



*Ministry for the*  
**Environment**  
*Manatū Mō Te Taiao*

# **Implementing the Fiordland Marine Conservation Strategy**

**Report of the Fiordland Marine Conservation  
Strategy Investigative Group**

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# Executive Summary

This report sets out the Investigative Group's advice to the Minister for the Environment on options for implementing the Fiordland Marine Conservation Strategy (the strategy) as produced by the Guardians of Fiordland's Fisheries and Marine Environment Inc. Ministers agreed to the implementation being completed by September 2005.

The Investigative Group has analysed and further developed the elements of the strategy in order to assess options for an appropriate means to implement these. Seven sets of management measures have been developed for implementation. They are:

## 1. Fisheries

- Commercial fishing:
  - prohibit commercial fishing inside the habitat lines (habitat lines were identified by the Guardians as practical expressions of the boundaries of the inner and entrance/outer habitats for each fiord. As much as possible they have been placed at easily identified and marked locations).
- Non-commercial fishing:
  - modify species bag limits
  - encourage harvesting to take place at the fiords entrances and along the outer coast
  - prohibit accumulation of bag limits for some species
  - provide for a temporary two year closure through regulation for blue cod in Milford and Doubtful Sounds
  - restrict bulk harvesting methods.

## 2. Values of special significance

Two types of special areas are proposed in the Guardians' strategy – areas that are representative of Fiordland's marine environment ('representative areas') and 'china shops' which are small, discrete areas with special features.

- Representative areas:
  - establish appropriate protection tools for the eight identified representative areas including any china shops located within these representative areas or contiguous to them.
- China shops not included in representative areas:
  - establish a code of practice for the use of each area
  - manage diving activities if the area is under threat from existing or future activities
  - manage anchoring if the area is under threat from existing or future activities.

### **3. Risks to the marine environment**

- Establish codes of practice for hull-cleaning, identification of unwanted species and domestic ballast water exchange.
- Establish a special taskforce to develop and implement a plan to address marine bio-invasion and other pest species specifically for Fiordland.
- Produce educational material to help promote compliance with new and existing standards and codes of practice.
- Continue to promote an integrated and co-operative approach by management agencies<sup>1</sup> to managing visitor numbers in Fiordland.

### **4. Expressing kaitiakitanga**

- Continue to recognise that Fiordland is a Statutory Acknowledgement Area (as defined in the Ngai Tahu Claims Settlement Act 1998), and the consultation requirements that this entails.
- Ensure tangata tiaki continue to manage customary fisheries (as defined by the South Island Customary Fishing regulations).
- Ensure taonga (as defined by the Ngai Tahu Claims Settlement Act) are managed by tangata tiaki (including in representative areas).
- Establish a convention for dual naming of important areas within Fiordland.
- Ensure tangata whenua representation on any committee set up for the Fiordland area.

### **5. Information and monitoring**

- Ensure management agencies develop an integrated monitoring programme for analysing the state of the environment.
- Ensure management agencies work with the Fiordland Marine Guardians when developing an integrated monitoring approach.
- Develop indicators by which to measure the performance of marine management.

### **6. Implementing the strategy**

- Define the area over which the management measures will apply.
- Implement the full package of management measures on a common start date, and by September 2005.
- Disallowing new marine reserves applications (other than those agreed to in the strategy) until the strategy has been reviewed.

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<sup>1</sup> Management agencies in the marine environment are currently the Ministry of Fisheries, Maritime Safety Authority, Ministry for the Environment, Environment Southland, Ngai Tahu, and the Department of Conservation.

- Establish and appoint the ‘Fiordland Marine Guardians’ to provide advice to the Government on the performance of marine management in Fiordland and to provide a forum for co-ordinating inter-agency work. The group will be independent of the current Guardians of Fiordland’s fisheries and Marine Environment Inc.
- Require a review of the performance of the management measures after five years.
- Require management agencies to take into account the advice of the Fiordland Marine Guardians.

## 7. Compliance

- Develop an integrated compliance approach for Fiordland to make effective use of limited compliance resources.
- Ensure management agencies work with the Fiordland Marine Guardians and the National Marine Co-ordination Centre, when developing an integrated compliance approach.

The management measures not requiring legislative backing can be implemented by management agencies; however, the Investigative Group considered four options for implementing the management measures that do require legislative backing. It was agreed that whatever the preferred option for implementation, existing management measures and systems should be used wherever possible. The four options are:

- **Option A: Current legislation** – use mechanisms already available under the Fisheries, Marine Reserves and Resource Management Acts
- **Option B: Comprehensive new legislation** – enact new legislation that would apply in the Fiordland area only, and replace functions under the Fisheries, Marine Reserves and Resource Management Acts within that area
- **Option C: Amendments to current legislation** – amend the Marine Reserves, Fisheries and Resource Management Acts to enable implementation of those specific management measures not currently provided for
- **Option D: Special legislation incorporating amendments to current legislation** – enact special legislation that would provide recognition for the Fiordland marine area and enable implementation of those specific management measures not currently provided for.

Most of the management measures can be implemented through either non-statutory means or existing legislation. However, existing legislation does not provide the means to:

- fast-track the creation of new marine reserves, and changes to the Environment Southland Coastal plan to meet the September 2005 deadline for implementation of all management measures
- prevent the creation of new marine reserves other than those agreed to in the strategy
- define the area over which management measures will apply
- provide for the establishment and roles of an advisory committee, to be called the Fiordland Marine Guardians.

## Preferred option

The Investigative Group's preference is for Option D which is special legislation incorporating specific provisions to recognise Fiordland's special marine environment and improve integration of planning and management. This would also involve some consequential amendments to current legislation.

Special legislation would:

- recognise the special nature of the Fiordland marine environment
- create the Fiordland Marine Guardians and define their role and functions
- require each of the Acts and management agencies to take into account the advice of the Fiordland Marine Guardians
- create the eight marine reserves and disallow further new marine reserves for five years
- create changes to the Southland Regional Coastal Plan
- define a boundary for the management measures in the Fiordland Area
- recognise the purpose of integrating management in this special area.

Although Fisheries Regulations are not constrained by process or timetable and therefore special legislation would not need to be used to implement the fisheries management regulations, in order to provide a complete package of measures within the Bill, this option may be desirable.

Other measures that do not require legislative change, such as educating users, can also be achieved through existing mechanisms and processes, though additional resources will be required.

# Introduction

## Purpose

The purpose of this report is to set out the Investigative Group's advice to the Minister for the Environment on options for implementing the Fiordland Marine Conservation Strategy (the strategy) as produced by the Guardians of Fiordland's Fisheries and Marine Environment Inc (the Guardians). Ministers agreed to the implementation being completed by September 2005.

The Cabinet Policy Committee agreed to the formation of an Investigative Group which has been tasked with writing this report, with the expectation that the Minister for the Environment will report back to the committee on preferred options for implementing the strategy.

## Background

Fiordland is recognised as a globally unique environment that contains high value marine resources and exceptional marine biodiversity. Increasing use of this area has threatened to compromise these values. The Southland community has reacted to these threats with an innovative proposal to improve marine resource management.

In 2003, the Guardians of Fiordland's Fisheries and Marine Environment (the Guardians) completed an eight-year project to improve marine resource management in Fiordland. The Guardians were formed in 1995 and its members represent organisations in the local community, including the Ngai Tahu Runanga of Oraka-Aparima, and commercial fishing, recreational fishing, charter/tourism, and conservation interests. The Guardians' strategy was developed to address their concerns about the impacts of human activities on Fiordland's fisheries and marine environment.

The Guardians started by developing an overall vision for Fiordland's marine environment, namely:

*That the quality of Fiordland's marine environment and fisheries, including the wider fishery experience, be maintained or improved for future generations to use and enjoy.*

They then worked towards that vision by gathering information and identifying issues with human activities impacting on the marine environment. Key objectives were developed for each of the problem areas to help the Guardians maintain a consistent approach through debate and decision-making.

The Guardians undertook long and careful negotiation and consultation with the wide range of interested groups and stakeholders. Each of the sectors involved in the negotiations gave up some of the interests that they held in the marine environment for the overall protection of the marine environment; this process was known as the 'gifts and gains'. The result of this process was a package of management measures the Guardians believed would improve local marine resource management. The Guardians strongly recommended that all management measures be implemented to ensure that the carefully negotiated balance of gifts and gains is not compromised.

The Guardians have asked the Government to take the necessary policy and legislative steps to implement their strategy. The Ministers of Fisheries and the Environment were presented with the strategy at a public meeting in Te Anau on 6 September 2003. At that meeting, the Ministers committed the Government to implementing the strategy by September 2005. The Ministers stated that they saw the strategy providing direction for marine management in Fiordland and recognised the strategy's vision and objectives. The Ministers noted that central and local government agencies would need to have the flexibility to find the most appropriate means to implement it.

In November 2003, the Investigative Group was formed on instruction from the Cabinet Policy Committee (12 November 2003, POL min (03)29/6). The group includes government and regional agencies, including the Ministry of Fisheries (MFish), Department of Conservation (DoC), Ministry for the Environment (MFE), Maritime Safety Authority, Environment Southland, the Guardians and Ngai Tahu. The group's task is to provide options for implementing the Guardians' strategy. MFE is co-ordinating this investigation. The Minister for the Environment will then submit a paper to Cabinet outlining options for implementing the Guardians' strategy by September 2005. The Cabinet paper will be based on this report and the feedback to it. Refer to Appendix 1 for the group's Terms of Reference.

# The Fiordland Marine Conservation Strategy

To start their process to improve marine management within the Fiordland marine environment, the Guardians first produced their vision statement. They then developed a list of issues for the area, a set of objectives for their process and a package of proposed measures to meet those objectives. This constitutes the Guardians' Fiordland Marine Conservation Strategy.

## Vision

The Guardians' strategy seeks to achieve the following vision, namely:

*That the quality of Fiordland's marine environment<sup>2</sup> and fisheries, including the wider fishery experience, be maintained or improved for future generations to use and enjoy.*

## Issues

The Guardians believe that the special nature of the Fiordland marine environment is the single most important feature underlying all aspects of their strategy. They describe the set of unique circumstances that come together in Fiordland to create the special habitats and communities that are found there. Briefly, high rainfall creates a darkly stained freshwater surface layer that restricts light into the water column and this inhibits the growth of large seaweed (kelp) that are characteristic of the outer coast. In the absence of this kelp zone, animals that are normally found at depth have colonised the steep fiord walls from the surface to about 40m depth, a phenomenon known as 'deep water emergence'.

The Guardians' initial focus was to develop a comprehensive picture of Fiordland's fisheries and marine environment. From there they identified a number of key issues that needed to be addressed if progress was to be made towards achieving their vision for Fiordland's fisheries and marine environment. The following key issues were identified:

- threats to the sustainability of fish stocks
- the need to protect values of special significance
- human generated environmental risks and threats
- the expression of kaitiakitanga.

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<sup>2</sup> The Guardians proposed that the Fiordland marine environment would cover the coast and fiords from the eastern bank of the mouth of the Waiau River in the south to Cascade Point in the north. The seaward boundary was flexible.

# Objectives

The Guardians identified key objectives for each of the four issues to provide guidance for them when developing their strategy and to ensure that a consistent approach was maintained through subsequent discussion and consultation. They are:

- Fisheries:
  - ensure the sustainable utilisation of the finite fisheries resources, having regard to the special nature of the fiord environment
  - prevent uncontrolled expansion of effort/harvest by all groups
  - ensure that the rights of tangata whenua, recreational, charter operators, commercial and other user groups are identified and recognised and that these groups are involved in fisheries management decisions including access to the fisheries resource
  - support overarching fisheries management frameworks
  - fit management of fisheries to an appropriate spatial scale
  - encourage harvesting to take place at the entrances and outer coast
  - encourage voluntary compliance with the rules and reinforce the view that non-compliance is unacceptable behaviour
  - adopt a cautious and responsible approach to proposals for new developments, including fisheries developments.
- Values of special significance:
  - ensure the ongoing integrity of areas, habitats and communities of special significance within Fiordland’s marine environment.
- Risks to the marine environment:
  - avoid where possible, remedy, or mitigate the adverse impacts of human activities on fisheries and the marine environment.
- Expressing kaitiakitanga:
  - ensure that kaitiakitanga (stewardship) be appropriately expressed for Fiordland’s fisheries and marine environment.

The Guardians also proposed four further objectives focused on how their strategy might successfully be implemented. These were also considered and accepted by the Investigative Group. They are:

- Information:
  - ensure there is a proactive approach to identifying and advocating research and information needs, to obtain the necessary information for advancing the strategy’s objectives.
- Implementing the strategy:
  - implement the package of management measures (gifts and gains) proposed in the strategy as a whole, without compromising underlying principles and balances.
- Compliance:
  - encourage voluntary compliance with the rules and reinforce the view that non-compliance is unacceptable behaviour.
- Monitoring the performance of the strategy:
  - evaluate whether the package of management measures is achieving the objectives of the strategy.

## Area of application of the strategy

The Guardians proposed that the Fiordland marine environment would cover the coast and fiords from the eastern bank of the mouth of the Waiau River in the south to Cascade Point in the north. The seaward boundary was not specified.<sup>3</sup>

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<sup>3</sup> Please refer to page 14 for further discussion

# Proposed Management Measures

The identification of issues and objectives allowed the Guardians to take an overview of marine management in Fiordland. They identified a number of ‘solutions’ to improve current management. These ‘solutions’ are their proposed management measures.

Because it is the management measures that have the greatest impact on existing users, these were the focus of long and careful negotiation and consultation with a wide range of stakeholders. Commercial and recreational fishers, Ngai Tahu, charter operators and environmental and community interests all endorsed the final package. The Guardians believe that keeping the negotiated balance is critical. They believe that should the negotiated balance be broken, the integrity of the entire approach (as advocated in their strategy) will be compromised. They believe that maintaining the balance and integrity of the package was crucial to retaining the confidence of the community in the process of implementing the various management measures. This would be particularly important over the first few years of the new management regime.

When reviewing the strategy, the Investigative Group noted that a number of the management measures needed to be clarified before implementation. Clarification of these has been possible with the help of the members of the Guardians on the Investigative Group, who in turn have liaised with the wider Guardians group. The Investigative Group has discussed and agreed changes to the strategy only where necessary for implementation purposes and has endeavoured to stay true to the essence of the Guardians’ expectations.

Reference to ‘the management measures’ within this report refers to the management measures as clarified by the Investigative Group and summarised below. Appendices 3–9 provide more detail on the specific management measures proposed by the Guardians and any changes that the Investigative Group recommend.

The package of management measures<sup>4</sup> now proposed by the Investigative Group is set out below.

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<sup>4</sup> Definition: management actions that have a specific purpose.

## Fisheries

- Commercial fishing:
  - prohibit commercial fishing inside the habitat lines (habitat lines were identified by the Guardians as practical expressions of the boundaries of the inner and entrance/outer habitats for each fiord. As much as possible they have been placed at easily identified and marked locations).
- Non-commercial fishing:
  - modify species bag limits
  - encourage harvesting to take place at the fiords entrances and along the outer coast
  - prohibit accumulation of bag limits for some species
  - provide for a temporary two-year closure through regulation for blue cod in Milford and Doubtful Sounds
  - restrict bulk harvesting methods.

## Values of special significance

Two types of special areas are suggested in the Guardians' strategy. These are areas that are representative of Fiordland's marine environment ('representative areas') and 'china shops'<sup>5</sup> which are small discrete areas with special features.

- Representative areas:
  - establish appropriate protection tools for the eight identified representative areas including any china shops located within these representative areas or contiguous to them.
- China shops not included in representative areas:
  - establish a code of practice for the use of each area
  - manage diving and anchoring if the area is under threat from existing or future activities.

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<sup>5</sup> China shops is a term used by the Guardians to describe small discrete areas that are considered to be outstanding for the abundance and/or diversity of mixed animal/plant communities or the abundance of particular animal species.

## Risks to the marine environment

- Establish codes of practice for hull-cleaning, identification of unwanted species and domestic ballast water exchange.
- Establish a special taskforce to develop and implement a plan to address marine bio-invasion and other pest species specifically for Fiordland.
- Produce educational material to help promote compliance with new and existing standards and codes of practice.
- Continue to promote an integrated and cooperative approach by management agencies to managing visitor numbers in Fiordland.

## Expressing kaitiakitanga

- Continue to recognise that Fiordland is a Statutory Acknowledgement Area (as defined in the Ngai Tahu Claims Settlement Act 1998), and the consultation requirements that this entails.
- Continue to have tangata tiaki manage customary fisheries (as defined by the South Island Customary Fishing regulations).
- Ensure taonga (as defined by the Ngai Tahu Claims Settlement Act) are managed by tangata tiaki (including in representative areas).
- Establish a convention for dual naming of important areas within Fiordland.
- Ensure tangata whenua representation on any committee set up for the Fiordland area.

## Information and monitoring<sup>6</sup>

- Ensure management agencies develop an integrated, representative monitoring programme for analysing the state of the marine environment.
- Ensure management agencies work with the Fiordland Marine Guardians when developing an integrated, representative monitoring approach.
- Develop indicators by which to measure the performance of marine management.

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<sup>6</sup> The Investigative Group have merged the management measures relating to information and monitoring the performance of the Strategy, this is discussed further in Appendix 7: Information and monitoring.

## Implementing the strategy

- Define the area over which the management measures will apply.
- Implement the management measures by September 2005.
- Disallowing new marine reserves applications (other than those agreed to in the strategy) until the strategy has been reviewed.
- Establish and appoint the 'Fiordland Marine Guardians' to provide advice to the Government on the performance of marine management in Fiordland and to provide a forum for co-ordinating inter-agency work. This group will be independent of the current Guardians of Fiordland's fisheries and Marine Environment Inc.
- Require a review of the performance of the management measures after five years.
- Require management agencies to take into account the advice of the Fiordland Marine Guardians.

## Compliance

- Develop an integrated compliance approach for Fiordland to make effective use of limited compliance resources.
- Ensure management agencies work with the Fiordland Marine Guardians and the National Marine Co-ordination Centre when developing an integrated compliance approach.

The following sections of this paper outline options for implementing these management measures.

# Options for Implementing the Strategy

Each of the management measures can be implemented in one or both of the following ways:<sup>7</sup>

- through non-statutory agreements and measures (eg, the proposed special taskforce to address the risk of marine bio-invasion by pest species<sup>8</sup>)
- through existing or new statutory measures (eg, fisheries bag limits through regulation or disallowing new marine reserves applications by amendment to the Marine Reserves Act).

The management measures not requiring statutory change can be implemented by the relevant management agencies. There are a number of options for implementing the management measures that do require statutory change, as described below. Regardless of which legislative option is chosen, it would be desirable for the non-statutory management measures within the overall package to be implemented at the same time as the statutory measures, to maintain consistency and the integrity of the package.

The Investigative Group considered four broad options for implementing the management measures that need statutory force. They are:

- **Option A: Current legislation.** This uses measures already available under the Fisheries, Marine Reserves and Resource Management Acts.
- **Option B: Comprehensive new legislation.** This would enact new legislation that would apply in the Fiordland area only, and effectively replace the Fisheries, Marine Reserves and Resource Management Acts within that area.
- **Option C: Amendments to current legislation.** This would amend the Marine Reserves, Fisheries and Resource Management Acts to enable implementation of those specific management measures not currently provided for.
- **Option D: Special legislation incorporating amendments to current legislation.** This would enact special legislation that would provide recognition for the Fiordland marine area and enable implementation of those specific management measures not currently provided for.

The Government has directed that the new management measures be implemented by September 2005. In order to meet this tight implementation timetable, and to lower the risk of unintended policy or legislative consequences, the Investigative Group agreed that existing legislation and management structures should be used wherever possible to implement the strategy.

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<sup>7</sup> Table 2 describes which category each proposed management measure falls into.

<sup>8</sup> There are many potential marine pest species, including ballast water and hull fouling species. The most commonly known exotic species is the Japanese kelp *Undaria*.

The Investigative Group was mindful that new or alternative implementation methods could lead to concerns by those groups who were party to the ‘gifts and gains’ process – and undermine the integrity of the package as a whole.

In making its recommendations to Government on the implementation of the strategy the Investigative Group has had to ensure that the outcome will not be inconsistent with other relevant national policies, including Oceans Policy, the Marine Protected Areas Strategy, the Marine Reserves Bill and the New Zealand Biodiversity Strategy.

## Option A: Current legislation

To implement the management measures in the strategy using current legislation, three existing statutes were considered to be most relevant: the Fisheries Act 1996, the Marine Reserves Act 1971 and the Resource Management Act 1991. The purposes of these Acts are described briefly below.

- The Fisheries Act 1996 provides for the utilisation of fisheries resources whilst ensuring sustainability.
- The Marine Reserves Act 1971 designates specified areas of the territorial sea, seabed, internal waters, foreshore and waters that are managed for scientific study and to preserve the marine habitat in its natural state.<sup>9</sup>
- The Resource Management Act 1991 is to ‘promote the sustainable management of natural and physical resources’. This Act focuses on avoiding, remedying or mitigating the effects of activities within or on the marine environment.

Table 1 summarises the extent to which each of the above statutes is able to be used to implement the management measures in the strategy.

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<sup>9</sup> The Marine Reserves Bill 2002 is currently before Parliament, and will eventually replace the Act. The Marine Reserves Bill 2002 includes a number of changes to the current Act. The Bill when enacted will provide a new process and broader purpose for the statute governing marine reserves.

**Table 1: Analysis of the ability of current marine legislation to implement the strategy**

Management measures in the strategy	Fisheries Act 1996	Marine Reserves Act 1971	Resource Management Act 1991	Using the three Acts combined
Fisheries	Yes	No	No	Yes
Values of special significance	Partly	Yes (but not within timeframe)	Partly	Yes (but not within timeframe)
Risks to the marine environment	Partly	Partly	Partly	Yes (but not within timeframe)
Expressing kaitiakitanga	Yes	Partly	Partly	Yes
Information and monitoring	Partly (in conjunction with the other agencies)	Partly (in conjunction with the other agencies)	Partly (in conjunction with the other agencies)	Yes
Implementing the Strategy	No	No	No	No
Compliance	Partly (in conjunction with the other agencies)	Partly (in conjunction with the other agencies)	Partly (in conjunction with the other agencies)	Yes

As shown above, each statute can be used to implement *some* management measures in the strategy; however no one statute can implement *all* of them. Appendix 2 provides further explanation to this table, by giving a brief summary of the purpose of each Act and the management measures that it can (or cannot) implement.

By using a combination of the Resource Management, Fisheries and Marine Reserves Acts, *most* of the strategy's management measures can be implemented but not all. This confirms the analysis presented by the Guardians.

## Management measures not easily accommodated by existing legislation

Existing legislation does not easily provide for the following management measures:

### Changes to the Southland Coastal Plan

Implementation of the management measure would require three changes to the Southland Regional Coastal Plan. First, diving in areas identified as china shops needs to be managed if the area is under threat from existing or future activities. China shop 'zones' therefore need to be recognised in the Southland Regional Coastal Plan, so that Environment Southland will be able to regulate charter boat activity through resource consents.

Second, anchoring in Fiordland needs to be managed if an area is under threat from existing or future activities. This would require changes to the Southland Regional Coastal Plan to make amendments to the mooring and anchoring schedule and alter the planning maps.

Finally, a hull-cleaning (and identification of unwanted species) code of practice, required for biosecurity reasons, needs to be backed up by regulations in the Southland Regional Coastal Plan.

The standard process for changes to the Southland Regional Coastal Plan can result in a lengthy public submission process. In order to meet the September 2005 deadline the normal process for changing the Southland Regional Coastal Plan would need to be set aside and replaced by special provisions in legislation. The updated plan will need to be published and new copies produced.

### **Creating eight new marine reserves**

It is proposed to establish marine reserves over the eight identified representative areas including any china shops located within these representative areas or contiguous to them. Creating marine reserves under the Marine Reserves Act involves a significant and often lengthy statutory process. There is also no guarantee that any of the marine reserve proposals would be successful. To create the eight marine reserves by the September 2005 deadline requires setting aside the normal process for creating marine reserves under the Marine Reserves Act (or new legislation) and to create them with special provisions in legislation.

### **Disallowing further new marine reserve applications for five years**

Under the Marine Reserves Act [section 5(1)] an applicant may make an application for a new marine reserve if they meet the criteria of the Act and follow the prescribed process. Applications are made at the discretion of the applicant and the right to apply for a new marine reserve in any particular area cannot be fettered by departmental policy. In accordance with the requirements of the Act, the Director General is bound to receive it and process any application made if the applicant and application meets the criteria of the Act.<sup>10</sup>

A statutory amendment would be needed to prevent applications for marine reserves being made. Hence it is proposed to amend the Marine Reserves Act to place a moratorium on new marine reserve applications within the Fiordland area until a formal review of the management measures has been completed.

### **Appointment and advice of 'Fiordland Marine Guardians'**

The Investigative Group recommends that an advisory committee called the Fiordland Marine Guardians be set up. The committee is considered to be an essential element of the new management regime as it will provide a focus for the community and management agencies to work together. Its primary tasks will be to take an overview of marine management in Fiordland, to provide a forum for management agencies to work together and to provide advice on ongoing marine resource management in Fiordland.

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<sup>10</sup> See Appendix 8 for more detail.

The committee could be set up in a non-statutory manner by Cabinet minute or by instruction from a Minister. However, if the committee does not have statutory recognition, any of the management agencies may find that their statutory functions are not sufficiently broad to allow them to give appropriate weight to the advice of the Fiordland Marine Guardians. They may be constrained by the purposes of their respective legislation, and this may preclude each from taking a more integrated approach to marine management.

## **Option B: Comprehensive new legislation**

Option B would involve crafting a new, comprehensive statute that would apply only to the Fiordland area and would replace functions under the Fisheries, Marine Reserves and Resource Management Acts within that area.

This would be a comprehensive solution to implementing all of the management measures. It would create a separate management regime from the rest of New Zealand, for fisheries, conservation and resource management. It would also provide specific and directive means for integration of the various management regimes and in particular it could list all of the various management measures required for Fiordland.

However, constructing both the policy advice and the new legislation would be very complex and time-consuming, as it would require careful consideration of how to replace longstanding legislation. It also runs counter to the group's intention to make use of existing legislation and management structures wherever possible to implement the strategy.

This option has a high risk of unintended policy consequences, due to the short timeframe and also risks alienation of the local support for the whole initiative. It would be very unlikely to meet the September 2005 deadline.

It would set an undesirable precedent for an area to be managed outside the current legislative regime that applies everywhere else in New Zealand, and would raise the potential for national marine management objectives and processes to be significantly undermined.

This option is also inconsistent with the direction of Government policy, which is to promote and manage integration through non-statutory means such as the Marine Protected Areas Strategy and the New Zealand Biodiversity Strategy. In particular a comprehensive new piece of legislation would pre-empt an Oceans Policy.

## Option C: Amendments to current legislation

Option C would involve using existing provisions under the Marine Reserves, Fisheries and Resource Management Acts to implement management measures. In addition, these statutes would need to be amended to allow implementation of the management measures that are not able to be implemented through current legislation.

### Fiordland Marine Guardians

As described above, an advisory committee is proposed to be a significant element of the new management regime. Its primary tasks will be to take an overview of marine management in Fiordland, to provide a forum for management agencies to work together and to provide advice on ongoing marine resource management. Providing it with statutory recognition and functions will mean that the management agencies should be able to give appropriate weight to the committee's advice. Placing the legislative provision for this committee within any one of the three major pieces of marine resource management legislation (Fisheries, Resource Management or Marine Reserves Act) could appear to give undue emphasis to that particular resource management sector. One possibility is to create the Fiordland Marine Guardians under the Environment Act. Establishing the committee this way would be consistent with the purpose of this Act. An advisory committee established under section 33 of the Environment Act would be able to provide advice to the Minister for the Environment on the application, operation, and effectiveness of the Fisheries, Resource Management or Marine Reserves Acts, among others. However, there is to date no precedent for establishing such a committee.

### Other amendments proposed

As noted under Option A, other amendments would be needed to the following legislation to implement the specific management measures listed below, namely:

- amendments to the Marine Reserves Act (or new Marine Reserves legislation) to:
  - create eight new marine reserves
  - disallow application for further new marine reserves in Fiordland for five years
  - take into account the advice of the Fiordland Marine Guardians.
- amendments to the Resource Management Act to:
  - make changes to the Southland Coastal Plan
  - take into account the advice of the Fiordland Marine Guardians.
- amendments to the Fisheries Act to take into account the advice of the Fiordland Marine Guardians.

The advantage to this option is that management measures can be specifically provided for by amendments to the relevant legislation. This option could allow changes to be made to meet the implementation timetable.

The disadvantage of this option is that the Fiordland area is left without any special status or recognition, and with no commonly agreed management boundary. Integrating elements, such as the need to recognise the role of the Fiordland Marine Guardians, would need to be inserted separately into each Act. Specific provisions for implementing local Fiordland-focused management measures might also detract from the national focus of these pieces of legislation. There is the risk that such ad hoc elements inserted into existing legislation may be, or become over time, inconsistent with the primary purposes of the legislation they have been inserted into.

## **Option D: Special legislation incorporating amendments to current legislation**

As with Option C, Option D also involves amendments to the Marine Reserves, Fisheries and Resource Management Acts, and would require an amendment Bill. The difference between the two is that in Option C the Bill simply provides for amendments to the existing pieces of legislation. The Bill in Option D would create a piece of legislation for the Fiordland Area which would contain specific provisions to recognise the special nature of the area and resources and the means to integrate management.

This special piece of legislation would:

- recognise the special nature of the Fiordland marine environment
- create the Fiordland Marine Guardians
- require each of the Acts and management agencies to take into account the advice of the Fiordland Marine Guardians
- create the eight marine reserves and disallow further new marine reserves for five years
- create changes to the Southland Regional Coastal Plan
- define a boundary for the management measures in the Fiordland Area<sup>11</sup>
- recognise the purpose of integrating management in this special area.
- could implement fisheries management measures (as discussed below).

An advantage of this option is that it would allow the special and unique nature of Fiordland to be given statutory recognition and so provide reason for any special or local management measures necessary to protect or manage these resources. It would also provide the means for the area to have greater status within the existing legislative resource management regimes of fisheries, resource management and marine conservation. It would create a greater sense of certainty within the resource management agencies<sup>12</sup> of the need to provide for collective, consistent and integrated management. The advice of the Fiordland Marine Guardians would also accordingly gain greater recognition and effect.

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<sup>11</sup> The Fiordland (Te Moana Atawhenua) marine environment covers the coastal marine area of the Southland Region from a line due south of the eastern bank of the mouth of the Waiiau River to a line due west of Awarua Point.

<sup>12</sup> Including both central and local government agencies, as well as those with delegated or other statutory responsibilities, such as tangata tiaki.

Option D provides for fewer consequential amendments to existing legislation. The group also found that enactment of special legislation would provide the best means to accommodate many of the management measures that could not otherwise be implemented through the existing management regime, specifically:

- defining the area over which management measures would apply
- providing for the appointment and role of a Fiordland Marine Guardians.

## **Extending the legislative process to include fisheries management provisions**

The proposed fisheries management measures can be implemented under existing Fisheries Regulations to meet the implementation timetable. However, as noted in Option C, the legislation needs to provide for a number of management measures that will need legislative provision to ensure they are both timely and complete. In order to create a complete package of management measures it may also be possible for the fisheries regulations to be implemented as a part of any new legislation. The legislation would simply include the regulations as a schedule in the same manner as the changes to the Regional Coastal Plan. They would continue to be Fisheries Act regulations. This would allow the public and the Select Committee to see the full package of management measures that require statutory change and consider them as whole. The advantage of this would be to provide Parliament with a Bill referencing all the significant resource management measures in one package. It is, however not necessary to do this, as the current process for setting fisheries regulations can operate in a timely manner to implement the measures.

## **Defining the area over which the management measures will apply**

In order to have integrated management over defined resources and within a defined area the extent of the management area needed closer definition. It was agreed to shift the northern boundary from Cascade Point, which is in the West Coast Regional Council area, to Awarua Point, which forms the boundary between the two regions (Southland and West Coast). This would more closely align the boundary with existing management responsibilities and prevent conflict or confusion with another regional council in another regional coastal area.

At either end of the area there is sufficient geographical extension to create a boundary (buffer) that is likely to limit lateral incursion into the area from the north and the south/east.

The outer (or seaward) boundary is proposed to be the extent of the coastal marine area (the 12 nautical mile limit of the Territorial Sea) as this coincides with a simple, existing and recognised jurisdictional limit.

# Conclusion: The Investigative Group's Preferred Implementation Option

The Investigative Group recommends Option D (special legislation incorporating amendments to current legislation) be adopted as the preferred approach for implementing the strategy.

This option involves developing special legislation which incorporates specific provisions to recognise Fiordland's special marine environment and to improve integration of planning and management. It would also make some consequential amendments to current legislation. This option is believed to provide the best method of giving effect to the Guardians' strategy and to provide the means to address local marine resource management in a more integrated manner that makes best use of existing legislation. Table 2 provides a summary of how each of the management measures would best be implemented within this option.

The Investigative Group believes that special legislation is desirable to provide a suitable, single, recognisable 'home' for management measures that cannot otherwise be accommodated through existing legislation. Both Options C and D involve legislative changes to implement the management measures for Fiordland's marine environment. However, Option D – by having one set of legislative provisions in a specific, locally-focussed Act that stipulates the requirements for the Fiordland Marine Guardians, recognises the purposes and roles of other management regimes, and recognises the need for integration – should provide for fewer changes to the existing legislative and management regimes than Option C. This should lower the risk to national resource management regimes, such as fisheries management, of inconsistent or anomalous legislative provisions becoming embedded in primary legislation. Fiordland-specific regulations, rules and other expectations would be mandated from a specific local Act. This would assist in providing these with necessary context; it would assist in gaining public recognition and acceptance of these (for compliance and enforcement purposes) as departures from nationally set practices and expectations. This could be especially important in managing the regional differences in fisheries management or marine reserve regulations, or rules within the broader Southland Regional Coastal Plan.

Maintaining community support for what the Guardians consider to be 'their strategy' (while meeting Ministers' expectation that local and central government agencies find the best means to implement it) has also been an important consideration. The need for swiftness in implementation has been recognised, but this has been balanced by the fact that the process for developing improved marine resource management for Fiordland is unique and without precedent in New Zealand. The Investigative Group believes that their preferred implementation option will meet the expectations of the Fiordland community, and provide better mechanisms to improve the future management of this internationally significant marine ecosystem.

**Table 2: Management measures and mechanisms/agencies to implement them**

Management measures to be implemented	Mechanisms/agencies to implement management measures
<p><b>Fisheries management measures</b></p> <ul style="list-style-type: none"> <li>• Commercial fishing: <ul style="list-style-type: none"> <li>– Prohibit commercial fishing inside the habitat lines</li> </ul> </li> <li>• Non-commercial fishing <ul style="list-style-type: none"> <li>– Modify species bag limits</li> <li>– Encourage harvesting to take place at the fiord entrances and along the outer coast</li> <li>– Prohibit accumulation of bag limits for some species</li> <li>– Enforce a temporary two-year closure, through regulation, for blue cod in Milford and Doubtful Sounds</li> <li>– Restrict bulk harvesting methods.</li> </ul> </li> </ul>	<p><b>Fisheries management measures</b></p> <p>All of the fisheries management measures proposed can be implemented through regulation by the Ministry of Fisheries. These are provided for under section 11 of the Fisheries Act 1996, which allows for the implementation of any sustainability measure or variation of sustainability measure by:</p> <ol style="list-style-type: none"> <li>a. notice in the <i>Gazette</i>; or</li> <li>b. recommending the making of regulations under section 298.</li> </ol> <p>Furthermore, general regulations are also provided for under section 297.</p> <p>The proposed fisheries regulations have been provisionally allocated space in the Ministry of Fisheries April 2005 sustainability round process, or they can be run in a separate process, depending on the implementation timing required.</p> <p>In order to create a complete package of management measures it may also be possible for the fisheries regulations to be implemented as a part of any new legislation. The legislation would simply include the regulations as a schedule in the same manner as the changes to the Regional Coastal Plan. They would continue to be Fisheries Act regulations. This would allow the public and the Select Committee to see the full package of management measures that require statutory change and consider them as whole. The advantage of this would be to provide Parliament with a Bill referencing all the significant resource management measures in one package. It is, however not necessary to do this, as the current process for setting fisheries regulations can operate in a timely manner to implement the measures.</p>
<p><b>Values of special significance</b></p> <p>Two types of special areas are suggested in the Guardians' Strategy. Areas that are representative of Fiordland's marine environment ('representative areas') and 'china shops' which are small discrete areas with special features.</p> <ul style="list-style-type: none"> <li>• Representative areas: <ul style="list-style-type: none"> <li>– Establish appropriate protection tools for the eight identified representative areas including any china shops located within these representative areas or contiguous to them.</li> </ul> </li> <li>• China shops not included in representative areas: <ul style="list-style-type: none"> <li>– Establish a code of practice for the use of each area</li> <li>– Manage diving and activities if the area is under threat from existing or future activities.</li> </ul> </li> </ul>	<p><b>Marine reserves</b></p> <ul style="list-style-type: none"> <li>• For the full package of management measures to be implemented at a common start date the normal statutory processes for establishing marine reserves would not be appropriate. Special legislation containing consequential amendments to the Marine Reserves Act 1971 (or new Marine Reserves legislation) and providing for the creation of eight new Marine Reserves would need to be enacted. The areas would be declared marine reserves and the provisions of the Marine Reserves Act 1971 (or new Marine Reserves legislation) would apply to such areas as if they had complied with all the statutory requirements for a marine reserve.</li> <li>• Educational and promotional material will need to be prepared in relation to these marine reserves.</li> <li>• The legislation will need to allow for coffering and pot storage within certain representative areas declared marine reserves in Fiordland where this is not inconsistent with the purpose of the Marine Reserves Act or Bill.</li> </ul> <p><b>Codes of practice</b></p> <ul style="list-style-type: none"> <li>• Environment Southland will create the codes of practice for each of the 12 china shop areas, except for the china shops that are within representative areas.</li> </ul> <p><b>Diving and anchoring</b></p> <ul style="list-style-type: none"> <li>• The china shop 'zones' are to be recognised in the Southland Regional Coastal Plan, so that Environment Southland will be able to regulate charter boat activity through resource consents.</li> </ul> <p>A change to the Southland Regional Coastal Plan will be needed to make amendments to the mooring and anchoring schedule and alter the planning maps. The normal process for changing the Southland Regional Coastal Plan would need to be set aside and replaced by special provisions in legislation, in order to meet the required deadline.</p>

Management measures to be implemented	Mechanisms/agencies to implement management measures
<p><b>Risks to the marine environment</b></p> <ul style="list-style-type: none"> <li>• Establish codes of practice for hull-cleaning, identification of unwanted species and domestic ballast water exchange.</li> <li>• Establish a special taskforce to develop and implement a plan to address marine bio-invasion and other pest species specifically for Fiordland.</li> <li>• Produce educational material to help promote compliance with new and existing standards and codes of practice.</li> <li>• Continue to promote an integrated and co-operative approach by management agencies to managing visitor numbers in Fiordland.</li> </ul>	<p><b>Codes of practice</b></p> <ul style="list-style-type: none"> <li>• Environment Southland will work with the Fiordland Marine Guardians to establish the two codes of practice. The domestic ballast water exchange code of practice will be voluntary to sign up to, however the hull-cleaning code of practice is to be backed up by rules in the Environment Southland Coastal Plan. These codes are to reflect industry best practice.</li> </ul> <p>Changes to the Southland Regional Coastal Plan will be made by special provisions in legislation creating the plan changes. The updated plan will need to be notified and new copies produced.</p> <p><b>Special taskforce</b></p> <ul style="list-style-type: none"> <li>• The marine biosecurity team will work with the Fiordland Marine Guardians to develop a non-statutory targeted plan to address marine bio-invasion and other pests species specifically for Fiordland.</li> </ul> <p><b>Educational material</b></p> <ul style="list-style-type: none"> <li>• The Department of Conservation, Ministry of Fisheries and Environment Southland will work together to produce educational material on Fiordland.</li> </ul>

Management measures to be implemented	Mechanisms/agencies to implement management measures
<p><b>Express kaitiakitanga</b></p> <ul style="list-style-type: none"> <li>• Continue to recognise that Fiordland is a Statutory Acknowledgement Area (as defined in the Ngai Tahu Claims Settlement Act 1998), and the consultation requirements that this entails.</li> <li>• Tangata tiaki should continue to manage customary fisheries (as defined by the South Island Customary Fishing regulations).</li> <li>• Taonga collection in representative areas are to be managed by tangata tiaki.</li> <li>• Establish a convention for dual naming of important areas within Fiordland.</li> <li>• Ensure tangata whenua representation on any committee set up for the Fiordland area.</li> </ul>	<p><b>Statutory acknowledgement areas</b></p> <ul style="list-style-type: none"> <li>• Take into account Statutory Acknowledgement Areas and tangata tiaki management of customary fisheries.</li> </ul> <p><b>Taonga collection</b></p> <ul style="list-style-type: none"> <li>• Provide in the legislation the authority for collection of pounamu and taonga within the proposed marine reserves where this is consistent with the purpose of the Marine Reserves Act and Bill.</li> </ul> <p><b>Dual naming</b></p> <ul style="list-style-type: none"> <li>• The dual names for the Fiordland Marine Area/Te Mimi o Tu Te Rakiwhanoa will be recognised in any legislation created for Fiordland.</li> <li>• The Department of Conservation will consult with Ngai Tahu on appropriate names for new marine reserves.</li> <li>• Environment Southland to consult with Ngai Tahu on appropriate names for China Shop 'zones'.</li> </ul> <p><b>Representation</b></p> <ul style="list-style-type: none"> <li>• Ngai Tahu will be represented on any committee set up by statute in the Fiordland area.</li> </ul>
<p><b>Information and monitoring<sup>13</sup></b></p> <ul style="list-style-type: none"> <li>• Management agencies are to develop an integrated, representative monitoring programme for analysing the state of the environment.</li> <li>• Management agencies should work with the Fiordland Marine Guardians when developing the integrated, representative monitoring approach.</li> <li>• Develop indicators by which to measure the performance of marine management.</li> </ul>	<p>The Ministry of Fisheries, Department of Conservation and Environment Southland in conjunction with the Fiordland Marine Guardians will establish a planning team to work out how to develop an integrated representative, monitoring approach for Fiordland. This will include evaluating:</p> <ul style="list-style-type: none"> <li>• the resources available (from the Ministry of Fisheries, Department of Conservation and Environment Southland) for monitoring in Fiordland</li> <li>• whether the implementation of the strategy will require a different approach to monitoring in Fiordland</li> <li>• ways in which monitoring costs can be shared</li> <li>• what information is needed to detect change in Fiordland based on the five areas identified by the Guardians, and how this will be done</li> <li>• how information gathered before the implementation of the strategy can be used as a baseline from which to measure progress</li> <li>• how, during the first five years of implementation, an appropriate monitoring system can be put in place to monitor blue stocks in the two closed sounds, and a trigger identified to lift or reinforce this closure</li> <li>• how, during the first five years of implementation, an appropriate system can be put in place to monitor changes in China Shops</li> <li>• how to make use of local community expertise when monitoring.</li> </ul> <p>This planning team will report to the Minister for the Environment by June 2005.</p>

<sup>13</sup> The Investigative Group have merged the management measures relating to information and monitoring the performance of the strategy; this is discussed further in Appendix 7.

Management measures to be implemented	Mechanisms/agencies to implement management measures
<p><b>Implementing the strategy</b></p> <ul style="list-style-type: none"> <li>• Define the area over which the management measures will apply.</li> <li>• Implement the full package of management measures on a common start date, and by September 2005.</li> <li>• Disallowing new marine reserves applications (other than those agreed to in the strategy) until the strategy has been reviewed.</li> <li>• Establish and appoint the 'Fiordland Marine Guardians' to provide advice to the Government on the performance of marine management in Fiordland and to provide a forum for co-ordinating inter-agency work.</li> <li>• Require the review the performance of the management measures after five years.</li> <li>• Require management agencies to take into account the advice of the Fiordland Marine Guardians.</li> </ul>	<p>All of these measures would be implemented as provisions within a new special statute for Fiordland:</p> <ul style="list-style-type: none"> <li>• An advisory committee called the 'Fiordland Marine Guardians' be established, that has its functions defined in legislation.</li> <li>• Fast-tracking the creation of new marine reserves, and changes to the Environment Southland Coastal plan, which will be necessary to meet the September 2005 deadline for implementation of all management measures.</li> <li>• Amending the Marine Reserves Act (or new Marine Reserves legislation) to the effect that there would be a moratorium on new marine reserve applications within the area of the strategy until the strategy has been formally reviewed. A consequential amendment to the Marine Reserves Act (or new Marine Reserves legislation) would be required.</li> </ul>
<p><b>Compliance</b></p> <ul style="list-style-type: none"> <li>• Develop an integrated compliance approach for Fiordland to make effective use of limited compliance resources. In doing this, work with the outcomes of the National Marine Co-ordination Centre.</li> <li>• Management agencies should work with the Fiordland Marine Guardians when developing an integrated compliance approach.</li> </ul>	<p>The Ministry of Fisheries, Department of Conservation and Environment Southland will establish a planning team to work out how to develop an integrated compliance approach for Fiordland. This will include:</p> <ul style="list-style-type: none"> <li>• evaluating the resources available (from the Ministry of Fisheries, Department of Conservation and Environment Southland) for compliance and enforcement in Fiordland, and the information currently available to the community, visitors and users about management measures and compliance expectations</li> <li>• evaluating whether the new management measures will require a different approach to compliance and enforcement in Fiordland.</li> </ul>

# Summary of Findings and Recommendations

The Guardians' strategy recommends a package of management measures derived from a vision and objectives. The management measures in the Guardians' strategy needed some clarification before the best means of implementation could be determined.

Most of these management measures can be implemented through either non-statutory means or existing legislation. However, existing legislation does not provide the means to:

- fast-track the creation of new marine reserves, and changes to the Environment Southland Coastal plan to meet the September 2005 deadline for implementation of all management measures
- disallow new marine reserves applications (other than those agreed to in the strategy) until the strategy is reviewed
- define the area over which management measures will apply
- provide for the establishment and roles of the 'Fiordland Marine Guardians'.

The group identified two workable options for implementing the strategy as a whole. The first option would involve amending the Marine Reserves, Fisheries and Resource Management Acts as needed to enable the implementation of specific management measures. The second option would involve enactment of a new statute created under a special Act of Parliament that would provide for recognition of the Fiordland marine environment and provisions specifically for management of the Fiordland area, and link to consequential amendments of the Marine Reserves, Fisheries and Resource Management Acts as needed to enable the implementation of specific management measures.

The Investigative Group recommends that Option D is adopted because it considers it to be the best means to:

- strike a balance between giving effect to the Guardians' strategy as an integrated whole, and making best use of existing means (statutory and non-statutory) for implementing the management measures
- provide for management measures that cannot otherwise be accommodated through existing legislation
- maintain community support for the strategy, and meet the Guardian's expectations for its implementation
- sustain the unique Fiordland ecosystem over time.

# Appendix 1: Terms of Reference for the Fiordland Marine Conservation Strategy Investigative Group

## Group Name

Fiordland Marine Conservation Strategy Investigative Group

## Purpose

The Investigative Group is set up provide options and recommendations on how to implement the Fiordland Marine Conservation Strategy.

## Context

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 comprise representatives from organisations in the local community including Ngai Tahu Runanga of Oraka-Aparima, commercial fishers, recreational fishers, charter/tourism operators, and conservation groups.

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.

The Cabinet Policy Committee (POL Min (03) 29/6) agreed to the formation of a wider Investigative group (led by the Ministry for the Environment) and invited the Minister for the Environment to report back to the Cabinet Policy Committee by the end of April 2004 on preferred options for implementing the Strategy.

## Objectives

The primary objective of the Investigative Group is to identify, assess and to provide advice on preferred options for implementing the Strategy.

In doing this, the group will:

1. provide for full, open, transparent discussion and exchange of views and foster understanding between government officials and community representatives
2. find workable solutions to implement the 'gifts and gains' that have been negotiated by the Guardians of Fiordland's Fisheries and Marine Environment
3. ensure that issues are resolved in a timely manner
4. identify an appropriate role for group members in the ongoing implementation of the strategy.

The Investigative Group will be supported by a 'Wellington Officials Group', which will have responsibility for reporting the Investigative Group's recommendations to cabinet. This cabinet paper needs to be completed by March 2004 (extended to June 2004).

## Membership of the group

The cabinet minute agreed that the group will be led by Ministry for the Environment and that membership will include:

- Department of Conservation
- Ministry of Fisheries
- Maritime Safety Authority
- Environment Southland
- Guardians of Fiordland
- Te Runanga o Ngai Tahu.

Other agencies and organisations will be invited as necessary to support the work of this group.

## Programme, timetable and reporting

1. The Investigative Group will be convened on 1 December 2003 and will begin work immediately. Meetings will be arranged as necessary.
2. The Investigative Group will be established for the period from 1 December 2003 until a decision is made by cabinet on the recommendations made by the Investigative Group.
3. Meeting venues and bookings will be organised by the Ministry for the Environment.
4. Minutes of meetings and actions will be issued by the Ministry for the Environment.

# **Appendix 2: Analysis of the Ability of Current Marine Legislation to Implement the Management Measures in the Strategy**

## **The Fisheries Act 1996**

The purpose of the Fisheries Act 1996 is to provide for the utilisation of fisheries resources while ensuring sustainability.

This Act can implement all of the fisheries management measures including method and area restrictions to protect habitats from the effects of fishing and recreational bag limits. An advantage to using the Fisheries Act is that controls can be implemented relatively quickly, particularly if responding to feedback from monitoring.

However, the Fisheries Act cannot be used to control non-fishing activities which limits the ability to protect areas of special significance from recreational activities other than fishing and manage risks to the marine environment, such as pollution from land-based activities. Importantly, it has no influence on the establishment of marine reserves or management of activities within these. Regulations to the Fisheries Act do provide recognition of kaitiakitanga, and this tangata tiaki model could provide a good prototype from which to base taonga collection within the Fiordland Marine Area.

## **The Marine Reserves Act 1971**

The Marine Reserves Act 1971 designates that specified areas of the territorial sea, seabed, internal waters, foreshore and waters may be the subject of an application that an area be declared a marine reserve and managed for scientific study and to preserve the marine habitat in its natural state. Creating marine reserves under the Marine Reserves Act 1971 provides the most comprehensive and secure form of protection for marine biodiversity. The Marine Reserves Act can manage the widest range of potentially damaging activities<sup>14</sup> in marine reserves, including all types of fishing. Public access can be controlled under the Act where there is a need to protect the features that a reserve was designed to protect. Unlike any of the other statutes, the aim is to protect certain areas in a natural state in perpetuity.

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<sup>14</sup> It also has linkages to the Crown Minerals Act to control mining.

The Marine Reserves Act 1971 provides the Minister of Conservation with the ability to allow non-commercial fishing in marine reserves. There is provision to allow limited non-commercial fishing in marine reserves.<sup>15</sup> Fishing outside marine reserves is not able to be controlled. However, in exercising that discretion, the Minister must have regard to the purpose of the Act, which includes a requirement that marine reserves shall be administered and maintained to be preserved as far as possible in their natural state. Research in recent years has indicated that fishing in marine reserves is generally not consistent with natural state protection. As such, a marine reserve could not be created over the whole of Fiordland when only 13% of the area was being managed for natural state protection. This would amount to using the Marine Reserves Act as a tool for routine fisheries management purposes, which lies outside its scope.

A condition attaching to the Order in Council establishing the marine reserve may make provision for the collection of taonga and may provide a role for kaitiaki appointed by tangata whenua. In addition, tangata whenua could be appointed to the advisory committee for the marine reserve. Permits to take things from or place in a marine reserve may be granted by the Minister. The Marine Reserves Act could not be used as the umbrella for implementing all the management measures.

The Marine Reserves Bill 2002 is currently before Parliament, and will eventually replace the Act. The Marine Reserves Bill 2002 includes a number of changes to the current Act. For further explanation please see Annex 4: Values of Special Significance.

## **The Resource Management Act 1991**

The purpose of the Resource Management Act, to 'promote the sustainable management of natural and physical resources' supports the vision of the Guardians. The Resource Management Act is able to recognise areas of special significance in plans and set regulations around commercial surface water activity, seabed disturbance, pollutions and physical damage in an effective manner.

The main disadvantage of using the Resource Management Act as the single piece of legislation to implement the FMCS is that Regional Councils under the Resource Management Act can only manage the effects of fishing. The First Schedule requires that the regional council, when preparing a regional coastal plan, consult with the Minister of Fisheries in relation to fisheries management and the management of aquaculture activities. However section 30(2) states that the functions of the regional council ... do not apply to the control of the harvesting or enhancement of populations of aquatic organisms, where the purpose of that control is to conserve, use, enhance or develop any fisheries resources controlled under the Fisheries Act.

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<sup>15</sup> It is the Government's policy that marine reserves are for conservation and that fisheries management is for extractive resource use and allocation. (Note though that utilisation as defined in s8 Fisheries Act 1996 includes conserving.) The Marine Reserves Bill 2002 does not provide for fishing within marine reserves, and this is a change from the existing legislation where non commercial fishing could be allowed subject to the protection principle. Currently there is limited fishing allowed in two marine reserves – Kapiti where whitebait may be taken from the Waikanae River and Tuhua/Mayor Island where pelagic bait fish for big game fishing may be taken.

# Appendix 3: Fisheries Management

## Management measures

The Guardians proposed a number of fisheries management measures in the Fiordland area. These are to prohibit commercial fishing inside the habitat lines,<sup>16</sup> and for non-commercial fishing (customary and amateur measures) to:

- modify species bag limits
- encourage harvesting to take place at the fiords entrances and along the outer coast
- prohibit accumulation of bag limits for some species
- provide for a temporary two-year closure through regulation for blue cod in Milford and Doubtful Sounds
- restrict bulk harvesting methods.

Some of the management measures proposed by the Guardians have changed as a result of subsequent discussions with staff from the Ministry of Fisheries. These discussions highlighted that, for practical enforcement reasons, it would be easier to keep bag limits at the same number in adjoining areas, and that instead of a S186B closure, this could also be achieved through regulation (as described below). The fisheries management measures that have been endorsed by the Investigative Group are outlined in Table 1 below (with the measures that have been changed by the Investigative Group in italics).

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<sup>16</sup> Habitat lines were identified by the Guardians as practical expressions of the boundaries of the inner and entrance/outer habitats for each fiord. As much as possible they have been placed at easily identified and marked locations.

**Table 3: Fisheries management measures endorsed by the Investigative Group**

Area	Management measures
Milford and Doubtful Sounds	<p><b>Commercial fishing</b></p> <ul style="list-style-type: none"> <li>No commercial fishing inside the Doubtful Sound habitat lines (Milford Sound has been closed to commercial fishing since the 1950s).</li> </ul> <p><b>Non-commercial fishing</b></p> <ul style="list-style-type: none"> <li>Two-year closure for blue cod, plus two additional years if necessary (the Guardians suggested a Section 186B temporary closure for blue cod, however the closure can be achieved more simply through the fisheries sustainability rounds).</li> <li>Groper daily bag limit of three, no accumulation* (changed from two for enforcement reasons).</li> <li>Rock lobster daily bag limit of three, no accumulation* (changed from two for enforcement reasons).</li> </ul>
Inside rest of the fiords	<p><b>Commercial fishing</b></p> <ul style="list-style-type: none"> <li>No commercial fishing inside the habitat lines.</li> </ul> <p><b>Non-commercial fishing bag limits</b></p> <ul style="list-style-type: none"> <li>Blue cod daily bag limit of three, no accumulation.*</li> <li>Groper daily bag limit of three, no accumulation.*</li> <li>Rock lobster daily bag limit of three, no accumulation.*</li> </ul>
Fiord entrances and outer coast	<p><b>Commercial fishing</b></p> <ul style="list-style-type: none"> <li>Harvest capped by the QMS.<sup>17</sup></li> </ul> <p><b>Non-commercial fishing bag limits</b></p> <ul style="list-style-type: none"> <li>Blue cod daily bag limit of 20, no accumulation* (includes the three blue cod limit from within the fiords).</li> <li>Groper daily bag limit of five, no accumulation* (includes the three groper limit from within the fiords).</li> <li>Rock lobster daily bag limit of six, with a three-day accumulation limit of 15. This measure is associated with a bag and tag provision relating to each day's catch.</li> </ul>
Applying both "Inside rest of the fiords" and to "Fiord entrances and outer coast"	<p><b>Non-commercial fishing bag limits</b></p> <ul style="list-style-type: none"> <li>Scallop and paua daily bag limit 10, no accumulation.*<sup>18</sup></li> <li>Groper included in the total finfish bag limit.</li> <li>Total finfish bag limit of 30 with no accumulation.*</li> <li>Jock Stewart (Sea Perch) daily bag limit of 10 with no accumulation* – outside the combined daily finfish bag limit.</li> </ul> <p><b>Non-commercial bulk harvesting methods</b></p> <ul style="list-style-type: none"> <li>No cod pots inside the habitat lines of any fiord.</li> <li>Dahn lines limited to two/boat and five hooks per line.</li> <li>Rock lobster pots limited to three/boat.</li> <li>No scallop dredges and no set nets.</li> </ul>

\* Accumulation refers to aggregation of catch in extended recreational fishing trips of several days' duration. To exercise this defence the fisher must be able to prove that the fish or shellfish was taken within the prescribed daily limit on each day fished.

<sup>17</sup> Harvest is already capped by the QMS, so there is no change to commercial fishing in these areas.

<sup>18</sup> Note that the daily bag limit for paua and scallops is already 10. The change proposed is to limit accumulation.

## Options for implementation

All of the fisheries management measures proposed can be implemented through regulation. Regulations are provided for under section 11 of the Fisheries Act 1996; which allows for the implementation of any sustainability measure or variation of sustainability measure by:

- a. notice in the *Gazette*; or
- b. recommending the making of regulations under section 298.

Furthermore, general regulations are provided for under section 297.

The proposed fisheries regulations have been provisionally allocated space in the Ministry of Fisheries April 2005 sustainability round process, or they can be run in a separate process, depending on the implementation timing required.

In order to create a complete package of management measures it may also be possible for the fisheries regulations to be implemented as a part of any new legislation. The legislation would simply include the regulations as a schedule. They would continue to be Fisheries Act regulations. This would allow the public and the Select Committee to see the full package of management measures that require statutory change and consider them as whole. The advantage of this would be to provide Parliament with a Bill referencing all the significant resource management measures in one package. It is, however not necessary to do this, as the current process for setting fisheries regulations can operate in a timely manner to implement the measures.

## Enforcement and compliance

The Guardians acknowledge that, due to the isolated nature of the Fiordland environment and the limited resources available, high levels of voluntary compliance with existing and new regulations will be critical to the success of their Strategy.

Fisheries compliance relies on influencing people's behaviour through effective communication and use of information tools to promote local fishing rules and to encourage responsible fishing practices. Therefore an important component of any compliance regime is the provision of targeted educational material.

Improving compliance education and raising levels of awareness is an important tool in promoting a high level of acceptance of fishing rules. However, a strong enforcement deterrent regime is also required to deter people from carelessly or deliberately breaching fisheries regulations. A balance of both education and enforcement deterrent tools will need to be developed specifically for the Fiordland area and should include the Guardians as advocates and promoters of educational awareness measures. The exact nature of this balance should be explored further by the Ministry of Fisheries in conjunction with the Guardians.

In addition, interagency co-operation and improved co-ordination of enforcement measures should be explored, in conjunction with the National Maritime Co-ordination centre. Presently the facility exists for appropriate Department of Conservation officers to be warranted as Honorary Fisheries Officers (HFOs) with limited training provided to assist in the delivery of non-commercial fisheries enforcement and education. Each HFO has to be supervised by a Fisheries Officer; however, given the limited resources available to fisheries enforcement in the Fiordland area and recent changes to Health and Safety requirements this could be problematic. The approach that the Investigative Group recommends in order to address these issues is outlined in Appendix 9: Compliance and Enforcement.

## Summary

The fisheries management measures proposed are:

- commercial fishing:
  - prohibit commercial fishing inside the habitat lines
- non-commercial fishing (customary and amateur measures):
  - modify species bag limits
  - encourage harvesting to take place at the fiords entrances and along the outer coast
  - prohibit accumulation of bag limits for some species
  - provide for a temporary two-year closure through regulation for blue cod in Milford and Doubtful Sounds
  - restrict bulk harvesting methods.

To implement these management measures:

- All of the fisheries management measures proposed can be implemented through regulation by the Ministry of Fisheries or as a part of any new legislation.

# Appendix 4: Values of Special Significance

## Management measures

The Guardians' Strategy identifies two types of special areas:

- 'Representative areas': these contain a range of habitats, communities and diversity that represent Fiordland's marine environment.
- 'China shops': these are small discrete areas that are outstanding for the abundance and/or diversity of animal or mixed animal and plant communities or for the abundance of particular animal species.

The management measures associated with each type of special area are discussed below.

## Representative areas

Fiordland's marine habitats and biodiversity can be encompassed by a selection of representative areas. Such an approach is advocated in the New Zealand Biodiversity Strategy released in 2000. The target of 10% of the marine environment in marine protected areas by 2010 is expressed in the New Zealand Biodiversity Strategy, which was prepared to meet our international obligations under the Convention on Biological Diversity. The Guardians have recognised the relevance of such an approach for Fiordland's marine environment. The Guardians decided that 'representative areas' could be more easily defined and would provide a more useful basis for advancing the Guardians' objective.

The Guardians and their advisers identified eight representative areas that represent estuarine, inside fiord and fiord entrance habitats, including one entire fiord system, four entire fiord arms and three other substantial areas. The Guardians believe that these areas are special from both a national and international perspective. The primary purpose of identifying representative areas is to ensure that community structure and biodiversity in these areas is not unduly compromised by human activity. The Guardians indicated that these representative areas would probably be best protected by creating marine reserves and confirmed that decision in following discussions and meetings with the Investigative Group.

## China shops

On the basis of local knowledge and the best available information, the Guardians identified 23 china shops from Bligh Sound to Preservation Inlet. The Guardians believe that collectively these areas support a wide range of special features and values. It is also anticipated that as additional information becomes available through future studies further china shops may be identified.

The china shops can be divided into two types: those that are within representative areas, and those that are not. The china shops that are within representative areas will be subject to the provisions of the representative areas as a minimum level of management, and may be subject to more intensive or restrictive measures as necessary.

The Guardians propose that in areas defined as china shops:

- a code of practice should be established for their use
- diving and anchoring should be managed if the area is under threat from existing or future activities.

In addition the Investigative Group have indicated that china shops should be places of targeted monitoring: this is discussed in Appendix 9: Information and monitoring. In some cases visitor numbers also need to be managed, this is discussed in Appendix 5: Risks to the marine environment.

Following monitoring china shops may be considered to be significant enough or subject to degradation to warrant further protection.

## **Options for implementation**

### **Representative areas**

The Guardians suggest that marine reserves are the most appropriate tool to protect representative areas, however they identify a number of concerns around the final form of the new Marine Reserves Bill, including whether it will be able to manage recreational activities and whether or not Kaitiakitanga will be able to be adequately expressed. In addition, the Investigative Group have had a number of discussions about the storage of rock lobster pots in marine reserves and how marine reserves could be implemented by September 2005. These issues are discussed below.

### **Managing recreational activities under the new Marine Reserves Bill**

Access to marine reserves can be controlled under the new Marine Reserves Bill where there is a need to protect the features that a reserve was designed to protect. That is, recreational and educational activities, research, concessions and anchoring may be controlled by an order-in-Council, a regulation, or by a short-term restriction under clause 17, but only if the controls are necessary to protect the natural values in the reserve. Clause 17 allows immediate problems or urgent threats to be addressed while formal, long term controls are established (if necessary) through an order-in-Council or regulation.

Under the Bill a concession system will be used to authorise commercial operators, research, and activities that are otherwise prohibited (clause 18). Concessions are not required for management activities or for activities that the Bill explicitly allows. The Bill uses the concessions system set out in Part IIIB of the Conservation Act as it has established procedures and criteria for authorising activities, and for monitoring and managing environmental effects. The concession fee may be reduced or waived in situations that involve the public good, core educational or non-commercial activities, or clear benefits to management.

Managing anchoring and visitor numbers can be regulated under the both the Marine Reserves Act and Bill. Extractive activities such as mining or dredging are prohibited under the Marine Reserves Act. Anchoring can be regulated under the Marine Reserves Act. Section 3(2)(d) explicitly provides for public access and enjoyment. However conditions may be imposed restricting this public access and enjoyment where such restrictions would be necessary for the preservation of marine life or for the welfare in general of the reserves. Thus under the Marine Reserves Act conditions may be imposed on public use. Note that these could only be imposed in circumstances where it was considered necessary to do so for the preservation of marine life or for the welfare in general of the reserves. A blanket ban on access would not meet the requirement for the imposition to be “necessary for the preservation of marine life or for the welfare in general of the reserves”. However, a condition could be imposed banning diving from certain areas if that diving was shown to be harmful to marine life.

### **Kaitiakitanga**

The Guardians were concerned about allowing for Kaitiakitanga to be adequately expressed in any marine reserves that are created. This is critical given that customary fishers are making a ‘gift’ through extinguishing their ability to fish within proposed marine reserves.

Under the Marine Reserves Act, a condition attaching to the Order in Council establishing the marine reserve may make provision for the collection of taonga and may provide a role for kaitiaki appointed by tangata whenua. In addition tangata whenua could be appointed to the advisory committee for the marine reserve. Permits to take anything from or place anything in a marine reserve may be granted by the Minister.

The Bill also requires tangata whenua to be included on any management board or advisory reserve committee that may be appointed (clause 27), and to be consulted on any management plan (clause 40). Tangata whenua, the local community, and people with a particular interest in a marine reserve can be involved in its management through advisory bodies or management bodies.

In the Marine Reserves Bill, advisory committees provide ongoing advice about the state of a reserve, management plans must be reviewed at least every 10 years and provision is made to amend or add to the conditions in the Order in Council establishing a reserve if this would enable the purpose of the Act to be better met.

The Investigative Group recommends that, when creating the marine reserves, the Department of Conservation will make an Order in Council to allow the collection of taonga listed in the Ngai Tahu Settlement Act<sup>19</sup> and for the recognition that Taonga in marine reserves are to be managed by tangata tiaki.

Taonga collection will be managed by tangata tiaki, similar to the way that customary fisheries are managed under the Fisheries Act. This is also discussed in Appendix 6: Expressing Kaititakitanga.

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<sup>19</sup> Need to list taonga in the Act.

## **Coffing**

Due to the remote nature of Fiordland, rock lobster fishers have stored their pots at certain points around Fiordland. These sites are characterised by soft sediments in relatively shallow sheltered sites. There are a limited number of these sites within Fiordland. Due to the recent increase in live rock lobster exports, fishers have had to store caught lobster prior to transportation from the Fiords to packaging and handling facilities prior to export. Fishers have coffed (stored) these lobsters in cages on the same sites they use to store lobster pots. Some of the coffing sites are within proposed representative areas, where the Guardians' recommend that marine reserves are created.

If no provisions can be made for coffing, then the Guardians suggest excluding these areas from the proposed marine reserves due to the lack of alternatives for coffing within Fiordland. Provision for storing rock lobster pots and holding (coff) pots can be made if the pots do not fish while being stored. Special conditions can be implemented when the reserve is established under (section 5(9)). Clearly the rock lobsters and other marine life could not be caught in the marine reserve.

The Department of Conservation and the local fishers that would be affected, will work together to identify which fishers store their pots and coff their lobsters at particular sites. They will also determine the nature of the seabed substrate and its susceptibility to damage (e.g. a sandy or muddy bottom might be resilient to the effect of pots), how many would be stored at any one time and whether the area was used by divers and others for recreational purposes and, therefore, whether the presence of coff pots would detract from the experience. If agreement cannot be reached, these areas will be removed from the proposed marine reserves.

## **Creating marine reserves by September 2005**

Creating marine reserves involves a significant and often lengthy statutory process run by the Department of Conservation. There is also no guarantee that any of the marine reserves proposals would be successful. For the package of management measures to be implemented on a common start date, the normal processes for establishing marine reserves needs to be set aside and replaced by special provisions in legislation to create eight separate marine reserves.

## **Review**

Marine reserves are established in perpetuity. There is nothing in the Marine Reserves Act which explicitly allows for the decision to establish to be reviewed and amended or revoked. However, the power to make or issue an Order in Council includes the power to amend or revoke it or revoke it and replace it with another.<sup>20</sup> Consequently, under the Marine Reserves Act any decision to establish a marine reserve may be reviewed and amended or revoked. Note also that management flexibility can be achieved via the imposition of conditions. Conditions can be as detailed and specific as desired and can have time frames on them. For instance, there may be a condition that sets a daily bag limit for Groper in a specific zoned area of a marine reserve, but specify that this restriction will be reviewed on an annual basis and amended or revoked as required.

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<sup>20</sup> See section 15 of the Interpretation Act 1999.

The Marine Reserves Bill provides a process for reviewing reserves, or their boundaries (clauses 73–75), but a reserve’s status would only be removed if the reserve no longer met the purpose of the Act.

To conclude, the Investigative Group has determined that marine reserves are the most appropriate way to protect representative areas, however these will need to be created by new provisions under the Marine Reserves Act, or under new legislation in order for them to be completed by September 2005. It is important to note that educational material will also need to be produced on the new marine reserves.

## **China shops (outside the representative areas)**

The Guardians propose that in areas defined as china shops:

- codes of practice should be established for their use
- diving and anchoring should be managed if the areas are under threat from existing or future activities.

These are discussed under the headings below.

### **Codes of practice**

Each of the china shops outside the representative areas needs a code of practice to set out recommended ways of behaving in these areas. The codes of practice will recommend where to anchor, and places that are not appropriate for scuba-diving, or how diving should be undertaken in those areas.

Environment Southland will be responsible for establishing the codes of practice and will work with the Fiordland Marine Guardians set them up.

### **Diving**

Environment Southland has a policy to recognise the recreational diving value of the coastal waters of Fiordland as being of international significance, and to maintain and enhance these values [Policy 14.3.1 of the Southland Regional Coastal Plan].

Most of the people who dive in Fiordland gain access by charter boat. Environment Southland are able to manage these divers by managing the amount of commercial surface water activity that goes on [Section 16.1 of the Southland Regional Coastal Plan], and restricting where the divers go, by attaching conditions to their resource consents. The china shop ‘zones’ should be recognised in the Southland Regional Coastal Plan, so that Environment Southland can regulate the charter boats through the resource consents that they apply for.

Changes to the Southland Regional Coastal Plan can result in a lengthy public submission process. Therefore, for the full package of management measures to be implemented at a common start date, the normal processes for changing the Southland Regional Coastal Plan needs to be set aside. This would require special provisions in legislation relating to the creation of the relevant plan changes.

The updated plan would need to be notified and new copies produced.

## Anchoring

Anchoring (and moorings) are managed through the Southland Regional Coastal Plan (section 11.7.7), however anchoring is not possible everywhere in the Fiords because of the steepness of the sides and the depth of the fiords.

A map of suitable anchoring sites for the whole of Fiordland has been produced by Environment Southland, and is available at the back of the Coastal Plan. Environment Southland, in conjunction with industry, is currently working on an initiative that will update this map and identify whether these anchorage sites are still appropriate. A plan change would be needed to make amendments to the mooring and anchoring schedule and to alter the planning maps. As discussed above, this would require legislative change.

## Summary

The management measures to protect values of special significance are:

- representative areas:
  - establish marine reserves over the eight identified representative areas and any contiguous china shops
- china shops:
  - a code of practice should be established for the use of each area
  - diving and anchoring should be managed if the area is under threat from existing or future activities.

To implement these management measures:

- marine reserves:
  - for the full package of management measures to be implemented at a common start date the normal processes for establishing marine reserves will need to be set aside and replaced by special provisions in legislation to create the eight proposed marine reserves probably as an amendment to the Marine Reserves Act 1971
  - educational and promotional material will need to be prepared in relation to these marine reserves
  - the Department of Conservation and identified fishers will reach agreement over the coffin and pot storage issues within representative areas in Fiordland
- codes of practice:
  - Environment Southland will create the codes of practice for each of the twelve china shop areas
- diving and anchoring:
  - the china shop ‘zones’ are to be recognised in the Southland Regional Coastal Plan, so that Environment Southland will be able to regulate charter boat activity through resource consents.

A change to the Southland Regional Coastal Plan will be needed to make amendments to the mooring and anchoring schedule and alter the planning maps. The normal process for changing the Southland Regional Coastal Plan would need to be set aside and replaced by special provisions in legislation, in order to meet the required deadline.

# Appendix 5: Risks to the Marine Environment

## Management measures

There are a number of different components under the ‘Risks to the Marine Environment’ heading: bio-invasion, pollution, physical damage, altered flow dynamics and increasing numbers of visitors. The management measures that the Guardians proposed are outlined in boxes, with an explanation of how they fit with current management set out beneath the boxes and the Investigative Group’s recommendations.

### Bio-invasion

**Ships’ hulls** – adopt the following code of practice:

- there must be no cleaning hulls below the water line and running gear within the fiords
- cleaning on shore must occur above the high tide mark and ensure that no fouling material or contaminated water could re-enter the sea
- all vessels/structures intending to temporarily reside in the fiords for more than 24 hours to must have their hulls inspected for Undaria and other unwanted organisms, and any detected unwanted organisms must be removed from the vessel/structure and disposed of on land
- all vessels/structures intending to permanently moor in the fiords must be cleaned and anti-fouled before being transported to the fiords.

Environment Southland manages commercial surface water activities (through resource consents under Section 16.1, Regional Coastal Plan) in Fiordland, and any ship being used as an accommodation base or facility in the fiords requires a resource consent.

A condition of the resource consent is that the ship must have its hull cleaned and maintained, and logged inspections of vessels for Undaria are required, before the vessel enters the internal waters of Fiordland. Commercial fishing vessels, however, do not require a coastal permit to operate in Fiordland (section 30 (2) of the RMA).

There is also a policy and a rule relating to hull cleaning in the Southland Coastal Plan:

- Avoid wherever practicable, remedy or mitigate the adverse effects of discharges of contaminants from areas used for the cleaning, maintenance and painting of structures and ships (Policy 7.3.8.2.2).
- Hull cleaning of ships, where viable unwanted or pest marine organisms enter the coastal marine area, is a prohibited activity (Rule 7.3.8.2.5).

The management measure that is recommended by the Investigative Group is to instigate a hull-cleaning code of practice that includes identification of unwanted species which would be backed up by regulations in the Southland Regional Coastal Plan. Education will also be needed.

### Ballast water

- The development of a voluntary practice that no foreign ballast water – regardless of whether it has been exchanged en route to New Zealand – is to be discharged into the fiords. This practice will need to include the caveat that compliance must be consistent with the safety of the crew and the vessel.
- The development of a voluntary practice that no domestic ballast water is to be discharged into the fiords. This practice will also need to include the caveat that compliance with this practice must be consistent with the safety of the crew and the vessel.

There are provisions in both the Environment Southland Regional Coastal Plan (at a Policy level only – Section 7.3) and under the Biosecurity Act (an import health standard) on ballast water:

- Policy 7.3.2.12 strongly discourages discharges of human sewage and ballast from ships in the fiords.
- Section 7.3 of the Environment Southland Regional Coastal Plan, cross-references to the Marine Pollution rules.
- Resource Management Act (Marine Pollution) Regulations 1998:
- 14. Discharge of ballast water –
  - (1) Any person may discharge in the coastal marine area, from a ship or offshore installation, clean ballast water or segregated ballast water.
  - (2) This regulation does not authorise the discharge of clean ballast water or segregated ballast water in contravention of the Biosecurity Act 1993, regulations made under that Act, or import health standards made under section 20 of that Act.
- There has been an Import Health Standard for Ballast from other countries since 1999, however foreign ballast may still be a risk after incomplete exchange with ocean water.
- Cruise vessels are asked not to discharge as part of port of entry requirements.
- The pending Marine Reserves Bill prohibits any discharges from vessels in marine reserves.

The Investigative Group endorses the Guardians' recommendation to create a voluntary code of practice for domestic and foreign ballast water exchange so that no ballast water is to be discharged into the fiords, including that compliance with this practice must be consistent with the safety of the crew and the vessel. This will also require education of people who use boats in Fiordland.

### Minimising the risk of bio-invasion in Fiordland

- A special taskforce involving the Ministry of Fisheries<sup>21</sup> Biosecurity Group, Environment Southland and the Guardians is required to develop a targeted plan specifically for Fiordland.
- A risk surveillance network for exotic marine pests needs to be established with educational and identification material provided by the Ministry of Fisheries' Biosecurity Group.

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<sup>21</sup> Marine biosecurity has recently been moved from the Ministry of Fisheries to the Ministry of Agriculture and Forestry.

- To be properly prepared, a ready reaction response plan should be developed in case an exotic marine pest is detected.

The marine biosecurity team is happy to work with the Fiordland Marine Guardians, the community, the Department of Conservation, and Environment Southland to identify ways in which they can participate in the detection of exotic new organisms. The marine biosecurity team has determined seven exotic species to be unwanted – Undaria being the only species that is currently in New Zealand.

Laminated identification cards have been produced for each of these seven species and have been disseminated through the Diving magazine as well as some regional councils. These identification cards could easily be provided to the Guardians and their members.

The Investigative Group endorse the decision to develop and implement a targeted plan to address marine bio-invasion and other pest species specifically for Fiordland and educational materials.

## Pollution

### Oil spills

- Support current Environment Southland and Marine Safety Authority Oil Spill Response Management Plans by providing logistical assistance.
- Assist with the development of an Oil Spill Contingency Plan for Fiordland by supplying information.

The Guardians' Strategy states that 'in the case of a spill, Environment Southland and the Maritime Safety Authority have comprehensive Oil Spill Response Management Plans for dealing with this threat' (section 5.3.1). However because of recent work on oil spill response plans (by the Maritime Safety Authority) for the fiords it has been confirmed that in Breaksea and Dusky Sounds, the ability of the Maritime Safety Authority and Environment Southland to respond to an oil spill would be extremely limited (because there is no road access and limited places to land).

New Zealand Police, in collaboration with Environment Southland and other marine oil spill and emergency response agencies, have prepared an emergency response action plan to deal with any incidents involving cruise ships or other large ships in Fiordland.

The Maritime Safety Authority will work with Environment Southland on this issue, and will also liaise with the Guardians and other government agencies. In the preparation of the Oil Spill Contingency Plan for Fiordland, the Maritime Safety Authority has contacted members of the Guardians to make use of their local knowledge.

### Sewage

- Sewage disposal from private boats and yachts does not currently require a resource consent. While informing all groups about ways to minimise the impact of discharging sewage into the fiord environment is important, the priority must rest with private boats and yachts at this time.

- Future plans for managing sewage treatment and disposal from land adjoining the fiords needs to be documented in the Fiordland National Park Management Plan.

All resource consents (for commercial vessels in the internal waters of the fiords) have conditions relating to sewage disposal. These conditions reflect the Resource Management Act (Marine Pollution) Regulations 1998 which require the sewage to be treated, or discharged into holding tanks for disposal at least 1000 metres outside the internal waters of the fiords. Many of the consent holders are required to keep a log of when and where they discharge their sewage.

The Ministry for the Environment has produced resources on disposing of sewage from boats that could form a useful part of an education package for people wanting to go boating in Fiordland.

There is currently a vessel sewage discharge facility in Milford Sound that is owned and operated by the Milford Sound Development Authority. This facility is on the Freshwater Basin wharf complex that is owned and operated by the Milford Sound Development Authority and connects to a series of septic tanks and piped discharge system into the coastal marine area. That facility is not necessarily available to all vessels in the area.

The Investigative Group agree that educational material is needed to help promote compliance with existing standards for overboard discharges.

#### Rubbish

- Advocate the 'take it in – bring it out' philosophy.
- Support the major Fiordland beach and anchorage clean up initiative involving charter operators, commercial fishers, Environment Southland, the Department of Conservation, volunteers and sponsors.
- Inform and educate users of the marine environment about acceptable rubbish disposal practices.

All resource consents have a condition requiring rubbish to be removed from the coastal marine area and disposed of at designated refuse disposal sites. Wilmot Pass conservation permits have the following provision:

- (7) The permit holder shall not:
  - (a) Place or tip or allow to be placed or tipped upon the bank or in the bed of the waters of any water course or stream any refuse garbage ... soil or any offensive or polluting matter or liquid whatsoever;

The objective in the Pollution and Public Health section of the Fiordland National Park Management Plan 1991 (Section 5.5) Pollution and Public Health is:

*To keep the park free of litter by encouraging visitors to remove their own litter, but where this is not practical receptacles will be provided.*

Milford Sound has a basic waste transfer station established which uses skip bins as the collection facility. That facility was established as a pilot project to initially ascertain the content of the waste stream in Milford, but the Council now intends working with the Milford Sound Development Authority to upgrade and improve those facilities. Material accumulated in

that transfer station is taken back to the main transfer station at Te Anau. There are also facilities that provide for the dumping of waste at the Te Anau Visitor Centre.

There are potential waste management and disposal problems around the Doubtful Sound wharf and access areas. The appropriate agencies are aware of the difficulties in disposing of waste from this area, and are to research the issue and identify options for disposal.

As far as the remainder of the Sounds are concerned, a beach cleanup exercise has been conducted and is continuing through a joint venture project with private enterprise, Environment Southland and the Department of Conservation.

The Investigative Group recommend that further education is needed on existing standards for rubbish disposal.

## Physical damage

### Structures

- Make submissions on resource consent applications that are not considered to be in the best interests of Fiordland's fisheries and marine environment.
- Provide information to Environment Southland over these issues.

The Investigative Group recommends that these particular management measures are more appropriately implemented by the Guardians.

### Anchoring

- To avoid damage to the environment, a guide to anchorages in Fiordland is needed that will build on Environment Southland's list of anchorages contained in the Southland Coastal Plan. Such a guide could also be a vehicle for providing helpful information such as on the most effective ways to anchor in different situations and advice about conditions likely to be experienced in Fiordland.

Anchoring (and moorings) are managed through the Southland Regional Coastal Plan (section 11.7.7), however anchoring is not possible everywhere in the Fiords because of the steepness of the sides and the depth of the fiords.

A map of suitable anchoring sites for the whole of Fiordland has been produced by Environment Southland, and is available at the back of the Coastal Plan. Environment Southland, in conjunction with industry, are currently working on an initiative that will update this map and identify whether these anchorage sites are still appropriate.

### Land slips

- Provide local knowledge about the spread of possums and deer in high densities to DoC so that decisions about priority areas for control are better informed.

The Department of Conservation prioritises pest control based on values at risk. Whereas priority areas may change in response to pest pressure, current possum work has focused on the

Pembroke wilderness area and Clinton/Arthur/Cleddau valleys. Several off shore islands are managed as sanctuaries and are subject to intensive pest control measures. The Department of Conservation still appreciates reports of pest pressure.

## Altered flow dynamics

Support research that identifies the factors that are contributing to the depleted state of harvested fish stocks in Doubtful Sound.

A considerable amount of work has been done in the past 10 years by ECNZ and more recently by Meridian relating to the impacts of fresh water discharges and flow dynamics in Doubtful Sound from the Manapouri Power Scheme tailrace discharges.

## Increasing numbers of visitors

- Take an effects-based approach to increased access and visitor numbers by managing risks to the marine environment and fishing activities and by ensuring special values are looked after as the Guardians advocate in their Strategy.
- Support initiatives to manage the effects of all users including kayaks, private boats and yachts. Provide local knowledge about the feasibility of controlling visitor numbers directly.

The Proposed Regional Coastal Plan for Southland provides for the sustainable management of Fiordland and provides direction for Milford Sound/Piopiotahi and Doubtful Sound while identifying the values that need to be protected throughout the other fiords. Objective 16.1.1 ‘Maintain essential characteristics’ states:

***To maintain the essential characteristics of the pristine coastal marine area environment adjoining the Fiordland National Park that contribute to a range of high quality experiences in a natural coastal environment.***

***Explanation*** – Except for Milford Sound, and to a lesser extent in Doubtful Sound, the intensity of tourism on the Fiordland coast is such that the intrinsic values or inherent worth of the area is largely unspoiled. These values largely stem from the very high natural character and the physical and perceptual characteristics of the landscape. Landscape as a human experience combines both aesthetic values and other values which people attribute to landscape such as tranquillity, remoteness and lack of intrusion. The essential characteristics of the coastal marine area of Fiordland that contribute to a range of high quality visitor experiences include outstanding natural character, landscape and amenity values, fauna and vegetation values, finite character and wilderness/remoteness values. These values need to be maintained so that people can continue to enjoy a range of high quality experiences. Failure to maintain these values will result in people feeling the need to travel elsewhere to experience the values they once experienced in a particular locality.

There is, however, considerable demand to expand recreational visitor activities in the area. This expansion needs to be managed to maintain a high quality environment which preserves natural character landscape and amenity values. Without management the outcome could be a lower quality, experience. While such development may essentially preserve the natural character of the area, it will reduce or modify landscape and amenity

*values. A sustainable 'carrying capacity' that maintains the essential characteristics of the area needs to be determined.*

Both Environment Southland and the Department of Conservation are utilising the resource consent process from their respective viewpoints, to participate in the management of commercial vessel activity on the internal waters of the fiords. The process allows both agencies to apply management initiatives across all of the fiords on a case-by-case basis, thus taking into account potential effects (both positive and adverse) on the coastal marine area and the potential impacts on the significant values of the neighbouring Fiordland National Park.

Twenty-four consents have been granted to date, all with limitations either imposed by conditions of consent, limited by the application itself, or negotiated between the parties. It is important to continuing monitoring those consents and other demand trends to ensure that increases in activity in the fiords are managed in order to retain the special values of the fiords.

The Investigative Group recognise that existing agencies should continue to take an integrated and co-operative approach to managing visitor numbers in Fiordland.

## **Options for implementation**

### **Codes of practice**

Environment Southland will work with the Fiordland Marine Guardians to establish two codes of practice. The domestic ballast water exchange code of practice will be voluntary to sign up to, however the hull-cleaning code of practice is to be backed up by regulations in the Environment Southland Coastal Plan, which is created under the Resource Management Act 1991. This will mean that vessels that don't sign up to the code of practice must apply for a resource consent.

Changes to the Southland Regional Coastal Plan can result in a lengthy public submission process, therefore, for the full package of management measures to be implemented at a common start date, the normal processes for changing the Southland Regional Coastal Plan needs to be set aside. This would require special provisions in legislation to create the plan changes. The updated plan would need to be notified and new copies produced.

### **Special taskforce**

The marine biosecurity group in the Ministry of Agriculture and Forestry will work with identified groups to develop a non-statutory targeted plan to address marine bio-invasion and other pests species specifically for the Fiordland situation.

### **Educational material**

The Department of Conservation, Ministry of Fisheries and Environment Southland will work together to produce educational material on Fiordland. This is further discussed in Appendix 9: Compliance and Enforcement.

## Anchoring

A map of suitable anchoring sites for the whole of Fiordland has been produced by Environment Southland, and is available in the back of the Coastal Plan. Environment Southland, in conjunction with industry, are currently working on an initiative to update this map and identify whether these anchorage sites are still appropriate.

Amendments will need to be made to the Southland Regional Coastal Plan to update the mooring and anchoring schedule and alter the planning maps. This would require legislative change as discussed in Appendix 4: Values of Special Significance. The work on anchoring will also need to be available in a form that is accessible to the boating public.

## Summary

The management measures around risks to the marine environment are:

- instigate **codes of practice** for hull-cleaning (and identification of unwanted species) and domestic ballast water exchange
- establish a **special taskforce** to develop and implement a targeted plan to address marine bio-invasion and other pest species specifically for Fiordland
- produce **educational material** to help promote compliance with new and existing standards and codes of practice
- continue to take an integrated and cooperative approach to **managing visitor numbers** in Fiordland.

To implement these management measures:

- Special taskforce:
  - The Ministry of Agriculture and Forestry will work with the Fiordland Marine Guardians to develop a non-statutory targeted plan to address marine bio-invasion and other pests species specifically for Fiordland.
- Codes of practice:
  - Environment Southland will work with industry/community to establish the two codes of practice. The domestic ballast water exchange code of practice will be voluntary to sign up to, however the hull-cleaning code of practice is to be backed up by regulations in the Environment Southland Coastal Plan.  
Changes to the Southland Regional Coastal Plan will be made by special provisions in legislation creating the plan changes. The updated plan will need to be notified and new copies produced.
- Educational material:
  - The Department of Conservation, Ministry of Fisheries and Environment Southland will work together to produce educational material on Fiordland.
- Anchoring:
  - Amendments will be made to the Southland Regional Coastal Plan to update the mooring and anchoring schedule and alter the planning maps. This would need to be done by special legislation.

# Appendix 6: Expressing Kaitiakitanga (Stewardship)

## Management measures

As the Guardians' Strategy states, Ngai Tahu Whanui has a long and significant association with Fiordland as is documented in the Statutory Acknowledgement for Te Mimi o Tu Te Rakiwhanoa (Fiordland Coastal Marine Area) in the Ngai Tahu Claims Settlement Act 1998. Long-standing protocols exist for exercising kaitiakitanga (stewardship) over the natural resource in the area. The Oraka/Aparima runanga is the kaitiaki runanga for Fiordland.

The Guardians' Strategy explains that an active involvement in managing Fiordland's fisheries and marine environment is an appropriate way for kaitiakitanga to be expressed, however does not come to any firm conclusions about the best way for this to be achieved. The Guardians' Strategy focuses on:

- section 186B closures for blue cod
- a mataitai application in the area around Waitutu
- taiapure as a mechanism to co-ordinate the package of 'gifts and gains'.

These management measures are discussed further below.

## Section 186B closures

The Investigative Group have discussed Section 186B closures for blue cod, and while this is an option for implementing this measure, the required closures are done with greater ease through the Ministry of Fisheries' sustainability rounds. This is also discussed in Appendix 3: Fisheries management measures.

## Waitutu mataitai application

The Guardians' Strategy states that: 'concern that paua can no longer be hand gathered close to shoreline along the southern Fiordland coastline resulted in the Waitutu Land Incorporation initiating discussion about establishing a mataitai along the coast abutting their land'. A mataitai application was lodged by the Oraka-Aparima Runanga and the Waitutu Land Inc. for this part of the coastline. The Investigative Group believe that the mataitai application in the area around Waitutu is complimentary to the Guardians' vision.

## Taiapure as a co-ordinating mechanism

Taiapure were discussed in the Guardians' Strategy as a mechanism for providing overarching and co-ordination functions for their Strategy as a whole. However, as a taiapure is a mechanism under the Fisheries Act, it is unable to influence the non-fisheries related aspects of their Strategy. Therefore this mechanism was dismissed as a co-ordinating mechanism for their Strategy and the Investigative Group endorse this conclusion.

The Investigative Group and Ngai Tahu discussed further options for achieving effective expression of kaitiakitanga in Fiordland. The Investigative Group recommends that the kaitiaki status of the Oraka/Aparima runanga can be further recognised by:

- continuing to respect that Fiordland is a Statutory Acknowledgement Area
- tangata tiaki continuing to manage customary fisheries
- taonga collection being managed by tangata tiaki in any marine reserves that are created, similar to the way that customary fisheries are managed under the Fisheries Act
- dual naming of important areas in Fiordland
- tangata whenua representation on any marine management committee established in the Fiordland area.

## **The Fiordland Statutory Acknowledgement Area**

As discussed above, one of the measures that acknowledges the relationship Ngai Tahu has with Fiordland is through Fiordland's recognition as a Statutory Acknowledgement Area. Section 102 of the Ngai Tahu Claims Settlement Act recognises Te Mimi o Tu Te Rakiwhanoa (the Fiordland Marine Area) and consultation with Ngai Tahu is required when proposing management changes. The Investigative Group recognises this, and Ngai Tahu form an important part of the Investigative Group. Future management should continue to recognise and consult with Ngai Tahu as the tangata whenua of the area.

## **Customary fisheries management of tangata tiaki**

The South Island Customary Fisheries Regulations under the Fisheries Act 1996 give kaitiaki/tangata tiaki management over the customary take for fisheries. It is important that this be maintained.

Taiapure, a tool under the Fisheries Act 1996, were discussed at length as a mechanism for providing overarching and co-ordination functions for the Guardians' Strategy as a whole. However taiapure cannot be used to manage non-fisheries related issues identified in their Strategy.

## **Taonga collection and customary activities within representative areas**

A number of marine reserves are to be created in Fiordland as a result of the implementation of the Guardians' Strategy. When creating the marine reserves the Department of Conservation will include a condition in the Order-in-Council to allow the collection of pounamu and taonga listed in the Ngai Tahu Settlement Act (Schedule 97). This will allow taonga collection to be managed by tangata tiaki, similar to the way that customary fisheries are managed under the Fisheries Act. See Appendix 4: Values of Special Significance for further information.

## Dual-naming of the Fiordland area

Dual naming is to be used within Fiordland/Te Mimi o Tu Te Rakiwhanoa, particularly when proposed marine reserves or other management areas can be associated with prominent Ngai Tahu landmarks.

## Representation on management committees

The kaitiaki Runanga (Ngai Tahu Whanui) will be represented on any marine management committees set up in Fiordland. This is discussed in Appendix 8: Implementing the Strategy.

## Options for implementation

Statutory Acknowledgement Areas and tangata tiaki management of customary fisheries already operate under existing legislation. The Investigative Group, in consultation with Ngai Tahu, do not see that any changes are needed to these.

The Investigative Group recommends that, when creating the marine reserves, the Department of Conservation will make an Order in Council to allow the collection of taonga listed in the Ngai Tahu Settlement Act. Taonga collection will be managed by tanga tiaki, similar to the way that customary fisheries are managed under the Fisheries Act. This could be the same body of individuals who administer Customary Fisheries Authorisations.

The dual names for the Fiordland Marine Area/Te Mimi o Tu Te Rakiwhanoa will be included in any special legislation. Further to this, the Department of Conservation will consult with Ngai Tahu when naming new marine reserves and Environment Southland will also consult with Ngai Tahu on appropriate names for china shop 'zones'.

Finally, Ngai Tahu will be represented on any committee with a role in marine management set up in the Fiordland area. This includes the Fiordland Marine Guardians as discussed in Appendix 8: Implementing the Strategy.

## Conclusion

The management measures associated with expressing Kaitiakitanga are:

- continuing to recognise that Fiordland is a Statutory Acknowledgement Area, and the consultation requirements that this entails
- tangata tiaki continuing to manage customary fisheries
- taonga collection in marine reserves to be managed by tangata tiaki
- dual naming of important areas in Fiordland
- tangata whenua representation on any committee set up by statute in the Fiordland area.

To implement these management measures:

- maintain the status quo in relation to Statutory Acknowledgement Areas and tangata tiaki management of customary fisheries
- seek an Order-in-Council to allow delegated Ministerial authority to collect pounamu and taonga within the proposed marine reserves
- the dual names for the Fiordland Marine Area/Te Mimi o Tu Te Rakiwhanoa will be recognised in any legislation created for Fiordland
- the Department of Conservation will consult with Ngai Tahu on appropriate names for new marine reserves
- Environment Southland will consult with Ngai Tahu on appropriate names for china shop 'zones'
- Ngai Tahu will be represented on any committees set up by statute in the Fiordland area.

# Appendix 7: Information and Monitoring

## Management measures

The Guardians recommend five areas for use of monitoring indicators:

- **Fisheries indicators** would be used to examine the state of fish stocks within Milford and Doubtful as well as inside the habitat lines. They would also assist the monitoring of familiarity, compliance, understanding and appreciation of the rules, and the reasons for any changes.
- **Areas of special significance** include china shops and representative areas:
  - representative areas contain a range of habitats, communities and diversity that represent Fiordland's marine environment
  - china shops are small discrete areas that are outstanding for the abundance and/or diversity of animal or mixed animal and plant communities or for the abundance of particular animal species.

The Guardians feel that the special characteristics of these areas need to be maintained or enhanced, and any damage avoided.

- When monitoring the **risks to the marine environment**, community input was seen as very important. This is the monitoring of damaging practices, and attempts to remedy these.
- **Kaitiaki indicators** monitor the levels of comfort for Ngai Tahu and the kaitiaki runanga (Oraka Aparima) with representation from these groups during implementation of the various facets of the Strategy. There was also a desire for the concept of kaitiakitanga to be understood by those interacting with the Fiordland marine area.
- Finally the Guardians wished to put in place a feedback mechanism to **monitor the performance of the Strategy as a whole**. This would allow monitoring of the implementation of the whole package of measures so that stakeholders continue to feel positive about the Strategy and its success; to meet the expectations of the Guardians.

The Strategy highlights three current quantitative baseline studies currently being undertaken in the Fiordland marine environment:

- a study looking at the state of blue cod, lobster and grouper stocks in Milford and Doubtful Sounds (Rick Boyd, Kingett Mitchell)
- work to ascertain the state of fish stocks inside habitat lines in selected fiords (NIWA)
- a study on geo-spatial layers for marine resources and biodiversity (Steve Wing, University of Otago).

The Ministry of Fisheries, the Department of Conservation and Environment Southland all currently have monitoring responsibilities in relation to their management functions. The Investigative Group proposes that these monitoring responsibilities will continue to be carried out by the respective agencies.

The Investigative Group also recommend that in order to make effective use of limited monitoring resources, management agencies should develop a shared approach to gathering information.

## Options for implementation

The Ministry of Fisheries, Ministry of Agriculture and Forestry, Department of Conservation and Environment Southland will establish a planning team to work out how to develop an integrated, representative monitoring approach for Fiordland. This will include evaluating:

- the resources available (from the Ministry of Fisheries, Ministry of Agriculture and Forestry, Department of Conservation and Environment Southland) for monitoring in Fiordland
- whether the implementation of the Strategy will require a different approach to monitoring in Fiordland
- ways in which monitoring costs can be shared
- the information required to detect change in Fiordland, and how this will be done
- how information gathered before the implementation of the strategy can be used as a baseline from which to measure progress
- how, during the first five years of implementation, an appropriate monitoring system can be put in place to monitor blue stocks in the two closed sounds, and a trigger identified to lift or reinforce this closure
- how, during the first five years of implementation, an appropriate system can be put in place to monitor china shops
- how to make use of local community expertise when monitoring.

This planning team will report to the Minister for the Environment by June 2005.

## Summary

The management measures for information and monitoring are:

- develop an integrated, representative approach to monitoring for Fiordland to make effective use of limited monitoring resources
- management agencies should work with the Fiordland Marine Guardians when developing this integrated monitoring approach.

To implement these management measures, the Ministry of Fisheries, Ministry of Agriculture and Forestry, Department of Conservation and Environment Southland will establish a planning team to work out how to develop an integrated, representative monitoring approach for Fiordland. This will include evaluating:

- the resources available (from the Ministry of Fisheries, Ministry of Agriculture and Forestry, Department of Conservation and Environment Southland) for monitoring in Fiordland
- whether the implementation of the Strategy will require a different approach to monitoring in Fiordland
- ways in which monitoring costs can be shared
- what information is needed to detect change in Fiordland and how this will be done
- how information gathered before the implementation of the strategy can be used as a baseline from which to measure progress

- how, during the first five years of implementation, an appropriate monitoring system can be put in place to monitor blue stocks in the two closed sounds, and a trigger identified to lift or reinforce this closure
- how, during the first five years of implementation, an appropriate system can be put in place to monitor china shops
- how to make use of local community expertise when monitoring.

# Appendix 8: Implementing the Strategy

## Management measures

The Guardians' Strategy includes a number of recommendations about how it should be implemented, including:

- creating a forum for integrating management in Fiordland
- use existing statutory mechanisms or changes to legislation
- management measures to be implemented by September 2005
- disallowing new marine reserves
- defining the area that the management measures apply to.

Their recommendations are summarised under each heading below with commentary and recommendations from the Investigative Group.

### Creating a forum for integrating management in Fiordland

The Guardians believe they have demonstrated the value of combining local skills and knowledge with agency advice. They also believe that they have provided a forum for agencies to step outside their own boundaries and think about issues collectively and that this can provide for a more holistic management approach that is inclusive of stakeholders.

The Guardians believe that they are capable of providing oversight for the management of Fiordland's fisheries and marine environment.

The Investigative Group have discussed these recommendations at length, and has come to the conclusion that it is appropriate for management agencies to retain the responsibilities and functions that flow from their respective legislation. Additionally, it is recommended that a new role be created for 'Fiordland Marine Guardians', formed from the local community. This group will be independent of the current Guardians of Fiordland's fisheries and Marine Environment Inc. and their role would be to provide advice to the Government on the implementation and effectiveness of the Strategy.

### Using existing statutory mechanisms or changes to legislation

The Guardian's suggest that the most of the management measures in the Strategy can be implemented using existing legislation. The Investigative Group agrees and analysis within the main body of this report outlines how existing statutes can be used to implement the Strategy and where legislative change will be necessary.

The Investigative Group proposes that each agency will retain responsibility for management under their existing legislation; however, as a result of the implementation of the Strategy, there will be a number of joint projects between the agencies with management responsibilities in Fiordland. These projects include:

- an integrated approach to monitoring (described in Appendix 7: Information and monitoring)
- more co-operation between agencies on enforcement/compliance issues (described in Appendix 9: Compliance)
- joint production of educational material, such as the code of practice (described in Appendix 5: Risks to the Marine Environment).

## **Implementation by September 2005**

To maintain the confidence of all the parties, the majority of the management measures must be implemented on a common start date. At the public meeting in Te Anau on 6 September 2003, the Ministers of Fisheries and the Environment committed the Government to implementing the Strategy by September 2005.

## **Disallowing new marine reserves applications**

New (external applicant) marine reserves applications need to be prevented, because the process of application and decision-making under the Marine Reserves Act provides a significant opportunity to force the creation of a new marine reserve within the Fiordland area and in doing so, upset the management balance. Even if the application is ultimately unsuccessful, the mere process of application and objection could be detrimental to the trust and goodwill required to maintain the balance of the management regime.

## **Defining the area that the management measures will apply to**

The area that the Strategy applies to will also need to be defined: the Fiordland (Te Moana Atawhenua) marine environment covers the coastal marine area of the Southland Region from a line due south of the eastern bank of the mouth of the Waiau River to a line due west of Awarua Point. This boundary will need to be recognised in the implementation of the management measures.

## **Options for implementation**

### **Fiordland Marine Guardians**

The Investigative Group recommends that an advisory committee called the Fiordland Marine Guardians be set up. The committee is considered to be an essential element of the new management regime as it will provide a focus for the community and management agencies to work together. Its primary tasks will be to take an overview of marine management in Fiordland, to provide a forum for management agencies to work together and to provide advice on ongoing marine resource management in Fiordland.

The committee could be set up in a non-statutory manner by Cabinet minute or by instruction from a Minister. However, if the committee does not have statutory recognition, any of the management agencies may find that their statutory functions are not sufficiently broad to allow them to give appropriate weight to the advice of the Fiordland Marine Guardians. They may be constrained by the purposes of their respective legislation, and this may preclude each from taking a more integrated approach to marine management.

Guardians made a number of recommendations about the function and membership of the group:

- the functions of the group need to be defined
- the membership of the group should be set according to a set of criteria that reflects the strengths of the current Guardians (local knowledge, experience and expertise).

The Investigative Group recommends that an advisory committee be established, rather than a committee with direct management responsibilities. The committee would have its functions defined in legislation. The role and functions of the 'Fiordland Marine Guardians' are discussed below.

### **Scope of the Fiordland Marine Guardians' role**

- a. To promote the purposes of the Marine Reserves Act 2004, Fisheries Act 1996, Resource Management Act 1991 and Biosecurity Act 1993,<sup>22</sup> through advising on:
  - the management of marine reserves and recommending potential sites for new marine reserves
  - the implementation of fisheries management measures to:
    - address the adverse effects of fishing on the maintenance of biodiversity
    - ensure the sustainability of fisheries resources
    - ensure appropriate and fair access to fisheries resources by recreational, commercial and customary fishers
    - where initiated by iwi, the implementation of customary site-based measures to provide for the exercise of kaitiakitanga (mataitai and taiapure).
  - measures to manage biosecurity risks
  - measures to limit visitor and boat access to prevent physical damage to marine habitats and communities.
- b. Such other matters as requested by the Ministers of Conservation, Fisheries, and Biosecurity and the Minister for the Environment.

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<sup>22</sup> The Biosecurity Act has a long title but does not currently have a purpose section. Wording would need to be adjusted accordingly.

## Functions of the Fiordland Marine Guardians

The Functions of the Fiordland Marine Guardians would be:

### General

- To advise on the ongoing implementation of marine resource management measures within the Fiordland Marine Area, taking into account both national and local objectives.
- To provide advice on such other matters as requested by Ministers and the Southland Regional Council.
- To make submissions to formal consultation or statutory hearing processes in order to make submissions on how policy/developments in other areas might affect its interests.
- To provide a forum and processes for facilitating:
  - an integrated approach and cooperation between management agencies in the exercise of the specific functions listed below (note this would ensure that, although reporting to individual Ministers, the recommendations were arrived at following an integrated exercise)
  - dialogue between management agencies, iwi and stakeholder groups.
- To prepare and disseminate information and educational material.
- To complete a review of the management measures implemented by the Act after a period of not less than five years and not longer than seven years after the commencement of the Act.
- Make recommendations for the confirmation of, revocation of, or amendment to these measures and the implementation of any new measures to help promote the purposes of the Acts listed under ‘Scope’ above.
- To facilitate and provide advice on the development of an integrated monitoring programme for analysing the state of the environment.
- To develop indicators by which to measure the performance of marine management.

### Marine reserves

- To operate as an advisory committee to the Minister of Conservation on marine reserves. (The Bill would deem the Fiordland Marine Guardians to be an advisory committee in lieu of the MOC appointing his own committee under the new Act.)
- To prepare a management plan for marine reserves collectively in Fiordland if requested by the Minister of Conservation.
- To monitor change in the structure and composition of the marine community and the densities of selected species following protection.
- Following the expiry of the moratorium, make recommendations to the Minister of Conservation on potential sites for any new marine reserves. (Note that the Minister of Conservation under the new Marine Reserves Act will be required to *make information publicly available on the classification system, gaps in the existing suite of marine reserves, and Government’s priorities for advancing applications in the medium term. This will assist the Committee.*)

### **Resource management**

- To produce educational material to help promote compliance with new and existing standards and codes of practice
- To promote an integrated and cooperative approach by management agencies to managing visitor numbers in Fiordland.
- Establish a code of practice for the use of each china shop area.
- To promote and manage diving activities if the area is under threat from existing or future activities.
- Manage anchoring if the area is under threat from existing or future activities.

### **Fisheries management**

- Provide advice to the Minister of Fisheries on the implementation of fisheries management measures to:
  - address the adverse effects of fishing on the maintenance of biodiversity
  - ensure the sustainability of fisheries resources
  - ensure appropriate and fair access to fisheries resources by recreational, commercial and customary fishers
  - where initiated by iwi, the implementation of customary site-based measures to provide for the exercise of kaitiakitanga (mataitai and taiapure)
  - the location and relevance of the ‘habitat lines’
  - means to encourage non-commercial harvesting to take place at the fiords entrances and along the outer coast.

### **Biosecurity**

- To provide advice on and facilitate the establishment of codes of practice for hull-cleaning, identification of unwanted species and domestic ballast water exchange.
- To advocate for and work with a special taskforce to develop and implement a plan to address marine bio-invasion and other pest species specifically for Fiordland.

The Fiordland Marine Guardians would report on its functions to the appropriate Minister/local authority with statutory responsibility. Although the recommendations would go individually to the relevant agency/Minister, the critical element is the process of dialogue developed between the agencies and the Committee.

There will be a need for ongoing reporting.

### **Membership of the Fiordland Marine Guardians**

Provide for the Committee be made up of representatives of non-government interests and officials from the key management/operational agencies. The latter could be appointed to the Committee in a non-voting capacity. This would allow the advice of the Committee to be viewed as independent but still ensure that it could work effectively in facilitating co-operation and integration across agencies. The Ministry for the Environment to provide administrative servicing.

Provide that members do not ‘represent’ any particular interest group, rather they should be people who represent the interests of Fiordland. They should be appointed for the particular skill and expertise and the perspective they bring. This means they do not need a formal mandate from the group they represent before voting or deciding on policy. While members will tend to advance the interests of the group from which they are drawn, this arrangement means that members have more scope to take a broader collective view on issues and compromise where necessary.

As the Fiordland Marine Guardians will be providing advice to the Government they will need to be appointed through the Appointments and Honours Cabinet Committee. This means that membership of the group is the Minister’s choice and a formal process of appointment is followed according to Cabinet Office guidelines. The community will be able to offer suggestions, but ultimately the choice is the Ministers’.

The maximum membership of a ministerially appointed group is eight, otherwise the group would become too expensive and unwieldy. The Investigative Group suggests that the membership of the committee should broadly reflect the make-up of the Guardians of Fiordland in order to provide a suitable mix of local knowledge, expertise and experience. It will also be important for there to be representation of Ngai Tahu so that their status as Kaitiaki is recognised.

## **Implementation by September 2005**

The statutory means to implement the management measures in the Strategy vary widely in both process and timing across the range of legislation:

- Fisheries management measures can be implemented reasonably quickly by regulation.<sup>23</sup>
- Management measures implemented under the Resource Management Act will require changes to the Southland Regional Coastal Plan. This can result in a lengthy public submission process.<sup>24</sup>
- Creating marine reserves can involve a significant and often lengthy statutory process.<sup>25</sup> There is also no guarantee that any of the marine reserve proposals would be successful.

For all of management measures to be implemented at a common start date, normal processes for amending the regional coastal plan and for establishing marine reserves would need to set aside and be replaced with special provisions in legislation, including:

- a schedule of necessary amendments to the Southland Coastal Plan
- a schedule creating the eight proposed marine reserves, as an amendment to the Marine Reserves Act.

The legislation would therefore set the agreed common start date for all the management measures.

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<sup>23</sup> See Appendix 3 for further details.

<sup>24</sup> See Appendix 5 for further details.

<sup>25</sup> See Annex 4 for further details.

A possible precedent for this is provided by the Forests (West Coast) Accord Act 2000. This Act set aside indigenous forestry lands to be different types of conservation land as at the date of the Act coming into force. The approach adopted in Section 8 of that Act could be followed. As an example: a similar type provision to Section 8 could be inserted declaring certain pieces of land (sea) identified in the Schedule to be “a marine reserve under the Marine Reserves Act”.

## **Disallowing new marine reserves applications**

Under the Marine Reserves Act (Section 5(1)) an applicant may make an application for a new marine reserve if they meet the criteria and follow the prescribed process. Applications are made at the discretion of the applicant and the right to apply for a new marine reserve in any particular area is not able to be fettered by a departmental policy decision. So long as the application is in accordance with the requirements of the Act, the Director General is bound to receive it and process it. It can not be refused.

The Director General is bound to allow the application to proceed on its merits; for it to be notified; and to refer objections and any answer to the Minister. Areas that are not the subject of an existing application could not be closed off to further applications. The Minister is then bound to make a decision as to whether or not any objection should be upheld and then in the event that no objection is upheld, the Minister is bound to go on and consider the substantive issue of whether he should make a recommendation that the area be declared a marine reserve .

The Investigative Group is of the opinion that the likelihood of a successful new marine reserve application is low, but the threat it would pose to the significant community support for the Strategy is such that it should be avoided. Because the process is set in statute, only a statutory amendment can prevent such an occurrence.

Hence it is proposed that a consequential amendment to the Marine Reserves Act (or new legislation) would be required to the effect that there would be a moratorium on new marine reserve applications within the area of the Strategy until the Strategy has been formally reviewed after five years.

## **Defining the area that the management measures will apply to**

The Guardians proposed that the Fiordland marine environment would cover the coast and fiords from the eastern bank of the mouth of the Waiau River in the south to Cascade Point in the north. Their seaward boundary was flexible.

In order to have integrated management over defined resources and within a defined area the extent of the management area needed closer definition. It was agreed to shift the northern boundary from Cascade Point, which is in the West Coast Regional Council area, to Awarua Point, which forms the boundary between the two regions (Southland and West Coast). This would more closely align the boundary with existing management responsibilities and prevent conflict or confusion with another regional council in another regional coastal area.

At either end of the area they provide sufficient geographical extension to create a boundary (buffer) that is likely to limit lateral incursion into the area from the north and the south/east.

The outer (or seaward) boundary is proposed to be the extent of the coastal marine area (the 12 nautical mile limit of the territorial sea) as this coincides with a simple, existing and recognised jurisdictional limit.

The advantage of these limits is that they reflect existing management boundaries.

The major disadvantage is that this precludes marine reserve establishment for five years (under the moratorium) over an area where there is currently no proposals for marine biodiversity protection (marine reserves).

## Conclusion

The management measures around implementing the Strategy are:

- define the area over which the management measures will apply
- implement the full package of management measures on a common start date, and by September 2005
- prevent the creation of new marine reserves other than those agreed to in the Strategy for a period of five years
- establish and appoint a 'Fiordland Marine Guardians' to provide advice to the Government on the performance of marine management in Fiordland
- require a review of the performance of the management measures after five years
- require management agencies to take into account the advice of the Fiordland Marine Guardians.

To implement these management measures:

- all of these measures would be implemented as provisions within a new special statute for Fiordland:
  - an advisory committee called the 'Fiordland Marine Guardians' be established, that has its functions defined in legislation
  - fast-tracking the creation of new marine reserves, and changes to the Environment Southland Coastal plan, which will be necessary to meet the September 2005 deadline for implementation of all management measures
  - amending the Marine Reserves Act (or new Marine Reserves legislation) to the effect that there would be a moratorium on new marine reserve applications within the area of the strategy until the strategy has been formally reviewed. A consequential amendment to the Marine Reserves Act (or new Marine Reserves legislation) would be required.

# Appendix 9: Compliance and Enforcement

## Management measures

The overall package of management measures proposed in this Strategy is very diverse due to the many different management needs of the Fiordland marine environment. Further complexity is added through the number of different statutes and management agencies involved, including the Ministry of Fisheries (Fisheries Act 1996), Department of Conservation (Marine Reserves Act 1971) and Environment Southland (Resource Management Act 1991).

When the Strategy is implemented, compliance with any rules will be the responsibility of the agency that administers the relevant statute. The Guardians support the ‘carrot and stick’ approach to compliance (encouragement to comply with the rules voluntarily combined with effective deterrent against illegal activities) that currently underpins the Ministry of Fisheries, Department of Conservation and Environment Southland compliance activities in Fiordland. However, the Guardians suggest a better way of covering the extensive Fiordland coastline is for management agencies to work together and with the community in and out of the water.

The Guardians’ advocate and support the design of an integrated compliance approach by the Ministry of Fisheries, the Department of Conservation and Environment Southland in Fiordland to make effective use of their limited compliance resources. In this way the agencies would develop a shared approach to information, education<sup>26</sup> and surveillance, although the prosecution of offences would still be taken by each agency according to their own statutory provisions.

The Guardians are willing to play a critical compliance support role, by:

- informing and educating fishers and other users about new management measures
- being the eyes and ears on the water
- supporting enforcement action.

Management agencies should therefore be encouraged to work with the Fiordland Marine Guardians when developing an integrated compliance approach.

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<sup>26</sup> Examples of new educational material that will be needed after the Strategy is implemented are in Appendix 6: Risks to the Marine Environment.

## Options for implementation

The Ministry of Fisheries, Department of Conservation and Environment Southland will establish a planning team to work out how to develop an integrated compliance approach for Fiordland. This will include:

- evaluating current resources (from the Ministry of Fisheries, Department of Conservation and Environment Southland) for compliance and enforcement in Fiordland. This would include the information currently available to the community, visitors and users about the special nature of Fiordland and the management measures and compliance expectations needed to maintain this
- whether the new management measures will require a different approach to compliance and enforcement in Fiordland
- ways in which information, education and surveillance can be shared
- how to make use of local community expertise.

## Conclusion

The management measures around compliance and enforcement are:

- develop an integrated compliance approach for Fiordland to make effective use of limited compliance resources
- management agencies should work with the Fiordland Marine Guardians when developing this integrated compliance approach.

To implement these management measures the Ministry of Fisheries, Department of Conservation and Environment Southland will establish a planning team to develop an integrated compliance approach for Fiordland. This will include:

- evaluating the resources available (from the Ministry of Fisheries, Department of Conservation and Environment Southland) for compliance and enforcement in Fiordland, and the information currently available to the community, visitors and users about management measures and compliance expectations
- whether the new management measures will require a different approach to compliance and enforcement in Fiordland
- ways in which information, education and surveillance can be shared
- how to make use of local community expertise.