

Marine Reserves Bill: Policy background and key features

Structure of the Bill

The Bill has the following contents:

General:	Definitions of terms, how the Bill binds the Crown, areas the Bill applies to and its effect on navigation, and the Bill's relationships to other Acts.
Purpose, Use:	The purpose, principles, a Treaty clause, what activities are allowed and not allowed in marine reserves, and how activities are managed.
Management:	How marine reserves are managed, how the public can be involved through advisory or management bodies, and management plans.
Establishment:	The application process, how the Minister decides on an application, and processes for altering or reviewing reserves.
Enforcement:	Enforcement officers, powers, offences and penalties.
Miscellaneous:	Regulations, repeals, amendments and transitions.
Schedules:	Schedule 1: provisions relating to management boards and reserve committees; Schedule 2 repeals the existing Act and its regulations; Schedule 3 consequential changes to various Acts and regulations.

Why a new Act is required

The review was prompted by the following problems with the 1971 Marine Reserves Act:

- The 1971 Act preserves areas in their natural state for scientific study. This does not reflect either the marine objectives of the NZ Biodiversity Strategy (NZBS) or that people now value marine reserves for a wider range of benefits that arise from protecting marine life.
- It provides no guidelines for how Treaty obligations would be met.
- It does not include appropriate linkages with recent marine management legislation.
- Some timeframes and processes are vague or not specified, which has contributed to significant delays in decisions being made on reserve applications.

Policy underlying the Bill

PROTECTING BIODIVERSITY

This Bill helps to implement the NZBS, which itself was developed in part to fulfil commitments made under the international Convention on Biological Diversity. One of the priority actions in the NZBS is to review the Marine Reserves Act (MRA) to better provide for the protection of marine biodiversity.



“Biodiversity” refers to the variety of different types of ecosystems, the variety of species of living things, and the variety of genes that each species contains. The Bill focuses on protecting marine communities and ecosystems, including examples of all the more widespread and common types as well as sites that are outstanding, rare, distinctive or important. It is important to include all these types to effectively protect biodiversity. The Act is therefore also extended to the exclusive economic zone (EEZ), to include all of NZ’s marine communities and ecosystems.

ENABLING PEOPLE TO ENJOY MARINE RESERVES

A fundamental principle of the current MRA, and of the Act that governs national parks on land, is people’s freedom to enter and enjoy these areas. The Bill keeps this principle, subject to ensuring the natural values in marine reserves are not harmed (cl 9(e), 12(1)).

PRINCIPLES OF THE TREATY

The processes in the Bill for establishing and managing marine reserves should:

- Be consistent with the Crown’s obligations to Maori under the principles of the Treaty; and
- Recognise and reflect the statutory obligations to Maori under the Treaty of Waitangi Fisheries Claims) Settlement Act 1992 and the Conservation Act 1987.

SOUND DECISION-MAKING PROCESSES

The Bill deals with processes for establishing marine reserves in some detail. The current processes have proved cumbersome and lengthy. The aim in the Bill is to provide a well-structured and efficient process that provides:

- Appropriate public notification of reserve proposals and appropriate and meaningful opportunities for Maori, public and stakeholder participation;
- Certainty to all parties about what is expected of them;
- Clarity about how the process will be managed, by, for example, including timeframes at each stage of the process; and
- Clear guidance for decision-makers.

INVOLVING THE PUBLIC IN MANAGEMENT

Local support and involvement can be important to the success of a marine reserve and its enforcement. The Bill establishes opportunities for people to be involved in reserve management.

Features of the bill

THE PURPOSE: CONSERVING BIODIVERSITY

The purpose of the Bill is to conserve indigenous marine biodiversity for current and future generations, by preserving and protecting marine communities and ecosystems within marine reserves (clause 7).

Principles are included relating to (cl 9, 10):

- Maintenance or restoration of marine life within the reserves to a natural state. Areas chosen for a marine reserves should be representative of the ecosystem type(s) being protected, but do not have to be pristine;
- Protection of historic features within reserves;
- The provision of undisturbed areas for research and education;
- Allowing use and enjoyment of marine reserves; and
- A precautionary approach to decision-making.

TREATY ISSUES

The Bill includes a Treaty clause that requires the Act to so be interpreted and administered as to give effect to the principles of the Treaty (cl 11). This maintains the obligations that already exist through section 4 of the Conservation Act.

The Bill also contains specific provisions that recognise the Treaty partnership:

- The Bill recognises the importance of providing opportunities for research contributing to Te Ira Tangaroa (Maori traditional and contemporary knowledge relating to the life principle of the marine environment) (cl 9(d), 12(2)).
- A reserve application cannot include areas within established mataitai or taiapure (cl 49(2)).
- The application process recognises tangata whenua, and iwi or hapu who have customary access to the proposed marine reserve area. The Bill requires:
 - Consultation with them from an early stage when a reserve proposal is first being developed, and on a formal application (cl 48, 53(3));
 - The Minister to consider (when deciding whether or not to approve a reserve application) whether there is an undue adverse effect on their ability to undertake customary food gathering, or on their relationship with the area (cl 67(2)(c)).
- Once a reserve has been established, the Bill also requires tangata whenua to be included on any management board or advisory reserve committee that may be appointed (cl 27), and to be consulted on any management plan (cl 40).

MARINE RESERVES IN THE EXCLUSIVE ECONOMIC ZONE

The Bill allows marine reserves to be established anywhere between mean high water spring and the 200-mile outer limit of the exclusive economic zone.

WHAT ACTIVITIES ARE AND ARE NOT ALLOWED

Activities that are allowed

Recreational and educational activities; anchoring; the normal operation of a ship; activities necessary for human safety, or to prevent serious damage to property or the environment (cl 12(1), (3)), and the activities of the NZ Defence Force (cl 4) are allowed in marine reserves. Boats may also pass through a reserve (cl 5).

Mining, prospecting and exploration in any marine reserve for petroleum, and in reserves within the 12-mile limit for other minerals, are managed through the Crown Minerals Act and do not require a separate authorisation under the Marine Reserves Act (cl 12). However these activities must only have a “minimum impact”, which precludes activities that would breach the MRA (cl 128). In contrast, mining for minerals in the EEZ under the Continental Shelf Act requires the Minister’s authorisation under the Marine Reserves Act (cl 129). This is because the Continental Shelf Act does not have the decision-making procedures in the Crown Minerals Act that help to safeguard the values of the reserve.

Activities that are allowed but need authorisation

The Bill also allows both scientific research, and research that contributes to Maori knowledge about the marine environment (Te Ira Tangaroa). However these require authorisation (cl 12(2)), both to monitor and manage potential effects (for example, if the research includes sampling marine life), and to limit disturbance from other activities on the research if this is required.

Prohibited activities

The Bill prohibits fishing in marine reserves (13(1)). This is because experience internationally and in NZ and is that “no-take” provides significantly better protection for marine life and is important to achieving a natural state in reserves. Allowing fishing would also make it far more difficult and expensive to manage and enforce marine reserves.

Other prohibited activities cannot be done without authorisation (Table 1, cl 13-15). These are generally activities with the potential to harm marine life or other values in the reserve. There are some differences in the rules for marine reserve within the 12-mile limit and those in the EEZ, because of the limitations on NZ’s sovereign rights in the EEZ under international law.

MANAGING ACTIVITIES IN A MARINE RESERVE:

Reserves must be managed according to the purpose, principles and other provisions in the Marine Reserves Act, any conditions in the Order in Council which establishes the reserve, regulations, relevant statements of General Policy, the relevant Conservation Management Strategy, and any approved management plan for the reserve (cl 32).

Recreational and educational activities, research, concessions and anchoring may be controlled by an order-in-Council, a regulation, or by a short-term restriction under clause 17, but only if the controls are necessary to protect the natural values in the reserve. All three mechanisms also require the Minister of Conservation’s approval, which in turn protects the public’s rights. Clause 17 allows immediate problems or urgent threats to be addressed while formal, long term controls are established (if necessary) through an order-in-Council or regulation.

A new feature in the Bill is that a concession system will be used to authorise commercial operators, research, and activities that are otherwise prohibited (cl 18). Concessions are not required for management activities or for activities that the Bill explicitly allows.

The Bill uses the concessions system set out in Part IIIB of the Conservation Act as it has established procedures and criteria for authorising activities, and for monitoring and managing environmental effects. The concession fee may be reduced or waived in situations that involve the public good, core educational or non-commercial activities, or clear benefits to management.

Relationship with other Acts

Authorisations that are required under other Acts will still be required (cl 6). For example, disturbing an archaeological site in a marine reserve would require authorisation under both the Marine Reserves Act and the Historic Places Act.

PUBLIC INVOLVEMENT IN MANAGEMENT

The Bill requires public consultation when developing a General Policy for marine reserves (cl 34), or a management plan (cl 38, 40-45), and when reviewing a reserve or its boundaries (cl 74).

Tangata whenua, the local community, and people with a particular interest in a reserve can be involved in its management through advisory bodies or management bodies.

Advisory bodies

The Minister may appoint an advisory body for a reserve managed by the Department of Conservation (DOC) (cl 24). Its role is to provide advice about the reserve, and to develop the management plan if one is required (cl 26). An advisory body can be the Conservation Board, or a reserve committee appointed directly through the Act (cl 27). The latter is a new form of advisory body, and reports directly to the Minister.

Table 1: Summary of activities and how they are managed in the Bill

Activity	Status under Bill	How managed in Bill
Activities allowed in all marine reserves		
<ul style="list-style-type: none"> • Recreational activities • Educational activities • Anchoring 	Allowed, subject to prohibited activities	Order in Council, Regulation, or short-term notice may limit if necessary to protect reserve's values, or guide if and how concessions are granted for research or commercial operators
<ul style="list-style-type: none"> • Scientific research • Research for Te Ira Tangaroa • Commercial operators (tourism etc) 	Allowed, but requires a concession beforehand	
<ul style="list-style-type: none"> • Activities for safety, preventing damage 	Allowed	Not controlled
<ul style="list-style-type: none"> • Normal ship operations • Passage through a reserve 	Allowed	Not controlled if activity is within the relevant specified definitions
<ul style="list-style-type: none"> • Mining (all mining within the 12-mile limit, and petroleum mining in the EEZ) 	Allowed only if has "minimum impact" and is authorised	Authorised and managed under Crown Minerals Act, not MRA
<ul style="list-style-type: none"> • Pest control 	If manager authorises	Manager authorises
<ul style="list-style-type: none"> • NZ Defence Force activities 	Act does not apply to enforcement activities, or to operational activities in the EEZ, or to operational activities in the Territorial Sea where there is a written agreement	
Activities prohibited in all marine reserves (both within the 12-mile limit and in the EEZ)		
<ul style="list-style-type: none"> • Fishing 	Not allowed	No provision for allowing
<ul style="list-style-type: none"> • Mining in EEZ (non-petroleum) 	Not allowed unless authorised	By concession
<ul style="list-style-type: none"> • Take material; • Take, modify, damage historic material • Damage, disturb, marine life, seabed etc • Introduce marine life • Erect a structure • Dump or incinerate • Use explosive or firearm 	Not allowed unless authorised	By concession Order in Council, regulation, or management plan may guide if and how concessions are granted
Activities prohibited in reserves within the 12-mile limit (in addition to those prohibited in all reserves)		
<ul style="list-style-type: none"> • Littering • Discharge of oils, noxious liquids, garbage, fishing waste, untreated sewage, other potentially harmful substances • Discharge sewage from outfalls • Discharge of ballast (unless for the immediate safety of the ship) • Land aircraft (except for emergency or for a navigational aid) 	Not allowed unless authorised Aircraft landing is allowed if it is operated by the NZ Defence Force or Civil Aviation Authority	By concession. Order in Council, regulation or management plan may guide if and how concessions are granted
Activities prohibited in reserves in the EEZ (in addition to those prohibited in all reserves)		
<ul style="list-style-type: none"> • Discharge of oils, noxious liquids, garbage, sewage 	Allowed only if within international standards	Seek international agreement to higher standards if required

Management bodies

The Bill also allows the Minister to appoint a management body to carry out the day to day management of a reserve, rather than DOC (cl 20). However the Minister must first be satisfied that the proposed body would have the resources to do so, and that it would better achieve the purpose of the Act for that reserve. A management body may be a local authority, another Minister, a management board, or another person or body. The Bill sets out the powers, functions and administrative procedures of these bodies (cl 22, Schedule 1). They must develop a draft management plan within three years (cl 37), which the Minister approves. They must also provide the Minister with an annual report on their management of the reserve and an audited financial statement (clause 28 in Schedule 1).

Management bodies are subject to the Ombudsmen Act 1975 and the Official Information Act 1982 (except for local authorities, which are subject to the Local Government Official Information and Meetings Act 1987).

Links to the NZCA and Conservation Boards

The NZ Conservation Authority (NZCA) may advise the Director-General on any matter concerning the welfare of marine reserves (cl 35). A reserve committee must include a member of the Conservation Board (cl 27). A reserve committee must also consult with the Conservation Board when developing a management plan (cl 40), and the Minister must consult with the NZCA before approving the plan (cl 44).

THE APPLICATION PROCESS

Applications for marine reserves are generally of significant interest to the public and are often contentious. The Bill provides a detailed process so that all interests and values are fully taken into account (Figure 1, cl 46-71). Key features are:

- The ability for any person to apply for a marine reserve (cl 47);
- Guidance on the preliminary consultation that must be carried out prior to an application being made and the information required in an application (cl 48, 49);
- Requirements that a proposal must meet before it will be accepted as an application (cl 48-51);
- Participation by Maori, stakeholders, the public and government departments through written submissions (cl 53-55);
- Meetings to assist submitters to discuss issues and resolve differences (cl 59, 60);
- Time limits on each stage of the process including on the Minister's final decision;
- A requirement for an independent report where DOC is the applicant (cl 62);
- Requirements that submission summaries and reports of meetings be made publicly available to facilitate participation and an understanding of the basis for decisions (cl 58, 60).

The decision-making process

The Minister of Conservation makes the final decision to recommend an order in council to declare a marine reserve. The Bill removes the existing concurrence roles of the Ministers of Fisheries and Transport. Instead, those Ministers must be consulted along with the Ministers of Defence, Energy and Foreign Affairs and Trade (cl 63). This ensures the Minister of Conservation has good information on the implications of a reserve for other Crown interests and obligations.

The Bill provides substantial guidance on the matters the Minister of Conservation must have regard to (cl 65-67). The Minister must be satisfied that a proposal:

- Meets the purpose and is consistent with the principles in the Act;
- Is in the public interest; and
- Has no undue adverse effect on any activity or interest listed.

An adverse effect is not “undue” if the Minister is satisfied that the benefit to the public interest in establishing the reserve outweighs the adverse effect. The public interest includes both the benefits to biodiversity conservation and other direct benefits that may arise from the reserve.

A REVIEW PROCESS

The Bill provides a process for reviewing reserves, or their boundaries (cl 73-75), but a reserve’s status would only be removed if the reserve no longer met the purpose of the Act.

ENFORCING MARINE RESERVES

Enforcement processes are designed to provide the necessary tools to enforce marine reserves effectively and efficiently (cl 76-125).

Enforcement officers and their powers

The Bill includes safeguards to ensure that only appropriately trained and qualified people can exercise enforcement powers. It appoints customs and naval officers to be enforcement officers, as well as DOC staff, fisheries officers and police (cl 77). Only these people can use the more serious powers in the Bill, including a limited power of arrest. They may exercise their powers anywhere in NZ (cl 83), so that offences can be investigated and evidence collected. The Bill also allows the Director General to appoint members of the public to be honorary enforcement officers (cl 78). These honorary officers must be trained and qualified in the same manner as DOC’s officers, but cannot make arrests.

The ability to appoint naval, customs and fisheries officers facilitates the inter-agency approach to enforcement that is envisaged in the Government’s maritime patrol review.

Offences and penalties

Offences that can directly effect the integrity of a reserve are strict liability offences (cl 109). This means that the defendant must prove that they took all reasonable steps to ensure they didn’t commit the offence, or that it was done in an emergency (cl 110).

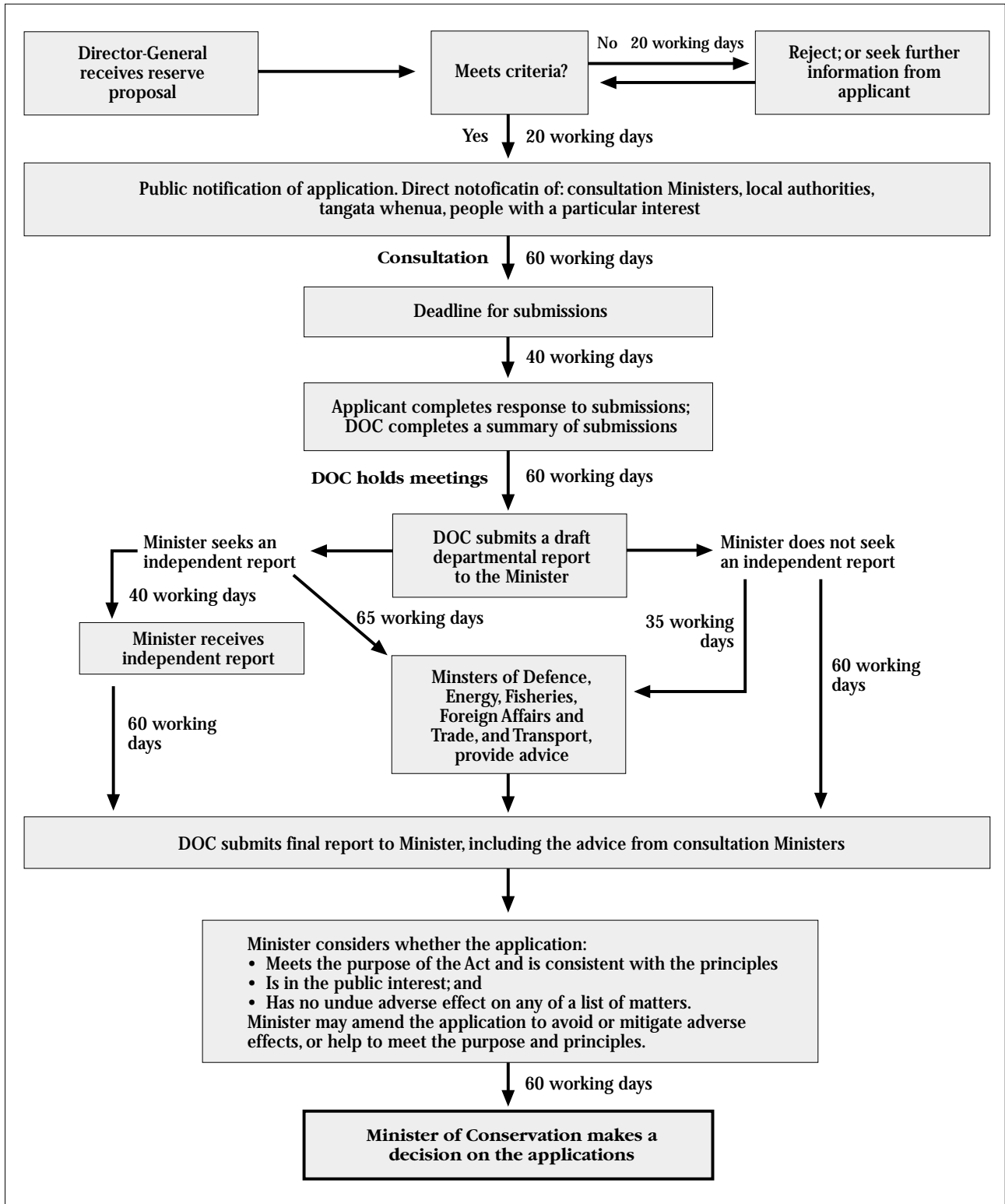
There are four categories of penalties, depending on the level of seriousness of the offending. Most offences fall into the second category.

The Bill also introduces two new approaches for dealing with offences.

- An infringement fee will be possible for all offences, except that of commercial take (cl 93, 105-108). This means that an infringement notice will be able to be issued for actions that are at the less serious end of the range.
- A sentencing option of community service sentences provides an opportunity to match the sentence more closely to offenders’ circumstances (cl 113).

Category of offence	Penalty (Maximum fine, imprisonment)
1. Commercial take of marine life from a reserve	\$250,000 and/or 6 months
2. Other serious offending that effects the reserve’s integrity	\$100,000 and/or 3 months
3. Obstruction or corruption type of offences	\$5,000 and/or 3 months
4. Less serious offending	\$5,000

Figure 1: Summary of Application and Decision-making Process



FOR FURTHER INFORMATION CONTACT:

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Or see the DOC website at:

www.doc.govt.nz/Conservation/Marine-and-Coastal/Reviewing-the-Marine-Reserves-Act-1971/index.asp