



**Te Ohu Kaimoana's response to
the Ministry of Foreign Affairs and
Trade's request for comments on
area-based conservation
measures and other matters**

Te Ohu
Kaimoana


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Introduction

1. This paper provides Te Ohu Kaimoana’s response to your request of 15 November 2019, for comments on key matters related to the negotiations for a new framework to implement the Convention on Biological Diversity (“the Convention”), including:
 - a. area-based conservation measures (by 10 January)
 - b. The Co-chair’s paper on the structure of a new set of global targets (by 10 January)
 - c. Ecosystem restoration (by 10 January)
 - d. Marine and coastal biodiversity (by 10 January)
 - e. The future work programme and institutional arrangements of the subsidiary body on indigenous peoples and traditional knowledge (Working Group 8 (j)) (by 31 January).
2. The specific matters we comment on concern the contribution of “area-based conservation measures” to achieve the objectives of the Convention in relation to marine and coastal biodiversity.
3. The focus of our response is to meet the 10 January deadline for area-based conservation measures. However, we remain very interested in the broader issues associated with marine management, particularly sustainable management of fisheries. Some of the background material available suggests there is progress in improving fisheries management globally and insights have been gained into the types of approaches that are effective. This includes rights-based approaches which are reflected in Aotearoa’s management system, and measures taken by regional management organisations to manage exploitation and the effects of fishing on marine ecosystems¹.
4. The Co-chairs identify possible issues to be reflected in new targets including potentially simplified Aichi Biodiversity Targets, and targets that are specific, measurable, achievable, results-based, and time-bound (SMART)². Our comments on area-based conservation measures promote the simplification of area-based targets. We also support the SMART approach. However, we promote the use of targets to measure environmental outcomes rather than application of management tools. We are aware a draft of targets will be released by the Co-chairs shortly. Given the very limited time available to us to research other matters raised by the Co-chairs in their suggested structure, we will leave any substantive comments until we have the opportunity to view the draft targets.
5. As a follow-up to this response, we will provide further comments on the future work program and institutional arrangements of the subsidiary body on indigenous peoples and traditional knowledge by 31 January (as requested).

¹ Rice, J., Garcia, S., and Symons Pirovalidou, D. (IUCN-CEM Fisheries Expert Group): *Marine Capture Fisheries and the Post-2020 Global Framework on Biodiversity Conservation*, in Background Briefs for 2020 Ocean Pathways Week, Montreal, 11 – 15 November, pp 38 - 45

² Co-chairs of the discussion Group: Possible elements of a Post-2020 Biodiversity Framework for Further Discussion, 30 August 2019, p3

6. If you have any questions or comments, please contact Kirsty Woods (kirsty.woods@teohu.maori.nz) or Te Taiawatea Moko-Mead (TeTaiawatea.Moko-Mead@teohu.maori.nz).

Summary

7. **Focus on environmental outcomes as opposed to the application of specific management tools**
A new approach to establishment of area-based targets as part of the Convention is required to achieve the Convention's objectives, and its goal to maintain the structure and function of the full range of marine and coastal ecosystems.
8. **Leave allocation decisions for individual countries to determine**
Peer reviewed literature³ suggests that "long term sustainability requires locally specific rules and governance that responds to the unique conditions of that place, implemented by people who have a long-term commitment to that place". Area-based targets should be specified at the global level in such a way that individual countries can determine the appropriate mix of specific measures, consistent with:
 - a. the risks they are managing
 - b. the status of information on biodiversity and ecosystems in their jurisdictions
 - c. their commitments to indigenous peoples and local communities
 - d. their economies and cultural and social values.
9. The new approach is preferable to ongoing specification or more and more detailed area-based conservation measures at the global level – each with their own targets. This just serves to make conservation and allocative decisions at a global level in ways that cut across the priorities of individual countries.
10. **Promote sustainable management of 100% of the global oceans and retain flexibility on the use of area-based management measures as part of the management approach**
Key elements of a new set of objectives or targets need to include an increase in area covered by marine management regimes that:
 - a. Manage risks to biodiversity/structure and function of marine ecosystems (through appropriately targeted area-based conservation measures)
 - b. Integrate specific area-based conservation measures across the seascape
 - c. Manage the cumulative effects of different activities in the marine environment
 - d. Recognise and embrace indigenous approaches to management
 - e. Are based on weaving the best available science and traditional knowledge of indigenous peoples and local communities.
 - f. Provide for adaptive approaches as new information comes to hand

³ Stephenson, J., Berkes, F., Turner, N. J., & Dick, J. (2014). Biocultural conservation of marine ecosystems: Examples from New Zealand and Canada, Ostrom, E. (2009). A general framework for analyzing sustainability of social-ecological systems. *Science*, 325(5939), 419-422.

11. Achievement of this goal would meet the obligations of the Convention, including Articles 8(a), 8(e) and 8(j).

Te Ohu Kaimoana's general approach is based on a Maori World View consistent with sustainable use of biological diversity

12. In April 2019, we put together comments for the Secretariat for the Convention on Biological Diversity on the matters we consider need to be addressed in the negotiation of a new framework (<https://teohu.maori.nz/wp-content/uploads/2019/06/Convention-on-Biological-Diversity-Response.pdf>).
13. We assessed several matters as being fundamental to ensuring the Convention on Biological Diversity (the Convention) supports Māori in the exercise of their fishing rights within Aotearoa's fisheries management system:
 - a. The obligations of the Convention in relation to indigenous peoples, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - b. Recognition of indigenous knowledge systems and world views. We note [Te Hā o Tangaroa kia ora ai tāua](#)⁴ as an expression of a Māori World View to sustainable management of the marine environment. This approach is enshrined in Te Tiriti o Waitangi and the Fisheries Settlement⁵ and is reflected in the purpose and principles of Aotearoa's fisheries legislation.
 - c. Māori rights in fisheries are an integral part of our fisheries management system. Our fisheries legislation contains obligations in relation to the Fisheries Settlement, and is guided by its purpose of sustainable utilisation, along with a set of environmental principles that include maintenance of aquatic biodiversity. In our view this is consistent with the objectives of the Convention and we would be concerned if the international framework – even if unintentionally – served to undermine this carefully constructed balance.
 - d. Marine protection initiatives agreed at the international level should support, and not undermine, the way our fisheries regime provides for protection of aquatic biodiversity from the undue adverse effects of fishing. Management of fisheries effects is integrated through Aotearoa's fisheries management system. International agreements around marine protection should support rather than undermine this approach.
 - e. Aotearoa has a rights and responsibilities-based approach to fisheries management. This framework creates the incentive for rights holders to take responsibility for managing the

⁴ Translated to the breath of Tangaroa sustains us.

⁵ The Fisheries Settlement was a settlement of Fisheries claims under Te Tiriti o Waitangi. It was enshrined in the Deed of Settlement, signed in 1992 and implemented through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1996 and the Maori Fisheries Act 2004.

effects of fishing on all aquatic biodiversity. As part of this Maori, in particular, have a share in production from marine biodiversity.

- f. In Aotearoa we need to do a better job of ensuring the impacts of other activities – such as land use - on fisheries and aquatic biodiversity are more effectively managed. We support international initiatives that encourage greater integration between management of land, fresh water and the marine environment, in a way that is appropriate for each country.

14. These matters remain pertinent to the discussions to be held on the development of the new Strategic Plan and associated targets, particularly as they relate to area-based conservation measures.

The term “Area based conservation measures” (ABCM) reflects a diversity of approaches

15. The term “Area-based conservation measures” appears to be a relatively recent term in the international discussions around the Convention. This has evolved to encapsulate various area-based approaches including protected areas and “other effective area-based conservation measures” (OECM) reflected in Aichi Target 11. There are many different area-based approaches that can be applied to achieve the Convention’s objectives. By promoting and monitoring progress on the implementation of single approaches or narrow definitions, many initiatives designed to achieve the same objectives fail to be acknowledged and included in our assessments of progress. This dilemma is reflected in the background papers, which discuss what constitutes an OECM, and acknowledge that there are multiple approaches including “locally managed marine areas (LMMA) and that may or may not fit within the definition of OECM, but which clearly contribute to biodiversity conservation and sustainable use⁶.
16. A Background Note for the ABCM Thematic Workshop, provides a further explanation of these measures as “a broad range of area-based measures, covering gradients of human modification and protection levels. These include protected areas and OECMs. They could also include Ecological Corridors/Areas of Connectivity Conservation, High Conservation Value Areas (as protected or conserved in some commodity certification schemes) and various governance arrangements for such ABCM’s, including territories and areas conserved by indigenous peoples and local communities (ICCAs)”.⁷
17. Taking the words “area-based conservation measures” at face value – such measures can be used to achieve many different objectives in the marine environment, consistent with conserving marine biodiversity to restore and maintain the structure and function of marine ecosystems and supporting sustainable use. The design of such a tool will depend upon the particular risks it is trying to manage but we would promote their use as a means of protecting marine biodiversity

⁶ Secretariat of the Convention on Biological Diversity: *Area-based Conservation Measures*, in *Marine Capture Fisheries and the Post-2020 Global Framework on Biodiversity Conservation*, in Background Briefs for 2020 Ocean Pathways Week, Montreal, 11 – 15 November, pp 45 - 57

⁷ p2. This paper is undated but was presumably prepared to support the meeting in Montreal, 11 – 15 November 2019. It is possibly an earlier version of the paper cited above.

from the undue adverse effects of activities, including fishing. Their design and implementation will be the result of an assessment of risks, based on weaving traditional knowledge and the best available science. Based on this approach, we don't consider there is a need to refer to anything more than "area-based conservation measures" in any future global targets – providing scope for flexible design and implementation of appropriate measures.

18. Target 11 refers to the need to ensure such measures are "effective" "equitable" and are "integrated into the broader seascape". From our perspective in Aotearoa, we take these concepts to mean that such measures are effective in managing risk, are designed and implemented in a manner that is consistent with Te Tiriti o Waitangi, and contributes to integrated management of the effects of all activities that take place in the marine environment.
19. The need to integrate these measures into broader management acknowledges that area-based measures cannot be used to manage all risks – especially those posed by the effects of land-use on the coastal environment. In addition, other measures also need to be applied to responsible management and overexploitation. Aotearoa's quota management system is the appropriate regime for managing exploitation of fisheries and has been endorsed by Māori as part of the Fisheries Settlement.
20. In Aotearoa, discussion around ABCMs has narrowly focussed on Marine Protected Areas (MPAs) rather than evolving broader concept of area-based conservation mechanisms. One of the problems emerging from the language of MPAs is defining what is to be protected, the risks to be managed and the appropriate management response. This question applies equally to the area-based conservation mechanisms. We consider that MPAs are often seen as a solution to a problem that has not been defined.
21. We have discussed some of the challenges associated with MPAs in more detail in our referenced comments to the CBD Secretariat.⁸ In particular we draw your attention to the results of an international study we commissioned into the implementation of MPAs and their implications for the Fisheries Settlement.⁹ These challenges also raise implications for how ABCMs are approached.

Marine Protected Areas are a management tool

22. The term "marine protected areas" has been captured and should be abandoned in favour of an outcome-based terminology. Tangled up in the debates around MPAs is a question about their purpose: are they intended to protect marine biodiversity in order to ensure ecosystems continue to function to provide ecosystem services to support sustainable use? Or are they intended to protect marine areas in a pristine state in order to provide for intrinsic or non-use values?

⁸ See <https://teohu.maori.nz/wp-content/uploads/2019/06/Convention-on-Biological-Diversity-Response.pdf>, paras 23 - 36

⁹ Ibid., paras 33 – 36

23. Decisions taken by the Conference of the Parties in 2004 are enlightening on this question. The overall goal of “marine and coastal protected areas” was defined at that time as follows:¹⁰
- “The establishment and maintenance of marine and coastal protected areas that are effectively managed, ecologically based and contribute to a global network¹¹ of marine and coastal protected areas, building upon national and regional systems, including a range of levels of protection, where human activities are managed, particularly through national legislation, regional programmes and policies, traditional and cultural practices and international agreements, *to maintain the structure and functioning of the full range of marine and coastal ecosystems, in order to provide benefits to both present and future generations*”.
24. The decision acknowledges that an effective marine and coastal biodiversity management framework would comprise sustainable management practices and action to protect biodiversity over the wider marine and coastal environment, including integrated networks of marine and coastal protected areas consisting of:
- (a) Marine and coastal protected areas, where threats are managed for the purpose of biodiversity conservation and/or sustainable use and where extractive uses may be allowed; and
 - (b) Representative marine and coastal protected areas where extractive uses are excluded, and other significant human pressures are removed or minimised, to enable the integrity, structure and functioning of ecosystems to be maintained or recovered.
25. According to the decision, the balance between category (a) and (b) marine and coastal protected areas is to be selected by the country concerned. As the decision also acknowledges, there are two possible outcomes or objectives that a marine and coastal protected area might achieve.
26. First is the support for sustainable use, acknowledged to be the primary driver for protected areas. It is acknowledged that “in many countries, marine and coastal protected areas where extractive uses are permitted may comprise the majority of areas within networks of marine and coastal protected areas and deliver most biodiversity benefits”.¹²
27. Alternatively, “the key purpose of representative areas from which extraction is excluded would be to provide for intrinsic values, to allow us to better understand the marine and coastal environment by acting as scientific reference areas, to contribute towards marine environment

¹⁰ UNEP/CBD/COP/DEC/VII/5, P 15: I

¹¹ The footnote included in this statement refers to a network of Parties rather than a network of areas: “A global network provides for the connections between Parties, with the collaboration of others, for the exchange of ideas and experiences, scientific and technical cooperation, capacity building and cooperative action that mutually support national and regional systems of protected areas which collectively contribute to the achievement of the programme of work. This network has no authority or mandate over national or regional systems”.

¹² Ibid, p 37

recovery, and to act as insurance against failures in management. But they will also contribute to other objectives including socio-economic well-being, sustainable use of fisheries and adjacent areas, and public enjoyment.¹³

28. In our responses to the Government on several matters, including the Convention on Biological Diversity and Aotearoa's own biodiversity strategy, we distinguish the different objectives that can be achieved by MPAs¹⁴.

MPAs as a flexible tool for managing the effects of activities on marine biodiversity

29. Consistent with the idea that marine protected areas and OECMs should be integrated across the seascape, we propose that marine protection initiatives should be integrated across management regimes so that the objectives for marine protection are clear, monitoring programmes can be put in place and corrections made along the way. We have advocated that an MPA should be defined as an area protected under relevant legislation to manage the effects of an activity on marine biodiversity. An overarching MPA policy could address management of cumulative effects and ensure protection initiatives are integrated.

MPAs as tools for re-allocating marine resources to different uses and values

30. Where areas are to be designated as "no-take" areas outside the framework of the Fisheries Act and therefore not required to achieve its purpose, they re-allocate an area to non-extractive uses and values. Ultimately the process should be explicit on who benefits and who bears the costs. It should also require negotiation with affected parties. As we have commented on many occasions, Iwi accept that their fishing rights also sit alongside responsibilities to manage fishing within environmental constraints, but they do not accept re-allocation of their rights to other uses (i.e. marine protected areas). Whether and how such areas are implemented needs to be agreed with Iwi.
31. The position taken by Iwi is consistent with Article 8 (j) of the Convention and the need to obtain informed consent of indigenous peoples when proposing protected areas.¹⁵

Setting global targets for ever-expanding list of area-based conservation measures will cut across the priorities of individual countries

32. "Marine and coastal protected areas" appeared to be defined in relatively broad and flexible terms in the early 2000s. However, there is now an expanded list of terms including other "effective area-based conservation mechanisms" (OECMs), all encompassed by the term "area-based

¹³ Ibid.

¹⁴ <https://teohu.maori.nz/wp-content/uploads/2019/11/Te-Ohu-Kaimoana%E2%80%99s-response-to-Te-Koiora-o-te-Koiora.pdf>, pp17 - 18

¹⁵ See Sander-Wright, K., and Solis Rivera, V.: *Local and Community-based Approaches for Marine Biodiversity Conservation and Sustainable Resource Use*, in in Background Briefs for 2020 Ocean Pathways Week, Montreal, 11 – 15 November, (pp 58 – 61), p61

conservation mechanisms”, reflecting the diverse approaches that can be used to achieve the Convention’s objectives.

33. The Background Note acknowledges that “when we talk about protected areas and other forms of area-based conservation, we need to clearly address four questions: why/what they are for; where they should be; how much; and how they should be managed to be effective”.¹⁶ We couldn’t agree more. In addition, in making such an assessment, it is necessary to be explicit about who benefits and who bears the costs.
34. However, based on our experience here in Aotearoa, we think the new strategic plan and targets need to focus more on broader environmental outcomes rather than impose specific targets for different types of area-based conservation mechanisms. The Background Note suggests area-based targets should include targets for biodiversity conservation and targets for nature’s contributions to sustaining people (ecosystem services including carbon storage). There is a danger that the Convention will cement in place targets that are too specific. For example, to require X% of areas to conserve biodiversity for its own sake and Y% of areas that include sustainable use etc.
35. It is useful to remember that the goal put forward for marine and coastal protection measures has been proposed as maintaining the structure and function of marine ecosystems.¹⁷ This approach can be applied equally to the broader concept of area-based conservation measures.
36. In doing so it would acknowledge that here are different ways of achieving this goal through measures that support different values (including different forms of sustainable use and intrinsic and other values).

Leave the design and implementation of specific area-based conservation measures to individual countries

37. Consistent with the CDB decisions on 2004, questions of how different priorities and values are allocated across the marine environment should be left to countries to determine, in accordance with their economies, cultural and social values, and most importantly their commitments to indigenous peoples and local communities.
38. One of the challenges of implementation is finding ways to measure progress towards this goal of “delivering on existing and future commitments requires improved understanding of ecosystem structures, properties and processes, their complex dynamics and how they are affected by pressures...”¹⁸.
39. To some extent quantitative targets for protected areas, OECMs and ABCMs generally, are a kind of proxy. However, they need to be specified at the global level in such a way that countries can

¹⁶ p3

¹⁷ UNEP/CBD/COP/DEC/VII/5, p15

¹⁸ Rice, J. et al, in Background Briefs for 2020 Ocean Pathways Week, Montreal, 11 – 15 November, p 42

determine the appropriate mix of measures, based on the risks they are managing, the status of information on biodiversity and ecosystems in their jurisdictions, and other matters outlined above.

Promote sustainable management of 100% of the global oceans

40. The new Strategic Plan should promote an increase in area covered by marine management regimes that:

- a. Manage risks to biodiversity/structure and function of marine ecosystems through appropriately targeted ABCMs
- b. Integrate specific ABCMs across the seascape
- c. Manage the cumulative effects of different activities in the marine environment
- d. Include indigenous approaches to management
- e. Are based on weaving the best available science and traditional knowledge of indigenous peoples and local communities
- f. Provide for adaptive approaches in light of new information

41. Achievement of this goal would meet the obligations of the Convention, including Articles 8(a), 8(e) and 8(j). As long as area-based management mechanisms are designed to achieve the overall goals and objectives of the Convention, the way they are defined and applied should be left to nations to determine alongside indigenous peoples and local communities. This approach is preferable to ongoing specification or more and more detailed measures at the global level – each with their own targets. Such an approach imposes allocative decisions taken globally that are more appropriately made at a national level.

42. As noted in the findings of an international study commissioned by Te Ohu Kaimoana¹⁹, locally driven approaches may be the best hope for long-term conservation in a complex world. Therefore, it is critical that global frameworks do not limit but support local and national management systems.

¹⁹ Libecap, G D, Arbuckle, M and Lindley, C: (in prep) An Analysis of the Impact on Māori Property Rights in Fisheries of Marine Protected Areas (MPA) and Recreational Fishing Outside the Quota Management System (QMS): Output 1: Marine Protected Areas and Ecosystem-Based Management – A Critical Global Overview

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