

## **SUBMISSION**

To the Local Government and Environment Select Committee on  
The Marine Reserves Bill

### **Introduction**

1. This submission is from Vince Kerr, Marine Conservation Consultant  
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2. I wish to appear before the committee to speak to my submission. I can be contacted at: 09 435 1518.

### **Background:**

3. I work as a marine conservation consultant in Northland. I hold a BSc. in biological science and education and horticultural qualifications. I currently work for the Nga Maunga ki te Moana Conservation Trust which is the home of the Whitebait Connection stream restoration program and the Experiencing Marine Reserves program. I also contract to Northland Conservancy, Department of Conservation to advise and support their marine conservation program. I was involved as a supporter in the Kamo High School Whangarei Harbour Marine Reserve Application, am currently supporting the Great Barrier Island Marine Reserve investigation with DoC and the Tiritiri Matangi Marine Reserve Proposal with NZ Underwater. I am also actively involved with numerous marine conservation groups and Iwi and hapu groups in Northland.

### **Submission**

I offer these suggestions on the Bill now before the House because I feel it is vital for Government to hear from people who are involved in the Marine Reserve process. I would also like to mention the significance of Northland as a marine area to our country. In this regard it is now time that we seek new ways to achieve the conservation objectives that the government has set out in the Biodiversity Strategy. Northland has spectacularly valuable marine resources which are currently highly threatened by overfishing and an almost total lack of local involvement solutions. This is the context of my submission. Much of this submission attempts to bring forward the voice of Iwi Maori. While I can not speak for Iwi Maori and therefore merely offer my personal view, I work with Iwi groups in Northland on a full time basis and have been widely involved with Iwi Maori in Northland for more than twenty years. All too often Iwi Maori shy away from Government consultation processes in Northland, and I believe this had been the case with the consultation to date on the Bill. This then is my attempt to bring issues and solutions forward so that the government can truly engage with Maori and local

communities of this country in preserving and restoring our marine heritage. Following are comments and suggestions relating to specific clauses of the Bill.

### **Clauses 7-10 purpose and principles of the Act**

*Section 9(d) recognition should be given to the importance of protecting undisturbed marine areas for scientific and educational purposes, and for research contributing to Te Ira Tangaroa, to gain a better understanding of the marine environment:*

Although the intention may be good and is supported, the Bill does not lay down *how* this could happen or in any way how Iwi Maori could be supported to undertake or develop research in Te Ira Tangaroa. See comments further on that address the issues of active involvement and rangatiratanga.

Also recommend that this section of the Bill should introduce a minimum goal for area of marine reserves in New Zealand. The Biodiversity Strategy comes close to this, but falls short of specifically addressing Marine Reserves when it talks about the “amount” of reserves or “protected areas”. This is an opportunity to be clear about what the objective is. Scientific evidence internationally strongly supports a minimum of 20% of the marine area in no-take biodiversity reserves for the most effective blend of conservation gain and support for fisheries management.

### **Clause 11 the Treaty clause:**

#### ***11 Treaty of Waitangi***

*This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.*

The clear problem here is that there is no specification or practical mechanism that explains how effect can be given to the Treaty. This problem is all too familiar to those who have struggled with Section 4 of the Conservation Act and the RMA provisions of “give regard” etc. Suggest that in appropriate circumstances the Minister have the power and authority to pass on or delegate all powers under this Act to the Treaty partner. This approach makes the issues negotiable depending on the situation. It would make it possible to move into true partnership. It would create a situation where Iwi Maori have the incentive to fully engage in the Conservation partnership with the Crown. Making decisions of this importance at the tribal or hapu/whanau level is entirely consistent with tikanga of most tribes. There are a number of other approaches to this recommendation that are possible, but I suggest serious consideration of the flexibility and positive incentives that are the basis of this approach, while the Crown retains a governance role of deciding when and how much control or involvement is devolved to Iwi Maori. Suggest this issue could be dealt with by creating a clause in Part 2 that allowed the Crown to delegate to Iwi the management of a Marine Reserve, or to recognised Kaitiaki of the area the decision and control of customary take under certain conditions agreed between Crown and Iwi which would not adversely affect the success of the Reserve.

## Clause 18 Concessions in marine reserves

### *18 Minister may grant concessions*

- (1) *The Minister may grant a concession for any activity in a marine reserve except an activity referred to in subsection (3) or subsection (4). A concession may be a lease, licence, permit, or easement.*
- (2) *A concession is required in a marine reserve—*
- (a) for scientific research; and*
  - (b) for research contributing to Te Ira Tangaroa; and*
  - (c) for a recreational activity, or other activity, undertaken for gain or reward; and*
  - (d) for an activity referred to in sections 13(2) and 14.*
- (3) *A concession is not required in a marine reserve for an activity referred to in section 12(1), (3), and (4).*
- (4) *The Minister must not grant a concession in a marine reserve for—*
- (a) the commercial, recreational, or customary take of marine life; or*
  - (b) an activity that is prohibited or restricted by—*
    - (i) the Order in Council under which the marine reserve is established; or*
    - (ii) regulations made under this Act that apply to the marine reserve*

I support the concept of rules and a process for establishing concessions in Marine Reserves. However I suggest that the present Bill has not addressed certain aspects of the process.

The first problem with concessions is that there is no mention of how Maori will be involved in the decision making relating to who gets what concession to do things in a Marine Reserve for commercial gain. The question that should be asked is how this is giving effect to Treaty principles. Suggest options are recommended that set in place set allocations of concession to Maori as of right **whether or not** they can be exercised in the present. Also, Maori must be involved in the decision making process because in some instances it may only be appropriate for Maori to hold concessions. This is the scenario where a Marine Reserve is created by Maori, managed by Maori and is located in a strongly traditional area. In this situation it would not be appropriate for the Crown to allocate concessions to outside interests, especially with no consultation. Other cases would involve balanced allocation appropriate to the community and Iwi involved. The system must be flexible and involve Maori fully in decision making where appropriate.

The second problem is with Section 18(4)(a). Here the decision has been made that the Minister will **not** have the ability to grant a concession for customary take. This has been done to simplify the situation and create one rule for everyone etc. Unfortunately many Maori will totally object to this approach as they will not wish to surrender the ability to choose whether they should take for customary use sometime in the future. A way to resolve this is to allow the Minister to delegate the power to grant the customary take to the appropriate Kaitiaki for the Reserve. (It is not logical that a Minister could ever make this decision anyway! (i.e. what could be taken and when). There could be strict guidelines as to how those powers would be managed, for very special purposes and carried out in way that would not harm the conservation objectives of the reserve etc. I consider that this process is workable and restores the proper authority to Kaitiaki. In

most cases marine reserves would be so treasured and important for their conservation purpose that Maori would be the last ones to abuse the situation. This approach fits perfectly the 'give effect to' clause (Clause 11), and the obligation to honor the provisions (refer terms of reference) of the Sealord Settlement.

### **Concessions Income**

Another issue that is not addressed in the Bill is any guideline or direction on where income derived from concessions will go. As it is not specified, I assume that this means that DoC collects it and it goes either to DoC or the general income account of the Government. Where Iwi Maori are the dominant stakeholder and doing all the work on the ground, there is an argument that there should be some sort of revenue sharing. Revenue sharing could also be considered for mitigation where a local hapu are forfeiting significant customary take areas to achieve the conservation purpose of the marine reserve. At the minimum there could be a clause that requires that all revenues be spent on marine conservation in that area or region, or even on the management, and perhaps education, training, and research for that particular reserve.

### **Clauses 19-21 provides for the appointment of managers of reserves**

Support these sections in principle as it is possible for Iwi Maori groups to be appointed as the Manager. However these sections need to have a statement that assures Iwi Maori that in appropriate circumstances they will be the manager if they so choose. It is also appropriate that the obligation of the Government to actively assist Iwi Maori to carry out this role is spelled out. Also, where a hapu or Iwi group does not currently have the capacity on the ground to manage now, there must be provision made to assure Iwi that it would be possible to be actively involved when the time comes that they are ready.

### **Clauses 24-30 deal with advisory committees**

Support these sections with the following exceptions. The situation where Iwi Maori are managing the marine reserve or where they have significant traditional interest in the reserve area is not really provided for. In these cases, which will be common in Northland, there needs to be provision to assure that the Tangata Moana have adequate representation on the advisory body and chair the advisory body where appropriate. In some cases Iwi Maori will need to have the majority of the seats on the advisory body. Again there is the scenario of a strongly traditional area where Iwi are the applicant and wish to manage and hold concessions. In this case they would need to be the majority representation on the advisory committee.

### **Clause 49 Contents of Proposal**

*(2) A proposal must not relate to a marine area—(b) that is included in a taiapure-local fishery or mataitai reserve declared under the Fisheries Act 1996.*

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Perhaps the intent of this clause is to protect the interests of Iwi Maori. However, as worded it unnecessarily restricts the integration of Marine Reserves and customary management. Recommend that this clause is rewritten along the lines of this:

*A proposal can not include areas of existing mataitai or taiapure reserves declared under the Fisheries Act except where Iwi Maori and the appropriate Kaitiaki support the Marine Reserve proposal. In the interest of integrated management, Iwi Maori may also wish to nominate areas of customary management within a proposed Marine Reserve. In these cases of an integrated approach, the applicants will need to fulfill requirements of the Marine Reserves Act and the Fisheries Act.*

(Note: the Marine Reserves Act needs to detail how a joint process would work in as streamlined a way as possible with the MinFish responsibility. Possibly, where a mataitai reserve was formed or proposed in a marine reserve, it could be handled along with the Marine Reserve in terms of the legalities etc.)

Explanation: Suggest this change is very important as the best scenario is for Iwi Maori to be free to use the advantages of the Marine Reserves Act within a larger traditional management system, or for Iwi Maori to be free and supported to set up a mataitai reserve within an existing large Marine Reserve. The power to design and recommend decisions needs to lie with communities and Iwi Maori on the ground, so it is essential that the legislation does not restrict the possibilities of the systems working together. To put it another way, the Fisheries Act does not provide for long-term closures to meet biodiversity conservation objectives. The Marine Reserves Act does; certainly both are needed to work together.

#### **Part 4 Establishment Clauses 46-75**

Generally the changes proposed, to put in place strict timelines on DoC and the Government, are good and bring the Marine Reserves Act in line with the RMA. Support Clause 62 which requires the Director General to carry out an independent review of the summary of submissions prepared by DoC. Support Clause 63 which sets out how DoC will consult with other Ministers, suggest this is a much better way to do it than the present sign-off log jam that exists with MinFish.

#### **Clause 67 Minister's decision**

*(1) The Minister must decide whether—*

*(a) to accept an application and recommend to the Governor-General the making of an Order in Council under section 71, with or without conditions under section 69; or*

*(b) to decline the application.*

*(2) The Minister may recommend the making of an Order in Council under section 71 only if the Minister is satisfied that the marine reserve proposed by the application as it may be amended under section 68, with any conditions that may be imposed under section 69,—*

*(a) meets the purpose and is consistent with the principles of this Act; and*

*(b) is in the public interest; and*

*(c) will have no undue adverse effect on any of the following:*

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*(i) the relationship of iwi or hapu who are tangata whenua or who have customary access, and their culture and traditions, with the marine area concerned:*

*(ii) the ability of iwi or hapu who are tangata whenua, or who have customary access, to undertake customary food gathering to the extent authorised by any enactment:*

*(iii) commercial and recreational fishing:*

*(iv) recreational use:*

*(v) economic use and development:*

*(vi) any estate or interest in land in or adjoining the proposed marine reserve:*

*(vii) navigation rights:*

*(viii) education and research:*

*(ix) the use of the marine area by the New Zealand Defence Force:*

*(x) other matters considered relevant by the Minister.*

*(3) An adverse effect is not undue under subsection (2)(c) if the Minister is satisfied that the benefit to the public interest in establishing the marine reserve outweighs the adverse effect.*

*(4) In considering the public interest under subsection (3), the Minister must have regard to—*

*(a) the benefit of preserving and protecting marine communities and ecosystems to conserve indigenous marine biodiversity; and*

*(b) any benefits that may arise directly from the establishment of the marine reserve that the Minister considers relevant.*

Section (2)(c)(i)&(ii) are the relevant tests for Iwi. The problem here is that the Bill does not spell out how Iwi interests will be practically allowed for in the process, and then in this clause makes a very general statement. If customary take is not managed by the Kaitiaki or those Iwi that choose to do so with the Crown, then how can a judgment on “undue effect” be made? If such a judgment is to be made for the biodiversity purpose, it is essential that some practical guidelines are set down as to what an undue effect is. Also, where adverse effects on customary management are permitted in the public and biodiversity interest, practical mitigation for Tangata Moana should be identified and required.

### **Clauses 72-75 Reviews of marine reserves**

Support in principle what the Bill is trying to do here. However, there should be an additional clause that allows a hapu or Iwi group to request or negotiate a review on the basis that in their view the reserve no longer serves its purpose under the Act or reflects best possible management practice for the area. There also needs to be a clause which reflects a partnership approach to decision making on the review where Iwi are the dominant stakeholder. In addition, there should be a clear option for the Crown to agree to a review at the end of a certain term, such as a generational review.

### **Part 5 Enforcement and Penalties Clauses 76 to 125**

Would like to offer the observation for consideration that this section becomes rather imposing and draconian if the role and involvement of Iwi are not recognised in the

provisions of this Bill. However, if Iwi are involved, the powers established by this section seem acceptable.

January 27, 2003

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