

DRAFT FOR CONSULTATION

Tohorā Oranga Bill

Member's Bill

Explanatory note

General policy statement

Indigenous Peoples of Te Moana-Nui-a-Kiwa (the Pacific Ocean) have always lived in harmony with the moana (ocean) and its inhabitants. Across the Pacific, many peoples see whales as sentient beings and ancestors possessing inherent rights. With this unique connection comes generations of indigenous knowledge and histories with whales that informs the identities of many peoples across the Pacific.

However, whales are under threat from destructive fishing practices, pollution, and other human activities. In an Aotearoa New Zealand context, 22 per cent of whales and other indigenous marine mammals are now threatened with extinction.

In 2023, indigenous leaders from across Te Moana-Nui-a-Kiwa, including Ariki from Aotearoa and the Cook Islands came together to address these threats to the whales. The result of this meeting was *He Whakaputanga Moana*: a declaration signed by the leaders that recognises whales as legal persons with inherent rights, including the right to freedom of movement, a healthy environment, and the ability to thrive alongside humanity.

This Bill works towards giving effect to *He Whakaputanga Moana* in Aotearoa New Zealand. The Bill does this through the concept of “te mana o te tohorā”, which it describes as the inherent mana and wairua of tohorā and the fundamental importance of tohorā to the health and well-being of the wider environment.

The Bill reflects te mana o te tohorā in five fundamental principles:

- *freedom of movement and migration*: All whales have a right to move and migrate freely within their established distribution and migratory routes, and all care must be taken to conserve and respect areas and migratory routes used by whales:
- *protection of natural behaviours*: All whales have a right to engage in their natural behaviours freely and protected from harm:

- *protection of social and cultural structures*: All whales have a right to have their unique and complex social and cultural structures and behaviours protected:
- *right to a healthy environment*: All whales have a right to thrive in a healthy and balanced ecosystem:
- *right to restoration and regeneration of habits and ecosystem*: All whales have a right to the restoration and regeneration of their habitats and ecosystems.

The Bill mitigates threats to tohorā by requiring decision-makers performing functions, powers, or duties under certain Acts to recognise and provide for te mana o te tohorā and the fundamental principles, if the performance of that function, power, or duty relates to whales or their environment. The relevant Acts, which are listed in Schedule 2 of the Bill, all relate to the ocean, wildlife, or the environment.

Further, if the performance of the function, power, or duty requires a decision, document, or report, the decision, document, or report must state how the decision-maker has recognised or provided for te mana o te tohorā and the fundamental principles. This ensures there is good accountability for proper decision-making.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on the day after Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of this Bill, which is to recognise the inherent mana and wairua of all tohorā, and their distinctive natural and cultural value to New Zealand and its people.

Clause 4 defines key terms used in the Bill, including the terms fundamental principles and te mana o te tohorā.

Clause 5 and *Schedule 1* provide for transitional matters.

Clause 6 provides for the Bill to bind the Crown.

Part 2

Te mana o te tohorā

Clause 7 describes the concept of te mana o te tohorā.

Clause 8 sets out the fundamental principles that reflect te mana o te tohorā.

Clause 9 provides for the legal effect of te mana o te tohorā described in *clause 7*. *Subclause (2)* requires all persons with functions, powers, or duties under the Acts listed in *Schedule 2* to recognise and provide for te mana o te tohorā and the funda-

mental principles. *Subclause (4)* ensures that those persons carrying out or exercising functions, powers, and duties under the specified Acts, undertake a balancing exercise, *paragraph (a)* clarifies that *subclause (2)* does not remove the statutory discretion of persons carrying out or exercising functions, powers, or duties under the specified Acts while *paragraph (b)* acknowledges that those persons may consider te mana o te tohorā and the fundamental principles as determining factors when exercising their statutory discretion. *Subclause (5)* stipulates that any documentation required in relation to carrying out obligations under the statutes referred to in *subclause (2)* must state how the requirements for legal weighting under that subclause has been complied with.

Clause 10 sets out the limits to the effect of the Bill, namely that it does not impinge on existing property rights or the application of other legislation.

Part 3

Regulations and review of Act

Clause 11 is a general regulation-making power.

Clause 12 provides for the operation of the Bill to be reviewed 5 years after it comes into force.

Teanau Tuiono

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Tohorā Oranga Act **2025**.

2 Commencement

This Act comes into force on the day after Royal assent.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to recognise the inherent mana and wairua of all tohorā, and their distinctive natural and cultural value to New Zealand and its people.

4 Interpretation

In this Act, unless the context otherwise requires,—

Director-General means the Director-General of Conservation

fundamental principles means the principles set out in **section 9**

specified legislation means the legislation listed in **Schedule 2**

te mana o te tohorā has the meaning given in **section 7**

tohorā or whale—

- (a) means all species commonly known as whales; and
- (b) includes baleen whales, sperm whales, beaked whales, orca, and pilot whales

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2
Te mana o te tohorā

7 Te mana o te tohorā

Te mana o te tohorā refers to the concept that recognises—

- (a) the mana and wairua of tohorā; and

- (b) the fundamental importance of tohorā to the health and well-being of the wider environment.

8 Fundamental principles

Te mana o te tohorā is reflected in the following fundamental principles:

Freedom of movement and migration

- (a) all whales have a right to move and migrate freely within their established distribution and migratory routes, and all care must be taken to conserve and respect areas and migratory routes used by whales:

Protection of natural behaviours

- (b) all whales have a right to engage in their natural behaviours freely and protected from harm:

Protection of social and cultural structures

- (c) all whales have a right to have their unique and complex social and cultural structures and behaviours protected:

Right to a healthy environment

- (d) all whales have a right to thrive in a healthy and balanced ecosystem:

Right to restoration and regeneration of habits and ecosystem

- (e) all whales have a right to the restoration and regeneration of their habitats and ecosystems.

9 Legal effect of te mana o te tohorā

- (1) This section applies to persons exercising or performing a function, power, or duty under an Act referred to in **Schedule 2** if the exercise or performance of that function, power, or duty relates to, or could affect, whales or their environment.
- (2) A person must recognise and provide for—
 - (a) te mana o te tohorā; and
 - (b) the fundamental principles.
- (3) The obligation under **subsection (2)** must be carried out in a manner that is consistent with the purpose of the Act under which the function, power, or duty is exercised or performed.
- (4) **Subsection (2)**—
 - (a) does not remove, or prevent the exercise of, any discretion that a person has in exercising or performing a function, power, or duty under an Act referred to in **Schedule 2**; but
 - (b) permits the person to consider te mana o te tohorā and the fundamental principles as determining factors when exercising or performing a function, power, or duty under that Act.

- (5) If the exercise or performance of a function, power, or duty in accordance with **subsection (2)** requires a decision, document, or report, that decision, document, or report must state how the requirements of **subsection (2)** have been complied with.

10 Effect of Act limited

Unless expressly provided for by or under this Act, nothing in this Act—

- (a) creates, limits, transfers, extinguishes, or otherwise affects any rights to, or interests in, water, wildlife, fish, aquatic life, or seaweeds; or
- (b) affects the application of any legislation.

Part 3 Regulations and Review of Act

11 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) providing for anything this Act says may or must be provided for by regulations;
 - (b) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

12 Review of Act

- (1) The Minister must, before the fifth anniversary of the commencement of this Act,—
- (a) commence a review of its operation; and
 - (b) prepare a report on that review.
- (2) The Minister must ensure that, during the review, the people and organisations that the Minister thinks appropriate are consulted.
- (3) The Minister must present the report to the House of Representatives as soon as practicable after it has been completed.

Schedule 1
Transitional, savings, and related provisions

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Part 1
Provisions relating to this Act as enacted

There are no transitional, savings, or related provisions in this Act as enacted.

Schedule 2
Acts referred to in section 9

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The Acts referred to in section 9 are—

- (a) Biosecurity Act 1993:
- (b) Conservation Act 1987:
- (c) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 :
- (d) Fast-track Approvals Act 2024:
- (e) Fisheries Act 1996:
- (f) Marine and Coastal Area (Takutai Moana) Act 2011:
- (g) Marine Mammals Protection Act 1978:
- (h) Marine Reserves Act 1971:
- (i) Maritime Transport Act 1994:
- (j) Resource Management Act 1991 (in relation to the coastal environment, including the coastal marine area):
- (k) Trade in Endangered Species Act 1989:
- (l) Wildlife Act 1953.