



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

KAIKŌURA (TE TAI-O-MAROKURA) MARINE MANAGEMENT BILL

15/04/2014

SUBMISSION ON KAIKŌURA (TE TAI-O-MAROKURA) MARINE MANAGEMENT BILL

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Kaikōura (Te Tai-o-Marokura) Marine Management Bill (Bill).
2. The Bill implements an integrated package of management measures for the purpose of affording protection to, and recognition of, the marine species and natural marine habitats in Te Tai-o-Marokura.
3. This submission addresses three issues:
 - 3.1. whether further provision is required in the Bill for implementing the Ministerial review of the Hikurangi Marine Reserve;
 - 3.2. whether the new penalties imposed by the Bill are consistent with the penalties provided for in other environment-focused legislation; and
 - 3.3. whether it would be preferable for clause 15 to expressly provide for all available sentencing options, as well as the section 26 (3) defence (rather than for clause 16 to do so by cross-reference to the Marine Mammals Protection Act 1978).

Implementing the Ministerial review of the Hikurangi Marine Reserve

4. Clause 8 provides that the Minister of Conservation must initiate a review to determine the effectiveness of the Hikurangi Marine Reserve, within 25 years of the commencement of the Act.
5. It can be inferred that the review, once initiated, would need to be completed in accordance with its terms of reference and that the Minister would then need to consider whether to implement any recommendations received following the completion of the review. It would be desirable for the legislation to address these matters.

Recommendation

6. That clause 8 includes a requirement to report to the Minister at the completion of the review, and a procedure for the Minister to consider steps to give effect to the recommendations received.

Consistency with other statutory penalties

7. Clause 16(1) provides that certain provisions of the Marine Mammals Protection Act 1978 (MMPA) apply, with necessary modifications, as if the two sanctuaries created by clauses 9 and 10 were marine mammal sanctuaries under the MMPA. Those provisions include some of the offence and enforcement provisions, but not the penalties, in sections 23 and 23A of the MMPA.
8. Clause 15 sets out offences related to the sanctuaries, and provides the penalty of a fine not exceeding \$10,000. In contrast, section 23(2A) of the MMPA provides, in the case of an individual, imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000 or both; in the case of a body corporate, a fine not exceeding \$200,000; and, in any case where the offence is a continuing one, a further fine not exceeding \$10,000 for every day on which the offence continues. The penalties in section 23(2A) apply to the offences in section 23(1), including failing to comply with any restriction imposed with respect to a marine mammal sanctuary.
9. It is not clear from the Explanatory Note to the Bill why the maximum penalty in clause 15 differs from the maximum penalty for offences related to marine mammal sanctuaries in the MMPA. There should be a consistent approach to penalties for offences relating to sanctuaries, whether the sanctuary is created under the Bill or the MMPA.
10. Neither clause 15(2) nor clause 15(3) makes provision for penalties for continuing offences. In contrast, section 23(2A) of the MMPA provides for a further fine of \$10,000 a day and the penalties for commercial gain under s23A provides for a further fine of \$20,000 a day. Sections 43C and 43D of the Conservation Act 1987 also provide equivalent penalties for continuing offences and offences committed for commercial gain.

Recommendation

11. That clause 15(2) and (3) be amended so that the penalties provided for in the Bill are consistent with penalties for similar offences in other enactments that protect or manage aspects of the marine environment.

Clauses 15 and 16

12. Clause 16(1) provides for specified provisions of the Marine Mammals Protection Act 1978 to apply, with any necessary modifications, to a sanctuary as if the sanctuary were a marine mammal sanctuary under that Act.

13. The specified provisions are:
 - 13.1. sections 3A to 3H which deal with statements of general policy, conservation management plans and strategies; and population management plans;
 - 13.2. section 22(4) which precludes the power to declare a marine mammal sanctuary in a Maritime or National Park, reserve or marine reserve;
 - 13.3. section 22(5) which provides that rangers appointed under the Wildlife Act, National Parks Act and Reserves Act have the authority to exercise any of the powers conferred on a ranger under section 39 of the Wildlife Act 1953 in any marine mammal sanctuary;
 - 13.4. section 26(3) which provides for a defence if it can be proved that the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life; and
 - 13.5. section 26A which provides for a court to impose a sentence of community work, and for the application of Part 2 of the Sentencing Act 2002.

14. Clause 16(3) provides:

For the purposes of subsections (1) and (2),—

 - (a) a breach of a restriction imposed by a *Gazette* notice under section 12(1)(a) is to be treated as a breach of the Marine Mammals Protection Act 1978; and
 - (b) an offence against section 15 is to be treated as an offence against the Marine Mammals Protection Act 1978.

15. Clause 16 is not easy to follow. It would be desirable for clause 15 (which sets out the penalty structure under the Bill) to provide for the court's power to impose a sentence of community work, rather than providing for this power in subclauses 16(1) and (3) by cross-reference to the Marine Mammals Protection Act. This would be logical and easier to follow. It also makes sense for this sentencing option to be available in cases where an offence is committed under clause 15(1)(b) (which provides that it is an offence to make any false or misleading statement in any application to the Director-General for an exemption from a restriction).

16. It would also be desirable to expressly provide for the section 26(3) defence in clause 15, rather than providing for this important matter by cross-reference in clause 16.

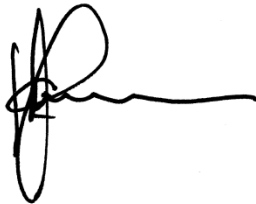
Recommendations

17. The Law Society recommends that:

- 17.1. clauses 15 and 16 be amended so that clause 15 includes a provision for a sentence of community service and the cross-reference to section 26A of the Marine Mammals Protection Act 1978 in clause 16(1) is removed; and
- 17.2. providing in clause 15 for the defence set out in section 26(3) of the Marine Mammals Protection Act 1978.

Conclusion

18. The Law Society does not wish to appear in support of this submission.

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Chris Moore
President
15 April 2014