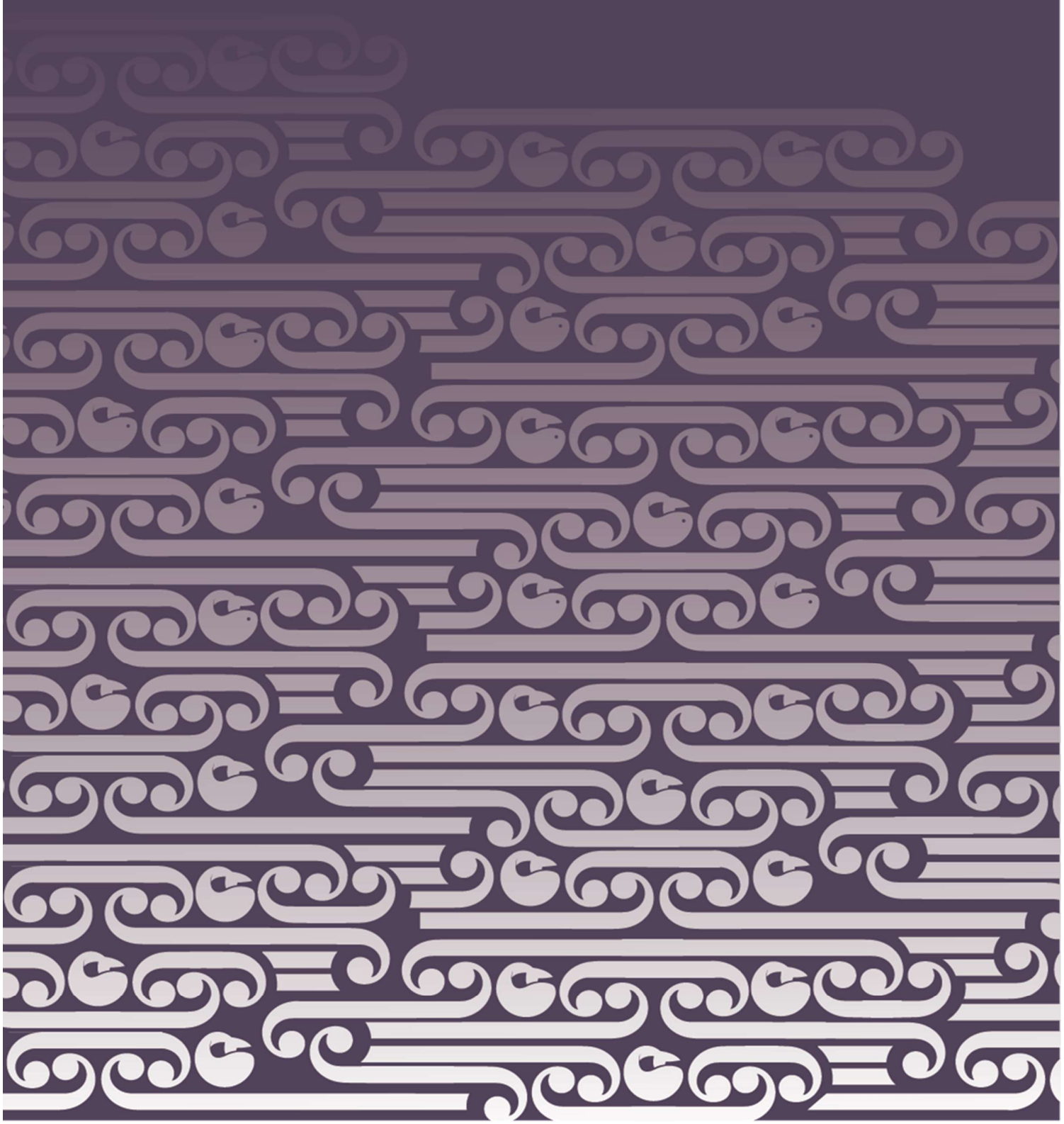

Te Ohu Kaimoana's response to the Primary Production Select Committee on the Fisheries Amendment Bill

Te Ohu Kaimoana

Contents

Response to the Fisheries Amendment Bill

1. This document provides our comments on proposed amendments to the Fisheries Act 1996.

2. Te Ohu Kaimoana's response to the Bill is centred on Te Ao Māori, the Treaty of Waitangi, the Fisheries Settlement, and the purpose of the Fisheries Act and the extent to which proposed amendments belong within that framework.

3. The purpose of the Fisheries Act 1996 ("the Act") is to *"provide for the utilisation of fisheries resources while ensuring sustainability"* (s 8(1)). This echos the ethos of *Te Hā o Tangaroa kia ora ai tāua*, an expression of the special relationship that iwi, hapū and whānu have with aquatic environment. Te hā o Tangaroa kia ora ai tāua, and its principles are at the heart of this response and the lens we used when considering the Fisheries Amendment Bill.

4. We have structured our response as follows:
    - Who we are and the reasons for our interest in the Fisheries Amendment Bill
    - Our guiding framework that has been shaped by the principles of Te hā o Tangaroa kia ora ai taua, the Deed of Settlement 1992 (Deed of Settlement), and Te Tiriti o Waitangi
    - An outline on how tikanga and mātauranga Māori relate to our response
    - Our views on the proposed amendments

5. We represent 58 iwi organisations through the Fisheries Settlement and the Maori Fisheries Act that implements key provisions of the settlement. However, our response should not be taken to override or detract from any response provided independently by iwi through their Mandated Iwi Organisations (MIOs) and/or Asset Holding Companies (AHCs) or through any other means.

6. We note that our statutory purpose, as Te Ohu Kaimoana includes assisting the Crown to discharge its obligations under the Fisheries Settlement and Te Tiriti o Waitangi (s 32(d) Maori Fishries Act). We would hope that too is reflected in the spirit of our response.

We are Te Ohu Kaimoana

7. The Ohu Kai Moana Trustee Limited (Te Ohu Kaimoana) was established to protect and enhance the Deed of Settlement. The Deed of Settlement and the Maori Fisheries Act 2004[1] are expressions of the Crown's legal obligation to uphold Te Tiriti o Waitangi.

[1] Māori Fisheries Deed of Settlement 1992. The Deed is given effect to by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Māori Fisheries Act 2004.

8. The Ohu Kaimoana's purpose is set out in s 32 of the Maori Fisheries Act, which provides the following:

Purpose of Te Ohu Kai Moana

The purpose of Te Ohu Kai Moana is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to—

(a) ultimately benefit the members of iwi and Maori generally; and

(b) further the agreements made in the Deed of Settlement; and

(c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and

(d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

9. We work on behalf of 58 mandated Iwi organisations (MIOs)[2] who represent Iwi throughout Aotearoa. These MIOs have corresponding Asset Holding Companies (AHCs) who hold Fisheries Settlement Assets on their behalf. The assets include Individual Transferable Quota (ITQ) and shares in Aotearoa Fisheries Limited (Moana), which, in turn, owns 50% of the Sealord Group.

10. Centering Tangaroa and Hinemoana me ō raua uri (and their descendants), we work with both the MIO and tangata kaitiaki/tiaki to further the interests of iwi, hapū and whānau members.

Our response to the Fisheries Amendment Bill is based on Te Ao Māori

11. The health of Tangaroa and the relationships our people have with the taiao is our priority. So when considering the Fisheries Amendment Bill, we use a framework shaped by tikanga and mātauranga Māori. This framework guides our analysis to ensure our response empowers iwi, hapū and whānau while protecting and advancing the Māori fishing interests and rights.

12. Our framework includes the following elements:
    a. Te hā o Tangaroa kia ora ai tāua;
    b. Te Tiriti o Waitangi and the Deed of Settlement sourced principles; and
    c. Mātauranga Māori.

13. We address each element in further detail below.

[2] MIO as referred to in The Maori Fisheries Act 2004: in relation to an iwi, means an organisation recognised by Te Ohu Kai Moana Trustee Limited under section 13(1) as the representative organisation of that iwi under this Act, and a reference to a mandated iwi organisation includes a reference to a recognised iwi organisation to the extent provided for by section 27.

Te hā o Tangaroa kia ora ai tāua guides our advice

14. Te hā o Tangaroa kia ora ai tāua is an expression of the of the special relationship that iwi, hapū and whānau have with aquatic environment. This statement means "the breath of Tangaroa sustains us" and refers to the importance of humanity's interdependent relationship with Tangaroa to ensure our health and well-being.

15. Māori rights in fisheries can be expressed as a share of the productive potential of all aquatic life in New Zealand waters. They are not just a right to harvest but also to use the resource in a way that provides for social, cultural, and economic well-being.

16. Te Hā o Tangaroa kia ora ai tāua does not mean that Māori have a right to use fisheries resources to the detriment of other children of Tangaroa: rights are an extension of responsibility. It speaks to striking an appropriate balance between people and those we share the environment with.

17. This expression aligns with the work of international indigenous scholars and practitioners around the globe, who have also envisioned a new path for fisheries research and management that aligns with indigenous values and theory. In Aotearoa, we expect that Māori and the Crown will work together to develop national fisheries policy, as it was intended under Te Tiriti o Waitangi and the Deed of Settlement. In this context, Te Ohu Kaimoana hopes to facilitate discussion between the government and iwi that envisions a future where Te hā o Tangaroa kia ora ai taua is centered on all approaches to aquatic legislation, policy, and regulation. We note the Ministry for the Environment and StatsNZ's Environment Aotearoa 2022 report[3]. The section noted 'Waitā' references the star in the Matariki cluster associated with the ocean and marine conditions and represents the various types of food harvested from the sea. This report highlights that the current threats to Waitā include sedimentation, nutrient pollution, plastic waste, climate change, and gaps in knowledge surrounding the effects of fishing. In this context, we seek clarity on how the fisheries and wider Ocean Reform intends to address the multiple threats (both fishing and non-fishing) to Tangaroa and Hinemoana, given that the Bill only targets commercial fishing. By diminishing the importance of other threats to the aquatic environment, the government is taking away initiatives, opportunities, and funding that would enable Māori and the wider community to care for Tangaroa and Hinemoana's health.

Principles sourced from the Deed of Settlement and Te Tiriti o Waitangi

The Deed of Settlement

18. An inherent part of the Deed of Settlement is protecting the reciprocal relationship with Tangaroa – it is an essential and relevant part of modern fisheries management for Aotearoa. By entering into the Deed of Settlement, the Crown recognised that fisheries are vital to Māori. In addition, the

[3] https://environment.govt.nz/assets/publications/environment-aotearoa-2022.pdf

Crown's treaty duty is to develop policies to recognise Māori use and management practices and enable Māori to exercise rangatiratanga over traditional fisheries (both commercial and non-commercial). We also acknowledge that the Fisheries Act has design features that enable Māori to exercise rangatiratanga and kaitiakitanga.

19. So for Te Ohu Kaimoana, our key concern is to ensure that any amendments and associated policy to the Fisheries Act continue to support an ongoing relationship with Tangaroa and ensure the Deed of Settlement endures.

Te Tiriti Principles

20. Te Tiriti o Waitangi guaranteed Māori tino rangatiratanga over their taonga, including fisheries. Tino rangatiratanga is the authority upon which Māori draw on in exercising independence over their interests and affairs. It is practiced through living according to tikanga and mātauranga Māori and striving wherever possible to ensure that the land and resources (including fisheries) guaranteed to Māori under Te Tiriti o Waitangi are protected for the use and enjoyment of future generations. This view endures today and is embodied within our framework Te hā o Tangaroa kia ora ai tāua.

21. The following principles of Te Tiriti and Te Tiriti jurisprudence offer a framework to guide Te Ohu Kaimoana, as it should also be used to guide government officials and other stakeholders so that equally we can ensure our decisions align with the partnership that was promised when Te Tiriti was signed.

Whai wāhi (participation)

22. The Treaty principle of whai wāhi is also referred to as the principle of participation. This is closely linked with tino rangatiratanga, as a key element of autonomy is having a participatory role in decision-making.

23. In applying the principle of participation (whai wāhi), Te Ohu Kaimoana expects a commitment from the government to ensure that Māori are actively involved in all aspects of the fisheries management system, including the Fisheries Amendment Bill. So when we consider this Bill, we analyse how 'Treaty Partners' have been involved throughout the Bill - and subsequent policy - development, their position, and how the government plans to involve Māori as the Bill progresses continually.

24. Whai wāhi is critical to any analysis of the Fisheries Amendment Bill, because it influences our consideration of any amendments made to consultation. Meaningful consultation and collaboration with Māori is imperative.

Tiakitanga (protection)

25. To Tiaki is to care for our tupuna so that Tangaroa may continue to care and provide for us. Caring for Tangaroa, and being a kaitiaki, underpins the right and obligation for Māori to hauhake (cultivate). Ultimately the right to enjoy the benefits (the kai) from our living relationship with Tangaroa depends upon our ability to Tiaki Tangaroa in a meaningful way. The way kaitiakitanga is practised dynamic

and location-specific, depending on the relationships between iwi, hapū, and whānau within that location.

26. In the context of this Amendment Bill, this principle encourages us to consider whether the proposed changes align with the Māori obligation to care for Tangaroa in a meaningful way. In considering this, we have proposed the following questions for the government to consider and provide a response on:
    a. How do these legislative amendments provide Māori with the best opportunity to care for Tangaroa?
    b. In light of the amendments seeming only to target commercial fishing, should Māori be concerned about the impact of inshore fish stocks from recreational fisheries and non-fishing impacts such as climate change and pollution? We seek clarity on how the fisheries and wider Ocean Reform intends to address the multiple threats (both fishing and non-fishing) to Tangaroa and Hinemoana, given that the Bill only targets commercial fishing.
    c. In light of the impacts expressed above, how will the government mitigate these to ensure the protection of Tangaroa, Hinemoana me o raua uri?

Waka hourua (partnership)

27. The principle of Waka hourua speaks to the promise of partnership made between the Crown and Māori. Since the Deed of Settlement, this has evolved into a partnership between Te Ohu Kaimoana and the Crown.

28. This means that both the Crown and Te Ohu Kaimoana will act reasonably, honourably and in good faith towards each other as Treaty partners.

Pito mata (development)

29. This is also referred to as the principle of potential. When we consider the Fisheries Amendment Bill, we are analysing how the amendments will impact, including advance, the future growth of Iwi and MIO in te Taiao and sustainable fisheries management.

30. For Te Ohu Kaimoana, we must see the government continue to develop a robust understanding of the vital relationship shared between Tangaroa and Māori. Te hā o Tangaroa underpins our purpose and leads our vision, and we expect this ethos to thrive in future policy considerations regarding te taiao.

Mātauranga Māori and Tikanga

Mātauranga Māori

31. For almost 800 years, fishing has been an essential aspect of Māori culture, both practically and spiritually. Traditions, stories, knowledge, and abilities related to Māori fishing have been passed down through generations, contributing to and developing mātauranga Māori.

32. Mātauranga Māori has been described as "a body of knowledge that seeks to explain phenomena by drawing on concepts handed down from one generation of Māori to another. ... mātauranga Māori has no beginning and is without end. It is constantly being enhanced and refined. Each passing generation of Māori makes their own contribution to mātauranga Māori"[4]. In the context of the natural environment, it is also regarded as " the pursuit of knowledge and comprehension of Te Taiao – the natural environment – following a systematic methodology based on evidence, and incorporating culture, values, and world view"[5].

Tikanga

33. Tikanga is how Māori care for their fisheries, underpinned by the Māori philosophical concepts such as taonga tuku iho (future generations), kaitiakitanga, manaakitanga (a duty to look after others), and kotahitanga (unity). The aim of tikanga Māori is balance. The interaction of these concepts to preserve intergenerational and intragenerational equity is consistent with the concept of "sustainable management".

34. Since Māori, particularly iwi, were rightfully granted rights to their fisheries through Te Tiriti o Waitangi and the Deed of Settlement and guaranteed through whakapapa, they must make special considerations based on their kaitiakitanga responsibilities on managing these taonga sustainably. These include future and cultural considerations underpinned by Tikanga Māori. In light of this, Māori need to be supported to take the lead in global fishery management.

35. Although not made explicit, we are concerned that the package of legislative amendments seeks to further centralise decision-making over Aotearoa fisheries to the Minister, limiting the tino rangatiratanga of iwi, hapū, whānau and kaitiaki to carry out their kaitiakitanga responsibilities over their customary (commercial and non-commercial) fisheries following their own mātauranga and tikanga. We encourage the government to consider how mātauranga and tikanga will be considered, particularly regarding the amendments that look to a) streamline the decision-making process for adjusting sustainability measures and b) change the rules for commercial on what can be landed and discarded.

[4] Mead (2003), p 234

[5] Hikuroa (2017), p 5

Our view on the Fisheries Amendment Bill

36. Our response is focussed on those aspects of the proposed legislative change that relate to
    I. Streamlining the decision-making process for adjusting sustainability measures
    II. Amended rules for commercial fishing on what can be landed and discarded

    as it is those aspects of the proposed reforms that raise the most concern .

I. Streamlining the decision-making process for adjusting sustainability measures

37. The Explanatory Note of the Fisheries Amendment Bill summarises that the Bill introduces the ability for the Minister to define pre-established decision rules for setting and adjusting sustainability measures under Part 3 of the Act. These rules will also be utilised to alter fish stock total allowable catches (TACs) under Part 4 of the Act. In addition, there is a proposed amendment to allow the Minister to specify recreational management controls in an instrument.

38. Though pre-set decision rules provide faster responses to fish stock changes, we emphasise that a strategic collaborative approach with industry and Treaty Partners during the development phases of pre-set decision rules is required. Referring specifically to the example of the increase in the TAC for CRA 4 (rock lobster in Wellington/Hawke's Bay area) in 2020 using a Harvest Control Rule (HCR) where further consultation during the development of the HCR stage should have considered other relevant matters for the fishery. We also note that while the HCR recommended an increase in that scenario, this was in contrast with the observations of key iwi[6]. This also questions the role of mātauranga Māori and tikanga in the development phase of pre-set decision rules and how this knowledge will be accounted for. We seek further clarification on this matter.

Our response

39. To an extent, we are comfortable with the drafting of the legislation regarding the consultation requirements, as section 12 (replaced by Clause 8) will continue to apply. We are concerned with the new section 12(1)(b), which precludes the Minister from consulting when revoking or applying a pre-set decision rule. As we have established in our guiding framework, the promises made to Māori in the Deed of Settlement and Te Tiriti principles (in this case, whai wāhi) require meaningful input and participation of tangata whenua. To this extent, we seek further clarification on the policy decisions regarding this amendment.

40. We are also concerned with the new overriding provisions that dissolve the Minister's compliance obligations to take into account or have regard to particular components such as commercial

[6] See paragraph 29 in our response to the Review of Sustainability Measures for 1 April and 1 October 2021/2022

fisheries levies, fisheries plans (including customary fisheries plans), and planning documents lodged by customary marine title groups recognised under the Marine and Coastal Area (Takutai Moana) Act 2011. In addition, the Minister will no longer have to comply with section 21(1), which allows for Māori customary non-commercial fishing interests. We seek clarification on how these provisions align with the Deed of Settlement.

II. Amended rules for commercial fishing on what can be landed and discarded

Concern with the four-year transition period

41. The expectation is that the changes introduced in these Amended rules will not come into effect immediately but rather be implemented progressively over four years. The understanding is that Fisheries New Zealand will review the current rules around discarding in a staggered manner during this period. Te Ohu Kaimoana intends to be a key participant in this process.

42. Regarding Te Ohu Kaimoana's interests in this four-year transition period, we have reflected on the Fisheries Act and its provision for Māori interests. Specifically, it requires the Minister to have regard to kaitiakitanga and provide for the input and participation of tangata whenua in sustainability processes and decisions[7]. We consider that for this period to be of genuine use to our tangata whenua, there needs to be an opportunity for Māori to participate in ongoing discussions regarding how the landings and discards progress over this transition period. In this respect, there needs to be a commitment from Fisheries New Zealand that an adaptive management approach based on knowledge of tangata whenua, fishers, and scientific evidence (through accurate reporting of all catch) would be more aligned with Māori approaches to managing landings and discards. Information is fundamental to understanding and managing our fisheries for sustainable intragenerational and intergenerational use. However, further feedback of tikanga by whanāu, hapū and iwi should be carried out to verify this point.

43. Te Ohu Kaimoana has received recent insights into the operation of Iceland's approach to addressing discards across their broader fisheries management framework. This follows a staff member's recent participation in the United Nations Education, Scientific and Cultural Organisation's GRÓ-Fisheries Training Programme[8] in Iceland from September 2021 to March 2022. It was found that the key to Iceland's success in implementing a 'discard ban' policy includes a comprehensive and integrated approach to addressing discards across the broader fisheries management framework that integrates regulatory measures to address the overarching goal of fisheries management (which is to promote the conservation and efficient use of stocks of fishery resources, ensuring the

[7] Fisheries Act, s 12

[8] https://www.grocentre.is/ftp/capacity-development-ftp/six-months-training-programme

generation of jobs for the industry[9]). Furthermore, the success of implementing the discard ban can be attributed to Iceland's efforts to involve stakeholders as an essential component of their discard policies (and broader policies) to facilitate policy alignment with industry incentives and foster a culture of compliance. This adaptive approach allows incremental improvements (30-40 years) in the overall management system over time and requires a long-term commitment.

Kōrero whakakapi - Closing Statements

44. Overall, we seek clarity on how the Fisheries Amendment Bill and broader Ocean Reform intend to address the multiple threats (both fishing and non-fishing) to Tangaroa and Hinemoana. The Amendment Bill has only focused on commercial fishing. By diminishing the importance of other threats to the aquatic environment, the government is taking away initiatives, opportunities and funding that would enable Māori to care for the health of Tangaroa.

45. Te Ohu Kaimoana welcomes the opportunity to discuss these proposals further.

Nāku noa, nā

Lisa te Heuheu
TE MĀTĀRAE

[9] Article 1 of the Icelandic Fisheries Management Act 2006 states the following management objective and principles for Icelandic fisheries: *The exploitable marine stocks of the Icelandic fishing banks are the common property of the Icelandic nation. The objective of this Act is to promote their conservation and efficient utilisation, thereby ensuring stable employment and settlement throughout Iceland. The allocation of harvest rights provided for by this Act neither endows individual parties with the right of ownership nor irrevocable control over harvest rights.*

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