

FORESHORE AND SEABED REPLACEMENT FRAMEWORK

SPECTRUM OF POSSIBLE OUTCOMES/AWARDS

Preliminary Advice prepared by the Technical Advisory Group for the Attorney General

Executive Summary

1. The Attorney General requested the Technical Advisory Group (TAG) to present advice on the prospective awards that could be made available in the replacement regime to the Foreshore and Seabed Act 2004.
2. This paper provides a preliminary identification of the prospective range of awards that could be made available. The paper primarily consolidates and considers potential enhancements to existing precedents to provide a platform for developing new awards commensurate with the shared commitment to implement a replacement regime unique to Aotearoa New Zealand.
3. The paper is set out in three parts:
 - a. Part A – Identification of Awards in Summarised Form;
 - b. Part B – Extended Analysis of Awards providing overview of the scope and circumstance of each award, and where possible, an example of its prospective operation;
 - c. Part C – Contextual Narrative on the purpose and principles informing the identification of the awards, as well as considering further work on prospective awards and related issues that could be completed.

PART A – PRELIMINARY IDENTIFICATION OF AWARDS

	Baseline recognition	Enhanced recognition
Status of mana	Recognition in the purpose and/or principles of the Act of: <ul style="list-style-type: none"> • The unbroken, inalienable and enduring mana held by iwi and hapū on a collective basis over their rohe moana; and • The right of iwi and hapū to continue to exercise and express their mana; and • The development and other rights inherent in that mana. 	
Environmental management	Iwi/hapū strategy/planning document (akin to the Ngati Porou Environmental Covenant), to be recognized and provided for (or taken into account) in by all decision-makers (i.e. across the full suite of marine management legislation and the status of a National Policy Statement under the Resource Management Act 1991 (cf. the status of the Vision/Strategy for the Waikato River).	Iwi/hapū strategy/planning document which has the status of a Regional Policy Statement under the Resource Management Act 1991 and to which effect must be given by decision-makers under other legislation.
	Statutory acknowledgement/overlay recognition of mana over rohe moana of iwi/hapū.	
	Consistent opportunities to input to decision-making across the full suite of marine management legislation.	
	Provide status for iwi/hapū rohe moana planning within the Fisheries Act 1996.	
Iwi/hapū authority	Restoration of placenames and placement of pouwhenua.	Joint decision-making in respect of new placenames.
	Notice of whale strandings and views on marine mammal and wildlife management taken into account (conservation protocol).	Notice of whale strandings and views on marine mammal and wildlife management given effect (conservation protocol)
	Notification of artefacts and taonga found within the rohe and right to participate in ownership determination process (taonga tuturu protocol).	Notification of artefacts and taonga found within the rohe and ownership determined in accordance with tikanga (taonga tuturu protocol).

	Ability for iwi/hapū to impose rāhui (i.e. restrict access and activities permanently or temporarily) for cultural reasons (e.g. wāhi tapu).	
	Joint decision-making of Iwi/hapū and the Crown on access to minerals ('nationalised' and 'non-nationalised').	Control of access to minerals
	Iwi/hapū share with the Crown in the benefits of 'non-nationalised' minerals.	Iwi/hapū receive benefits of non-nationalised minerals.
		Iwi/hapū receive/share in benefits of any other resources within the rohe (benefit sharing protocol).
	More effective processes within the customary fishing regulations for: <ul style="list-style-type: none"> • Appointment of tāngata tiaki/kaitiaki; • Allowing (some or all) commercial fishing within mātaimai; and • Capacity to develop tailored permitting/permission systems for customary fishing. 	Iwi/hapū have access to a mechanism for giving full legal effect to tikanga in respect of fisheries (binding iwi/hapū members and third parties).
	Provide for self-regulation by iwi/hapū of their members in respect of all customary activities, including the taking of flora, fauna and mineral resources (cf. the Tītī Islands regulations).	Iwi/hapū have access to a mechanism for giving full legal effect to tikanga in respect of flora and fauna (binding iwi/hapū members and third parties).
	The Crown to encourage local authorities to transfer of some/all functions under the Resource Management Act 1991 to iwi/hapū (s.33) or in accordance with joint management agreements (s.36B).	Mandatory transfer of some/all local authority functions under the Resource Management Act 1991 to iwi/hapū (s.33) or in accordance with joint management agreements (s.36B).
	The Crown to enter into discussions on tailoring implementation of the Māori Commercial Aquaculture Claims Settlement Act region by region.	Perpetual occupation right for aquaculture settlement space.
		Ability to approve or restrict occupation, extraction and

		discharges (cf. Ngati Porou permission right with some modifications).
Effective relationships	Joint Council/Iwi planning committees (cf. Ngāti Pahauwera).	
	Protocols/relationship agreements/memoranda of understanding with government agencies, including annual meetings between Treaty partners to discuss strategic management and regulation of marine environment and implementation of mechanisms (cf. Paepae Rangatira/Whakamana Accord).	Individually tailored processes for engagement between Treaty partners.

PART B – EXTENDED COMMENTARY ON THE AWARDS

	Scope of the mechanism	Circumstances in which it would apply	Examples of its application
Status of mana - Baseline/Enhanced Recognition			
Recognition in the purpose and/or principles of the Act of the unbroken, inalienable and enduring mana held by iwi and hapū on a collective basis over their rohe moana.	A statement of legal recognition of the existence and nature of mana, given effect in the interpretation and application of the legislation.	Universal application. Purpose/principles of the Act called in to assist on questions of interpretation.	Could assist in establishing roles and responsibilities in respect of activities, use of resources unforeseen at the time of the Act.
Recognition in the purpose and/or principles of the Act of the right of iwi and hapū to exercise and express their mana.	A statement of legal recognition of the right of iwi and hapū to exercise and express their mana.	As above.	As above.
Recognition in the purpose and/or principles of the Act of the development rights inherent in the mana of iwi and hapū.	A statement of legal recognition of the development rights inherent in mana and guaranteed by the Treaty, given effect in the interpretation and application of the legislation.	As above.	As above.
Environmental management – Baseline Recognition			
Iwi/hapū strategy/planning document (akin to the Ngati Porou Environmental Covenant), to be recognized and provided for (or taken into account) in by all decision-makers (i.e. across the full suite of marine management legislation and the status of a National Policy Statement under the Resource Management Act 1991 (cf. the status of the Vision/Strategy for the Waikato River).	Provision for iwi/hapū to develop a document setting out principles/policies for giving effect to their mana in the management of their rohe moana. That document would be considered in decision-making under all relevant legislation as one dimension of achieving consistency across different statutory regimes.	Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana.	The iwi/hapū strategy/planning document would provide a context within which other mechanisms would operate, as well as providing guidance to decision-makers on, for example, resource consent applications.
Statutory acknowledgement/overlay recognition of mana over rohe moana	Explicit, public recognition of the mana of individual iwi/hapū over their rohe	As above.	Would act as notification to decision-makers of iwi/hapū to engage with and

of iwi/hapū.	moana.		public notice in public documents, e.g. plans/policy statements under the Resource Management Act 1991.
Consistent opportunities to input to decision-making across the full suite of marine management legislation.	Review and rationalization of opportunities for iwi/hapū input across the full suite of legislation applying to the marine environment.	Universal application.	Would increase certainty for decision-makers and third parties by, for example, increasing the transparency of iwi/hapū input to decision-making under the Crown Minerals Act 1991.
Provide status for iwi/hapū rohe moana planning within the Fisheries Act 1996.	Similar to the strategy/planning document above, but focused specifically on fisheries management.	Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana.	Similar to the strategy/planning document above, a fisheries planning tool could improve the effective involvement of iwi/hapū in fisheries management in a more flexible and proactive way than the tools currently available (e.g. mātaimai).
Environmental management – Enhanced Recognition			
Iwi/hapū strategy/planning document which has the status of a Regional Policy Statement under the Resource Management Act 1991 and to which effect must be given by decision-makers under other legislation.	As for the strategy/planning document above, but to be given greater weight in decision-making.	Applying as a result of negotiation or litigation.	As for strategy/planning document above.
Iwi/hapū authority – Baseline recognition			
Restoration of placenames and placement of pouwhenua.	Visible markers of the mana of iwi/hapū over their rohe moana.	Of universal application in principle, though some process would be required for notification of names to be restored and identification of pouwhenua sites.	Numerous examples of restoration of placenames through the Treaty settlement process. Pouwhenua might be used to mark the boundaries of tribal rohe moana or areas of particular significance.
Notice of whale strandings and views	More effective provision for iwi/hapū	Of universal application, requiring	Likely that iwi/hapū will elect to

on marine mammal and wildlife management recognized and provided for (or taken into account) (conservation protocol).	involvement in the management of marine whale strandings and management of marine mammals generally.	resolution only of the issue of which iwi or hapū holds mana over which rohe moana.	develop procedures or protocols in advance, setting out their tikanga in respect of whale strandings and other marine mammal management issues.
Notification of artefacts and taonga found within the rohe and right to participate in ownership determination process (taonga tuturu protocol).	Measures for recognition of iwi/hapū kaitiakitanga over taonga tuturu.	As above	Would allow agreements to be reached over the protection, storage and (where appropriate) display of artifacts and taonga.
Ability for iwi/hapū to impose rāhui (i.e. restrict access and activities permanently or temporarily) for cultural reasons (e.g. wāhi tapu).	Flexible mechanism for restriction of access, either generally or for specified purposes or times in accordance with tikanga.	Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana. Some process will be required for notifying and enforcing rāhui.	Could be used to restrict access generally in respect of wāhi tapu or applying other, more limited rāhui, for example in the wake of a death a sea. Could also be used to limit specific activities for other cultural reasons (see, for example provision for temporary closure of fisheries under s.186A and s.186B of the Fisheries Act 1996).
Joint decision-making of Iwi/hapū and the Crown on access to minerals (‘nationalised’ and ‘non-nationalised’).	A Treaty-based mechanism to replace the 2004 Act’s vesting of control over access in the Minister of Conservation.	Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana. Processes for joint decision-making would need to be specified in statute.	Joint decision-making would provide a mechanism for protecting areas of particular cultural significance from exploitation.
Iwi/hapū share with the Crown in the benefits of ‘non-nationalised’ minerals.	A Treaty-based mechanism to replace the 2004 Act’s vesting of non-nationalised minerals (and the benefits of such minerals) in the Crown.	Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana. Principles governing sharing of benefits could be specified in statute and/or agreed case-by-case).	A share of benefits obtained from exploitation of minerals could assist in funding iwi/hapū management responsibilities, e.g. developing strategies and plans.
More effective processes within the	Improving the workability of specific	Of universal application, though a	The lack of an effective dispute

<p>customary fishing regulations for:</p> <ul style="list-style-type: none"> • Appointment of tāngata tiaki/kaitiaki; • Allowing (some or all) commercial fishing within mātaimai; and • Capacity to develop tailored permitting/permission systems for customary fishing. 	<p>processes within the customary fishing regulations to aid their effective implementation.</p>	<p>process would be required for developing permitting/permission systems tailored to the tikanga and needs of individual iwi/ahpū.</p>	<p>resolution process in respect of which iwi/hapū/whānau has authority to appoint tāngata tiaki/kaitiaki has hampered the implementation of the regulations. Addressing this issue would greatly improve the effectiveness of iwi/hapu input to fisheries management. In cases which iwi/hapū have wished to allow limited commercial fishing within mātaimai, Ministry of Fisheries reluctance to establish a mātaimai subject to this provision has made it impossible to secure agreement between commercial and customary fishers. Many iwi/hapū have expressed dissatisfaction with the 'one size fits all' nature of the customary fisheries permitting system; variations to that system to suit their tikanga and needs would encourage implementation of, and compliance with, the regulations.</p>
<p>The Crown to encourage local authorities to transfer of some/all functions under the Resource Management Act 1991 to iwi/hapū (s.33) or in accordance with joint management agreements (s.36B).</p>	<p>These mechanisms already exist within the Resource Management Act 1991 but have not been used to date. Various measures might be used to encourage their uptake by local authorities.</p>	<p>Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana.</p>	<p>Joint management agreements could be used, for example, as a means of ensuring iwi/hapū have a full role in monitoring the environmental effects of activities conducted pursuant to resource consents.</p>
<p>The Crown to enter into discussions on tailoring implementation of the Māori Commercial Aquaculture Claims Settlement Act region by region.</p>	<p>Proposed reforms to the aquaculture management regime will make implementation more challenging that at present, calling for creative solutions for each region.</p>	<p>Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana. Because the aquaculture settlement is premised on regional</p>	<p>Establishment of aquaculture through resource consents for individual marine farms (rather than in large scale Aquaculture Management Areas, as contemplated in the aquaculture</p>

		council boundaries, agreements for regional implementation will need to be concluded at the same level.	settlement) is likely to deliver iwi only pepperpotting of small and uneconomic parcels of aquaculture space. Agreement could be reached, for example, that the Crown and iwi will jointly apply for (and fund) an area of space for marine farming, in return for iwi foregoing small scale entitlements under the settlement for a period of time.
Iwi/hapū authority – Enhanced Recognition			
Joint decision-making in respect of new placenames.	An effective role for iwi/hapū (greater than mere consultation in the New Zealand Geographic Board process) in relation to new placenames.	Applying as a result of negotiation or litigation.	Precedents for enhanced input to these decisions exist in Treaty settlements.
Notice of whale strandings and views on marine mammal and wildlife management given effect (conservation protocol)	As above in respect of the conservation protocol, but with greater weight given to iwi/hapū concerns.	As above.	As above in respect of the conservation protocol.
Notification of artefacts and taonga found within the rohe and ownership determined in accordance with tikanga (taonga tuturu protocol).	As above in respect of the taonga tuturu protocol, but with greater weight given to iwi/hapū concerns.	As above.	As above in respect of the taonga tuturu protocol.
Control of access to minerals	Replacement of the 2004 Act's vesting of control over access in the Minister of Conservation with a full recognition of iwi/hapū mana over their rohe moana.	As above.	Would ensure that areas of particular cultural significance are protected from exploitation.
Iwi/hapū receive benefits of non-nationalised minerals.	Replacement of the 2004 Act's vesting of non-nationalised minerals (and the benefits of such minerals) with a full	As above.	Benefits obtained from exploitation of minerals could assist in funding iwi/hapū management responsibilities,

	recognition of the mana of iwi/hapū over these resources.		e.g. developing strategies and plans.
Iwi/hapū receive/share in benefits of any other resources within the rohe (benefit sharing protocol).	As above, but in respect of the exploitation of resources other than minerals.	As above.	As above.
Iwi/hapū have access to a mechanism for giving full legal effect to tikanga in respect of fisheries (binding iwi/hapū members and third parties).	Providing the fullest possible expression of the mana of iwi/hapū by providing for their tikanga to have binding legal effect in respect of all persons in their rohe.	As above.	Could be an enhanced version of the fisheries bylaws mechanism from the Ngāti Porou Deed.
Iwi/hapū have access to a mechanism for giving full legal effect to tikanga in respect of flora and fauna (binding iwi/hapū members and third parties).	As above.	As above.	As above.
Mandatory transfer of some/all local authority functions under the Resource Management Act 1991 to iwi/hapū (s.33) or in accordance with joint management agreements (s.36B).	A mechanism to address situations where joint decision-making or transfer of functions is the most efficient and effective way to reflect the appropriate level of iwi/hapū input.	As above.	Could be used to transfer specific environmental management functions to iwi/hapū such as standard setting or monitoring.
Perpetual occupation right for aquaculture settlement space.	Where iwi receive resource consents for marine farming as redress under the aquaculture settlement, an underlying perpetual right to occupy that space could be issued, reflecting the proprietary nature of the iwi interest.	As above. Because the aquaculture settlement is premised on regional council boundaries and has named iwi beneficiaries, some reconciliation may be required where that does not result in alignment with the holders of mana.	A perpetual occupation right would not be inconsistent with the shared marine space but could, for example, provide greater investment certainty for iwi marine farms.
Effective relationships – Baseline Recognition			
Joint Council/Iwi planning committees (cf. Ngāti Pahauwera.	A committee of Council comprising (at least) 50% iwi/hapū representation,	Of universal application, requiring resolution only of the issue of which	The committee would be responsible for periodic reviews of Resource

	delegated Council responsibility for all planning and policy development functions.	iwi or hapū holds mana over which rohe moana.	Management Act 1991 policy/planning documents, including through effective integration of iwi/hapū strategy/planning documents (as described above).
Protocols/relationship agreements/memoranda of understanding with government agencies, including annual meetings between Treaty partners to discuss strategic management and regulation of marine environment and implementation of mechanisms (cf. Paepae Rangatira/Whakamana Accord).	Ensuring aligned expectations of how relationships between iwi/hapū and Crown agencies will operate.	Of universal application, requiring resolution only of the issue of which iwi or hapū holds mana over which rohe moana.	Treaty settlements and the Ngāti Porou Deed provide precedents.
Effective relationships – Enhanced Recognition			
Individually tailored processes for engagement between Treaty partners.	As above, but tailored, rather than generic, protocols would be developed.	Applying as a result of negotiation or litigation.	As above.

PART C – CONTEXTUAL NARRATIVE ON AWARDS

Introduction:

4. The Attorney General requested the Technical Advisory Group (TAG) to present advice on the prospective awards that could be made available in the replacement regime to the Foreshore and Seabed Act 2004.
5. This paper provides a preliminary identification of the prospective range of awards that could be made available. The analysis draws on a comprehensive analysis of the suite of New Zealand precedents, sourced in both Treaty Settlements and foreshore and seabed agreements. It is anticipated that this consolidation provide a platform for further work on more innovative mechanisms that may be appropriate for the replacement regime.
6. The analysis rests on two overarching objectives;
 - a. That the awards, in combination, should deliver both normative transformation and practical outcomes;
 - b. That those outcomes are intended to ensure that the replacement regime will provide an integrated framework that reflects the inter-locking whakapapa, tikanga and mātauranga of Iwi/hapū with the foreshore and seabed.
7. As preliminary advice, the paper does not comment substantively on the suitability of the mechanisms identified to give effect to these objectives. We also note that building on pre-existing mechanisms may not be able to satisfy the extent of normative transformation sought and that the need to recognise the distinct situation of Iwi/hapū will necessitate varying degrees of differentiation, and emphasise that compartmentalising the awards will exacerbate the inability to satisfy these foundational matters. Accordingly, we consider it important to continue the inquiry both into the approach to identifying prospective awards and the nature of the awards themselves.
8. The advice is presented in the following structure:
 - a. Caveats on the advice are outlined for the avoidance of doubt;
 - b. Purpose of awards – that seeks to identify the principles that the awards, individually and in combination, to seek to fulfill;
 - c. Type of awards – that distinguishes between normative and practical awards and identifies potential types of practical awards;
 - d. Spectrum of awards – that contextualises the nature of the continuum identified; and
 - e. Tūpuna Title – that provides a perspective on how the awards relate to the concept of Tūpuna Title; and
 - f. Proposal as to further work to be completed.

Caveats:

9. This paper has been prepared by the Iwi Advisors on the TAG, as requested by the Attorney General and we wish to emphasise that it is presented as professional advice of persons with

expertise in the relevant areas and reflects solely their professional opinions on the question posed by the Attorney General and is based on the following express caveats;

- a. The paper does not represent the positions of any Iwi and hapū. It has been consistently emphasised throughout the regional hui that Iwi/hapū have the inherent right as Treaty partners to represent their own positions directly to the Crown;
- b. This paper does not represent the views of the Iwi Leaders Group and the Iwi Leaders reserve the right to advance positions beyond and/or contrary to the contents of this paper;
- c. This paper does not address the nature and extent of the rights and interests of Iwi/hapū and the advice presented should not be construed as reflective of any position on the nature and extent of rights and interests; and
- d. The identification of mechanisms should be treated as indicative, and it is emphasised that the material presented is not exhaustive.

Overview of Awards:

10. The awards presented in this paper are intended to provide for Iwi/hapū to express their mana over the foreshore and seabed within their rohe. The analysis is presented in the following parts:
 - a. Purpose of awards – that seeks to identify the principles that the awards, individually and in combination, to seek to fulfill;
 - b. Type of awards – that distinguishes between normative and practical awards;
 - c. Spectrum of awards – that contextualises the nature of the continuum identified; and
 - d. Tūpuna Title – that provides a perspective on how the awards may relate to the concept of Tūpuna Title.
11. The awards are summarised in tabulated form at **Appendix One** two parts:
 - a. Part A provides the preliminary identification of awards according to the three potential tiers;
 - b. Part B discusses the potential scope and circumstances for potential awards, and where possible, provides an example of application.

Purpose and Principles of Awards:

12. The awards are intended to provide for the expression of Iwi/hapū mana by giving effect to two overarching objectives;
 - a. That the awards, in combination, should deliver both normative transformation and practical outcomes;
 - b. That those outcomes ensure that the replacement regime provides an integrated framework that reflects the inter-locking whakapapa, tikanga and mātauranga of Iwi/hapū with the foreshore and seabed.
13. The purpose of the awards is therefore to uphold the principles inherent within mana in robust and practical terms.
14. The principles of mana that must be upheld include:

- a. That mana is an ancestral inheritance that is enduring and inalienable, and as such, subsists irrespective of its treatment at law over time;
 - b. That mana confers interdependent authorities and responsibilities, with responsibilities being the driving purpose for, and framing conditions on, the exercise of authority.;
 - c. That the overarching responsibility is to protect the integrated/holistic vitality of the environment;
 - d. That the attendant authorities span a number of facets including the related to the practices of the collective as well as other interactions with the environment.
15. We consider that these principles also serve as standards against which the awards ought to be measured.
16. To give effect to these principles, it is anticipated that there will be a need for a new way of thinking about, and reflecting in statute, the place and status of mana in NZ law. This paper however, largely consolidates and comments on existing precedents on the basis that doing so is an important guide to considering further approaches.

Type of Awards

17. Two principle types of 'awards' are identified; normative and practical.
18. The normative 'award' is framed as recognition that mana is enduring and inalienable, and could most likely be given effect through a carefully framed provision in statute. This award is primarily designed to give effect to the enduring status of mana, as set out at paragraph 13 (a).
19. The practical awards are designed to give effect to the authorities and responsibilities derived from mana in a way that both upholds the integrity of mana, and provides for the exercise of those responsibilities in practical terms that intersects with the statutory and regulatory framework applying to the marine environment.
20. The table of awards at Appendix One For are therefore grouped vertically under four headings:
- a. The status of mana (normative component)– how the legislation might recognise, as a matter of principle, the unbroken, inalienable and enduring mana held by iwi and hapū on a collective basis over their rohe moana;
 - b. Environmental management– which identifies mechanisms that could deliver improved and more integrated management of the marine environment and its resources, principally through more effective participation of iwi and hapū and provision for their tikanga;
 - c. Iwi/hapū authority – giving effect to iwi/hapū authority over their own members in respect of customary activities and over third parties (in some circumstances, at least); and
 - d. Effective relationships– ensuring that relationships between iwi/hapū and organs of central/local government and both effective and conducted in accordance with the Treaty of Waitangi.

Overview of Spectrum:

21. The awards are presented on a spectrum at Appendix One.
22. The awards are ordered on a three tiered spectrum that provides for;

- a. Status recognition – that provides for the the status of mana as enduring and inalienable;
 - b. Baseline recognition – that provides for a minimum suite of entitlements largely derived from the precedents available that are directed to improving the recognition and exercise of roles and responsibilities.
 - c. Enhanced recognition – that identifies a set of entitlements that are stronger in nature, and largely comprise of amendments to existing precedents.
23. The awards are presented at Appendix One in two parts:
- a. Part A provides the preliminary identification of awards according to the three tiers above;
 - b. Part B discusses the potential scope and circumstances for potential awards, and where possible, provides an example of application.
24. It is emphasised that while there is common acceptance that differences of situation, tradition and aspiration amongst Iwi/hapū should be provided for, there is a high aversion to any suggestion that it is possible to have ‘more mana than others’. Accordingly, we do not intend that the spectrum provides any more than an identification of the relationship between the awards identified.

Tūpuna Title

25. Tūpuna Title is embedded in the inter-locking whakapapa, tikanga and mātauranga of Iwi/hapū with the foreshore and seabed, and in our assessment, Tūpuna Title is premised on the enduring and inalienable status of mana. We therefore consider there is a commonality in the purpose and principles of Tūpuna Title and provision for the expression of mana.
26. The point at which we consider there may be disjuncture between Tūpuna Title and the contents of this paper is in respect of the assumptions or construct underlying the awards. Tūpuna Title envisages a fundamental transformation of the legal landscape and approach to providing for the exercise of mana. The awards in this paper could be construed as less than ideal in the following respects as a result of drawing on existing precedent;
- a. That the awards could be perceived as delegated by the Crown rather than as reflecting the inherent mana of Iwi/hapū;
 - b. That the awards could be considered to reduce the status and scope of mana, by being less than is commensurate with tikanga and as having a fragmentary effect.

Next steps

27. We recognise that there are range of limitations applying to this advice that inform the next stage of the work programme.
28. Potentially the most consequential limitation is that the advice presented will not attract universal support from Iwi/hapū on the basis of four probable areas of concern:
- a. The focus on tangible awards may not be considered sufficiently transformative or capable of meaningfully providing for the exercise of mana;
 - b. The presentation of the advice on a spectrum assumes that some thresholds may apply for certain awards. However, it is clear that there is not universal acceptance of the propriety of thresholds across all Iwi/hapū and we underscore that we do not, and many Iwi and hapū are likely to not, accept any threshold that suggests a differentiation in the status of mana across Iwi/hapū. As mana is an ancestral inheritance constituted in spiritual terms it

is inappropriate for the thresholds to suggest that some mana 'is more special' than others; and

- c. The awards are presented at a high level and framed in generic terms, however, there is a clear need for customization and further innovation according to the specific situation, traditions and aspirations of Iwi/hapū within their rohe. It is emphasised that a 'one size fits all' approach is highly unlikely to be considered suitable and that the identification of Iwi/hapū/regional specific awards is properly for the Treaty partners to consider through direct engagement.
 - d. The advice does not consider the mechanics of how the awards might be implemented or provided for i.e. whether the legislation will provide exhaustively for the full range of mechanisms, whether those agreed through negotiation will require specific legislation, how specifically the legislation might provide for entitlements arising from a court award in lieu of title and related issues. We consider that the mode of provision and implementation will materially affect the suitability of the awards.
29. There are also a number of inter-related matters that will need to be considered including the thresholds, mechanics and process elements attaching to the awards.
30. Accordingly, we propose to further work on shaping the composite of awards, with the objective of identifying an approach and specific awards that are more capable, individually and in combination, of giving effect to the mana of Iwi/hapū in a suitably transformative way. We also envisage that four further specific pieces will be required:
- a. Consideration of the appropriate thresholds that might apply, should thresholds be created. These thresholds will suggest that principles of tikanga Māori should be the sole source of law framing any such thresholds, and that common law criteria would be considered inappropriate standards to determine the expression of mana in both normative and practical senses. This paper will be completed by 18 December;
 - b. A review of each of piece of legislation affecting the marine environment and consideration if any additional mechanisms are required in order to achieve appropriate recognition of mana;
 - c. A detailed fleshing out of any new mechanisms and consideration of existing mechanisms to identify modifications that might be appropriate; and
 - d. Further papers on the process elements: negotiation, litigation and implementation.