

Stemming the Colonial Environmental Tide- Ecosystem-Based Management and Shared Crown-Māori Co-Governance for Sustaining Our Marine Coastal Estate in Aotearoa New Zealand – Summary Report

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Mana Whakahaere Tōtika Sustainable Seas Research Project





This summary report was prepared by Dr Robert Joseph from Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Te Piringa Faculty of Law at the University of Waikato for the National Science Challenge Sustainable Seas Ko Ngā Moana Whakauka Project.

Ko Ngā Moana Whakauka – Sustainable Seas National Science Challenge is committed to the appropriate protection, management and use of mātauranga Māori within its research, outputs and outcomes. This is expressed through the respect and integrity of our researchers, both Māori and non-Māori, and in our approach to ethics and the management of intellectual property. Where mātauranga Māori is sourced from historical repositories, we recognise the obligation to take all reasonable steps to ensure its protection and safeguard for future generations. We also acknowledge the findings of the Waitangi Tribunal in relation to *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity* and are committed to working with Māori researchers and communities to refine our approach.

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Contents

A) Background.....	4
B) Research Implications – Findings and Proposed Approaches	4
Consolidated National Approach and Direction.....	4
Collaboration Key.....	5
National Conversation Overdue	6
Treaty of Waitangi and UNDRIP Germane	6
Mātauranga and Tikanga Māori Relevant	7
Mana Whakahaere Tōtika- EBM Co-Governance Capacity and Capability Building.....	7
Legislative Reform Pressing.....	8
Strengthen Current Legislation Not Start a New.....	8
Legal Personality of our Marine and Coastal Estate.....	9
National Co-Governance EBM Commission.....	9
C) What We Did	10
D) Appendices.....	15
Appendix 1: Ecosystem-based Management: Te Ara Tika – The Pathway Forward	15
Appendix 2: Key Marine Legislation	17
E) References.....	18

A) Background

The Sustainable Seas National Science Challenge (the challenge) is exploring opportunities for law and policy to support ecosystem-based management (EBM) in Aotearoa New Zealand's marine and coastal estate. One such opportunity focusses on our governance structures and how well they provide for mana whakahaere tōtika – shared co-governance jurisdiction – based on the Treaty of Waitangi partnership, mātauranga and tikanga Māori.

Te Mata Hautū Taketake – The Māori and Indigenous Governance Centre (MIGC) at the University of Waikato was contracted to carry out some of the challenge research on EBM governance, mātauranga and tikanga Māori, and the Treaty. To this end, MIGC published three Sustainable Seas National Science Challenge Reports.¹ The 2020 Report: *Stemming the Colonial Environmental Tide*² ('the main report') articulates some environmental challenges that are currently undermining the health and well-being of our marine and coastal estate. It then discusses how EBM with Māori mana whakahaere tōtika – shared co-governance jurisdiction – can be a viable and practical solution for restoring and sustaining our marine and coastal estate in Aotearoa New Zealand.

This report summarises the main report and draws on others to further advocate for EBM, adapted to our local context. It describes key implications of the research and proposes some approaches and recommendations to inform discussion, debate and ideas for future policy reform. These ideas will be shared and discussed with policy, Māori, and research representatives, and supplemented by more recent research and reports, before being refined and finalised into a final policy briefing and guidance document.

B) Research Implications – Findings and Proposed Approaches

Consolidated National Approach and Direction

At present there is no national vision, strategy, policy or plan reflecting and guiding our many connections, relationships and uses of the marine estate in Aotearoa New Zealand. Research from within Sustainable Seas has on many occasions noted the complexity of disjointed marine management regimes. It has been argued that addressing our degraded marine and coastal estate within realistic timeframes requires a adopting a bold ambitious National Oceans vision, strategy, policy, and plan ('National Oceans policy and plan') and engagement approach.

¹ See Dr Robert Joseph, Mylene Rakena, Mary Te Kuini Jones, Dr Rogena Sterling and Celeste Rakena *The Treaty, Tikanga Māori, Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand – Possible Ways Forward*, (National Science Challenge Sustainable Seas Ko Ngā Moana Whakauka and Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Te Piringa-Faculty of Law, University of Waikato, November 2018); Dr Robert Joseph, Mylene Rakena, Mary Te Kuini Jones, Jenny Takuira, Mariana Te Tai and Celeste Rakena, *Stemming the Colonial Environmental Tide - Shared Māori Governance Jurisdiction and Ecosystem-Based Management over the Marine and Coastal Seascape in Aotearoa New Zealand – Possible Ways Forward*, (National Science Challenge Sustainable Seas Ko Ngā Moana Whakauka and Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Te Piringa-Faculty of Law, University of Waikato, November 2020) at 74 [Hereafter *Stemming the Colonial Environmental Tide Report*]; and the summary report: Joseph, R, *Treaty-based Governance and EBM over the Marine Estate in Aotearoa*, (National Science Challenge Sustainable Seas Ko Ngā Moana Whakauka and Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Te Piringa-Faculty of Law, University of Waikato, 2022).

² Above.

Ecosystem-based management (EBM) principles established by the Challenge have been developed to reflect Tiriti o Waitangi and tikanga Māori opportunities and implications and can provide a strong foundation for such a vision.

Based on our research, some key aspects of the approach to developing a national vision based on EBM should include:

- Co-design and development of a shared collective National Oceans policy and plan, and engagement approach must be initially undertaken by the Crown and Māori as Treaty of Waitangi partners working in good faith.
- The National Oceans policy and plan that adopts EBM must acknowledge the Treaty of Waitangi partnership, co-governance and how mātauranga and tikanga Māori have much to contribute to the recovery and sustainability of the marine and coastal estate.
- All New Zealanders, including industry³ and other key stakeholders, also need to have an opportunity to understand and be a part of the national conversation and development of the National Oceans policy and plan. The adoption of EBM as one of the key pillars of a National Oceans policy and plan by Government, Māori, and industry could facilitate efficiency of process utilising years of Sustainable Seas research.
- Any National Oceans policy and plan developed should be a living evolving document that continues to be regularly reviewed through ongoing collaborative conversations.
- Any associated laws and institutions for adopting EBM need to be monitored for progress to ensure quality assurance, accountability, review, and currency over time.

Collaboration Key

- The Crown and Māori need to co-develop a holistic, coordinated engagement approach for adopting EBM over the marine and coastal estate that will involve changes in policy and law and will need to articulate how EBM will apply.
- We need to link together the public sector,⁴ private sector,⁵ and Māori sector⁶ siloes over the marine and coastal estate under EBM to collaborate in and prioritise restoring the health and well-being of the marine and coastal estate.
- Government and Māori leaders need to develop a holistic, coordinated approach to engagement with local Government, relevant public sector agencies, and the private sector to socialise EBM and co-governance education.
- The Crown and Māori must co-lead and co-design the delivery of the EBM engagement strategy which should be as wide and inclusive as possible by using a

³ 'Industry' for the purposes of this report for EBM includes key stakeholders working in or on the marine and coastal estate such as the seafood industry, offshore mining and tourism.

⁴ The Public sector - National, Regional and Local Governments, the Ministry for the Environment, Ministry for Fisheries, Department of Conservation, the Environment Protection Authority, etc.

⁵ The Private sector – Industry such as mining, tourism and the seafood industry.

⁶ The Māori sector – Iwi, hapū, whānau and relevant Māori entities.

range of channels and appropriate processes for different audiences to optimise outreach and maximise engagement.

- The National Oceans policy and plan, national conversation and engagement plan adopting EBM must be accompanied by education and information to raise awareness of the degraded state of our marine and coastal estate, and our EBM strategy for recovering our marine and coastal estate.
- The revised Aotearoa New Zealand education curriculum should be utilised for EBM engagement where it is taught at schools and should not shy away from the difficult aspects of our history.
- All New Zealanders must have the opportunity to participate in and benefit from the EBM reforms for recovering and sustaining the health and well-being of the marine and coastal estate.
- The Crown and industry need to collaborate and engage with Māori on the National Oceans policy and plan and engagement through appropriate Māori representatives and to allow time for decision making processes to occur according to mātauranga and tikanga Māori.

National Conversation Overdue

- The Crown must establish an avenue for national dialogue between the Treaty partners and the wider public to consider the EBM matters over the marine and coastal estate.
- To generate public support for the recognition of EBM and co-governance, an informed inclusive national conversation on the National Oceans policy and plan and engagement will need to take place accompanied by a public education campaign between 2023-2030.

Treaty of Waitangi and UNDRIP Germane

- Aotearoa New Zealand has reached a moment in its maturity as a nation where we must realise the Treaty of Waitangi aspirations and promises agreed to in 1840 by the bicentenary of its signing in 2040.
- The New Zealand Government needs to also take seriously its partnership responsibilities under the Treaty of Waitangi 1840 and the United Nations Declaration on the Rights of Indigenous Peoples 2007 (UNDRIP).
- The National Oceans policy and plan adopting EBM must acknowledge as a central pillar the Treaty of Waitangi partnership through co-governance in the recovery and sustainability of the marine and coastal estate.
- The Government and Māori should formalise in all EBM policy and law shared co-governance jurisdiction relationships over the marine and coastal estate based on the Treaty of Waitangi 1840 and UNDRIP 2007.

Mātauranga and Tikanga Māori Relevant

- The National Oceans policy and plan, and the engagement approach should acknowledge in EBM policy and law how mātauranga and tikanga Māori will contribute to the recovery and sustainability of our marine and coastal estate.
- As a Treaty of Waitangi partner, Māori mana whakahaere tōtika – shared co-governance jurisdiction – must apply in the implementation of EBM across the marine and coastal estate.
- Mātauranga and tikanga Māori should be applied across the country under shared State and Māori co-governance jurisdiction.

Mana Whakahaere Tōtika - EBM Co-Governance Capacity and Capability Building

- The Crown and Māori should normalise mana whakahaere tōtika – shared co-governance jurisdiction - through EBM co-governance models for restoring and sustaining the health and well-being of the marine and coastal estate.
- The EBM co-governance models should function, according to mātauranga and tikanga Māori, within a wider Aotearoa New Zealand state political framework.
- The Crown, Māori, and industry must develop and build internal capacity and capability to carry out EBM and co-governance effectively over the marine and coastal estate.
- Iwi, hapū, and in some contexts even whānau must establish effective co-governance arrangements with their respective mana whakahaere tōtika – shared co-governance jurisdiction – recognised for EBM recovery of the health and well-being of our marine and coastal estate.
- Māori communities should exercise manaakitanga towards all people within the tribal rohe moana marine areas.
- All sectors must develop and rebuild effective co-governance values, culture, policies, systems, processes, institutions, laws, practices, and structures that are fit for purpose in adopting EBM for restoring and sustaining the health and well-being of the marine and coastal estate.
- The Crown and Māori must build internal capacity and capability by building on already established co-governance models to further enhance EBM over the marine and coastal estate.
- The Crown, Māori and industry should explore and provide mutual opportunities for all groups to learn from each other for effective EBM and co-governance of the marine and coastal estate by establishing cadetships and partnerships.
- The Crown and Māori need to co-develop education and training programmes to address structural bias and institutional racism within the public sector.
- The Crown, Māori, and industry should explore and learn from compelling International EBM co-governance models from, inter alia, the Provincial and Territorial comprehensive co-governance agreements, and the Great Bear Initiative, in Canada, from the Great Barrier Reef in Australia, and elsewhere.

Legislative Reform Pressing

- Reform the current environment law to prioritise the health and well-being of the marine and coastal estate through, inter alia, EBM and co-governance.
- Crown legislative reform should be undertaken to ensure that EBM and co-governance are reflected in the Natural and Built Environment Act 2023 and other environmental legislative reform to enable the Crown, Māori, and industry to balance their interests with the well-being and sustainability of the marine and coastal estate.
- Amend environment legislation such as the Natural and Built Environment Act 2023 to state that EBM, the Treaty, and co-governance obligations apply to all persons exercising powers and functions under the statute.
- Remove barriers and provide incentives for providing for EBM and co-governance in legislation provisions such as the now repealed RMA sections such as s. 33 (transfer of powers to iwi), s. 36B (joint management agreements), ss. 58M-58U (Mana Whakahono a Rohe), s. 171 (recommendations by territorial authorities to consider ss. 5-8), and s. 188 (potential iwi heritage management authorities), and in the recently enacted Natural and Built Environment Act 2023.
- Make Crown-Māori mana whakahaere tōtika – shared co-governance jurisdiction - - and EBM of the marine and coastal estate mandatory in the Natural and Built Environment Act 2023 and any other related environmental legislation.
- Extend the EBM, Treaty and co-governance priorities and obligations to all associated Crown entities including those exercising delegated authority such as Regional and Local Councils, and, inter alia, the Ministry for the Environment, Ministry for Fisheries, and Department of Conservation.
- Gradually bring all related environmental policy, legislation, and initiatives in line with EBM, collaboration, the Treaty, and mana whakahaere tōtika – shared co-governance jurisdiction - over the marine and coastal estate.
- EBM mana whakahaere tōtika – shared co-governance jurisdiction - may provide direction for Crown and industry engagement with iwi, hapū and whānau for free, prior, and informed consent in relation to any extractive activities such as seabed mining and exploratory drilling within the marine and coastal estate.⁷

Strengthen Current Legislation Not Start a New

- The required changes do not necessarily mean repealing current legislation such as, inter alia, the Marine Reserves Act 1971, Local Government Act 2002, Māori Fisheries Act 2004, and the Marine and Coastal Area (Takutai Moana) Act 2011. – although we acknowledge here the recently repealed Resource Management Act 1991 with the Natural and Built Environment Act 2023.
- Instead, it may mean maximising or utilising existing laws and policies or underutilised opportunities within the current legislative framework to be more effective for co-governance and EBM for recovering the marine and coastal estate.

⁷ Legislative precedent already exists in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

- Specific provisions could, for example, include strengthening Māori mana whakahaere tōtika – shared co-governance jurisdiction - in Mātaitai and Taiāpure for customary fisheries.

Legal Personality of our Marine and Coastal Estate

- For broader collective impact to implement the National Oceans policy and plan through EBM that acknowledges the Treaty, effective collaboration arrangements, mātauranga and tikanga Māori, and Māori mana whakahaere tōtika of the marine and coastal estate, the Government should grant legal personality through legislation to the marine and coastal area (takutai moana) estate with a focus on preserving and conserving its health and well-being in perpetuity that trumps all other interests.

National Co-Governance EBM Commission

- Either modify and strengthen the mandate and powers of the current Environment Protection Authority to set and monitor the National Oceans policy and plan through EBM and Māori mana whakahaere tōtika for restoring the health and well-being of our marine and coastal estate in perpetuity; or
- Establish a new national co-governance body – an EBM Commission - for implementing EBM over the marine and coastal estate and articulating EBM priorities, policies, practices and even assisting with enacting new EBM laws and institutions (or modifying and strengthening current laws and institutions) for restoring and sustaining the health and well-being of our marine and coastal estate in perpetuity.
- The EBM Commission could also adjudicate in the first instance on any disputes that will inevitably arise between and even within the various interest groups.
- The proposed national EBM Commission body should be co-governing and reflective of the Treaty of Waitangi partnership with equal numbers of Government and Māori representatives whose tasks may be to:
 - Provide a framework for change that enables the marine and coastal estate to recover and thrive within an EBM context balancing all interests – Government, Māori and industry.
 - Approve the final engagement strategy on the National Oceans policy and plan and how EBM will be integrated.
 - Provide high level leadership for EBM and Māori mana whakahaere tōtika co-governance at national, regional, and local levels.
 - Direct EBM and Māori mana whakahaere tōtika co-governance nationally, regionally, and locally.
 - Monitor EBM and Treaty performance of National Government, Local Authorities and Māori authorities.
 - Ensure that all Government working groups, advisory and appointed bodies operating in the marine and coastal estate reflect EBM, the Treaty

partnership, and Māori mana whakahaere tōtika co-governance at least in composition and decision-making.

The next section will briefly outline our research and how we came to the above research implications and recommendations.

C) What We Did

The 2020 Sustainable Seas National Science Challenge Report: *Stemming the Colonial Environmental Tide*⁸ is a 600-page report that articulates in detail the alarming environmental degradation of our marine and coastal estate and some Māori responses to this environmental tidal wave. To stem this ‘colonial environmental tide’ that continues to undermine the health and well-being of our marine and coastal estate, our MIGC research fully supports the Sustainable Seas approach of adopting EBM with Government, Māori, and industry⁹ collaborating as co-governing partners in our collective urgent quest to restore and sustain our marine and coastal estate going forward.

The full report explored current co-governance and co-management arrangements over the coastal marine estate by analysing several specific legislative and regulative marine and coastal estate models in Aotearoa New Zealand. It also looked at other relevant EBM and co-governance marine models in Canada and Australia to provide further context for Aotearoa New Zealand. This section summarises some of this research.

Co-Governance Example	Description
Resource Management Act 1991	<p>Resource management policy, regulatory and legislative regimes in Aotearoa New Zealand recognise Māori rights, interests, and values in the Resource Management Act 1991 (RMA, currently under review) and other statutes, but they are neither provided for fully nor are they given substantive effect in practice. The practical implementation of RMA statutory provisions was a key challenge for Māori such as balancing the specific purpose and Māori provisions in ss. 5, 6, 7 and 8, due to balancing other interests against Māori co-governance aspirations and responsibilities. The emphasis for Māori in the RMA is on a right to culture model and not shared co-governance jurisdiction or proprietary rights to exercise full kaitiakitanga responsibilities over natural resources.</p> <p>The RMA also devolved powers and rights to local authorities, but did not paradoxically, devolve Treaty of Waitangi responsibilities to Māori. The challenge of practical implementation of other specific RMA statutory provisions for Māori was evident and need to be addressed urgently including, s. 33 (transfer of powers to iwi), s. 36B (joint management agreements), s. 171 (recommendations by territorial authorities to consider ss. 5-8) and s. 188 (potential iwi heritage management authorities), and more latterly, ss. 58M-58U (Mana Whakahono a Rohe).</p>

⁸ Above, n. 1 (Joseph et al) at 74.

⁹ ‘Industry’ for the purposes of this report for EBM and as noted above includes key stakeholders working in or on the marine and coastal estate such as the seafood industry, offshore mining, and tourism.

Māori Commercial Fisheries	<p>Māori commercial fisheries and aquaculture legislation regulates Māori commercial and aquaculture responsibilities and appear to be enabling regimes for recognising mātauranga and tikanga Māori and Treaty partnerships with some shared co-governance jurisdiction possibilities. The 1992 Māori Commercial Fisheries Treaty settlement established the new post-settlement governance entity, Te Ohu Kai Moana (TOKM) with legislative directions to establish a framework for the allocation of the settlement assets to iwi.</p> <p>Māori communities must incorporate into legal entities that represent group interests in both commercial fisheries and aquaculture, which tend to favour (but not always!) corporate interests over environmental and cultural interests. Similar mātauranga and tikanga Māori legal challenges have emerged with ascertaining traditional tribal boundaries, coastal entitlements, and fisheries management areas, that may not necessarily be conducive to tikanga Māori and EBM co-governance of the marine and coastal estate.</p>
Māori Customary Fisheries – Taiāpure, Mātaitai Reserves	<p>The Fisheries Act 1996 and other Māori fisheries regulations provide generously in some areas for Māori customary forms of environmental co-governance and co-management such as in taiāpure and mātaitai reserves. In such cases co-management committees pass bylaws that provide scope for mātauranga and tikanga Māori that may be significant in terms of acknowledging Treaty partnerships and co-governance power sharing jurisdiction. The process of establishing reserves and the bylaws themselves, however, are heavily scrutinised and are even controlled in many respects by the responsible Minister, which, again, undermines tribal mana whakahaere tōtika as originally envisaged in the Treaty of Waitangi.</p>
Marine and Coastal Area (Takutai Moana) Act 2011	<p>The Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) recognises and promotes the exercise of Māori customary interests in the common marine and coastal area by providing for customary marine title, wāhi tapu protection and protected customary rights. These are theoretically very enabling provisions in terms of recognising mātauranga and tikanga Māori, and for empowering the Treaty of Waitangi partnership with potentially some shared co-governance jurisdiction. Consequently, hundreds of Māori groups are currently negotiating with the Crown or are litigating in the High Court for recognition of customary interests over the marine and coastal estate based on the common law doctrine of aboriginal title, which is determined by mātauranga and tikanga Māori.</p> <p>The challenges of MACA are the slowness as well as inadequate funding to process claims resulting in the few claims that have been processed to date, passing the challenging MACA statutory tests, and the Crown’s very conservative interpretation of MACA.</p>
Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	<p>The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) does not give full regard to the principles of the Treaty of Waitangi for some shared jurisdiction and co-governance. The Courts, however, have not been willing to require more than the stated legislative requirements under s. 12, EEZ Act to fulfil the principles of the Treaty of Waitangi. Although s. 59(m),</p>

	<p>EEZ Act provides the Courts with the broad power to consider ‘any other matter,’ the 2018 High Court decision of <i>Taranaki-Whanganui Conservation Board v The Environmental Protection Authority</i>, [2018] NZHC 2217 affirmed that s. 59(m), EEZ Act was not intended to supplement existing legislative provisions provided to serve the same objective. Thus, if a decision-making committee is unwilling to go beyond s 12, EEZ Act matters, Māori who have interests outside the s. 12 matters will be adversely affected, which may limit the Environmental Protection Authority’s ability to incorporate the Treaty of Waitangi principles into its decision-making processes to the same extent it is enabled under other legislation such as the RMA.</p>
<p>Marine Protected Areas</p>	<p>Marine Protected Areas (MPAs) under the Marine Reserves Act 1971 naturally align with tikanga Māori practices such as rāhui for co-governance, along with internationally recognised conservation approaches including EBM best practices of flexibility to achieve ecological, social, cultural, and commercial objectives that determine successful environmental initiatives. The creation of MPAs in Aotearoa New Zealand requires, as a minimum, transparency and appropriate acknowledgement of mātauranga and tikanga Māori as well as inclusion of Māori as Treaty partners not a bystander or another stakeholder, hence the possibility of co-governance arrangements. The former National Government’s mistreatment of the Kermadec Ocean Sanctuary in 2016 however, illustrated that the potential for ulterior political motives to undermine the Treaty partnership and tikanga Māori responsibilities within the Kermadec Ocean Sanctuary.</p> <p>For long-term sustainability in Aotearoa New Zealand, the Government must ensure that the processes for creating MPAs are inclusive and that they reflect the commitments that the Crown is obliged to honour from the Treaty partnership. The Kermadec Ocean deserves protection but not at the cost of Māori co-governance and negotiated Treaty settlement mana whakahaere tōtika, proprietary, and cultural rights and responsibilities. Environmental protection and tikanga Māori are symbiotic, align with EBM best practices, and should be recognised at all levels of co-governance decision-making over the marine estate in local, regional, and national Government, as well as with industry and other stakeholders.</p>
<p>Treaty of Waitangi Settlements Co-Governance</p>	<p>Negotiated Treaty of Waitangi settlements are proving to be the major catalysts for recognising and protecting mātauranga, tikanga and taonga Māori environmental interests and for shared co-governance jurisdiction. The Government prefers to negotiate agreements to address Māori claims to natural resources. For the coastal marine estate, the Government asserts that the process of rights definition is best left to collaboration between iwi and the Crown. The challenge is Māori must first seek leverage in negotiations by obtaining some <i>prima facie</i> legal right to the natural resource.</p> <p>Treaty of Waitangi settlements are realising new co-governance partnerships between Māori and the Crown, including local authorities. The co-management agreements in Treaty settlements such as the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the Te Urewera Act 2014, and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, emphasise consultation and effective participation in decision-making under the RMA – a right to culture</p>

	model - not collaborative ecosystem-based management and shared mana whakahaere tōtika- co-governance jurisdiction- over natural resources.
Other Legislation	<p>Given the increasing frequency of Treaty of Waitangi settlements, co-management and joint management agreements, and iwi planning arrangements under the RMA, a feasible option to empower the Treaty of Waitangi partnership is to share more co-governance jurisdiction with iwi and hapū authorities. This could be at least in part initially, and then more over time to allow Māori to effectively co-govern and co-manage a specific area of the coastal marine estate within the tribal rohe under an overarching EBM framework.</p> <p>Such options have been possible since the enactment of the RMA in 1991 under ss. 33 (as noted above), and 188, and more recently in ss. 36B 58M-58U, as amended by s. 51, Resource Legislation Amendment Act 2017, as well as with Māori customary fishing responsibilities with taiāpure and mātaimai reserves for example.</p> <p>The efforts to introduce iwi participation arrangements (IPAs), Mana Whakahono a Rohe in the RMA, and other special legislation initiatives such as the Hauraki Sea Change Tai Timu Tai Pari marine spatial plan 2013, and the Auckland Unitary Plan 2017. These go some way towards promoting effective iwi participation in RMA processes and provide scope for EBM collaboration and co-governance arrangements. Authentic co-governing partnerships in decision-making processes should and have started to become substantively and procedurally normative.</p>
Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019	In 2019, the New Zealand Government enacted the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 that provides very broad scope (at least theoretically) for co-governance and concurrent jurisdiction for most of the Ngāti Porou rohe moana coastal marine estate. The statute appears to forge a path of authentic concurrent jurisdiction which will need to be closely monitored over the coming years for co-governance and co-designed structures that acknowledge the Ngāti Porou partnership based on the Treaty of Waitangi and that effectively incorporates Ngāti Porou tikanga and mātauranga within an EBM context over the marine estate.
Canada – Self-Government and Co-Governance	Some compelling international models of EBM and co-governance exist in Canada where Indigenous groups have shared self-government and co-governance jurisdiction through comprehensive Treaty settlement and self-government agreements including over the marine and coastal estate with the James Bay Cree and Inuit in Northern Quebec, the Inuit in Nunavut, Inuvialuit, Labrador and Nunavik, and the Nisga’a in northern B.C.
Canada – Great Bear Initiative EBM and Co-Governance	The Great Bear Initiative (GBI) and Marine Planning Partnership frameworks over the B.C, Canada, terrestrial and marine estate, are compelling case studies for effective co-governance, and partnership collaboration models between diverse groups (Government, industry, community, and Indigenous people) to manage the natural resources in a specific EBM context. From the outset, the establishment of the GBI and Marine Planning Partnership in 2005 was based on

	<p>implementing EBM over the Great Bear Forest and marine estate. The GBI then, is important as a sweeping mechanism for recognising and realising First Nations co-governance aspirations over traditional territories, for bridging and integrating traditional ecological knowledge and stewardship laws and institutions with western science and mainstream law when governing coastal resources, and for building genuine partnerships through power sharing, collective jurisdiction, resource sharing and capacity building at all levels in the policies, laws and institutions of the Province of B.C.</p> <p>The recent enactment of the Declaration on the Rights of Indigenous Peoples Act 2019 in B.C, Canada that incorporates UNDRIP into B.C domestic law is also pivotal for providing free, prior, and informed consent for any projects on Indigenous lands and it provides a framework for decision-making between Indigenous Governments and the Province of B.C on matters that impact their citizens. The Declaration on the Rights of Indigenous Peoples Act 2019 then could be utilised to enhance opportunities with the GBI for example, for implementing EBM over the marine estate more effectively through, inter alia, shared authentic co-governance jurisdiction which warrants close monitoring going forward.</p>
<p>Australia – Great Barrier Reef EBM and Co-Governance</p>	<p>In Australia, the original Great Barrier Reef Marine Park Act 1975 (GBRMPA) promised much in terms of long-term protection and conservation of the Great Barrier Reef (GBR) through EBM and by facilitating partnerships with Indigenous Aboriginal and Torres Strait Traditional Owners. But the GBRMPA has been light on delivery of both EBM and facilitating co-governance partnerships with Indigenous Aboriginal and Torres Strait Traditional Owners. Both EBM and Indigenous Traditional Owners appeared to be marginalised over the years in the governance and management of the GBR.</p> <p>The 2018 <i>Traditional Owners of the Great Barrier Reef Report</i> recommended genuine co-governance in the overarching governance of the GBR and far deeper ownership of, and participation in, its active day to day management thus imploring Australian Governments to take a far more negotiated approach with Indigenous Aboriginal and Torres Strait Traditional Owners at the GBR-wide level down to local scales that apply the principles of free prior and informed consent from UNDRIP.</p>
<p>Summary</p>	<p>Māori environmental perspectives – mātauranga and tikanga Māori- deserve to be fully tested and integrated in EBM and co-governance arrangements for the marine coastal estate, not treated as an add-on, afterthought, or a group of matters placed in opposition to (or as grudging concessions to) a dominant Aotearoa New Zealand mainstream western paradigm. To treat them as a separate theme would deny their potential for synergies with other matters including implementing EBM over the marine and coastal estate.</p> <p>What is urgently required is effective collaboration and genuine co-governance partnerships with other sectors of society in Aotearoa New Zealand to support implementing EBM over the marine and coastal estate. Genuine co-governance partnerships are also urgently required in both the GBI in B.C, Canada, and with Indigenous Traditional Owners in the GBR, in Queensland, Australia, that</p>

	appropriately acknowledge and equitably incorporate Indigenous co-governance within this EBM context.

D) Appendices

Appendix 1: Ecosystem-based Management: Te Ara Tika – The Pathway Forward

- Ecosystem-based management ('EBM') is a viable solution worthy of exploration for remedying the alarming environmental degradation of our marine and coastal estate.
- The Sustainable Seas National Science Challenge acknowledged internationally recognised EBM principles then adapted them to fit a specific Aotearoa New Zealand context that includes the following seven EBM pou principles:
 - Human Activities
 - Tailored
 - Knowledge-based
 - Sustainability
 - Adapts
 - Collaborative decision-making; and
 - Co-governance.

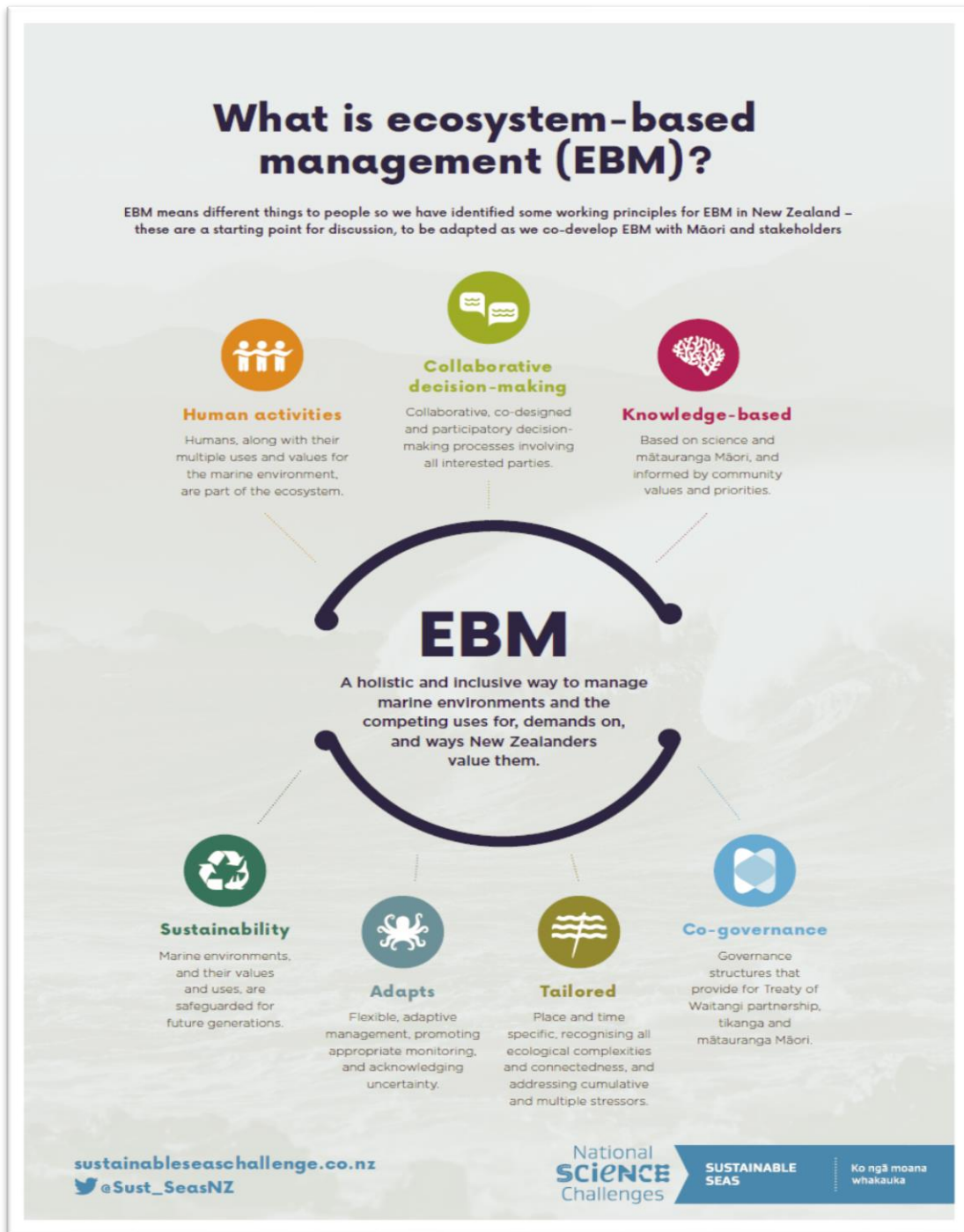


Diagram 1: National Science Challenge EBM¹⁰

¹⁰ National Science Challenge ecosystem-based management (EBM) diagram located online at the website: https://www.sciencelearn.org.nz/system/documents/files/000/000/667/original/Sustainable_Seas_Challenge_EBM.pdf?1507494794 (Accessed March 2020).

Appendix 2: Key Marine Legislation

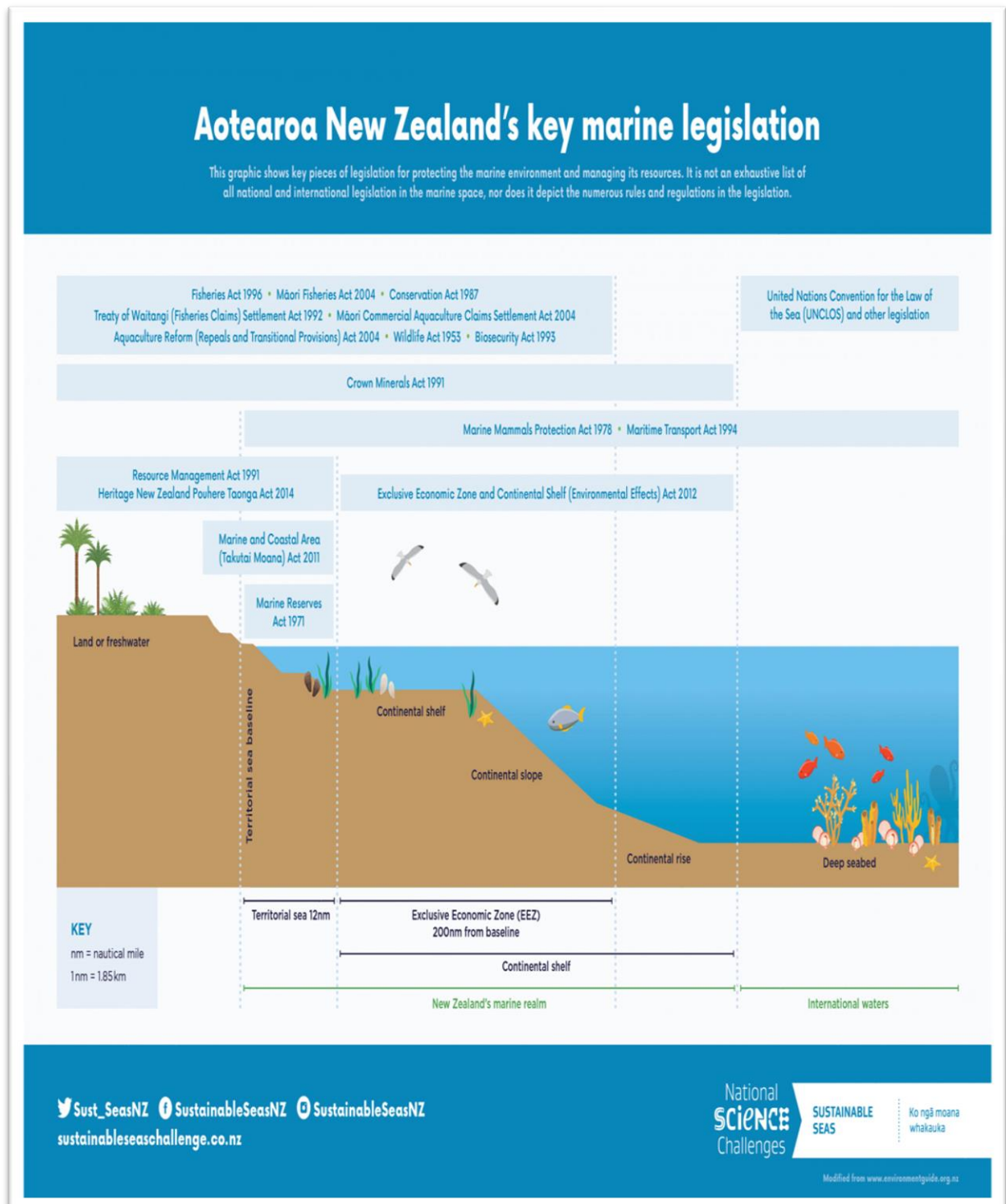


Diagram 2: Aotearoa New Zealand's Key but Fragmented Marine and Coastal Estate Legislation (the report acknowledges here the recent repeal of the Resource Management Act 1991 with the Natural and Built Environments Act 2023).

E) References

Legislation

1. Fisheries Act 1996.
2. Local Government Act 2002
3. Māori Fisheries Act 2004
4. Marine and Coastal (Takutai Moana) Act 2011
5. Marine Reserves Act 1971
6. Natural and Built Environment Act 2023
7. Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
8. Resource Legislation Amendment Act 2017.
9. Resource Management Act 1991 (now repealed)
10. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017
11. Te Urewera Act 2014
12. Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
13. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

Bill

1. Natural and Built and Environments Bill 2022

Treaties

1. Te Whakaputanga o te Rangatiratanga o Niu Tirenī 1835 – The Declaration of Independence 1835
2. Te Tiriti o Waitangi - Treaty of Waitangi 1840
3. United Nations Declaration on the Rights of Indigenous Peoples 2007.

Case Law

1. Taranaki-Whanganui Conservation Board and Others v The Environmental Protection Authority, [2018] NZHC 2217.

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6. Joseph, R, *Treaty-based Governance and EBM over the Marine Estate in Aotearoa*, (National Science Challenge Sustainable Seas Ko Ngā Moana Whakauka and Te Mata Hautū Taketake – the Māori and Indigenous Governance Centre, Te Piringa-Faculty of Law, University of Waikato, 2022).
7. McNeil, K, 'The Jurisdiction of Inherent Right Aboriginal Governments' (Research Paper for the National Centre for First Nations Governance, 11 October 2007).
8. National Science Challenge ecosystem-based management (EBM) diagram located online at the website:
https://www.sciencelearn.org.nz/system/documents/files/000/000/667/original/Sustainable_Seas_Challenge_EBM.pdf?1507494794 (Accessed March 2020).
9. Wever, S.G, 'Recognising Rangatiratanga: Sharing Power with Māori through Co-Management,' (Bachelor of Laws Honours Dissertation, Faculty of Law, University of Otago, 2011).



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