TE OHU KAIMOANA

Te Ohu Kaimoana response to the Offshore Renewable Energy Bill 2024

5 February 2025

Contents

We are Te Ohu Kaimoana

1. Te Ohu Kaimoana was established to protect and enhance the Māori Fisheries Settlements.[1] The Māori Fisheries Settlements, the Māori Fisheries Act 2004 (**MFA**) and the Māori Commercial Aquaculture Claims Settlement Act 2004 (**MCACSA**) are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi, particularly the guarantee that Māori would maintain tino rangatiratanga over our fisheries resources.

2. Te Ohu Kaimoana Kāhui structure is below as figure 1.

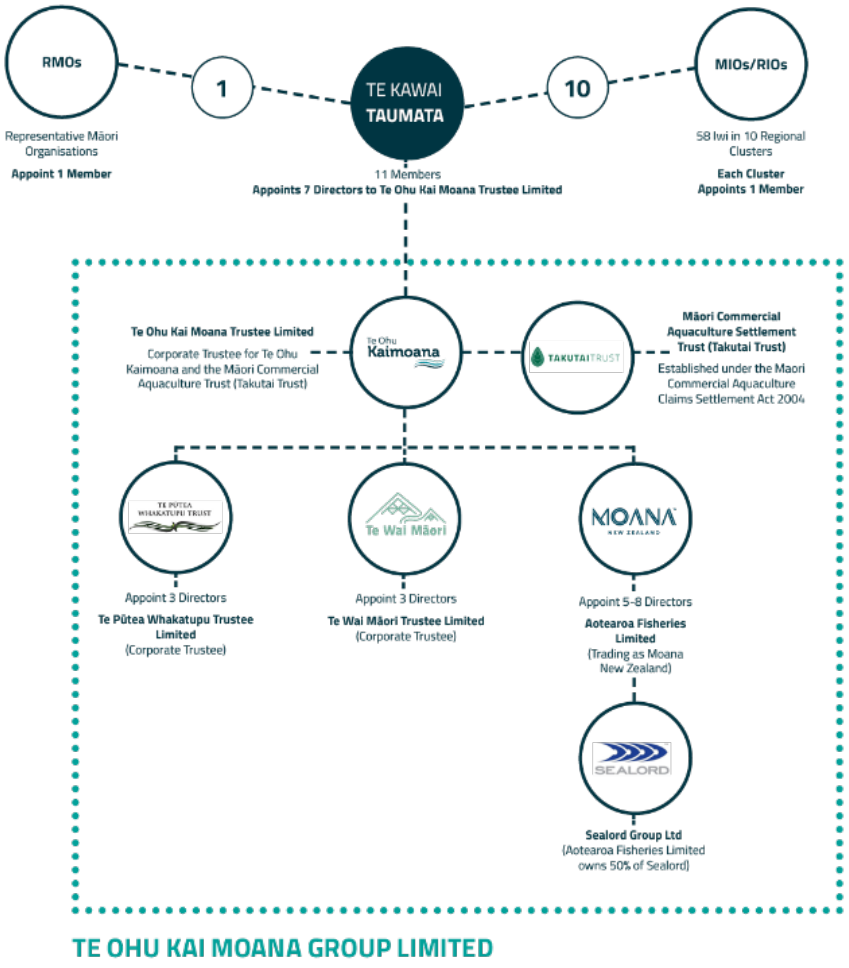

Figure 1: Te Ohu Kaimoana Kāhui structure

[1] The full framework of deeds and settlement legislation to give effect to the agreements between the Crown and Māori in the Fisheries Settlement involves: the (now repealed) Maori Fisheries Act 1989, the 1992 Fisheries Deed of Settlement, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (which also includes the customary fisheries management regulations given effect through Part 9 of the Fisheries Act 1996), the Māori Fisheries Act 2004, and the Māori Commercial Aquaculture Claims Settlement Act 2004.

3. The purpose of Te Ohu Kaimoana is to "advance the interests of iwi, individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to: [2]
    (a) ultimately benefit the members of Iwi and Māori generally;
    (b) further the agreements made in the Fisheries Deed of Settlement;
    (c) assist the Crown to discharge its obligations under the Fisheries Deed of Settlement and Te Tiriti o Waitangi/ Treaty of Waitangi; and
    (d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Fisheries Deed of Settlement".

4. The purpose of the Māori Aquaculture Settlement Trust (**Takutai Trust**) is to: [3]
    (a) receive settlement assets from the Crown or regional councils;
    (b) hold and maintain settlement assets on trust until they are transferred to an iwi aquaculture organisation;
    (c) allocate settlement assets to iwi on the basis of a model set out in the MCACSA;
    (d) facilitate steps by iwi to meet the requirements for the allocation of settlement assets; and
    (e) perform any functions that are necessary or desirable to facilitate consultation between the Crown and iwi aquaculture organisations, mandated iwi organisations, and recognised iwi organisations for the purposes of MCACSA.

5. We work on behalf of 58 Mandated Iwi Organisations (**MIO**), Recognised Iwi Organisations (**RIO**) and Iwi Aquaculture Organisations (**IAO**) who in turn represent iwi throughout Aotearoa. We work to protect their rights and interests and enable them to progress their aspirations within the moana.

[2] Māori Fisheries Act 2004, section 32.
[3] Māori Commercial Aquaculture Claims Settlement Act 2004, section 35.

Te Ohu Kaimoana's interest in the Bill

6. Our interest in the Offshore Renewable Energy Bill (the **Bill**) arises from our responsibility to protect the rights and interests of iwi in fisheries and aquaculture, in a manner that furthers the agreements in the Fisheries Deed of Settlement (the **Deed**), the Māori Fisheries Settlements, and assists the Crown to discharge its obligations under these, Te Tiriti o Waitangi (**Te Tiriti**) and the Treaty of Waitangi (the **Treaty**).

7. Te Tiriti guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is Māori acting with authority and independence over their own affairs. It is practiced through living according to tikanga and mātauranga Māori, and striving wherever possible to ensure that the homes, land, and resources (including fisheries) guaranteed to Māori under Te Tiriti are protected for the use and enjoyment of future generations.

8. There is a special relationship that iwi, hapū and whānau have with the moana, including speaking to the interdependent relationship with Tangaroa to ensure the health and well-being of Tangaroa. This expression underpins our purpose, policy principles and leads our kōrero to ensure the sustainability of Tangaroa's kete for today and our mokopuna yet to come. It is important that the Government understands the continuing importance of Tangaroa and recognises the tūhonotanga that Māori hold as his uri. In a contemporary context, the Māori Fisheries Settlements are expressions of this interdependent relationship.

9. Iwi/hapū rights are an extension of their kaitiaki responsibility, a responsibility to use the resources in a way that provides for social, cultural and economic well-being, and in a way that is not to the detriment of Tangaroa or other children of Tangaroa. It speaks to striking an appropriate balance between people and those we share the environment with. Management and protection of fisheries, freshwater and marine aquaculture resources are some elements of this reciprocal relationship.

10. For Te Ohu Kaimoana, our key concern with the Bill is to ensure that it protects and upholds the commitments made by the Crown to Iwi in the Māori Fisheries Settlements, as well as the over-arching commitments set out in both Te Tiriti and the Treaty.

This is our response to the Bill

11. Thank you for providing us with the opportunity to comment on the Bill. This document provides Te Ohu Kaimoana's response to the Bill.

12. Our approach to this response is derived from the context of Te Ohu Kaimoana's role in the Māori Fisheries Settlements.[1]

13. To support this response, we also wish to present our views kanohi ki te kanohi to the Transport and Infrastructure Select Committee.

    (a) Our response is structured in the following way:

        - Te Ohu Kaimoana's position on the Bill
        - Te Tiriti and its principles
        - Impacts to the Māori Fisheries Settlements
            - Undue adverse effects testing
        - Future consenting consistency
            - How offshore renewable energy is consented
            - Transparency of Ministerial decision-making
        - Limitations of engagement
            - Application rounds engagement
            - Engagement and dispute resolution with the applicant
        - Environmental impacts of offshore renewable energy
            - Decommissioning of offshore renewable energy infrastructure
            - Ecological impacts and monitoring plans

14. We do not intend for our response to conflict with, or override, any response provided independently by Iwi. Our responsibilities as the trustee of the two settlements referred to above are separate and distinct but complementary to those of iwi and hapū who hold mana whenua and mana moana and are beneficiaries of the Māori Fisheries Settlements through their MIO, RIO and IAO.

Mauri ora,

Graeme Hastilow

Te Mātārae | Chief Executive

Te Ohu Kai Moana Trustee Limited

Te Ohu Kaimoana's position on the Bill

15. Te Ohu Kaimoana does not support the Bill in its current form; however, we consider many of our concerns could be addressed through constructive discussion with officials and the inclusion of a Te Tiriti o Waitangi clause. We have outlined our rationale and recommendations in the sections below.

16. Te Ohu Kaimoana has been explicitly recognised as a Treaty Settlement Entity within the Bill[4] and we are best equipped to identify potential implications to the Māori Fisheries Settlements. We expect that officials will be in contact to co-develop amendments to the Bill, which we have outlined within this response, that would ensure the Māori Fisheries Settlements are upheld.

Te Tiriti o Waitangi and its principles

17. The Bill does not refer to Te Tiriti and its principles. Moreover, Te Tiriti does not form part of the criteria that the Minister for Energy needs to consider when granting permits under the Bill. This is a concern for Te Ohu Kaimoana and the MIO, IAO and RIO it represents who have Te Tiriti rights and interests that may be impacted by the operation of this Bill and do not fit under the scope of section 6. Te Tiriti and its principles should be explicitly referenced and considered in the permitting decision stages.

18. Additionally, clause 6, as currently written, does not provide for the consideration of Māori customary rights and interests that are not recognised by a legislative regime. Māori customary rights and interests exist regardless of whether they are explicitly recognised by a legislative regime. Consideration of these rights and interests being determined by legislative recognition creates a double and unfair standard of consideration between rights and interests that have been legislatively recognised and those that haven't. This is exacerbated when we consider some applications for customary marine title or rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) that have been heard, granted, and some are still waiting in the cue to be heard (through no fault of their own).

19. In light of the issues outlined above, we recommend section 6 is amended in the following way to rectify this issue:

6 Obligations relating to Te Tiriti o Waitangi and customary rights

(1) All persons performing and exercising functions, duties, and powers under this Act must act in a manner that is consistent with—

(a) Te Tiriti o Waitangi and its principles; and

[4] Offshore Renewable Energy Bill 2024, clause 4.

(b) customary rights, including but not limited to those customary rights recognised under-

i. the Marine and Coastal Area (Takutai Moana) Act 2011:

ii. the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

(2) In this section, existing Treaty settlements means Treaty settlements that exist at the time the relevant function, duty, or power is performed or exercised (rather than only those that exist at the commencement of this Act).

Impacts to the Māori Fisheries Settlements

20. Te Ohu Kaimoana is pleased to see The Māori Fisheries Settlements and Te Ohu Kaimoana as a Treaty Settlement Entity as expressly referenced in the Bill[5].

Undue Adverse Effects testing

21. As the trustee of the Māori Fisheries Settlements, we have a vested interest in proper adverse effects testing being undertaken to understand the potential impacts that proposed offshore renewable energy infrastructure may have on fishing. Under the Resource Management Act 1991 (**RMA**),[6] should an applicant wish to put in an aquaculture farm, they must receive a binding aquaculture decision by the Chief Executive (**CE**) for the Ministry for Primary Industries (**MPI**) which concludes whether an aquaculture project will have an undue adverse effect (**UAE**) on commercial, recreational or customary fishing. Should a project demonstrate that it will have undue adverse effects, the application can still proceed in the area if the developer provides compensation to each affected quota owner for the loss of value of the owner's affected quota through a negotiated agreement, or as determined by an independent arbitrator.

22. As we have noted in previous responses for other bills, such as the Fast Track Approvals Bill (**FTAB**), UAE testing is only required for aquaculture developments in the coastal marine area. It is not a requirement for marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**). We recommend a similar regime is extended to offshore renewable energy projects in the coastal marine area and the Exclusive Economic Zone (**EEZ**) that have an undue adverse effect on Māori customary commercial and non-commercial fishing rights and interests. Applying this decision to all offshore renewable energy applications would go some way to upholding the Māori Fisheries Settlements and providing consistency under the two differing pieces of legislation.

[5] Offshore Renewable Energy Bill 2024, clause 4.
[6] Resource Management Act 1991, section 116A.

23. Te Ohu Kaimoana therefore recommends that a similar UAE testing regime for offshore renewable energy projects is a requirement undertaken at the feasibility permitting stage before an applicant can apply for a commercial permit. This enables a process where collaboration can occur in the early stages rather than parties being notified at the end of a process.

24. Te Ohu Kaimoana welcomes the opportunity to co-develop with officials, what a UAE testing regime could look like in the Bill.

Future consenting consistency

25. This section will analyse the process when the applicant reaches the stage of applying for a coastal permit under the RMA or a marine consent under the EEZ Act. Currently, depending on how far offshore an application extends, there are two different pieces of legislation that it could fall within.
    (a) If the application is for activities within 12 nautical miles, the governing legislation is the RMA.
    (b) If the application for activities beyond 12 nautical miles but within 200 nautical miles, the governing legislation is the EEZ Act.

How offshore renewable energy is consented

26. The main concern we have with two separate Acts, the RMA and the EEZ Act, being utilised post feasibility permit being granted, is that they have different agencies and environmental protections which in turn create inconsistencies in the way applications for the same activity are treated, dependent on where the infrastructure is built.

27. Te Ohu Kaimoana therefore recommends that the CE for the MPI and the CE for the Ministry for Business, Innovation and Employment (**MBIE**) must sign off on offshore renewable energy feasibility and commercial permits to ensure that consistent protections are upheld across all offshore renewable energy applications.

Transparency of Ministerial decision-making

28. As the Bill is currently drafted, it sets out what the Minister must have regard to when making their decision on permitting applications. However, it does not include a requirement for the Minister to provide any transparency for their rationale on their decision once it has been made.

29. To promote transparency in ministerial decision-making, we recommend amending the Bill to explicitly require that the Minister's decision, along with the rationale behind it, be made publicly available. Te Ohu Kaimoana welcomes the opportunity to co-develop this clause in the Bill with officials.

Limitations of engagement

30. This section looks at the potential limitations of engagement identified in the Bill; we have made recommendations throughout to remedy them.

Application rounds engagement

31. We support the spatial planning nature of the Bill through the Minister determining application areas that are suitable for offshore renewable energy. Identifying these areas for applicants to then apply to gain feasibility permits, not only allows for better future planning, but also better relationships between the applicants and those that may be affected by the future renewable energy infrastructure.

32. We have assumed that good due diligence would happen prior to the Minister for Energy opening an application round for a specific geographic area. However, for the avoidance of doubt, we recommend that the delineation of application zones is co-developed with the relevant regional councils, the CE of the Ministry of Fisheries and the relevant iwi/ hapū or Treaty Settlement entity, prior to being released to the public. This will ensure that only appropriate space is put out for public consultation and applications for a feasibility permit for offshore renewable energy.

33. This should be directly referenced in the Bill to ensure clear guidance on how this is undertaken. We have drafted the below clause, which should be included in the Bill between clause 12 and 13. Inserting this clause will require all clauses following this to shift down a number i.e. clause 13 shall now be clause 14 and so forth:

13 Determination of geographic area or areas

(1) Applications for feasibility permits may be made only in a geographic area determined in accordance with this section.

(2) Before launching an application round under section 13 (section 14 if amended), the Minister must identify potential geographic areas for ORE development together with the following groups:

(a) the relevant regional councils;

(b) the Chief Executive of the Ministry for Primary Industries; and

(c) the relevant Treaty settlement entity.

(3) In determining a geographic area, for ORE development the Minister must have regard to the views of the groups in section 13(2).

Engagement and dispute resolution with an applicant

34. Te Ohu Kaimoana is supportive of the intent and the consistent engagement with the

appropriate Treaty Settlement entities throughout each stage of the permitting process. However, we have identified a lack of conflict resolution or direction should the applicant be met with strong opposing views from the relevant affected parties.

35. For example, prior to being able to make an application for a feasibility permit, the applicant must consult any relevant iwi authorities, hapū, and Treaty Settlement entities. The minimum eligibility criteria in the Bill notes that the applicant must include in their application a record of the consultation and a statement explaining how it has informed the proposed development.[7] This is a start, however in order to uphold the Māori Fisheries Settlements and actively protect Māori customary commercial and non-commercial fishing rights, the Minister for Energy must, where Māori customary commercial and non-commercial fishing rights are unduly affected, only approve a proposed project with the approval of the relevant Treaty Settlement entity, hapū or iwi.

36. Therefore, Te Ohu Kaimoana recommends that the applicant must go one step further and resolve all reasonable issues and disputes with the relevant Treaty Settlement entity, hapū or iwi prior to seeking approval for both the feasibility permit and the commercial permit and have outlined this in their application in order for the Minister to make a full and final decision.

37. Further to this, Te Ohu Kaimoana recommends that the Bill is amended to include a list of reasons why the Minister "must decline" a permit application. This will relieve concerns that the Minister may approve a project that the relevant iwi authorities, hapū, and Treaty Settlement entities are opposed to and is potentially inconsistent with the Māori Fisheries Settlements. At the bare minimum, we require that the "must decline" list includes that a project must be declined, if it is inconsistent with any Treaty Settlement or where consultation has resulted in strong opposition from the affected parties.

38. We have drafted the below clauses, which could be included in the Bill for both the feasibility permitting stage and the commercial permitting stage. The following amended clause is for the clause 19, Mandatory considerations for granting application for feasibility permits:

19 Mandatory considerations for granting application for feasibility permits

(1) The Minister may grant an application for a feasibility permit if the Minister is satisfied that—

Development requirements

(a) the proposed development is likely to deliver benefits for New Zealand; and

(b) no other feasibility permit or commercial permit is current in respect of the proposed

[7] Offshore Renewable Energy Bill 2024, clause 15 & 25

permit area; and

(c) the proposed development plan is consistent with the purpose of the proposed permit, the purpose of this Act, and good industry practice in respect of the proposed ORE generation activities; and

Permit holder suitability requirements

(d) the applicant has, or is likely to have, the technical and financial capability to install, operate, maintain, and decommission the proposed ORE generation infrastructure; and

(e) the applicant is highly likely to comply, on an ongoing basis, with the requirements under this Act and the regulations

Impact on Treaty Settlements and support of Māori groups

(f) the Māori groups with relevant interests in the proposed ORE area support the application for feasibility permits.

(2) ...

(a) ....

(3) The Minister must decline any application if the Minister is satisfied that –

(a) the application is inconsistent with a Treaty settlement

39. The following amended clause is for the clause 29, Mandatory considerations for granting application for commercial permits:

29 Mandatory considerations for granting application for commercial permit

(1) The Minister may grant an application for a commercial permit if the Minister is satisfied that—

Development requirements

(a) the proposed development plan is consistent with the purpose of the proposed permit, the purpose of this Act, and good industry practice in respect of the proposed ORE generation infrastructure activities; and

Permit holder suitability considerations

(b) the applicant has the technical and financial capability to install, operate, maintain, and decommission the proposed ORE generation infrastructure; and

(c) the applicant is ready to carry out the proposed development plan; and

(d) the applicant has complied with the requirements under this Act and the regulations and the conditions of their feasibility permit; and

(e) the applicant is highly likely to comply, on an ongoing basis, with—

i. their decommissioning obligation and financial security obligation; and

ii. the other requirements under this Act and the regulations; and

(f) the applicant has, or will be able to, put in place an acceptable financial security arrangement that complies with subpart 3 of Part 3.

Impact on Treaty Settlements and support of Māori groups

(g) the Māori groups with relevant interests in the proposed ORE area support the application for commercial permits.

(2) ...

(a) ...

(3) The Minister must decline any application if the Minister is satisfied that –

(a) the application is inconsistent with a Treaty settlement.

Environmental impacts of offshore renewable energy infrastructure

Decommissioning of offshore renewable energy infrastructure

40. The Bill sets out that a "person who holds a commercial permit must carry out, and meet the costs of, the decommissioning of all offshore renewable energy generation infrastructure that is attributable to infrastructure generation activities under the permit"[8]. The Bill also places an obligation to "ensure that an acceptable financial security arrangement is put in place and maintained that is sufficient to cover the estimated cost to the Crown of decommissioning that infrastructure in the event that the permit holder or other obliged person fails to decommission"9. The purpose of these clauses is to ensure that the end of lifecycle of this infrastructure is not an afterthought but well thought out and planned for at the outset. Te Ohu Kaimoana supports this approach to ensure that decommissioning and environmental reinstatement can take place as required.

41. Additionally, we recognise that further research is being conducted in this industry regarding best practice when it comes to decommissioning of this infrastructure. We are aware that there are arguments that would say leaving infrastructure in place is better for the environment than removing them altogether at the conclusion of the term of their permit and vice versa. As there is no clear rule, we would recommend that decommissioning plans are subject to change on a case-by-case basis, depending on what the best environmental outcome at the time of decommissioning would be.

42. For example, pylons in the seafloor or other renewable energy infrastructure could become significant habitats over time for shellfish and other marine life. Preserving the biodiversity on

[8] Offshore Renewable Energy Bill 2024, Part 3, clause70.
[9] Offshore Renewable Energy Bill 2024, Part 3, clause 69.

and around infrastructure should be an important consideration when it has reached the end of its service life and is decommissioned. An environmental effects assessment should be carried out to consider whether it would be environmentally damaging to remove the infrastructure and the ecosystem that has formed around it. If so, then the decommissioning plan should be altered to achieve the best environmental outcome, e.g. to retain infrastructure supporting marine life and remove other components. This will ensure the best outcome is sought on a case-by-case basis when more is known about the wider environmental impacts of decommissioning this infrastructure.

Ecological impacts and monitoring plans

43. Offshore renewable energy is a relatively new concept in Aotearoa, and as such, the potential environmental impacts remain unclear. The literature on offshore renewable energy infrastructure highlights diverse ecological effects on the marine environment and the species that inhabit it. As kaitiaki of Tangaroa, we have an obligation to ensure that we prioritise the health and wellbeing of the ocean and its species over human-centred gains.

44. Te Ohu Kaimoana recommends that the Bill include an additional requirement once a feasibility permit has been approved, mandating the development of a robust environmental monitoring plan by applicants. This plan should outline a baseline monitoring of the proposed application site and continue into post-development to assess any ongoing impacts. Such monitoring will contribute to a better understanding of the effects of offshore renewable energy on marine ecosystems and inform the evolution of technology in this sector.

45. Monitoring plans should specifically focus on the presence, behaviour and wellbeing of marine mammals and seabirds within the area, as well as the impacts on fish populations and their subsequent effect to the Māori Fisheries Settlements. These plans must be developed and approved as a prerequisite for obtaining a commercial permit. They should also inform the assessment of environmental effects required when applying for the appropriate consents and guide the mitigation of potential ecological impacts.

46. Te Ohu Kaimoana recommends that Subpart 3 – Commercial Permits, clause 25, Minimum eligibility criteria for commercial permits is amended to read:

25 Minimum eligibility criteria for applicants for commercial permits

A person is eligible to apply to the Minister for a commercial permit if—

(d) the person has undertaken consultation as required by section 24 (which relates to consultation with Māori groups); and

(e) the person is the permit holder of a current feasibility permit that applies in respect of

the whole permit area for which the commercial permit application is made; and

(f) the person has a proposed environmental monitoring plan for the anticipated lifespan of the ORE development that monitors the impact of the ORE development on the presence, behaviour and wellbeing of marine mammals, seabirds and fish populations within the ORE development area.

TE ŌHU
KAIMOANA