

Marine Reserves Bill

Key Points – Marine Reserves

Environmental Management and the Treaty

- The Government has the right to make laws for conservation under Article I of the Treaty: that is, to ensure that people's use of natural resources occurs within sustainable limits.
- At the same time, the options chosen by government to conserve resources should have the least possible impact on Article II Treaty rights (and arguably Article III rights), while achieving the objective of sustainability.
- If the 'cause' of any problem is fisheries activity, you should first look to use options under the Fisheries Act. There are powers under that Act to protect natural resources. The Government is not restrained in reducing fisheries activity if it is needed to protect a natural resource and no compensation is needed under these circumstances. If however the Crown imposes controls for reasons other than sustainability reasons then it must compensate.
- If options chosen by the Government under this Bill are designed to achieve some other purpose (such as encouraging alternative uses of resources), and have the effect of displacing Maori customary rights (including rights under the Deed of Settlement), then compensation must be provided.

The Fisheries Settlement

- The integrity¹ of the Settlement is threatened by multiple Government reforms that are currently taking place in an inconsistent manner (i.e. Marine Reserves, Aquaculture, Recreational 'rights' or zones).
- These reforms are having the effect of devaluing the currency of the Settlement while providing for other uses in the marine environment. This must stop.
- Any reform that alters the nature of redress provided in the Settlement (as a whole), for any reason other than for sustainability, will have the effect of a breach of contract unless the prior informed consent of the parties, to such change is secured.

¹ This includes commercial assets, non-commercial obligations and participation in the management and conservation of NZ fisheries.

What is the Purpose of a Marine Reserve – in the Bill?

- Is the purpose of a Marine Reserve specifically to protect biodiversity from some threat or a multitude of threats? Or, is it to reallocate access to the fishery for other activities (i.e. ecotourism, tertiary or research industry, or the public good etc).
- If the purpose of a Marine Reserve is to protect biodiversity it must be demonstrated (i.e. the threats identified and the risks characterised).
- Only then can effective mitigation be identified from a range of possible mitigation options; and
 - The determination of available mitigation choices must be guided by obligations to achieve sustainability while minimising the impact on Article II rights (this might mean some benign activity can continue); and
 - If a “no impact” marine reserve is the only approach that will work, then this will need to apply equally to all impact activities – not just fishing; and
 - Once a “no impact” reserve is established, a restoration and monitoring programme must support the reserve to ensure that the area is returned to a sustainable use mode of operation.
 - A suitable review period must complete the overall plan of management to ensure that the tool chosen for the job is serving its **purpose**
- **However**, If the purpose of a “no-take (cf. “no impact”) Marine Reserve is to re-allocate the fishing space to other use-activities then the displacement must be recognised and compensation provided.

