31st January 2003

TO: Local Government and Environment Committee
Parliament Buildings
Wellington

SUBMISSION FROM NEW ZEALAND RECREATIONAL FISHING COUNCIL ON THE MARINE RESERVES BILL 2002

OPENING

The Council thanks you for this opportunity to present submissions to you on the Marine Reserves Bill. As a general statement the **Council is not opposed to the creation of Marine Reserves**. In broad terms we believe they should be in the right place for the right reasons. The protection of biodiversity and the protection of unique or at-risk ecosystems are just two aspects in the overall management of the resource. Marine Reserves have a place in the suite of tools to responsibly manage our coastal and marine environment. However, they are simply one of many tools we can currently use for this purpose.

The Council believes marine reserves have a role to play in marine ecosystem management, but they should not be seen as the only tool available. We have a number of concerns in relation to this Bill that we will expound on further submission.

THE COUNCIL and REPRESENTATION

The New Zealand Recreational Fishing Council represents National and Regional Association, Club Corporate and individual members. Whilst a number of these have their own policies and will make submissions to you we believe they will be consistent with these submissions lodged by the overall body.

The National Organisations represented are N.Z. Angling & Casting Association, N.Z. Big Game Fishing Council, N.Z. Trailer Boat Federation, N.Z. Marine Transport Association, N.Z. Underwater Federation, N.Z. Sports Industry Association. The Regional Associations cover the whole country and are in Northland, Auckland, Bay of Plenty/Waikato, Taranaki, Wellington, Tasman Bay, and Otago. The Council also has some Maori groups as members with Te Runanga o Ngai Tahu as regional association.

The membership represented both directly and indirectly is in the vicinity of 300,000 recreational and sustenance fishers. In addition by default we represent the public interest in the fishery and those fishers who are non-members We say by default because we are the only constituted representative body that has been recognised by Government and the Courts of doing so.

The 1996 research to provide estimates of Recreational and Sustenance Harvest Estimates found that there are approx 1.35 Million recreational and sustenance fishers in New Zealand and therefore we effectively represent that number.

The Council has been recognised in two court cases as representing the recreational fishers of New Zealand. The Council was attached to these cases without its prior knowledge and the court papers show it was ordered "to represent the recreational fishing public of New Zealand". The first of these was the order of attachment to the High Court Action on the Manukau Taiapure application. The

second relates to the SNA1 challenge of the Ministers decision that was heard by the High Court. The Council also hold Approved Party Status for consultations with the Ministry of Fisheries and is recognised by them and the Minister of Fisheries as a stakeholder group.

The Council has a Board of elected officers and members. The Council consults with its members and the public using various means. These include newsletters, its web site and various press releases. In addition it consults through the various fishing media and meetings it holds and receives input through those forum.

COUNCIL POLICY.

The NZRFC has a formal Marine Reserves Policy that was adopted at its Annual General Meeting in 1993. This policy reads:

> *"That the Council through its members supports the establishment of marine reserves only where it is fully demonstrated that the purposes of the legislation are being met by the application".*

In relation to specific Marine reserve application the Council has left the input to individual members and organisations whilst adopting an overview role. In a number of statements and submissions different wording has been used to express that policy but these have been consistent with the intent of it. It is appropriate that we should note the most recent of these here.

Press Release from Ross Gildon June 12th 2002.

The President of the Recreational Fishing Council, Ross Gildon, today expressed fears that the Department of Conservation with support from the Green Party is on a collision course with recreational fishers around the country over the establishment of marine reserves.

"*The current legislation requires the Minister of Conservation to uphold an objection to the establishment of a marine reserve if the proposed reserve would interfere unduly with, or adversely affect, any existing usage of the area for recreational purposes.*

"The fears of my council centre on concerns that changes to the legislation will end up pitting recreational fishers against zealous conservationists because insufficient notice has been taken of recreational usage," he said.

"Papers of Cabinet decisions released to us under the Information Act disclose there is pressure to erode further the rights of Kiwis who like to flick a line into the waters off our coast. The policy of the Green Party to declare 20 percent of the coastline as reserve areas adds to that pressure.

"The final wording of new legislation has not yet been released. The time frame for submissions is going to be short we are told by Government officials. This is not reassuring to recreational fishers, particularly because our member clubs meet only once a month and will have little time for input.

"Our council recognises that the Government has a biodiversity strategy in place. It accepts the value of reserves in this context. But it has to be said that if the establishment of reserves is bulldozed ahead without due regard to customary use by rec fishers there is potential for more than harsh words on our foreshores and at sea.

"We don't want people in communities who hold passionate views on both sides of this issue to be pitted against one another. That would not be a recipe for successful long term management. " – ends

Policy statement as quoted at the 2002 New Plymouth AGM and also used in the Council's Te Matuku Bay submission.

We are concerned about our natural marine resources and support the protection of the marine environment and sustainable utilisation of fish and shellfish stocks.

We equally believe that marine protection areas should be located in areas of unique biodiversity and scientific needs and in locations where the public has a choice as to whether they wish to participate and enter the area or not.

Both these express our overall policy in more specific terms and many other quotations could be provided. **We wish to make it clear at this stage the Council is not opposed to marine reserves overall. The legislation referred to is the 1971 Act (not this Bill) and Council does support reserves that meet the criteria of that legislation.**

In simple terms it supports reserves in the right place for the right reasons. It supports reserves "for the purpose of preserving them in their natural state as the habitat of marine life for scientific study" *(1971 Act Preamble)*. To obtain support for "preserving, as marine reserves for the scientific study of marine life" the area must contain "underwater scenery, natural features or marine life of such distinctive quality, or so typical, or so beautiful, or unique that their continued preservation IS IN THE NATIONAL INTEREST" *(Sect 3 1971 Act – emphasis added)*

AFFILIATES POLICIES.

We have been provided with policies from some of our affiliates. In particular we commend the policies of the **NZ Big Game Fishing Council and the NZ Marine Transport Association** that are consistent with our own and we are aware that they are providing their own submissions to you. **We support those submissions**.

We are also aware of the policy of our affiliate **NZ Underwater Association** that was adopted September 1977 and reaffirmed in June 1991. Whilst the adopted policy is mainly consistent with our own we believe that they will be submitting some opposing views to ours. **Therefore this submission should not be taken as being on behalf of that organisation.**

Seafood Industry Policy.

Council has also received a copy of the policy of the NZ Seafood Industry adopted in April 2002. **In many areas the Council disagrees with the Industry but in reviewing this Bill finds itself in agreement with them.**
We concur with their view that this Bill should **Focus on the outcome (protection of marine biodiversity), not the tool (marine reserves).**

We concur with their view of non support of a policy approach based on protecting X% of the EEZ, or X% of the marine environment, or establishing X new marine reserves over the next xx years.

We concur with their view that the purpose of the Marine Reserves Act should be to provide "high level" protection of marine biodiversity.

We concur with their view that all marine reserves should be strictly "no take" and in fact suggest that marine reserves should be based on a policy of "one out, all out" i.e. total protection.

We concur with their view that Marine Reserves should not be established to protect historic heritage, natural features or scenic values, or to provide tourism opportunities or "places to look at fish".

We concur with their view that Marine Reserves should not be established to protect "representative samples" of marine ecosystems.

We concur with their view that Marine reserves are NOT fisheries management tools.

We concur with their view that the concurrence role of the Minister of Fisheries should be retained because of the significant implications of marine reserves for the sustainability and utilisation of fisheries resources.

We concur with their view that Marine reserves interfere with the exercise of harvest rights and opportunities for sustainable use.

We concur with their view that proponents of marine reserves should be required to demonstrate that they have avoided, remedied or mitigated any adverse effects of the marine reserve on other uses or values of the area, including all types of fishing.

We reiterate here that the Council agrees with the policy and note that it is consistent with our basic simple policy adopted back in 1993.

COUNCILS CONCERNS ON BILL.

The Council in reviewing the Bill finds a number of concerns with the intended legislation. In reviewing it we look to past history in addition to the intent of the proposal. There are a number of aspects that we believe will enhance the Marine Reserves Act 1971 (these will be covered below) but history gives us concerns in some generic areas. These are being covered at this point to draw them to your attention.

Generic Government Policy/Party Policy.

Over the last few years we have heard the catch phrase of "10% of the Coastline in Marine Reserves" or "10% of the Coastline in Marine Protected Areas". We also note some changes of the "10%" to "20%" and even higher.

We consider a "Percentage" policy as being an arbitrary way to select areas for protection. Such a policy takes no account of the purposes of the legislation or of the intent for a marine reserve status on a particular section of the coast.

Looking at the 1971 Act its "Preamble" states:

> *An Act to provide for the setting up and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study*

In Section 3 (1) the 1971 Act states:

It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that 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 requirements are quite clear the area is being preserved for scientific study. It must contain scenery, features and marine life that its preservation is in the national interest. We question where is the scientific evidence that a set percentage of the coastline meets those criteria? We submit that such scientific evidence does not exist. This being the case, How can Government and Parties espouse such a policy within the present Bill?

Looking to the Bill we note (without discussing the actual intent/content at this stage) Section 7 under the Purposes of the Act states:

The purpose of this Act is to conserve indigenous marine biodiversity in New Zealand's foreshore, internal waters, territorial sea and exclusive economic zone for current and future generations, by preserving and protecting within marine reserves---

(a) representative examples of the full range of marine communities and ecosystems that are common or widespread; and

(b) outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and

(c) natural features that are part of the biological and physical processes of the marine communities and ecosystems referred to in paragraphs (a) and (b), in particular those nature features that are outstanding, rare, unique, beautiful, or important.

Sections 8 & 9 under the Principles states:

8 *Principles to be taken into account*
A person performing a function or duty under this Act must take into account the principles specified in sections 9 and 10.

9 Principles
The principles are as follows:

(a) a marine reserve should include the range of habitats and marine communities that distinguish the marine area in which the marine reserve is situated and be of a size, design, and condition (or potential condition) that can be reasonably expected to---

(i) provide effective protection for the populations, marine communities, and natural ecological processes occurring within it; and
(ii) reflect the known composition and ecological patterns and processes of the habitat or marine community:

(b) the marine communities and ecosystems in a marine reserve should be maintained in, or restored to, a natural state:

(c) historic material in a marine reserve should be protected:

(d) recognition should be given to the importance of protecting undisturbed marine areas for scientific and educational purposes, and for research contributing to Te Ira Tangaroa, to gain a better understanding of the marine environment:

(e) the use and enjoyment of marine reserves should be allowed, if consistent with the purpose of this Act, and appropriate provision should be made to facilitate that use and protect the quality of the experience.

We again question (without discussing the actual intent/content at this stage) where is the scientific evidence that a set percentage of the coastline meets those criteria? We submit that such scientific evidence does not exist. This being the case, how can Government and Parties espouse such a policy within the present legislation?

TRUST OF THE GOVERNMENT, THE MINISTER AND THE DEPARTMENT OF CONSERVATION.

For Legislation and Reserves to work there has to be a trust between the participants including the Government, the Minister and the Ministry or Government Department involved. We note that such trust does not exist at this time in relation to Marine Reserves and this lack of trust comes from experience. We could cite many reasons for it but will only mention some to stress the point.

Non Declining & Resurrection Of Applications - We note that "no marine reserve application has ever been declined". Once they are on the books they stay there and are resurrected by the Department/Minister every few years in an endeavour to overcome the objections. We do note one advantage of the Bill is that it should force an end to this practice by the setting of time limits for decisions but this aspect will be expanded on later. Our assertion is proven in some documentation provided to us under the Official Information Act. Two of these are provided as Appendix 1 and Appendix 2. We draw to your attention the comments -

- *Minister of Fisheries to be requested to reconsider his concurrence in light of Treaty settlement with Ngati Tama and their negotiated support*
- *Ministry of Fisheries asked to re-activate 1999 concurrence request.*
- *Consideration needs to be given as to how to revitalise this dated application*

Akaroa Harbour - These show the continuing resurrection of applications. As further evidence we note the comments in the September 2002 list for Dan Rogers (Akaroa Harbour) of

- *Department to continue discussion with Ngai Tahu re strategy in their rohe*
- *Taiapure application is expected to require a year to bring to approval stage*
- *Ministers of Fisheries and Conservation to discuss later in taiapure process.*

We are aware that two application were lodged for Akaroa Harbour this one plus another shortly thereafter by one of our affiliates. The second application was lodged as an alternative to the first. The second application has completed its process and resulted in a reserve at Flea Bay. This being the case, why is this application still on the books? Why is it being resurrected? How can the Government, Minister and Department build trust and commitment with this sort of attitude?

Parininihi - The next example we would cite is the Parininihi (North Taranaki) that is noted on the schedule as being sent to the Minister of Fisheries for concurrence for the second time. The first time the application was unacceptable in Fisheries Management terms. It was then put on the back burner and negotiations for support carried out with Ngati Tama. We note no negotiations with other objectors. In the interim the Ministry of Fisheries implemented some protection regulations under the Fisheries Act. The application then becomes resurrected to deny users access and is again referred to the Minister of Fisheries for concurrence. We understand (from verbal indications) that it is still not acceptable in Fisheries Management terms and that the Minister of Fisheries has declined or indicated that he will decline concurrence. No announcement has been made so we can only again presume that it's been put on the back burner again to try to justify an application that does not meet the requirements of the 1971 legislation. This being the case, why is this application still on the books? Why is it being resurrected? How can the Government, Minister and Department build trust and commitment with this sort of attitude?

Glenduan – Ataata Point (North Nelson) - The next example we would cite is the North Nelson application that is also noted on the schedule as the Minister of Fisheries being asked to reactivate the concurrence request. We understand that the first time the application was unacceptable in Fisheries Management terms and the Ministry of Fisheries was requested to put on the back burner. We note no reference to any other negotiations with Maori or other objectors. The application has again become resurrected for concurrence. We understand (from verbal indications) that it is still not acceptable in Fisheries Management terms and that the Minister of Fisheries has declined or indicated that he will decline concurrence. No announcement has been made so we can only again presume that its been put on the back burner to try to justify an application that does not meet the requirements of the 1971 legislation. This being the case, why is this application still on the books? Why is it being resurrected? How can the Government, Minister and Department build trust and commitment with this sort of attitude?

Taputeranga (Wellington South Coast) – We now turn to the Wellington South Coast application that the previous Minister of Conservation (Sandra Lee) has approved on 13th May 2002 and referred to the Minister's of Fisheries (Pete Hodgson) and Transport (Mark Gosche) for concurrence. We believe that this application is now on the back burner also as the Conservation Ministers decision has been challenged in the High Court by Ngati Toa. We further understand that prior to that action the Minister of Transport (Mark Gosche) has indicated his concurrence. The Minister of Fisheries (Pete Hodgson) has not yet commenced his consultation and is holding this back pending the outcome of the High Court Action. How can the Government, Minister and Department build trust and commitment when they continue to delay application rather than make a decision of declining them?

We place on record that all three Ministers have received an indication of a further High Court action by one of our affiliates (Wellington Recreational Marine Fishers Assoc. Inc.) should concurrence and final approval be given.

A number of aspects relating to this application give us cause for concern. The first is the actions of the Minister of Conservation (Sandra Lee) herself and of her Parliamentary staff in respect of Conflict of Interest. We note the statement on page A11 of the Sunday Times of 28th July 2002 a feature article on Sandra Lee. In the 5th paragraph of the third column it states "Lee has kept her Forest and Bird membership while Conservation minister, much to the disgust of pro-development critics." On the face of it this is a clear case of a "Conflict of Interest" for the Minister in respect to the application and decision for the Taputeranga Marine Reserve to which Forest & Bird were one of the joint applicants. How can the Government and Minister build trust and be considered credible when such conflicts of interest exist?

We then note that the Minister's principal advisor at the time was Kevin Smith. He is a former senior employee of the Forest and Bird organisation. To compound this our affiliate holds documents indicating he was also one of the initial proponents for the Wellington South Coast Marine Reserve and one of its staunch advocates. At a public meeting in Wellington discussing the proposal on being informed of safety issues he stated that he was not interested in such matters or that people could drown and that the reserve would become a reality regardless of these safety issues. Again we see a clear conflict of interest by the Ministers Principal advisor. How can the Government and Minister build trust and be considered credible when such conflicts of interest exist?

Looking at the application itself we note that it is ultra vires for two reasons. The first is the eligibility of the applicant whilst the second is the Minister has ignored the requirements of the 1971 Act. To explain the first we note that the criteria set by the 1971 Act is that applications must be made by

"Any body corporate or other organization engaged in or having as one of its objects the scientific study of marine life or natural history". [Section 5 (a) (iii) of the Act].

The advertised applicant is "South Coast Marine Reserve Coalition AND Royal Forest and Bird Protection Society of New Zealand (Inc)". That is two bodies or organizations (not one} and therefore fails to meet the criteria required. As a Joint body they may be an organisation BUT THEY HAVE NO LEGAL ENTITY. Nor are they incorporated as a joint body. One of the two named organisations (South Coast Marine Reserve Coalition) is not incorporated in its own right. The other (Royal Forest and Bird Protection Society of New Zealand (Inc) is incorporated and could have applied on its own behalf. But this is not what has occurred.

We then look at the consistency of the decision of the Minister and Department in accepting the application as it was submitted. In doing so we go back to correspondence we hold in April 1991 with Geoff McAlpine of the Department of Conservation. The "Committee of the Combined Marlborough Dive Clubs" wished to lodge an application for the Long Island Marine Reserve. They were refused by the Department because, even though each club was separately incorporated, as a group jointly they were not. The advice was that they had no legal identity and as a combined group they were ineligible. The application was therefore lodged by AQUA Trust (of which our Secretary/Treasurer was Chairman) to overcome the problem and Departments ruling. We therefore ask where is the consistency? What has changed to make this Wellington application acceptable?

The Second reason the Wellington Application is Ultra Vires is the Minister has failed to comply with the requirements of the 1971 Act. Section 5 (6) is quite specific in its requirements. It states that the Minister

"shall uphold the objection if he is satisfied that declaring a marine reserve would – (d) Interfere unduly with OR adversely affect existing usage of the area for recreational purposes".

It was suggested to our affiliate the Minister had a counterbalancing provision but we note none is provided for in that statement in the Act. Adding to that we hold a letter of 28th February 2002 from the Minister to Evan Keay of Island Bay which states "I am advised that while a small portion of recreational fishing usage in the Wellington Area will be affected by the proposal there will be counter-balancing benefits to recreational users to consider as well". This being the case the Minister was required to uphold the objections in this area of which she was aware.

Both these aspect give us cause for concern in that the Minister has ignored the requirements of the legislation. How can the Government and Minister build trust and be considered credible when occurs?

Lastly on this reserve application we look at the actions of the Minister of Transport (Hon Mark Gosche) from whom concurrence was sought. We understand that (although no announcement has been made) the Minister has issued concurrence. We note no consultation from him on objectors views and concerns. The Minister of Fisheries has been told by the High Court that he must consult therefore we ask – What is different with the concurrence role of the Minister of Transport?

Our affiliate has concerns over aspects of this reserve as they relate to transport issues. The reserve has been allowed to have its outer boundaries extended into 1000 metres of an international gazetted shipping route. Marine charts including the electronic versions all clearly show the Pencarrow Head Light directs shipping into Wellington Harbour by the use of its white (079 to 081 degrees, range 13 miles) and red (081 to 088 degrees, range 10 miles) intense sector arc. This in fact directs shipping through many hundreds of metres of the outer limits of the proposed reserve. Therefore the reserve can *"Interfere unduly with any existing right of navigation"*.

We are also concerned relating to safety of persons using the area. We note the massive damage the fast ferries were doing to the marine environment, not only to the surface plankton but also the seabed to a depth of fifty metres. We observe that the fast ferry takes an outward passage some 4000 metres off the Phillips Point and some 1500 metres off the proposed reserve boundaries. Prior to some objection by our affiliate three times daily those ferries travel through the reserve area. Again a interference to navigation and danger to users of the marine area. What is different with the concurrence role of the Minister of Transport and is he to accept responsibility for any accidents in the future?

Whangarei Harbour Kamo High School Application – As with the Wellington South Coast application we are concerned as to the the eligibility of the applicant being the Kamo High School. On 7th August 2002 we wrote to the then Minister of Conservation (Hon Sandra Lee) requesting clarification of the subclause under that section 5 of the 1971 Act that the Kamo High School meets as an applicant. The present Minister of Conservation (Hon Chris Carter) has responded on 3rd September stating the *"Kamo High School being engaged in or having as one of its objects the scientific study of marine life or natural history". [Section 5 (a) (iii) of the1971 Act]*. This response must be questioned. Is not a High School set up under the education legislation to educate children? What section of the education legislation allows a high school to be engaged in *the scientific study of marine life or natural history?* What section of the education legislation provides a high school *having as one of its objects the scientific study of marine life or natural history?* It seems to us that the response received is purely a device to allow acceptance of another ultra vires application.

Te Matuku/Waiheke Island marine reserve. - Our concerns are further highlighted by the approval of the Minister of this marine reserve application within a few months of her leaving office. Again this is similar to the Wellington South coast application and should never have been approved in terms of the legislation. We refer in this instance TO section 4 of the act subsection (1) which states

> *"Subject to section 5 of this Act, the Governor-General may from time to time, by Order in Council, declare that any area described in the Order shall be a marine reserve subject to this Act, and to such conditions as may be recommended to him by the Minister under subsection (9) of section 5 of this Act; but no area in respect of which any lease or licence under the Marine Farming Act 1971 is for the time being in force shall be declared a marine reserve."*

In spite of the fact the Minister has approved a reserve for which the Governor General cannot legally provide the required Order in Council.

We are also told the area is not of unique biodiversity nor in need of scientific study. We are told the boundaries of the proposal were altered and they impinge on the safe over night anchorage in the area. In her decision Sandra Lee says that the reserve will enhance local fisheries and yet we have clear scientific evidence from your Ministry that marine reserves do not contribute to effective fisheries enhancement or management in New Zealand waters. We recognise that the QMS is tasked with this responsibility. Fisheries Management is not a purpose of the Marine Reserves Act nor should it be.

The area of passage rocks is important to us and recognised as being a prime sustainable area that holds kahawai all year round and is an important area for all boaties to catch kahawai, either for bait or sustenance.

The main shipping route for small craft to and from the bottom end passes through this proposed reserve boundary. The public will have no choice but to go through this reserve. Fishers frequently tow lures to catch a feed while on passage and the reserve impinges on their right to do so.

It is our understanding that this concurrence is also now being held in the Nelson Office of the Ministry of Fisheries as it cannot meet the Fisheries Concurrence process and rather than have concurrence refused DOC have requested a delay in an endeavour to make the application acceptable for resurrection again at a future time.

For the reasons set out above Council considers that it is impossible for the Government, Minister or Department to build trust with the communities and that proposals will fail for this reason. It is also the basis on which we object to certain aspects of the Bill itself,

OTHER TOOLS AVAILABLE.

As a further generic concern the Council submits that the Bill does not take into account the other tools that are now available for managing the Marine Resources and Marine Biodiversity. The Bill seems to be endeavouring to address many issues under the purported purpose of "Protecting Marine Biodiversity" whilst failing to recognise those other tools. Council notes that in 1971 when the Marine Reserves Act was passed many of the present tools were not available. By attempting to include them in this Bill it pre-empts the consideration of the Oceans Strategy, it pre-empts the Governments Marine Biodiversity Strategy (which is being worked on) and it shifts too much responsibility to the Department of Conservation rather than the appropriate Government Agencies that are presently and should be involved. **Council notes that the lead agency/agent for Marine Biodiversity is the Ministry of Fisheries/ Minister of Fisheries but that the concurrence role of that Minister is removed in the Bill. This we believe will lead to fragmentation in marine management.** It was noted at our 2002 conference (by the Hon. Peter Dunne) that the Department of Conservation has two roles and that these conflict with each other. The roles are described as "Advocate for Conservation" and "Management of the Crown Estate" and **Council agrees these responsibilities conflict with each other.** This Bill exacerbates the problem of such conflict.

For the record we note the following tools (for managing Marine Biodiversity and Marine Resources) have been implemented since the 1971 Act and suggest this Bill conflicts in many ways with them. We note the list is not exhaustive and that other mechanisms also exist.

Fisheries Act 1996 (1983) - The Purpose of the Fisheries Act is to ensure sustainability as a primary purpose and the principles require the maintenance of biodiversity. This Act includes the tools of Fisheries Plans, which offer a potential mechanism for stakeholder and community initiatives to protect, maintain, or restore habitats and ecosystems that are important for marine biodiversity. It includes Seamount closures to maintain aquatic biodiversity. It includes **Fishing Exclusions** such as bans on bulk or other harvesting methods in significant areas such as Paterson Inlet, Wairoa Hard, Spirits Bay, and the bryozoan beds at Separation Point. It also includes **Mataitai reserves** that are areas set aside as traditional fishing grounds where tangata whenua have a special relationship with the place. The Fisheries Act, recognises and provides for non-commercial customary food gathering by Maori. Maori and non-Maori may fish in mataitai reserves, but the Maori Committee (tangata tiaki) or kaitiaki can make bylaws restricting or prohibiting the taking of fish, aquatic life or seaweed in the reserve, if they consider this necessary for sustainable management. Commercial fishing may not occur in a mataitai reserve unless recommended by the tangata tiaki/kaitiaki. It includes **Taiapure reserves** that are similar to Mataitai. Both these management tools are not primarily designed to prevent all use threatening biodiversity values but management rules may be subject to more frequent review. In doing so they have the potential to achieve significant biodiversity protection and have the potential to achieve a high degree of tangata whenua acceptance.

Resource Management Act 1991 – We then have this Act which includes Marine Biodiversity protection in the form of **Regional Coastal Plans.** A Regional Coastal Plan is the tool by which resources in the Coastal Marine Area are managed at a regional level. They must "not be inconsistent" with the New Zealand Coastal Policy Statement which The NZCPS states that it is a national priority "To preserve the natural character of the coastal environment" and "To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna". These plans are useful for identifying areas to be protected and are the only mechanism available to deal with land based threats to biodiversity values. This Bill also includes **Areas of conservation significance** which are a further tool for protecting Marine Biodiversity.

Marine Mammals Protection Act 1978 – This Act provides for **Marine Mammal Sanctuaries** that are established to protect particular marine mammal species (e.g. dolphins, whales, seals, sea lions) by establishing sanctuaries within which activities known to have adverse effects on a species are prohibited. The level of protection available under the MMPA can be extensive if used to its full potential. Two examples are the Auckland Islands that to protect the NZ sea lion and Southern right whales by prohibiting all trawl fishing within 12 nm of the islands and Banks Peninsula that protects Hector's dolphin by prohibiting set nets during the summer.

Wildlife Act 1953 – This Act makes provision for Wildlife Sanctuaries and refuges that are established to protect particular species in a defined geographic area. Within sanctuaries, activities that disturb or extract the wildlife species concerned or habitat are prohibited or restricted. Access is often also restricted. A number of refuges and sanctuaries have been established and those with a marine component are usually small and located in inter-tidal areas.

As already indicated above Council questions the need for the overarching "protection of Marine Biodiversity in this Bill. We concur with the need for some reserves for scientific and/or unique purposes. We consider the present tool of the Marine Reserves Act adequate in purpose to provide for those reserves (although can see some need for improvement of the process within that). We therefore question the expansion into other areas creating conflict with other Acts as will be seen below.

MARINE PROTECTED AREAS STRATEGY.

We have indicated above that we consider this Bill to be premature and in conflict with overarching strategies being developed. One of these is the Marine Protected Areas Strategy a draft of which we have received for preliminary consultation. The purpose of that strategy paper is sated to be to set out the strategy for establishing a network of areas that protect marine biodiversity. The strategy is to utilises a broad range of management tools including marine reserves, fishing prohibitions, world heritage sites, and other coastal and marine management tools such as mätaitai and taiapure areas. This also implements priority action 3.6(a) of the New Zealand Biodiversity Strategy and is indicated as is an initiative of the New Zealand Biodiversity Strategy (NZBS), which was launched in February 2000.

Its intent is stated as "New Zealand's natural marine habitats and ecosystems are maintained in a healthy functioning state. Degraded marine habitats are recovering. A full range of marine habitats and ecosystems representative of New Zealand's marine biodiversity is protected." It contains actions to achieve this intent. The Scope is stated as it will co-ordinate existing tools and mechanisms for protecting marine biodiversity, rather than seek to develop new tools and legal frameworks.

The focus of the strategy is on using legislative instruments that have biodiversity protection as an objective in creating a representative marine protected areas network using three main legislative

tools of the Marine Reserves Act, the Fisheries Act 1996 and the Resource Management Act (RMA) 1991. It also notes that other legislative frameworks also have the potential to contribute to the network and

Some non-statutory tools such as rahui and local agreements also play a valuable role in maintaining or protecting biodiversity

We note that on 1st June2002 Sandra Lee who was then Minister of Conservation stated on Radio NZ "So one of the key focuses of the new Marine Reserve Draft Bill will be to focus on a preservation of the biodiversity of an area for its intrinsic values not just scientific argument." It is therefore apparent that the intent of the bill is to pre-empt the strategy.

She drew parallels between the terrestrial environment and the forms of preservation from world heritage status in national parks right through to local purpose reserves and other forms of protection. She then suggested that in the marine environment we only have the Marine Reserves Act. This is not correct but gives an insight into her intent in introducing the Bill.

Council therefore submits that this Bill is premature and the expansion of the Marine Reserves definition and purposes is pre-emptive. We consider that it would be far better to maintain management of the marine areas in the hands of the appropriate agencies rather than in the hands of the Department of Conservation. We have no problem with DOC being the advocate for Conservation but submit that the relevant management/overall control should be in the hands of the likes of the Ministry of Fisheries.

MISCONCEPTIONS and LOSS OF ACCESS.

As a generic issue Council has concerns over the misconceptions created by proponents for reserves under the present Act and sees this continuing under the new Bill. The creation of Reserves leads to a loss of access to those who already have rights to use the resource.

Addressing the first issue is the concept that Marine Reserves enhance fisheries and create protected zones to improve the fisheries resource. To show this point we note that one of the major proponents for reserves is the Royal NZ Forest & Bird Society. On the Environment Matters Programme on Radio NZ on 1st June 2002 Eric Pyle who is Conservation Manager stated

> *"That there's going to be more fish in the sea basically. In marine reserves of course you can't catch fish and what happens is the fish numbers tend to increase significantly and the fishers benefit because on the edge of marine reserves you get a spill over effect. Also they can provide very important breeding areas. Fish grow a lot bigger in marine reserves and bigger fish produce a lot more young."*

Mr Pyle further indicated that he thinks reserves need to be strategically placed to overcome poaching. We note however that poaching is a Fisheries Management issue and is addressed by the Fisheries Act and the enforcement provisions therein. It is not and nor should it be) an issue relating to a Marine Reserve and the creation of one.

In anticipation that the suggestion of Fisheries management and enhancement (plus spillover effects) will also be made to your committee we use one example in response. On the Central Hawke Bay Coast at Porongohau in 1994 a Taiapure was created as a community management tool and initiative. One of the results of this was the banning of Commercial Rock Lobster fishing in the Taiapure. The size is relevant as it covers an area parallel to the coast one nautical mile from shore and 42 kilometres in length. Then in 1997 DOC created the Te Angiangi Marine Reserve 5 kms from the northern boundary of the Taiapure. This entire coastline was well used for rock lobster fishing and the effect of the closure of both areas has forced that fishery into an area of 5 kms only.

As it was sustaining 6 boats with 900 pots they are now all in one small window and can create greater pressure in that which is left.

Council notes that increased numbers of fish and lobsters inside marine reserves do not "*compensate*" for the lost fishing opportunity. Research at the Leigh reserve has shown that catch rates by commercial lobster fishermen working adjacent to the marine reserve boundaries are no better, and are often less, than catch rates in the wider fishery management area. There is no evidence of "spillover" benefits often claimed by reserve advocates. The quota management system does address both the demand and the supply of fishstocks. Marine reserves currently have no fishstock management role - not in legislation, nor in application. Areas closed to fishing may have a fish stock management role as part of a comprehensive Fishery Plan.

Council also refers you to scientific research papers on the effects of creation of Reserves and Closed areas and in particular cites:

- *A Framework for assessing the use of spatial closure as a fisheries management tool – Trophia Research – N Bentley et al - NZ Mfish Project ENV 1999/04 Feb 2001*

- *The role of Marine reserves as Fisheries Management Tools – A review of concepts, evidence and international experience – Trevor J Ward et al – Dept of Aquaculture, Fisheries & Forestry, Australia – Dec 2001.*

- *Mpa Perspective: Dangerous Targets And Inflexible Stances Threaten Marine Conservation Efforts - By Tundi Agardy.*

- *Freshwater and Marine Ecosystems ("Dangerous Targets? Unresolved Issues and Ideological Clashes Around Marine Protected Areas". - T. Agardy, P. Bridgewater, M.P. Crosby, J. Day, P.K. Dayton, R Kenchington, D. Laffoley, P. McConney, P.A. Murray, J.E. Parks, and L.Peau).* ***– See Appendix 3.***

Council again notes its concerns that the creation of a proliferation of Marine Reserves under this Bill will exacerbate problems of loss of access to the resource and will result in transferring pressure into areas where it cannot be sustained.

THE BILL ITSELF.

Council now proposes to address specific issues in the Bill itself. We again make it clear at this stage the Council is not opposed to marine reserves overall. It sees in the Bill some improvements in the current legislation but has concerns that the Bill goes to far and addresses issues more appropriately cover in other existing legislation.

Clause 1 - Title

We note the title is stated as "the Marine Reserves Act 2002".

Council Questions whether this is still an appropriate title taking into account our comments above and following. The purpose has been expended far beyond the context of Marine Reserves and the purpose set out in clause 7 indicates it is to "conserve indigenous marine biodiversity.

Part 1
Purpose, principles, application, and interpretation

Clause 3 Interpretation

We note that although the Bill has a purpose to "*conserve indigenous marine biodiversity*" no definition of the meaning of this expression is given in this clause. We note that Biodiversity is defined in the New Zealand Biodiversity Strategy as:

> *'the variety of all biological life - plants, animals, fungi, and micro-organisms – the genes they contain and the ecosystems on land or in water where they live. It is the diversity of life on earth.'*

Council recommends for clarity that the expression "marine biodiversity" should be included and recommends the above interpretation. We further recommend that the expression "indigenous" be defined in this are.

Clause 5 Application of this Act

Subclause (2) states [**emphasis added**]:

> *However, this Act must be interpreted so that it does not restrict innocent passage through a marine reserve in the territorial sea, transit passage through a marine reserve in an international strait, or freedom of navigation in a marine reserve in the exclusive economic zone,* ***apart from---***
>
> ***the restrictions in sections 13 to 16; and****…*

A Council affiliate has raised concerns in respect of this clause. Reference to Clauses 13 (2) (b) and (c) creates an inconsistency and problem. This makes it an offence to:

> (b) *modify, damage, or destroy historic material in a marine reserve, or remove historic material from a marine reserve:*
>
> *(c) damage, injure, interfere with, or disturb the marine life, foreshore, seabed, natural features, natural material, and other material or structures of the marine reserve:*

Using the **Wellington South Coast application** (which Hon Sandra Lee has approved) as an example the proposed reserve impinges on the gazetted shipping channel for Wellington Harbour. The Fast Ferry between the Islands can (and has) legally transit through the reserve. That ferry has been shown to modify the bottom, to move boulders in 40 metres of water and by throughput of water damage marine life via its turbines. It is legally using the shipping channel for "innocent passage" but in doing so will be committing an offence under this clause. A similar situation can exist in relation to the **Te Matuku/Waiheke Island marine reserve** That has also been placed over recognised shipping lanes. We question could it be deemed that charter vessels and smaller recreational boats also cause damage from their propulsion through a reserve?

Whilst using a large vessel as an example Council has concerns that this clause could be used at some point to limit or restrict access to boats in the future and we seek appropriate modification.

Purpose of Act

Clause 7 under the heading "Purpose" states:

> *The purpose of this Act is to conserve indigenous marine biodiversity in New Zealand's foreshore, internal waters, territorial sea and exclusive economic zone for current and future generations, by preserving and protecting within marine reserves---*
>
> *(a) representative examples of the full range of marine communities and ecosystems that are common or widespread; and*

(b) outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and

(c) natural features that are part of the biological and physical processes of the marine communities and ecosystems referred to in paragraphs (a) and (b), in particular those nature features that are outstanding, rare, unique, beautiful, or important.

We reiterate our opening statement that Council is not opposed to the creation of Marine Reserves. Although the Members of Council are extractive users they believes marine reserve have a role to play in marine ecosystem management, but they should not be seen as the only tool available. This tool should be retained to protect areas and ecosystems that are unique and rare rather than as a general tool to lock up certain areas. They should be areas where science shows this form of protection is needed. They should be areas where scientific study can be and should be carried out. Marine Reserves should be the "last resort" type of protection that needs to be provided. As indicated above we already have many other tools to protect the marine biodiversity under other legislation and these should be used in the first instance.

Council accepts and has no difficulty with subclauses (b) and (c). We question however the need to add subclause (a) and would recommend its removal. Why do we wish to remove access for a "representative sample"? What is the need for such a sample? What is the purpose? What is the scientific validity for such? These are questions that require answering before such a broad clause as this is added. We consider the addition of subclause (a) to be the main impingement on other legislation**. Council therefore considers subclause (a) should be removed**.

Council also questions the need to expand the legislation into the entire EEZ as this amendment proposes. The Fisheries Act has already been used to protect seamounts and should remain the primary legislation for the wider EEZ. In making this observation we question how the creation of a marine reserve in the EEZ will meet the requirements of the principles of the Act. We refer to 9 (a)

(i) provide effective protection for the populations, marine communities, and natural ecological processes occurring within it; and

(ii) reflect the known composition and ecological patterns and processes of the habitat or marine community
:

and in doing so ask what areas may need such protection of Marine Reserve Status that are not already protected by natural occurrences and location removing effects of man from them. We refer to 9 (b),

(b) the marine communities and ecosystems in a marine reserve should be maintained in, or restored to, a natural state:

and in doing so question which areas if any are not already in a natural state, which need restoring? We refer to 9 (c)

(c) *historic material in a marine reserve should be protected:*

and in doing so question which areas if any have historical material that is not already protected by distance, depth and the environment. We refer to 9 (d)

(d) recognition should be given to the importance of protecting undisturbed marine areas for scientific and educational purposes,

and for research contributing to Te Ira Tangaroa, to gain a better understanding of the marine environment:

and in doing so question which areas are not already undisturbed and what scientific or educational purposes are proposed in these areas which are beyond the influence of man or his ability to even access them because of depth distance weather etc.

Council therefore recommends the removal of the entire EEZ.

Principles

Clause 8 under the heading "Principles to be taken into account" states

"A person performing a function or duty under this Act must take into account the principles specified in sections 9 and 10."

Council has no difficulty with this clause.

Clause 9 under the heading "Principles" states:

The principles are as follows:

(a) a marine reserve should include the range of habitats and marine communities that distinguish the marine area in which the marine reserve is situated and be of a size, design, and condition (or potential condition) that can be reasonably expected to---

(i) provide effective protection for the populations, marine communities, and natural ecological processes occurring within it; and

(ii) reflect the known composition and ecological patterns and processes of the habitat or marine community:

(b) the marine communities and ecosystems in a marine reserve should be maintained in, or restored to, a natural state:

(c) historic material in a marine reserve should be protected:

(d) recognition should be given to the importance of protecting undisturbed marine areas for scientific and educational purposes, and for research contributing to Te Ira Tangaroa, to gain a better understanding of the marine environment:

(e) the use and enjoyment of marine reserves should be allowed, if consistent with the purpose of this Act, and appropriate provision should be made to facilitate that use and protect the quality of the experience.

In General terms Council sees no difficulties with these principles to be taken into account. We have already questioned above how aspects of them as they relate to the EEZ and our questions/objections need to be considered here. We note that the principles are very important and that there are a number of requirements throughout the Bill for decisions to be consistent with the "purpose & principles". We will therefore comment on these as they arise. We note that it is very important that the principles are "balanced" and we acknowledge that there are adverse effects as well as biodiversity benefits in the creation of marine reserves.

At this stage however **we consider additional principles are required to cover taking into account and protection of existing use rights and the protection of the integrity of the fisheries management regime.** subclause(e) uses the phrase *"facilitate that use"* and this could result in an

active transfer of rights from extractive use to non-extractive use. These become an issue when used in combination with Clause 67 (4) that states:

> *"In considering the public interest under subsection (3), the Minister must have regard to---*
>
> *(a) the benefit of preserving and protecting marine communities and ecosystems to conserve indigenous marine biodiversity; and*
>
> *(b) any benefits that may arise directly from the establishment of the marine reserve that the Minister considers relevant."*

When balancing benefits the Minister must also be forced to consider the detrimental effects of those extractive (or other users) who already have rights (be they common law or legislated). Therefore **Council considers the principles of this Act need to be expanded into a principle to protect existing use rights and other legislation.**

We see another difficulty in the area of (a) (i) *providing protection to "populations" and "ecological processes"* – in that this section could be used to justify massive reserves in detriment to other users.

We further note in (b) the use of the term *"restoration"* suggests that Marine Reserves could be established not just in high quality ecosystems, but also in degraded ecosystems. This aspect needs clarifying. Also there is a need to clarify what is a "natural state" and how this reflects in the Act. Council suggests that some definition in the "Interpretation section" is appropriate.

Clause 10 under the heading "Decision-making principles" states:

> *(1) Decisions should be based on the best available information.*
>
> *(2) Decision makers should consider the extent and nature of any uncertainty in information.*
>
> *(3) The fact that information is uncertain or incomplete does not, of itself, justify postponing or not making a decision about establishing a marine reserve.*
>
> *(4) If information is uncertain or incomplete, a decision concerning management of a marine reserve that may adversely affect a marine community should tend to protecting and preserving that community.*

Whilst sub clauses (1) & (2) are in Councils view logical and justifiable we consider that sub clauses seem (3) & (4) need amendment or balancing. These principles imply that the precautionary principle only works the one way in favour of protection. Other legislation such as the Fisheries Act provide a far more balanced incorporation of caution and should be used.

Treaty of Waitangi

Clause 11 under the heading "Treaty of Waitangi" states:

> *This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.*

Council has no difficulty with this clause.

Part 2

Use of reserves
Permitted activities

Clause 12 under the heading "Permitted activities" states:

> *(1) A person may carry out in a marine reserve a recreational or educational activity that does not breach section 13, section 14, or section 15 and that is not carried out for gain or reward.*
>
> *(2) A person may carry out in a marine reserve, if authorised to do so by a concession,---*
>
> *(a) scientific research; and*
>
> *(b) research contributing to Te Ira Tangaroa; and*
>
> *(c) any other activity.*
>
> *(3) A person may carry out in a marine reserve any of the following activities:*
>
> *(a) anchoring:*
>
> *(b) the normal operation of a ship:*
>
> *(c) an activity necessary to save or protect human life or health, or prevent serious damage to property, or avoid an actual or likely adverse effect on the environment:*
>
> *(d) any mining, exploration, or prospecting authorised under the Crown Minerals Act 1991.*
>
> *(4) The manager of a marine reserve, or the Minister or Director-General, may carry out any activity in the reserve in performing or exercising a function, duty, or power under this Act or other enactments.*
>
> *(5) Subsections (1), (2), (3)(a), and (4) may be overridden by---*
>
> *(a) an Order in Council under which a marine reserve is established; or*
>
> *(b) regulations under this Act that apply to a marine reserve; or*
>
> *(c) a notice given under section 17.*

Council notes that this clause introduces into the legislation the aspects of "Concessions" relating to use of the reserves. Council has considerable difficulty with such an introduction particularly when taking into account the Departments (and Governments) history of concessions and their use for "making money" by user charges. The "purposes and principles" of the Act are clearly stated in clauses 7, 8, 9 & 10 of the Bill and we note nowhere therein is the suggestion of "making money or a return". In fact principle 9 (e) which states:

> *(e) the use and enjoyment of marine reserves should be allowed, if consistent with the purpose of this Act, and appropriate provision should be made to facilitate that use and protect the quality of the experience.*

implies the opposite. The charging of a concession can reduce "public access, use and enjoyment" that would be contrary to this clause.

Under clause 12 subclause (1) the expression is used *"and that is not carried out for gain or reward."* This expression needs considerable clarification as to its meaning. Council is already aware of moves in the past by DOC to require concessions of various users. A prime example is that of a diving instructor who charges students to teach them to dive. Part of the curriculum (which is education) requires a certain amount of practical diving in the ocean. Where a marine reserve is local the instructors take the students to that area rather than another bit of the ocean. We are aware that DOC is already attempting to force such instructors to obtain a concession for such use thereby breaching the intent of the legislation. We note many schools charge students for extra curricular activities and costs for class visits etc. They are thereby also covered by this expression "gain or reward". Are they to be required to obtain and pay for a concession. What about the bus company that takes such groups (or even tourists) to a marine reserve? Are they also going to be required to obtain and pay for a concession.

Council also has a number of members who operate charter vessels. The "gain or reward" payment they receive is for the boat use and they are basically a taxi or bus driver. Where a reserve is situated away from the main land such as the Mayor Island and Poor Knights Reserves and to a lesser extent the Long Island Reserve the main access is by charter vessel. It becomes ridiculous where this clause suggests they will need a concession.

Council therefore requests the removal of the words *"and that is not carried out for gain or reward."* from subclause 1 and amendment of subclause 2 by the removal of the words *"if authorised to do so by a concession,"* to remove any requirement for a "concession" to be obtained for access.

Council can see no difficulty with subclauses 3) and 4). We do however question the need for subclause 5 and the ability of regulations or notice to override the primary permitted activities in the Act. We have expressed earlier our concerns and lack of trust of the department and Minister and would request removal of this subclause or at the very least sections (b) and (c) of that subclause.

Restricted activities

Clause 13 under the heading "Activities restricted in all marine reserves" states:

> *(1) No person may take marine life from a marine reserve unless authorised to do so by---*
>
> *(a) the manager of the marine reserve for management or biosecurity purposes; or*
>
> *(b) a concession granted under section 18 for scientific research, or for research contributing to Te Ira Tangaroa.*
>
> *(2) A person must not do any of the following things unless authorised by a concession:*
>
> *(a) take natural material or other material from a marine reserve:*
>
> *(b) modify, damage, or destroy historic material in a marine reserve, or remove historic material from a marine reserve:*
>
> *(c) damage, injure, interfere with, or disturb the marine life, foreshore, seabed, natural features, natural material, and other material or structures of the marine reserve:*

(d) dump or incinerate waste or other material in a marine reserve from a vessel or aircraft:

(e) introduce marine life into a marine reserve:

(f) erect a structure in a marine reserve:

(g) use an explosive or discharge a firearm in or into a marine reserve:

(h) operate, submerge, or tow in or into a marine reserve any line, net, trap, gun, or other gear for taking marine life.

(3) The restrictions in this section are additional to the restrictions in sections 14 and 15.

In respect of both Subclauses 1 & 2 for the reasons given above the Council requests removal of the references to "concession".

In addition in respect of both Subclauses 1 & 2 Council has concerns in the use of the words "take" and "introduce" in these subclauses. Our difficulties emanate from the officious nature of some officials and their interpretation of the law. They are compounded by the "powers of seizure" set under clause 91 and the "onus of Proof" set under clause 109 (4). In relation to the word "take" a definition is given under Clause 3 "interpretation" that reads

"take,---

(a) in relation to marine life, includes remove, catch, fish, or kill by any means or device (whether or not the marine life is subsequently returned alive or dead into a marine area); and

(b) in relation to a plant, includes uproot, uplift, or transplant; and

(c) includes an attempt to do any of the things in paragraph (a) or paragraph (b)

In relation to the word "introduce" no definition is given under Clause 3. Using the Wellington South Coast Reserve application as an example we note that the main south coast boat ramp for launching and recovery of vessels is within the reserve boundaries. In terms of this interpretation any person launching from that ramp and fishing outside the reserve and then returning to recover the vessel at the ramp can be deemed to be or interpreted as being in breach of this law twice. The moment he crosses the reserve boundary with fish legally caught on board he is "introducing marine life into a marine reserve" area. When recovering his vessel he is then "removing" marine life from the marine reserve area. It hasn't touched the water, It wasn't "caught" in the marine reserve but the reality is it was introduced and taken (removed). The Bill then allows confiscation of the vessel etc and places the onus and expense on the alleged offender to prove otherwise. A similar example can be used with boats in transit through a marine reserve area and the Waiheke application which covers recognised recreational fishing lanes is an example. Council does not believe that you should be enacting laws that turn law abiding citizens into alleged lawbreakers and then requiring them to prove otherwise. We request that a clear interpretation of the meanings of "take" and "introduced" be incorporated in Clause 3 or amendment be made to this (and the other relevant clauses) to correct the anomaly.

Council has further concerns with the use of the word "damage" in subclauses b) and c) without similar interpretation under Clause 3. We would add to this concern the use of the words "modify" "injure' and "interfere with" and the word "disturb". We have referred to

above the fast ferry transiting the Wellington Marine Reserve area. We note that its turbines "damage, injure, interfere with and disturb" the marine life within the reserve. A large vessel passing a reserve creates a wave pattern that also has the potential to "damage, injure, interfere with and disturb" the marine life within the reserve. At what size and how close can a vessel go to a reserve without impinging on this law. We question the use of small pleasure boats being used in a reserve. They will definitely "disturb" any marine life around them. They could also be injuring the same marine life. Marine diesels and motors suck in and discharge water for cooling purposes. Is this clause to be interpreted as a prohibition on all vessels within of close to a reserve?

As a further matter we question subclause *(f) reading "erect a structure in a marine reserve"* and needing a concession. With the Resource Management Act requiring resource consents for structures why does it then become necessary to obtain a concession (or other approval) from the Minister of Conservation or the Department? Does this indicate that this Bill will take precedence over the RMA and if so why?

Clause 14 under the heading "Activities restricted in marine reserves in foreshore, territorial sea and internal waters"

> *A person must not do any of the following things in a marine reserve in the foreshore, territorial sea or internal waters unless authorised by a concession:*
>
> *(a) discharge---*
>
> *(i) noxious liquid substances, oil, or garbage; or*
>
> *(ii) waste from fishing:*
>
> *(b) discharge untreated sewage from a vessel or offshore installation:*
>
> *(c) discharge sewage or other waste from outfalls:*
>
> *(d) discharge ballast of any kind:*
>
> *(e) discharge a substance or an article of any kind that is---*
>
> *(i) harmful to marine life or marine communities, or to any part of them; or*
>
> *(ii) harmful to human health; or*
>
> *(iii) harmful to people's use and enjoyment of the marine reserve:*
>
> *(f) land or take off an aircraft except to establish, construct, operate, maintain, repair, or replace a maritime navigational aid:*
>
> *(g) deposit litter in a marine reserve except in a place or receptacle provided for that purpose.*

Council reiterates it comments above on the term "concession" and notes that this needs to be removed. Council also draws to attention the "discharge" of cooling waters from marine motors which is the usual operation of a vessel and questions whether this could be deemed to be a discharge of "*noxious liquid substances*" or the discharge of a "substance" that is "*harmful to marine life or marine communities, or to any part of them*". Again we see a situation where the Bill is not clear.

Clause 16 under the heading "Relationship between restricted and permitted activities" states:

(1) Sections 13(2) and 14---

(a) are overridden by section 12(2) to (4); and

(b) may be overridden by an Order in Council that establishes a reserve.

(2) No person may carry out an activity in a marine reserve unless it is--

(a) an activity referred to in, or authorised by, section 12(1), (3), or (4), section 13(1)(a), or section 14(g); or

(b) an activity authorised by a concession.

Council reiterates it comments above on the term "concession" and notes that this needs to be removed.

Concessions

Clause 18 under the heading "Minister may grant concessions" states:

(1) The Minister may grant a concession for any activity in a marine reserve except an activity referred to in subsection (3) or subsection (4). A concession may be a lease, licence, permit, or easement.

(2) A concession is required in a marine reserve---

(a) for scientific research; and

(b) for research contributing to Te Ira Tangaroa; and

(c) for a recreational activity, or other activity, undertaken for gain or reward; and

(d) for an activity referred to in sections 13(2) and 14.

(3) A concession is not required in a marine reserve for an activity referred to in section 12(1), (3), and (4).

(4) The Minister must not grant a concession in a marine reserve for---

(a) the commercial, recreational, or customary take of marine life; or

(b) an activity that is prohibited or restricted by---

(i) the Order in Council under which the marine reserve is established; or

(ii) regulations made under this Act that apply to the marine reserve; or

(iii) a notice given by the manager of the marine reserve under section 17; or

(iv) a statement of general policy or conservation management strategy that applies to the marine reserve; or

(v) a management plan for the marine reserve.

(5) Part IIIB of the Conservation Act 1987 (except sections 17O and 17ZF(1)) applies, with all necessary modifications, to a concession under this Act as if---

(a) the concession were a concession under the Conservation Act 1987; and

(b) every reference in those sections to a conservation area were a reference to a marine reserve; and

(c) the reference in section 17Y(1)(a) of the Conservation Act 1987 to paying rents, concession fees, and royalties to the Minister were, for a concession in a marine reserve for which a management body has been appointed, a reference to paying those rents, concession fees, and royalties to the management body.

(6) It is a condition of every concession that the concessionaire must comply with the prohibitions or restrictions imposed under section 17(1) or (3), unless the manager specifies otherwise.

Council reiterates it comments above on the term "concession" and notes that this needs to be removed. Regardless of our basic objection we note particularly subclause 4) where it states

"*The Minister must not grant a concession in a marine reserve for---*

(a) the commercial, recreational, or customary take of marine life; or

Taking into account that many of our members exercise a customary take and Clause 11 of the Bill requires it to be administered to give effect of the principles of the Treaty of Waitangi we question how this prohibition is giving that effect and how it affects the Treaty of Waitangi Fisheries Claims Settlement Act.

Part 3
Management of marine reserves

Clauses 19 to 23 cover the Management of Marine Reserves and the appointment of Management bodies by the Minister. Clauses 24 to 26 cover the appointment of Advisory bodies for reserves managed by DOC. Council has very little to say on this issue other than to refer to Clause 20 under the heading "Appointment of management bodies" subclause (1)(c) which states:

"a management board consisting of persons that the Minister thinks are fit for that purpose; or"

Council believes that there are a number of persons from the extractive area who should qualify for appointment to such boards. However past experience with nominations made for Conservation Boards and the NZ Conservation Authority has shown a reluctance to appoint any such qualified persons. This being the case we express the reservation that any boards so appointed will not be representative of all qualified stakeholders and therefore lacking in knowledge. It is also noted that the Bill is silent on the reimbursement of expenses/meeting costs and operating expenses etc for such Boards.

Part 4
Establishment of marine reserves
Applications to establish marine reserves

Council notes that aspects of the application process proposed will be a vast improvement over the process in the present Act. We do however see some difficulties within that process and will highlight these as we proceed. We further note an extra interpretation section for this part of the Act and will comment thereon at the end of this part of the bill. We understand and interpret the intent under the bill to be in general terms a proposal is submitted and consulted on. This proposal with approval becomes an application upon which submissions can be made. These submissions are responded to and summarised. They are consulted on with other Minister and a decision is made. Provision is also made for review and alteration of reserves.

Proposals for establishment of marine reserves

Clause 47 under the heading "Preparation of proposal" states:

(1) The Director-General may prepare a proposal.

(2) A person other than the Director-General may prepare a proposal and submit it to the Director-General.

Council sees difficulty with subclause 2 of this clause as it means that any person can make a proposal. In theory all 3 million residents can submit a proposal for their "patch" and each will need to be addressed. We see this as providing a recipe for ad hoc proposals and do not consider this to be an ideal situation. We would prefer a planned strategic approach based on some form of national strategy rather than the ad hoc approach of the past. Council therefore recommends that this general approach be qualified with a requirement that proposals are consistent with a "national strategy for Marine Reserves".

Clause 48 under the heading "Consultation and consideration during preparation of proposal" states:

In preparing a proposal under section 47, the Director-General or the proposer, as the case may be, must,---

(a) if practicable, consult---

(i) iwi or hapu who are tangata whenua of the marine area concerned; and

(ii) iwi or hapu who have customary access to the marine area concerned; and

(iii) interested persons; and

(b) keep a record of that consultation; and

(c) consider ways of avoiding or mitigating adverse effects on existing uses of the marine area concerned if those ways do not compromise the purpose of this Act and are consistent with its principles.

Council has concerns over two aspects of this clause. The first is the use of the words "if practical" in subclause (a). Council considers that it is essential that consultation take place with Iwi, Hapu and interested parties. Council therefore recommends the removal of the words "if practical" to make such consultation compulsory.

In addition Council considers that it is essential that proposals are consulted with "existing users of the proposed marine area" and would therefore recommend the adding of a further category. We appreciate that the phrase "other interested persons" can be argued as covering

this requirement but we do not consider this to be strong enough to protect existing users who already have rights. We question who decides who are other "interested parties". Council has already had experience in respect of the Volkner Rocks proposals of a lack of consultation with "existing users" and can present evidence if this is required.

Clause 49 under the heading "Contents of proposal" states:

> *(1) A proposal must---*
>
> *(a) describe the location and boundaries of the marine area proposed as a marine reserve; and*
>
> *(b) state how the proposed marine reserve will meet the purpose and principles of this Act; and*
>
> *(c) contain the names and addresses of those who were consulted under section 48(a), and summarise the matters raised by them; and*
>
> *(d) contain a statement of the extent (if any) to which the matters raised or considered during consultation under section 48 have been addressed in the proposal.*
>
> *(2) A proposal must not relate to a marine area---*
> *(a) for which a lease or licence under the Marine Farming Act 1971 is in force; or*
>
> (b) *that is included in a taiapure-local fishery or mataitai reserve declared under the Fisheries Act 1996.*

Council considers that it is essential that proposers be required to consider early on in the process whether or not a Marine Reserve is the best means of achieving their management objectives for an area. They need to declare what those management objectives are and Council does not consider a set percentage of the coastline to be such an objective. Council recommends that amendment be made to this section to require a clear statement of the objectives of the proposed marine reserve and an analysis of the alternative ways of achieving those objectives. It further needs to state the reasons why a Marine Reserve is considered the best means of achieving the objectives. It should also include an evaluation of the benefits and costs of the main alternatives as is required under section 32 of the Resource Management Act. Council therefore requests amendment accordingly.

Clause 50 under the heading "Further information may be required" states:

> *If the Director-General considers that further information is necessary to enable him or her to decide whether to permit a proposal to proceed under section 51, the Director-General may, by written notice to the proposer given within 20 working days after receiving the proposal under section 47(2), require the proposer to provide him or her with the further information.*

Council notes that this is the first clause that incorporates a time frame to be met and commends the use of such time frames. It forces a decision and therefore provides certainty to the process. It will prevent resurrection of proposals and applications occurring ad infinitum that we have referred to earlier in this submission.

Clause 51 under the heading "Permission for proposals to proceed as applications" states:

(1) The Director-General must, within 20 working days after receiving a proposal under section 47(2) or, if further information has been sought under section 50, within 20 working days after receiving the further information, decide whether to permit the proposal to proceed as an application.

(2) The Director-General must permit a proposal to proceed as an application if---

(a) the proposal satisfies section 49, appears to meet the purpose of this Act, and appears to be consistent with the principles of this Act; and

(b) consultation under section 48(a) has occurred.

(3) If the Director-General permits a proposal to proceed as an application, the Director-General must notify the proposer of that decision.

(4) If the Director-General does not permit a proposal to proceed as an application, the Director-General must---

(a) notify the proposer that the proposal is not permitted to proceed as an application and of the reasons for that decision; and

(b) advise those who are identified in the proposal under section 49(1)(c) of that decision.

(5) A proposal prepared by the Director-General is permitted to proceed as an application.

Council notes that this clause also incorporates a time frame and we commend that aspect. We further note that we have recommended above an analysis of alternatives and the Director General needs to consider whether that also is adequate. Amendment her will also be necessary.

Procedure for applications

Clause 52 under the heading "Plan of marine area" states:

(1) The Director-General must, for every proposal that is permitted to proceed as an application, prepare a plan of the marine area to which the application relates.

(2) The plan must---

(a) be on a suitable scale; and

(b) show the boundaries and extent of the proposed marine reserve; and

(c) show all tidal waters clearly.

Council considers such plan should also clearly show other legislated closed areas (such as Mataitai and Taiapure) in the near vicinity and we recommend amendment accordingly.

Clause 53 under the heading "Public notification of application".

Clause 54 under the heading "Plan and application to be available for inspection"

Council has no comment to offer on these clauses.

Clause 55 under the heading "Submissions on application" states:

> *(1) Any person may make a submission to the Director-General about an application.*
>
> *(2) A submission must---*
>
> *(a) be in writing; and*
>
> *(b) specify the aspects of the application that the submission supports and the aspects it opposes; and*
>
> *(c) specify the reasons for the support or opposition identified; and*
>
> *(d) refer to any information that is relevant to the application and the Minister's decision on the application that has not been referred to or included in the application; and*
>
> *(e) state whether or not the person making the submission wishes to receive notice of meetings convened in relation to the application.*
>
> *(3) A person who makes a submission must serve 2 copies of it on the Director-General on or before the closing date for receipt of submissions.*
>
> *(4) If the Director-General is not the applicant, the Director-General must, as soon as is practicable, serve on the applicant a copy of every submission received by the Director-General.*

Council observes that whilst it has no real objection to this clause it will by virtue of subclause 2 (b) continue to make reserve applications the result of a "popularity contest". We are unsure this is a good idea but would refer you to of comments on interpretation at the end of this part of the Act.

Clause 56 under the heading "Response to submissions"

Clause 57 under the heading "Summary of submissions"

Clause 58 under the heading "Submitters to be sent response to, and summary of, submissions"

Clause 59 under the heading "Meetings" states:

Clause 60 under the heading "Procedure and record of meetings" states:

Clause 61 under the heading "Director-General to prepare draft report" states:

Council has no comment to offer on these clauses.

Clause 62 under the heading "Independent report" states:

> *(1) Within 40 working days of the receipt of the draft report prepared by the Director-General under section 61, the Minister must (if the*

Director-General is the applicant), or may (in other cases), obtain an independent report on the administrative process followed by the Director-General regarding the application.

(2) The independent report must---

(a) report on and evaluate that process; and

(b) assess whether the draft report of the Director-General under section 61 represents a fair and balanced assessment of the application, all submissions received, the applicant's response, and any other relevant matters.

(3) The Minister must be satisfied that a person selected to prepare an independent report under this section is a fit and proper person to do so, having regard to the person's qualifications, experience, character and reputation, and ability to maintain an appropriate degree of impartiality and independence.

(4) An independent report may not comment on the appropriateness of a recommendation made by the Director-General in the draft report unless failure to comply with the Act or poor process appears to have had a significant bearing on the recommendation.

Council has concerns over this clause. It notes that an "independent report" is a useful check and balance on the process. However we consider it to be "toothless" in its current form. We note that the Minister decides whether to appoint an independent reviewer (unless DOC is the applicant) and the Minister alone does the appointing. We note that the reviewer is generally only allowed to look at process issues and not issues of substance or merit. We note that the "consultation Ministers" are not involved at all and that at the end of the whole business, the Minister must only "have regard to" an independent report.

Council suggests that amendments be made that strengthen the role of the independent report. We consider that such a report should be able to be requested by "interested or affected parties" and the independent report should not just cover the process but also on the substance of the application and the merits of any objections.

Council also has concerns on the appointment of the independent reviewer and the ability of others to alter such reports before publication. We note that in the case of the Volkner Rocks application the reviewer had been employed by the department previously. Whilst we would not cast doubt on this persons ability and integrity we are aware that the report provided in draft form was reviewed by ??? and we have reasons to believe alterations were made to it. This therefore creates concerns as to the use of such independent reports and the suggestion that they are presently being used to push the department's specific line. Council therefore believes this area needs further work and amendment.

Clause 63 under the heading "Consultation with Ministers" states:

(1) As soon as practicable after receiving the documents referred to in section 61(b), the Minister must provide copies of the documents to each consultation Minister and must consult with them about the application.

(2) Consultation Ministers must respond to consultation by the Minister under subsection (1) within 65 working days of receiving the documents (if the Minister has sought an independent report) or within 35 days of receiving the documents (in other cases).

Council notes that this area is one of its main areas of concern in this Bill. We find the removal of (particularly) the Minister of Fisheries "concurrence" role abhorrent and will expand further below.

Presuming this section of the Bill remains the Council has no objections to the application and documents being provided to the consultation ministers. In fact we see such a move as an enhancement to the present system. We question the need for two separate time frames and believe that the same timeframe of at least 65 days to be appropriate. We then question whether "65 days" is sufficient for the Minister of Fisheries (as a Consulting Minister) to properly assess the application and provide a response to it. Under the present Act (and case law) it has been confirmed that he must "consult with stakeholders". This being the case he needs to be provided with sufficient time to do so and with sufficient time for those stakeholders to respond. We recommend that a minimum of 100 days must be provided.

We also note that the clause is unclear as to what documentation is provided to the consulting minister. Reference is made to clause 61 (b) and by implication these are the only documents that need be given to him. Where an "independent report" has been prepared this also need to be provided for completeness and we recommend this be made clear within this clause.

Whilst the clause is clear that the Minister of Conservation must provide documents to the Consultation Ministers it is not clear as to who the consultation Minister respond to. We presume that it will be to the Minister of Conservation but when reading Clause 64 we note that the director general provides a final report. That implies that the Consultation Ministers reports are provided to the Director General only as he only has to have regard to the views expressed. It is therefore possible that the Minister of Conservation may not necessarily see the consulting Ministers reports until the time of making a decision. We therefore recommend that this aspect be clarified.

Role of The Minister of Fisheries.

Under the Fisheries Act 1996 the Minister of Fisheries is required to manage the fisheries resource to provide for utilization while ensuring sustainability. Such a role is of National importance and affects the national economy. The same Act provides various rights to stakeholders and involves support of Governments obligations to Maori under the Treaty of Waitangi and the Fisheries Claim Settlement Act. The creation of marine reserves impinges on the Ministers ability to meet his obligations under the Fisheries Act.

Under the Marine Reserves Act 1971 the Minister of Fisheries has a "concurrence" role that is defined in section 5 (9). Council considers that it is important that the Minister of Fisheries must continue to consult stakeholders as defined by the High Court. Council further considers that the Minister of Fisheries must continue to have a "concurrence" role and this clause needs amendment accordingly.

Clause 64 under the heading "Final report to Minister" states:

> *The Director-General must, after having regard to any views received from the consultation Ministers under section 63, provide the Minister with a final report---*
>
> *(a) within 60 working days of the receipt by the Minister of the draft report; or*

(b) if an independent report has been sought by the Minister under section 62, within 60 working days of the date of receipt of that report.

Council notes its comments above regarding time frames and these need amending here also. Council also considers that this clause is weak in respect of the roles and reports from the "consultation ministers". At the very least the Director General should be required to "take account of" the views of the consultation Ministers rather than just "have regard to" which we are advised is the weakest form of statutory reference. We therefore recommend amendment accordingly.

Decision on application

Clause 65 under the heading "Time limit for Minister's decision" states:

The Minister must decide an application, and state the reasons for the decision, within 60 working days of receiving the final report of the Director-General under section 64.

Council commends this clause to you and supports it in its entirety. It requires the Minister to make a decision and should overcome the problems of applications being "resurrected" ad infinitum as we have referred to earlier in this submission.

Clause 66 under the heading "Matters Minister must consider" states:

The Minister must have regard to the following matters in considering an application:

(a) the submissions received:

(b) any response to submissions:

(c) the matters raised in any meetings convened under section 59:

(d) any independent report obtained under section 62:

(e) the consultation carried out with consultation Ministers under section 63:

(f) the final report of the Director-General under section 64:

(g) relevant provisions of any management plan prepared under any other enactment:

(h) the matters referred to in section 67(2):

(i) any other relevant matters.

Council considers this clause to again be very weak with its reference to "have regard to". We recommend that this be amended to "take into account".

Clause 67 under the heading "Minister's decision" states:

(1) The Minister must decide whether---

(a) to accept an application and recommend to the Governor-General the making of an Order in Council under section 71, with or without conditions under section 69; or

(b) to decline the application.

(2) The Minister may recommend the making of an Order in Council under section 71 only if the Minister is satisfied that the marine reserve proposed by the application as it may be amended under section 68, with any conditions that may be imposed under section 69,---

(a) meets the purpose and is consistent with the principles of this Act; and

(b) is in the public interest; and

(c) will have no undue adverse effect on any of the following:

(i) the relationship of iwi or hapu who are tangata whenua or who have customary access, and their culture and traditions, with the marine area concerned:

(ii) the ability of iwi or hapu who are tangata whenua, or who have customary access, to undertake customary food gathering to the extent authorised by any enactment:

(iii) commercial and recreational fishing:

(iv) recreational use:

(v) economic use and development:

(vi) any estate or interest in land in or adjoining the proposed marine reserve:

(vii) navigation rights:

(viii) education and research:

(ix) the use of the marine area by the New Zealand Defence Force:

(x) other matters considered relevant by the Minister.

(3) An adverse effect is not undue under subsection (2)(c) if the Minister is satisfied that the benefit to the public interest in establishing the marine reserve outweighs the adverse effect.

(4) In considering the public interest under subsection (3), the Minister must have regard to---

(a) the benefit of preserving and protecting marine communities and ecosystems to conserve indigenous marine biodiversity; and

(b) any benefits that may arise directly from the establishment of the marine reserve that the Minister considers relevant.

Council considers this clause weakens the protection provided by the present Act and therefore needs amendment. In relation to the specifics in clause 2 (c) we note the joining together under (iii) of "commercial and recreational fishing". These need to be split so that if there is an undue adverse effect and not the other then it overall may not be considered undue. Commercial fishing operations are vastly different from recreational and should not be joined.

Council then notes that reference is made under (iii) to the "ability of iwi or hapu who are tangata whenua, or who have customary access, to undertake customary food gathering to the

extent authorised by any enactment". This can be taken to imply that Customary food gathering can still occur even if a marine reserve is created. If the implication is incorrect (and customary food gathering cannot occur) because it is in the public interest to create the reserve then this legislation (and the creation of a reserve) gives the Minister of Conservation the power to override the customary fisheries sections of the Fisheries Act. It is also overriding, and could place in jeopardy, the Fisheries Settlement as set out in the Treaty of Waitangi Fisheries Claims Settlement Act.

Council notes that under the 1971 Act Clause 5 (9) was much clearer when it states:

> ***Where any objection has been made in accordance with subsection (3) of this section, the Minister shall, before considering the application, decide whether or not the objection should be upheld and, in doing so, shall take into consideration any answer made to the objection by the applicant [and, if the applicant is the Director-General, any report on the objection and the application the Minister may have obtained from an independent source]. If the objection is upheld the area shall not be declared a marine reserve. In making any such decision, the Minister shall not be bound to follow any formal procedure, but shall have regard to all submissions made by or on behalf of the objector, and to any answer made by the applicant, and shall uphold the objection if he is satisfied that declaring the area a marine reserve would---***
>
> ***(a) Interfere unduly with any estate or interest in land in or adjoining the proposed reserve:***
>
> ***(b) Interfere unduly with any existing right of navigation:***
>
> ***(c) Interfere unduly with commercial fishing:***
>
> ***(d) Interfere unduly with or adversely affect any existing usage of the area for recreational purposes:***
>
> ***(e) Otherwise be contrary to the public interest.***

Council recommends that this section be altered to maintain the requirement that the Minister "shall uphold the objections where there is any undue adverse effect". In making this submission Council notes its comments earlier that the past Minister has ignored and overridden these requirements already.

Council is extremely concerned with subclauses 3 and 4 of this clause. These also stem from our earlier comments that the Department has been working to these rules for some time without the backing of legislation. It seems to us that these sections have been included to legitimise advice they have already given to the Minister under the 1971 Act which we note will be challenged in the High Court at an appropriate time. We therefore request complete removal of these two sub clauses. Council further sees these clauses resulting in a reallocation of rights without and checks and balances. Council sees that a very significant adverse effect could be overridden on the whim of a Minister or on advice of the Department and we consider this situation to be undemocratic. We consider subclause 4 (b) to be the worst aspect of this proposal and question how you balance "undue adverse effects" on one sector against supposed benefits of reducing their access and rights.

Clause 68 under the heading "Minister may amend application" states:

> *The Minister may amend the application before making a decision under section 67(1)---*
>
> *(a) to avoid or mitigate any adverse effect of a kind referred to in section 67(2)(c); or*

(b) to enhance the prospect that the proposed marine reserve satisfies the purpose and is consistent with the principles of this Act.

Council submits that this section needs to be deleted from the Bill. It is our view that an application should stand on its own feet. It should succeed or fail on the information or data that has been provided. All consultation and reports and consideration of the proposal has been considered on the information provided in the first instance. Why should you allow it to be modified at the "tenth" hour just to allow it to proceed. We see this clause as a means to ensure that no proposals are declined. We consider they must fail and if necessary resubmitted to pass through the whole process and not be amended by one Minister on the recommendation of one Department.

Clause 69 under the heading "Conditions" states:

The Minister may include, in a recommendation made to the Governor-General under section 67,---

(a) conditions that the Minister considers necessary or desirable to enhance the prospect that the marine reserve will meet the purpose in Section 7 and be consistent with the principles in section 9, including conditions about access to, and use of, the marine reserve; and

(b) conditions relating to the appointment of a management body or reserve committee for the marine reserve; and

(c) a condition requiring that a review of the marine reserve must be carried out no later than 25 years following the date on which the Order in Council establishing the marine reserve comes into force, to assess whether the marine reserve continues to meet the purpose of this Act.

Council supports this Clause in the Bill and has no difficulty with the Minister being able to set conditions. We consider that the Minister should be required to set the condition referred to in (c) thereby making it mandatory.

Clause 70 under the heading "Notification of Minister's decision" states:

The Director-General must notify the applicant of the Minister's decision under section 67 and the reasons for the decision.

Council supports this Clause in the Bill but considers it should also include notification to all submitters and recommends amendment accordingly.

Clause 71 under the heading "Declaration of marine reserve" states:

The Governor-General may, by Order in Council made on the recommendation of the Minister under section 67(1)(a), declare a marine area to be a marine reserve on the conditions stated in the order.

Council supports this Clause in the Bill.

Subpart 3---Review and alteration of marine reserves
Alteration of marine reserves

Clause 72 under the heading "Alteration"

(1) The Minister may recommend to the Governor-General that an Order in Council be made amending the boundary of a marine reserve, or amending or adding to the conditions in the Order in Council establishing the marine reserve, if the Minister considers that---

(a) amending the boundaries, or amending or adding to the conditions, is necessary or desirable to better pursue the purpose of this Act; and

(b) the marine reserve, if amended as proposed, will continue to meet the requirements in section 67(2)(a) and (b); and

(c) the proposed amendment is minor or technical and will not materially increase an adverse effect of a kind referred to in section 67(2)(c).

(2) The Minister must consult the consultation Ministers before making a recommendation under subsection (1).

(3) The Governor-General may, on the recommendation of the Minister under subsection (1), make an Order in Council implementing the recommendation.

Council reiterates it comments made in relation to clause 68. It submits that this section needs to be deleted from the Bill. It is our view that an application should stand on its own feet. It should succeed or fail on the information or data that has been provided. All consultation and reports and consideration of the proposal has been considered on the information provided in the first instance. Why should you allow it to be modified at the "tenth" hour just to allow it to proceed. We see this clause as a means to ensure that no proposals are declined. We consider they must fail and if necessary resubmitted to pass through the whole process and not be amended by one Minister on the recommendation of one Department.

Reviews of marine reserves

Clause 73 under the heading "Commencement of review" states:

(1) The Director-General must review a marine reserve according to this subpart if---

(a) the Order in Council under which the marine reserve is established requires a review; or

(b) the Minister considers for any reason that a marine reserve may no longer meet the purpose of this Act; or

(c) the Minister considers that a proposed amendment to the boundaries of the marine reserve, or to any of the conditions specified in the Order in Council, do not satisfy the criteria in section 72(1).

(2) A review may relate to 1 or more marine reserves.

Council supports this clause but considers it does not go far enough. All marine reserves should be subject to regular review to ensure that they meet the criteria under which they were established. This should also cover reserves created under the 1971 legislation. Using as an example the Leigh Marine Reserve that was created for the purpose of "Scientific Study" under the 1971 Act. That Act also indicates a purpose of retaining the area in its "natural state". Whilst some scientific research has been carried out the area these days it cannot meet the criteria. We hear reports of "fish feeding". We hear reports of fish expecting to be fed. We hear reports of people being "head butted" and "bitten" when they do not feed the fish. These

outcomes are not natural. The numbers of people visiting the area means it is not being retained in its "natural state". How can an area with the reported numbers of visitors meet the criteria under this Bill of protecting biodiversity? This is one reserve that is not meeting the criteria and should be reviewed. Council notes that there is an argument for "one out, all out" in areas created marine reserves to ensure that they are retained in their "pristine and natural" condition. The only access should be under some form of permit for scientific study purposes. Council also considers that interested parties affected by the reserve should also be able to request a review. We therefore recommend alteration of this clause.

Clause 74 under the heading "Conduct of review" states:

> *(1) Sections 53 to 69 apply, with the modifications specified in subsection (2) and all other necessary modifications, to a review under this subpart as if every reference in those sections to---*
>
> *(a) an application were a reference to a review; and*
>
> *(b) the proposed marine reserve were a reference to the marine reserve under review; and*
>
> *(c) a plan prepared under section 52 were a reference to the existing plan of the marine reserve.*
>
> *(2) Sections 53 to 69 are modified as follows in their application to a review:*
>
> *(a) instead of the matters referred to in section 53(2)(a), the public notice of the review must state the name of the marine reserve being reviewed and the reasons for the review; and*
>
> *(b) a submitter need serve only 1 copy of a submission on the Director-General under section 55(3), and section 53(2)(e) is to be read accordingly; and*
>
> *(c) the Director-General is not required to serve a copy of the submissions on an applicant under section 55(4), and section 56 does not apply.*

Council supports this clause subject to our comments on clause 73 above.

Clause 75 under the heading "Alterations to, or revocation of, marine reserves on review" states:

> *(1) The Governor-General may, by Order in Council made on the recommendation of the Minister following a review,---*
>
> *(a) revoke the Order in Council under which the marine reserve is established; or*
>
> *(b) amend the Order in Council under which the marine reserve is established to alter the boundaries of the marine reserve or the conditions of that Order in Council (including by revoking or adding to those conditions).*
>
> *(2) The Minister may recommend revoking an Order in Council that establishes a marine reserve only if the Minister is satisfied that the marine reserve no longer meets the purpose of this Act.*

Council supports this clause subject to our comments on clause 73 above.

Clause 46 under the heading "Interpretation" states:

In this Part, unless the context otherwise requires,---

applicant means---

(a) the person who makes a proposal that is authorised to proceed as an application; or

(b) the Director-General, if the Director-General prepares a proposal application means a proposal that is authorised to proceed as an application under section 51

interested person, in relation to a proposal, means a person or group likely to have a significant interest in the proposal; and includes the representatives of that person or group

proposal means a proposal to establish a marine area as a marine reserve

proposer means a person who prepares and submits a proposal under section 47(2)

response to submissions means a response to submissions prepared by the applicant under section 56

summary of submissions means a summary of views expressed in submissions prepared by the Director-General under section 57.

Council considers that further interpretations are required and these have been highlighted above in our comments on specific sections of this part of the bill.

We also consider that a definition of the meaning of "person" should be added. This should be restricted to people over the legal age of 18 years. It will overcome the problem of small children lodging submissions etc as has occurred in the past.

We consider that "applicant" needs to be amended to restrict it to either "individual persons over the age of 18 years" OR to "legally incorporated groups" as per the 1971 Act. This then ensures that the people applying for reserves can be legally identified and be made responsible for their applications. We do not consider that "loose associations of people without legal entity or responsibility" should be able to become applicants.

We consider that the term "Commercial fishing" which is used in a number of places in the bill needs defining (probably in clause 3 - Interpretation) rather than here.

We consider that the term "Recreational fishing" which is used in a number of places in the bill needs defining (probably in clause 3 - Interpretation) rather than here.

We therefore recommend these additions.

Part 5
Enforcement and penalties

Clause 76 under the heading "Interpretation" states:

In this Part, unless the context requires otherwise,---

article includes---

(a) a bag, case, container, bulk cargo container, freezer, fridge, package, parcel, article of clothing, or other thing capable

of holding or transporting marine life or natural material; and

(b) any ammunition, appliance, device, engine, equipment, explosive, firearm, fishing gear, good, implement, instrument, material, net, or trap

document includes---

(a) a document or record in any form, whether signed or initialled or otherwise authenticated by its maker or not; and

(b) writing on any material; and

(c) information recorded, transmitted, or stored by tape-recorder, computer, or other device, and material subsequently derived from information so recorded, transmitted, or stored; and

(d) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached by any means; and

(e) a book, map, plan, graph, or drawing; and

(f) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

enforcement officer means an enforcement officer appointed under section 77(1) or a person specified in section 77(2)

honorary enforcement officer means an honorary enforcement officer appointed under section 78

infringement fee for an infringement offence means the amount fixed by regulations made under section 126 as the infringement fee for the offence

infringement offence means---

(a) an offence against this Act, except an offence under section 109(1)(a); and

(b) an offence that is declared, by regulations made under this Act, to be an infringement offence

offence means an offence against this Act or any regulations made under this Act

premises means land or a building, except a private dwelling or marae or building associated with a marae

vehicle includes a conveyance used or designed to be used on land, whether or not it is also capable of being used on or over water; and includes an animal that may be used as a conveyance.

Council has no comment to offer on this clause although we wonder why it is not incorporated into clause 3 – Interpretation..

Subpart 1---Enforcement officers and their powers
Appointment

Clause 77 under the heading “Appointment of enforcement officers”

Clause 78 under the heading “Appointment of honorary enforcement officers”

Clause 79 under the heading “Issue and scope of warrants for enforcement officers”

Clause 80 under the heading “Issue and scope of warrants for honorary enforcement officers”

Clause 81 under the heading “Surrender of warrant”

Clause 82 under the heading “Combined warrant”

Powers

Clause 83 under the heading “Exercise of powers”

Clause 84 under the heading “Use of force”

Clause 85 under the heading “Authority to exercise powers”

Clause 86 under the heading “Power to interfere to prevent or stop offending”

Clause 87 under the heading “Power to require personal particulars”

Clause 88 under the heading “Power to stop”

Clause 89 under the heading “Power of entry and search”

Clause 90 under the heading “Notice of entry and search

Clause 91 under the heading “ Power of seizure

Clause 92 under the heading “Power to take and copy documents

Clause 93 under the heading “Power to issue infringement notices

Clause 94 under the heading “Power of arrest

Subpart 2---Seized property

Clause 95 under the heading “Meaning of seized property

Clause 96 under the heading “Advice by Director-General

Clause 97 under the heading “Disposal of seized marine life

Clause 98 under the heading “Custody of seized property

Clause 99 under the heading “Decision to lay charge to be made promptly

Clause 100 under the heading “Director-General may release seized property unconditionally or under bond

Clause 101 under the heading "Failure to comply with bond

Clause 102 under the heading "Applications to Court about seized property

Clause 103 under the heading "Final release of seized property

Clause 104 under the heading "Seized property forfeited to Crown if ownership not established

Subpart 3---Offences and penalties
Infringement offences

Clause 105 under the heading "Infringement offences

Clause 106 under the heading "Infringement notices

Clause 107 under the heading "Payment of infringement fees

Clause 108 under the heading "Forfeiture for infringement offence

Council has no comment to offer on these clauses.

Offences

Clause 109 under the heading "Strict liability offences" states:

> *(1) Every person commits an offence who,---*
>
> *(a) takes marine life from a marine reserve for commercial purposes; or*
>
> *(b) takes marine life from a marine reserve; or*
>
> *(c) takes natural material or other material from a marine reserve; or*
>
> *(d) modifies, damages, destroys, or removes historic material in or from a marine reserve; or*
>
> *(e) damages, injures, interferes with, or disturbs marine life or the foreshore, seabed, natural features, natural material, and other material or structures of a marine reserve; or*
>
> *(f) dumps or incinerates waste or other material in a marine reserve from a vessel; or*
>
> *(g) introduces marine life into a marine reserve; or*
>
> *(h) erects a structure in a marine reserve; or*
>
> *(i) uses an explosive or discharges a firearm in or into a marine reserve; or*
>
> *(j) undertakes an activity in a marine reserve that requires a concession, without a concession, in breach of section 18(2), or breaches the terms of a concession or authorisation; or*
>
> *(k) operates, submerges, or tows in or into a marine reserve any line, net, trap, gun, or other fishing gear.*

(2) Every person commits an offence who, in a marine reserve in the territorial sea or internal waters,---

(a) discharges noxious liquid substances, oil, garbage, or waste from fishing; or

(b) discharges untreated sewage from a vessel or offshore installation; or

(c) discharges sewage or other waste from outfalls; or

(d) discharges ballast of any kind; or

(e) discharges a substance or article of any kind that is harmful to marine life or marine communities, or any part of them, to human health, or to people's use and enjoyment of the marine reserve; or

(f) lands or takes off an aircraft except to establish, construct, operate, maintain, repair, or replace a maritime navigational aid; or

(g) takes litter from land and deposits it in a marine reserve except in a place or receptacle provided for that purpose.

(3) However, there is no offence under subsection (1) or subsection (2) if the activity is authorised under section 13(1)(a) or by a concession.

(4) The onus is on the defendant to prove that an activity is authorised in a way referred to in subsection (3).

(5) Every person commits an offence who, in a marine reserve in the exclusive economic zone, discharges noxious liquid substances, oil, sewage, or garbage contrary to section 226 of the Maritime Transport Act 1994 or any higher standard recognised by the International Maritime Organisation for the marine reserve.

(6) A person must be treated as having taken marine life for commercial purposes if the person is found in possession of an amount of marine life exceeding 3 times the amateur individual catch limit (if any) prescribed for that marine life.

Council reiterates it comments above relating particularly to clauses 12, 13, 14 and 18.

Clause 110 under the heading "Defences to strict liability offences" states:

It is a defence to an offence under section 109 if the defendant proves that---

(a) the defendant took all reasonable steps to ensure that the offence was not committed; or

(b) the action was taken in a situation of emergency and was consistent with the safety and welfare of a person or vessel.

Council reiterates it comments above relating particularly to clauses 12, 13, 14 and 18.

Clause 111 under the heading "Offences requiring intent or recklessness"

Penalties

Clause 112 under the Heading "Penalties"

Clause 113 under the Heading “Sentence of community service

Clause 114 under the Heading “Offenders liable for loss or damage, and costs associated with seized property

Clause 115 under the Heading “Forfeiture of property on conviction

Subpart 4---Forfeit property

Clause 116 under the Heading “Interpretation

Clause 117 under the Heading “Forfeit property vests in Crown

Clause 118 under the Heading “Director-General's powers over forfeit property

Clause 119 under the Heading “Court may grant relief to third party

Subpart 5---Miscellaneous

Clause 120 under the Heading “Offences in exclusive economic zone

Clause 121 under the Heading “Enforcement against foreign vessels

Clause 122 under the Heading “Time limit for laying information

Clause 123 under the Heading “Application of section 78A(1) of Summary Proceedings Act 1957

Clause 124 under the Heading “Protection of persons acting under authority of Act

Clause 125 under the Heading “Information leading to conviction

Council has no comment to offer on these clauses.

Part 6
Regulations, repeals and amendments, and transition

Clause 126 under the heading “Regulations” states:

> *The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:*
>
> *(a) prohibiting or restricting persons from carrying out in marine reserves an activity referred to in section 12(1), (2), (3)(a), and (4):*
>
> *(b) prescribing offences that are infringement offences under this Act or regulations made under this Act:*
>
> *(c) prescribing the form of infringement notices, and prescribing the infringement fees (not exceeding $1,000) for infringement offences, which may be different fees for different offences:*
>
> *(d) revoking the regulations continued by section 138(1):*

(e) providing for any other matters that are contemplated by, or necessary for giving full effect to, this Act and for its due administration.

Council expresses concerns about the insertion of subclause (a) hereof and suggests removal of it. We do not consider that parliament should move to the Governor General the ability to override parliament. Under clause 12 (when the bill is passed) certain activities will be permitted. Why then provide a clause giving the Governor General the power to prohibit them?

Clause 127 under the heading "Repeals and revocations

Clause 128 under the heading "Amendments to Crown Minerals Act 1991

Clause 129 under the heading "Amendment to Continental Shelf Act 1964

Clause 130 under the heading "Consequential amendments

Transition

Clause 131 under the heading "Interpretation

Council has no comment to offer on these clauses.

Clause 132 under the heading "Existing applications for marine reserves" states:

(1) Despite the repeal of the 1971 Act by section 127, sections 4(1) and (2) and 5 of the 1971 Act continue to apply to an application for a marine reserve that has been notified under section 5(1)(b) of the 1971 Act before the commencement date, except that---

(a) the Minister must decide the application under section 5(9) of the 1971 Act within 1 year from the commencement date; and

(b) the Minister of Transport and the Minister of Fisheries must decide whether or not to concur with the Minister within 1 year from the date of the Minister's decision referred to in paragraph (a).

(2) An application for a marine reserve that has not been notified under section 5(1)(b) of the 1971 Act before the commencement date must be treated as a proposal under section 47 of the 2002 Act, and Part 4 of the 2002 Act applies accordingly.

Council commends and accepts this clause but considers it does not go far enough. A number of applications are at various stages and the clause does not indicate what happens to them if approval or concurrence does not occur within the timeframes stated. Taking into account our earlier submissions and the fact that no marine reserve has ever been defined Council requests the addition of a further subclause. This should clearly state any application not meeting the timeframe fails and is declined.

Clause 133 under the heading "Seizure and forfeiture of property

Clause 134 under the heading "Mining interests

Clause 135 under the heading “Rangers

Clause 136 under the heading “Authorisations for scientific study

Clause 137 under the heading “Marine reserve committees

Clause 138 under the heading “Marine Reserves Regulations 1993

Clause 139 under the heading “Transition for commercial concessions

Council has no comment to offer on these clauses.

CONCLUSION.

The Council thanks the select committee for the opportunity to present these submissions. We again note that we are not opposed to Marine Reserves in the right place for the right reasons.

In concluding we must ask for your clarification as to the status of the Marine Reserves already in place that were created under the 1971 Act. We are aware that some are covered by their own legislation but others are not. This Bill repeals in total the Marine Reserves Act 1971 and also the regulations made under it (Clause 127). We can find no “Savings” within the Bill. If the Primary Act is revoked then what status do any regulations made under that Act hold? If the Primary Act is revoked does this also revoke the Orders in Council setting up existing marine reserves as the Act no longer exists?

The Council reiterates that it is not opposed to the creation of marine reserves, provided the process in the current Act is followed. The current Act gives weight to scientific purposes and preserves areas of significance in a manner that is objective and measurable.

We also note that marine reserves should not be used as a surrogate fisheries management tool. There are a wide and effective range of tools to do this, including the QMS, which other countries do not have. Consequently, the Select Committee should not be persuaded by arguments that marine reserves have been adopted by “other countries” as a fisheries management device.

Our preference is for the Bill not to proceed. However, if it does, we have suggested a number of ways it should be amended to take account of a wider range of objectives and activities which must be considered when proposing a reserve.

While all are important to us, a summary of our key points is:

> **Marine Reserves should be for high level protection as a last resort and the Bill needs amendment to reflect this.**
>
> **Expand the principles to protect existing use rights and other legislation..**
>
> **All activities likely to be affected by the proposed reserve should be taken into account and the consultation process at all levels be amended to do so.**
>
> **The purpose of the Bill should be made measurable and objective.**
>
> **The concession regime should be removed or at the least amended so that public access and the mode of transport to get to the reserve is not a concession activity.**

Make mandatory consultation with existing users of the area.

The Minister of Fisheries' right of veto is restored.

The ability of the Minister of Conservation to amend applications after lodging and consultation needs to be removed.

The Director-General and/or the reserves' proposers must show that a marine reserve is the most cost-effective way to meet their objective in establishing it.

That there are no restrictions on what may be contained in an independent report into the proposed reserve, and that any affected person or organisation may request such a report.

Remove the EEZ from coverage of the Bill.

Remove the "representative sample" aspects of the Bill.

Make provision for a regular review of all marine reserves created.

That compensation should be paid to individuals or organisations which are adversely affected by a proposed marine reserve.

The Council welcomes the opportunity to make this submission and asks to be heard in support of it.

Appendix 1 - MARINE RESERVES PROPOSALS ACTION SUMMARY (as at 8 April 2002)

Marine Reserve Proposal	**Next steps**
1. Parininihi ****** (North Taranaki)	• Minister of Fisheries to be requested to reconsider his concurrence in light of Treaty settlement with Ngati Tama and their negotiated support • Memo sent to Minister of Fisheries January 2002 to re-request concurrence. • MFish concurrence report deadline **early June 2002**
2. Glenduan – Ataata Point ******(North Nelson)	• Ministry of Fisheries asked to re-activate 1999 concurrence request. • MFish concurrence report deadline **early June 2002**
3. Kaikoura	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Conservancy requested to prepare report for Minister proposing steps for updating.
4. Paterson Inlet***** (Stewart Island)	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Conservancy report sent to Minister **27 February 2002**.
5. Nugget Point (Otago)	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Consideration needs to be given as to how to revitalise this dated application • Early discussion with Mfish suggests stakeholder meetings to make progress.
6. Dan Rogers (Akaroa Harbour)	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Taiapure application is expected to require a year to bring to approval stage • Ministers of Fisheries and Conservation to discuss later in taiapure process.
7. Te Matuku Bay****** (Waiheke Island)	• Approved by Minister of Conservation on **8 March 2002.** • Concurrence request went to Ministers of Fisheries and Transport **14 March 2002**. • MFish concurrence report deadline late **June 2002.**
8. Taputeranga***** (Wellington South Coast)	• The applicant, Wellington South Coast Marine Reserve Coalition and Forest and Bird, publicly notified the application in the newspapers on 18 October 2000. • Conservancy has reported in memo dated **11 January 2002** recommending that Minister considers objections and decides substantive application. • Minister to meet with Ngati Toa on **10 April 2002.**
9. Whangarei Harbour	• The applicant, Kamo High School, has completed preconsultation. • Conservancy reports that the application was formally notified on **15 March 2002.**
10. Auckland Islands	• Preconsultation document released **March 2002.** • Formal application expected mid April 2002.

Other proposals due to enter the formal process:

Expected application date:		
Volkner Rocks	(Bay of Plenty)	15 April 2002
Mimiwhangata	(Northland)	after July 2002
Great Barrier Island	(Auckland	15 July 2002

** Minister of Fisheries' consent requested.
With Minister of Conservation for decision

Appendix 2 – MARINE RESERVES PROPOSALS – ACTION SUMMARY (as at 6 September 2002)

(114383)

Marine Reserve Proposal	Next steps
1. Parininihi ** (North Taranaki)	• Minister of Fisheries to be requested to reconsider his concurrence in light of Treaty settlement with Ngati Tama and their negotiated support • Memo sent to Minister of Fisheries January 2002 to re-request concurrence. • *Draft concurrence report subject to review.*
2. Glenduan – Ataata Point ** (North Nelson)	• Ministry of Fisheries asked to re-activate 1999 concurrence request. • MFish concurrence report ready for Ministerial consideration • *Draft concurrence report subject to review.*
3. Kaikoura	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Conservancy requested to prepare proposals to revitalise this application.
4. Paterson Inlet** (Stewart Island)	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Conservancy report sent to Minister **27 February 2002**. • Meeting with Ngai Tahu held **July 2002.** • Minister approved application **24 July 2002.** Concurrence sought.
5. Nugget Point (Otago)	• Early discussion with MFish suggests stakeholder meetings to make progress. • DOC planning for new, amended application, starting with preconsultation **August – October 2002.**
6. Dan Rogers (Akaroa Harbour)	• Department to continue discussion with Ngai Tahu re strategy in their rohe • Taiapure application is expected to require a year to bring to approval stage • Ministers of Fisheries and Conservation to discuss later in taiapure process.
7. Te Matuku Bay** (Waiheke Island)	• Approved by Minister of Conservation on **8 March 2002.** • Concurrence request went to Ministers of Fisheries and Transport **14 March 2002**. • MFish concurrence report at an advanced stage.
8. Taputeranga** (Wellington South Coast)	• Application publicly notified on 18 October 2000. • Minister approved proposal on **13 May 2002**. Concurrence sought. • Ngati Toa has commenced judicial review proceedings.
9. Whangarei Harbour	• The applicant, Kamo High School, has completed preconsultation. • Conservancy reports that the application was formally notified on **15 March 2002.** • Applicant has provided answer to objections. DOC preparing report to MOC
10. Auckland Islands	• Preconsultation document released **March 2002.**. • Submissions/objections close **9 August 2002** • Answer to objections to DG by **8 September 2002.**
11. Volkner Rocks	• Joint application with Whakaari MPSC will be launched **in September 2002**.

Other proposals due to enter the formal process:

		Expected application date:
Mimiwhangata	(Northland)	late 2002
Great Barrier Island	(Auckland	late 2002

****** Minister of Fisheries' consent requested.
***** With Minister of Conservation for decision

Appendix 3 – Northern Hemisphere critique of marine reserves

MPA PERSPECTIVE: DANGEROUS TARGETS AND INFLEXIBLE STANCES THREATEN MARINE CONSERVATION EFFORTS By Tundi Agardy

Marine protected areas (MPAs) are fast becoming mainstream tools for conserving biodiversity in all the world's coastal areas. Yet with the welcome rise in MPA interest has come discord, as differing interpretations of what MPAs are and divergent approaches to their use have led to fractures in the once united front for MPA use in marine conservation. This article poses two questions: 1) do only no-take reserves confer legitimacy as MPAs?, and 2) should one spatial target for closures be used for all MPAs? I hope that discussion of these and other questions will help strengthen the use of the MPA tool and ultimately serve to hasten global marine conservation.

* Do Only No-Take Reserves Confer Legitimacy as MPAs? *

MPA advocates have long clamoured for a single, broadly accepted definition of what constitutes an MPA. In fact the array of goals, and their order of priority, varies widely - so much so that every MPA is essentially unique. MPA planners can follow a standardized methodology to design and implement MPAs, but they should not cling to the idea that a single model will fit all circumstances. Instead, planners must be sure that the final design reflects clearly defined and site-specific objectives.

There are those who argue that only no-take reserves can confer conservation benefits, and those who argue that MPA benefits go well beyond what no-take areas can possibly confer. The problem that this difference of opinion creates is twofold: first, rather than clarifying the scientific validity of MPA benefits, it creates confusion for those searching to find the appropriate tool to fit their needs; and second, it dismisses the very valid other sorts of benefits that MPAs provide. Such benefits include resolving user conflicts, strengthening local and regional economies, empowering local communities, and providing small-scale examples of integrated management.

Perhaps the most important problem with the strong push to establish exclusively no-take MPAs has to do with the perception that only MPAs that fence the ocean to keep people out are worthwhile. Experience shows that this dangerously undermines the ability of managers to implement MPAs successfully. In fact, the best examples of MPAs are those that have drawn fishers and other users into the planning process, creating strong advocates for MPAs among the groups most affected by the prospective restrictions. And most successful multiple-use MPAs include no-take components, making the dichotomy between "hard" no-take and "soft" multiple-use MPAs a false one.

* Should One Spatial Target for Closures be Used for All MPAs? *

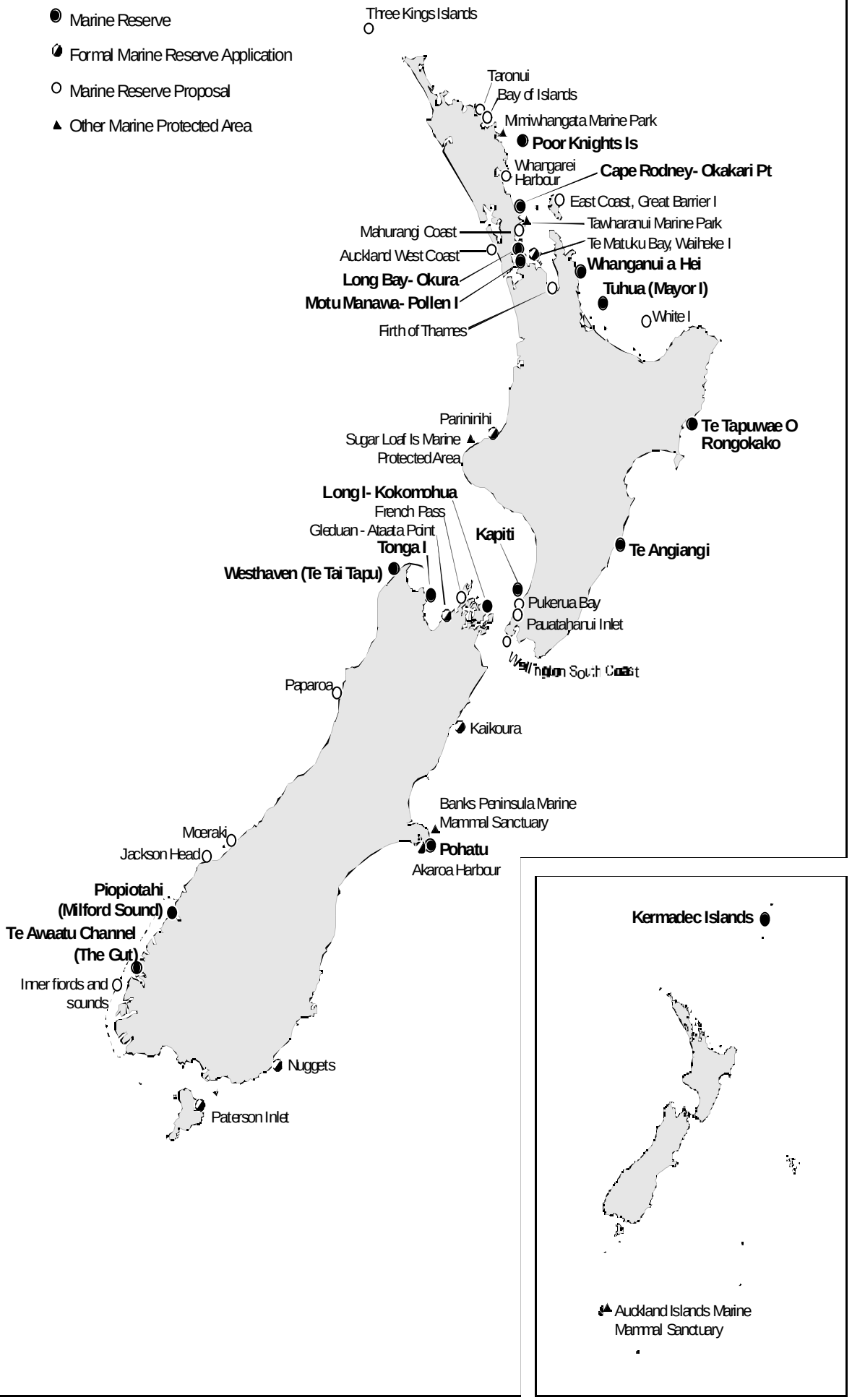
The push to create scientific consensus statements and publish theoretical papers on MPAs is a natural response to the proliferation of seemingly meaningless MPA designations. This is especially true regarding efforts to identify a single target to describe the minimum amount of area set aside as no-take. The 20% figure has now become dogma. The origin of this figure is debated, yet it was certainly extrapolated from very localized studies of particular fisheries within particular habitats - not from representative community ecology from a wide range of habitat types. For a small subset of fisheries in a particular biome, the figure may indeed be valid. However, it is most certainly not a magic number for many biomes that face serious degradation from inadequately controlled uses of the marine and coastal environment. The one-size-fits-all approach cannot be expected to work in all environments to combat all threats. And such failures have repercussions: a very real danger exists if MPAs do not meet expectations, for decision-makers and the public may well eventually abandon them altogether. Another problem with simplistic targets is that they provide absolutely no guidance on which areas should be protected, from what, or how to achieve the desired outcome. In the end, the tendency will always be to establish no-take areas in the remotest, least-used areas - where strict restrictions can be imposed with minimal resistance. These, unfortunately, are the areas where

MPAs are least needed. This leads to another dangerous tendency that adherence to strict minimum targets will present: creating a false sense of security that marine issues are being dealt with adequately.

* Inadvertent Consequences and the Danger of Derailing Conservation *

All of us working in marine conservation welcome the newfound interest in MPAs. Yet inflexibility and rigid dogma threaten the progress made to date. Narrow interpretations of what constitutes an MPA; objective-setting that is done by a single interest group (often scientists) as opposed to the broadest possible array of stakeholders; adherence to scientifically questionable targets; and the disingenuous labelling of scientific opinion as truth are all extremely dangerous tactics that will not serve defenders of MPAs or marine conservation well in the end. Science can and should be harnessed to guide MPA planning, yet it should not drive the process unilaterally, especially when it leads to myopia and inflexibility. We must recognize the limits of science - and we must always be honest with ourselves and with the public about the existence of those limits. Anything less than honesty threatens the integrity of all of us working in marine conservation, defeating us, coastal peoples, and oceans themselves.

MARINE RESERVES, PROPOSALS AND INVESTIGATIONS



Marinres.FH8 Nov1999