



Te Wai Māori

RESPONSE TO MFE AND DOC'S DISCUSSION DOCUMENT AND
PROPOSED NATIONAL POLICY STATEMENT FOR INDIGENOUS
BIODIVERSITY





Submission on the Ministry for the Environment and Department of Conservation's Discussion Document and Proposed National Policy Statement for Indigenous Biodiversity

Introduction

1. This document provides Te Wai Māori Trust's (Te Wai Māori, the Trust) response to the Ministry for the Environment and Department of Conservation's Discussion Document "*He Kura Koiora i hokia - A discussion document on a proposed National Policy Statement for Indigenous Biodiversity*" (the Discussion Document) and proposed National Policy Statement for Indigenous Biodiversity (NPSIB). The feedback provided is focussed on three key areas of the discussion document: *Section A: Recognising te ao Māori and the principles of the Treaty of Waitangi*; *Section B: Identifying important biodiversity and taonga* and *Section C: Managing adverse effects on biodiversity from activities*.
2. Te Wai Māori Trust works on behalf of 58 mandated Iwi organisations (MIOs), who represent all Māori throughout Aotearoa. This document is not intended to usurp or detract from any responses made independently by Iwi or hapū or any other pathways Iwi and hapū may pursue to affirm their rights.

Executive Summary

3. The following provides a summary of Te Wai Māori Trust's response to the Discussion Document and proposed NPSIB. Te Wai Māori Trust:
 - supports the stated 'purpose' of the proposed NPSIB but are concerned by the approach proposed to achieve this;
 - does not consider that the proposed NPSIB gives adequate recognition to Te Ao Māori nor the principles of the Treaty of Waitangi;
 - does not consider that appropriate consideration has been given to impacts on Māori and strongly recommends MfE/DOC commission expert analysis specific to impacts on Māori, that must include analysis of economic impacts on Māori and the Māori economy;
 - does not support the proposed approach to identifying Significant Natural Areas nor the underlying principles required to be considered as part of the process, as no role for Iwi/hapū has been identified, nor any provision made for Māori interests to be considered as part of the process;
 - does not agree with the proposed approach to identifying and managing taonga species and ecosystems in its current form as it does not appropriately consider or provide for Māori;

- recommends that the definition of Māori land provided for in the proposed NPSIB be revisited and broadened to reflect the full remit of Māori land holdings; and
- recommends that the existing provision for guidance, funding and support proposed for councils and landowners be extended to Māori/tangata whenua; and that specific provision for guidance, funding and support must also be made for Māori landowners whom it is recognised will be disproportionately affected compared to other private landowners; and
- recommends that Central Government focus on addressing existing barriers to Māori participation in resource management processes, which are further entrenched and exacerbated by the current approach to the proposed NPSIB.

Te Wai Māori Trust

4. Te Wai Māori Trust is an independent Māori Trust established under the Māori Fisheries Act 2004 (the Māori Fisheries Act). The purpose of Te Wai Māori is to advance Māori interests in freshwater fisheries¹ (s 94, Māori Fisheries Act) through:
 - undertaking or funding research, development and education;
 - promoting the protection and enhancement of freshwater fisheries habitat;
 - promoting the establishment of freshwater fisheries; and
 - using resources to bring direct and indirect benefits to Māori in respect of their freshwater fisheries interests.
5. Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries. The long-term outcomes Te Wai Māori work towards include:
 - enhancing the health and well-being of the indigenous fisheries and their environment;
 - increasing Iwi and hapū capacity and capability in freshwater fisheries and their ability to take responsibility for the health and well-being of freshwater fisheries;
 - promoting and sharing indigenous fisheries expertise, knowledge and understanding; and
 - increasing the quality and range of information to Iwi and hapū on freshwater fisheries and their interests thereof.
6. Our core values are te mana o te wai, whakapapa, and kaitiakitanga and represent the natural order of the Te Wai Māori worldview. First and foremost, we value freshwater and all that is encompassed in its ecosystems. The inherent right for water in its own state. Each water body has its own mauri. Whakapapa recognises our interdependence which binds us as tangata of the environment; and kaitiakitanga, our obligation and responsibility to care for Papatūānuku and ngā atua. Iwi and hapū do not distinguish land from lakes, lagoons, rivers, wetlands, freshwater species

¹ The Māori Fisheries Act defines "freshwater fisheries" as including the species, habitat, surrounding land, water column, and water quality and quantity. Sports fisheries or unwanted aquatic life or activities conducted under the Freshwater Fish Farming Regulations 1983 are excluded from this definition.

and their associated beds. They are considered part of an undivided entity. Ensuring the health and well-being of freshwater is essential for the continued health and well-being of freshwater fisheries. Healthy waterbodies are a direct source of mahinga kai for Māori and the use of mahinga kai is an important expression of cultural identity and values, passed down through generations.

7. Healthy freshwater fisheries depend on upholding our responsibilities to ensure the health and well-being of freshwater environments (including surrounding terrestrial and riparian habitats). This in turn requires good information, constructive inter-agency relationships, effective regulations and rules, and clear priorities for action. Most of the pressures on taonga freshwater fisheries are due to modification of freshwater environments; including dams, culverts, flood gates, land-based activities and diversion of rivers and streams. These modifications create barriers to migration for taonga species such as tuna (eels) and galaxiids. Further problems are caused by erosion and the clearing of forests. Silt and sediment which build up over our riverbeds reduce the amount of food available to indigenous fish and spoil their habitats. Predation and competition from introduced trout and other exotic predatory fish also threaten our taonga freshwater species.
8. Iwi and hapū have expressed that there is a real need for the identification and articulation of Iwi and hapū values and perspectives of freshwater ecosystems to help build greater understanding within and alongside Crown agencies. Effective understanding of Māori interests and values with Crown agencies requires full Iwi and hapū participation and a commitment from Crown agencies to collaborate in good faith and build strong, enduring relationships.
9. DOC and other Crown agencies must engage in mana-enhancing, Te Tiriti-based processes to formulate taonga freshwater fisheries and environmental policy. It is our view that the development of policy and regulations that acknowledge cultural values and provide a role for Iwi and hapū nationwide in implementation and interpretation would significantly add to improved understanding of taonga species and te taiao.

Proposed National Policy Statement for Indigenous Biodiversity

10. Te Wai Māori Trust supports the stated 'purpose' of the proposed NPSIB, which is "*to set out objectives and policies in relation to maintaining indigenous biodiversity and to specify what local authorities must do to achieve those objectives*", but are concerned by the approach proposed to achieve this.
11. While the objectives and policies are currently focussed on terrestrial biodiversity (and limited aspects of wetlands), it would appear that the Government is 'leaving the door open' to extend the focus of the NPS to include freshwater and marine biodiversity at a later stage. Despite this, no analysis has been provided as to remaining areas or policy gaps that may need to be included in any further revisions of the NPSIB (i.e. that have not been captured by the proposed revised

National Policy Statement for Freshwater Management (NPS-FM) and the New Zealand Coastal Policy Statement).

12. We also note that dividing the natural world into three areas in this way (terrestrial, freshwater, and marine biodiversity) is at odds with a Te Ao Māori worldview, and the way the natural environment works. The environment is an undivided entity and its functions work interdependently, and the Trust considers that trying to describe or set objectives for one part or another, rather than as a whole, undermines the ultimate intention of setting national objectives for our environment.

Recognising Te Ao Māori and the Principles of the Treaty of Waitangi

13. The Biodiversity Collaborative Group (BCG) outlined in their 2018 report a proposed approach to indigenous biodiversity management that would be underpinned by the concept of 'Hutia Te Rito'. It intended for Hutia Te Rito to be 'the underlying framework and ultimate reference point for decision-making'. To enable this the objectives and policies proposed by the group relating to Hutia Te Rito, Te Tiriti o Waitangi and Tangata whenua as kaitiaki were the foremost provisions. This intent has been lost in the proposed NPSIB prepared by MfE and DOC, which lacks coherence, appearing to have cherry picked elements of the BCG's approach, in the process losing context and diminishing what was originally intended.
14. Exacerbating the above, is that it is apparent the proposed NPSIB has been prepared by MfE and DOC in the absence of any meaningful Māori participation, with the two Crown agencies failing to partner with Māori or co-design process and policy provisions. This has ultimately resulted in the inappropriate use of Māori terms and concepts in the proposed NPSIB and consequent development of ineffective objectives and policies.
15. An example of this, is Objective 6, stated as: "*to recognise the role of landowners, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity*". The way this objective is framed infers that there is no distinction between the relationship of kaitiaki with te taiao/indigenous biodiversity to that of landowners and 'communities' at large. It infers that one is a steward or kaitiaki by virtue of being a landowner or member of the community and shows a profound lack of understanding of the concept of kaitiakitanga.
16. The Discussion Document states that the proposed NPSIB '*explicitly includes mātauranga Māori and tikanga Māori in decision making and environmental management*'. However, the reality is it does little to encourage a move away from the status quo, where mātauranga Māori and tikanga Māori are poorly provided for in decision making and environmental management.

17. Provisions relating to tikanga Māori and mātauranga Māori in the proposed NPSIB are weak, prefaced with the following terms: “where appropriate”; “as far as practicable”; “where relevant”; “to the extent possible”; and “take all reasonable steps”. This approach applies no level of compulsion, rather leaving it to discretion of the decision maker. In an existing system that lacks Māori representation, does not appropriately provide for; invest in or value tikanga Māori and mātauranga Māori in the same way it does western paradigms and knowledge systems, such an approach is ineffective and tokenistic.
18. If the Government is genuinely seeking to provide for mātauranga Māori and tikanga Māori in decision making and environmental management, it must address the barriers for Māori, Iwi and hapū participation in RMA/resource management processes² and not further entrench and exacerbate this issue by developing new legislative instruments, that do not adequately involve, consider or provide for Māori.

Enhancing the role of tangata whenua in decision-making

19. The discussion document identifies under-use of existing mechanisms intended to aid Māori participation in resource management decision-making, as a ‘problem with the current approach’ to biodiversity management. However, it then goes on to refer to one such mechanism, Mana Whakahono ā Rohe, as a tool that Iwi/Māori could utilise in order to implement the NPSIB. This indicates a lack of willingness to genuinely provide for Māori interests or enhance the role of Māori in decision-making in the NPSIB and shows a disregard for whether proposed policies will be effective/can be implemented. The ability of Māori to utilise Mana Whakahono ā Rohe is constrained by the same resourcing problems that inhibit effective Māori participation in RMA processes more generally³. Based on feedback we have received from Iwi, the Trust would rather see details of how Crown agencies intend to implement their commitments by empowering Iwi, hapū and Māori to use provisions such as the above, that are already provided for in law.
20. The regulatory impact statement⁴ prepared on the NPSIB states that: “*tangata whenua will benefit from greater involvement in resource management and decision making that impacts on indigenous biodiversity. This is through better incorporation of mātauranga Māori and tikanga Māori in council practices and an acknowledgement of their role as kaitiaki*”. The assertion appears baseless, neither the discussion document, nor the proposed NPSIB articulate how this will be achieved. Simply adding references to mātauranga Māori and tikanga Māori in policies without addressing resourcing issues, and without providing a framework or guidance or compulsion for

² Refer to Perception Planning report – Scoping Report: Issues and options for incorporating Māori values and outcomes in freshwater management planning, decision-making and implementation, prepared for the Ministry for the Environment 16 December 2019

³ Refer Perception Planning report.

⁴ Refer Impact Statement: Improving indigenous biodiversity management under the Resource Management Act (1991): <https://www.mfe.govt.nz/sites/default/files/media/Biodiversity/ris-improving-indigenous-biodiversity-management-under-RMA.pdf>

implementation falls severely short of this assertion. In order to move toward genuine incorporation of mātauranga Māori and tikanga Māori, the Crown must partner (i.e. in a manner that provides for joint rights/responsibilities in decision-making) with Māori as the subject matter experts, to co-design legislative instruments to ensure policies developed are appropriate and effective.

21. MfE and DOC have failed to recognise Iwi rangatiratanga above broader stakeholders and failed to enhance the role of Māori with regards to environmental management. Accordingly, Te Wai Māori does not consider that the proposed NPSIB gives adequate recognition to Te Ao Māori nor the principles of the Treaty of Waitangi. We recommend that it be reviewed in order to do so, and that further engagement with kaitiaki, through Iwi and with Māori resource management practitioners on this issue be undertaken immediately, before the NPSIB is progressed any further. Te Wai Māori, through our existing networks with the 58 mandated Iwi organisations representing all Iwi throughout Aotearoa, could assist with this.

Identifying Important Biodiversity and Taonga

Identification of Significant Natural Areas

22. Te Wai Māori trust does not support the proposed approach to identifying Significant Natural Areas (SNAs) nor the underlying principles required to be considered as part of the process. No role for Iwi/hapū is provided in the SNA identification process outlined in Table 3 of the discussion document and section 3.8 of the proposed NPSIB, nor is any reference made to Māori interests (including taonga) to be taken into consideration as part of the identification process.
23. The absence of any reference to partnership with Iwi/hapū is also noted with concern. The principle of "partnership" seems to exclude any practical requirement for territorial authorities to partner with Māori, instead requiring that "*territorial authorities must seek to engage with landowners early and share information about indigenous biodiversity, potential management options and any support and incentives that may be available*". Further, we don't consider that the description provided accurately reflects the meaning or principle of 'partnership'. We recommend that it be revisited to reflect and provide for joint rights/responsibilities in decision-making and that it be broadened to include Iwi/hapū.

Identification and description of taonga species and ecosystems

24. The taonga identification and description process proposed as part of the NPSIB requires tangata whenua to provide sensitive information to territorial authorities in order to obtain a level of protection. This represents a substantial barrier for tangata whenua to engage in this process and whether or not they do enter into the process will be contingent on the nature of the relationship between Iwi and the territorial authority. Thus, where relationships between Iwi/hapū and territorial authorities are weak or strained or there is distrust between the parties this will be a significant impediment to the success of the proposed approach.

25. The process outlined for the consideration and protection of taonga species or ecosystems in the discussion document lacks detail (i.e. how taonga would best be protected, implications if not identified etc.) and will leave a lot to the discretion of territorial authorities. It also places an additional burden on the already stretched capacity of Iwi/hapū/Māori to participate in yet another resource management process. In the absence of any Central Government focus on addressing known barriers to Māori participation in resource management, and with no guidance, funding or support proposed for tangata whenua as part of the proposed NPSIB (to be extended to councils and landowners only), it will lead to the Crown failing in its obligations to Māori.
26. Accordingly Te Wai Māori does not support the proposed approach to identifying and managing taonga species and ecosystems in its current form and strongly recommend that Central Government focus on addressing existing barriers to Māori participation in resource management process and that guidance, funding and support be extended to "tangata whenua" as part of the NPSIB.

Managing Adverse effects on Biodiversity from Impacts

The use and development of Māori land

27. The definition of Māori land contained in the draft NPS is: "*Māori customary land and Māori freehold land as defined in Te Ture Whenua Māori Act 1993*". This definition is too narrow and does not reflect the complexities of Māori land holdings, failing to consider the implications on lands returned to Iwi and hapū through treaty settlement processes and land held under the Public Works Act which will also be affected by the proposed NPSIB. We strongly recommend that this definition be revisited and broadened to reflect the full remit of Māori land holdings.
28. The BCG highlighted that limitations on the use and development of land is likely to disproportionately impact Māori compared to other private landowners, as up to 50 per cent of the land cover on Māori-owned land is comprised of indigenous vegetation. They acknowledged that Māori land is subject to restrictions and protections that do not apply to other privately-owned land and outlined barriers to land use change and biodiversity maintenance as including: fragmentation of ownership, restrictions on sale, lack of access to bank lending, inefficiencies of legal processes in comparison to privately owned non-Māori land, and lack of coordinated access to land information and support for owners across agencies and service providers. The Discussion Document further recognises that protections for SNAs could "*unfairly impact on Māori land worsen disadvantages created by historic confiscation and loss of land*".
29. Yet despite the above, the NPSIB does not include any explicit measures to mitigate the impacts on Māori-owned land/Māori landowners. The measures proposed under part 3.9 of the proposed NPSIB and *Appendix 5 – Regional Biodiversity strategies* are entirely inadequate and will fail to mitigate the disproportionate impact on Māori, representing a failure by the Crown to meet its Treaty obligations to Māori. What was originally proposed by the BCG under *Policy 10: Providing for*

Māori cultural activities and Māori land went some way to providing specific consideration to Māori owned land, but has been lost in the current approach to the proposed NPSIB.

30. Te Wai Māori recommend that new measures be developed that adequately consider and provide for Māori land and Māori landowners. We recommend further engagement with kaitiaki, through Iwi and with Māori resource management practitioners on this issue. This should entail development of targeted guidance, funding and support for Māori landowners and options to incentivise active protection on Māori land, picking up on options touched on by the Biodiversity Collaborative Biodiversity Group, that MfE/DOC have failed to give effect to. Te Wai Māori, through our existing networks with the 58 Mandated Iwi Organisations representing all Iwi throughout Aotearoa, could assist with this.

Economic impacts on Māori

31. The regulatory impact statement recognises that the proposed NPSIB will result in implementation costs that will " *have a significant impact on councils, tangata whenua and landowners*". It then notes the importance of the proposed guidance, funding and support proposed to sit alongside any new measures. However, that guidance, funding and support will only be provided to councils and landowners, **not** tangata whenua. No reasoning is provided as to why tangata whenua have been excluded. As it stands no targeted support has been outlined for Māori, despite 'significant' impacts on tangata whenua being specifically identified by the two Crown agencies.
32. In addition to the financial burden that will be placed on Māori as a consequence of the proposed NPSIB, it will also have impacts in terms of placing an additional burden on the already stretched capacity of Iwi and hapū to participate in yet another resource management process in the absence of any adequate Central Government support.
33. We strongly recommend that the existing guidance, funding and support that is to be provided to councils and landowners be extended to Māori/tangata whenua. Separate specific provision for guidance, funding and support must also be made for Māori landowners whom it is recognised will be disproportionately affected when compared to other private landowners. To inform this we recommend MfE/DOC commission expert analysis specific to impacts on Māori, including economic impacts on Māori and the Māori economy.

Other comments

Exclusion of Crown land/conservation estate from proposed NPSIB

34. Conservation land is not proposed for inclusion under the NPSIB in its current form, however, the discussion document does not clearly articulate the reasons for this. It is assumed that it is because it is considered that appropriate protective measures are already in place for land held as public conservation estate. However, considering recent and ongoing scrutiny of some decisions regarding land management practices and decisions on activity within the conservation estate

(notably grazing licences and pastoral lease arrangements), we consider that this should be explored further.

Potential for perverse outcomes

35. The approach being taken to improve protection of indigenous biodiversity on private land could be considered heavy-handed and will be challenging for many landowners and land managers to accept, particularly given potential for impacts on land value, and that little has been outlined to incentivise active protection of biodiversity on private land. Moreover, there is a risk of destruction of indigenous biodiversity (i.e. vegetation) occurring, prior to any new requirements coming into force. In an existing resource management system in which territorial authorities are already stretched with respect to compliance, monitoring and enforcement capability and capacity, the potential for this is potentially quite significant.

Conclusion

36. Te Wai Māori Trust has a significant interest in the resource management system, particularly the Resource Management Act and its relationship to protecting Māori interests in freshwater fisheries (including surrounding terrestrial and riparian habitats); protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities to ensure healthy freshwater fisheries and freshwater environments.
37. We would like to see Central Government commit to genuinely acknowledging and addressing the barriers for Māori, Iwi and hapū participation in resource management processes and commit to meeting its Treaty and settlement obligations and move toward implementing a Treaty compliant environmental regime. We would be happy to meet kānohi ki te kānohi to discuss the points raised in this submission.

If you would like to discuss this submission please contact Carly O'Connor, Senior Policy Analyst: Te Wai Māori Trust – Carly.O'Connor@waimaori.maori.nz

