



**Draft Conservation Services  
Programme Annual Plan  
2020/21 Response**

Te Ohu  
**Kaimoana**  


# This is our response to the draft Conservation Services Programme Annual Plan

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1. Te Ohu Kaimoana welcomes the opportunity to provide comment and advice on the draft Conservation Services Programme (CSP) Annual Plan for 2020/21.
2. We have structured our response as follows:
  - First, we set out who we are and the reasons for our engagement with the CSP.
  - Second, we describe Te Hā o Tangaroa kia ora ai tāua, as the foundation of our advice.
  - Third, we outline our views on the CSP process.
  - To conclude, we provide our recommendations for the draft CSP Annual Plan for 2020/21.
3. We have provided specific commentary on projects and their descriptions in the draft document. This is attached alongside our response document.
4. We do not intend our response to conflict with or override any response provided independently by Iwi, through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs).

## We are Te Ohu Kaimoana

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5. Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) was established to implement, protect and enhance the Deed of Settlement. The Deed of Settlement and the Maori Fisheries Act 2004<sup>1</sup> are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi.
6. Our purpose, set out in section 32 of the Maori Fisheries Act 2004, is to "advance the interests of Iwi, individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:
  - a) ultimately benefit the members of Iwi and Maori generally
  - b) further the agreements made in the Deed of Settlement
  - c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi
  - d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement."

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<sup>1</sup> Māori Fisheries Deed of Settlement 1992. The Deed is given effect to by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Maori Fisheries Act 2004.

7. We work on behalf of 58 Mandated Iwi Organisations (MIOs)<sup>2</sup> who represent Iwi throughout Aotearoa. Asset Holding Companies (AHCs) hold Fisheries Settlement Assets on behalf of their MIOs. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited which, in turn, owns Moana Fisheries and 50% of the Sealord Group.
8. MIOs have approved our Māori Fisheries Strategy and three-year strategic plan, which has as its goal “that MIOs collectively lead the development of Aotearoa’s marine and environmental policy affecting fisheries management through Te Ohu Kaimoana as their mandated agent”. We play a key role in assisting MIOs to achieve that goal.

## Te Ohu Kaimoana’s interest

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9. Our interest in marine conservation services arises from our responsibility to protect the rights and interests of Iwi in the Deed of Settlement and assist the Crown to discharge its obligations under the Deed and Te Tiriti o Waitangi.
10. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is about Māori acting with authority and independence over their own affairs. It is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations. This view endures today and is embodied within our framework Te Hā o Tangaroa kia ora ai tāua (the breath of Tangaroa sustains us).
11. The obligations under Te Tiriti o Waitangi apply to the Crown generally, whether there is an explicit reference to the Treaty in the governing statute, in this case the Fisheries Act 1996 (The Act). Of particular note are the comments in the Barton-Prescott case, that “since the Treaty of Waitangi was designed to have general application, that general application must colour all matters to which it has relevance, whether public or private and...whether or not there is a reference to the treaty in the statute.”<sup>3</sup>

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<sup>2</sup> MIO as referred to in The Maori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

<sup>3</sup> Barton-Prescott v Director-General of Social Welfare [1997] 3 NZLR 179, 184.

## A Māori world view

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### The significance of Tangaroa to Te Ao Māori

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12. The relationship Māori have with Tangaroa is intrinsic, and the ability to benefit from that relationship was and continues to be underpinned by whakapapa. Tangaroa is the son of Papatūānuku, the earth mother, and Ranginui, the sky father. When Papatūānuku and Ranginui were separated, Tangaroa went to live in the world that was created and has existed as a tipuna to Māori ever since.<sup>4</sup>
13. Protection of the reciprocal relationship with Tangaroa is an inherent part of the Deed of Settlement – it's an important and relevant part of modern fisheries management for Aotearoa.

### We base our advice on Te Hā o Tangaroa kia ora ai tāua

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14. Te Hā o Tangaroa kia ora ai tāua is an expression of the unique and lasting connection Māori have with the environment. It contains the principles we use to analyse and develop contemporary fisheries policy, and other policies that may affect the rights of Iwi under the Deed of Settlement. In essence, Te Hā o Tangaroa kia ora ai tāua highlights the importance of humanity's interdependent relationship with Tangaroa to ensure our mutual health and wellbeing.
15. Māori rights in fisheries can be expressed as a share of the productive potential of all aquatic life in the waters of Aotearoa. They are not just a right to harvest, but also to use the resource in a way that provides for social, cultural and economic wellbeing.
16. Te Hā o Tangaroa kia ora ai tāua does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility. It speaks to striking an appropriate balance between people and those we share the environment with.
17. In accordance with this view, "conservation" is part of "sustainable use", that is, it is carried out in order to sustainably use resources for the benefit of current and future generations. The Fisheries Act's purpose is to "to provide for the utilisation of fisheries resources while ensuring sustainability." The purpose and principles of the Act echo Te Hā o Tangaroa kia ora ai tāua.
18. The Act complements and supports Te Hā o Tangaroa kia ora ai tāua. Our ability to maintain a reciprocal relationship with Tangaroa depends in part upon appropriate implementation to achieve the purpose of the Act, particularly avoiding, remedying and mitigating any adverse effects of fishing on the environment (s 8(2b)). As the funds derived for conservation services result from the provisions of the Act, this purpose should be the underlying driver of the CSP's work.

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<sup>4</sup> Waitangi Tribunal. "Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity." Te taumata tuatahi (2011).

# Our view on the Conservation Services Programme

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## **Research funded from CSP levies must be attributable to the adverse effects of fishing.**

19. Conservation services are defined in Section 2 of the Fisheries Act 1996 (the Act) as follows:
- a. *research relating to those adverse effects on protected species;*
  - b. *research on measures to mitigate the adverse effects of commercial fishing on protected species;*  
*and*
  - c. *the development of population management plans under the Wildlife Act 1953 and the Marine Mammals Protection Act 1978.*

## **Iwi are significant contributors to the funds procured for fisheries related research.**

20. Costs recovered from Iwi quota owners are distributed through the CSP to provide information on interactions between fishing and protected species. This information assists Iwi quota owners in fulfilling their responsibilities as kaitiaki. The perpetual nature of settlement quota means that Iwi have long-term interests in and aspirations for protected species and the related cost recovered research programmes. In addition to the quota provided through the Deed of Settlement, Iwi have invested significantly in the fishing industry, including increased quota ownership. In some fisheries the kahui of Te Ohu Kaimoana collectively own the majority of quota. Collectively, Iwi own about a third of all quota and are therefore a major contributor to the funds procured for fisheries related research.

## **The relationship between the Department of Conservation and Te Ohu Kaimoana continues to develop**

21. In reference to the Te Tiriti section (1.4) of the Conservation Services Strategic Statement 2018, we note the specific mention of Te Ohu Kaimoana's mandate to act on behalf of Iwi. We appreciate an engaged kanohi ki te kanohi approach to consultation with the Department of Conservation (DOC) for the development of the Annual Plan and determination of conservation costs to quota owners. This approach provides opportunities for both parties to discuss their perspectives beyond the scope of specific research proposals and gain a longer-term aspiration for the outcomes of the marine environment. The constructive kōrero between DOC and Te Ohu Kaimoana before release of this draft Annual Plan is an improvement towards supporting a meaningful Treaty partnership. We look forward to continuing to build on this relationship in coming years.

## **Research conducted under CSP should be set by management objectives – not project proposals from researchers.**

22. As discussed in our hui prior to the draft Annual Plan's release, we consider the process of setting the research projects for the annual plan requires improvement. We fully support the inclusive and collaborative aspects of the CSP process throughout the year. However, it is important to remember that DOC's role – as administrator – is to set management and research objectives in partnership with Te Ohu Kaimoana and quota owners (or their representative agents). The guidance for setting project objectives and rationale should be the appropriate National Plans of Action, Threat Management Plans, the Aquatic Environment and Biodiversity Report, risk assessments, and gaps

identified during working groups from the previous year. These projects can then be tendered to researchers who can provide the research approach. Importantly, the CSP is not an arena for researchers to bid and direct the use of cost recovered funds.

**The current process for procuring research detracts from the purpose and function of the CSP.**

23. Currently, the presence of researchers during the Research Advisory Group (RAG) meeting hinders the process of prioritisation. This process presents a “competition for funds” which means fisheries management and protected species outcomes are not the priority focus for many participants. This detracts from the purpose of the meeting and is often disruptive. It is time-consuming and frustrating to push back on projects that have no place being funded by Iwi or other quota owners. It is our view that such projects represent a misuse of funds and would not make it to the RAG if management objectives guided the project proposals are set as described above.

**Tendering projects to researchers provides better incentives for quality outputs.**

24. After the development of the project objective and rationale by DOC, Te Ohu Kaimoana and quota owners, the role of researchers in the RAG should then be focussed on experimental design and delivery of the research. Tendering projects would generate incentives for researchers to deliver outcomes from the data collected under CSP funds. A process of this nature would ensure efficient and legislatively compliant use of resources and potentially spur innovation.

**Consideration of CSP projects is often done without context from all protected species and fisheries research.**

25. This year it was valuable to have Fisheries New Zealand present in the RAG to describe the projects they had planned or underway. This provided some context that enabled the group to fairly judge the merit of the CSP proposed projects. However, we were still without key information as the Biodiversity Contingency Business Case workstreams for Antipodean albatross, Hector’s and Māui dolphins, and hoiho were not available. Further, core funded workstreams were not included. In order to provide well informed and complete advice on the best use of protected species research funds, it is crucial that the RAG have information on all protected species and fisheries research.

**A long-term research strategy is needed, so that we can more effectively target research and utilise cost recovered resources.**

26. In previous responses to CSP, we have expressed concern at the lack of an overarching strategic approach toward the generation and prioritisation of research projects. We consider identification of long-term objectives and planning research consistent with that direction a necessary requirement. Only then can we be confident that the most effective use of resources is carried out and realistic, positive outcomes for protected species can be achieved. This is particularly important when considering the continuous funding from Iwi; improvements in mitigation would be expected to result in a reduction in the amount and cost of fisheries related protected species research.

**Developing research projects by priority species/fishery/issue would generate a platform to align all resources for research.**

27. Regardless of how a project is resourced, we consider collaboration is a key way of increasing the capacity and success of conservation efforts. By focussing on the research need, it may open the door to co-funded projects that aren't part of the CSP but greatly contribute to the collective information and conservation effort.

## Our advice for the CSP Annual Plan 2020

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### **We support the dedication of resources toward the species liaison programme.**

28. The species liaison programme approaches protected species mitigation at a fine scale with efficient feedback loops to regulatory bodies. We value this approach as it provides for vessel and fishery specific management at a personal level to ensure continuous improvement of practices and therefore support desired outcomes for protected species mitigation. Further, the feedback process to governing bodies and working groups closes the gap between quota/ACE holders and harvesters. Similar processes have been implemented through the Deepwater Group and we support the wider rollout across inshore fleets.

### **Identification of mitigation gaps can be achieved through stakeholder engagement.**

29. We do not support the funding of project MIT2020-03. At the RAG there was general consensus that the objectives of this proposal could be better achieved through a workshop and that a contracted analysis would be more expensive and less relevant. From the feedback at the RAG, Te Ohu Kaimoana recognises that there are currently obvious mitigation gaps that can be addressed through research development. In the project description it is proposed to analyse the reduction of bycatch that can be achieved through full deployment of current mitigation tools across fishing methods. We have concern with the value of this approach as mitigation tools are deployed in relation to area, fishery and vessel specifications not just fishing method. The output could generate expectations of an unrealistic level of protected species capture reduction using current tools. Again, we suggest a workshop to provide information on known gaps and whether these are due to an implementation/uptake issue or if there is a need for new mitigation tool development. Further, such a workshop could discuss the potential need for an analysis of existing mitigation tools and the details that would be required to make this valuable. Overall, in concept we support the identification of gaps in order to prioritise future projects however disagree with an approach that puts analysis before stakeholder discussion.

### **We consider that the fisheries related effects on sea lions have been greatly reduced and apportioning research costs should reflect this.**

30. There has been ongoing CSP research for the Auckland Island sea lion population to reflect the adverse effects associated with the fisheries operating in that area. Over time the fisheries impacts have been greatly reduced with higher certainty due to the full implementation of Sea Lion Excluder Devices and high observer coverage. As a result, fisheries are no longer considered to have an adverse effect on the population. Considering the current circumstances Te Ohu Kaimoana suggests reviewing the current 90:10 apportioning of costs to quota owners and the Crown respectively for the Auckland Islands pup count project.

**Te Ohu Kaimoana would like to engage in the review of the Strategic Statement.**

31. The draft Annual Plan mentions a review of the CSP Strategic Statement is intended to be reviewed 2020/21. As part of maintaining our engagement in the CSP process we would expect to take a lead role in the review and the identification of areas in which the Treaty partner relationship can be enhanced. For example, while there is significant mention of Te Tiriti obligations in the Strategic Statement there is a lack of flow through to the processes and other documents produced by the CSP. All such statements must have meaningful follow through or else not be made.
32. **Research for species of highest risk should be prioritised and funded.** We appreciate and understand the wide and varying impacts of COVID-19 on Aotearoa. This has generated consequences for some planned Government research and workstreams. We consider it paramount that any diversion of funds from protected species work does not impact the research needs for high risk species, notably the Antipodean albatross. We note that research for the Antipodean albatross is not cost recovered. However, the draft Annual Plan includes Crown funded projects for relatively low-risk species and Te Ohu Kaimoana recommends that these projects are delayed in order to retain all planned research and workstreams for the Antipodean albatross. It is our view that action cannot be delayed for this species and therefore resources cannot either.

**There should be specific mention of providing recovered seabirds to Māori in the Annual Plan.**

33. The draft Annual Plan sets out the CSP Observer Programmes duties and goals. We note there is no recognition of the expectation for Māori to recover certain seabird species carcasses for cultural purposes through the observer programme. This expectation stems from a right contemporarily granted through Te Tiriti o Waitangi that has both spiritual and ancestral importance. It is also a provision set out in the CSP Strategic Statement 2018 and this provision should be carried through and incorporated within the CSP Annual Plan. Including this detail recognises CSP's engagement with Māori as a Treaty partner and solidifies the Te Tiriti section of the Strategic Statement.
34. In summary, Te Ohu Kaimoana supports and values research and management (including conservation) initiatives for marine protected species. Under an incentive-based fisheries management system, the CSP connects rights holders with their responsibility to care for Tangaroa. Hence, we support research programmes that address identified risks to the sustainable utilisation of fisheries resources and are based on long-term management objectives. We welcome improved alignment with DOC and look forward to working in partnership to ensure adverse effects on Iwi's taonga are avoided, remedied or mitigated.

Nāku noa, nā,



**Dion Tuuta**

Te Mātārae – Te Ohu Kaimoana

Te Ohu  
**Kaimoana**

