) guidelines as a Category 1b (Wilderness Area) marine protected area.
- 8 Te Ohu has scheduled a Special General Meeting (SGM) on 13 June 2023 for the 58 mandated iwi organisations, who hold fisheries assets through the Māori Fisheries Act

2004, to consider and vote on the revised proposal. [I will provide the Committee with an oral update on the outcome of this meeting or outcome to be inserted].

Policy

- 9 I propose that the SOP makes the following key changes to the Bill (paras 10-27 below).

New name of the Act and sanctuary: Ngā Whatu-a-Māui Ocean Sanctuary

- 10 The name of the Bill and sanctuary is changed from the Kermadec Ocean Sanctuary to the Ngā Whatu-a-Māui Ocean Sanctuary. The name was proposed at a wānanga (meeting) in July 2022 initiated by Te Ohu and attended by iwi representatives from around the country. Ngā Whatu-a-Māui refers to the legacy of Māui and the area being the highway for the tūpuna (ancestors) of all Māori. 'Ngā whatu' refers to the rāhui stone (used to protect places) and also knowledge stored in receptacles.

Revised purpose of the Act

- 11 The purpose of the Ngā Whatu-a-Māui Act (the Act) is amended to recognise:
- 11.1 Māori rights and interests, including those relating to fisheries interests and the association of Ngāti Kuri and Te Aupōuri to Rangitāhua/the Kermadec Islands and adjoining marine reserve
 - 11.2 the significance of the area, including for purposes of research, and the sharing of knowledge.

Fishing activity is suspended not prohibited

- 12 Commercial fishing permits and recreational fishing in the sanctuary are suspended.¹ As part of a review of the operation of the sanctuary, every 20 years the Crown and Te Ohu, acting in good faith, can independently decide on the future use of their respective annual catch entitlements for QMA 10 fish stocks (after first using best endeavours to agree on future use).² The Crown is bound to give effect to any decision by Te Ohu. Separately, and at the same time, the Crown must make a determination about the future of other fishing suspended by the sanctuary (besides fishing for QMA 10 stocks) – for example, fishing for highly migratory species like tuna, and recreational fishing.
- 13 Customary non-commercial fishing rights are not affected (they continue to operate under customary fisheries regulations made under the Fisheries Act 1996).
- 14 These measures are designed to:
- 14.1 give effect to the agreement of Te Ohu (on behalf of iwi) and the Crown not to use their annual catch entitlements for QMA 10 fish stocks for at least 20 years

¹ The Bill introduced to Parliament in 2016 prohibited all forms of fishing in the sanctuary, in perpetuity.

² QMA 10 encompasses the area of the sanctuary and adjoining marine reserve around the Kermadec Islands. The future use of QMA 10 fish stocks relates to the sanctuary area only.

- 14.2 protect Māori fisheries rights and the integrity of the 1992 Fisheries Settlement, reflecting the unique nature of the commercial fisheries rights in QMA 10 that have been allocated to Te Ohu on behalf of iwi.

Creation of new entity: Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui)

- 15 A new entity is created, Te Kāhui o Ngā Whatu-a-Māui (Te Kāhui). Its functions will include:
- 15.1 developing a Crown-funded 20-year research plan for the sanctuary
 - 15.2 commissioning research
 - 15.3 commissioning specific reports, including an independent review on the operation of the sanctuary every 20 years
 - 15.4 providing recommendations on the independent review report
 - 15.5 commissioning a report on legal personhood for the sanctuary, with the Crown required to respond to the report
 - 15.6 participating in an international outreach programme.
- 16 In exercising its functions, Te Kāhui must give effect to principles of Te Hā o Tangaroa, as described in the Bill. These principles relate to the use and protection of the oceans (of Tangaroa).
- 17 Te Kāhui will be made up of four Crown appointees, four Te Ohu appointees, and one appointee each made by Ngāti Kuri and Te Aupōuri.
- 18 The chair of Te Kāhui is to rotate every 2.5 years between Crown and Te Ohu/iwi appointees s9(2)(f)(iv) and s9(2)(j)
- 19 No changes are proposed to the Conservation Board responsible for the Kermadec Islands and existing adjoining marine reserve.³ Te Kāhui will have a function to liaise with this board in relation to the sanctuary area.

Prohibited activities

- 20 The Bill is amended to align with the effects-based approach of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). As a result, the Bill prohibits activities that adversely affect the seabed and water column and does not expressly refer to mining activities or seismic surveys. Specific prohibitions to mining activities will take place through consequential amendments to both the Crown Minerals Act 1991 and the EEZ Act.

³ The Kermadec Islands Marine Reserve, established in 1990, extends out 12 nautical miles from the Kermadec Islands.

Crown-funded research plan to be developed by Te Kāhui

- 21 The Bill provides for a 20-year Crown-funded research plan. Te Kāhui is required to develop the plan. The Bill sets out the broad scope of the research plan, which encompasses:
- 21.1 characterising aquatic life
 - 21.2 monitoring changes in the abundance and distribution of aquatic life, including fish stocks (to inform future decisions about the viability of any fishery in the area)
 - 21.3 changes in oceanographic processes, including those associated with climate change
 - 21.4 characterising the association of aquatic life with geological features
 - 21.5 research on cultural heritage in relation to the sanctuary.
- 22 The research plan is an investment in broadening our understanding of the sanctuary area and will inform the 20-year review of the operation of the sanctuary.
- 23 Te Kāhui will undertake 5-yearly progress reports on the research plan and an interim review at 10 years. Having considered the research undertaken, Te Kāhui may change the research plan to give effect to the 10-year review findings.

Removal of 'no compensation' provision

- 24 The Bill, as introduced, prohibited claims for compensation. This provision has been removed. As a matter of general principle, parties should have the ability to pursue legal claims for any loss, damage, or adverse effect on rights or interests arising from decisions by the Crown.
- 25 By entering into an associated Agreement with the Crown (refer para 28), Te Ohu would withdraw its current litigation relating to the Bill. There has been limited commercial fishing in the area over the last decade. Fishing for migratory fish species such as tuna can occur in other areas in the exclusive economic zone (EEZ) and on the adjacent high seas.

- 26 s9(2)(f)(iv) and s9(2)(j)

Joint administration of the Act by the Department of Conservation and the Office for Māori Crown Relations: Te Arawhiti

- 27 The Department of Conservation (DOC) and the Office for Māori Crown Relations: Te Arawhiti will jointly administer the Act. The addition of Te Arawhiti here is a concession to Te Ohu and mandated iwi organisations who sought this and other measures of assurance that Crown actions under the new legislation would remain cognisant of Māori interests and perspectives. DOC and Te Arawhiti will work through how joint administration will work, including as to matters of cost.

Associated agreement between the Crown and Te Ohu

- 28 In conjunction with the Bill, I propose the Crown enters into an associated Agreement with Te Ohu (Appendix 2) prior to enactment of the Bill or following if necessary. The Agreement records the good faith endeavours of the parties regarding the establishment and operation of the sanctuary, as reflected in the Bill, and does not create legal obligations. The Agreement includes:
- 28.1 the parties' agreement not to exercise use of their respective QMA 10 annual catch entitlements and quota for at least the initial 20 years (noting that the SOP provides for a review of this agreement at 20 years)
 - 28.2 the parties' agreement that at the 10-year review of the research plan, or subsequently at 15 and 20 years, consideration of the best available information is used to determine whether a review of the total allowable catch limits for QMA 10 fish stocks is warranted under the Fisheries Act.. If the Minister responsible for Fisheries elects to increase the total allowable catch of a QMA 10 fish stock, the Crown and Te Ohu are to discuss the impact on existing rights and interests, including the value of annual catch entitlements for the fish stock in question
 - 28.3 DOC and Te Ohu providing joint secretariat support to Te Kāhui in the exercise of its functions
 - 28.4 the intention of Te Ohu (on behalf of iwi) to withdraw its litigation regarding the establishment of the sanctuary
 - 28.5 the Crown and Te Ohu to reserve their respective positions on the creation of marine protected areas in New Zealand's EEZ and the ability of any such areas to affect existing rights and interests.
- 29 Cabinet authorised the then Minister for Oceans and Fisheries, in consultation with the Minister of Conservation, and the Minister for Māori Crown Relations: Te Arawhiti, to prepare a draft Agreement [CBC-21-MIN-0111]. I will consult with these Ministers on the final draft. I seek authorisation to enter into the Agreement on behalf of the Crown.

Management of Rangitāhua/the Kermadec Islands

- 30 During engagement with iwi on the revised proposal for the sanctuary, Ngāti Kuri sought delegated authority, together with Te Aupōuri, for the management of the Kermadec Islands Nature Reserve and surrounding existing marine reserve. s
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2)
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- 31 s9(2)(f)(iv)

Financial implications

- 32 Cabinet previously agreed [CBC-21-MIN-0111 refers] that funding for implementing the sanctuary would be provided through:

- 32.1 the Between-Budget Contingency in 2021/22 for DOC support secretariat costs (\$3.772m) and Te Kāhui costs (\$4.923m) for the full first 20 years, and
 - 32.2 the Natural Resource Cluster Budget 2022 for Te Kāhui research fund, agency compliance, monitoring, and enforcement, and permitting of marine scientific research for the financial years 2022/23 to 2025/26.
- 33 Budget 2022 secured \$14.57m for Vote Conservation: Implementation of marine protection and localised management actions, which included \$9.317m (OPEX) and \$2.523m (CAPEX) allocated to the sanctuary. Budget 2022 also secured \$1.536m under Vote Environment for compliance, monitoring and enforcement activities undertaken by the Environmental Protection Authority in relation to marine science research for the 2021/22-2025/26 financial years and \$0.385m for outyears.
- 34 I note the Minister of Conservation has agreed to transfer the remaining \$2.732m, initially secured for Southeast Marine Protection and Sea Change (Hauraki Gulf), to ensure delivery of the new elements of the amended Bill. This reflects policy decisions taken after the Budget process and added responsibilities for DOC outlined in this paper, including a joint secretariat function (for Te Kāhui) to be shared between DOC and Te Ohu and the requirement for Te Kāhui to provide a report on legal personhood for the sanctuary within the first 5 years.

Impact analysis

- 35 A Regulatory Impact Statement (RIS) was prepared for the Bill as introduced in 2016. An updated interim RIS was provided to Cabinet in October 2021. A Final RIS is attached at Appendix 3.
- 36 The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Final RIS. The panel considers the document meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the strengths and weaknesses of the options available and provides a convincing analysis of the reasons for the proposed changes to the Bill.

Climate Implications of Policy Assessment

- 37 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met.

Compliance

- 38 I consider that the proposed legislative amendments in the SOP comply with:
- 38.1 the principles of the Treaty of Waitangi
 - 38.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 38.3 the disclosure statement requirements. A revised disclosure statement for the Bill, with the SOP amendments incorporated, is attached to this paper at Appendix 4
 - 38.4 the principles and guidelines set out in the Privacy Act 2020

- 38.5 relevant international obligations and commitments, including the United Nations Convention on the Law of the Sea and the Convention on Biological Diversity
- 38.6 the Legislation Guidelines (2021 edition) which are maintained by the Legislation Design and Advisory Committee, with one variation. The Bill contains a so-called ‘Henry VIII’ provision enabling the suspension of fishing rights created by statute to be amended or revoked by Order in Council. This approach is central to maintaining the integrity of the 1992 Fisheries Settlement. The Legislative Design and Advisory Committee consider that “this appears to be one of those relatively rare occasions where the inclusion of a Henry VIII provision is an important part of the policy being presented to Parliament, in that it signals that the suspension of rights under the Bill is founded on mutual agreement”.

Consultation

Departmental consultation

- 39 This paper was prepared by the Ministry for the Environment together with the Department of Conservation, the Office for Māori Crown Relations: Te Arawhiti, and the Ministry for Primary Industries/Fisheries New Zealand.
- 40 Other agencies consulted during the development of the policy proposals to amend the Bill and this paper include: the Crown Law Office, the Treasury, the Environmental Protection Authority, the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of Transport, Maritime New Zealand, the Ministry of Defence, the New Zealand Defence Force, Land Information New Zealand, and Te Puni Kōkiri. The Department of Prime Minister and Cabinet was informed.
- 41 The Public Service Commission was consulted about the nature of the entity established by the Bill, Te Kāhui. Guidance was sought from the Legislative Design and Advisory Committee on proposed amendments to the Bill, which resulted in refinement to the process for reviewing the sanctuary every 20 years. The Cabinet Office was consulted on definitions in the Bill.
- 42 I have consulted with those Ministers whose portfolios are impacted by the Bill, including the Minister of Conservation, the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Energy and Resources, the Minister of Foreign Affairs, and the Minister for Māori Development.

External engagement

- 43 Cabinet agreed to targeted engagement on the revised Bill with the parties most affected by the proposed sanctuary [CBC-21-MIN-0111 refers].
- 44 Following the mandate provided by Labour’s Māori Manifesto 2020⁴ a partnership approach between the Crown and Te Ohu has underpinned work to develop the revised proposal to amend the Bill. Ministers for the Environment, Oceans and Fisheries, Conservation, and Te Arawhiti - Māori Crown Affairs have engaged with Te Ohu representatives to progress work on the revised proposal. The Prime Minister,

⁴ The manifesto states a commitment to “build on the work we have undertaken with Te Ohu Kaimoana and Māori to resolve the outstanding issues surrounding the Kermadecs”.

Ministers, and Te Ohu representatives met on 21 July 2021. Working groups of officials⁵ and representatives from Te Ohu have engaged extensively to develop and agree principles underlying the revised proposal. Te Ohu has engaged with mandated iwi organisations to socialise the revised proposal and convey feedback to officials.

- 45 Engagement with Ngāti Kuri and Te Aupōuri has been ongoing over the past two years and included sharing the revised proposal (together with supporting materials), and the exposure draft of the SOP. Meetings were conducted with Ministers and officials to discuss progress on the Bill, the aspirations of these iwi for the sanctuary, and their feedback with respect to the materials shared.
- 46 Additionally, a copy of the exposure draft and summary of the revised proposal was provided to NgāiTakoto. Meetings were held to discuss feedback and the interests of NgāiTakoto in the sanctuary, however this engagement was less extensive than that conducted with Ngāti Kuri and Te Aupōuri.
- 47 Good faith engagement with Te Ohu, Ngāti Kuri, and Te Aupōuri has resulted in substantive policy changes to provide for recognition of Māori rights and interests, in particular those recognised in the 1992 Fisheries Settlement and the association of iwi with the area. Not all changes proposed by Ngāti Kuri and Te Aupōuri, however, have been addressed, as some of these did not align with measures agreed by the Crown and Te Ohu.
- 48 I took the decision not to engage with other affected fishing interests given that their position is not substantively altered by the proposed amendments to the Bill.

Binding on the Crown

- 49 The Bill, as reported back by Select Committee, will bind the Crown. The amendments to the Bill proposed in the SOP attached as Appendix 1 would bind the Crown.

Associated regulations

- 50 The Bill enables the making of regulations for a range of administrative matters, mostly relating to the Bill's marine scientific research permitting regime.

Other instruments

- 51 The proposed amendments in the SOP will enable the making of Orders in Council to remove, amend, or reinstate the suspension of fishing. As a consequence of any such Orders in Council, changes under the Fisheries Act 1996 to fishing permits, deemed values and cost recovery levies may be made.

Definition of Minister/department

- 52 The Bill contains a definition of the Minister, the Director-General of Conservation and the Environmental Protection Authority. The SOP amends the definition of Minister.

⁵ In 2020, an interagency officials' group was formed, led by the Ministry for the Environment, with officials from the Department of Conservation, the Ministry for Primary Industries/Fisheries New Zealand, the office for Māori Crown Affairs – Te Arawhiti, and the Ministry for Foreign Affairs and Trade.

Commencement of legislation

53 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

54 A Bill to establish the Kermadec Ocean Sanctuary was introduced in the House on 8 March 2016. The Select Committee reported back on 22 July 2016. The Bill awaits its second reading.

55 The process to amend and enact the Bill has previously been agreed by Cabinet [CBC-21-MIN-0111 refers]:

55.1 the Kermadec Ocean Sanctuary Bill, with the 2016 Select Committee recommendations, will be progressed to a second stage reading, with the Government voting in support of the recommendations

55.2 the proposed amendments to the Bill will be introduced through the SOP attached as Appendix 1 and considered by the Committee of the whole House

55.3 the Bill will then be progressed to a third reading and enactment.

56 The Bill holds a category 3 priority on the Legislation Programme (to be passed if possible before the 2023 general election).

Proactive Release

57 I propose to release this paper proactively on the Ministry for the Environment's website after the SOP is introduced in the House, subject to any redactions as are appropriate under the Official Information Act 1982.

Recommendations


The Minister for the Environment recommends that the Committee:

0 **Note** that the Kermadec/Rangitāhua region is of national and global significance of about 620,000 square kilometres around the Kermadec Islands (the Islands), with significant biodiversity values present

1 **Note** that a Bill to create an ocean sanctuary in the Kermadec/Rangitāhua region, the Kermadec Ocean Sanctuary Bill (the Bill) has been before the House of Representatives since 2016, and is awaiting second reading following report back with recommended amendments from the (then) Local Government and Environment Committee (the Select Committee)

2 **Note** that the Bill reported back by the Select Committee fails to appropriately recognise the unique nature of fishing rights in the Kermadec/Rangitāhua region, with QMA 10 quota held by the Crown and by Te Ohu Kaimoana (Te Ohu), as trustee for iwi beneficiaries, not being able to be fished anywhere else

3 **Note** that it is a priority, in establishing the sanctuary, that the Crown's Treaty of Waitangi/Te Tiriti o Waitangi commitments, including those arising from the 1992 Fisheries Settlement between the Crown and iwi/Māori are met and the sanctuary contributes to global ocean protection goals and targets

- 4 **Note** that policy changes to the Bill were approved by the Cabinet Business Committee on 6 October 2021 [CBC-21-MIN-0111 refers], and the Cabinet Environment, Energy and Climate Committee on 31 March 2022 [ENV-22-MIN-0014 refers]
- 5 **Note** that further policy changes have been made by the Minister for the Environment, following consultation with Ministerial colleagues, in accordance with the authority granted by the Cabinet Business Committee [CBC-21-MIN-111 refers]
- 6 **Note** that targeted engagement on an initial exposure draft of the revised Bill occurred in May 2022 with Te Ohu, Ngāti Kuri, Te Aupōuri and, to a lesser extent, Ngāi Takoto, with subsequent discussions leading to the further policy changes to the Bill
- 7 **Note** that Te Ohu plans to discuss the amended Bill with mandated iwi organisations on 13 June 2023 and, if supported, provide Te Ohu with a mandate to enter into an Agreement with the Crown and withdraw its litigation [to be updated]
- 8 **Note** that the amendments have been drafted by the Parliamentary Counsel Office as the SOP attached as Appendix 1
- 9 **Note** that Cabinet authorised the Minister for Oceans and Fisheries, in consultation with the Minister of Conservation, and the Minister for Māori Crown Relations: Te Arawhiti, to prepare a draft Agreement between the Crown and Te Ohu Kaimoana [CBC-21-MIN-0111 refers]
- 10 **Agree** that the Minister for the Environment will consult with the Minister of Conservation and the Minister for Māori Crown Relations: Te Arawhiti on the final draft Agreement
- 11 **Agree** that that the Minister for the Environment is authorised to enter into the Agreement on behalf of the Crown attached as Appendix 2, with minor and technical changes, as required, for the proper effect of the Agreement
- 12 s9(2)(f)(iv) 
- 13 **Note** that Cabinet approved that the Between-Budget Contingency in 2021/22 fund DOC support secretariat costs (\$3.772m) and Te Kāhui costs (\$4.923m) for the sanctuary for the full first 20 years [CBC-21-MIN-0111 refers]
- 14 **Note** that Budget 2022 secured \$1.536m under Vote Environment for compliance, monitoring and enforcement activities undertaken by the Environmental Protection Authority for the 2021/22-2025/26 financial years and \$0.385m for outyears
- 15 **Note** that Budget 2022 also secured \$14.57m for Vote Conservation: Implementation of marine protection and localised management actions, of which \$9.317m (OPEX) and \$2.523m (CAPEX) was allocated to the sanctuary
- 16 **Note** that the Minister of Conservation has agreed to transfer the remaining \$2.732m of the \$14.57m Budget 2022 funding, initially secured for Southeast Marine Protection and Sea Change (Hauraki Gulf), to ensure delivery of the new elements of the amended Bill

- 17 **Note** that the Bill, with the 2016 Select Committee recommendations, is to be progressed to a second stage reading and the SOP then introduced
- 18 **Note** that the Kermadec Ocean Sanctuary Bill 2016 (noting that the SOP amends the name of the Bill) holds a category 3 priority on the 2023 Legislation Programme
- 19 **Authorise** introduction of the SOP attached as Appendix 1 for consideration by the Committee of the whole House
- 20 **Authorise** the Minister for the Environment to instruct the Parliamentary Counsel Office to draft further changes to the SOP prior to introduction if the changes are of a minor or technical nature and necessary for the Bill's proper operation or effect

Authorised for lodgement

Hon David Parker

Minister for the Environment

Appendix 1. Supplementary Order Paper amending the Kermadec Ocean Sanctuary Bill

Appendix 2. Draft Agreement between the Crown and Te Ohu Kaimoana

**Appendix 3. Draft Final Regulatory Impact Statement for the Ngā Whatu-a-Māui
(formerly Kermadec) Ocean Sanctuary Bill**

Appendix 4. Revised Departmental Disclosure Statement for the Kermadec Ocean Sanctuary Bill

AGREEMENT ABOUT THE CREATION OF NGĀ WHATU-A-MAUI OCEAN SANCTUARY

DRAFT 3.2.12 – 29 MAY 2023

LEGALLY PRIVILEGED – FOR COMMENT BY CROWN OFFICIALS and TE OHU KAI MOANA

BETWEEN: THE MINISTER FOR THE ENVIRONMENT, THE MINISTER OF CONSERVATION AND THE MINISTER FOR MĀORI CROWN RELATIONS: TE ARAWHITI, on behalf of the Crown (the ‘**Crown**’)

AND TE OHU KAI MOANA TRUSTEE LIMITED, in its capacity as trustee of the Te Ohu Kai Moana Trust (‘**Te Ohu Kai Moana**’)

(Together, the ‘Parties’)

Introduction

1. In 2016, the Government introduced the Kermadec Ocean Sanctuary Bill in the House of Representatives proposing to establish an ocean sanctuary in Aotearoa New Zealand’s exclusive economic zone. The proposed sanctuary is in Fisheries Management Area 10, around Rangitāhua, the Kermadec Islands (the ‘Sanctuary’). The Crown considers that the Sanctuary would support New Zealand’s international commitments under the Convention on Biological Diversity, and is required for responsible management of Aotearoa’s marine environment.
2. Te Ohu Kai Moana is established to “advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:¹
 - (a) ultimately benefit the members of iwi and Maori generally; and
 - (b) further the agreements made in the Deed of Settlement [of Māori claims about commercial fishing in September 1992]; and
 - (c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
 - (d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement”.

¹ Māori Fisheries Act 2004, s 32.

3. This agreement has come about in consequence of the Parties working together to revise the ocean sanctuary first proposed by the Crown and introduced in the House of Representatives in 2016. The parties have worked together to develop a proposal that recognises the rights and interests of Māori in commercial and non-commercial customary fishing that are protected by the 1992 Deed of Settlement of Māori claims about commercial fishing, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1996 and the Māori Fisheries Act 2004.

Agreements

Quota Management Area 10 (QMA 10) fishing quota, other fishing, and future reviews of the Sanctuary, including decisions on any future use of QMA 10 quota

4. The Parties agree that in relation to the Sanctuary, for at least an initial 20-year period:
 - 4.1 Te Ohu Kai Moana, on behalf of iwi, will place a rāhui in relation to the use of the Quota Management Area 10 (QMA 10) quota that it holds;
 - 4.2 The Crown will not use or dispose of the QMA 10 quota that it holds;
 - 4.3 The Crown will take steps to suspend all recreational fishing, and the exercise of commercial fishing permits for all other fish stocks (Quota Management System (QMS) and non-QMS) within the area of the Sanctuary; and
 - 4.4 Customary fishing can continue (consistent with section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992).
5. The Parties agree that before the end of the initial 20-year period there will be a review of the operation of the Sanctuary (the first review) under the proposed legislation mentioned below.
6. The Parties agree that after the first review, the Crown and Te Ohu Kai Moana (on behalf of iwi) will use best endeavours to come to a collective decision about any future use of QMA 10 quota in the Sanctuary. If the Parties cannot come to a collective decision, each party will make its own decision about what to do with the QMA 10 quota that it holds.
7. The Parties agree that decision points may arise during the initial 20-year period for possible review of QMA 10 total allowable catch and total allowable commercial catch (TAC/TACC) as follows:
 - 7.1 At the 10-year milestone (the 10-year interim review of the research plan),

the best available information (including research that has been conducted to that point for the purposes of the research plan) can be used as the basis for a discussion between Te Ohu Kai Moana and the Crown to identify QMA 10 fish stocks of greatest interest and any possible material change that could result from any TAC /TACC review of these priority stocks;

- 7.2 For the priority stocks, a TAC review under section 13 of the Fisheries Act may be conducted (involving public consultation on a proposal to change the TAC/TACC, noting there can be no pre-determination of whether there will be a legal or factual basis for the TAC/TACC to increase);
- 7.3 If the TAC review results in a decision by the Minister responsible for Fisheries to change the TAC/TACC, there will be a discussion between Te Ohu Kai Moana and the Crown;
- 7.4 The discussion between Te Ohu Kai Moana and the Crown will focus on the impact on rights and interests, including consideration of the value of Annual Catch Entitlement (ACE) of QMA 10 fish stocks; and
- 7.5 If there is insufficient information at 10 years, a further TAC/TACC review could occur at 15 years and/ or 20 years after the Sanctuary's creation, depending on the availability of information.

Amending the existing Kermadec Ocean Sanctuary Bill to reflect the revised proposal for the Sanctuary

8. The Minister responsible will present a Supplementary Order Paper in the House of Representatives to amend the Kermadec Ocean Sanctuary Bill. The Parties' intent is that the Supplementary Order Paper will contain clauses that reflect the outcome of the work undertaken by the Parties from 2018 to February 2023 to improve upon the Crown's original sanctuary proposal.
9. As part of that work the Parties discussed the establishment of a body, Te Kāhui. In discussing membership of Te Kāhui the Crown proposed that Ngāti Kuri and Te Aupōuri be represented on that body. Ngāti Kuri and Te Aupōuri have an existing Crown recognised association and ongoing involvement in the Rangitāhua Islands and adjoining marine reserve. Accordingly, the Crown has proposed distinct representation on Te Kāhui, with one seat for each iwi. In proposing two seats for Ngāti Kuri and Te Aupōuri appointees, the Crown does not imply that the two iwi have greater interests than other iwi in commercial fisheries in the Sanctuary area, or any other part of the Exclusive Economic Zone of Aotearoa.

10. Once legislation to establish the Sanctuary is in force, as a result of the House of Representatives debating the matters set out in the Supplementary Order Paper and remaining stages for legislation to establish the Sanctuary being completed, the Parties agree that:

The Parties and Te Kāhui will partner to make the Sanctuary operationally successful

10.1 The Crown, through Te Papa Atawhai – the Department of Conservation (DOC), will periodically enter into contracts for services with Te Ohu Kai Moana, including for secondments, so that Te Ohu Kai Moana is involved alongside DOC in providing shared secretariat support services to Te Kāhui, once Te Kāhui is established. The Parties recognise that the terms of these contracts, their ultimate duration and their extent or scope is not the subject of this agreement and will depend on the ongoing needs of Te Kāhui for secretariat support. This agreement does not determine those questions;

10.2 The Crown, through Te Papa Atawhai – the Department of Conservation (DOC), will enter into a Memorandum of Understanding with Te Kāhui, once Te Kāhui is established, that provides a framework for how the two entities will work together to carry out their legislative functions effectively and efficiently in relation to the Sanctuary;

10.3 The Crown, through Manatū Aorere – the Ministry of Foreign Affairs and Trade, will work closely with Te Kāhui, once it is established, to develop an international outreach programme for the Sanctuary. The programme could have the following objectives:

10.3.1 s9(2)(j) [Redacted]

10.3.2 s9(2)(j) [Redacted]

10.4 The Crown will ensure Te Kāhui, once it is established, can take part in international outreach initiatives, in the manner set out in attachment 1 to

this agreement;²

- 10.5 The Crown, acting principally through Manatū Aorere – the Ministry of Foreign Affairs and Trade, will inform Te Kāhui, once it is established, about applications received from other countries in relation to ships being used by that country for wholly governmental purposes seeking to undertake marine scientific research in the Sanctuary. Manatū Aorere will provide Te Kāhui with an opportunity to make written comments on those applications. At the time of the first such application Te Kāhui is informed of, Manatū Aorere will discuss with Te Kāhui the scope and purpose of decisions about such applications in light of Aotearoa New Zealand's international law obligations;

Funding

- 10.6 The Crown will provide Te Kāhui, once it is established, with research funding in the order of \$40 million over 20 years. The purpose of this research funding is to enable Te Kāhui to pursue its research functions. The parties note that Te Kāhui may reach further agreements about additional funding from governmental and other sources for its research programme and dissemination of the results of that research. The Crown will also fund the operational costs of Te Kāhui and its secretariat support as part of an overall investment in the Sanctuary of approximately \$60 million (including the research fund) over 20 years; and

Ending litigation

- 10.7 Te Ohu Kai Moana will file a notice of discontinuance in the High Court to end the litigation it commenced against the Crown in 2016 about the Kermadec Ocean Sanctuary Bill (CIV 2016-485-180). s9(2)(h)

² Attachment 1 to this agreement sets out how the parties agree that Te Kāhui, once it is established, can become involved in international outreach initiatives that relate to its functions and objects, including early engagement with other relevant interests in the Pacific region.

Te Ohu Kai Moana Trustee Limited representation

11. Te Ohu Kai Moana Trustee Limited enters into this agreement in its capacity as the statutory trustee of Te Ohu Kai Moana, in terms of the Māori Fisheries Act 2004, whereby Te Ohu Kai Moana Trustee Limited:

11.1 exists to protect and enhance the interests of iwi and Māori in fisheries, fishing and fisheries-related activities; and

11.2 holds quota for fish stocks in QMA 10 on behalf of iwi and Māori and has the authority to make the decisions relating to that quota that are set out in this agreement.

Status of this agreement

12. The matters set out in this agreement are the result of good faith discussions between the Parties to address concerns about a Bill introduced to the House of Representatives in 2016. While this agreement records a number of future measures the Crown and Te Ohu Kai Moana will each take, the Parties each agree that what is recorded here about these future measures reflects the Parties' agreed understanding and is not legally binding to enable one party to compel the other to act. Accordingly, this agreement does not create a legal relationship between the parties to it. Instead, legally enforceable matters concerning the subject matter of this agreement are those enacted by Parliament in legislation to give effect to the proposed Sanctuary.

13. The Parties otherwise reserve their positions regarding:

13.1 the creation of protected areas in the Exclusive Economic Zone of Aotearoa New Zealand;

13.2 the ability of any such protected area to affect existing rights and interests, including in relation to fishing; and

13.3 possible future claims by Te Ohu Kai Moana for compensation, including if discussions between the Crown and Te Ohu Kai Moana about TAC review for QMA 10 stocks, mentioned at clause 9.3 above did not resolve matters to the satisfaction of Te Ohu Kai Moana.

Signed

[Date and signatories to agreement to be inserted.]

ATTACHMENT 1 —TE KĀHUI PARTICIPATION IN INTERNATIONAL OUTREACH INITIATIVES

14. The Crown will take steps to ensure Te Kāhui, once it is established, can take part in international outreach initiatives, including those undertaken by the Government of Aotearoa New Zealand on issues relating to the Ngā Whatu-a-Maui Ocean Sanctuary. Te Kāhui participation in this programme will be funded from its operating budget.

15. s9(2)(j) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[V 3.2.1 ends – 29052023 - 1645.]

Revised Departmental Disclosure Statement

Ngā Whatu-a-Māui Ocean Sanctuary Bill

A revised departmental disclosure statement for a Bill the government is proposing to amend by supplementary order paper seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Kermadec Ocean Sanctuary Bill, dated 26 February 2016, can be found at this link [bill-government-2016-120.pdf \(legislation.govt.nz\)](#)

This revised disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

[Date finalised].

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The Main Areas of Change to the Original Disclosures

This is a revised disclosure statement for the Ngā Whatu-a-Māui Ocean Sanctuary Bill.

A revised disclosure statement incorporates the content of the original disclosure statement for the Bill, but also includes and highlights the changes needing to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the revised disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement include:

- the general policy intent of the Bill and additional 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.

Part One: General Policy Statement

The purpose of this Bill remains to establish a new marine protected area in New Zealand's exclusive economic zone around the Kermadec Islands. The marine protected area is to be named Ngā Whatu-a-Māui Ocean Sanctuary (the sanctuary). The area of the sanctuary comprises the waters and underlying seabed and subsoil extending from the boundary of the current Kermadec Islands Marine Reserve to the 200 nautical mile limit of New Zealand's exclusive economic zone surrounding the Kermadec Islands.

Amendments to the Bill provide for recognition of Māori rights and interests in the establishment of the sanctuary, consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and its Deed.

The purpose of the Act is amended by substituting the preservation of the ecological integrity and biodiversity of the area for preservation of the sanctuary in its natural state. The purpose is amended to also recognise Māori rights and interests, including those relating to fisheries interests and the association of Ngāti Kuri and Te Aupōuri to the Rangitāhua/Kermadec Islands and adjoining marine reserve; and the significance of the area, including for purpose of research and the sharing of knowledge.

The operation of the sanctuary will be reviewed at 20-year intervals. Commercial fishing permits and recreational fishing in the sanctuary are suspended, subject to a decision following the 20-year review. The Crown and Te Ohu Kaimoana (Te Ohu) can independently decide on the future use of their respective annual catch entitlements for QMA10 fish stocks at the end of a review period. The Crown must give effect to Te Ohu's decision on Te Ohu's QMA10 stocks, but otherwise makes its own decisions on all other fishing suspended under the Act. Customary Māori fishing rights are retained and will continue to operate under customary fisheries regulations made under the Fisheries Act 1996.

Activities, other than fishing, that involve dumping, the disturbance of the seabed, subsoil and/or aquatic life, including as a result of vibrations (other than that associated with propulsion of a vessel), that are likely to have an adverse effect, are prohibited. Existing exemptions are retained, including for marine scientific research, passage of vessels, and activities specifically regulated under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Marine scientific research involving effects that would otherwise be prohibited must be approved by the Director-General of Conservation. Decisions must consider a broad set of criteria - the effects, benefits, and necessity of the proposed research, and cultural values. Research conducted under the terms of the United Nations Convention of the Law of the Sea 1982 will continue to be approved by the Secretary of Foreign Affairs and Trade and be subject to a permit granted by the Director General of Conservation.

A new entity is created, Te Kāhui o Ngā Whatu-a-Māui. Its membership comprises Crown, Te Ohu, Ngāti Kuri and Te Aupōuri appointees. The functions of Te Kāhui include: the development of a (Crown-funded) research plan, the commissioning of research, the commissioning of specific reports (including a 20-yearly review report), involvement in an international outreach programme for knowledge sharing purposes, and providing recommendations on the 20-yearly review report. The operation of Te Kāhui will be supported by a joint secretariat of staff from the Department of Conservation and Te Ohu.

The prohibition on claims for compensation has been removed from the Bill. This is consistent with the general principle that parties should have the ability to pursue legal claims for any loss, damage, or adverse effect on rights or interests arising from enactment of a Bill.

The Department of Conservation and the Office for Māori Crown Relations: Te Arawhiti will jointly administer the Act.

The Act incorporates a stand-alone Treaty of Waitangi provision instead of listing the Act on Schedule 1 of the Conservation Act 1987.

The Environmental Protection Authority is responsible for enforcement under the Act, other than in respect of fishing related offences which rests with the Ministry for Primary Industries.

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
<p>A number of reports by the PEW Charitable Trusts have either informed, or are relevant, to the Bill. These reports include:</p> <p>Kermadecs Profile: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/pewkermadecsprofile.pdf</p> <p>The Kermadecs – Science Symposium Proceedings: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/kermadec_symposium_aug_2010_proceedings.pdf</p> <p>The Kermadecs – Fact Sheet: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/kermadec-fact-sheet.pdf?la=en</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>Although the Bill does not seek to give effect to New Zealand action in relation to an international treaty, it is consistent with the following international obligations:</p> <p>The United Nations Convention on the Law of the Sea (including article 192) - this can be accessed at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf</p> <p>The Convention of Biological Diversity – the convention can be accessed at https://www.cbd.int/convention/text/</p> <p>The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 – the convention can be accessed at Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (imo.org)</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The proposals were considered in:</p> <p>The RIS Establishment of a Kermadec Ocean Sanctuary, authored by the Ministry for the Environment (February 2016). The RIS can be accessed at Regulatory Impact Statement: Establishment of a Kermadec Ocean Sanctuary (treasury.govt.nz)</p> <p>[Updated RIS website reference to be inserted]</p>	

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
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The RIS did not meet the threshold for Treasury RIA Team assessment. Rather, the RIS was assessed by the Ministry for the Environment's RIA Panel. Their full QA statement is as follows:

The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Final RIS. The panel considers the document meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the strengths and weaknesses of the options available and provides a convincing analysis of the reasons for the proposed changes to the Bill.

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?	NO
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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
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?	YES
Information on the use of annual catch entitlements for quota management area 10 (QMA10) fish stocks is available at [hyperlink to be added] Information on recent catch data for QMA10 and fisheries management area 10 is available at [hyperlink to be added]	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
Due to the current low state of activity in the Kermadec region, there is little likelihood of the costs or benefits of the sanctuary being impacted by the level of compliance with the obligations and standards and/or the nature and level of regulator effort put into encouraging or securing compliance. Any New Zealand vessel that is capable of commercial fishing in the sanctuary area is subject to geospatial position tracking and reporting. Foreign fishers in the area adjacent to the sanctuary are generally compliant and unlikely to change behaviour.	

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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During the development of the Bill, the Ministry for the Environment worked with the Ministry of Foreign Affairs to ensure that the Bill is consistent with New Zealand's international obligations relating to:

- The United Nations Convention on the Law of the Sea (including article 192)
- The Convention of Biological Diversity (specifically target 11)
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972
- The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972

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?

Since Select Committee consideration of the Bill, the Ministry for the Environment, together with a cross-agency working group, has engaged extensively with Te Ohu on the nature of the fisheries settlement and the rights held by Te Ohu on behalf of iwi in relation to QMA 10 fish stocks. The Ministry also engaged with Ngāti Kuri, Te Aupōuri and NgaiTakoto about their interests in relation to the sanctuary area.

The Ministry for the Environment has worked with the Office for Māori Crown Relations: Te Arawhiti to ascertain the nature of interests, in the form of Treaty analysis and also with Te Puni Kōkiri in relation to the consideration of cultural values for purposes of marine scientific research.

These discussions have resulted in amendments to the Bill to recognise Māori rights and interests, including protection of the 1992 Fisheries Settlement, the association of Ngāti Kuri and Te Aupōuri to Rangitāhua and surrounding waters, and consideration of cultural values. Refer also to section 3.6.

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?	
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YES

There are no implications arising from the Bill. This Bill is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

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
<p>The offence provisions, which rely on existing offence provisions in other Acts, are found at:</p> <p>Section 41 of the Bill (amending the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 by inserting a new 134EA and 134EB into that Act).</p> <p>Section 89 of the Fisheries Act 1996 creates an offence to contravene any condition placed on any commercial fishing permit by the chief executive of the Ministry assigned who has assumed responsibility for the Fisheries Act (this includes the suspension of commercial fishing permits for purposes of sections 9A and 9B of the Bill).</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted prior to introduction of the Bill on the new offence and penalty provisions and whether the Bill is consistent with the Bill of Rights Act 1990.</p>	

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
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

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
<p>Te Ohu and representatives of Seafood New Zealand (SNZ) were consulted on the policy to be given effect by the original Bill, as introduced to the House in 2016. Te Ohu and SNZ expressed concerns about the impact of the sanctuary on fishing rights allocated to iwi under the Fisheries Settlement.</p> <p>Te Ohu has been subsequently engaged on policy changes to the Bill.</p> <p>Ngāti Kuri and Te Aupōuri were consulted on the policy to be given effect by the original Bill. Ngāti Kuri, Te Aupōuri and Ngāi Takoto were subsequently consulted on an exposure draft of the amended Bill.</p> <p>Substantive policy changes have been made to the Bill as a result of this consultation providing for recognition of Māori rights and interests. These policy changes include: the name of the Bill and sanctuary, an expanded purpose statement, the non-derogation of existing legislation, the establishment of a new entity, the membership of the entity, consideration of cultural values for purpose of marine scientific research in the sanctuary, the creation of a research plan, and the 20-yearly review of the sanctuary.</p>	

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
<p>The Ministry has worked directly with the Crown Law Office, the Department of Conservation, the Environmental Protection Authority, the Ministry for Primary Industries/Fisheries NZ, the Office for Māori Crown Relations: Te Arawhiti, the Ministry for Foreign Affairs and Trade, Maritime New Zealand, the Ministry for Business, Innovation, and Employment, the Ministry of Justice, the Ministry of Transport, Te Puni Kōkiri, the Treasury, and the Public Service Commission on the development of the Bill.</p> <p>Officials also engaged with the Legislation Design Advisory Committee late 2021 and the Cabinet Office.</p>	

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 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
Offences created in the Bill, which are linked to the Bill under both the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Fisheries Act 1996, are strict liability offences.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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?	YES
The Bill creates a decision-making power (by Order in Council) to remove, amend, or reinstate the suspension of commercial fishing permits and recreational fishing under the Fisheries Act 1996 as they relate to quota management area 10/fisheries management area 10, as a result of decisions made at the 20-yearly review of the sanctuary. The power also provides for subsequent changes to be made to deemed values and cost recovery levies under the Fisheries Act 1996.	

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
See 4.6.	


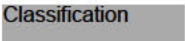
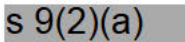
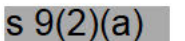
4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>This Bill creates a new regulation making powers for the Governor-General, on the recommendation of the Minister of Conservation and the Minister for Māori Crown Relations: Te Arawhiti, to make regulations to make regulations:</p> <ul style="list-style-type: none">a) specifying terms and conditions that apply to marine scientific research permits; andb) providing for any other matters contemplated by this Bill and necessary for its administration or for giving it full effect. <p>This power is to allow further detail to be provided by the Ministers to ensure the Bill can be implemented as intended.</p> <p>The Bill also creates a new regulation making power for the Ministers responsible for the Bill to make regulations allowing the Director-General of Conservation, the Environmental Protection Authority, and the chief executive of the Ministry of Primary Industries to recover fees and costs incurred in the exercise of their functions under the Bill that are not otherwise covered by an appropriation provided by Parliament.</p> <p>The Bill also creates a decision-making power to remove, amend, or reinstate the suspension of commercial fishing permits and recreational fishing under the Fisheries Act 1996 (see 4.6).</p>	

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 prohibitions and other regulatory features of this Bill will be enforced under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and Fisheries Act 1996.	



Briefing: Approach to discussions with northern iwi on management of Kermadec Islands Nature Reserve and Marine Reserve

To	Minister of Conservation	Date submitted	21 April 2023
Cc	Minister for the Environment		
Risk Assessment	s9(2)(g) (i) 	Priority	High
Reference	23-B-0014	DocCM	DOC-7248121
Security Level	Classification 		
Action sought	Sign and send attached letter	Timeframe	1 May 2023
Attachments	Attachment A – map of the proposed Sanctuary and adjacent Kermadec Islands Nature Reserve and Marine Reserve. Attachment B - Draft letter to Peter-Lucas Jones (Te Aupōuri) and Harry Burkhardt (Ngāti Kuri)		
Contacts			
Name and position			Cell phone
Sam Thomas, Director, Policy			s 9(2)(a) 
Ruth Isaac, Deputy Director-General, Strategy and Policy			s 9(2)(a) 

- s 9(2)(f)(iv)

[Redacted]

[Redacted]

[Redacted]

10. Harry Burkhardt has requested a meeting with you to discuss Ngāti Kuri's aspirations. We recommend you meet with him and Peter-Lucas Jones (Te Aupōuri) following our further advice to you.

We recommend that you ... (Ngā tohutohu)

		Decision
a)	Note that Ngāti Kuri have requested that you delegate authority for the Kermadec Islands Nature Reserve and Marine Reserve to Ngāti Kuri and Te Aupōuri and that DOC resource those functions.	
b)	s 9(2)(f)(iv) [Redacted]	
c)	s 9(2)(f)(iv) [Redacted]	
d)	s 9(2)(f)(iv) [Redacted]	
e)	Sign the attached letter to Peter-Lucas Jones (Te Aupōuri) and Harry Burkhardt (Ngāti Kuri) setting out your expectations for ongoing discussions concerning the management of the Kermadec Islands Nature Reserve and Marine Reserve.	Yes / No
f)	Agree to meet with Peter-Lucas Jones (Te Aupōuri) and Harry Burkhardt (Ngāti Kuri) following your consideration of upcoming initial advice on potential pathways in May.	Yes / No



Date: 21/04/2023

Ruth Isaac
 DDG Strategy and Policy
 For Director-General of Conservation

Date: / /

Hon Willow-Jean Prime
Minister of Conservation

Purpose – Te aronga

1. This briefing provides:
 - Context, and proposed next steps, relating to a request to you from northern iwi to change the management of the Kermadec Islands Nature Reserve and Marine Reserve. These requests are linked to the progress of the Ngā Whatu-a-Maui Ocean Sanctuary (the Sanctuary) proposal; and
 - A draft letter from you to northern iwi regarding the development of options for management change.

Background and context – Te horopaki

Iwi requests to make changes to management of the Kermadec Islands Nature Reserve and Marine Reserve

2. During engagement with Ngāti Kuri and Te Aupōuri on the Sanctuary, they raised issues regarding DOC's management of the Kermadec Islands (Rangitāhua), which are a Nature Reserve, and the surrounding Kermadec Islands Marine Reserve (map provided in **Attachment A**).
3. These issues related primarily to the level of iwi involvement in management decisions and governance, and a desire for more integrated management across the islands and surrounding waters. Some specific concerns were also raised, such as access to the islands and DOC's research permitting process.
4. DOC had initial discussions with Ngāti Kuri and Te Aupōuri last year to better understand the issues they have with the current management regime and their aspirations for the future. s 9(2)(g)(i)
[Redacted]
5. s 9(2)(g)(i)
[Redacted]
6. [Redacted]
7. [Redacted]
8. Recently, Harry Burkhardt (Ngāti Kuri Trust Board chair) has signalled to Minister Parker's office that he expects discussions on the management of the reserves to progress more quickly. You and Minister Parker recently received a letter from Ngāti Kuri Trust Board requesting that the following is provided for, concurrently with the Sanctuary legislation:
 - The Minister of Conservation delegates authority for the Kermadec Islands Nature Reserve and Marine Reserve to Ngāti Kuri and Te Aupōuri; and
 - The Department of Conservation provides resources for the iwi to carry out management functions.

9. s 9(2)(g)(i) [Redacted]
10. As of 19 April 2023, we understand that the next steps for the Sanctuary involve Te Ohu Kaimoana holding a Special General Meeting (**SGM**) to seek the views of Mandated Iwi Organisations on the proposal. Depending on the outcome of the SGM, Minister Parker may then seek Cabinet's agreement (around June) to introduce into the House a Supplementary Order Paper (SOP) to revise the 2016 Sanctuary Bill.
11. s 9(2)(j) [Redacted]

- s 9(2)(f)(iv) [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]

Recommended approach

17. In light of the above we recommend the following approach:
- s 9(2)(f)(iv) [Redacted]
 - s 9(2)(f)(iv) [Redacted]

- You meet with Harry Burkhardt and Peter-Lucas Jones following your consideration of our May advice. Harry Burkhardt has indicated a desire to meet with you to present Ngāti Kuri’s aspirations and request directly. Minister Parker is likely to meet with Harry and potentially Peter-Lucas after the SGM, to discuss the Sanctuary in light of the SGM outcomes [23-B-0161 refers]. We suggest you meet with Harry and Peter-Lucas after that meeting, to focus the discussion on issues relating to the nature reserve and marine reserve. We can provide support for that discussion as required and will also provide further advice once the outcome of the SGM is known.

Current management arrangements for Rangitāhua

- 18. Out of scope 
- 
- 
- 
- 

² The Regional Coastal Plan for the Kermadec and Subantarctic Islands is available at: <https://www.doc.govt.nz/globalassets/documents/about-doc/conservation-management/coastal-management/regional-coastal-plan-kermadecs-subantarctics.pdf>

23. Out of scope [Redacted]

Risk assessment – Aronga tūraru

24. Ngāti Kuri has requested delegated management of the Kermadec Islands Nature Reserve and Marine Reserve, to progress alongside the Sanctuary proposal. ^{s 9(2)(iv)} [Redacted]

25. s 9(2)(f)(iv) [Redacted]

- | [Redacted]
- | [Redacted]
- | [Redacted]
- | [Redacted]

■ [Redacted]

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

27. Out of scope [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

33. Out of scope

Consultation – Kōrero whakawhiti

37. The Ministry for the Environment and Te Arawhiti were consulted on this briefing.

Financial implications – Te hīraunga pūtea

38. s 9(2)(g)(i) Our forthcoming advice will provide further analysis on this matter.

Legal implications – Te hīraunga a ture

39. We have been working with MfE to support enactment of the Sanctuary Bill during this parliamentary term.

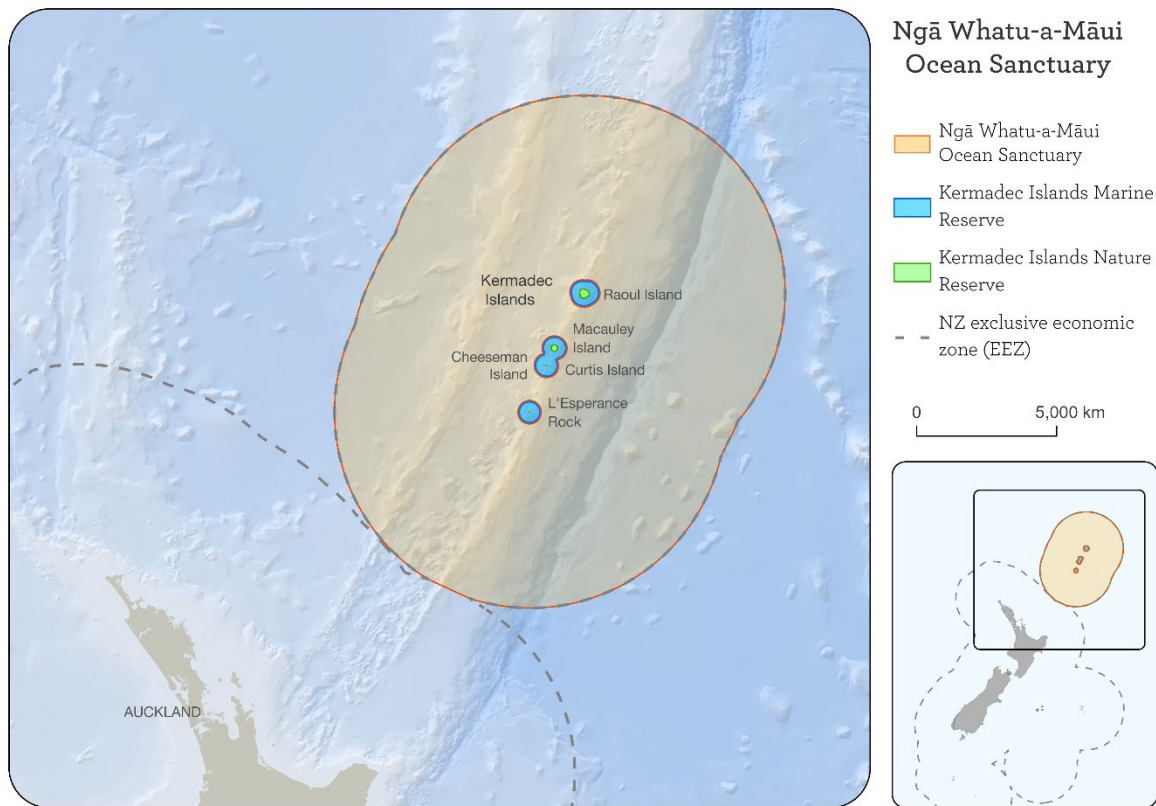
40. s 9(2)(g)(i) We will fully brief you on any risks or legislative implications as part of your future consideration of any pathways developed, and ahead of any discussions you may wish to have with the iwi.

Next steps – Ngā tāwhaitanga

41. We will conduct further analysis on any option(s) for new management arrangements that may be developed for Rangitāhua and provide advice to you in May, ahead of Te Ohu's SGM. We suggest you meet with Harry Burkhardt and Peter-Lucas Jones after the SGM, to hear their concerns and aspirations and discuss a pathway forward.

ENDS

Attachment A – map of the proposed Sanctuary and the adjacent Kermadec Islands Nature Reserve and Marine Reserve



Attachment B - Draft letter to Peter-Lucas Jones (Te Aupōuri) and Harry Burkhardt (Ngāti Kuri)

Hon Willow-Jean Prime

MP for Northland

Minister of Conservation

Minister for Youth

Associate Minister for Arts, Culture and Heritage

Associate Minister of Health



Ref: CORM-944

Harry Burkhardt and Peter-Lucas Jones

9(2)(a)

Tēnā kōrua Mr Burkhardt rāua ko Mr Jones

Thank you for your constructive engagement on the Rangitāhua Ocean Sanctuary proposal. The proposal has made significant progress over recent years, and we remain committed to implementing appropriate protection for this special area.

I acknowledge the issues and opportunities you have raised, including with former Ministers of Conservation, and with the Department, regarding the management of the Kermadec Islands Nature Reserve and adjacent Marine Reserve. I also acknowledge your desire for a more integrated approach to management across the islands and Marine Reserve and a management approach that better reflects your connection with this area.

Out of scope

Nāku noa nā

Hon Willow-Jean Prime

Minister of Conservation

cc Hon David Parker, Minister for the Environment



Draft Response to Ngāti Kuri Trust Board Letter - Kermadec Ocean Sanctuary Bill

 Ministry for the Environment Manatū Mō Te Taiao	Ministry for Primary Industries Manatū Ahu Matua 	 TeArawhiti THE OFFICE FOR MĀORI CROWN RELATIONS	 Department of Conservation Te Papa Atawhai
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Date Submitted:	20 April 2023	Tracking #: BRF-3118; 23-B-0161	
Security Level	Policy and Privacy Classification	MfE Priority:	Non-Urgent

	Action sought:	Response by:
To: Hon David PARKER, Minister for the Environment Cc: Hon Willow-Jean PRIME, Minister of Conservation	<p>Sign the attached letter</p> <p>Agree to meet with Harry Burkhardt and Peter Lucas Jones s9(2)(g)(i)</p> <p>Agree to forward this paper to the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Oceans and Fisheries</p>	26 April 2023

Actions for Minister's Office Staff	<p>Forward this paper to the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Oceans and Fisheries</p> <p>Return the signed report to MfE</p>
Number of appendices and attachments 2	<p>Appendix 1: Draft response to Ngāti Kuri Trust Board</p> <p>Appendix 2: Letter from Ngāti Kuri Trust Board</p>

Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Stuart Brodie – Ministry for the Environment	s9(2)(a)	
Director	Glenn Wigley – Ministry for the Environment	s9(2)(a)	✓
Director	Sam Thomas – Department of Conservation	s9(2)(a)	

Draft Response to Ngāti Kuri Trust Board Letter - Kermadec Ocean Sanctuary Bill

Key Messages

1. This briefing provides you with a draft response to a letter you received from Harry Burkhardt, Chair of Ngāti Kuri Trust Board (appendix 1).
2. The letter from Harry Burkhardt (appendix 2) emphasises the significance for Ngāti Kuri of its Treaty settlement and its association with the Kermadec/Rangitāhua area. The letter also reiterates a number of points previously raised by Ngāti Kuri, including the name of the sanctuary, membership of Te Kāhui, the Bill's purpose statement, visibility of Ngāti Kuri in the Bill, and Ngāti Kuri's aspirations for a governance role in the Kermadec Islands Nature Reserve and surrounding marine reserve.
3. s 9(2)(g)(i)
[Redacted]
[Redacted]
4. Policy decisions about many of the matters raised by Ngāti Kuri regarding the sanctuary have already been made. While these decisions have not formally been communicated to Ngāti Kuri, officials shared a high-level summary of the revised proposal with Ngāti Kuri on 6 September 2022. We understand that representatives from Te Ohu Kaimoana (Te Ohu) have also been discussing the revised proposal directly with Ngāti Kuri.
5. The current proposal incorporates a number of matters raised by Ngāti Kuri. s9(2)(g)(i)
[Redacted]
[Redacted]
[Redacted] This reflects substantial changes to the Bill as originally introduced, with the SOP limiting the area of proposed sanctuary to beyond the 12nm (removing inclusion of the Kermadec Islands and territorial sea) and reorientating the Bill to provide for fishing rights of all iwi recognised by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
6. The current revised proposal as discussed with Te Ohu is unlikely to fully meet the aspirations of Ngāti Kuri for the sanctuary. The Crown has an obligation to protect the interests and tikanga of all iwi with associations to the area, as Treaty partner. In doing so, the Crown has worked closely with Te Ohu (as the trustee of all iwi who are the beneficiaries of fishing assets allocated under the 1992 Fisheries Deed of Settlement), while also collaborating with Ngāti Kuri and Te Aupōuri to the extent practicable.
7. We consider the content of Ngāti Kuri's letter primarily goes to the relationship between Ngāti Kuri (and also Te Aupōuri) and the Crown. You may wish to offer to meet with Harry Burkhardt (and Peter-Lucas Jones, Te Aupōuri) s9(2)(g)(i)
[Redacted]

s9(2)(g)(i)

8. We propose to release the SOP to Te Ohu in advance of the SGM (in support of that process) and would be in a position to provide Ngāti Kuri and Te Aupōuri with the SOP

s9(2)(g)(i)

9. s9(2)(f)(iv)

Recommendations

10. We recommend that you:

- a. **Sign** the attached letter to Harry Burkhardt, Chair of Ngāti Kuri Trust Board

Yes/No

- b. **Agree** to meet with Harry Burkhardt and Peter-Lucas Jones

s9(2)(g)(i)

Yes/No

- c. **Agree** to forward this paper to the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Oceans and Fisheries

Yes/No



- d. **Note** that the SOP can be released to Ngāti Kuri and Te Aupōuri

s9(2)(g)(i)

s9(2)(g)(i)

- e. s9(2)(f)(iv)

Signature

Glenn Wigley Director, Waste and Resource Efficiency - Regulatory and Policy Ministry for the Environment	
Sam Thomas Director, Policy Department of Conservation	
Hon David PARKER, Minister for the Environment	Date:

Purpose

1. A letter from Harry Burkhardt, Chair of Ngāti Kuri Trust Board, dated 22 March 2023, was sent to you and the Hon Willow-Jean Prime, Minister of Conservation (see appendix 2).
2. A response to the letter is attached for your consideration (see appendix 1).

Context

3. A high-level summary of the revised policy proposal was shared with Ngāti Kuri on 6 September 2022, predating policy decisions on the revised purpose of the Act, name of the sanctuary and the membership, composition and required skills of Te Kāhui.
4. A waiver to release the SOP to Te Ohu, Ngāti Kuri and Te Aupōuri was secured in December 2022. s9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
5. We understand that Te Ohu has also discussed the revised proposal directly with Ngāti Kuri. The upcoming SGM (scheduled for 11 May) will provide an opportunity for mandated iwi organisations (MIOs) to discuss a summary of the revised policy proposal (Ngāti Kuri will have received this information). It is unclear whether representatives of Ngāti Kuri will participate in the SGM.
6. We suggest that the SOP is released to Te Ohu in advance of the SGM, s9(2)(g)(i) [REDACTED]
[REDACTED] The intent is to provide Te Ohu confidence, in support of the SGM process, about how the policy proposals have been adopted in the SOP.

Proposals relating to the sanctuary

7. The letter from Harry Burkhardt contains a high-level context and specific policy proposals relating to the sanctuary. Many of the points reiterate matters you previously discussed with Ngāti Kuri in August 2022.

General Context

8. s9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9. The letter also suggests that the Crown undertake a co-design process with “a Ngāti Kuri technician to sit alongside the Crown to integrate [its proposals] into the Ocean Sanctuary legislation fully”.

10. s9(2)(g)(i) [Redacted]

11. s9(2)(g)(i) [Redacted]

12. s9(2)(g)(i) [Redacted]

Specific Proposals

13. The letter from Harry Burkhardt outlines a number of specific policy proposals, some of which were incorporated in the SOP as a consequence of earlier engagement with Ngāti Kuri:

- a. Ngāti Kuri is to appoint a person to Te Kāhui (retained from the original Bill)
- b. consideration of appropriate skills and experience, including knowledge of tikanga and mātauranga, is required by those appointing members to Te Kāhui
- c. Ngāti Kuri’s association with the area is reflected in the purpose statement
- d. the purpose statement refers to the preservation of the ecological integrity of the sanctuary
- e. the research plan is to include climate change research
- f. the prohibition on seabed mining in the sanctuary.

14. Ngāti Kuri also noted its support for Te Ohu to provide administrative, project and technical support to the body established under the Act.

15. Several matters raised by Ngāti Kuri have not been adopted in policy decisions and differ from the proposal agreed with Te Ohu, including:

- a. that Ngāti Kuri and Te Aupōuri would have responsibility to determine the name of sanctuary. In contrast, Ngā Whatu-a-Māui, as proposed by the iwi wānanga process facilitated by Te Ohu Kaimoana held on 4 July 2022, is proposed

- b. a 25-year review term (consistent with the original Bill); the SOP provides for a 20-year review
- c. that commercial fishing is prohibited (the SOP suspends commercial permits subject to review decisions at 20 years)
- d. a six-member board for Te Kāhui; one Te Rūnanga Nui o Te Aupōuri, one Ngāti Kuri Trust Board, two iwi appointees determined by Te Aupōuri, Ngāti Kuri and Te Ohu collectively, and two by the Crown. The SOP provides that Te Kāhui will consist of 10 members, 4 appointed by the Crown, 4 by Te Ohu Kaimoana, and 1 each by the Ngāti Kuri Authority and the Te Aupōuri Authority
- e. that Ngāti Kuri and Te Aupōuri members would act as chair of the body created under the Act. The SOP provides for the chair role to rotate between the Crown and Māori-appointees, with a Te Ohu appointee acting as the initial and final chair over the 20-year period leading up to the review decisions. s 9(2)(g)(i)
- f. that all research and permitting to be the management of the leadership table (the body established under the Act). Under the SOP, permitting of research is a Crown function undertaken by DOC.

16. Further, Ngāti Kuri state an expectation that ‘the Board’ is resourced appropriately to achieve the aspirations of the purpose of the Act over the period of 25 years.

Kermadec Islands nature and marine reserves

17. Ngāti Kuri request that:

- a. authority for the Kermadec Islands Nature Reserve and Marine Reserve is delegated to Ngāti Kuri and Te Aupōuri (those with statutory acknowledgments)
- b. the Ministry (sic) of Conservation provides the resources to carry out the function appropriately as legislatively required
- c. this is provided for concurrently with the Rangitāhua Ocean Sanctuary legislation.

18. s 9(2)(f)(iv)

19. s 9(2)(f)(iv)

Next Steps

20. A draft response to the Harry Burkhardt, Chair of the Ngāti Kuri Trust Board, is attached for your consideration. We suggest that the response is sent before the Te Ohu SGM.
21. Ngāti Kuri has requested a meeting with you and the Minister of Conservation. You may wish to meet with Harry Burkhardt (and Peter-Lucas Jones) to discuss the content of the SOP and the Government’s plan to enact the Bill this term. s9(2)(g)(i) [REDACTED].
22. s9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED] s 9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
23. Subject to the outcome of the Te Ohu SGM, we recommend you aim to lodge the final Cabinet paper with the SOP on 15 June for ENV committee on 22 June. Following this the Bill would be returned to the House for a second reading, the SOP would then be debated by the House, and the Bill subsequently enacted by the end of July.

Appendix 1: Draft Response to Harry Burkhardt, Chair of Ngāti Kuri Trust Board

Harry Burkhardt

Chairperson, Te Manawa o Ngāti Kuri

9(2)(a)

Engagement on the Kermadec Ocean Sanctuary Bill

E te rangatira, tēnā koe,

Firstly, I wish to thank you for the contribution you personally and Ngāti Kuri have made over many years to establish an ocean sanctuary.

As you are aware, the Crown has worked closely with Te Ohu Kaimoana, as the trustee of all iwi who are the beneficiaries of fishing assets allocated under the 1992 Fisheries Deed of Settlement, to appropriately recognise iwi fishing rights and interests for purposes of the Bill.

Alongside working with Te Ohu, Ministers and officials have collaborated with Ngāti Kuri and Te Aupōuri to date and I reiterate our commitment to continue to do so.

Together, these discussions have led to wide ranging changes to the Bill. Several of these changes were discussed with you in August 2022.

As a consequence of your previous engagement with me and my officials, a number of the proposals referred to in your recent letter are in the revised proposal. These include:

- Ngāti Kuri and Te Aupōuri seats on the Kāhui established under the Act
- the skills and experience of appointees to that body
- changes to the purpose statement to reflect the association of Ngāti Kuri and Te Aupōuri with Rangitāhua and the preservation of the ecological integrity of the sanctuary
- that Ngāti Kuri and Te Aupōuri are consulted about specific activities under the Act, namely applications for research permits, the content of the research plan, and the review of the sanctuary
- a commitment to appropriately resource Te Kāhui to fulfil its functions under the Act over the 20-year period.

I recognise there are several areas where your suggestions don't align with the current proposal. These include the name of the sanctuary, the prohibition of commercial fishing (this being suspended rather than prohibited), a review term of 25 years (this being 20 years), and the composition and chair of Te Kāhui. These decisions reflect the Crown's intent to find the right balance and recognise Māori rights and interests as a whole for the purposes of the Bill.

In respecting the process agreed to with Te Ohu, a summary of the proposed changes to the Bill is to be considered by mandated iwi organisations at the upcoming special general meeting (SGM) on 11 May.

s9(2)(g)(i)

The Government's intent is to enact legislation this term to establish the sanctuary. To achieve this objective, final Cabinet decisions are planned for June this year.

The Minister of Conservation, the Hon Willow-Jean Prime, will respond to you separately about the Kermadec Islands Nature Reserve and Marine Reserve.

Nāku noa, nā

Hon David Parker

Minister for Oceans and Fisheries

Cc: Hon Willow-Jean Prime, Minister of Conservation

Appendix 2: Letter from Harry Burkhardt, Chair of Ngāti Kuri Trust Board

Talking Points for Minister Parker to call Rangimarie Hunia, Chair of Te Ohu Kaimoana – week of 3 April 2023

Context

- You are scheduled to make a telephone call to Rangimarie Hunia prior to Easter
- This is an opportunity to check in and make sure Te Ohu is on track to hold its SGM on 10 May, and for you to emphasise the critical need for no further delays in the SGM date.
- SGM dates have been pushed out several times over the past 6-7 months. The SGM was initially expected to be held in September 2022, then delayed until December 2022 pending resolution of ACE issues, then tentatively set to be included in Te Ohu's AGM, then rescheduled to approximately 3 weeks later, and now delayed a further 2 weeks for 10 May (but at time of writing the package of papers to MIOs is yet to be sent).
- Lisa Te Heuheu recently advised officials that Te Ohu's legal advisor intends to provide 'extra advice and interpretation' on the summary of the proposal agreed (intended to be shared with MIOs as part of materials for the SGM). Officials are still waiting to see this.
- The current timing of the SGM (10 May) will still enable Cabinet to consider the draft SOP in June and the Bill to be enacted this term, subject to no further significant issues being raised and PCO availability.
- Ngāti Kuri Trust Board Chair, Harry Burkhardt, wrote to you and Hon Willow-Jean Prime, Minister of Conservation, on 22 March 2023. Officials are currently drafting a response for you and Minister Prime to send in week of 17 April.
- We understand Te Ohu CE, Lisa Te Heuheu, has been talking to Harry directly and they are aware of at least some of what Harry is asking for in this letter, for example, his proposal for Ngāti Kuri or Te Aupōuri to chair the Kāhui.
- Once the papers for the SGM have gone out to MIOs, officials plan to share the draft SOP and Agreement with Te Ohu. The intention is/was that Te Ohu advisors would be able to confirm at the SGM that they're comfortable with how the agreed intent of proposal has been given effect to in the SOP

Talking points

- Delays are frustrating and we are running out of time to ensure the Bill can be enacted this term
- Respect you have a process to run with your Mandated Iwi Organisations
- We are so close – a significant amount of work and good faith collaboration between yourselves and officials has been achieved
- Understand we have a proposal your Board is willing to take to MIOs – which is a huge achievement

- Note Harry Burkhardt has also written to me with his views. Intend to respond after Easter/before the SGM. Will look to meet with him at some point, potentially after the SGM
- Encourage you to continue to work with Harry and Te Aupōuri to come to a shared view

Back-pocket on Harry Burkhardt's letter if needed:

- There are a number of areas of consistency between the requests from the Ngāti Kuri Board in its recent letter and the current sanctuary proposal including:
 - amendments to the purpose of the sanctuary to include preserving ecological integrity and biodiversity of the area, and inclusion of reference to the association of Ngāti Kuri and Te Aupōuri with Rangitāhua and the adjoining Kermadec Islands Marine Reserve
 - appointments for Ngāti Kuri and Te Aupōuri to the Kāhui
 - skills and experience for appointments to the Kāhui
 - decision making by consensus for the Kāhui
 - reference to Māori cultural values throughout decision making including permitting of research
- There are, however, requests that do not align with the current revised proposal including:
 - the Rangitāhua name be retained for sanctuary and it have an initial 25 year period (currently 20 years)
 - a smaller number of members for the Kāhui and a reduced (administrative and advisory only) role for Te Ohu
 - Ngāti Kuri/Te Aupōuri to Chair the Kāhui
 - all research and permitting of research to be the responsibility of the Kāhui.



22 March 2023

To Minister Parker
Minister for the Environment
Minister Willow Jean Prime
Minister of Conservation

By e-mail d.parker@ministers.govt.nz
willow-jeanprime.ea@parliament.govt.nz

Tēnā kōrua e te Minita

Re: Ongoing Engagement of Ocean Sanctuary Bill and Delegated Authority over The Kermadec Island Nature Reserve and Marine Reserve.

The Crown's apology to Ngāti Kuri delivered by Hon Chris Finlayson on the 7th of February 2014 is as follows:

- 1 "To nga uri o Ngāti Kuri, to the ancestors, those here today, and those who are yet to come, the Crown makes the following apology:*
- 2 The Crown unreservedly apologises for its failure to appropriately recognise and respect the mana and rangatiratanga of Ngāti Kuri. This was unprincipled and has left Ngāti Kuri almost invisible as an iwi in the history of Te Hiku o Te Ika.*
- 3 The Crown profoundly regrets its breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles, which have had an enduring impact on Ngāti Kuri. The Crown is deeply sorry it has not acted with the utmost good faith towards Ngāti Kuri in a manner consistent with the honour of the Crown.*
- 4 These omissions restricted Ngāti Kuri's ability to act as kaitiaki over their taonga, wahi tapu, and whenua, and the compounding effects of successive flawed land laws progressively undermined their traditional tikanga and rangatiratanga. The Crown regrets the prejudice Ngāti Kuri have suffered as a result, including being marginalised on their ancestral lands, and a loss of tribal authority, social cohesion, traditional knowledge, and ability to develop economically.*

- 5 *The Crown unreservedly apologises for the cumulative effects of its ongoing actions and omissions, which contributed to Ngāti Kuri suffering significant population losses and left the people in poverty, poor housing, and deep distress over successive generations.*

- 6 *With this settlement, the Crown seeks to atone for these acknowledged injustices and begin the process of reconciliation. The Crown intends, in the utmost good faith, from this point forward to begin a renewed and enduring relationship with Ngāti Kuri based on mutual trust, commitment, co-operation, and respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles. This is done in the spirit of establishing a new and invigorated relationship based on mutual dignity and respect.”*

Our last formal engagement has been on receiving your letter 19th August 2023. Accepting that we have had a series of significant weather and political events since then, we are concerned that despite a commitment to share the legislation drafts, we have had radio silence.

1.0 Ngāti Kuri has had a series of collective and separate conversations with Te Aupōuri and Te Ohu Kaimoana leadership. Te Ohu Kaimoana has shared with us some of their legislative drafts as of the 28th of August 2022. From there we landed on some shared themes

From Ngāti Kuri’s perspective, they are:

- 1 Te Ohu Kai Moana, Te Aupōuri and Ngāti Kuri represent separately and collectively a similar constituency.
- 2 Ngāti Kuri supports extant rights. This is reflected in the Natural Build and Environment Bill as an antecedent to associated legislation.
- 3 We support a leadership model that is underpinned by our kawa.
- 4 We request the legislation to be future-focused while referencing our Tikanga.

2.0 We support the purpose of the Act, including the underlined.

The purpose of this Act is—

- 1 *to establish the Rangitāhua Ocean Sanctuary; and*
- 2 *to manage the sanctuary so as—*
 - (i) *to preserve the ecological integrity and biodiversity of the sanctuary.*

to recognise Māori rights and interests in the area of the sanctuary, including those provided for by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1996, the Māori Fisheries Act 2004, and Ngāti Kuri Settlements Act 2015, Te Aupōuri Settlement Act 2015

3.0 We support the principle of 620,000 square kilometers of New Zealand’s EEZ (FMA 10) being ringfenced for an appropriate period (25 years = 1 generation) that:

- 1 prohibits commercial fishing (It is not fished currently under the Māori Fisheries Legislation as it is not commercially viable)

- 2 prohibits undersea mining.
- 3 That acknowledges Te Mana o Rangitāhua and its domains to build on cultural and scientific insights to inform climate change adaptation.
- 4 Review after 25 years.

4.0 We support the following Board appointment criteria and membership.

- 1 Members understand Tikanga and mātauranga.
- 2 Members are connected to Iwi, hapū and whanau.
- 3 Te Rūnanga Nui o Te Aupōuri appoints their member.
- 4 The Ngāti Kuri Trust Board appoints their member.
- 5 Te Aupōuri/Ngāti Kuri to Chair
- 6 The appointment of two other Iwi members to be done collectively by Te Aupōuri, Ngāti Kuri and Te Ohu Kaimoana
- 7 Six Member Board; one Te Rūnanga Nui o Te Aupōuri, one Ngāti Kuri Trust Board, two Iwi nga motu, two Crown.

5.0 We support the following notions to inform the Kawa of Te Mana o Rangitāhua_

- 1 As with our cultural practices, this is the responsibility of the hau kainga as framed by legislation (Te Rūnanga Nui o Te Aupōuri and Ngāti Kuri Trust Board).
- 2 Leadership to second skills as they see fit.
- 3 Decision-making by consensus.
- 4 The leadership table is the Waharoa into Rangitāhua
- 5 Te Ohu Kaimoana to provide administrative, project and technical support.
- 6 All parties are bound by kawa.
- 7 Nomenclature is the realm of this leadership table.
- 8 It is for the hau kainga to determine the name.
- 9 All research and permitting to be the management of this leadership table.

6.0 It is our expectation that the Board is resourced appropriately to achieve the aspirations of the purpose of the Act over the period of 25 years.

7.0 We support a Ngāti Kuri technician to sit alongside the Crown to integrate these into the Ocean Sanctuary legislation fully.

The Kermadec islands Nature Reserve and Marine Reserve encompasses 16 islands, and the waters around the island and rocks out to the edge of the Territorial Sea (12 nautical miles).

8.0 Ngāti Kuri request the following.

- 1 That the Minister of Conservation delegates authority for the Kermadec islands Nature Reserve and Marine Reserve to those who have statutory acknowledgement (Ngāti Kuri and Te Aupouri as determined by each respective Settlement Act)
- 2 That the Ministry of Conservation provides the resources to carry out the function appropriately as legislatively required
- 3 That this is provided for concurrently with the Rangitāhua Ocean Sanctuary Legislation.

Below are the links that speak of Ngāti Kuri and our partner's investment in programs and

relationships that are envisaged in the legislation. Building on these will allow us to slingshot into the significant opportunities that the legislation provides.

<https://ngatikuri.iwi.nz/nz-geo-rangitahua-kermadec-islands/>

<https://www.aucklandmuseum.com/discover/research/rangitahua>

Can we schedule a meeting with both of you to finalise the details?

Nga mihi



Harry Burkhardt
Chairman Ngāti Kuri Trust Board | Te Manawa o Ngāti Kuri
9(2)(a)



Approval of response to Te Ohu Kaimoana relating to the Kermadec Ocean Sanctuary Bill

Date Submitted:	15 February 2023	Tracking #: BRF-2790	
Security Level	Policy and Privacy Classification	MfE Priority:	Urgent

	Action sought:	Response by:
Hon David PARKER, Minister for the Environment	Agree to the response to Te Ohu	17 February 2023
CC Hon Stuart NASH, Minister for Oceans and Fisheries CC Hon Willow-Jean PRIME, Minister of Conservation		

Actions for Minister's Office Staff	Return the signed report to MfE
Number of appendices and attachments Nil	

Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Stuart Brodie	s9(2)(a)	
Responsible Manager	Fiona Newlove	s9(2)(a)	
Director	Glenn Wigley	s9(2)(a)	✓

Approval of response to Te Ohu Kaimoana relating to the Kermadec Ocean Sanctuary Bill

Purpose

1. This briefing seeks your approval on the response to Te Ohu Kaimoana (Te Ohu) on the final substantive issue they have raised on the policy proposal to amend the Kermadec Ocean Sanctuary Bill (the Bill).

Context

2. In discussions this week with Lil Anderson, Te Ohu proposed that the Agreement between the Crown and Te Ohu specify that a Total Allowable Catch/Total Allowable Commercial Catch (TAC/TACC) review of quota management area 10 (QMA 10) fish stocks under the Fisheries Act occur at 10 years, leading to a possible discussion with the Crown about subsequent payment for the value of the annual catch entitlement (ACE) going forward (e.g. not retrospective).
3. Te Ohu were advised that this issue would need to be tested with Ministers. The expectation has been set with Te Ohu that we will provide a final response on this issue prior to the Te Ohu AGM. s9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
4. To enable this matter to be resolved by 22 February, subject to your agreement, officials propose to inform Te Ohu of the Crown's final position on this issue on 17 February.

Proposed Response to Te Ohu

5. We suggest the following proposal for inclusion in the Agreement (not the Supplementary Order (SOP)) is tabled with Te Ohu as the Crown's final position on the matter of Te Ohu's QMA 10 ACE:
 - a. at the 10-year review milestone, the best available information (including the research conducted for purposes of the research plan during that 10 years) is used as the basis for a discussion between Te Ohu and the Crown to identify QMA 10 fish stocks of greatest interest and any possible material change that could result from any TAC/TACC review
 - b. for the priority stocks, a TAC review under section 13 of the Fisheries Act is conducted (involving public consultation of a proposal to change the TAC/TACC, noting there can be no pre-determination of whether there will be grounds for the TAC/TACC to increase)

- c. if the TAC review results in a decision by the Minister responsible for Fisheries to change the TAC/TACC, there is a discussion between Te Ohu and the Crown
- d. the discussion would focus on the impact on rights and interests, including consideration of the value of ACE of QMA 10 fish stocks
- e. the revised SOP for the Bill does not preclude Te Ohu (and other affected parties) pursuing legal claims for compensation if discussions with the Crown at 10 years did not reach a successful resolution and Te Ohu believed there was a basis for such a claim
- f. if there is insufficient information to change the TAC/TACC at 10 years, a further TAC/TACC review can occur at 15 years and/or 20 years depending on the availability of information.

Key Considerations

Agreeing to a TAC/TACC Review at 10 years

6. On the matter of the TAC/TACC review, key considerations include:
- a. the SOP removes provisions that would set the TACs for QMA 10 fish stock at zero tonnes in perpetuity
 - b. s9(2)(g)(i) [Redacted]
 - c. s9(2)(g)(i) [Redacted]
 - d. s9(2)(g)(i) [Redacted]
 - e. s9(2)(g)(i) [Redacted]
 - f. s9(2)(g)(i) [Redacted]

- g. s9(2)(g)(i) [redacted]
- h. s 9(2)(g)(i) [redacted]

Potential payment for ACE

7. On the issue of a conversation about payment for the value of ACE, key considerations include:

- a. s9(2)(g)(i) [redacted]
- b. the SOP removes provisions that preclude claims for compensation. The consequence is that Te Ohu and other affected parties would be able to pursue such claims at any stage, including in light of new information or a TAC increase. Te Ohu is not aware, to date, of the decision to remove this provision. s 9(2)(h) [redacted]
- c. it is preferable, from a Treaty relationship perspective, that the Crown and Te Ohu seek to resolve the matter, acting in good faith, with dialogue first and pursuit of legal claims as a last resort
- d. s9(2)(g)(i) [redacted]
- e. s 9(2)(g)(i) [redacted]
- f. s 9(2)(g)(i) [redacted]

Next Steps

8. Should you agree to this approach, we will inform Te Ohu of the Crown's response to its proposal regarding the TAC review for QMA 10 fish stocks and provide you with an update of the outcome of this discussion.
9. To enable this final issue to be resolved by 22 February, we recommend officials respond to Te Ohu on 17 February.
10. In the event that Te Ohu is not satisfied with this response, we recommend that you meet/engage with the Rangimarie Hunia, Te Ohu Board chair, and potentially other Board members, by 20 February, to confirm the Crown's final position and to understand Te Ohu's intent to seek support for the revised proposal at its AGM on 23 March and discuss next steps (BRF 2635 refers).


Recommendations

11. We recommend that you:

- a. **Agree** that the Crown's final position on Te Ohu's QMA 10 ACE to be conveyed to Te Ohu is:
 - i. at the 10-year review milestone, the best available information (including the research conducted for purposes of the research plan during that 10 years) is used as the basis for a discussion between Te Ohu and the Crown to identify QMA 10 fish stocks of greatest interest and any possible material change that could result from any TAC/TACC review
 - ii. for the priority stocks, a TAC review under section 13 of the Fisheries Act is conducted (involving public consultation of a proposal to change the TAC/TACC, noting there can be no pre-determination of whether there will be grounds for the TAC/TACC to increase)
 - iii. if the TAC review results in a decision by the Minister responsible for Fisheries to change the TAC/TACC, there is a discussion between Te Ohu and the Crown
 - iv. the discussion would focus on the impact on rights and interests, including consideration of the value of ACE of QMA 10 fish stocks
 - v. the revised SOP for the Bill does not preclude Te Ohu (and other affected parties) pursuing legal claims for compensation if discussions with the Crown at 10 years did not reach a successful resolution and Te Ohu believed there was a basis for such a claim
 - vi. if there is insufficient information to change the TAC/TACC at 10 years, a further TAC/TACC review can occur at 15 years and/or 20 years depending on the availability of information

Yes/No

Signature

Glenn Wigley Director Waste and Resource Efficiency - Regulatory and Policy	
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Hon David PARKER, Minister for the Environment	Date:
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Options to progress the Kermadec Ocean Sanctuary Bill



Date Submitted:	10 February 2023	Tracking #: BRF-2635	
Security Level	Policy and Privacy Classification	MfE Priority:	Not urgent

	Action sought:	Response by:
Hon David PARKER, Minister for the Environment	Agree to forward this paper to the Minister of Conservation, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Oceans and Fisheries	20 February 2023

Actions for Minister's Office Staff	Forward this report to the Minister of Conservation, the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Oceans and Fisheries Return the signed report to MfE
Number of appendices and attachments	Nil

Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Stuart Brodie – Ministry for the Environment	s9(2)(a)	
Director	Glenn Wigley – Ministry for the Environment	s9(2)(a)	✓
Deputy Director-General	Ruth Isaac – Department of Conservation	s9(2)(a)	
Deputy Director-General	Dan Bolger – Fisheries New Zealand	s9(2)(a)	
Deputy Chief Executive	Warren Fraser – Office for Māori Crown Relations: Te Arawhiti	s9(2)(a)	

Options to progress the Kermadec Ocean Sanctuary Bill

Key Messages

1. This briefing provides you with an update on discussions with Te Ohu Kaimoana (Te Ohu) and advice on options to progress the Kermadec Ocean Sanctuary Bill (the Bill) to ensure its enactment in this parliamentary term.

Te Ohu update

2. Te Ohu Kaimoana's (Te Ohu) Annual General Meeting (AGM) is scheduled for 23 March. For the revised proposal to be considered at the AGM, Te Ohu is looking to resolve outstanding matters with the Crown prior by 22 February (this being the final notification date for AGM matters).
3. Based on the most recent discussions at Waitangi between Lil Anderson and Lisa te Heuheu (Te Ohu Chief Executive), we understand that Te Ohu's proposal to sell its annual catch entitlements (ACE) for quota management area 10 (QMA 10) fish stocks to the Crown is not being pursued. Instead, Te Ohu ask that the Agreement between the Crown and Te Ohu is clear about:
 - a. the importance of ACE to Mandated Iwi Organisations (MIOs)
 - b. that ongoing research undertaken by Te Kāhui on fish species will contribute to any future decisions about total allowable commercial catch (TACC) [for QMA 10 fish stocks] under the Fisheries Act 1996.
4. Officials are now working with Te Ohu on how the above concerns could be built into the Agreement between the Crown and Te Ohu and/or communicated clearly to MIOs at the AGM.

Reaching agreement with Te Ohu on revised proposal

5. Despite recent delays including Te Ohu deferring plans to put the proposal to MIOs and new issues being raised by the Te Ohu Board, officials consider Te Ohu's AGM to be the best way forward to secure Te Ohu/MIO support for the revised proposal set out in the supplementary order paper (SOP) and the Agreement between the Crown and Te Ohu.
6. Officials are reasonably confident that the remaining dimensions of the ACE issue, what we understand to be the final substantive issue, can be resolved with Te Ohu by 22 February, enabling the revised proposal to be considered at Te Ohu's AGM.
7. We will continue to work with Te Ohu on efforts to resolve the outstanding matter and provide you with an update on where these discussions have landed by 17 February.

8. Prior to the AGM being notified on 22 February, we recommend that you, and potentially other Ministers including the Minister of Conservation, the Minister for Māori Crown Relations – Te Arawhiti and/or the Minister for Oceans and Fisheries, meet with Rangimarie Hunia. A meeting/discussion prior to the AGM would enable you to:
 - a. reaffirm the Government's intent to enact the Bill by June 2023 at the latest
 - b. confirm Te Ohu's intent to seek support for the revised proposal at its AGM on 23 March
 - c. agree to next steps, including consideration of the outcome of the Te Ohu AGM and progressing the Agreement between the Crown and Te Ohu by early April
 - d. discuss the implications in the event that the Crown and Te Ohu are unable to fully resolve all matters and alternative ways forward each might consider.

Officials will provide further advice on the range of options the Crown could take in the event agreement with Te Ohu cannot be reached

9. In the event that matters are not able to be resolved, having exhausted best endeavours to do so, the Government may consider the potential option of progressing the SOP without securing the full support of Te Ohu and/or MIOs.
10. There are significant risks associated with progressing the Bill without securing Te Ohu's support. These include:
 - a. damage to the Crown's ongoing relationship with iwi and Te Ohu

s 9(2)(h)

11. There may also be issues with the practicalities of implementing the Bill, including operation of Te Kāhui, in the absence of Te Ohu support.
12. Officials will provide further advice on the range of options the Crown could take if an agreement cannot be reached with Te Ohu including, at the extreme, proceeding with legislation without agreement on all issues. s 9(2)(h)




Recommendations


13. We recommend that you:
 - a. **Note** that officials will provide you with an update on discussions with Te Ohu to resolve the QMA 10 ACE issue by 17 February

- b. **Agree** to meet/engage with Rangimarie Hunia, the Te Ohu Board chair, and potentially other Board members by 20 February to:
- i. reaffirm Government's intent to enact the Bill by June 2023 latest
 - ii. confirm Te Ohu's intent to seek support for the revised proposal at its AGM on 23 March
 - iii. agree to next steps, including consideration of the outcome of the Te Ohu AGM and progressing the Agreement between the Crown and Te Ohu by early April
 - iv. discuss, if need be, the implications in the event that the Crown and Te Ohu are unable to fully resolve all matters and alternative ways forward each might consider
- Yes/No
- c. **Agree** to forward this briefing to the Minister for Māori Crown Relations: Te Arawhiti, the Minister of Conservation, and the Minister for Oceans and Fisheries.

Yes/No

Signature

Glenn Wigley Director, Waste and Resource Efficiency - Regulatory and Policy Ministry for the Environment	
Ruth Isaac Deputy Director-General, Strategy and Policy Department of Conservation	
Dan Bolger Deputy Director-General Fisheries New Zealand	

<p>Warren Fraser Deputy Chief Executive, Strategy, Policy and Legal Office for Māori Crown Relations: Te Arawhiti</p>	
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<p>Hon David PARKER, Minister for the Environment</p>	<p>Date:</p>
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Purpose

1. This briefing provides you with an update on discussions with Te Ohu and advice on options to progress the Bill to ensure its enactment in this parliamentary term.

Background

2. Following your decisions on final policy proposals (BRF 2006 refers) in November 2022, a draft SOP was prepared by the Parliamentary Counsel Office.
3. A limited purpose waiver from the Attorney General's office was approved for the draft SOP to be shared with representative members of Te Ohu, Ngāti Kuri and Te Aupōuri. s9(2)(g)(i) [REDACTED]
4. Te Ohu had earlier advised that the revised proposal set out in the SOP and the Agreement between the Crown and Te Ohu would be considered at a Special General Meeting on 20 January 2023. Consideration of the proposal has been deferred to Te Ohu's AGM scheduled for 23 March.

Te Ohu update

5. The Te Ohu Board has yet to determine whether the revised proposal will go forward to Te Ohu's AGM. Te Ohu is looking to resolve outstanding matters with the Crown prior to 22 February, this being the final notification date for AGM matters.
6. Based on the most recent discussions at Waitangi between Lil Anderson and Lisa te Heuheu (Te Ohu Chief Executive), Te Ohu have advised that its proposal to sell its ACE for QMA 10 fish stocks to the Crown is not being pursued. Te Ohu ask that the agreement between the Crown and Te Ohu is clear about:
 - a. the importance of ACE in the Fisheries Act 1996 and the importance of ACE to MIOs
 - b. that ongoing research undertaken by Te Kāhui on fish species will contribute to any future decisions [by the Minister with responsibility for Fisheries] about the TACC (for QMA 10 fish stocks) and that this TACC enables a conversation about ACE and how this is to be treated between Crown and Te Ohu.
7. Officials are reasonably confident that this issue can be successfully resolved with Te Ohu prior to 22 February. We are exploring relevant options, s 9(2)(g)(i) [REDACTED].

Best endeavours to resolve outstanding matters

8. The approach to date has been to work with Te Ohu on a revised proposal that meets the Government's objectives of establishing a sanctuary that contributes to global

marine commitments, while recognising Māori rights and interests and enabling Te Ohu to secure a mandate from the MIOs.

9. Despite delays with setting up a Special General Meeting at the end of last year, officials consider Te Ohu's AGM on 23 March to be the best way forward to secure Te Ohu/MIO support for the revised proposal set out in the SOP and the Agreement between the Crown and Te Ohu.
10. We recommend that good faith discussions with Te Ohu are continued, given that the ACE issue appears to be the substantive issue to be resolved (for purposes of the AGM). In support of this process:
 - a. Officials will continue to work with Te Ohu in efforts to resolve all outstanding matters by 22 February
 - b. We recommend that you, and potentially other Ministers including the Minister of Conservation, the Minister for Māori Crown Relations – Te Arawhiti and/or the Minister for Oceans and Fisheries, meet/engage with the Rangimarie Hunia, Te Ohu Board chair, and potentially other Board members by 20 February to:
 - i. reaffirm Government's intent to enact the Bill by June 2023 at the latest
 - ii. confirm Te Ohu's intent to seek support for the revised proposal at its AGM on 23 March
 - iii. agree to next steps, including consideration of the outcome of the Te Ohu AGM and progressing the Agreement between the Crown and Te Ohu by early April
 - iv. discuss the implications in the event that the Crown and Te Ohu are unable to fully resolve all matters and the alternative ways forward each might consider. If the ACE issue is unable to be resolved prior to 22 February, agreement could be secured for the policy proposal to go forward to Te Ohu's AGM on the basis that the parties are continuing to work through the matter. This will allow further time for the parties to reach agreement prior to the AGM on 23 March.

Enactment of Bill without Te Ohu's full support

11. There remains the risk that Te Ohu (and/or MIOs) does not support all aspects of the proposal which may affect the ability to meet the Government's intention to pass the Bill this parliamentary term.
12. Depending on how matters unfold either before or at the AGM, the Government may want to consider other options to pass the Bill this term having exhausted best endeavours to resolve matters with Te Ohu.
13. Proceeding without the support of Te Ohu would come with risks, for example:

- a. damage to the Crown and Te Ohu working relationship, which could impact on other current and future work programmes, including for marine protected area reform
 - b. reputational risk / public criticism about the outcome of a process designed to secure the support of Te Ohu and iwi and delay in finalising the Bill
 - c. adverse effects on the Crown's relationships with iwi (given the pan-iwi nature of the fisheries settlement and the interests of northern iwi in the proposal and engagement with those iwi to date)
 - d. s 9(2)(h)
 - e. the effective operation of Te Kāhui and other aspects of the proposal.
14. Officials can provide more detailed advice on these risks and options going forward, if needed, in the event that agreement with Te Ohu is not secured.

Next Steps

- 15. We will provide you with an update of where we have landed in discussions with Te Ohu by 17 February, to inform your conversation with Rangimarie Hunia (which may also include other members of the Te Ohu Board).
- 16. We will also continue to work with Te Ohu on the SOP and draft agreement in the lead up to the Te Ohu AGM.
- 17. If need be, officials can provide further advice on the range of options the Crown could take if an agreement cannot be reached with Te Ohu and/or MIOs, including any necessary amendments to the SOP.
- 18. For the Bill to be enacted in this parliamentary term, we consider that Cabinet approval to introduce the SOP would need to occur by mid-May, with the second reading of the Bill and introduction of the SOP in the House in early-June and enactment by late-June.



To: Hon David Parker, Minister for Oceans and Fisheries
From: Fiona Newlove, Manager Marine Policy
Cc: Glenn Wigley, Sam Buckle, Vicky Robertson
Date: 20 January 2023

RE: Update on proposed Ngā Whatu-a-Māui (Kermadec) Ocean Sanctuary

Purpose

To update on discussions with Te Ohu Kaimoana (Te Ohu) regarding the Kermadec Ocean Sanctuary, prior to the next Te Ohu Board meeting on 26 and 27 January

Update/ context

- On 19 December Lil Anderson received an update from Rangimarie Hunia. Rangimarie confirmed Te Ohu would not be going ahead with a Special General Meeting (SGM) on 20 January.
- This week Lil Anderson received a further update that the Te Ohu AGM is now set for 22 March, where Te Ohu intends to present the final proposal to MIOs for their consideration.
- The Te Ohu Board will meet on 26 and 27 January for their strategy meeting. The Board previously met on 6 December and agreed to support the proposal subject to one aspect relating to the Annual Catch Entitlement (ACE) for QMA 10 (which Rangimarie discussed with you directly). We understand Rangimarie will be looking to provide an update to the Board on this matter at this meeting.
- We understand Rangimarie has also given an undertaking to go to Iwi Chairs Forum with the revised proposal, which may be at Waitangi.
- We understand Rangimarie is aware there may be some frustration as a result of delays with the SGM/AGM and new issues being raised.
- Discussions with Te Ohu (Rangimarie and her team) at the end of last year focused on Kāhui-led research programme and how this will provide value to MIOs. s9(2)(g)(i) [redacted]
- To help address this ACE issue, we have provided to Te Ohu material that summarises the current provisions of the Bill that relate to research and how these will deliver value to MIOs. s9(2)(g)(i) [redacted]



- Officials will continue to work with Te Ohu to resolve this matter in the lead up to the Board discussion next week and after, if necessary.

Te Ohu Board meeting in late January

In advance of the Te Ohu Board strategy meeting on 26 and 27 January, you may wish to phone Rangimarie. This would be an opportunity to:

- understand where the Board is at with the revised proposal
- confirm the next steps to initiate consideration of the final proposal at the AGM
- express any frustration around delays and/or emphasise time constraints if want to enact Bill before mid-year.

Alternatively, Rangimarie may want to call you after the Board meeting to provide you with an update on the outcome of her report back to the Board.

Next steps

We will provide you with further advice in the week of 30 January which will include a further progress update, including from the Te Ohu Board meeting the week prior, and options you could consider from here.

Fiona Newlove

Date: 20/1/2023