

Post-Election Briefing

Te Ohu
Kaimoana

The logo graphic for Te Ohu Kaimoana consists of three stylized, wavy lines in a light teal color, positioned below the text.

Summary

This briefing for Ministers, provides an overview of the purpose of Te Ohu Kaimoana and its key priorities for the next three years. A key part of its role is to assist the Crown to discharge its obligations under the Fisheries Deed of Settlement and the Treaty of Waitangi.

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Te Ohu
Kaimoana


KA ORA KI TAI KA HUA KI UTA

A bountiful ocean will sustain us

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Introduction

This briefing provides incoming Ministers with an introduction to Te Ohu Kaimoana and its key areas of interest.

Purpose and role of Te Ohu Kaimoana

Te Ohu Kaimoana is an independent Māori Trust established under the Maori Fisheries Act 2004. Its purpose is to work with Iwi and the Crown to advance the interests of Iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:

1. Further the agreements made in the Deed of Settlement;
2. Benefit the members of Iwi and Māori generally;
3. Assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
4. Contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement (*s 32, Maori Fisheries Act 2004*).

Māori Fisheries Deed of Settlement

- A full and final settlement of Māori claims to fishing rights guaranteed under the Treaty of Waitangi;
- Signed by the Crown and Māori in September 1992;
- Attested that Māori supported the QMS as a lawful and appropriate regime to manage commercial Fisheries in New Zealand;
- Delivered quota, fishing companies and cash to Māori through Iwi; and,
- Promulgated regulations enabling Iwi, hapū and whānau to take responsibility for customary non-commercial fishing.

By entering into the Deed of Settlement the Crown recognised that fisheries are of importance to Māori. The Crown's Treaty duty is to develop policies which help recognise use and management practices, and provide protection for and scope for the exercise of rangatiratanga, in respect of traditional fisheries. Māori traditional fisheries include commercial and non-commercial interests.

Te Ohu Kaimoana assists and empowers Mandated Iwi Organisations (MIOs) to manage and protect their commercial and non-commercial fisheries rights, guaranteed in the 1992 Deed of Settlement and the Māori Commercial Aquaculture Settlement.

Te Ohu Kaimoana can also assist the Crown to achieve durable settlements by advising on and developing policy that takes fisheries, aquaculture and marine management forward in a manner consistent with the Deed of Settlement and settlement legislation.

As a result of the Māori Fisheries Review undertaken in 2014-15, Iwi has resolved that Te Ohu Kaimoana should continue to exist to serve their needs and have committed to providing the necessary resources.

Key priorities for Iwi and Te Ohu Kaimoana from 2017-2020

- Implementation of the Māori Fisheries Review through an amended Maori Fisheries Act;
- Develop and promote options to improve marine management while recognising Māori fisheries rights, including those expressed through the QMS and the Aquaculture Settlements;
- Strengthen the QMS to ensure all sectors have an incentive to take responsibility for their share of the Total Allowable Catch;
- Ensure policies on marine protection distinguish sustainability from preservation (which treats non-use as a form of utilisation);
- Ensure that where fishing is prohibited for reasons other than sustainability, Māori rights are protected or amended only by agreement;
- Ensure the customary fisheries framework is working for Iwi, hapū and whānau, consistent with the Deed of Settlement; and,
- Build strong relationships with relevant Ministers and senior bureaucrats and councils.

What does the Government need to do?

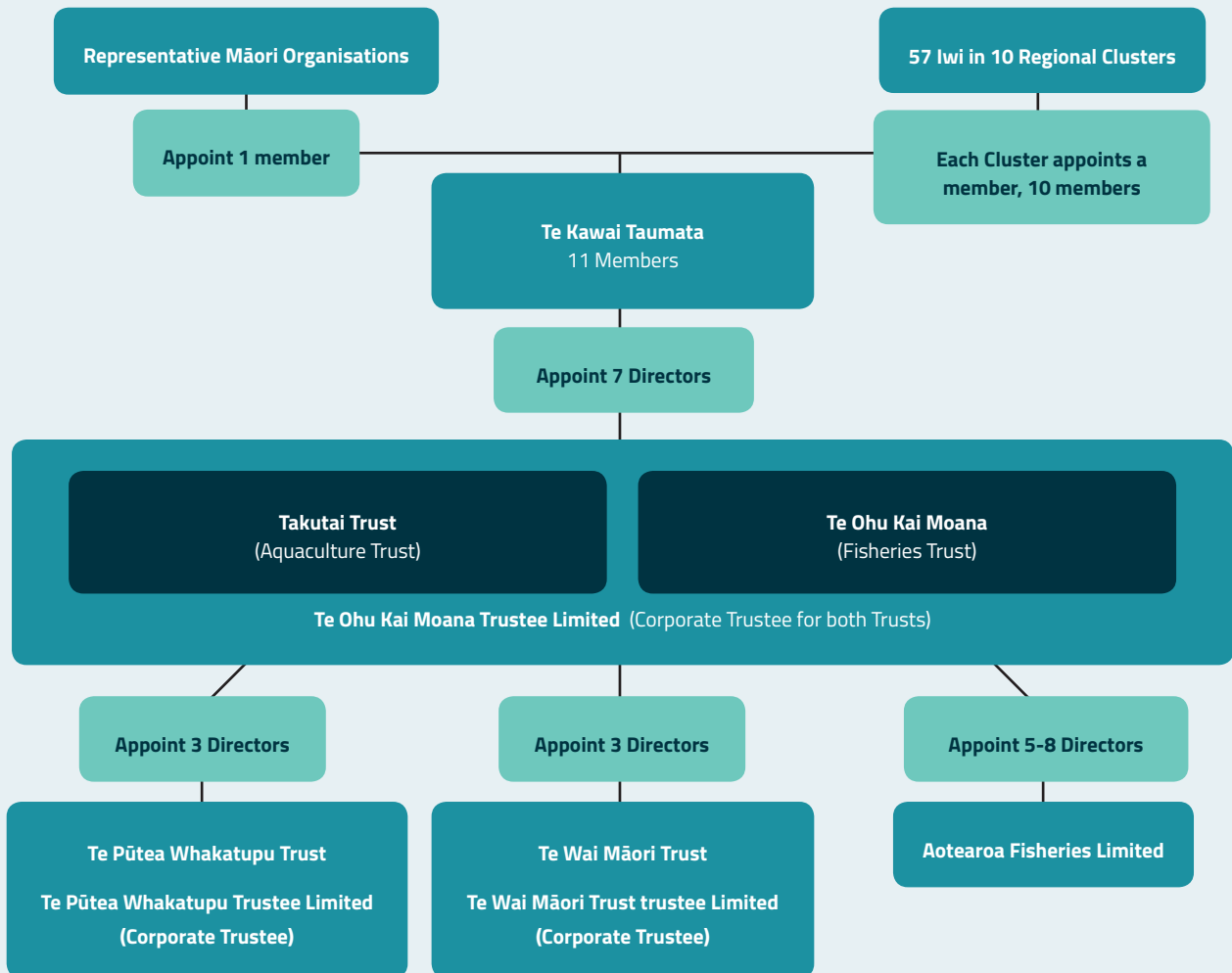
- Work with Te Ohu Kaimoana and Iwi to ensure appropriate amendments to the Maori Fisheries Act 2004, as agreed by Iwi, are enacted during 2018, and;
- Uphold the Fisheries Settlement by collaborating with Te Ohu Kaimoana as agent of Māori, and Treaty partner to the Crown, to ensure government policy is consistent with the Deed of Settlement, particularly:
 - the Future of our Fisheries policy;
 - the introduction of Integrated Electronic Monitoring and Reporting system (IERMS);
 - the Kermadec Sanctuary proposal;
 - the Marine Protected Areas policy;
 - a solution for 28N Rights;
 - SeaChange proposals for the Hauraki Gulf;
 - restricting the ability for Regional Councils to manage fisheries under the Resource Management Act; and,
 - cost recovery under the Fisheries Act.

Further information is provided as follows.

The Māori Fisheries Review

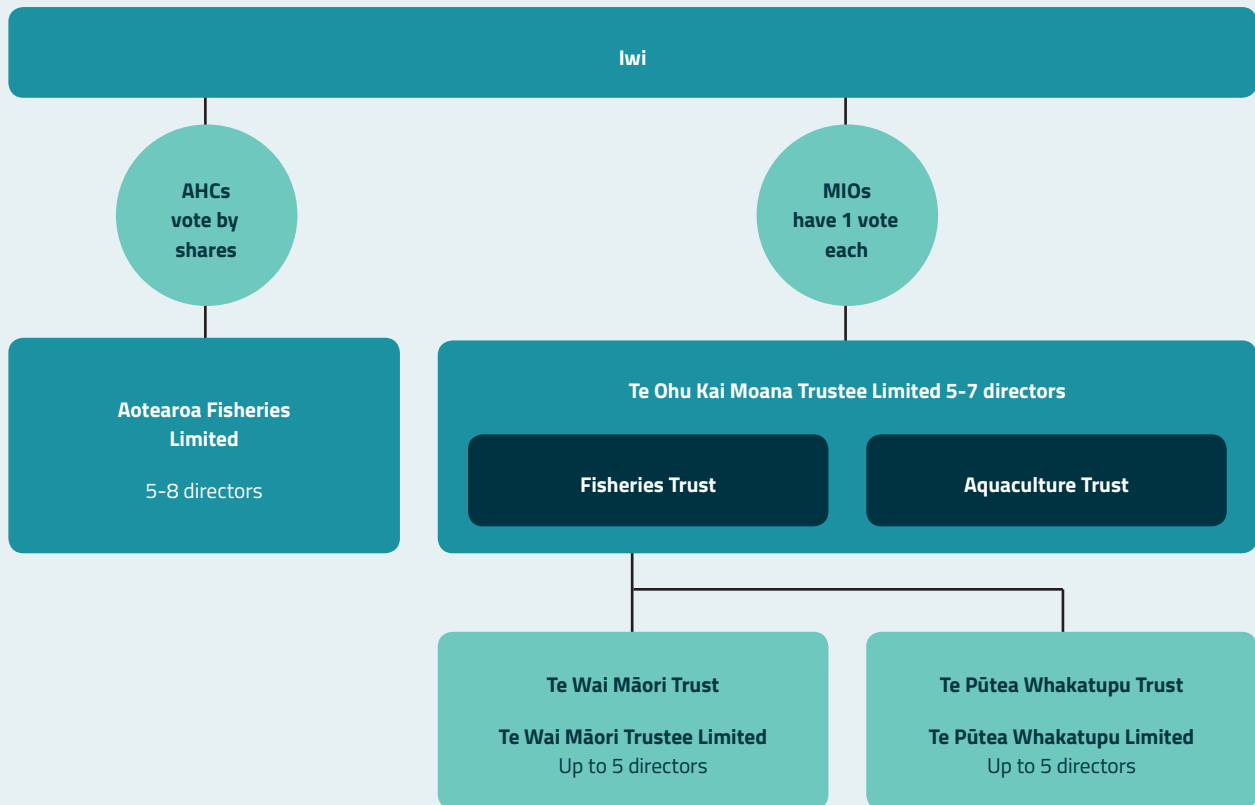
Current governance of Te Ohu Kaimoana and Aotearoa Fisheries Ltd.

Based on an Electoral College system



- The role of Te Ohu Kaimoana, under the Maori Fisheries Act 2004, is to recognise MIOs and transfer settlement assets to them (and their Asset Holding Companies (AHCs)), and govern Te Wai Māori Trust, Te Pūtea Whakatupu Trust and AFL. The allocation of assets is almost complete.
- Te Ohu Kaimoana is also trustee for the Takutai Trust. Our role is to facilitate Aquaculture Settlement agreements between Iwi and the Crown. Under these agreements, the Crown transfers settlement assets to Te Ohu Kaimoana, who assists Iwi to agree on how they will be allocated. Once agreement is reached Te Ohu Kaimoana transfers the assets to Iwi.
- The governance of the group of entities is centralised through Te Ohu Kaimoana who appoints the directors of Aotearoa Fisheries Ltd, Te Wai Māori Trust and Te Pūtea Whakatupu Trust. Iwi appoint the directors of Te Ohu Kaimoana through an Electoral College system.

The future – direct appointments by Iwi to the boards of Te Ohu Kaimoana and Aotearoa Fisheries Ltd



- The Māori Fisheries Act requires a review of the governance arrangements 11 years after enactment of the Maori Fisheries Act.
 - The review was completed in 2015.
 - Following the review, Iwi voted to seek changes to the Māori Fisheries Act to enable them to take direct control of Te Ohu Kaimoana and Aotearoa Fisheries Ltd, consistent with the principle of rangatiratanga.
 - The changes will require amendments to the Māori Fisheries Act. We have submitted two reports to the Minister for Primary Industries outlining the required amendments¹.
- It is now up to the Government to progress these amendments as quickly as possible.
- Once the Māori Fisheries Act is amended, MIOs will appoint the directors of Te Ohu Kaimoana, and their AHCs will appoint the directors of AFL.
 - Iwi seek a closer relationship to their entities – and want Te Ohu Kaimoana to continue to protect and enhance their interests, including developing policy advice for them. Iwi recently approved a Māori Fisheries Strategy and three-year Strategic Plan for Te Ohu Kaimoana that will ensure the organisation has secure resources as these changes are made.

¹ For further information see Māori Fisheries Review: Report to the Minister for Primary Industries (Te Ohu Kaimoana, September 2016) and Māori Fisheries Review: Second Report to the Minister for Primary Industries (Te Ohu Kaimoana, August 2017).

Key policy issues – what we have said

Fisheries management and allocation

The Fisheries Act

- The Fisheries Act including its purpose and principles provides a sound basis for fisheries management. In general, the system is working well but some fine-tuning is required. In September 2015, the Minister for Primary Industries announced an operational review of the Act which would not affect the purpose and principles of the Act, including the QMS and the Māori Fisheries Settlement.
- The “Future of our Fisheries” proposals subsequently released in 2016. Iwi and Te Ohu Kaimoana considered the proposals would negatively affect the Settlement, and Iwi directed Te Ohu Kaimoana to take legal action against the Minister to protect their rights. After being notified of the intentions of Iwi, the Minister urged Te Ohu Kaimoana to work with his Ministry to ensure any policies proposed to Cabinet did not negatively affect the Settlement. He also invited Te Ohu Kaimoana to provide comment to him on any proposals we had residual concerns about.
- Te Ohu Kaimoana has been involved in discussion on the Future of our Fisheries and IEMRs policies. However, the Ministry has refused to show Te Ohu Kaimoana its advice to the Minister – meaning Te Ohu Kaimoana cannot brief the Minister on any outstanding concerns. Litigation is the only other option available.

Shared fisheries and sector allowances

- When setting the Total Allowable Catch (TAC) and Total Allowable Commercial Catch (TACC) the Minister for Primary Industries is currently able to alter allocation between the commercial, recreational and customary-non-commercial sectors for sustainability reasons. However, reallocation provides a disincentive for sectors to take responsibility for their share of a fishery or to collaborate with each other on fisheries management, as any initiative taken by any particular fisheries sector to rebuild a fishery could go unrewarded. For example, this would be the case where the commercial sector forgoes catch to enable a rebuild and pays for the science and research, only to have a substantial portion of any increase allocated to the recreational sector but not them.
- The process for changes in allocation between the sectors needs to be reviewed with the intent of achieving fixed shares between sectors. Mechanisms to enable trades between the sectors where they are willing also need to be developed. This approach would provide an incentive to each sector to take responsibility for their share of the fishery and be rewarded appropriately. In its absence, the commercial sector is increasingly reluctant to invest in innovation and to endorse the normal processes for alterations to catch when other options that maintain their share, such as shelving, are available.

Fisheries for our Future and Ecosystem based fisheries management

- So far policies for Ecosystem-based Fisheries Management appear to be all things to all people and everyone's values are assumed to be provided for as if they have equal weight. The latter is not the case but even if it were, providing for everyone's values is unattainable. With the Fisheries Act we already have a firm foundation upon which to manage the effects of fishing on ecosystems. Provision for people's values needs to start with evidence-based decision-making and recognition of existing rights.

Integrated Electronic Monitoring and Reporting Systems

- Better data from commercial fishers through electronic reporting will help improve management. However, data on its own doesn't necessarily support better decisions – the data required must be driven by specified fisheries objectives if it is to inform management. Electronic reporting will need to be advanced progressively and improved over time as technology and capability grows. The installation of cameras should be for defined management objectives and used where cameras are clearly the superior tool. Installing and operating cameras, and storing and analysing data is not an effective use of resources if the objective is not clear. Where cameras are used, clear rules will be needed around ownership of information and access to data.

28N Rights

- When the QMS was first established quota holders had rights to fish set tonnages of quota rather than a proportion of the TACC. If a sustainability assessment indicated more catch was available, the Government sold more quota. If a decrease was required, the Government bought quota back from quota holders. Quota was also subject to resource rentals. In the early days of the QMS, it was recognised that catches in several fish stocks needed to be reduced substantially. Quota owners were offered compensation through a tendered buyback. Those who did not accept this option obtained rights under 28N of the Fisheries Act 1986 to return their quota to its original limit if the fishery recovered. Under that regime when TACCs were increased again, 28N rights holders had preferential access to any increases.
- The rights continue to exist under the QMS today, but the regime has been modified. As quota is now based on a proportion of the TACC, Iwi fisheries quota interests will be taken from Iwi and reallocated to 28N rights holders when TACCs are increased in future. Māori negotiators never agreed the Crown could use Iwi settlement assets to satisfy this Crown liability when they signed the Deed of Settlement. The Crown must find a way to resolve 28N rights without re-allocating Iwi settlement rights.

Cost recovery

- A review of cost recovery regime is overdue. The Crown levies the seafood industry \$30-36M each year. There is a definitive set of principles that apply under Section 262 of the Fisheries Act 1996 to ensure the Crown operates within limits when charging for its regulatory services. Under these principles there is a set of rules established by regulation but there are some irregularities in the rules and the way they are applied. The principles need to be applied more strictly to ensure that levies are fully justified and expected results achieved.

Aquaculture

Use of Minister's powers to relocate salmon farms

- The proposed use of the Primary Industries Minister's intervention powers to relocate King Salmon farms will create additional Aquaculture Settlement obligations in the Marlborough Region for the five-year period 2016 – 2020. If that proceeds, the Crown will need to provide the Iwi of Marlborough with the equivalent of 20 per cent of any new space not already provided for the 2016-2020 period in whatever form the Iwi decide.

National Environmental Standard (NES)

- Te Ohu Kaimoana and Iwi support a NES to classify most applications for replacement consents as restricted discretionary activities will ensure consistency across the regions by having all councils considering the same matters when processing applications. It will provide greater certainty to marine farmers including iwi. Te Ohu Kaimoana does not consider Councils should have any discretion on whether to notify iwi, who should be notified of all applications for replacement consents in areas that they have Statutory Acknowledgements. In addition, councils should be required to consider tangata whenua values and liaise with a representative appointed by the iwi authorities of a region.

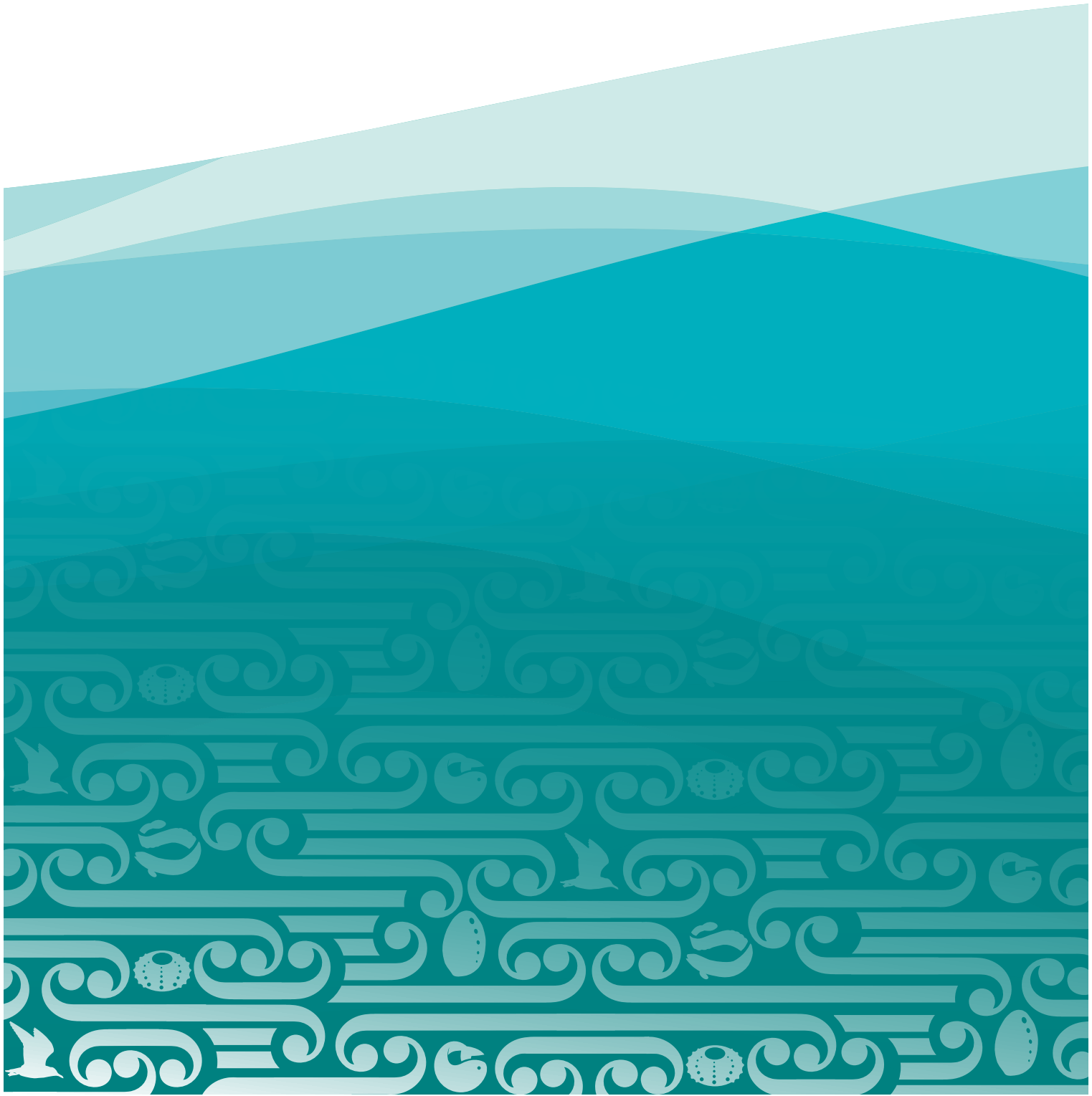
Environment

Marine protected areas and recreational fishing areas

- The use of marine protection tools needs to be based on a sound assessment of actual risks to marine biodiversity. Proposals developed by government so far do not meet this standard – and are more about reallocating marine space to non-extractive users with no recognition of existing fishing rights under the Settlement, which must be recognised and protected. In addition, the Government proposal that recreational fishing parks should be created under a Marine Protected Areas regime is misguided. Recreational fishing areas belong squarely within the Fisheries Act where appropriate consideration can be given to the effects of such areas on other sectors.

Rangitāhua/Kermadec Sanctuary

- The Kermadec Sanctuary proposal was announced by the Government with no prior consultation with Iwi or Te Ohu Kaimoana. Te Ohu Kaimoana holds settlement quota for this area on behalf of all Iwi – these valuable rights to fish against this quota are effectively extinguished by the establishment of a marine sanctuary. The proposal was presented as a "sustainability measure" but in practice, there are no sustainability issues from fishing as the effects of fishing on the biodiversity of the seafloor are already avoided through a "benthic protection area" (BPA). This BPA is recognised internationally as one of the largest marine protected areas in the world and there are no sustainability issues with fishing practices currently allowed in the area. The effect of the proposal is to strip Iwi of their fishing rights and re-allocate the area to non-extractive users. There is no evidence the Sanctuary is required for sustainability. Iwi and Te Ohu Kaimoana are open to talking with the Government to find a solution.



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