A New Marine Protected Areas Act

Submission to the Minister of Conservation, the Minister for the Environment, and the Minister for Primary Industries

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Contents

Introduction

I welcome the opportunity to make a submission on the Government's proposed new policy on marine protection.

New Zealand is a steward for a vast area of ocean. Our oceans are some of the most diverse in the world. Like our national parks, our oceans are valued not just for their biodiversity, but also for cultural heritage, recreation and tourism.

The current Marine Reserves Act was enacted in 1971, and has the sole, and very limited, purpose of protecting the marine environment for scientific study. Clearly, this has been out-dated for a long time. It is critical that real progress is made.

One aspect of successful conservation that is sometimes overlooked is public enjoyment of nature. The more people appreciate the natural world, the more inclined they will be to support conservation initiatives. Those who enjoy our national parks and other conservation land include trampers, kayakers, hunters and those who drive through or simply sit and look at our stunning landscapes.

Similarly, fishing, diving, snorkelling, boating, and whalewatching are some ways in which people can appreciate marine conservation.

Such activities provide economic opportunities in tourism.[1] The ocean is also rich in food, mineral and energy resources that make significant contributions to New Zealand's economy. At times marine protection initiatives will require careful consideration of trade-offs.

Crucially, the sea is integral to Māoritanga. The rights to gather kaimoana and to earn a living from the sea through fishing are recognised in the Māori fisheries settlements. It is critical that marine protection legislation also recognises and protects these rights.

Developing policy in this area is challenging and it is important to make progress, so I am encouraged by this discussion paper. The planned creation of the Kermadec Ocean Sanctuary is also good news.

Both in New Zealand and overseas, progress has been made by bringing stakeholders around the table. This includes iwi, recreational users, and those with commercial interests in our oceans.

The discussion paper proposal, while not perfect, is a significant move forward. We must not lose this opportunity to protect our 'big blue backyard'.

There are four sections in this submission:

- The purpose of the proposed Marine Protected Areas Act
- Creating a representative and integrated network
- Recreational fishing parks
- The Exclusive Economic Zone

The purpose of the proposed Marine Protected Areas Act

The purpose of any law is critical because it guides everything that follows. What is the envisaged purpose of the proposed Act?

This is most clearly stated in section 3.1 of the discussion document, which outlines six objectives. These cover important aspects of marine protection legislation, but the purpose of the proposed Act should be focussed on the desired outcomes.

The primary outcome must be to protect marine biodiversity. However, our oceans are also important for other reasons – the ways in which they contribute to our economy and lifestyle. Central to Māori is the concept of kaitiakitanga – guardianship of the environment.

Sometimes there may be win-wins. But where tradeoffs are needed this should be done openly with reasoning made explicit.

I recommend that the primary purpose of the proposed Marine Protected Areas Act be protection of the marine environment.

Creating a representative and integrated network

The process for creating an MPA laid out in the discussion paper begins with someone proposing an MPA. As such, it does not differ from the current process, and relies on the enthusiasm and drive of individuals and community groups, valuable though this is. It follows that there is no guarantee that a representative and integrated network of MPAs would be created.

To create such a network requires a strategy. Representation of different ecological habitats will not happen through *ad hoc* initiatives. Nor will different kinds of MPAs link to each other to form an integrated whole without coordinated planning.

In the discussion document on p.11, the need for planning is acknowledged in the statement:

"A well designed and managed MPA network will provide a greater contribution to a healthy marine environment than a collection of individually identified MPAs."

To achieve this, there needs to be a clear legislative requirement for a strategy outlining how a representative and integrated network will be achieved. Such a strategy could be prepared collaboratively but should be underpinned by scientific data and understanding.

A strategy should include principles for designing a representative and integrated network.[2] It should also include processes and timeframes, both for identifying protected areas and for restricting what can be done in these areas.

The strategy should also ensure that the provisions of other legislation – such as the Fisheries Act 1996 – are considered and integrated into the process.

One early part of designing a network should be an extensive mapping exercise. Information on biogeographic regions, ocean depths and underlying geology, along with what is known about the location of different ecological habitats can be used to prepare GIS maps.[3] These can then be overlaid with other maps – one showing existing protected areas, and others showing concentrations of commercially valuable fish species, and areas where there is oil and gas or mineral potential.[4] It may well be found that in many cases there is little or no conflict.

An important aspect of designing a network of marine protected areas is the involvement of local iwi and the integration of customary reserves. While the ability to create mātaitai and taiapure reserves is to remain in the Fisheries Act, it is important that they be considered together with other types of protected areas.[5]

I recommend that the proposed Marine Protected Areas Act require officials to prepare a strategy for creating a representative and integrated network in collaboration with stakeholders.

Recreational fishing parks

Recreational fishing parks are about catching fish, not about protecting the marine environment. The sustainability of different fish species is managed under the Fisheries Act 1996. Thus, it may seem odd to provide for the creation of recreational fishing parks in the new Act, rather than doing it under the Fisheries Act.

However, an important part of protecting the marine environment is for people to enjoy it. On land, there are recreation reserves such as Molesworth in Marlborough. One main way in which people enjoy the sea is going out in a boat and catching fish with varying success.

Some may be concerned about the difficulty of preventing overfishing – it is easier to 'police' a few commercial operators than many recreational fishers. But the difficulty of 'policing' many recreational fishers is not a new problem. Recreational fishing parks will need to be managed to ensure sustainability of the fishery. The population of Auckland is rapidly increasing and tens of thousands of boats already fish in the Hauraki Gulf. If it is made into a recreational fishing park, action will almost certainly need to be taken at times to ensure there are fish to catch in the future – bag limits may need to be reduced and/or size restrictions tightened.

The discussion paper envisages an advisory body for each recreational fishing park. I hope that the sense of ownership that would come with a recreational fishing park will lead to a greater sense of responsibility among recreational fishers.

My bigger concern is the intent to create the Hauraki Gulf and Marlborough Sounds recreational fishing parks under the proposed law without going through the process that would be established in that law. Recreational fishing parks are more likely to be successful and to integrate better with other marine protected areas if designed in a collaborative way, rather than by the stroke of a pen in an Act.

Both proposed fishing parks cover large areas. At a minimum, consideration should be given to establishing some 'no take' marine reserves and customary reserves in these areas. More work is needed to integrate the two proposed parks with other marine protection initiatives, in particular with the Hauraki Gulf Marine Spatial Plan.

I recommend that the establishment of the two proposed recreational fishing parks be considered as part of a wider network of marine protected areas in the Hauraki Gulf and the Marlborough Sounds.

The Exclusive Economic Zone (EEZ)

It is proposed that the new Act be restricted to the territorial sea, that is to say the sea within 12 nautical miles of the coast. But New Zealand has both rights and responsibilities under the Law of the Sea to an area of sea that is far larger – the Exclusive Economic Zone.[6]

The Law of the Sea states:

"States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment."

The right to exploit resources (and profit from royalties) in the EEZ has thus been granted ***conditional*** on environmental protection. A key part of protecting and preserving the marine environment is to designate some areas as marine protected areas.

However, putting marine protected areas into the EEZ under the proposed new Act is ruled out in the discussion document. Instead it is proposed that each MPA that is to be created in the EEZ must have its own enabling legislation. This is the process being followed for the proposed Kermadec Ocean Sanctuary, because it lies within the EEZ.

But enacting one-at-a-time *ad hoc* legislation is not the way to ensure the development of a representative integrated network of MPAs.

The reason for limiting the coverage of the proposed new Act to the territorial sea is given on p.16 of the discussion document as a lack of information.

"As our knowledge of the marine environment in New Zealand's Exclusive Economic Zone and continental shelf increases over time, there may be a case for extending the proposed categories of protection to these areas."

In addition, the Minister for the Environment has referred to legal issues that limit New Zealand's control over the EEZ. For example, deep sea cables and some shipping activities cannot be prohibited in the EEZ.[7]

However, other countries have passed marine protection legislation providing for the establishment of marine reserves within their Exclusive Economic Zones, as well as within their territorial waters.

Neither lack of information nor legal issues should be show-stoppers to ultimately including the EEZ within the new law. Work must be done to clarify their nature, and a 'can-do' attitude taken to overcome them.

I recommend that Ministers require officials to investigate the barriers preventing the inclusion of the EEZ in this Act, and produce a discussion document proposing ways for overcoming them.

Notes

1. It is estimated that 11,000 New Zealanders visit Poor Knights Marine Reserve each year, as compared to about 5,000 New Zealanders who walk the Milford Track. Data from DOC 2014 surveys of visitor numbers. About 375,000 people visit the Goat Island Marine Reserve each year.

2. A review of the literature on design principles for marine protection has been done by the United Nations Environment Programme (UNEP), and 'boiled down' into four key principles: Adequacy, Representivity, Resilience, and Connectivity. UNEP/WCMC, 2008, *"National and regional networks of marine protected areas: A review of progress"*, pp.25-30. Policy on protected marine areas was developed ten years ago in New Zealand. It contains six 'design' principles and 10 'planning' principles. See Department of Conservation and Ministry of Fisheries, 2005, *"Marine protected areas: Policy and implementation plan"*. In designing its network, the United Kingdom has used seven principles. See Joint Nature Conservation Committee and Natural England, 2010, *"Marine conservation zone project: Ecological network guidance"*, pp.3-4.

3. The Ministry for the Environment has developed a marine environmental classification system for environmental reporting purposes. This system maps out different habitats and environments in the territorial sea and EEZ, and could form the basis of the proposed mapping exercise.

4. This should not be taken as my advocacy for drilling for oil and gas in the sea or extracting minerals from the seabed, but rather as an acknowledgement of the *realpolitik* of the situation.

5. Mātaitai and taiapure are customary management areas. Mātaitai reserves can be established over the traditional fishing grounds of tangata whenua and are managed by tangata kaitiaki. Mātaitai reserves do not exclude recreational fishing, but will generally exclude commercial fishing. Taiapure are areas that have special customary significance to iwi or hapu and are managed by a tangata whenua committee. Both commercial and recreational fishing are allowed in taiapure.

6. The area of the EEZ is about 25 times as large as the territorial sea. Beyond the EEZ, New Zealand also has some rights and responsibilities for the Extended Continental Shelf (ECS).

7. Question for Oral Answer: Exclusive Economic Zone – Marine Reserves, 1 March 2016.