

Regulatory Impact Statement:
Overview of required information

Regulatory Impact Statement

Subantarctic Islands Marine Protected Areas:
Subantarctic Islands Marine Reserves Bill and
accompanying Fisheries Act measures.

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Conservation and the Ministry of Fisheries.

This RIS provides an analysis of options to create marine reserves in the territorial sea around three of New Zealand's subantarctic island groups. For two of these island groups it is proposed to prohibit Danish seining in the parts of their territorial seas that will not be covered by the proposed marine reserves.

The New Zealand Subantarctic Islands and their territorial seas have been internationally recognised for their outstanding conservation values by being awarded World Heritage status in 1998.

The marine reserves and prohibitions on Danish seining, combined with existing Fisheries Act prohibitions on bottom trawling and dredging under the Fisheries (Benthic Protection Areas) Regulations 2007, will provide for marine protected areas over the entire area of the territorial sea of the New Zealand Subantarctic Islands in accordance with the Marine Protected Areas policy.

The RIS is limited by several key information gaps, which are:

- Currently, DOC staff prepare a report and recommendations on marine reserve applications, but there is no reliable estimates of staff time or costs involved. This makes it difficult to compare with the proposed special legislation process;

- The RIS provides an accurate assessment of current use of the areas that are proposed to be marine reserves and areas where Danish seining is to be prohibited. There may be possible future uses that the existence of these marine protected areas may encourage and/or curtail. However, quantifying these would be speculative. Similarly, knowledge of the biodiversity values of the areas will improve over time.

DOC considers that Option 2 for implementing the marine reserve proposals – progressing marine reserves using special legislation – will be the most efficient and is likely to be the more timely of the two options. Both options are likely to have the following impacts on businesses:

- Change of spatial use patterns for commercial fishers of ling.
- Limitation on mineral-related activities. The policy intent is to maintain the current interface between the Marine Reserves Act 1971 and the Crown Minerals Act 1991 in relation to marine reserves, namely that prospecting, exploration, or mining in marine reserves be restricted to low impact activities.
- Benefits to nature based tourism from creation of these marine reserves.

The proposals do not override fundamental common law principles.

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Introduction: The Value of Biodiversity in New Zealand's Subantarctic Islands

This proposal seeks to implement a package of marine protected areas around three of New Zealand's subantarctic island groups. The New Zealand Subantarctic Islands – Antipodes Island Group, Bounty Islands, Campbell Island/Motu Ihupuku, and the Auckland Islands – and their territorial seas have been internationally recognised for their outstanding conservation values by being awarded World Heritage status in 1998.

The land area of each of the subantarctic islands is fully protected through having national reserve and nature reserve status under the Reserves Act 1977. The territorial sea around one of the island groups, the Auckland Islands, has been fully protected as a marine reserve under the Marine Reserves Act 1971 since 2003. The current proposal represents the first comprehensive opportunity to address New Zealand's World Heritage obligations in respect of the territorial seas of the other three subantarctic island groups.

The four subantarctic island groups are situated between approximately 500 and 750 km from the South Island and are separated from one another by large distances. As a result of this separation, each of the island groups is highly distinct biologically, geologically and geographically. For example, while Antipodes Island rocky reefs support subantarctic shallow subtidal marine communities dominated by encrusting coralline algae, the rocky reefs at the Bounty Islands are dominated by filter and suspension-feeding invertebrates, such as encrusting sponges, barnacles and mussels. Each island group also supports its own suite of threatened and/or endemic species, living or breeding only on and around these remote islands. The subantarctic islands and their territorial seas have been subject to minimal human impact and are therefore near-pristine ecosystems.

Status quo and problem definition

- The Subantarctic Islands and their territorial seas were awarded World Heritage status in 1998. The land areas of all the Subantarctic Islands are fully protected through having national reserve and nature reserve status under the Reserves Act 1977. In 1993, the land and territorial sea of the Auckland Islands were protected as a marine

mammal sanctuary under the Marine Mammals Protection Act 1978. The Auckland Islands territorial sea became fully protected in 2003 by the establishment of a marine reserve under the Marine Reserves Act 1971. In addition, bottom trawling and dredging have been prohibited in the territorial seas of the Antipodes Island Group, the Bounty Islands and Campbell Island/Motu Ihupuku since 2007 through their designation as Benthic Protection Areas (BPAs) under the Fisheries (Benthic Protection Areas) Regulations 2007.

- The Proposed Regional Coastal Plan: Kermadec and Subantarctic Islands (a statutory plan required under s.31A of the Resource Management Act), was publicly notified on 15 January 2011. The plan includes regional rules that have legal effect from the date of public notification, and that apply to the outer limits of the Territorial Sea.
- The Marine Protected Areas Policy (MPA Policy) was jointly developed by the Department of Conservation and Ministry of Fisheries and was released in January 2006. It provides a framework to protect marine biodiversity by establishing a network of marine protected areas (MPAs).
- Implementation of the MPA Policy in the coastal marine environment is being carried out at a regional level through collaborative stakeholder fora. In 2008, the Subantarctic Marine Protection Planning Forum (the Forum) was appointed by the then Ministers of Conservation and Fisheries and tasked with developing recommendations for MPAs in the territorial seas around the Antipodes Island Group, Bounty Islands and Campbell Island/Motu Ihupuku.
- The Forum gathered and considered information on the values and uses of the region's marine environment before developing options for MPAs. Preliminary options were released by the Forum for public comment. The forum carried out a non-statutory consultation process commencing in June 2009 with the release of a consultation document which provided eight weeks for public comment. Sixty-five submissions were received from a wide range of stakeholders and members of the public. Forum members were unable to reach consensus on proposals and therefore made their recommendations to Ministers in the form of two options for each island group.
- On Monday 6 December 2010 the Minister of Conservation and the Minister of Fisheries and Aquaculture met and agreed on preferred marine protection for each of the island groups. Implementation was to proceed under relevant statutory or legislative processes.

- In order to establish the preferred marine reserves options, applications for marine reserves could be progressed under the Marine Reserves Act 1971. Alternatively, the marine reserves could be created through a special Act of Parliament and deemed to be marine reserves under the Marine Reserves Act 1971.
- The prohibitions on Danish seining could best be implemented by regulations under the Fisheries Act 1996. Subject to Cabinet approval these provisions can be completed in a timely fashion and will be ready to come into force when the marine reserves are established. Using Fisheries regulations is favoured as it maintains consistency with existing fishing method restrictions on dredging and trawling that are in place around the Subantarctic Islands and they can be implemented in a timely and efficient manner.

Summary of Problems with the Status Quo

- As a party to the World Heritage Convention, New Zealand has accepted an obligation to meet the responsibilities associated with World Heritage site listing. This in effect acknowledges that the natural sites (islands and sea) are of a quality that is of global significance which it undertakes to protect and conserve on behalf of the world community. Protection of the territorial seas around the Antipodes Island Group, Bounty Islands and Campbell Island/Motu Ihupuku is inadequate given their World Heritage status.
- The Forum presented recommendations for protection in January 2010 and there is an expectation amongst forum members and the public that these will be acted on.

Objectives

- The objectives for this exercise are to:
 - Meet New Zealand's World Heritage obligations within the territorial seas of the Subantarctic Islands for ensuring the protection and conservation, of the world heritage area including the obligation to take such measures as are appropriate under New Zealand law to protect and conserve natural heritage.
 - Implement preferred options for marine protection for New Zealand's Subantarctic Islands arising from a stakeholder run planning process.
 - Create marine protected areas around the entire territorial sea of the Antipodes Island Group, Bounty Islands and Campbell Island/Motu Ihupuku by:

- creating three new marine reserves of varying sizes around the Antipodes Island Group, Bounty Islands and Campbell Island/Motu Ihupuku.
- prohibiting Danish seining in those parts of the Bounty Islands and Campbell Island/Motu Ihupuku territorial seas not covered by the proposed marine reserves.
- Achieve the desired outcome in a timely and efficient manner.

Regulatory impact analysis for marine reserve proposals

OPTION 1: Progressing Marine Reserves Applications under the Marine Reserves Act

The Director-General of Conservation could develop marine reserve applications for each of the preferred marine reserve options under the Marine Reserves Act 1971.

The marine reserve applications would be progressed using the process set out in the Marine Reserves Act 1971.

Key regulatory impacts of Option 1

Most of the costs and benefits of option 1 are the same as for option 2. These are as follows.

Commercial Fishing

Antipodes Island Group – There was no recorded fishing activity within the territorial sea between 1 October 2003 and 30 September 2007. However, in the 2008/09 year a small amount of long-lining occurred in the territorial sea that targeted Patagonian toothfish.

Bounty Islands – Fishing around the Bounty Islands entails bottom long-lining that targets ling. The average catch over the period 1998-2008 is 129 tonnes from the territorial sea and 282 tonnes from within 20 nautical miles of the Bounty Islands. This equates to \$506,970 and \$1.11 million respectively. Fishing effort in recent years for this species around the Bounty Islands has declined.

The proposal is that ling fishing will be able to continue in the western side and the southeast corner of the territorial sea around the islands, Danish seining will be prohibited, and existing prohibitions on bottom trawling and dredging will remain. The remaining 58 percent (approximately) of the territorial sea around the islands will be protected in a marine reserve. This

proposal will provide for the existing long-line fishery for ling to continue in the area where the majority of fishing occurs.

Campbell Island/Motu Ihupuku – There was no recorded fishing activity between 1 October 2003 and 30 September 2007 around Campbell Island/Motu Ihupuku.

The proposal is for a marine reserve covering 39 percent of the territorial sea around the island. The remainder of the territorial sea around the island is to be a marine protected area established under the Fisheries Act. This option will allow for experimental fishing of deepwater crabs.

Five years after the date of establishment of the marine reserve around Campbell Island/Motu Ihupuku, the Department of Conservation will commission an independent review on the size of the marine reserve. The review will focus on information including the value of the Campbell Island/Motu Ihupuku territorial sea to the deepwater crab fishery and the fishery's impact on the marine environment. Following the review, the Minister of Conservation and the Minister of Fisheries and Aquaculture will determine whether or not to increase the size of the marine reserve around Campbell Island/Motu Ihupuku.

Recreational Fishing

There is no recreational fishing in the Subantarctic Islands.

Customary Interest

There is no customary fishing in the Subantarctic Islands. Ngāi Tahu, the iwi with tangata whenua status over the islands and their surrounding seas, submitted that it was comfortable with all options proposed, but held a preference for full marine reserves around each of the islands.

Petroleum Mining

The Petroleum Exploration and Production Association of New Zealand submitted that it had little interest in the area, any impact was therefore likely to be small, and their interests in the areas lay well outside the territorial sea in the Great South Basin.

Petroleum extraction from a field below the seabed, by a rig outside a marine reserve, would not require authorisation by the Minister of Conservation if it

did not damage the seabed and benthic marine life. Entry into a marine reserve to prospect or explore for petroleum would require authorisation by the Minister which, under current policy, would be limited to minimum impact activities.

There is no existing petroleum exploration or extraction in any of the areas proposed as marine reserves.

Minerals

There is currently no mining activity within the territorial seas of the Subantarctic Islands.

The policy intent is to maintain the current interface between the Marine Reserves Act 1971 and the Crown Minerals Act 1991 in relation to marine reserves, namely that prospecting, exploration or mining in marine reserves be restricted to minimum impact activities.

Similar to the processes for authorising mining on public conservation land, persons holding permits obtained under the Crown Minerals Act 1991 to mine in an area which included a marine reserve would need to obtain the consent of the Minister of Conservation before they could gain access for mining. The Minister of Conservation could only grant minerals access if satisfied that the proposed mining activity was:

1. in accordance with the provisions of the Marine Reserves Act 1971, and
2. in accordance with section 61(1A) of the Crown Minerals Act 1991 if the marine reserve is listed on Schedule 4 of the Crown Minerals Act (marine reserves are not automatically included on Schedule 4).

The government has indicated that the Crown Minerals Act will be amended to automatically add high value conservation areas (such as marine reserves) to Schedule 4 of that Act when they are established. In practice, this would be a fairly stringent test, and would require that the mining did not damage the environment within a reserve, and did not alter the marine environment from its natural state. There are, however, potential situations in which mining activities could meet this test – for example, if directional drilling from outside the reserve itself were used.

Tourism

Tourism operators currently make expeditions to the Subantarctic Islands and there has been a significant increase in the number of visitors in recent years. Visitor numbers range between 800 and 1,100 visitors in each of the last two seasons. Tourism to the Subantarctic Islands is a multi-million dollar industry. Trips to all New Zealand Subantarctic Islands and Australia's Macquarie Island cost from \$8,500 to \$29,800 plus government landing fees of up to \$800 per person. Other cruises also visit these islands as part of larger itineraries which may include other parts of southern New Zealand, Tasmania and Antarctica. Marketing of these tours emphasises the World Heritage status of these islands and seas.

The Tourism Industry Association supports full marine reserves for each island group, stating that marine reserve protection would complement that existing for land in the region. In its view, this would enhance the attraction of this destination.

Science

As some of the least modified environments remaining in New Zealand, protection of these islands and their full territorial seas using marine protected areas will provide benefits to scientific study by providing the opportunity to study undisturbed, natural ecosystem dynamics and the exploration of areas containing species as yet undiscovered, unnamed and with potentially high scientific and commercial value. Areas protected from extractive human activities will serve as useful "control" sites for scientific studies such as ecosystem functioning, by reducing the influence of potentially confounding or interacting factors.

Costs and Benefits exclusive to option 1

In the past, the implementation process for marine reserves has been protracted due to a lack of statutory timeframes for processing under the Marine Reserves Act 1971. The total time taken from the first proposal of a site to final establishment of a marine reserve ranges from one to 21 years. The average time taken for this process is 12 years. With prioritisation of the work programme by both the Department and the Ministry of Fisheries and commitment to short timeframes, it is possible the process could be completed in 12 months.

The main cost for government relating to establishment of marine reserves is the time of salaried staff. A rough estimate can be gained from the examples

of two marine reserves established in Taranaki. Staff time was concentrated mostly in the first year of the process, and in these cases, amounted to an estimated average of 0.6 FTEs over the period of a year.

OPTION 2: Progressing Marine Reserves using Special Legislation

The marine reserve proposals could be progressed under an Act of Parliament that establishes marine reserves in the territorial seas of each of three subantarctic island groups. This represents the Ministers' preferred option for progressing the three new marine reserves for the Subantarctic Islands. A similar approach was taken when implementing multiple marine reserves and fisheries measures in Fiordland using the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

Key regulatory impacts of Option 2

Option 2 has the following key impacts in addition to those identified for Option 1:

Costs will be incurred in developing legislation – including drafting the legislation and costs associated with the parliamentary processes, including Select Committee, necessary for developing a Bill.

Option 2 has the following key benefits in addition to those identified for option 1.

The Marine Reserves Act 1971 is designed to process single marine reserve applications. The use of special legislation to implement the proposals enables the package of marine reserves to be considered as a whole. This reduces the chance of fragmented marine protection mechanisms being implemented and is more likely to achieve the protection objectives for the islands. It also reduces the risk of unravelling the marine protection options that the stakeholder MPA forum put forward following public consultations, some of which were agreed as a package by the Minister of Conservation and the Minister of Fisheries and Aquaculture.

The Ministry of Fisheries and Aquaculture proposes implementing prohibitions on Danish seining through regulations under the Fisheries Act 1996. This can be done reasonably quickly, subject to Cabinet approval. It would be useful if the other part of the package (marine reserves) could also be progressed in a timely fashion. Given the tight timeframes imposed around the work of the Forum, such timely implementation of the package of marine protection would accord with the Forum's expectations for progress of their work.

Implementation through special legislation is likely to be more efficient and less costly than processing individual applications under the Marine Reserves Act 1971. The process under the Marine Reserves Act is lengthy, requiring development of an application document, formal notification, public consultation, reporting and assessment processes by officials followed by Ministerial decision. If the Minister of Conservation decides not to uphold objections, a concurrence process with the Ministers of Fisheries and Transport is required.

The Forum consisted of representatives from key stakeholder groups and was supported by officials from the Department of Conservation and Ministry of Fisheries throughout the process. The Forum conducted pre-statutory consultation with the wider public and ultimately decisions were made jointly by the Minister of Conservation and Minister of Fisheries and Aquaculture. The use of the Marine Reserves Act 1971 duplicates this process by requiring further public consultation on each proposal as well as a concurrence process with both the Minister of Fisheries and Aquaculture and the Minister of Transport. It has been common in applications over the past ten years for the Ministry of Fisheries to choose to conduct another round of consultation to assist the Minister of Fisheries in his concurrence role. This is time consuming and inefficient, and carries risk at each stage. It may be unlikely in this instance because of the collaborative process undertaken by the Forum.

In addition to the pre-statutory consultation by the Forum, the Select Committee process for special legislation in the House would provide an opportunity for public submissions.

The time required to create marine reserves under special legislation may be much less than the time taken to pursue them under the Marine Reserves Act 1971. However, the former is dependent on the legislative priority the special legislation is afforded by the Government. As an example, the Fiordland (Te Moana o Atawhenua) Marine Management Bill which created eight new marine reserves took two months to develop and another 4.5 months from introduction to Royal Assent. A preliminary timeline for implementation through special legislation indicates an enactment date in October 2011.

Conclusions and recommendations

Creation of the marine reserves by application (under the Marine Reserves Act 1971) or under special legislation will impose the same costs on business. They will also provide the same benefits to nature tourism, science and our international reputation.

The Department of Conservation considers that Option 2 (special legislation) will be more timely and efficient than using the Marine Reserves Act 1971 process.

Regulatory impact analysis for the Fisheries Act restrictions on Danish seining

The proposed Fisheries Act restrictions on Danish seining and marine reserves are a package of marine protected areas formulated to provide a high level of biodiversity protection and allow for some existing and potential fishing to occur.

The Danish seining restrictions (complemented by the existing restrictions on bottom trawling and dredging) will provide a significant level of biodiversity protection.

The impact of the proposed restrictions on the fishing industry is not substantial. The proposals have been designed to allow the existing ling fishery around the Bounty Islands to continue. In addition, the proposal allows for the potential development of a crab fishery in the part of the Campbell Island/Motu Ihupuku territorial sea not covered by the marine reserve. A review is then proposed in five years time as discussed above. No Danish seining has occurred in the areas covered by the Danish seining proposals in the last 10 years. There is no impact on customary or recreational fishing. Two options were considered for giving effect to the Danish seining restrictions proposal:

Option 1: Implementation of Danish seining restrictions through Fisheries Act regulations

Option 2: Implementation of Danish seining restrictions into Special Legislation.

OPTION 1: Implementation of Danish seining restrictions through Fisheries Act regulations

The current Fisheries Act regulations contain provisions for the protection of areas. The addition of restrictions on Danish seining would enhance these existing area protection measures in an administratively efficient and effective manner. This addition would maintain consistency with existing methods restrictions that are currently in existence in the Territorial Sea around the sub-Antarctic islands.

The inclusion of the Danish seining restrictions in the Fisheries Act regulation would provide a greater degree of future flexibility and responsiveness, for instance, the adjustment of the penalty regime.

The ability to consider the protection of the subantarctic biogeographic region as a whole package is achieved through the inclusion of the restrictions on Danish seining in the Fisheries Act regulations. This reduces the chance of a fragmented approach to mechanisms being implemented.

OPTION 2: Incorporation of Danish seining restrictions into Special Legislation

Special legislation would achieve the restrictions sought for Danish seining, however, this would fragment the current and proposed protection around the Subantarctic Islands as some method restrictions would also exist in the Fisheries Act regulations.

The inclusion of the restrictions on Danish seining in special legislation would place the proposed marine reserves and the restrictions in one legislative instrument. However, this would not be as efficient or responsive to future concerns given the processes and costs required to implement change, for instance, the adjustment of the penalty regime.

Conclusion

The Minister of Fisheries and Aquaculture considered all of the above and determined that the advantages of using the Fisheries Act regulations outweighed the use of special legislation.

Consultation

The Subantarctic Marine Protection Planning process was led by a stakeholder forum which also carried out a non-statutory wider public consultation process over an eight week period commencing in June 2009. This consultation gave all of the key stakeholders a full opportunity to provide information and state their views and objections to the full range of options provided.

The table below summarises departmental feedback on the RIS and how any concerns were addressed.

Agency	Key concerns	How concerns
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		addressed
Ministry of Economic Development	Information regarding access to mine minerals in marine reserves is misleading as reserves are likely to be added to Schedule 4 of the Crown Minerals Act.	Amended mining section of the RIS to recognise likely inclusion of the marine reserves on Schedule 4 of the Crown Minerals Act.

Implementation

- The Subantarctic Islands Marine Reserves Bill will establish the areas as marine reserves deemed to be marine reserves under the Marine Reserves Act 1971.
- The marine reserves will be administered by the Department of Conservation.
- Survey plans of the marine reserve boundaries will be drawn digitally and lodged with Land Information New Zealand's survey office and will be displayed on nautical charts.
- Boundary markers will not be required.
- Minimal signage may be erected at Campbell Island/Motu Ihupuku as the only one of the three island groups on which landing is permitted.
- The review of the extent of the marine reserve at Campbell Island/Motu Ihupuku five years from the establishment date will be led by the Department of Conservation in consultation with the Ministry of Fisheries.
- It is recommended that Fisheries Act prohibitions on Danish seining be implemented for those parts of the territorial seas of the Campbell Island/Motu Ihupuku and Bounty Islands not covered by the marine reserve proposals.
- The prohibitions on Danish seining for those parts of the territorial seas of the Campbell and Bounty islands not covered by the marine reserve proposals will be implemented through regulations under the Fisheries Act 1996 and will come into force at the same time the marine reserves are established.
- Contravention of these fisheries regulations will incur a maximum penalty of \$100,000 and forfeiture provisions apply. This level of penalty is consistent with existing penalties for trawling or dredging under the Fisheries (Benthic Protection) Areas Regulations 2007 which are already in place in the area proposed for the Danish seining restrictions.

- Management and monitoring of the marine reserves will align with the programme for the existing Auckland Islands (Motu Maha) Marine Reserve.
- Compliance monitoring of the reserves will be included as part of the existing multi-agency patrols conducted by the New Zealand Defence Force and analysis of commercial fishing vessel information from statutory returns and satellite vessel monitoring by the Ministry of Fisheries. As the islands are uninhabited and are rarely visited by recreational vessels, compliance effort is expected to be minimal.
- Similarly, the primary means of monitoring compliance with the proposed new fisheries regulations to restrict fishing methods in the subantarctic area will be via the existing multi-agency patrols conducted by the New Zealand Defence Force.
- Given enforcement of all the new restrictions will be incorporated into existing processes and managed according to assessed risks, additional costs will not be incurred. However where available resources are targeted may change depending on overall priorities.

Monitoring, evaluation and review

- DOC undertakes regular monitoring of fish numbers, species richness, habitat and other key ecological indicators in most of New Zealand's marine reserves, and the results are publicly reported on the Department's website. This monitoring data helps DOC to assess the results and effectiveness of the marine reserves regime.
- In addition, DOC undertakes periodic monitoring and review of its marine protection policy and progress of the New Zealand Biodiversity Strategy. In order to meet the government's expectations outlined in the Government Statement on Regulation, DOC undertakes ongoing regulatory scans in order to identify the regulatory costs and impacts of all its regulation and assess whether any of these impacts are unnecessary or unreasonable.