



# Briefing: Hauraki Gulf / Tīkapa Moana Marine Protection Bill - Advice on ring-net fishing provision

<b>To</b>	Minister of Conservation	<b>Date submitted</b>	23 October 2024
<b>Action sought</b>	Decisions on how to implement the provision for ring-net fishing through an Amendment Paper.	<b>Priority</b>	High
<b>Reference</b>	24-B-0501	<b>DocCM</b>	DOC-7782709
<b>Security Level</b>	In Confidence		

<b>Risk Assessment</b>	Medium There is a risk that fishing will intensify within the two high protection areas	<b>Timeframe</b>	By end 4 November 2024 (earlier, if possible, to allow for PCO drafting)
<b>Attachments</b>	Attachment A: Overview of how the review process could be structured		

Contacts	
Name and position	Phone
Siân Roguski, Director Policy (Biodiversity, International and Funding)	9(2)(a)
Ruth Isaac, Deputy Director-General Policy and Regulatory Services	9(2)(a)

## **Executive summary – Whakarāpopoto ā kaiwhakahaere**

---

1. Following Cabinet agreement to provide for ring-net fishing within two high protection areas (HPAs) proposed under the Hauraki Gulf / Tīkapa Moana Marine Protection Bill (the Bill), you need to decide the following matters (by 4 November) so that drafting can be initiated by the Parliamentary Counsel Office (PCO):

### ***Who the provision/exemption applies to***

2. The provision could apply only to those permit holders who have fished using the ring-net method in the two HPAs during any of the 2021, 2022 and 2023 fishing years. This approach constrains the activity to this specific method and avoids the possibility of fishers creating a new catch history within the HPAs prior to their implementation. Five permit holders meet these criteria.
3. We recommend further constraining the list to those who have recorded more than a single fishing event from those areas over that period - three permit holders (1 at Kawau Bay and 2 at Rangitoto and Motutapu).

### ***Conditions on the provision/exemption***

4. We do not recommend adding conditions relating to non-target catch, catch limits, or reporting, on the basis of maintaining alignment with the existing fisheries management system and ensuring workability for Fisheries New Zealand (FNZ).
5. Not requiring non-target catch to be returned to the water, and not specifying a limit on catch, may present a risk to biodiversity, particularly if fishing intensifies or bycatch changes. These risks should be considered during the 3-year review.
6. To manage the risk of intensification of fishing within the HPAs, we recommend:
  - only vessels six metres or less in length can operate within the HPAs;
  - vessels must remain within the vicinity of the ring-net while it is in operation; and
  - permit holders can fish using only one fishing vessel at a time.
7. We also recommend the Bill clarifies that fisheries regulations continue to apply. Fisheries officers will be able to exercise powers and duties under fisheries legislation and clause 35 of the Bill.

### ***Details for the 3-year review of the provision/exemption***

8. The Bill could stipulate that the Minister of Conservation must initiate a review no later than three years after enactment and is the decision-maker on the review.
9. Alternatively, you could decide that the provision should automatically expire three years after enactment, with no specific statutory provision for a review. Under this scenario the provision could be reviewed, as agreed by Cabinet, but the details would not be legislated. If you decided to extend or amend the provision, an amendment Bill would be required.
10. Options we have considered for a review clause in the Bill are:
  - a) a *'detail-light' approach*, which would not include information about the review process (e.g., the matters considered or consultation), or
  - b) a *detailed approach*, which would include a moderate level of detail about the 3-year review.
11. Should you decide that a statutory review is required, we recommend the detailed approach (10.b) on the basis that it would provide greater certainty to the decision maker, stakeholders and agencies on the review. We recommend the review process:
  - must consider the costs and benefits of the provision for ring-net fishing, including impacts on biodiversity; and

- expressly provide for consultation, including engagement with Treaty partners.
12. Under either approach we recommend specifying that the review be completed within a 1-year timeframe (so that the review and decisions are completed within four years) and that the Bill specifies that the provision/exemption continues unless it is revoked or amended (after review at three years or subsequently).

### ***Drafting the provision/exemption***

13. All details of the provision could be included in either new regulations or a schedule to the Bill.
14. The Bill will include provisions to empower the Government to make secondary legislation for the provision in line with your preferred form, and a separate clause providing for a review.

### **Next Steps**

15. We recommend you consult with the Minister for Oceans and Fisheries on these matters. We will then incorporate your decisions into an Amendment Paper.
16. We will separately seek your approval to proactively release recent Cabinet papers and advice, including the advice on the provision/exemption [24-B-0531 refers].

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

		<b>Decision</b>
<b>a)</b>	<b>Note</b> that Cabinet has agreed that commercial ring-net fishing targeting kahawai, grey mullet and trevally is to be provided for in Kawau Bay High Protection Area and Rangitoto and Motutapu High Protection Area between 1 March and 31 August each year, with a review after three years [CAB-24-MIN-0386 refers]	
<b><i>Details of the ring-net provision</i></b>		
<b>b)</b>	<p><b>Agree</b> that the provision in recommendation a applies only to:</p> <p><b>Either</b></p> <p>i) those commercial permit holders <u>who have recorded more than a single fishing event</u> using the ring-net method, within either of the areas proposed as the Kawau Bay High Protection Area and Rangitoto and Motutapu High Protection Area, during the fishing years beginning 1 October 2021, 2022 and 2023 (three permit holders) <b>(recommended)</b></p> <p><b>OR</b></p> <p>ii) those commercial permit holders who have fished using the ring-net method, within either of the areas proposed as the Kawau Bay High Protection Area and Rangitoto and Motutapu High Protection Area, during the fishing years beginning 1 October 2021, 2022 and 2023 (five permit holders)</p>	<p>Yes / No</p> <p>Yes / No</p>
<b>c)</b>	<b>Agree</b> that the provision in recommendation a applies only to those vessels six metres or less in length	Yes / No

d)	<b>Agree</b> that any vessel operators undertaking ring-net fishing must remain within the vicinity of the ring-net while it is in operation	Yes / No
e)	<b>Agree</b> that permit holders may use only 1 fishing vessel at any one time to take fish within the HPAs	Yes / No
f)	<b>Agree</b> that 'ring-net' is defined in the Bill as per the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, but (for avoidance of doubt) does not include Danish seine, purse seine or trawl net	Yes / No
<b><i>Review of the ring-net provision</i></b>		
g)	<b>Agree</b> <b>EITHER</b> i) The Minister of Conservation must initiate a review of the provision for ring-net fishing no later than three years after enactment  <b>OR</b> ii) The provision expires three years after enactment ( <i>you would still have the option of amending the Act following a non-statutory review</i> )	Yes / No       Yes / No
<u>If you agree to recommendation g(i), please indicate your decisions on recommendations h-k</u>		
h)	<b>Agree</b> <b>EITHER</b> i) The benefits and costs of the provision for ring-net fishing, including impacts on biodiversity, are matters that must be considered in the review ( <b>recommended</b> )  <b>OR</b> ii) Matters to be considered during the review are not specified	Yes / No      Yes / No
i)	<b>Agree</b> <b>EITHER</b> i) The Minister must provide the opportunity for interested parties to provide their views as part of the review ( <b>recommended</b> )  <b>OR</b> ii) Consultation is not explicitly provided for as part of the review (but would not be precluded)	Yes / No      Yes / No
j)	<b>Agree</b> that decisions on the review are made by the Minister of Conservation	Yes / No
k)	<b>Agree</b> i) A decision on the review must be made no later than four years after enactment	Yes / No

	<p><b>AND</b></p> <p>ii) The Minister of Conservation can initiate subsequent reviews at any other time</p> <p><b>AND</b></p> <p>iii) The provision continues unless a decision is made to revoke or amend the provision</p>	<p>Yes / No</p> <p>Yes / No</p>
<b>Drafting of the provision/exemption</b>		
l)	<p><b>Agree</b> that DOC instructs the Parliamentary Counsel Office (PCO) to draft, as indicated by your decisions in this Briefing:</p> <ul style="list-style-type: none"> <li>a provision exempting ring-net fishing with technical details and conditions in the Bill or secondary legislation as appropriate;</li> <li>Ministerial powers to enact secondary legislation for the purpose of detailing conditions and revoking the provision as required;</li> <li>secondary legislation to provide technical details, and revoke the provision after review if required;</li> <li>an expiry if required; and</li> <li>a review provision if required.</li> </ul>	Yes / No
m)	<b>Agree</b> that the Bill be amended to clarify that those fishing where provided for in this Act must also adhere with the Fisheries Act 1996 and any regulations made under it	Yes / No
<b>Next steps</b>		
n)	<b>Agree</b> to forward this paper to the Minister for Oceans and Fisheries	Yes / No
o)	<b>Agree</b> to consult the Minister for Oceans and Fisheries on the proposals in this paper	Yes / No
p)	<b>Agree</b> that following your decisions on the proposals in this paper, and discussions with PCO on drafting options, officials contact relevant ring-net fishers to confirm their comfort with the provision applying to them and how they may be identified as such in the legislation	Yes / No

9(2)(a)

Date: 23 /10 /2024

Ruth Isaac  
Deputy Director-General Policy and  
Regulatory Services

Date: / /

Hon Tama Potaka  
**Minister of Conservation**

## Purpose – Te aronga

---

1. This briefing seeks your agreement to mechanisms to give effect to Cabinet's agreement to provide for commercial ring-net fishing within two high protection areas proposed under the Hauraki Gulf / Tīkapa Moana Marine Protection Bill.

## Background and context – Te horopaki

---

2. Cabinet's decision [CAB-24-MIN-0386] specified that commercial ring-net fishing:
  - is to be provided for only in Kawau Bay HPA and Rangitoto and Motutapu HPA;
  - is to occur only between 1 March and 31 August each year; and
  - is limited to targeting of kahawai, grey mullet and trevally.
3. You need to make further decisions on technical matters to make the provision workable and manage the potential risk of intensification of fishing effort within the HPAs.
4. Cabinet also decided that the provision/exemption is subject to a review at three years and conditions to be confirmed between the Minister of Conservation and the Minister for Oceans and Fisheries.
5. Your decisions on these matters will be incorporated into an Amendment Paper, alongside the other changes that Cabinet has agreed.

## You need to make decisions on what specific fishing activity is provided for and how it should be managed

---

### *Determining who can ring-net fish within the two HPAs*

6. Cabinet agreed that ring-net fishing can only be carried out by commercial permit holders who have fished in the two HPAs in one or more of the past three fishing years. Three elements of this require clarification in the Bill (points of clarification underlined below). We recommend the Bill or secondary legislation provide that:
  - a) Only those commercial permit holders who have fished using the ring-net method can fish;
  - b) The 'past three fishing years' means the fishing years beginning 1 October 2021, 2022 and 2023; and
  - c) Only those permit holders who have recorded more than a single fishing event within the two HPAs over the above 3-year period can continue to fish within those areas (three permit holders).
7. This approach will restrict the provision to only those who have used the ring-net method, rather than any method, and aligns with the timing of Cabinet's agreement to this provision. If the 'past three fishing years' was defined as the three years prior to enactment, this could encourage fishers to create a catch history within the HPAs prior to the Bill's enactment. Those who could legally fish within the HPAs would not be representative of those who have recently fished in these areas and this may present a higher risk to biodiversity.
8. Limiting the permit holders to only those who have recorded more than a single fishing event from the two HPAs will exclude two fishers for whom the HPAs have contributed a very minor proportion of their total catch **9(2)(b)(ii)**. This would mitigate the risk that those fishers change their fishing behaviour to fish more often (and take more fish) from the HPAs in the future. **9(2)(b)(ii)**

9. Alternatively, you may wish to apply the exemption to all five permit holders who have fished within the two HPAs within the last three fishing years (i.e., include the two permit holders who have only recorded a single fishing event each over the last three years).
10. We recommend that the Bill define 'ring-net' as per the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986. On advice from FNZ, we recommend that the Bill clarify that 'ring-net' excludes Danish seine, purse seine and trawl net methods (for avoidance of doubt and to assist with compliance).

#### Identifying those to whom the provision applies

11. Identifying who will be able to fish within the HPAs could be achieved by naming the relevant permit holders in a Schedule to the Bill, or in new regulations. Both approaches are similar to the provision for drag-netting in Tauranga Harbour, where permit holders named in a schedule to fisheries regulations are able to drag net in specific areas (10 permit holders are named as being able to drag net fish in Tauranga Harbour; one permit holder is named as being able to take a particular target species).<sup>2</sup>
12. Officials will explore with PCO alternative drafting options to naming the relevant individuals or companies in legislation, while ensuring compliance practicality. The intent would be to protect their privacy to an extent. 9(2)(c) We understand that naming individuals in legislation is an issue currently under consideration by the Office of the Clerk.
13. Potential options could include listing just a client or permit number, or to fully list the specific criteria (such as the requirement to have fished there in the last three fishing years) in the regulations or schedule (thereby in effect naming those to whom the provision applies).

#### ***Ensuring workability and managing the risk of fishing effort intensification***

##### What happens to non-target catch?

14. For ring-net fishing targeting kahawai, grey mullet and trevally, the catch of non-target species is usually low but cannot be avoided completely.
15. Under existing fisheries regulations, all Quota Management System (QMS) species that are caught must be landed. This means that non-target QMS or bycatch species caught within the HPAs (with the exception of protected species) will need to be retained and balanced against fishers' Annual Catch Entitlement.
16. We have considered whether the Bill could require that non-target species be returned to the sea. However, FNZ advise that fisheries landings and discards rules are an important component of the fisheries management system and creating different rules would present a monitoring and enforcement issue.
17. On balance, requiring consistency with existing landings and discards rules will better support compliance and law enforcement operations and ensure administrative efficiency for both fishers and agencies. Fishers will not be able to actively target species other than those listed in the legislation as the target species (i.e., kahawai, grey mullet and trevally).

<sup>1</sup> 9(2)(b)(ii)

<sup>2</sup> Regulation 12(4) and 12(5) of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986

#### Should there be a limit on catch within the HPAs?

18. We previously advised you that the catch taken from the HPAs could be limited (for example, to the quantities currently caught from the areas – around 16 tonnes per year) [24-B-0476 refers]. However, on further analysis, this would be unworkable and create administrative burden for fishers and agencies due to additional monitoring and reporting requirements. It would be difficult to develop a sound scientific basis for a catch limit for these specific areas and target species within the larger quota management area, and contentious to allocate that catch limit among the fishers.
19. Not specifying a limit on catch means that DOC and FNZ will not be able to fully understand the implications of providing for fishing within the HPAs. Fishers may choose to take none or all of their allowable catch from the HPAs. To address this, agencies propose relying on monitoring and fisher reporting to understand the potential impacts of this provision, which could inform the 3-year review.
20. To assist with managing the potential risk of intensification of fishing effort, we recommend that:
  - only permit holders operating vessels six metres or less in length can fish within the HPAs. This will maintain the provision to the size of ring-net vessels currently operating within the HPAs.
  - vessel operators are required to remain in the vicinity of their ring-net when it is in operation. This will assist with compliance and managing bycatch, as well as reduce the risk of intensification of fishing (as operators will not be able to set multiple nets within the HPAs).
  - permit holders may use only 1 fishing vessel at any one time (similar to the Tauranga drag-netting regulation). Note that this may not prevent permit holders from deploying multiple vessels sequentially.

#### Should there be additional notification and reporting requirements?

21. Providing for ring-net fishing within the HPAs will present compliance and enforcement challenges. DOC and FNZ have considered whether additional notification and/or reporting requirements should be included in the Bill to facilitate enforcement.
22. On balance, we consider that current monitoring and reporting requirements will be adequate for supporting enforcement and for understanding where, when and how much catch is taken from the HPAs. Adding more notification and/or reporting requirements via the Bill would provide limited additional benefit for compliance and law enforcement.
23. Those ring-net fishing will be required to report all catch as part of the fisheries management system. While these vessels are not observed due to their small size, fisheries monitoring systems will allow agencies to know when specific vessels are entering the HPAs.
24. DOC and FNZ will continue to work together to support compliance and law enforcement and will advise if additional reporting requirements would be beneficial.

#### Providing clarity that fisheries regulations continue to apply

25. For avoidance of doubt and to give effect to the above matters, we recommend adding a clause that specifically requires those fishing to also adhere with the Fisheries Act and any regulations made under it (such as landings and discards rules, size limits, reporting etc).



## **You need to decide what the review process should look like**

---

26. There are options around the nature of the review clause, the level of detail to include in the review clause and on timeframes for and outcomes of the review.
27. The Bill could require a review and stipulate that the provision for ring-net fishing continues unless it is revoked or amended at the 3-year review or at any subsequent time (**Attachment A** provides an overview of how this process could be structured).
28. Alternatively, you could decide that the provision should expire three years after enactment (with no explicit statutory provision for a review). This would be more consistent with a 'grandfather' or 'sunset' clause. Under this approach, a review could still be initiated (outside the legislation) and the provision could be extended or changed if required (via an amendment Bill).

### ***Determining who the reviewers and decision-makers are***

29. If you decide that a review clause is required in the legislation, we recommend that the Minister of Conservation must initiate the review no later than three years after enactment and that the Minister of Conservation is the decision-maker on the outcome of the review. This is consistent with the review clause in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 (where the Minister for the Environment initiates the review and prepares and publishes a report).
30. Alternatively, given the provision relates to fishing, you may consider it appropriate that the review is initiated by the Minister of Conservation but that the decision on the review is made by the Minister of Conservation in consultation with the Minister for Oceans and Fisheries.
31. Both DOC and Fisheries New Zealand would support the review process under either of the decision-making options.

### ***The level of detail on the review to be set out in legislation***

32. We recommend that detail on what is considered in the review, and who is consulted, is specified as below. This approach gives more certainty to agencies and stakeholders, as they know in advance what the review process will be and what information they may need to develop ahead of the review.
33. Providing a moderate level of detail on the review provides consistency within the Bill (e.g., with the Ministerial review provided for in clause 68) and with other marine protection legislation.<sup>3</sup> However, this approach creates less flexibility for decision-makers.
34. Alternatively, under a 'detail-light' approach, the Minister would be required to undertake a review, but other details of the review process are not specified.

### **What criteria (if any) are specified?**

35. We recommend that benefits and costs, including impacts on the protection of biodiversity, are identified as matters that must be considered in the review. This would ensure that the benefits to fishers and wider community are specifically considered alongside any risks to biodiversity, but would not constrain consideration to only those matters.

### **Are requirements for consultation specified?**

36. Given the outcome of the review will have implications for fishers and there will likely be broader interest from the general public and iwi in the review, we recommend the

---

<sup>3</sup> For example, Kaikoura (Te Tai o Marokura) Marine Management Act 2014 and Fiordland (Te Moana o Atawhenua) Marine Management Act 2005

Bill specify that the Minister must provide the opportunity for interested parties to provide their views as part of the review.

37. Alternatively, no specific requirement for consultation could be included – in effect, more targeted consultation with affected persons would be undertaken and wider consultation would not be precluded if deemed necessary. This approach would be more efficient and require less resourcing, but could result in wider views not being understood or incorporated into decision-making.

#### Are timeframes for the review and decision specified?

38. We recommend a timeframe of up to one year for a review and decision, to provide for consultation and development of advice. We consider this timeframe is reasonable given the constrained nature of the activity being reviewed (noting that the Bill's more general review clause (clause 68) requires decision-making within two years).

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

---

39. We anticipate that the level of bycatch will be low. However, providing for ring-net fishing presents risk to target and non-target species, as non-target QMS fish will need to be landed if caught within the HPAs. Not creating a limit on catch could exacerbate this.
40. It is possible that fishing will intensify within the HPAs. Targeting the provision (e.g., by limiting vessel size) will help mitigate this. Mandatory catch reporting will inform future assessment of risks to biodiversity. Agencies may be able to direct funding and monitoring effort towards better understanding these risks and impacts on biodiversity.
41. Relevant permit holders may not want to be able to be identifiable through the Bill (or secondary legislation) and/or not want to be able to continue to fish in these areas. We propose that agencies engage with these individuals after your decisions on the proposals in this paper.

#### **Treaty principles (section 4) – Ngā mātaōpono Tiriti (section 4)**

---

42. Te Ohu Kaimoana and some mana whenua groups have previously expressed their opposition to the prohibition of customary commercial fishing in HPAs. The provision as agreed by Cabinet provides for limited commercial fishing by specific permit holders but does not specifically acknowledge customary commercial fishing.

#### **Consultation – Kōrero whakawhiti**

---

43. Fisheries New Zealand and the Parliamentary Counsel Office were consulted on this paper.

#### **Financial implications – Te hīraunga pūtea**

---

44. The provision for ring-net fishing in the HPAs will have financial implications. Additional compliance and monitoring is envisaged and a statutory review process will have resourcing implications for DOC and FNZ. These additional activities will be funded from within agency baselines.

#### **Legal implications – Te hīraunga a ture**

---

45. Your decisions will be incorporated into an Amendment Paper to be voted on at the Committee of the whole House stage. Agreed changes will be incorporated into the Bill.
46. Subject to your decisions and further engagement with Parliamentary Counsel Office, the changes may result in the exemption being included in the existing list of exclusions in clause 21 of the Bill, with the technical detail of the proposed exemption

included as a Schedule to the Bill or new regulation. The relevant permit holders may be named in this Schedule or regulation. A new review clause will likely need to be added to the Bill.

47. Subject to whether the provision sits in a Schedule to the Bill or new regulation, new powers for the Minister of Conservation to revoke the provision via secondary legislation will be needed.
48. New regulations may be able to be developed concurrently with progression of the Bill through the House or could be developed after the Bill is passed and the regulation-making power is in effect. This latter approach may risk the regulations not being agreed for some time.
49. We will work with PCO on the best drafting approach to give effect to your decisions on this briefing.

### **Next steps – Ngā tāwhaitanga**

---

50. We recommend you forward this paper to the Minister for Oceans and Fisheries and consult the Minister on proposals in this paper.
51. Officials can engage with relevant permit holders to determine whether they are comfortable with the provision applying to them and how they may be identifiable through the Bill.
52. We will work with PCO to incorporate your decisions into an Amendment Paper.
53. An indicative timeline for enactment of the legislation is below. These timeframes (in particular for the second option) are subject to several matters, including availability of PCO resourcing and House time, and the drafting approach to be taken to the ring-net provision.

## Indicative timeline for the Bill and amendments

Step	Timeline 1	Timeline 2 (compressed)
Briefing to Minister on new provision for ring-net fishing	With MOC on 23 October	With MOC on 23 October
DOC sends initial drafting instructions for an Amendment Paper (AP) to PCO (excluding the ring-net provision)	By 25 October	By 25 October
Consultation with Minister for Oceans and Fisheries, and decisions on this briefing	ASAP to allow time for drafting instructions and PCO drafting, but by end 4 November	ASAP to allow time for drafting instructions and PCO drafting, but by end 4 November
Further drafting instructions following decisions on ring-net fishing advice (in consultation with Fisheries NZ)	By end 5 November (pending Ministerial decisions and engagement with FNZ)	By end 5 November (pending Ministerial decisions and engagement with FNZ)
PCO draft the amendment paper	Complete by 30 November	Complete by 30 November
Second reading	TBC	TBC
Departmental consultation on AP Cabinet paper	2 - 6 December (one week)	2 – 4 December (3 days)
AP Cabinet paper sent to Ministers office	6 December	2 December
Ministerial consultation on AP Cabinet paper	6-13 December (7 days)	2 – 4 December (3 days – concurrent with Departmental consultation)
AP Cabinet paper lodged	19 December	5 December
AP Cabinet paper considered by LEG	Early 2025	12 December
AP Cabinet paper considered by Cabinet	Early 2025	Possibly only go to LEG
Final AP submitted to Clerk	Early 2025	Week of 9 December
Committee of the Whole House	Early 2025	17/18 December
Third reading	Early 2025	19 December (last sitting day)
Royal assent	2025	2025

**ENDS**

## Ring-net provision continues unless it is revoked or amended

