New Zealand Government

A New Marine Protected Areas Act

CONSULTATION DOCUMENT

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We need to ensure New Zealand's vast oceans are sustainably managed and protected to support a strong economy, a rich natural environment, and our great Kiwi lifestyle. We have good laws with our internationally recognised quota management system under the Fisheries Act 1996 and the Maritime Transport Act 1994. We had no system of environmental management for other maritime activities like mining or petroleum in the Exclusive Economic Zone (EEZ) until the Government passed the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. The next step in improving New Zealand's ocean management is to provide a better system of marine protected areas in the territorial sea.

We are proud it was a former National Government that passed the Marine Reserves Act in 1971. It was world leading then, but best practice in marine protection has developed significantly in the 40 years since. The Marine Reserves Act 1971 lacks flexibility by only allowing no-take marine reserves. The processes for creating and managing reserves do not work well for local communities, iwi/Māori or business.

These problems have meant that governments have repeatedly resorted to special legislation to put protection in place in areas like the Sugar Loaf Islands, Subantarctic Islands, Kaikōura and Fiordland, or used tools like fisheries closures under the Fisheries Act that provide only limited protection. This approach is inefficient, confusing and is not working.

This reform proposes four different types of marine protected areas, just as we have different types of parks and reserves for different purposes on land.

Marine reserves would be the same as under the current Marine Reserves Act 1971, being strictly protected with the purpose of conserving biodiversity in its natural state.

Species-specific sanctuaries would be similar to marine mammal sanctuaries but would also be available to other marine life like albatross or great white sharks, with rules focused on the specific protection needs of that species.

Seabed reserves would protect areas of the sea floor and would include prohibitions on seabed mining, bottom trawl fishing and dredging.

Recreational fishing parks would recognise that there are areas where the recreational fishing experience could be improved by providing a preference for non- commercial fishing for some species.

These different types of marine protected areas would be managed under a new and improved Act of Parliament. This would enable an integrated approach where a community can simultaneously consider different types of protection.

The proposed new law would require an analysis of the economic potential of an area, so the opportunities and costs of any new protected areas are openly considered. It would also encourage a collaborative approach to develop protected areas where iwi/Māori and interested parties, like fishers, conservation interests and industry, get to work together on better management of our marine environment.

Law reform in this area is difficult and previous attempts have been unsuccessful. There are strongly competing public and private interests as well as multiple government agencies involved. This new approach seeks to find a way forward that recognises the need for a

balance between New Zealand taking up the economic opportunities for jobs and growth while also ensuring the right framework is in place for reserves, sanctuaries and recreational parks in the marine environment.

Alongside our ambition for improving the framework for marine protection tools, for the long term, we are also advancing specific proposals in the Kermadecs, Hauraki Gulf and the Marlborough Sounds.

The Prime Minister announced the 620,000 square kilometre Kermadec Ocean Sanctuary at the United Nations on 29 September 2015. Applications for seabed mining activities requiring decisions meant the Government needed to resolve its position on the future of this area. This Sanctuary will be created by separate legislation. The general marine protection tools in this consultation document do not include the EEZ, with the proposed Sanctuary covering 16 per cent of the EEZ. Other EEZ proposals may be considered but, given the size and significance of the EEZ, would need to be advanced by specific legislation.

We also announced during the 2014 election campaign our policy of creating two recreational fishing parks in the inner Hauraki Gulf and Marlborough Sounds. These proposals will be delivered as part of this legislative reform, and we are seeking feedback on the details. These two recreational fishing parks are about enhancing the opportunity for recreational fishing in two of our most popular areas.

We welcome your input into these ideas for improving management of New Zealand's marine environment.

Hon Nathan Guy
Minister for Primary Industries

Hon Maggie Barry
Minister of Conservation

Hon Dr Nick Smith
Minister for the Environment

Section 1:
Our ocean environment

New Zealand is a globally significant maritime nation. Our marine environment has an extraordinarily rich and unique array of animals, plants and habitats, extending from sea level to a depth of more than 10 kilometres, and from the subantarctic to the subtropical. Scientists estimate that as much as 80 per cent of New Zealand's indigenous biodiversity may be found in the sea. Over 15,000 marine species have been identified in our waters, but scientists believe there may be as many as 65,000. That represents around 10 per cent of global marine biodiversity. Our isolation means many of these species are not found anywhere else in the world.

The ocean also supports our economy and thousands of jobs. Over 1500 commercial fishing boats operate around New Zealand's coasts, with fisheries adding $1.5 billion to our exports each year. The oil and gas industry contributes $2.8 billion to the economy each year, approximately 90 per cent of which is from the sea. Our sea ports move more than 49 million tonnes of exports (99 per cent by weight of all exports) and imports, with a combined value of more than $75 billion annually.

Most of us live near the coast and use the ocean for recreational fishing, boating, swimming and diving. We have about 900,000 recreational boats, and about 20 per cent of us go on over 2.3 million recreational fishing trips each year, catching 17 million fish. Forty-two taiapure and mātaitai reserves[1] provide hapū/iwi with a role in management of fishing grounds of special significance to them.

Cumulatively, these commercial, recreational and cultural activities put pressure on our marine environment, which is intensified by global and local factors such as ocean acidification, sea temperature rise and land-based runoff. Given our reliance on the ocean, we need to ensure a system is in place to support its ongoing health and productivity.

The Government's ambition is for New Zealand to be a world leader in the sustainable management and protection of our marine environment, so New Zealanders can continue to enjoy and benefit from its wealth for generations to come. The Government also wants to be able to market New Zealand's exported seafood as product coming from a nation that is a careful steward of its ocean environment.

1.1 Purpose of the consultation document

This consultation document sets out the Government's proposal for a new approach to marine protection in New Zealand. Your feedback is welcomed on the proposal and the questions inserted throughout the text, along with any other information you may want to submit.

Submissions are due by 5.00pm on Friday 11 March 2016. Information on how to make a submission is included in section 7.

[1] A taiapure is a local management tool established in an area that has customarily been of special significance to iwi or hapū as a source of food or for spiritual or cultural reasons. Mātaitai reserves recognise and provide for customary food gathering by Māori and the special relationship between tāngata whenua and places of importance for customary food gathering. Mātaitai reserves can be declared over identified traditional fishing grounds where a special relationship exists with tāngata whenua.

1.2 The Kermadec Ocean Sanctuary

The Kermadec Ocean Sanctuary

On 29 September 2015, Prime Minister John Key announced a proposal to create a 620,000 square kilometre Kermadec Ocean Sanctuary. Legislation creating the Sanctuary will be progressed in 2016 separately from the proposals in this consultation document. The purpose of the legislation will be to preserve this important marine area in its natural state.

The Sanctuary will be located in the Kermadec region of the South Pacific Ocean, about 1000 kilometres northeast of New Zealand. Its deep, clear waters are home to an amazing array of marine life and provide and important migration path for many marine species crossing the Pacific Ocean. There is nowhere else in New Zealand's Exclusive Economic Zone where such a range of tropical, subtropical and temperate species of fish, birds and marine mammals can be found co-existing together.

The area is one of the most geologically diverse in the world. It contains the world's longest chain of submerged volcanoes and the second deepest ocean trench with a depth of 10 kilometres.

To date, the isolation of the area and the depth of water have ensured a very low level of human impact, but increased activity in fishing, seabed mining and the spread of pollution across the world's oceans makes it important to protect these globally significant pristine areas.

This proposed Sanctuary aligns New Zealand with similar initiatives by the USA, UK, Australian, and Chilean governments for large scale ocean protected areas.

Section 2:
The need for a new approach to marine protection

The Government wants New Zealand's marine management system to achieve an appropriate balance between protecting our marine environment and maximising commercial, recreational and cultural opportunities now and in the future.[2] The Government believes this balance is achieved when important representative ecosystems are identified and protected, and the sustainable management of our resources for recreational, cultural or economic benefits is facilitated and optimised.

Marine protected areas (MPAs) are a tool to protect the marine and coastal environment. They protect different marine habitats and ecosystems and are most effective when they form a representative and adaptable network.[3] Some MPAs perform various functions in addition to protection, such as providing for tourism, recreational enjoyment and economic activities. They also allow for a better understanding of the marine environment.

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2 See appendix B for a table summarising New Zealand's existing marine management legislation.

3 New Zealand has committed to establishing a representative network of marine protected areas as a Party to the United Nations' Convention on Biological Diversity.

What is a 'representative network' of marine protected areas?

A representative network is characterised by the representation of different habitats and ecosystems in New Zealand's marine environment in one or more MPA. This helps ensure the ability of an MPA network to survive natural catastrophes and major impacts, by replicating each habitat and ecosystem across multiple MPAs within the network. Each MPA in the network should be well managed and of sufficient size and shape to sustain the species and habitats it represents. A well designed and managed MPA network will provide a greater contribution to a healthy marine environment than a collection of individually identified MPAs.

2.1 How marine areas are currently protected

New Zealand was one of the first countries in the world to develop marine protection legislation when it introduced the Marine Reserves Act in 1971. A proposal for a marine reserve may be made at any time by any individual or group that meet the criteria under the Marine Reserves Act. Marine reserves offer the highest level of protection in New Zealand because they generally prohibit the removal of all marine habitats and life, providing an environment for scientific study.

New Zealand has other legislative tools available that offer marine protection in specific circumstances, including species protection under the Wildlife Act, and marine mammal sanctuaries established under the Marine Mammals Protection Act. These statutes do not provide for a range of marine protection and use measures to be implemented as a package, so some key initiatives over the past two decades have been put in place using special Acts of Parliament, such as in Fiordland, Kaikoura and the Subantarctic Islands.

Fisheries restrictions under the Fisheries Act have also been used to sustainably manage fisheries and mitigate the impact of fishing activities on the environment and various affected species within the territorial sea and beyond.

Within the territorial sea, New Zealand currently has 44 marine reserves, eight marine mammal sanctuaries, and four benthic protection areas.[4] The location of these is shown in appendix A and a full list can be found on the Department of Conservation website: www.doc.govt.nz/nature/habitats/marine/marine-reserves-a-z/.

Bill Ballantine, the father of marine protection in New Zealand

"Our marine environment is magnificent. It is not some trivial extra, like the ribbon on a parcel, but a major asset, worthy of our care and attention" (Ballantine, 1991, p 15).

Dr Bill Ballantine, QSO, MBE (1937–2015), successfully promoted the establishment of 'no-take' marine reserves in New Zealand and internationally. He worked tirelessly for six years to promote the enactment of the Marine Reserves Act 1971, which resulted in the establishment of the Leigh Marine Reserve (Cape Rodney–Okakari Point), New Zealand's first marine reserve.

2.2 Need for reform

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

The Marine Reserves Act was New Zealand's first dedicated marine protection legislation, but it no longer meets New Zealand's needs. This is because its purpose is too narrowly focused. Although it enables the complete protection of areas, marine reserves can only be established for the purpose of scientific study.

Other issues with the Marine Reserves Act are:

- consultation processes are inadequate:
  - there is no single consultative process that helps build broad support
  - consultation is undertaken by the person making the proposal, which can lead to a lack of neutrality
  - the perceived lack of credibility in the process, and the need for a concurrent Ministerial decision, leads to unnecessary duplication of consultation
- the Act itself does not specifically reference the Treaty of Waitangi and provides few mechanisms for iwi/Māori participation in decision-making, although the Treaty provision in the Conservation Act 1987 is referenced
- proposals are considered in isolation, making it difficult to determine a specific area's contribution to a broader network of protected areas.

[4] Around the Kermadec Islands, the entire territorial sea is occupied by the Kermadec Islands Marine Reserve, and the Kermadec Benthic Protection Area is overlaid on that reserve. Benthic protection areas cover the entire territorial sea around the Antipodes Islands, Bounty Islands and Campbell Island, and have subsequently been augmented by a mix of marine reserves and additional regulations under the Fisheries Act.

New Zealand has several other tools that provide marine protection, but they are split across different legislation with a variety of purposes and decision-making processes. These include the Marine Mammals Protection Act, the Wildlife Act, and benthic protection areas or other fisheries restrictions under the Fisheries Act.

These tools all protect the marine environment in some way, but each on its own offers only limited protection. For example, marine mammal sanctuaries under the Marine Mammals Protection Act can be established to protect marine mammals from harmful human impacts, particularly in vulnerable areas such as breeding grounds. However, although these areas have various benefits they only restrict specific activities with the potential to harm marine mammals and do not explicitly provide protection for other marine species at risk.

Because these tools are so limited and cannot be implemented as a package, governments have repeatedly resorted to special legislation to put protection in place in areas like Fiordland, Kaikōura, Taranaki and the Subantarctic Islands.[5] The process for creating special legislation can be long, does not provide certainty for communities, and can mean there are inconsistencies in how each area is managed. As with all the other tools, decisions are made on a case-by-case basis. The result is an approach to marine protection that incrementally allocates areas for differing purposes, rather than creating a representative and adaptable network of MPAs.

Summary of issues

Significant shortcomings of the current approach to marine protection include:

- decisions on marine protection are made with little coordination
- marine reserves can only be established for the purpose of scientific study
- consultation processes in statute do not provide for different tools to be considered through a collaborative process and can lack credibility
- proposals are not considered in a way that minimises costs for all parties involved
- the location of protected areas is not considered in a way that maximises economic and environmental benefits for New Zealand
- consideration of the effects on existing and future uses and values is inadequate, potentially limiting the sustainable growth of the marine economy
- provision for iwi/Māori involvement in the development and management of MPAs is inconsistent and often inadequate
- it does not address recreational amenity values including those of recreational fishers in high-demand areas
- it does not enable the creation of a representative and adaptable network of protected areas across the territorial sea
- it does not provide a dynamic approach for changing or improving protection as new information becomes available or new threats emerge.

[5] For example, it took 21 years and all of the tools described in this section to achieve comprehensive marine protection around the Subantarctic Islands. The process for developing special legislation took six years, from appointment of a stakeholder forum in 2008 to new legislation in 2014.

The Government considers that the current approach does not provide adequate protection of the marine environment while growing the economy and allowing New Zealanders now and in the future to enjoy everything the ocean has to offer. To achieve the Government's ambition for New Zealand to be a world leader in the sustainable management and protection of our marine environment, the existing approach needs to change.

Questions

1. Do you agree there is a need for reform of New Zealand's approach to marine protection?
2. Are there any significant issues that haven't been identified?
3. Are there parts of the existing approach to marine protection that should be retained? Why?

Section 3:
The proposal: a new approach to marine protection

As outlined in section 2, the current approach to marine protection does not deliver a satisfactory system for sustainably managing New Zealand's oceans. We have an opportunity to improve the way we protect and provide for the best use of New Zealand's marine environment.

The Government is proposing a broad new approach that provides protection of all elements of biodiversity while also enabling varying levels of use. It proposes to repeal the Marine Reserves Act and replace it with a modern and fit-for-purpose Marine Protected Areas Act (MPA Act).

As part of the Government's proposed reform of the marine protection framework, it also intends to establish new recreational fishing parks in the Hauraki Gulf and Marlborough Sounds. Section 5 provides more detail about each of the proposed recreational fishing parks.

3.1 Objectives of the new Marine Protected Areas Act

The new MPA Act will meet the following objectives:

1. A representative and adaptable network of MPAs is created over time to enhance, protect and restore marine biodiversity in New Zealand's territorial sea.
2. Decisions about environmental protection and economic growth are made in a planned and integrated way, based on sound evidence, to maximise the benefits to New Zealand.

3. Customary rights and values are recognised, ensuring the principles of the Treaty of Waitangi are met and the Crown's Treaty obligations are delivered.
4. Collaboration is supported through meaningful engagement with iwi/Māori, local communities, business and the wider public.
5. Varying levels of protection and use are provided for, including consideration of all existing and future uses and values.
6. New Zealand's international obligations in relation to the marine environment are met.

3.2 Four categories for marine protection

The new MPA Act will provide four categories with different levels of protection. This will mean protection can be designed to meet the specific environmental needs of an area, while taking into account existing and future values and uses.

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

The four categories proposed are:

1. marine reserves
2. species-specific sanctuaries
3. seabed reserves
4. recreational fishing parks.

The proposed Act will set out the purpose of each of the four categories. This will include which activities are allowed or prohibited in all areas protected in a particular category. For example, seabed mining will be prohibited in all seabed reserves. See table 1 for a summary of the purpose and proposed scope of each category.

Specific objectives for particular areas will be determined on a case-by-case basis but must be consistent with the purpose of the relevant category. This means it will 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 great white sharks would differ from those required in a sanctuary to protect coral.

The new MPA Act will allow the creation of MPAs in New Zealand's territorial sea, which reflects the current scope of the Marine Reserves Act. The territorial sea is where the highest level of competition for access and resources currently exists, where the risks to marine biodiversity are greatest and where a large number of commercial, recreational and cultural activities take place. Because of this, we know more about the marine environment in the territorial sea than in other areas under New Zealand's jurisdiction.

Decisions on marine protection in the territorial sea can be made taking into account an existing knowledge base, and often with clearly identified values and interests. As our knowledge of the marine environment in New Zealand's Exclusive Economic Zone and continental shelf increases over time, there may be a case for extending the proposed categories of protection to these areas. This could include any new proposals beyond the Kermadec Ocean Sanctuary, which could be progressed by way of special legislation.

Table 1: 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 affect 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 and enabling recreational fishers to take more responsibility for the effects of their activities in these areas and the sustainability of the fishery.
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. 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. Marine farming will not be affected and 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 for scientific purposes.	Individual species are currently protected through the Wildlife Act 1953 and Marine Mammals Protection Act 1978.	Some areas of the seabed in the territorial sea are protected through benthic protection areas 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.

Examples of how the marine protected area categories could be used

The Tonga Island and Horoirangi Marine Reserves in Tasman Bay are examples of how a **marine reserve** works. No fishing of any kind is permitted, and the sea floor cannot be disturbed in any way. Recreational activities are permitted, such as snorkelling, diving, kayaking and boating. Today, there are more than seven times as many crayfish and 40 times as many blue cod over 30 centimetres than when the Tonga Island Marine Reserve was created 20 years ago. In the Horoirangi Marine Reserve, which was created in 2006, crayfish are 3.5 times more abundant, and a third of blue cod are over 30 centimetres, compared with just 1.7 per cent outside the reserve.

A **species-specific sanctuary** could be established to provide comprehensive protection to any species at particular sites. For example, a sanctuary could be designed to protect albatross, great white shark or blue whale feeding or breeding areas. Activities that may adversely affect the species would be restricted, such as seismic surveying or certain fishing methods.

A **seabed reserve** could be established to protect specific habitats or ecosystems in particular areas of the sea floor. For example, a reserve could be designed to protect seagrass or mussel beds. Activities that may affect these habitats or ecosystems would be restricted, such as boat anchoring or mooring and bottom-fishing methods.

The Sugar Loaf Islands Marine Protected Area is an example of how a **recreational fishing park** may work. All commercial fishing is prohibited in the area except surface trolling for kingfish and kahawai. Recreational fishing is allowed, subject to certain restrictions on methods and species.

A marine reserve is seen as a complete protection tool in a geographic area that would not overlap with other categories of MPAs. It would be possible for the other three categories of MPAs to overlap, with careful attention given to their design so it could practically work within that particular area.

Questions

4. Do you support the outlined objectives of the new MPA Act?
5. Are there additional objectives that should be included in marine protection reform?
6. Are the four categories proposed for marine protection an appropriate way to achieve a representative and adaptable network of MPAs (objectives 1, 2, 5 and 6)?
7. If the options outlined in table 1 were applied in an area of interest to you, what impact would that have on your existing or future activities?

3.3 Economic value of marine protected areas

Sustainably managing our oceans means allowing for the use and development of our marine resources, as well as protecting them. We are already doing this on land, for example, by allowing conservation areas under the Conservation Act to be located in the same place as permitted areas under the Crown Minerals Act 1991.

MPAs will provide economic benefits to New Zealand, including supporting productive fisheries (eg, through protecting spawning and nursery habitats), increasing and enhancing tourism activities, and sustaining food harvesting.

For example, recreational fishing generates economic spin-offs for tourism operators, retailers and service industries. Recreational fishing parks will enhance these benefits by establishing areas where fisheries can be managed solely for non-commercial fishing, the quality of the fishing experience can be improved, and participation in fishing can be actively encouraged. In this way, recreational fishing parks will support the realisation of better value from New Zealand's coastal fisheries.

The growing marine tourism sector also generates significant economic revenue for New Zealand:

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

Recognising economic interests

In some areas, putting protection in place may affect existing and future uses of the marine environment. The new process for establishing MPAs will ensure effects on users are minimised, where this can be done without compromising necessary environmental protection. Where an area of the territorial sea has been suggested for marine protection, the economic potential of the area will be given full consideration. An independent assessment of the economic impact of a proposed MPA will be required as part of the decision-making process.

The Government recognises that establishing MPAs may affect some existing property and use rights in the marine environment. The following methods are proposed to ensure the effects on those rights are mitigated or minimised.

Fishing

Commercial fishing in New Zealand is managed through the Quota Management System, which enables sustainable economic value to be gained from fisheries resources.

The current Marine Reserves Act and the Marine Mammals Protection Act do not make any provision for compensation when a marine reserve or sanctuary is established. The Fisheries Act also makes it clear that the Crown is not liable to pay compensation where measures are taken for sustainability, which includes biodiversity protection.

The Government is proposing a different approach for the establishment of recreational fishing parks, the purpose of which is to enhance the recreational fishing experience by reducing commercial fishing effort in the area. The effect on commercial fishing may be similar to a situation where a marine farm is established and impacts the rights of quota holders to the point where compensation may be justified.

Compensation will not be paid to quota owners in relation to the establishment of seabed reserves, species-specific sanctuaries, or marine reserves because they are measures taken for the purpose of ensuring sustainability.

All fishing activities will continue to be managed under the Fisheries Act. The integrity of rights and interests recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and existing arrangements for non-commercial customary fishing will be fully recognised and maintained.

Oil, gas and minerals

Increasing the economic value of the oil, gas and mineral mining industries is one important element of the Government's Business Growth Agenda. Permits for oil, gas and mineral mining can be granted for prospecting, exploration and mining under the Crown Minerals Act.[6]

To provide certainty to the oil, gas and mineral mining industries, it is proposed that no category of MPA can be established in areas where there are petroleum or mineral mining, prospecting or exploration permits under the Crown Minerals Act for the life of the permit, unless the permit holder agrees. This recognises the significant and ongoing investment made by permit holders undertaking petroleum or mineral mining, prospecting or exploration activities in a particular area.

The proposed approach gives certainty to industry without unnecessarily impeding progress in developing New Zealand's network of MPAs.

Questions

8. Does the approach take account of the way the fishing sector operates? Why/why not?
9. Does the approach take account of the way the oil, gas and minerals sector operates? Why/why not?
10. Are there other economic interests that haven't been covered?
11. Is the new MPA Act likely to have the intended effect that decisions about environmental protection and economic growth are made in an integrated way (objective 2)? Why/why not?

[6] For more information about petroleum and mineral permits, see www.nzpam.govt.nz/cms/investors/permits.

Section 4:
How it will work: a new process for establishing marine protected areas

4.1 Improved and integrated decision-making

The current legislative processes for establishing protected areas are complex, can be divisive and do not allow for planned and integrated decision-making. The proposed MPA Act will have an improved decision-making framework and will support collaboration and meaningful engagement with iwi/Māori, fishers, local communities, business and the wider public. Ministers will work together to make sure the best decisions are made to ensure the sustainable management of our marine environment.

Identifying and proposing areas for protection

Achieving an appropriate balance between protection and commercial, recreational and cultural opportunities requires a good understanding of our marine environment. In general, we need to improve our knowledge, so we can make good decisions about which areas of our oceans to protect.

The Government will continue gathering information about the marine environment in a systematic way, including through scientific research and engagement with iwi/Māori, local communities, business and the wider public. Initiatives are already under way that will support this process. For example, the Government has committed $31.3 million over five years to the Sustainable Seas National Science Challenge, which includes conducting research to develop a better understanding of the dynamics and sensitivities of our oceans and coastal systems.

Proposals to establish an MPA will only be advanced if they adequately describe the environment and benefits of protection and assess the economic impacts on current and future uses in a particular area. The MPA Act will include criteria for determining what information is needed and whether the information provided in a proposal is sufficient. Proposals will initially be considered by a lead Minister who will determine whether the proposal is consistent with the objectives of the MPA Act.

Which Minister takes the lead 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.

Multiple categories of protection may be required in some areas, to reflect different environmental and community needs. The process in situations such as this, including which Minister takes the lead, has yet to be determined.

Initiating a marine protected area proposal

Once a proposal has been accepted by a lead Minister, other Ministers whose responsibilities may be affected by the proposal will become involved in the process. This is because MPA proposals are likely to have effects on a variety of areas of interest to New Zealand. For example, ships might pass through a species-specific sanctuary, or a seabed reserve might be located in an area suitable for a new telecommunications cable.

The Conservation, Primary Industries, Environment and Māori Development Ministers will automatically be involved in every proposal. Other Ministers who may be involved include the Ministers of Energy and Resources, Transport, Communications, Foreign Affairs and Trade, and Defence.

The relevant Ministers will make a joint decision on which proposals should be advanced or not. Ministers will need to take into account the urgency of the issues and the resources available to support the development of MPA proposals.

The new process for initiating MPA proposals will allow Ministers to take a planned approach to designing a representative and adaptable network of MPAs in the territorial sea over time. Existing and future values and uses of the environment will be considered, to secure the sustainable use of our oceans through the protection of important ecosystems and biodiversity.

Making decisions on marine protected area proposals

Once relevant Ministers agree to initiate an MPA proposal, consultation and further information gathering will be undertaken in one of two ways:

- **Collaborative process**: A collaborative process will be self-governing but will be given clear terms of reference by Ministers that will include assessment criteria against which the proposal must be evaluated. It will enable collaboration between all interested parties, including fishers, iwi/Māori, local communities, business and the wider public. This will ensure the interests of all parties are taken into account, including consideration of the impacts of a proposal on each party. The process will require public consultation as well as an independent economic assessment. Once consensus has been reached on a proposal, a

recommendation will be made to relevant Ministers. If consensus cannot be reached, Ministers can choose to refer the proposal to a board of inquiry.

- **Board of inquiry process**: A board of inquiry will be appointed by Ministers and chaired by an Environment Court judge. Ministers will be required to ensure board members have skills relevant to the proposal, including fishing, marine science, conservation, tikanga and mātauranga Māori, and economic expertise. The board will be given clear terms of reference that will include assessment criteria against which the board must evaluate the proposal. A full public consultation process and an independent economic assessment will be required. At the conclusion of the process, the board will make a recommendation to relevant Ministers.

The relevant Ministers will jointly decide which process is more appropriate for a particular proposal. The decision on which process is best for a proposal will be made on a case-by-case basis. Examples of how the two processes may work are provided in appendix C.

There is intended to be a constructive tension between the alternative processes. If goodwill and a willingness to compromise exist between stakeholders, the collaborative process will be preferred. This process offers interested parties more direct input into any proposal. However, it relies on consensus to progress and could allow a single party to unreasonably block progress. The existence of the board of inquiry process enables a robust decision to be made on an MPA proposal without a consensus, if parties' views are, or are likely to be, too divergent.

Benefits of the collaborative process

Collaborative processes are a proven approach to making decisions where multiple stakeholder views are involved. The collaborative approach will be most applicable for issues where there is 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 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. The process is designed to ensure that the interests of, and impacts on, all parties are considered. Successful collaboration results in outcomes that are driven and widely supported by the community.

Benefits of the board of inquiry process

The board of inquiry process suits proposals of national significance or direction, or those where a collaborative process would be unlikely to reach consensus. 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 planned approach to questions of both protection and use, and how proposals are able to contribute to the existing network of MPAs.

The collaborative and board of inquiry processes will recommend the appropriate level of protection and use to the relevant Ministers, as well as which activities will be prohibited or allowed in a proposed MPA. Criteria for this decision will be included in the terms of reference for both processes and may include:

- the costs and benefits of the proposal to the environment and the economy
- the proposal's contribution to a representative and adaptable network of MPAs

- whether the area is currently protected in any way
- the effect on existing and future uses and values of the area
- the effect on Treaty of Waitangi rights and obligations
- the alignment with international best practice and commitments.

Once the relevant Ministers receive a recommendation, they may choose to accept or reject it, or refer it back for reconsideration or amendment. Ministers will not be able to change recommendations. The proposed MPA Act will specify how and when decisions may be challenged.

The new MPA Act will ensure a planned approach is taken to the creation of a representative and adaptable network of MPAs in the territorial sea over time. It will set out clear procedures and decision points, giving applicants and other participants certainty about the process in which they are engaging and the outcomes they may expect.

Supporting marine planning exercises

Several existing tools are available to support boards of inquiry and collaborative processes. For example, Seasketch is currently being used for a number of marine planning exercises in New Zealand and around the world (see www.seasketch.org). Tools like this make it possible to map information and identify gaps and overlapping interests in the marine environment and will play an important role in progressing marine protection.

Packaging protection tools

In some circumstances, achieving a sound balance between protection and sustainable use of marine resources may best be achieved by incorporating marine management tools beyond the four categories proposed for the new MPA Act into a suite of protection and management measures in an area. For example, a proposal may include an area where objectives are best met using a customary tool (eg, taiapure or mātaitai reserves), or a recreational fishing tool under the Fisheries Act.

The new MPA Act will enable the implementation of these tools alongside the proposed MPA categories in a timely and coordinated way, so a collaborative process can develop a package of marine protection tools including areas set aside for other uses, for example, customary.

Aligning decisions

People wishing to undertake activities allowed within an MPA may still have to go through a consenting process under the Resource Management Act 1991 (RMA). 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.

The new MPA Act will provide for MPAs in the territorial sea to be recognised in regional coastal plans. Decision-makers under the RMA will be required to take MPAs into account when making decisions on proposed activities, including whether:

- an MPA is in place in the consent application area
- the proposed activity will affect an adjacent MPA

- a species or ecosystem in the consent application area is otherwise protected as part of the representative network of MPAs.

Over time, RMA decision-makers will be able to consider whether the MPA network provides sufficient protection for elements of the marine environment affected by the application before them. For example, activities that will affect a particular species in an application area could be allowed if the overall integrity of the species was maintained across its range.

Reviewing marine protected areas

The proposed MPA Act will allow for the periodic review of new MPAs. This will 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. Whether an MPA would be subject to a future review would be decided at the time the MPA was established, but it would not apply to any existing MPAs except where already required.

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

The timing of reviews will be flexible and will take into account the purpose for which the MPA was established. For example, if an MPA was 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. MPAs could also be subject to a generational review, to recognise the Māori view that decisions made by contemporary generations should not tie the hands of future generations.

Any review provisions already in place for existing MPAs will be retained in line with their current timetable or statutory requirements.

Questions

12. What do you think would be the best process for initiating MPA proposals in areas where multiple categories of protection may be needed?
13. Are the proposed MPA decision-making processes (collaborative process and board of inquiry process) the best way of achieving our objectives (2, 3, 4 and 5)? Why/why not?
14. What are the advantages and disadvantages of having two different decision-making processes? Is one of the processes preferable to the other or are there alternative decision-making processes that would better achieve the desired outcomes (objectives 2, 4 and 5)?
15. Do you agree with the proposed review arrangements? Why/why not? Are there any additional approaches that should be considered for reviewing MPAs?

4.2 Improving iwi/Māori involvement

Iwi/Māori interests in the ocean include safeguarding taonga and mahinga kai (food gathering locations and resources), spiritual practices, customary rights, and commercial and recreational fishing. Iwi/Māori resource management ethos provides for sustainable use so marine biodiversity is enhanced and is not subject to unacceptable risks.

The Marine Reserves Act does not explicitly recognise the kaitiaki role of iwi/Māori in marine protection. An important purpose of the new MPA Act will be to recognise the Treaty of Waitangi appropriately and strengthen iwi/Māori involvement in marine protection processes. Iwi/Māori participation will be an important part of any consensus that may be reached. To achieve this purpose, the new MPA Act will:

- include a Treaty clause that is consistent with the current levels of statutory recognition of Treaty of Waitangi obligations and responsibilities
- provide meaningful iwi/Māori involvement in all stages of marine protection processes, including the establishment of MPAs and their management, which will ensure that legislative reforms will not result in any inconsistencies with the provisions of Treaty settlement legislation
- maintain the integrity of rights and interests recognised under the Marine and Coastal Area (Takutai Moana) Act 2011
- ensure existing arrangements for non-commercial customary fishing, including taiapure and mātaitai reserves, are fully recognised and maintained
- enable customary fishing activities and the management of important customary fishing areas to be included in integrated marine protection packages, where appropriate
- require that any advisory committees on MPAs include representation of iwi/Māori.

Question

16. Are the proposed decision-making processes sufficient to ensure customary interests, rights and values are appropriately taken into account, Treaty of Waitangi principles are met and decisions are consistent with the Crown's historical Treaty settlement obligations (objectives 3 and 4)? If not, what are your concerns?

Section 5:
Recreational fishing parks

We know there are increasing numbers of users of the inshore marine space, resulting in growing pressures on some fish stocks and increased tension between customary, recreational and commercial fishers. There are some areas, particularly in sheltered areas close to population centres, where the separation of non-commercial and commercial fishing for some species may improve the fishing experience of recreational fishers.

The Government is proposing to establish recreational fishing parks to enhance the enjoyment and value of recreational fishing in these high-demand areas by reducing the localised impact of commercial fishing. These parks will enable recreational fishers to have more say in how the value of the recreational experience can be enhanced and to have greater input into how fisheries are managed in these areas.

While commercial fishing will generally be prohibited for the main recreational species, specific parks might allow commercial fishing to continue for certain species. Customary fishing and marine farming will not be affected by the creation of recreational fishing parks and some petroleum or minerals activities could be allowed.

It is proposed that the new MPA Act will create a framework for establishing recreational fishing parks. It is also proposed that parks in two of our main recreational fishing areas – the Hauraki Gulf and Marlborough Sounds – will be created under the new legislation.

Hauraki Gulf Recreational Fishing Park

The Hauraki Gulf is one of New Zealand's recreational fishing hotspots. It sits within Fisheries Management Area 1 (FMA1), which extends from North Cape to the western Bay of Plenty.

The snapper fishery in FMA1 is the largest recreational fishery in the country, and on a typical summer's day on the Hauraki Gulf, up to 6900 recreational vessels can be on the water carrying around 21,000 fishers. About 80 commercial fishing vessels are also fishing in the Hauraki Gulf, which may be competing with recreational fishers for catch and space. There are a number of restrictions on commercial fishing that are designed to limit the impact of fishing on the environment or mitigate competition between fishing sectors.

Location of the proposed Hauraki Gulf Recreational Fishing Park

The precise boundaries for the proposed Hauraki Gulf Recreational Fishing Park will require careful consideration. The draft proposal is that the park extends across the inner Hauraki Gulf, incorporating Statistical Area 7 in FMA1 and Omaha Bay (see map 1).

Species

While it is proposed that most commercial fishing activity would be prohibited in the proposed Hauraki Gulf Recreational Fishing Park, commercial fishing of some species could continue where there is limited competition between recreational and commercial use of a species and there is a strong rationale for commercial fishing to remain. For instance, it may be desirable for commercial fishing of flatfish to continue because they are prolific breeders and are not heavily targeted by non-commercial fishers.

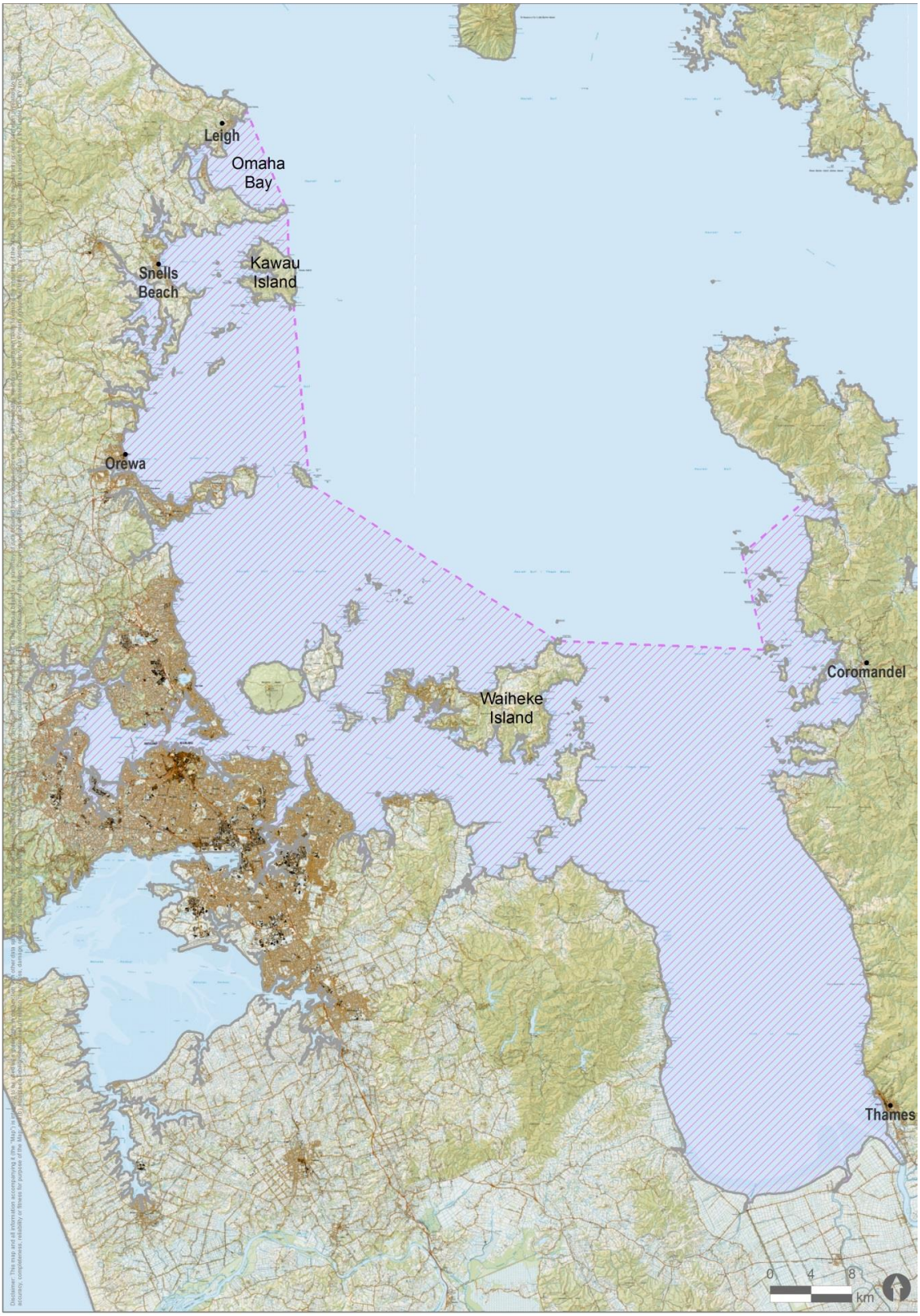
Within the area indicated in map 1, the key species targeted by recreational fishers in the proposed area are snapper, flatfish, kahawai, john dory, gurnard, tarakihi, trevally, and scallops. It is proposed that these finfish species would be exclusively non-commercial in the park area.

Table 2: Top 12 fish stocks by average annual commercial catch (tonnes) for the past five fishing years (2010/11 – 2014/15) in the Hauraki Gulf

Stock	Estimated commercial catch within proposed park (tonnes)	Percentage of total allowable commercial catch caught within proposed park
Snapper	261	5.8
Kahawai	176	16.3
Flatfish	171	14.4
Grey mullet	99	10.7
Pilchard	56	2.8
Rig	43	6.2
Parore	21	34.9
Kina	14	10.3
Jack mackerel	11	0.1
Trevally	10	0.6
Gurnard	4	0.2
School shark	4	0.6
Total	**870**	

Note: the total allowable commercial catch is within the relevant quota management area for each species.

Map 1: Proposed location for a Hauraki Gulf Recreational Fishing Park based on Statistical Area 7 in Fisheries Management Area 1 and Omaha Bay



Marlborough Sounds

The Marlborough Sounds is another important area for recreational fishers in New Zealand. A considerable amount of recreational fishing effort occurs in the Marlborough area, which tends to be concentrated in Queen Charlotte Sound, Pelorus Sound and around D'Urville Island. Recreational fishing effort is highest over the summer holiday months when there is an influx of visitors.

Blue cod is the primary species targeted in this fishery. As fishing effort has intensified and gear has improved, the fishery has suffered localised depletion, with the decline in blue cod abundance being particularly acute in the enclosed waters of the inner Marlborough Sounds. This resulted in the fishery being closed for two years, from 2009–11, and managed through tighter catch restrictions. A new regime for blue cod recreational fishing applies from 20 December 2015, following a process of public engagement and consultation.

Commercial fishing is constrained in areas of the Marlborough Sounds for particular times of the year. There is pressure from recreational users for this to be further restrained, because of the importance of the recreational fishery to the local community and tourism sector.

Location of the proposed Marlborough Sounds Recreational Fishing Park

The precise boundaries for the proposed Marlborough Sounds Recreational Fishing Park will require careful consideration. The proposal would be for the park to cover the current area of the Marlborough Sounds Blue Cod Management Area (see map 2).

Species

It is proposed that the Marlborough Sounds Recreational Fishing Park would affect only commercial finfishing. This would mean that, within the park, commercial fishers could continue to harvest species such as paua, scallop and crayfish under the Quota Management System. Within the area indicated on map 2, the main finfish species targeted by recreational fishers are blue cod, snapper, flatfish, hapuku and bass. Commercial fishers also target these species, as well as school shark.

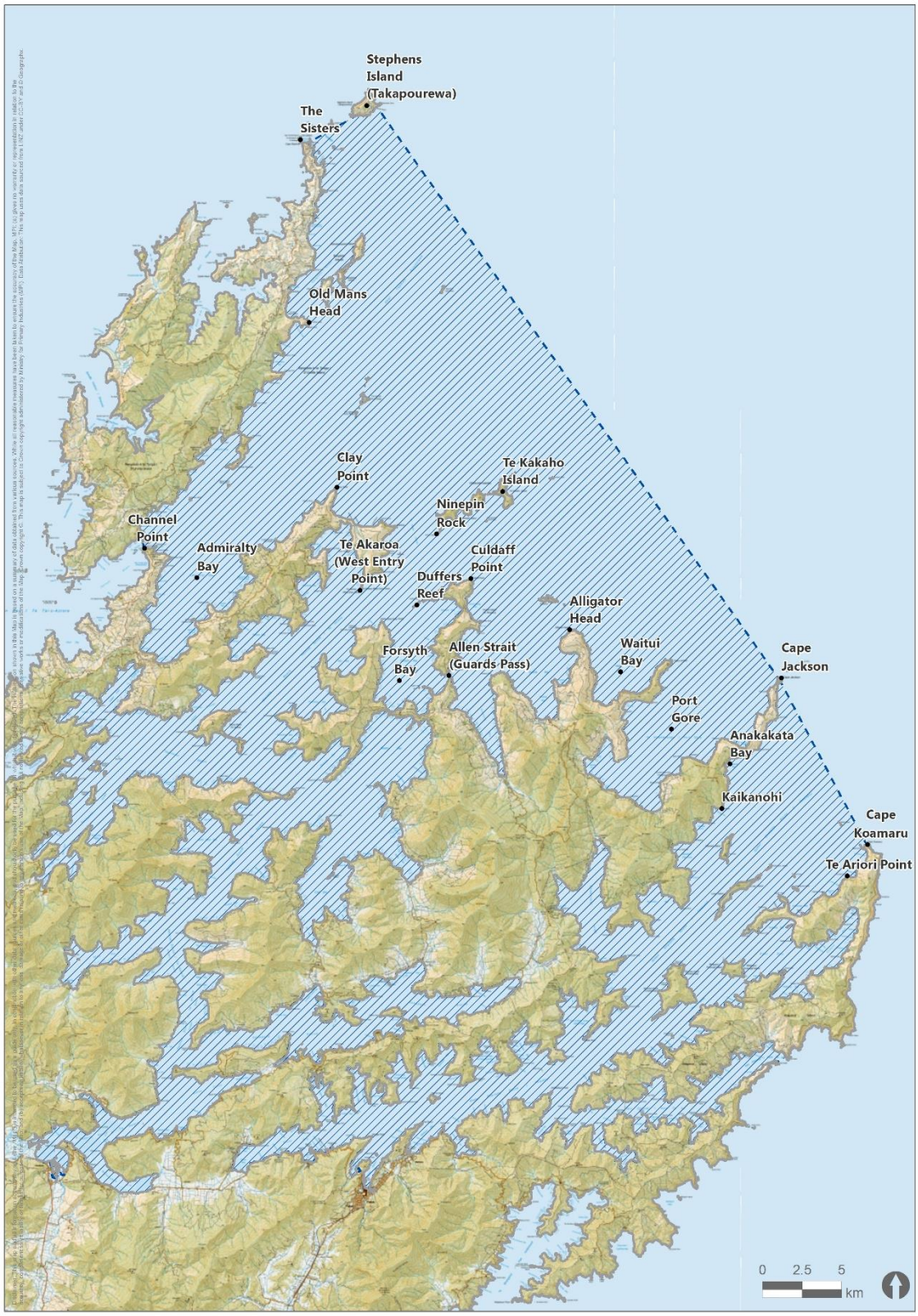
Table 3: Top 12 fish stocks by average annual commercial catch (tonnes) for the past five fishing years (2010/11 – 2014/15) in the Marlborough Sounds

Stock	Estimated commercial catch within proposed park (tonnes)	Percentage of total allowable commercial catch caught within proposed park
Gurnard (GUR7)	26	3.3
Red cod (RCO7)	21	0.7
Flatfish (FLA7)	14	0.7
Spiny dogfish (SPD7)	13	0.7
Snapper (SNA7)	6	2.9
Barracouta (BAR7)	6	0.1
Leatherjacket (LEA2)	6	0.5
John dory (JDO7)	5	3.2
School shark (SCH	4	0.6
Rig (SPO7)	4	1.6
Tarakihi (TAR 7)	3	0.3
Blue cod (BCO7)	31*	44.3
Total	**139**	

* This figure includes 29 tonnes of blue cod catch taken by potting across the whole of Statistical Area 017 (this includes the Marlborough Sounds plus the area south to Cape Campbell). Potting fishers are only required to report their catch by statistical area and there is no reliable estimate of what proportion of blue cod catch taken by potting within Statistical Area 017 is caught within the proposed park boundaries.

Note: the total allowable commercial catch is within the relevant quota management area for each species.

Map 2: Proposed location of a Marlborough Sounds Recreational Fishing Park based on the Blue Cod Management Area



Compensation for commercial fishers

As discussed in section 3, commercial fishing in New Zealand is managed through the Quota Management System, which enables sustainable economic value to be gained from fisheries resources. While the Fisheries Act is clear that the Crown is not liable to pay compensation where measures are taken for sustainability (including biodiversity protection), recreational fishing parks are created to enhance the recreational fishing experience.

The Government is therefore proposing to develop a specific compensation approach for recreational fishing parks. This approach will be similar to the situation where a marine farm is established and it affects the rights of quota holders to the point where compensation may be justified.

In recreational fishing parks, a case-by-case assessment will be carried out that recognises the particular characteristics of the commercial fisheries in the area. Compensation will be paid to quota owners when the impact on commercial fishing is deemed to be materially significant, consistent with relevant criteria to be included in the proposed MPA Act.[7]

The amount payable will be determined through an evidence-based assessment of the impact on commercial fishing for quota species. This would take into account the boundaries of the park and whether there are to be any measures that would mitigate the effect of a general prohibition on commercial fishing, such as seasonal or species exemptions.

When it comes to compensation, the Government recognises the fisheries management incentives surrounding ownership of quota, which encourage a long-term view and a focus on sustainability.

Management and reporting

The management of recreational fishing parks will need careful consideration, including how they will link with existing marine management processes.

For the proposed recreational fishing parks in the Hauraki Gulf and Marlborough Sounds, linkage will need to be made with initiatives such as Sea Change in Auckland and the Blue Cod Management Group in Marlborough.

The lead agency for recreational fishing parks will be the Ministry for Primary Industries although there will be a greater opportunity for input for iwi, stakeholders and interested parties into management decisions within the boundaries of recreational fishing parks.

One way to achieve this could be the formation of an advisory group, appointed by the Minister responsible for fisheries, and tasked with providing advice on matters aligned with the purpose of the recreational fishing park.

Such a group could consist of individuals that are representative of iwi and relevant stakeholders. The group could also include a range of interests and expertise such as marine science. Specific terms of reference could be drafted once the group is established.

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[7] 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, will be used to determine whether and what amount of compensation is payable. As with the existing aquaculture UAE test, if quota owners disagree with the proposed level of compensation, they will be able to have their offer of compensation assessed through an independent resolution process under the Arbitration Act 1996. The assessment will be made by an independent arbitrator and includes the right of appeal to the High Court on points of law.

Monitoring the outcome of recreational fishing parks will also be a vital part of their ongoing management. Monitoring could include looking at how the displacement of commercial fishing may have affected other fishing areas and any impact on the abundance of fish stock. It could also include monitoring of the recreational fishing experience. Options need to be explored regarding how this could be assessed.

Questions

Please be clear as to whether your responses apply to the Hauraki Gulf, Marlborough Sounds or both proposed areas.

17. Do you support the proposal for recreational fishing parks in the Hauraki Gulf and Marlborough Sounds?
18. What do you think should be the boundary lines for the recreational fishing parks? In the Hauraki Gulf, could we use the Statistical Area 7 of Fishing Management Area 1 (see map 1)? In the Marlborough Sounds, could we use the Blue Cod Management Area (see map 2)? Are these boundary lines easily recognisable, that is, would prominent landmarks help with identifying the boundaries of the park when you are on a boat?
19. Do you think commercial fishing should be allowed to continue for some species within recreational fishing parks? If so, what species would you allow and why?
20. What do you think about the proposed compensation scheme for commercial fishing affected by the creation of recreational fishing parks?
21. What do you think about who should manage the recreational fishing parks? How could the park management work together with existing groups?
22. How should benefits and changes created through the proposed parks be monitored? How could this work?

Section 6:
Implementation

Successful implementation of MPAs will require strong community and government support and involvement. The Government is committed to ensuring the proposed reforms successfully implement a representative and adaptable network of MPAs that meets the objectives outlined in section 2.

6.1 Transitioning existing marine protected areas

New Zealand already has tools to protect the marine environment, including marine reserves and marine parks. The first step in implementing this proposal will be to ensure these tools are incorporated into the new MPA Act.

As far as possible, the outcomes of collaborative processes that are already in progress will be transitioned into the new MPA Act. The Government will work with communities to ensure the best outcomes for areas as they transition to the new regime.

The proposed transition process for each of the four categories in the new MPA Act is outlined below.

Marine reserves

New Zealand has 44 marine reserves, established either through the Marine Reserves Act or special legislation. It is proposed that all 44 marine reserves will transition into the new MPA Act. No change will occur to the levels of protection afforded to any marine reserve or to

existing marine reserve advisory committees. Any specific provisions already in place will remain. For example, no change will occur to the review of the Moutere Ihupuku/Campbell Island Marine Reserve required under the Subantarctic Islands Marine Reserves Act 2014.

Species-specific sanctuaries

Several existing tools provide protection to specific marine species in certain areas of the territorial sea. All of these will transition into the proposed MPA Act and will become species-specific sanctuaries, including:

- all marine mammal sanctuaries established under the Marine Mammals Protection Act 1978
- the whale sanctuary and New Zealand fur seal sanctuary established under the Kaikōura (Te Tai o Marokura) Marine Management Act 2014
- some species in some places protected under the Wildlife Act 1953.

Varying levels of protection and use will occur within species-specific sanctuaries, depending on the species in question, spatial considerations and existing management regimes. For example, within the West Coast North Island Marine Mammal Sanctuary, restrictions on fishing and mining differ across the sanctuary. Restrictions such as these will remain, but any future changes to the regime will be made under the new MPA Act. Fishing activities will continue to be managed under the Fisheries Act 1996.

Seabed reserves

At present, no tool exists that is equivalent to seabed reserves, but the Fisheries Act 1996 provides limited protection for specific areas of the seabed in the territorial sea and beyond. This includes benthic protection areas and seamount closures, which prohibit bottom trawling and dredging fishing methods. When these areas were created they were only assessed for their fisheries-related benefits.

Under the new MPA Act, benthic protection areas within the territorial sea or parts of them could be assessed as candidates for transition to seabed reserves. Whether an area transitions to the new MPA Act will depend on whether it meets the purpose of the category.

It is proposed that any area that does not become a seabed reserve will continue to be managed under the Fisheries Act.

Recreational fishing parks

Existing recreational fishing areas will need to be transitioned into the new MPA Act. Mimiwhangata Marine Park and Sugar Loaf Islands Marine Protected Area both provide biodiversity protection and recreational fishing opportunities, while generally excluding commercial fishing activities. No changes are proposed to existing provisions, and both areas will be recognised as recreational fishing parks. Other existing areas that prohibit or limit commercial fishing activities may also be transitioned into the MPA Act as recreational fishing parks once they have been assessed.

Customary management areas

Several community-based forums have been established around New Zealand to guide planning processes in the local marine environment (eg, Fiordland, Kaikōura, and South-East Otago). These forums have developed integrated management packages that provide for the protection of the marine environment and its sustainable use through a variety of legislative instruments, including customary management areas (taiapure–local fisheries and mātaitai reserves).

Although the proposed MPA Act will reduce the need for multiple legislative instruments to achieve protection objectives in some cases, customary management areas will remain the most appropriate way of achieving protection objectives. The proposed MPA Act will therefore enable the use of customary management areas alongside the proposed MPA categories to create integrated management packages.

Other area-based restrictions

Several other marine management tools are in place in New Zealand, including fisheries closures and cable protection zones. These restrictions are often established for the purpose of protecting infrastructure but may have a protective effect. Where these tools do not clearly align with the four categories proposed under the new MPA Act, they will be retained under their existing legislation.

Questions

23. Do you agree with the proposed arrangements for transitioning existing MPAs? If not, what are your concerns?
24. Do you agree that customary management areas should be able to be used alongside the proposed MPA Act to create integrated management packages? If not, what are your concerns?
25. What would be required to ensure the integrity of current protected areas is maintained while achieving the objectives of the new MPA Act (section 3.1)?

6.2 Involving communities in managing marine protected areas

Communities play an important role in managing New Zealand's existing marine reserves, and their involvement in managing MPAs will be strengthened under the new MPA Act. For example, there is likely to be a high degree of interest in recreational fishing parks, so recreational fishers will be encouraged to take greater responsibility in decision-making within these parks.

Māori involvement in managing MPAs will also be strengthened, including membership of any advisory boards created under the new MPA Act.

6.3 Managing commercial activities in marine reserves

The current Marine Reserves Act does not enable the management of commercial recreation and tourism activities within marine reserves. By contrast, tourism operations on public conservation land are managed through a concessions system. It is proposed that the new MPA Act will similarly enable the management of commercial recreation and tourism activities in MPAs. This will provide a more consistent approach to managing commercial recreation and tourism activities on land and in the marine environment.

6.4 Compliance and law enforcement

It is important that restrictions in MPAs are adequately enforced and provision is made to address any offences. The proposed MPA Act will make sure offence provisions for all four categories of MPAs are consistent with other relevant legislation for protected area management, resource use, and effects management.

New Zealand has a developed system for combined maritime law enforcement, including use of conservation, fisheries, naval, air force and police capacity. Compliance and law enforcement provisions for all MPAs will operate within this system.

6.5 Monitoring and reporting

Monitoring will play an important role in the new MPA Act, by providing information on which management decisions can be based. It will also inform any reviews of a specific MPA or the broader network. For example, the connectivity of MPAs may be assessed to see how well the network is functioning and whether any changes need to be made.

The status of MPAs will be regularly reported on, to assess progress towards achieving the objectives set out in this proposal.

Questions

26. Are the proposed approaches sufficient to ensure communities are involved in managing MPAs? Are there alternative approaches that would better ensure community involvement in managing MPAs?
27. What role can iwi/Māori play in managing MPAs? Are the proposed approaches sufficient to ensure iwi/Māori are involved in managing MPAs?
28. Do you agree with managing commercial tourism activities in MPAs in a similar way to how they are managed on public conservation land? Why/why not?

Section 7:
Consultation process

7.1 How to make a submission

The Government welcomes your feedback on this consultation document. The questions posed throughout this document are summarised below. They are a guide only and all comments are welcome. You do not have to answer all the questions.

To ensure your point of view is clearly understood, you should explain your rationale and provide supporting evidence where appropriate.

You can make a submission in three ways:

- use our online submission tool, available at www.mfe.govt.nz/more/consultations/MPA
- download a copy of the submission form to complete and return to us. This is available at www.mfe.govt.nz/more/consultations/MPA. If you do not have access to a computer, a copy of the submission form can be posted to you
- type up or write out your own submission.

If you are posting your submission, send it to New MPA Act, Ministry for the Environment, PO Box 10362, Wellington 6143 and include:

- the title of the consultation (New MPA Act)
- your name or organisation name
- postal address
- telephone number
- email address.

If you are emailing your submission, send it to mpaconsultation@mfe.govt.nz as a:

- PDF
- Microsoft Word document (2003 or later version).

Submissions close at 5.00pm on Friday 11 March 2016.

7.2 Public events and hui

Public engagement events and hui to provide further information on the detail of the proposals will be held throughout the country. More information on these events is available at www.mfe.govt.nz/more/consultations/MPA.

7.3 Contact for queries

Please direct any queries to:

Phone: +64 4 439 7400

Email: mpaconsultation@mfe.govt.nz

Postal: New MPA Act, Ministry for the Environment, PO Box 10362, Wellington 6143

7.4 Publishing and releasing submissions

All or part of any written submission (including names of submitters) may be published on the Ministry for the Environment's website, www.mfe.govt.nz. Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting of both your submission and your name.

Contents of submissions may be released to the public under the Official Information Act 1982, following requests to the Ministry for the Environment (including via email). Please advise if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 1993 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including the Ministry for the Environment. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in relation to the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

7.5 Questions to guide your feedback

Section 2: The need for a new approach to marine protection

1. Do you agree there is a need for reform of New Zealand's approach to marine protection?
2. Are there any significant issues that haven't been identified?
3. Are there parts of the existing approach to marine protection that should be retained? Why?

Section 3: The proposal: a new approach to marine protection

4. Do you support the outlined objectives of the new MPA Act?
5. Are there additional objectives that should be included in marine protection reform?
6. Are the four categories proposed for marine protection an appropriate way to achieve a representative and adaptable network of MPAs (objectives 1, 2, 5 and 6)?
7. If the options outlined in table 1 were applied in an area of interest to you, what impact would that have on your existing or future activities?
8. Does the approach take account of the way the fishing sector operates? Why/why not?
9. Does the approach take account of the way the oil, gas and minerals sector operates? Why/why not?
10. Are there other economic interests that haven't been covered?
11. Is the new MPA Act likely to have the intended effect that decisions about environmental protection and economic growth are made in a planned and integrated way (objective 2)? Why/why not?

Section 4: How it will work: a new process for establishing marine protected areas

12. What do you think would be the best process for initiating MPA proposals in areas where multiple categories of protection may be needed?
13. Are the proposed MPA decision-making processes (collaborative process and board of inquiry process) the best way of achieving our objectives (2, 3, 4 and 5)? Why/why not?
14. What are the advantages and disadvantages of having two different decision-making processes? Is one of the processes preferable to the other or are there alternative decision-making processes that would better achieve the desired outcomes (objectives 2, 4 and 5)?
15. Do you agree with the proposed review arrangements? Why/why not? Are there any additional approaches that should be considered for reviewing MPAs?
16. Are the proposed decision-making processes sufficient to ensure customary interests, rights and values are appropriately taken into account, Treaty of Waitangi principles are met, and decisions are consistent with the Crown's historical Treaty settlement obligations (objectives 3 and 4)? If not, what are your concerns?

Section 5: Recreational fishing parks

Please be clear as to whether your responses apply to the Hauraki Gulf, Marlborough Sounds or both proposed areas.

17. Do you support the proposal for recreational fishing parks in the Hauraki Gulf and Marlborough Sounds?
18. What do you think should be the boundary lines for the recreational fishing parks? In the Hauraki Gulf, could we use the Statistical Area 7 of Fishing Management Area 1 (see map 1)? In the Marlborough Sounds, could we use the Blue Cod Management Area (see map 2)? Are these boundary lines easily recognisable, that is, would prominent landmarks help with identifying the boundaries of the park when you are on a boat?
19. Do you think commercial fishing should be allowed to continue for some species within recreational fishing parks? If so, what species would you allow and why?
20. What do you think about the proposed compensation scheme for commercial fishing affected by the creation of recreational fishing parks?
21. What do you think about who should manage the recreational fishing parks? How could the park management work together with existing groups?
22. How should benefits and changes created through the proposed parks be monitored? How could this work?

Section 6: Implementation

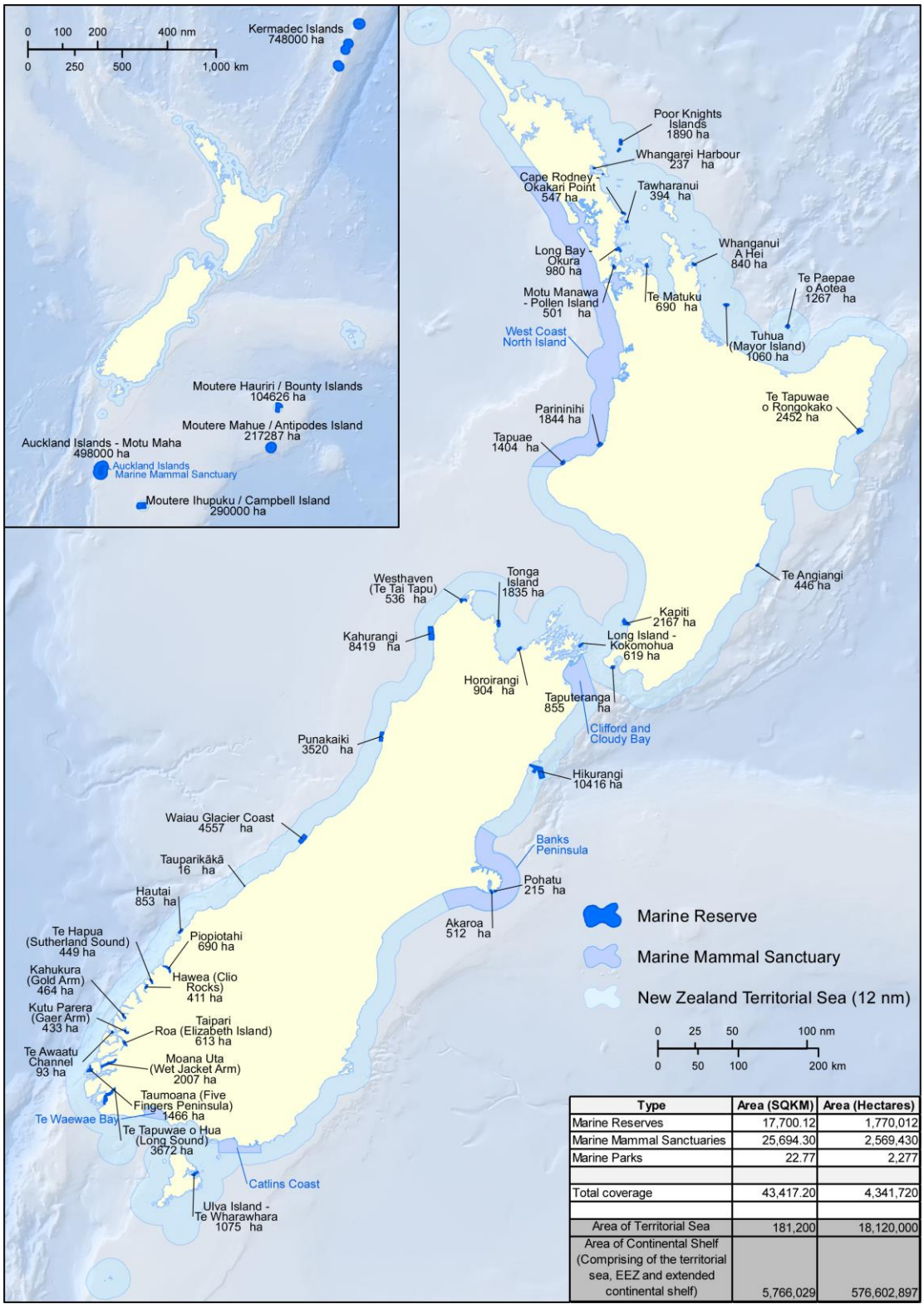
23. Do you agree with the proposed arrangements for transitioning existing MPAs? If not, what are your concerns?
24. Do you agree that customary management areas should be able to be used alongside the proposed MPA Act to create integrated management packages? If not, what are your concerns?
25. What would be required to ensure the integrity of current protected areas is maintained while achieving the objectives of the new MPA Act (section 3.1)?
26. Are the proposed approaches sufficient to ensure communities are involved in managing MPAs? Are there alternative approaches that would better ensure community involvement in managing MPAs?
27. What role can iwi/Māori play in managing MPAs? Are the proposed approaches sufficient to ensure iwi/Māori are involved in managing MPAs?
28. Do you agree with managing commercial tourism activities in MPAs in a similar way to how they are managed on public conservation land? Why/why not?

7.6 What happens next?

Once submissions have been considered, further work will be undertaken to refine the proposals and draft the new MPA Act.

The Government intends to progress this work into a Bill to be introduced to Parliament. Further opportunity to engage with the development of the new MPA Act will be available through the Local Government and Environment Select Committee process.

Appendix A: Marine protection in New Zealand's territorial sea



Type	Area (SQKM)	Area (Hectares)
Marine Reserves	17,700.12	1,770,012
Marine Mammal Sanctuaries	25,694.30	2,569,430
Marine Parks	22.77	2,277
Total coverage	43,417.20	4,341,720
Area of Territorial Sea	181,200	18,120,000
Area of Continental Shelf (Comprising of the territorial sea, EEZ and extended continental shelf)	5,766,029	576,602,897

Note: Around the Kermadec Islands, the entire territorial sea is occupied by the Kermadec Islands Marine Reserve, and the Kermadec Benthic Protection Area is overlaid on that reserve. The proposed Kermadec Ocean Sanctuary will cover the area currently protected by the Kermadec Benthic Protection Area. Benthic protection areas cover the entire territorial sea around the Antipodes Islands, Bounty Islands and Campbell Island, and have subsequently been augmented by a mix of marine reserves and additional regulations under the Fisheries Act 1996.

Appendix B: Existing marine management legislation in New Zealand's territorial sea

Issue	Relevant legislation
Effects management *(excluding fisheries)*	Resource Management Act 1991
Fisheries management *(including effects)*	Fisheries Act 1996
Marine reserves	Marine Reserves Act 1971
Species protection *(including seabirds, some fish and corals)*	Wildlife Act 1953 (*not continental shelf*) Marine Mammals Protection Act 1978 (*not continental shelf*)
Biological security	Biosecurity Act 1993
Shipping	Maritime Transport Act 1994
Access to minerals	Crown Minerals Act 1991
Historic heritage	Historic Places Act 1993
Seabed rights	Marine and Coastal Area (Takutai Moana) Act 2011
Treaty settlements	Various Acts
Special legislation resulting from community- or stakeholder-based initiatives	Kaikōura (Te Tai o Marokura) Marine Management Act 2014 Subantarctic Islands Marine Reserves Act 2014 Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 Sugar Loaf Islands Marine Protected Area Act 1991

Appendix C: Examples of how processes for creating marine protected areas may work

Example 1: Collaborative process

A local community group has joined forces with tourism operators. They want to reduce negative impacts on toheroa shellfish by preventing activities in a small area of the coastline on 90 Mile Beach known to be important breeding grounds for the species.

Although the area is small, the success of the species could have wider benefits for a community that relies heavily on tourism and fishing operations to contribute to the local economy.

The area was not identified through the Government's oceans research programme, but the local community feels strongly about this issue and has completed a joint proposal requesting that a species-specific sanctuary be established.

The proposal is assessed by officials against several criteria, including whether there is enough information to make the case for a sanctuary and how the creation of a sanctuary would contribute to New Zealand's broader network of marine protected areas.

The community group has done a good job of getting together all readily available evidence and has been working hard to get the buy-in of other local stakeholders including local iwi and recreational fishers. Government officials provide feedback on the proposal before it is formally presented to Ministers.

Because this proposal is for a species-specific sanctuary, it is presented to the Minister of Conservation. The Minister considers the proposal and presents it to colleagues, and a joint decision is made to progress the proposal.

Iwi and fishers have agreed in principle to the proposal but still have reservations about how the sanctuary might affect them. The submitters consider that they can come up with an approach that works for everyone and have expressed an interest in taking forward their proposal in a collaborative way.

It is agreed that the collaborative approach is appropriate, and Ministers set terms of reference for the collaborative approach, including the maximum area of coverage that can be proposed and a reporting timeline.

The collaborative group has formed a governance board that includes representation from iwi and fishers, and the board is expecting to submit an update report to Ministers in the coming months. The update will include an economic impact assessment commissioned by the governance board that shows both the costs and benefits to the area and the particular stakeholders associated with the development of a sanctuary.

Example 2: Board of inquiry process

Research commissioned by government agencies and undertaken by the National Institute of Water and Atmospheric Research (NIWA) identifies extensive beds of large kelp off the East Cape of New Zealand. The researchers consider that the kelp beds should be protected, because the taxonomy and natural history of the kelp is not yet fully understood. Kelp beds are highly productive ecosystems that create habitat for juvenile fish and marine invertebrates.

Relevant agencies jointly advise Ministers that a seabed reserve would be a suitable response to protect the kelp beds.

The area in question is located within a current exploration permit area under the Crown Minerals Act 1991. Officials meet with the permit holder to establish how the proposed seabed reserve would affect activities. Satisfied that the reserve could be established (with alterations) without compromising the investment already made by the exploration company, officials formally present a proposal to the Minister for the Environment, because it is for a seabed reserve.

The Minister considers the proposal and presents it to colleagues. The proposal outlines that there could be some effects on fishing in the area, so a joint decision is made to progress the application but via a board of inquiry. The independent board of inquiry process is chosen because the reserve could form a significant component of the national system of reserves and there may be significant implications for different industries.

Ministers establish the terms of reference for the board of inquiry, including when they expect a recommendation to be made, and appoint the board. The board commissions an economic impact assessment and calls for submissions on the proposal.

After the inquiry process, the board provides its advice to Ministers that a seabed reserve be established. The proposed reserve area has been altered slightly from the original proposal to take account of oil and gas activities occurring under an existing permit in close proximity to the proposed reserve. Even with amendments to the reserve area, it has not been possible to address all concerns raised by the fisheries industry. However, the board found that the impact on fishing would be minor and the environmental benefits of protection would exceed those impacts.

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