

Chair
CABINET POLICY COMMITTEE

IMPLEMENTATION OF THE FIORDLAND MARINE CONSERVATION STRATEGY.

Proposal

1. This paper seeks endorsement of the approach jointly proposed by the Minister for the Environment and the Minister of Fisheries for officials to investigate and report on the most effective means to implement the proposed Fiordland Marine Conservation Strategy.

Executive summary

2. We seek endorsement that officials from Environment (leading), Conservation and Fisheries, among others, investigate and report on the best means to realise the Fiordland Marine Conservation Strategy. Key to the successful investigation and implementation of the Strategy will be the direct and early involvement of the Guardians, Te Runanga o Ngai Tahu, and Environment Southland.
3. This paper provides an overview of the proposed Fiordland Marine Conservation Strategy. It was developed by the community group known as the Guardians of Fiordland's Fisheries and Marine Environment. Their Strategy seeks the sustainable management of the Fiordland marine environment. Four major issues are identified within the Strategy, these being: fisheries depletion; areas of special significance; risks to the marine environment; and the expression of kaitiakitanga.
4. The timetable for investigation and reporting (by end April 2004) and implementation (July 2005) is achievable. Legislative changes will almost certainly be necessary, including the possibility of special legislation. Implementation of an integrated strategy in Fiordland will require the support of local government. It is also likely to require annual funding for Environment Southland, Conservation and Fisheries.

Background

5. The Fiordland Marine Conservation Strategy (the Strategy) reflects concerns about the impacts of human activities on the Fiordland marine environment. It was produced by the Guardians of Fiordland's Fisheries and Marine Environment (the Guardians) to provide an integrated approach to local marine management. The Guardians were formed in 1995 and comprises members from organisations in the local community and includes the Ngai Tahu Runanga of Oraka-Aparima, commercial fishing, recreational fishing, charter/tourism, and conservation interests.
6. The Guardian's work is unique in that it is a community initiated Strategy that has significant contributions from a diverse range of stakeholders.
7. Support, advice and funding for the development of the Strategy have variously come from the Ministry for the Environment, the Department of Conservation, the Ministry of Fisheries and Environment Southland as well as organisations within the Guardians.

8. The Strategy includes proposals for the sustainable management of fisheries and protection of biodiversity in unique and representative habitats. It seeks to address the impacts of pollution, bio-invasion, physical damage, changing hydro-dynamics and increasing visitor numbers as well as a suitable expression of kaitiakitanga.
9. The Strategy expects existing resource regulators in central government (the Department of Conservation and the Ministry of Fisheries), local government and local stakeholders to work co-operatively towards implementation. This could involve a combination of new legislation, regulations, codes of practice, education and compliance/enforcement activities.
10. The Strategy presents a package of principles and measures arrived at through negotiation and consultation with the wide range of interested group and stakeholders. It states a strong preference for special legislation as the means of implementation to preserve this parcel of principals and measures.
11. Officials note that, while special legislation is an option, all methods of implementation should also be investigated including the use of existing mechanisms.
12. The Guardians want the government to take the necessary policy and legislative steps to implement the Strategy.

Comment

Guardians' Expectations

13. The Guardians have expressed strongly within the Strategy:
 - a) that the Strategy should be implemented as a whole.
 - b) that the Strategy has strong support and community buy-in through its negotiated outcomes and consultation processes. These negotiated outcomes are referred to by the Guardians as 'gifts and gains'.
 - c) that special legislation is their preferred means to guarantee the parcel of 'gifts and gains' negotiated through the process and to ensure formal recognition of the Strategy and the Guardians role within it. As the 'gifts and gains' are entwined, the Guardians see them as indivisible and therefore need to be implemented as a whole.
 - d) existing legislative and institutional arrangements should work together within the framework of special legislation to deliver the expected outcomes.
14. The Guardians presented the Minister of Fisheries and the Minister for the Environment with the Strategy at a public meeting in Te Anau on the 6th of September 2003.
15. At that meeting, the Guardians reinforced the message that the implementation of the Strategy should provide a means to integrate and simplify marine conservation management through commonly agreed objectives.

Ministers' Responses

16. At that meeting, we stated our intention to support the implementation of the Strategy.

17. We indicated our preferences about how and when the Strategy might be implemented. These included that:
- a) as far as practical, the Strategy would be implemented as a single unified package, reflecting its purpose of integrating local management, and the carefully negotiated balance of its content (the 'gifts and gains');
 - b) the Strategy would be substantially implemented by September 2005;
 - c) a broadly-based, interagency Investigative Group would be established, led by the Ministry for the Environment, to investigate and report back on the means for and implications of implementing the Strategy;
 - d) the Guardians should focus on the outcome, that is the implementation of the Strategy, and allow the Ministers flexibility in the method of implementation; and,
 - e) the Guardians, local government and local stakeholders would be involved in both the short-term work in developing the implementation process and the longer-term operational implementation.

Current Governance Arrangements

18. The Fiordland National Park and adjoining coastal marine area is subject to a wide variety of existing (and often poorly co-ordinated) statutory governance arrangements, including fisheries rules, plans and policy statements under the Resource Management Act, the Ngai Tahu Claims Settlement Act, the Marine Reserves Act, the New Zealand Coastal Policy Statement and the Conservation Act (and plans under it).

Proposed Management Changes in Fiordland Marine Conservation Strategy

19. The Strategy identifies a number of changes in management. As well as seeking changes in fisheries management, the Strategy also seeks to address the impacts of pollution, bio-invasion, physical damage, changing hydro-dynamics and increasing visitor numbers. It also seeks an expression of kaitiakitanga.
20. The Strategy identifies a number of species subject to overfishing in different parts of Fiordland and fishing methods and practices that may be destructive to vulnerable ecosystems. It proposes:
- a ban on commercial fishing methods and bulk recreational fishing methods within areas (marked by habitat lines) to protect specific habitats;
 - a range of recreational bag limits for certain species in certain areas, including reductions in existing limits for some at risk species;
 - a 'no-accumulation' rule for specific species targeted by recreational fishers to both discourage excessive harvesting, and to allow for future expansion of the recreational fishery; and
 - application of protection measures (such as Marine Reserves, and Restricted Coastal Activities status) to identified special areas ('china shops' and 'representative habitats').

Issues Relating to Proposed Management Measures

21. The Strategy addresses all the issues in Fiordland marine environment with fisheries management as only one part of a wider approach.

22. A preliminary analysis by the Ministry of Fisheries noted that the issues affecting Fiordland (e.g. low productivity of the inner fiords and increasing human activity pressures) differ significantly from those affecting other coastal environments in the South Island. The Ministry of Fisheries noted a number of challenges in implementing the fisheries management aspects of the Strategy, however, it considers that they could be implemented through fisheries regulations
23. The Ministry of Fisheries also notes that fisheries management alone will not ensure the holistic approach sought through the Strategy. Fisheries management measures will also need to be complemented by simultaneous protection of habitats through the establishment of marine reserves and the management of other coastal protected areas and species under other statutes (such as the Resource Management Act) by Environment Southland and the Department of Conservation.

Implementation

24. There are three options for the implementation of the proposed Strategy. These are:
 - Keeping the **Status Quo**, with no changes in the management for Fiordland;
 - Using **existing legislation** to reflect the intent of the Strategy, (with a greater degree of co-operation and communication between agencies and with the Guardians); or
 - Using **special legislation** to implement the Strategy, by giving it special status, and requiring its recognition within existing legislation and management.
25. The Strategy notes that all of the measures proposed can be implemented within the existing legislation, but not in a co-ordinated manner. Most coastal resource management is carried out pursuant to generic nation-wide legislation such as the Resource Management Act or the Fisheries Act. These Acts have devolution and local decision making powers which are rarely used due to mandate, liability and consistency problems. Further, management options like Taiapure are complex, untried and could not deliver the full range of management controls envisaged in the Strategy.
26. Location-specific special legislation has been used in high-use and high value areas, such as the Hauraki Gulf and Sugar Loaf Islands in Taranaki. These examples will be assessed for the applicability to the Fiordland situation.

Evaluation of the Strategy for Implementation.

27. It is proposed that an in-depth evaluation of the Strategy would be through a broadly-based, interagency Investigative Group. This group would include the Guardians, the Ministry for the Environment (including Oceans Policy), the Ministry of Fisheries, the Department of Conservation, the Maritime Safety Authority, Environment Southland and Te Runanga o Ngai Tahu. Other agencies or organisations with a particular interest or expertise will also be invited to participate as needed.
28. The objective of this Investigative Group will be to evaluate options for implementing the Strategy in terms of policy, legislative and operational workability.
29. It is expected that the core government departments of the Ministry for the Environment, Ministry of Fisheries and the Department of Conservation will co-ordinate the analysis and advice from the Investigative Group. If legislative change

is necessary to preserve the 'gifts and gains' negotiated through the Strategy, then this group of officials will seek approval for possible legislative initiatives within the Legislative Programme for 2004-05.

30. The Ministry for the Environment has offered to lead the Investigative Group. It has also offered to be responsible for co-ordinating the report-back to Ministers in April 2004.
31. The April 2004 report-back to Ministers will provide detailed analysis and advice on options for implementing the Strategy, including policy implications, legislative requirements and estimates of ongoing management costs.
32. It is proposed by all parties that the Strategy be monitored and its effectiveness be reviewed five years after implementation.

Local Implementation

33. Environment Southland has expressed a willingness to have a significant and ongoing role in the implementation of the Strategy.
34. The Department of Conservation has indicated that delegations of powers appropriate to local groups and council staff will be considered as part of the Strategy implementation.

Links with other Government Projects and Policies

35. The Strategy developed by the Guardians has not been developed in a vacuum. Currently there are a number of important and strategic documents that have been developed, or are in development which have bearing on the Coastal Marine Area, including, the Biodiversity Strategy, the Marine Protected Areas Strategy, Oceans Policy, the review of the New Zealand Coastal Policy Statement, the new Marine Reserves Bill, the Aquaculture reform and the ongoing discussions on the Foreshore and Seabed.
36. The implementation of the Fiordland Strategy will complement the work proposed through the draft Oceans Policy that seeks to develop tools, models and support for community-based initiatives to improve local management of coastal environments (including development of a 'best practice' community model for managing sensitive or valued areas).
37. The Strategy will also support achievement of objectives of the NZ Biodiversity Strategy (approved by Govt in February 2000) in several ways. It has been generated by community involvement (objective 8.1 of the NZBS); it seeks to provide greater protection from the adverse effects of fishing and other coastal and marine resource use (objective 3.4); and, it seeks to enhance protection of marine habitats and ecosystems through full protection of china shops and representative areas (objective 3.6, particularly actions a. and d.).

Risks and Opportunities

38. There are risks and opportunities associated with the process noted above. The risks can be minimised by high level commitment to the overall process and successful involvement of the Guardians and other regulatory agencies in implementing this local initiative.
39. As noted in paras 22-23 above, the Ministry of Fisheries has undertaken a preliminary assessment of the specific fisheries management issues and has

identified a number of potential challenges to their implementation through fisheries regulations. However, there are opportunities to work with the Guardians and stakeholders to address these challenges..

40. The Guardians expect there to be both strong and continuing involvement of central and local government agencies, and reflect the commitment by the local community. Environment Southland and the Department of Conservation will both likely play a significant role in local education and compliance initiatives.
41. The implementation of a strategy which has been developed by local stakeholders is rare. It has provided an opportunity for a new, more co-operative approach to the management of marine resources to be tested. This is illustrated by the attendance of not only Ministers of Fisheries and of the Environment, but the Kaiwhakahaere of Ngai Tahu at the launch of the Strategy. It will need the full endorsement and commitment from all involved. It will inevitably involve new and innovative management mechanisms, and hence needs close monitoring to evaluate its success.

Funding Implications

42. All of the agencies involved, including Environment Southland, have indicated that the cost of their involvement in the period of assessment and development of the means to implement the Strategy (prior to July 2005) can almost certainly be met from existing baselines.
43. To assist the Guardians to continue their involvement over the next two years the Ministry for the Environment is proposing to grant a small extension (of no more than \$20,000) to the Guardians existing project supported by the Ministry for the Environment's Sustainable Management Fund. This would be available to meet the actual and reasonable expenses of their participation in the Investigative Group over the next two years.
44. The operational agencies (Environment Southland, the Ministry of Fisheries and the Department of Conservation) will each assess the likely cost implications of the implementation and long term management of the Strategy, as part of the report-back in April 2004.
45. Initial and indicative assessments based on the current Strategy and discussions with the relevant agencies suggest that ongoing management costs of the Strategy may be of the order of \$300,000 per year. This funding would be used for such things as increased enforcement, signage, provide education resources, information dissemination and monitoring.

Proposed Timetable

46. The following timetable is proposed for the next 2 years:
 - a) Cabinet considers this paper in early November 2003;
 - b) Tentative approval is sought for possible legislative initiatives within the Legislative Programme for 2004-05. This would occur in late November 2003.
 - c) The Investigative Group evaluates and assess policy options between October 2003 and early March 2004, including indicative costs and legislative options;
 - d) A report is provided for the Minister for the Environment to give to Cabinet Policy (POL) Committee on policy and legislative options by the end of April 2004;

- e) If special legislation is found to be the best method of implementing the Strategy then:
- A draft bill and a report for Cabinet Legislative (LEG) Committee, seeking approval for introduction, would be completed by the end of June 2004;
 - The bill would be completed and ready for introduction to House by September 2004;
- f) Departmental Budget bids for 2005-06 year (and out-years), based on the bill's provisions and department's likely work programmes, will be developed by end January 2005;
- g) The bill passes by end of May 2005;
- h) Central and regional government implementation of Strategy begins July 2005.

Consultation

47. This Cabinet paper has been circulated to the following departments: Conservation, Fisheries, Agriculture and Forestry, Economic Development, Te Puni Kokiri, Justice, Treasury, Tourism and the Maritime Safety Authority. The comments provided by these Departments have been incorporated into this paper.
48. The Guardians, Environment Southland and Te Runanga o Ngai Tahu have also been consulted about these issues during the development of this Cabinet paper and their views have been incorporated in this paper.

Human rights

49. The proposals in this paper are not inconsistent with the Human Rights Act 1993. The proposals also appear to be consistent with the New Zealand Bill of Rights Act 1990.

Legislative implications

50. If special legislation is identified as the best mechanism for the implementation of the Strategy, detailed analysis of the Strategy's outcomes and existing legislative mechanisms will be required, however, the exact nature and extent of this work will not be known until completion.
51. Should legislation be the agreed outcome, it will need to be allocated a place in the government's legislative programme for 2004-05. The Ministry for the Environment will seek indicative approval for this contingency at the next opportunity.

Regulatory impact and compliance cost statement

52. A regulatory impact statement and a compliance cost statement will be prepared alongside policy proposals that will be reported to POL and Cabinet by the end of April 2004.

Publicity

53. Stakeholders, including the Guardians and local government will need to be informed of Cabinet's decision. It is intended that this paper and consequent decisions will be made available to them.

Recommendations

It is recommended that the Committee:

1. **Noted** that the Fiordland Marine Conservation Strategy developed by the Guardians of Fiordland's Fisheries and Marine Environment is complete and has been delivered to the Government.
2. **Noted** that the Ministers of Fisheries and Environment attended the launch of this Strategy, received this from the Guardians and endorsed the management approach proposed within the Strategy.
3. **Noted** that the Guardians are seeking special legislation to implement the Strategy.
4. **Agreed** to the formation of a wider Investigative Group, lead by the Ministry for the Environment, and including the Department of Conservation, the Ministry of Fisheries, the Maritime Safety Authority, Environment Southland, the Guardians and Te Runanga o Ngai Tahu and other agencies and organisations as necessary to support the work of this group.
5. **Invited** the Minister for the Environment to report back to Cabinet Policy Committee by the end of April 2004 on preferred options for implementing the Strategy.
6. **Noted** that budget implications will be estimated in the April 2004 report-back and will be developed into departmental bids by end January 2005 for the 2005-06 financial year.
7. **Noted** that there may be legislative implications following the report back by officials, with special legislation a likely option.
8. **Noted** that the Ministry for the Environment will publicly release this Cabinet submission (POL (030 350) after the Cabinet minute is released.
9. **Noted** that the Minister of Fisheries indicates that consultation is not required with the government caucuses or other parties represented in Parliament.

Hon Pete Hodgson

Minister of Fisheries

(Signed on Behalf of)

Hon Marian Hobbs

Minister for the Environment

