

Summary of written submissions on discussion document *Bioprospecting: Harnessing Benefits for New Zealand*

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I Introduction:

Written submissions were received from 40 submitters¹ on the discussion document *Bioprospecting: Harnessing Benefits for New Zealand* (the discussion document). Submitters included iwi/hapū incorporations and organisations, scientific organisations, Crown Research Institutes, regional and local government bodies, and individuals. Not surprisingly a range of views were expressed in the submissions. The following is an attempt to summarise those submissions into key themes. As this report is a summary, not all points made in the submissions have been included and this report should not be taken as a full report of all submissions made, or a substitute for reading the submissions themselves.

This report comprises two sections. The first section outlines general themes to emerge from submissions.² The second section summarises submissions directed at the questions posed in the discussion document.³

Executive Summary

1. Consultation process and timeframes

Many submitters stated that the recent consultation process on the discussion document was not sufficient to enable Māori to be properly informed. It was submitted that full and easily digestible information is required and that more time, opportunity and resourcing is needed to consider the matters raised in the discussion document.

2. Te Tiriti o Waitangi/The Treaty of Waitangi

The importance of the Treaty of Waitangi was also noted in this process. Ongoing partnership, equality, and active self representation, and participation by Māori were asserted as needing to underpin any bioprospecting policy development. Others asserted that government policy and any framework need to recognise, give effect to and be compliant with the Treaty of Waitangi.

¹ In no particular order: Te Ora o Manukau; Ngati Kahungunu; Te Rūnanga o Ngāi Tahu (Ngāi Tahu); Kahui Legal (Legal Counsel for Ngati Porou); the Māori Party; Waikato Raupatu Trustee Company Ltd; Dr Adele Whyte; Enterprise Northland; Mrs Kathie Roberts; Te Hunga Roia Māori o Aotearoa (THRMOA); Nelson/Marlborough Conservation Board; Auckland Regional Council; BioDiscovery NZ; AgResearch; Landcare Research; Scion; Dr Owen Morgan; Industrial Research Limited; Tuhoe Putaiao Trust; Ngati Whatua Nga Rima o Kaipara Trust (NWNRoK); Te Rūnanga o Ngāti Awa (Ngāti Awa); Te Arawa Lakes Trust; Te Arawa FOMA; Wairoa District Council Māori Committee; He Oranga mo nga Uri Tuku Iho Trust; Fred Allen; Malibu Hamilton; University of Canterbury; NZBio; Crop and Food Research; National Institute of Water and Atmospheric Research (NIWA); GE Free; Far North District Council; Te Iwi o Rakaipaaka Inc; Researched Medicines Industry Association of New Zealand; Tiakina te Taiao Ltd; Whenua.biz; New Zealand Conservation Authority (NZCA); New Zealand Seafood Industry Council Ltd (SeaFIC) and Nautilus Minerals.

² In some instances, submissions that were made in response to the questions in the discussion document have been incorporated into the general theme section for consistency.

³ Again, aspects of certain general submissions have been incorporated into this section where responses appeared to be directed at particular questions posed in the discussion document.

3. The Waitangi Tribunal flora and fauna WAI 262 claim

The Waitangi Tribunal ‘flora and fauna’ claim, WAI 262, featured prominently in many submissions. Many considered that the Waitangi Tribunal’s report on WAI 262 must be addressed before developing a bioprospecting policy. Some considered, however, that there are things that the Crown can do before the Waitangi Tribunal releases its report, such as, commencing analysis of the nature of the bioprospecting problem and developing a code of ethics. However, it was submitted that the policy process should not go as far as jeopardising the outcomes of the inquiry. Others submitted that a bioprospecting framework should be developed before WAI 262 is reported on, with acknowledgement that the framework could accommodate WAI 262 outcomes.

Disappointment was expressed about the development of a discussion document in isolation from claimants, given the importance of ownership of biological materials. In addition, the evidence presented by claimants in the WAI 262 process was recommended as providing a valuable resource for officials in the policy development process.

4. Is bioprospecting an acceptable practice?

While many submitters explicitly or implicitly accepted bioprospecting as an acceptable practice, others did not share this view. One submitter in particular was quite clear that they did not consider bioprospecting and subsequent patenting of biological material to be acceptable practices.

5. ‘Māori’ have diverse realities

It was noted that Māori are not one homogenous group with a single set of ideas, and that it should not be assumed that what is right for one iwi/hapū is right for all of Māoridom. It was submitted that diverging views should not be taken advantage of, with zoning in on the more conservative views.

6. The ‘Māori interest’ in bioprospecting

The ‘Māori interest’ in bioprospecting as defined in the discussion document was considered to narrowly define that interest as relating to mātauranga Māori only. In the view of some submitters, it is critical that officials understand that the Māori dimension includes the relationship Māori have with their natural environment and extends beyond mātauranga Māori.

7. Holistic approach

Submitters also noted the holistic nature of traditional knowledge. It was submitted that a whole of government approach is required to move forward. More broadly, other submitters asserted that a holistic and principled review of the legislative and policy framework that deals with indigenous flora and fauna and mātauranga Māori is required.

8. Moratorium on bioprospecting in New Zealand?

Of those who directly raised the issue of a moratorium on bioprospecting, diverging views were expressed. Some considered that immediate steps should be taken to ensure that flora and fauna are

not utilised until WAI 262 is resolved. Others submitted that a moratorium on bioprospecting would not be appropriate.

9. Mataatua Declaration and the Declaration on the Rights of Indigenous Peoples

Some submitters were concerned that the Government did not support the Declaration on the Rights of Indigenous Peoples (DRIP). Those submitters were also disappointed that the Mataatua Declaration and the DRIP had not been referred to or reflected in the discussion document. Submitters pointed out that both documents contain important statements about the desires of indigenous peoples in terms of any bioprospecting regime and should be reflected in any bioprospecting policy.

10. Intellectual property rights

The relevance of intellectual property rights was noted by a number of submitters. From a bioprospectors point of view, it was submitted that it was important that ownership of intellectual property rights developed from extracts from New Zealand plants are clarified. Another point of view was that intellectual property rights are a Western property right system quite foreign to Māori concepts and as such the appropriateness of intellectual property protection for protecting traditional knowledge is questionable.

11. The Convention on Biological Diversity and international timeframes

Many submitters noted the value of the Convention on Biological Diversity. However, timeframes for signing an international agreement on access and benefit sharing as a driver for the development of a national policy was a significant concern of many submitters. It was submitted that in this case foreign policy should be guided by domestic policy, not the other way round.

However, one submitter considered that while New Zealand should not do anything during international negotiations to jeopardise or negatively affect Māori interests, to 'do nothing' would be equally unacceptable. They suggest active engagement in analysis and research is required and that the evidence presented in the WAI 262 inquiry provides ample material to guide officials.

12. Frameworks currently in use

Both Ngati Awa and Te Iwi o Rakaipaaka Tikanga Inc provided examples of domestically developed tools that they have developed and use, which provide a model upon which any framework for bioprospecting activities could be based.

13. Submissions on next steps

Various suggestions were made on what the next steps should be in this policy development process. A theme evident through many submissions is that Māori wish to be engaged and resourced as an active Treaty partner. The Tangata Whenua Reference Group was noted as having a key role in any next steps. Ngati Kahungunu submitted that a new framework is required for addressing the interface between tino rangatiratanga and the existing legislative system.

14. Submissions on the questions posed in the discussion document

It was generally accepted that better information is required on current bioprospecting activities in New Zealand. It was also generally accepted that New Zealand would benefit from a more coordinated and comprehensive approach to bioprospecting, although this view was not unanimous. Te Ora o Manukau, for example, was opposed to the development of any bioprospecting framework.

In terms of benefits, it was submitted that the focus should be on non-monetary benefits, particularly on information capture on our biota. The time it takes iwi to respond to issues, was considered to be a major cost that had not been adequately accounted for.

Submitters considered that the definition of bioprospecting, policy vision and policy principles, all required reconsideration. In terms of policy scope, submitters agreed that activities such as collection for traditional activities, collection of firewood and collection for food should not be within scope, while others considered that the question of ownership needs to be addressed. Most submitters considered that non-commercial and ex situ collections should be included within the scope of any policy. Various views were expressed about whether non-indigenous material should be included. Most considered that all three tiers should be included, although others did not want to see private access providers within scope due to their common law property rights.

In terms of administrative frameworks, many submitters agreed that there should be a National Focal Point and a Competent National Authority, possibly as a single authority. Other submitters considered that existing permitting structures should remain with current permitting bodies.

In terms of mātauranga Māori, it was evident from submissions that the decision makers in relation to mātauranga are the knowledge holders themselves. Of the options articulated to protect mātauranga, there was general support for the establishment for a code of ethics or code of best practice. There was, however, a mixed response to the suggestion of a voluntary register and an advisory council. In relation to the register, some submitters considered it would be useful to guide bioprospectors, while others submitted a database over simplifies the complexities of knowledge. There was also some support for an advisory council, but also criticism and opposition directed at the limited nature of this type of body.

The Bonn Guidelines were noted by many submitters as being useful to consider in policy development process, however, they also suggested that the Guidelines should only be used to guide policy developers for components that are useful for New Zealand. Moreover, it was submitted that the Guidelines should not be taken as conclusive of Māori interests, nor considerations regarding the marine environment.

Disappointment was expressed about the range of other national frameworks that were articulated in the discussion document. However, a number of aspects of certain frameworks in use, or that are being developed were noted as being potential frameworks to model any New Zealand system on.

II General Submissions and Key Themes:

1. Consultation process and timeframes

Many submitters stated that the recent consultation process on the discussion document was not sufficient to enable Māori to be properly informed.⁴ It was submitted that:

- the consultation timeframes were unreasonable;⁵
- insufficient resources were provided for proper consultation;⁶ and
- the extent of any future involvement of Māori in the process was unclear.⁷

He Oranga Mo Nga Uri Tuku Iho Trust described the process as “very dangerous” for Māori who did not have sufficient background information. They suggested that such discussions need to be facilitated by experts such as Aroha Mead in ‘safe’ forums.⁸

It was therefore suggested that full and easily digestible information is required, along with more time, opportunity and resourcing to consider the matters raised in the discussion document.⁹ More broadly it was suggested that more effort is needed to communicate with all New Zealanders to encourage more stakeholders to take part in this process.¹⁰

2. Te Tiriti o Waitangi/The Treaty of Waitangi

Many submitters noted the importance of the Treaty of Waitangi in this process. In relation to the discussion document itself, Ngāi Tahu submitted that it did “not provide adequate recognition of pre-existing rights and responsibilities constituted by tikanga and affirmed by the Treaty of Waitangi.”¹¹ Moreover, Ngati Awa submitted that the Crown did not act in good faith by articulating only two options in the discussion document.¹² They suggested that, “therefore one could conclude that this is not an open consultation process that seeks the informed views of iwi/Māori, rather it is an attempt to deliberately limit the range of options for iwi/Māori to consider and consent to.”¹³

Ongoing partnership was noted as a key principle in the policy development process moving forward.¹⁴ Hapū and iwi want to be involved in the development of any policy appropriate to their rohe from start to finish.¹⁵ It was also recognized that this process provides an opportunity to establish a true partnership.¹⁶ The principles of equality, and active self representation by Māori were also asserted as needing to underpin any bioprospecting policy development,¹⁷ and that

⁴ Te Ora o Manukau, page 3; Ngati Kahungunu, page 1 and 2; Ngāi Tahu, page 5; Kahui Legal, page 2; and the Māori Party, page 2.

⁵ Waikato Raupatu Trustee Company Ltd, page 2; and Ngāi Tahu, page 5.

⁶ He Oranga Mo Nga Uri Tuku Iho Trust, page 3.

⁷ Wairoa District Council Māori Committee, page 5.

⁸ He Oranga Mo Nga Uri Tuku Iho Trust, page 2.

⁹ Ngati Kahungunu, page 1 and 2; Kahui Legal, page 2; Te Ora o Manukau, page 3; the Māori Party, page 2; and Ngati Awa, page 10.

¹⁰ Dr Adele Whyte, page 6.

¹¹ Ngāi Tahu, page 5.

¹² Ngati Awa, page 5.

¹³ Ngati Awa, page 5.

¹⁴ Te Iwi o Rakaipaaka Inc, page 6; THRMOA, page 2; and Wairoa District Council Māori Committee, page 5.

¹⁵ For example see, Te Arawa Lakes Trust, page 2.

¹⁶ Mrs Kathie Roberts, page 5. Similar sentiments were expressed by Dr Adele Whyte, page 6.

¹⁷ Wairoa District Council Māori Committee, page 7.

bioprospecting policy must only be made with active participation of Tangata Whenua.¹⁸ Ngati Whatua Nga Rima o Kaipara Trust (NWNRoK) submitted that to give effect to a robust and effective Te Tiriti partnership, the government needs to show improved international and national integrity, good faith or capacity foresight to protect Tangata Whenua interests.¹⁹

Others asserted that government policy and any framework need to recognise, give effect to, and be compliant with the Treaty of Waitangi.²⁰ Te Hunga Roia Māori o Aotearoa (THRMOA) pointed out that the findings of the Waitangi Tribunal on WAI 262 will be instructive as to the meaning of the Treaty in this context.²¹

3. The Waitangi Tribunal flora and fauna WAI 262 claim

The Waitangi Tribunal flora and fauna claim, ‘WAI 262’, featured prominently in many submissions. Many considered that the Waitangi Tribunal’s report on WAI 262 must be addressed before developing any bioprospecting policy.²² The reasons given for this position included:

- The findings of WAI 262 should inform the development of any bioprospecting framework.²³
- The Crown risks predetermining the outcome of the claim by conducting the two processes simultaneously.²⁴
- Deliberations on what biological resources should be available for bioprospecting and how they should be managed is very much about ownership – which goes to the heart of WAI 262.²⁵

Two submitters, however, noted that there are things that the Crown can do before the Waitangi Tribunal releases its report, such as, commencing analysis of the nature of the bioprospecting problem and developing a code of ethics on, for example, expected behavior regarding the environment, engaging with Māori and benefit sharing.²⁶ However, THRMOA warned against the policy process going too far and jeopardising the outcome of the inquiry.²⁷

Te Arawa FOMA, on the other hand, indicated that they are not waiting for a decision on WAI 262 and submitted that while Māori are waiting other people are acting.²⁸ Others considered that “something” needs to be done before the WAI 262 report is issued, as there is a significant amount of uncertainty around the potential implications of the claim, which severely inhibits the

¹⁸ Ngāi Tahu, page 11. See also Waikato Raupatu Trustee Company Ltd, page 4.

¹⁹ NWNRoK, page 3.

²⁰ Dr Owen Morgan, page 4; THRMOA, page 2; He Oranga Mo Nga Uri Tuku Iho Trust, page 2; and Scion, page 2.

²¹ THRMOA, page 2.

²² Wairoa District Council Māori Committee, page 4; Te Ora o Manukau, page 3; the Māori Party, page 2; Nelson/Marlborough Conservation Board, page 4; Ngati Awa, page 3; Whenua.biz, page 2; Malibu Hamilton, page 1; and Waikato Raupatu Trustee Company Ltd, page 2. The latter also submitted that any framework should not proceed until the claim to the Waikato River has been resolved.

²³ Te Ora o Manukau, page 3.

²⁴ Wairoa District Council Māori Committee, page 4. Similar concerns were expressed by Ngati Awa, page 6, who submitted that they would not want to see bioprospecting policy “being used as a mandate to enact legislation that attempts to assert the Crown’s unfettered sovereignty over biological diversity.”

²⁵ The Māori Party, page 1.

²⁶ THRMOA, page 4 and 7; and NIWA, page 2.

²⁷ THRMOA, page 2.

²⁸ Te Arawa FOMA, page 3.

development of research projects.²⁹ Enterprise Northland, however, submitted that this “must not prejudice the outcome of WAI 262”.³⁰ Others went a step further and asserted that a bioprospecting framework should be developed before WAI 262 is complete, with acknowledgement that the framework could change to accommodate WAI 262 outcomes.³¹

Concern was also raised at the development of the discussion document in isolation from WAI 262 claimants, given the importance of ownership of biological materials.³² Some submitters also expressed concern over the Crown’s failure to advise the Waitangi Tribunal of its intention to engage in a consultation exercise.³³ Ngāi Tahu expressed disappointment that the discussion document was released and must be consulted on while WAI 262 remains unsettled.³⁴

Submitters also recommended that evidence and submissions of WAI 262 be reviewed by officials, and fully integrated into and considered in the policy development process.³⁵ Some submitters asserted that the Crown should endorse the ‘Framework for Resolution’ proposed and recommended by some counsel for WAI 262, and that the Crown should seek urgent approval from the Tribunal to do this.³⁶

4. Is bioprospecting an acceptable practice?

While many submitters explicitly or implicitly accepted bioprospecting as an acceptable practice, others did not share this view.³⁷ GE Free in particular was quite clear that they did not consider bioprospecting and subsequent patenting of biological material to be acceptable practices. They submitted that, “bioprospecting does not respect the rights of people and communities who do not want the commons enclosed.”³⁸ They argued that producers of biological commodities use “biodiversity as raw materials to produce biological products protected by patents that displace biodiversity and indigenous knowledge, both of which they have exploited.”³⁹ Furthermore they ask “can the planet and the diverse communities that inhabit it afford to have biodiversity and alternative lifestyles swallowed up as raw material for a centralised global corporate culture that can only produce cultural and biological uniformity?”⁴⁰

5. ‘Māori’ have diverse realities

THRMOA noted that Māori are not one homogenous group with a single set of ideas.⁴¹ Similarly, He Oranga Mo Nga Uri Tuku Iho Trust asserted that it should not be assumed “that what is right for

²⁹ Enterprise Northland, page 7; AgResearch, page 2; and Crop and Food Research, page 2. A similar point was made by the Wairoa District Council Māori Committee, page 4, who noted that the question of ownership of biological resources is responsible for a large degree of uncertainty and lost opportunities, particularly for Māori.

³⁰ Enterprise Northland, page 7.

³¹ NZBio, page 4; and Crop and Food Research, page 2.

³² The Māori Party, page 1; and NWNRoK, page 3.

³³ Ngati Awa, page 3; and Kahui Legal, page 1.

³⁴ Ngāi Tahu, page 10.

³⁵ Kahui Legal, page 1; and THRMOA, page 4. Tuhoe Putaiao Trust, page 2, also recommended officials read Barry Barclay’s book *Manatuturu* to gain a clear picture of the issues that Māori are dealing with when trying to protect their taonga.

³⁶ The Māori Party, page 3; and Malibu Hamilton, page 1.

³⁷ For example, Ngāi Tahu, page 7, submitted bioprospecting was an acceptable practice as long as it was regulated properly.

³⁸ GE Free, page 2.

³⁹ GE Free, page 2.

⁴⁰ GE Free, page 2.

⁴¹ THRMOA, page 2.

one whanau, hapū, iwi is right for all of Māoridom.”⁴² Recognising that other iwi/hapū may not share the same aspirations, Te Arawa FOMA submitted that they want to progress forward and stated that they refuse to be bound by others who are not so interested in a proactive approach to bioprospecting.⁴³ This also means that in relation to the development of solutions, any formulation of new policies needs to be specific to Te Arawa and developed by and with Te Arawa.⁴⁴ THRMOA warned that diverging views should not be taken advantage of “by the Crown zoning in on the more conservative views.”⁴⁵

6. The ‘Māori interest’ in bioprospecting

THRMOA submitted that the discussion document arguably narrowly defines the ‘Māori interest’ regarding bioprospecting as relating to mātauranga Māori only.⁴⁶ In their view, it is critical that officials understand that the Māori dimension includes the relationship Māori have with their natural environment and also extends to the policy framework regarding access to and utilisation of genetic resources.⁴⁷

Similarly, Ngati Awa submitted that iwi have greater interests in biological diversity than mātauranga about growing, harvesting biological resources. “We have an interest in the resource itself, and with the integrity of research being conducted in our *rohe*.”⁴⁸ Also relevant to the notion of diverse realities discussed above, Whenua.biz noted that it is important to recognise that aspirations in relation to bioprospecting may range from revitalising traditional applications, to investing in research and development, to developing business opportunities in overseas markets.⁴⁹

7. Holistic approach

Submitters also noted the holistic nature of traditional knowledge. Given that traditional knowledge extends beyond bioprospecting or intellectual property, THRMOA asserted that a whole of government approach is required to move forward.⁵⁰ Similarly other submitters asserted that a holistic and principled review of the legislative and policy framework that deals with indigenous flora and fauna and mātauranga Māori is required.⁵¹ In particular it was submitted that it is important to work through the big issues first before getting into detail such as bioprospecting policy.⁵²

8. Moratorium on bioprospecting in New Zealand?

Of those who directly raised the issue of moratorium of bioprospecting, diverging views were expressed. Ngati Kahungunu, for example, submitted that “the Crown as a whole should take immediate steps to ensure that taonga such as biological resources, are not utilised until

⁴² He Oranga Mo Nga Uri Tuku Iho Trust, page 2.

⁴³ Te Arawa FOMA, page 5. See also Te Arawa Lakes Trust, page 2.

⁴⁴ Te Arawa Lakes Trust, page 3. See also Waikato Raupatu Trustee Company Ltd, page 3.

⁴⁵ THRMOA, page 2.

⁴⁶ THRMOA, page 3.

⁴⁷ THRMOA, page 3.

⁴⁸ Ngati Awa, page 7.

⁴⁹ Whenua.biz, page 1.

⁵⁰ THRMOA, page 2.

⁵¹ Ngati Kahungunu, page 2; Wairoa District Council Māori Committee, page 13; Malibu Hamilton, page 1; and Ngāi Tahu, page 10.

⁵² Ngati Kahungunu, page 2; Wairoa District Council Māori Committee, page 14; and Malibu Hamilton, page 1.

bioprospecting and flora and fauna issues are resolved.”⁵³ GE Free asserted that “the biological commons belong to us all ... and should not be harvested and exploited as so many other ‘resources/treasures’ which have been squandered for economic gain.” Moreover they noted that “several North American Indian nations have passed anti-bioprospecting laws.”⁵⁴

Enterprise Northland, however, submitted that a moratorium on bioprospecting would not be appropriate. They considered that “any such moratorium would be detrimental to Māori economic development.”⁵⁵ Likewise Industrial Research Limited submitted that “it is essential that access to and scientific research on the New Zealand flora can continue...and that the results of such work should be published in the open science literature, so that knowledge of the flora can be advanced.”⁵⁶ Crop and Food Research asserted that New Zealand has an obligation to contribute internationally⁵⁷ and “cannot develop a framework that denies access to our biodiversity, neither can we allow other countries to take a lead role in discovery from our own biodiversity.”⁵⁸

9. Mataatua Declaration and the Declaration on the Rights of Indigenous Peoples

Some submitters were concerned that the Government did not support the Declaration on the Rights of Indigenous Peoples (DRIP).⁵⁹ Submitters were also disappointed that the Mataatua Declaration⁶⁰ and the DRIP had not been referred to or reflected in the discussion document.⁶¹ Submitters pointed out that both documents contain important statements about the desires of indigenous peoples in terms of any bioprospecting regime and should be reflected in any policy. In relation to the Mataatua Declaration, the following provisions were noted as being relevant to bioprospecting:⁶²

- The first and primary beneficiaries of Māori bio-cultural heritage should be the direct descendants of that heritage.
- Hapū/Iwi are capable of managing their bio-cultural heritage resources themselves.
- Hapū/Iwi are the guardians of their bio-cultural heritage and have the right to protect and control dissemination.

10. Intellectual property rights

Intellectual property rights (IPRs) were noted by a number of submitters. From a bioprospectors point of view, it was submitted that it was important that ownership of IPRs developed from extracts from New Zealand plants are clarified.⁶³ Another point of view was that IPRs are a Western property right system, quite foreign to the Māori concepts,⁶⁴ while one submission described IPRs as an attempt to formalize the continuing piracy of Third World genetic resources by Northern biotech companies.⁶⁵

⁵³ Ngati Kahungunu, page 3. Similarly, Tuhoe Putaiao Trust, page 3, submitted that legislation should be enacted to prevent exploitation of taonga before the WAI 262 is resolved.

⁵⁴ GE Free, page 1.

⁵⁵ Enterprise Northland, page 7.

⁵⁶ Industrial Research Limited, page 2.

⁵⁷ Crop and Food Research, page 1. A similar submission was made by Enterprise Northland, page 7.

⁵⁸ Crop and Food Research, page 1.

⁵⁹ Wairoa District Council Māori Committee, page 9; and He Oranga Mo Nga Uri Tuku Iho Trust, page 2.

⁶⁰ Kahui Legal, page 4; Ngati Awa, page 3; and Tuhoe Putaiao Trust, page 1.

⁶¹ Kahui Legal, page 4; Tuhoe Putaiao Trust, page 1; and Ngati Awa, page 3.

⁶² Kahui Legal, page 4; and Ngati Awa, page 3.

⁶³ Industrial Research Limited, page 2.

⁶⁴ Wairoa District Council Māori Committee, page 11.

⁶⁵ GE Free, page 2.

In particular the Wairoa District Council Māori Committee asserted that IPRs and the implications for traditional knowledge needs considerable attention. Moreover, they argued that a complete prohibition on the patenting of life forms is consistent with Māori cultural values.⁶⁶ In relation to biological resources from any Crown Estate, Ngati Awa submitted that IPRs should not be permitted. “Biological diversity should be for the benefit for all New Zealanders and should not be included within the coverage of patentable materials.”⁶⁷ In addition, they submitted that while they agree that bioprospecting and IPRs are inter-related, it is possible for a policy to be developed on bioprospecting that inhibits the assertion of formal IPRs.⁶⁸

Likewise GE Free submitted that there was clearly a need to prevent any claims on New Zealand’s flora and fauna as well as any rights to use traditional knowledge: “It is clear that patent protection does not allow for the sharing of information in science, so important if it is to benefit mankind.”⁶⁹ In relation to the discussion document, Ngāi Tahu submitted that “the policy is being progressed without sufficient recognition of the intersections with the IP consequences of bioprospecting.”⁷⁰

Wairoa District Council Māori Committee submitted that “the appropriateness of intellectual property mechanisms for protecting traditional knowledge is questionable.”⁷¹ Similarly, Tuhoe Putaiao Trust submitted that the Patents Act and the Plant Variety Rights Act are inappropriate methods of protecting Tuhoe’s mātauranga of the indigenous flora and fauna.⁷² Kahui Legal also cited Hirini Clarke’s evidence presented in the WAI 262 inquiry regarding the inability of existing intellectual property laws to adequately protect manuka from misappropriation and exploitation.⁷³

The Wairoa District Council Māori Committee encouraged the Crown to “develop mechanisms for the repatriation of traditional knowledge and genetic resources that have been misappropriated.” Moreover in their view “traditional knowledge and genetic resources should be classified as inalienable cultural heritage, which is not subject to the laws relevant to public domain.”⁷⁴

11. The Convention on Biological Diversity and international timeframes

Many submitters noted the value of the Convention on Biological Diversity (CBD). For example, Kahui Legal supported certain aspects of CBD, namely:⁷⁵

- Article 8(j) relating to access and benefit sharing and the recognition of the rights of ownership of biological resources by indigenous peoples; and
- The requirement of prior informed consent from owners of biological resources.

Their view was that these aspects of the CBD should be the starting point of any policy development around bioprospecting.⁷⁶

⁶⁶ Wairoa District Council Māori Committee, page 5.

⁶⁷ Ngati Awa, page 5.

⁶⁸ Ngati Awa, page 4. For example, see the Peru agreement between the International Potato Centre and indigenous communities of the Andes.

⁶⁹ GE Free, page 2.

⁷⁰ Ngāi Tahu, page 5.

⁷¹ Wairoa District Council Māori Committee, page 5.

⁷² Tuhoe Putaiao Trust, page 3. They also submitted that the DRIP should be incorporated into revisions of these Acts.

⁷³ Kahui Legal, page 2.

⁷⁴ Wairoa District Council Māori Committee, page 8.

⁷⁵ Kahui Legal, page 4.

⁷⁶ Kahui Legal, page 4.

Some submitters had significant concerns about timeframes for signing an international agreement on access and benefit sharing (ABS) being a driver for the development of a national policy.⁷⁷ Specifically the Māori Party stated that it did “not support a policy development process which is more focused on meeting international deadlines than on the development of just and robust domestic policy.”⁷⁸ Likewise, Te Ora o Manukau submitted that they do not support the Government entering into any binding international agreements that could prejudice the development of domestic policies.⁷⁹ Ngati Awa submitted that in this case foreign policy should be guided by domestic policy, not the other way round.⁸⁰

THRMOA, however, submitted that while they are of the view that “New Zealand should not do anything internationally to jeopardise or negatively affect Māori interests, to ‘do nothing’ is equally unacceptable.” They suggest that active engagement in analysis and research is required and that the evidence presented in the WAI 262 inquiry provides ample material to guide officials on the Māori interest. Moreover they note that a ‘low profile’ approach is not consistent with active protection, or with a Cabinet decision of 2001 directing New Zealand to be proactive in pursuing cultural and intellectual rights for indigenous peoples internationally.⁸¹

Fred Allen likewise argued that our international obligations require New Zealand to be active in protecting Māori interests.⁸² Whenua.biz suggested that a policy framework consistent with and informed by Māori views of the CBD would assist as a key reference for all international agreements relevant to utilising New Zealand’s biological resources.⁸³ Dr Adele Whyte submitted that it is important that elements of what we want to include in a New Zealand framework are preserved at an international level, and “that none of these outcomes unduly prejudice the outcome of WAI 262.” Specifically she argues that “it is the access and benefit sharing with Māori and international prospectors which needs protecting.”⁸⁴

Dr Owen Morgan also suggested that at the ABS negotiations, New Zealand should be guided by:⁸⁵

1. the interests of the country as a whole;
2. the specific interests of Māori; and
3. international protection against unauthorized bioprospecting coupled with international controls to ensure agreements reached in one country are enforceable in a second country.

It was submitted that full and effective participation of Māori in all ABS discussion is essential and lack of engagement with Māori to date is problematic.⁸⁶

⁷⁷ Te Ora o Manukau, page 3; Wairoa District Council Māori Committee; the Māori Party, page 2; and Dr Adele Whyte, page 6.

⁷⁸ The Māori Party, page 2. Similar sentiments were expressed by Wairoa District Council Māori Committee, page 8; and Ngati Awa, page 4.

⁷⁹ Te Ora o Manukau, page 3.

⁸⁰ Ngati Awa, page 4.

⁸¹ THRMOA, page 3

⁸² Fred Allen, page 1.

⁸³ Whenua.biz, page 2.

⁸⁴ Dr Adele Whyte, page 6.

⁸⁵ Dr Owen Morgan, page 12.

⁸⁶ Wairoa District Council Māori Committee, page 9; and Kahui Legal page 4.

12. Frameworks currently in use

Ngati Awa provided an example of a domestic tool⁸⁷ that they contributed significantly to, and use in their rohe, which provides a method upon which any framework for bioprospecting activity could be hung. Their tool illustrates the type of principles Ngati Awa support, and is an existing means by which an enquirer might seek to access or use Ngati Awa's resources or traditional knowledge: "These principles contribute to a framework that recognises the intellectual property rights of Māori people and their right to assess and determine the extent to which places and resources are important to them, and their right to determine their relationships and their culture and traditions with their ancestral taonga." Of note, the principles of the Mataatua Declaration were also used in the development of their iwi/hapū planning documents.⁸⁸

Te Iwi o Rakaipaaka Tikanga Inc also have an established relationship with the Department of Conservation in which potential applicants for harvesting of flora and fauna within their traditional rohe are directed by the Department to their iwi authority for approval.⁸⁹ Applicants are required to observe 'nga tikanga o Ngati Rakaipaaka', which outlines their expectations for the processes and practices associated with taonga.⁹⁰

13. Submissions on next steps

Various suggestions were made on what the next steps should be in this policy development process. A theme evident through many submissions is that Māori wish to be engaged as an active Treaty partner. For example, Te Ora o Manukau submitted that government "facilitate and resource a process to enable Tangata Whenua to engage with Tangata Whenua to build capacity of Māori to participate in the biodiversity and bioprospecting decision making process."⁹¹ Te Ora o Manukau also recommended that government "facilitate and resource a process to establish a forum where Tangata Whenua select Rangatira to engage with the Crown on their behalf."⁹²

NWNRoK also submitted that Tangata Whenua should determine and develop a framework for biological heritage and requested that the Crown:⁹³

- Establish a fund to enable Tangata Whenua to enter long-term and robust planning toward developing a Crown-Māori legislative framework.
- Agree to resource the Tangata Whenua Reference Group⁹⁴ to undertake a situation scan, and also to articulate the adverse influences and recommend resolutions.
- Formally engage the Tangata Whenua Reference Group to provide input into the report to Cabinet as part of a work stream to establish a national Crown-Māori international engagement and reporting mechanism.

Ngāi Tahu asserted that any bioprospecting framework must address the concerns of Tangata Whenua and only be developed with their full and informed participation.⁹⁵ They also supported the

⁸⁷ Plan Change No.1 'Heritage Criteria' in the Bay of Plenty Regional Policy Statement.

⁸⁸ Ngati Awa, pages 1 and 2.

⁸⁹ Te Iwi o Rakaipaaka Tikanga Inc, pages 6 and 7.

⁹⁰ Te Iwi o Rakaipaaka Tikanga Inc, page 7.

⁹¹ Te Ora o Manukau, page 3. A similar submission was also made by NWNRoK, page 3

⁹² Te Ora o Manukau, page 4.

⁹³ NWNRoK, page 3.

⁹⁴ More generally NWNRoK also supported the declarations issued by the Tangata Whenua Reference Group, 13 September 2007, Wellington Hui. Malibu Hamilton, page 3, also supported those declarations.

Tangata Whenua Reference Group recommendations that government provide resourcing to enable Tangata Whenua to:⁹⁶

- Develop a framework so that Tangata Whenua can achieve an outcome/s that reflect the diverse views, including those who want to wait for the WAI 262 report and those who want to develop their bioprospecting and intellectual property opportunities.
- Discuss and affirm the rights of all Tangata Whenua to respect shared whakapapa.

Ngati Kahungunu⁹⁷ submitted that a new framework is required for addressing the interface between tino rangatiratanga and existing legislative system.⁹⁸ The framework they have suggested is a two-tiered structure, with the first tier being a ‘Co-ordinating Body’ comprising of WAI 262 claimants, other iwi, the Crown, Crown Research Institutes (CRIs) and the public. The secondary tier would comprise of eight working groups, with bioprospecting potentially being part of the proposed Resource Ownership Working Group.⁹⁹ In their view, once the Crown has embarked on the suggested process, the extent of current bioprospecting activities, and any required frameworks, can then be considered.¹⁰⁰

III Submissions on the questions posed in the discussion document

1) On New Zealand’s biological resources:

1.1 Do you think we need to have good information about bioprospecting activities in New Zealand, including the type and nature of such activities?

Submitters who answered this question agreed that good information is needed on current bioprospecting activity occurring in New Zealand.¹⁰¹

The reasons given for this view included to:¹⁰²

- coordinate bioprospecting activities across the country;¹⁰³
- encourage appropriate conservation policy, adequate funding and education and conservation commitment;¹⁰⁴
- inform the policy development with accurate information about bioprospecting (to determine the nature of the problem);¹⁰⁵
- ensure benefit is shared fairly amongst those who contributed to the realization of value,¹⁰⁶ and

⁹⁵ Ngāi Tahu, page 6.

⁹⁶ Ngāi Tahu, page 6.

⁹⁷ Ngati Kahungunu, page 2. This submission was supported by Malibu Hamilton, page 3, and the Wairoa District Council Māori Committee, page 13.

⁹⁸ As suggested in their WAI 262 closing submissions.

⁹⁹ Ngati Kahungunu, page 2 and 3.

¹⁰⁰ Ngati Kahungunu, page 3

¹⁰¹ Dr Adele Whyte, page 1; Enterprise Northland, page 1; Mrs Kathie Roberts, page 1; THRMOA, page 4; Nelson/Marlborough Conservation Board, page 1; Auckland Regional Council, page 1; SeaFIC, page 2; BioDiscovery NZ, page 1; Ngāi Tahu, page 5; AgResearch, page 1; Landcare Research, page 1; Scion, page 1; Dr Owen Morgan, page 2; NZCA, page 1. However note Ngati Kahungunu’s view that the process they have suggested should be undertaken before any exercise of gathering information, page 3.

¹⁰² This is not an exhaustive list. Please review submissions for a comprehensive list of the reasons provided.

¹⁰³ Dr Adele Whyte, page 1.

¹⁰⁴ Nelson/Marlborough Conservation Board, page 1.

¹⁰⁵ Dr Owen Morgan, page 2; THRMOA, page 4. Similar comments were made by Ngāi Tahu, page 5; and Enterprise Northland, page 1.

¹⁰⁶ Scion, page 1.

- encourage more research on New Zealand biota, with the results being in the public domain.¹⁰⁷

1.2 As a traditional knowledge holder, bioprospector and/or access provider, what are your experiences of bioprospecting in New Zealand? Can you provide any information that would be useful to develop a bioprospecting framework in New Zealand, for example, provide information about bioprospecting costs, benefits, outcomes, and current, benefit sharing agreements?

Bioprospectors noted that bioprospecting is expensive and that while financial benefits can be derived, they may not be realised for many years, if ever.¹⁰⁸ Key benefits of bioprospecting are likely to include:

- research funding that flows to research groups;¹⁰⁹ and
- capture of information on our biota.¹¹⁰

In terms of the ‘Māori experience’, Nelson/Marlborough Conservation Board submitted that probably the biggest gap has been the lack of recognition of mātauranga Māori and appropriate sharing of benefits.¹¹¹ THRMOA submitted that many tribal groups have had experiences regarding bioprospecting in their traditional rohe and can provide guidance on the nature of such activity. They asserted that capacity building is needed for these discussions as not all bioprospectors approach Māori under the ‘bioprospecting’ banner.¹¹² Ngāi Tahu noted their frustration over current practices in regard to access to and exploitation of natural resources, as more often than not, involvement of Tangata Whenua is peripheral, last minute and under pressure to agree.¹¹³

For examples of bioprospecting in New Zealand, see the submissions of BioDiscovery NZ, Tiakina te Taiao Ltd, Te Arawa FOMA, AgResearch, and the evidence presented on behalf of Ngati Porou claimants in WAI 262 as suggested by Kahui Legal.¹¹⁴

2) On New Zealand’s current frameworks to access biological material:

2.1 Do you think the existing access frameworks would benefit from operating within a more coordinated and comprehensive bioprospecting framework? If so, why? If not, why not?

Submitters who addressed this question explicitly or implicitly agreed that there should be a more coordinated and comprehensive bioprospecting framework.¹¹⁵

The reasons given for this view included:

¹⁰⁷ NZCA, page 1.

¹⁰⁸ Landcare Research, page 1; University of Canterbury, page 1; and AgResearch, page 1.

¹⁰⁹ University of Canterbury, page 4.

¹¹⁰ University of Canterbury, page 2.

¹¹¹ Nelson/Marlborough Conservation Board, page 1.

¹¹² THRMOA, page 4.

¹¹³ Ngāi Tahu, page 6.

¹¹⁴ Kahui Legal, page 2.

¹¹⁵ Dr Adele Whyte, page 2; Tiakina te Taiao Ltd, page 1; Mrs Roberts, page 2; NIWA, page 1; Nelson/Marlborough Conservation Board, page 1; AgResearch, page 2; NZCA, page 2; Auckland Regional Council, page 2; Nautilus Minerals, page 2; Enterprise Northland, page 2; THRMOA, page 4; Scion, page 1; Landcare Research, page 2; Dr Owen Morgan, page 3; BioDiscovery NZ, page 2; Ngāi Tahu, page 6; and SeaFIC, page 3.

- Absence of a national framework is an obstacle to bioprospecting because of the lack of certainty about the process,¹¹⁶ how to initiate consultation with Māori, and the number of departments involved.¹¹⁷
- We are lagging behind internationally and lack of coordination has some serious risks.¹¹⁸
- To avoid confusion and conflicts of interests and ensure protection of the environment from asset-stripping and Māori knowledge from over exploitation.¹¹⁹
- A framework is critical to knowing what is happening.¹²⁰
- In terms of Māori interests, it is important that all access providers are consistent and coordinated.¹²¹
- To enable efficient monitoring of bioprospecting activities and assist in ensuring objectives are more easily achieved.¹²²

3) On a comprehensive bioprospecting framework for New Zealand:

3.1 Do you think that New Zealand should have a comprehensive policy framework to manage bioprospecting activity in this country?

Most submitters who answered this question were supportive or conditionally supportive of a comprehensive policy framework.¹²³ The reasons provided were substantially the same as those outlined above in question 2.1. However support for a more coordinated approach was not unanimous. Te Ora o Manukau stated that it did not support the development of the proposed bioprospecting framework for New Zealand.¹²⁴ Waikato Raupatu Lands Trust submitted they did not support a policy that has a negative impact on their interests in biological resources.¹²⁵

As noted above, some submitters were conditionally supportive of a more comprehensive framework. For example:

- NIWA submitted it was supportive of a framework that optimises the value of our diversity through benefit sharing and is cognoscente of engaging with Māori.¹²⁶
- Ngāi Tahu supported the development of a bioprospecting framework provided the framework is developed with the active participation of Tangata Whenua.¹²⁷
- Dr Owen Morgan was supportive of a framework, subject to the need to obtain further information that would justify a comprehensive policy framework and that any framework gives effect to the Treaty of Waitangi and is compatible with the final settlement of the WAI 262 claim.¹²⁸

¹¹⁶ Dr Owen Morgan, page 3; University of Canterbury, page 3; and NIWA, page 2.

¹¹⁷ NIWA, page 3.

¹¹⁸ Tiakina te Taiao Ltd, page 1.

¹¹⁹ Mrs Kathie Roberts, page 2.

¹²⁰ Enterprise Northland, page 2.

¹²¹ THRMOA, page 4.

¹²² Dr Owen Morgan, page 3.

¹²³ Landcare Research, page 2; Auckland Regional Council, page 2; Nautilus Minerals, page 2; THRMOA, page 4; Enterprise Northland, page 2; Mrs Kathie Roberts, page 2; Dr Adele Whyte, page 2, Scion, page 2; University of Canterbury, page 3; Ngāi Tahu, page 7; NZBio, page 1; Whenua.biz, page 1; NZCA, page 2; BioDiscovery NZ, page 2; Nelson/Marlborough Conservation Board, page 1; and AgResearch, page 2 and 3.

¹²⁴ Te Ora o Manukau, page 3.

¹²⁵ Waikato Raupatu Trustee Company Ltd, page 3.

¹²⁶ NIWA, page 1.

¹²⁷ Ngāi Tahu, page 7.

¹²⁸ Dr Owen Morgan, page 4.

- Whenua.biz supported the development of a policy framed around support for Māori driving research and development toward sustainable enterprise rather than a passive or reactive interest.¹²⁹

He Oranga Mo Nga Uri Tuku Iho Trust submitted that it supports any mechanism that:¹³⁰

- protects the resource and its ability to reproduce itself in its natural environment/habitat;
- recognises and actively protects kaitieki and their relationship with that/those resource/s;
- is developed with and by those kaitieki or an other party agreed to, at timeframes and forums acceptable to those kaitieki;
- promotes, undertaken and/or has utilised kaupapa-Māori based principles of engagement, research, work and decision making;
- compliments and/or improves the current range of protection mechanisms available; and
- any limitation/s of the mechanisms are readily identifiable.

A range of suggestions were made on what an effective comprehensive bioprospecting framework needs to achieve. For example, it was suggested that any framework needs to:

- Guide on negotiating intellectual property rights.¹³¹
- Protect relevant intellectual property.¹³²
- Protect indigenous biodiversity.¹³³
- Ensure flow of information back to the source of biological resources.¹³⁴
- Facilitate relationships between bioprospectors with appropriate hapū/iwi.¹³⁵
- Be ecologically sustainable.¹³⁶
- Take appropriate account of the Treaty of Waitangi and Treaty Settlements.¹³⁷
- Ensure acknowledgment of and respect for Māori traditional knowledge.¹³⁸
- Take into consideration unique features of deep sea marine bioprospectors.¹³⁹

Others suggested that any comprehensive bioprospecting framework needs to achieve policy objectives in a manner that is:

- inexpensive;¹⁴⁰
- enables bioprospecting activities to be monitored;¹⁴¹
- robust and flexible enough to accommodate a variety of interests;¹⁴²
- simple, practical and not overly restrictive or bureaucratic; and¹⁴³
- certain, transparent and defensible to attract investment.¹⁴⁴

¹²⁹ Whenua.biz, page 1.

¹³⁰ He Oranga Mo Nga Uri Tuku Iho Trust, page 3.

¹³¹ Mrs Kathie Roberts, page 2 and 3.

¹³² University of Canterbury, page 3.

¹³³ NZCA, page 2.

¹³⁴ University of Canterbury, page 2; and Dr Owen Morgan, page 3.

¹³⁵ Te Arawa Lakes Trust, page 3.

¹³⁶ NZCA, page 2.

¹³⁷ NZCA, page 2.

¹³⁸ NZCA, page 2.

¹³⁹ Nautilus Minerals, page 1.

¹⁴⁰ Dr Owen Morgan, page 1.

¹⁴¹ Dr Owen Morgan, page 3.

¹⁴² Dr Owen Morgan, page 2; and BioDiscovery NZ, page 2.

¹⁴³ Scion, page 2; Dr Adele Whyte, page 2; Landcare Research, page 6; University of Canterbury, page 3; NIWA, page 3; NZBio, page 3; AgResearch, page 2; Dr Owen Morgan, page 1; and Researched Medicines Industry Association, page 1.

¹⁴⁴ University of Canterbury, page 3; NIWA, page 2; Landcare Research, page 6; NZBio, page 3; and Researched Medicines Industry Association, page 1.

Some submitters warned that if the system was not simple, user friendly, or is too prescriptive or loads administration costs at an early stage, it may discourage bioprospecting activities.¹⁴⁵

Ngati Awa submitted that the Crown should develop a policy “that sets standards for how the activity of bioprospecting should be carried out...and should not be predicated on an assumed Crown ownership of indigenous flora and fauna.” They prefer the Crown to focus on regulating the conduct of bioprospecting in terms of protocols for access to resources, such as prior informed consent, export of samples, commitment to developing and maintaining in-situ collections and guidelines for sharing benefits of any commercialisation.¹⁴⁶

Finally, taxonomy was submitted as being a cornerstone of any bioprospecting framework. As the University of Canterbury submitted, “if we do not know what it is then how can we protect it?”¹⁴⁷

3.2 What are your views on the proposed vision and policy principles to guide New Zealand’s bioprospecting policy?

In relation to the vision statement, some submitted that the wording of the vision needs to be reconsidered. Dr Owen Morgan submitted that the proposed vision statement lacks clarity, is uncertain in approach and is “fatally flawed”.¹⁴⁸ Other submitters were concerned about the commercial focus of the statement,¹⁴⁹ with one describing it as being so commercially focused that it was “inappropriate.”¹⁵⁰ Similarly, Wairoa District Council Māori Committee stated that ethical, cultural, social and environmental concerns should also inform policy development.¹⁵¹

Other suggestions included:

- The focus should be on encouraging New Zealand investment rather than international investment in biotechnology.¹⁵²
- The statement should recognise the need to protect New Zealand’s unique indigenous biodiversity, ecosystems and flora and fauna.¹⁵³
- Bioprospecting should not be separated from access to the biological resources and indigenous knowledge and benefit sharing.¹⁵⁴
- Emphasis should be on maximization of returns to New Zealand from the use of our biological resources.¹⁵⁵
- Positive outcomes and developments in social, cultural and environmental areas should also be promoted.¹⁵⁶
- In relation to Māori traditional knowledge, ‘recognised’ is very weak. ‘Respect, preserve and maintain’ are considerably more appropriate.¹⁵⁷

¹⁴⁵ Scion, page 2; Researched Medicines Industry Association, page 1; Dr Adele Whyte, page 2, Enterprise Northland, page 2; BioDiscovery NZ, page 2; and AgResearch, page 2.

¹⁴⁶ Ngati Awa, page 6.

¹⁴⁷ University of Canterbury, page 2.

¹⁴⁸ Dr Owen Morgan, page 4 and 5.

¹⁴⁹ Dr Adele Whyte, page 6; Malibu Hamilton, page 3; and Wairoa District Council Māori Committee, page 12.

¹⁵⁰ THRMOA, page 4.

¹⁵¹ Wairoa District Council Māori Committee, page 12.

¹⁵² Nelson/Marlborough Conservation Board, page 2.

¹⁵³ Auckland Regional Council, page 2.

¹⁵⁴ Dr Adele Whyte, page 2.

¹⁵⁵ Ngāi Tahu, page 7.

¹⁵⁶ THRMOA, page 5.

- “Appropriate” in reference to the Treaty of Waitangi and Treaty Settlements should be removed.¹⁵⁸
- References to “appropriateness” in terms of recognition and protection of Māori traditional knowledge must be removed.¹⁵⁹

In relation to the policy principles, Dr Owen Morgan made a general criticism of the principles that they do not read as principles within a policy framework “but rather as part of a regulatory framework.”¹⁶⁰ Other comments made in relation to the policy principles included:

- Māori interests are not only Treaty-based. The government has international obligations via Article 8(j) and related CBD provisions.¹⁶¹
- How can a policy ensure that Māori traditional knowledge is ‘acknowledged’ and ‘respected’?¹⁶²
- The principles should refer to ‘prior informed consent.’¹⁶³
- In relation to ‘ensures the equitable sharing of benefits’:
 - CBD meetings have clarified that ‘fair and equitable’ has become the norm.¹⁶⁴
 - The reference to ‘equitable benefit sharing’ is not connected with traditional knowledge. There is a risk that traditional knowledge may ‘slip through the cracks’ if explicit reference is not made.¹⁶⁵
 - In relation to “ensures the equitable sharing of benefits”, it needs to state who the sharing of benefits is between and how sharing will be achieved.¹⁶⁶
- “Unduly” in “does not unduly inhibit non-commercial scientific and academic research” should be removed.¹⁶⁷
- The policy principle “encourages the timely processing...with applicants’ transaction costs kept to an optimum level” does not define “optimum”. All impacts of bioprospecting should be identified and be the true costs to be met by the prospectors.¹⁶⁸
- Need to add a principle “does not disadvantage New Zealand in its relations with other countries.”¹⁶⁹

¹⁵⁷ THRMOA, page 5.

¹⁵⁸ Ngāi Tahu, page 8. A similar comment was made by THRMOA, page 5.

¹⁵⁹ Ngāi Tahu, page 8; Dr Owen Morgan, page 5; and Dr Adele Whyte, page 7. Similarly THRMOA, page 5 requested clarification on the reference to protection of Māori traditional knowledge ‘where appropriate’.

¹⁶⁰ Dr Owen Morgan, page 6. He also suggests how the principles should be redrafted, see page 6 of his submission.

¹⁶¹ THRMOA, page 6.

¹⁶² THRMOA, page 6.

¹⁶³ THRMOA, page 6.

¹⁶⁴ THRMOA, page 6.

¹⁶⁵ THRMOA, page 6.

¹⁶⁶ NZCA, page 2.

¹⁶⁷ NZCA, page 2.

¹⁶⁸ NZCA, page 2.

¹⁶⁹ Dr Owen Morgan, page 6.

3.3(i) Potential policy benefits and costs

3.3(i)(a) Do you see any other potential benefits or costs arising from a bioprospecting framework apart from those discussed in this document?

Some submitted that the discussion document only covered some of the potential monetary and non-monetary benefits. Dr Owen Morgan submitted that greater consideration needs to be given to enforcement, and benefit sharing.¹⁷⁰ He noted that countries with similar frameworks will have similar issues of benefit sharing and costs. In his view it seems sensible to structure costs so that they are similar to other countries to avoid diverting prospective bioprospectors.¹⁷¹

Scion likewise submitted that there is a need to consider how compliance will be mandated and audited, and noted that there are benefits that could and should be ascribed to the owners or access providers.¹⁷² Tiakina te Taiao Ltd submitted that a major cost that has not been adequately accounted for is the time it takes iwi and the community to respond to the issues.¹⁷³

Other submitters noted the potential for economic benefit to Māori from bioprospecting, including through developing research partnerships and investment.¹⁷⁴ However, submitters warned against high expectations about commercial return.¹⁷⁵ Moreover it was suggested that any framework must recognise this and “attempt to anchor benefits from successful discoveries back to New Zealand.”¹⁷⁶

Nautilus Minerals submitted that information and knowledge sharing related to deep sea marine bioprospecting would also be of significant value to New Zealand and offers the State an opportunity to:¹⁷⁷

- increase knowledge of biodiversity and deep sea ecosystems;
- improve the States understanding of the value of deep sea ecosystems; and
- increase knowledge of New Zealand’s biota.

Nautilus Minerals also asserted that bioprospecting activities are likely to attract more biological research to New Zealand, with success potentially leading to the increased development of research based industries.¹⁷⁸

3.3(i)(b) Which benefits do you think would be the most beneficial for New Zealand to capture?

A variety of suggestions were made in relation to this question. Some suggestions for benefits most beneficial for New Zealand to capture included:

- non-monetary benefits;¹⁷⁹
- value added benefits, such as additional research and development conducted in New Zealand and associated employment;¹⁸⁰

¹⁷⁰ Dr Owen Morgan, page 1.

¹⁷¹ Dr Owen Morgan, page 7.

¹⁷² Scion, pages 2 and 3.

¹⁷³ Tiakina te Taiao, page 1.

¹⁷⁴ Dr Adele Whyte, page 2; and Enterprise Northland, page 3.

¹⁷⁵ Enterprise Northland, page 3; and Crop and Food Research, page 1.

¹⁷⁶ Crop and Food Research, page 1.

¹⁷⁷ Nautilus Minerals, page 2 and 3.

¹⁷⁸ Nautilus Minerals, page 3.

¹⁷⁹ Dr Owen Morgan, page 7.

- royalties, although benefits tend not to be widely distributed;¹⁸¹
- recognition and development of ecological and cultural values;¹⁸²
- the fullest benefits afforded by the use of traditional knowledge of Tangata Whenua;¹⁸³
- downstream benefits from any bioprospecting activity should be available to New Zealanders, possibly through use of benefit-sharing agreements;¹⁸⁴ and
- access to international companies and expertise for development of pharmaceuticals and upskilling of New Zealand personnel.¹⁸⁵

3.3(i)(c) Do you think that there are potential benefits that are not worth capturing because of potential costs involved in doing so?

Some submitters answered no to this question.¹⁸⁶ BioDiscovery NZ submitted that the answer depended on the likelihood of benefits being obtained and the size of those benefits. In their view it is essential to have a good working relationship between access provider and bioprospector in which the principles of benefit sharing are clear and aims of the work are shared.¹⁸⁷ Another view was that it may be impossible to undertake a cost/benefit analysis, for example, how do you validly measure ‘institutional capacity building’?¹⁸⁸ Another submitted that further analytical work needs to be done before possible policy options are considered.¹⁸⁹

3.3 (ii) Policy scope

3.3(ii)(a) What are your thoughts on the current definition of bioprospecting?

Several submitters asserted that the current definition of bioprospecting needs to be reconsidered.¹⁹⁰ Three submitters,¹⁹¹ for example, argued that the definition should read “bioprospecting is the access to and the collection of biological material and the analysis of its material properties, or its molecular, biochemical or genetic content.” The reasons for this approach included:

- Bioprospecting is undertaken for the sake of knowledge, not for commercial imperatives.¹⁹²
- Commercialisation strategies are beyond the government’s responsibilities.¹⁹³
- At the early stage commercial imperatives may not exist.¹⁹⁴

BioDiscovery NZ noted that it seemed reasonable to exclude non-commercial research collecting, however, a framework would need to be cognisant of the possibility of commercial projects morphing out of non-commercial activities.¹⁹⁵ Scion argued that excluding bioprospecting without a specific commercial purpose behind it is likely to cause confusion.¹⁹⁶

¹⁸⁰ BioDiscovery NZ, page 2.

¹⁸¹ BioDiscovery NZ, page 2.

¹⁸² Nelson/Marlborough Conservation Board, page 2.

¹⁸³ Ngāi Tahu, page 8.

¹⁸⁴ Ngāi Tahu, page 8.

¹⁸⁵ Dr Adele Whyte, page 3.

¹⁸⁶ Nelson/Marlborough Conservation Board, page 2; and Dr Adele Whyte, page 3.

¹⁸⁷ BioDiscovery NZ, page 2.

¹⁸⁸ Dr Owen Morgan, page 8.

¹⁸⁹ THRMOA, page 6.

¹⁹⁰ Te Arawa Lakes Trust, page 3; NIWA, page 2, Enterprise Northland, page 3; Dr Owen Morgan, page 8; and NZBio, page 2.

¹⁹¹ NIWA, page 2; Enterprise Northland, page 4; and NZBio, page 2.

¹⁹² NIWA, page 2. In direct contrast to this point, GE Free argued that bioprospecting was about money, not science, page 2.

¹⁹³ NIWA, page 2.

¹⁹⁴ NZBio, page 2.

¹⁹⁵ BioDiscovery NZ, page 2.

¹⁹⁶ Scion, page 3.

Nautilus Minerals considered that the definition should include “...for commercial gain”, as non-commercial activities, such as obtaining sampling for Environment Impact Assessments (EIAs), should not be considered bioprospecting.¹⁹⁷ If non-commercial activities are included, some specific activities such as collecting of data for EIAs should be excluded.¹⁹⁸

Other submitters argued that the definition is narrow and should include other activities. For example, Ngāi Tahu asserted that the definition does not take account of downstream developments and that it is artificial to divorce the outcome of downstream developments from the initial bioprospecting.¹⁹⁹ Conversely SeaFIC submitted that they support the exclusion of product development from the definition.²⁰⁰

Kathie Roberts argued that the definition should include “screening and selection after analysis of biological material and any subsequent storage of selected material by freezing or chemical treatment to preserve it for later processing.” She also suggested that written reports of findings should also be included, as they may trigger subsequent development of products.²⁰¹

Dr Owen Morgan submitted that the definition is deficient on at least four counts and is not consistent with elements covered in the discussion paper.²⁰² For example, he argues the definition ignores access, the process of approaching Māori with a view to obtaining access to and permission to use Māori traditional knowledge; and is restricted to ‘for the purposes of developing commercial products.’²⁰³

He Oranga Mo Nga Uri Tuku Iho Trust were concerned that the definition had an inherent focus on ‘parts’ of biological material; “The natural and holistic role and function of the resource (flora, fauna or otherwise) that biological material is sourced from should always be considered if not outweigh the value or significance of its parts.”²⁰⁴

From a commercial fishing perspective, it was argued that it is important that normal fishing activities be clearly excluded from any definition.²⁰⁵ SeaFIC also submitted that the definition should better reflect the research activities into and the search for unique compounds and the development of commercial products based on those unique compounds.²⁰⁶

3.3(ii)(b) What are your views on how the “in scope” and “out of scope” boundaries of bioprospecting have been defined?

Again diverse opinions were expressed in answering this question.²⁰⁷ The New Zealand Conservation Authority submitted that if everything was ‘in-scope’, progress in biodiversity

¹⁹⁷ Nautilus Minerals, page 3.

¹⁹⁸ Nautilus Minerals, page 3.

¹⁹⁹ Ngāi Tahu, page 8.

²⁰⁰ SeaFIC, page 2.

²⁰¹ Mrs Kathie Roberts, page 3.

²⁰² Dr Owen Morgan, page 8.

²⁰³ Dr Owen Morgan, page 8. See his submission for his proposed definition.

²⁰⁴ He Oranga Mo Nga Uri Tuku Iho Trust, page 1.

²⁰⁵ SeaFIC, page 3.

²⁰⁶ SeaFIC, page 2.

²⁰⁷ Note that the responses to this question in many cases overlapped with the subsequent questions. Therefore the next three sections should be read together.

discovery and documentation could be severely constrained.²⁰⁸ Nelson/Marlborough Conservation Board submitted that this question was difficult as gene technology is developing at a pace that the potential is impossible to determine, however, they asserted that development of plant varieties with specific characteristics of commercial value should be in scope.²⁰⁹

Submitters agreed that certain activities, such as traditional activities such as weaving,²¹⁰ collection of firewood,²¹¹ and collection for food and seeds should not be within scope.²¹²

Ngāi Tahu submitted that the in-scope boundaries are narrow and likely to create accountability problems over time.²¹³ For example, they argued that exclusion of ex situ collections would make it difficult to determine where a sample was sourced and therefore the downstream capture of benefits would be impossible.²¹⁴

Ngāi Tahu also submitted that it was “alarming that the policy document unequivocally accepts that there is no stopping illicit bioprospecting.”²¹⁵ Two other submitters also asserted that a policy on the export of biological materials should be developed to control the removal of biological material from New Zealand, possibly through a permitting system.²¹⁶

Tiakina te Taiao Ltd submitted that the ownership of materials needs to be clarified in terms of the scope of any policy.²¹⁷ GE Free also submitted that the ownership issue is one of the most important issues and that “no proper policy can or should be put in place without full public consultation on this issue.”²¹⁸

3.3(ii)(c) Do you think that non-commercial activities should be within the scope of a bioprospecting policy? If so, why? If not, why not?

Several submitters considered that non-commercial research should be within the scope of a bioprospecting policy.²¹⁹ Some of the reasons identified for this approach included:

- It is impossible to define commercial/non-commercial research activity.²²⁰
- Results may lead to commercial activities in time.²²¹

However, BioDiscovery NZ submitted that non-commercial research activities should not be entirely within scope of any bioprospecting policy, as they argued it could add a layer of administration. However, they submitted that improved access to data on who is collecting what could be useful, as would tracking of samples.²²²

²⁰⁸ NZCA, page 3.

²⁰⁹ Nelson/Marlborough Conservation Board, page 2.

²¹⁰ Dr Adele Whyte, page 3.

²¹¹ Dr Adele Whyte, page 3. See also BioDiscovery NZ who qualified it as being for personal use only, page 3.

²¹² Scion, page 3; See also BioDiscovery NZ who qualified this as being for personal use only, page 3.

²¹³ Ngāi Tahu, page 8.

²¹⁴ Ngāi Tahu, page 8.

²¹⁵ Ngāi Tahu, page 5.

²¹⁶ NIWA, page 3 and 4; and Nautilus Minerals, page 4.

²¹⁷ Tiakina te Taiao Ltd, page 1.

²¹⁸ GE Free, page 3.

²¹⁹ SeaFIC, page 3; Nelson/Marlborough Conservation Board, page 2; Dr Owen Morgan, page 9; Mrs Kathie Roberts, page 3; Dr Adele Whyte, page 3; Enterprise Northland, page 4; and Scion, page 3.

²²⁰ SeaFIC, page 3.

²²¹ Mrs Kathie Roberts, page 3; Dr Adele Whyte, page 3; and Enterprise Northland, page 4.

²²² BioDiscovery NZ, page 3.

Two submitters agreed that any framework must not restrict non-commercial research.²²³ The Auckland Regional Council also added the collection of biological material for genuine ecological restoration and for traditional use should not be within scope.²²⁴ They added that research on pest control for biodiversity protection should not be restricted.²²⁵

3.3(ii)(d) If yes, can you think of specific activities that should nonetheless be excluded from the scope of a bioprospecting policy?

Tiakina te Taiao Ltd argued that non-Māori and non-commercial activities could be excluded only if they are very small in scale.²²⁶ Other suggestions included:

- Excluding specimen collecting for undergraduate study and school education.²²⁷
- Only those activities that fall within a revised definition should be included in the scope of the policy.²²⁸

3.3(ii)(e) If yes, what levels of compliance should be expected from non-commercial researchers?

The suggestions made for compliance expected for non-commercial research included:

- The general procedure to determine whether it is in or out should be simple.²²⁹
- Minimum compliance levels to reflect the non-commercial nature of their work, for example, simply a registration process. However there should be room to impose compliance obligations for non-commercial operations that evolve into commercial ventures.²³⁰
- Over-regulation can stifle activity so licensing should balance pragmatism against realism.²³¹
- Non-commercial research could have one flat fee, set so that this type of research is not hindered and there should at any rate be no fee differentiation between commercial and non-commercial.²³²
- It should not be costly.²³³
- Non-commercial researchers should be required to meet the same levels of compliance as commercial researches.²³⁴

3.4 Which kinds of biological resources should be accessed for bioprospecting?

Dr Owen Morgan submitted that all biological material should or could potentially be in scope.²³⁵ Kathie Roberts agreed with this on the proviso that any biological material that is endangered or

²²³ Auckland Regional Council, page 2; and Landcare Research, page 2.

²²⁴ Auckland Regional Council, page 2.

²²⁵ Auckland Regional Council, page 2.

²²⁶ Tiakina te Taiao Ltd, page 2.

²²⁷ Mrs Kathie Roberts, page 3.

²²⁸ Dr Owen Morgan, page 9.

²²⁹ Nelson/Marlborough Conservation Board, page 3.

²³⁰ Ngāi Tahu, page 9.

²³¹ Scion, page 3.

²³² Enterprise Northland, page 4.

²³³ Enterprise Northland, page 4.

²³⁴ Dr Owen Morgan, page 10.

²³⁵ Dr Owen Morgan, 10.

rare in any single locality should not be included.²³⁶ Auckland Regional Council submitted that emphasis needs to be on “indigenous biological material and providing a clear framework and protection for diversity, habitats, ecosystems, threatened species and natural genetic variability”.²³⁷ Tiakina te Taiao Ltd submitted that traditional Māori resources should be prioritised for Māori first.²³⁸

3.4(i) In your view, which of the three tiers of access (central government, local government and private) should be included in a bioprospecting framework?

Several submitters argued that all three tiers of access should be included in a bioprospecting framework.²³⁹ Ngāi Tahu argued that including all three would ensure greater control over bioprospecting practices, but the success or otherwise will depend on the structure chosen to undertake these functions.²⁴⁰

BioDiscovery NZ submitted that central and local governments should definitely be included; however, private providers should not be included “given their common law property rights”.²⁴¹ Ngāi Tahu stated it opposed any system that encroaches on private property rights, but recognized that “registration of bioprospecting activities will ensure the best capture of benefits for New Zealand.”²⁴² Similarly, Scion submitted that private access providers should be included, for example, by a requirement to have an agreement for access and to record that agreement.²⁴³

3.4(ii) Do you think ex situ collections should be included in a bioprospecting policy?

Again, there was general consensus that ex situ collections should be included in any bioprospecting policy.²⁴⁴ Scion, for example, noted that the extent of ex situ collections is currently unknown and to exclude them may compromise the ability to track and trace where and which bioprospecting activities are occurring. They suggested including a finite start date or that only relevant contents of the ex situ collections fall within any policy as potential compromises.²⁴⁵

Landcare Research submitted that it would be desirable to encompass current relevant reference collections in any bioprospecting policy, provided it did not constrain non-commercial research and inter-institutional linkages.²⁴⁶ SeaFIC also pointed out that any policy should not impinge on the custodianship of such collections, or place responsibilities on custodians to monitor and enforce any policy developed.²⁴⁷

²³⁶ Mrs Kathie Roberts, page 4.

²³⁷ Auckland Regional Council, page 2.

²³⁸ Tiakina te Taiao Ltd, page 2.

²³⁹ Enterprise Northland, page 5; Auckland Regional Council, page 2; Nelson/Marlborough Conservation Board, page 3; and Dr Adele Whyte, page 4.

²⁴⁰ Ngāi Tahu, page 9. Ngati Awa, page 7, also submitted that local government access providers should be in scope

²⁴¹ BioDiscovery NZ, page 3. Likewise Tiakina te Taiao Ltd submitted that government rather than private access providers should be involved, page 2.

²⁴² Ngāi Tahu, page 9.

²⁴³ Scion, page 3.

²⁴⁴ Tiakina te Taiao Ltd, page 2; Nelson/Marlborough Conservation Board, page 3; Mrs Kathie Roberts, page 4; Ngāi Tahu, page 9; SeaFIC, page 4; NZBio, page 4; Dr Adele Whyte, page 4; Dr Owen Morgan, page 10; NIWA, page 4; and Ngati Awa, page 7.

²⁴⁵ Scion, page 4.

²⁴⁶ Landcare Research, page 3.

²⁴⁷ SeaFIC, page 2.

3.4(iii) Do you think that non-indigenous biological material should be included in a bioprospecting policy?

Several submitters agreed that non-indigenous biological material should be included in any bioprospecting policy.²⁴⁸ Some of the reasons noted included:

- The absence of detailed knowledge of the biota of the oceans means it is not necessarily possible to identify indigenous from introduced species.²⁴⁹
- Many non-indigenous species are of potential interest to bioprospectors, and some may be unavailable in their own country.²⁵⁰

Other submitters considered that biological material which has been introduced should also be included provided it was not deliberately introduced.²⁵¹ Others argued, however, that only indigenous flora and fauna should be in scope.²⁵² NZBio reasoned that it is unlikely that non-indigenous biological material would be the target of bioprospecting activity.²⁵³ BioDiscovery NZ submitted that it is more important to protect indigenous first, but the lack of taxonomy hinders our knowledge of what is and is not indigenous.²⁵⁴ Another submitter considered that non-indigenous species should only be included if it can only be sourced in New Zealand.²⁵⁵ Ngati Awa submitted that indigenous flora and fauna should be left to hapū/iwi to manage themselves.²⁵⁶

3.5 Administrative frameworks

3.5(i) Do you think that New Zealand should have a National Focal Point? If yes, what form could it take?

3.5(ii) Do you think New Zealand should have a Competent National Authority? If yes what roles and responsibilities could it have?

Several submitters agreed that there could be a National Focal Point (NFP) and a Competent National Authority (CNA), possibly as a single authority.²⁵⁷ Moreover it was suggested that even without the rest of the framework, a single point of contact through a single authority would be advantageous.²⁵⁸ Both the Department of Conservation and the Ministry of Economic Development were suggested as possible coordinating bodies. It was also suggested that existing access frameworks would benefit from being subsumed into such a framework.²⁵⁹

²⁴⁸ Tiakina te Taiao Ltd, page 2; Nelson/Marlborough Conservation Board, page 3; Scion, page 3 and 4; SeaFIC, page 3; and Dr Adele Whyte, page 4.

²⁴⁹ SeaFIC, page 3.

²⁵⁰ Nelson/Marlborough Conservation Board, page 3.

²⁵¹ Dr Owen Morgan, page 10; and Enterprise Northland, page 5.

²⁵² NIWA, page 4; and NZBio, page 4.

²⁵³ NZBio, page 4.

²⁵⁴ BioDiscovery NZ, page 3.

²⁵⁵ Mrs Kathie Roberts, page 4.

²⁵⁶ Ngati Awa, page 7.

²⁵⁷ Mrs Kathie Roberts, page 4; Enterprise Northland, page 5; Dr Owen Morgan, page 10 and 11; NZBio, page 2; NIWA, page 3; and Landcare Research, page 3.

²⁵⁸ BioDiscovery NZ, page 4. Likewise Landcare Research, page 3 and 4, submitted it would be desirable to have one point of contact for all parties.

²⁵⁹ Dr Owen Morgan, page 11.

Another submitter agreed there should be a NFP but iwi should participate in the development of their own frameworks for their particular rohe.²⁶⁰ It was also submitted that any National Authority should have Māori members on such a body.²⁶¹ He Oranga Mo Nga Uri Tuku Iho Trust submitted that “whanau, hapū and iwi should be central to the accessing of and decision-making relating to the use of all “biological material” including the right to decide not to collect, analyse or otherwise this material.”²⁶²

Other submitters argued that while national focus and coordination would be useful, existing permitting structures already in place should be retained.²⁶³ It was asserted that permitting should remain with statutory bodies to provide inherent checks and balances.²⁶⁴ The Seafood Industry Council submitted that while existing government frameworks could be modified and required to be reported to a centralised NFP, they would not support overlapping frameworks which may increase business and compliance costs for commercial seafood activities. They continued that the nature and form of a National Authority would be dependant on the outcome of who should benefit from bioprospecting and how those benefits should be shared. They argued that the discussion document implies benefits will flow to access providers and those who share knowledge, which seems to contradict the policy aims of capture of information and sharing benefits to serve national interests.²⁶⁵

Several submitters made suggestions on the possible functions of a CNA, including to:

- maintain a central register of all bioprospecting activities, accessible to all researchers,²⁶⁶ including combining and updating current databases;²⁶⁷
- assist potential bioprospectors in getting in contact with appropriate people;²⁶⁸
- provide guidelines for ethical interactions with Māori,²⁶⁹
- administer certificates of origin,²⁷⁰ and
- issue licenses.²⁷¹

²⁶⁰ Dr Adele Whyte, page 4. Similarly, Waikato Raupatu Lands Trust submitted that they seek the highest level of co-management concerning bioprospecting in their rohe, and are seeking an active decision making role in bioprospecting activity and permitting in their rohe, page 3.

²⁶¹ Dr Adele Whyte, page 4.

²⁶² He Oranga Mo Nga Uri Tuku Iho Trust, page 1.

²⁶³ Auckland Regional Council, page 3; and Nelson/Marlborough Conservation Board, page 3.

²⁶⁴ Nelson/Marlborough Conservation Board, page 3.

²⁶⁵ SeaFIC, pages 3 and 4.

²⁶⁶ Mrs Kathie Roberts, page 4; Industrial Research Limited, page 2; and NZBio, page 3.

²⁶⁷ Industrial Research Limited, page 2.

²⁶⁸ Dr Adele Whyte, page 5.

²⁶⁹ Dr Adele Whyte, page 5; and Scion, page 4.

²⁷⁰ Dr Adele Whyte, page 5.

²⁷¹ Scion, page 4.

4) Mātauranga Māori

4.1 How do you think use of mātauranga Māori for bioprospecting can be most appropriately managed and protected?

One theme evident in response to this question is that the kaitiaki of mātauranga are and must remain the decision makers regarding use of mātauranga Māori.²⁷² An illustration of this point was provided by Tuhoe Putaiao Trust who stated that “Ngai Tuhoe people determine and maintain their own culture, traditions and relationships with our ancestral lands, resources and other taonga to ensure that these relationships, heritage values and customary rights endure for future generations.”²⁷³

It was also submitted that any bioprospecting benefits to flow from the use of mātauranga need to flow back to Māori.²⁷⁴ In addition it was submitted that Māori need to be resourced or compensated for their involvement in any system.²⁷⁵

THRMOA also submitted that:²⁷⁶

- Access to and use of mātauranga must only occur with prior informed consent of relevant kaitiaki, including a right of veto and confidentiality.
- Customary laws and practices have a key role in management and protection and should be the starting point.²⁷⁷
- New forms of *sui generis* measures are needed that integrate customary laws and practices.

Similar sentiments were expressed by Ngāi Tahu, who in addition, suggested that protection of mātauranga Māori must be undertaken in a holistic and reasoned fashion. THRMOA submitted that such principles need to be analysed and developed further before progressing policy options. That said, they suggested that some soft law measures can be more rapidly advanced in the short term.²⁷⁸

Enterprise Northland submitted that there should be a reasonable test of “knowability” as some researchers actively try not to encroach on existing knowledge.²⁷⁹ It was argued that as bioprospectors can invest a lot of time and money in any project, if that work unknowingly overlaps with traditional knowledge which was not ‘knowable’ to them, that could lead to undesirable outcomes.²⁸⁰ Similarly Nautilus Minerals submitted that any policy must take into account that not all bioprospectors use traditional knowledge in their search for biological material, particularly in deep sea marine bioprospecting.²⁸¹

Others considered that New Zealand has unique responsibilities with respect to indigenous knowledge, including to illustrate how traditional knowledge can be managed for the benefit of key

²⁷² THRMOA, page 7; Tiakina te Taiao Ltd, page 2; and Kahui Legal, page 3.

²⁷³ Tuhoe Putaiao Trust, page 1.

²⁷⁴ Tiakina te Taiao Ltd, page 2; and Wairoa District Council Māori Committee, page 2.

²⁷⁵ Tiakina te Taiao Ltd, page 2; and Kahui Legal, page 3.

²⁷⁶ THRMOA, page 7.

²⁷⁷ Te Arawa Lakes Trust, pages 2 and 3 also submitted that the development of any framework in terms of use and knowledge in the Te Arawa rohe must comply with Te Arawa tikanga and kawa. A similar submission was made by Te Iwi o Rakaipaaka Inc in respect of any policy reflecting their tikanga, see page 7 of their submission.

²⁷⁸ THRMOA, page 7.

²⁷⁹ Enterprise Northland, page 6.

²⁸⁰ Enterprise Northland, page 6.

²⁸¹ Nautilus Minerals, page 4.

stakeholders.²⁸² “An appropriate advisory body may be necessary to assist applicants through any framework while we ‘learn by doing’” and lead the world in finding innovative approaches.²⁸³

While one submitter argued that use of Māori traditional knowledge should be encouraged through providing incentives for iwi to become involved in bioprospecting,²⁸⁴ another argued that “indigenous peoples' prior knowledge is being exploited for gain in the guise of a greater benefit in medicines etc”.²⁸⁵

4.2 What do you think of the suggestions made in this document as options to protect mātauranga Māori (a voluntary register, ensuring legally and fully mandated governance entities, a code of best practice for bioprospectors, or an advisory council to a Competent National Authority)?

In relation to the suggestions made in the discussion document as options to protect mātauranga Māori, it was submitted by THRMOA that key principles need to be clarified before considering such options.²⁸⁶ THRMOA also noted that as there was no definition of the nature of the problem in respect of mātauranga Māori it was premature to comment.²⁸⁷

The following focuses on the three options that received the most commentary by submitters, namely a code of best practice/code of ethics, a voluntary register and an advisory council. (These options were also briefly outlined in the discussion document itself.)

Code of best practice/code of ethics

There was general support for a code of best practice/code of ethics.²⁸⁸ It was submitted that the protection of mātauranga could be achieved by a clear and consistent set of guidelines for bioprospectors in a manner that facilitates relationships.²⁸⁹ It was also suggested that the code could provide guidance on engaging with Māori,²⁹⁰ benefit sharing,²⁹¹ and expected behavior in relation to the environment.²⁹² Furthermore, Landcare Research suggested that the guidelines could provide for training of local Māori in science methodology, intellectual property management and negotiation of agreements.²⁹³ Enterprise Northland noted that a code of ethics was submitted by Maui Solomon in the WAI 262 inquiry and such a code should be developed over time.²⁹⁴

AgResearch argued that a code of best conduct must not be too difficult, as organisations will look to investigate overseas compounds if compliance is onerous.²⁹⁵ Ngāi Tahu lent qualified support to

²⁸² University of Canterbury, page 3.

²⁸³ University of Canterbury, pages 3 and 4.

²⁸⁴ AgResearch, page 3.

²⁸⁵ GE Free, page 2.

²⁸⁶ THRMOA, page 8.

²⁸⁷ THRMOA, page 8.

²⁸⁸ Dr Owen Morgan, page 11; Mrs Kathie Roberts, page 7; Dr Adele Whyte, page 5; NZBio, page 3; NIWA page 2; and Landcare Research, 4.

²⁸⁹ Whenua.biz, page 2; and NIWA, page 2. Te Arawa Lakes Trust, page 2 also recommended the establishment of clear guidelines and principles of engagement when establishing a relationship with Te Arawa.

²⁹⁰ NIWA, page 2.

²⁹¹ NZBio, page 3 and NIWA, page 2.

²⁹² NIWA, page 2.

²⁹³ Landcare Research, page 4

²⁹⁴ Enterprise Northland, page 6.

²⁹⁵ AgResearch, page 3.

the idea of a code of best practice, provided it was implemented with other measures to ensure compliance.²⁹⁶

Voluntary Database/Register

Some submitters expressed concern about a publicly accessible database where it could be used without obligation.²⁹⁷ Other submitters considered that a database of traditional knowledge claims should be established and maintained to allow researchers to engage with Māori and also to enable them to avoid potential overlap between mātauranga and bioprospecting projects.²⁹⁸ AgResearch concurred with this submission provided that Māori are aware that if mātauranga Māori of relevance is not registered, then it cannot be cited at a later stage in challenge to a patent application.²⁹⁹

Conversely, Ngāi Tahu opposed a register in the form suggested in the document, as it assumes that “all matauraka Māori was and could be captured by such a device.” They further submitted that “the assumption that if a knowledge or practice was not registered then no prior knowledge issues arise, places excessive burden on Tangata Whenua to ensure the register is complete. The burden of ensuring no prior use issues arise must sit with the bioprospector.” They did, however, support a voluntary register on the proviso that hapū/iwi determine which information should be held at iwi level and which should be held at hapū level. Moreover, in their view, iwi and hapū should control data input and retain control of information contained in the register and receive adequate resourcing to do so.³⁰⁰

Ngati Awa had similar concerns as Ngāi Tahu and submitted that the proposal over-simplifies the complexities of knowledge, both traditional and other forms.³⁰¹ Moreover, they contended that the discussion document does not alert Māori to the considerable risks associated with the proposals.³⁰² They also suggested that a register may unfairly limit the ‘ownership’ of that knowledge to particular groups when it is more widely known.³⁰³ It was submitted that any system needs to include capacity building for Māori in this area.³⁰⁴

Advisory Council to a Competent National Authority

While there was some support for the establishment of an advisory body of sorts,³⁰⁵ criticism was also directed at this type of body. In particular, it was argued that the power of current advisory bodies either is, or is likely to be, far too limited.³⁰⁶ The Wairoa District Council Māori Committee cited the Māori Trade Marks Advisory Committee as an illustration of this point: “These types of

²⁹⁶ Ngāi Tahu, page 10.

²⁹⁷ Mrs Kathie Roberts, page 7; and Dr Adele Whyte, page 5.

²⁹⁸ NIWA, page 3 and NZBio, page 3.

²⁹⁹ AgResearch, page 3.

³⁰⁰ Ngāi Tahu, page 10.

³⁰¹ Ngati Awa, page 7 and 8.

³⁰² Ngati Awa, page 8.

³⁰³ Ngati Awa page 8; See also BioDiscovery NZ, page 4. A similar point was made by Te Arawa FOMA, page 5, who questioned whether iwi can define what is theirs alone.

³⁰⁴ BioDiscovery NZ, page 4.

³⁰⁵ Mrs Kathie Roberts, page 5; and Tiakina te Taiao Ltd, page 2.

³⁰⁶ Kahui Legal, page 3; and Wairoa District Council Māori Committee, page 6.

bodies should be empowered further to fully achieve Māori aspirations in terms of protecting mātauranga Māori, traditional knowledge and Māori intellectual property rights.³⁰⁷

Ngati Awa submitted that the proposal for a Māori Advisory Council sits at the lowest end of the spectrum as the proposal has not been presented as one of many layers of Māori involvement, but as the only major layer. They asserted that there should be several layers for which iwi should be resourced to carry out the primary functions.³⁰⁸ Moreover, they argue that a Māori Advisory Council that sits under the CNA is not acceptable. They suggested establishing an on-going process for hapū/iwi involvement in bioprospecting as set out in Articles 26, 29, 31 and 32 of the DRIP.³⁰⁹

Submitters' proposals

While Ngati Awa submitted that they did not accept the options articulated in the discussion document, they recommended that the Crown continue dialogue with Mataatua iwi to develop local responses as well as discussing more appropriate national responses.³¹⁰ They also recommended the adoption of a national system of Community Certificates of Origin that tracks all transactions associated with a specific biological resource and associated mātauranga from its local origin.³¹¹ They assert that the Certificates would form the basis of any subsequent discussion on benefit sharing. They contend that this approach favours an active and ongoing local/iwi management in relevant research and usage of indigenous flora and fauna (and associated mātauranga).³¹²

5) International Bioprospecting Frameworks:

5.1 What aspects of the Bonn Guidelines of the Convention on Biological Diversity (CBD) do you believe should be considered in developing a domestic bioprospecting framework?

Some submitters considered that the Bonn Guidelines of the Convention on Biological Diversity (the Guidelines) had valuable points to consider³¹³ and include in a domestic framework.³¹⁴ THRMOA noted that while the Guidelines contain some positive stepping stones, for example, capacity building and references to effective indigenous participation, it was submitted that there is limited consideration of indigenous peoples' interests and the Guidelines "should not be taken as conclusive regarding Māori interests."³¹⁵

NIWA likewise noted shortcomings of the Guidelines in relation to the marine environment, as much of the knowledge gained from bioprospecting in the marine environment is not based on traditional knowledge.³¹⁶ As stated by Dr Owen Morgan, policy makers should refer to the Guidelines for those components and examples that are useful to New Zealand.³¹⁷

³⁰⁷ Wairoa District Council Māori Committee, pages 6 and 7.

³⁰⁸ Ngati Awa, page 8.

³⁰⁹ Ngati Awa, page 9.

³¹⁰ Ngati Awa, page 10.

³¹¹ Ngati Awa, page 8.

³¹² Ngati Awa, page 8. A similar suggestion was made by Ngāi Tahu, page 7, also submitted that a track and trace system whereby all bioprospecting activities and research outcomes are monitored would ensure the capture of international bioprospecting within its auspices, ensuring downstream benefits are retained or returned to New Zealand.

³¹³ SeaFIC, page 4; BioDiscovery NZ, page 4; and AgResearch, page 4.

³¹⁴ Mrs Kathie Roberts, page 8.

³¹⁵ THRMOA, page 8.

³¹⁶ NIWA, page 4.

³¹⁷ Dr Owen Morgan, page 11.

5.2 Are there aspects of international bioprospecting frameworks as outlined in section 5 (or any others you know about) that could be useful to consider during the development of a bioprospecting framework in New Zealand?

The following aspects of other national regimes were cited as being useful to explore further:

- Provisions of the Norwegian draft Bill on the Protection of the Natural Environment, Landscape and Biological Diversity.³¹⁸
- The Australian approach Commonwealth areas and also the Northern territory approach.³¹⁹
- Andean Communities requirement for prior informed consent and benefit sharing with the National Authority and indigenous and local communities.³²⁰
- The licensing of scientific research under the Scientists Act in Canada.³²¹

THRMOA submitted that they would expect a comparative analysis would extend beyond the cited examples³²² and be disseminated amongst Māori.³²³ Other regimes suggested as being useful models included:

- Secretariat of the Pacific Community – Model Law for the Protection of Traditional Knowledge and Expressions of Culture.³²⁴
- African Model Law³²⁵
- Peru³²⁶, Costa Rica³²⁷ and Brazil³²⁸ approaches and
- the Vanuatu Cultural Centre model.³²⁹

Dr Owen Morgan also noted that “the most relevant of the existing frameworks will be those that are established in countries that are similarly biodiverse to New Zealand and have a strongly politicized, indigenous population that is determined to protect its heritage.”³³⁰

6) On any other issues

6.1 Do you have any further suggestions or comments on the issues raised in this document?

A range of suggestions were made under this section. Where I have not incorporated the suggestions made under this question elsewhere in the report, I have attempted to group the submissions into themes, below.

Ownership of biological resources and benefit sharing

³¹⁸ THRMOA, page 8.

³¹⁹ THRMOA, page 8.

³²⁰ Scion, page 5.

³²¹ Scion, page 5.

³²² THRMOA, page 9.

³²³ Kahui Legal, page 4.

³²⁴ Kahui Legal, page 4; and Ngati Awa, page 5.

³²⁵ Kahui Legal, page 4; and Ngati Awa, page 5.

³²⁶ Kahui Legal, page 4; Ngati Awa, page 5.

³²⁷ Kahui Legal, page 4; Ngati Awa, page 5; and University of Canterbury, page 3.

³²⁸ Kahui Legal, page 4; and Ngati Awa, page 5.

³²⁹ Kahui Legal, page 4; Ngati Awa, page 5; and Wairoa District Council Māori Committee, page 4.

³³⁰ Dr Owen Morgan, page 12.

Many submitters asserted the importance of establishing certainty over ownership and any subsequent benefit sharing.³³¹ In this regard Scion noted the complex nature of the issue of ownership and how to fairly allocate appropriate benefits to access providers or owners: “For this we go back to the philosophy that bioprospecting activities are only permitted to proceed if the bioprospector has defined a process for how to address this, if monetary and non-monetary benefits arise from the exploitation of New Zealand’s fauna and flora.”³³²

Engagement with local and regional authorities

Both the Auckland Regional Council³³³ and the Far North District Council³³⁴ submitted that central government needs to remain engaged with local and regional authorities, particularly around implementation of any framework and implications of WAI 262.

Funding for bioprospecting

It was submitted that currently there is little funding for bioprospecting and biodiversity projects, particularly as the Foundation for Research Science and Technology has recently terminated bioprospecting funding.³³⁵ Moreover, it was asserted that someone must be willing to pay for bioprospecting, and due to the risks associated with bioprospecting, centralised agencies are best suited to fund it.³³⁶ Another submitter called for the government to establish and fund a science centre whereby the potential of the WAI 262 claim can be fully explored.³³⁷

Confidentiality

Some submitters recommended that confidential information provided by bioprospectors should be kept confidential in any publicly accessible databases.³³⁸ However, it was also suggested that unless information is commercially and/or culturally sensitive, it should be available widely for use.³³⁹

³³¹ For example, see Wairoa District Council Māori Committee, page 4; and BioDiscovery NZ, page 5.

³³² Scion, page 5.

³³³ Auckland Regional Council, page 2.

³³⁴ Far North District Council, page 1.

³³⁵ Crop and Food Research, page 2; and Enterprise Northland, page 7.

³³⁶ BioDiscovery NZ, page 5.

³³⁷ Te Arawa FOMA, page 4.

³³⁸ Nautilus Minerals, page 5; University of Canterbury, page 2; and AgResearch, page 1.

³³⁹ University of Canterbury, page 4.