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ARTICLE

Extending Legal Personhood to Taonga Species: The Next Step Towards an Effective Wai 262 Response

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The Waitangi Tribunal's 2011 *Ko Aotearoa Tēnei* (*Wai 262 Report*) concluded that a proper interpretation of Te Tiriti o Waitangi requires that partnership and shared decision-making between the Department of Conservation and kaitiaki (guardians) be the default approach to conservation management. The Tribunal made five recommendations for reform, ranging from reviews of the Wildlife Act 1953, *Conservation General Policy* and *General Policy for National Parks* to formalising a partnership between the Department of Conservation and Māori by establishing a national Kura Taiao Council. Using Ngāti Koata's relationship with their taonga species tuatara as a case study, this article evaluates the Waitangi Tribunal's recommendations and the Government's response to these recommendations, concluding that they do not do enough to ensure Māori fulfil their obligations as kaitiaki of their taonga species by exercising rangatiratanga. This article argues that the existing concept of granting legal personality to natural features should be extended to taonga species to ensure that each hapū's unique relationship with their taonga species is recognised and protected by law, in turn ensuring that the Crown honours its obligations to protect taonga under art 2 of Te Tiriti o Waitangi.

I Introduction

Māori are the kaitiaki (guardians) of Aotearoa New Zealand's Indigenous flora and fauna, practising conservation using methods developed by generations of interaction with the environment and retained as mātauranga Māori (Māori knowledge).[1] To Māori,

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1 Bevan Erueti and others "'Pūrākau o te Ngahere': Indigenous Māori Interpretations, Expressions and Connection to Taonga Species and Biosecurity Issues" (2023) 11(1) Knowledge Cultures 34 at 37–38.

New Zealand's flora and fauna are taonga (treasures) not only because they provide a source of food, medicine, shelter, and spiritual well-being but because they are connected to Māori through shared whakapapa (genealogy).[2] Māori and Pākehā have fundamentally different approaches to conservation.[3] While Māori perceive themselves as a part of the environment connected by whakapapa, European conservation principles prioritise preservation through control.[4] The dominance of European conservation principles can be observed in New Zealand law—for example, by law, the Crown owns all "wildlife" in New Zealand,[5] despite this directly contradicting the tino rangatiratanga (authority) of kaitiaki as protected by art 2 of Te Tiriti o Waitangi.[6]

In 1991, in hope of gaining some legal recognition of Māori interests in taonga species, six claimants lodged the Wai 262 claim with the Waitangi Tribunal.[7] One claimant was John Hippolite, a representative from Ngāti Koata. In Hippolite's statement, Ngāti Koata highlighted that a series of statutory and policy decisions had limited their access to Takapourewa and thus prevented them from fulfilling their obligations as kaitiaki of the tuatara within their rohe (territory).[8] Ngāti Koata sought a series of remedies that collectively aimed to ensure all proposed and existing legislation be amended to allow Ngāti Koata to exercise tino rangatiratanga over the Indigenous flora and fauna in their rohe.[9] Notably, Ngāti Koata also sought the recognition of taonga as possessing legal and spiritual identity under the tino rangatiratanga and kaitiakitanga (guardianship) of Ngāti Koata, where called for.[10]

In 2011, 20 years after the claim was initially lodged, the Waitangi Tribunal released *Ko Aotearoa Tēnei* (*Wai 262 Report*).[11] It concluded that because much of New Zealand's land mass is controlled by the Department of Conservation (DOC), whether kaitiaki can fulfil their obligations to their taonga species depends on DOC's operations.[12] The Tribunal issued five recommendations to improve the recognition of mātauranga Māori in conservation policy, ranging from reviews of the Wildlife Act 1953, *Conservation General Policy* (*CGP*) and *General Policy for National Parks* (*GPNP*) to the formalisation of a partnership between the Department of Conservation and Māori through the establishment of a national Kura Taiao Council.[13]

The Waitangi Tribunal's recommendations, and the Crown's response to these recommendations, does little to ensure that Māori can exercise tino rangatiratanga and kaitiakitanga. This article argues that the concept of granting legal personality to natural features, a solution adopted to settle Treaty claims regarding Te Urewera, Te Awa Tupua,

2 At 37–38.

3 Hēmi Whaanga and Priscilla Wehi "Rāhui and conservation? Māori voices in the nineteenth century niupepa Māori" (2017) 47 J Roy Soc New Zealand 100 at 101; and David Young *Our Islands, Our Selves: A History of Conservation in New Zealand* (University of Otago Press, Dunedin, 2004) at 216.

4 At 101.

5 Wildlife Act 1953, s 57(3).

6 See Te Tiriti o Waitangi 1840, art 2.

7 Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) vol 1 at 2.

8 *First Amended Statement of Claim* (Wai 262, 10 September 1997) at [12.3].

9 *Second Amended Statement of Claim on Behalf of Ngati Koata* (Wai 262, October 2001) at [7.1].

10 At [7.1(i)].

11 Waitangi Tribunal, above n 7.

12 At 314.

13 At 372–373; Department of Conservation *Conservation General Policy* (May 2005); and New Zealand Conservation Authority *General Policy for National Parks* (April 2005).

and Te Kāhui Tupua,[14] should be extended to taonga species to ensure that Māori can exercise tino rangatiratanga in fulfilling their kaitiaki obligations.

Part II analyses how past conservation strategies have prohibited Ngāti Koata from fulfilling their role as the kaitiaki of tuatara, establishing the need for the strong legal protection of the right for Māori to exercise rangatiratanga over their taonga species. Part III reviews the *Wai 262 Reports*' findings regarding Māori involvement in conservation decision-making and contends that while the conclusion that partnership should be embedded in New Zealand's conservation policies is correct, the recommendations fall short of ensuring kaitiaki can exercise rangatiratanga. Part IV evaluates DOC's response to the findings of the *Wai 262 Report* and argues that this still does not adequately protect the relationship between kaitiaki and their taonga species. Part V analyses how legal personality could be extended to taonga species to ensure kaitiaki can exercise tino rangatiratanga effectively. Finally, Part VI argues that taonga species should be granted legal personality, and their kaitiaki appointed as legal guardians to ensure they can exercise kaitiakitanga and rangatiratanga.

To preface this article, I acknowledge that my position as a Pākehā woman influences my worldview and, in turn, what I can contribute to the discussion of the protection of taonga. My knowledge of tikanga and te ao Māori is limited to what I have encountered in my secondary and tertiary education. While I have engaged with the writing of Māori scholars in this article, direct input from kaitiaki, tohunga, kaumātua, and the broader Māori community is needed to further the discussion of how the relationship between kaitiaki and their taonga species can best be protected. I have included simple English translations of te reo Māori and tikanga concepts in this article from John C Moorfield's *Te aka: Māori-English, English-Māori Dictionary and Index*.[15]

II New Zealand Conservation Policies and Their Impact on the Relationship Between Kaitiaki and Taonga Species

This section lays the foundation for the justification of the radical suggestion that taonga species become legal persons. First, it describes the nature of the relationship between kaitiaki and their taonga species and establishes that the relationship is significant and guarantees legal protection. Second, it analyses how Crown policies failed to protect this relationship and at times have actively harmed it.

A *Kaitiakitanga and taonga species*

Kaitiakitanga is a core value in te ao Māori.[16] Kaitiakitanga is the obligation to selflessly nurture or care for the physical well-being and mauri (spiritual well-being) of taonga.[17] Tangible things such as plants, wildlife, water, and land, or intangible things such as

14 See Te Urewera Act 2014, s 11; Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14; and Te Pire Whakatupua mō Te Kāhui Tupua/Taranaki Maunga Collective Redress Bill 2023 (293-1) [Te Kāhui Tupua Bill], cls 17–21.

15 John C Moorfield *Te aka: Māori-English, English-Māori Dictionary and Index* (3rd ed, Pearson, Auckland, 2011).

16 Tara McAllister, Daniel Hikuroa and Cate Macinnis-Ng "Connecting Science to Indigenous Knowledge: kaitiakitanga, conservation, and resource management" (2023) 47(1) NZ J Ecol 1 at 3.

17 At 3.

language, knowledge and culture can be taonga.[18] Conceptually, kaitiakitanga is inseparable from the principle of tino rangatiratanga (absolute authority).[19] As the holders of kaitiakitanga obligations, kaitiaki have the right to make and enforce laws and customs (an exercise of tino rangatiratanga) to protect their taonga.[20] The right to exercise "te tino rangatiratanga" over taonga was guaranteed by art 2 of Te Tiriti o Waitangi.[21]

Taonga species have a particular cultural or spiritual significance to an iwi or hapū, such that the iwi or hapū are the kaitiaki of the entire species.[22] Taonga species have kōrero tuku iho (oral history) describing how the community became kaitiaki and what obligations this creates for them.[23] For some Māori, taonga species are emblematic of their community or cultural identity.[24] Emblematic species often have spiritual or mystical functions, acting as spiritual guardians of the iwi or hapū by appearing at important times to communicate warnings to matakite (prophets).[25]

Ngāti Koata's kaitiaki obligations to protect tuatara are central to the identity and pride of iwi members. Evidence presented to the Waitangi Tribunal by Ngāti Koata described a deep cultural and spiritual relationship between Ngāti Koata and tuatara, extending to a reverence for the entire species.[26] Tuatara are said to be able to see into the spiritual realm through their third eye granted by Tangaroa.[27] Terewai Grace and Benjamin Hippolite explained that tuatara are like tupuna to Ngāti Koata, symbolising the wisdom that comes with age.[28] Ngāti Koata look to tuatara for their wisdom, counsel and recommendations in times of uncertainty.[29]

B *Crown policies and their adverse impact on the relationship between kaitiaki and taonga species*

Crown land acquisition policies in the 19th century alienated Māori from their land, which in turn prevented Māori from accessing taonga flora and fauna on the land.[30] Today, approximately one-third of New Zealand's land mass is part of New Zealand's conservation estate, leaving the DOC responsible for managing and protecting many taonga species.[31] Without access to their taonga, Māori are unable to exercise tino rangatiratanga.[32]

Ngāti Koata identified land loss as a factor that had limited their ability to fulfil their kaitiaki obligations to tuatara. Takapourewa, an island in the rohe of Ngāti Koata, is home to 50 per cent of the tuatara population.[33] Takapourewa was gifted to Ngāti Koata by

18 At 3–4.
19 At 4.
20 At 4.
21 Te Tiriti o Waitangi, art 2.
22 Waitangi Tribunal, above n 7, at 115.
23 At 115.
24 At 118.
25 At 117.
26 At 134.
27 At 134.
28 At 179.
29 At 179.
30 Jacinta Ruru "Managing Our Treasured Home: The Conservation Estate and the Principles of the Treaty of Waitangi" (2004) 8 NZJEL 243 at 248.
31 At 246.
32 Whaanga and Wehi, above n 3, at 101.
33 Waitangi Tribunal, above n 7, at 134.

Tutepourangi of Ngāti Kuia in the late 1820s.[34] After an investigation by the Native Land Court in 1883, the title to Takapourewa was granted to Ngāti Koata.[35] While Ngāti Koata believed only a small section of land was required, in 1891, the Crown acquired all of Takapourewa under the Public Works Act 1882 to build a lighthouse.[36] The loss of Takapourewa prevented Ngāti Koata from exercising their kaitiaki obligations to the tuatara.

In a 1994 deed of settlement, Ngāti Koata and the Crown agreed to make Takapourewa a reserve under the Reserves Act 1997.[37] The deed identified that the Crown's land purchases and management policies had prevented Ngāti Koata from accessing their taonga and therefore prevented them from fulfilling their kaitiaki obligations.[38] In recognition of this breach of Te Tiriti o Waitangi, the 1994 Deed provided for the appointment of Te Pātaka a Ngāti Koata trustees as advisers to the Minister of Conservation, requiring the Minister to have regard to the advice of Te Pātaka a Ngāti Koata when making decisions related to the native flora and fauna of Takapourewa.[39] Further, the deed stated that the Director-General of Conservation and Te Pātaka a Ngāti Koata trustees would jointly prepare and approve an operational plan for Takapourewa Nature Reserve.[40]

However, Ngāti Koata and the Crown disagreed about the degree of authority the deed granted each party, forming part of the grounds for Waitangi Tribunal claim Wai 566.[41] Ngāti Koata believed that the deed established joint authority between Ngāti Koata and DOC over Takapourewa, while the Crown believed the deed merely required consultation.[42] While the Tribunal ruled that the issue could still be resolved through negotiation,[43] this dispute shows a continuing misunderstanding of the relationship between kaitiaki and their taonga species. Substantial policy reform is required for this relationship to be protected as required under art 2 of Te Tiriti o Waitangi.

III The Waitangi Tribunal's Recommendations for Protecting Kaitiaki Relationships with Taonga Species

Seeking remedies for the Crown's past and continued failures to ensure Māori can exercise tino rangatiratanga over their taonga species. In 1991, six claimants, including Ngāti Koata representative John Hippolite, lodged the Wai 262 claim with the Waitangi Tribunal.[44] In the *Wai 262 Report*, the Waitangi Tribunal affirmed that Te Tiriti o Waitangi obliges the Crown to actively protect kaitiakitanga and to carry out its functions in a manner that is consistent with the tino rangatiratanga of iwi and hapū.[45] Chapters two,

34 Waitangi Tribunal *Te Tau Ihu o te Waka a Maui: Report on Northern South Island* Claims (Wai 785, 2008) vol 3 at 1306.
35 At 1306.
36 At 1306.
37 At 1306.
38 *Deed of Settlement of Historical Claims between Ngāti Kōata and the Crown* (Te Arawhiti/Office for Māori Crown Relations, 21 December 2012) at [29.2].
39 At [5.36.2]–[5.36.3].
40 At [5.38].
41 Waitangi Tribunal, above n 34, at 1314.
42 At 1309.
43 At 1316.
44 Waitangi Tribunal, above n 7, at 1.
45 At 368.

three and four of the Waitangi Tribunal's *Wai 262 Report* discuss the kaitiaki relationships with taonga species. In light of the Waitangi Tribunal's factual findings, this section evaluates the efficacy of the Waitangi Tribunal's recommendations. It concludes that while they are conceptually transformative, it does not follow that their implementation would guarantee Māori will be able to fulfil their kaitiaki obligations to their taonga species.

A *Recommendations of chapters two and three*

In chapter two of the *Wai 262 Report*, the Tribunal reviewed the relationship between kaitiaki and taonga species' genetic and biological resources. The Tribunal concluded that kaitiaki have rights to the mātauranga Māori associated with their taonga species and that these rights ought to be protected. Still, kaitiaki do not have ownership rights of an entire species' genetic and biological resources.[46] However, the Tribunal explained that in exceptional cases, like tuatara, kaitiaki can justifiably claim an *interest* in each living specimen of a taonga species.[47] The Tribunal recommended that New Zealand's bioprospecting, genetic modification, and intellectual property regimes be reformed to enable the protection of the mātauranga Māori associated with a kaitiaki relationship.[48]

In chapter three of the *Wai 262 Report*, the Tribunal reviewed how New Zealand's resource management laws impacted the relationship between kaitiaki and the environment. The Tribunal identified that Te Tiriti obliges the Crown to conduct its conservation activities in a manner consistent with the tino rangatiratanga of iwi and hapū to the greatest extent practicable.[49] To fulfil this obligation, the Tribunal recommended the Crown make several changes to the Resource Management Act 1991 (RMA).[50]

Chapters two and three's recommendations highlight that kaitiaki have complex and culturally significant relationships with their taonga species, requiring foundational changes to how New Zealand law views property, resource management and scientific development for adequate protection. Even with extensive consultation with Māori and other expert stakeholders, it is unclear how new legislation can be crafted to balance the need to recognise individual kaitiaki relationships and the need for legislation to account for other interests.

B *Recommendations of chapter four*

In chapter four of the *Wai 262 Report*, the Tribunal reviewed the relationship between taonga and the conservation estate. The Tribunal concluded that because much of the natural environment is under DOC control, kaitiaki depended on DOC's operations to fulfil their obligations.[51] The Tribunal made five specific legislative, structural, and policy reform recommendations. This subsection will evaluate the effectiveness of these recommendations in protecting the relationship between kaitiaki and taonga species.

First, the Tribunal recommended that the partnership between DOC and Māori be formalised in statute through the establishment of a national Kura Taiao Council and conservancy-based Kura Taiao boards and that conservation legislation be reviewed to

46 At 212.
47 At 211.
48 At 212.
49 At 367.
50 At 286.
51 At 314.

identify and respond to any statutory barriers to kaitiakitanga.[52] The Tribunal explained that in some cases, kaitiaki interests would be so significant as to justify outright control, while influence will be sufficient in others.[53] While the Tribunal correctly identifies the need for formalising the partnership between the Crown and Māori, the recommendation fails to ensure that iwi will be partners in all situations, as required to uphold tino rangatiratanga. Māori must be given the authority to decide when outright control is required or when influence will be sufficient. DOC is not in a position to make such decisions accurately for all iwi and hapū, as iwi and hapū themselves are the best-placed to know their kaitiaki obligations to their taonga.

Second, the Tribunal recommended that the *CGP* and *GPNP* be amended to reflect the full range of Treaty principles that apply in law.[54] This recommendation correctly identifies the need for all of New Zealand's conservation legislation to be reviewed and reformed to ensure consistency with Te Tiriti. However, it is still flawed. Even if Treaty principles must be considered by law, guarantee that DOC will give the principles adequate weight in the face of other pressures, such as budgetary constraints, nor that DOC staff would understand what the Treaty principles require in different circumstances.[55] Adequate consultation with iwi and hapū can be costly and time-consuming, especially considering that conservation decisions are complex and often impact many species of flora and fauna.[56] Iwi and hapū may also be hesitant to describe their kaitiaki obligations to DOC officials in detail due to past wrongs.[57]

Third, the Tribunal recommended that provision be made for full statutory co-management of customary use by DOC and Pātaka Komiti as representatives of kaitiaki and that the *CGP* and *GPNP* be amended to make customary harvest and access a "will" responsibility.[58] While a "presumption in favour of customary practices" would mean most customary practices would be allowed, it is unclear why co-management is required given the Tribunal's previous analysis of mātauranga Māori is consistent with conservation concerns.[59] It would be more appropriate for DOC to have an advisory position, with Māori retaining final decision-making authority over customary use.[60] It may be helpful in some cases for Māori to be provided with the formal scientific information that DOC has to inform their decisions, but evidence suggests the scepticism of mātauranga Māori as ecological science is based on misinformation, and mātauranga Māori has been successfully applied alongside contemporary science to achieve positive conservation outcomes.[61]

Fourth, the Tribunal recommended that the Wildlife Act be amended so that no one owns protected wildlife or taonga works derived from them. The Wildlife Act allows shared management of protected species in line with the partnership principle.[62] This

52 At 372.
53 At 370.
54 At 372.
55 See generally Jacinta Ruru and others "Reversing the Decline in New Zealand's Biodiversity: empowering Māori within reformed conservation law" (2017) 13(2) PQ 65.
56 See LM Hurley "Making Nature Governable: A Genealogy of Rights of Nature in Aotearoa New Zealand" (MSc Thesis, University of Auckland, 2023) at 111–113.
57 See Waitangi Tribunal, above n 7, at 300–303.
58 At 372.
59 At 312.
60 Todd Taiepa and others "Co-management of New Zealand's conservation estate by Maori and Pakeha: a review" (1997) 24(3) Environmental Conservation 236 at 238.
61 See Erueti and others, above n 1.
62 See Waitangi Tribunal, above n 7, at 372.

recommendation correctly identifies that the Wildlife Act vesting ownership rights of all Indigenous species in New Zealand would prevent Māori from meaningfully exercising kaitiakitanga and tino rangatiratanga. However, without explicit direction as to what statutory shared management would look like, the risk of hapū without the resources or connections necessary to engage with the Crown not having their relationship with their taonga species protected remains. Moreover, while the partnership principle is a good guideline for a healthy Crown-Māori relationship, an Act that controls all wildlife in New Zealand must replace the ownership concept with one of guardianship specifically, to be consistent with tikanga. The underlying conflict between the understanding of the environment's value in te ao Māori and te ao Pākehā must be reconciled to give effect to Te Tiriti o Waitangi.

Fifth, the Tribunal recommended that DOC amend its policies and strategies to give tangata whenua (Indigenous peoples) interests in taonga a "reasonable degree of preference" when it makes decisions about commercial activities in the conservation estate and that DOC formalise its policies for consultation with tangata whenua about concessions in their rohe.[63] The Tribunal explains this is not a preference for all Māori, nor an overriding consideration, but rather the recognition of the special relationship between tangata whenua and taonga within their rohe.[64] However, this does not ensure that kaitiakitanga relationships are protected. There will be situations where Māori have access to their taonga limited, or taonga are harmed by commercial activity.[65] Kaitiakitanga requires the ability to exercise tino rangatiratanga.[66] If Māori cannot have veto power to guarantee they can protect their taonga, then kaitiakitanga is not protected.

Each kaitiaki has a unique relationship with their taonga species. The Waitangi Tribunal has identified an expansive range of legislation and policies that must be reviewed to ensure kaitiaki can access and fulfil their obligations to their taonga species. However, how all reviews will strike an appropriate balance between kaitiaki interests and competing policy considerations is unclear. Taonga species would be best protected by a statutory regime that guarantees Māori have the authority to protect and fulfil their kaitiaki obligations to their taonga species, allowing flexibility to adapt this authority to the needs of individual kaitiaki relationships.

IV The Department of Conservation's Response to Wai 262

Successive governments have been slow to respond to the recommendations of the *Wai 262 Report*. As 12 years have passed since the Waitangi Tribunal initially released the *Wai 262 Report*, many of its recommendations are no longer fit for purpose. Noting the Government's deviation from the Tribunal's recommendations, this part reviews the work the Government has commenced in response to the Wai 262 claim. This part concludes that the recommendations of the Waitangi Tribunal are too disjointed to ensure Māori can fulfil their kaitiaki obligations to their taonga species, and therefore, a more radical solution is required.

63 At 372.
64 At 371.
65 See *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA).
66 See Waitangi Tribunal, above n 7, at 8.

A *New Zealand's biodiversity strategies*

(1) *Te Mana o Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*

In August 2020, DOC released *Te Mana o Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020* (*ANZBS*).[67] *ANZBS* sets out a strategic framework for the protection, restoration, and sustainable use of biodiversity in New Zealand from 2020 to 2050. *ANZBS* explicitly recognises:[68]

> … [the] role that biodiversity management plays in meeting the aspirations of Treaty partners, whānau, hapū, iwi and Māori organisations regarding WAI 262, as well as in protecting taonga species, regulating bio-prospecting and ensuring the protection of Māori cultural and intellectual property.

Three of *ANZBS*'s nine objectives are closely related to Wai 262's recommendations.[69] Objective two states, "[t]reaty partners, whānau, hapū, iwi and Māori organisations are rangatira and kaitiaki".[70] It is promising that objective two explicitly recognises that rangatiratanga and kaitiakitanga are inseparable concepts.[71] Objective five states, "[m]ātauranga Māori [is] an integral part of biodiversity research and management".[72] Goals under objective five aim to increase the respect afforded to mātauranga Māori and grow the number of people who can confidently draw on knowledge from multiple scientific disciplines to act as kaitiaki.[73] Upskilling DOC staff to increase their understanding of mātauranga Māori will certainly improve DOC's relationship with kaitiaki, and it is promising that 2025 goals aim for an increase in the intergenerational transfer of mātauranga Māori.[74] Objective nine states, "[c]ollaboration, co-design and partnership are delivering better outcomes".[75] While the objective's focus on partnership and enabling collective action is commendable, it is concerning that the 2025 goals refer to using Māori values to guide decision-making rather than empowering Māori as direct decision-makers.[76]

(2) *Te Mana o Te Taiao: Aotearoa New Zealand Biodiversity Strategy Implementation Plan*

In April 2022, DOC released *Te Mana o Te Taiao: Aotearoa New Zealand Biodiversity Strategy Implementation Plan*.[77] It sets out how DOC intends to achieve the objectives of *ANZBS*, with an initial focus on establishing systems that will enable sustainable conservation. To achieve the objectives of *ANZBS*, the *Implementation Plan* lists a series of actions, each

67 Department of Conservation *Te Mana o Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020* (August 2020) at 34.
68 At 44.
69 Te Puni Kōkiri *Waitangi Tribunal Claims Update: Section 8I Report 1 July 2021 To 30 June 2022* (E74, 2023) at 30.
70 At 30.
71 Department of Conservation, above n 67, at 26.
72 Te Puni Kōkiri, above n 69, at 30.
73 Department of Conservation, above n 67, at 49.
74 At 49.
75 At 43.
76 At 51.
77 Department of Conservation *Te Mana o Te Taiao: Aotearoa New Zealand Biodiversity Strategy Implementation Plan* (April 2022) at 2.

engaging Māori in different programmes and a range of capacities.[78] While it is commendable that iwi are engaged in a range of government-funded projects that aim to achieve better conservation outcomes, the *Implementation Plan* appears to be engaging Māori in a consultation rather than an authoritative partnership role. It is particularly concerning that the actions do not use language that can be interpreted with certainty to fulfil rangatiratanga.[79] As recognised in *ANZBS*, kaitiaki require the ability to exercise rangatiratanga to make decisions. For the Plan to give effect to rangatiratanga, Māori must be consistently engaged in a decision-making capacity.

(3) *National Policy Statement for Indigenous Biodiversity*

In July 2023, the Minister for the Environment published the *National Policy Statement for Indigenous Biodiversity* (*NPSIB*).[80] Forming another part of the government's response to declining biodiversity in New Zealand, *NPSIB* clarifies to local councils their responsibility to protect biodiversity on their land under the RMA.[81] *NPSIB*'s overall objective is to maintain biodiversity across Aotearoa, New Zealand so that there is no further loss of Indigenous biodiversity, which will be achieved through recognising tangata whenua as kaitiaki of Indigenous biodiversity.[82]

Of the 17 policies listed in *NPSIB*, only two explicitly refer to Māori engagement. Policy one seeks a reality where Indigenous biodiversity is managed in a way that gives effect to the decision-making principles and considers the principles of the Treaty of Waitangi.[83] *NPSIB*'s decision-making principles, which inform its implementation, "recognise[s] the obligation and responsibility of care that tangata whenua have as kaitiaki of indigenous biodiversity".[84] Policy two aims to assist tangata whenua to exercise kaitiakitanga for Indigenous biodiversity in their rohe through managing Indigenous biodiversity on their land, identifying and protecting Indigenous species that are taonga, and actively participating in other decision-making about Indigenous biodiversity.[85] In the implementation section, *NPSIB* requires that every local authority involve tangata whenua as partners in managing Indigenous biodiversity.[86] While it is commendable that *NPSIB* recognises tangata whenua as partners, it is concerning that *NPSIB* makes no reference to rangatiratanga.

B *Partial review of the* Conservation General Policy *and* General Policy for National Parks

In August 2019, the Minister of Conservation, alongside the New Zealand Conservation Authority, directed DOC to undertake reviews of the *CGP* and *GPNP* to ensure the policies were well placed to give effect to the principles of the Treaty and to help DOC meet their responsibilities as a Treaty partner.[87] The Director-General of Conservation appointed the

78 At 15–32.
79 See generally at 15–16. The actions use language like "partnering", "co-design" and "involved".
80 Ministry for the Environment *National Policy Statement for Indigenous Biodiversity* (7 July 2023) at 2.
81 At 2.
82 At 13.
83 At 13.
84 At 6.
85 At 13.
86 At 15.
87 Department of Conservation "Options Development Group report" <www.doc.govt.nz>.

Options Development Group (ODG) in August 2020 after candidates were nominated by iwi, who would be responsible for developing ideas for change.[88]

In December 2021, the ODG released their review of the *CGP* and *GPNP*.[89] In their Report, the ODG explained that while they drew on several of the Waitangi Tribunal's recommendations in the *Wai 262 Report*, they did not adopt the Tribunal's recommendations in their entirety as there had been developments in thinking in the 10 years since the Report was released.[90] The ODG made seven recommendations to ensure conservation policies gave effect to the principles of the Treaty and to help DOC meet its responsibilities as a Treaty partner.

First, the ODG recommended that conservation be transformed through fundamental reform of the conservation system.[91] Second, the ODG recommended that the purpose of conservation be reframed to ensure it is fit for purpose for New Zealand.[92] Third, the ODG recommended that kawa, tikanga, and mātauranga be centred within the conservation system.[93] Fourth, the ODG recommended recasting the legal status of conservation lands, waters, resources, Indigenous species and other taonga.[94] Fifth, the ODG recommended reforming conservation governance and management to reflect Te Tiriti partnership at all levels. Sixth, the ODG recommended that the devolution of powers and functions, including decision-making, be enabled to meaningfully recognise the role and exercise of rangatiratanga.[95] Seventh, the ODG recommended that capacity be built within DOC and tangata whenua to give effect to Te Tiriti.[96]

The ODG's recommendations correctly identify that reform of the entire conservation management system, not just individual policies, is required to truly give effect to Te Tiriti o Waitangi. However, the success of the ODG's recommendations is contingent on their implementation, which, as of December 2024, has still not occurred.[97] In New Zealand's present political climate, it is unlikely that the ODG's recommendations will be implemented without substantial adjustment, if at all.[98]

C *Wildlife Act reform*

In October 2021, Cabinet approved the initiation of a review of the Wildlife Act.[99] The review took a first-principles approach, with DOC hosting 40 hui between May and July 2022 to understand the issues of different stakeholders with the current legislation.[100]

88 Department of Conservation *Giving better effect to the principles of the Treaty of Waitangi: Partial reviews of the Conservation General Policy and the General Policy for National Parks – A background paper about the process and main issues* (June 2020) at 4.

89 Options Development Group *Partial reviews of the Conservation General Policy and General Policy for National Parks regarding Te Tiriti o Waitangi / the Treaty of Waitangi* (Department of Conservation, March 2022) at 6.

90 At 22.

91 At 61.

92 At 66.

93 At 70.

94 At 74.

95 At 88.

96 At 91.

97 Department of Conservation "DOC's focus - Annual Review 2023-24" <www.doc.govt.nz>.

98 See Department of Conservation "Budget 2024 overview" <www.doc.govt.nz>.

99 Willow-Jean Prime *Report back on the review of the Wildlife Act 1953* (Office of the Minister of Conservation, July 2023) at [4].

100 At [30].

In April 2022, then Minister of Conservation Kiritapu Allan established a Strategic Oversight Group to ensure the review was conducted in a manner consistent with the strategic direction of the wider conservation sector.[101] The first stage of the review involved targeted engagement, where DOC hosted 40 hui, including 17 with tangata whenua.[102] In September 2023, following a meeting of the Cabinet Environment, the Minister for Conservation in the Energy and Climate Committee recommended the Wildlife Act be repealed and replaced. A DOC media release stated that repealing and replacing the Act will follow a standard legislative process during the next parliamentary term.[103]

It is concerning that the Government is still at the initial review stage 12 years after the *Wai 262 Report* was released. The Wildlife Act has received sustained literary criticism for its inability to facilitate cohesive conservation management.[104] The Wildlife Act must be reformed to give effect to kaitiakitanga and rangatiratanga and to improve conservation outcomes overall.

D *Conclusion*

The former Attorney-General Christopher Finlayson, speaking about the difficulty of managing relationships between DOC and iwi, observed:[105]

> What I find is that people in this modern world, government officials are very good at turning up, they've learned a few waiata, they can say a karakia, they give a little mihi, the kind that's always nice, but they don't buy into the spirit of the settlement. I see that time and time again because Wellington knows best. The state knows best—the institutional, not the political state.

Conservation policy can be written and reviewed with the best intentions, but only when the resulting policy is guiding rather than binding. Whether Māori have decision-making authority rests in the government staff's interpretation of the said policy. While government-wide mātauranga Māori education programmes may grow greater respect for mātauranga Māori within DOC, Māori cannot meaningfully be equal partners with a government entity that has a monopoly of authority and resources and an entrenched understanding of conservation in direct conflict with te ao Māori. To ensure Māori can exercise kaitiakitanga and tino rangatiratanga regarding their taonga species as protected by Te Tiriti o Waitangi, Māori must be empowered as decision-makers by statute.

V How Could Legal Personality Be Extended to Taonga Species?

A *What is legal personality?*

In modern Western legal systems, all human beings are considered "natural persons" with certain fundamental rights.[106] Historically, not all human beings held fundamental rights. For example, women, enslaved people, the mentally ill, and children have not been

101 At [38].
102 Te Puni Kōkiri, above n 69, at 28.
103 Prime, above n 99, at [63].
104 See Pip Wallace and Shaun Fluker "Protection of Threatened Species in New Zealand" (2015) 19 NZ J Envtl L 179.
105 Hurley, above n 56, at 114 (emphasis added).
106 AH Angelo "Personality and Legal Culture" (1996) 26 VUWLR 395 at 404.

recognised as "natural persons" at different points in Western legal history.[107] While there are differences across different legal jurisdictions, legal persons are generally defined as entities entitled to the same legal rights and duties as human beings.[108] Fundamentally, legal personality facilitates society's regulation of human conduct.[109] If a being has a legal personality, it has the right to appear in court and pursue legal action against others who have breached their rights and duties. A legal person also has the right to hold property and enter into binding contracts.[110] Legal persons can be artificially created by common law or statute.[111]

Extending legal personality to natural features was first proposed by Christopher Stone in his 1972 article "Should Trees Have Standing? Toward Legal Rights for Natural Objects".[112] Since then, the concept has been used for various purposes across various jurisdictions. In Uttarakhand, India, the Ganga and Yamuna Rivers were granted legal personality by the High Court in recognition of their cultural sanctity and the need for heightened environmental protection.[113] Later that year, the High Court also recognised the legal personality of the glaciers that feed the Ganga and Yamuna Rivers and the surrounding ecosystem.[114] In New Zealand, legislation has recognised the prior, intrinsic identities of Te Urewera, Te Awa Tupua and Te Kāhui Tupua to facilitate the acknowledgement of Crown wrongs without the Crown having to cede ownership of the natural features.[115]

Writing about the future of legal personality, former Attorney-General Christopher Finlayson opined: "My view is that, conceptually speaking, there are no limits to where the concept of legal personality could be taken next. Any limits are political rather than conceptual."[116]

The remainder of this article argues that granting legal personality to taonga species is a natural extension of an existing legal tool to protect rangatiratanga and kaitiakitanga and should be implemented to honour the rights granted to Māori under art 2 of Te Tiriti o Waitangi.

B *Judicial development of legal personality for non-human species*

Outside New Zealand, Indigenous species with cultural and environmental significance have been granted legal personality. In 2018, the White Earth Band of Ojibwe in the

107 Ngaire Naffine "Who are Law's Persons? From Cheshire Cats to Responsible Subjects" (2003) 66 MLR 346 at 362–364.

108 SM Solaiman "Legal personality of robots, corporations, idols and chimpanzees: a quest for legitimacy" (2017) 25 Artif Intell Law 155 at 157.

109 Bryant Smith "Legal Personality" (1928) 37 Yale LJ 283 at 296 as cited in Katherine Sanders "'Beyond Human Ownership'? Property, Power and Legal Personality for Nature in Aotearoa New Zealand" (2018) 30 JEL 207.

110 Erin O'Donnell and Julia Talbot-Jones "Three rivers are now legally people - but that's just the start of looking after them" (24 March 2017) The Conversation <www.theconversation.com.nz>.

111 At 27.

112 Christopher D Stone "Should Trees Have Standing? Toward Legal Rights for Natural Objects" (1972) 45 S Cal L Rev 450.

113 See "India's Ganges and Yamuna Rivers are 'not living entities'" (8 July 2017) BBC <www.bbc.com>.

114 See *Miglani v State of Uttarakhand* HC Uttarakhand (India) PIL No 140 of 2015, 30 March 2017.

115 Sanders, above n 109, at 211.

116 Christopher Finlayson *Legal Personhood of Natural Resources: The potential for ocean jurisdiction* (NZ Centre for Global Studies, 2022) at 6.

United States granted legal personality to Manoomin (a species of wild rice) in tribal law.[117] Manoomin is an essential part of the Anishinaabe creation story, diet and culture.[118]

In 2021, the White Earth Band filed a claim against the Minnesota Department of Natural Resources in the White Earth Tribal Court to enforce the rights of Manoomin.[119] The lawsuit aimed to prevent harm to the species caused by the construction and operation of an Enbridge gas pipeline, alleging that the state of Minnesota failed to adequately protect bodies of water near the construction site, which were vital to Manoomin's survival, and had therefore breached Manoomin's rights.[120] Although the case was ultimately dismissed in Federal Court as the water bodies fell outside the White Earth Band's tribal geographical jurisdiction, the case still demonstrates that granting legal personality to species that are significant to Indigenous peoples presents an opportunity to strengthen environmental protection and Indigenous sovereignty simultaneously.[121]

Following the Manoomin decision, in 2022, the Sauk-Suilattle Tribe, also in the United States, filed a lawsuit in Seattle tribal court against the city of Seattle to enforce the legal personality of salmon as recognised in tribal law. [122] Like the Manoomin case, the city of Seattle asked the Federal Court to dismiss the case on jurisdictional grounds.[123]

In both cases, the push to dismiss in the Federal Court on jurisdictional grounds highlights that while extending legal personality to species presents an opportunity to strengthen environmental protection and Indigenous sovereignty, national legislative affirmation is necessary to ensure the law is meaningfully enforceable. Legal personality is more effective at ensuring Indigenous sovereignty and environmental protection when the legislature considers a model that balances these considerations against other policy factors. The New Zealand model of purpose-driven legislative recognition of legal personality should be extended to taonga species.

Alongside all other natural features, taonga species already have a legal personality in tikanga.[124] In New Zealand, the common law could recognise natural features as legal persons by its incremental processes as part of the wider shift towards recognising tikanga as part of New Zealand's legal foundations. However, without legislation that recognises the personality of natural features, progress through the common law will likely be slow. Moreover, common law protection will still be overridden by existing conservation law, as identified in Parts III and IV of this article, providing inadequate protection for the relationship between kaitiaki and their taonga species.

117 Kekek Jason Stark "Bezhigwan Ji-Izhi-Ganawaabandiyang: The Rights of Nature and its Jurisdictional Application for Anishinaabe Territories" (2022) 83 Mont L Rev 79 at 89.

118 Anna Belinski "Minnesota Dep't of Nat Res v Manoomin, No AP21-0516, (White Earth Band of Ojibwe Ct of Appeals March, 10, 2022" (2023) 0(3) Pub Land & Resources L Rev 1 at 5.

119 At 1.

120 Tim Lovett "Wild Rice Goes to Court as the Rights of Nature Movement Hits Minnesota" Hennepin County Bar Association <www.mnbar.org>.

121 Belinski, above n 118, at 17.

122 Lester Black "Not going with the flow: salmon 'sue' US city over harm to population" *The Guardian* (United States, online ed, 9 March 2022).

123 Alexandra Huneeus "The Legal Struggle for Rights of Nature in the United States" (2022) Wis L Rev 133 at 156.

124 See Angelo, above n 106, at 396–403.

C *Granting legal personality to species using specific legislation*

For the purposes of this article, specific legislation refers to individual acts of Parliament which have the sole purpose of granting legal personality to an entity.[125] In New Zealand, three natural features have been granted legal personality by specific legislation—Te Urewera, Te Awa Tupua, and Te Kāhui Tupua.

In 2014, Parliament recognised the legal personality of Te Urewera by passing Te Urewera Act 2014.[126] Te Urewera is a vast area of land on the North Island of New Zealand, which features lakes, mountains, and Indigenous forests.[127] Tūhoe have a deep connection to Te Urewera; Te Urewera is their ewe whenua (place of origin and return), ancestor, and homeland.[128] Before becoming a legal person, Te Urewera was a national park managed as Crown land by DOC.[129] The purpose of Te Urewera Act was to provide redress for the historical harm caused by Crown policy and actions, as enacted as part of the Crown's settlement with Tūhoe.[130] Te Urewera Act recognises the personality of Te Urewera as it is understood in tikanga. Section 3 explains that Te Urewera is an ancient and enduring place of spiritual value with its mana and mauri, whose identity inspires people to commit to its care.[131] The Act requires that the rights, powers, and duties held by Te Urewera as a legal person be exercised on behalf of Te Urewera by Te Urewera board.[132] Te Urewera will have a management plan like other national parks in New Zealand, but the board, rather than DOC, approves the plans.[133]

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (Te Awa Tupua Act) granted Te Awa Tupua all rights, duties, and liabilities of a legal person.[134] The iwi and hapū of the Whanganui River have an inalienable connection with and responsibility to Te Awa Tupua and its health and well-being.[135] Before Te Awa Tupua was granted legal personality, it was managed using a top-down system of governance directed by 26 pieces of legislation.[136] Te Awa Tupua Act established Te Pou Tupua to exercise the rights and duties of Te Awa Tupua on its behalf.[137] Te Pou Tupua comprises two people, one appointed by Crown nomination and one appointed by the nomination of iwi with interests in Te Awa Tupua.[138] The Act also established Te Karewao, an advisory group comprised of persons appointed by local interest groups to provide advice and support to Te Pou Tupua[139] and

125 See Neil Campbell "Corporate Personality" in Peter Watts, Neil Campbell and Christopher Hare (eds) *Company Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2016) 23 at 27 as cited in Megan Exton "Personhood: A Legal Tool for Furthering Māori Aspirations for Land" (LLB(Hons) Dissertation, University of Otago, 2017) at 8.

126 Te Urewera Act, s 11(1).

127 Section 3.

128 Section 3.

129 Jacinta Ruru "Tūhoe-Crown settlement – Te Urewera Act 2014" (2014) Māori Law Rev 16.

130 *Ngāi Tūhoe Deed of Settlement* (Office of Treaty Settlements, Deed of Settlement, June 2013) at Part A: Te Urewera.

131 Te Urewera Act, s 3.

132 Section 11.

133 Section 18.

134 Section 14.

135 Section 13.

136 Julia Talbot-Jones and Jeff Bennett "Implementing bottom-up governance through granting legal rights to rivers: a case study of the Whanganui River, Aotearoa New Zealand" (2022) 26 AJEM 64 at 70.

137 Te Awa Tupua (Whanganui River Claims Settlement) Act, s 14(2).

138 Sections 20(1)–(6).

139 Sections 27–28.

Te Kōpuka, who are strategy groups comprised of local representatives responsible for advancing the health and well-being of Te Awa Tupua.[140]

In September 2023, Minister Hon Andrew Little introduced Te Pire Whakatupua mō Te Kāhui Tupua/Taranaki Maunga Collective Redress Bill (Te Kāhui Tupua Bill) to Parliament, which awaits its first reading.[141] Taranaki Maunga and its surrounding ranges have been the central pillar for Taranaki's iwi, hapū, and whanau for generations.[142] In 1865, the Crown confiscated 1.2 million hectares of Taranaki land, including Taranaki Maunga.[143] Taranaki Maunga was managed by the Crown as a reserve and later as a national park.[144] Te Kāhui Tupua Bill grants Te Kāhui Tupua legal personality, whose rights, powers, duties and responsibilities are to be performed by a board, Te Tōpuni Kōkōrangi, on its behalf.[145] Te Tōpuni Kōkōrangi will consist of eight members, four appointed by the trustees of Te Tōpuni Ngārahu and four appointed by the Minister of Conservation, who will be responsible for administering Te Kāhui Tupua in accordance with the National Parks Act 1980.[146]

Granting legal personality to natural features has been praised as an effective form of protecting and respecting the relationship between Indigenous people and the environment in New Zealand because each piece of legislation was written with a clear, identifiable purpose and bodies to act on behalf of the natural features have been designed based on local circumstances.[147] While granting legal personality to natural features by specific legislation was suitable in the above examples, granting legal personality to taonga species through specific legislation would be limited in two ways. First, granting legal personality by specific legislation to every individual taonga species would require many pieces of legislation, in turn, requiring extensive resources to draft legislation that is fit for purpose. Second, previous examples of legal personality being extended to natural features in New Zealand have resulted from extended Treaty settlement processes. Outside of settling Treaty claims, it is unlikely that Parliament would have the time or political will to draft and pass legislation that appropriately protects each kaitiaki relationship. Māori should not be limited to having their kaitiaki relationships recognised through Treaty settlements as this creates the risk that smaller, less-resourced iwi and hapū who cannot afford a Waitangi Tribunal claim will not be able to exercise kaitiakitanga or rangatiratanga.

D *Granting legal personality to species using general legislation: the "*Taonga Species Act*"*

For the purposes of this, general legislation refers to acts of Parliament that establish a registration system that may grant legal personality to any entity should they meet the required criteria. Granting legal personality by general legislation would look similar to establishing corporate entities. In New Zealand, limited partnerships and incorporated

140 Sections 29–30.
141 Te Kāhui Tupua Bill (explanatory note).
142 Section 4(1).
143 Section 4(2).
144 Section 4(3).
145 Sections 18(1)–18(2).
146 Sections 30–31.
147 See Ruru, above n 129; Michelle Worthington and Peta Spender "Constructing legal personhood: corporate law's legacy" (2021) 30 GLR 348; and Talbot-Jones and Bennett, above n 136, at 73.

companies are granted legal personality upon registration.[148] The Companies Act 1993 and the Limited Partnerships Act 2008 outline criteria that corporate entities must meet before registration.[149] Before the development of general legislation, companies could only be incorporated through a royal charter or specific legislation.[150] While granting legal personality by general legislation has yet to be extended to natural features, it is an existing legal concept that could be appropriately adapted to give effect to kaitiakitanga and rangatiratanga. This article proposes that New Zealand should enact general legislation granting registered taonga species legal personality when in force. This article will refer to the proposed general legislation as the "Taonga Species Act" (TSA).

As observed by Michelle Worthington and Peta Spender, the effective use and regulation of legal personality depends on the underlying purpose of that legal personality.[151] Where the purpose of legal personality is unclear and does not inform the design of legal personality, the courts will enforce the concept in inappropriate and ineffective ways. The TSA must have a clear, well-considered purpose to ensure that the taonga species granted legal personality under the legislation are afforded rights and duties, which, when enforced, give effect to kaitiakitanga and tino rangatiratanga. While TSA cannot be individualised to the extent specific legislation can, it can still clearly identify the meaning and significance of kaitiakitanga, rangatiratanga and taonga species as canvassed in Part II in its purpose.

Functionally, the TSA should work similarly to the Companies Act. Any person may, alone or as a collective, apply for registration of a taonga species under the TSA.[152] Tikanga experts should develop the registration criteria to ensure that a diverse range of kaitiaki relationships may be registered. Applications should be reviewed by an expert committee of pūkenga (experts). However, sensitive information such as kōrero tuku iho, which may be collected as part of the registration criteria, should not be released publicly.

Upon registration, a taonga species will have a recognised legal personality, and their kaitiaki will be empowered to make decisions on their behalf. Just as companies have the flexibility to design their structures to best achieve their needs, registered kaitiaki should be empowered to design boards that are most appropriate to reflect their obligations to their taonga species. To ensure that overarching conservation goals are considered, it would be appropriate for DOC to work alongside kaitiaki to design the board and define their functions. Where there is a conflict between different iwi, the general legislation could defer to tikanga-based solutions. For example, Ngāti Koata accepts that Ngāti Kuia and other iwi have interests in and kaitiaki responsibilities to the Indigenous flora and fauna of Takapourewa.[153] Taonga species could still be administered as part of DOC's wider conservation and biodiversity strategies. Still, kaitiaki must be consulted when said strategies are written and enacted, and kaitiaki must retain the right to make decisions about their taonga.

148 Companies Act 1993, ss 11–13; and Limited Partnerships Act 2008, ss 8–10 and 51–53.
149 Companies Act, ss 13–15; and Limited Partnerships Act, ss 6, 7 and 11.
150 Campbell, above n 125, at 27.
151 Worthington and Spender, above n 147, at 357.
152 See Companies Act, s 11.
153 Waitangi Tribunal, above n 34, at 1316.

VI Should Legal Personality Be Extended to Taonga Species?

Having identified the conceptual form of legal personality that should be extended to taonga species, this section presents two reasons why extending the concept to taonga species is necessary. First, it contends that legal personality effectively bridges the gap between the Māori and the European worldviews in a manner that respects tino rangatiratanga and kaitiakitanga. Second, it contends that extending legal personality to tuatara supports effective conservation management.

A *Bridging the gap between incompatible legal systems*

The underlying premise of the Wai 262 claim is that mātauranga Māori stems from a fundamentally different worldview to mātauranga Pākehā (European knowledge), which has primacy in New Zealand law.[154] As Parts III and IV observed, these antithetical worldviews extend to conservation. An effective response to the Wai 262 claim and, in turn, honouring Te Tiriti o Waitangi requires the Crown to ensure Māori can exercise kaitiakitanga and rangatiratanga. The Western legal system has traditionally treated the natural world as a resource subject to human ownership and exploitation.[155] As canvassed in Part II, tuatara have their spiritual personality. Ngāti Koata does not control tuatara; they have obligations to them, which must be fulfilled by exercising rangatiratanga. Granting legal personality to taonga species like tuatara would effectively bridge the gap between the Māori and European worldviews. It allows progress despite disagreement and gives effect to kaitiakitanga and rangatiratanga by providing structural protection. The Government is unlikely to address the range of recommendations made in the *Wai 262 Report* because they would require so many concessions.

(1) Allowing progress when there is no agreement

Legal personality has successfully reconciled the fundamental differences between the Māori and European worldviews while balancing competing political concerns. Giving effect to rangatiratanga in the Western legal system would suggest that the Crown should cede ownership rights of taonga species to their kaitiaki. However, this would be politically unpopular, challenge the Crown's political power, and be inconsistent with tikanga.[156] Legal personality draws on elements of tikanga and the colonial legal system to produce a third option, similar to the "third law" proposed by Justice Joe Williams.[157] As legal persons, a taonga species could not be owned. This recognises the mauri of taonga species in New Zealand's European law, even though the concept of an entire species as an entity having a collective life force does not translate to mātauranga Pākehā. Ultimately, legal personality gives effect to the sovereignty of both legal systems by creating a reality that does not force either legal system to change its worldview. Mātauranga Māori and Pākehā can agree to disagree but still produce an outcome that satisfies both worldviews.

154 See Waitangi Tribunal, above n 7, at 12–19.
155 At 313.
156 See Finlayson, above n 116, at 3–4; and Sanders, above n 109, at 213–221.
157 See Justice Joseph Williams "The Harkness Henry Lecture Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law" (2013) 21 Waikato L Rev 1 at 11–20.

(2) Advantages of structural recognition

Other forms of the legal recognition of tikanga have had limited effect because they are interpreted by parties who do not have a comprehensive understanding of tikanga.[158] Granting taonga species legal personality through general legislation ensures that instead of government staff or the Courts interpreting tikanga, kaitiaki have the statutory authority to design a management process that would give effect to kaitiakitanga, and in turn rangatiratanga. For example, Te Urewera board has made significant progress towards mana motuhake (self-determination) for Tūhoe.[159] As it is empowered by statute, Te Urewera board writes the management plans, determining how Te Urewera is cared for. In writing their 2017 plan "Te Kawa", the board directly gave effect to their worldview as kaitiaki: "Te Kawa is about the management of people for the benefit of the land – it is not about land management."[160] Establishing similar boards to care for taonga species like tuatara would enable a similar benefit.

Moreover, empowering kaitiaki boards by statute ensures that external parties consult kaitiaki. For example, since Te Awa Tupua was granted legal personality, commercial and community groups understand that they must consult with Whanganui iwi when beginning an activity related to Te Awa Tupua.[161] This shows that statutory empowerment is effective at ensuring the community at large recognises the rangatiratanga of kaitiaki. In turn, by recognising Te Awa Tupua as a legal person and Whanganui iwi as their kaitiaki, the community gains a greater understanding of te ao Māori.[162]

Granting legal personality by general legislation also allows experts to design purpose-built legislation that avoids causing unintended harm when enacted. While a comprehensive drafting and consultation process means legislation takes a long time to develop, this is necessary to maintain public support for Indigenous rights and the environment. For example, when the Bangladeshi Supreme Court granted all rivers in the country legal personality to prevent further degradation from pollution, thousands of people living in informal settlements alongside rivers were evicted from their homes, causing unrest.[163] Particularly, New Zealand politics debates the value of Te Tiriti o Waitangi; it is important that unintended consequences of legislation do not sour public opinion to the extent that the resulting law silences Māori altogether.[164] The balance struck by Te Urewera Act, Te Awa Tupua Act, and Te Kāhui Tupua Bill suggest that New Zealand's Legislature can draft the TSA in a manner that would prevent the most serious forms of harm.

158 See generally Ruru, above n 30.

159 Rawinia Higgins "Ko te mana tuatoru, ko te mana motuhake" in Mark Hickford and Carwyn Jones (eds) *Indigenous Peoples and the State: International Perspectives on the Treaty of Waitangi* (Routledge, London, 2018) 129 at 138–139.

160 Te Urewera Board "Te Kawa o Te Urewera Draft" (2017) Ngāti Tūhoe <www.ngaituhoe.iwi.nz>.

161 Emily Ireland "Legal personhood of the Whanganui Awa: To what extent has the Te Awa Tupua Act 2017 influenced decision-making for activities that affect the Whanganui River?" (MPlan Thesis, Lincoln University, 2021) at 65.

162 At 74.

163 See Sigal Samuel "This country gave all its rivers their own legal rights" (18 August 2019) Vox <www.vox.com>.

164 See generally Moana Manaiapoto "David Seymour to Chris Luxon on Treaty Referendum: 'You rule it out, we rule it in' that's how the negotiations are done" *The New Zealand Herald* (online ed, Auckland, 17 October 2023).

B *Effective conservation management*

(1) Community engagement

As the Waitangi Tribunal identified in their *Wai 262 Report*, DOC is unique from other government agencies as the community is involved in key strategic roles to a great extent.[165] New Zealand's conservation model assumes the Government lacks the people and resources to do stewardship justice.[166] Even if procedurally inefficient, the advantage of the purpose-driven legal personality model adopted in New Zealand is that it ensures the local community is actively engaged in conservation management.

First, as was observed when Te Awa Tupua became a legal person, devolving power from DOC as a central organisation to local kaitiaki boards facilitates the implementation of a framework that incorporates local knowledge and supports direct local participation.[167] As local actors have a more intimate understanding of the needs of their community, integrating mātauranga Māori has the potential to enhance current conservation approaches.[168] Kōrero tuku iho held by kaitiaki contains invaluable ecological information about Indigenous species before European colonisation. For example, kōrero tuku iho provided evidence of past tuatara occupation of several islands that had not previously been recorded.[169] Taonga species boards would better ensure this information is respected and considered when developing conservation strategies.

Second, acknowledging taonga species as legal entities with their rights humanises nature, cementing the environment as a matter of public interest.[170] Previous instances of natural features granted legal personality in New Zealand have popularised an ethic of care towards nature, eroding the separation between humans and the environment.[171] Increasing New Zealanders' connection to the environment could also elevate the significance of DOC's kaupapa (purpose) in Parliament's mind, saving DOC from future budget cuts that will make protecting taonga species near impossible.

(2) Effective decision-making

A study of the changes to conservation decision-making processes regarding Te Awa Tupua after it was appointed a legal person in 2017 found that recognition of legal personalities led to more informed decisions. First, the recognition of Te Awa Tupua as a legal person led to the recognition of the need to partner with Whanganui iwi before beginning any activity that relates to the Whanganui River. Second, the local community found that granting Te Awa Tupua legal personality informed their knowledge base, enhanced cultural growth, and improved their understanding of Whanganui iwi's relationship with the river. Third, Te Awa Tupua becoming a legal person enhanced the scope and purpose of activities, forcing actors to clarify what they were trying to achieve.

165 Waitangi Tribunal, above n 7, at 324.
166 At 342.
167 Talbot-Jones and Bennett, above n 136, at 75.
168 Taiepa and others, above n 60, at 238.
169 Kristina M Ramstad and others "Species and Cultural Conservation in New Zealand: Maori Traditional Ecological Knowledge of Tuatara" (2007) 21(2) Conservation Biology 455 at 463.
170 Rachael Mortiaux "Righting Aotearoa's coastal marine area: a case for legal personhood to enhance environmental protection" (2021) 30 GLR 413 at 430.
171 Hurley, above n 56, at 97.

The community believed that slowing down the decision-making process after Te Awa Tupua was granted legal personality led to better decision-making.[172]

Devolving power to lower levels of institutional arrangement by granting legal personality to natural features and appointing local representatives as their guardians provides a more pragmatic approach to conservation compared to the present fragmentation of New Zealand's conservation law.[173] Devolving formal power to Ngāti Koata to care for tuatara could reinforce the success of existing collaboration efforts with DOC.[174]

(3) Enforcement of rights

As a legal person, a taonga species such as tuatara would be able to bring proceedings in its own name, have its injury be considered in determining whether to grant relief and receive compensation for its benefit. Providing a platform for litigation would incentivise increased monitoring and enforcement as external actors look to limit their legal liability.[175] In turn, a fear of legal liability would pressure the Government to establish stronger and clearer guidelines for acceptable behaviour towards the environment.[176] If tuatara experiences harm, damages may be awarded directly to the kaitiaki board for the protection of the tuatara. New Zealand's conservation management system is chronically underfunded.[177] Any additional financial assistance would certainly be helpful for conservation efforts.

VI Conclusion

Kaitiaki are a key part of Aotearoa's conservation system, contributing knowledge and resources which improve conservation outcomes for New Zealand's Indigenous flora and fauna.[178] Since its establishment in 1987, DOC has made positive steps towards building a collaborative relationship with Māori. However, there is still a long way to go before Māori can genuinely exercise kaitiakitanga and rangatiratanga and retain the mātauranga Māori associated with taonga species. While only Māori can answer the ultimate question of how kaitiaki can exercise rangatiratanga, this article has suggested that granting legal personality to taonga species could be a solution that reconciles the underlying conflict between mātauranga Māori and mātauranga Pākehā in New Zealand law. Indeed, opening the door to many of Aotearoa's Indigenous species becoming legal persons would certainly have wide-reaching ramifications for the conservation system. Still, these kinds of innovative solutions must be considered if the best outcomes for mātauranga Māori and the environment are to be achieved. A healthy environment is not just something to enjoy; it is essential for human survival. The New Zealand Government has a duty to protect and nurture it under Te Tiriti o Waitangi.

172 Ireland, above n 161, at 65.
173 Talbot-Jones and Bennett, above n 136, at 75.
174 See Ngāti Koata "Tiaki Taiao" <www.ngatikoata.com>.
175 Mortiaux, above n 170, at 431.
176 At 431.
177 Ruru and others, above n 55, at 66.
178 At 66: see, for example, Ngāi Tahu's investment in kiwi restoration.