



26 October 2018

Document Number: B18-0853

**Meeting with the Minister of Conservation to discuss the South-East Marine Protection Forum recommendations.**

**Purpose:**

The purpose of this briefing is to provide you with information on your joint decision (with the Minister of Conservation) on marine protection recommendations put forward by the South East Marine Protection Forum (the Forum).

Minister	Action Required:	Minister’s Deadline
Minister of Fisheries	Note the contents of this brief	For your meeting with the Minister of Conservation at 6.30pm on 31 October.

**Fisheries New Zealand Officials Attending the Meeting**

Dan Bolger – Head of Fisheries New Zealand

Stuart Anderson – Director Fisheries Management

s9(2)(a) – Manager - Customary Fisheries & Spatial Allocations

s9(2)(a) – Team Manager – Spatial Planning & Allocations

**Contact for telephone discussion (if required)**

	Name	Position	Work	Mobile
Responsible Manager	s9(2)(a)	Manager - Customary Fisheries & Spatial Allocations	s9(2)(a)	s9(2)(a)
Principal Author	s9(2)(a)	Team Manager – Spatial Planning & Allocations	s9(2)(a)	s9(2)(a)

## Key Messages

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1. Your meeting with the Minister of Conservation is an opportunity to decide which of the marine protected area (MPA) proposals put forward by the Forum, will be implemented, by when and in what form.
2. Fisheries New Zealand and DOC agree that Network 1 is the preferred option that best meets the objectives of the Marine Protected Areas Policy & Implementation Plan (MPA Policy).
3. However, Fisheries New Zealand and DOC have differing views on how to implement Network 1. The main differences are due to interpretation of the MPA Policy (in particular the level of fishing restrictions that can be imposed in some MPAs and the level of evidence required to support these restrictions).
4. To ensure that a protected area network can be successfully implemented, Fisheries New Zealand recommends that you:
  - Use existing legislation (rather than special legislation) as the preferred vehicle for establishing new MPAs;
  - Ensure your decisions on establishing new MPAs are resilient to legal challenge by modifying some of the Forum's proposals to ensure that they can be successfully implemented;
  - Explore the use of National Threat Management Plans for protected species and/or broader fisheries management controls as potential mechanisms to manage the risks that set nets pose to protected species in the Forum's planning area; and
  - Explore non-MPA options such as review of the total allowable catch (TAC) and other harvest controls to address the Forum's concerns about the commercial harvest of bladder kelp and shortfin eels.

## Recommendations

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5. Fisheries New Zealand recommends that you:

- a) **Note** that you are scheduled to meet with the Minister of Conservation on 31 October to discuss proposals for the establishment of new marine protected areas put forward by the South East Marine Protection Forum.

**Noted**

- b) **Note** the contents of this briefing.

**Noted**

- c) **Agree** to discuss the following points with the Minister of Conservation:

- Use existing legislation (rather than special legislation) as the preferred vehicle for establishing new MPAs;
- Implement Network 1, but modify some of the Forum's MPA proposals to ensure that they can be successfully implemented;
- Potential use of National Threat Management Plans and/or broader fisheries management controls as potential mechanisms to manage the risks that set nets pose to protected species in the Forum's planning area;
- Potential use of non-MPA options such as review of the total allowable catch (TAC) and other harvest controls for addressing the Forum's concerns about the commercial harvest of bladder kelp and shortfin eels.

**Agreed / Not Agreed**

Dan Bolger  
Head of Fisheries New Zealand  
for Director-General

Hon Stuart Nash  
Minister of Fisheries

/ / 2018

## Background

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### Issue

6. You have received joint advice prepared by Fisheries New Zealand and the Department of Conservation (DOC) on options for new MPAs put forward in the Forum's recommendation report (**B18-0285 refers**).
7. The Forum was constituted in 2014 under the 2005 Marine Protected Areas Policy & Implementation Plan (the MPA Policy) and tasked with undertaking a consultative MPA planning process focused on the south-east coast of the South Island. Its membership included representatives of Kai Tahu,<sup>1</sup> environmental groups, recreational fishers, and the tourism and marine science sectors. Fisheries New Zealand and DOC provided support and guidance for the Forum.
8. Despite a substantial personal commitment to the process by the Forum members and investment of resources by agencies, the Forum was unable to reach consensus on their recommendations.
9. This led to two factions within the Forum promoting quite disparate MPA options. One faction (consisting mainly of commercial fishing interests) promoted the option of an MPA network that minimised effects of fishing interests (Network 2), while the other (consisting mainly of environmental, marine science and tourism interests) promoted the option of a more expansive MPA network that provided greater coverage across a range of marine habitats (Network 1).
10. Both Fisheries New Zealand and DOC agree that Network 1 better meets the objectives of the MPA Policy and provides the core of MPA proposals that should be considered for possible implementation. However, Fisheries New Zealand has concerns about attempting to implement all of the elements of the Network 1 proposal. On the other hand, DOC are supportive of attempting to implement all elements of the proposal as a package.
11. The proponents of Network 1 have developed several recommendations that would at a minimum be difficult to implement using existing legislation. Acknowledging this, DOC have proposed that special legislation could be considered as a way to implement the Network 1 proposal. However, Fisheries New Zealand's preference is to instead amend the Network 1 proposal so that it can be successfully implemented using existing legislation (the Marine Reserves Act 1971 and the Fisheries Act 1996).

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<sup>1</sup> Kai Tahu is the name that the Ngai Tahu people ascribe to themselves in their own dialect.

12. Irrespective of whether special legislation or existing legislation is used as the vehicle for establishing new MPAs in the southeast of the South Island, your role as Minister of Fisheries will be critical to ensuring either process can reach a successful conclusion.
13. If special legislation is used, you will need to seek Cabinet's approval to develop the legislation and introduce the Bill to the House.
14. If existing legislation is used, your decisions as Minister of Fisheries are pivotal to establishing both marine reserves (under the Marine Reserves Act 1971) and other (Type 2) MPAs (under the Fisheries Act 1996).
15. The decision process for marine reserves involves the Minister of Conservation making a decision (in principle) to approve one; however it cannot be established unless you subsequently concur with that decision. For the establishment of MPAs using the Fisheries Act 1996, responsibility for the decision is yours alone.
16. Both processes require you to consider the impact of the proposed MPA on the rights and interests of Māori, and on the interests of recreational and commercial fishers.
17. The subsequent analysis provides you with Fisheries New Zealand's rationale for our recommendations to:
  - a) Ensure successful and timely implementation of new MPAs by using existing legislation;
  - b) Ensure your decisions to establish new MPAs are resilient to legal challenge; and
  - c) Effectively manage risks to protected species within the Forum's planning area.

## **Analysis**

### *Ensure successful and timely implementation of new MPAs by using existing legislation*

18. There are currently no MPAs along the south-east coast of the South Island, and the Forum's planning process has generated a good deal of public expectation about the nature of the marine protection outcomes that are likely to emerge from it.

19. Fisheries New Zealand therefore considers that using existing legislation is the pathway that would most likely enable new MPAs in the southeast of the South Island to be established within a reasonable timeframe.

20. s9(2)(f)(iv)

21. s9(2)(f)(iv)

*Ensure your decisions to establish new MPAs are resilient to legal challenge*

22. Fisheries New Zealand considers that some limited adjustments are needed to the Network 1 proposal to ensure that it can be successfully implemented.

23. Fisheries New Zealand considers that two elements of the Network 1 proposal need to be amended to enable you to give effect to them through your decision-making role under both the Marine Reserves Act 1971 and the Fisheries Act 1996. These are:

- i. Amendments to the boundaries of two proposed MPAs (Site A1 and D1) to reduce their impact on commercial fishers; and
- ii. Adjusting the level of restriction on fishing activities within five proposed Type 2 MPAs (to be established using the Fisheries Act).

*Limiting the effects of new MPAs on commercial fishers*

24. A key consideration for your decisions on MPA proposals under both the Marine Reserves Act 1971 and the Fisheries Act 1996 is assessing the level of impact that the new MPA would have on commercial fishing interests.

25. Fisheries New Zealand considers that there are two specific MPA proposals put forward by proponents of Network 1 for which boundary amendments should be considered to lessen the impact on commercial fishers. These are: Site A1 (a proposed Type 2 MPA) and Site D1 (a proposed marine reserve).

26. Fisheries New Zealand is concerned that, in developing these proposals, the proponents of Network 1 have not given due consideration to the impact that they will likely have on fishers. Fisheries New Zealand's view is that a decision to implement either of these proposals in their current form would heighten the risk of this decision being subject to judicial review, as commercial fishing interests could argue that due consideration had not been given to the impact on their quota rights.
27. This risk is particularly acute for the proposed marine reserve at Site D1, as this area is an important rock lobster fishing ground. It's closure would displace approximately 20 percent<sup>2</sup> the current rock lobster catch taken within the CRA7 fishery. Affected fishers would have no option other than to attempt to relocate part or all of their operations to other rock lobster grounds within CRA 7.
28. As the CRA7 fishery is already fully developed, with all available grounds being fished at capacity, this displacement would be likely to preclude some fishers from taking their catch entitlements. Fisheries New Zealand estimates that a total of up to 19 commercial fishers could be affected to varying degrees.
29. Fisheries New Zealand considers that this level of effect heightens the risk that a decision to implement the proposed marine reserve in its current form could be challenged by commercial fishing interests. To address this risk, we consider that the boundaries of Site D1 need to be amended to reduce the level of impact on the commercial fishery.

#### *Appropriate level of restriction on fishing in Type 2 MPAs*

30. To establish Type 2 MPAs by prohibiting particular fishing methods under the Fisheries Act 1996, sufficient evidence is needed to support a decision that those fishing methods are causing or have the potential to cause, an "adverse effect on the aquatic environment".<sup>3</sup> The MPA Policy is focused on protection of biodiversity at the habitat and ecosystem level (and not individual species)<sup>4</sup>, whereas the Fisheries Act's definition of "aquatic environment" encompasses both individual species (and ecosystems).
31. For those fishing methods that involve dragging weighted fishing gear along the seafloor (bottom trawling, Danish seining, and dredging), there is a strong body of scientific evidence to support a presumption that they will damage marine life on the seafloor and adversely affect benthic habitats and ecosystems.

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<sup>2</sup> 17.7 tonnes of catch with an estimated export value of NZ\$ 1.9 million.

<sup>3</sup> Section 8(2) of the Fisheries Act 1996

<sup>4</sup> Paragraph 20: Marine Protected Areas Policy and Implementation Plan, Department of Conservation and Ministry of Fisheries 2005.

32. For this reason, both DOC and Fisheries New Zealand have agreed that these methods need to be prohibited in all cases to establish a Type 2 MPA. This agreed minimum threshold of protection provides the basis of New Zealand's reporting of MPA coverage in international forums such as the Conference of the Parties to the UN Convention of Biological Diversity.<sup>5</sup>
33. To enable you to apply additional prohibitions on fishing methods in excess of the minimum threshold, site-specific evidence is required to enable you to be satisfied that their prohibition is warranted. This is problematic, because it requires a case-by-case assessment of each proposed Type 2 MPA, and direct evidence of the adverse effects on habitats and ecosystems that are caused by the use of particular fishing methods at that site.
34. While we consider that you could readily implement prohibitions on bottom trawling, Danish seining and dredging, for Type 2 MPAs in Network 1, sound evidence to support further restrictions is lacking.
35. For this reason, Fisheries New Zealand recommends that restrictions on fishing methods across all Type 2 MPAs proposed for Network 1 should be limited to the three bottom-fishing methods that both DOC and Fisheries New Zealand agree need to be prohibited (bottom trawling, Danish seining, and dredging).

*Managing risks to protected species within the Forum's planning area*

36. As noted, the MPA Policy is focused on protection of marine biodiversity at the habitat and ecosystem level rather than at the level of individual species. This has led to frustration amongst some Forum members concerned by the risk that set nets pose to protected species, such as yellow-eyed penguins (Hoiho) and Hector's dolphins. It appears that the proposal to prohibit set net use in all Type 2 MPAs put forward by proponents of Network 1 is (at least in part) motivated by a desire to mitigate the risks that set nets pose to these species.
37. Fisheries New Zealand acknowledges that set net use across the Forum's planning area poses a risk to both Hector's dolphins and yellow-eyed penguins (Hoiho). However, we consider that, rather than prohibiting set netting within particular MPAs it would be more effective to apply controls at a broader geographic scale that reflects the level of risk that these species are exposed to across their range.

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<sup>5</sup> See, "Aichi Target 11" in: <https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2018/draft-convention-on-biodiversity-national-report/>



38. Fisheries New Zealand has launched a number of initiatives that provide the opportunity to address public concerns over the bycatch of protected species within the Forum's planning area. These are:
- Development of a National Threat Management and Recovery Plan for yellow-eyed penguin (Hoiho) in collaboration with DOC, Kai Tahu and the Yellow-eyed Penguin Trust.
  - Review of the National Threat Management Plan for Maui and Hector's dolphins in collaboration with DOC.
  - Scoping of a national-level review of the regulation and use of set nets (**B18-0221 refers**).
39. We recommend that you consider utilising these processes to address protected species bycatch issues at a regional scale (rather than at the scale of individual MPAs).

*Addressing concerns about commercial harvest of bladder kelp and shortfin eels*

40. Proponents of Network 1 have proposed prohibiting the commercial harvest of bladder kelp (*Macrocystis pyrifera*) across the known range of this species in the northern part of the Forum's area.
41. Bladder kelp is managed by Fisheries New Zealand under the quota management system.<sup>6</sup> There are six holders of bladder kelp quota, which entitles them to harvest bladder kelp within quota management area KBB3G, which extends from the southern boundary of the Forum's planning area northwards to the Clarence River mouth.
42. Fisheries New Zealand does not consider that the proposed ban on commercial harvest of bladder kelp can be justified, given that no commercial harvest of this species is currently occurring with the Forum's planning area.
43. Rather than pre-emptively banning harvest, Fisheries New Zealand considers that a more appropriate course of action for addressing concerns about sustainability of future harvest would be to review the TACC or use other harvest controls needed to ensure the ecological integrity of kelp forest habitat is maintained.
44. Similarly, Fisheries New Zealand considers you should consider addressing concerns about the harvest of shortfin eels in proposed Type 2 MPAs in estuarine areas through a review of sustainability measures for the relevant stock (SFE15), rather than attempting to prohibit the use of Fyke nets in these areas (as proposed by proponents of Network 1). Fisheries New Zealand considers a more effective and credible strategy for addressing these concerns would be to review the total allowable commercial catch and other harvest controls in place for SFE 15.

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<sup>6</sup> Bladder kelp (*Macrocystis pyrifera*) was introduced into the quota management system in 2010.

## Conclusions

45. Your meeting with the Minister of Conservation is an opportunity to decide which of the MPA proposals put forward by the Forum, will be implemented.
46. To ensure that the implementation process can be successfully completed within a reasonable timeframe, Fisheries New Zealand recommends that you implement particular MPA proposals in a modified form. We also recommend that you explore with the Minister of Conservation alternative (non-MPA) options for addressing public concerns over bycatch of protected species within the Forum's planning area, and for addressing concerns about the commercial harvest of bladder kelp and shortfin eels.

Proactive Release

s9(2)(f)(iv)

Proactive Release