

**From:** Ariane La Porte  
**To:** Government Services  
**Cc:** Doc PrivateSecs  
**Subject:** FW: : (2) CORTP-2085 Hauraki Gulf/Tikapa Moana Marine Protection Bill  
**Date:** Friday, 27 September 2024 2:37:13 pm  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[20240926 Hauraki Gulf - Tikapa Moana Marine Protection Bill.pdf](#)  
[2024.08.15 Tikapa Moana Protection Bill Amendment Paper.pdf](#)

Hi Team,  
Can we please commission the below.  
Many thanks.

Ministerial Reply		
Note: Response letter and invite advice (if applicable) must be returned to the Office concurrently.		
Due to Office	15 working days from commissioning	
GS check	Yes	No
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Ngā mihi



**Ariane La Porte**  
Private Secretary – Conservation | Office of Hon Tama Potaka MP  
Minister of Conservation | Minister for Māori Development  
Minister for Māori Crown Relations: Te Arawhiti | Minister for Whānau Ora  
Associate Minister of Housing (Social Housing)  
M: [s 9\(2\)\(a\)](#)  
Email: [ariane.laporte@parliament.govt.nz](mailto:ariane.laporte@parliament.govt.nz) | Website: [www.beehive.govt.nz](http://www.beehive.govt.nz)  
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

**From:** Charlie Mackey <[Charlie.Mackey@teohu.maori.nz](mailto:Charlie.Mackey@teohu.maori.nz)> **On Behalf Of** Graeme Hastilow  
**Sent:** Friday, September 27, 2024 9:08 AM  
**To:** Tama Potaka (MIN) <[T.Potaka@ministers.govt.nz](mailto:T.Potaka@ministers.govt.nz)>; Tama Potaka <[Tama.Potaka@parliament.govt.nz](mailto:Tama.Potaka@parliament.govt.nz)>  
**Cc:** Kylie Grigg <[Kylie.Grigg@teohu.maori.nz](mailto:Kylie.Grigg@teohu.maori.nz)>; Graeme Hastilow <[graeme.hastilow@teohu.maori.nz](mailto:graeme.hastilow@teohu.maori.nz)>  
**Subject:** : (2) CORTP-2085 Hauraki Gulf/Tikapa Moana Marine Protection Bill

Tēnā koe, tēnā koutou

Further to my email yesterday regarding the Hauraki Gulf/Tikapa Moana Marine Protection Bill we omitted to include the attachment.

It is now attached for your information.

My apologies for this oversight.

Nga manaakitanga

**Graeme Hastilow**

**Chief Executive| Te Mātārae**

☐ [s 9\(2\)\(a\)](#) ☐

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**From:** Charlie Mackey **On Behalf Of** Graeme Hastilow  
**Sent:** Thursday, September 26, 2024 2:16 PM  
**To:** Tama Potaka (MIN) <[t.potaka@ministers.govt.nz](mailto:t.potaka@ministers.govt.nz)>; [tama.potaka@parliament.govt.nz](mailto:tama.potaka@parliament.govt.nz)  
**Cc:** Graeme Hastilow <[graeme.hastilow@teohu.maori.nz](mailto:graeme.hastilow@teohu.maori.nz)>; Kylie Grigg <[Kylie.Grigg@teohu.maori.nz](mailto:Kylie.Grigg@teohu.maori.nz)>  
**Subject:** Hauraki Gulf/Tikapa Moana Marine Protection Bill

Tēnā koe, tēnā koutou

Please find attached a letter from Mr Pahia Turia the Chair of Te Ohu Kaimoana regarding the Hauraki Gulf/Tikapa Moana Marine Protection Bill.

Nga manaakitanga  
Graeme Hastilow  
Chief Executive| Te Mātārae

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□ s 9(2)(a) □ [REDACTED]

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26 September 2024

Hon. Tama Potaka  
Minister for Conservation and  
Minister for Māori Crown Relations  
Parliament Buildings  
WELLINGTON

Via email: [tama.potaka@parliament.govt.nz](mailto:tama.potaka@parliament.govt.nz)

E te Minita, tēnā koe

**Re: Hauraki Gulf / Tīkapa Moana Marine Protection Bill: 'No Entitlement to Compensation' Clause (Clause 9A) and Customary Non-Commercial Fishing Matters**

I would like to express our gratitude for the constructive and positive discussions we had with you at your office on August 21, 2024. At that meeting, you outlined the need to achieve both conservation outcomes as well as ongoing recognition of the rights and interests of iwi and Māori arising from the 1992 Fisheries Settlement. Our understanding of the outcome from the meeting was for Te Ohu Kaimoana to provide advice in the form of an amendment paper, addressing our key concerns, particularly those related to the "no entitlement to compensation" clause and the customary non-commercial fishing issues we raised within the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill).

We are pleased to submit the attached formal amendment paper, which outlines our specific recommendations for changes to the Bill. Our advice focuses on the following key areas:

- removing the Environment Select Committees proposal to include a no entitlement to compensation clause within the Bill;
- removing the restriction on the exercise of customary non-commercial fishing rights within high protection areas; and
- establishing a mechanism that provides specific provisions for engagement with hapū and iwi when setting biodiversity objectives.

We believe these amendments are essential for recognising and safeguarding Māori customary commercial and non-commercial fishing rights and interests whilst also contributing to the health and sustainability of the marine environment.

For both iwi and Te Ohu Kaimoana, the Fisheries Settlement binds together and obligates both iwi and the Crown to act in a manner that fully honours the agreements expressed under the Deed of Settlement. We must emphasize that the current provisions of the Bill, as proposed by the Government and reported back by the Environment Select Committee, breach this agreement. Moreover, advancing the Bill, without proper consultation with iwi, particularly regarding Clause 9A, disregards the Crown's good faith obligations under Te Tiriti o Waitangi.

We have made it clear that our goal is to resolve these critical issues so that iwi, Te Ohu Kaimoana, and the Crown can move forward together with a framework that both protects the biodiversity of Tīkapa Moana and respects Māori customary commercial and non-commercial fishing rights.

We would like to work closely with your team to refine the Bill in a way that reflects the significance of Māori customary commercial and non-commercial fishing rights and interests, as well as the need for robust marine conservation measures.

Please find the amendment paper of advice attached for your consideration. We look forward to your feedback and to continuing our work together on this important kaupapa.

Noho ora mai rā,

s 9(2)(a)



Pahia Turia

**Chair**

**Te Ohu Kaimoana**



#### **NOTE**

This document provides the textual amendments Te Ohu Kaimoana seek to be made at the Select Committee, and the Explanatory Note for this AP.

Te Ohu Kaimoana's support for the continued passage of the Hauraki Gulf / Tīkapa Moana Marine Protection Bill is contingent on these amendments being accepted, or the provision of satisfactory explanations as to why they are not required. Most of these amendments have been sought in Te Ohu Kaimoana's submission on the Bill and through other correspondence with officials, however these amendments have not been provided for to date.

Drafting style and precise wording are matters for Parliamentary Counsel Office (PCO) discretion so long as the desired outcome is achieved. The PCO may prefer to produce the proposed amendments in the form of tracked amendments in the Bill as reported from the Select Committee.

Accordingly, while this document is in the general form of an AP, it is best regarded as drafting instructions and guidance to officials as to what is required.

# **House of Representatives**

# **Amendment Paper**

## **Hauraki Gulf / Tīkapa Moana Marine Protection Bill**

### **Explanatory Note**

This Amendment Paper (**AP**) proposes changes to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the **Bill**) to:

- remove the Select Committees proposal to include a no entitlement to compensation clause within the Bill;
- remove the restriction on the exercise of customary non-commercial fishing rights within high protection areas; and
- establish a mechanism that provides specific provisions for engagement with hapū and iwi when setting biodiversity objectives.

### **No entitlement to compensation**

The addition of *clause 9A* will remove the Crown's liability to pay compensation to any person for any loss of, or any adverse effect on, a right or an interest in individual transferable quota or a right to undertake fishing arising from the enactment or operation of this Bill. *Clause 9A* was introduced

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**Proposed amendments to  
Hauraki Gulf / Tīkapa Moana Marine Protection Bill**

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at the Select Committee stage and applied without any prior consultation or engagement with the public.

This is a serious error of principle in this case.

*Clause 9A* would prevent any person from making a common law claim to seek compensation for the value of their property rights, which may be lost due to the establishment of Marine Protected Areas under the Bill. Parliament should not have the authority to disallow a person's ability to pursue compensation for such losses, as this would undermine the protection of individual property rights and the principles of fairness and equity. Removing this right without sufficient public consultation also fails to recognize the interests of affected individuals and communities and could result in negative consequences for those impacted by the establishment of Marine Protected Areas.

Iwi have traditionally opposed the Crown's efforts to remove the right to apply for compensation, where the loss of fishing rights are concerned. A comparable clause in the Kermadec Ocean Sanctuary Bill faced significant opposition from iwi and was subsequently removed after the consultation stage ended.

Te Ohu Kaimoana raised its concerns with the Minister of Conservation and the Minister for Oceans and Fisheries on 17 July 2024.

### Customary Non-Commercial Fishing in High Protection Areas

*Clause 19(1)(b)* of the Bill states that a person may undertake customary fishing within a high protection area if they comply with any regulations made under sections 66 or 67 relating to the high protection area.

However, the current drafting of *clause 19(1)(b)* imposes unnecessary restrictions on the exercise of customary non-commercial fishing rights by limiting these activities to those that comply with the aforementioned regulations. To better uphold the principles of the Treaty of Waitangi and ensure that decision-making authority regarding customary non-commercial fishing remains under the jurisdiction of Tāngata Whenua and Tāngata Kaitiaki, it is recommended that *clause 19(1)(b)* be removed from the Bill.

Te Ohu Kaimoana raised its concerns with the Minister of Conservation on 21 August 2024.

### Determining Customary Non-Commercial Fishing Based on Biodiversity Objectives

The addition of *clause 65(1A)* to the Bill means that the Minister must be satisfied that, if consultation with any person affected by the proposed regulations is appropriate, sufficient consultation with that person or their representative has occurred.

Similarly, *clause 66(2)(c)* to the Bill means that the Minister must not make a recommendation under subsection (1) unless the Minister is satisfied that consultation with any person affected by the proposed regulations is appropriate and sufficient consultation with that person or their representative has occurred.

*Clauses 65(1A) and 66(2)(c)*, do not explicitly require consultation with iwi and hapū. Given the importance of the protected areas to these groups, it would be prudent to ensure that they are specifically included in the consultation process. This approach would be consistent with the Crown's obligations under the Treaty of Waitangi and support meaningful Māori participation in decision-making related to their customary non-commercial fishing interests.

Te Ohu Kaimoana raised its concerns with the Minister of Conservation and the Minister for Oceans and Fisheries on 17 July 2024.

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**Proposed amendments to  
Hauraki Gulf / Tikapa Moana Marine Protection Bill**

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*Proposed amendments*

Hon Tama Potaka, in Committee, to move the following amendments:

.....

No entitlement to compensation

*Clause 9A*

*Remove Clause 9A*

.....

Customary fishing in high protection areas

*Clause 19*

*Remove subclause 19(1)(b)*

.....

General Regulations (Matters to be considered by the Minister of Conservation)

*Clause 65(1A)*

*Replace s 65(1A) and insert with:*

65(1A) The Minister must not make a recommendation under subsection (1)(c) unless the Minister is satisfied that the following persons have been consulted with:

- (a) hapū and iwi that exercise kaitiakitanga in the protected area; and
  - (b) any affected person by the proposed regulations.
- .....

Regulations for biodiversity objectives and associated restrictions

*Clause 66(1)(c)*

*Replace “, if consultation with any person affected by the proposed regulations is appropriate, sufficient consultation with that person or their representative has occurred” with:*



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**Proposed amendments to  
Hauraki Gulf / Tikapa Moana Marine Protection Bill**

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the following persons have been consulted with:

- (i) hapū and iwi that exercise kaitiakitanga in the seafloor protection areas and high protection areas; and
- (ii) any affected person by the proposed regulations.

.....

# Hon Tama Potaka

Minister of Conservation  
Minister for Māori Crown Relations: Te Arawhiti  
Minister for Māori Development  
Minister for Whānau Ora  
Associate Minister of Housing (Social Housing)



Ref: CORM-1449

22 October 2024

Pahia Turia  
Te Ohu Kaimoana

[Charlie.Mackey@teohu.maori.nz](mailto:Charlie.Mackey@teohu.maori.nz)

Tēnā koe Mr Turia

Thank you for your email dated 26 September 2024 regarding proposed changes to the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill).

I also enjoyed our constructive discussion on 21 August 2024 and appreciate you providing further advice on your concerns, as discussed.

I acknowledge you have concerns regarding the 'no compensation' clause, regulation of non-commercial customary fishing, and engagement with hapū and iwi when setting biodiversity objectives.

We are working on changes to the Bill and I will make a full announcement when the Bill is returned to Parliament for its second reading. These changes will then be voted on by all Members at the Committee of the Whole House stage.

Thank you for taking the time to write.

Mauriora

A handwritten signature in blue ink that reads 'Tama Potaka'.

Hon Tama Potaka  
**Minister of Conservation**