18/06/15

In Confidence

Offices of the Minister for the Environment, Minister for Primary Industries and the Minister of Conservation

Chair

Cabinet Economic Growth and Infrastructure Committee

Draft consultation document on the Government's proposed approach to reform New Zealand's marine protection framework

Proposal

1. This paper seeks your agreement to share the Government's draft consultation document on marine protection reform with the Iwi Leaders' Group.

Executive summary

2. New Zealand is a globally significant maritime nation. We have effective modern legislation for managing fisheries and the environmental effects of activities such as petroleum and mineral mining across all New Zealand waters. By contrast the Marine Reserves Act 1971, our first dedicated marine protection legislation, is outdated and needs reform.
3. The Government has undertaken to replace it with a new Marine Protected Areas Act (MPA Act) that provides marine protected areas (MPAs) through four categories with different types of protection.
4. The attached draft consultation document (Appendix 1) sets out a broad new approach to marine protection that provides protection of all elements of biodiversity while also enabling varying levels of use. The improved decision-making framework ensures that only proposals adequately describing the environment, the benefits of protection and impacts on current and future uses in a particular area will be advanced. Relevant Ministers will make joint decisions on which proposals to advance, the approach to consultation and information gathering, and final decisions on any proposals.
5. We consider that the proposed approach will ensure the best balance is achieved between protecting our marine environment and maximising economic, recreational and cultural opportunities now and in the future.
6. We propose to provide the draft consultation document to Iwi Leaders to seek their initial views prior to public release. Following engagement with Iwi Leaders, we intend to report back to Cabinet on a public release.
7. Officials from MPA working group agencies (MfE, DOC, MPI, TPK, OTS, MBIE) are developing a consultation and communication plan. We aim to seek approval to finalise the plan, in consultation with relevant portfolio Ministers, before release of the consultation document.

Background

8. New Zealand has internationally recognised fisheries management through the Quota Management System (QMS) under the Fisheries Act 1996. Recent changes to the Crown Minerals Act 1991 and recently introduced environmental management legislation for our exclusive economic zone (EEZ) and continental shelf have provided modern methods of marine resource management. By comparison the current approach to marine protection is not effective. Key shortcomings include:

    - current marine protection tools are split across different legislation, and do not work together in a co-ordinated way
    - consultation and decision-making processes are overly long, costly and can be divisive
    - consideration of the effects on existing and future uses is inadequate, potentially limiting the sustainable growth of the marine economy
    - the Marine Reserves Act 1971 does not provide for marine protection in the vast majority of our ocean environment - the EEZ and continental shelf.

9. These shortcomings were recognised in the National Party's 2014 Policy, released before the general election. The Government has identified that the Marine Reserves Act 1971 is outdated and needs reform, and undertook to replace it with a new MPA Act that provides MPAs through four categories with different levels of protection.

10. The October 2014 Speech from the Throne stated that the Government will introduce legislation to improve the responsible use, management and conservation of New Zealand's ocean environment, allowing for a wider range of marine protected areas.

Comment

11. MPAs are a tool to protect and sustainably manage the marine and coastal environment. They perform various functions in addition to protection – such as providing for tourism, recreational enjoyment and economic activities. They also support fisheries management and allow us to better understand the marine environment.

Draft consultation document

12. The proposed approach set out in the draft consultation document recognises that there are strongly competing public and private interests in the marine environment. The QMS for fisheries, recent Block Offers for mineral and petroleum prospecting, and EEZ legislative changes facilitate economic opportunities for jobs and growth. This proposal completes the sustainable management regime for our oceans by ensuring we have the right framework for protecting the marine environment.

13. Under the proposed approach the MPA Act will provide four categories with graduated types of protection, in line with the National Party's 2014 Policy:

    - **Marine reserves** will be managed in their natural state and strictly protected

- **Species-specific sanctuaries** will protect one or more named species while allowing sustainable use. Which activities are restricted will vary according to factors such as the ecology of the protected species
- **Seabed reserves** will protect areas of the seabed while allowing sustainable use. Seabed mining, bottom trawl fishing and dredging will be prohibited
- **Recreational fishing parks** will generally prohibit commercial fishing for the main recreational species. Customary fishing will continue.

14. Each category will have its own purpose and objectives. Appendix 2 provides a summary of the purpose and proposed scope of each category, who the lead agency will be and which activities are restricted or prohibited (where relevant).
15. Using one or more of the four categories will mean that protection can be designed to meet the specific environmental needs of an area, while taking into account existing and future values and uses. It will also allow the creation of MPAs in all marine areas under New Zealand's jurisdiction, including the territorial sea, EEZ and continental shelf.
16. In addition to the broad framework for the four MPA categories, the draft consultation document sets out key elements of the proposed MPA Act:
    - an improved decision-making framework for initiating and deciding on MPA proposals
    - how impacts on existing and future uses will be taken into account
    - improved processes for iwi/Māori involvement in marine protection processes
    - how it will provide for periodic review of MPAs and the process to transition existing tools into the new categories.
17. The draft consultation document also seeks feedback on a number of other elements of the proposed MPA Act, including community involvement in managing MPAs, management of commercial activities in MPAs, compliance and law enforcement, and monitoring and reporting.

<u>Improved and integrated decision-making</u>

18. The improved decision-making framework will ensure that only proposals that adequately describe the environment, the benefits of protection and impacts on current and future uses in a particular area will be advanced.
19. A proposed MPA will initially be considered by a lead Minister. Other Ministers whose areas of responsibility may be affected will also be involved in the joint decision on whether to advance the proposal. The Ministers of Conservation, Primary Industries, Environment and Māori Development will be automatically involved in every proposal. Other Ministers will be involved if the proposal affects their responsibilities, including the Ministers of Transport, Energy and Resources, Communications, Foreign Affairs and Trade, and Defence.
20. The MPA Act will include criteria for determining what kind of information is needed, and whether the information provided in a proposal is sufficient. Ministers will also take into account the urgency of the issues and the resources available to support development of a particular proposal.

21. Ministers will also decide which approach to consultation is appropriate – a Board of Inquiry process or a Collaborative process, should they choose to advance the proposal. For both processes, Ministers will provide clear terms of reference that include assessment criteria. Both processes will require an independent economic assessment of the proposal and full public consultation. Existing and future values and uses of the environment will be fully considered.

22. Ministers will make the final decision on any MPAs recommended through either process.

Recognising economic interests

23. MPAs provide a range of economic benefits to New Zealand, including enhancing and increasing tourism activities, supporting productive commercial, recreational and customary fisheries (e.g. through protecting spawning and nursery habitats) and sustaining food harvesting.

24. We recognise that establishing MPAs may impact existing and future uses of the marine environment. I consider that the proposed decision-making framework will ensure the interests of all existing and future users will be fully considered during development of a particular proposal.

25. Under the proposed approach, quota owners under the Quota Management System will be compensated when they are unduly impacted by establishment of a recreational fishing park using a modified form of the Undue Adverse Effects test currently used when commercial fishing may be affected by a proposed aquaculture activity. Whether and what amount of compensation may be payable will be determined case by case. Compensation will not be paid to quota owners in relation to the establishment of the other three categories of MPA because they are measures for the purpose of ensuring sustainability.

26. Under the Crown Minerals Act 1991, the areas of our ocean currently allocated for oil, gas and mineral prospecting and exploration are extensive, enabling businesses to survey and explore widely in the search for resources that are viable for future development. Mining permits (for production) are granted only once a viable resource has been identified, and for much smaller areas.

27. To provide certainty to the oil, gas and mineral mining industries, we propose that no category of MPA can be established in areas where there are petroleum or mineral **mining** permits for the life of the permit, unless the permit holder agrees. MPAs would only be considered in **prospecting** or **exploration** permit areas if they had no significant impact on these activities.

28. We consider that this approach gives certainty to industry without unnecessarily impeding the development of a credible network of MPAs. However, areas covered by existing prospecting or exploration permits could also be excluded from consideration for an MPA.

29. We consider that the proposed decision-making framework will ensure that the interests of all existing and future users will be fully considered during development of a particular proposal. In practice, MPAs will generally occupy small discrete areas, and are unlikely to impact significantly on prospecting or exploration permit areas.

30. We need to resolve our position on this matter. We therefore seek your decision on which of the two approaches to put forward in the draft consultation document.

Engaging with Iwi Leaders

31. We propose to provide the draft consultation document to Iwi Leaders to seek their initial views prior to public release. Officials advise us that Iwi Leaders are likely to raise the issues of MPA governance and decision-making, the Treaty clause and effects on fishing quota and customary fishing rights.

32. We consider that seeking initial feedback from Iwi Leaders on the proposed approach will help to maintain the strong relationship that the Government has with them. This will be the start of ongoing engagement, which we consider will be critical to achieving a successful and timely outcome.

Consultation

33. The following agencies were involved in development of the draft consultation document: Department of Conservation (DOC), Ministry for Primary Industries (MPI), Ministry of Business, Innovation and Employment (MBIE), Te Puni Kōkiri (TPK), the Office of Treaty Settlements (OTS) and the Treasury. The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.

34. There is general support for the intent of the proposed reforms. In addition to the matters outlined in this paper, agencies provided the following comments:

    a. MBIE considers it is important that existing mining permit rights are recognised and protected. They consider that areas covered by existing prospecting or exploration permits granted under the Crown Minerals Act 1991 should also be excluded from the MPA process.

    b. OTS considers that further consideration will need to be given to the interface with historical Treaty settlements, and how these are given effect in the post settlement environment, including the integration with the Marine and Coastal Area (Takutai Moana) Act 2011.

    c. DOC is concerned about the suggestion that over time decision-makers under the EEZ Act and RMA regimes will be able to consider whether the MPA network provides sufficient protection for elements of the marine environment affected by the application before them. They consider this would be a significant shift in how sustainable management is undertaken in these regimes, by suggesting that MPAs could be a mechanism for offsetting the effects of activities in other areas. They note that species protected under other legislation such as the Wildlife Act 1953 are protected in their own right and this status is relevant to decision making.

Financial implications

35. There are short term costs for the reform process, including public consultation and development of the final policy proposals.

36. The amount of compensation payable to quota owners for the establishment of recreational fishing parks will depend on Ministers' decisions on the level of

impact which would trigger payment, the treatment of cumulative effects if multiple parks are established within the same quota management area, the boundaries of individual parks, and whether any species are exempt from the general prohibition on commercial fishing. The proposed approach is designed to minimise costs to existing users of the marine environment. More detail on implementation costs will be available when the policy proposals have been finalised following public consultation.

Human rights

37. The proposals in the draft consultation document and this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

38. The proposals in the draft consultation document and this paper will require development of new legislation that would replace or reform existing legislation.

39. Further detail on the scope and timing of legislative change will be developed in conjunction with final policy proposals following public consultation.

Regulatory impact analysis

40. A Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment (Appendix 3) and reviewed by Treasury's Regulatory Impact Analysis Team (RIAT), which considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

41. The RIAT team states that the RIS does enough to make the case that consultation need not include the options of retaining the status quo or a limited reform of the existing Marine Reserves Act, which is all that is necessary at this stage. There is not yet sufficient information and analysis to enable decisions on the form and content of the proposed new statute. The proposed consultation should enable greater clarity in this regard.

Publicity

42. Subject to Cabinet approval, we plan to announce the proposed new approach to marine protection and release of the consultation document at the time of the Environmental Defence Society conference in Auckland in mid-August.

43. Officials from MPA working group agencies (MfE, DOC, MPI, TPK, OTS, MBIE) are developing a consultation and communication plan. We aim to seek approval to finalise the plan, in consultation with relevant portfolio Ministers, before release of the consultation document.

Recommendations

44. The Minister for the Environment, the Minister for Primary Industries and the Minister of Conservation recommend that the Committee:

    1. note that the current approach to marine protection does not deliver the best outcomes for either the marine environment or the economy

2. note that the draft consultation document 'A New Marine Protected Areas Act – Protecting our big blue backyard' proposes a new approach to marine protection in New Zealand, to be delivered through a new Marine Protected Areas Act

3. note that the proposed approach to marine protection is designed to ensure the best balance is achieved between protecting our marine environment and maximising economic, recreational and cultural opportunities now and in the future

4. either [preferred]

   4.1. agree that the draft consultation document proposes that no category of marine protected area (MPA) can be established in areas where there are petroleum or mineral **mining** permits for the life of the permit, unless the permit holder agrees and that MPAs would only be considered in **prospecting** or **exploration** permit areas if they had no significant impact on these activities

   or

   4.2. agree that the consultation document proposes that no MPA can be established in areas where there are petroleum or mineral **prospecting, exploration** or **mining** permits under the Crown Minerals Act 1991 for the life of the permit, unless the permit holder agrees

5. authorise the Minister for the Environment, the Minister for Primary Industries and the Minister of Conservation to provide the draft consultation document to Iwi Leaders

6. authorise the Minister for the Environment, the Minister for Primary Industries and the Minister of Conservation, in consultation with relevant portfolio Ministers, to finalise a consultation and communication plan before release of the consultation document

7. invite the Minister for the Environment, the Minister for Primary Industries and the Minister of Conservation to report back to Cabinet following engagement with Iwi Leaders for Cabinet consideration of the final proposal, and to seek approval to release the consultation document for public consultation.

Hon Dr Nick Smith
Minister for the Environment
18 / 6 / 15

Nathan Guy
Hon Nathan Guy
Minister for Primary Industries
18 / 6 / 15.

Hon Maggie Barry
Minister of Conservation
____ / ____ / ____

Appendix 2. Summary of categories under the proposed new Marine Protected Areas Act

	Marine reserve	Species-specific sanctuary	Seabed reserve	Recreational fishing park
Purpose	To preserve and protect areas in their natural state for the conservation of marine biodiversity. These areas will protect not only unique and special sites, but also representative sites that exemplify important ecosystem features and values.	To preserve and protect one or more named species while allowing sustainable use. These sanctuaries will provide the ability to establish spatial protection for marine species at sea and on land areas used by the species, including those protected under the Marine Mammals Protection Act 1978 or the Wildlife Act 1953.	To preserve and protect the seabed environment while allowing sustainable use. Seabed reserves will control activities that impact the seabed and a zone above it.	To enhance the enjoyment and value of recreational fishing in high demand areas by reducing the impact of commercial fishing. This will encourage recreational fishers to take more responsibility for the impacts of their activities in these areas.
Areas where permitted	Territorial sea and Exclusive Economic Zone	Territorial sea, Exclusive Economic Zone and continental shelf	Territorial sea, Exclusive Economic Zone and continental shelf	Territorial sea
Proposed scope of category	These areas will be managed in their natural state and will be strictly protected. There will be no fishing or petroleum or minerals activity within marine reserves.	Which activities are restricted or prohibited will vary according to factors such as the ecology of the particular species, the components of the ecosystem that are important to that species, or any specific protection objectives the community may have. Fisheries resources will be managed using established tools under the Fisheries Act 1996, , where appropriate, in a manner consistent with the purpose of the sanctuary.	Seabed mining, bottom trawl fishing and dredging will be prohibited in these areas. Other activities may be allowed if they do not conflict with the purpose of the reserve.	Commercial fishing will generally be prohibited for the main recreational species. Specific parks might allow commercial fishing to continue for certain species, or allow marine farming. Customary fishing will continue. Ongoing management of fisheries resources (eg making of regulations prohibiting commercial fishing) will be carried out under the Fisheries Act 1996. Some petroleum or minerals activities could be allowed.
Lead agency	Department of Conservation	Department of Conservation	Ministry for the Environment	Ministry for Primary Industries
Current approach	Marine reserves are established under the Marine Reserves Act 1971 and through special legislation, but can be established only in the territorial sea and only for scientific purposes.	Individual species are currently protected through the Wildlife Act 1953 and Marine Mammals Protection Act 1978.	Some areas of the seabed are protected through benthic protection areas and seamount closures under the Fisheries Act 1996, but are only protected from the effects of bottom trawling and dredging.	Equivalent areas can be created under the Fisheries Act 1996 and through special legislation (eg, Sugar Loaf Islands). They are managed under the Fisheries Act 1996.

Appendix 3

Regulatory Impact Statement: Reforming Marine Protection Legislation

Regulatory Impact Statement

REFORMING MARINE PROTECTION LEGISLATION

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment. It sets out the objectives and provides a preliminary analysis of options to reform New Zealand's marine protection legislation.

This is an initial RIS to accompany the discussion document, *A new Marine Protected Areas Act: Protecting our big blue backyard*, which outlines the details of one proposal for reforming marine protection.

Following the completion of consultation with the Iwi Leaders Group (ILG) and, consequently, the general public, a Cabinet paper and updated RIS with further analysis incorporating views and findings from consultation will be submitted to Cabinet along with the final policy proposals.

A collaborative, cross-agency approach has been used in developing the proposal outlined in the discussion document, which is based on a pre-election commitment from the National Party. The agencies involved were: the Department of Conservation; the Ministry for Primary Industries; the Ministry of Business, Innovation and Employment; the Ministry for the Environment; the Treasury and Te Puni Kōkiri. The Ministry of Justice (through the Office of Treaty Settlements) had some involvement in the process.

The focus on balancing protection and use has led to the development of options being constrained. In the past, marine protection legislation has been solely focused on protection, but the Government now wants to ensure New Zealand's marine management system achieves the best balance between protection and maximising economic and recreational opportunities.

The options have been constrained by the proposals set out in the pre-election commitment, and focus on the particular approach outlined in the discussion document as the preferred solution.

There is uncertainty about specific impacts of the proposed changes, and decisions about how options perform against the policy objectives are qualitative and subjective.
We have provided our best assessment of the options in the context of these constraints and will update the analysis further once consultation with ILG and the public has been undertaken.

Glenn Wigley
Director, Environmental Systems Directorate

Date 10/6/15

Status quo and problem definition

Status quo

Overview

1. New Zealand's marine environment is a highly valued and important natural resource for our country's cultural, economic, environmental and social wellbeing. Increasingly, coastal and marine environments are coming under pressure from a variety of uses. While there are number of existing regulatory measures to manage the use and protection of the ocean, the existing protection measures are unfit to deliver an effective marine management approach.

2. Marine protected areas (MPAs), such as marine reserves, are a tool to protect and sustainably manage the marine and coastal environment in the territorial sea, the Exclusive Economic Zone (EEZ) and the continental shelf. This jurisdiction includes a vast range of ecosystems, habitats and species ranging from sea level to more than 10km deep and up to 1400km from the mainland.

3. MPAs protect examples of different marine habitats and ecosystems and perform a range of other functions, such as providing for tourism, recreational enjoyment and other economic activities. MPAs also support fisheries management and allow us to better understand the marine environment.

4. Marine protection mechanisms are present in a range of legislation. A cornerstone of this legislative body is the Marine Reserves Act 1971 (MRA), which was established to allow for areas of the marine environment to be dedicated for the purpose of scientific study. Marine reserves offer the highest level of protection in New Zealand as they provide for the prohibition of all marine habitats and life, providing a pristine environment for scientific study.

5. Marine protection can also be achieved through the 2005 Marine Protected Areas Policy and Implementation Plan (MPA Policy). The MPA Policy uses collaborative, community-based forums to develop proposals on a regional scale. The proposals may be implemented using existing legislation, or through the creation of special legislation.

6. New Zealand currently has 44 marine reserves and six marine mammal sanctuaries. Limited protection from fishing is also provided by 17 seamount closures and 17 Benthic Protection Areas (see Figure 1 page 4).

7. Community-initiated processes that do not strictly follow the MPA Policy may also result in proposals for marine protection. Examples include:

    - Te Korowai o Te Tai ō Marokura, which integrated a number of marine protection and fisheries mechanisms to manage coastal and marine resources along the Kaikōura coast; and
    - the Fiordland Marine Guardians developed a suite of protection measures for the Fiordland region.

8. New Zealand has several other tools available for marine protection under different legislation, including species protection under the Wildlife Act 1953, marine mammal sanctuaries established under the Marine Mammals Protection Act 1978, and fisheries closures such as Benthic Protection Areas established under the Fisheries Act 1996. To date, these tools have been used in an ad-hoc manner with little coordination.

9. While there are number of existing regulatory measures to manage the use and protection of the marine environment, the existing protection measures are unfit to deliver an effective marine management approach.

10. Note that this is an initial RIS. Following the completion of consultation, a Cabinet paper and updated RIS with further analysis incorporating consultation findings and the final policy proposals will be submitted to Cabinet.

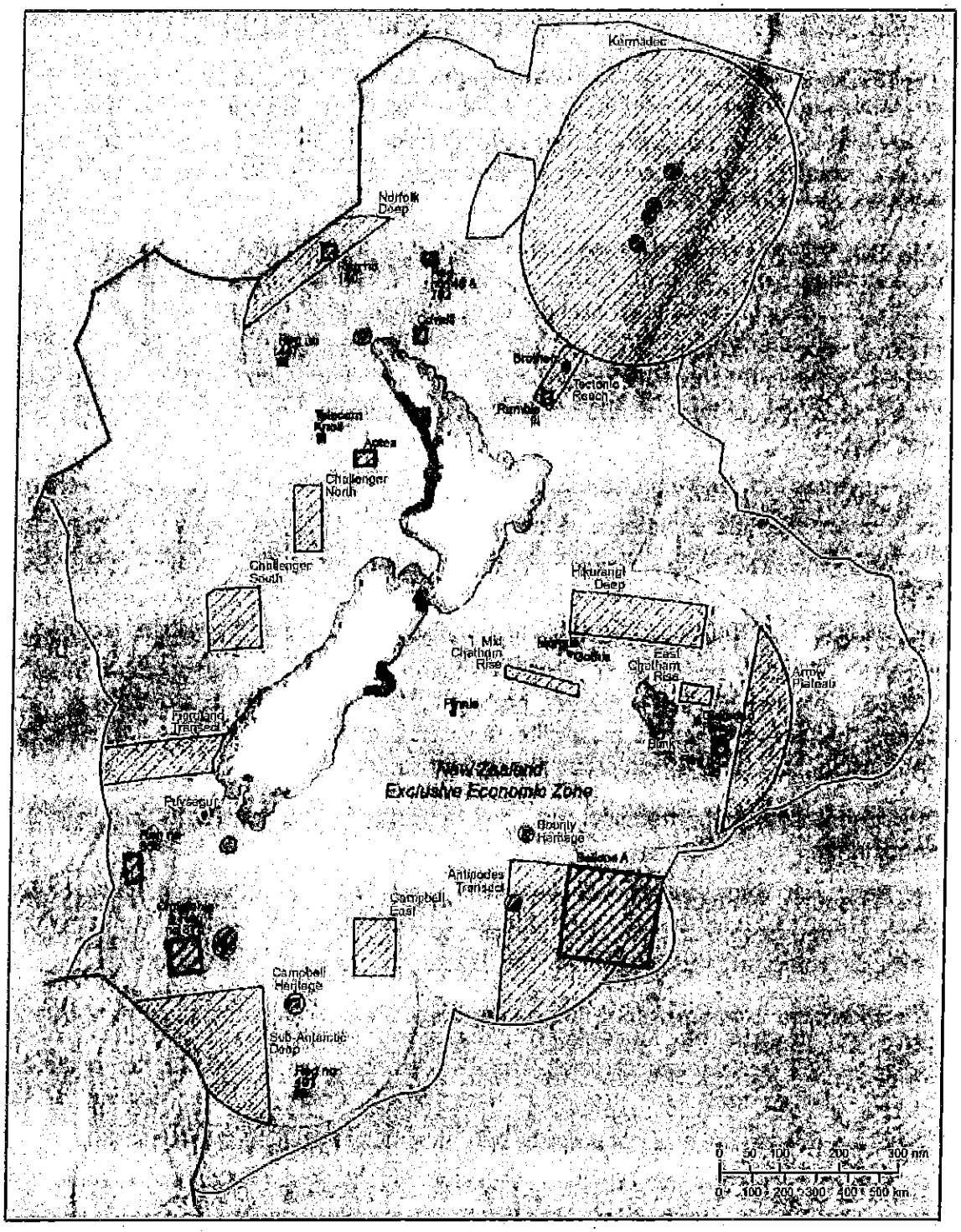
Government priority

11. The Government's ambition is for New Zealand to be a world leader in the sustainable management and protection of our marine environment so that New Zealanders can continue to enjoy and benefit from its wealth for generations to come.

12. An important element of this is New Zealand's commitment to establish a representative network of marine protected areas[1] as a Party to the United Nations' Convention on Biological Diversity.

[1] An MPA network is a collection of individual MPAs or reserves operating co-operatively and synergistically, at various spatial scales and with a range of protection levels that are designed to meet objectives that a single reserve cannot achieve.

Figure 1: Marine protection already in place in New Zealand



- Seamount Closure
- Benthic Protection Area
- Marine Reserve
- Marine mammal sanctuary
  hatched where coincides with a marine reserve
- New Zealand-Australia Maritime Boundary (2004 Treaty)
- New Zealand Continental Shelf (as approved by CLCS)
- New Zealand Territorial Sea (12 nm)
- New Zealand Exclusive Economic Zone (200 nm)

Marine Protection legislation

13. Figure 1 (previous page) provides an overview of the marine protection already in place in New Zealand, which has been implemented using the following legislation.

14. The Marine Reserves Act 1971 (MRA) provides for the creation of marine reserves in the territorial sea. While these do not have to be no-take reserves, there has been an agreed policy that the MRA would only be used for creating no-take reserves. Minor exceptions to the "no-take" policy have been allowed such as taking driftwood and stones from beaches on the West Coast.

15. The Fisheries Act 1996 (Fisheries Act) contains a range of mechanisms that can be used for protecting particular values from the effects of fishing. This includes marine parks created to protect recreational fishing values, mataitai reserves[2] and taiapure[3] created to protect traditional fishing values, controls on fishing used to prevent bycatch of protected species, various mechanisms used to protect habitats important for fisheries, and benthic protection areas created to protect benthic ecosystems from bottom-impacting fishing methods.

16. The Reserves Act 1977 can be used to create reserves on foreshore areas. Low water mark boundaries are common on island reserves, but are used largely to allow control of landings to prevent pest incursions and poaching, rather than to protect the foreshore itself.

17. The Wildlife Act 1953 can be used to protect marine areas for wildlife management purposes (wildlife sanctuaries, wildlife refuges and wildlife management reserves). "Wildlife" includes all birds, reptiles, bats, amphibians, and any invertebrate or marine organism that is declared to be wildlife. A number of marine organisms, including corals and sharks, have been given protection under this Act.

18. The Marine Mammals Protection Act 1978 provides for the creation of marine mammal sanctuaries.

19. The Resource Management Act 1991 (RMA) requires the creation of regional coastal plans. These can control activities that are subject to the Act, such as aquaculture and ports, to protect a range of environmental and other values, including biodiversity.

20. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) governs the sustainable management of the natural resources of New Zealand's EEZ and continental shelf. The EEZ Act does this by allowing the regulation of certain activities that were previously unregulated in the EEZ and continental shelf. However, this statute was not purpose-built as a marine protection mechanism.

21. The Submarine Cables and Pipelines Protection Act 1996 sets out cable protection zones where all anchoring and most types of fishing are banned. Although this has a protection effect and cable protection zones are recognised domestically as MPAs, it is not designed as a tool for marine protection.

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2 Mataitai reserves recognise and provide for customary food gathering by Māori and the special relationship between Tangata Whenua and places of importance for customary food gathering. Mataitai reserves can be declared over identified traditional fishing grounds where there is a special relationship over tangata whenua.

3 A taiapure is a local management tool established in an area that has customarily been of special significance to an iwi or hapū as a source of food or for spiritual or cultural reasons. All fishing (including commercial fishing) can continue in a taiapure.

Problem definition

22. The Government is concerned that the current approach to marine protection is not the most effective for sustainably managing our marine environment and enhancing, protecting and restoring marine biodiversity. The approach is complex and inflexible, and consultation and decision-making processes are overly long, costly and cumbersome.

23. Marine protection tools are split across different legislation with a variety of purposes, objectives and decision-making processes. They offer limited protection for biodiversity, and do not work together in a holistic way. For example, benthic protection areas created under the Fisheries Act 1996 protect specific areas of the seafloor from the effects of bottom-trawling and dredging, but do not provide protection from other activities that may occur in the same area, such as seabed mining.

The Marine Reserves Act 1971 is no longer fit for purpose

24. New Zealand's marine management system needs to achieve the best balance between protecting our environment and maximising economic and recreational opportunities now and in the future. To achieve this, ecosystems need to be identified and protected, and the sustainable use of our resources for recreational, cultural or economic benefits needs to be facilitated and optimised appropriately.

25. The Marine Reserves Act 1971 (MRA), under which marine reserves would normally be established, is no longer fit for purpose:

    - its purpose is too narrowly focused on sites for scientific study, rather than biodiversity, and does not adequately take into account other potential uses of an area;
    - consultation processes are inadequate:
        i. they are undertaken by the person making the proposal, which can lead to a lack of neutrality
        ii. the perceived lack of credibility in the process leads to unnecessary duplication of consultation;
    - the process for establishing marine reserves can be complex, long and divisive;
    - its jurisdiction is restricted to the territorial sea, and does not provide for protection in New Zealand's Exclusive Economic Zone or continental shelf;
    - it does not provide a dynamic approach for changing or improving protection as new information becomes available or as new threats emerge;
    - although it applies the Treaty provision in the Conservation Act 1986 (section 4), it does not specifically reference the Treaty of Waitangi, and provides few mechanisms for iwi/hapū participation in decision-making; and
    - proposals are considered in isolation, making it difficult to determine a specific area's contribution to a broader network of protected areas.

Marine protection tools are fragmented

26. Current marine protection tools are split across different legislation, and do not work together in a co-ordinated way. This results in a complex and inflexible system, which requires multiple application processes and leads to long, costly and cumbersome processes. For example, it took 21 years and many of the tools described above to

achieve comprehensive marine protection around New Zealand's Subantarctic Islands, and required the creation of special legislation to co-ordinate implementation.

27. This fragmented approach has also contributed to sub-optimal outcomes for biodiversity protection. For example, due to the cumbersome and divisive process for establishing marine reserves relatively few have been created, and these do not adequately represent New Zealand's biodiversity or the range of habitats.

28. The Government is also concerned that the current approach does not allow for important ecosystems to be identified and protected, or for the sustainable use of our resources for recreational, cultural or economic benefits to be facilitated and optimised.

Processes are complex and adversarial, resulting in special legislation

29. While a wide range of legislative tools are available, it is difficult to use these in an integrated way. MPA regional forums, such as those in Kaikoura and Fiordland have had to use special legislation to progress their work due to the lack of a clear and comprehensive protection framework.

30. Establishing marine reserves can be complex, drawn-out and divisive, and does not allow strategic consideration of marine protection across a wide geographic area or determine the optimal location of protected areas. The process for creating a marine reserve involves an interested party making an application to the Government, followed by a decision by Ministers on whether to uphold any potential objections to that application. The absence of avenues for various users of the marine environment to engage with one another has tended to spark conflict. An MPA Policy was developed in response to this. It introduced a collaborative approach to MPAs for sub-regions, and has been successful in achieving consensus between iwi/Māori and other stakeholders on MPA networks. However, effective implementation of the outcomes of the collaborative processes has required special legislation in several cases, including Kaikoura.

31. The processes in the MRA for creating marine reserves are not efficient or outwardly collaborative. There are no deadlines, so decisions are generally not made in a timely fashion. In addition, there are issues with the order in which various protection measures are implemented. To overcome these implementation challenges the only clear option has been special legislation.

32. Almost all recent marine protection initiatives have been implemented through special legislation because effective legislation is not available. However, special legislation is inefficient if used regularly, as it requires Parliamentary resources (drafting time, House time, etc), and there is a high risk of inappropriate variation in approaches in different regions.

33. Relying on special legislation results in a decision-by-decision approach to marine protection that incrementally allocates areas for differing purposes, rather than strategically guiding decisions on how best to sustainably manage our ocean.

Treaty of Waitangi

34. The current regulatory framework for marine protected area development does not allow for consistency in the involvement of iwi/Māori in decision-making and management.

35. For example, the Marine Reserves Act does not explicitly recognise the kaitiakitanga role of iwi/Māori in the marine environment, or ensure that the Crown's obligations under the

Treaty of Waitangi are fully met. The RMA, Fisheries Act and EEZ Act have been drafted or amended recently to reflect the Crown's Treaty obligations. However, the Marine Reserves Act predates the inclusion of effective Treaty clauses and mechanisms.

36. In addition, the relationship between customary fishing rights, interests in the foreshore and seabed (including under the Marine and Coastal Area (Takutai Moana) Act 2011), other rights and interests, and marine protection are not clearly defined. Involvement of iwi/Māori in decision-making and management across MPAs also needs to be strengthened.

Objectives

37. The objectives of reforming New Zealand's marine protection regime cut across multiple aspects of the problem. This policy work will meet the following objectives:

    1. Create, over time, a representative network of marine protected areas that represents the range of New Zealand's marine habitats and enhances, protects and restores marine biodiversity in New Zealand, including in the Exclusive Economic Zone and continental shelf.
    2. Ensure strategic decisions about environmental protection and economic growth are made in an integrated way, based on sound evidence, to maximise the benefits to New Zealand.
    3. Ensure customary rights and values are recognised, that the principles of the Treaty of Waitangi are met and that the Crown's Treaty obligations are delivered.
    4. Provide a process that delivers meaningful engagement with iwi/Māori, local communities, private enterprise and the wider public.
    5. Provide for protection of biodiversity and enable varying levels of use, including consideration of all existing and future uses.
    6. Ensure New Zealand's international obligations in relation to the marine environment are met.

Options and impact analysis

Options

38. The current approach to marine protection does not deliver a satisfactory system for sustainably managing New Zealand's oceans and recognising the values and interests it provides. Options development was constrained by identifying options that allowed for both protection and use. Measures focused solely on protection were therefore excluded.
39. The following options have been considered for addressing the problems with our marine protection regime. Option 3 will be tested through feedback on the discussion document *A new Marine Protected Areas Act: Protecting our big blue backyard*:

    - Option one: **Status quo** – keep the marine management regime as it stands, using special legislation if required to develop marine protected areas in the territorial sea.
    - Option two: **Update the Marine Reserves Act 1971** – amend the primary purpose of marine reserves and ensure the Act complements other spatial and natural resource management regimes in the marine area.

- Option three: **Create a new Marine Protected Areas Act** – repeal the MRA and replace it with a fit for purpose Marine Protected Areas Act that provides for protection of biodiversity while also enabling varying levels of use.

Option one: Status quo

Table One: Analysis of option 1 (status quo) against objectives

	Objective 1: Representative network for marine biodiversity	**Objective 2:** Strategic decision-making	**Objective 3:** Customary rights and values and ToW	**Objective 4:** Engagement with all stakeholders and public	**Objective 5:** Varying levels of protection and use	**Objective 6:** International obligations are met
Option 1: **Status quo**	0	0	1	1	1	1

Key: 0 = doesn't meet objective; 1 = partially meets objective; 2 = meets objective

40. Continuing the status quo would see the MRA and other relevant legislation retained in their current form and, if required, special legislation being used. Marine reserves could only be developed in the territorial sea.

41. As there would be no change to the current marine management approach, it would continue to be deficient in the aspects noted in the problem definition (page 6). Therefore, the stated objectives would also not be addressed in full.

Option two: Update the Marine Reserves Act 1971

42. This option would update the Marine Reserves Act 1971 (MRA) to amend the primary purpose of marine reserves as being the protection of areas in their natural state for the protection of biological diversity, in both the territorial sea and the EEZ. The intention would be to complement the other spatial and natural resource management regimes for marine protection in New Zealand.

43. The design and site selection criteria for reserve proposals would be broadened to allow matters such as cultural heritage, ecosystem services, ease of public access and relationships with other protected areas to be considered alongside biodiversity values.

44. There would be a Treaty of Waitangi clause, recognising the legislative mechanisms (such as the Māori Fisheries Settlement and Marine and Coastal Area (Takutai Moana) Act 2011) that have been implemented since the original MRA came into force.

45. The processes for establishment, decision-making and review, governance and management, commercial activities and offences would be updated to enable flexibility and integration with the other relevant legislation. Marine reserves would be able to be developed through a board of inquiry or a mandated collaborative process.

Impacts – option 2

Table Two: Analysis of option 2 (update the Marine Reserves Act) against objectives						
	Objective 1: Representative network for marine biodiversity	**Objective 2:** Strategic decision-making	**Objective 3:** Customary rights and values and ToW	**Objective 4:** Engagement with all stakeholders and public	**Objective 5:** Varying levels of protection and use	**Objective 6:** International obligations are met
Option 2: **Update MRA**	1	1	1	2	1	1
Key: 0 = doesn't meet objective; 1 = partially meets objective; 2 = meets objective						

Positive impacts:

46. Introducing the ability to create marine reserves in the EEZ and continental shelf would be a significant positive impact and would result in a larger number of values, habitats and species being able to be protected compared with the status quo (the area of the territorial sea, the EEZ and extended continental shelf is over 20 times New Zealand's land area).

47. The current MRA's scientific focus means that a range of important values the marine environment provides cannot be protected. By widening the design and site selection criteria for reserve proposals, the range of values able to be protected is increased.

48. This option ensures that public and economic interests are considered in decision-making about marine reserve proposals, whilst broadening public and Ministerial involvement in the establishment and decision-making processes. It also provides for community involvement in the management of marine reserves.

49. These changes will help to strengthen communities' ownership of local coastal reserves in all aspects, from establishment to management.

50. Although marine reserves remove the ability to undertake activities that disturb or extract resources from them, a wide range of activities are allowed in marine reserves, and several offer significant revenue to communities. For example:

    - about 375,000 people visited the Cape Rodney – Okakari Point Marine Reserve in North Auckland in 2007[4];
    - the Poor Knights Islands Marine Reserve (established in 1981) has been rated by aquatic legend Jacques Cousteau as one of the top 10 dive spots in the world. A single commercial diving operator taking about 12,000 visitors there each year, adding significant value to the Northland economy.

51. Further assessment of the likely cost impacts of a proposed MPA network would need to be assessed on a case-by-case basis.

52. Although there are some negative effects on the fishing industry, marine reserves also have considerable benefits. Marine reserves have the potential to increase fishery

[4] Hunt, L. (2008). Economic Impact Analysis of the Cape Rodney Okakari Point (Leigh) Marine Reserve. Available from: http://www.marinenz.org.nz/documents/leigh_eco_impact.pdf

catches in two ways: through emigration of large fish across the border of a reserve into fishing areas ('spill over'), and through breeding from larvae from a reserve that can enhance recruitment into regional fishery stocks. There are also a variety of potential benefits of reserves that are important to the industry, but will not directly impact catches. These include: helping to maintain species genetic diversity and population size structure; providing a buffer against recruitment failure; and providing unharvested 'baselines' from which to measure the effects of fishing.[5]

53. A further positive impact is that clarity would be provided around how the Treaty of Waitangi and iwi/Māori interests are considered in the development of marine reserves, which will make giving effect to the Treaty principles more meaningful and consistent. It would also take into account the Māori Fisheries Settlement and is consistent with the Legislation Advisory Committee Guidelines, which the current MRA does not do.

54. Updating the MRA to increase the flexibility of marine protection under marine reserves will enable New Zealand to moderately meet its commitment as a party to the United Nations' Convention on Biological Diversity.

Negative impacts:

55. No take areas for fishing reduce the area in which commercial fishers can catch their quota. However, although the area in which a quota owner can catch their quota is reduced, their quota stays the same – they just cannot catch any fish within a no take reserve. This may reduce the economic value gained from fishing resources if commercial fishers have to travel considerably further to fish outside the no take reserve. This would particularly be a concern for smaller commercial operators. Again, the cost impacts of a proposed MPA network would need to be assessed on a case-by-case basis.

56. Updating the MRA would partially address the majority of the objectives outlined, and likely result in reduced use of special legislation to create marine protected areas. However, the suite of marine protection tools would still be split across different legislation, with not all of the legislation working together in a holistic way. Because of this, this option does not adequately address the issues of legislative fragmentation, and processes being complex and adversarial.

57. Although the focus of marine reserves would be widened, it would not be possible to create different categories of protection to allow for varying uses. Because of this, when creating individual marine reserves, it would be difficult to respond to multiple values and to get broad support for specific marine reserve proposals.

58. There is also no mechanism in this option to manage commercial tourism activities in marine reserves in a similar way to how they are managed in National Parks by the Department of Conservation (DoC).

59. For these reasons, the system would still be complex and reasonably inflexible. Some of these negative impacts could be addressed in the legislation, but as this would result in an even more significant overhaul of the legislation, the development of a new Act may be more appropriate (such as option 3).

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[5] Rawley, R (1992). Impacts of Marine Reserves on Fisheries. Published by DoC. Accessed from: http://www.doc.govt.nz/documents/science-and-technical/SR51.pdf

Option three: Create a new Marine Protected Areas Act

60. A new MPA Act would provide four categories with different levels of protection. This will mean that protection can be designed to meet the specific environmental needs of an area, while taking into account existing and future values and uses. It would also allow the creation of MPAs in all marine areas under New Zealand's jurisdiction, including the territorial sea, the EEZ and the extended continental shelf.

61. The highest level of protection would continue to be provided by marine reserves, but the other categories would allow for varying levels of use alongside protection, enabling sustainable management of our marine environment.

62. The four proposed categories are:
    - Marine reserves
    - Species-specific sanctuaries
    - Seabed reserves
    - Recreational fishing parks

63. Each category would have its own purpose and objectives, as well as a clear definition of which activities are allowed or prohibited. When considering a proposal for a new MPA, the purpose and objectives of each category would be taken into account. It would also be possible to apply different restrictions within MPAs of the same category. For example, the restrictions in place for a species-specific sanctuary to protect blue whales would differ from those required in a sanctuary to protect coral.

64. See Table Three for a summary of the policy detail for each category (purpose, area covered and proposed scope).

65. Which Minister takes the lead on the development of a particular MPA will depend on the category of MPA under consideration:
    - marine reserves and species-specific sanctuaries – Minister of Conservation;
    - seabed reserves – Minister for the Environment;
    - recreational fishing parks – Minister for Primary Industries.

66. No category of MPAs can be established in areas where there are petroleum or mineral mining permits under the Crown Minerals Act 1991 for the life of the permit, unless the permit holder agrees. However, it would be possible for Seabed Reserves, Species-Specific Sanctuaries and Recreational Fishing Parks to be established within prospecting or exploration permit areas.

67. The MPA Act would enable the establishment of a network of marine protected areas by providing for a strategic, collaborative process to be used to determine an optimal network of MPAs.

68. There would be two processes for the creation of MPAs – a board of inquiry process and a collaborative process. Relevant Ministers would jointly decide which process is more appropriate for a particular proposal.

69. The MPA Act would recognise the Treaty of Waitangi and strengthen iwi/Māori involvement in marine protection processes by:
    - include a Treaty clause consistent with contemporary legal drafting principles
    - be consistent with the current levels of statutory recognition of Treaty of Waitangi, obligations and responsibilities

- provide meaningful iwi/Māori involvement in all stages of the marine protection process
- require that interested iwi/Māori must be consulted during the process for establishing MPAs
- ensure that legislative reforms will not result in any inconsistencies with the obligations provisions ofarising from Treaty settlement legislation
- maintain the integrity of rights and interests recognised under the Marine and Coastal Area (Takutai Moana) Act 2011
- allow for consideration of the best way to interface with the protect rights and mechanisms granted under the Marine and Coastal Area (Takutai Moana) Act 2011, including whether MPA processes should be initiated in areas subject to applications under that Act by only allowing MPAs in those areas with the consent of relevant iwi/Māori
- ensure that existing arrangements for non-commercial customary fishing, including taiapure and mātaitai reserves are fully recognised and maintained
- require that any advisory committees on MPAs include representation of iwi/Māori.

70. Once a species-specific sanctuary, seabed reserve or recreational fishing park has been established, activities that are allowed within the protected area will still be required to go through the relevant consenting processes under the RMA and the EEZ Act, unless they are permitted activities under these Acts. However, decisions made on all uses of the marine environment will be closely aligned to avoid duplication and improve integration of the marine management system.

Table Three: Summary of categories under the proposed new Marine Protected Areas Act

	Marine reserve	Species-specific sanctuary	Seabed reserve	Recreational fishing park
Purpose	To preserve and protect areas in their natural state for the conservation of marine biodiversity. These areas will protect not only unique and special sites, but also representative sites that exemplify important ecosystem features and values.	To preserve and protect one or more named species while allowing sustainable use. These sanctuaries will provide the ability to establish spatial protection for marine species at sea and on land areas used by the species, including those protected under the Marine Mammals Protection Act 1978 or the Wildlife Act 1953.	To preserve and protect the seabed environment while allowing sustainable use. Seabed reserves will control activities that impact the seabed and a zone above it.	To enhance the enjoyment and value of recreational fishing in high demand areas by reducing the impact of commercial fishing. This will encourage recreational fishers to take more responsibility for the impacts of their activities in these areas.
Areas where permitted	Territorial sea and Exclusive Economic Zone	Territorial sea, Exclusive Economic Zone and continental shelf	Territorial sea, Exclusive Economic Zone and continental shelf	Territorial sea
Proposed scope of category	These areas will be managed in their natural state and will be strictly protected. There will be no fishing or petroleum or minerals activity within marine reserves.	Which activities are restricted or prohibited will vary according to factors such as the ecology of the particular species, the components of the ecosystem that are important to that species, or any specific protection objectives the community may have. Fisheries resources will be managed using established tools under the Fisheries Act 1996, in a manner consistent with the purpose of the sanctuary.	Seabed mining, bottom trawl fishing and dredging will be prohibited in these areas. Other activities may be allowed if they do not conflict with the purpose of the reserve.	Commercial fishing will generally be prohibited for the main recreational species. Specific parks might allow commercial fishing to continue for certain species, or allow marine farming. Customary fishing will continue. Ongoing management of fisheries resources (eg, making of regulations prohibiting commercial fishing) will be carried out under the Fisheries Act 1996. Some petroleum or minerals activities could be allowed.
Lead agency	Department of Conservation	Department of Conservation	Ministry for the Environment	Ministry for Primary Industries
Current approach	Marine reserves are established under the Marine Reserves Act 1971 and through special legislation, but can be established only in the territorial sea and only for scientific purposes.	Individual species are currently protected through the Wildlife Act 1953 and Marine Mammals Protection Act 1978.	Some areas of the seabed are protected through benthic protection areas and seamount closures under the Fisheries Act 1996, but are only protected from the effects of bottom trawling and dredging.	Equivalent areas can be created under the Fisheries Act 1996, and through special legislation (eg, Sugar Loaf Islands).. They are managed under the Fisheries Act 1996.

Impacts – option 3

Table Four: Analysis of option 3 (create an MPA Act) against objectives

	Objective 1: Representative network for marine biodiversity	Objective 2: Strategic decision-making	Objective 3: Customary rights and values and ToW	Objective 4: Engagement with all stakeholders and public	Objective 5: Varying levels of protection and use	Objective 6: International obligations are met
Option 3: **MPA Act**	2	2	2	2	2	2
Key: 0 = doesn't meet objective; 1 = partially meets objective; 2 = meets objective						

Positive impacts:

71. Same impacts as for option 2. In addition:

72. Creating an MPA Act would meet all of the objectives outlined, including the ability to create a network of protected areas that is comprehensive and representative of New Zealand's marine habitats and ecosystems.

73. An MPA Act would provide protection for a broad range of biodiversity elements whilst enabling varying levels of use. It would allow for greater alignment of decision-making across the regime, including with the RMA and EEZ Act. This would provide significant clarity to users by reducing duplication and improving integration of the marine management system.

74. The proposed legislation would provide for a strategic, collaborative process to be used to determine an optimal network of MPAs. It is anticipated that a new MPA Act would significantly reduce the need for special legislation. However, special legislation will remain an option for achieving marine protection outcomes if needed.

75. It is appropriate to strengthen iwi/Māori involvement in marine protection processes. Māori resource management ethos provides for sustainable use so that marine biodiversity is enhanced and is not subject to unacceptable risks. This option recognises this ethos and iwi/Māori interests in the ocean, including safe guarding taonga, mahinga kai (food gathering), commercial fishing and customary rights.

76. Integrating protection tools and decision-making processes, combined with flexibility in the level of protection, means a strategic approach can be taken to create a network of protected areas that is comprehensive and representative of New Zealand's marine habitats and ecosystems. This will also allow New Zealand to meet its commitment as a party to the United Nations' Convention on Biological Diversity.

77. This option would also provide a mechanism to manage commercial tourism activities in marine reserves in a similar way to how they are managed in National Parks by DoC. This would enable the balance between protection and use to be managed appropriately to ensure the objectives of specific marine reserves are met.

78. Fishing quota owners (including holders of Treaty of Waitangi settlement quota) would be compensated when they are unduly impacted by the establishment of a Recreational Fishing Park.

79. The mechanism for determining whether and what amount of compensation is payable would be a form of the Undue Adverse Effects test (UAE test), similar to the one currently used when commercial fishing is affected by proposed aquaculture activity. A case-by-case assessment would be carried out that recognises the particular characteristics of the commercial fisheries in the area. Compensation would be payable when the impact on commercial fishing is deemed to be materially significant, consistent with relevant criteria that would be included in the proposed MPA Act.

80. As with the existing aquaculture UAE test, if quota owners disagree with the proposed level of compensation, they would be able to have their offer of compensation assessed through an independent resolution process under the Arbitration Act 1996. The assessment would be made by an independent arbitrator and would include the right of appeal to the High Court on points of law.

81. Compensation would not be paid to quota owners in relation to the establishment of Seabed Reserves, Species-Specific Sanctuaries or Marine Reserves. This is consistent with existing law in respect of commercial fishing, under which the Crown is not liable to pay compensation where it takes measures for the purpose of ensuring sustainability.

82. Having two processes for the creation of MPAs (a board of inquiry process and a collaborative process), would allow each proposal to be considered under the most appropriate process, taking into account the characteristics of each particular proposal. The decision as to which process is best for a proposal would be made on a case-by-case basis.

83. The board of inquiry process is more likely to be used for proposals of national significance or direction. The benefits of the process are timely and consistent decisions made by independent board members with relevant expertise. Boards of inquiry will be able to take a strategic approach to questions of both protection and use, and how proposals are able to contribute to the existing network of MPAs.

84. Collaborative processes are increasingly recognised as a successful approach to making decisions where there are multiple stakeholder views. The collaborative approach will be most applicable where there is an issue with a strong local or regional interest. It will support meaningful engagement with iwi/Māori, local communities, business and the wider public. The main advantage of the collaborative process is that it allows the community itself to decide what it values and make trade-offs. It encourages stakeholders to share their ideas openly from the beginning of the process and discourages adversarial engagement. Successful collaboration results in outcomes that are driven and widely supported by the community.

Negative impacts:

85. An MPA Act would have some cost impact on the Government and communities. For example, collaborative processes can be costly to all participants in terms of the time and financial resources needed to support it. There may also be costs related to developing a network of MPAs. More comprehensive assessment of the cost impacts of the proposals will be developed.

86. No take areas for fishing reduce the area in which commercial fishers can catch their quota. However, although the area in which a quota owner can catch their quota is reduced, their quota stays the same. This may reduce the economic value gained from fishing resources if commercial fishers have to travel considerably further to fish outside

the no take reserve. This would particularly be a concern for smaller commercial operators. However, in Recreational Fishing Parks there would be a mechanism to provide compensation to quota owners.

Risks:

87. Elements of the MPA Act involve concepts that have previously proved to be highly controversial (e.g. compensation to quota owners). There is a risk that public consultation could become focused on these controversial issues. This could make broad public consensus on marine protection reform difficult to achieve.

88. How the existing protection tools will be transitioned into the new structure will be determined as part of the policy development process, and will be documented in the final Cabinet paper and RIS. It is intended that any concerns raised by iwi and local communities during consultation will be addressed in the policy development phase.

89. There are likely to be significant concerns by local communities in relation to any effect on special legislation establishing marine protected areas. An example is the recently enacted Kaikoura (Te Tai o Marokura) Marine Management Act 2014, which implemented protected areas and particular management provisions as a package. To address these concerns, any MPA Act would integrate the management of all existing marine protected areas, with the current levels of protection and particular administrative arrangements remaining unchanged.

90. In addition to marine reserves formed under the MRA, there are also around 15 marine protected areas established for specific purposes under various pieces of legislation.[6] It may not be possible to transition all of these marine protected areas without some changes to the scope, levels of protection and particular administrative arrangements. Iwi and local communities may raise concerns about perceived downgrading of marine protected areas in their region, although this is unlikely.

91. There are a number of risks and challenges associated with providing compensation in relation to commercial fishing activities that are affected by the establishment of Recreational Fishing Parks. This includes potentially significant costs, legal issues and challenges around social equity and fairness.

92. There is a lack of a detailed guiding strategy to provide the overarching vision of a new MPA Act. Without a detailed strategy there is a minor risk that an MPA Act may not achieve the objectives of reform as efficiently as it could.

Consultation

93. A collaborative, cross-agency approach has been used in developing the proposal outlined in the discussion document, which is based on a pre-election commitment from the National Party. The agencies involved were: the Department of Conservation (DoC); the Ministry for Primary Industries (MPI); the Ministry of Business, Innovation and Employment (MBIE); the Ministry for the Environment (MfE); the Treasury and Te Puni

[6] Includes the Fiordland Marine Area, Mimiwhangata Marine Park, Sugar Loaf Islands Marine Protected Area, 10 cable closures, and several fisheries closures, including around the subantarctic Bounty Islands and Campbell Island/Motu Ihupuku.

Kōkiri (TPK). The Ministry of Justice (through the Office of Treaty Settlements) had some involvement in the process.

94. This RIS used material provided by officials from DoC, MPI, MfE, MBIE, TPK and Treasury, and considered the outcomes of earlier processes that involved government consultation (e.g. proposals to amend the Marine Reserves Act in 2012).

95. The success of any process for establishing marine protected areas is dependent on broad public acceptance of the process as being fair and equitable. As a first step in communicating and consulting the public on marine protection reform the Iwi Leaders Group will be consulted on the discussion document *A new Marine Protected Areas Act: Protecting our big blue backyard.* The discussion document outlines the details of option three (MPA Act) for reforming marine protection.

96. Following consultation with Iwi Leaders, an updated discussion document and RIS incorporating the Iwi Leaders' views will be taken to Cabinet to seek approval to consult with the general public.

97. After consultation, a Cabinet paper and updated RIS with further analysis incorporating consultation findings and the final policy proposals will be submitted to Cabinet.

Conclusions and recommendations

98. Continuing the status quo (option one) will not achieve the stated objectives. Option two, updating the MRA, will partially meet the objectives of marine protection reform but the issues of fragmentation, co-ordination and processes being overly cumbersome and adversarial will still remain. Some of the negative impacts of option two could be addressed, but as this would result in an even more significant overhaul of the MRA, the development of a new Act may be more appropriate.

99. Option three, creating a new MPA Act, is currently the preferred option. This option will achieve all the objectives, through integrating various elements of New Zealand's marine protection regime into one legislative mechanism. This will provide protection for the marine environment whilst enabling varying levels of use.

100. Integrating protection tools and decision-making processes, combined with flexibility in the level of protection, means a strategic approach can be taken to create a network of protected areas that is adaptable and representative of New Zealand's marine biodiversity, habitats and ecosystems.

101. We consider that the risks identified can be mitigated through well-thought out policy design and implementation.

102. It is important to note that this is a preliminary RIS. Officials will analyse further information and evidence provided during consultation before submitting final policy proposals to Cabinet.

Implementation

103. Giving effect to the proposals contained in this RIS will require legislative amendment and/or development. Successful implementation of both options outlined requires strong community and Government support and involvement.

104. Depending on the option progressed, implementation of a new marine protection approach may need to cover the following matters:

- provisions for transitioning of current marine protected mechanisms into the new regime;
- processes for establishing marine reserves/protected areas;
- processes for managing recreational and commercial activity in marine reserves/protected areas;
- processes for economic compensation;
- processes for involving iwi/Māori in the development and management of marine reserves/protected areas;
- processes for community involvement in managing marine reserves/protected areas;
- monitoring and reporting;
- compliance and law enforcement.

Monitoring, evaluation and review

105. The central government agencies involved in marine protection (mainly DoC, MPI and MfE) would monitor and review the implementation and progress of a new marine protection regime. These agencies would carry out targeted monitoring and evaluation of the desired objectives to review how the new approach to marine protection is performing. This could include looking at aspects such as:

- the number of new marine reserves/protected areas developed;
- the types of protection new reserves are providing;
- environmental impacts, such as marine wildlife populations;
- how the community, iwi and stakeholders are being involved in the process and management of marine reserves/protected areas;
- the time and cost of the process to develop new marine reserves/protected areas;
- how recreational and commercial activity is being managed in marine reserves/protected areas;
- how any new marine reserves/protected areas are impacting on communities socially, economically and culturally.

106. The proposed MPA Act would require the periodic review of MPAs. This would help the MPA network to remain representative and adaptable, and to meet its objectives. A review may be a condition of the establishment of an MPA, or may be triggered by particular events, such as the emergence of a new threat or new technology, or the discovery of a valuable new resource.

107. Reviews would be undertaken by either a board of inquiry or through a collaborative process. The outcome of a review should be consistent with the original purpose of the MPA. In exceptional circumstances, MPAs could be revoked if a review identifies that this would deliver better outcomes for sustainably managing our ocean.

108. The timing of reviews could be flexible, and will take into account the purpose for which the MPA was established. For example, if an MPA is established to protect a particularly long-lived slow-growing species, then the timing of its review should reflect the time

required for that species to demonstrate a response to any management regime put in place.

109. Further consideration of monitoring, evaluation and review measures will be considered as part of the further policy development process.