

# Oceans Secretariat Briefing: Final minor decisions on the Hauraki Gulf / Tikapa Moana Marine Protection Bill

<b>To</b>	Minister of Conservation Minister for Oceans and Fisheries	<b>Date submitted</b>	7 July 2023
<b>Risk Assessment</b>	Low	<b>Priority</b>	High
<b>MPI reference</b>	B23-0510	<b>DocCM</b>	DOC-7391022
<b>DOC reference</b>	23-B-0310		
<b>Security Level</b>	In Confidence		

<b>Action sought</b>	Approve final minor policy decisions.	<b>Timeframe</b>	By 10 July 2023 (to ensure the Bill can be introduced to the House mid-August).
<b>Attachments</b>	None		

<b>Contacts</b>	
<b>Name and position</b>	<b>Cell phone</b>
<b>DOC Contact/s</b>	
Amelia Smith, Manager – Marine Policy	s 9 (2)(a)
<b>MPI Contact/s</b>	
Jacob Hore, Manager – Inshore Fisheries North, Fisheries New Zealand	s 9 (2)(a)

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## Executive summary – Whakarāpopoto ā kaiwhakahaere

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1. On 29 June 2023, you received the briefing *Ministerial consultation on the Hauraki Gulf Marine Protection Bill and associated Cabinet paper* [22-B-0291/B23-0482 refers]. You agreed to all recommendations, including to carry out Ministerial consultation from 10-21 July 2023. Your decisions and any other feedback you provided, will be reflected in the Cabinet paper and Hauraki Gulf / Tikapa Moana Marine Protection Bill (the Bill).
2. Officials have received further feedback from the New Zealand Defence Force that require final minor and technical decisions. Following this feedback we recommend that:
  - the prohibition on ‘*dumping, depositing or discharge of waste or other matter*’ is amended to ‘*dumping, depositing or discharge of waste or other matter that is likely to have a more than minor adverse effect on aquatic life*’;
  - stormwater discharge that is a permitted activity under the Resource Management Act 1991 is exempt from the prohibitions under the Hauraki Gulf / Tikapa Moana Marine Protection Bill; and
  - activities that are associated with military training under the Defence Act 1990 is exempt from the prohibitions under the Hauraki Gulf / Tikapa Moana Marine Protection Bill.
3. The timing of receiving this feedback and seeking your decisions has implications for Ministerial consultation on the Cabinet paper and draft Bill: instead of starting Ministerial consultation on 10 July we recommend starting it on 12 July (subject to your decisions on this briefing). This will enable the Cabinet paper to be lodged on 27 July (depending on PCO availability to draft a final version of the Bill over the ministerial consultation period).
4. Following your feedback on 10 July, we will provide a ministerial consultation package for ministerial consultation to begin on 12 July. Assuming PCO are available to make final changes to the Bill in the coming two weeks, this will enable the Bill to be introduced to the House in mid-August 2023.

**We recommend that you ... (Ngā tohutohu)**

	Decision
<b>Agree</b> that the prohibition on 'dumping, depositing or discharge of waste or other matter' is amended to 'dumping, depositing or discharge of waste or other matter <u>that is likely to have a more than minor adverse effect on aquatic life</u> '.	<input checked="" type="checkbox"/> Yes / No
<b>Agree</b> that stormwater discharge that is a permitted activity under the Resource Management Act 1991 is exempt from the prohibitions under the Hauraki Gulf / Tīkapa Moana Marine Protection Bill.	<input checked="" type="checkbox"/> Yes / No
<b>Agree</b> that activities that are associated with military training under the Defence Act 1990 is exempt from the prohibitions under the Hauraki Gulf / Tīkapa Moana Marine Protection Bill.	<input checked="" type="checkbox"/> Yes / No
<b>Note</b> that once we have received your decisions, we will update the Cabinet paper and drafting instructions and provide a package for Ministerial consultation beginning on 12 July.	
<b>Note</b> that meeting the timeframe for introducing the Bill in August remains dependent on PCO prioritising the Bill.	

s 9 (2)(a)

Date: 07 / 07 / 2023

Siân Roguski  
Director, Strategy and Policy  
For Director-General of Conservation

Date: 10/07/2023

Hon Willow-Jean Prime  
**Minister of Conservation**

s 9 (2)(a)

Date: 07 / 07 / 2023

Rob Gear  
Acting Director, Fisheries Management  
Fisheries New Zealand

Date: / /

Hon Rachel Brooking  
**Minister for Oceans and Fisheries**

## **Purpose – Te aronga**

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1. This paper seeks your agreement to further minor policy changes that arose from inter-agency feedback.

## **Background and context – Te horopaki**

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2. On 29 June 2023, you received the briefing *Ministerial consultation on the Hauraki Gulf Marine Protection Bill and associated Cabinet paper* [22-B-0291/B23-0482 refers]. You agreed to all recommendations, including to carry out Ministerial consultation from 10-21 July 2023. Your decisions and any other feedback you provided, will be reflected in the Cabinet paper and Hauraki Gulf / Tikapa Moana Marine Protection Bill (the Bill).
3. Officials have received further feedback from the New Zealand Defence Force that require further minor decisions. These decisions are considered 'minor or technical' and therefore do not require Cabinet approval.

## **Further decisions following inter-agency consultation**

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4. The following outlines the further decisions required, in light of the further feedback from the New Zealand Defence Force:

### ***Prohibition on dumping, depositing and discharging***

5. The Bill includes a prohibition for both the High Protection Areas (HPAs) and Seafloor Protection Areas (SPAs) on '*dumping, depositing or discharge of waste or other matter*'. As currently drafted, these activities are entirely prohibited, including de minimis activities e.g., pouring a cup of water into the ocean.
6. We recommend that this prohibition for both HPAs and SPAs is amended to '*dumping, depositing or discharge of waste or other matter that is likely to have a more than minor adverse effect on aquatic life*'.
7. This aligns with the prohibition in the Bill on disturbance: *disturbance (including by excavating, drilling, tunnelling, or dredging) of aquatic life, habitats, or water column in a manner that is likely to have a more than minor adverse effect on aquatic life*.
8. While it is unlikely that a de minimis activity would be prosecuted under the Bill, we consider it is appropriate to explicitly provide for this in the legislation for avoidance of doubt. There is precedent for this language in both the Resource Management Act 1991 and the Conservation Act 1987. Officials will develop policy guidance on what activities are considered more than minor.

### ***Additional exemptions to prohibitions in the Bill***

9. In their feedback, the New Zealand Defence Force requested that the following activities are exempt from prohibitions in the Bill:
  - stormwater discharge that is 'permitted' under the Resource Management Act 1991 (RMA)<sup>1</sup>; and
  - activities associated with military training under the Defence Act 1990.
10. These activities could be considered to have a no more than minor adverse effect on aquatic life, and therefore not be prohibited (pending your agreement to the recommendation above). However, for avoidance of doubt, we propose that both these activities are explicitly exempted in the Bill.

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<sup>1</sup> Permitted activity: a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Resource Management Act 1991, regulations, plan, or proposed plan – Resource Management Act 1991.

### Stormwater discharge

11. Stormwater discharges that meet standards outlined in relevant council documents (e.g., the Auckland Unitary Plan and the Waikato Regional Coastal Plan) are a 'permitted' activity under the Resource Management Act 1991 (RMA). Stormwater discharges that do not meet these standards require a consent. This paper refers only to stormwater discharges that are a 'permitted' activity under the RMA.
12. Stormwater discharge is a common activity in many areas of the Hauraki Gulf / Tīkapa Moana. These discharges occur in areas to become HPAs or SPAs, including from the New Zealand Defence Force (NZDF) facility on the Whangaparaoa peninsula.
13. We consider that these discharge activities will not have a significant impact on biodiversity or conflict with the purpose of the Bill. Any impact would most likely be in localised, shallow embayments with limited water flow. The area likely to be most impacted is the Kawau SPA, however, the impact is still expected not to be significant.
14. If this activity remains prohibited under the Bill, the NZDF (and other entities responsible for 'permitted' stormwater discharge) will be required to either apply for a permit or develop new infrastructure for the stormwater to be discharged elsewhere.
15. We do not consider it appropriate for this activity to require a permit under the Bill due to the relatively low impact and expected frequency of occurrence. We anticipate permitting all occurrences of this activity to be onerous to both applicants and DOC.
16. To develop new infrastructure will likely be impractical, cost prohibitive, and could lead to negative environmental impacts associated with the development of new infrastructure.
17. We recommend that the Bill includes an exemption for stormwater discharge that is a permitted activity under the Resource Management Act 1991.

### NZDF military training activities

18. The New Zealand Defence Force expressed concern about their ability to carry out military training activities from their facility on the Whangaparaoa peninsula when the SPA is established. An example of an activity that could be impacted is the training in firing of NZDF weapons systems, as there may be bullets or casings entering the ocean.
19. We recommend that there is an exemption in the Bill that allows for activities associated with military training under the Defence Act 1990.
20. We do not anticipate that these activities will have a significant impact on biodiversity in the area of the SPA.

### **Risk assessment – Aronga tūraru**

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21. There are no significant risks associated with these policy decisions.

### **Consultation – Kōrero whakawhiti**

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22. The recommendations in this paper are the result of consultation with the New Zealand Defence Force. No further consultation was carried out on the content of this paper.

### **Financial implications – Te hiraunga pūtea**

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23. There are no financial implications associated with the content of this paper.

### **Legislative implications – Te hiraunga a ture**

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24. If you agree to the minor changes discussed in this paper, these will be reflected in the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (pending PCO availability).

## Next steps – Ngā tāwhaitanga

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25. We seek your decisions on the contents of this paper by 10 July 2023 to ensure the Cabinet paper and Bill is ready for Ministerial consultation on 12 July. Any delay will require reducing the Ministerial consultation period or risk missing the lodgement date for Cabinet which would mean the Bill could not be introduced to the House prior to the general election.
26. Following your decisions, the documents for Ministerial consultation will be provided by 12 July 2023 and will include:
  - Cabinet paper – The Hauraki Gulf / Tīkapa Moana Marine Protection Bill: Approval for Introduction;
  - The Hauraki Gulf / Tīkapa Moana Marine Protection Bill;
  - Changes to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill following feedback from Ministers and agencies; and
  - Maps of the marine protection areas.
27. These documents will reflect the decisions you make in this paper. The Bill will not be final due to PCO deprioritising it.
28. Assuming PCO are available to make recent and final changes to the Bill in the coming two weeks, we will incorporate any feedback from Ministerial consultation and lodge the Cabinet paper on 27 July for LEG committee 3 August.

**ENDS**

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