

Improving Aotearoa New Zealand's approach to marine protection

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Summary

Improving the approach to marine protection

Aotearoa New Zealand is a maritime nation - with vast, diverse and unique oceans. Keeping the marine environment healthy, with a diverse range of species, is important to our wellbeing and our future.

Māori have a genealogical connection to the sea and have the role of kaitiaki (guardians); an inherited responsibility of each generation to protect and care, not only for the natural world, but also for the needs of successive generations. Kaitiakitanga (guardianship and protection) is an essential part of the spiritual and cultural relationship of iwi/Māori with the marine environment.

An estimated 30 percent of Aotearoa New Zealand's biodiversity is found at sea. However, the [Our Marine Environment 2019](#) report concluded that many marine species and habitats are under threat, as a consequence of our activities and climate change.

The Government wants to improve how we protect marine biodiversity and ecosystem function and resilience while supporting the relationship between iwi/Māori and Tangaroa. We propose to improve the way we establish and manage marine protected areas (MPAs), as a first step to addressing cumulative effects. MPAs are an important tool for protecting and managing risks to marine biodiversity, which complement other key parts of the marine management system, including the Fisheries Act 1996 and Resource Management Act 1991.

Issues with the current approach to marine protection

While a broad range of marine management tools are available, it is challenging to use them alongside each other in an effective and efficient way. There are different views about the risks to the marine environment, cumulative impacts and environmental tipping points. Agencies and legislation have few shared goals or policies to help coordinate action, and in some cases, have overlapping responsibilities. This can reduce accountability and contribute to uncertainty for agencies and marine users.

There are also immediate issues within the policy framework for marine protected areas (MPAs) and other marine protection tools. Nearly 50 years ago, Aotearoa New Zealand was world-leading in its enactment of the Marine Reserves Act 1971, which provided an important foundation for protecting marine biodiversity. However, it is no longer fit-for-purpose. Many other countries have established more recent MPA legislation that reflects new thinking about MPAs. Through engagement and lessons learned from previous MPA processes, the Government has identified the following issues with the Marine Reserves Act and 2005 marine protected areas policy and associated guidelines:

- There is no strategic, nationally coordinated approach to MPAs and other tools for the protection of marine biodiversity and ecosystem function and resilience;
- The geographic scope of the Marine Reserves Act is limited to the territorial sea (TS) and cannot protect important ecosystems that extend to or exist in the exclusive economic zone (EEZ);
- The Marine Reserves Act has a narrow purpose of protection for scientific study, rather than the purpose for biodiversity protection;
- The Marine Reserves Act lacks tools that allow protection to occur with varying levels of use across multiple activities;
- The Marine Reserves Act does not provide specific guidance on how to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and does not explicitly recognise the role of iwi/Māori as kaitiaki; and
- Public consultation processes for establishing marine reserves are unclear, inefficient, and inflexible and often lead to drawn out timeframes for establishing MPAs.

Objectives

The Government wants the marine environment to be healthy and resilient to maintain its ability to provide for the needs of current and future generations while recognising its inherent intrinsic value.

To support this, the following set of objectives for improving the marine protection system are proposed:

1. **Environment:** Marine protection tools can be deployed in a timely and effective way to maintain and restore the marine environment;
2. **Treaty:** Te Tiriti o Waitangi/the Treaty of Waitangi and its principles are upheld, the Crown's Treaty obligations are delivered, and customary rights and interests are recognised and protected;
3. **Strategy:** A strategic, objective-driven approach is taken to marine protection, based on sound evidence, including scientific advice and mātauranga Māori, assessments of risk, and social and cultural values;
4. **Participation:** Processes for establishing and managing marine protection are efficient and transparent, provide for partnership with iwi/Māori, and engagement with local communities, businesses and the wider public;
5. **Integration:** The marine protection policy framework is better coordinated and integrated with the rest of the marine management system and enables a move towards ecosystem-based management across New Zealand's maritime zones; and
6. **International:** Aotearoa New Zealand can lead the way in developing best practice for marine protection, consistent with international obligations.

A new Marine Protected Areas Act and National MPA Strategy

The Government is proposing to meet the objectives and address issues with the current approach by replacing the Marine Reserves Act 1971 and associated policy with a new MPA Act and National Strategy.

There are a range of options for how an MPA Act could be designed, and the Government wants your views to ensure that we get it right. In particular, iwi/Māori have significant rights and interests in the marine environment and the Government intends to progress this work in a way that recognises and protects these rights and provides for the aspirations of iwi/Māori.

We propose a new MPA Act:

- Has the purpose of establishment and effective management of MPAs to maintain, protect and restore indigenous marine biological diversity and ecosystem function and resilience;
- Covers both the territorial sea and exclusive economic zone;
- Gives effect to te Tiriti o Waitangi/the Treaty of Waitangi and its principles and provides clarity about how to implement the principles. This would include explicit recognition of rights and interests under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Māori Fisheries Act 2004¹, the Marine and Coastal Area (Takutai Moana) Act 2011 and other relevant Treaty of Waitangi Settlement Acts. The Government also wants to explore how co-governance arrangements that better reflect Treaty partnership could be incorporated into an MPA Act;
- Retains marine reserves and establishes a new flexible MPA category - marine conservation areas. Marine reserves would remain the primary tool for establishing minimal impact areas to maintain an area as far as possible in a natural state. Marine conservation areas would be tailored to achieve specific protection objectives that are not easily achieved through existing legislation. Marine conservation areas would allow for varying levels of use that are consistent with those objectives. Objectives could include protection of a particular species, habitat, natural features important to biodiversity, ecological process, or to support customary aspirations;
- Enables tools under other legislation to be properly integrated using provisions of this Act where appropriate, including customary fisheries management practices (such as mātaimai)

¹ The Fisheries Settlement was a settlement of Fisheries claims under Te Tiriti o Waitangi. It was enshrined in the Deed of Settlement, signed in 1992 and implemented through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Māori Fisheries Act 2004.

reserves), other Fisheries Act 1996 management measures, Marine Protection Rules under the Maritime Transport Act, and the Resource Management Act;

- Provides for the development of a National MPA Strategy to support a strategic, nationally coordinated approach to establishing and managing protection tools, including tools applied under other Acts. The National MPA Strategy would include national protection objectives, priorities, guidance on aspects of implementation and scientific methods, and an action plan to specify how processes for establishing MPAs would be progressed across Aotearoa New Zealand; the Strategy, just like the new MPA Act, would be developed in partnership with iwi/Māori and stakeholders;
- Outlines a five-stage process for establishing marine protected areas under the Act, alongside other tools that support meaningful consultation and consideration of benefits and impacts;
- Establishes a national monitoring and reporting framework which supports the use of mātauranga Māori, alongside science; and
- Provides for effective management of marine protected areas, including co-management arrangements, and periodic review of marine protected areas, including generational reviews.

Supporting integrated and coordinated management

The Government recognises that MPAs are one of many tools that can provide for the protection of biodiversity. A linked-up marine management system is needed and will ensure all risks to the marine environment are appropriately addressed.

The new MPA Act would support and complement other legislation that contributes to the overall sustainable management of the marine environment, such as the Fisheries Act 1996, Resource Management Act 1991, the Maritime Transport Act 1994, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The Government is currently progressing work to reform the resource management system. The new MPA Act would be designed to improve integration between itself and any successor to the Resource Management Act 1991.

Where appropriate, tools under other legislation should be progressed alongside MPAs, for example tools to give effect to customary fisheries management practices under the Fisheries Act (including mātaihai reserves) and other tools Māori might use to manage their relationship with Tangaroa. This would help build a national, strategically coordinated approach to marine protection for all of Aotearoa New Zealand.

Have your say

The Government seeks feedback on the proposal for a new MPA Act and National MPA Strategy. We would like your views on whether this document accurately identifies the issues, options to address them, the effects of the options, and whether you have any alternative ideas.

Your submissions will be used as one of the inputs to further inform our policy work. Submissions close at **Time Day Month** 2021. Please see [Section 6](#) for information on how to make a submission.



1: Background

Rock wall at Poor Knights Islands Marine Reserve encrusted with sponges, ascidians, hydroids and polyzoans. Photographer: Vincent Zintzen

1.1 Purpose and scope of document

This document describes the Government's proposal to replace the Marine Reserves Act 1971 with a new Marine Protected Areas (MPA) Act and National MPA Strategy. It outlines why the Government is pursuing the new Act instead of non-regulatory and broader reform approaches and seeks feedback on how the new MPA Act and National MPA Strategy should be designed.

The Government recognises that MPAs are one of many tools that can provide for the protection of biodiversity. The Government is not seeking feedback on other fundamental parts of the marine management system (such as the Fisheries Act 1996 or proposals for reform of the Resource Management Act 1991), except to the extent that the Government wants to ensure the management system is linked up to ensure that all risks to the marine environment are appropriately addressed. The Government's obligations under the Tiriti o Waitangi/Treaty of Waitangi and Treaty settlements are also out of scope. Any reform would be progressed in a way that upholds these obligations.

1.2 The marine environment is important to us

The marine environment is central to our identity and our economy. For many New Zealanders the ocean is an integral part of culture and lifestyle that would be incomplete without a quiet walk on the beach, family holidays, or water activities. Most of us live near the coast and enjoy fishing, boating, swimming or diving. New Zealanders go on almost 2 million recreational fishing trips each year and in 2017/18 caught over 7 million fish and 3.9 million shellfish.



Father is fishing with his sons off the rocky coast (Photo from NZ Story resource).

An estimated 30 percent of Aotearoa New Zealand's biodiversity is found at sea. Biodiversity is crucial for ecosystem health and resilience; greater species diversity results in ecosystems that are more resilient to adverse events, including climate change.

Healthy marine ecosystems are essential for indigenous flora and fauna and human wellbeing. For example, healthy marine ecosystems absorb carbon dioxide, provide nursery habitat for many marine species, filter out pollutants and improve water quality, reduce coastal erosion and buffer extreme weather events.

The moana also makes a significant contribution to our prosperity. In 2017, the marine economy added \$7 billion to the Aotearoa New Zealand economy and provided over 100,000 jobs. Aotearoa New Zealand's ports move exports and imports worth more than \$75 billion annually. Many international and domestic visitors are attracted by the beauty of Aotearoa New Zealand's coastlines and oceans making the marine environment an important driver of the \$40.9 billion produced by the tourism sector in 2019.

1.3 Māori relationship with Tangaroa

From the origin of the universe, Māori have a genealogical connection to the moana (and whenua), referred to as whakapapa; Māori are the descendants of Tangaroa (god of the sea). Whakapapa weaves together human beings, their environment and spiritual realm giving purpose and importance to kaitiakitanga. The principle of kaitiakitanga is the inherited responsibility of each generation to protect and care for the natural world, and the needs of successive generations. The role of kaitiaki

exceeds the definition of a guardian with kaitiakitanga being an essential part of the spiritual and cultural relationship of iwi/Māori with marine realm.

In Te Āo Māori, conservation through appropriate marine protection is a component of sustainable use. The relationship between people and Tangaroa is one of mutual dependence. Tangaroa is part of a web of active relationships based on whakapapa. By caring for Tangaroa, Tangaroa provides for us. This world view is shared by numerous indigenous peoples around the world and is supported by international agreements such as the Convention on Biological Diversity. It is a view, which is interwoven with rangatiratanga (authority), guaranteed under Article Two of the te Tiriti o Waitangi/the Treaty of Waitangi in respect of taonga (treasures) including fisheries.

The loss of marine biodiversity, and the growing distance between Māori and what remains, makes it harder to sustain traditional relationships, responsibilities and practices. For example, mātauranga Māori that relates to particular taonga (treasure) species can only survive if kaitiakitanga can be carried out for those taonga – which in turn requires being able to exercise rangatiratanga (authority).

Mātauranga Māori is the extensive knowledge that Māori have of the natural world, and their way of knowing it. It provides Māori with a way to understand, relate to, and manage natural resources. Mātauranga Māori has been developed over hundreds of years and forms a significant evidence base and management approach for caring for Tangaroa.

Māori developed the practice of rāhui (periods when no one may take any resources or particular resources (such as shellfish) from an area) in response to a need for conservation of food resources or to prevent the gathering of food for a specified period after a death in the area.

In addition to rāhui, Māori traditionally limited harvests of certain species by season and by restricting access to fishing grounds. Māori also applied other forms of tapu (restriction) to prevent the mauri (life force) from being degraded (for example, through the pollution of fishing areas by human waste, or fishing grounds being damaged by nets and lines).

1.4 Relationship between Māori and the Crown

Through Article One of te Tiriti o Waitangi/the Treaty of Waitangi, the government gained the right to govern. This is qualified by Article Two where the Crown promises that Māori will have the right to make decisions over resources and taonga that they wish to retain, including those in the marine environment.



Intergenerational care (Photo from NZ Story resource).

Treaty principles are used in law to bridge the different interpretations of the Māori and English texts of te Tiriti o Waitangi/the Treaty of Waitangi. They require the Crown to act in good faith, work in partnership with iwi/Māori when making decisions that could affect their interests, act reasonably and honourably, make informed decisions, actively protect Māori rights and interests and preserve capacity to provide redress for proven grievances.

Iwi/Māori play a critical role in the marine environment, including in protecting marine biodiversity. They do so as a partner to the te Tiriti o Waitangi/the Treaty of Waitangi, holder of mātauranga Māori, and through the diverse rights and interests iwi/Māori have in the marine environment. These include rights enshrined in law under Treaty settlements such as the Treaty of Waitangi (Fishing Claims) Settlement Act 1992, the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004, and rights under the Marine and Coastal Area (Takutai Moana) Act 2011. These rights may be commercial or non-commercial in nature but are all approached from the perspective of Te Ao Māori.

The Treaty of Waitangi (Fisheries Claims) Settlement Act puts in place the agreements made in the 1992 Fisheries Deed of Settlement. It settled all Māori claims to commercial fisheries under the Treaty of Waitangi and makes better provision for Māori non-commercial traditional and customary fishing rights and interests and Māori participation in the management and conservation of Aotearoa New Zealand's fisheries. In settling their claims with the Crown, iwi/Māori agreed that the Quota Management System is an appropriate regime for exercising their rights and responsibilities in relation to the commercial aspect of their customary fishing right.

Many iwi/Māori see the introduction of MPAs as eroding their rights under the te Tiriti o Waitangi/the Treaty of Waitangi and Treaty settlements. Some iwi/Māori have expressed concern that MPAs negatively impact their customary non-commercial fishing practices, their commercial fishing interests and the economic wellbeing of fishing communities. MPAs may also affect the ability for iwi/Māori to establish customary fishing areas (taiāpure or mātaihai) as provided for following the Treaty of Waitangi (Fisheries Claims) Settlement Act.

The nature of these rights requires the Crown to partner with a range of iwi, hapū and Māori organisations when considering the management of a particular marine area.

There are a range of options for partnering with iwi/Māori that would depend on factors such as Treaty settlement commitments and/or statutory requirements, relevance of national priorities, and geographic scope, among other things. Options for co-governance arrangements between the Crown and iwi/Māori could be explored in the MPA Act. This could mean that decision-making responsibilities and powers are shared between the Government and iwi/Māori throughout the process of designing, establishing and managing MPAs, reflecting a partnership approach. Options for co-objective setting, co-decision making and co-governance arrangements within a new MPA Act framework are further explored in this document.

1.5 Our activities put pressures on the marine environment

The [Our Marine Environment 2019](#) report outlines the decline in Aotearoa New Zealand's marine biodiversity, and habitat condition and extent, as a consequence of our activities on land and at sea, which is intensified by the impacts of global effects such as climate change. **Figure 1** outlines some of the key pressures.

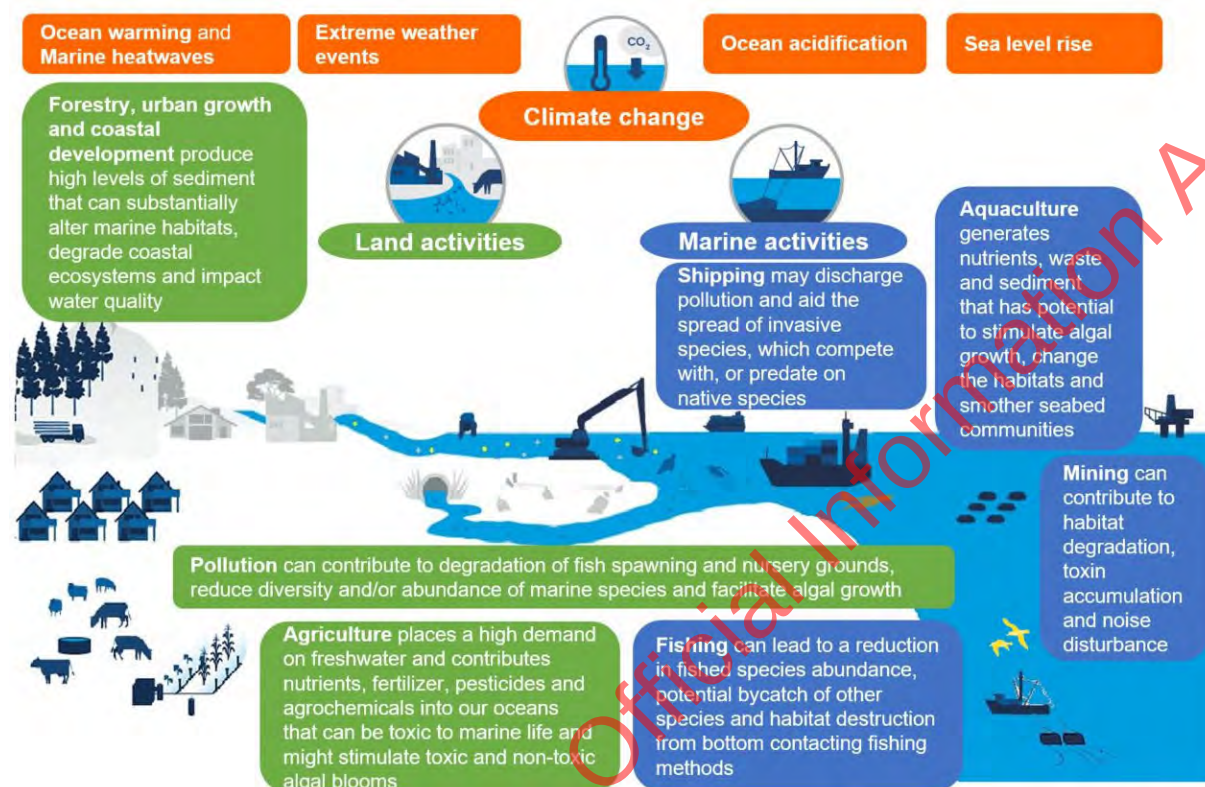


Figure 1: Key pressures on the marine environment

Many species and habitats are in trouble. Of the few marine species that are assessed, 22 percent of marine mammals, 90 percent of seabirds, and 80 percent of shorebirds are classified as threatened, or at risk.

Of the 169 fish stocks that are scientifically assessed, 84 percent have no sustainability issues and 16 percent are in need of management action to ensure they rebuild. Management actions are either in place or being put in place to rebuild these stocks.

The number of identified, non-native marine species established here is rising and now totals 214. Many non-native species can spread rapidly, and some affect native species and habitats.

Estuaries and marine habitats provide species with the food and shelter they need to survive and thrive. Some plants and animals, like seagrass or shellfish, create new habitats and support other species. Many of these are diminishing or under threat.

The marine environment is complex. We don't fully understand how the impacts of various activities interact, or how cumulative effects influence the health of Tangaroa and the capacity of species or habitats to adjust and recover. We do know that loss of species that play key roles in the food chain can destabilise an ecosystem, including affecting the health and abundance of fish species, seabirds and marine mammals.

We also recognise that there are environmental limits; if resource use is not kept within the regenerative capacity of the environment, there is a significant risk of irreversible changes to the ecological system and flow-on impacts on human well-being.

Te Mana o te Taiao – The Aotearoa New Zealand Biodiversity Strategy 2020² includes several goals about protecting and restoring the marine environment including:

- By 2050, an interconnected series of marine and coastal ecosystems have been protected and restored to a 'healthy functioning state and are connected to indigenous land, wetland and freshwater systems.
- By 2035, marine and coastal biodiversity is managed within environmental limits so that there is no net loss in the extent or condition of marine and coastal ecosystems.
- By 2035, an effective network of marine protected areas and other tools, including marine and coastal ecosystems of high biodiversity value is established and is meeting the agreed protection standard.

1.6 Current marine management system is complex

Aotearoa New Zealand's marine management system is made up of many different laws and policies, which provide a broad range of tools for protecting the areas of the marine environment within our jurisdiction. Existing tools include:

- Marine reserves;
- Marine mammal sanctuaries;
- Wildlife sanctuaries and under the Reserves Act 1977;
- The Fisheries Management System, including the Quota Management System³, catch limits, and sustainability measures to manage the effects of fishing of the aquatic environment (such as method and gear restrictions, and seasonal and area-based restrictions);
- Measures to recognise customary rights and interests (such as mātaihai reserves);
- Restrictions under regional coastal and district plans;
- Consenting and permitting regimes;
- Bans on harmful products (e.g. plastic bags, microbeads); and
- Regulation of discharge of harmful substances from ships

In addition, voluntary action by iwi/Māori and communities (such as rāhui) make significant contributions to the protection of the marine environment.

A number of agencies, including local authorities, are responsible for administering these tools. Table 1 outlines key legislation and responsible agencies that contributes to the protection of the marine environment. There are also various area-specific pieces of legislation⁴ as well as legislation that gives effect to Treaty settlements, such as the Treaty of Waitangi (Fisheries Claims) Settlement Act.

² Te Mana o te Taiao – The Aotearoa New Zealand Biodiversity Strategy 2020 sets a strategic direction for the protection, restoration and sustainable use of biodiversity, particularly indigenous biodiversity, in Aotearoa New Zealand.

³ Commercial fishing is managed under the QMS, which allocates shares in each fish stock as quota. Quota generates an entitlement to catch a certain amount of fish each year (a proportion of the Total Allowable Commercial Catch), known as Annual Catch Entitlement (ACE), and can be traded. Providing long-term fishing rights via quota incentivises sustainable fishing practices and economic efficiency.

⁴ For example, the Hauraki Gulf Marine Park Act 2000, and Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

Table 1: Key legislation that contributes to protection of the marine environment

Legislation	Responsible Agency	Relevant purpose	Geographic scope		
			Land	TS	EEZ
Resource Management Act 1991	Ministry for the Environment and local authorities	Promotes the sustainable management of natural and physical resources	✓	✓	
Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	Ministry for the Environment, Environmental Protection Authority	Promotes the sustainable management of natural resources and to protect the environment from pollution in the exclusive economic zone and continental shelf			✓
Fisheries Act 1996	Ministry for Primary Industries / Fisheries New Zealand	Provides for the utilisation of fisheries resources while ensuring sustainability		✓	✓
Marine and Coastal Area (Takutai Moana) Act 2011	Te Arawhiti	Provides for exercise of the customary interests in the common marine and coastal area	✓*	✓	
Conservation Act 1987	Department of Conservation	Promotes the conservation of New Zealand's natural and historic resources	✓	✓	✓
Marine Reserves Act 1971	Department of Conservation	To preserve and protect areas in their natural state for scientific study		✓	
Marine Mammals Protection Act 1978	Department of Conservation	The protection, conservation and management of marine mammals within New Zealand and within New Zealand fisheries waters	✓	✓	✓
Wildlife Act 1953	Department of Conservation	Determines the protected status of wildlife (does not include marine mammals) and the management of game birds	✓	✓	✓
Biosecurity Act 1993	Ministry for Primary Industries / Biosecurity New Zealand	Enables the exclusion, eradication, and effective management of pests and unwanted organisms.	✓	✓	✓
Maritime Transport Act 1994	Ministry of Transport, Maritime New Zealand	Regulates ship safety, maritime liability, and marine environmental protection of the marine environment from discharges from ships		✓	✓
Waste Minimisation Act 2008	Ministry for the Environment	Encourages waste minimisation and a decrease in waste disposal in order to protect the environment from harm and provide environmental, social, economic, and cultural benefits	✓	✓	✓

* Geographic scope of the Marine and Coastal Area (Takutai Moana) Act 2011 includes internal waters.

The Government is working on significant improvements within the marine management system

This work includes:

- Development of an implementation plan for Te Mana o te Taiao – The Aotearoa New Zealand Biodiversity Strategy 2020 (led by Department of Conservation);
- Science-based projects to support an improved approach to marine protection, including habitat classification and identification of key ecological areas (led by the Department of Conservation through its Biodiversity 2018 Programme, in conjunction with Fisheries New Zealand and Ministry for the Environment);
- The Sustainable Seas National Science Challenge, which provides \$71.1 million over 10 years to focus on enhancing the use of Aotearoa New Zealand marine resources within environmental and biological constraints;
- The Comprehensive Review of the Resource Management System, which provides an opportunity to design a system that delivers better outcomes for the environment, people and the economy (led by the Ministry for the Environment);
- The Essential Freshwater package, which will set Aotearoa New Zealand on a path to turning around water quality trends and make long-term improvements in freshwater (led by the Ministry for the Environment and the Ministry for Primary Industries);
- The Fisheries Change Programme, which is a programme of work to strengthen fisheries management and ensure the sustainability of fishing. It aims to improve management of the risks of fishing on marine biodiversity and ecosystems, including associated and dependant species and habitats of particular significance for fisheries management, the introduction of electronic reporting and geospatial position reporting, the rollout of cameras on vessels, and improvements to the fishing rules to make them simpler, fairer and more responsive while also incentivising better fishing practice (led by Fisheries New Zealand);
- The implementation of the Hector's and Maui Dolphin Threat Management Plan and the National Plan of Action for Seabirds, and the review of the National Plan of Action for Sharks (led by the Department of Conservation and Fisheries New Zealand);
- The implementation of Te Kaweka Takohaka mō te Hoiho – a strategy to support the ecological and cultural health of hoiho (partnership between Te Rūnanga o Ngāi Tahu, Department of Conservation, Yellow-eyed Penguin Trust and Fisheries New Zealand);
- An overhaul of the Biosecurity Act 1993, to ensure the biosecurity system helps protect our economy, environment, and people from unwanted pests and diseases (led by the Ministry for Primary Industries).

1.7 Marine protected areas are an important part of the management system

The Government wants to better protect marine biodiversity and ecosystem function and resilience while supporting the relationship between iwi/Māori and Tangaroa. MPAs can assist by providing specific areas where single and cumulative human activities are managed to allow for the protection and restoration of ecosystems and habitats. Well-designed MPAs can:

- Provide for the maintenance or recovery of at-risk species, habitats and healthy food webs;
- Provide precautionary protection in the face of significant knowledge gaps, such as those related to cumulative impacts, emerging risks and environmental tipping points;
- Support larger populations and greater genetic diversity which increases the likelihood that species will survive and adapt to shocks and pressures (e.g. climate change);
- Store and sequester carbon through the regeneration of marine and coastal ecosystems such as mangrove forests, seagrass meadows and intertidal saltmarshes (vegetation & sediments);

- Protect fisheries spawning and nursery habitat from multiple risks and pressures;
- Provide a number of secondary benefits, for example nature-based recreational and tourism opportunities, such as diving; and
- Influence the management of activities outside their boundaries, which might impact on biodiversity within their boundaries.⁵

MPAs affect, and are affected by, activities outside their boundaries so they cannot manage all of the pressures in a given area. They can also impact the rights of marine users, by imposing restrictions on use. Because MPAs only allow us to manage certain activities, they work best when aligned and coordinated with other key system-wide efforts such as the management of land-based effects and sustainable fisheries management

One consideration in establishing MPAs is potential effects for surrounding areas (such as displacement of activities that puts more pressure on areas outside the MPA or spill-over effects from increased population densities within an MPA) and any associated management implications. Considering MPAs as part of a well-constructed package with other management tools will generally be the most appropriate way to ensure the environment is protected to support different social, cultural and economic objectives.

MPAs can be used to support the aspirations of Māori. An example of this is Te Tapuwae o Rongokako marine reserve. Ngāti Konohi applied for the marine reserve, with the Department of Conservation, in part because of concerns over diminishing seafood stocks in traditional harvesting areas. They felt the marine reserve site could become a kōhanga (nursery) to nurture kaimoana (seafood). The success of the reserve, alongside adjacent mātaihai areas, was recently celebrated by Ngāti Konohi, the Department of Conservation, and the local community at the reserve's 20th anniversary.

⁵ Policies 5 and 11 in the Aotearoa New Zealand Coastal Policy Statement require local authorities to consider effects on waters managed under other legislation when making decisions under the Resource Management Act 1991. This includes MPAs.

1.8 Aotearoa New Zealand's current marine protection measures



Collage of photos depicting some of Aotearoa New Zealand's marine environments, animals and activities.

Top left – Kayak in Kenepuru sound. Photographer: Irina Ilyushkina

Top right – Stingray at Poor Knight's Island Marine Reserve. Photographer: Vincent Zintzen

Left centre – Boat in Queen Charlotte sound. Photographer: Irina Ilyushkina

Left bottom – Fishing boat. Photo from NZ Story resource.

Right bottom – Guardianship of What's Ours. Photo from NZ Story resource.

⁶ Under the 2005 MPA Policy and associated guidelines an area that is not a marine reserve and meets the protection standard is a "Type 2" MPA. The minimum restrictions on fishing needed to meet this standard are controls on bottom trawling, Danish seining and dredging, as there is a presumption that these methods will not allow maintenance and recovery of physical features and biogenic structures. Other fishing methods need to be considered on a case by case basis.

Significant knowledge gaps make MPAs an important management tool

Aotearoa New Zealand has made a significant investment in building the knowledge base about the marine environment and the effectiveness of its management regime. Local and central Government, industry, research institutes and communities have and continue to make substantial contributions to better understanding the marine domain.

However, Aotearoa New Zealand's marine environment is large and complex and despite these efforts to improve our understanding, significant knowledge gaps remain. The Parliamentary Commissioner for the Environment's 2019 report, "[Focusing Aotearoa New Zealand's environmental reporting system](#)", highlighted that we have:

- Poor understanding of the conservation status and distributions of many species and habitats;
- Limited understanding of the cumulative impacts our various land and sea-based activities are having on our marine ecosystems. Some of the impacts are likely to be irreversible and we don't know enough to be able to predict the tipping points or manage the risks; and
- Uncertainty about the cumulative and cascading impacts of climate change, including its potential role in exacerbating existing pressures and subsequent secondary impacts such as increased input of sediment into the coastal environment due to more severe storm events, causing floods or erosion.

MPAs are an important insurance policy. Protecting an ecologically representative range of habitats and ecosystems is one way to mitigate the risk associated with making management decisions when we don't fully understand how our impacts interact and effects of other threats (e.g. climate change).

Because MPAs have reduced pressures compared to the surrounding environment, they are important reference areas for study. MPAs provide scientific baselines and opportunities to monitor and study large-scale, long-term patterns or changes in the environment over time (e.g. El Niño or climate change). Learning from these baselines can increase our ability to understand and effectively manage the pressures on the marine environment.

1.9 Relevant international commitments

Aotearoa New Zealand is a party to the United Nations Convention on the Law of the Sea (UNCLOS), which provides the legal framework for all uses of the ocean. Aotearoa New Zealand is also a party to a number of other international agreements relevant to the conservation and sustainable management of the marine environment, including the United Nations Convention on Biological Diversity, the Convention for the Protection of Natural Resources and Environment of the South Pacific Region, the International Convention for the Prevention of Pollution from Ships, Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and a range of agreements relating to fisheries.

Under the Convention on Biological Diversity, Aotearoa New Zealand is committed to the global goal of establishing a representative network of well-connected protected areas and other effective area-based conservation measures⁷ comprising "10 percent of coastal and marine area"⁸ by 2020. The United Nations Sustainable Development Goals, which New Zealand is also committed to, likewise

⁷ Other effective area based conservation measures are defined by the Convention on Biological Diversity as "a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values".

⁸ [Aichi target 11](#)

includes a target of conserving at least 10 per cent of coastal and marine areas. New post-2020 international biodiversity targets are currently being negotiated.

DRAFT

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2: Issues with Aotearoa New Zealand's current approach to marine protection

Sea tulip (*Pyura pachydermatina*) beneath a canopy of giant kelp (*Macrocystis pyrifera*) in the Ulva Island-Te Wharawhara Marine Reserve. Photographer: Vincent Zintzen

2.1 Identifying the issues

While a broad range of marine management tools are available, it is challenging to use them alongside each other in an effective and efficient way. There are different views about the risks to the marine environment, cumulative impacts and environmental tipping points. Agencies and legislation have few shared goals or policies to help coordinate action, and in some cases, have overlapping responsibilities. This can reduce accountability and contribute to uncertainty for agencies and marine users.

There are also immediate issues within the policy framework for marine protected areas (MPAs) and other marine protection tools. The enactment of the Marine Reserves Act in 1971 made Aotearoa New Zealand one of the first countries in the world to develop marine protection legislation. It has provided an important foundation for protecting Aotearoa New Zealand's marine biodiversity and we have made considerable progress towards establishing MPAs through this Act. However, the legislation is now out of date and does not adequately support a strategic approach to establishing and managing marine protected areas. Many other countries have established more recent MPA legislation that reflects new thinking about MPAs.

To help address this the Government developed the non-legislative 2005 MPA Policy and Implementation Plan and associated guidelines. The 2005 MPA Policy sets out national level objectives for marine protection, and network design and planning principles. It also recognised that, alongside marine reserves, other legislative tools could be used to establish MPAs. Three collaborative planning forums have been established to develop proposals in accordance with the Policy, leading to the establishment of a number of MPAs in the Subantarctic and on the West Coast of the South Island. Proposals for the south east of the South Island are in progress. The Policy has made an important contribution; however, the benefits of the Policy have been limited by its lack of statutory backing, processes have been prolonged, and many opportunities for improvement have been identified during its development and implementation.

Important lessons have also been learned from processes that have not directly applied the 2005 MPA Policy. For example, Sea Change Tai Timu Tai Pari, Aotearoa New Zealand's first attempt at marine spatial planning. Many of the issues with these processes are outlined within reports from the Office of the Auditor-General⁹. The reports generally highlight the need to improve how collaborative processes are set up and managed including providing clear objectives, roles and responsibilities and the best available information for early consideration.

In 2016, the Government consulted on a proposal for a new MPA Act, and this showed near unanimous public support for improving Aotearoa New Zealand's approach to marine protection. The submissions on that consultation have informed the development of this discussion document.

In 2019, officials from the Department of Conservation and Fisheries New Zealand engaged with Iwi/Māori and stakeholders on the broad issues and objectives set out in this document. This included hui, meetings with industry and environmental non-governmental organisations, and a series of workshops with Te Ohu Kaimoana¹⁰. There was broad agreement that there are significant issues with the Marine Reserves Act and support for the marine management system to be better coordinated and integrated.

2.2 Key issues

We have identified the following key issues that mean the Marine Reserves Act and the 2005 MPA Policy is not fit-for-purpose:

- There is no strategic, nationally coordinated approach to MPAs and other tools for the protection of marine biodiversity and ecosystem function and resilience;

⁹ [Using different processes to protect marine environments](#) and [Sea Change – Tai Timu Tai Pari: Creating a marine spatial plan for the Hauraki Gulf](#).

¹⁰ Te Ohu Kaimoana were established under the Māori Fisheries Act 2004 to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to ultimately benefit the members of iwi and Māori generally; further the agreements made in the Deed of Settlement; assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

- The geographic scope of the Marine Reserves Act is limited to the territorial sea;
- The Marine Reserves Act has a narrow purpose of protection for scientific study;
- The Marine Reserves Act lacks tools that allow protection to occur with varying levels of use across multiple activities;
- The Marine Reserves Act does not provide specific guidance on how to give effect to the principles of the te Tiriti o Waitangi/Treaty of Waitangi and does not explicitly recognise the role of iwi/Māori as kaitiaki;
- Public consultation processes for establishing marine reserves are unclear, inefficient, and inflexible.

These issues can interact to exacerbate each other. These matters are outlined below in more detail.

Lack of strategic approach to MPAs and other protection tools

The policy framework for marine protection lacks an agreed definition of the amount of protection required at national or regional scales to maintain ecosystem function and resilience. The Marine Reserves Act encourages marine reserves to be established on an ad hoc basis as it lacks a strategic framework for prioritising and guiding the placement of MPAs and other marine protection tools across the country. Strategic frameworks for guiding placement of MPAs are generally viewed as international best practice.

The current approach lacks clear objectives about what is needed to maintain the health of the marine environment. This has made it challenging to establish a strategic, evidence-based and effective network of MPAs and protection tools. It also makes it more difficult to manage risks and cumulative impacts on biodiversity in an integrated way to protect marine ecosystem functioning and resilience.

Exclusive economic zone is excluded

The Marine Reserves Act does not allow for marine reserves to be established in the exclusive economic zone (EEZ). This means that special legislation would be needed to implement no-take MPAs in the EEZ and the significant size of our EEZ makes this an inefficient approach. The Fisheries Act can be used to manage the effects of fishing in areas of the EEZ, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 can be used to manage activities other than fishing, such as seabed disturbances and dumping. However, these Acts are not specifically designed to establish and manage MPAs, and there are no mechanisms in place to coordinate the use of these tools.

Narrow purpose

The Marine Reserves Act establishes marine reserves to protect areas in their natural state for purposes of scientific study. Protecting biodiversity for scientific study is important, but it is only one of many reasons society wishes to create MPAs; people value MPAs for a wider range of benefits that arise from protecting marine biodiversity and ecosystems. It is also inconsistent with international best practice, which indicates that the purpose of MPAs is the long-term conservation of nature.

Lack of flexible tools that allow protection with varying levels of use

The Marine Reserves Act only provides for one type of MPA – marine reserves. Marine reserves are relatively inflexible and do not easily provide for biodiversity protection alongside a level of sustainable use that may be consistent with protection objectives. This has resulted in other legislation being used to establish MPAs, primarily the Fisheries Act.

While the Fisheries Act can be used to establish MPAs for biodiversity purposes, only fishing activity can be controlled. This means that such areas can be undermined by development and use in the absence of controls under other regimes, such as the Resource Management Act 1991. In many

areas these complementary controls are not in place and it is difficult to coordinate across the different legislation and agencies.

Te Tiriti o Waitangi/the Treaty of Waitangi

The Marine Reserves Act is one of the Acts administered by the Department of Conservation that must be interpreted and administered to give effect to the principles of the Treaty of Waitangi. However, it lacks clarity on how to do this, and provisions that provide for the involvement of iwi/Māori are not explicitly included. The Marine Reserves Act also does not directly recognise the kaitiaki role of iwi/Māori in marine protection or allow for easy alignment with customary tools under the Fisheries Act.

Iwi/Māori play a critical role in marine protection, as a Treaty partner, and due to their diverse range of rights and interests in the marine environment, including cultural and commercial rights under Treaty settlements (including in respect of fisheries and aquaculture), and rights under the Marine and Coastal Area (Takutai Moana) Act. Concerns about the impacts MPAs may have on iwi/Māori rights and interests are often a significant issue during MPA processes, particularly in areas where customary rights are yet to be fully recognised. This issue has been exacerbated as the establishment of customary tools, and recognition of their contribution, has not been fully integrated into most previous planning processes.

Where the impact of an MPA proposal is significant for Māori outcomes and/or Māori rights and interest—strong active partnership with Māori in the objective-setting, design and implementation of the proposal is required. Currently, decisions about establishing and managing MPAs rests with the Government, informed by the recommendations of a collaborative group and a public process on an MPA proposal. A co-governance approach to decision-making between Māori and the Crown may afford a greater opportunity to ensure Māori rights and interests in the marine environment are protected and the kaitiaki role of iwi/Māori in marine protection is recognised and supported.

Current public consultation processes are unclear, inefficient and inflexible

Current marine reserve application processes do not encourage constructive and meaningful engagement. Specific issues include the lack of guidance on preparing marine reserve proposals, including consultation processes. Currently, the applicant for the marine reserve (specified bodies such as universities, hapū or iwi, and the Director-General of Conservation) is responsible for undertaking any consultation. The provisions in the Marine Reserves Act that provide for input are narrow; requirements are only for applicants to publicly notify the intention to declare a marine reserve and ask for any objections. If any objection is upheld by the decision-making Minister, the marine reserve must be declined. This leads to unclear avenues for constructive engagement with the public and iwi/Māori and can contribute to making it an adversarial process. The current process also lacks guidance and transparency around the how the different costs and benefits of proposed MPAs are balanced when decisions are made.

Process guidelines have been developed to fill the consultation gaps with mixed success. The Department of Conservation has set out its own quality control guidelines to combat collaboration issues. In most cases external applicants follow these and other related consultation steps taken in government proposals. These pre-consultation phases have often been prolonged with some requiring up to 10 years of meetings, hui, consultation, and negotiation with stakeholder groups before a formal application is notified.

The MPA Policy was developed partly in response to these concerns and has also provided some further process guidance. It introduced a collaborative approach to MPAs in a regional format and has been more successful in achieving engagement with iwi/Māori and stakeholders. However, these processes have also proved lengthy, only apply to MPA policy-based forums (and not single marine reserve applications), and stakeholder groups have been unable to reach consensus in forums.

What do you think?

1. Have we accurately described the issues with the current approach to marine protection? Why or why not?
2. Do you agree with how we have characterised the problems with the Marine Reserves Act? If not, why not?
3. Are there any additional issues we should consider? Please provide evidence to support your view.

2.3 Why act now?

The degradation of Aotearoa New Zealand's marine environment is expected to continue in the absence of action to resolve the identified issues and establish clear protection objectives. The development of an effective network of MPAs and other protection tools will continue to be delayed and uncoordinated. Ad hoc applications for marine reserves will continue without certainty about whether national marine protection outcomes are being achieved. If new regional MPA planning processes were to start they would face the issues outlined above and would continue to be highly contentious and drawn out. We would also fail to meet public expectations for action to protect and restore marine biodiversity and ecosystems.

Incremental improvements would continue to be made to aspects of the marine management system outside of MPAs, but we would face continuing uncertainty about how Aotearoa New Zealand balances marine protection and use objectives.

Reform of the resource management system is currently underway and, while focused on the terrestrial domain, includes the impact of land use on the marine environment and activities in the coastal marine area that are currently regulated under the Resource Management Act 1991. Any marine protection reform work that progresses as a result of this consultation would be aligned with it given the cross-cutting roles of the legislation in the marine environment. Progressing these reforms alongside each other is an opportunity to ensure they are better coordinated and complementary in seeking to support better outcomes for the marine environment. The resource management reform work is still in its early stages and will continue regardless of the outcome of this consultation.

Acting now will enable more effective and optimal protection of unique habitats and ecosystems that we may otherwise lose to cumulative pressures, including climate change. We will also accrue greater benefits from more optimal biodiversity conservation outcomes, lower impacts on existing users, more integrated management regimes, enhanced partnership with iwi/Māori and increased certainty for stakeholders if we act sooner.

What do you think?

4. How important do you think these issues are? What consequences do you foresee if we don't act now?

2.4 Objectives

The Government wants the marine environment to be healthy and resilient to maintain its ability to provide for the needs of current and future generations while recognising its inherent intrinsic value. This will involve moving towards a more integrated spatial planning process for all uses of the marine environment, considering the rights of current users, the on-going interests of Māori, and managing potential future uses of the marine environment for the benefit of New Zealand.

To support this, the Government proposes the following set of objectives for improving the marine protection system:

1. **Environment:** Marine protection tools can be deployed in a timely and effective way to maintain and restore the marine environment;
2. **Treaty:** Te Tiriti o Waitangi/the Treaty of Waitangi and its principles are upheld, the Crown's Treaty obligations are delivered, and customary rights and interests are recognised and protected;
3. **Strategy:** A strategic, objective-driven approach is taken to marine protection, based on sound evidence, including scientific advice and mātauranga Māori, assessments of risk, and social and cultural values;
4. **Participation:** Processes for establishing and managing marine protection are efficient and transparent, provide for partnership with iwi/Māori, and engagement with local communities, businesses and the wider public;
5. **Integration:** The marine protection policy framework is better coordinated and integrated with the rest of the management system and enables a move towards integrated spatial planning and ecosystem-based management across New Zealand's maritime zones; and
6. **International:** Aotearoa New Zealand can lead the way in developing best practice for marine protection, consistent with international obligations.

Alignment with these objectives will be discussed throughout the following proposal.

What do you think?

5. Do you think these objectives are appropriate? Why or why not?
6. Do you think we have missed any important objectives?

2.5 Consideration of options to meet objectives

Agencies considered three options for resolving the identified issues; one non-regulatory and two regulatory. These options are described further and assessed against the objectives below. The *Treaty* and *International* objectives are considered to be minimum standards that any of the options would be required to meet. All options would need to be progressed in a way that is consistent with te Tiriti o Waitangi/the Treaty of Waitangi and its principles and Treaty settlements.

Non-regulatory	1. Policy review and additional proposals: A review and update of the 2005 MPA policy and guidelines alongside the progression of additional MPA proposals (under existing legislation and policies).
Regulatory	2. MPA Act and Strategy: Replacing the Marine Reserves Act with new MPA legislation and a National MPA Strategy.
	3. Comprehensive review and short-term action plan: A broad review and reform of the marine management system concurrent with a short-term action plan under the existing framework.

Option 1: Policy review and additional proposals

The review would consider the 2005 MPA Policy and associated guidelines including the interpretation of the protection standard, how it applies to different tools, and the implementation challenges associated with it. It would establish whether further guidance can be provided for MPA processes and integration of different marine protection tools. This option would also include running additional regional processes across Aotearoa New Zealand. Either existing legislation or special legislation would be used to implement options developed through these regional processes.

Environment objective: Could be achieved within a year or two and would enable more MPA planning processes to be started in the short term. Deployment of tools would continue to be prolonged; improvements to national direction would be limited by lack of legislative backing and existing issues with implementing under current legislation will remain.

Treaty objective: Can provide greater guidance on Treaty principles and improve guidance on how customary tools can be recognised for biodiversity contributions and established alongside MPAs.

Strategy objective: Could provide national direction and strengthen evidence integration but still limited by lack of legislative backing.

Participation objective: Could provide greater guidance but processes in legislation would still be inadequate.

Integration objective: Minor improvements possible but would still lack more flexible tools and tools for the EEZ. Integration similar to the status quo.

International objective: Will ensure New Zealand's international obligations in relation to the marine environment are met as a minimum standard.

Option 2: MPA Act and National MPA Strategy

In this option, the Marine Reserves Act, the 2005 MPA policy and its associated guidelines would be replaced with a new MPA Act and a National MPA Strategy. The new MPA Act would be designed to enable the Government to undertake more efficient and strategic processes, with a flexible set of tools alongside marine reserves. The new Act would mandate the National MPA Strategy, providing it with legislative backing. This approach reflects that the extent of changes required to the Marine Reserves Act precludes more targeted amendments to the existing legislation.

Like Option 1, this option includes a review of the 2005 MPA Policy and associated guidelines. Appropriate areas of the existing policy and guidance would be transitioned to, and improved on, in the Strategy to provide stronger impetus and clearer guidance for a nationally coordinated approach to establishing and managing MPAs.

This option would progress alongside the resource management reform process with appropriate linkage points to ensure consistent approaches to cross-cutting issues.

Environment objective: Would take several years however, once in place, planning processes and the establishment of MPAs should be more efficient due to a directive Strategy and improved decision-making processes.

Treaty objective: Provides clarity in legislation on how to observe Treaty principles as well as policy guidance. Can improve guidance on how customary tools can be recognised for biodiversity contributions and established alongside MPAs.

Strategy objective: Provides national direction with legislative backing. Legislation would include clearer criteria and requirements relating to the use of evidence.

Participation objective: Allows clearer requirements in legislation for consultation.

Integration objective: Wouldn't result in full integration across the management system as it focuses on reforming a specific piece of legislation. Would improve integration through enabling new flexible tools to address multiple environmental pressures, ensuring better recognition of Māori rights and interests, tools for the EEZ, and improved establishment processes – this would reduce the need for special legislation for progressing marine protection proposals. Integration would also be improved through mandating more strategic, national-level planning. Potential for clarifying interface between related legislation through amendments. Does not preclude undertaking broader reform in the future and would better integrate into it.

International objective: Would ensure New Zealand's international obligations in relation to the marine environment are met as a minimum standard.

Option 3: Comprehensive review and short-term action plan

In this option, a comprehensive review of the marine management system would seek to improve coordination issues and lack of clarity around overlapping responsibilities in the marine environment. This would include considering the development of a long-term response strategy and work towards ecosystem-based management. Such a review could inform regulatory and non-regulatory options for improving the performance of the system as a whole and include:

- Establishing long-term, high-level goals and principles for decision-making for the marine management system;
- Setting environmental limits and/or a protection standard at local, regional and national scales to preserve ecosystem integrity, important habitats, protected species, and productive fisheries;
- Considering options for improving the marine management system to better achieve these goals and principles, for example by:
 - Supporting a formal approach to marine spatial planning or wider marine protection framework where management tools can be fully implemented through a single process;
 - Improving integration across the system and/or rationalising legislation; and
 - Improving institutional arrangements to support clear accountability, shared responsibility, and a common risk management approach.

This option would be progressed alongside the existing resource management reform process with appropriate linkage points to ensure consistent approaches to cross-cutting issues.

A review would take time so a short-term action plan would be started concurrently to enable a more immediate response to environmental decline.

Environment objective: The short-term action plan would prioritise immediate work on establishing marine protection but deployment of tools would continue to be prolonged; improvements to national direction would be limited by lack of legislative backing and existing issues with implementing under current legislation would remain. The time required for the comprehensive review and any subsequent reform would likely be many years due to the breadth of policy work and consultation involved. Potential for better long-term environmental outcomes due to increased integration.

Treaty objective: Provides clarity in legislation on how to observe Treaty principles as well as policy guidance. Potential for alignment across legislation. Can improve ability to consider customary tools alongside other tools over the long term, but same as status quo in short-medium term.

Strategy objective: Provides national direction with legislative backing. National direction under this approach would apply across the management system.

Participation objective: Allows clearer requirements in legislation for consultation.

Integration objective: Potential for full integration and allows for a complete toolbox (including for the EEZ).

International objective: Would ensure New Zealand's international obligations in relation to the marine environment are met as a minimum standard.

What do you think?

7. Do you agree with the identified options? What impacts would these options have on you?
8. Are there any other options you think the Government should have considered for solving the identified issues?
9. What do you consider are the key elements of a comprehensive review of the marine management system?

2.6 Proposal for new MPA Act and National Strategy

The Government considers Option 2: MPA Act and National MPA Strategy most clearly meets the objectives. Many of the identified issues with the current approach to marine protection would require legislative changes to address them. A new MPA Act provides an opportunity to:

- Provide strategic national objectives and direction with legislative backing;
- Introduce a new multi-use tool to address multiple environmental pressures across the territorial sea and the exclusive economic zone;
- Maintain the existing strong Treaty provision as well as provide greater clarity in legislation on how to implement it;
- Set clearer legislative requirements for consultation and consideration of the best available information in decision-making;
- Clarify the interface between related legislation. This could support integration and coordination and could support a future marine management system review and steps towards ecosystem-based management; and
- Recognise the biodiversity contributions made by tools under other legislation, for example customary fisheries tools.

The benefits of this include providing improved legislative processes and statutory national direction to enable more regional planning processes for establishing MPAs and other marine protection tools. A regional focus for establishing MPAs and other marine protection tools could support integration with any future marine spatial planning¹¹ efforts in Aotearoa New Zealand. A further benefit is the development of a statutory strategic approach which would allow the prioritisation of MPA efforts for the greatest public benefits.

The following sections describe the proposal for Option 2 more fully. The Government invites your feedback and views on this proposal.

What do you think?

10. Do you agree that a new MPA Act and National MPA Strategy best address the issues we described in the previous section?

¹¹ Marine spatial planning is a process of allocating human activities in marine areas to achieve ecological, economic, and social objectives. It looks at broader range of issues than just marine protection.

3 Proposal for a new Marine Protected Areas Act

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Hall Arm, Doubtful Sound, Fiordland. Photographer: Stephen Logie

3.1 Purpose

We propose that the purpose of the new MPA Act be the establishment and effective management of MPAs to maintain, protect and restore indigenous marine biological diversity and ecosystem function and resilience.

Achieving this purpose can assist in:

- Maintaining and restoring the health of Tangaroa;
- Providing for the sustainable management of the marine environment;
- Providing for social cultural and economic values for current and future generations, including public use and enjoyment;
- The protection of areas of scientific and educational value;
- The protection of natural character, natural features and landscapes; and/or
- The recognition of the intrinsic value of ecosystems.

The proposed purpose is wider than the purpose of the Marine Reserves Act, which is the establishment of marine reserves to protect areas in their natural state for purposes of scientific study. Protecting biodiversity for scientific study is important, but it is only one of many reasons New Zealanders wish to protect biodiversity. The majority of submissions on the 2016 MPA reform proposal supported a clear purpose for protecting marine biodiversity.

The focus on MPAs would also help to distinguish the new MPA Act from legislation that provide other marine protection tools.

We also propose the following MPA definition for the Act:

A clearly defined area of the marine environment especially dedicated and managed to achieve, through adequate protection, the long-term maintenance and/or recovery of indigenous biological diversity in a healthy functioning state.

This definition would provide clarity about the minimum level of protection required for an area to be considered an MPA.

What do you think?

11. Is there anything missing from the proposed purpose? Do you support it?
12. What do you think of the proposed MPA definition? Do you think there is anything missing from the definition?

3.2 Responsible Minister and agency

The Marine Reserves Act is administered by the Department of Conservation and the Minister of Conservation. We propose the MPA Act would be the same.

Other Ministers that have a role in marine management also have an interest in the implementation of the MPA Act. Decisions under the MPA Act could have significant implications for these portfolios, and ensuring coordinated and integrated management is a key objective for reform. How these interests are taken into account is an important consideration for the design of the Act.

We propose that the Minister of Conservation be required to consult with other relevant Ministers at key points of decision-making, and take into account their views. In some circumstances joint decision-making between two or more Ministers may also be appropriate.

We also propose that other agencies would have functions and responsibilities under certain provisions of the MPA Act and support administration, in particular the Ministry for the Environment and Fisheries New Zealand.

Options for how other Ministers and Agencies could be involved are outlined in relevant sections of this discussion document, in particular the National MPA Strategy ([Section 3.7](#)) and the process for establishing MPAs ([Section 3.9](#)).

What do you think?

13. Do you think the Department of Conservation and Minister for Conservation are the most appropriate administrators of the MPA Act? Why or why not?

3.3 Principles

Principles are high-level statements of core policy aims or general underlying values that affect how legislation should be interpreted and applied. They support the purpose of the legislation and enable decision-making in line with the policy of the legislation.

Principles should enhance decision-making processes and not create complexity and risks for decision-making under legislation. For example, including too many principles in a decision-making process may result in unworkable and complex decision-making. The weighting that is applied to principles can vary. For example decision-makers could be required to give effect to them or take them into account. Certain principles could also be given a stronger weighting than others.

We propose four principles in the following table that all persons exercising functions and powers under the new MPA Act would be required to take into account. We consider this appropriate, as it would provide clear direction to decision-makers while providing a level of flexibility to take into account other matters such as community priorities, as part of their decision-making.

Principle	Explanation
1. MPAs should as far as possible be designed and managed as a network that: a. Represents the full range of Aotearoa New Zealand's diverse habitats and biodiversity, including typical, outstanding, rare, threatened, distinctive and locally, nationally or internationally important species and habitats; b. Replicates features at more than one site within the network; c. Is adequate and viable, through appropriate design, size, shape and spacing; d. Is ecologically connected, allowing for species to benefit surrounding areas and ecosystems, including MPAs; and e. Takes into account that other protection tools can contribute to achieving network objectives and may also form part of the network.	Establishing a network of MPAs and other protection tools, within a wider environmental management framework, can achieve biodiversity protection benefits that are greater than the sum of its parts; it can strengthen the resilience of ecological systems in the face of pressures such as environmental change and human activities. This aligns with effectiveness under the <i>Environment</i> objective. The inclusion of this principle would support a strategic, science-based approach to marine protection by maximising the benefits of MPAs. This aligns with the <i>Strategy</i> objective. This principle also recognises that while MPAs would be a key part of the network, other tools can also effectively contribute to biodiversity protection, supporting coordination and integrated management (supporting the <i>Integration</i> objective). The majority of submitters in the 2016 consultation expressed broad support for a network of MPAs. The network design principles

Principle	Explanation
	proposed are consistent with international best practice.
2. The public should be able to freely access and enter MPAs so that they have full enjoyment and the opportunity to study, observe, and record marine life in its natural habitat, subject to the imposition of conditions or restrictions necessary for the protection of biological diversity.	This principle is consistent with current provisions in the Marine Reserves Act and other conservation legislation. It recognises the importance of the marine area to New Zealanders (aligning with social values under the <i>Strategy</i> objective), while also recognising that there may be circumstances where it is reasonable for access into MPAs to be restricted where the purpose of the MPA Act would otherwise be compromised. For example, if an area is being damaged due to a high level of visitors. This also aligns with the <i>Participation</i> objective by providing for engagement with the public.
3. Where practical, avoid or mitigate the adverse impacts of proposed MPAs on existing and future uses.	This principle recognises that decisions should be transparent, and informed by engagement with iwi/Māori, local communities, business and the wider public (consistent with the <i>Participation</i> objective). Appropriate recognition should be provided to rights and interests, and opportunities to reduce impacts on them considered in decision-making. This also aligns with the <i>Strategy</i> objective ensuring decisions are based on sound evidence and consider social values. This principle would assist with ensuring that te Tiriti o Waitangi/the Treaty of Waitangi and its principles are upheld, the Crown's Treaty obligations are delivered, and customary rights and interests are recognised and protected (aligns with the <i>Treaty</i> and <i>Participation</i> objectives).
4. (a) Decisions should be based on the best information that is available without unreasonable cost, effort, or time, and (b) If the information available is uncertain or inadequate, people exercising powers and carrying out functions under the MPA Act may take a precautionary approach that favours environmental protection.	This principle would help ensure that decisions are based on sound information but recognises that information will not always be available. It aligns with the <i>Strategy</i> objective by acknowledging that lack of evidence does not necessarily equal an absence of risk. Information would include scientific, social and economic information, including traditional and local ecological knowledge and analyses of this information. The need for decisions to be based on sound evidence was supported by a majority of submitters to the 2016 consultation document.

Further guidance on these principles would be developed and provided in the proposed National MPA Strategy discussed in [Section 3.7](#).

What do you think?

14. Do you think the proposed principles are appropriate for the Act? Why or why not? Are there any further principles we should consider, or any changes to the principles proposed?

3.4 Geographic scope

We propose that the geographic scope of the MPA Act be the territorial sea, EEZ, and internal waters (e.g. estuaries and tidal rivers). This is an extension from the current geographic scope of the Marine Reserves Act, which is limited to the territorial sea and internal waters.

The EEZ is a significant proportion of Aotearoa New Zealand's marine area with a variety of uses impacting on unique species and habitats. Including the EEZ in the new MPA Act therefore aligns with the Environment objective as it would enable the effective establishment of consistent marine protection throughout Aotearoa New Zealand's marine jurisdiction; The inclusion of the EEZ would also support the *Strategy* objective and provide greater certainty to marine users by avoiding the need for ad-hoc marine protection processes in the EEZ.

The majority of submitters in the 2016 consultation supported including the EEZ in the scope of a new MPA Act.

We are also seeking views on the inclusion of New Zealand's extended continental shelf (ECS) in the geographic scope of the MPA Act. New Zealand has some exclusive sovereign rights over the ECS related to the seabed and subsoil, including sedentary species under UNCLOS. However, these rights and jurisdiction are qualified by the requirement to have regard to the rights and duties of other States and shall act in a manner compatible with the provisions of UNCLOS. Fishing activities for non-sedentary species within the high seas over the ECS are managed by Regional Fisheries Management Organisations (RFMOs).¹²

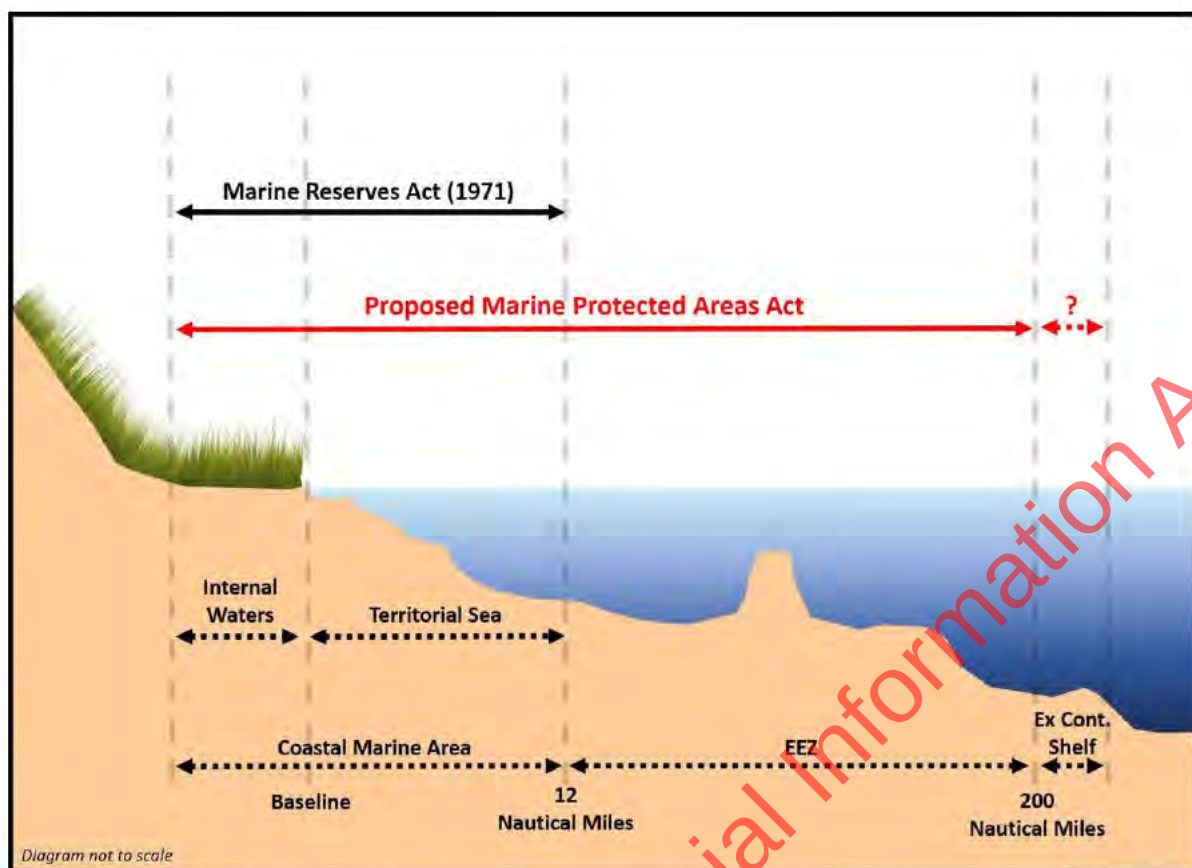
New Zealand currently manages a range of activities on the ECS through the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act e.g. mining. However, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act does not apply to fishing. There is therefore a gap in New Zealand's domestic regulatory framework in relation to fishing for sedentary species from both a conservation and sustainable utilisation¹³ perspective in the ECS. The inclusion of the ECS in the MPA Act would support the integration on the marine management system and align with our international objectives for marine protection.

Consistent with relevant international law, the MPA Act and National Strategy would need to complement and consider existing environmental legislation¹⁴ and measures that already apply to the extended continental shelf.

¹²The South Pacific Regional Fisheries Management Organisation (SPRFMO) manages fishing for all species on the high seas with the exception of: highly migratory species, which are managed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and The Western and Central Pacific Fisheries Commission (WCPFC); anadromous and catadromous species; and sedentary species on a coastal State's ECS (SPRFMO Convention, Article 1,1,(f),(i)).

¹³The scope of the Fisheries Act 1996 does not currently extend to the ECS but extending its scope in parallel to that of the MPA Act, it could enable New Zealand to regulate for the sustainable utilisation of sedentary fisheries resources on the ECS and require other countries to seek permitting before operating in this area. NZ manages its fishing fleet (being flagged to NZ) as it has jurisdiction and control in relation to the administrative, technical and social matters over those vessels (Art 94), as opposed to the area itself.

¹⁴The Exclusive Economic Zone and Continental Shelf Act 2012, the Maritime Transport Act 1994, United Nations Convention on the Law of the Sea (UNCLOS) and regulations set by the relevant RFMOs.



What do you think?

15. Do you support applying the MPA Act to the territorial sea, exclusive economic zone and internal waters? Why or why not?
16. Do you support applying the MPA Act to the extended continental shelf? Why or why not?

3.5 Recognition of te Tiriti o Waitangi/the Treaty of Waitangi

Early engagement on this proposal and submissions in 2016 emphasised the importance of recognising and protecting iwi/Māori rights and interests. While the Government must balance this with the interests of all New Zealanders, it is appropriate that the new MPA Act explicitly recognises te Tiriti o Waitangi/the Treaty of Waitangi and its principles and iwi/Māori rights and interests. Iwi/Māori have important cultural, social and commercial connections to the marine environment, and the flora and fauna within it. The marine environment is a taonga to be protected by iwi/Māori for current and future generations in their role as kaitiaki, and provides kaimoana to iwi/Māori as fishers.

Section 4 of the Conservation Act 1987 applies to the Marine Reserves Act and other acts administered by the Department of Conservation. It provides that “this Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi”. A number of submissions in 2016 advocated for a Treaty clause to be at least equivalent to section 4 of the Conservation Act.

The recent Supreme Court decision *Ngai Tai Ki Tamaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, highlights that section 4 is one of the strongest weightings given to Treaty principles in legislation.

It is proposed that the MPA Act is added to schedule 1 of the Conservation Act, making it subject to section 4,¹⁵ to maintain the current high standard of recognition and protection of the rights and obligations afforded by te Tiriti o Waitangi/the Treaty of Waitangi and its principles and ensures consistency with the *Treaty* objective.

Additionally, the Government proposes providing for the following:

- Explicit recognition of relevant rights and interests in other legislation, including the Treaty of Waitangi (Fishing Claims) Settlement Act, the Māori Commercial Aquaculture Claims Settlement Act, the Marine and Coastal Area (Takutai Moana) Act, and any relevant Treaty of Waitangi Settlement Acts;
- Explicitly providing for meaningful partnership with iwi/Māori in the development of the National MPA Strategy, and in processes for establishing, managing (including co-management) and reviewing MPAs, and the inclusion of mātauranga Māori where the holders of the knowledge agree;
- Enabling consideration and establishment of measures to recognise customary fisheries management practices (such as the establishment of mātaihai reserves) alongside MPA processes, where appropriate, and recognising the contribution these mechanisms make to biodiversity objectives;¹⁶
- The inclusion of a test which requires the impact of any proposal on existing rights and interests, including those held by iwi/Māori to be considered (see [Section 3.9](#) for more information);
- Consultation with the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Treaty of Waitangi Negotiations, the Minister for Māori Affairs, and the Minister appointed by the Prime Minister to be responsible for the Marine and Coastal (Takutai Moana) Act, when making decisions about establishing MPAs.

The Government is also interested in exploring options for co-governance arrangements between the Crown and iwi/Māori within the MPA Act. This could mean that decision-making responsibilities and powers are shared between the Government and iwi/Māori throughout the process of designing, establishing and managing MPAs, reflecting a partnership approach. Arrangements such as these are further explored in the following sections of this document: 3.13 *National Strategy*; 3.15 *Process for establishing marine reserves and marine conservation areas*; and 3.16 *Management of MPAs*.

What do you think?

17. Do you support the proposed approach for recognising te Tiriti o Waitangi/the Treaty of Waitangi and its principles? Why or why not?
18. Should the Government consider options for co-governance within a new MPA Act? What could effective co-governance arrangements look like?

3.6 MPA Categories

It is common practice internationally to have a suite of MPA categories or tools that can accommodate for different levels of use and protection in the marine environment. The International Union for Conservation of Nature (IUCN) recognises six different categories of MPAs, classified according to their objectives and ranging from fully protected areas (no-take zones where no extraction is permitted) to multiple use areas. MPA categories can provide certainty for marine users by pre-defining the specific protection objectives and the level of activity or use allowed in that area; this is already the case with marine reserves.

Marine reserves are relatively inflexible and do not easily provide for biodiversity protection alongside a level of sustainable use that may be consistent with protection objectives. This has resulted in other

¹⁵ Section 4 is intended to apply to all those exercising powers and functions under the MPA Act.

¹⁶ Customary fisheries tools will continue to be established under the Fisheries Act 1996.

legislation, which often only address one pressure being used to establish MPAs, primarily the Fisheries Act 1996. In addition to allowing sustainable use where it does not pose a risk, flexible tools provide a greater ability to adapt restrictions within the MPA to respond to changing circumstances, for example environmental changes associated with climate change. In exchange, flexibility in a tool can increase the complexity and costs associated with applying it, such as through more detailed assessments on what controls are appropriate, monitoring and enforcement expenses.

Having more than one MPA tool under a new Act would help address fragmentation issues across the marine management system as it would support a more integrated package of marine protection tools to manage multiple activities, with the primary purpose of meeting biodiversity protection objectives. This would reduce the need to resort to multiple Acts with different purposes and processes. Tools provided under other legislation would also still be needed alongside marine reserves and marine conservation areas to achieve biodiversity protection outcomes. This aligns with the *Integration* objective.

We propose the MPA Act to provide for two MPA categories:

- Marine reserves; and
- A new, more flexible, objective-driven tool called a marine conservation area.

Marine reserves are reasonably prescriptive, which is appropriate when a high level of protection is desired. Marine conservation areas provide a more flexible way of meeting specific protection objectives.

These two categories of MPAs, together with appropriate management measures and tools under other legislation, would be able to respond to various protection objectives and risks, while balancing the values and interests of those in the marine environment (consistent with the *Strategy* objective).

Marine reserves

Marine reserves would continue to offer the highest level of protection currently available for marine biodiversity, in providing a minimal use area that would be managed as far as possible to maintain the area in a natural state.

Currently, marine reserves can only be established for the purpose of scientific study. The new MPA Act would amend the purpose of marine reserves to include the protection of marine biodiversity. This includes typical, outstanding, rare, distinctive, internationally, nationally or locally important habitats and ecosystems; and encompasses protecting them to maintain their natural state or to enable them to recover.

To ensure that the purpose is achieved, we propose that the same activities prohibited within a marine reserve under the Marine Reserves Act be maintained. Some examples of the types of activities that would be prohibited within marine reserves include:

- Taking any plant, marine species, and/or natural material;
- Fishing activities (recreational, non-commercial customary and commercial) as managed under the Fisheries Act and other extractive activities such as removing seaweed;
- Petroleum or minerals activities as managed under the Crown Minerals Act 1991 and earlier legislation;
- The discharge of any toxic substance, pollutant, or substance injurious to marine life;
- Some activities that would require consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act such as:
 - o Dumping of waste or other matter;
 - o Placement of any structure, or material; and
 - o Causing of vibrations.
- Other activities as needed to achieve the protection objective of the marine reserve.

As is currently the case, the Minister of Conservation would be able to permit take of materials in limited circumstances for scientific study and non-commercial reasons where this is low impact and consistent with the protection objective of the marine reserve. For example, the taking of driftwood, beach stones, non-living shell and pounamu for non-commercial purposes is permitted from five marine reserves on the west coast of the South Island, subject to conditions¹⁷.

Marine conservation areas

The MPA Act would introduce a new more flexible and objective driven MPA category called marine conservation areas. Marine conservation areas would be tailored to achieve specific protection objectives that cannot be easily achieved under existing legislation and allow for varying levels of use that are consistent with those objectives. Objectives could include protection of a particular species, habitat, ecological process, natural features important to biodiversity or to support customary aspirations (set out in the examples below). This reflects that some biodiversity protection objectives can be achieved without restricting all or most activities in an area.

Marine conservation areas would have a long-term protection objective(s) and a legal mechanism to coordinate and assess the impact of activities in the area and apply additional restrictions as necessary to achieve the protection objective(s).

The activities allowed within marine conservation areas could vary according to factors such as the:

- Specific objectives of the MPA;
- Level of impact or risk associated with the activity;
- Ecology of the particular area or marine species;
- Extent to which it is outstanding, rare or distinctive;
- Level of protection sought;
- Location of MCA relative to jurisdiction under international law; and
- Importance of the area for cultural, economic and social activities.

It would be possible to use a combination of MPA categories and other management measures together within an area, for example a marine reserve could be established within the larger area of a marine conservation area. This is a common practice globally, and an example of this is Australia's Coral Sea Commonwealth Marine Reserve.¹⁸

Protection of specific habitats

Seabed habitats have an important role in supporting biodiversity, through provision of food, shelter and features important for completing life history stages, such as spawning. For example, a marine conservation area could be established to protect fragile seabed habitats such as bryozoans, by managing activities that may impact on them, such as the use of some fishing methods, dredging (for fishing or other purposes), anchoring, dumping and development of structures on the seabed.

Protection of specific species

Protection for marine mammals is provided under the Marine Mammals Protection Act 1978 but non-mammal species protected under the Wildlife Act 1953 could benefit from a marine conservation area. This category could be used to provide protection for fragile and ecologically important species such as corals. Protection could be provided through restrictions on bottom impacting fishing methods, dumping, seabed disturbance through anchoring, dredging and mining, and commercial tourism could be managed to avoid impacts of scuba divers on these species.

Protection of foraging areas for certain species

Some areas of Aotearoa New Zealand's marine environment are known to be important foraging areas for mobile species such as marine mammals, seabirds and large fish. For example, an offshore area where currents well to the surface around seabed features such as pinnacles and seamounts, often are foraging grounds for seabirds such as petrels and albatrosses. Better managing activities

¹⁷ The Kahurangi, Punakaiki, Hautai, Tauparikākā, and Waiau Glacier Coast marine reserves.

¹⁸ Coral Sea Marine Park [Management Plan 2018](#).

that may threaten either the foraging activity or the birds' prey species, such as dumping, fishing, and tourism, could assist with achieving protection objectives for seabirds.

These areas may be managed flexibly; restrictions on activities may only need to be implemented on a seasonal basis, there may be some extractive use that can continue, or the size or shape of the protected area may need to be more adaptive to take into account changing environmental conditions.

Protecting biodiversity to support customary aspirations

Certain areas, habitats or species in the moana (sea) or coastal area hold significant cultural or spiritual value for iwi/hapū and are considered taonga. A marine conservation area could support iwi/Māori to exercise kaitiakitanga over such features or locations, with a management regime designed to ensure specific protection objectives are achieved.

Restrictions on activities such as anchoring, use of particular fishing methods or access for tourism purposes could ensure the associated protection objectives for that area continue to be achieved. Some continued ongoing resource use may be compatible with achieving those objectives. Any authorisation or management of customary fishing would be undertaken in accordance with the Fisheries Act and Treaty of Waitangi (Fisheries Claims) Settlement Act. For example, a marine conservation area could be established over an area that contains taonga species, such as stingray or seaweed, where the objectives for conserving an area or species is for purposes outside sustainable use or customary take and therefore cannot be enacted through existing customary tools under the Fisheries Act. This area could protect customary biodiversity aspirations and also serve as a vehicle for wānanga (learning), ensuring mātauranga and values about the moana are passed down through generations.

What do you think?

19. Do you agree with the proposed MPA Act categories? Why or why not?
20. Do you support the flexible approach of the marine conservation area?
21. Do you have examples where a marine conservation area could meet specific objectives in your area?
22. Do you support the use of the marine conservation area tool to achieve customary biodiversity aspirations?

Protection standard

We propose that the MPA Act include a protection standard, which would outline the minimum standard of protection an area must provide in order to meet the proposed MPA definition, and form part of the MPA network. A protection standard provides the guidance for assessing whether a tool, or a combination of tools, is likely to achieve desired protection outcomes. This would ensure an outcomes-focused approach to protecting marine biodiversity (aligning with the *Environment* objective) and provide transparency in the establishment process (consistent with the *Participation* objective). When assessing areas against the protection standard, a robust, transparent and evidence-based assessment process would be undertaken to ensure alignment with the *Strategy* objective.

Marine reserves and marine conservation areas would be designed to meet the protection standard. Management measures and tools under other legislation could also be assessed against the protection standard and could be recognised as being part of the network where they do so. Not all tools under other legislation would meet this protection standard, but they will still play an important role for biodiversity protection.

The 2008 MPA Policy Guidelines provides the protection standard currently used.

To meet the protection standard, a management tool must enable the maintenance or recovery of the site's biological diversity at the habitat and ecosystem level to a healthy functioning state. In particular, the management of the regime must provide for the maintenance and recovery at the site of:

- Physical features and biogenic structures that support biodiversity;
- Ecological systems, natural species composition (including all life-history states), and trophic linkages; and
- Potential for the biodiversity to adapt and recover in response to perturbation.

The 2008 protection standard has played an important role in assessing and establishing tools, but it has shortcomings. For example, some of the guidance it provides is aspirational, which has proven to be challenging in practical implementation. The current protection standard is also focused on protection at the habitat level, which makes assessment of protection measures for species difficult.

We intend to update the current protection standard and seek your feedback on how it can be improved.

A protection standard would have two main functions:

- Informing the establishment of new MPAs; and
- Reporting on the progress in implementing the National MPA Strategy and Aotearoa New Zealand's contribution to international biodiversity protection objectives.

As part of any initial MPA planning process, a protection standard could assess the contributions to the network from existing tools and measures in the areas. This would assist with identifying the additional protection needed, selecting the most appropriate tool for this level of protection and avoiding unnecessary duplication of protection in certain areas.

A protection standard would also assist with reporting on domestic and international progress on a variety of marine biodiversity protection measures.

The following key concepts would be embedded in a new protection standard:

- Consideration of a tool's benefits and objectives;
- Consideration of the efficacy of a tool, including its contribution to aspects of good network design;
- The principle that MPAs should provide a higher degree of protection to biodiversity than surrounding areas; and
- Alignment with international best practice and guidance.

What do you think?

23. Do you agree with the concept of a protection standard and its functions? Why or why not? How do you think the current protection standard could be improved?
24. Have we considered all the appropriate concepts for the protection standard?

Management measures under other legislation

Tools available under other legislation would continue to be used to address risks to biodiversity and complement marine reserves and marine conservation areas. For example, Fisheries Act tools can be used to ensure fishing activity is sustainable and to give effect to customary fisheries management practices (for example mātaihai reserves). The Maritime Transport Act 1994 contains tools that implement additional protection measures aimed at reducing the risk of marine pollution. In a given case, a range of tools may be able to address a particular environmental pressure or risk and to provide for social, economic, and cultural benefits. Decisions on what tool to use would need to take into account the relative benefits and costs of tools in the particular circumstances.

Management tools under other legislation could also be assessed against the protection standard and could be recognised as being part of the network where they do so. This approach supports our *Environment* and *Integration* objectives. The possible use of these tools, and the costs and benefits of doing so would be considered throughout the development of the National MPA Strategy, and throughout the MPA establishment process.

Managing activities within MPAs

The management framework of Marine Reserves Act is limited to issuing permits for scientific research. As a result, there are examples of marine reserves where there are high volumes of currently unregulated activities which can potentially lead to conflict between users, safety issues, negative impacts on local and visitor experience, and negative effects on the marine ecosystem. The effects of these activities will need to be managed effectively and better understood through research and monitoring. We propose that the MPA Act replicate the permissions framework under the Conservation Act (where the permissions are known as concessions) to flexibly manage activities while ensuring these activities do not conflict with the objectives of the particular MPA. This would include (but not be limited to) marine scientific research, recreation and tourism.

Commercial, customary and recreational fishing would not be subject to the concession regime, as these activities are managed under the Fisheries Act.



Whale and dolphin watching tour with guide providing explanations to visitors. Photo by NZ Story resource.

The new MPA Act could enable the Minister of Conservation to, dependant on the type and objectives of the MPA:

- Apply conditions on access;
- Regulate commercial activities and require marine concessions for them;
- Prohibit or consent to any minerals exploration, prospecting or mining activities;
- Regulate conduct within an MPA, including diving and anchoring;

- Provide for the care, management and protection of any natural or historical resource of an MPA;
- Prohibit, restrict or regulate the entry of aircraft, ships or other vehicles into an MPA, subject to international obligations;
- Prohibit or control the extent to which and the manner by which people may allow their animals (pets) to enter or remain in an MPA;
- Recognise and protect wāhi tapu (sacred sites) and/or other customary interests; and
- Conduct and control marine scientific research by New Zealand vessels.

Freedom of navigation is preserved in UNCLOS and therefore would not be restricted through the MPA Act. Other international obligations would continue to be implemented through relevant legislation, including the Maritime Transport Act, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, and the Resource Management Act.

The current Marine Reserves Act provides for rights of access and navigation (other than anchorage). This includes a provision that a vessel may anchor in a marine reserve in time of stress or emergency and measures can be taken to avoid loss or injury of human life or property. We propose that this would remain unaffected.

What do you think?

25. How do you think activities in MPAs should be managed?

3.7 National MPA Strategy

Submitters in 2016 identified that a strategic and planned approach to marine protection was required to support any new MPA Act. We propose that the MPA Act aligns more strongly with the *Strategy* objective by providing for the development of a National MPA Strategy.

The National MPA Strategy could be a statutory document made on the recommendation of the Minister of Conservation, Minister of Oceans and Fisheries and Minister for the Environment. Another option, to ensure the views of marine users are reflected in the guidance that the MPA National Strategy would provide, is to include the following ministers as a statutory requirement to consult; the Minister of Transport, Minister of Energy and Resources, Minister for Māori Crown Relations: Te Arawhiti, Minister for Treaty of Waitangi Negotiations, Minister for Māori Development, and Minister appointed by the Prime Minister to be responsible for the Marine and Coastal (Takutai Moana) Act.

This would improve coordination across the marine management system, including with the Resource Management Act (or any successor legislation), Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, and Fisheries Act. This aligns with the *Integration* objective. Alternatively, the Minister of Conservation could be the sole Minister responsible for the development of the Strategy similar to how the Minister for the Environment is the responsible Minister for developing National Policy Statements, and the Minister of Conservation is responsible for the New Zealand Coastal Policy Statement under the Resource Management Act.

The Strategy would improve coordination across the marine management system by providing a framework for engagement on national-level spatial considerations and setting out how they are to be considered alongside regional priorities. While the Strategy would not direct the use of tools under other legislation it would, along with a well-designed regional process, facilitate greater support and rationale for the use of those tools.

The purpose of the National MPA Strategy would be to provide further guidance on specific provisions in the Act and support the implementation of marine protection using the tools and processes specified in the Act. The National MPA Strategy would establish a strategic, nationally coordinated approach to the establishment and management of MPAs by describing national objectives, priorities and standards. This would support the prioritisation of resources and development of an MPA network.

The National MPA Strategy would be aligned with the Aotearoa New Zealand Coastal Policy Statement and Te Mana o te Taiao – The Aotearoa New Zealand Biodiversity Strategy. Under existing provisions in the Resource Management Act, local authorities would be required to consider it in their planning processes. This provision does not direct them to take any particular action. Given the work to reform the resource management system and the potential for changes to the Resource Management Act, the National Strategy would be designed to align with that work as it develops.

Another option is to broaden the function of the National MPA Strategy to apply to wider marine protection tools implemented under other Acts, and/or influence decisions that impact the marine environment. It could be a consideration under Acts such as the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, Fisheries Act, Maritime Transport Act, Marine Mammals Protection Act and Wildlife Act.

The National MPA Strategy would be used by planners, communities, stakeholders, researchers and those involved in marine protection initiatives. It would provide them with detailed guidance about aspects such as the planning process, information base and management approaches, to help meet the purpose of the new MPA Act.

Content of the National MPA Strategy

The National MPA Strategy would include evidence-based targets and identify specific objectives and priorities for marine protected areas. This would include (at a national level), the development of a network and could also cover other marine protection objectives such as species-specific goals. This will ensure alignment with the *Environment* objective. Priorities for protection, (including priority regions, habitats, ecosystems or species) would be informed by risk assessments (taking into account information gaps), conservation status and existing protection.

The National MPA Strategy would help to ensure that national priorities are designed taking into account local/regional aspirations so that they are both supported in a strategic way.

The National MPA Strategy could also help to inform operational considerations such as:

- Application of the principles specified in the Act (described in section 3.3), including:
 - o Identification of priorities for protection, including priority regions, habitats, ecosystems or species. This would be informed by risk assessments (taking into account information gaps) and existing protection measures;
 - o Guidance on support tools, such as the use of planning software and habitat classifications.
- The marine protection planning process, including:
 - o An action plan to specify processes for establishing MPAs, in the context of wider protection tools, across Aotearoa New Zealand;
 - o Marine protection tool selection, and methods for assessing the contributions MPAs and other protection tools make to the network;
 - o Where MPAs are the appropriate tool, how to undertake assessments of the impacts of MPA proposals on the matters specified in the Act, such as existing rights and interests;
 - o How to ensure the tools under the MPA Act and protection mechanisms available under other legislation work cohesively to form a network;
 - o The use of science, mātauranga Māori and other information including socio-economic data, when designing and assessing proposals.
- Management of MPAs, including:
 - o The development of management plans and day-to-day management of activities within MPAs;
 - o Standards for monitoring and compliance.

What do you think?

26. Do you support the development of a National MPA Strategy? Why or why not?
27. What Ministers should have a role in approving the National MPA Strategy and what should their role be? Why?
28. Do you think the function of the National MPA Strategy should be narrow (only applies to the MPA Act) or broader (a consideration for decisions under other Acts)? Why?

Scientific research to underpin policy and planning



Scientific diver conducting underwater survey. Photo by Vincent Zintzen.

Increasing scientific knowledge through fundamental research enables the development of sound MPA strategy and policy and more effective approaches to establishing marine protection.

Approximately \$2 million of the [Department of Conservation Biodiversity Contingency Fund](#) from Budget 2018 has been allocated over four years to progress:

- Guidance on MPA network design;
- A gaps analysis of MPAs in the territorial sea;
- Collation of data sets, including to identify 'key ecological areas' and under-represented habitats; and
- A review of habitat classification systems.

The process for developing the National MPA Strategy

The Government proposes that the National MPA Strategy be developed within 18 months of the enactment of the new MPA Act and is reviewed every 10 years. Mandated reviews would ensure that it continues to reflect international best practice, current scientific understanding, and the aspirations of New Zealanders. The Government proposes that the development of a National MPA Strategy includes the following tasks:

- Compile information on national biodiversity values, and assess the threats to biodiversity;
- Review the current MPA policy and guidance and consider lessons from previous planning processes to identify areas of the existing policy, guidance and practices that can be transitioned to, or improved, for the National MPA Strategy;
- Establish national objectives for biodiversity protection;

- Assess current MPAs and other areas that contribute to biodiversity protection, to determine the extent to which the national biodiversity protection objectives are already being met. This could include an assessment of their effectiveness and would inform the transition of existing MPAs into the new legislative regime, where appropriate. Where direct transition is not appropriate, it could inform improvements to the effectiveness of existing measures. It would also contribute to our understanding of gaps in the network, which would help prioritise future MPA planning;
- Identify priority areas, habitat, and species for consideration in protection initiatives;
- Develop draft National MPA Strategy and undertake public consultation. Changes would then be made to the National MPA Strategy based on the analysis of submissions; and
- Approval of the National MPA Strategy by the Ministers of Conservation, Fisheries and Environment and implement through the processes outlined in sections 3.9 and 3.10.

Strong alignment with the *Participation* and *Treaty* objectives is important as the Strategy would be a strong foundation for a shared understanding of what New Zealand wants to achieve with MPAs. Consultation and collaboration would be essential to its development and implementation, so the Government proposes to partner with iwi/Māori and collaborate with local authorities and stakeholders throughout the development of the Strategy, and during subsequent reviews.

Involvement of iwi/Māori in Strategy development could be through co-design where the Government and Māori partner to determine the objectives of the Strategy, design the process for developing it, and make joint decisions. The Ministerial approval process for the Strategy would include iwi/Māori representatives. This contrasts with a collaborative approach where iwi/Māori are involved in the development of the Strategy and decision-making, but the Government ultimately makes the decision.

What do you think?

29. Do you agree with the proposed process for developing and reviewing the National MPA Strategy? Why or why not?
30. What could an effective co-design approach look like for developing the Strategy?

3.8 Science and Mātauranga Māori Advisory Board

Decision-making Minister(s) could appoint a Science and Mātauranga Māori Advisory Board to support the development and implementation of the National MPA Strategy. The Board would provide advice on issues such as geographical priority, how proposals contribute to marine protection goals including the MPA network, and monitoring and reporting. The Board could also provide ongoing scientific and technical advice to collaborative groups throughout the proposal development stages, including contribution to development of national, regional and local marine protection goals. The members of the Science and Mātauranga Māori Advisory Board would be appointees with relevant scientific experience, including environmental, mātauranga Māori, and fisheries science expertise. They could be from a range of affiliations, such as universities, Crown research institutes, iwi/Māori, and local authorities.

What do you think?

31. What role do you think a Science and Mātauranga Māori Advisory Board should have?

3.9 Process for establishing marine reserves and marine conservation areas

The current public consultation processes are unclear, inefficient and inflexible. It is important that the new MPA Act's decision-making process is well-structured and clear, includes adequate information and decision-making principles (*Strategy* objective), provides for meaningful collaboration with iwi/Māori (*Treaty* objective) and improves public consultation processes (*Participation* objective).

Key considerations and trade-offs to take into account when designing a decision-making process include strategic use of government resources, transparency, inclusivity, administrative efficiency and cost-effectiveness. This proposal aims to strike the right balance between public participation and administrative efficiency, as well as providing a relatively high degree of certainty alongside the ability to adapt processes to particular circumstances.

We propose the new MPA Act would ensure decisions are informed, well-supported and credible by providing for:

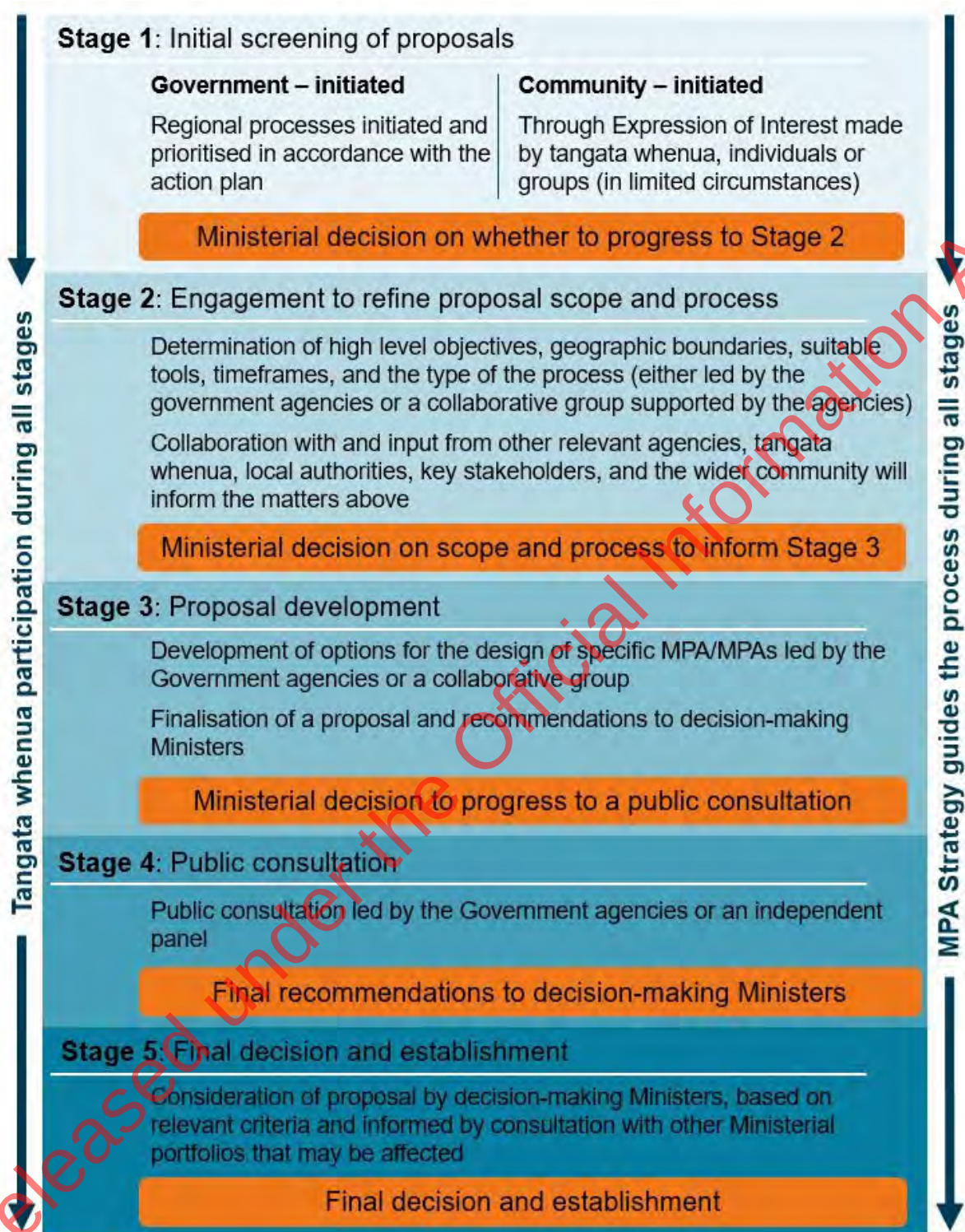
1. A planned approach to creating a network of MPAs that is informed by the National MPA Strategy.
2. Clear decision-making criteria informing joint decisions by the Minister of Conservation and the Minister of Oceans and Fisheries throughout the process for establishing MPAs.
3. A clear five stage process for establishing MPAs:
 - An initial screening decision;
 - Engagement to refine the high-level proposal and process;
 - MPA proposal development through either a government-led or collaborative group process;
 - Public consultation on MPA proposals; and
 - Final Ministerial decisions and MPA establishment.

The process for establishing marine reserves and marine conservation areas is outlined in **Figure 2**.

The process would be led by the Department of Conservation and Fisheries New Zealand with support from other agencies where appropriate (further referred as "Government agencies" or "agencies").

In the first two stages, consideration would be given to a broad range of issues and options to identify whether other management measures and tools should be considered as part of the process. If a range of measures and tools are going to be considered, upfront decisions would be made about governance arrangements, resourcing, and the processes for decision making and implementation. Amendments could be made to other legislation to drive the use of those tools in line with the outcomes of the process.

Figure 2: Process for establishing marine reserves and marine conservation areas.



Stage One: Initial screening of proposals

We propose that processes to establish MPAs could be initiated in one of two ways:

- A government-initiated regional process; or
- Through an Expression of Interest (EOI) made by an individual, iwi/Māori, or group.

Government-initiated regional processes

Government-initiated regional scale processes would generally be preferred as they better align with the *Strategy* objective; they enable greater efficiency, support strategic design, and allow cumulative impacts of MPAs and other measures to be more effectively considered. Government is also well-placed to work with others to consider the full suite of marine protection tools available to protect and restore marine biodiversity in a priority region.

The National MPA Strategy would provide for the development of an action plan for how and when these processes will commence, supporting a systematic approach to the establishment of MPAs across Aotearoa New Zealand. The development of the National MPA Strategy would involve consultation, providing an opportunity for interested parties to have their say on the action plan. This would provide greater certainty for the public and marine users.

Expression of interest

While Government-initiated regional processes would be preferred, it could be appropriate to progress smaller scale processes in some limited circumstances. For example, if there is strong support and buy-in from iwi/Māori and stakeholders for the protection of an area identified as a priority in the National Strategy. This mitigates the risk of disempowering communities and misaligning with the *Participation* objective.

We propose that this would be achieved through an EOI process. This would involve the government asking for EOIs from any individual, community group, iwi/hapū or interested group to initiate a process. The new MPA Act and National MPA Strategy would set out the content that an EOI must include.

There are a number of options for how an EOI process could work. One option would be to enable EOIs to be made at any time. Alternatively, processes could be run at regular intervals (such as once a year), or as needed.

To ensure the EOI process supports the National MPA Strategy, and to manage the flow of EOIs, limitations could be placed on the types of EOIs that would be considered at a particular time. For example, limiting to particular geographic areas, or to proposals that would contribute to certain priority ecosystems or gaps in the network. EOI processes could also be undertaken in an area prior to commencement of a Government led process, to identify community aspirations and inform that future process.

EOIs would be collectively considered and prioritised through a screening process. This would ensure limited resources are used effectively and avoid an ad hoc, first-in-first-come approach to marine protection. It would also enable consideration of whether EOIs could be revised to better align with the National MPA Strategy or integrated with other EOIs into a regional process. While the screening step would have upfront costs, it should result in cost-efficiencies over the long-term. This approach is also preferable to the status quo, where applications must be progressed regardless of their merits or level of support.

At the end of the EOI process, agencies would prepare advice on priority proposals and seek ministerial decisions about whether to progress them to Stage Two.

Stage Two: Engagement to refine proposal scope and process

The objective of stage two would be to determine how the proposal would be developed and would involve:

- Determining high-level objectives for the process;

- Determining geographic boundaries;
- Determining what tools might be most suited to achieve the objectives (for example, whether iwi/Māori wish for customary tools to be considered);
- Analysing the relative effectiveness of alternative marine protection tools;
- Determining whether the proposal will be developed via a government-led process or a collaborative group;
- Determining timeframes for the process;
- Involvement of other interested agencies, in particular those that have responsibilities relating to rights and interests in the marine environment, to ensure buy in and identify critical issues so they can be addressed early where necessary; and
- Gathering information to inform the process, including scientific, geographic and economic information, mātauranga Māori, and the views and values of iwi/Māori, community groups, local authorities, and key stakeholders.

Input from and collaboration with iwi/Māori would be essential, including those with active applications under the Marine and Coastal Area (Takutai Moana) Act 2011. Strong engagement with local authorities, key stakeholders, and the wider community would also be essential. Reaching agreement on these matters early could encourage a more positive, outcomes-focused process.

Government-led or collaborative group

Proposals would be developed in stage three by either government agencies or a collaborative group supported by the agencies. If a collaborative group is considered appropriate, Ministers would approve a terms of reference to guide the collaborative group and a nominations and appointment process would be undertaken. A terms of reference would be optional for a government-led process.

A collaborative group process strongly aligns with the *Participation* objective as it empowers communities and stakeholders. It brings multiple stakeholders together to identify what the community values are and what it wants to trade off. As stakeholders can have direct representation of their interests, these can be more clearly communicated and considered. However, finding consensus with multiple stakeholders and interests can be inefficient; it can be time consuming and difficult as well as raise costs and lead to stalemates. While the National MPA Strategy would guide the process, there is still a risk that collaborative proposals would bias towards local interests and not fully consider broader national considerations. This could impact on the ability to align with the *Strategy* objective.

A government-led approach can be more efficient and deliver more timely decisions, but may not reach the collaboration expectations of some stakeholders. However, it can still enable meaningful public participation through a range of public engagement processes, such as public meetings, and targeted workshops and forums. Government-led processes better align with the *Strategy* objective as they are more likely to be guided by national objectives. These processes would be useful when a collaborative group is unlikely to be successful. For example, when it is challenging to form a collaborative group that is representative, or when there are strongly polarised views.

Having the option of the two different proposal development approaches allows flexibility in how the *Strategy* and *Participation* objectives are balanced to ensure the best approach can be used taking into account local circumstances and the nature of the proposals to be developed.

Stage Three: Proposal development and recommendations to Ministers

The Government, or the collaborative group, would develop options for the design of specific MPAs, under the guidance of the National MPA Strategy and terms of reference. Both approaches would be undertaken in a way that enables iwi/Māori and key stakeholders to contribute their views on proposals (including how it would impact their rights and interests).

The preferred outcome for a collaborative group is consensus on their proposals. However, if this cannot be reached, alternative options and the reasons for them may be provided in the final recommendations to Ministers.

Formal proposals would be submitted to Ministers, who would then decide whether a proposal should progress to a public consultation or, possibly be sent to an independent panel for further consideration.

Stage Four: Public consultation

To support informed decisions, final proposals would be subject to a public consultation process for which agencies would prepare consultation materials. Consultation may be led by the Government or an independent panel and would be expected to include public notification, public meetings and hearings, analysis of submissions and further recommendations to Ministers.

Stage Five: Final decision and establishment

Currently, the Minister of Conservation, the Minister of Oceans and Fisheries and the Minister of Transport are required to agree to the establishment of an MPA. The government proposes to remove the Minister of Transport as a decision-making Minister, as the new processes for establishing MPAs mean there is a greater opportunity to identify any potential issues relating to navigation and transport issues early on, and to mitigate any adverse impacts during the development of MPA proposals.

The decision-making framework in the MPA Act should reflect that establishing MPAs requires the Crown to appropriately balance different iwi/Māori, stakeholder and public interests. The Government proposes that the most appropriate way to achieve this is through joint decision-making between the Minister of Conservation and the Minister of Oceans and Fisheries, in consultation with other relevant Ministers under the new MPA Act.

Joint decision-making would ensure the trade-offs between Conservation and Fisheries portfolio interests are appropriately considered and balanced. The Minister of Oceans and Fisheries being a decision-maker would reflect that MPAs have implications for the utilisation of fisheries resources also managed under the Fisheries Act, and for the Treaty of Waitangi (Fisheries Claims) Settlement Act. The impacts of MPAs on fishing interests are normally the most contentious matter when establishing MPAs. It would also support alignment with marine protection tools in the Fisheries Act and could make it easier to progress fisheries measures alongside MPAs, including customary fisheries tools.

Other Ministers with relevant portfolios would be consulted, as a statutory requirement before Ministers make a decision. The Ministers that would be consulted could include the Minister of Transport, Minister of Energy and Resources, Minister for Māori Crown Relations: Te Arawhiti, Minister for Treaty of Waitangi Negotiations, Minister for Māori Development, and Minister appointed by the Prime Minister to be responsible for the Marine and Coastal (Takutai Moana) Act. The views of these Ministers would need to be taken into account in decision-making, to the extent it is relevant to the statutory decision-making criteria. These criteria are outlined in pages 40 to 43, and 47.

Consultation Ministers would be provided with relevant documents to support this consultation, including copies of the final proposal, draft recommendations, a summary of any submissions, and any responses to submissions.

This joint decision-making approach retains the accountability benefits of a single decision-making Minister and decreases the risk of duplication of information being produced by agencies. However, additional time might be needed to arrive at a joint decision, which might increase length of consideration of an MPA proposal compared to a single decision-making Minister.

Potential co-governance arrangements

The Government is also interested in exploring the potential of a co-governance decision-making framework where iwi/Māori representatives would be added to the Ministerial decision-makers. This could be a representative of the iwi in whose rohe the MPA in question falls. If this were the case, all three parties would have to agree to establish specific MPAs.

What do you think?

30. Do you support the proposed process for establishing MPAs?

31. What roles do you think the Minister of Conservation and Minister of Oceans and Fisheries should have in decision-making?
32. What role should other Ministers with portfolio interests in the marine space have?
33. What could an effective co-governance decision-making framework look like?

Decision-making criteria

We propose that the decision-making Minister(s) must consider whether establishing the proposed MPA(s) is in the public interest, taking into account the following criteria:

- The purpose of the MPA Act including the benefit of preserving and protecting indigenous marine biodiversity and any benefits that may arise directly from the establishment of the MPA that the Ministers consider relevant. For example, benefits for scientific research and mātauranga Māori, and increased resilience against climate change;
- The principles of the MPA Act;
- The purpose and objectives of the relevant MPA tools;
- The National MPA Strategy;

The decision-making Minister(s) must also have regard to:

- Any relevant planning document that an iwi authority recognises (iwi management plans);
- Whether the recommendations align with the relevant terms of reference.
- Other relevant legislation. The proposed interface between the MPA Act and other legislation is discussed in more detail in Section 4.

The decision-maker must give effect to the principles of the Treaty in accordance with the Treaty clause.

Additionally, the decision maker would be required to consider adverse impacts on rights and interests.

Considering impacts on rights and interests

The Marine Reserves Act requires the Minister of Conservation to uphold any objection to a marine reserve proposal if it unduly interferes with interests in adjoining land, rights of navigation, commercial fishing, and existing recreational use or is otherwise contrary to the public interest. This requires consideration of both the benefits and impacts of a proposal.

The proposed process for developing MPA proposals (Stage Two) is intended to enable potential impacts on rights and interests to be identified early, allowing the identification of options for mitigation while meeting biodiversity objectives. However, it is inevitable that MPAs will have some impacts on rights and interests. We propose that the new MPA Act require decision-making Minister(s) to consider any adverse effects on existing interests.

Existing interests would include:

- The relationship between iwi/Māori and their customary culture, traditions and food gathering in a marine area;
- Commercial and recreational fishing;
- Recreational use;
- Navigation rights, maritime safety and the efficient movement of shipping;
- Education and research;

- Activities authorised under a Resource Management Act consent;
- Existing petroleum, gas, and mineral permits under the Crown Minerals Act;
- Existing consents provided under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act;
- The settlement of a historical claim under the Treaty of Waitangi Act 1975, and the settlement of contemporary claims under the Tiriti o Waitangi/the Treaty of Waitangi as provided in any Act;
- New Zealand Defence Force operations and activities undertaken within various areas; and
- Other matters considered to be relevant.

In considering the adverse effects on existing interests decision-making Minister(s) could have regard to:

- The location of the proposed MPA in relation to existing interests and activities;
- How much it will exclude existing interests;
- The extent to which existing interests could be carried out in other areas;
- How much the proposal will increase the cost of existing interests and activities; and
- Cumulative effects of multiple protection instruments on existing interests and activities.

Compensation would not be provided for impacts on rights and interests associated with the establishment of an MPA. The current Marine Reserves Act and the Marine Mammals Protection Act do not make any provision for compensation when a marine reserve or sanctuary is established. Similarly, under the Fisheries Act the Crown is not liable to pay compensation where measures are taken to ensure sustainability, which includes measures to avoid, remedy or mitigate the adverse effects of fishing on the aquatic environment.

A key design issue is the weighting given to the consideration of adverse effects on existing interests in decision-making, and the balance struck between adverse effects and benefits. Three options are outlined below:

- Minister/s required to reject or amend proposal where an adverse effect is undue;
- Minister/s required to have regard to undue adverse effects; or
- Adverse effects not to exceed a threshold.

1. Minister/s required to reject or amend where adverse effect is undue

One option is to maintain the weighting under the Marine Reserves Act. This would require decision making Minister/s to consider any adverse effect on existing interests against the public benefit, to determine whether they are undue. If decision-making Minister(s) found the public benefit did not outweigh an adverse effect on existing interests, they would need to reject the proposal, or amend it so that the impact is no longer undue. This may involve further negotiation or consultation where appropriate.

This approach aligns well with the *Strategy* objective because it requires Minister/s to weigh the costs and benefits of the proposal. It recognises that greater impacts on existing interests may be justified when an MPA is protecting a rare, distinctive or nationally important habitat or ecosystems, in contrast to ecosystems that are more common or widespread. This option balances the *Environment*, *Treaty*, and *Participation* objectives by requiring all relevant information to be considered as part of decision-making.

2. Minister/s required to have regard to undue adverse effects

A second option is to require decision-making Minister(s) to have regard to undue adverse effects. This allows the decision-making Minister(s) to decide what weight to give to impacts on existing interests and means they could decide to establish MPAs even if there is an undue adverse effect. Depending on the decision-making Minister(s), this could favour biodiversity outcomes (*Environment*

objective) as it would make it easier to establish MPAs. However, it is not very transparent (*Participation* objective), and could skew heavily against social and economic values (*Strategy* objective). This could reduce support for the MPAs which has the potential to impact their success (*Environment* objective).

3. **Adverse effects not to exceed a threshold**

A third approach would be to set a particular threshold, which impacts must not exceed, regardless of the proposals benefit. Different thresholds could be set for different interests. Provided the methods of assessment were clear, this would provide greater certainty and high transparency (*Participation* objective). However, the knowledge gaps in the marine environment would make it challenging to ensure the threshold/s were appropriate (*Strategy* and *Environment* objectives). Such a test may also be less able to factor in the unique circumstances, particularly given the wide range of interests that can be impacted by MPAs.



Fisherman aboard fishing vessel at sea. Photo by NZ Story resource.

Customary rights and interests under the Marine and Coastal Area (Takutai) Moana Act

The MPA Act would maintain the rights and interests recognised under the Marine and Coastal Area (Takutai Moana) Act. This includes participation rights (including notification) of affected iwi, hapū and whānau in conservation processes.

MPAs would not be able to be established in an area where there are Customary Marine Title Holders under the Marine and Coastal Area (Takutai Moana) Act without the approval of the Customary Marine Title Holder, unless the MPA is for a protection purpose that is of national importance. The need to obtain the approval of customary marine title holders under the Marine and Coastal Area (Takutai Moana) Act recognises their existing right to decline permission for certain conservation activities, including the creation of marine reserves.

In order to proceed with an MPA in a Customary Marine Title area decision-makers must consider specific statutory criteria, including having regard to the views of the customary marine title group, whether there are no other practicable options for achieving the protection purpose of national importance other than within the customary marine title area, and whether the proposal minimises any adverse effect on the interests of the customary marine title group as far as practicable.

Establishment

If the decision-making Minister(s) consider that establishing the proposed MPAs is in the public interest, taking into account the criteria outlined above, they would recommend to the Governor General the making of an Order in Council accordingly. Decision-making Minister(s) would notify in writing the outcome of the final decision as soon as practicable after receiving recommendations.

What do you think?

34. Do you think the right decision-making criteria have been proposed? Why or why not?
35. What weighting do you think is right for considering impacts on existing rights and interests? Why?
36. Do you think the decision-making criteria would appropriately balance biodiversity objectives and the rights and interests in the marine environment? Why or Why not?

3.10 Management and review processes for established MPAs

The Department of Conservation currently carries out the day to day management of marine reserves and this would remain the case for marine reserves and marine conservation areas established under the MPA Act.

The Government intends for the MPA Act to provide a comprehensive and collaborative management process with active and meaningful involvement of local communities, iwi/Māori, industry and other stakeholders.

Management groups

Many existing marine reserves have advisory committees to provide for community involvement in reserve management. They provide for collaboration with iwi/Māori and communities as some MPAs require that the operations and maintenance of the MPA reflect local conditions. They can also help to ensure that MPAs are better aligned with other MPAs in the area.

Currently, marine reserve committees are established under the Conservation Act. However, there are no statutory guidelines on the makeup and functions of such committees, or the circumstances in which they would be established.

In the MPA Act, the Government proposes to provide an alternative, where appropriate, to the existing ability to establish marine reserve committees under the Conservation Act; management groups. Establishing management groups directly through the MPA Act would provide more clarity around when and how groups operate.

Such groups would be unlikely to significantly change the number of committees relative to the current approach, because committees would be sought in similar circumstances, whether under the MPA Act or under Conservation Boards.

Management groups would be advisory in nature. They would provide advice and recommendations to relevant agencies about aspects such as the effectiveness of management measures. Management groups may lead local voluntary activities to improve the management of MPAs, such as community education.

Management groups would not have formal powers to enact rules, determine access rights (including concessions or research proposals), or impose fees or charges. These powers would rest with the relevant agencies and relevant Ministers, however, they would be informed by management groups.

Management groups could consist of members that can collectively represent local iwi/Māori (including relevant Customary Marine Title Holders), community, and other relevant interest groups.

Where possible, members would be from the local community to maximise engagement and knowledge.

Depending on the specific features of an MPA, co-management arrangements could be established between the Crown and iwi/Māori. Co-management arrangements can protect the interests of Māori, enhance the Māori-Crown partnership, and provide for effective management of natural resources and protect the interests of Māori.

The Government is interested in exploring options for co-governance in MPA management. This would involve establishing decision-making bodies, with equal Crown and Māori representation, that have powers to appoint management groups, enact rules, determine access rights (including concessions or research proposals), or impose fees or charges.

Management plans

While many aspects of the management of MPAs may be able to be defined in the new legislation itself, or a conservation management strategy, specific provisions and more detailed management guidance may be better placed in an MPA management plan. The Marine Reserves Act allows for conservation management plans that establish objectives for the management of a marine reserve or reserves and the Government proposes to retain this in the MPA Act. The National MPA Strategy would provide a framework for the development of any specific MPA management plans that would identify what conservation outcomes are to be sought in specific areas. Management plans would be designed to give clear directions for management to achieve protection outcomes while remaining flexible enough to allow for changing circumstances.

Relevant agencies and management groups would develop management plans in collaboration with stakeholders. Management plans would take into account iwi planning documents and would be prepared in consultation with iwi/Māori.

Some MPAs may not need a standalone management plan; management plans may be able to cover multiple MPAs, particularly if they have similar objectives and management oversight. Management plans could be developed at a regional level to enable strategic planning and coordination between MPAs within the region and on the national level.

The management plans could include:

- Objectives, outcomes and policies to guide management decisions;
- Roles and relationships;
- Description of the environment, most important and vulnerable species/ habitats;
- Activities and management strategies;
- Monitoring and research;
- Reporting and review.

What do you think?

37. Do you support the establishment and proposed role of management groups? Why or why not?
38. What could an effective co-management approach look like?
39. What are your views on when and how co-management approaches should be used?
40. Do you support the proposed use of management plans? Why or why not?
41. Are there alternative options for statutory governance and planning that you think would be more effective?

Monitoring and reporting

The Department of Conservation is responsible for managing, monitoring and reporting on marine reserves and is developing a Marine Monitoring and Reporting Framework and Plan. Along with guidance from whānau, hapū and iwi, this will form the basis for a national monitoring and reporting system for MPAs.

The intent is to provide a nationally consistent and effective approach for monitoring and reporting on new and existing MPAs, ensuring monitoring is consistent over time, with appropriate replication across ecosystems. The system would support the use of mātauranga Māori and monitoring led by whānau, hapū and iwi to provide more holistic understanding of marine ecosystems. It would build on existing datasets and monitoring programmes, and incorporate international best practice.

This system would assist in evaluation against domestic and international conservation targets. It would inform ongoing management and compliance, any reviews of a specific MPA or the broader network, and reviews of the National MPA Strategy. An integrated system would also assist with coordination of monitoring across research providers, community-led science and enhance our knowledge of marine ecosystems.

The Minister for Conservation would be required to produce or commission a report on the state of the network every 10 to 15 years. The report would also include social, cultural and economic outcomes of establishment of MPAs to provide a comprehensive assessment of progress towards MPA objectives.

What do you think?

42. What should be part of the national marine monitoring and reporting framework?

Review processes

The proposed MPA Act would allow for the periodic review of MPAs established under the Act. This would help to support adaptive management, and to assess if protection and management objectives are being met and whether changes to the management regime are warranted to ensure these objectives are met. Specific review periods and relevant matters for consideration could be set during the establishment of MPAs. This approach would better provide for adaptation to changing climatic conditions over time.

A more fundamental review may be needed in some circumstances, for example, through a generational review. This is consistent with the Māori world view that decisions made by contemporary generations should not tie the hands of future generations. Generational reviews would allow more substantial changes such as the removal of an MPA or significant boundary changes where protection and management objectives are not being met (acknowledging that biodiversity recovery can take many decades or, in some cases centuries) or values have changed.

What do you think?

43. Do you agree with the proposed review processes for MPAs established under the MPA Act? Why or why not?

3.11 Enforcement and compliance

It is important that restrictions in MPAs are adequately enforced and provision is made to address any offences. A new enforcement and compliance framework would be developed for the MPA Act by reviewing existing provisions of the Marine Reserves Act and incorporating best practices from existing marine protection laws in Aotearoa New Zealand.

To achieve this objective, the following areas would be addressed:

- enforcement powers;
- offences (including infringement offences that can deal with less serious offending);
- penalties;
- defences to prosecution;
- corporate liability;
- forfeiture provisions.

Responsibility for compliance and enforcement activities under the new MPA Act would rest with the Department of Conservation, Fisheries New Zealand and the Environmental Protection Authority. Fisheries officers, Department of Conservation rangers, police officers and defence personnel would be empowered to enforce the new MPA Act. Existing inter-agency compliance planning and intelligence sharing mechanisms would continue to operate and would be updated as required. Agencies would work together to integrate any new requirements into their planning, training and operational development on an ongoing basis.

The Environmental Protection Authority would continue to be the agency that is responsible for compliance with an enforcement of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act in relation to consented or permitted activities within MPAs that are within the EEZ (such as mining or dumping). Where activities are prohibited within MPAs, consents could not be granted.

There may also be opportunities for iwi/Māori and communities to support enforcement and compliance activities through monitoring, education and outreach.

There will be an opportunity for feedback on these aspects in more detail at a later stage.

What do you think?

44. What do you think is important to consider in developing an enforcement and compliance framework?

4: Relationship with other legislation

Rocky shore in Lyall Bay, Wellington. Photo from Fisheries New Zealand archive

This section outlines the proposed relationship between the proposed MPA Act and other legislation that contributes to the overall sustainable management of the marine environment.

We propose the following linkages between MPA Act and other legislation:

- The prohibitions, restrictions and requirements imposed under the new MPA Act are additional to those under other legislation. Where there are overlaps of legislative tools in an area, the strongest rule would prevail. For example, resource consents would still be required to undertake certain activities within an MPA, the discharge requirements in the MPAs established in the EEZ would be regulated by marine protection rules under the Maritime Transport Act, and any fishing within an MPA must also meet the requirements of the Fisheries Act. An exception to this is activities required to manage the MPA; Resource Management Act consents (or any equivalents under the reformed resource management system) would not be required for management activities (e.g. boundary marking, signage, underwater trails, and mooring buoys).
- To the extent that they are relevant, those exercising functions under the MPA Act would be required to have regard to:
 - o Relevant provisions or plans under conservation legislation, including conservation general policy, conservation management strategies, and population management plans;
 - o The New Zealand Coastal Policy Statement under the Resource Management Act, and any regional policy statement, regional plan or proposed regional plan (including any equivalent or relevant provisions developed through resource management reform);
 - o Policy statements or regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act;
 - o Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to non-commercial customary fishing) under the Fisheries Act;
 - o Any planning document lodged by a customary marine title group under the Marine and Coastal Area (Takutai Moana) Act;
 - o Marine protection rules under the Maritime Transport Act; and
 - o The settlement of a historical claim under the Treaty of Waitangi Act, and the settlement of contemporary claims under the Treaty of Waitangi as provided in any Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act and the Māori Commercial Aquaculture Claims Settlement Act.

Those exercising functions under other legislation, including the Fisheries Act, Resource Management Act (or any successor legislation), and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act would be required to take into account MPAs established under the MPA Act and the National MPA Strategy, to the extent they are relevant, including in relation to resource consent applications.

In some cases, this is consistent with existing legislative provisions. For example, under the Resource Management Act, local authorities are required to have regard to management plans and strategies prepared under other Acts. Where necessary, consequential amendments would be made to clarify the intended interface between legislation.

The Government is proposing to reform the resource management system, including the Resource Management Act. Any changes made as a result of this processes could have implications for the design of the MPA Act. We want to understand your views on how these two reform processes should align with each other. Issues of particular interest are:

- The balance between national priorities, such as developing an ecologically connected network of marine protection tools, and regional/local values and interests;
- What processes and mechanisms are used to balance regional and national priorities;

- How to best enable equitable and transparent assessment of impacts on other users in establishing MPAs; and
- How to build in reviews for MPAs, such as generational reviews, alongside other planning processes.

The role of regional councils in protecting indigenous biodiversity in the Coastal Marine Area

Both regional councils and central government agencies have responsibilities for protecting indigenous biodiversity in the coastal marine area. It's important that central government and regional councils are coordinated in their approach to ensure efficient use of resources, greater certainty for stakeholders and clear accountabilities.

On 4 November 2019 the Court of Appeal released the decision *Attorney-General v Motiti Rohe Moana Trust & Ors*. The Court decided that regional councils can control fishing activities under the Resource Management Act for the purpose of protecting biodiversity, so long as these controls are not for Fisheries Act purposes. The Court also considered that five indicators may assist in deciding if control is for a Fisheries Act purpose (necessity, type, scope, scale, and location).

Based on this decision, three no-take areas are being established by Regional Councils around Motiti Island in the Bay of Plenty. Measures are also being considered by Regional Councils in a number of other regions.

What do you think?

45. Do you support the proposed relationship between the MPA Act and other legislation? Why or why not?
46. How can the marine protection work of regional councils and central government be better aligned?
47. What considerations are most important when aligning this proposal with the resource management reform process?

5: Implementation



Recreational diver enjoying the vibrancy of pristine shallower-water rocky reef habitats in the Poor Knights Islands Marine Reserve.

Photographer: Vincent Zintzen

This proposal would be implemented by repealing the Marine Reserves Act and enacting a new MPA Act and associated National MPA Strategy.

The new MPA Act would be implemented by the Department of Conservation with support from the Fisheries New Zealand and Ministry for the Environment. The Department of Conservation and Fisheries New Zealand have worked together to implement marine protection processes under the current legislative framework and many of those roles and relationships would remain the same. However, implementation of different tools under the new MPA Act and Fisheries Act would be more aligned.

Marine reserve applications that have been notified prior to the repealing of the Marine Reserves Act would continue to progress as if still under the Marine Reserves Act. A time limit could be established during which time the decision-making and concurrence ministers must have made their decision.

The development of the National MPA Strategy includes an assessment of existing MPAs and marine protection tools which would inform their transition into the new legislative regime, where appropriate. Transitional arrangements would be developed to clarify how existing and new marine protection processes would be progressed in the 18-month window prior to the finalisation of the National MPA Strategy.

What do you think?

48. What do you think of the proposed implementation arrangements?

What happens next?

We are interested to hear your thoughts about this proposal for a new MPA Act and Strategy. Once we have received submissions, we will consider the new information and perspectives that have been provided. We will use this to further inform our policy analysis. A summary of the information we have received through consultation will be made available.

6: Making submissions



Beehive, the Executive Wing of New Zealand Parliament Buildings in Wellington Photo from Fisheries New Zealand archive

The Department of Conservation and Fisheries New Zealand are seeking feedback on proposals to reform the Marine Reserves Act and improve Aotearoa New Zealand's approach to marine management as a whole, outlined in this document.

Having your say

You can respond to the questions it raises or submit general comments to us in any of the following ways:

- Online** Submissions can be made using the online submission template: [\[insert hyperlink here\]](#)
- Email** Please email your feedback via pdf or Microsoft Word Document (2003 or later version to: [\[need to set up a submission inbox\]](#)
- Letters** While we prefer email or online submissions, the list of questions is set out below and you can send your response by post to:

**Consultation: Marine Protection Reform
Fisheries New Zealand
PO Box 2526
Wellington 6104**

**Consultation: Marine Protection Reform
Department of Conservation
PO Box 2526
Wellington 6104**

Submissions must be received no later than [\(Date to be confirmed\)](#).

Please include the following information:

Your name and title

Your contact details (your phone number, address, and email)

Your organisation's name (if you are submitting on behalf of an organisation).

Your feedback is public information

Any submission you make becomes public information. Anyone can ask for copies of all submissions under the Official Information Act 1982. The Official Information Act 1982 says we must make the information available unless there is a good reason for withholding it. You can find those grounds in sections 6 and 9 of the Official Information Act.

Tell us if you think there are grounds to withhold specific information in your submission. Reasons might include that it is commercially sensitive or personal information. Any decision to withhold information can, however, be reviewed by the Ombudsman, who may require the information be released.

Public events and hui

Public engagement events and hui to provide further information about the proposals will be held throughout the country. More information on these events is available at [\[Website link\]](#).

Contact for queries

Please direct any queries to:

Phone: XXXX

Email: XXXX

Postal: XXXX

Questions to guide your feedback

Section 2: Issues with Aotearoa New Zealand's current approach to marine protection

1. Have we accurately described the issues with the current approach to marine protection? Why or why not?
2. Do you agree with how we have characterised the problems with the Marine Reserves Act? If not, why not?
3. Are there any additional issues we should consider? Please provide evidence to support your view.
4. How important do you think these issues are? What consequences do you foresee if we don't act now?
5. Do you think these objectives are appropriate? Why or why not?
6. Do you think we have missed any important objectives?
7. Do you agree with the identified options? What impacts would these options have on you?
8. Are there any other options you think the Government should have considered for solving the identified issues? Why or why not?
9. Do you agree that a new MPA Act and National MPA Strategy best address the issues we described in the previous section?

Section 3: Proposal for a new Marine Protected Areas Act

10. Is there anything missing from the proposed purpose? Do you support it?
11. What do you think of the proposed MPA definition? Do you think there is anything missing from the definition?
12. Do you think the Department of Conservation and Minister for Conservation are the most appropriate administrators of the MPA Act? Why or why not?
13. Do you think the proposed principles are appropriate for the Act? Why or why not? Are there any further principles we should consider, or any changes to the principles proposed?
14. Do you support applying the MPA Act to the territorial sea, exclusive economic zone and internal waters? Why or why not?
15. Do you support applying the MPA Act to the extended continental shelf? Why or why not?
16. Do you support the proposed approach for recognising te Tiriti o Waitangi/the Treaty of Waitangi and its principles? Why or why not?
17. Should the Government consider options for co-governance within a new MPA Act? What could effective co-governance arrangements look like?
18. Do you agree with the proposed MPA Act categories? Why or why not?
19. Do you support the flexible approach of the marine conservation area?
20. Do you have examples where a marine conservation area could meet specific objectives in your area?

21. Do you support the use of the marine conservation area tool to achieve customary biodiversity aspirations?
22. Do you agree with the concept of a protection standard and its functions? Why or why not? How do you think the current protection standard could be improved?
23. Have we considered all the appropriate concepts for the protection standard?
24. How do you think activities in MPAs should be managed?
25. Do you support the development of a National MPA Strategy? Why or why not?
26. Do you think the function of the National MPA Strategy should be narrow (only applies to the MPA Act) or broader (a consideration for decisions under other Acts)? Why?
27. Do you agree with the proposed process for developing and reviewing the National MPA Strategy? Why or why not?
28. What could an effective co-design approach look like for developing the Strategy?
29. What role do you think a Science and Mātauranga Māori Advisory Board should have?
30. Do you support the proposed process for establishing MPAs?
31. What roles do you think the Minister of Conservation and Minister of Oceans and Fisheries should have in decision-making?
32. What role should other Ministers with portfolio interests in the marine space have?
33. What could an effective co-governance decision-making framework look like?
34. Do you think the right decision-making criteria have been proposed? Why or why not?
35. What weighting do you think is right for considering impacts on existing rights and interests? Why?
36. Do you think the decision-making criteria would appropriately balance biodiversity objectives and the rights and interests in the marine environment? Why or Why not?
37. Do you support the establishment and proposed role of management groups? Why or why not?
38. What could an effective co-management approach look like?
39. What are your views on when and how co-management approaches should be used?
40. Do you support the proposed use of management plans? Why or why not?
41. Are there alternative options for statutory governance and planning that you think would be more effective?
42. What should be part of the national marine monitoring and reporting framework?
43. Do you agree with the proposed review processes for MPAs established under the MPA Act? Why or why not?
44. What do you think is important to consider in developing an enforcement and compliance framework?

Section 4: Relationship with other legislation

45. Do you support the proposed relationship between the MPA Act and other legislation? Why or why not?

46. How can the marine protection work of regional councils and central government be better aligned?

Section 5: Implementation

47. What do you think of the proposed implementation arrangements?

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7: Glossary

Te reo terms

Hapū: Kinship group, clan, tribe, subtribe.

Iwi: Extended kinship group, tribe, nation.

Kaimoana: Seafood, shellfish.

Kaitiaki: Guardian, trustee, minder.

Kaitiakitanga: A spiritual and environmental ethos that governs tangata whenua responsibilities for the care and protection of mauri, the dynamic life principle that underpins all heritage. Kaitiakitanga includes components of protection, guardianship, stewardship and customary use. It is exercised by tangata whenua in relation to ancestral lands, water, sites, resources and other taonga.

Kōhanga: Nest, nursery.

Mātaitai reserve: An area established through regulations under the Fisheries Act 1996 to recognise and provide for the special relationship between tangata whenua and a traditional fishing ground. Tangata whenua can propose bylaws to control fishing within mātaitai reserves, which need to be approved by the Minister of Fisheries. Mātaitai reserves allow customary and recreational fishing but don't allow commercial fishing unless authorised by a bylaw.

Mātauranga Māori: Māori knowledge; the body of knowledge originating from Māori ancestors, including the Māori world view and perspectives, Māori creativity, and cultural practices.

Mauri: Life principle, life force, vital essence.

Moana: Sea, ocean.

Rāhui: To put in place ritual prohibition, closed season, ban, reserve. Rahui are often, but not always temporary.

Rangatiratanga: Chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership, leadership of a social group, domain of the rangatira, noble birth, attributes of a chief.

Rohe moana: A coastal and marine area over which an iwi or a hapū exercises its mana and its kaitiakitanga.

Taiāpure: A management tool established under the Fisheries Act 1996 in an area that has customarily been of special significance to iwi or as a source of food or for spiritual or cultural reasons, to provide recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi. Taiāpure can only be established in estuarine or coastal waters. All types of fishing are allowed in a taiāpure unless its management committee recommends changes to the fishing rules and the Minister of Fisheries approves them.

Tapu: Be sacred, prohibited, restricted, set apart, forbidden, under atua (god) protection.

Tangata whenua: People of the land; the indigenous people of New Zealand. In relation to a particular area, it means the iwi or hapū that holds mana whenua over that area.

Tangaroa: Atua (god) of the sea and fish.

Te Ao Māori: The Māori world; a Māori perspective/worldview.

Taonga: Treasure, anything prized; applied to anything considered to be of value, including socially or culturally valuable objects, resources, phenomena, ideas and techniques

Wānanga: To meet and discuss, deliberate, consider.

Whakapapa: Genealogy, genealogical table, lineage, descent.

Whānau: Extended family, family group.

Whenua: Land.

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Technical terms

Biodiversity (biological diversity): The variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems.

Coastal marine area: As defined in the Resource Management Act 1991 where coastal marine area means the foreshore, seabed, and coastal water, and the air space above the water—

(a) of which the seaward boundary is the outer limits of the territorial sea:

(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—

- (i) 1 kilometre upstream from the mouth of the river; or
- (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

Continental shelf: The seabed and subsoil of the submarine area that extend beyond a state's territorial sea through the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles. New Zealand has more limited rights in this area - the exploitation of minerals, gas and other non-living resources within the seabed and subsoil as well as sedentary species on the seabed but excluding mobile fish.

Cumulative effects: Changes to the environment caused by the combined impact of past, present and future human activities and natural processes.

Customary fisheries: Traditional rights confirmed by the Treaty of Waitangi and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, including the non-commercial customary rights of tangata whenua in relation to traditional and customary practices – for example, traditional management of a fishery (mātaihai or taiāpure) and customary non-commercial food gathering. The commercial fishing rights of tangata whenua are also customary in nature.

Ecosystem: An interacting system of living and non-living parts such as sunlight, air, water, minerals and nutrients. Marine ecosystems can be small and relatively short-lived, for example, blooms of algae on intertidal reefs and some hydrothermal systems, or large and long-lived such as estuaries and kelp forests.

Ecosystem-based management (EBM): An interdisciplinary approach that balances ecological, social and governance principles at appropriate temporal and spatial scales in a distinct geographical area to achieve sustainable resource use. Scientific knowledge and effective monitoring are used to acknowledge the connections, integrity and biodiversity within an ecosystem along with its dynamic nature and associated uncertainties. EBM recognises coupled social-ecological systems with stakeholders involved in an integrated and adaptive management process where decisions reflect societal choice.¹⁹

Exclusive economic zone (EEZ): An area of sea beyond and adjacent to the territorial sea. The outer limit of the exclusive economic zone cannot exceed 200 nautical miles from the territorial sea baseline.

Fauna: All animal species present, especially in a particular country, region or time.

Fisheries: A general term that covers the fishers, vessels, and fishing gear involved in catching fish from a particular fish stock. It also refers to the fishing grounds and catch.

Flora: All plant species present, especially in a particular country, region or time.

¹⁹ Long, R. D., Charles, A., & Stephenson, R. L. (2015). Key principles of marine ecosystem-based management. *Marine Policy*, 57, 53-60.

Habitat: The area where a particular species lives – essentially, the natural environment that surrounds, influences, and is used by a species population.

Internal waters: Any areas of the sea that are on the landward side of the baseline of the territorial sea.

Intrinsic values: Those aspects of ecosystems and their constituent parts which have value in their own right, including—

(a) their biological and genetic diversity; and

(b) the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience.

Marine area: For the purposes of this document, Aotearoa New Zealand's marine area is defined as internal waters, territorial sea, exclusive economic zone and extended continental shelf.

Marine management system: The broad set of regulatory programs and instruments administered by a variety of government agencies that ensure the marine environment is adequately managed, used and protected.

Marine protection tools: The broad set of regulatory management tools and instruments that provide for protection or restoration of ecosystems, habitats and species in the marine environment by managing various pressures, including human activities. Marine protected areas are an area-based protection tool and a subset of the spectrum of marine protection tools available.

Management tools: Mechanisms that manage how people interact with the marine environment. This includes marine protection tools but also tools that focus on sustainable use. For example, the fisheries management system, regulation of pollution, and consenting and permitting of land-based activities that impact on the marine environment.

Natural character: As defined in Policy 13(2) of the New Zealand Coastal Policy Statement 2010, which recognises that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:

(a) natural elements, processes and patterns;

(b) biophysical, ecological, geological and geomorphological aspects;

(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;

(d) the natural movement of water and sediment;

(e) the natural darkness of the night sky;

(f) places or areas that are wild or scenic;

(g) a range of natural character from pristine to modified; and

(h) experiential attributes, including the sounds and smell of the sea; and their context or setting.

Sustainable management: The use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

Territorial sea: An area of water not exceeding 12 nautical miles in width which is measured seaward from the territorial sea baseline.

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Appendix 1

Key legislation relating to marine management

Biosecurity Act 1993

The Biosecurity Act provides regulation relating to the exclusion, eradication, and effective management of pests and unwanted organisms. It includes provisions relating to the import of risk goods, surveillance for and response to pest incursions (including establishing Government/industry agreement for readiness or response), enforcement and penalties, and pest management – including pest management plans and pathway management plans.

Conservation Act 1987

The Conservation Act underpins the governance, administration and management of New Zealand's conservation estate and sports fish and game resources. It establishes the Department of Conservation, the NZ Conservation Authority and conservation boards, the New Zealand Fish and Game Council, and regional fish and game councils. It governs the administration of other conservation legislation and provides for the management of the majority of public conservation land including stewardship land.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

The Exclusive Economic Zone and Continental Shelf Act aims to promote the sustainable management of natural resources in the exclusive economic zone (EEZ) and continental shelf. The Act also seeks to protect the EEZ and continental shelf from pollution by regulating discharges and dumping. It seeks to achieve these goals by allowing for the regulation of certain activities that were previously unregulated in the EEZ and continental shelf.

Fisheries Act 1996

The Fisheries Act provides for the utilisation of fisheries resources (conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being), while ensuring sustainability (maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations, and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment).

Māori Commercial Aquaculture Claims Settlement Act 2004

The Māori Commercial Aquaculture Claims Settlement Act provides for a full and final settlement of Māori commercial aquaculture claims since 21 September 1992. The Act delivers this settlement through providing settlement assets to Te Ohu Kaimoana Trustee Limited for distribution to Iwi Aquaculture Organisations.

Māori Fisheries Act 2004

The Māori Fisheries Act implements the agreements made in 1992 Fisheries Deed of Settlement and provides for the development of the collective and individual interests of iwi in fisheries, fishing, and fisheries-related activities in a manner that is ultimately for the benefit of all Māori. The Act established Te Ohu Kaimoana as a trustee to act as a representative organisation for mandated iwi organisations to advance the interests of Māori in fishing and fisheries-related activities and to advise on and allocate fisheries settlement assets to iwi.

Marine and Coastal Area (Takutai Moana) Act 2011

The Marine and Coastal Area (Takutai Moana) Act acknowledges the importance of the marine and coastal area to all New Zealanders and provides for the recognition of the customary rights of iwi, hapū

and whānau in the common marine and coastal area. Public access to the common marine and coastal area is guaranteed by the Act.

Marine Mammal Protection Act 1978

The Marine Mammals Protection Act regulates the protection and management of marine mammals in New Zealand and New Zealand fisheries waters, including the EEZ.

Marine Reserves Act 1971

The Marine Reserves Act provides for the setting up and management of areas of the sea and foreshore as marine reserves. Marine reserves are areas containing underwater scenery, natural features or marine life of such distinctive quality, or so typical, beautiful or unique, that their preservation for scientific study is in the national interest.

Maritime Transport Act 1994

The Maritime Transport Act regulates ship safety, maritime liability, and marine environmental protection. Maritime New Zealand is responsible for maritime safety and marine pollution prevention and response functions under the Act.

National Coastal Policy Statement 2010 (NZCPS)

The NZCPS guides local authorities in their day to day management of the coastal environment. The NZCPS is an instrument issued under section 52(2) of the Resource Management Act 1991. It is the only mandatory National Policy Statement and is prepared by the Minister of Conservation.

Resource Management Act 1991

The Resource Management Act 1991 (RMA) is New Zealand's primary legislation outlining how to manage the environment. The purpose of the Act is to promote the sustainable management of natural and physical resources. Under the Act, local authorities have responsibilities for managing activities on land, water, air and in the coastal marine area, many of which have an effect on biodiversity. The Act provides several mechanisms including national policy statements, national environmental standards, and national planning standards which are developed at a national level to provide direction to local authorities on how to achieve the purpose of the Act.

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

The Treaty of Waitangi (Fisheries Claims) Settlement Act puts in place the agreements made in the 1992 Fisheries Deed of Settlement. It settled all Māori claims to commercial fisheries under the Treaty of Waitangi and makes better provision for Māori non-commercial traditional and customary fishing rights and interests and Māori participation in the management and conservation of New Zealand's fisheries.

Wildlife Act 1953

The Wildlife Act applies throughout New Zealand, and all New Zealand fisheries waters including the EEZ, and is administered by the Department of Conservation. It regulates which animals are 'wildlife'; absolutely protects all wildlife except for those species listed in Schedules 1-5 (e.g. as partially protected or unprotected); and provides for the management of game birds. For marine species, the Wildlife Act currently only applies to and absolutely protects any marine reptiles, all but seven seabirds, and species listed in Schedule 7A (which currently lists eight fish and some corals). It does not apply to whales, dolphins, seals, and sea lions—these are managed under the Marine Mammals Protection Act.

Appendix 2

New Zealand's relevant international legal obligations

United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS provides the legal framework for all uses of the ocean. UNCLOS provides states with both rights and duties. Under UNCLOS, New Zealand has different rights and obligations in each maritime zone.

Territorial Sea

New Zealand has sovereignty over its territorial sea (Article 2). Foreign ships have the right to innocent passage in the territorial sea (Article 17) but New Zealand may adopt laws and regulations with regard to that innocent passage in respect of conservation of the living resources of the sea and the preservation of the environment of New Zealand and the prevention, reduction and control of pollution thereof (Article 21).

Exclusive Economic Zone (EEZ)

New Zealand has exclusive sovereign rights to the natural resources in its EEZ. Sovereign rights include exploring and exploiting natural resources, as well as conserving and managing them. New Zealand also has jurisdiction over the protection and preservation of the marine environment in the EEZ (Article 56), subject to Part XII which sets out specific provisions for the marine environment's protection and preservation. High seas freedoms are preserved by UNCLOS and apply in the EEZ (Article 58), including the freedom of navigation and overflight, and the freedom of laying submarine cables and pipelines.

Continental Shelf

New Zealand has exclusive sovereign rights over its continental shelf, including sedentary species (Article 77). Where the continental shelf extends beyond the outer limits of the EEZ (i.e. the extended continental shelf), New Zealand has no rights to resources in the water column.

Marine scientific research (MSR)

The freedom for foreign vessels to conduct MSR in other states' waters is enshrined in Part XIII of UNCLOS.

New Zealand has the exclusive right to regulate, authorise and conduct MSR in its territorial sea. Foreign MSR vessels can only conduct MSR in the territorial sea with New Zealand's express consent and they must abide by any conditions set by New Zealand. Therefore, New Zealand has wide discretion to decline MSR requests where activities conflict with domestic laws.

New Zealand has the right to regulate MSR in its EEZ and continental shelf (Article 246(1)), however it is constrained in how far it can do so. Coastal states shall, in normal circumstances, grant consent for MSR and to this end states can establish rules and procedures "ensuring that such consent will not be delayed or denied unreasonably". There are limited grounds under which consent can be withheld for MSR in the EEZ or continental shelf (Article 246(5)(a)-(d)). Consent can be withheld if the MSR project:

- Is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;
- Involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- Involves the construction, operation or use of artificial islands, installations and structures;

- Contains inaccurate information regarding the nature and objectives of the project or the researching State has outstanding obligations to the coastal State from a prior research project.

Foreign government owned or operated vessels undertaking marine scientific research for wholly government purposes in New Zealand's EEZ have sovereign immunity. New Zealand is unable to enforce domestic legislation against vessels enjoying sovereign immunity.

Convention on Biological Diversity (CBD)

The CBD covers biological diversity within national jurisdiction. Under the CBD, New Zealand has committed to a non-binding global goal of a representative network of protected areas and other effective area-based conservation measures comprising "10 percent of coastal and marine area" by 2020.

The Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986 (the Noumea Convention)

The Noumea Convention requires New Zealand to take actions to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat by, where appropriate, establishing protected areas (Article 14).