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Environmental Defence Society submission on Hauraki Gulf / Tīkapa Moana Marine Protection Bill

SUBMITTER DETAILS

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Summary of submission

1. The Hauraki Gulf Tīkapa Moana is a taonga of the utmost cultural and spiritual significance and of national and international importance.

2. The state of the environment of the Hauraki Gulf Marine Park is of serious concern with long-term declines in biodiversity, the depletion of taonga species, and the loss of important benthic habitat. In addition to fishing, other growing pressures on the Hauraki Gulf make an increase in marine protection critical to increase the resilience and ability of marine ecosystems to survive cumulative impacts including those from climate change.

3. Marine protection is recognised as one of the most powerful and effective methods of restoring marine life and habitats. As well as enabling the recovery of marine ecosystems and species within the area protected, these areas also benefit the marine space well beyond their boundaries thereby enhancing commercial and recreational fishing opportunities.

4. The provisions of the Hauraki Gulf / Tīkapa Moana Marine Protection Bill ("**Bill**") are broadly consistent with the recommendations of the Sea Change Tai Timu Tai Pari ("**Sea Change**") process which had wide agency, cross-sectoral, iwi and public support.

5. There is a demonstrated need to increase the size of the existing marine reserves at Leigh and Hahei. Extensions to these areas need to be marine reserves so the new areas can be seamlessly integrated into the existing areas, and so they can be managed in a coherent manner.

6. EDS strongly supports the establishment of 12 Highly Protected Areas ("**HPAs**") as set out in the Bill, which individually and collectively have high biodiversity values that need and merit protection. EDS also strongly supports the creation of 5 seafloor protection areas ("**SPAs**") as set out in the Bill to help address the negative impacts of activities that damage important biogenic habitats in the Hauraki Gulf. However, there are gaps in coverage and so there is a need for the Bill to make provision for the identification of further protected areas as needed.

7. EDS generally supports the activities identified as prohibited in HPAs and SPAs. EDS supports the additional prohibited activities in the Mokohīnau SPA due to the very sensitive marine ecosystems included in that SPA.

8. The economic assessment of the impacts of the protected areas shows that any reduction in commercial catch/revenue is likely to be very small, if there is a reduction at all, and so any impact of displaced effort is also likely to be very small.

9. The economic assessment also shows that the reduction in recreational catch due to increased marine protection is very small and is not likely to result in any significant displacement of effort to other areas which are not protected.

10. It is also likely that increased protection will increase the abundance of fish stocks targeted by commercial and recreational fishers providing an overall net benefit.

11. EDS strongly supports the Bill, subject to the amendments set out in **Appendix A**. In summary, these include:

    - Clarify the purpose of SPAs and HPAs.
    - Enable the addition of new protected areas.
    - Provide for the mandatory development of biodiversity objectives for all protected areas.
    - Provide for the mandatory monitoring of protected areas and permits.
    - Tighten up the permit process, including providing for public notification in some cases.
    - Providing for changes to permits where unanticipated cumulative effects occur or when biodiversity objectives are amended.
    - Enabling public interest entities to appeal permit decisions alongside applicants and permit holders.
    - Creating an offence for breaching conditions of a permit.
    - Amending the test for regulating activities within protected areas from "necessary" to "reasonably necessary".

Introduction

12. The Environmental Defence Society ("**EDS**") thanks the Environment Select Committee for the opportunity to make a submission on the Bill.

13. EDS is an independent not-for-profit organisation conducting interdisciplinary policy research and litigation. It was established in 1971 with the purpose of improving environmental outcomes in Aotearoa New Zealand. EDS has a special interest in coastal and marine ecosystems and is currently leading research on future options for oceans system reform.

14. The Hauraki Gulf Tīkapa Moana has been a core focus of EDS's work for many years. EDS strongly supported the Sea Change process. EDS Policy Director, Raewyn Peart, was a member of the Stakeholder Working Group ("**SWG**") that developed the Sea Change Marine Spatial Plan, was subsequently a member of the Ministerial Advisory Committee on Sea Change, and is currently a member of the Hauraki Gulf Fisheries Plan Advisory Group.

15. EDS has published widely on Hauraki Gulf issues. In 2016, EDS produced an environmental history of the Hauraki Gulf[1] followed by a 2017 lessons learnt review of the Sea Change process,[2] a 2018 investigation into fisheries management which included a Hauraki Gulf case study,[3] a 2019 investigation into aquaculture which included a Hauraki Gulf case study[4] and a 2019 report outlining potential options for improving the governance of the Hauraki Gulf.[5] In 2020, EDS published a report on protecting the Hauraki Gulf Islands as part of its landscape protection project.[6] All of EDS's publications are available at: https://eds.org.nz/resources/documents/report-library/

16. More recently, EDS has submitted in support of iwi-led proposals to temporarily close the waters around Waiheke Island and Aotea Great Barrier Island, and in support of the proposed Hākaimango-Matiatia (Northwest Waiheke Island) Marine Reserve. EDS also submitted on the review of sustainability measures for Coromandel scallops and the Draft Hauraki Gulf Fisheries Plan.[7]

Intent of the Bill

17. The Bill seeks to address the ongoing decline of the Hauraki Gulf Tīkapa Moana due to human activities. It does so through establishing a network of marine protected areas which are intended to contribute to restoring the overall health and mauri of the Gulf. They include:

- 12 HPAs to protect and enhance marine habitats and ecosystems while providing for the customary practices of mana whenua;
- 5 SPAs to protect sensitive sea floor habitats while continuing to allow for compatible activities; and
- 2 marine reserves adjacent to the existing Whanganui-a-Hei (Cathedral Cove) and Cape Rodney-Okakari Point marine reserves, to effectively expand these marine reserves.

18. Such protection is greatly and urgently needed. EDS strongly supports the intent of the Bill, and its provisions, subject to the amendments set out in Appendix A.

19. The Bill needs to be considered within the context of the considerable importance of the Hauraki Gulf Tīkapa Moana to mana whenua, local and regional communities, Aotearoa New Zealand more broadly and the rest of the world, and the ongoing degradation of this nationally and internationally significant marine area.

20. In addition, as the proposals have been largely based on those set out in the Sea Change marine spatial plan[8] (with some minor boundary changes), it is important to understand the genesis of the Sea Change process, how the marine protection proposals were developed, and the broad cross-sectoral support generated for the Sea Change plan as a result of the collaborative process.

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[1] Peart R, 2016, *The story of the Hauraki Gulf*, Bateman, Auckland
[2] Peart R, 2017, *Turning the tide: Integrated marine planning in New Zealand*, EDS, Auckland
[3] Peart R, 2018, *Voices from the sea: Managing New Zealand's fisheries*, EDS, Auckland
[4] Peart R, 2019, *Farming the Sea: Marine Aquaculture with Resource Management System Reform*, EDS, Auckland
[5] Peart R and B Cox, 2019, *Governance of the Hauraki Gulf: A review of options,* EDS, Auckland
[6] Peart R and C Woodhouse, 2020, *Protecting the Hauraki Gulf Islands*, EDS, Auckland
[7] Recent submissions prepared by EDS are available at https://eds.org.nz/resources/documents/submissions/
[8] Sea Change Tai Timu Tai Pari, 2016, *Hauraki Gulf marine spatial plan*, Waikato Regional Council, Hamilton, at 18

The importance of the Hauraki Gulf Tīkapa Moana

21. The Hauraki Gulf Tīkapa Moana "is a taonga of the utmost cultural and spiritual significance to mana whenua through its rich history of settlement and use since the first waka (ancestral canoes) navigated its water many centuries ago."[9] It is a highly productive marine system, is a major spawning and nursery area for snapper and other finfish,[10] and supports some of the most important commercial and recreational fisheries in the country.

22. The Gulf is an international seabird biodiversity hotspot, with over 70 species being sighted there, comprising some 20% of the world's total number of seabird species. At least 23 species breed in the Hauraki Gulf.[11] The wider Hauraki Gulf region and many of its islands are recognised as globally important with five bird species endemic to the region and breeding nowhere else in the world.[12] Around 50 Bryde's whales live year-round in the Gulf, and common and bottlenose dolphins are thought to use the Gulf as a calving and nursery area, possibly due to the year-round abundance of food.[13]

23. The national and international importance of the Gulf is highlighted by the passage of the Hauraki Gulf Marine Park Act 2000 which establishes the Hauraki Gulf Marine Park "to recognise and *protect in perpetuity the international and national significance* of the land and the natural and historic resources within the Park".[14] This highlights the need to protect the area in perpetuity.

24. In section 7, that Act recognises *as a matter of national significance* the interrelationship between the Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the Gulf (which includes its waters and ecosystems).[11] Section 8 sets out management objectives for the Gulf which include "(a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments".

25. To date, action towards achieving the Act's objectives has been underwhelming at best. A mere 3,960 ha (or 0.3%) of the Hauraki Gulf Marine Park is protected within marine reserves. Only one marine reserve, the Te Matuku Marine Reserve on the south coast of Waiheke Island, was created after the establishment of the Marine Park in 2000 and the application for it was lodged prior to the Marine Park being established.[15]

26. The Hauraki Gulf Forum has set a goal of at least 30% marine protection of the Hauraki Gulf Marine Park in its 2021-22 Annual Report,[16] recognising the growing need to provide significantly increased protection for the Marine Park.

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[9] Ibid

[10] Zeldis J R and R I C C Francis, 1998, *A daily egg production method estimate of snapper biomass in Hauraki Gulf, New Zealand*, ICES Journal of Marine Science, 55, 522-534

[11] Gaskin C P and M J Rayner, 2013, *Seabirds of the Hauraki Gulf: Natural history, research and cons*ervation, Hauraki Gulf Forum, Auckland

[12] Gaskin C P (ed), 2021, *The state of our seabirds 2021: Seabird ecology, research and conservation for the wider Hauraki Gulf/Tīkapa Moana/Te Moananui-ā-Toi region*, Northern New Zealand Seabirds Charitable Trust, Auckland

[13] Stockin K A, 2008, *The New Zealand common dolphin (Delphinus sp.): Identity, ecology and Conservation*, PhD thesis, Massey University, Auckland; Dwyer S L et al, 2014, *Overlooking a potential hotspot at Great Barrier Island for the nationally endangered bottlenose dolphin of New Zealand*, Endangered Species Research, 25, 97-114

[14] Hauraki Gulf Marine Park Act 2000, section 32(a)

[15] Hauraki Gulf Forum, 2020, *State of our Gulf 2020: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2020*, at 13. Available from www.haurakigulfforum.org.nz

[16] Hauraki Gulf Forum, 2022, *Annual report Te Pūrongo ā Tau 2021-22*. Available from https://gulfjournal.org.nz/wp-content/uploads/2022/08/HGF-AR-2022-10.pdf

27. The Forum's goal has been supported by a public survey undertaken in September and October 2021. Of the 1,000 respondents, 77% supported putting 30% of the Hauraki Gulf into marine protected areas. Only 5% were opposed.[17]

28. Mana whenua have showed leadership in providing protection in the absence of government action. In January 2021, Ngāti Pāoa placed a rāhui on the harvest of scallops, mussels, rock lobsters and pāua from the nearshore marine area around Waiheke Island. In February 2022, Ngāti Manuhiri laid a rāhui over the entirety of the Hauraki Gulf to prohibit the harvesting of scallops. In the same month the Motairehe Marae Trust passed a resolution to lay a rāhui over Aotea to prohibit all take of scallops, pāua and crayfish within the entirety of its rohe.

29. There is an urgent need to support these efforts by implementing strong area-based protection to meet the vision and objectives for the Hauraki Gulf Marine Park.

Need for greater marine protection in the Hauraki Gulf Tīkapa Moana

30. The state of the environment of the Hauraki Gulf Marine Park is of serious concern. The latest assessment report, published by the Hauraki Gulf Forum earlier this year, describes long-term declines in biodiversity, the depletion of taonga species, and the loss of important benthic habitat.[18] Cumulative effects of human-induced pressures, including overfishing, introduction of invasive species and poorly regulated land-based activities (i.e., sedimentation and nutrient run-off), have led to widespread degradation of the marine environment. This, in turn, has undermined the capacity of species and ecosystems to perform important ecological functions and provide ecosystem services including fish production.[19] Specific findings in the report, indicative of the ongoing poor health of the Gulf, include:[20]

- Tāmure and tarakihi are at levels where action is needed to actively rebuild their stocks (less than 20% of unfished stock biomass);
- Kōura (crayfish) is regarded as functionally extinct in heavily fished areas;
- Kina barrens are expanding rapidly due to the lack of large predators – tāmure (snapper) and kōura (crayfish);
- There has been universal decline in the density of harvestable (>30 mm) tuangi (cockles) over the last 20 years at the 12 monitored sites where harvesting is allowed; and
- There is growing evidence of reduced food availability for top predators.[21]

31. In addition, scallop beds are in a state of collapse with the biomass of commercially fished scallop beds declining by more than 80% in the Coromandel fishery over the past 10 years, representing a decline from 1,397 tonnes to 249 tonnes between 2012 and 2021.[22] Steeper declines have been observed within certain areas. For example, the biomass of core scallop

[17] Horizon Research, 2021, *Hauraki Gulf survey*, prepared for the Hauraki Gulf Forum. Available from: https://gulfjournal.org.nz/2021/11/results-of-hauraki-gulf-poll/

[18] Hauraki Gulf Forum, 2023, *State of our Gulf 2023: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2023*. Available from www.haurakigulfforum.org.nz

[19] Ibid

[20] Hauraki Gulf Forum, 2023, *At a glance: State of our Gulf 2023: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2023*, at 15-17. Available from www.haurakigulfforum.org.nz

[21] Hauraki Gulf Forum, 2023, *State of our Gulf 2023: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2023*, at 13. Available from www.haurakigulfforum.org.nz

[22] Fisheries New Zealand, 2021, *Review of sustainability measures for New Zealand scallops (SCA 1 & SCA CS) for 2022/23*, FNZ Discussion Paper No 2021/30. Available from www.mpi.govt.nz

beds in the Hauraki Gulf declined from 1,005 tonnes in 2012 to 52 tonnes in 2021 with the current biomass only 5% of the 2012 level.

32. Even more alarming is recent research documenting the expansion of kina barrens off Te Hauturu-o-toi Little Barrier Island and the Noises. Kina barrens surrounding Te Hauturu-o-toi Little Barrier Island have increased from 0.4% of the rocky reef system in 1953, to 11.6% in 1979 and 32.73% in 2019. The figures for the Noises are even more stark, with kina barrens increasing from 23.97% of reef areas in 1978 to 49.52% in 2019.[23] Kina barrens are associated with the fishing down of large snapper and crayfish. Evidence from marine reserves indicate that a high level of marine protection (with all fishing excluded) will enable the kelp forests to recover. This highlights the urgent need to increase marine protection in the Hauraki Gulf.

33. The loss of kelp forests in the Hauraki Gulf not only reduces biodiversity and productivity but it has potentially significant climate consequences. Kelp forests play a vital role in mitigating climate change. As explained in a recent article in the *Yale Environment Review*, as a kelp forest deteriorates, it releases sequestered carbon dioxide back into the atmosphere and the kelp forests become a source of carbon rather than a sink.[24]

34. Further signs that all is not well with the ecological health of the Hauraki Gulf Tīkapa Moana is the appearance of snapper and trevally with milky white 'mushy' flesh. Although some fish had been observed with this syndrome in previous years, it became much more common during the 2022-23 fishing year.[25] Investigations have attributed the syndrome to fish undergoing a prolonged period of starvation.[26]

35. This poor state of the marine environment is also affecting other species including the Hauraki Gulf's internationally important seabird population. As described in the *State of Our Seabirds 2021* report, "many populations of resident seabirds remain in a poor state because of our devastation of the Gulf's food webs through overfishing and habitat damage".[27] The proportion of species that breed in the Hauraki Gulf Marine Park that are Threatened have increased from 4% in 2002 to 22% today.[28]

36. In addition to fishing, other growing pressures on the marine environment make an increase in marine protection critical, in order to increase the resilience and ability of marine ecosystems to survive cumulative impacts. Climate change is already having significant impacts on the Gulf (which will increase significantly in the future) through seawater warming, seawater acidification and increased sediment inputs from a greater frequency and intensity of storms.

37. The severity of such impacts has been highlighted by the series of marine heatwaves recently impacting the Hauraki Gulf, with the 2022 episode being the longest marine heatwave on

[23] Dartnell L, 2022, *The extent of kina barrens over time at Hauturu-o-Toi and the Noises Islands*, Masters of Marine Studies Masters thesis, University of Auckland

[24] Yale Environment Review, 2022, *Kelp can help: Kelp forests reveal hidden potential for blue carbon sequestration*, 2 May. Available from https://environment-review.yale.edu/kelp-can-help-kelp-forests-reveal-hidden-potential-blue-carbon-sequestration

[25] https://www.mpi.govt.nz/fishing-aquaculture/recreational-fishing/information-on-popular-fish-in-nz/snapper-status-and-information/milky-white-flesh-in-snapper-and-some-other-finfish/

[26] *Milky-white flesh syndrome in snapper (Pagrus auratus) and trevally (Pseudocaranx dentex) investigated*, 2023, Surveillance 50(2), at 34

[27] Gaskin C P (ed), 2021, *The state of our seabirds 2021: Seabird ecology, research and conservation for the wider Hauraki Gulf/Tīkapa Moana/Te Moananui-ā-Toi region*, Northern New Zealand Seabirds Charitable Trust, Auckland, at 7

[28] Hauraki Gulf Forum, 2020, *State of our Gulf 2020: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2020*, at 147

record. The heated water caused bleaching of large rocky reef sponges, with some appearing to 'melt' off the reefs. This is extremely concerning as sponges play important ecological and biochemical roles within these rocky reefs communities.[29]

38. The situation is predicted to get much worse. Research has indicated that, by 2100, the 40-odd marine heatwave days we currently see in a normal year will increase to between 80 (low emissions, best-case scenario) and 170 days (high emissions, worst-case scenario) by the end of the century. In addition, average marine heatwave intensities are predicted to increase by 20% (best case) to 100% (double, worst case) by the century's end. For the North Island (including the Hauraki Gulf), this means an average marine heatwave could be between 0.5°C to 2°C more intense than today.[30]

39. We have also seen the expansion of the invasive pest *Caulerpa*, which was first sighted at Blind Bay, Aotea Great Barrier Island in June 2021, and which forms a dense carpet over the seabed outcompeting indigenous species. By March 2023, the seaweed had expanded to cover over 90% of the seabed in Blind Bay to depths of 10 metres[31] and it has since also been found within the Hauraki Gulf at Tryphena, Whangaparara, Ahuahua Great Mercury Island, Waiheke Island, and Kawau Island and further north at Te Rāwhiti Inlet. Such invasive pests get a stronger hold when ecosystems are degraded.

40. The impacts of such pressures are not only ecological. It is now difficult to find, let alone harvest, many of the taonga marine species that were once abundant across shallow coastal waters of the Hauraki Gulf. For example, the absence of rock lobsters, scallops, mussels and pāua around Waiheke Island has impeded the continuation of customary harvest practices and led to the current rāhui.

41. Such impacts are very concerning because of the enormous importance of the Hauraki Gulf to regional communities and Aotearoa New Zealand as a whole. ***EDS submits that the provisions in the Bill are essential to help address the ongoing and mounting pressures on the Hauraki Gulf Tīkapa Moana.***

Sea Change Tai Timu Tai Pari process

42. The Sea Change Tai Timu Tai Pari ("**Sea Change**") project had its inception in the Hauraki Gulf Forum's 2011 *State of Our Gulf Report* (now over a decade old) which highlighted the ongoing and significant environmental decline of the Hauraki Gulf and the failure of current management approaches to address it.[32] This made it clear that incremental change would be insufficient to address the size of the challenge and a step change in approach was required.

43. In response, Auckland Council and Waikato Regional Council agreed to initiate a marine spatial planning project for the Hauraki Gulf, with the Department of Conservation ("**DOC**") and the Ministry for Primary industries ("**MPI**") subsequently joining the agency grouping. The project design drew on international best practice in marine spatial planning.[33]

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[29] Shears N, 2022, *Marine heatwave and melting sponges in Te Moananui o Toi – the Hauraku Gulf, Aotearoa New Zealand*, Youtube video, 9 June: https://www.youtube.com/watch?v=Cvmp1jJQIJc

[30] Behrens E, 2022, *Mean heat: Marine heatwaves to get longer and hotter by 2100*, NIWA media release, 7 March: https://niwa.co.nz/news/mean-heat-marine-heatwaves-to-get-longer-and-hotter-by-2100

[31] Hauraki Gulf Forum, 2023, *State of our Gulf 2023: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2023*, at 168. Available from www.haurakigulfforum.org.nz

[32] Hauraki Gulf Forum, 2011, *State of our gulf 2011*, Hauraki Gulf Forum, Auckland, at 13

[33] Hauraki Gulf Forum, 2011, *Spatial planning for the Gulf: An international review of marine spatial planning initiatives and application to the Hauraki Gulf*, Hauraki Gulf Forum, Auckland

44. A co-governance Project Steering Group ("**PSG**") was established to oversee the project consisting of eight mana whenua representatives and eight representatives from the statutory bodies involved in managing the Gulf (including territorial authorities, Auckland Council, Waikato Regional Council, DOC and MPI).

45. The PSG defined the purpose of the project as being to "develop a spatial plan that will achieve sustainable management of the Hauraki Gulf, including a Hauraki Gulf which is vibrant with life and healthy mauri, is increasingly productive and supports thriving communities."[34] It approved the Terms of Reference for the SWG and received and adopted the final Sea Change plan.

46. The plan itself was developed by the SWG which consisted of representatives from mana whenua, commercial and recreational fishing, farming, aquaculture, infrastructure, community and environmental interests. The role of the SWG was to "compile information and evidence, analyse, represent all points of view, debate and resolve conflicts and work together as a group to develop a future vision for a healthy and productive Hauraki Gulf … The future vision will be manifested as a physical document – the Hauraki Gulf Marine Spatial Plan."[35] The group operated on a consensus basis which meant that "every member either supports or does not actively oppose (can live with) the decision."[36]

47. The SWG first convened in December 2013 and met approximately monthly for a 3 year period up until late 2016 when the plan was completed (with a break of several months during mid 2015). SWG members agreed that the plan would be science based as well as incorporating mātauranga Māori. Scientists from a range of research institutions presented their work directly to the SWG.

48. An extensive public process was undertaken alongside the SWG. This involved public meetings, 25 'Listening Posts', a web-based use and values survey and an active website and email updating programme. In addition, a 'Love Our Gulf' event and social media campaign was undertaken. This public engagement effort connected with more than 14,500 people overall, with 9,350 actively contributing their views to the project. The results of the engagement were summarised and made available to the SWG members to inform plan development.

49. A group of community stakeholders who had been present at meetings held to select the SWG members, called the 'Hauraki 100+', were convened every few months to provide an update on progress, discuss key issues and obtain feedback. The group was intended to act as a 'sounding board' for the SWG during the preparation of the marine spatial plan.

50. Multiple spatial data sets were assembled on a web-based tool called SeaSketch which was used to identify and evaluate marine protection options. A technical team supported by two science advisors supported the SWG.

51. The work of the SWG was overseen by an Independent Review Panel comprising 5 experts in various fields, including Paris-based Charles Ehler who was the co-author of the UNESCO guide to marine spatial planning. The Panel provided three reports and many of the recommendations were adopted by the SWG.

[34] Sea Change Tai Timu Tai Pari, 2013, *Stakeholder Working Group: Terms of reference*, Auckland Council, Auckland
[35] Ibid at 2-4
[36] Ibid

52. The resultant marine spatial plan was structured around four kete of knowledge: Part One Kaitiakitanga and Guardianship, Part Two Mahinga Kai – Replenishing the Food Baskets, Part Three Ki Uta Ki Tai – Ridge to Reef or Mountains to Sea and Part Four Kotahitanga – Prosperous Communities.[37] Amongst its wide-ranging and detailed recommendations was the creation of 13 new marine protected areas and extensions to two existing marine reserves. The plan stated that the marine protected areas were to be created by 2020.[38]

53. The Sea Change Plan was agreed to by all 14 members of the SWG and was received and adopted by the PSG. It was publicly launched on 6 December 2016 (now nearly 7 years ago).

54. It is clear that the Sea Change process and plan had wide agency, cross-sectoral and public support. The process was sponsored and overseen by the key implementing agencies including DOC and MPI. Mana whenua representatives were active participants in the governance of the project and development of the plan. However, implementation of the Sea Change Plan has been very slow, and meanwhile the State of the Gulf has continued to deteriorate. ***EDS submits that it is urgent that additional marine protection, in broad alignment with the Sea Change Plan and as set out in the Bill, is put in place without delay.***

Benefits of marine protection

55. "No-take" marine reserves are recognised as one of the most powerful and effective methods for protecting marine life and habitats.[39] They provide refuges where populations of exploited marine species can recover, and habitats modified by fishing can regenerate.

56. Long-term studies at sites within marine reserves in Aotearoa New Zealand have identified the numerous ecological benefits of permanent marine protection.[40] The Cape Rodney to Okakari Point Marine Reserve ("**Leigh Marine Reserve**"), gazetted in 1975, was the first to be established in the country. Two decades after protection, scientists observed significant increases in the abundance and size of snapper and rock lobsters; declines in the abundance of urchins; and the expansion of kelp forest across shallow rocky reefs within the reserve.[41] The total area of urchin barren habitat shrunk from 31.4% to 3.2% within 20 years, which increased primary productivity within the reserve by an estimated 58%.[42] Studies have shown that the increase in kelp habitat supports aggregations of marine invertebrates, which in turn provide an important food source for larger fish species.[43]

57. The increase in kelp habitat also provides significant climate benefits. A study of Australian kelp forests revealed that they sequestered around 1.3-2.8 teragrams of carbon per year

[37] Sea Change Tai Timu Tai Pari, 2016, *Hauraki Gulf Marine Spatial* Plan, Waikato Regional Council, Hamilton
[38] Ibid at 112 - 120.
[39] See Ballentine B, 2014, *Fifty years on: Lessons from marine reserves in New Zealand and principles for a worldwide network*, Biological Conservation, 176, 297-307
[40] See Babcock et al, 1999, *Changes in community structure in temperate marine reserves*, Mar Ecol Prog Ser, 189, 125−134; Shears N T and R C Babcock, 2002, *Marine reserves demonstrate top-down control of community structure on temperate reefs*, Oecologia, 132, 131-142; and Shears N T and R C Babcock, 2003, *Continuing trophic cascade effects after 25 years of no-take marine reserve protection*, Mar Ecol Prog Ser, 246, 1-16
[41] Babcock et al, 1999, *Changes in community structure in temperate marine reserves,* Mar Ecol Prog Ser, 189, at 131
[42] Babcock et al, above n 23, at 131
[43] Ballentine B, 2014, *Fifty years on: Lessons from marine reserves in New Zealand and principles for a worldwide network*, Biological Conservation, 176, 297-307

accounting for 30% of total blue carbon sequestered in Australia annually and about 3% of the total global blue carbon budget.[44]

58. The potential benefits of marine reserves extend beyond their boundaries. Studies have shown that marine reserves can benefit adjacent fisheries through the spill over of adults and juveniles and the export of eggs and larvae to sites located down-current.[45] For example, adult snapper in the Leigh Marine Reserve (extending over 5.2 km^2) contributed an estimated 10.6% of newly settled juveniles in surrounding areas covering around 400 km^2 and up to 40 km away.[46] This is because increases in the size and abundance of individuals within marine reserves result in increased reproductive potential thereby boosting the capacity of target fish stocks to maintain sustainable population levels.[47] Consequently, marine reserves can enhance opportunities for commercial and recreational fishing activities in surrounding waters.

59. An evaluation of the economic impacts of the enhanced recruitment evidenced from the Leigh Marine Reserve identified a boost to the commercial fishery of $NZ 1.49 million catch landing value per annum and $NZ 3.21 million from recreational fishing activity associated spending per annum. As the researchers emphasised "These values all come from the recruitment effects associated with one species, from only 0.08% of the marine space in the Hauraki Gulf, New Zealand".[48] This indicates that significantly increasing the area of marine protection will likely significantly increase the available commercial and recreational harvest with associated economic and social benefits.

60. Marine reserves are also a tourism and recreation attraction and can provide substantial economic benefits at local and regional scales. An economic impact analysis of the Leigh Marine Reserve estimated there were 375,000 visits to the reserve in 2008, which contributed $18.6 million into the local economy.[49] In contrast, the operational costs associated with managing the reserve over the same period were relatively low at $70,000.[50]

61. The scientific benefits of marine reserves are of critical importance when moving into a period where environmental change is expected to occur at unprecedented scale, magnitude and pace. Marine reserves provide an opportunity to study the natural processes and ecology of areas that are protected from the direct effects of fishing. Results can then be compared with findings from fished areas to provide insights into the impacts of fishing on species and the wider environment.

Need to increase size of existing marine reserves

62. When the Leigh Marine Reserve was established in 1975 the boundary was drawn just 800m offshore. This boundary was arbitrary. As explained by Bill Ballantine:

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[44] Yale Environment Review, 2022, *Kelp can help: Kelp forests reveal hidden potential for blue carbon sequestration*, 2 May. Available at https://environment-review.yale.edu/kelp-can-help-kelp-forests-reveal-hidden-potential-blue-carbon-sequestration

[45] Gell F R and C M Roberts, 2003, *Benefits beyond boundaries: Fishery effects of marine reserves*, Trends in ecology & evolution, 18(9), 448-455. Available from www.aquadocs.org

[46] Le Port A et al, 2017, *Temperate marine protected areas provides recruitment subsidies to local fisheries*, Proceedings of the Royal Society B Biological Sciences, 284, 1865

[47] Ibid

[48] Qu Z, S Thrush, D Parsons and N Lewis, 2021, *Economic valuation of the snapper recruitment effect from a well-established temperate no-take marine reserve on adjacent fisheries*, Marine Policy, 134, 104792

[49] Hunt L, 2008, *Economic Impact Analysis of the Cape Rodney Okakari Point (Leigh) Marine Reserve on the Rodney District,* DOC Investigation Report 4052, at 2. Available from www.howtokit.org.nz

[50] Ibid

"There was virtually no precedent at the time and research scientists, including me, were obsessed with rocky reefs. Flat sandy bottoms didn't seem very real, which is quite wrong, but that's how it was then. The other consideration was that, at that time, trawling was not allowed within 0.5 nautical miles of land. That translates to 800 metres and that's where we set the seaward boundary. There was no scientific justification for it, it was just a piece of political pragmatism."[51]

63. Despite its small size, the Leigh Marine Reserve has enabled a wealth of science about rocky reef ecosystems and the impacts of fishing on them. Monitoring has been undertaken inside and outside the marine reserve, enabling a comparison to be made between the two areas, and providing insights into the impacts of fishing on marine systems.

64. The first species to show a marked recovery was crayfish. Four years after the reserve was created, their numbers had increased five-fold.[52] As the numbers within the protected area increased, so did the catches of crayfish outside the seaward boundary of the reserve, as the animals migrated past the narrow protective boundaries.

65. Although numbers within the marine reserves increased initially, when crayfish populations declined in the surrounding CRA 2 fishery (thought to be a result of poor recruitment combined with sustained fishing pressure), it become apparent that the small areas protected by the Leigh Marine Reserve and the Whanganui-a-Hei (Cathedral Cove) Marine Reserve were not large enough to protect their crayfish populations in the longer term. While the marine reserves continue to support much higher numbers and larger crayfish than surrounding fished waters, monitoring has shown declines inside the reserves of 59- 80% over the past 10-15 years, despite being in a strict 'no-take' area.[53]

66. The research indicated that the decline has been exacerbated by the continued capture of crayfish on the offshore boundaries of these relatively small reserves. Tracking research has shown that crayfish undertake seasonal movements off the reef and out onto sandy habitats where they feed on bivalves. These movements take them near to and beyond reserve boundaries where they are likely to be caught.[54] This indicates a need to expand the boundaries of these two marine reserves. As recently emphasised by Dr Nick Shears:

"Currently, less than 1 per cent of crayfish populations in the Hauraki Gulf are protected in marine reserves and these results highlight the urgent and overdue need to substantially increase the level of marine protection in the Gulf… This can be achieved through expansion of existing reserves and implementation of new marine protected areas that are well-designed and large enough to effectively protect these important species and their associated ecosystems."

67. One of the significant contributions made by science based on the Leigh Marine Reserve was a better understanding of the phenomena known as 'urchin barrens'. During the 1970s, divers observed extensive strips of rocky reef that were bare of plant cover, most noticeably kelp. At first, scientists struggled to understand what was going on. But, as several marine reserves were established along the coast and the populations of snapper and crayfish recovered, the

[51] Peart R, 2016, *The story of the Hauraki Gulf*, Bateman, Auckland, at 328-329
[52] Ibid at 330
[53] University of Auckland, 29021, *Existing reserves too small to protect crayfish*, 4 May: https://www.auckland.ac.nz/en/news/2021/05/04/existing-reserves-too-small-to-protect-crayfish-.html
[54] Ibid

barren areas of rock started to disappear. As stated by the researchers, "no-take marine reserves provide real-world experiments that show the importance of species in food webs, and the consequences of fishing for ecosystems".[55] Such knowledge would not have been possible without full protection.

68. On reviewing 50 years' experience with marine reserves in New Zealand, Dr Bill Ballantine concluded:[56]

> *"The scientific benefits of marine reserves proved so numerous that it became clear that marine reserves are as important to science as clean apparatus is to chemistry, and for the same reason. They are the controls for the uncontrolled experiment that is happening due to fishing and other human activities."*

69. EDS submits that it is important that the extensions to the Leigh and Hahei Marine Reserves are also marine reserves, as provided for in the Bill, so they can be seamlessly integrated into the existing reserves. The Leigh Marine Reserve, in particular, has enabled a wealth of science to be undertaken in what is a largely unimpacted marine system providing an important 'control' site. Creating a boundary between two contiguous types of protected area would also likely create logistical problems with enforcing different rules and having different management approaches for adjacent areas.

Need to create 12 HPAs

70. ***The Bill provides for the establishment of 12 HPAs which EDS strongly supports***. It is clear from the evaluation of different areas, as described in *Revitalising the Gulf,* that these areas have high biodiversity values that merit protection. For example, the 12 HPAs collectively protect, amongst other things:[57]

- Sponge and black coral assemblages and deep patch reefs (Te Hauturu-o-Toi / Little Barrier HPA)
- Largest of the few remnants of subtidal seagrass habitat in the Gulf (Slipper Island / Whakahau HPA)
- Shallow reefs, dog cockle and horse mussel beds (Motukawao Islands HPA)
- Sponge dominated reef in high current areas (Rotoroa Island HPA)
- Deeper reefs with large sponge assemblages (Rangitoto and Motutapu HPA)
- Diverse high-current rocky reef assemblages and high biodiversity (Cape Colville HPA)
- Extensive reef systems with highly productive and diverse species assemblages (Mokohīnau Islands HPA)
- Outstanding underwater scenery and an abundance and high diversity of flora and fauna (Aldermen Islands / Te Ruamāhua (north) HPA)
- Diverse rocky reef assemblages including kelp forests, sponges, hydroids, anemones and ascidians (Aldermen Islands / Te Ruamāhua (south) HPA)
- Sponge assemblages, large rhodolith bed and horse mussel beds (Kawau Bay HPA)
- High habitat diversity and ecological values supporting a diverse range of species (Tiritiri Matangi HPA)

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[55] Leleu K, B Remy-Zephir, R Grace and M J Costello, 2012, *Mapping habitats in a marine reserve showed how a 30-year trophic cascade altered ecosystem structure*, Biological Conservation, 155, 193-201

[56] Ballantine B, 2014, *Fifty years on: Lessons from marine reserves in New Zealand and principles for a worldwide network*, Biological Conservation, 176, 297-307

[57] DOC, Fisheries New Zealand and MPI, 2021, *Revitalising the Gulf: Government action on the Sea Change Plan*, Appendix 4

- Unique geographical location that supports a regionally significant range of biogenic habitats (Ōtata / Noises Island HPA)

71. These HPAs are generally in line with the Sea Change proposals with some refinement and boundary changes as a result of further scientific and economic assessment and public consultation. During the Sea Change process, it was evident that there was strong public support for more marine protection in the Hauraki Gulf. The Sea Change Plan reports:[58]

> *"A common theme highlighted in the Listening Posts was a concern for declining species and habitats, and a clear desire for more marine reserves. A parallel result came from an Auckland Council People's Panel survey published in 2014 which showed that 39% of respondents had visited a marine reserve in Auckland, whereas only 24% had fished in the ocean. These results, along with extensive ecological analysis, led the Stakeholder Working Group to conclude that we had a clear mandate to recommend creation of more MPAs."*

72. In particular, EDS supports the inclusion of the Ōtata / Noises Islands HPA in the package of HPAs included in the Bill. This is a biodiverse area with important benthic habitats and is of particular importance to seabirds that nest on many of the islands in the group. It urgently needs protection. This is highlighted by the increase in urchin barrens on its reefs as described above.

73. The HPA proposals do not include any protection around Ahuahu/Great Mercury Island despite its high habitat diversity, including diverse algal and encrusting invertebrate assemblages, diverse sponge assemblages and black and gorgonian corals. The area is also of high importance for nesting seabirds.[59] The exclusion of the area from the Bill is not because it lacks high biodiversity values that merit protection, but ostensibly because the Sea Change proposals did "not provide sufficient protection for the biodiversity of this area".[60] Instead of expanding the small area proposed to be protected in the Sea Change proposals to provide greater biodiversity protection, *Revitalising Our Gulf* abandoned protection altogether. It merely identified the area as a "gap" in protection that needs to be addressed.[61]

74. There are also gaps in coverage of the proposed HPAs around Waiheke Island and Aotea/Great Barrier Island, with protection in these areas also not being included in the Sea Change proposal. ***EDS submits that the Bill should include provision for the identification of further HPAs to fill gaps in the network.***

Need to create 5 SPAs

75. EDS also strongly supports the creation of 5 SPAs as provided for in the Bill. As recently explained by Fisheries New Zealand:[62]

> *"It is well known that fishing with mobile bottom-contact gear, such as bottom trawling, has adverse effects on benthic communities and their habitat (Rice 2006, Kaiser et al. 2006). These effects consist of destruction of organisms by crushing, or their removal as bycatch, and physical disturbance to the habitat as fishing gear is dragged across the seafloor."*

[58] Sea Change Tai Timu Tai Pari, 2016, *Hauraki Gulf Marine Spatial Plan*, Waikato Regional Council, Hamilton, at page 117
[59] Ibid at page 274
[60] DOC, Fisheries New Zealand and MPI, 2021, Revitalising the Gulf: Government action on the Sea Change Plan, at 65
[61] Ibid
[62] Fisheries New Zealand, 2022, *Review of commercial fishing sustainability measures for the Cape Brett to Mimiwhangata area*, Northland, Discussion Paper 2022/17

"On soft sediments, bottom trawling can not only displace sediment and associated species, but also suspend sediment into the water column. Plumes of suspended sediment within the turbulent wake of trawl gear can take days to settle, and may be significant, relative to natural levels of suspension in areas with little seabed disturbance by currents or waves (Durrieu de Madron et al. 2005). There is a risk that bottom trawling on soft sediments near rocky reef systems could lead to suspended sediment deposition onto sensitive benthic species and affect their abundance, or health and condition."

76. It is therefore important that bottom trawling is excluded from on or near important benthic habitats in the Hauraki Gulf Marine Park. In EDS's view, bottom disturbing fishing methods (including bottom trawling, Danish seining and dredging) should be excluded from the entire Hauraki Gulf Marine Park. It therefore supports the proposed SPAs but submits that the areas they cover should be extended in the future. ***Provision should therefore be made in the Bill for additional SPAs to be created.***

Impact of HPAs and SPAs

77. EDS generally supports the activities identified as prohibited in HPAs and SPAs. In particular, EDS supports the additional prohibited activities in the Mokohīnau SPA due to the very sensitive marine ecosystems included in that SPA.

78. The proposed HPAs, and to a lesser extent the proposed SPAs, will have some small direct impacts on both recreational and commercial fishers. However, such impacts need to be put into context. In broad terms, the additional 12 HPAs, and extension to two marine reserves, will increase the area of the Hauraki Gulf Marine Park under a high level of protection to around just 6%. This means that the very large majority of the Marine Park will remain open to fishers.

79. Martin Jenkins was commissioned to quantify the estimated impacts of the marine protection proposals on commercial and recreational fishers. For the majority of commercial fishing stocks (those managed according to the October fishing year), only 1% (530 tonnes) of the total catch within the Hauraki Gulf is currently caught within the areas to be protected, which is estimated to be just 2% ($1.37 million) of total port revenue derived from the Hauraki Gulf. This means that 99% of the tonnage and 98% of the revenue of the commercial fishing industry in the Hauraki Gulf will remain unaffected.[63]

80. It is important to recognise that the SPAs do not ban fishing *per se*, but only bottom impact methods, so the impacts are likely to be even less than the small percentages indicated in the Martin Jenkins analysis. Where bottom trawl is currently used in the proposed SPA areas, at least part of this effort could be transferred to other methods such as longlining. And at least part (if not all) of the remaining minimally affected catch could potentially be caught elsewhere within the respective quota management areas which extend far further than the Hauraki Gulf Marine Park itself.

81. In this respect it is important to note that for the most valuable finfish species in the Gulf, snapper, the SNA1 area from which harvest can be taken extends from North Cape right around the entire top half of the east coast of the North Island to East Cape. It seems extremely likely that any small reduction in harvest within the marine protected areas could

[63] Leung-Wai J and R Kulwant, 2022, *Revitalising the Gulf Stage 1 – Impact of the marine protection proposals on commercial fishers*, Martin, Jenkins & Associates Limited

be caught elsewhere within this vast area without any undue displaced effort impacts. ***As a result, any reduction in commercial catch/revenue is likely to be very small, if there is a reduction at all, as a result of the proposed protection. In addition, any impact of displaced effort is also likely to be very small.***

82. It should also be borne in mind the benefits that marine protection will likely provide for commercial fishing. If the value of increased recruitment from the Leigh Marine Reserve, which comprises only 0.08% of the Hauraki Gulf Marine Park, provides an additional $NZ 1.49 million catch landing value per annum[64] it could be expected that the network of HPAs which will cover around 6% of the area would in the future provide added value that far outweighs the value of any immediate reduction in commercial harvest (if such reduction occurs at all).

83. Rock lobster and pack horse lobster commercial catch is managed according to the April fishing year and separate figures have been calculated by Martin Jenkins for the impact on this industry. It concludes that 3% of the total Hauraki Gulf harvest for these stocks (4.47 tonnes) was caught within the proposed protected areas comprising 4% of total port price. This means that 97% of the lobster harvest in the Hauraki Gulf occurs outside these areas.

84. It should be borne in mind that this harvest is part of the CRA2 fishery which extends down the east coast to the tip of the East Cape. There is therefore a large area from which the 3% of the Hauraki Gulf harvest displaced from the protected areas could be harvested from, meaning that marine protection may not result in any direct reduction in total harvest or any discernible displaced effort impacts.

85. Also, a potential 4.47 tonne reduction in harvest (if indeed a reduction would occur at all) needs to be considered within the broader context of the fishery. In 2018, the total allowable commercial catch was reduced from 200 to 80 tonnes, a reduction of 120 tonnes. This was because the stock was "experiencing critically low levels of abundance".[65] This indicates that other factors are likely to have a much greater impact on the industry than the proposed protected areas, which if anything will serve to help increase abundance over time.

86. Displacement of recreational fishing of snapper is estimated to be slightly higher at 5.7% in terms of weight, but this needs to be considered in the context that "recreational tāmure [snapper] catches dropped by around 27% between the 2011–12 and 2017–18." This decrease was put down to cuts in bag limits, increased size limits and fewer recreational fishers.[66] This means that, compared to other factors, ***the reduction in recreational catch due to increased marine protection is very small and is not likely to result in any significant displacement of effort to other areas which are not protected. As with commercial fishing, in the future it is also likely that increased protection will increase the abundance of fish stocks targeted by recreational fishers providing an overall net benefit.***

Submissions on specific provisions of the Bill

87. At the outset, we record that EDS expressly supports:

[64] Qu Z, S Thrush, D Parsons and N Lewis, 2021, *Economic valuation of the snapper recruitment effect from a well-established temperate no-take marine reserve on adjacent fisheries*, Marine Policy, 134, 104792
[65] Minister of Fisheries, 2018, *Fisheries sustainability measures for 1 April 2018: Decision letter*: https://www.mpi.govt.nz/dmsdocument/27987-Ministers-Decision-letter-1-April-2018-signed
[66] Hauraki Gulf Forum, 2020, *State of our Gulf 2020: Hauraki Gulf /Tīkapa Moana/Te Moananui-ā-Toi State of the Environment Report 2020* at 12. Available from www.haurakigulfforum.org.nz

- Clause 3 – the purpose of the Act, which is "to contribute to the restoration of the health and mauri of the Hauraki Gulf / Tīkapa Moana…" which is consistent with the vision of the Sea Change process; and

- Clause 4 – Tiritiri o Waitangi/Treaty of Waitangi, which requires the Act to be interpreted and administered to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. This is consistent with section 4 of the Conservation Act 1987 and section 5 of the Natural and Built Environment Act 2023.

88. Clauses which EDS considers require amendment are set out below.

Clause 5 Interpretation

89. 'Ecological integrity' should be defined in Clause 5 if it is used in Clauses 12 and 16 as recommended below. 'Protected area' is used in the body of the Bill but the term is only defined in Clause 26 and should instead be defined in Clause 5:

> **Ecological integrity** means the extent to which an ecosystem is able to support and maintain its:
> (a) composition (being its natural diversity of indigenous species, habitats, and communities); and
> (b) structure (being its biotic and abiotic physical features); and
> (c) functions (being its ecological and physical processes)
>
> **Protected area** means a seafloor protection area or a high protection area

Clause 12 Purpose of seafloor protection areas

90. The purpose of SPAs should be amended to make it clear that the intention is to maintain and, *where degraded*, restore indigenous benthic habitats. Otherwise, there is ambiguity as to whether a degraded benthic habitat can simply be maintained rather than restored; and whether a benthic habitat dominated by exotic species (i.e., *Caulerpa*) is to be maintained rather than the indigenous habitat restored. Having a clear purpose is particularly important because permits must be consistent with the purpose of the protected area (see Clause 30(1)(a)(i)).

91. Greater clarity could be achieved by including the term 'ecological integrity' in the purpose of SPAs. This concept is well known, well defined, and has been used in other legislation and policy in Aotearoa New Zealand. For example, 'ecological integrity' is defined in section 4 of the Environmental Reporting Act 2015 as meaning "the full potential of indigenous biotic and abiotic features and natural processes, functioning in sustainable communities, habitats and landscapes". The same definition is included in Te Mana o Te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020.[67]

92. Domain and synthesis reports prepared under the Environmental Reporting Act must describe the impacts that the state of the environment, and changes to it, have on 'ecological integrity'.[68] The Natural and Built Environment Act 2023 also references the 'ecological integrity, mana and mauri' of indigenous biodiversity (alongside air, water, soils, the coastal environment, wetlands, lakes and rivers), providing as a system outcome that it is to be

[67] See page 61
[68] Ss 8(1)(c)(i) and 11(1)(c)(i), Environmental Reporting Act 2015

protected, *or if degraded*, restored.[69] The National Policy Statement for Indigenous Biodiversity 2023 also uses the term in relation to significant natural areas with an updated definition (which we have submitted should be included in Clause 5 above). The Bill needs to be consistent with this more contemporary approach.

93. EDS seeks the following amendments to Clause 12 (with a consequential amendment to Clause 5 as set out above to include a definition of 'ecological integrity'):

> 12 The purpose of seafloor protection areas is to maintain and, <u>if degraded,</u> restore <u>the ecological integrity of</u> benthic habitats within the seafloor protection areas.

94. If the term 'ecological integrity' is not included in the clause then the term 'indigenous' should be inserted before 'benthic habitats' to make it clear that it is indigenous habitats that are prioritised for protection, as follows:

> Alternative
>
> 12 The purpose of seafloor protection areas is to maintain and, <u>if degraded,</u> restore <u>indigenous</u> benthic habitats within the seafloor protection areas.

Clause 16 Purpose of high protection areas

95. For the same reasons set out above, the purpose of HPAs should be clarified to make it clear that restoration and enhancement is the goal where the area is degraded (and not just protection) and that the focus is on indigenous biodiversity (not enhancing exotic species). This requires the following amendments to Clause 16:

> 16 The purpose of high protection areas is to protect, <u>and if degraded</u> restore~~,~~ and enhance, <u>the ecological integrity of</u> biodiversity within the high protection areas.

96. If the term 'ecological integrity' is not included in the clause then the term 'indigenous' should be inserted before 'biodiversity' to make it clear that it is indigenous species and habitats that are prioritised for protection, as follows:

> *Alternative*
>
> 16 The purpose of high protection areas is to protect, <u>and if degraded</u> restore~~,~~ and enhance, <u>indigenous</u> biodiversity within the high protection areas.

Clause 18 Activities prohibited in HPAs

97. EDS generally supports this clause. However, subclause 18(2)(h) should be clarified. Currently, it refers to 'habitats' *or* the 'water column' which is confusing as the water column is also a habitat. This confusion could be corrected by referring to 'benthic' habitats or water column as follows:

> 18(2)(h)the disturbance (including by excavating, drilling, tunnelling, or dredging) of aquatic life, <u>benthic</u> habitats, or water column in a manner that is likely to have a more than minor adverse effect on aquatic life:

[69] Section 6(2)(a), Natural and Built Environment Act 2023

Clause 20 Small-scale removal of natural material in SPAs and HPAs

98. EDS does not consider that people should be able to remove sand, shingle, shells and other natural material from HPAs or SPAs as of right. This could undermine the purposes of the areas to protect, maintain, restore and enhance biodiversity and habitats.

99. Although Clause 20 refers to only taking a 'small quantity' (defined as no more than a person can carry on them in a single trip in 1 day), there could still be significant cumulative effects in the context of thousands of visitors to a single HPA. For example, there were 350,000 visitors to the Leigh Marine Reserve in 2008 and if each visitor took a bag of sand or shells per visit this could end up stripping the beach over time.

100. EDS therefore submits that Clause 20 should be deleted. If the clause is not deleted, EDS submits that an addition should be made to clarify that it does not apply to living material, as follows:

> (1) If a person complies with **subsection (2)**, the person may do the following:
> (a) despite **section 14(2)(f)**, remove sand from a seafloor protection area:
> (b) despite **section 18(2)(c)**, remove sand, shingle, shell, or other <u>non-living</u> natural material from a high protection area.
> (2) A person who removes sand, shingle, shell, or other <u>non-living</u> natural material from a seafloor protection area or high protection area—

Clause 21 Other activities to which prohibitions do not apply

101. Clause 21 identifies activities to which the prohibitions listed for HPAs or SPAs do not apply. EDS considers these to be generally appropriate apart from subclause (g) which excludes any activity permitted under any Act administered by the Department of Conservation. Such Acts include the Wildlife Act 1953, Marine Mammals Protection Act 1978 and Conservation Act 1987. Under these statutes permits or concessions can be issued to undertake activities as wide as killing and capturing wild animals, marine tourism, mining and electricity generation. These authorisations are granted under legislation which has no clear protective purpose or principles to guide decision-making.[70] It is therefore inappropriate that such processes should trump the protections in the Bill.

102. This issue could be addressed by the following amendment which would treat existing permits granted under conservation legislation in a similar way to those granted under the Resource Management Act 1991 (RMA):

> 21 The prohibitions in **sections 14, 15, and 18** do not apply to—
> (g) any activity <u>for which an authorisation has been granted</u> ~~permitte~~d under any Act administered by the Department of Conservation <u>at the time this Act commences, until the expiration of that authorisation:</u>

[70] See Koolen-Bourke D and R Peart, 2021, *Conserving Nature: Conservation Reform Issues Paper*, EDS, Auckland, at 104-105; Koolen-Bourke D, R Peart and S Schlaepfer, 2023, *Reform of the Wildlife Act 1953: Appendix D – Interface between the Wildlife Act and protection of marine species*, EDS Auckland

Addition of new Part 2A additional protected areas

103. As indicated above, the network of protected areas created by the Bill is not comprehensive. There are currently gaps, particularly when it comes to marine protection around Ahuahu Great Mercury Island, Waiheke Island and Aotea Great Barrier Island. Monitoring of the Hauraki Gulf Tīkapa Moana may also demonstrate that additional protected areas are needed elsewhere in the future. The Bill needs to be forward looking and provide a mechanism for additional protected areas to be created when needed. This could be achieved by the following addition:

> **25A Establishment of additional protected areas**
> (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a high protection area or a seafloor protection area within the Hauraki Gulf / Tīkapa Moana.
> (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister—
> (a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and
> (b) is satisfied that the proposal to declare a protected area—
> (i) was developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the proposed protected area; and
> (ii) was provided to the public with adequate time and opportunity to make a submission; and
> (iii) is based on the best available information, including mātauranga Māori; and
> (iv) is reasonably necessary to achieve the purpose of the Act.

Addition of new Part 2B Biodiversity objectives

104. Biodiversity objectives are critical in the context of the Bill because:

- The anticipated effects of an activity on biodiversity objectives must be considered before granting any permit in a protected area (Clause 29(a)), and permits within protected areas must be consistent with the biodiversity objectives for the area (Clause 30(1)(a)(ii)), unless they meet strict criteria regarding necessity and inability to locate elsewhere;
- Permits can be revoked or amended if they are no longer consistent with biodiversity objectives (Clause 32(b));
- Customary fishing must comply with any biodiversity objectives for the area (Clause 19(1)(b));
- The Minister can make regulations to manage activities occurring within HPAs to give effect to biodiversity objectives (Clause 66(1)(b));
- Additional management actions (including regulation of customary fishing) cannot occur until biodiversity objectives are established (Clause 67(2)(a)); and
- They would be expected to inform management, research and monitoring for each site (although this is not directly provided for in the current Bill).

105. Currently, the Bill does not require the development of biodiversity objectives for HPAs (i.e., it is not mandatory) but instead adopts an enabling approach, providing that the Governor-General *may*, by Order-in Council on the recommendation of the Minister, make regulations for setting biodiversity objectives for HPAs (Clause 66(1)(a)). The setting of biodiversity objectives for SPAs is similarly discretionary, providing that the Governor-General *may* make regulations setting them (Clause 65(1)(d)).

106. Given the importance of biodiversity objectives to the management (and therefore success) of protected areas EDS submits that setting them should be mandatory. We need to learn from the experience with national direction under the RMA, which was largely discretionary, and as a result remained largely undeveloped for several decades. It is also important that the public has input into the final form of the biodiversity objectives, while acknowledging the important role of whānau, hapū, and iwi in their co-development.

107. These matters could be rectified by including a new Part 2A in the Bill as follows, with consequential amendments to clause 66 to remove the reference to setting biodiversity objectives:

25B Biodiversity objectives

There shall at all times be biodiversity objectives set for each protected area, recommended and issued by the Minister in accordance with **section 25D**.

25C Purpose of biodiversity objectives

The purpose of biodiversity objectives is to state objectives for each protected area that are–

(a) appropriate to the characteristics of the protected area; and

(b) sufficient to achieve the purpose of the protected area under **section 12 or section 16**.

25D Biodiversity objectives to be made as regulations

(1) The Governor-General shall, by Order in Council made on the recommendation of the Minister, make biodiversity objectives in the form of regulations.

(2) The regulations may apply to one or more protected areas.

25E Preparation of biodiversity objectives

The Minister must not make a recommendation or issue biodiversity objectives under **subsection 25B** unless the Minister—

(a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and

(b) is satisfied that the biodiversity objectives—

(i) were developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the protection area; and

(ii) were provided to the public with reasonable opportunity for interested persons to make submissions on the proposed biodiversity objectives; and

(iii) are based on the best available information, including mātauranga Māori.

Addition of new Part 2C Monitoring and alteration of boundaries

108. Regular monitoring of the new protected areas is critical to ensure that their purpose and biodiversity objectives are being met. Monitoring is an essential part of an adaptive management approach whereby the management settings for the protected areas can be adjusted according to the rate of recovery. It will also be essential to inform the 25-year review of protected areas required in Clause 68. Currently, the Bill makes no provision for monitoring of protected areas. This could be rectified by the inclusion of the following provision:

25F Monitoring of protected areas

(1) The Director-General must monitor the state of each protected area.

(2) The Director-General must, at intervals of not more than 3 years, compile and make available to the public a review of the results of its monitoring under subsection (1) to enable the public to be informed and participate under this Act.
(3) The monitoring shall include measuring the extent to which the biodiversity objectives for each protected area have been met.
(4) Where any biodiversity objectives have not been met, the Director-General shall identify additional management actions required to achieve the biodiversity objectives.
(5) Additional management actions include amending the boundaries of any protected area in accordance with section 25G.
(6) Monitoring shall be undertaken collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the protected area.
(7) Monitoring must be undertaken in accordance with any regulations.

109. Monitoring of a protected area may indicate that the boundaries are not sufficient to achieve its biodiversity objectives or the purpose of the protected area. The Bill therefore needs to make provision for the alteration of boundaries if this is the case to provide for adaptive management. This could be addressed by the following addition:

25G Alteration of boundaries of protected area
(1) Where the results of monitoring indicate that–
(a) the biodiversity objectives for any protected area have not been met; or
(b) the purpose of the protected area is not being met; and
(c) an alteration to the boundaries of the protected area would contribute to meeting the biodiversity objectives or the purpose of the protected area –
the Governor-General may, by Order in Council made on the recommendation of the Minister, alter the boundaries of a protected area.
(2) The Minister must not make a recommendation under **subsection (1)** unless the Minister—
(a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and
(b) is satisfied that the proposal to alter the boundaries of a protected area—
(i) was developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the proposed protected area; and
(ii) was provided to the public with adequate time and opportunity to make a submission; and
(iii) is based on the best available information, including mātauranga Māori; and
(iv) is reasonably necessary to achieve the purpose of the Act.

110. Further, the Bill does not mandate the monitoring of permits granted under Clause 30. Clause 38 gives powers to rangers for the purposes of monitoring compliance with permit conditions, but this provision is intended to apply 'in the moment' of a potential offence. There is no requirement for the Director-General to monitor the exercise of permits more generally (as there is for local authorities to monitor the exercise of resource consents under the RMA (section 35) and the Natural and Built Environment Act (section 777)). Monitoring of permits is required to inform the revocation or amendments of permit conditions under Clause 32. This could be rectified by the inclusion of the following provision:

25H Monitoring of permits
(1) The Director-General must monitor the exercise of permits granted under **section 30**.
(2) The Director-General must take appropriate action (having regard to the methods available to it under this Act) where monitoring shows this to be necessary.

Clause 26 Interpretation of this Part

111. Clause 26 includes a definition of protected area which we have submitted should be included earlier in Clause 5. It would therefore consequentially need to be deleted from this clause as follows:

> 26 In this Part, unless the context otherwise requires,—
> ~~Protected area means a seafloor protection area or a high protection area~~

Clause 27 Application for permits

112. Clause 27 is too focused on adopting an effects-based and mitigation approach to consenting, an approach which patently failed under the RMA to effectively manage environmental impacts, particularly cumulative impacts. The starting point should be identifying the extent to which the proposal assists with meeting the purpose and biodiversity objectives of the protected area affected, that is, the extent to which it has a positive effect. In the event of inconsistency with biodiversity objectives and the purpose of a protected area the application should include reasons why it is necessary and why it needs to occur within the protective area.

113. The drafting should be amended as follows to reflect this shift in approach:

> 27(2) An application for a permit must be made in a form approved by the Director-General and include—
> (a) the applicant's name and contact details; and
> (b) a description of the proposed activity; and
> <u>(ba) a description of the extent to which the proposed activity is consistent with the purpose and biodiversity objectives for the protected area; and</u>
> <u>(bb) to the extent that the activity is inconsistent with the purpose or biodiversity objectives for the protected area, reasons why it is necessary and can only occur in the protected area;</u>
> (c) the anticipated effects of the proposed activity.

Clause 29 Matters to be considered by Director-General

114. When making a decision on an application for a permit, Clause 29 requires consideration of the 'anticipated effects of the activity on the protected area and its biodiversity objectives.' This clause should also refer to the purpose of the protected area, particularly in the case where more detailed biodiversity objectives have yet to be developed. This could be rectified by the inclusion of the following provision:

> 29 Before making a decision on an application for a permit, the Director-General must consider—
> <u>(e) the extent to which the activity is consistent with the purpose of the protected area.</u>

Addition of Clause 29A Public notification for applications

115. EDS considers that if the proposal has more than minor effects on the protected area there should be provision for public notification, similar to the case with concessions under the Conservation Act. This would enable the Director-General to be better informed as to the impacts of the application, through information presented by members of the public, and

would help avoid primary reliance on information provided by the applicant which has a vested interest in the outcome. This could be achieved through inserting the following clause:

29A Public notification for applications
If the anticipated effects of the activity on the protected area are adverse, the Director-General must publicly notify the application and receive and consider public submissions on it before making a decision under section 30.

Clause 30 Decision of Director-General

116. EDS considers clause 30 to be too loosely drafted with the effect that inappropriate and damaging activities could be permitted in HPAs and SPAs. Activities should be granted *only* if they satisfy the requirements in either (1)(a) or (1)(b). Exceptions to this should only be made where an activity is *absolutely* necessary. That is because of the damaging impacts that activities can have on HPAs and SPAs. This concern can be addressed by the following amendments:

30(1) After considering an application for a permit and any further information, the Director-General may—
(a) grant the permit, only if satisfied that—
… or
(b) grant the permit, only if satisfied that—
(i) the activity is absolutely necessary; and

Clause 32 Revocation of permit or amendment of permit conditions due to adverse effects and other grounds

117. The grounds for the revocation of a permit or change of conditions are not broad enough and do not envisage that the biodiversity objectives might be amended or that progress towards meeting them might require additional measures to be implemented. They also do not address unanticipated cumulative effects.

118. Implicit in the concept of adaptive management is the need for management to be changed as conditions change and this should not be unduly restricted by existing permits (albeit acknowledging the need for some certainty for the permit holder). It is well acknowledged that the RMA gave too much protection to existing use rights and this hampered councils in addressing emerging environmental issues. It needs to be implicit in the Bill that conditions might change and the terms of any permit may therefore need to change as well. The following amendments would address this point:

32 The Director-General may, at any time, revoke a permit granted under **section 30**, or amend any condition of the permit, if the Director-General considers that the activity—
(a) is causing adverse effects to the protected area, including cumulative effects, that are greater than those anticipated at the time the permit was granted; or
(b) is inconsistent with the biodiversity objectives for the protected area in a manner that was not anticipated at the time the permit was granted; or
(ba) is inconsistent with the biodiversity objectives for the protected area which have been amended since the permit was granted; or
(c) is inconsistent with the rights and interests of whānau, hapū, and iwi that exercise kaitiakitanga in the protected area in a manner that was not anticipated at the time the permit was granted.

Clause 33 Appeal to High Court on question of law

119. Providing applicants or permit holders with appeal rights, and not groups acting in the public interest, creates a very uneven playing field towards use of protected areas (rather than protection) and means that applicants effectively have 'two bites at the cherry'; one when they make the application and secondly on appeal. This would be addressed by the following wording change:

> 33(1) The following persons may appeal to the High Court against the decisions of the Director-General specified in **subsection (2)**:
> (a) the applicant:
> (b) the permit holder:
> (c) whānau, hapū, and iwi that exercise kaitiakitanga in the protected area:
> (d) a person who has an interest in the proceedings that is greater than the interest that the general public has.

Clause 41 Offence to undertake prohibited activity within protected area

120. Clause 41(5)(b) has some awkward wording which EDS suggests could be tidied up as follows:

> 41(5)(b) in the case of a prohibited activity that involves fishing, the person is in possession of a number of fish that exceeds ~~by at least~~ 3 times the amateur individual daily limit.

Addition of clause 42A Offence to breach condition of permit

121. The Bill does not currently state that it is an offence to breach a condition of a permit. This means that a person would be able to breach permit conditions with impunity. This can be rectified with the inclusion of the following provision:

> **Clause 42A Offence to breach condition of permit**
> A person commits an offence against this Act if the person contravenes, or permits a contravention of, any condition of a permit granted under **section 30**.

Clause 65 General regulations

122. We have earlier submitted that the mandatory preparation of biodiversity objectives should be provided for directly within the Bill. Consequential amendments to Clause 65 are therefore necessary as follows:

> 65(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
> ~~(d) providing for the setting of biodiversity objectives for seafloor protection areas:~~

Clause 66 Regulations for biodiversity objectives and associated restrictions for high protection areas

123. As per above, we submit that the mandatory preparation of biodiversity objectives should be provided for directly within the Bill. Consequential amendments to Clause 66 are therefore necessary.

124. Otherwise, EDS generally supports Clause 66 for regulating activities occurring within HPAs. However, we consider that the clause needs to be strengthened. The requirement to demonstrate that such regulation is "necessary" is too high a bar, given the paucity of information in the marine area and, in particular, the difficulty in ascribing specific impacts to any one specific activity. This is because the marine environment is very fluid and it is typically cumulative impacts that cause the most significant ecological damage. This concern can be addressed by making the following amendments to the clause:

66 Regulations for ~~biodiversity objectives and associated~~ restrictions for high protection areas

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that provide for

~~(a) the setting of biodiversity objectives for high protection areas; and~~

(b) the regulation of activities occurring within high protection areas (including the regulation of customary fishing) as <u>reasonably</u> necessary to give effect to the biodiversity objectives.

(2) The Minister must not make a recommendation under **subsection (1)** unless the Minister—

(a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and

(b) is satisfied that the proposals for regulations—

(i) were developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the high protection area; and

(ii) are based on the best available information, including mātauranga Māori; and

(iii) if the proposals relate to the regulation of customary fishing, impose any restrictions on customary fishing only to the minimum extent <u>reasonably</u> necessary to give effect to the biodiversity objectives.

(3) Regulations made under this section may provide for all or any of the following:

(a) restrictions relating to when activities may occur:

(b) restrictions relating to how activities may occur:

(c) reporting requirements relating to activities:

(d) any other restrictions or requirements that the Minister considers <u>reasonably</u> necessary to give effect to the biodiversity objectives.

Conclusion

125. EDS strongly supports the Bill. The marine protections in the Bill are urgently needed to help turn around the ongoing and serious degradation of the Hauraki Gulf. The Bill has had a long gestation, with the protected areas being identified through an intensive co-governance and multi-stakeholder collaborative process, and having since been subject to several additional rounds of consultation. There is broad support for the proposals which are well founded and well supported by the best available evidence.

126. EDS strongly urges the Select Committee to recommend adoption of the Bill with the amendments set out in this submission.

APPENDIX A

AMENDMENTS SOUGHT TO THE BILL

Note: deletions shown with a strikeout and additions underlined

Clause 5 Interpretation

Ecological integrity means the extent to which an ecosystem is able to support and maintain its:
(a) composition (being its natural diversity of indigenous species, habitats, and communities); and
(b) structure (being its biotic and abiotic physical features); and
(c) functions (being its ecological and physical processes)
Protected area means a seafloor protection area or a high protection area

Clause 12 Purpose of seafloor protection areas

The purpose of seafloor protection areas is to maintain and, if degraded, restore the ecological integrity of benthic habitats within the seafloor protection areas.

Alternative
The purpose of seafloor protection areas is to maintain and, if degraded, restore indigenous benthic habitats within the seafloor protection areas.

Clause 16 Purpose of high protection areas

The purpose of high protection areas is to protect, and if degraded restore~~,~~ and enhance, the ecological integrity of biodiversity within the high protection areas.

Alternative
The purpose of high protection areas is to protect, and if degraded restore~~,~~ and enhance, indigenous biodiversity within the high protection areas.

Clause 18 Activities prohibited in HPAs

(i) the disturbance (including by excavating, drilling, tunnelling, or dredging) of aquatic life, benthic habitats, or water column in a manner that is likely to have a more than minor adverse effect on aquatic life:

Clause 20 Small-scale removal of natural material in seafloor protection areas and high protection areas

Entirely delete clause 20.

Alternative
(1) If a person complies with **subsection (2)**, the person may do the following:
(a) despite **section 14(2)(f)**, remove sand from a seafloor protection area:
(b) despite **section 18(2)(c)**, remove sand, shingle, shell, or other non-living natural material from a high protection area.
(2) A person who removes sand, shingle, shell, or other non-living natural material from a seafloor protection area or high protection area—

Clause 21 Other activities to which prohibitions do not apply

The prohibitions in **sections 14, 15, and 18** do not apply to—
(g) any activity for which an authorisation has been granted ~~permitted~~ under any Act administered by the Department of Conservation at the time this Act commences, until the expiration of that authorisation:

Addition of new Part 2A Establishment of additional protected areas

25A Establishment of additional protected areas

1. The Governor-General may, by Order in Council made on the recommendation of the Minister, declare a high protection area or a seafloor protection area within the Hauraki Gulf / Tīkapa Moana.
2. The Minister must not make a recommendation under subsection (1) unless the Minister—
   (a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and
   (b) is satisfied that the proposal to declare a protected area—
      (j) was developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the proposed protected area; and
      a. was provided to the public with adequate time and opportunity to make a submission; and
      (iii) is based on the best available information, including mātauranga Māori; and
      (iv) is reasonably necessary to achieve the purpose of the Act.

Addition of new Part 2B Biodiversity objectives

25B Biodiversity objectives

There shall at all times be biodiversity objectives set for each protected area, recommended and issued by the Minister in accordance with **section 25D**.

25C Purpose of biodiversity objectives

The purpose of biodiversity objectives is to state objectives for each protected area that are–

(a) appropriate to the characteristics of the protected area; and
(b) sufficient to achieve the purpose of the protected area under **section 12 or section 16**.

25D Biodiversity objectives to be made as regulations

(1) The Governor-General shall, by Order in Council made on the recommendation of the Minister, make biodiversity objectives in the form of regulations.
(2) The regulations may apply to one or more protected areas.

25E Preparation of biodiversity objectives

The Minister must not make a recommendation or issue biodiversity objectives under **subsection 25B** unless the Minister—

(a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and
(b) is satisfied that the biodiversity objectives—
   (i) were developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the protection area; and
   (ii) were provided to the public with reasonable opportunity for interested persons to make submissions on the proposed biodiversity objectives; and
   b. are based on the best available information, including mātauranga Māori.

Addition of new Part 2C Monitoring

25F Monitoring of protected areas

(1) The Director-General must monitor the state of each protected area.
(2) The Director-General must, at intervals of not more than 3 years, compile and make available to the public a review of the results of its monitoring under subsection (1) to enable the public to be informed and participate under this Act.
(3) The monitoring shall include measuring the extent to which the biodiversity objectives for each protected area have been met.
(4) Where any biodiversity objectives have not been met, the Director-General shall identify additional management actions required to achieve the biodiversity objectives.
(5) Monitoring shall be undertaken collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the protected area.
(6) Monitoring required by this section must be undertaken in accordance with any regulations.

25G Alteration of boundaries of protected area

(1) Where the results of monitoring indicate that–
   (a) the biodiversity objectives for any protected area have not been met; or
   (b) the purpose of the protected area is not being met; and

(c) an alteration to the boundaries of the protected area would contribute to meeting the biodiversity objectives or the purpose of the protected area –

the Governor-General shall, by Order in Council made on the recommendation of the Minister, alter the boundaries of a protected area.

(2) The Minister must not make a recommendation under **subsection (1)** unless the Minister—

(a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and

(b) is satisfied that the proposal to alter the boundaries of a protected area—

(i) was developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the proposed protected area; and

(ii) was provided to the public with adequate time and opportunity to make a submission; and

(iii) is based on the best available information, including mātauranga Māori; and

(iv) is reasonably necessary to achieve the purpose of the Act.

25H Monitoring of permits

(1) The Director-General must monitor the exercise of permits granted under **section 30**.

(2) The Director-General must take appropriate action (having regard to the methods available to it under this Act) where monitoring shows this to be necessary.

Clause 26 Interpretation of this Part

In this Part, unless the context otherwise requires,—

effect includes—

(a) any positive or adverse effect; and

(b) any temporary or permanent effect; and

(c) any past, present, or future effect; and

(d) any cumulative effect that arises over time or in combination with other effects

~~Protected area means a seafloor protection area or a high protection area~~

Clause 27 Application for permits

(2) An application for a permit must be made in a form approved by the Director-General and include—

(a) the applicant's name and contact details; and

(b) a description of the proposed activity; and

(ba) a description of the extent to which the proposed activity is consistent with the purpose and biodiversity objectives for the protected area; and

(bb) to the extent the activity is inconsistent with the purpose or biodiversity objectives for the protected area, reasons why it is necessary and can only occur in the protected area;

(c) the anticipated effects of the proposed activity.

Clause 29 Matters to be considered by Director-General

Before making a decision on an application for a permit, the Director-General must consider—

(e) the extent to which the activity is consistent with the purpose of the protected area.

Addition of clause 29A Public notification for applications

29A Public notification for applications

If the anticipated effects of the activity on the protected area are adverse, the Director-General must publicly notify the application and receive and consider public submissions on it before making a decision under section 30.

Clause 30 Decision of Director-General

(1) After considering an application for a permit and any further information, the Director-General may—

(a) grant the permit, only if satisfied that—

… or

(b) grant the permit, only if satisfied that—

(i) the activity is absolutely necessary; and

Clause 32 Revocation of permit or amendment of permit conditions due to adverse effects and other grounds

The Director-General may, at any time, revoke a permit granted under **section 30**, or amend any condition of the permit, if the Director-General considers that the activity—

(a) is causing adverse effects to the protected area, <u>including cumulative effects</u>, that are greater than those anticipated at the time the permit was granted; or

(b) is inconsistent with the biodiversity objectives for the protected area in a manner that was not anticipated at the time the permit was granted; or

<u>(ba) is inconsistent with the biodiversity objectives for the protected area which have been amended since the permit was granted; or</u>

(c) is inconsistent with the rights and interests of whānau, hapū, and iwi that exercise kaitiakitanga in the protected area in a manner that was not anticipated at the time the permit was granted.

Clause 33 Appeal to High Court on question of law

(1) The following persons may appeal to the High Court against the decisions of the Director-General specified in **subsection (2)**:

(a) the applicant:

(b) the permit holder:

(c) whānau, hapū, and iwi that exercise kaitiakitanga in the protected area:

(d) <u>a person who has an interest in the proceedings that is greater than the interest that the general public has.</u>

Clause 41 Offence to undertake prohibited activity within protected are

(5)(b) in the case of a prohibited activity that involves fishing, the person is in possession of a number of fish that exceeds ~~by at least~~ 3 times the amateur individual daily limit.

Addition of clause 42A Offence to breach condition of permit

<u>Clause 42A Offence to breach condition of permit</u>

<u>A person commits an offence against this Act if the person contravenes, or permits a contravention of, any condition of a permit granted under **section 30**.</u>

Clause 65 General regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

~~(d) providing for the setting of biodiversity objectives for seafloor protection areas:~~

Clause 66 Regulations for biodiversity objectives and associated restrictions for high protection areas

66 Regulations for ~~biodiversity objectives and associated~~ restrictions for high protection areas

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that provide for–

~~(a) the setting of biodiversity objectives for high protection areas; and~~

(b) the regulation of activities occurring within high protection areas (including the regulation of customary fishing) as <u>reasonably</u> necessary to give effect to the biodiversity objectives.

(2) The Minister must not make a recommendation under **subsection (1)** unless the Minister—

(a) has consulted the Minister responsible for the administration of the Fisheries Act 1996; and

(b) is satisfied that the proposals for regulations—

(i) were developed collaboratively with whānau, hapū, and iwi that exercise kaitiakitanga in the high protection area; and

(ii) are based on the best available information, including mātauranga Māori; and

(iii) if the proposals relate to the regulation of customary fishing, impose any restrictions on customary fishing only to the minimum extent reasonably necessary to give effect to the biodiversity objectives.

(3) Regulations made under this section may provide for all or any of the following:

(a) restrictions relating to when activities may occur:

(b) restrictions relating to how activities may occur:

(c) reporting requirements relating to activities:

(d) any other restrictions or requirements that the Minister considers reasonably necessary to give effect to the biodiversity objectives.