

Brief on Iwi submissions to the Marine Reserve Amendment Bill

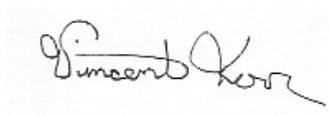
Vince Kerr, Nga Maunga ki te Moana Conservation Trust Jan 2003 (email: vincek@igrin.co.nz)

The following information is a brief on the Marine Reserves Bill now before Parliament. I offer these suggestions because I feel it is vital for the Iwi voice to be heard. I hear the concerns of Iwi Maori in regards to marine reserves and Kaitiakitanga issues on the Northland coast on a constant basis. Progress will be unnecessarily slow as long as this voice is not heard.

Following are specific comments on parts of Bill I feel are particularly relevant to Iwi Maori. In most cases I have included suggested changes for you to consider using in your submission. Please know that I offer this advice based on my experience; you will need to decide for yourself if it is tika and helpful, I hope it is. At the end of the suggestions for submissions section is a submission template and some further information on the submission process and the Bill.

Note: Quotes from the Bill are copied here in red.

Kia Kaha



Suggestions for Submissions

Clauses 7-10 set out purpose and principles of the Act

Suggest support for these sections with one exception.

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, the Bill does not lay down *how* this could happen or in any way how Iwi 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.

Clause 11 is 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 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 the DoC and section 4 of the Conservation Act and the RMA provisions of “give regard” etc. Suggest that the recommendation is that in appropriate circumstances that 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 like the flexibility and positive incentives that are the basis of this approach, while the Crown retains 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 managing a MR or 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 is about Concessions in marine reserves, (in the current Act there is no power to grant concessions)

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; or 16

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 should be asked is how this is giving effect to the 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 situation where a marine reserves 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. Other cases would involve balanced allocation appropriate to the community and Iwi involved, therefore 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. 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!) 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 and the obligation to honor the provisions, (see terms of reference) of the Sealord Settlement.

Concessions Income?

Another issue that is not addressed in the Bill is and guideline or direction on where income derived from concession will go. As it is not specified this means that DoC collects it and goes either to DoC or the general income accounts 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 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

Most of these sections are OK except that they don't deal with the situation where Iwi Maori are managing the marine reserve or where they have significant traditional interest in the reserve area. In these cases, which will be the common situation 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 Moana will need to have the majority of the seats on the advisory body. Again there is the situation 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.

Perhaps the intent of this clause is to protect the interests of Iwi Maori, however as worded it unnecessarily restricts the integration of the 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 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 MR Act and the Fisheries Act. (Note probably the MR Act needs to detail how a joint process would work in a streamlined way as possible with the MinFish responsibility. Possibly where a mataitai reserve was formed in a marine reserve it could be handled along with the marine reserve in terms of the legalities etc.)

Explanation: I suggest this change is very important as the best scenario is for Iwi Maori to be free to use the advantages of the Marine Reserve Act within a larger traditional management system or for Iwi Maori to be free 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 the legislation does not restrict the possibilities of the systems working together. To put it another way the Fisheries Act does not make it easy to have long term closures, the Marine Reserves Act does, so certainly both are needed to work together..

Part 4 Establishment Clauses 46-75

I have no real comment on most of this section and think generally the changes proposed to put in place strict timelines on DoC and the Govt. are a good thing and bring the MR Act in line with the RMA. I would also support the Clause 62 which requires the Director General to carry out an independent revue of the summary of submissions prepared by

DoC. I would 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:

(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 to Iwi. The problem here is that the Bill does not spell out how Iwi's interest will be practically allowed for in the process and then in this clause it makes this vague 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 be made of "undue affect". If such a judgment is to be made for the biodiversity purpose then it is essential that some practical guidelines are set down as to what an undue affect is. Also where there are adverse effects on customary management allowed in the public and

biodiversity interest, practical mitigation to 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, but it is what is left out that is the issue. There should be an additional clause that allows a hapu or Iwi group to request or negotiate a review on the basis that that in their view the reserve is no longer serving its purpose under the Act or reflects the 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 certain term, such as a generational review.

Part 5 Enforcement and Penalties Clauses 76 to 125

No comment to make here, this section becomes rather imposing and draconian if Iwi's role and involvement is not recognised in the provisions of this submission, however if Iwi are involved then the powers established by this section seem OK

Suggested format Submission Template

Here is a suggested submission layout which you may wish to consider copying. Your name, address and daytime telephone number could be included in a covering letter instead.

SUBMISSION

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

Introduction

1. This submission is from (name of individual/organisation and address).
2. I/we wish to appear before the committee to speak to my/our submission. I can be contacted at: (List your daytime contact telephone number or the name, address and contact telephone number of the contact person for your organisation if different from above. These details could be included in a covering letter instead for privacy reasons.)
I/we wish that the following also appear in support of my/our submission: (List names and positions in organisation).
3. (If an organisation, give brief details of your organisation's aims, membership and structure and the people consulted in the preparation of the submission.)
General/Summary (if a long submission)

4. I/we support/oppose the intent of this bill because (state reasons why).
I/we wish to make the following comments (views on the general intent of the inquiry).

Clause * (Bill)

5. I/we support/oppose the provisions of this clause because (state reasons why).

Clause * (Bill)

6. Although I/we agree with the general intent of this clause, I/we feel that (note any changes you would like to see made and be as specific as you can suggesting new wording for the clause if you wish).

Specific comments (Inquiry)

7. I/we wish to raise the following matters under terms of reference 1, terms of reference 2 etc (expand on your views and give reasons for them).

Recommendations

8. (List any further recommendations or conclusions that you wish the committee to consider. You may wish to restate recommendations mentioned earlier in the text.)

Information on where to send submissions and how to get further information:

The Marine Reserves Bill had its first reading on Tuesday 15 October 2002. It was referred to the Local Government and Environment Select Committee, which has called for submissions.

Submissions on the Bill should be sent to the following address by **31 January 2003**:

Marie Alexander
Clerk of the Committee
Local Government and Environment Committee
Select Committee Office
Parliament Buildings
Wellington
Phone: (04) 471 9525
e-mail: marie.alexander@parliament.govt.nz
[<mailto:marie.alexander@parliament.govt.nz>](mailto:marie.alexander@parliament.govt.nz)

The Select Committee is likely to be holding hearings on the Bill. If a person wishes to be heard on their submission, they should indicate this clearly in their submission.

For further information

A leaflet summarising the background and key features of the Bill is available. For further information contact Marie Alexander, clerk of the Committee, at the above address.

Additional information can also be found on the following websites:

- [<www.clerk.parliament.govt.nz/programme/committees/submissions/>](http://www.clerk.parliament.govt.nz/programme/committees/submissions/)
Select Committee information on Bills and where submissions should be sent.
- [<www.clerk.parliament.govt.nz/publications/MakeSubE.pdf>](http://www.clerk.parliament.govt.nz/publications/MakeSubE.pdf)
"Making a submission to a Parliamentary Select Committee", a booklet published by the Parliamentary Clerk. It covers writing a submission, presenting oral submissions, and general information on Select Committees.
- [<www.doc.govt.nz/Conservation/Marine-and-Coastal/Review-of-the-Marine-Reserves-Act-1971/index.asp>](http://www.doc.govt.nz/Conservation/Marine-and-Coastal/Review-of-the-Marine-Reserves-Act-1971/index.asp)
Includes: copy of the Bill (in pdf format); a summary of the policy background and key features of the Bill; the regulatory impact and compliance cost statement; a summary of submissions on the discussion document; and media releases from the Minister of Conservation.

If people do not have access to these websites, printed copies of the documents are available as follows:

- The guide "Making a submission to a Parliamentary Select Committee" is available through the Clerks office-contact Marie Alexander at her address above.
- For printed copies of the material on the DOC website (other than the Bill), contact DOC Head Office in Wellington, Phone (04) 471 0726.
- The Bill is available from Bennetts Government Bookshop outlets (in Auckland, Wellington, Christchurch and Dunedin), or can be ordered through Whitcoulls bookshops. It costs \$6.85.

From: Karli [Karli@nzunderwater.org.nz]
Sent: Wednesday, November 06, 2002 1:02 PM
Subject: Marine Reserves Network ~ submissions on the marine reserves bill
Submissions on the Marine Reserves Bill...

The public notice about the Marine Reserves Bill (posted earlier) asked people to send 25 copies of their submission to the Parliamentary Select Committee.

If sending 25 copies is difficult or beyond your means, it may be possible to send fewer copies. Either write this in a covering letter or contact the Secretariat to explain.

Secondly, if you are able to appear before the select committee and make an oral submission, this can have much more impact than making a written submission only. You should clearly state in your written submission that you would like to appear before the committee, and give your name and daytime phone number.

Cheers,

Karli Thomas

Environmental Coordinator
New Zealand Underwater Association

How Treaty issues are addressed in the Marine Reserves Bill

Released by DoC Dec 2002

CONSULTATION ON THE REVIEW

- A discussion document was distributed in October 2000, and 16 Hui and 16 public meetings were held between November 2000 and February 01.
- In total, 256 submissions were received, including submissions representing 21 Iwi, Hapu, Runanga, Trust Boards and Marae committees, and three groups.

PROBLEMS WITH THE CURRENT MARINE RESERVE ACT

- In the 1971 Marine Reserves Act:
 - Maori are mentioned once – that iwi or hapu who are tangata whenua can apply for a marine reserve;
 - There are no guidelines for how Treaty obligations are met;
 - DOC addresses the principles of the Treaty through the obligations in section 4 of the Conservation Act.

- The Marine Reserves Bill is far more specific about how Treaty obligations will be met.

THE MARINE RESERVES BILL

Treaty section

- The Bill includes a Treaty section that restates section 4 of the Conservation Act that: “This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.” This means that the obligations that already exist through section 4 of the Conservation Act are maintained. (Clause 11)

Specific provisions relevant to Treaty issues

The Bill also contains provisions that specifically recognise the Treaty partnership. They include:

- **Te Ira Tangaroa:** The Bill recognises the importance of providing opportunities for scientific research, and also for research contributing to Te Ira Tangaroa. “Te Ira Tangaroa” is defined as Maori traditional and contemporary knowledge relating to the life principle of the marine environment. (Clause 9(d), 12(2))
- **Interface with mataitai:** An application to establish a marine reserve cannot include areas within established mataitai or taiapure. (Clause 49(2))
- **Process for establishing a marine reserve:**
 - These processes recognise iwi or hapu who are:
 - ◆ Tangata whenua of the area being proposed as a marine reserve; or
 - ◆ Who have customary access to the area.
 - **Consultation:** Iwi or hapu who are tangata whenua or who have customary access must:
 - ◆ Be consulted when a marine reserve proposal is developed;
 - ◆ Be directly notified when an application is publicly notified; and
 - ◆ Be consulted on a marine reserve application. (Clauses 48, 53(3))
 - **Decision-making:**
 - ◆ The Minister decides whether or not to approve an application to establish a marine reserve, and will only approve a marine reserve application if:
 - * It meets the purpose and is consistent with the principles of the Act; and
 - * Is in the public interest; and
 - * Has no undue adverse effect on a list of matters. (Clause 67(2)(c))
 - ◆ The list of matters requires, among other matters¹, the Minister to consider tangata whenua, and iwi and hapu who have customary access to that marine area, and whether there is an undue adverse effect on:

¹ E.g. commercial and recreational fishing, recreational use, and economic use and development (among others).

- * Their ability to undertake customary food gathering to the extent authorised by any enactment; and
- * The relationship of their culture and traditions with the area.
- ◆ An effect is not undue if the Minister is satisfied that the benefit to the public interest in establishing the reserve outweighs the adverse effect. (Clause 67(3))
- **Management of established marine reserve: Maori involvement**
 - **Advisory bodies:** The Bill requires tangata whenua to be included on any advisory reserve committee that may be appointed. (Clause 27(1))
 - **Devolved management:** The Bill allows the Minister to appoint a management body to manage a reserve in certain circumstances, rather than the Director-General. A management body may be (Clause 20(1)):
 - ◆ A local authority or other Minister;
 - ◆ A management board made up of appointed individuals—in which case the Bill requires tangata whenua to be included on the board (Clause 27(1)); or
 - ◆ Other person or body—which could, for example, be the local hapu.
 - **Consultation:** Tangata whenua must be consulted when a management plan is developed. (Clause 40(2))

STATUTORY OBLIGATIONS UNDER THE FISHERIES SETTLEMENT ACT

- The Treaty of Waitangi (Fisheries Claims) Settlement Act imposes a general obligation on the Crown to act in accordance with Treaty principles, and on the Minister of Fisheries to recognise and provide for customary food gathering by Maori.
- The Marine Reserves Bill requires the Minister of Conservation, when considering a marine reserve application, to consult with the Minister of Fisheries on the implications of a marine reserve application for customary, recreational and commercial fishing and the Fisheries Deed of Settlement (the Minister must also consult with four other Ministers). (Clause 63)
- The Marine Reserves Bill then sets out how the Minister makes the decision (see above under “decision-making”)
- The Oceans Ministers agreed that, with respect to Treaty issues, the matters the Minister of Conservation is required to consider should not undermine the Crown’s obligations under the Fisheries Deed of Settlement and subsequent legislation.
- The proposed criteria in the Marine Reserves Bill (Clause 67):
 - Capture the concepts that the Minister of Fisheries currently considers; and
 - Are explicit, so it is easier to ensure the statutory tests have been met; and
 - Enable the Minister to take a wider view on how the principles of the Treaty apply to Maori non-commercial fishing.

Marine reserves as no-take areas

- Marine reserves will not allow fishing, whether customary, recreational or commercial (Clause 13(1)).
- Officials considered at length various options for allowing some types or level of take in all or parts of reserves. However it was considered that allowing take in some reserves:
 - Was complex;
 - Did not provide the full range of benefits possible in areas with full protection;
 - Had a significant risk that the reserves would not achieve their desired protection or restoration goals;
 - Would make it far more difficult and expensive to mark, monitor, manage and enforce such marine reserves;
 - Would also make enforcement of other, no-take reserves, more difficult and costly; and
 - Risked making the Marine Reserves Act a defacto “fisheries management” tool, thereby cutting across the processes established in fisheries legislation.
- Three-quarters of submissions commented on take, and about two-thirds of these supported “no-take” biodiversity reserves. “No-take” was seen as being integral to effective high-end protection, simple, fair and unambiguous. Maori generally opposed strictly no-take reserves in submissions and at hui, but this view was not unanimous.

SUBMISSIONS ON THE REVIEW

- In total, 256 submissions were received on the discussion document. A summary is available on the DOC web site at: www.doc.govt.nz/Whats-new/Consulting-On/, and is listed under the title: “Tapui Taimoana (Reviewing the Marine Reserves Act 1971): Summary of Submissions”. It was written by Boffa Miskell Ltd.
- Maori submissions included submissions representing 21 Iwi, Hapu, Runanga, Trust Boards and Marae committees; plus submissions from the Maori Women’s Welfare League (Ngakau Kotahi Branch), Te Ohu Kaimoana, and the NZ Federation of United Seafood Interests Inc.