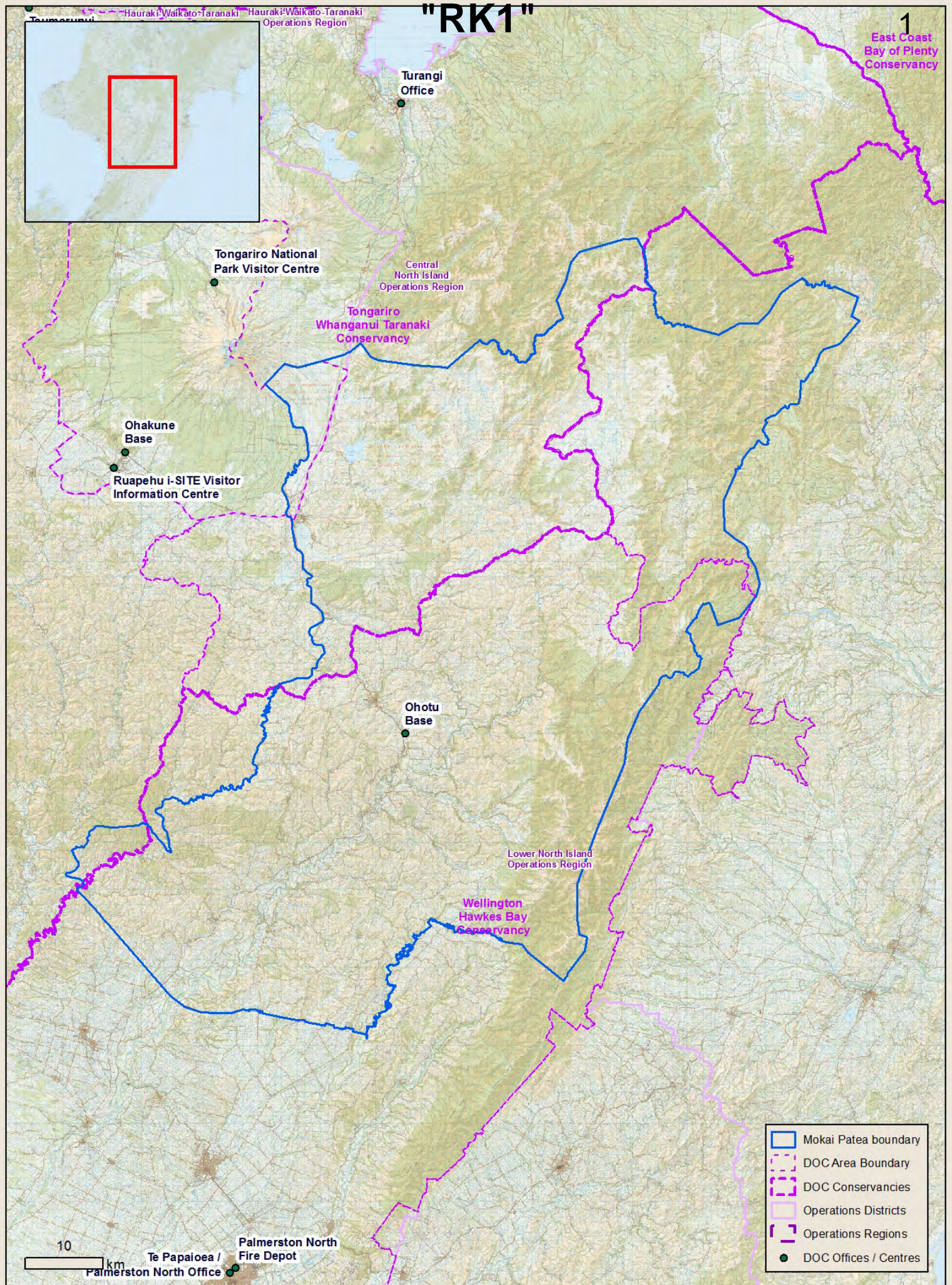


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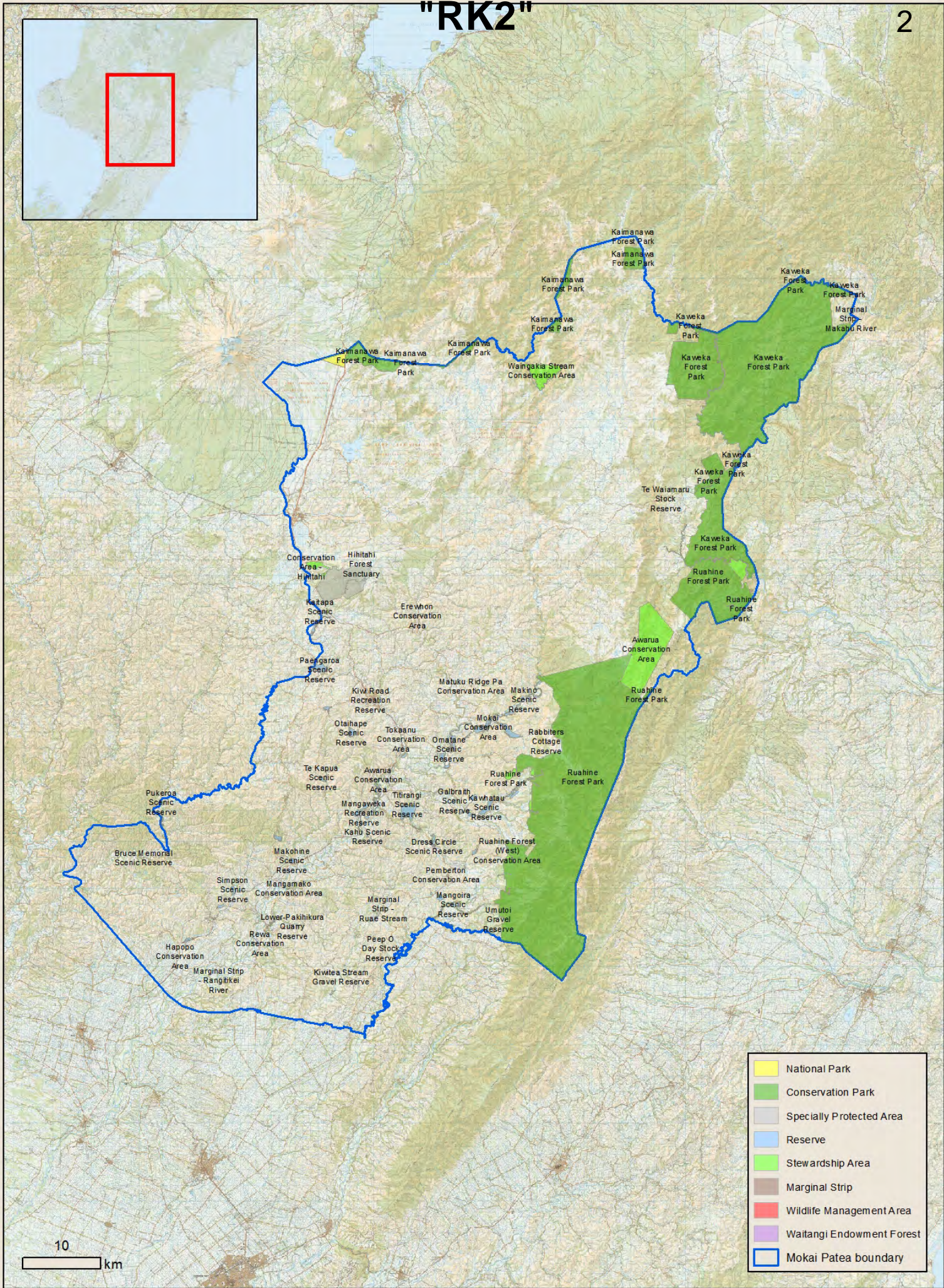
### BRIEF OF EVIDENCE OF REGINALD VICTOR ROBERT KEMPER 18 February 2019

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# Principles and goals of the Treaty of Waitangi

*The Principles for Crown Action on the Treaty of Waitangi and the goals that have been developed to address these principles.*

## Principles of the Treaty

Effective engagement with tangata whenua enhances the conservation of natural resources and historical and cultural heritage. The Department has a statutory responsibility under Section 4 of the Conservation Act 1987. Acts listed in its First Schedule must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi. Where, however, there is clearly an inconsistency between the provisions of any of these Acts and the principles of the Treaty, the provisions of the relevant Act will apply.

There has been considerable jurisprudence on the Treaty of Waitangi and its principles, and the scope of the duties the Treaty imposes on the Crown. Interpretations continue to evolve. In 1989 the Government published "Principles for Crown Action on the Treaty of Waitangi". The principles are:

- The principle of government
- The principle of self management
- The principle of equality
- The principle of reasonable cooperation
- The principle of redress

Successful implementation of Treaty principles depends on the particular circumstances of each case including the statutory conservation framework, and the significance to tangata whenua of the taonga in question. To help managers interpret these principles and apply them successfully to their work, DOC has developed the following goals which have been framed in relation to the places it administers. These goals may be added to or amended in light of further evolution in understanding of the principles of the Treaty of Waitangi, and because they are closely inter-related should not be considered in isolation.

## Goals for the Treaty

### The principle of government

DOC implements conservation legislation and works effectively and efficiently to achieve conservation outcomes for the benefit of all citizens.

DOC will:

1. make decisions and take actions in accordance with the legislation and the circumstances which apply in any particular case, including section 4 of the Conservation Act, General Policies and government's conservation goals;
2. develop, maintain and monitor the capabilities within the department required to give effect to the principles of the Treaty in its work.

### **The principle of self management**

DOC recognises the exercise by tangata whenua of traditional authority over their land, resources and other taonga.

DOC will:

1. in relation to areas and natural resources which it manages, work with tangata whenua to determine and implement a reasonable and practicable degree of tangata whenua involvement at sites or with issues of interest to them, covering a range of options from a right to be consulted to the exercise of tangata whenua control;

The department recognises the exercise by tangata whenua of their customary duty as kaitiaki over their natural and cultural taonga according to tikanga.

DOC will, in relation to areas and natural resources which it manages, support the kaitiaki role of tangata whenua by:

1. recognising and respecting Maori conservation practices and cultural values
2. recognising the customary use of traditional materials and indigenous species by Maori, consistent with statutory requirements
3. affording to tangata whenua an effective degree of participation and control in the protection and management of wāhi tapu
4. encouraging and supporting tangata whenua involvement and participation in conservation on public conservation lands and waters
5. recognising the role of matauranga Maori in conservation management.

The department actively protects the interests of tangata whenua in the land, resources and other taonga managed by the department and does this in co-operation with tangata whenua.

DOC will work with tangata whenua to:

1. understand their interests and needs in relation to areas and resources which the department manages or which are affected by its work
2. ensure that reasonable and practicable steps are taken to protect those interests
3. ensure that actions which might undermine those interests are avoided wherever practicable
4. include Māori place and species names in interpretation and public information, make appropriate use of te reo Māori, and draw attention to tangata whenua values where appropriate.

### **The principle of equality**

All citizens have access to natural, historical and recreational resources managed by the department and can participate in conservation management.

DOC will, in relation to the areas and resources it manages:

1. ensure that all citizens can access conservation benefits
2. ensure that all citizens can access opportunities to participate in conservation management.

### **The principle of reasonable cooperation**

DOC makes informed decisions which have regard to the interests and needs of tangata whenua in respect to the land, resources and other taonga managed by the department or affected by the department's work. DOC will consult with tangata whenua:

1. when statutory planning documents are being developed
2. on specific proposals that involve places or resources of spiritual or historical and cultural significance to them.

DOC has successful relationships and partnerships with tangata whenua.

DOC will:

1. seek and maintain relationships with tangata whenua to enhance conservation and recognise mana. These relationships should be based on mutual good faith, cooperation and respect.
2. seek and maintain partnerships with tangata whenua whose rohe covers any place or resource administered by the Department. Such partnerships will be appropriate to local circumstances.
3. work co-operatively with tangata whenua to achieve conservation outcomes.

### **The principle of redress**

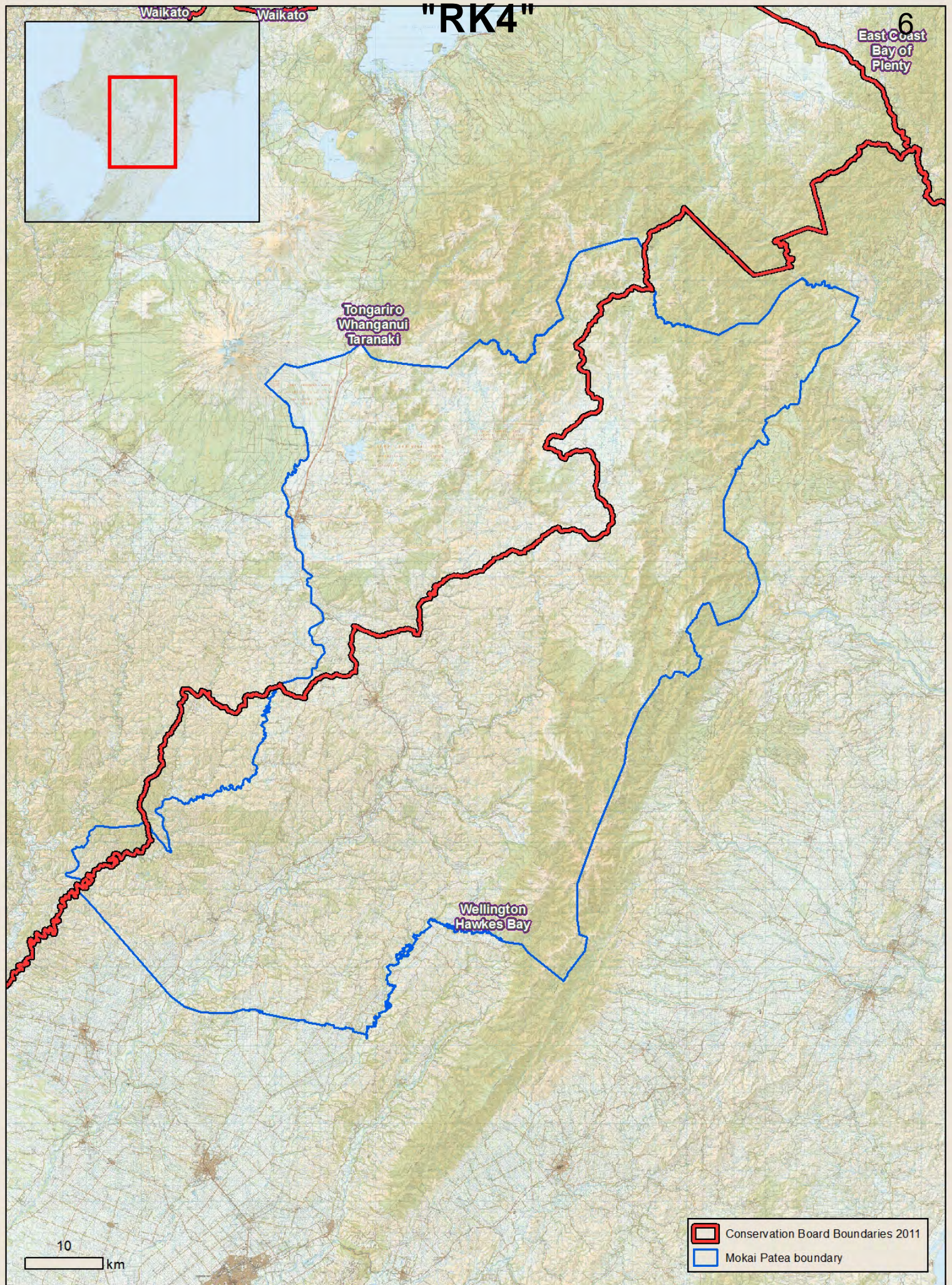
DOC participates in the Crown's actions to remedy past breaches, and avoids actions which would create further grievances.

DOC will:

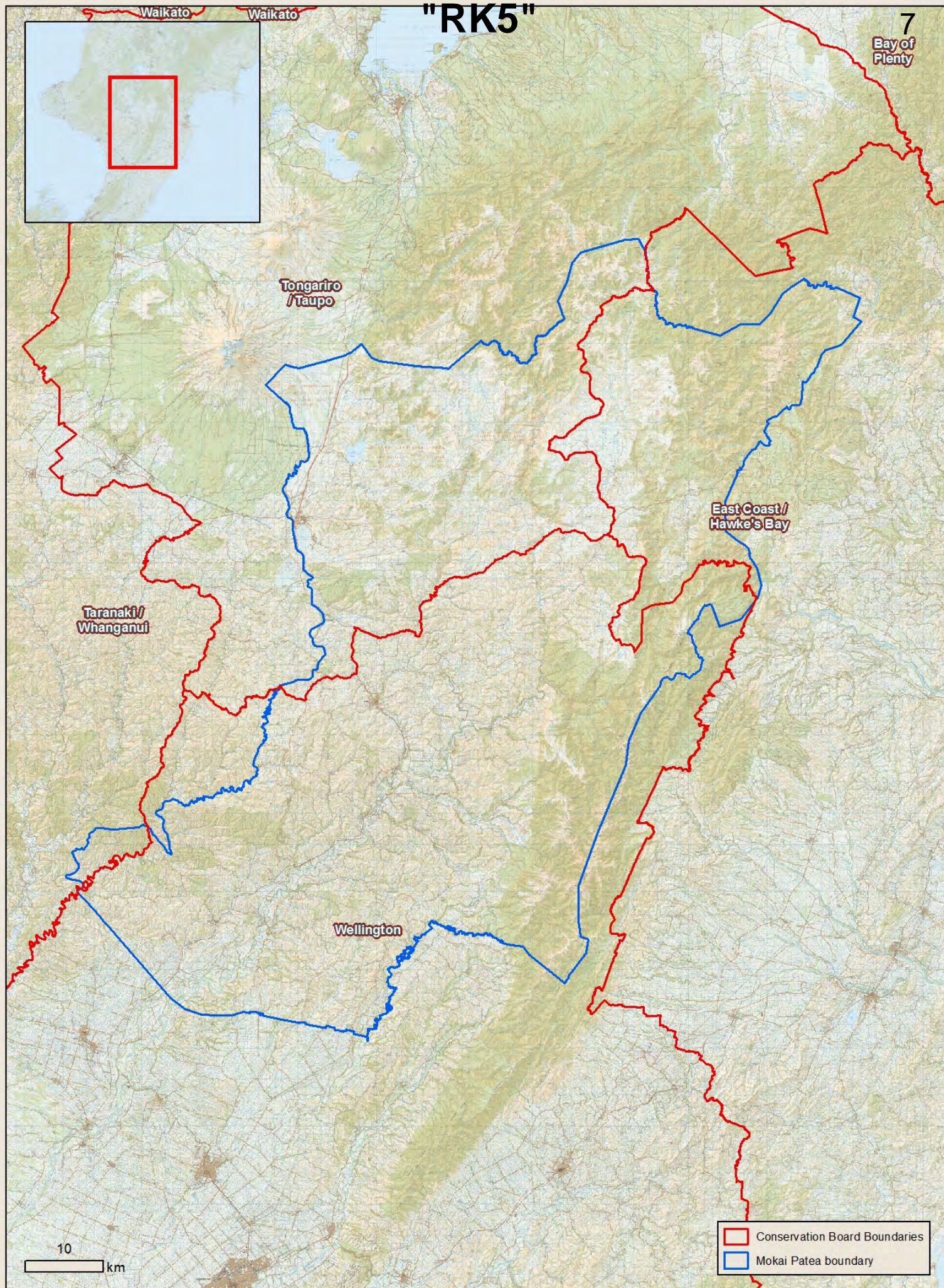
1. participate in and implement relevant Treaty claims settlements consistent with its statutory functions
2. seek to avoid actions which would be a breach of the principles of the Treaty of Waitangi.

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## CONSERVATION GENERAL POLICY

**Conservation Act 1987**

**Wildlife Act 1953**

**Marine Reserves Act 1971**

**Reserves Act 1977**

**Wild Animal Control Act 1977**

**Marine Mammals Protection Act 1978**



Department of Conservation  
*Te Papa Atawhai*



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## 2. Treaty of Waitangi Responsibilities

The Conservation Act 1987, and all the Acts listed in its First Schedule, must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (section 4, Conservation Act 1987). Where, however, there is clearly an inconsistency between the provisions of any of these Acts and the principles of the Treaty, the provisions of the relevant Act will apply. There has been considerable jurisprudence on the Treaty of Waitangi and its principles, and the scope of the duties the Treaty imposes on the Crown. Interpretations continue to evolve.

Effective partnerships with tangata whenua can achieve enhanced conservation of natural resources and historical and cultural heritage. Tangata whenua responsibilities to this heritage are embodied in the ethic of kaitiakitanga. Kaitiakitanga is a spiritual and environmental ethos that governs tangata whenua responsibilities for the care and protection of mauri, the dynamic life principle that underpins all heritage. Kaitiakitanga includes components of protection, guardianship, stewardship and customary use. It is exercised by tangata whenua in relation to ancestral lands, water, sites, resources and other taonga. The focus of kaitiakitanga is manaaki (care) and rahui (protection).

In 1989 the Government published "Principles for Crown Action on the Treaty of Waitangi". The principles are:

- The principle of government
- The principle of self management
- The principle of equality
- The principle of reasonable cooperation
- The principle of redress.

The way these principles are applied will depend on the particular circumstances of each case, including the statutory conservation framework and the significance to tangata whenua of the land, resource or taonga in question.

Customary use of traditional materials and indigenous species may be authorised under a variety of different statutory provisions, such as section 17Q and section 30 of the Conservation Act 1987, depending on the nature of the use. Other consents may be required.



## **POLICIES**

### **2 Treaty of Waitangi Responsibilities**

- 2 (a) Relationships will be sought and maintained with tangata whenua to enhance conservation. These relationships should be based on mutual good faith, cooperation and respect.
- 2 (b) Partnerships to enhance conservation and to recognise mana should be encouraged and may be sought and maintained with tangata whenua whose rohe covers any place or resource administered by the Department. Such partnerships will be appropriate to local circumstances.
- 2 (c) Protocols and agreements may be negotiated and implemented to support relationships and partnerships, by mutual consent between tangata whenua and the Department.
- 2 (d) Tangata whenua will be consulted when statutory planning documents are being developed. Information will be made available to facilitate their contributions.
- 2 (e) Tangata whenua will be consulted on specific proposals that involve places or resources of spiritual or historical and cultural significance to them.
- 2 (f) Tangata whenua involvement and participation in conservation on public conservation lands and waters will be encouraged and may be supported with information and technical advice.
- 2 (g) Customary use of traditional materials and indigenous species may be authorised on a case by case basis where:
  - i. it is consistent with all relevant Acts and regulations (including fisheries legislation), conservation management strategies and plans;
  - ii. it is consistent with the purposes for which the land is held;
  - iii. there is an established tradition of such customary use at the place; and
  - iv. the preservation of the indigenous species at the place is not affected.

The views of tangata whenua should be sought and had regard to.

\* This part of 2(g) previously read "Non-commercial customary use of..."



- 2 (h) Public information and interpretation, where it refers to places or resources of significance to tangata whenua, should be developed with them, and should include Māori place and species names, make appropriate use of te reo Māori, and draw attention to tangata whenua values.
- 2 (i) The Department will seek to avoid actions which would be a breach of the Treaty of Waitangi.
- 2 (j) The Department will participate in and implement relevant Treaty claims settlements consistent with its statutory functions.