

# Departmental Memo



Department of  
Conservation  
*Te Papa Atawhai*

## In Confidence

DOCCM: 6087347

**Date:** 18 December 2019  
**To:** Lou Sanson, Director General  
**From:** Marie Long, Director Planning, Permissions and Land  
**Subject:** **Southeast Marine Protection Process: Notification of applications for six proposed marine reserves**

### Purpose – Te Pūtake

1. The purpose of this memorandum is to consult you and seek your approval on the impending public notification process for the Southeast Marine Protection (SEMP) Network – in particular the applications by you as Director-General for six proposed marine reserves that the Department of Conservation (DOC) would be responsible for under the Marine Reserves Act 1971 (MRA).

### Summary – Tuhinga Whakarāpopoto

2. Under Section 5(1)(a)(v) of the Marine Reserves Act 1971 (MRA), the Director-General can make an application for marine reserves. Section 5(1)(b) of the MRA requires that you must be consulted before the publication of the intention to apply for Orders in Council declaring the marine reserves, even when you are the applicant. Your agreement in principle will allow us to commence public consultation on the proposed Southeast Marine Protected Area (SEMPA) Network.
3. DOC considers the six proposed areas to be declared marine reserves meet the criteria under section 3(1) of the MRA -the areas contain "underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique that their continued preservation is in the national interest". The reasons for this are identified in the Applications.
4. The applications for six marine reserves are an annexure to the joint consultation document that has been prepared by DOC with Fisheries New Zealand (FNZ) (reference DOC CM 6145792).

### Background and context – Te Horopaki

5. On 11 May 2019, the Minister of Conservation and the Minister of Fisheries (the Ministers) jointly announced their intention to proceed with one of the two recommended marine protection network options (Network 1) put forward by the South-East Marine Protection Forum (the Forum).
6. Network 1 comprises six marine reserves (Type 1 marine protected areas), five Type 2 marine protected areas and commercial kelp harvesting restrictions.
7. The Ministers instructed DOC and FNZ (the Agencies) to progress the Network 1 MPA proposals using the MRA and the Fisheries Act 1996.

8. DOC is responsible for progressing the six marine reserves under the MRA and FNZ is responsible for progressing the five Type 2 MPAs and commercial kelp harvesting via regulations under the Fisheries Act.

***The joint consultation document and six marine reserve applications***

9. In accordance with Ministerial instructions, the agencies have developed a joint consultation document that allows for public consultation on the whole proposed SEMPA network (Network 1).
10. The consultation document has required a bespoke Regulatory Impact Analysis (RIA) and agencies have established a joint MPI-DOC Quality Assurance Panel to verify this requirement is met.
11. RIA are undertaken for policy work involving regulatory options or proposals that may result in a paper being submitted to Cabinet, and this requirement also applies to discussion and public consultation documents, before they are released.
12. The RIA Quality Assurance Panel process ensured we provide for effective consultation and minimise legal risk. The joint panel was established and has provided assessment and review of the consultation document with their final approval being provided on 16 December 2019.
13. Any further amendments proposed to the consultation document will require re-assessment by RIA Quality Assurance panel and resulting in delays to the proposed public notification date.
14. The joint consultation document is available here [DOC-6163141](#).
15. The six marine reserve applications are **attached**. They will form a single annexure to the joint consultation document and can be accessed here [DOC-6145794](#).
16. The proposed newspaper advertisement for public notification is **included in Annex 1** and can be accessed here [DOC-6070692](#).

**Risk assessment – Nga Whakatūpato**

17. DOC's position is that the Applications meet the marine reserve eligibility criteria in s5 of the MRA. However, there is risk in relation to the Crown's obligations under the Treaty of Waitangi and Treaty of Waitangi (Fisheries Claims) Settlement Act (the Treaty Settlement Act).
18. Through our recent and ongoing engagement with our Treaty Partner, Kāi Tahu, we have been clearly informed that they will oppose the MPA network (and likely take legal action against the Crown) unless the following matters are sufficiently addressed:
- 'rebalancing' of impacts on Kāi Tahu rights and interests including:
  - the current and future value of their commercial fishing interests; and
  - their ability to exercise their non-commercial customary fishing rights caused by the creation of MPAs;
  - Establishment of a Crown-Kāi Tahu co-management regime for any new MPA network; and
  - Agreement and implementation of a process for generational (25 year) review of any MPAs established.
19. A comprehensive briefing on these matters was provided to the Minister of Conservation and Minister of Fisheries recently, a copy of which is here: [DOC-6090156](#)

***Risk Mitigation***


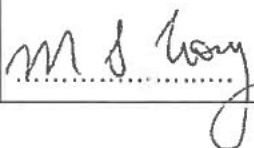
20. Agencies have worked with Kāi Tahu to ensure wording in the consultation document (and applications) accurately reflects their position on the SEMP proposal, particularly

potential rebalancing of impacts on Kāi Tahu rights and interests, co-management and generational review of the marine protected areas.

21. At the request of Kāi Tahu, a meeting is proposed to occur between the Minister of Conservation and Minister of Fisheries with Papatipu Rūnanga. A date for this hui is yet to be confirmed.
22. Following this Ministerial hui, Departmental officers will continue to engage with Kāi Tahu to address the matters raised in our consultation to date.
23. The Department will comprehensively brief the Minister for Conservation on our Treaty Partner's position on the proposed marine reserves prior to any Ministerial decisions being made.

### Recommendations

It is recommended that you–

		<u>D-G's decision</u>
(a)	<u>Note</u> the impending statutory process under the Marine Reserves Act 1971 to apply for six marine reserves, which is a result of a process undertaken between 2014 and 2018 by the South-East Marine Protection Forum, Department of Conservation and Fisheries New Zealand.	Noted
(b)	<u>Agree</u> to notify your intention to apply as the Director-General for six marine reserves in the Southeast South Island as identified in the attached map, as set out in the draft public notice attached and linked above.	Agreed / Not agreed
(c)	<u>Approve</u> the draft applications and public notice for six marine reserves to be placed in accordance with the Marine Reserves Act 1971	Approved / Not approved
(d)	<u>Note</u> that the current projected notification date is in mid-January 2020 and that we will inform you via email once a date is confirmed.	Noted
(e)	<u>Note</u> that you will receive further information on the notification of these applications, including talking points, when the applications are notified in early 2020.	Noted
Lou Sanson Director General Signed:  18 / 12 / 2019		Marie Long Director, Permissions, Planning and Land Signed:  18 / 12 / 2019

Contact for queries: Rebecca Bird, Marine Protected Areas Significant Projects Manager, Sec 9(2)(a)

ENDS



# Cabinet Paper Memo



Department of  
Conservation  
*Te Papa Atawhai*

GS ref: 20-K-0001

DOCCM: 6204361

## In Confidence

**Paper title:** Proposed package of marine protection measures in the south east of the South Island

**Minister lead:** Hon Stuart Nash, Minister of Fisheries

**Committee:** Cabinet Economic Development (DEV) Committee

**Date of meeting:** 12 February 2020

**DOC contacts:** Natasha Hayward, Director Planning Permissions and Land Sec 9(2)(a)  
Rebecca Bird, MPA Significant Projects Manager Sec 9(2)(a)

<b>Purpose</b>	To inform Committee members of the pending launch of public consultation on the South East marine protection package of measures.
<b>DOC comment</b>	<ul style="list-style-type: none"><li>Minister Nash will present a short oral item to DEV on the public launch to consultation.</li><li>DOC and FNZ intend to launch public consultation on 17 February 2020.</li><li>FNZ have developed the attached Aide-memoire for their Minister.</li><li>DOC supports the paper.</li><li>Public consultation is a significant milestone in the MPA process. You may however encounter criticism from colleagues for undue delays and/or for not seeking cabinet approval on the consultation document. Your Ministerial roles as decision makers on marine reserve proposals could risk pre-determination if Cabinet approval was sought at this stage, so it is appropriate Cabinet receives a noting item only.</li></ul>

## Talking Points

- I support the Hon Stuart Nash, Minister of Fisheries in his presentation and note this is a significant development in the MPA process for the South East South Island region.
- As noted, DOC and Fisheries New Zealand have undertaken important consultation with Kāi Tahu over 2019.
- I am very pleased the views of the public will now be sought to help inform our decisions later in 2020.
- (The following points apply if there is any concern as to why Cabinet approval to the consultation document is not being sought):

- The six Marine Reserve applications are made in the name of the Director-General.
- In summary, Cabinet or Ministers do not have a statutory role under the Marine Reserves Act 1971 at this stage of the Marine Reserves application process.
- Agencies have developed a combined consultation document including the marine reserve applications and fisheries regulations.

- Sec 9(2)(h) [Redacted]
- Sec 9(2)(h) [Redacted]

Attachment one: AM20-0066: Proposed package of marine protection measures in the south east of the South Island

**ENDS**

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# Cabinet Economic Development Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Oral Item: Options for New Marine Protection Along the South-East Coast of the South Island: Public Consultation

**Portfolios**                      **Fisheries / Conservation**

On 12 February 2020, the Cabinet Economic Development Committee:

- 1        **noted** that on 14 March 2019, the Cabinet Environment, Energy and Climate Committee:
  - 1.1        noted that:
    - 1.1.1        the South-East Marine Protection Forum (the Forum) was established in 2014 to provide recommendations to Ministers on establishing a network of marine protected areas in the Forum region;
    - 1.1.2        the Forum had delivered its recommendations to the Minister of Fisheries and the Minister of Conservation (the Ministers);
  - 1.2        noted that the Ministers intend to consult on progressing Network 1 in its entirety, to maintain the integrity of the Forum process and because this option best meets biodiversity protection objectives;
  - 1.3        invited the Ministers to report back to Cabinet with a draft consultation document, prior to its public release;

[ENV-19-MIN-0007]
- 2        **noted** the advice of the Ministers on the content of a consultation document on the proposed network of marine protected areas;
- 3        **invited** the Ministers to report back to Cabinet on the outcome of the consultation in due course.

Jack Petterson  
Committee Secretary

**Hard-copy distribution: (see over)**

**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Damien O'Connor  
Hon Shane Jones  
Hon Tracey Martin  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon James Shaw  
Hon Julie Anne Genter  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister of Fisheries  
Minister of Conservation

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# Departmental Memo



Department of  
Conservation  
*Te Papa Atawhai*

## In Confidence

DOCCM: 6206624

**Date:** 12 February 2020  
**To:** Mike Slater, Deputy-Director General, Operations  
**From:** Natasha Hayward, Director, Planning, Permissions and Land  
**Subject:** **Southeast marine protection: public notification update and request for your approval on the notification letter for stakeholders.**

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### Purpose – Te Pūtake

1. The purpose of this memorandum is to update you on the public notification process and seek your sign off on the public notification letters for the southeast marine protection (SEMP) Network.

### Summary – Tuhinga Whakarāpopoto

2. On 17 February 2020, DOC and Fisheries New Zealand plan to launch public consultation on southeast marine protection.
3. Under Section 5(1)(a)(v) of the Marine Reserves Act 1971 (MRA), the Director-General can make an application for marine reserves. When the Director-General is the applicant, Section 5(1)(d) of the MRA requires notification in writing to particular stakeholders. This requirement is delegated and, as the Deputy-Director-General-Operations, you have authority to notify these stakeholders on behalf of the Director-General.
4. We therefore require your approval and signature on the letter to be sent to stakeholders that we are statutorily required to notify.

### Background and context – Te Horopaki

5. The South-East Marine Protection (SEMP) Forum delivered their final recommendations for marine protection on 19 February 2018.
6. Following the 11 May 2019 announcement to progress the proposed 'Network 1' the Department of Conservation (DOC) and Fisheries New Zealand have been preparing a joint consultation document for public notification.
7. Agencies and Kāi Tahu have agreed to the inclusion of text in the consultation document, which reflects Kāi Tahu's concerns with the marine protection proposals and their preferred options for addressing these concerns.
8. In addition, to help ensure effective consultation and delivery of regulatory impact analysis (RIA) to support statutory decisions, the consultation document has been reviewed and approved by a joint DOC-MPI RIA Panel.
9. Following RIA panel approval, the necessary approvals to initiate public consultation have been received:



- a. The DOC Director General approved the Marine Reserve Applications for public notification on 19 December 2019, as required under the Marine Reserve Act 1971.
  - b. The Minister of Fisheries approved public consultation on the package of fisheries regulations proposed for establishment of Type 2 MPAs.
10. On 11 February, I approved the consultation document for public release.
  11. DOC and Fisheries New Zealand plan to launch public consultation on 17 February 2020.
  12. Fisheries Minister Hon Stuart Nash, with support from the Minister of Conservation, presented an oral update on the intended SEMP public consultation to Cabinet (DEV) on 12 February 2020.

### **Next steps**

13. A public consultation period of “exactly” two months (17 February-17 April) is required under the Marine Reserves Act 1971 for proposed marine reserve applications. To ensure coordinated processing of submissions, a two-month period will also be allowed for any proposed fisheries regulations (19-B-0720 and B19-0713 refer).
14. Following consultation, agencies will require time to analyse submissions and prepare advice for Ministerial consideration. We are preparing to expedite this process by engaging external consultants, however there are several responsibilities that cannot be devolved.
15. While not a legislative requirement, DOC also intends to respond to objections and to commission an independent report for the Minister of Conservation on the objections. This is in keeping with previous marine reserve processes and helps ensure it is robust.
16. Further engagement is also required with Te Rūnanga o Ngāi Tahu on the SEMP proposals (20-B-0017 refers).
17. Ministers also met with Papatipu Rūnaka on the 11 February regarding the potential impacts of southeast marine protection on TRoNT rights and interests, and possible rebalancing options. It was agreed that agencies will continue to engage Ngāi Tahu. We are working with Ngāi Tahu representatives to schedule future hui over the coming months.
18. Delays have impacted the overall timeline for the establishment of any new MPAs.
19. Ministerial decisions on the SEMP proposals were originally planned for March 2020. However, the earliest possible timing for decisions is likely to be July 2020 with gazettal of MPAs later in 2020 (20-B-0086 refers).

### ***The joint consultation document and six marine reserve applications***

20. In accordance with Ministerial instructions, the agencies have developed a joint consultation document that allows for public consultation overall proposed SEMPA network (Network 1).
21. The consultation document has required a bespoke RIA and agencies established a joint MPI-DOC Quality Assurance Panel to verify this requirement is met.
22. The joint consultation document is available here [DOC 6175128](#)
23. The six marine reserve applications form a single annexure to the joint consultation document and can be accessed here [DOC-6145794](#)



### ***Public notification***

24. The newspaper advertisement has D-G approval and is ready for public notification as per statutory requirements. It can be accessed here [DOC-6070692](#)

25. Under Section 5(1)(a)(v) of the MRA, the Director-General can make an application for marine reserves. When the Director-General is the applicant, Section 5(1)(d) of the MRA requires notification in writing to particular stakeholders.
26. This requirement is delegated and, as the Deputy-Director-General-Operations, you have authority to notify these stakeholders on behalf of the Director-General.
27. We therefore request your approval and signature on the letter to be sent to the stakeholders that we are statutorily required to notify. The notification letter can be accessed here [DOC-6207746](#).

## Recommendations

It is recommended that you–

		<u>DD-G's decision</u>
(a)	<b>Note</b> the D-G has approved 6 Marine Reserve Applications and the public notice for public notification	Noted
(b)	<b>Note</b> the Director PPL has approved the joint DOC-FNZ consultation document for public notification	Noted
(c)	<b>Note</b> that the notification date is set for 17 February 2020.	Noted
(d)	<b>Approve and sign</b> the notification letter <a href="#">DOC-6207746</a> to be sent to the statutorily required stakeholders.	Approved/Signed
Natasha Hayward Director, Permissions, Planning and Land Signed:  13/02/2020		Mike Slater Deputy Director General Signed:  13/02/2020

Contact for queries: Rebecca Bird, Marine Protected Areas Significant Projects Manager,  
 Sec 9(2)(a)

**ENDS**



# Cabinet

## Minute of Decision

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### Report of the Cabinet Economic Development Committee: Period Ended 14 February 2020


On 17 February 2020, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 14 February 2020:

Out of Scope

DEV-20-MIN-0006    **Oral Item: Options for New Marine Protection Along the South-East Coast of the South Island: Public Consultation**    CONFIRMED  
Portfolios: Fisheries / Conservation

Out of Scope

Out of Scope



Michael Webster  
Secretary of the Cabinet

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**Hard-copy distribution:**  
Cabinet Economic Development Committee  
Minister for Women

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# Departmental Memo



Department of  
Conservation  
*Te Papa Atawhai*

**In Confidence**

DOCCM: 6248923

**Date:** 27 March 2020  
**To:** Lou Sanson, Director General Department of Conservation  
**From:** Michael Slater, Deputy Director General Operations  
**Subject:** **Decision on withdrawing public consultation on southeast marine protection.**  
**Action sought:** Note Departmental advice,  
Agree to recommendation and, if agreed;  
Direct officials to withdraw current consultation process, and  
Notify the Minister of Conservation.  
**Timeframe:** Prior to 3 April 2020 to allow DOC and FNZ officials to undertake necessary preparations before consultation process ends (17 April 2020).

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## **Purpose – Te Pūtake**

1. This memo provides you with updated information on the implications of the national response to COVID-19 on the public consultation process for southeast marine protection.

## **Summary – Tuhinga Whakarāpopoto**

2. On Friday 20 March 2020, Department of Conservation (DOC) officials provided advice to me regarding options for managing the southeast marine protection (SEMP) public consultation process. On the morning of Monday 23 March 2020, the Minister of Conservation (MOC) indicated her preference for the current SEMP process to continue. The DOC advice (and MOC's indication) was provided under the context of a national response to COVID-19 being at Alert Level 2 – "Reduce".
3. Later on 23 March 2020, the Prime Minister announced an escalation of the national Alert Level (from Alert Level 2 to Level 3 for 48 hours, proceeding to Level 4 after 48 hours).
4. On 25 March 2020 a National State of Emergency was declared, and at 11.59pm the nation moved to Alert Level 4 – "Eliminate". This changes the context on which the 20 March 2020 DOC advice was based, and therefore requires reconsideration.
5. Hard copies of the SEMP consultation document were displayed in DOC offices and some libraries and are therefore no longer accessible to the public. Access is a requirement of the Marine Reserves Act 1971 (the Act). It is likely any future submitters are now limited to those with home internet access.
6. I understand Fisheries New Zealand are preparing advice for their Minister regarding options for stopping the current SEMP public consultation process.
7. Concurrent work on Crown-Treaty partner engagement has now been delayed. The planned 30 March 2020 hui in Otago with Ngāi Tahu has been postponed with no future date or process for engagement agreed.



**The following paragraphs are subject to legal privilege**

8. Sec 9(2)(h) [Redacted]
9. The SEMP team and I seek your directive urgently in order to prepare for withdrawing or continuing with public consultation.

**We recommend that you (Nga Tohutohu) –**

	Decision
(a) <u>Note</u> MOC indicated her preference for DOC to continue with the current SEMP process BEFORE the national Threat Level escalation was advised.	Noted
(b) <u>Note</u> DOC provided advice to me on 20 March 2020 based on the national Alert Level of 2.	Noted
(c) <u>Note</u> the public can no longer access hard copies of the public consultation document and that future submissions are likely to be limited to those with home internet access.	Noted
(d) <u>Note</u> that Crown-Treaty partner engagement is currently on hold.	Noted
(e) <b><u>Legally privileged</u></b> Sec 9(2)(h) [Redacted]	Noted
Sec 9(2)(h) [Redacted]	Noted
(f) <u>Agree</u> to DOC withdrawing public consultation of the Director-General's application. f yes,	Yes / No
(g) <u>Agree</u> to notify your equivalent at Fisheries New Zealand.	Yes / No
(h) <u>Direct</u> DOC officials to work with Fisheries New Zealand to withdraw the current consultation process.	Yes / No
(i) <u>Direct</u> DOC officials to notify the Minister of Conservation	Yes / No



Mike Slater  
Deputy Director-General Operations  
Department of Conservation



Lou Sanson  
Director-General  
Department of Conservation

## Background and context – Te Horopaki

10. DOC and Fisheries New Zealand launched joint-public consultation on SEMP on 17 February 2020 and the consultation process is due to close on 17 April 2020.
11. For DOC, there are two main aspects to the current SEMP consultation: statutory consultation under the Act and concurrent consultation with our Treaty Partner.
12. On Friday 20 March 2020, the DOC SEMP team provided advice to me regarding options for managing the current SEMP consultation process under the national COVID-19 response context of Alert Level 2.
13. On the morning of Monday 23 March 2020, the MOC indicated her preference for the SEMP process to continue.
14. Entering Alert Level 4 has significant implications for the statutory consultation process. Section 5(2) of the Act requires the plan of the proposed marine reserves “shall” be available during office hours at the appropriate DOC office. We can no longer fulfil that requirement. In addition, the restriction of non-essential travel and closures of libraries inhibit people’s potential ability to participate in the consultation in a normal manner. In addition, we can no longer access any written submissions posted to DOC Head Office.
15. Treaty partner engagement has also been postponed. On 24 March 2020 a representative from Ngāi Tahu advised they recommended postponing the proposed hui on 30 March due to the COVID-19 outbreak. People were either aiding their whānau, assisting with school closures or preparing themselves for the impending self-isolation. The advice was that any hui should be postponed until Papatipu Rūnaka are fully settled in and comfortable with these imposed restrictions.
16. The implications of the nation’s move to Alert Level 4 changes the context on which the 20 March 2020 SEMP team advice was based, and therefore requires reconsideration.
17. On 26 March 2020, Fisheries New Zealand officials advised their Minister is considering stopping SEMP consultation and they are preparing advice on the matter.
18. We have also received a number of media and public enquires regarding plans for SEMP consultation.

## Public consultation

19. On 17 February 2020 DOC published public notices stating the Director-General’s intent to apply for an Order in Council to establish six proposed marine reserves and launched the Public Voice online interface for submissions. Under the Act, a two-month public consultation period is required from that date of notice.
20. We have facilitated public feedback by providing a comprehensive online interface for submissions as well as providing for email and postal submissions on the proposed SEMP network.
21. Up until late last week, DOC’s position had been that, while we must work within legislative constraints, as an acknowledgement of the pressures caused by COVID-19 we would consider late submissions on a case-by-case basis.
22. Our position has now evolved given the escalation to Alert Level 4 and the implications this has for public access to the consultation material and the associated public perception risk.

## *The following two paragraphs are subject to legal privilege*

23. Sec 9(2)(h)



24. Sec 9(2)(h)

25. In terms of Treaty partner engagement, no new hui date or process for engagement has been agreed. Virtual hui run through Rūnaka offices were discussed but would be impracticable now that Alert Level 4 is in place. It is considered that marae-based consultation is critical, particularly as we have been told a number of Ngāi Tahu members will be unlikely to make written submissions.

***The following paragraph is subject to legal privilege***

26. Sec 9(2)(h)

**Your directive is required urgently**

27. There are two main options for your consideration:

- Continue with consultation (i.e., continue with current 2-month statutory public consultation that began on 17 Feb 2020 and will end on 17 April 2020, and subsequent amended process, which is still to be determined)
- Withdraw consultation (i.e., stop the current 2-month statutory public consultation, with a view to reinitiating a new 2-month statutory public consultation at some appropriate later date)

28. We require a directive to allow us to plan the next steps regarding SEMP consultation. We also need to communicate this directive to a range of audiences.

29. Continuing consultation would also require a clear communications plan as we would need to address issues around natural justice and public perception.

30. Withdrawing consultation would require clear communications around the status of current submissions and the process from here.

31. If your directive is to withdraw, we will also need to give further consideration to the process for commencing a new statutory public consultation process. For the sake of efficiency and to recognise the work submitters have already undertaken, our preference would be to re-release the current document in full and to give submitters the opportunity to re-submit their existing submissions. Whether or not this is possible will depend on how much time passes between withdrawing the current consultation process and starting a new process. Any changes in terms of technical, legal or Treaty partner engagement in the intervening period would also need to be considered. Again, this work will be progressed once a directive is confirmed.

## Risk assessment – Nga Whakatūpato

*The following three paragraphs are subject to legal privilege*

32. Sec 9(2)(h)

## Next steps – Nga Tāwhaitanga

35. Once we have your directive, we need to consider the practicalities of this decision and when this should take effect, specifically how we'll notify the public and people who have already submitted.
36. If your directive is to withdraw, we will also need to give further consideration to the process for commencing a new statutory public consultation process.
37. We plan to do this with Fisheries New Zealand over the coming days, once a directive has been confirmed.
38. We will remain in close contact with Ngāi Tahu to ascertain options for future engagement.

Contact for queries:

Rebecca Bird, Marine Protected Areas Significant Projects Manager. Mobile: Sec 9(2)(a)

ENDS.

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# Fisheries New Zealand

Tini a Tangaroa

08 May 2020

MPI Reference: B20-0215

DOC Reference: 20-B-0285

## South-East Marine Protection: resuming public consultation

### Purpose:

This paper provides you with advice for recommending public consultation on the proposed south-east MPA network, following the easing of COVID-19 restrictions.

Minister	Action Required:	Minister's Deadline
Minister of Fisheries	<b>Note</b> the contents of this brief; and <b>Agree</b> to the recommendations.	For your meeting with the Minister of Conservation on 13 May 2020.
Minister of Conservation	<b>Note</b> the contents of this brief; and <b>Agree</b> to the recommendations.	For your meeting with the Minister of Fisheries on 13 May 2020.

### Fisheries New Zealand Officials Attending the Meeting

Dan Bolger – Deputy Director-General Fisheries New Zealand

Emma Taylor – Acting Director Fisheries Management

Blake Abernethy – Team Manager, Spatial Planning & Allocations

### Department of Conservation Officials Attending the Meeting

Lynn Hansberry – Manager, Management Planning

Rebecca Bird – Team Lead, National Marine Protection Programme

### Contact for telephone discussion (if required)

	Name	Position	Work	Mobile
Responsible Manager	David Scranney	Manager, Customary Fisheries & Spatial Allocations, Fisheries New Zealand	Sec 9(2)(a)	Sec 9(2)(a)
Responsible Manager	Lynn Hansberry	Manager, Management Planning, Department of Conservation		Sec 9(2)(a)



## Key Messages

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1. The unprecedented public health emergency created by the outbreak of COVID-19 in New Zealand required suspension of public consultation on the proposed network of marine protected areas (MPAs) in the south-east of the South Island.
2. On 9 April 2020, postponement of consultation was publicly announced. No recommencement date was given, but it was announced that consultation would not restart until the restrictions were eased.
3. The COVID-19 Alert Level 4 and current Alert Level 3 responses and associated restrictions precluded effective public participation in the consultation process.
4. The Department of Conservation (DOC) and Fisheries New Zealand (the agencies) have jointly assessed the practicality of recommencing consultation, as the restrictions are eased over the coming weeks.
5. The agencies consider that public consultation could recommence when restrictions have been eased provided certain requirements are met:
  - a. The public consultation must run for two consecutive months;
  - b. Hardcopies of the proposed marine reserve plans are available for viewing at DOC offices as required by the Marine Reserves Act;
  - c. People have adequate time to prepare for the consultation, and those who need to self-isolate can participate meaningfully;
  - d. The agencies maintain ongoing engagement with Kāi Tahu.
6. These requirements cannot be met while stringent physical distancing requirements are in place, gatherings are prohibited, or public venues are closed, including DOC offices. The situation, however, is rapidly evolving.
7. Even once the restrictions are eased, the public health advisory remains that those with elevated vulnerability to the COVID-19 virus (including Kāi Tahu kaumātua (elders)) should continue to self-isolate at home.
8. Agencies consider that there are a number of practical steps that could be taken to meet the requirements listed above and enable consultation to recommence. These include: delivery of hard copies of consultation material to those in self-isolation and/or who cannot access it via the internet; and, using video-conferencing for engaging with vulnerable members of Kāi Tahu and stakeholder groups who cannot attend gatherings.
9. Overall, we anticipate Alert Level 2 is likely to provide sufficient freedom to recommence. The agencies will update their advice to you where decisions are required.
10. We have assumed that you do not need to return to Cabinet prior to recommencing consultation. If Cabinet endorsement is required, completing consultation before the House rises for the General Election will not be possible.

11. Agencies will provide you with further advice on timing for recommencing consultation under COVID-19 Alert Level 2 following the announcement on 12 May of Cabinet's decision on whether COVID-19 Alert Level 3 restrictions will be extended.

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## Recommendations

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12. DOC and Fisheries New Zealand recommend that you:

- a) **Note** that the COVID-19 public health emergency made it necessary to postpone public consultation on the proposed south-east MPA network.  
**Noted**
- b) **Note** that both DOC and Fisheries New Zealand consider it is potentially feasible to recommence public consultation under COVID-19 Alert Level 2, subject to measures being put in place to help ensure fair public participation.  
**Noted**
- c) **Note** that agencies will provide you with further advice on recommencing consultation under COVID-19 Alert Level 2 following the 11 May Cabinet decision on whether the COVID-19 Alert Level 3 restrictions will be extended.  
**Noted**
- d) **Agree** that further approval from Cabinet to progress commencement of consultation **is not** required.

**Agreed / Not Agreed**

Dan Bolger  
Deputy Director-General  
Fisheries New Zealand

Hon Stuart Nash  
Minister of Fisheries  
/ / 2020



Natasha Hayward  
Director Planning, Permissions and Land

Hon Eugenie Sage  
Minister of Conservation  
/ / 2020

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## Background

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### *Postponement of public consultation on south-east MPA proposals*

13. On 9 April 2020, you publicly announced suspension of consultation on the network of MPAs. It was deemed necessary to suspend this consultation, in light of the unprecedented public health emergency presented by the COVID-19 outbreak. No date was given for the consultation to recommence, but it was announced that it would not recommence until the current COVID-19 restrictions were eased.
14. The agencies have jointly assessed the conditions under which consultation could feasibly recommence.

### *Limitations on resuming public consultation under current restrictions*

15. Prior to its suspension, consultation on the proposed MPAs was scheduled to run for two months, from 17 February to 17 April 2020.
16. The primary mechanism for gathering submissions was an online interface developed by Public Voice Ltd, which enabled users to view details of the proposed MPAs, and lodge their submissions via an online portal.
17. While remote access to the online interface presents no public health concerns and can be readily maintained under any COVID-19 response level, it was not possible to maintain other critical elements of the consultation process under Alert Levels 4 and 3.

### *Engagement with Kāi Tahu is crucial to ensure the successful delivery of an MPA network*

18. The agencies are required to give effect to the principles of the Treaty of Waitangi, in particular the principles of informed decision making, partnership and active protection of Māori rights and interests.
19. We have maintained close contact with TRoNT representatives, who have expressed a willingness to facilitate “remote” engagement with Papatipu Rūnaka representatives.

### *Resuming public consultation should be possible by employing additional measures*

20. Agencies are considering when to recommence the south-east MPA public consultation and have developed a draft re-engagement plan for your consideration (See: attachment one).
21. We do not think it is necessary to obtain Cabinet approval to progress commencement. Cabinet previously agreed that the consultation could occur [19-K-00002 **Refers**].

22. The next section assesses possible measures that, in conjunction with the easing of the COVID-19 restrictions, would assist with the recommencement of public consultation.

### **Analysis**




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#### *Considerations to inform decisions on when to recommence consultation*

23. There are four key factors to consider in deciding when the consultation process should recommence:
- a. The MRA requires that public consultation runs for two consecutive months;
  - b. Section 5(2) of the MRA requires that hardcopies of the proposed marine reserve plans (in practice – hardcopies of the marine reserve applications) are available for public viewing during office hours at the DOC offices nearest the proposed reserves;
  - c. Public participation must be meaningful, and the process must be fair and reasonable, hence:
    - Those groups who are vulnerable to COVID-19 and need to self-isolate must still be able to participate in the consultation process; and
    - Kāi Tahu and stakeholders must be given adequate time to prepare for the consultation to recommence.
  - d. The agencies must maintain direct ongoing engagement with representatives of the six Papatipu Rūnaka of Kāi Tahu, who hold manamoana over the waters in which the proposed MPAs are planned.

*[The following 3 paragraphs are subject to legal privilege]*

24. Sec 9(2)(h)



27. Additional measures to be considered include:

- a. Advance notice to the public of the intention to recommence public consultation.
- b. Relaunch of the online interface.
- c. Enhanced promotion of the online interface for public submissions.

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- d. Ensure that potential submitters are aware they can request hardcopies if desired, or how to access softcopies themselves.
  - e. Ensure that the public notices about the consultation includes the various options of how to make a submission, and those public notices are published more often than is statutorily required.
  - f. In the event that DOC offices remain closed to the general public:
    - Display maps of the marine reserves that can be seen from outside the DOC offices (where possible); and/or
    - Provide limited access to DOC offices for the purpose of viewing the maps/plans of the marine reserves.
  - g. Provide ready access to agency staff.
  - h. Undertake frequent stakeholder communications throughout consultation.
  - i. Provide options for teleconferencing and virtual hui for both Kāi Tahu and stakeholders.
28. Any recommencement of consultation must be signalled well in advance to enable the general public to prepare. More specifically:
- a. Kāi Tahu have requested adequate advance notice of the consultation recommencing.
  - b. Commercial fishing industry representatives have written to both agencies expressing concern that recommencing consultation will place additional stress on industry participants at a time that they are struggling to adapt to the recession caused by the COVID-19 pandemic.
  - c. Members of the South-East Marine Protection Forum have requested advance notice of the consultation recommencing in order to prepare and advise their stakeholders.
29. To enable Kāi Tahu and stakeholders to prepare, the agencies propose that they be given advance notice two weeks prior to the date on which consultation will recommence (see: attachment one).
30. In addition, under normal circumstances, public notices require a 10-14 day lead in time before being published in newspapers. Agencies require time to update and arrange the printing of hardcopies of consultation material, once a recommencement date has been set.
31. Agencies will advise previous submitters that their existing submissions will still be considered, and will provide clear instructions on how to amend or withdraw their submission, if they wish.

#### *Timeframe for completing consultation*

32. If consultation is to be completed before the House rises for the General Election on 6 August 2020, it needs to begin no later than the first week of June 2020 (see: attachment one).

### Next steps

33. Subject to your agreement with the recommendations in this briefing, agencies plan to develop:
  - a. Public communications which will set out the decision to recommence the public consultation on the proposed south-east MPA network; and
  - b. An update to you on what arrangements we plan to put in place to recommence consultation, following the announcement on 12 May 2020 about whether COVID-19 Alert Level 3 will be extended beyond 14 May 2020.
34. We will liaise with your offices to ensure that this aligns with your expectations.

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## Attachment One: Draft consultation workflow without Cabinet endorsement on the recommencement of south-east MPA consultation

Date	Key Process Step	Specific Task
13 May 2020	1. Approval to recommence the consultation process	a. Minister of Fisheries (in consultation with MOC) decides whether or not to seek Cabinet approval to recommence consultation.
13 May 2020		b. Ministers review the current situation near end of COVID-19 Alert Level 3 period and advise agency officials.
13 May 2020		c. Minister of Fisheries and DOC D-G decide when to recommence public consultation.
13 - 15 May 2020	2. Finalise the re-engagement plan	a. Agencies agree re-engagement and communications plan.
18 May 2020*‡	3. Notification to Kāi Tahu and key stakeholders	a. Public update on recommencement b. Emails (phone calls as necessary) to inform Kāi Tahu and key stakeholders of: i. Consultation commencement date. ii. Consultation duration (two months).
13 - 20 May 2020	4. Pre-organise recommencement notifications	a. Organise newspaper ads, web texts, media release, stake holder notification letters (as per MRA requirements).
22 - 29 May 2020	5. Recommence consultation	a. Newspaper notifications (use same papers as previously) – twice for DOC notices only.
3 June 2020		b. Joint media release by both Ministers.
3 June 2020		c. Re-activate the Public Voice website for online submissions.
3 June 2020		d. Place web and social media advertising.
3 June 2020		e. Inform previous submitters that their submissions are valid and they can resubmit if they wish.
3 June 2020		f. Make hard copies available for those who cannot access them online.
3 June 2020	6. Consultation starts	
5 August 2020	7. Consultation ends	

\* Assumes that Ministers decide not to seek Cabinet approval to recommence consultation.

‡ Cabinet reviews how we are tracking under Alert Level 3 and makes further decisions on **11 May 2020**. If Alert Level 3 is extended past 14 May 2020 then indicative dates will need to change.

**From:** Lou Sanson <[lsanson@doc.govt.nz](mailto:lsanson@doc.govt.nz)>  
**Sent:** Monday, 18 May 2020 8:25 a.m.  
**To:** Michael Slater <[m Slater@doc.govt.nz](mailto:m Slater@doc.govt.nz)>  
**Cc:** Lynn Hansberry <[lhansberry@doc.govt.nz](mailto:lhansberry@doc.govt.nz)>; Natasha Hayward <[nhayward@doc.govt.nz](mailto:nhayward@doc.govt.nz)>  
**Subject:** Fwd: SEMP notification - DG approval required

Approved

Lou Sanson  
Director-General | Tumuaki Ahurei  
Department of Conservation | Te Papa Atawhai

On 18/05/2020 7:56 am, Michael Slater <[m Slater@doc.govt.nz](mailto:m Slater@doc.govt.nz)> wrote:  
Hi Lou

Please note the attached memo seeking your approval to restart the SEMP consultation for a further full 2 month period. Consultation to start on 3 June.

Can you please urgently provide your approval to ensure we have all authorities in place to both announce and then initiate the Consultation period.

Cheers Mike

Sent from Workspace ONE Boxer

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DOC 6295431

20 May 2020

To: Lou Sanson  
CC: Natasha Hayward, Lynn Hansberry, Rebecca Bird  
From: Michael Slater

**Subject:** Consulting you on recommencing public consultation on southeast marine protection.

Kia ora Lou

**Summary:** The SEMP team are consulting with you to confirm your agreement to restart public consultation. The intention is to publicly notify on 3 June 2020. Consultation will run for two months.

**Action sought:**

**Please respond to this email ASAP confirming you agree to proceed with notification on 3 June.**

**Please confirm if you would like a short discussion with the team to discuss the notification plan (for the restart to public consultation).**

**Context:**

1. On 19 December 2019 you agreed to publicly notify 6 applications for marine reserves as part of the joint southeast marine protection (SEMP) network for public consultation with Fisheries New Zealand. The public consultation process for all proposals was subsequently launched on 17 February 2020 for a two-month period as required under the Marine Reserves Act 1971 (MRA).
2. On 8 April 2020, you and the Deputy Director-General of Fisheries New Zealand (Dan Bolger) decided to withdraw the SEMP joint consultation process, with a view to recommencing public consultation at a later date.
3. This decision was made in consultation with the Minister of Fisheries and the Minister of Conservation, in response to New Zealand entering Alert Level 4 and a National State of Emergency on 25 March 2020, due to the COVID-19 pandemic.
4. The decision to withdraw consultation was not made lightly. However, given the Alert Level 4 lockdown, this step was considered necessary as the public were no longer free to participate meaningfully in the consultation process as required by natural justice and the MRA.
5. The Covid-19 pandemic remains a very real global threat, and, despite the easing of national restriction the situation is constantly evolving.
6. DOC and Fisheries New Zealand have worked on a plan for recommencing public consultation of the SEMP network proposals. The focus of the plan is to establish a robust public consultation process that can endure irrespective of the COVID-19 pandemic. In order to comply with the requirements of the MRA, a full two-month public consultation period is required.

*[The following paragraph is subject to legal privilege]*

7. Sec 9(2)(h)





8. I believe, that by ensuring we employ these measures, we can run a fair process this time around that ensures consultation can continue for the full two-month period.
9. On 14 May 2020, the Minister of Conservation (MOC) and the Minister of Fisheries indicated they were happy for SEMP consultation to resume on 3 June 2020, following joint advice from DOC and Fisheries New Zealand officials (refer 20-B-0285). The briefing outlined the proposed additional measures to be taken.
10. I hereby seek your agreement to recommence public consultation on 3 June and, if agreed, I will instruct the team to publicly notify your application for marine reserves as a part of the SEMP proposals as per the statutory requirements.

Ngā mihi nui



Michael Slater

Deputy Director-General Operations  
Department of Conservation

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## Updated Q&A and talking Points

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### ***Talking Points for Minister of Conservation***

#### ***Acknowledgements***

- Tēnā koutou katoa, thank you for joining us here today.
- I want to acknowledge Kāi Tahu as tangata whenua of the south-east region of Te Waipounamu, and Te Rūnaka o Ōtākou, te mana whenua/mana moana of where we stand.
- Thank you also to Marie Baker-Galloway, representing the South-East Marine Protection Forum – Roopu Manaaki ki te Toka – for joining us.

#### ***Introduction/scene setting***

- Standing here today looking out on the beautiful moana emphasises the importance of caring for such taonga.
- But the marine environment of Aotearoa, including this region, is not what it once was. Human activities on land and at sea put pressure on our prized moana.
- But it doesn't have to be this way. There are things we can do.
- And that's what we're here today to celebrate – taking action to make a meaningful difference.

#### ***Acknowledging the work of the Forum***

- The roots of this celebration began nearly ten years ago when the South-east Marine Protection Forum – which included Kāi Tahu, commercial and recreational fishing interests, and science, environmental, tourism and community interests – was tasked with making recommendations to ministers on what a network of marine protected areas could look like along the southeast coast of Te Waipounamu.
- It was a tough job – and I believe the Forum provided a robust option for the Government to take forward.

#### ***Six new marine reserves***

- It's a great day for marine conservation in Aotearoa and a highlight for me, as Minister of Conservation, to have approved the creation of six new marine reserves along the south-east coast of Te Waipounamu from the Waitaki River near Timaru to Mata Au (Clutha River) in south Otago.
- These will be the first new marine reserves established in Aotearoa since 2014.
- The Papanui Marine Reserve, which lies offshore north of Otago Peninsula and encompasses the deep Papanui Canyon, will be the largest marine reserve around mainland Aotearoa.
- Together, these six new sites will increase the area of fully protected marine reserves around mainland Aotearoa by nearly two thirds.
- It represents an important step forward in developing a nation-wide network of marine protected areas in Aotearoa and underscores this Government's commitment to marine conservation.

***There's a high level of support for the network***

- In 2020, the Department of Conservation and Fisheries New Zealand undertook statutory consultation on the proposed network of 12 marine protected areas.
- More than 4,000 submissions were received and, of these, an overwhelming 90% wanted the network established as proposed.

***I agree the marine reserves should be created***

- When making my decisions on the six proposed marine reserves, I considered very carefully the Crown's obligations under te Tiriti, and the obligations required of me under legislation, especially the Marine Reserves Act.
- In reaching my decisions to approve all six marine reserves, I have made boundary changes to two marine reserves (Te Umu Kōau and Ōrau marine reserves) from what was proposed, and I have instructed that some rules be put in place in the legislation and other measures be implemented.

- These decisions reduce the interference on existing uses where it was necessary, while still protecting the environmental values of each of the six marine reserves.

***These sites will be co-managed in partnership with Kāi Tahu***

- The Crown and Kāi Tahu have committed to work together to manage these sites. This approach acknowledges the tension between establishing marine reserves that prohibit take and the right of tangata whenua to exercise their kaitiakitanga.
- This is a tailored solution created by Kāi Tahu and the Department of Conservation working in good faith as Tiriti partners.

***Conclusion***

- The fruit of nearly ten years' work by countless people, these six new 'national parks of the sea' will help protect the typical and the special places along this spectacular and treasured coastline.
- This offers an immense opportunity for learning and research, whether that be mātauraka, scientific research, local school trips or public engagement. Let's make the most of these marine reserves.
- Toitū te marae a Tāne Mahuta, toitū te marae a Tangaroa, toitū te tangata.

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## Updated questions & answers

Marine reserves	
Question 1: What are marine reserves?	
Answer	<ul style="list-style-type: none"><li>• Marine reserves are the highest level of marine protection available in New Zealand. They are established under the Marine Reserves Act 1971 and managed by DOC. New Zealand has 44 marine reserves, increasing to 50 once the southeast South Island marine reserves come into force.</li><li>• The main aim of a marine reserve is to create an area free from alterations to marine habitats and life, which provides a useful comparison for scientists to study. Marine reserves may be established in areas that contain underwater scenery, natural features, or marine life of such distinctive quality, type, beauty or uniqueness that their continued preservation is in the interest of the nation.</li><li>• Marine reserves allow ecosystems to recover to a more natural state. Research has shown the number and diversity of plants and animals can increase in marine reserves, along with the average size of fish and other animals.</li><li>• Marine reserves are also special places that can be enjoyed by everyone, offering spectacular opportunities to see rare and abundant sea creatures and environments. Activities such as sailing, kayaking, snorkelling and diving are just some of the ways to explore what is above and below the surface of our marine reserves.</li></ul>
Question 2: What will these marine reserves protect?	
Answer	<ul style="list-style-type: none"><li>• The six new marine reserves will protect a range of coastal and estuarine habitats and the marine life within them.</li><li>• Habitats protected include estuarine and tidal lagoons, rock reefs, offshore canyons, giant kelp forests, deep water bryozoan (lace coral) thickets, seagrass and red algae beds – all of which support an array of marine species.</li><li>• Protecting a range of habitats and ecosystems promotes resilience in the face of uncertainty in managing the impacts of human activities and threat of climate change.</li><li>• These are the first marine reserves for this coastal region and form part of a proposed network of twelve marine protected areas designed to protect important marine habitats and biodiversity found from Timaru to Waipapa Point in Southland.</li><li>• Together, the six marine reserves boost the total area of marine reserves around mainland New Zealand by almost two thirds (from 615 km<sup>2</sup> to about 1,011 km<sup>2</sup>).</li></ul>

- Papanui Marine Reserve, at 168 km<sup>2</sup>, will be the largest marine reserve around the mainland.
- The marine reserves also protect the 'everyday' habitats and ecosystems. This representation is important for creating resilience in the overall marine system.
- Habitats within the proposed marine reserves include:
  - Typical boulder, cobble, gravel, rock reef, reef shelves, wave-washed rock platforms, sand and mud substrates (bottom types), sandy beaches, boulder beaches, rocky headlands
  - Islands, sea caves, offshore rock stacks
  - Estuarine, saltmarsh, tidal lagoon habitats
  - One proposed marine reserve includes canyon habitats – one of only two sites in the southeast region this close to shore.
- *Biogenic (living) habitats*: The marine reserves will protect biogenic (living) habitats including kelp forests, bryozoan (lace coral) thickets, seagrass beds, seaweed gardens, and red algae beds. These have high biodiversity value and can be important nursery areas for juveniles of many species.
- *Bryozoan thickets*: The area off the Otago Peninsula is the only location where bryozoan thickets (habitat forming structures) are known to occur along the southeast coast of the South Island. Thickets support a diverse invertebrate community and juvenile fishes.
- The Papanui marine reserve would protect 30% of the known distribution of habitat-forming bryozoans in this area.
- *Marine mega-fauna benefits*: Because the proposed marine reserves protect a range of habitats found in this region, they would also protect the animals and plants that occur there or the animals that forage on their way through.
- This includes mega-fauna such as long-finned pilot whales, sperm whales, NZ sea lions, NZ fur seals, yellow-eyed penguins, little blue penguins, sharks, fairy prions, Otago, little pied and spotted shags, and sooty shearwaters, but also the little guys like brittle stars, sea stars, a variety of snails, shellfish, fish, sponges, bryozoans and quill worms.

**Question 3: Why focus marine protection in the southeast South Island?**

**Answer**

- This was the largest coastal region without any marine protected areas (as defined by New Zealand's MPA Policy).
- It features lesser-known species and habitats, such as the globally unique deep-water bryozoan or lace coral thickets that provide juvenile species of several marine species with protection from predators, and giant kelp forests that provide habitat for many fish species.
- Its spectacular coastline is well-known for being home to some of our most endangered species such as hoiho/yellow-eyed penguin, toaro/northern royal albatross and rāpoka/New Zealand sea lion.

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**Question 4: When will the marine reserves come into force?**

**Answer**

- The six marine reserves will come into force following an Order in Council and gazettal process. We anticipate this to be completed by mid-2024.

**Question 5: What science and research will occur in the marine reserves?**

**Answer**

- Marine reserves act as a control site for scientific research, becoming areas of comparison for other sites that are fished. DOC has existing data sets for some of the southeast marine reserve sites and will be able to show over time changes in key indicator species.

**Other marine protected areas**

**Question 6: When will the other proposed MPAs be adopted?**

**Answer**

- Other proposed fisheries measures (five Type 2 MPAs and one kelp protection area), falling under the Fisheries Act 1996, were also proposed as part of the Network to complement the marine reserves announced here. Fisheries New Zealand is developing advice on these measures, for consideration by the Minister for Oceans and Fisheries.
- The Minister for Oceans and Fisheries will make decisions on the measures under the Fisheries Act, which are then considered by Cabinet.

**Question 7: Why were they not decided at the same time as the marine reserves?**

**Answer**

- The Minister of Conservation's decision on the marine reserves was needed before developing advice on the network of Type 2 MPAs. The decision on the marine reserves influences how the Type 2 MPAs would complement the network. For example, if decisions regarding marine reserves were different other fisheries management measures may be needed to complete the network.

**Question 8: What's the difference between the network's marine reserves and the proposed fisheries measures?**

**Answer**

- Marine reserves, which are established under the Marine Reserves Act, are generally 'no-take' areas in which fishing, mining and the disturbance of all marine life and habitat are prohibited.
- The other MPAs proposed for the southeast marine protection network include Type 2 MPAs and a kelp protection area. They were proposed under the Fisheries Act 1996.
- Type 2 MPAs are areas that incorporate various management tools that together meet the protection standard. Management tools can be established under various Acts, but most notably the Fisheries Act 1996. Type 2 MPAs are not no-take areas as they generally allow

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	<ul style="list-style-type: none"> <li>• most recreational fishing to occur, as well as some commercial fishing depending on the fishing method. A mandatory / bottom line requirement to qualify as a Type 2 MPA is the prohibition of mobile bottom-impacting fishing methods.</li> <li>• Type 2 MPAs would avoid, remedy, or mitigate adverse effects of fishing caused by particular fishing methods, including possible prohibitions on use of a range of fishing methods. This would apply to recreational and commercial fishing. Customary non-commercial fishing would not be affected.</li> <li>• The proposed kelp protection area would prohibit the harvest of bladder kelp (<i>Macrocystis pyrifera</i>), which is an important habitat-forming species in New Zealand.</li> </ul>
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**Question 9: Why go for marine reserves rather than ‘high protection areas’ like in the Hauraki Gulf?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• In 2019, the then Ministers of Conservation and Fisheries directed DOC and Fisheries New Zealand to progress the Forum’s proposed Network 1 using existing legislation.</li> <li>• For DOC, this meant using the Marine Reserves Act, which allows only for the establishment of marine reserves. By contrast, the process in the Hauraki Gulf involves creating new legislation, specific to the Gulf, which will enable the creation of high protection areas.</li> </ul>
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**Marine protection goals**

**Question 10: What are New Zealand’s marine protection goals?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• New Zealand’s marine protection goals and the pathways to achieving them are set out in two key documents: Te Mana o te Taiao – New Zealand Biodiversity Strategy (2020) and its associated implementation plan (2022).</li> <li>• Under Te Mana o te Taiao, New Zealand’s marine protection goals are: <ul style="list-style-type: none"> <li>○ To make significant progress in establishing an effective network of marine protected areas and other protection tools (by 2030).</li> <li>○ To establish an effective network of marine protected areas and other tools, including marine and coastal ecosystems of high biodiversity value that meets the agreed protection standard (by 2035).</li> </ul> </li> <li>• Objective 10 of the Te Mana o te Taiao Implementation Plan includes the action “Implementation of a proposed network of marine protected areas is progressed in the southeastern South Island coastal marine area”.</li> </ul>
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**Question 11: How is New Zealand tracking in its contribution to the global target of 30% marine protection by 2030?**

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<b>Answer</b>	<ul style="list-style-type: none"> <li>• The Government is committed to a more holistic and integrated approach to managing our oceans.</li> <li>• Currently, New Zealand has marine reserves in 0.42% of its marine and coastal area (9.5% of the territorial sea and 0% of the exclusive economic zone).</li> <li>• New Zealand also protects an additional 30% under a variety of other measures, including areas protected from fishing impacts and areas to manage risks to marine mammals.</li> <li>• The Government is working on a process for how New Zealand can respond to the opportunities offered by the Kunming-Montreal Global Biodiversity Framework, adopted by Parties to the Convention on Biological Diversity in December 2022, and ensure we meet our international obligations under it. This includes how New Zealand contributes to the global goal of 30% marine protection by 2030.</li> <li>• In addition to the percentage component of the new global protection target, other elements are also important. This includes coverage of areas of particular importance for biodiversity, ecological representativeness, and recognising and respecting the rights of indigenous peoples and local communities.</li> <li>• There is more work to do to make progress on filling the gaps in our marine protection.</li> <li>• To move towards greater marine protection, we are focussed on delivering on marine protection here in the southeast of the South Island and the Hauraki Gulf.</li> </ul>
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**Question 12: What proportion of New Zealand’s waters are now protected in marine reserves?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• Currently, New Zealand has 0.42% of its marine and coastal area (9.5% of the territorial sea and 0% of the exclusive economic zone) in marine reserves.</li> <li>• This figure will increase to 0.43% of the coastal and marine area (9.7% of the territorial sea) once the new marine reserves come into force.</li> <li>• The Hauraki Gulf marine reserve extensions would add about another 30 km<sup>2</sup> of marine reserves, in addition to the 396 km<sup>2</sup> added by the southeast marine reserves.</li> </ul>
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**Consultation feedback**

**Question 13: What was the level of support/opposition for the marine reserves?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• More than 4,000 submissions were received on the proposed network of marine protected areas. 90% of these wanted the network established as proposed, this includes all six marine reserves.</li> <li>• These network submissions showed 90.1% (3,522) supported establishing the network as proposed, 9.4% (366) objected (either an</li> </ul>
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	<p>outright objection to establishing the marine protection or a preference for another option such as bigger, smaller or different marine protected areas), and 0.5% (20) didn't indicate a preference.</p> <ul style="list-style-type: none"> <li>• As well as submissions on the network as a whole, we received submissions about specific marine reserve proposals. While there was a very high level of support for the network as proposed (i.e. 90%), submissions on specific marine reserves were supported by 30-61% of submissions.</li> <li>• Conversely, 37-67% of submissions either outright objected a proposed marine reserve or wanted the marine reserve but with something changed (e.g. make it bigger or make it smaller).</li> </ul>
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**Question 14: What was the main feedback from consultation?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• A wide range of views were received during consultation. Some thought the proposed marine reserves would have too great an impact on their use of the marine environment or that marine protection was unnecessary. Others felt the proposals did not go far enough and the marine reserves should be bigger. Many views fell between these perspectives.</li> <li>• All submissions on the proposed marine reserves were considered against the criteria of the Marine Reserves Act.</li> <li>• Despite there being support for the Network more generally, there was a concern from commercial fishers and their representatives that the reserves would impact their bottom line.</li> <li>• The majority of recreational fishers that submitted also objected to the reserves raising concerns around the reserves limiting their access to favoured fishing locations and making it harder to harvest seafood. Submitters also felt the reserves would impact on their ability to safely access areas for fishing.</li> </ul>
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**Question 15: What key changes were made to the marine reserves as a result of consultation?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• To reduce interference on some uses, Order in Council conditions for Waitaki, Te Umu Kōau, Ōrau and Ōkaihae marine reserves allow for specified existing or future activities to occur within the sites.</li> <li>• There are two boundary changes. One at Te Umu Kōau Marine Reserve to reduce the impact on the commercial kōura (rock lobster) fishery, as well as the impact of the reserve on Kāi Tahu rights and interests. Another change was made at Ōrau Marine Reserve that will enable the Otago Regional Council to continue necessary flood protection activities associated with Tomahawk Lagoon.</li> <li>• These changes strike the right balance between avoiding undue interference with those existing uses while ensuring the marine reserves maintain value individually and what they add to the proposed network as a whole.</li> </ul>
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	<ul style="list-style-type: none"> <li>• The mitigations for existing uses for Waitaki, Te Umu Kōau, Ōrau and Ōkaihae marine reserves allow for:</li> <li>• Continuation of already consented discharge and monitoring activities associated with the Waitaki irrigation scheme(Waitaki);</li> <li>• current and future Dunedin City Council municipal wastewater services (Ōrau and Ōkaihae);</li> <li>• vehicle access on the foreshore to launch or retrieve vessels (Te Umu Kōau and Ōrau); and</li> <li>• hunting with firearms for the purpose of gamebird and unprotected waterfowl management in estuaries (Te Umu Kōau).</li> </ul>
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**Question 16: Why has Te Umu Kōau Marine Reserve been made smaller?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• Te Umu Kōau Marine Reserve has been made about 8.5 km<sup>2</sup> smaller than proposed. This change removes some deep reef habitat from within the site but keeps enough so a viable representation of this habitat is still in the network.</li> <li>• The boundary was changed because, as it was proposed, it was likely to have caused undue interference with the commercial kōura fishery in the area. Ministers agreed with DOC's recommended boundary change as a reasonable measure to address this. The original proposed boundary would have had an impact on Kāi Tahu rights and interests.</li> <li>• Objections from some commercial fishers stated the impact of the proposed Te Umu Kōau Marine Reserve on the commercial kōura fishery would be significant. In particular, concern was raised about the marine reserve including an area of deep rocky reef, locally known as 'the Church', which is considered very important to the commercial kōura fishery in this region.</li> <li>• Using a variety of information sources, including the latest commercial fishing data, DOC considered that inclusion of 'the Church' within the marine reserve was likely to result in undue interference on the commercial kōura fishery.</li> <li>• A boundary amendment has been made to mitigate this likely interference so that it is not considered undue. This means that 'the Church' no longer sits within the marine reserve, and the site is now 88 km<sup>2</sup> instead of the proposed 96 km<sup>2</sup>.</li> </ul>
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**Question 17: Why are there no marine reserves in Southland?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• During the Forum's process, a marine reserve was suggested at Irihuka (Long Point) within the Southland region. Te Rūnaka o Awarua hold manawhenua manamoana over this area and consider the site of customary and commercial importance.</li> <li>• The rūnaka opposed a marine reserve at Irihuka and believe that their customary tools such as taiāpure and / or mātaimai reserves are</li> </ul>
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effective in managing areas of significance. The Forum respected this position and did not pursue the proposed marine reserve.

### Impact on fishers

#### Question 18: What impact will the marine reserves have on fishers?

##### Answer

- Marine reserves are generally no take areas, which means fishing is prohibited. Once the marine reserves are in place, likely mid-2024, all fishers will have to fish elsewhere. This may result in inconvenience or increased costs for some fishers.
- When the marine reserve proposals were developed, efforts were made to choose areas that would not unduly impact existing users. The reserves will not affect people's ability to fish outside of the marine reserves.
- The marine reserves represent 4.4% of the southeast region that was considered for marine protection, which means there is still a lot of coastline and sea available to fish, even when accessibility and other fishery area restrictions are taken into account.
- It is expected that the current level of commercial landings will be maintained, and for there to be no significant displacement effects as a consequence of the proposed reserves.
- FNZ will ensure the FirstMate support programme is aware of the issue and is available for any affected fishers following announcements.

#### Question 19: Will the delay in establishing the marine reserves mean the sites will be heavily fished in the meantime?

##### Answer

- This is always a possibility and has been previously observed elsewhere in New Zealand and overseas. Fishers are allowed to continue to fish their Annual Catch Entitlement and are required to report their catch to Fisheries New Zealand.

### Kāi Tahu rights and interests

#### Question 20: What was the feedback from Kāi Tahu?

##### Answer

- I will defer to Kāi Tahu to speak to their feedback.
- *[CONTEXT: As part of the engagement process, Kāi Tahu raised concerns that the proposed MPAs may alienate current and future generations from their rohe moana, preventing them from undertaking their kaitiaki roles and undermining their mana.]*
- *[CONTEXT: Kāi Tahu view the proposed MPAs, particularly the marine reserves, as reducing the likelihood of establishing additional customary protected areas. They also consider the proposed MPAs will affect the quality and sustainability of kāimoana in existing customary protection areas by displacing commercial or recreational catch into them.]*

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	<ul style="list-style-type: none"> <li>• [CONTEXT: Kāi Tahu did not make a submission under the statutory consultation process, instead preferring to have their views heard through direct engagement, befitting a partnership. A submission was made by Te Rūnanga o Ōtākou, one of the six papatipu whose rohe moana is within the Network area.]</li> </ul>
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**Question 21: What does co-management with Kāi Tahu mean?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• Kāi Tahu, DOC, and Fisheries New Zealand have committed to work together to manage the network of marine protected areas.</li> <li>• [CONTEXT: This arrangement reflects Kāi Tahu tino rangatiratanga (self-determination) and enhances the retention and transfer of knowledge through generations. Kāi Tahu also consider it would allow for the maintenance of their cultural connection to their area.]</li> <li>• In the broadest sense, it will mean working together as good Tiriti partners to research, monitor and manage the marine reserves and any of the network's other protection measures approved by the Minister for Oceans and Fisheries. Kāi Tahu will have 50% of the seats at the management table.</li> </ul>
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**Question 22: What agreements have been made with Kāi Tahu?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• As well as co-management, the following measures will be put in place:             <ul style="list-style-type: none"> <li>- Kāi Tahu will be able to access the marine reserves for the continued enhancement of mātauraka Māori (traditional knowledge) through organised wānaka (intergenerational sharing of knowledge), and for the retrieval of koiwi tākata (ancestral remains) and artefacts, and cultural materials including dead marine mammals and marine mammal parts.</li> <li>- Periodic (five-yearly) reviews of data gathered at the marine reserves and in customary protected areas will be undertaken and will inform co-management decisions.</li> <li>- Generational (25-yearly) reviews of the marine reserves themselves, and in the context of the marine protected area network, to inform management decisions at that time.</li> <li>- Roles for Kāi Tahu rangers to undertake day-to-day work across the proposed marine protected area network alongside DOC Rangers and Fisheries New Zealand Fisheries Officers, and within Kāi Tahu customary protected areas (e.g. mātaimai reserves and taiāpure).</li> <li>- Te reo Māori names will be used for the marine reserves and pou whenua will be used, amongst other signs/markers, for the marine reserves.</li> <li>- Those holding an <i>Undaria pinnatifida</i> harvesting permit will be able to harvest this invasive seaweed from within the marine reserves.</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>- Sufficient funding to enable successful implementation and ongoing management of the marine reserves and the co-management activities and functions.</li> <li>• In addition, Kāi Tahu was informed that decisions to declare the marine reserves is unlikely, and not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011.</li> </ul>
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**Question 23: Are you concerned that the marine protection proposals introduce two sets of rules, one for Kāi Tahu and one for the rest of New Zealand?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• No, that is not the case. No one can fish commercially or recreationally in the marine reserves.</li> <li>• Under te Tiriti o Waitangi fisheries settlement legislation, Kāi Tahu hold commercial and customary non-commercial fishing rights. When administering conservation legislation, the Crown must give effect to the principles of the Treaty.</li> <li>• Marine reserves would generally exclude the ability for Kāi Tahu to exercise their customary non-commercial fishing rights. However, there will be conditions on these marine reserves to enable Kāi Tahu to continue to exercise their role as kaitiaki within their rohe moana, such as by allowing planned wānaka for the ongoing enhancement and sharing of mātauraka Māori (traditional knowledge), and retrieval of koiwi tākata (ancestral remains), artefacts, marine mammal remains and some beach materials.</li> <li>• Overall, the focus of this Government is conservation that works. What we have seen is that for conservation to work for biodiversity, it must work for people. We are committed to recognising Kāi Tahu as kaitiaki in the southeast region, as well as delivering healthy functioning marine ecosystems that support a diverse range of species.</li> </ul>
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**Question 24: How do activities associated with enhancing mātauraka Māori within these marine reserves differ from the customary practices that will be allowed for within the 'high protection areas' in the Hauraki Gulf?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• Standard customary fishing under the Fisheries Act will not occur in the southeast marine reserves, and Kāi Tahu did not ask for this. Instead, Kāi Tahu want to occasionally undertake lessons to teach the art of traditional fishing within the southeast marine reserves – and these lessons don't necessarily mean marine life will be taken or consumed.</li> <li>• In comparison, tangata whenua of the Hauraki Gulf will be able to continue with customary fishing under the Fisheries Act, provided that fishing aligns with the conservation goals of the high protection areas.</li> </ul>
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**Question 25: How will these marine reserves be managed and monitored to ensure that customary wānaka practices are not having a negative impact?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• Good monitoring and compliance are crucial to any marine protection tool. That includes monitoring the impacts of a wide variety of</li> </ul>
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	<p>activities, including those of marine and land-based activities.</p> <ul style="list-style-type: none"> <li>• Before Kāi Tahu undertake planned wānaka activities they will inform the co-management committee. There will be a monitoring regime established and officials and Kāi Tahu will work in partnership to ensure these areas produce the best possible results for biodiversity.</li> </ul>
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**Question 26: What if customary wānaka practices are found to be impacting too greatly on the marine reserves?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• Any activities undertaken within the marine reserves must be consistent with the purpose of the Marine Reserves Act.</li> <li>• Should any permitted activities, including customary wānaka practices, be found to be undermining the purpose, then as co-management partners, DOC and Kāi Tahu will revisit whether and how these activities can continue.</li> </ul>
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**Compliance**

**Question 27: How will you enforce no-fishing rules over such a large area?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• DOC is responsible for compliance activity in marine reserves. There may be occasions where Fisheries New Zealand detects possible offences within the marine reserves; when this occurs, it will pass that evidence onto DOC.</li> <li>• As in other parts of New Zealand, DOC and Fisheries New Zealand will collaborate as much as possible to share resources and information relating to monitoring and offence detection in the new areas.</li> </ul>
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**Question 28: What is FNZ's role in managing the marine reserves?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• The Department of Conservation is responsible for managing, monitoring and enforcement relating to the marine reserves; it is Fisheries New Zealand's responsibility to manage, monitor and enforce the Type 2 MPAs, if they are approved.</li> <li>• Type 2 MPAs are protected areas established outside of the Marine Reserves Act 1971. They provide enough protection from the adverse effects of fishing to meet the MPA Protection Standard.</li> </ul>
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**Funding**

**Question 29: How much will it cost to manage them?**

<b>Answer</b>	<ul style="list-style-type: none"> <li>• DOC estimates it will cost \$2.6m over the first four years to establish and then manage the six marine reserves, with additional ongoing costs of approximately \$0.6m per year afterwards.</li> <li>• In addition, DOC estimates it will cost \$5.2m over the first four years to implement and then maintain co-management of the network of marine protected areas (the six marine reserves and the six fisheries measures), with additional ongoing costs of approximately \$1.4m per year afterwards.</li> </ul>
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**Question 30: How is DOC paying for this given constrained budgets?**

**Answer**

- DOC has reprioritised existing funds to pay for the implementation and ongoing management of the marine reserves and for co-management with Kāi Tahu.
- Some of DOC's Predator Free 2050 programme funding will be reprioritised to establish and manage the southeast South Island marine reserves as well as the recently announced Hauraki Gulf marine protected areas.

**Question 31: What impact will this have on DOC's Predator Free 2050 programme?**

**Answer**

- The reprioritisation of funds to the Hauraki Gulf and southeast marine protection programmes, means approximately \$19.5m per year of Budget 22 funding will remain available for the Predator Free 2050 Strategy.
- DOC is looking at where adjustments can be made to minimise the impact on the Predator Free work programme. The Government considers that this strikes an appropriate balance between increasing the funding for an important job of predator eradication on land, and the equally important task of protecting our marine biodiversity.

**The Forum**

**Question 32: What did the Forum do?**

**Answer**

- The community-based South-east Marine Protection Forum/ Roopu Manaaki ki te Toka had representatives from Kāi Tahu, commercial and recreational fishing interests, marine science, tourism, communities and the environment.
- They initially consulted widely with Kāi Tahu, local communities, interest groups and the public about marine protection, and considered available scientific information.
- They recommended two network options to Ministers in 2018, which aimed to balance the effects on users versus biodiversity protection outcomes.
- The proposed southeast marine protection network is based on the Network 1 option developed by the Forum.

**The Announcement**

**Question 33: Why did the announcement event not take place?**

**Answer**

- The event was cancelled for logistical reasons – there were a range of factors including venue availability and security.

**The process**

**Question 34: Was the process to reach a decision fit for purpose?**

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**Answer**

- The Southeast Marine Protection process is a large and complex proposal, consisting of a network of six marine reserves (proposed under the Marine Reserves Act 1971), five proposed Type 2 Marine Protected Areas and a kelp protection area (proposed under the Fisheries Act 1996). This network of areas was one of two networks recommended by the Southeast Marine Protection Forum which represented stakeholders, community interests and Ngāi Tahu. The forum gathered information, consulted with the wider public and deliberated on marine protection options for the region from 2014-2018.
- In 2020, DOC and Fisheries New Zealand publicly consulted on this marine protection network. The commercial fishing information used in the consultation document was the best available information at the time and was based on average annual catch data over ten years (2007/08 to 2016/17).
- Since 2020, DOC has carefully considered and analysed the 4056 submissions received in order to develop accurate and robust advice to inform Ministerial decision-making. These submissions demonstrated a wide variety of views on the current health of this region's marine environment and similarly diverging views about the need for marine protection.
- DOC has also been provided updated commercial fishing information to inform its analysis of expected impacts on commercial fisheries. This includes the more accurate 'electronic catch and position reporting' data that has been collected since 2019. This is the best and most up to date commercial fisheries information available.
- The Minister of Conservation is required by the Marine Reserves Act 1971 to consider a range of factors when making decisions on new marine reserve proposals including, but not limited to, whether a marine reserve would interfere 'unduly' with commercial fishing or with recreational use of the area (e.g. recreational fishing).

*(Context - Minister Brooking has the below talking points, for your visibility)*

- *[FOR CONTEXT] We have reliable data on how much fishing will be affected from a combination of fishing trends over the past decade and more fine-scale information we've gathered over the past four years using electronic monitoring.*
  - *The 2020 consultation document was based on catch data collected over 10 consecutive fishing years (2007/08 to 2016/17, inclusive). While these data show long-term trends in how much fish was caught in a statistical area, those data were not collected at a fine enough scale to show what was caught in individual marine reserves. Despite these limitations, these data were the best available at the time of the consultation.*
  - *With the introduction of electronic reporting and geospatial positioning reporting (ER/GPR) in 2019, it became possible to understand where rock lobster fishing was happening with high precision, providing up-to-date information on how much fishing*

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*happened within each of the proposed marine reserves for the 2020/2021 – 2022/2023 fishing years.*

- [FOR CONTEXT] We heard concerns from industry and Kāi Tahu about the impacts proposed Te Umu Kōau Marine Reserve to fishing. According to early estimates of commercial impact presented in the 2020 consultation document, 19.9 tonnes of CRA 7 annual landings would be affected by the proposed reserve at Te Umu Kōau. The new ER/GPR data estimated this impact at 14.2 tonnes of CRA 7 annual landings.*
- [FOR CONTEXT] The impacts on fishers were carefully considered, and decisions to effectively restrict commercial rock lobster catch were not taken lightly.*
- [FOR CONTEXT] Because of the level of impact of Te Umu Kōau Marine Reserve as proposed by the SEMP Forum, amendments to the reserve boundary were considered to mitigate the impact on the rock lobster industry.*
- [FOR CONTEXT] The Minister of Conservation progressed one of those options (which amended the marine reserve boundary to exclude the area of deep reef known as “The Church”) that effectively halved the level of impact to commercial fishers (from 14.2 tonnes of CRA 7 annual landings to 5.6 tonnes), while still including an area of deep reef within the reserve.*

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