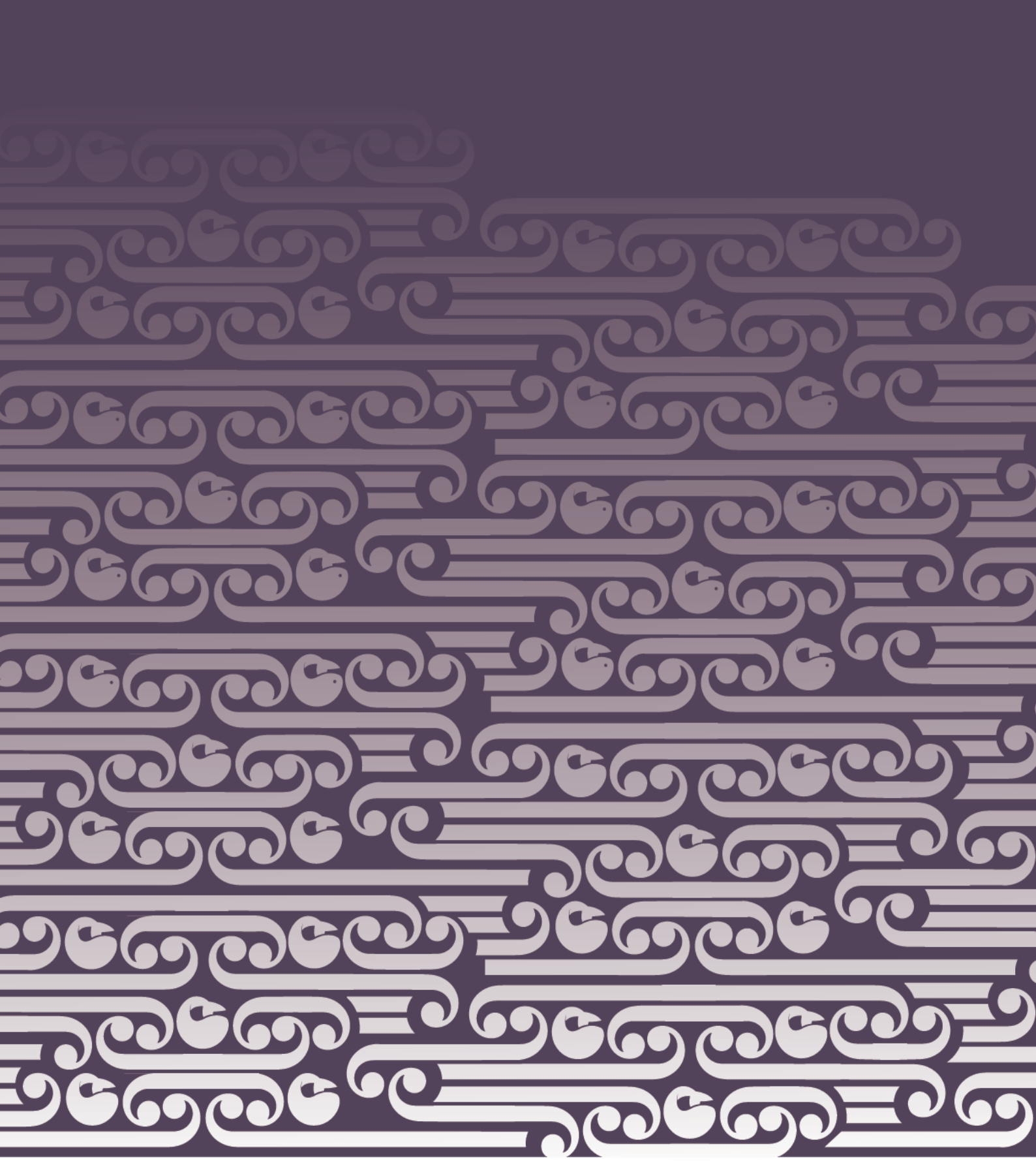

Priorities for negotiations on a new framework for implementing the Convention on Biological Diversity

Paper to the Secretariat for the Convention on Biological Diversity

Te Ohu Kaimoana

15 April 2019

Secretariat for the Convention on Biological Diversity
Secretariat@cbd.int

Tēnā koutou katoa

Tēnei a Tangaroa
Tangaroa whiti tua, Tangaroa whiti aro,
Tangaroa kōpū,
Tangaroa, nau mai
Kia piri, kia tata
Tihei Mauri Ora

Here is Tangaroa (the God of the Sea)
Tangaroa who surrounds us
Tangaroa who is the source of life
Welcome Tangaroa – draw near, draw close
Now there is life

1. Te Ohu Kaimoana (the Māori Fisheries Trust) works on behalf of Iwi (Tribes) who together are the indigenous people of New Zealand. Guided by Iwi, we work with the Government of New Zealand to conserve aquatic biodiversity and protect and support Māori customary fishing rights. This working relationship is furthered in the spirit of partnership envisaged by the Treaty of Waitangi, signed by the Crown and Māori in 1840.

2. In 2004, Te Ohu Kaimoana was established through legislation to implement and protect an agreement between the Crown and Māori to address Māori claims to their customary commercial and non-commercial fisheries, made under the Treaty of Waitangi. This agreement is enshrined in the Fisheries Deed of Settlement which was signed by both parties in September 1992.

3. Fifty-eight Mandated Iwi Organisations, representing all Iwi of New Zealand, shape Te Ohu Kaimoana's priorities. These organisations have directed Te Ohu Kaimoana to lead the development of national and regional fisheries policy based on Māori principles. This includes a focus on policy being developed internationally in the knowledge that it influences policies developed here in New Zealand. They wish to ensure that international agreements entered into by the New Zealand Government support rather than undermine our fisheries management regime and the commercial and non-commercial aspects of their customary fishing rights.

4. In light of this direction, we are providing you with our preliminary views on key issues to be covered in the impending negotiations on a new post 2020 global framework for implementing the Convention on Biological Diversity (the Convention). We have also contributed to the New Zealand Government submission to the Convention. The primary focus of our paper is aquatic biodiversity, which includes and supports our fresh water and marine fisheries resources.

5. If you have any questions or wish to obtain further information, please don't hesitate to contact me at Dion.Tuuta@teohu.maori.nz.

Ngā mihi

Dion Tuuta
Chief Executive

Contents

Executive Summary

1. Te Ohu Kaimoana (the Māori Fisheries Trust) works with the Government of New Zealand to conserve aquatic biodiversity and protect and support Maori fishing rights, consistent with the spirit of partnership envisaged by the Treaty of Waitangi[1].

2. There are several matters that we wish to identify as fundamental to ensuring the Convention on Biological Diversity (the Convention) supports Māori in the exercise of their fishing rights within New Zealand'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 world views. Te Hā o Tangaroa Kia Ora Ai Tāua[2] (see Figure 1) is a basis for the way Māori manage their relationship with the marine environment. This approach is enshrined in the Treaty of Waitangi and the Fisheries Settlement between the Crown and Māori and is reflected in the purpose and principles of New Zealand'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 settlement of Māori fisheries claims, 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. We would be concerned if the international framework – even if unintentionally – served to undermine this regime and the Maori world view.

    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 adverse effects of fishing. Management of fisheries effects is integrated through New Zealand's fisheries management system. International agreements around marine protection should support rather than undermine this approach.

    e. New Zealand has a rights and responsibilities-based approach to fisheries management. This framework creates the incentive for rights holders to take responsibility for managing the effects of fishing on all aquatic biodiversity.

[1] The Treaty of Waitangi signed by the Crown and Māori in 1840 is New Zealand's Foundation Document. It gave the British Crown the right to govern in exchange for a guarantee to the chiefs the exercise of chieftainship over their "lands, villages and taonga katoa (all treasured things).
[2] This translates as "The breath of Tangaroa sustains us".

f. In New Zealand 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 under other relevant regimes. We support international initiatives that encourage greater integration between management of land, fresh water and the marine environment, but in a way that is appropriate for each coastal State.

3. The potential applicability of our indigenous approach to management provides a strong case for a wider engagement with indigenous peoples and local communities to develop a common position outlining biodiversity commitments as part of the process of developing the updated framework for implementing the Convention. Such an engagement is beyond the resources of Te Ohu Kaimoana but is an initiative which we would support and potentially help lead.

4. Te Ohu Kaimoana notes that the Convention's Congress has invited Parties to the Convention as well as the Global Environment Facility (GEF) to financially support the post 2020 review process. Accordingly, Te Ohu Kaimoana has opened dialogue with GEF and other funding and collaborative partners through an intermediary to progress this initiative. We are keen to take up discussions directly if there is a means to do so. We have signalled this initiative to the Government of New Zealand and other Parties and are encouraging them to provide support.

The Convention on Biological Diversity and United Nations Declaration on the Rights of Indigenous Peoples

5. The current Convention on Biological Diversity (the Convention) provides a framework for States to meet its objectives in a flexible manner in light of their own cultural, economic and constitutional arrangements. The objectives of the Convention are stated in Article 1 to be:

> …the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

6. The Convention recognises that States have the "sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction" (Article 3). It provides a framework for countries to achieve its objectives but provides flexibility in the way countries go about achieving them.

7. Further Articles of the Convention touch on the general actions to be taken but very much based on what is appropriate to each party. Under Article 6, contracting parties, including New Zealand, agreed, in accordance with their particular conditions and capabilities, to "develop national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt for this purpose, existing strategies, plans or programmes which shall reflect, *interalia*, the measures set out in [the] Convention, relevant to the Contracting Party concerned". In addition, they agreed to "integrate as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes or policies".

8. Article 8 requires each contracting party, "as far as possible and as appropriate, to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity" (Article 8 a) and "promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas " (Article 8 (e)). These two subsections can be seen to be complementary and indeed intertwined and are reflected in New Zealand's fisheries management system and supported by the goals and objectives of the New Zealand Biodiversity Strategy 2000 – 2020. However, since the signing of the Convention and development of our own New Zealand Biodiversity Strategy, actions of previous governments have treated them as though they are unrelated and in some cases as though they are in conflict. We discuss this matter later in this response. Our position is that our Quota Management System meets these requirements - in relation to the effects of fishing - for 100% of the waters inside our Exclusive Economic Zone and that approach extends to New Zealand's interests on the High Seas.

9. Of particular interest to Iwi, Article 8 (j) adds that each Contracting Party shall:

> Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval of and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge innovations and practices".

10. Aichi Target 18 further emphasises this obligation:

> *By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.*

11. This obligation influences the way contracting parties might go about achieving the objectives of the Convention. In referring to "knowledge, innovations and practices" it can be seen to be flexible in approach and application – enabling indigenous practices to evolve to meet contemporary needs. The Fisheries Settlement and Māori agreement to the Quota Management System as the basis for management of commercial fisheries represents an innovation that sits comfortably with Māori resource management.

12. The Treaty of Waitangi and settlements arising from that Treaty have a unique global context in that the Treaty not only provides a legal framework for recognition of indigenous rights to own and use natural resources but also carries with it an obligation on the State to protect those rights on into the future. Māori rights to use marine resources in accordance with their world view and associated customs is supported by the United Nations Declaration on the Rights of Indigenous Peoples and international agreements and practice for social cultural and economic development. The Declaration includes the right to use and develop lands, territories and resources, the right to fair treatment and redress and the right to the conservation and protection of the environment and its production capacity[3].

13. It is important therefore that marine protection and the development of strategies and mechanisms for protecting biodiversity within the marine environment are implemented in a manner that properly recognises and protects those interests. It is not only in the best interests of Māori to pursue such action but also an obligation of the New Zealand Government to follow such a path.

[3] http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.18_declaration%20rights%20indigenous%20peoples.pdf

Incorporation of Maori customary fishing rights into New Zealand's fisheries regime

14. In settling their claims against the Treaty of Waitangi with the Crown, Māori agreed that the rights-based Quota Management System is an appropriate regime for exercising their rights and responsibilities in relation to the commercial aspect of their customary fishing right, and that regulations should be promulgated to enable them to exercise the same in respect of their non-commercial customary fishing rights.

15. By way of background, in 1986, the Crown introduced the quota management system (QMS) as the framework for managing commercial fisheries in Aotearoa New Zealand. Māori objected to this initiative, which effectively dispossessed them of their property rights in fishing, guaranteed under the Treaty of Waitangi.

16. While there may have been little need for regulation of fisheries in the 1840s - the situation by the 1980s was vastly different. By then the fishing industry was overcapitalised and catches of the most important inshore species showed a marked decline. The government recognised the need to set limits on catches to encourage greater efficiency in the fishing industry and to create ongoing incentives to manage the fisheries sustainably.

17. By the 1980s, the Crown's failure to recognise tribal authority and property in fisheries had to a large extent undermined the ability of Māori to develop effective ways to exercise their authority or protect their rights in a modern context. At the same time, Māori concerns about removal of their ability to participate and lack of recognition of their fishing rights came to a head when the Quota Management System was introduced, and Individual Transferrable Quota allocated by the Government to private interests as a means of preventing further degradation of fisheries.

18. The Quota Management System was introduced on 1 October 1986. It allowed the Minister of Fisheries to set a Total Allowable Catch for each fish stock. In response, Māori obtained an injunction against the Government to prevent further fish stocks being introduced into the Quota Management System until the issue of ownership had been resolved.

19. As a result of the action taken by Māori, the courts confirmed that Māori customary fishing rights were controlled by "hapū and tribes" and that those customary rights contain both commercial and non-commercial elements.

20. To resolve claims and litigation involving fisheries, an interim settlement of fishing claims that acknowledged the full spectrum of Maori interests in fisheries was entered into between Māori and the Crown in 1989 and provided 10% of all fisheries then in the Quota Management System – along with some funding for administration. The Fisheries Deed of Settlement, implemented through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, was the final settlement of all Māori claims to customary fishing rights. Amongst other things, the Crown undertook to

provide Maori with 20% of the quota for all new species brought within the Quota Management System after that time

21. In return, Māori agreed to endorse the Quota Management System as an appropriate regime for the sustainable utilisation of commercial fisheries. In this way, modern commercial quota became a proxy for the Māori traditional right to use fisheries resources for commercial purposes. In addition, they also agreed that regulations should be promulgated to support management by Māori of customary non-commercial fishing.

22. The Aquaculture Settlement, enacted in 2004, mirrors the commercial aspects of the Fisheries Settlement. It delivers 20% of all new space created for aquaculture to iwi through Te Ohu Kaimoana. It also obliges the Crown to deliver an equivalent of 20% of "pre-commencement space" – which is space approved for aquaculture between September 1992 and December 2004.

23. Through these processes, Māori rights in fisheries are now expressed as a share of the productive potential of all aquatic life in New Zealand waters[4]. Māori rights are not just a right to harvest, but also to utilise the resource in a way that provides for their social, cultural and economic wellbeing.

24. Given these interests, it follows that the New Zealand Government cannot negotiate away Maori rights to biodiversity without the express approval of its Treaty partner.

[4] Access to Fisheries resources is available to New Zealand citizens on issue of a permit. For stocks managed under the Quota Management System, the fisher must balance catch with Annual Catch Entitlement or pay a deemed value. Iwi organisations collectively are the only entities that hold Annual Catch Entitlement for all fisheries managed under the Quota Management System and are guaranteed 20% of all stocks introduced into the Quota Management System in the future.

Te Hā o Tangaroa Kia Ora Ai Tāua: the basis for conservation and sustainable use

25. Te Hā o Tangaroa Kia Ora Ai Tāua is how Te Ohu Kaimoana articulates the Māori World View as the basis for the way Māori manage their relationship with the marine environment. Maori expect to be able to manage their resources in a way that is consistent with this view, given the guarantees made under the Treaty of Waitangi and the Fisheries Settlement.

26. Taking the perspective of a Māori world view, conservation is a component of sustainable use, and not an end in itself. The concept of Te Hā o Tangaroa Kia ora Ai Tāua focusses specifically on the relationship between Māori and Tangaroa (the God of the Sea; see Figure 1). The relationship between people and Tangaroa is one of mutual dependence. Tangaroa is not valued solely for its own sake, but as part of a web of active relationships based on whakapapa (genealogy). By caring for Tangaroa, we gain the right to benefit from the resources he provides. This world view is shared by numerous indigenous peoples around the world. It is a view which is interwoven with rangatiratanga (right to exercise authority), guaranteed under Article Two of the Treaty of Waitangi in respect of taonga (treasures) including fisheries. It is also supported by Article 8 (j) of the Convention and Aichi Target 8 referred to earlier.

27. Under this view, "conservation" is part of "sustainable use", that is, it is carried out in order to use resources for the benefit of current and future generations and is a check on our exploitation. In relation to managing fisheries and the effects of fishing on biodiversity, the purpose and principles of our Fisheries Act 1996 echo Te Hā o Tangaroa Kia ora Ai Tāua. There has never been any disagreement by beneficiaries of the Fisheries Settlement that quota rights secured under the settlement are subject to a responsibility to ensure sustainability – having a framework that requires this was a key reason for Iwi accepting the Quota Management System.

28. Furthermore, Māori understand that the protection of biodiversity is an important component of what sustainability means. This is clear in the way New Zealand's fisheries legislation describes what it means to achieve its purpose to "provide for the utilisation of fisheries resources while ensuring sustainability". Under the legislation, utilisation means "conserving[5], using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being". Ensuring sustainability means:
    a. Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations
    b. Avoiding, remedying or mitigating the effects of fishing on the aquatic environment.

[5] Under the legislation, conservation means "the maintenance or restoration of fisheries resources for their future use; and conserving has a corresponding meaning".

29. Significantly, the legislation includes three explicit environmental principles:
    a. associated or dependent species should be maintained above a level that ensures their long-term viability
    b. biological diversity of the aquatic environment should be maintained
    c. habitats of particular significance for fisheries management should be protected.

30. The agreements made between the Crown and Maori and documented in the Deed of Settlement support the proposition that the effects of fishing on biodiversity should be managed within our fisheries legislation. Doing so ensures there is a clear obligation on the part of fisheries rights holders and our fisheries management agency – Fisheries New Zealand - to manage the effects of fishing on aquatic biodiversity.

31. New Zealand's fisheries legislation also contains obligations in relation to agreements entered into by the New Zealand Government. These obligations relate to international agreements and the Fisheries Settlement with Māori. Functions, duties and powers exercised under the legislation are to be exercised in a manner consistent with both. In our view, both can be reconciled where international agreements support Māori and other indigenous views on the way biodiversity should be managed.

Figure 1: Te Hā o Tangaroa Kia ora Ai Tāua

Consistency of New Zealand's fisheries regime with the Convention

32. The purpose and principles of New Zealand's fisheries legislation and its sustainable utilisation focus is consistent with the objectives of the Convention relating to the conservation of biological diversity and sustainable use of its components.

33. Conservation of aquatic biodiversity and sustainable use of its components can be achieved in various ways and using various tools. Implementation should remain flexible and not prescriptive – enabling Parties to the Convention to implement them in a way that is appropriate to their culture, economy and regulatory framework.

34. The key here is to identify the outcomes to be achieved and not require them to be achieved through a particular management regime or tool. For example, Aichi Target 6 supports this approaching in stating:

    By 2020 all fish and invertebrate stocks and aquatic plans are managed and harvested sustainably, legally and applying ecosystem-based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.

35. Progress has been made to achieve these outcomes in New Zealand, particularly through:
    a. The setting of catch limits for commercial fisheries under the Quota Management System, managed through a Total Allowable Commercial Catch (TACC). Management of fish stocks is adaptive and catch limits are reviewed and adjusted to ensure they are sustainable. In addition, the allocation to Iwi of quota under the QMS enables Māori to exercise the commercial aspects of their customary fishing right
    b. Establishment of a regime to enable management of customary non-commercial fishing by kaitiaki[6]. This enables Iwi and hapū and whanau to exercise the non-commercial aspects of their customary fishing right.
    c. Development of National Plans of Action and Threat Management Plans for key species with which fisheries interact
    d. Development of measures to mitigate the effects of fishing on biodiversity, such as sea lion exclusion devices, measures to avoid seabird captures and initiatives to develop new net technologies that are being developed to better avoid unwanted catch.

36. We acknowledge there is more to do –for example to identify the significant fisheries habitats that should be protected from any adverse effects of fishing. While there is more to do to improve and strengthen our fisheries management regime, the fundamentals of the regime are sound and make it fit for purpose. The emphasis needs to be on improving implementation.

[6] Kaitiaki are appointed through Iwi, hapū (sub-tribes) and whanau (extended families) to manage customary non-commercial fishing.

What do we mean by marine protected areas (MPAs) and what is their purpose?

37. The requirement to protect aquatic biodiversity from fisheries effects is integrated through New Zealand's fisheries management system.

38. The obligations under the Convention as they relate to protection of the marine environment are specified broadly, in the knowledge that systems for management of the marine environment, including fisheries vary greatly across jurisdictions: from inadequate to sophisticated. The current Convention defines "protected area" as "a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives". This definition is quite capable of being applied to manage the effects of fishing under New Zealand's fisheries legislation and in fact can be said to have been applied already. The whole of the Exclusive Economic Zone is subject to the fisheries legislation. Fish stocks are managed within quota management areas and fishing activity is subject to the environmental principles referred to earlier. Conservation objectives are achievable through various measures, such as catch limits and measures to manage the effects of fishing on other forms of aquatic biodiversity.

39. It is not clear at this stage what form the new global framework will take and we understand various suggestions have been made by the Parties from adopting the Aichi Targets to measures such as full protection of 30% of all habitat types on land and sea by 2030.

40. One of the problems emerging with the language of "marine protected areas" (MPAs), is defining what is to be protected, the risks to be managed and the appropriate management response. In New Zealand and internationally there is a push from NGOs for the designation of MPAs in increasing percentages of the ocean. The approach of setting area-based targets is reflected in Aichi Target 11, which states:

    By 2020, at least 17 percent of terrestrial and inland water, and 10 percent of coastal and marine areas, especially of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures and integrated into the wider landscapes and seascapes.

41. The "*Quick Guide to the Aichi Biodiversity Targets*", in relation to Target 11, states that "*the protected areas can include not only strict protected areas but also protected areas that allow sustainable use consistent with the protection of species, habitats and ecosystem processes*". This statement envisages use of resources where harvested species are managed sustainably, the risks posed by harvest on other species are well managed, and underlying ecosystems on which they depend continue to function. However, while the target appears to recognise these matters, the creation of thresholds such as 10% (or 30%) is not helpful if we are to develop a fully integrated system of management that ensures the effects of all activities on marine biodiversity are addressed.

42. In the New Zealand situation, the 10% target for protection of coastal marine areas is included in the current New Zealand Biodiversity Strategy. The approach being taken by previous governments to implementing marine protection initiatives, for example through the existing marine protected areas (MPA) policy and proposed Kermadec Sanctuary, treats marine protection as something distinct from the protection that may be applied through activity focussed management regimes. It applies protection tools without any deliberate process to explore the risks to biodiversity of different activities that occur in the areas concerned, or to consider appropriate tools to address those threats.

43. Thus, there is potential for a new framework for the Convention to deliver large permanent MPAs, without considering how they contribute to the management of resources such as fisheries, both in areas under the jurisdiction of States and on the High Seas. This approach also effectively reduces the area in which fisheries may be accessed, so that future catch limits are reduced beyond what is necessary to achieve sustainable use.

44. In relation to aquatic biodiversity on the High Seas and the proposed legal instrument for Biodiversity Beyond National Jurisdiction (BBNJ), a risk-based approach in light of the effects of fishing (or any other activity) should be taken to determine what level of protection is appropriate and under what conditions that may change. For example, under the South Pacific Regional Fisheries Management Organisation (SPRFMO), the approach to identification of areas that can and cannot be fished is negotiable over time, depending on the level of information that is available. In this regard, environmental assessment processes and implementation of area-based management approaches form part of an adaptive approach to managing large areas of ocean for which there may be little information.

45. Finally, the Fisheries Settlement means there is a broad principle that 20% of all national commercial fishing rights allocated to New Zealand should be made available to Māori. Once a national limit is established, 20% would transfer to Te Ohu Kaimoana for allocation to Iwi. New Zealand can only control our fishing activities on the High Seas via our fisheries legislation, so it is an important consideration for underpinning our position on the Convention targets as they may relate to the High Seas.

46. As noted earlier, providing the use of marine protection initiatives is intended to meet the objectives of the Convention, the way they are used should remain flexible and not prescriptive. For this reason, we do not favour including percentage thresholds as a strict requirement – particularly given the move to continually increase the percentage of MPAs in areas of the world that lack a legal framework based on rights and responsibilities.

47. The overall approach that has been taken and its implications are echoed in the findings of an international study commissioned by Te Ohu Kaimoana to analyse the impact of MPAs on Māori property rights in fisheries. The study begins with an overview of the international literature followed by a closer look at the situation in New Zealand. While a final paper has yet to be published, key findings based on the review of the international literature are summarised below:

a. **MPA definition**: vagueness and variation in MPA definition and goals makes critical analysis of their objectives and impacts on national constituent groups, where actual policy must take place, extremely difficult. It also hinders the design of alternative approaches, if warranted, to achieve reasonable biological goals.

b. **Durability of MPAs**: Although MPAs are called for by members of broad international organisations, such as UN agencies and worldwide NGOs to provide global public goods, they must be designed and implemented at the country level, affecting country citizens, budgets and use of natural resources. Advocates have general policy objectives that they promote, but they typically do not bear direct private costs from the restrictions imposed. By contrast, those who will bear the costs of implementation, with unclear benefits, will have very different objectives and incentives in mind. This does not bode well for long-term political durability of MPAs or of the economic and social returns from national marine resources affected.

c. **Criteria for establishment of MPAs**: there are no generally-understood criteria for the establishment of MPAs. Some may be pre-emptive, inserted into areas of partially pristine ecosystem conditions, whereas other are opportunistically created by advocates in areas of little current human exploitation or constituent involvement or reaction. The lack of specificity in criteria definition makes it difficult to evaluate the effects of any MPA on later human populations. Positive predicted outcomes are not based on rigorous trade-off analysis.

d. **Cost benefit and trade-off analyses**: Cost-benefit analyses of MPAs to assess trade-offs, particularly as they include precluded or restricted human activities, such as fishing or mining, are very rare in the literature. The absence of trade-off analyses is often justified in that ecosystem values are difficult to assess without extensive data and that in principle, they should not be valued in economic terms because they involve non-human values. However, there are longstanding established methods for valuing non-traded resources in economics. Polices are long-lasting when costs and benefits are distributed proportionately amongst parties. If not, those who bear more costs than benefits are made worse off and will resist, and those that bear more benefits than costs will promote.

e. **Integration with national laws and indigenous rights**: MPA proposals generally are presented in isolation of national policies and legal obligations. Nevertheless, they involve costs and potential benefits and hence, must be weighed in light of them along with other national objectives and responsibilities. For example, fishing communities and especially those with indigenous populations, often perform poorly relative to the national socio-economic criteria. Indigenous populations also have treaty guarantees that may be compromised. If MPAs inflict added costs, then these outcomes would be inconsistent with other policies. The practices of indigenous and other local parties can be an alternative to MPAs, achieving more ecosystem goals at lower cost. They are locally-based and understood, whereas MPAs typically are top-down initiatives.

f. **Compensation:** compensation to resource users affected by no-take MPAs or highly restricted access regulations is extremely rare. One rare example exists of compensation to fishers adversely affected by the Great Barrier Reef MPA re-zoning in Australia in 2004. Tourism benefits are estimated in total to be around thirty-six times greater than commercial fishing however it is important to underscore that the tourism benefits do not necessarily accrue to fishers or their communities. Distributional effects must be addressed in any cost-benefit analysis.

g. **Baseline assumptions**: the baseline alternative for MPAs is not defined. When open access and the race to fish dominates, then short time horizons prevail with excess labour and capital devoted to the fishery, low profitability, depleted targets stocks, high levels of bycatch, and little ecosystem preservation. MPA discussions typically point to these conditions as the source of human degradation of biological systems and justification for MPAs. But open access or traditional regulatory practices are being replaced by local, rights-based systems that result in different incentives for resource use. Alternatives to achieve agreed-upon ecological goals using rights-based systems are timely, less contentious and more effective. [7]

48. In relation to the New Zealand situation, the authors conclude that MPA proposals – in particular the proposed Kermadec Ocean Sanctuary in a large area within New Zealand's exclusive economic zone, are motivated by NGOs and political officials who seek to promote New Zealand as a leader in ocean conservation. However, there was little attention to programme evaluation in planning or in implementation and underlying causal mechanisms between establishment of the Sanctuary and claimed outcomes remain unclear. In addition, they conclude the proposal appears to violate the Fisheries Settlement, erode the security of fishing rights which could have ripple effects in the broader fisheries management regime – undermining incentives for marine stewardship, and eventually create the exact environmental and social problems that MPAs are intended to avoid. Finally, involving Māori and other resource users in collaborating on solutions rather than casting them as adversaries, draws upon their unique local, long-standing understanding of the resource and how to protect it. [8]

49. In summary, we consider the level of protection required needs to be integrated through the regimes that manage different activities that have an adverse effect on biodiversity. In New Zealand, our approach to marine protection from fisheries effects needs to be focussed within our fisheries regime so that measures to protect aquatic biodiversity from fishing are properly assessed in terms of their ability to manage threats and risks. We recommend that the new framework for implementing the Convention does not limit but instead supports our ability to do so. We would be concerned if the Convention was to

[7] 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

[8] Ibid: Output 2: An Analysis of Ecosystem-Based Management and Marine Protected Areas in New Zealand with Application to the Proposed Kermadec Sanctuary.

be used to impose no-take MPAs or to subvert the consultation obligations under the Fisheries Settlement and indeed the United Nations Declaration on the Rights of Indigenous Peoples.

50. The inclusion of an arbitrary percentage target such as 10% needs to be reconsidered both in the New Zealand revised strategy and during the negotiations to update the Convention itself. This type of target approach creates perverse incentives for States to find the easiest ways to achieve it, in some cases designating large areas that do not need further protection as no-take areas, just to meet the target. This approach can also mean that areas containing biodiversity that is at risk do not receive the attention and management they need. By integrating marine protection across management regimes in this way, the objectives for marine protection become clear, monitoring programmes can be put in place, and corrections made along the way.

Building on our rights-based approach to fisheries

51. Building on the rights-based approach to fisheries management in New Zealand, will create the incentive for rights holders take responsibility for managing the effects of fishing on marine biodiversity. This is much more effective than the stark alternative of open-access fisheries regimes.

52. As findings from our international study suggest, rights-based systems result in different incentives for resource use than open access or traditional regulatory systems, and these can respond to problems in a timelier and more effective way. Another approach available under the Fisheries Act 1996 is the use of Fisheries Plans, which provide the basis for rights holders to take responsibility for managing fisheries and the effects of fishing on the aquatic environment – including biodiversity. We consider priority also needs to be given to promoting this approach as part of a marine biodiversity strategy in New Zealand, supported by the new global biodiversity framework**.**

53. In this regard, Aichi Target 3 supports the evolution of such approaches:

By 2020, at the latest, incentives, including subsidies, harmful to biodiversity, are eliminated, phased out or reformed in order to minimise or avoid negative impacts and positive incentives for the conservation and sustainable use of biodiversity are developed and applied, consistent and in harmony with the Convention and other relevant international obligations, taking into account national socio-economic conditions.

54. We note that in New Zealand no subsidies are provided to the commercial sector, which is in fact levied to pay for the services that benefit them. This includes fisheries stock assessments and measures to avoid, remedy or mitigate the effects of fishing on the aquatic environment including marine biodiversity. In addition, the introduction of species into the Quota Management System (QMS) and the allocation of Individual Transferrable Quota (ITQ) creates the incentives required for quota holders to take

responsibility for the sustainable use of biodiversity, including fisheries resources and the ecosystems of which they are a part. As already discussed, the commercial aspect of Māori fishing rights is woven through this system.

55. The new global framework for the Convention needs to enable States to achieve outcomes in different ways where their legislative framework provides for rights and responsibilities rather than top-down centralised prescription.

Managing the effects of other activities on fisheries and aquatic biodiversity

56. The position we have taken in relation to New Zealand's management regime is: where non-fishing activities affect marine biodiversity, including habitats described earlier, action should be taken under the regimes that manage those activities. A clear example is the need for authorities who manage land-use to control activities on land that affect fisheries resources and associated aquatic biodiversity.

57. The Fisheries Settlement affirmed Māori rights and interests in both marine and freshwater fisheries. Further, the connections through whakapapa[9] between Māori and ecosystems in their rohe[10] extend through our rivers and encompass the freshwater taonga that inhabit them. Various land-use practices that adversely affect the biodiversity of freshwater ecosystems flow downstream, ultimately affecting marine ecosystems and negatively affecting the rights and interests of communities and Māori. The integration of management regimes needs to account for the connection between terrestrial, freshwater, and marine environments and the connections these environments share with people. In New Zealand, solutions under the relevant legislation need to be deployed in appropriate ways that target relevant threats. For example, action needs to be taken on land to address sediments and nutrients that adversely affect marine biodiversity.

58. In this regard we note that Aichi Target 8 states:

    By 2020, pollution, including from excess nutrients, has been brought to levels that are not detrimental to ecosystem function and biodiversity.

    While New Zealand still faces challenges in addressing this issue, it remains a priority – particularly given its effect on our inshore fisheries.

[9] Genealogy
[10] Geographical area of authority