

Departmental Disclosure Statement

Hauraki Gulf / Tīkapa Moana Marine Protection Bill 2023

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Conservation.

The Department of Conservation certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 August 2023.

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	6
Part Three: Testing of Legislative Content.....	10
Part Four: Significant Legislative Features	13

Part One: General Policy Statement

General Policy Statement

The Bill establishes the following marine protected areas in the Hauraki Gulf:

- 2 marine reserves;
- 5 seafloor protection areas; and
- 12 high protection areas.

Background

This Bill seeks to address the ongoing environmental decline of the Hauraki Gulf / Tīkapa Moana (the **Gulf**) due to human activities, as described in consecutive “State of our Gulf” reports.¹ Pressures from harvesting and utilisation activities, land-based activities (such as pollution and sedimentation), and climate change have contributed to a decline in coastal and marine biodiversity. Those issues are manifesting in the increasing prevalence of ecosystem changes such as kina barrens, habitat loss, and localised fisheries depletion.

New Zealand and international experts consider area-based marine protection to be one of the most effective methods for protecting marine life. At present the Gulf has 6 marine reserves and 4 cable protection zones (**CPZs**), which are recognised as Type 2 marine protected areas.²

The Bill creates 2 new marine reserves as extensions to existing marine reserves, 12 high-protection areas (**HPAs**), and 5 seafloor protection areas (**SPAs**). Those areas will increase protection almost threefold from 6.7% to just over 18% of the Gulf (including the CPZs). Together they will create a more effective network of marine protection. This will result in positive biodiversity outcomes and contribute to the goal of restoring the overall health and mauri of the Gulf.

The development of those marine protection areas was initiated in the 2017 *Sea Change – Tai Timu Tai Pari: Hauraki Gulf Marine Spatial Plan* (the **Sea Change plan**). This is a non-statutory marine spatial plan for the Gulf developed by an independently formed stakeholder working group.

In response to the Sea Change plan, in 2021 the Government released *Revitalising the Gulf: Government action on the Sea Change Plan* (**Revitalising the Gulf**). The marine protection areas proposed in Revitalising the Gulf were based on those proposed in the Sea Change plan. A ministerial advisory committee provided independent advice on the proposals.

In establishing those marine protection areas, the Government recognises rights and interests of Māori provided for by the Treaty of Waitangi (Fisheries Claims) Settlement

¹ Every 3 years, the Hauraki Gulf Forum, established under the Hauraki Gulf Marine Park Act 2000, produces a report on the state of the Hauraki Gulf environment and the initiatives by agencies for its protection and enhancement. See <https://gulfjournal.org.nz/state-of-the-gulf/>

² These are protected areas established outside the Marine Reserves Act 1971 that provide enough protection from the adverse effects of activities, including fishing, to meet the Marine Protected Areas Protection Standard. That standard is that the marine protected area enables the maintenance or recovery of the site’s biological diversity at the habitat and ecosystem level to a healthy functioning state.

Act 1992 and the Marine and Coastal Area (Takutai Moana) Act 2011. The HPAs and SPAs will not affect an applicant group's ability to obtain recognition of protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011. The HPAs and SPAs will also not affect the exercise of protected customary rights or rights held by a customary marine title group under that Act.

Marine Reserves

New marine reserves are being established as extensions to the existing Cape Rodney–Okakari Point Marine Reserve and the Whanganui A Hei (Cathedral Cove) Marine Reserve. Marine reserves are a very effective way of protecting marine life and habitats. They are strictly “no take”, including marine life, shells, rocks, and driftwood.

They also provide control sites for understanding the impact of fishing elsewhere, and for measuring changes in the marine environment over time.

Once established, the marine reserves will be treated as if they were declared by an Order in Council made under section 4(1) of the Marine Reserves Act 1971.

Although this Bill will establish new marine reserves adjacent to the existing marine reserves, they are in effect extensions of the existing marine reserves, and subject to the same rules and provisions as the existing marine reserves. They are also subject to the same compliance and enforcement regime.

High protection areas and seafloor protection areas

The purpose of HPAs is to protect, restore, and enhance biodiversity within the HPAs. A range of activities will be prohibited in HPAs, including commercial and recreational fishing, large-scale removal of non-living materials such as sand, stone, and driftwood, and the dumping or discharge of waste, sewage, or litter that will have a more than minor adverse impact on aquatic life.

Customary fishing will be allowed in HPAs, provided the customary fishing aligns with the biodiversity objectives for a site, and is authorised through the existing customary fisheries framework under the Fisheries Act 1996.

The purpose of SPAs is to maintain and restore benthic habitats within the SPAs. Activities prohibited in SPAs include trawling that makes contact with the seabed, dredging, and Danish seining fishing methods. Dumping, depositing, or discharging waste or other matter that is likely to have an adverse effect on aquatic life is prohibited. Sand extraction, mining, and aquaculture are also prohibited. There will be additional prohibitions on set netting, potting, and bottom longlining in the SPA around the Mokohīnau Islands. Fishing methods and activities that are not harmful to sea-floor habitats, such as spear fishing and line fishing, are permitted in the SPAs.

Customary fishing in high protection areas and seafloor protection areas

In HPAs, traditional non-commercial food gathering (customary fishing) will continue to be exercised under regulations made under section 186 of the Fisheries Act 1996, regulations made under section 297 of the Fisheries Act 1996 made for the purpose of section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or subpart 5 of Part 2 of the Fisheries (Amateur Fishing) Regulations 2013.

Those activities can only occur if the fishing activity is not contrary to any restrictions determined by the biodiversity objectives for the site. The biodiversity objectives for HPAs will be agreed with Māori and provided for through regulations.

In SPAs, customary fishing using methods prohibited in those areas cannot occur (for example, trawling that makes contact with the seabed, Danish seining, or dredging). Customary fishing using any other method can occur in those areas.

Prohibitions

A technical analysis determined what activities have the greatest impact on the seafloor. These activities are prohibited in SPAs.

The prohibitions in HPAs are more extensive than SPAs and reflect the purpose of these areas, which is to protect, restore, and enhance biodiversity.

The prohibitions for both SPAs and HPAs do not prohibit ship passage, tourism operations, or non-fishing recreational activities (unless these activities have a more than minor adverse effect on aquatic life).

Exemptions to prohibitions

Feedback received during engagement highlighted the need for some exemptions to prohibitions to allow for activities related to customary practices, emergencies, bio-security threats, shipping, etc.

Compliance and enforcement for high protection areas and seafloor protection areas

The marine reserves will be subject to the compliance and enforcement regime, including the offences and penalties system, in the Marine Reserves Act 1971.

The HPAs and SPAs will have an offences and penalties system modelled on the Marine Reserves Act 1971 but updated to include a corporate liability clause and to be more aligned with modern conservation legislation.

The Bill provides for powers of rangers in HPAs and SPAs modelled on the Marine Reserves Act 1971.

Permitting regime

This Bill provides for the issuing of permits for otherwise prohibited or regulated activities in HPAs and SPAs. Instances where permits may be appropriate include for undertaking mātauranga Māori activities or scientific study, active restoration, or maintenance of existing infrastructure.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Sea Change – Tai Timu Tai Pari: Hauraki Gulf Marine Spatial Plan</i>, Sea Change Stakeholder Working Group, April 2017 (accessible on The Hauraki Gulf Forum website here: https://gulffjournal.org.nz/wp-content/uploads/2022/01/5086-SCTTTP-Marine-Spatial-Plan-WR.pdf).</p> <p><i>Revitalising the Gulf: Government action on the Sea Change Plan</i>, Department of Conservation, June 2021 (accessible at https://www.doc.govt.nz/globalassets/documents/our-work/sea-change/revitalising-the-gulf.pdf).</p> <p><i>Sea Change – Tai Timu Tai Pari Plan: Marine Protected Area (MPA) proposals</i>, Department of Conservation and Fisheries New Zealand, May 2021 (accessible at https://www.doc.govt.nz/globalassets/documents/our-work/sea-change/marine-protection-technical-document.pdf).</p> <p><i>State of the Gulf Environment Reports</i>, Hauraki Gulf Forum, every three years (accessible at https://gulffjournal.org.nz/state-of-the-gulf/).</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--------------------------------------------------------------------------------------------------------------	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement: Marine protection proposals from Revitalising the Gulf: Government action on the Sea Change Plan</i>, Department of Conservation, December 2022 (this will be available online at https://www.doc.govt.nz/our-work/revitalising-the-gulf/).</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIS did not meet the threshold for independent RIA Team assessment.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------

The RIS outlined the preferred option for defining customary practices that can still occur within the High Protection Areas (HPAs). The preferred option was to “define customary practices broadly according to the traditions and values important to Hauraki Gulf mana whenua, explicitly providing for non-commercial customary practices, and explicitly excluding commercial and recreational fishing activities”.

Cabinet subsequently agreed that:

- the Bill will not impact on ‘protected customary rights’ (PCRs) as defined in the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act), nor will it impact on any applications under the Takutai Moana Act;
- fishing customary practices could continue within HPAs under existing customary fishing regulations; and
- non-fishing customary practices can continue within HPAs, including small scale removal of natural materials such as shells and stones.

Cabinet did not agree to a specific definition of non-fishing customary practices (in line with mana whenua feedback, which strongly opposed an exhaustive definition in legislation). The Bill gives effect to this direction by not defining customary practices.

It is possible that certain practices that some iwi might consider ‘customary practices’ are prohibited by the Bill, if they are the same as an activity that will be explicitly prohibited by the Bill. This risk is considered to be low, given the allowance for PCRs, customary fishing, and the provision for small-scale removal of natural material (such as the removal of stones for hāngī) in the Bill. Activities not explicitly prohibited will still be allowed, such as the launching of waka.

The RIS did not address a compliance and enforcement regime, a permitting regime, a review clause or a Te Tiriti o Waitangi provision.

Compliance and enforcement regime

The RIS covered the role of agencies regarding compliance and enforcement in High Protection Areas but not the details of a compliance and enforcement regime.

The compliance and enforcement regime in this Bill includes an offences and penalties system similar to that in the Marine Reserves Act but updated to include a corporate liability clause and to be more aligned with modern conservation legislation e.g., the Bill includes a mens rea element for imprisonment terms (as opposed to strict liability).

The Bill includes provisions for the power of rangers that are modelled on the Marine Reserves Act and include the following powers:

- to order a person thought to be or about to commit an offence under the Bill to refrain from the prohibited activity;
- to stop a person who is/has committed an offence against the Bill;
- to require information from someone thought to have committed an offence, or for the purpose of monitoring compliance with the Bill; and
- to seize property, aquatic life and natural materials, or proceeds from the sale of aquatic life or natural materials related to the offence undertaken.

These powers are subject to Part 4 (excluding subpart 3) of the Search and Surveillance Act 2012.

The Bill includes provisions for Court ordered forfeiture of property, aquatic life and natural materials, or proceeds from the sale of aquatic life or natural materials related to the offence undertaken, for all offences.

Permitting regime

The Bill will include a permitting regime whereby the Director-General of the Department of Conservation can grant (and change, review, revoke and transfer) permits for otherwise prohibited activities.

The Bill specifies that the Director-General must consider the following matters when making a decision on a permit application:

- the anticipated effects of the activity on the seafloor protection areas (SPA) or high protection area (HPA) and the biodiversity objectives;
- the anticipated effects of the activity on the rights and interests on whānau, hapū, and iwi who exercise kaitiakitanga in the area;
- if the anticipated effects are negative, reasons why the activity is necessary and can only occur within the SPA or HPA area; and
- any measures that can be undertaken to avoid, remedy, or mitigate any adverse effects of the activity.

25-year review clause

The Bill includes a 25-year review clause, requiring a review of the HPAs and SPAs. The review is to be carried out by the Minister of Conservation and the Minister responsible for the administration of the Fisheries Act 1996.

The review will assess the operation, effectiveness, and management of the marine protection. The review would require interested persons (including whānau, hapū, and iwi that exercise kaitiakitanga in the area) to make a submission. This is in line with review clauses found in other marine protection legislation e.g., the Kaikōura (Te Tai o Marokura) Marine Management Act 2014, Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

Inclusion of a Tiriti o Waitangi/Treaty of Waitangi (Treaty) provision

The Bill includes a Treaty clause similar to section 4 of the Conservation Act: This Act must be interpreted and administered as to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
<p>An Economic Impact Assessment was carried out to inform impact analysis for the proposals. Stage 1 of the assessment, which is a commercial fishing report, was included in the RIS. Stage 2, which is a recreational fishing and wellbeing report was finalised following the RIS but early findings informed the RIS.</p> <p>A further RIS was developed for regulations on infringement offences. This RIS did not inform the policy in the Bill, only associated regulations:</p> <p><i>Regulatory Impact Statement: infringement offences regulations associated with the Hauraki Gulf Marine Protection Bill 2023</i>, Department of Conservation, July 2023</p> <p>(this will be available online at https://www.doc.govt.nz/our-work/revitalising-the-gulf)</p>	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The RIS provides an analysis on costs and benefits of the policy that is given effect by this Bill. To inform the Regulatory Impact Assessment, the following Economic Impact Assessments were carried out:</p> <ul style="list-style-type: none"> • <i>Revitalising the Gulf: Stage 1 – Impact of the marine protection proposals on commercial fishers</i>, Martin Jenkins, August 2022 (accessible at https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/2022/revitalising-the-gulf-2223/revitalise-gulf-commercial-fishers-report.pdf) • <i>Revitalising the Gulf: Stage 2: Economic Impact Assessment of the marine protection proposals</i>, Martin Jenkins, December 2022 (accessible at https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2022-consultations/help-revitalise-hauraki-gulf/) <p>The Stage 1 report shows that commercial fishing in the proposed protection areas accounted for 2.0%-3.5% of the total revenue generated by permit holders across all quota management areas that include some or all of the Hauraki Gulf.</p> <p>The impact on individual permit holders varies greatly as fishing activity in the proposed protected areas represents between 0.05% and 53.8% of permit holders' total fishing activity in New Zealand's exclusive economic zone. For the majority of these fishers, catch from the proposed protected areas represents <10% of their total catch. Some permit holders will be disproportionately impacted by the restrictions imposed by the proposed marine protection.</p> <p>The Stage 2 report shows that the total impact on national Gross Domestic Product (GDP) is estimated to range from \$4.2 – \$4.9m and \$0.4m – \$0.6m for the October and April fishing years respectively. However, this assumes that none of the lost catch is recoverable from a transfer of commercial fishing activity to areas outside of the proposed protection areas.</p> <p>The ability of commercial fishers to transfer their fishing effort to other areas will vary and depends on factors such as personal and financial circumstances, the nature and dynamics of the fishery, other government policy interventions, and ongoing fisheries management decisions.</p> <p>Limited data is available on recreational fishing. The report estimates that around 9.58% of the recreational fishing vessels surveyed in the Hauraki Gulf were in areas that are being proposed as high protection areas.</p> <p>The wider impacts on wellbeing are not clear-cut and are interdependent in various ways. Impacts are perceived and therefore can be viewed as either positive or negative, depending on how people interact with the marine environment and their personal values.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Effective compliance of the marine protected areas proposed in this Bill is necessary for the benefits of these areas to be realised.</p> <p>The Bill stipulates the offences and penalties regime. This, alongside an infringement regime established through regulations, will allow for the enforcement activities to be applied effectively to encourage compliance.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

A key international obligation related to this Bill are commitments under the Convention on Biological Diversity (CBD) including new global targets developed under the Kunming-Montreal Global Biodiversity Framework.

New Zealand gives effect to international conventions including the *International Convention for the Prevention of Pollution from Ships (MARPOL)* and the *London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972* to regulate shipping activities. Any deviation from these agreements to how ships are managed need to be justified at international fora based on environmental effects and outcomes. The environmental impacts of allowing all shipping activities to continue in these protection areas are expected to be minimal and therefore do not justify moving away from international conventions. As such, normal shipping activities are exempted from prohibitions under this Bill.

Under the United Nations Convention on the Law of the Sea (UNCLOS), domestic regulations cannot apply to ships with immunities under Article 32. This includes immunities for foreign warships or governmental ships. These immunities are specified in this Bill as there is no overarching Act to account for this.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Multiple rounds of consultation have been carried out with mana whenua during policy development. The feedback was taken into account when developing the policies.

Te Arawhiti and Te Puni Kōkiri were consulted and provided advice throughout the process of developing the Bill.

The Treaty Provisions Oversight Group, led out of Te Arawhiti, provided advice on the Treaty Clause to be included in the Bill. The Bill recognises Māori rights and interests provided for by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Marine and Coastal Area (Takutai Moana) Act 2011 in establishing these protection areas. The HPAs and SPAs will not impact on the ability for an application group to obtain recognition of protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act.

The HPAs and SPAs will also not impact on the exercise of protected customary rights or rights held by a customary marine title group under the Marine and Coastal Area (Takutai Moana) Act. Not all protected customary rights or rights held by a customary marine title group under the Takutai Moana Act can be exercised in the marine reserves. Any activities prohibited in a marine reserve through the Marine Reserves Act would not be able to be carried out as a protected customary right.

In HPAs, customary fishing will continue to be exercised under regulations made under section 186 of the Fisheries Act 1996, regulations made under section 297 of the Fisheries Act made for the purpose of section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act, or Subpart 5 of Part 2 of the Fisheries (Amateur Fishing) Regulations 2013. These activities can only occur where that fishing activity is not contrary to any restrictions determined by the biodiversity objectives for the site. The biodiversity objectives for HPAs will be agreed with Māori and provided for through regulations.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
The Ministry of Justice concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act 1990.	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill provides for the following offences, penalties and forfeiture modelled off those in the Marine Reserves Act 1971, with appropriate updating:</p> <ul style="list-style-type: none"> • strict liability infringement offences covering all prohibited activities in SPAs and HPAs, and that these have a maximum fee of \$1,000 and no imprisonment; • strict liability criminal offences covering prohibited non-commercial activities in SPAs and HPAs, with a maximum fine of \$100,000 and no imprisonment, but an ability to impose community-based sentences; • strict liability criminal offences covering prohibited commercial activities in SPAs and HPAs, with a maximum fine of \$200,000 and no imprisonment, but an ability to impose community-based sentences; • mens rea criminal offences covering all prohibited activities in SPAs and HPAs, with a maximum fine of \$250,000 and maximum 3-month imprisonment term; • mens rea criminal offences for other offences, with a maximum fine of \$100,000 and maximum 3-month imprisonment term; and • a body corporate liability clause modelled on existing conservation legislation. 	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
All components of offences and penalties were reviewed and approved by the Ministry of Justice before inclusion in the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Officials undertook several rounds of engagement during 2020-2022.</p> <p><u>Engagement during 2019-2020</u></p> <p>Targeted engagement was carried out with mana whenua and stakeholders with significant interests during the development of the marine protection proposals.</p> <p><u>Engagement between October 2021 and April 2022</u></p> <p>Engagement was carried out with mana whenua to further explore how customary practices could be provided for within High Protection Areas. The marine protection proposals were updated based on the feedback.</p> <p><u>Targeted engagement September 2022 – November 2022</u></p> <p>The scope of the targeted engagement included:</p> <ul style="list-style-type: none"> - seeking feedback from key stakeholders (fishers, NGOs, councils etc) on how the protection proposals may impact them and their interests, - seeking feedback from mana whenua on the proposed approach to managing customary practices within High Protection Areas. <p>This involved a consultation webpage and an email address for submissions.</p> <p>Feedback was received from 11 fisheries stakeholder groups as well as several individual operators, 12 mana whenua groups and via 7,550 other submissions. These included more than 7,000 'form' submissions sponsored by four organisations, some were supportive of the marine protection while others opposed the marine protection or aspects of it e.g., the allowance of customary fishing in HPAs.</p> <p>Overall, there was strong support from mana whenua, stakeholders, and the public for improved marine protection. Mana whenua support was contingent on the recognition of their customary rights and interests within the HPAs. Many commercial and recreational fishers were not supportive of the marine protection.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
------------------------------------------------------------------------------------------------------------------------	-----------

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
------------------------------------------------------------------------------------------------------------	-----------

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
---------------------------------------------------------------------------------------------	-----------

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill will create strict liability offences. The Bill includes a clause which sets out defences for the strict liability.</p> <p>Proving mens rea in practice is difficult for environmental offences because it requires proof the offender had knowledge of a location, its legal status, and the rules applying in that location. Without strict liability offences, it would be difficult to enforce the prohibitions unless the alleged offender makes a confession or has been previously warned for repeat offences.</p> <p><i>Mitigation of potential adverse effects</i></p> <p>Two key measures have been taken to mitigate the potential adverse effects of the strict liability offence. These are:</p> <ul style="list-style-type: none">• inclusion of strict liability defence clause in the Bill• exclusion of imprisonment term for any strict liability offences. <p>The inclusion of a defence for strict liability is in line with other conservation legislation and guidance from the Ministry of Justice.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
-----------------------------------------------------------------------------------------	-----------

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill creates regulation-making powers for a range of purposes, including:	
<ul style="list-style-type: none">• providing for the marking of boundaries of high protection areas and seafloor protection areas, and the management of such areas;• providing for setting biodiversity objectives for seafloor protection and for high protection areas;• the regulation of activities (including customary fishing) to the extent necessary to give effect to the biodiversity objectives of high protection areas;• prescribing penalties for infringement offences• prescribing offences for the breach of the regulations;• prescribing infringement offences for the breach of the regulations; and• providing for anything incidental that is necessary for giving effect to the Act.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
--------------------------------------------------------------------------------------------------------------------------------	-----------