

1. Introduction

1.1 ABOUT THIS HANDBOOK



Outside groups and organisations, other than the Director- General of Conservation, may be involved in the process of establishing marine reserves. Being an applicant provides an opportunity for the public to become fully involved in protection and conservaton of the coastal marine environment.

The purpose of this handbook is to make prospective marine reserve applicants familiar with the marine reserve application process. By raising the applicant's awareness of common themes, pitfalls and other issues requiring special consideration, this handbook should accomplish two objectives. Firstly, it will enable the applicant to plan an effective campaign where the workload is kept to a minimum. Secondly, it will help safeguard particular community aspirations and values.

The handbook is based on the experiences of Department of Conservation and its pioneering marine reserve campaigners. Previous marine reserve proposals show a variety of approaches. While common themes do emerge, the details of the marine reserve process are by and large unique to each marine reserve application. This handbook illustrates the critical steps and assists with planning for a marine reserve application.

Marine reserves are established under the Marine Reserves Act 1971. The process is divided into two stages: the first is the nonstatutory or informal stage; the second, the statutory (formal) stage. Whereas there is no statutory requirement upon an applicant to carry out the non-statutory process, experience has shown that this is an effective way of identifying the issues of concern and involving the community at an early stage. The bulk of the applicant's workload will occur during the informal stage. The statutory phase of the process is more formal. The two stages are described in detail in the proposal and application-making section on pages 6 to 39.

As each application is different, presenting a different set of issues, this handbook, a working draft, is intended to be used as a guide only.

It is advisable to have a copy of the Marine Reserves Act 1971 available while preparing the application.

Additional advice

Staff at Department of Conservation office near you are available to offer additional assistance to organisations initiating an application on issues relating to this handbook, marine reserves in general, and coastal conservation. They can also direct you to other sources of assistance. A Department of Conservation address list is included at the back of this guide. Potential applicants are advised to seek advice as early as possible and certainly prior to presenting any formal application.

1.2 MARINE RESERVES

The Department of Conservation and the marine environment

In 1987 the Department of Conservation was formed and became responsible for administering the Marine Reserves Act 1971. One of the Department's aims is "to conserve the natural character and quality of the coastal and marine environments of New Zealand". Establishing a network of marine reserves around New Zealand is one method of achieving this aim.

What is a marine reserve?

A marine reserve is a specified area of the territorial sea, seabed and foreshore which is set up and managed for the purpose of preserving it in a natural state as the habitat of marine life for scientific study.

An area is declared a marine reserve by an Order in Council made by the Governor-General. The Order in Council defines the area covered by the reserve, usually with reference to a distance seaward of Mean High Water Springs (MHWS), and/or by reference to known landmarks or reference points on land. The boundaries of a marine reserve may be marked with lights, beacons, buoys, or marks.

What areas can be made into marine reserves?

Any area below MHWS and within the territorial sea or internal waters of New Zealand (provided no lease or licence under the Marine Farming Act 1971 is in force) may become a marine reserve. A size limit is not specified, although the area must satisfy the requirements of section 3(1) of the Marine Reserves Act (See next section).

What types of areas qualify for marine reserve status?

Section 3(l) of the Act contains a wide brief of the types of areas suitable to be a marine reserve. Reserves may be established in areas "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."

There are currently 16 marine reserves. They protect a variety of marine habitats and are briefly described below:

Cape RodneyOkakari Point Marine Reserve

located near Leigh, Auckland (established 1975). Established largely through the efforts of Auckland University staff, this marine reserve is a prime example of typical rocky northern coast. (NZ Gazette 1975, page 2427)

Poor Knights Islands Marine Reserve

located north-east of Whangarei (established 1981). The waters surrounding the islands are internationally famous for the blend of subtropical and temperate species which can be found there. The reserve has spectacular underwater scenery, such as steep cliffs, caves and archways, and abundant schooling fish. (Statutory Regulation 1981/16)

Kermadec Islands Marine Reserve

located approximately 400 nautical miles northeast of Auckland (established 1990). This is our largest marine reserve and surrounds the four main islands in the Kermadec group, extending out to the limits of the territorial sea. The area has an interesting mixture of subtropical, temperate and endemic species. (Statutory Regulation 1990/305)

Kapiti Marine Reserve

located 50 km north of Wellington (established 1992) comprises two areas, Area 1 on the west of the island and Area 2 on the island's east coast and converging on the mainland at the Waikanae River mouth. The waters around Kapiti are renowned for their clarity and diversity of temperate habitats. (Statutory Regulation 1992/71)

Whanganui A Hei (Cathedral Cove) Marine Reserve

(established 1992) is located on the south-eastern extremity of Mercury Bay, Coromandel Peninsula. The area contains some of the most picturesque coastal scenes of the Coromandel while the marine environment contains reefs and soft sediment areas typical of the area. (Statutory Regulation 1992/387)

Mayor Island (Tuhua) Marine Reserve

(established 1992), located northeast of Tauranga harbour in the Bay of Plenty. Situated to the north of the island, this marine reserve contains outstanding underwater scenery, subtropical and warm temperate species and nationally unique geological features. (Statutory Regulation 1992/386)

Long Island Kokomohua Marine Reserve

(established 1993) is located in Queen Charlotte Sound, Marlborough Sounds. This marine reserve was established through the efforts of local dive clubs. The area contains typical Marlborough Sounds marine and intertidal ecosystems as well as unusual geological features. (Statutory Regulation 1993/72)

Fiordland Marine Reserves: Piopiotahi (Milford) Marine Reserve and Te Awaatu Channel (The Gut) Marine Reserve

(both established 1993). These marine reserves were proposed by the New Zealand Federation of Commercial Fishermen. The Piopiotahi (Milford) Marine Reserve is an example of a typical fiord ecosystem. "The Gut" is considered to be unique, containing a number of rare species and the highest diversity of species known in the fiords. It is also one of the few places where sea pens can be found at diveable depths. (Statutory Regulations 1993/315, and 1993/316)

Tonga Marine Reserve

located Abel Tasman National Park (established 1993). The Director General of Conservation was the applicant for this marine reserve just north of Marahau in Abel Tasman Bay. The area is considered distinctive due to its combination of coastal forest, sheltered granite shores, and rocky subtidal reefs. (Statutory Regulation 1993/338)

Westhaven (Te Tai Tapu) Marine Reserve

located in the southern section of Westhaven Inlet on the top of the West Coast (established in early 1994). It forms part of a package of protection for this large



unmodified estuary, the other part of the package being an adjacent wildlife management reserve in the northern section of the estuary. The package enables fishing to continue in the northern part of the estuary while ensuring the habitat remains protected. (Statutory Regulation 1994/56)

Long Bay-Okura Marine Reserve

an east coast beach on Auckland's north shore in North Shore City established in 1995. Within the boundaries of the Hauraki Gulf Marine Park, includes estuary with mangroves and mudflats, intertidal platform reefs and sub-tidal mudflats.

Motu Manawa (Pollen Island) Marine Reserve

established in 1995 in the Waitemata Harbour within the Hauraki Gulf Marine Park. Mangrove, saltmarsh and open inter-tidal habitat representative of the Upper Waitemata Harbour. Shell banks.

Pohatu (Flea Bay) Marine Reserve

established in 1999 off Banks Peninsula, east of the entrance to Akaroa Harbour. Very exposed coast with boulders, rock stacks, steep cliffs, kelp forests and cold temperate reef fish.

Te Angiangi Marine Reserve

established in 1997, east of Waipukurau. Typical of central Hawkes Bay coast. Semi-exposed with inter-tidal reefs. Sub-tidal boulder bank, kelp forest, and warm and cold temperature reef fish.

Te Tapuwae o Rongokako Marine Reserve

established in 1999 on the east coast north of Gisborne. Semi-exposed coast with sandy beaches, intertidal reefs, kelp forest, urchin barrens, sub-tidal sand and mudflats. Warm temperate reef fish with cold temperate species.

The map on page 41 shows New Zealand's marine reserves and other marine protected areas.

Who may apply for marine reserves?

In addition to the Director General of Conservation, many organisations are able to make marine reserve applications. Other organisations that may apply include:

- any university (within the meaning of the Universities Act 1961)
- any body appointed to administer land (subject to the Reserves Act 1977) which has frontage onto the sea
- any incorporated society engaged in or having as one of its objectives the scientific study of marine life or natural history

Permitted activities in a marine reserve

The following activities are allowed in a marine reserve:

Public access:

Public access is permitted so that the opportunity to study, observe, and record

marine life in its natural habitat may be enjoyed in full measure. However, public access may be restricted if the welfare of marine life or the marine reserve is at risk.

Navigation:

Subject to any regulations, navigation is permitted provided it does not harm the marine life in the reserve.

Anchoring:

Anchoring within a marine reserve is generally permitted so long as there is minimal or no damage to the reserve. Anchoring can be prohibited in areas closed for scientific study. In popular anchoring areas where the marine life may be disturbed, mooring buoys may be provided. For example, the Poor Knights Islands Marine Reserve has mooring buoys in the heavily used areas.

Exploration, prospecting, and extraction of minerals, including hydrocarbons, sand, shingle etc:

These activities are subject to consent from the Minister of Energy and the concurrence of the Minister of Conservation.

Activities That Are Not Allowed In A Marine Reserve

Discharges:

No discharges of any sort are allowed. Holding tanks must not be discharged within the reserve.

Commercial fishing.

Amateur fishing:

Non-commercial or amateur fishing is not allowed in a marine reserve unless this has been provided for by either a notice in the NZ Gazette, or a condition attached to the Order in Council declaring the area a marine reserve.

Structures:

Structures in certain circumstances can be authorised by the Director-General. Note that it may also be necessary to obtain a resource consent under the Resource Management Act.

Public works:

Public works (i.e. any Crown or local authority work) are not allowed except where consent has been given by the Minister of Conservation and the Minister in charge of the department in control of the work.

Interference with marine life:

Disruption, introduction, or taking of any plant, animal or material which interferes with the preservation of marine life (except where provisions have been made) is not allowed.

Firearms:

Shooting within or into a marine reserve is not allowed.



Who looks after marine reserves?

The Director-General of Conservation is responsible for managing marine reserves. Important management functions include marking marine reserve boundaries, law enforcement, issuing scientific permits, and monitoring environmental changes.

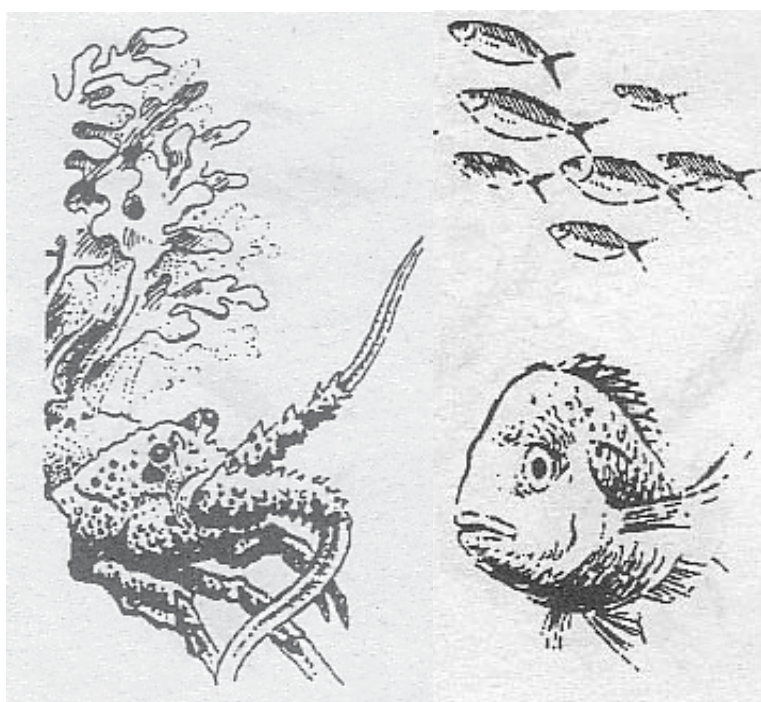
The community can also become involved in looking after marine reserves by helping the Department of Conservation with law enforcement.

1.3 ESTABLISHING A MARINE RESERVE: THE PROCESS

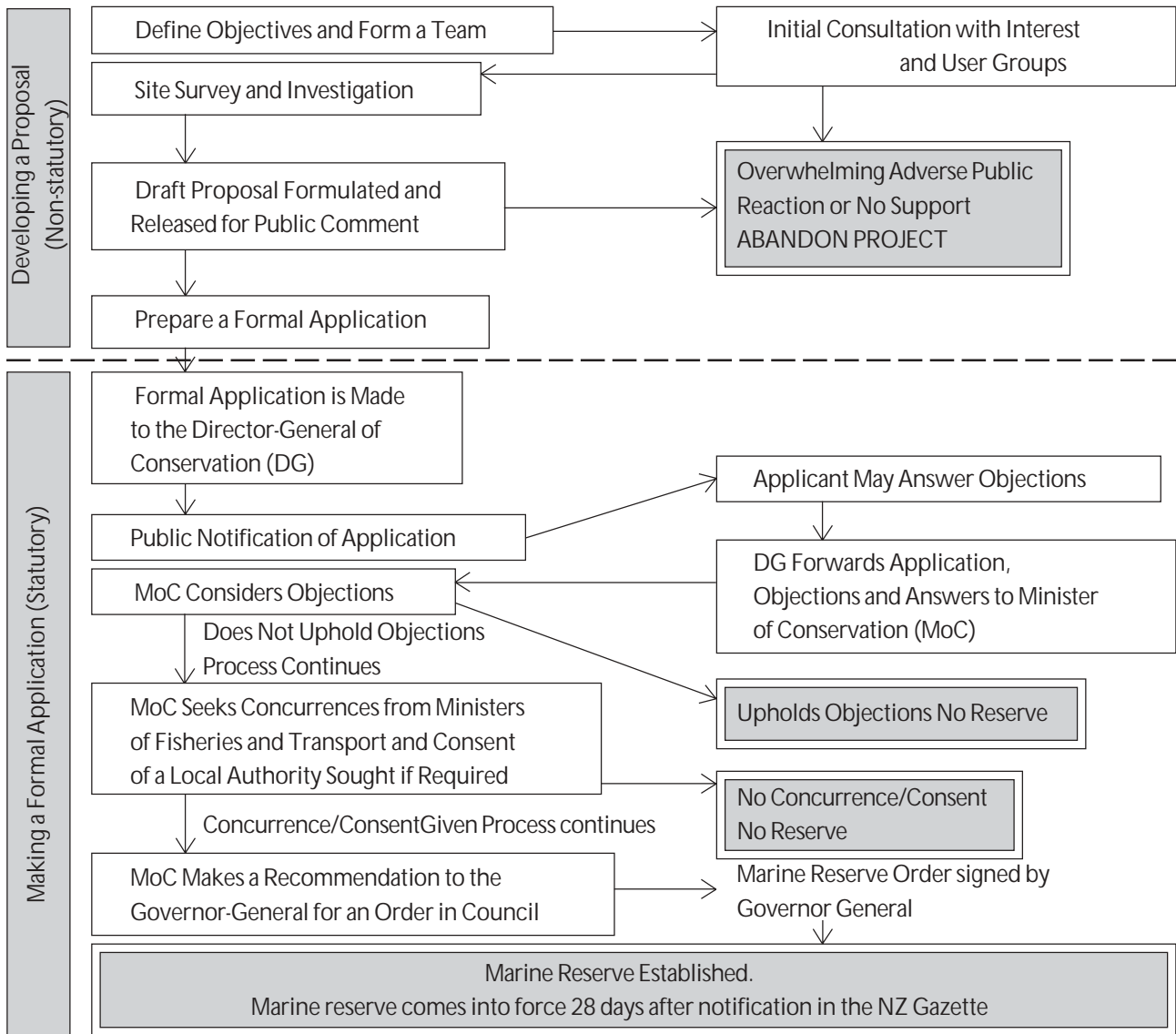
Overview

Within the overall process to establish a marine reserve there are two separate and distinctive stages. The first non-statutory stage involves developing a proposal, including the steps taken before an application is formally presented to the Director-General of Conservation (see pages 6-22)

The second stage requires a number of steps to be taken by the applicant which are prescribed by the Marine Reserves Act. This stage is known as the "statutory process" (see pages 23-36). When the applicant has completed the required steps, the Director-General of Conservation and the Minister of Conservation have further statutory functions to complete before a marine reserve can be established (see pages 37-39). The flow chart on the next page illustrates the basic steps in the marine reserve application process and is supported by detailed explanations of the main steps in the following pages.



The Marine Reserve Process



2. Developing a Proposal

2.1 DEFINE OBJECTIVES AND FORM A TEAM

You should consider whether the Marine Reserves Act is the most appropriate way of achieving protection of the coastal marine environment. Planning for a marine reserve proposal can be likened to a campaign. As an advocate for marine reserves, you will be continually assessing public attitudes with the aim of encouraging supporters and minimising opposition. You will discover that a diverse range of public attitudes and opinions exists, all of which must be considered and taken into account.

Developing a marine reserve proposal requires a dedicated and well organised team. Your team should include people from within the local community and local organisations to assist with all the tasks that will need to be done. Abilities in resource planning, survey, public relations, iwi liaison, and community development will also be great assets.

It is essential at an early stage to identify a core of two or three people within the team who have the time, enthusiasm, ability and facilities to keep the proposal moving to its conclusion. Previous marine reserve campaigns have taken three years on average. Keeping the same team members throughout your campaign will help maintain momentum.

Your team should plan and develop a strategy mapping out all the processes vital to the success of your campaign. This plan should outline the work that needs to be done, the roles of your team members, and how the community and specialists will be involved. It will be useful to develop a timetable for completing steps, allowing for some flexibility to slow down or speed up the pace of progress with the application depending on circumstances.

Outside applications made to date have cost between \$6000 and \$10,000 to prepare a formal application. Costs depend on how much original investigation of the marine biology of the area has to be carried out, and how much photocopying, photography etc. is required. Your team should prepare a provisional budget, and investigate possible sources of funding.

When making an application, your team will need to comply with the requirements of the Marine Reserves Act as to the status of applicants. If your organisation is not a university or body appointed to administer land which has frontage to the sea coast, you will need to form an incorporated society or corporate body which is engaged in, or has as one of its objectives, the scientific study of marine life or natural history.

2.2 INITIAL CONSULTATION WITH INTEREST AND USER GROUPS

Previous marine reserve proposals indicate that marine reserve applications are most successful if a broad base of public support is developed. Once public support has been gained you should aim to consolidate it. If you gain the support of the community the application process will be subject to less conflict and opposition. You should consult the Department of Conservation as soon as possible as the departmental team will need to become familiar with the site and the issues early on in the process.

To reduce the risk of a detrimental public backlash, arrange for other groups to become involved in the process as much as possible. Prepare to approach other organisations with the objective of informing them of your plans. Responses will be varied, both in intensity and support.

Your team should talk to the following groups and individuals:

- Local iwi and tangata whenua
- Commercial fishers (including marine farming)
- Community groups
- Tourist operators
- Landowners
- Recreational fishers

- Dive clubs
- Boat clubs
- Local authorities
- Ministry of Fisheries
- Research organisations such as universities
- Environment groups
- Department of Conservation
- Relevant Conservation Board
- Schools
- Defence

As this is the first step towards community consultation it is recommended that all links are maintained no matter how inconsequential they may appear. In the event that there is an overwhelming adverse response or no support for your proposal, be prepared to abandon this project or to consider a different area and/or a different approach. It is preferable to avoid having to continually explain the actions of your organisation to members of the public who may be confused by the proposal.

Additional notes on consultation

The more effort and care that goes into the preparation of the application the greater degree of success and the better the outcome.

Consultation with the community and the interest groups should continue throughout the process of proposing a marine reserve and making an application. Widespread community consultation has many benefits and is an important step toward ensuring that site selection is widely supported and based on the best information available.

There are many effective methods of community consultation and different ones will be used in different situations. Generally, the most effective form of community consultation is talking with and listening to key local people in their own forum. Consultation should be as wide as possible and not limited to producing discussion papers and the later formal application document.

Your immediate and long term objectives for community consultation are to:

- (1) Develop networks that assist in the transfer of information between your organisation and the community;
- (2) Introduce the community to coastal protection issues and the marine reserve concept;
- (3) Build and maintain support for marine reserves;
- (4) Encourage involvement in site selection; and
- (5) Stimulate a sense of community belonging to the marine reserve.



General consultation steps

If specific sites have not been identified, a general consultation process can be used (refer to steps 1 - 6 below). If specific sites have been identified already either by yourself or other interested parties, you may want to approach the consultation process from a slightly different angle. You must be prepared to discuss proposals **specifically** and **confidently**. You must know your facts! You must be prepared to explain the application process and involve the community at all stages.

Step 1: Compile a list of all community groups that may be interested in your proposal. You will adopt individual consultation procedures appropriate for each group.

Step 2: Categorise whether each group is local, district, or national. This will enable you to prioritise your consultative energies and improve efficiency and effectiveness. Different objectives will be sought at the various organisational levels. For example, local bodies can be approached directly to generate community support and involvement, while addressing their parent bodies is an indirect method of generating acceptance for your proposal.

You should remember that local groups are also vital and in some cases more important. This is especially so in small communities. Examples of local and district groups are:

Local: schools, residents, ratepayers, the local media, small local action-orientated groups, individuals with specific skills and influence.

District: universities, commercial groups, political organisations.

Step 3: Plan and evaluate your information needs. You will require information for your draft proposal (see sections 2.3 and 2.4).

Secondly, there is a lot of scope for building good local rapport through information sharing. For example survey results can be shared with the community.

Finally, when you open discussions with the local community it will want to be informed about the application process and the philosophy and legal status of marine reserves, as well as the role of the community.

Major and minor questions, like "can we shoot ducks?", will also need to be answered. If you can't answer some questions, note these for later replies. Establish what the benefits for the groups are and cover all controversial issues. Always return to the overwhelming motivation of the campaign, that is protecting the marine environment.

Remember, there is great opportunity to include local people as volunteers in surveys. Their experience (not formally "scientific") can be very useful. This is particularly true of tangata whenua, whose knowledge has depth and longevity that cannot be emulated.

Of course more detailed information will also be required. In this case, scientific research groups can provide additional evidence and support for your proposal. The department, Ministry of Fisheries, schools, universities and other scientific organisations may be able to help.

Be wary, identifying a location on the basis of scientific evidence without adequate consultation with the community is not good practice.

Step 4: Before opening any discussions, ensure that you are well prepared. You should:

- Prioritise the order in which you will consult with the identified community groups. Typically, your first consultation should be with tangata whenua (see tangata whenua consultation, page 13).
- Ensure that you are confident and have the necessary background information. Prepare necessary resources and visual information to excite and educate your audience about marine reserves.
- Decide who will make the initial presentation. Ensure that your spokesperson is appropriate to the audience. Two people may be appropriate for different roles. A local link might be useful.
- Ensure you understand your audience's beliefs, political agendas and issues.
- Determine whether or not they will likely become or remain allies.
- Decide exactly what you want them to do.

Step 5: All consultations should be evaluated in terms of whether your audience has accepted the marine reserves philosophy. Then, "if not, why not?"

Step 6: Maintain links with all groups even if they oppose your idea. They may be required for information, advice, or support at a later stage.

If a group appears unresponsive try a different approach but above all maintain positive messages about your willingness to discuss issues.

Another method of maintaining links and communicating with local groups is to talk to their parent organisations. Often messages from higher up in their network e.g. Royal Forest and Bird Protection Society, New Zealand Federation of Commercial Fishermen will be effective. The Department of Conservation can be called on for advice in these circumstances.

It is a good idea to adopt a one-on-one approach as well as holding public meeting where possible. If a landowner requests more information, a visit is in all likelihood the best method for conveying the information, especially if the landowner is not supportive. Sometimes the support is lacking due to insufficient information or misunderstandings.



Determined obstacles

Some people will appear to be determined and immovable obstacles.

Provide them with information about places such as the marine reserve at Leigh which once faced seemingly impossible opposition. Discuss and address their concerns seriously. Don't give up friendly dialogue because they "hate greenies or conservation." Remember that for every vocal opponent there is usually a silent supporter.

Public meetings and forums

REMEMBER, public meetings or forums are not the same as addressing a key group. They need careful preparation and often serve purposes other than the purely consultative. It is

not advisable to plan such public gatherings in the initial consultation phase for marine reserves. Public meetings should strengthen community support and unless carefully organised, can polarise groups within the community instead of advancing the marine reserves campaign. As with all other mechanisms, the objective of a public meeting needs to be defined before making a commitment to one. If there is a strong level of local support and interest it may be useful to hold a public meeting to reinforce the community approach. This is an opportunity to involve local authority and other interest groups as advocates and facilitators of the process of establishing marine reserves. Such meetings are a great opportunity for education and information exchange, but not a good place for lengthy public debate of the pros and cons.

There are certain practical details to consider when calling a public meeting. For instance:

- Ensure the date does not conflict with other local events;
- Choose a suitable venue and your best speakers with the most local mana;
- Anticipate everything including the supper, the chairs and thorny questions;
- Practise your presentations, especially any visual material;
- Ask a respected member of the local community to chair the meeting;
- Be aware of potential areas of conflict;
- Be prepared for media interpretation of your message.

There will always be opponents of conservation at these meetings. Your opponents may be more vocal than your supporters. You should draw your supporters out by conducting your meeting or forum in a rational manner.

Often your opposition will demand answers and results at public meetings. To avoid this state clearly at the outset that the purpose is to allow the public to express opinions without decisions having to be made on the spot. Both parties will benefit from this as it allows time to consider all options.

The media

As in all areas, the importance of the media cannot be over-estimated in marine reserves work. A person who can network with the media should be included in your team and be fully aware of all the team's marine reserves work, so as to be able to effectively promote it. You should establish a good relationship with the local media and keep the media up to date with positive developments.

There is great potential for conflict in marine reserves. Sometimes saying nothing is the best option, particularly with issues such as tangata whenua where publicity may be unwelcome, premature and/or inappropriate.

Other public events

There are other ways of creating public support such as participating in local events with stalls and displays, organising coastal walks and information evenings, working with school children, using community newspapers for coastal stories, "open houses", running videos in local shops or focusing visitor programmes on marine reserves issues.

Tangata whenua consultation

Consultation with tangata whenua is necessary because the Treaty of Waitangi requires a partnership between the peoples of New Zealand. This partnership requires consultation which is a two-way process. It is a great deal more than giving formal notice of a proposal for a marine reserve.

Experience has taught the Department of Conservation that tangata whenua should be the first to be included in any marine reserve consultations. You should make a concerted effort to seek advice before opening discussions. Like all community groups the most successful relationships will be generated if each has respect for the other.

Approach tangata whenua as associates and meet frequently. This may require considerable self education for some people. Ensure this consultation is allowed its due time.

Protocol

If you are unfamiliar with tangata whenua protocol, language, and dynamics of Maori decision making, make an effort to understand them. Remember too, tangata whenua may be equally unsure about decision making processes familiar to you.

Before initiating discussion with tangata whenua consider some basic issues. These include the Treaty of Waitangi, land ownership and fisheries issues. Take time to investigate the political structure of the Maori community, identify key groups and individuals.

Process for tangata whenua consultation

The process for tangata whenua consultation is similar to the general consultation steps discussed on pages 10 - 12. There are some differences, however. The main consultation steps are as follows:

Step 1: Research tangata whenua whakapapa. You will be accepted more readily if you have obviously made an attempt to understand tangata whenua history.

Step 2: Form a consultation group. You will need a four or five person team who will consult with tangata whenua for the duration of the campaign. This team should include a key spokesperson for your group.

Your spokesperson will be somebody who is articulate, has mana or prestige, and commands the highest authority within your group. It will be to your benefit to also include someone who is familiar with tangata whenua protocol.

Step 3: Identify key figures. Identify traditional hapu or iwi for each coastal area (there may be more than one). If several groups claim this status treat them as such. Identify the key people in each hapu. Remember that important kaumatua exist in each hapu as well as local political leadership organised through runanga.

You may need to research the form of these structures. The Maori Women's Welfare League, universities and even hapu themselves may provide this information.



Step 4: Organise initial contact - the most senior person in your organisation should make the initial contact with key people. Why otherwise should hapu give you and your issues any credibility? Expect a number of hui to be organised which this person should attend. Typical issues of discussion will reflect **general** coastal issues and perspectives. Remember, it may be some time before discussions about the general concept of marine reserves are appropriate.

Step 5: Building momentum - once sufficient interest in general coastal issues has been generated your next step will be to organise a hui with tangata whenua to discuss **specific** coastal issues, including protection. Be prepared to address a number of coastal issues including your own personal kaupapa on coastal protection.

Tangata whenua are not opposed to the concept of marine reserves as nurseries or food baskets. Where they may complement taiapure and mahinga maataitai (Established under the Maori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992) by being next to or nearby marine reserves, support may be given.

Remember, if you are truly dedicated to tangata whenua consultation you must budget accordingly. Possible expenses include koha for holding hui on local marae.

Step 6: Maintain momentum - evaluate all hui soon after the event. Some questions you want to ask yourself are:

- Has a good relationship between the two groups been established?
- Has the general concept for marine reserves been welcomed?
- Were any specific sites or problems identified?

Step 7: Site Selection. If you feel one or several sites are “winnable”, go back to the relevant tangata whenua and discuss it with them first. Do not assume that just because you have consulted with them over some issues that they will agree with this one.

Step 8: Scientific Survey. Once the issue of coastal protection has been raised and discussed with tangata whenua, biological survey work can be planned. Biological surveys are an excellent opportunity to involve tangata whenua representatives as advisors. A good survey will compare (and share) tangata whenua knowledge of the coast with other research findings. This two way exchange will only be possible if your credibility has been established previously.

Step 9: Draft Report Evaluation. Before drafting public documents, you must be confident that both parties are aware of all the issues concerned with establishing a marine reserve in the particular area. For example:

- Do you understand tangata whenua concerns?
- Have you addressed these concerns adequately?
- Do tangata whenua understand all the issues surrounding the concept of a marine reserve in their area?

Local authority consultation

Consultation with local authorities (eg district and regional councils) will ensure that their support will give you “formal” backing. Needless to say, gaining council approval for your project requires a structured and planned approach.

Ideally, contact with local authorities should be made before site selection. Approach the council at chairperson level. You should express the following ideas:

- That you wish to cooperate with the council in establishing protected coastal areas.
- Request an opportunity to present and explain the marine reserves concept. Appropriate forums in which to hold early discussions include council meetings.

Videos or informative talks on the general concept of marine reserves supported by flow charts of the consultation process are effective in ‘planting the seed.’

Remember, before you organise any presentations make sure you are familiar with council responsibilities in coastal management and coastal issues at district and regional levels.

As with all presentations, take care to analyse the council’s response. Finally, identify common ground and potential problems with the council.

Your next step is to discuss specific aims and problems with the council’s environment or coastal resources committee (or its equivalent). Ideally, the chairperson of the committee would chair public forums on marine reserves.

Once a good link has been forged with council members, encourage them to release public statements expressing support for marine reserves. Don’t ask them to support specific sites unless you have consulted **everyone** involved and gained a level of acceptance from most of them.

Record keeping and debrief

Good record keeping is essential throughout the consultation process. This is a good point at which to have a debrief and to assess the situation. Keep a record of the debrief.

2.3 SITE SURVEY AND INVESTIGATION

In order to support your case for a marine reserve, you will need to gather information relevant to the area. This information will be used initially in your draft proposal for public comment (see section 2.4) and in more detail later, should you progress with a statutory application for a marine reserve (see section 3.1).

Remember, site investigations can be costly. Therefore, to avoid unnecessary expenditure you must be confident that at least two or three possible options are winnable. As a rule, sound out support (ie. consult first) before committing too many resources.

The information below outlines what you will need to include in a draft proposal and, later, to support a statutory application.

Information requirements

Once your consultation is running smoothly you will be able to begin investigations in the area you are interested in protecting. When embarking upon investigations, consider the following four points:

- (1) Does the site meet the requirements of the Marine Reserves Act 1971?
- (2) Does the site have the support of a majority of the community?
- (3) Have you considered all possible impacts on other users of the area?
- (4) Do you have sufficient information about the site to warrant making an application to the Director-General of Conservation?

In the absence of direct guidance from the statutes, it is necessary to establish subjectively some elements which logically follow from the need to satisfy the criteria of section 3(1) of the Marine Reserves Act:

- Information should be the best available from a review of literature, contact with relevant research institutes and tertiary studies libraries, and those of relevant agencies.
- Technical information should wherever possible be drawn from acknowledged experts in the field of marine geomorphology, biology, bathymetry and coastal processes, especially from peer reviewed and published papers.
- Where underwater survey is possible and necessary to support the application, personnel with acceptable training and expertise should be used to lead field teams and monitor information collected.
- Field techniques should be appropriate to the site in question, with techniques able to be replicated for peer review if necessary.
- Information should be capable of being placed in a local and biogeographic regional context, so that there is a frame of reference for assertions of distinctive quality, beauty, typicality or uniqueness.
- Information presented should also, where available, contain bathymetry, habitat description, geomorphology, biology (including species lists), and guidance on current flows, exposure, system dynamism, erosion/sedimentation, linkages across the land/sea interface (if any) and connectivities, to the extent that this information enhances the arguments to meet section 3(1) criteria.
- The proposed reserve should also be compared with other existing marine reserves, in order to better define representativeness, replication and uniqueness.
- The quality and sources of the information used to support the application should be transparently detailed in the application document, along with the choice of survey methodologies used to gather new information.

Note: These principles for information quality apply to the establishment of the value of the area as satisfying the s.3(1) criteria. A similar standard of information should apply wherever possible to any aspect of the case presented for a new marine reserve, including the

examination of the impacts of a marine reserve on other uses of the area (e.g. Minister's consideration of 'undue interference' and 'adverse effect' in s.5(6) and the final decision on the merits of the application in section 5(9) including 'the best interests of scientific study and... for the benefit of the public'.

Potential for conflict

While the survey and investigations are often run in conjunction with the consultative process, achieving the balance between the two programmes is a complex juggling act. Background information about the area will complement your consultative procedures. More to the point, a lack of specific information may harm your campaign. Without evidence you cannot substantiate any arguments for locating a marine reserve in a particular area.

Your knowledge about any preferred marine reserve site should be extensive. You will need to provide quality information in your formal application (see section 3.1) which describes the following items in detail:

- (1) The locality of the area
- (2) The physical and biological features of the area
- (3) The cultural features of the area
- (4) Legal aspects of the area

Some of this information should be included in the draft proposal (see section 2.4). When you have received a positive public response to your draft proposal and decide to proceed with a formal application, you should aim to collect more detailed information to support your application.

Physical and biological features

Detailed descriptions about the area's physical and biological characteristics can be obtained from many sources. A few suggestions are listed below:

Information Required:

- Biology
- Climate
- Geology
- Coastal and ocean current patterns
- Topography
- Local traditional knowledge

Possible Sources:

- Aerial photographs
- Reports (published and unpublished)
- Geological survey maps
- Hydrographic charts
- Oceanographic survey maps
- Topographic survey maps
- Local iwi



Possible Organisations:

- Crown Research Institutes (NIWA)
- Department of Conservation
- Maritime Safety Authority
- Meteorological Service
- Ministry of Fisheries
- Regional Councils
- Universities
- Public Libraries
- Dive Clubs
- Commercial Fishing Organisations
- Land Information New Zealand (LINZ)

You may find there is a complete lack of biological information for your area of interest and you will need to arrange for surveys to be done. The Department of Conservation can put you in contact with relevant research organisations.

Cultural features

You should provide information on the historical and cultural significance of the area. This will include identification of local tribal authorities, marae, wahi tapu, and their relationship with the area. There may also be a significant European history in the area.

Legal status

In general, the legal and administrative information required will fall into the following categories:

(1) Statutory Applications and Approvals:

Applicants must be aware of any statutory applications and approvals within and/or adjacent to the proposed area. This is necessary so that their compatibility with a marine reserve can be assessed.

These matters are governed by the Resource Management Act 1991 (RMA) and the Marine Farming Act 1971. With regards to the RMA, as well as obtaining information on authorised structures/activities, it is also important to have a list of unauthorised structures present in the area proposed for a marine reserve. This can be obtained from the regional council.

It would be useful to present the information on the structures as an appendix giving the location (grid references), type and whether the structure is authorised or not. It is important to have this information because if the application is successful, the gazette notice will need to make provision for the structures, unless the Minister decides otherwise.

Note that under the Marine Reserves Act, marine farms cannot be included in a marine reserve. If there are existing farms within the proposed area or adjacent to it, it is also worthwhile getting copies of the licences from the Ministry of Fisheries. This information is needed in any case, as the owners of the licences must be formally

notified of the lodgement of the application. (See section below-Land Status Reports, and section 3.4)

It is best to obtain this information early in the pre-statutory stage and it will need to be checked during the final stages of preparation of the notification document as it should form an appendix to the application.

(2) Land Status Reports:

All applicants will need to commission a land status search at the relevant Land Information New Zealand office.

The land status search will check for:

- Private titles over the sea bed or foreshore;
- Areas of the seabed or foreshore which may have been vested in a local authority;
- The names and addresses of adjoining landowners, or the owners of land within 100m of the investigation area;
- The names and addresses of owners held on Maori Land Court records;
- The business operations in the area and on land adjoining properties which may affect or be affected by any marine reserve.

(Refer to section 3.4 for details)

It may be tempting to use Terraview to gain some of this information. A word of caution, Terraview is only indicative, a land status search at the relevant Land Information New Zealand office is necessary. This will provide the names of the owners of the land parcels and the mortgagees. Contact addresses for the owners can be obtained from the local council's rates department. This information should be presented in an appendix to the application. (See section 3.4 for list of mandatory contacts). The Department of Conservation, or the independent assessor in the case where the department is the applicant, will need to check that all landowners etc have been notified in accordance with Section 5(1)(d) of the Marine Reserves Act. Hence the need for this information to be readily accessible. If it is not then it will take time to gather the information and the processing stage will be slowed.

As noted under the heading above – Legal Status, it is best to obtain this information early in the pre-statutory stage and it will need to be checked during the final stages of preparation of the notification document as it should form an appendix to the application. It will also enable comprehensive consultation.

The applicant must provide to the department, not only names and addresses of landowners etc but also DP and CT numbers, preferably as a table keyed to a cadastral map and present the information as an appendix in the application (See section 3.4). This information is not required for the proposal for public comment (See section 2.4).

The Act enables any area below Mean High Water Springs (MHWS), provided no lease or licence under the Marine Farming act 1971 is in force, to become a marine reserve'. Property boundaries, in general, go to Mean High Water Mark (MHWM). Where there is a discernible difference between the two marks, the department



requires that the written agreement of the landowner is obtained demonstrating that the owner is happy for that portion of land be subject to the Marine Reserves Act. This is required not only for private landowners but also where the land is owned by a public agency other than the department. If the written agreement for the boundary to be at MHWS is not attached to the application as an appendix, the landward boundary, should the area be declared a marine reserve, would be at MHWM, unless the Minister decides otherwise.

This written agreement needs to be an appendix to the application, but is not required for the proposal for public comment (See section 2.4).

(3) Navigational Use:

An assessment of navigational use must be included so the Minister of Transport can assess the impact of any marine reserve application.

Information about the existing patterns of navigation (such as navigation channels), as well as the types of vessels using the area, will be required. The Maritime Safety Authority in Wellington can provide this information.

(4) Coastal Activities under the Resource Management Act:

Check to see if any applications have been lodged with the local authority for construction, reclamations, extraction of sand or any other activity under the Resource Management Act.

(5) Mining Licenses:

Check with the Ministry of Commerce to see whether any applications have been lodged or licenses granted for prospecting, exploration or mining of mineral and/or hydrocarbons in the area.

(6) Sewage and Stormwater Outfalls:

Check with the local authorities and do on-site inspections.

(7) Regional Coastal Plans:

Check the provisions of the relevant regional coastal plan for the area.

(8) User and Interest Groups:

Finally, you should identify any user or interest groups in the area. You will need to be able to demonstrate knowledge of their type and level of use which may affect or be affected by any marine reserve proposal.

Some user groups include:

- Traditional users such as Maori communities
- Recreational fishers
- Commercial fishers
- Dive and boating clubs
- Environmental groups
- Tourist operators
- Local fishing associations
- Ministry of Fisheries and any relevant advisory boards.
- Research institutions such as universities

You will find that fishing is likely to be the key use in the area which you are proposing for a marine reserve. The Ministry of Fisheries may be able to provide information on user groups involved in fishing.

2.4 FORMULATE A PROPOSAL FOR PUBLIC COMMENT

An initial proposal precedes and forms the basis for the formal application (see sections 3.1 and 3.2). You should continue consultations with community groups when formulating your proposal.

Your proposal should be a written document which identifies and provides information on a variety of issues including:

- **A good general description of the area**, including physical features and biological values
- **A description of cultural and historical aspects of the area**
- **The purpose of the proposed marine reserve** (ie scientific study of marine life) with general comments on management and monitoring of the marine reserve
- **Identification of existing uses of the area**
- **Identifying possible future uses**
- **Addressing relevant issues** such as the impact of a marine reserve on the user groups
- **Outlining the procedure that the application will follow.** This could be presented as a flow diagram

You should invite public comment on your proposal. Often a simple questionnaire attached to your proposal can help you decide how your formal application will turn out (location, size, boundaries etc). Give a reasonable period of time within which to comment and make sure you have enough copies available for respondents.

Ensure a wide distribution of your proposal document, making sure you also lodge copies with a number of organisations, including relevant office of the Department of Conservation and public libraries.



You may also wish to print a pamphlet which briefly explains the proposal and who to contact for more information. Widely distributed pamphlets can ensure greater coverage of the community while alerting people to the fact that you are proposing a marine reserve near their area.

Ensure that the public understands that the informal proposal is only a preliminary step to formulating the formal statutory application.

It is a good idea to decide on the area to be proposed as a marine reserve at this stage rather than increasing the size of it, or including new areas, later in the process.

Having said that, minor boundary adjustments could be considered once public comment has been received in order to alleviate concerns about a particular area or areas.

The views of the relevant Department of Conservation staff should be sought as to the practicalities of the boundaries in relation to marking them, whether the applicant is the

department or another organisation. The boundaries of a marine reserve need to be able to be marked in such a way as to make it easy for someone to know whether they are in the reserve. Marking is expensive and it is desirable to identify points which do not escalate these costs.

It is important to keep good records of consultation and its results and these should be forwarded to the department. This information also will need to appear as an appendix to the formal application.

If at all possible landowners and others having an ownership interest in the area should be approached individually so that the proposal can be discussed and their views obtained.

This is a good point at which to have a debrief and to assess the situation. Record the results of the debrief.

3. Making a Formal Application

3.1 PREPARE STATUTORY APPLICATION

Having released your proposal document and received a positive response from the public, you are now ready to move into the formal part of the application process and develop your marine reserve application. If you are unsure whether you have all the necessary information, contact your nearest Department of Conservation office. A model application is provided below as a guide. In addition, an electronic copy of a recent application can be obtained from the department for use as appropriate.

Continue to liaise with the department during the drafting of your formal application. They may be able to provide additional information or advice. Your first complete draft should be handed to your departmental contact. They will comment on the content and format and you may want to incorporate these comments into your final draft.

The application should demonstrate the proposal meets Section 3(1) and (2) of the Act. In describing the values, use the words and phrases in the Act.

Model application document to apply for an order in council to establish a marine reserve

TITLE: MARINE RESERVE APPLICATION [NAME]

CONTENTS

1. INTRODUCTION

(This section should include a brief explanation of marine reserves, the Marine Reserves Act 1971, and the Department of Conservation's association with them.)

- 1.1 Application for a Marine Reserve
- 1.2 Marine Reserves and the Department of Conservation
- 1.3 Process for Establishing a Marine Reserve

2. THE APPLICATION

(Your application should accurately identify your group as applicant, the area you are proposing for marine reserve status together with a name for the reserve, the qualities of the area and a map of the location and boundaries.)

- 2.1 The Applicant
- 2.2 Location
- 2.3 Boundaries
- 2.4 Objectives
- 2.5 Natural Values (eg, marine habitat and coastal setting descriptions)
- 2.6 Other Values (eg, cultural, historical, recreation, education)

3. APPLICATION BACKGROUND

(The discussion should explain your initial reasoning for selecting your particular site, and a summary of the procedures you followed while conducting your consultations.)

- 3.1 Origin of Proposal
- 3.2 Early Consultation and Investigation
- 3.3 Tangata Whenua Consultation
- 3.4 Draft Marine Reserve Proposal
- 3.5 Public Response to the Draft Proposal
- 3.6 Issues and Concerns: conflict resolution, including boundary selection

4. IMPLICATIONS FOR CURRENT USES AND USERS, AND OTHER GROUPS

(You should show that you are considering all implications that your proposed marine reserve will have on current and future users of the area.)

- 4.1 Tangata Whenua
- 4.2 Commercial Fishers
- 4.3 Charter Boat Operators
- 4.4 Recreational Fishers
- 4.5 Divers
- 4.6 Non-Extractive Recreational Users



- 4.7 Scientific Interests
- 4.8 Educational Interests
- 4.9 Conservation Interests

5. JUSTIFICATION

(You should include discussion on what a marine reserve is and compare it with the purpose in the legislation.)

- 5.1 Meets Purposes of Marine Reserves Act (section 3)
- 5.2 Meets Other Legislative Criteria
- 5.3 Has Widespread Support

6. PROPOSED MANAGEMENT

(The Department of Conservation manages marine reserves once they have been established. However, community involvement is actively encouraged. Discussion with the department will assist you with developing this section.)

- 6.1 Level of Protection
- 6.2 Navigation and Anchoring
- 6.3 Identification of Boundaries
- 6.4 Enforcement Matters
- 6.5 Scientific Study and Monitoring
- 6.6 Education and Interpretation
- 6.7 Management Proposal

SUMMARY

REFERENCES

APPENDICES

Important additional information includes:

- A summary of submissions received on your earlier proposal released for public comment.
- A copy of your Notice of Intention to apply for a marine reserve.
- Schedule of consultation.
- Opinion surveys.
- A list of structures with location (grid reference)/type/authorised or not.
- The scientific studies.
- The list of people/organisations having an ownership interest adjacent to or in the area proposed as a marine reserve keyed to a cadastral map.
- Topographical maps/ aerial photos/ hydrographic charts, if not in the body of the application.
- Copies of letters from the landowners whose boundary is MHWm and who agree to the boundary of the marine reserve being at MHWS.

3.2 FORMAL APPLICATION MADE TO DIRECTOR-GENERAL OF CONSERVATION

Once you have drafted the final copy of your marine reserve application you will have almost reached the end of the pre-statutory process. The statutory process is initiated when you send your application to the Director-General of Conservation to apply for an Order in Council to declare a marine reserve. The task of formally notifying the public of your intentions (see section 3.3) begins when you receive the Director-General's letter of acknowledgement. An example of a letter to the Director-General is as follows:

Model letter

[Date]

Director-General
Department of Conservation
P O Box 10-420
WELLINGTON.

Dear Director-General

[Organisation] is an organisation which is engaged in or has among its aims and objectives "the scientific study of marine life or natural history etc". A copy of our registered _____ is attached for your information.

In terms of Section 5(1) of the Marine Reserves Act 1971 *[Organisation]* is eligible to apply for an Order in Council to declare a marine reserve.

Please find attached the formal notice and application for a marine reserve for *[area]*.

Section 5(1)(b) of the Act requires that we must consult with you before publishing our notice of intention to apply for an Order in Council declaring a marine reserve. The purpose of this letter and attached application and public notice is to fulfil this requirement of the Act.

In preparing this application for a marine reserve there has been widespread public consultation. This is outlined in the attached application document. The marine reserve proposal now has widespread support in the local community.

The Marine Reserves Act 1971 also requires that any area proposed as a marine reserve must meet certain criteria. The area must 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" (Section 3(1) Marine Reserves Act 1971). *[Organisation]* considers that this marine reserve application fulfils these criteria.

[Organisation] trusts that you will accept this letter and application as sufficient consultation with you in terms of Section 5(1)(b) of the Marine Reserves Act 1971 to apply for an Order in Council declaring a marine reserve. This being so, it is our intention to publicly notify our application on [d-m-y].

[Signature]

[Organisation]



The letter to the Director-General, along with the application and the notice of intention to notify (See section 3.3), should arrive in the department's Head Office at least three weeks before the notification date, as the department needs to formally reply in writing.

You should forward to the relevant Conservancy office an electronic copy of the application for their use later in the process.

3.3 PUBLIC NOTIFICATION OF APPLICATION

The Marine Reserves Act 1971 stipulates that once the applicant has notified the Director-General of Conservation of the intention to apply for an Order in Council, the applicant must publicly notify the notice of intention in the daily newspapers.

The notice must be published at least twice in a paper circulating nearest to the place where the area is located, with an interval of 5 to 10 days. The same notice must be published at least once in each of the daily newspapers of Auckland, Wellington, Christchurch, and Dunedin. Copies of all newspaper advertisements along with their publication date should be kept to show that this statutory requirement has been complied with. The following information should be included in the notice.

- Date of first publication for the notice
- Where the plan may be inspected
- A general description of the area
- An address for service and replies
- A call for objections specifying the grounds for objections and the time frame they must be received in (i.e. two months)

It is necessary to forward to your contact in the department, legible copies of notices in newspapers as published. It is preferable to forward originals as these will form an appendix in the submission to the Minister of Conservation (see later) in order to demonstrating that Section 5(1)(b) has been complied with.

Model notice of intention to apply for an order in council:

NOTICE UNDER SECTION 5 MARINE RESERVES ACT 1971

Pursuant to Section 5 of the Marine Reserves Act 1971, *[name of applicant]* gives notice of its intention to apply for an Order in Council declaring an area of sea around/at/in or between *[general description of area proposed]* as a marine reserve, and to be known as *[name of proposed marine reserve]*.

A plan of the proposed marine reserve showing all tidal waters coloured blue and the boundaries and the extent of the area sought to be declared a marine reserve together with a full copy of the application may be inspected free of charge at the Department of Conservation office in *[office nearest proposed marine reserve and other conservancy offices]* during ordinary office hours or by writing to the applicant whose address is given below.

Any person or organisation may object to the making of the Order in Council by specifying the grounds of the objection in writing and submitting it to the Director-General, Department of Conservation, whose address for service is Department of Conservation *[address of Conservancy]*, within two months from the date of the first publication of this notice and also serving a copy on the applicant whose address is given below.

The date of the first publication of this notice is [d-m-y].

This notice of intention to apply for a marine reserve is given by the applicant, *[name of applicant]*, whose address for service is *[address of applicant]*.

(Signed)

Applicant

3.4 NOTIFICATION OF OTHER PARTIES

Make every attempt to notify all interest groups of your intentions prior to the release of the newspaper notices. Send them copies of the application. Notify those groups and individuals listed below.

Note that it is mandatory to notify the first group.

Contact list

Group 1 (Mandatory):

Applicants must give notice in writing of the proposed marine reserve, under Section 5(1)(d) of the Act, to the following:

- All persons owning any estate or interest in the land in or adjoining the proposed marine reserve. Even if the land is separated from the proposed marine reserve by the foreshore or by a road the land is deemed to adjoin it. If the land is not more than 100 metres from the proposed marine reserve and is separated from it by any other reserve of any kind or any marginal strip it is deemed to adjoin the proposed marine reserve and hence the owners will need to be notified.

(Note that the term 'any persons' includes the owners of any Maori land. Maori land means customary land or Maori freehold land. The Registrar of the Maori Land Court should be contacted for the names of the owners to be notified (See Section 5(10) of the Act).

(Also note the expression "estate or interest in land" includes any mining interest).

- Any harbour board if the area or any part of the area proposed as a marine reserve is within the jurisdiction of that harbour board. (While harbour boards have been abolished, local authorities may exercise functions, duties and powers previously carried out by a harbour board. Therefore, in all cases the relevant local authority



will need to be notified as a harbour board).

- Any local authority or public body in which the foreshore or the control of the foreshore is vested and that foreshore or any part of it lies within the area proposed as a marine reserve.
- Note that in addition to sending notification to the Secretary of Transport, it is a good idea to send a copy to the Maritime Safety Authority in Wellington, as well, as it has been delegated a number of matters by the Minister of Transport.
- The Chief Executive of Fisheries.

Note that the above should be notified in writing **prior** to the publication of the notice to apply for the establishment of a marine reserve.

Contact these organisations and individuals by registered mail prior to the public notification. If your mail does not reach the intended destination try alternative modes of communication. Attempts should be made to contact land owners not reached by registered mail. Keep good records of all names and addresses that notification has been sent to and any receipts for registered letters.

Receipts of registered mail should be forwarded to the department as they should form an appendix to the submission to the Minister of Conservation in order for the Minister to be satisfied that Section 5(1)(d) has been complied with.

Group 2:

- Local dive club/s
- Local boating club/s
- New Zealand Underwater Association
- Recreational fishing groups (e.g. Recreational Fishing Council)
- Fishing organisations with an interest in fishing the area (e.g. the Fishing Industry Board, Fishing Industry Association, Federation of Commercial Fishermen, Inshore Fishermen's Association, Regional Fisheries Management Advisory Committees, Port Liaison Committees etc)
- New Zealand Conservation Authority and relevant Conservation Board
- Community and ratepayers organisations
- New Zealand Maori Council
- New Zealand Maori Congress
- Local Maori organisations, marae, committees and trusts
- District Maori Council nearest the proposed reserve

- Ministry of Maori Development Te Puni Kokori
- Treaty of Waitangi Fisheries Commission
- Any local or regional authority, united council or maritime planning authority whose territorial boundary adjoins or includes the proposed marine reserve area
- Ministry of Commerce
- Environmental groups e.g. Royal Forest and Bird Protection Society, Greenpeace
- Any other groups or individuals that may be affected by the proposed marine reserve.

Information required for interest groups

Announce and advertise the release of the application as widely as possible. Circulating a pamphlet amongst interest groups, explaining the application is an effective way of advertising.

Other events you should consider during the submission period include organising (at least one) hui, public meeting, open day and slide show evening to discuss the application. If you have consulted extensively during the pre-statutory process the number of objections received in the formal application should be minimal.

Public inspection of the application

A plan of the proposed marine reserve must be available for viewing at the Department of Conservation office nearest to the proposal. The plan must be available for public inspection during ordinary office hours and be free of charge. The plan must show in detail, the marine reserve proposal including all tidal waters (coloured blue), and all boundaries of the proposed area. It is adequate for the plan to be contained within the application document.

In addition, you should send copies of your application and the plan of the proposed reserve to:

- Public relations offices
- Council offices
- Public libraries



4. The Processing of the Application

4.1 RECEIVING OBJECTIONS AND SUBMISSIONS IN SUPPORT

You will need to prepare for incoming submissions once your document has become public. Ideally one person should be in charge of receiving all objections and submissions in support. These should be categorised according to the criteria outlined below.

While the notice does not call for submissions in support of the application, such submissions are not precluded and may be received by the applicant and used in the answer.

It is important to note that under the Act written objections are sent to the Director-General i.e. the department, and it is the department's responsibility to ensure that all objections and submission in support are processed properly. Generally the Conservancy in which the proposed area lies within will be the contact. A copy is simply served on the applicant.

You should keep good track of the objections especially if you intend to provide an answer to the objections under Section 5(4). To assist with good record keeping it is useful to ask the department to provide you with an electronic version of the database the department will use (see later). It is also necessary to maintain good communication with the department to ensure that it receives all objections and submissions in support by the due date. In some instances in the past, these have been only sent to the applicant. In order to be considered they must be copied to the department.

Legal advice is that objections (outright and qualified) and submissions in support are valid when received via email provided the name and postal address of the person is on the electronic message.

The department will acknowledge receipt of the objection/submission in support by way of a standard letter. The letter will provide a timetable of future procedures. If an objection or submission in support is received after the closing date, the acknowledgement letter should inform the writer that their objection or submission in support was received late and cannot be considered.

4.2 CODING OBJECTIONS AND SUBMISSIONS IN SUPPORT

It is important that objections/submissions are organised, recorded and classified correctly and accurately because the Minister of Conservation is specifically required by the Marine Reserves Act to consider and make a decision in respect of any objection. The responses should be coded according to the following criteria:

(1) Type of response:

- (a) Outright objection (opposed to the marine reserve application as publicly notified)

- (b) Objection with qualified support (will support the marine reserve application only if certain changes are made)
- (c) Submission in support (supports marine reserve application. Note: some submissions may express support for the marine reserve as it is but would prefer it to be larger.)

(Note: It may be difficult classifying some objections/submissions that do not clearly fall into a particular category. In those cases where there may be some doubt or uncertainty treat the response as an objection to ensure that it is given consideration by the Minister of Conservation.)

(2) Form of response:

- (a) petition
- (b) letter
- (c) form letter

(Note: A petition should be treated as a single objection or submission in support made on behalf of # petitioners. This should be noted in the answer (if one is prepared) and will be noted by the department in its submission to the Minister. See sections 4.3 and 4.4).

(3) Type of submitter:

- (a) individual
- (b) group
- (c) other

The database should have the following fields:

#	is the unique identifier assigned to the correspondence on the date received
Date	is the date the correspondence was received
Surname	
First Name	
Name of Organisation	
Address/suburb/city	it is a good idea to have a complete address as possible. Eg. 15 Seaview Road/Onetangi/Waiheke Island
Type	an outright objection, an objection with qualified support or a submission in support
Form	petition/letter/form letter
Summary	this is the summary of the objection, objection with qualified support or submission in support.



Criteria	the criteria under Section 5(6) of the Act to which the objection relates or Section 4 of the Conservation Act if they pertain to customary rights and/or customary ownership. Simply enter the subsection of Section 5(6) ["a,b,c,d,e"] or "S4" in the column.
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4.3 APPLICANT MAY ANSWER OBJECTIONS

It is left to the applicant's discretion whether or not an answer to any objection is provided. Any answer is, however, sent to the Director-General of Conservation for the Minister of Conservation to consider. It is not a reply to the objector. Submissions in support may be appended to an answer to objections as these are expressions of public interest and are relevant for consideration by the Minister of Conservation.

Remember that any answer to objections must be sent to the Director-General within three months from the date of first publication of the notice in the newspapers.

This is not very long considering that most objections and submissions in support tend to be lodged towards the end of the two month objection period, this leaves only one month for the applicant to collate and analyse all the submissions. It is a good idea to begin the analysis process early on, adding objections and submissions in support to your database as they are received. See below for a model answer to objections.

Model answers to objections

TITLE: ANSWERS TO OBJECTIONS TO [APPLICANT] APPLICATION FOR THE [NAME] MARINE RESERVE

CONTENTS

1. INTRODUCTION

1.1 Opportunity to answer objections

An application for a marine reserve at *[location]* has been made by the *[applicant]*. As part of the statutory process outlined in the Marine Reserves Act 1971, the *[applicant]* called for objections to the application on *[date]* through public notices in newspapers. The period for objections closed on *[date]*. The *[applicant's name]* has considered the objections and also the submissions in support received, and in terms of Section 5(4) of the Act, provides the following answer to those objections in this report.

Section 5(4) of the Marine Reserves Act 1971 provides:

"The applicant may, on receiving any copy of objections under subsection (3) of this section, answer those objections in writing to the Director-General within 3 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1) of this section and the Director-General shall send any such answer he may receive within that time to the Minister for consideration."

1.2 Objections Received

objections were received by the end of the two month statutory objection period on [date]. An additional # objections were received after this date. These late submissions have not been considered.

1.3 Submissions in Support

A total of # submissions were received in support of the application (Appendix 1). # submissions were from groups or organisations. [Note if any were conditional and what these conditions were, if they were significant/substantive.]

The Minister of Conservation's statutory function is to consider whether or not any objection should be upheld. There is no statutory provision which calls for submissions in support or which outlines how the Minister should deal with any submissions received in support. Legal advice is that submissions in support are not irrelevant and may be referred to in the answer to objections. Submissions in support may also be referred to when considering whether any objections should be upheld in terms of the criteria outlined in Section 5(6) of the Act. Submissions received in support of the application are appended to this document (Appendix 1).

2. ANSWERS TO MATTERS RAISED IN OBJECTIONS

2.1 Introduction

This analysis of objections is made in the light of the statutory criteria set out in Section 5(6)(a) to (e) of the Marine Reserves Act 1971 to which the Minister is required to have regard when considering whether or not any objection should be upheld.

2.2 Grounds for Upholding Objections

Under Section 5(6) of the Marine Reserves Act the Minister shall uphold an objection if he/she 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.

2.3 Answer to Objections

2.3.1 Introduction

(You should discuss the objections in terms of the number received under each of the criteria in section 5(6)(a) - (e) of the Marine Reserves Act, which the Minister of Conservation must consider. Your answer should focus on the matters raised in the objections.)



A summary of the number of objections and submissions in support received is given in Table 1 (below). Table 2 (page 35) provides a summary of the grounds of objection.

2.3.2 Adjoining landowners

5(6)(a) *“interfere unduly with any estate or interest in land in or adjoining the proposed reserve*

- (i) Summary of objections relating to interests of adjoining landowners
- (ii) Answers to the matters raised in objections
- (iii) Summary of answer to objections about the effect on adjoining landowners.

2.3.3 Navigation

5(6)(b) *“interfere unduly with any existing right of navigation”*

- (i) Summary of objections concerning navigation, and for (ii), (iii) above.

2.3.4 Commercial fishing

3(6)(c) *“interfere unduly with commercial fishing”*

- (i) Summary of objections relating to commercial fishing, and for (ii), (iii) above.

Table 1: Summary of objections and submissions in support. (Example)

Origin	Objections		Submission in Support
	Outright	Conditional	
Land or property owners affected by proposal			
Commercial fishers and industry			
Recreational fishing and diving groups			
Maori: groups individuals			
Local authorities			
Other: groups individuals			
TOTAL			

(Note: These are examples of potential objectors and supporters only; this is not intended to be a definitive list.)

Table 2: Issues raised by objectors (note: objectors generally objected on the basis of more than one issue). (Example)

Grounds of Objection	#	Grounds of Objection	#
Effect on Commercial Fishing		Science	
Public Safety		Conflict with NZCPS	
Loss of Recreational Fishing Opportunity		Inadequate Facilities	
Loss of Recreational Opportunity (excluding fishing) or "Quality of Life"		Process	
Loss of Enjoyment/Educational Opportunity for Children		Species Diversity	
Maori Issues		Cost to Ratepayer	
Enforcement/Boundary Marking		Future Use and Viability of Camping Grounds	
Number of People Inconvenienced		No Grounds of Objection Stated	

(Note: These are examples of potential grounds only; this is not intended to be a definitive list.)

2.3.5 Recreation

5(6)(d) *"interfere unduly with or adversely affect any existing usage of the area for recreational purposes"*

- (i) Summary of objections on grounds of effect on recreation
- (ii) Answer to the matters raised in objections
- (iii) Summary of answer to objections concerning the impact on recreational usage and experience of the area

(Note: Legal advice is that the Minister must decide what the recreational use of the proposed area is. The Minister must then consider any consequences arising from the creation of the area as a reserve in terms of undue interference and adverse effect on the existing recreational usage overall.)

2.3.6 Public Interest

5(6)(e) *"otherwise be contrary to the public interest"*

- (i) Other matters; summary of objections on these other matters
- (ii) Answer to matters raised in objections
- (iii) Summary of answer to objections concerning the effect on the public interest
- (iv) Table summarising the reasons given in the submissions for supporting the marine reserve application

(Note: The Minister of Conservation is required to uphold an objection to a marine reserve application if satisfied that any of the five consequences in section 5(6) would result from declaring an area a marine reserve.)



2.3.7 Tangata whenua response

Summarise the concerns/support raised by tangata whenua where they relate to customary ownership and use.

3. OPTIONS FOR AMATEUR FISHING IN THE PROPOSED RESERVE

The Marine Reserves Act provides the opportunity for traditional and recreational fishing in a marine reserve (s.3(3) and s.5(9)).

If this is an issue for the application, identify any options available to allow for traditional and/or recreational fishing. This may be necessary to satisfy the requirement that there is no undue interference or adverse effect on existing recreational usage of the area. Discuss the requirement for amateur fishing and also refer to any objections or submissions that opposed any fishing in the proposed reserve.

4. CONCLUSION

(Include mention of the total number of objections, objections with qualified support and submissions in support received.)

[Signature]

[Applicant]

5. REFERENCES

APPENDIX 1

Objections and submissions

(include copies of all objections/submissions received by the due date.)

Procedure for sending objections, answer and submissions in support to Director-General of Conservation

You should deliver all objections, the answer to the objections with submissions in support, newspaper notices showing date of publication, a list of recipients of the formal notification together with any accompanying letters to your contact person at the Department of Conservation.

The department will acknowledge receipt of these documents in writing and keep you informed of developments.

This is the last stage where you need to do any work. From here on the application process becomes the responsibility of the department and the Minister of Conservation.

4.4 DIRECTOR-GENERAL OF CONSERVATION FORWARDS THE APPLICATION, OBJECTIONS AND ANSWER TO THE MINISTER OF CONSERVATION

It is the policy of the department to prepare a submission to the Minister of Conservation. This submission comprises the application, objections and an answer, if provided, along with the analysis of the objections and recommendations from the department whether to uphold them or not.

While there is no statutory time frame for the Director-General to forward the application/objections/answer to the Minister of Conservation, the current policy of the department is to have the submission to the Minister three months after the closing date for objections.

The department will check that all statutory procedures have been followed in the process to date (Section 5(1)-(2)). In addition, it will summarise the objections and advise the Minister on whether or not to uphold any objection under Section 5(6), and on Section 5(9).

If the Minister upholds any objection, a marine reserve cannot be established.

The department will consult with tangata whenua about the application and will advise the Minister accordingly. The reason for this is that Section 4 of the Conservation Act requires the Marine Reserves Act to be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. That obligation extends to the Marine Reserves Act, as it is an Act listed in the First Schedule of the Conservation Act. The Courts have consistently held that the department is required to consult with iwi to fulfil its Section 4 obligations. While applicants are encouraged to consult with iwi, the obligation to consult rests with the Crown. Hence the department needs to consult with iwi after the objections have been lodged and to convey the views of iwi to the Minister of Conservation by way of the submission.

4.5 MINISTERIAL ACTIONS

In considering the application, the Minister does not have to follow any formal procedures. However, all objections must be considered along with any answer provided by the applicant before the Minister of Conservation considers the application.

The Minister of Conservation considers the objections

The Minister must uphold any objection if he/she is satisfied that the proposed marine reserve would:

- (a) interfere unduly with any estate of 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



The Minister must consider each objection in the light of the criteria (a,b,c,d,e) above and decide whether to uphold any of the objections. If any objection is upheld, a marine reserve cannot be established and the applicant and the objectors must be notified accordingly. (See later)

The Marine Reserves Act 1971 does not make any specific provision for the consideration of submissions in support. However, legal advice is that submissions in support can be considered by the Minister.

Minister of Conservation considers application

If none of the objections are upheld and the Minister considers, under Section 5(9), that a marine reserve:

- (a) will be in the best interests of scientific study
- (b) will benefit the public
- (c) is expedient that the area be declared a marine reserve either conditionally or unconditionally

The Minister is then in a position to recommend to the Governor-General the making of an Order in Council (see also section 4.5) if the Ministers of Fisheries and Transport concur. Conditions may be included in the Order in Council, such as setting the cost of marking boundaries, allowing for non-commercial fishing, or other conditions.

The Minister's decision

Once the Minister has made a decision the Conservancy will notify all objectors and the applicant of the decision. This notification will be in writing and will explain the grounds for the Minister's decision; submitters in support are not notified. The Minister's decision is final.

The objectors and applicant should be notified by the department of the decision **prior** to the press release the Minister might issue.

The Minister seeks concurrence from the Ministers of Fisheries and Transport and the consent of the local authority

Following the Minister's affirmative decisions, the concurrence of the Ministers of Fisheries and Transport must be sought as well as the consent of the local authority, as a harbour board.

The Minister makes a recommendation to the Governor-General for an order in council

If concurrences and, consent are given, the Minister of Conservation will begin preparations to recommend to the GovernorGeneral the making of an Order in Council to declare the area a marine reserve. At this stage, the department will need to commission the preparation of a survey plan of the area. You will be informed of progress by the Director-General of Conservation as information comes to hand.

The survey plan of the marine reserve will need to be lodged in the Survey Office of the local Land Information NZ office and copies sent to the Maritime Safety Authority and the Navy Hydrographer.

The Minister of Conservation will release a press statement about the marine reserve being established when the Order in Council has been signed by the Governor-General.

4.6 MARINE RESERVE ESTABLISHED

Gazette notice

The Department of Conservation will confirm with you, the date of publication of the Order in Council in the New Zealand Gazette. The marine reserve comes into force 28 days after the date of publication of the Order in Council in the Gazette.

Marine reserve opening

The Department of Conservation may, if you wish, arrange for a formal marine reserve opening in conjunction with you. The Department of Conservation believes that a marine reserve launch is a function for the community. In essence, it is a celebration of an achievement, by the local community. The individuals, groups and organisations that supported, participated, and negotiated to make the marine reserve possible should be given priority in the planning of the launch. They should be encouraged to participate in the launch, even if they demonstrated early opposition and eventually gave support during the campaign. The launch is a chance to consolidate support in the community and continue a programme of inclusion.






5. GLOSSARY

Hapu	subtribe
Hui	meeting(s)
Iwi	tribe
Kaumatua	elder
Kaupapa	philosophy
Koha	gift or donation
Mahinga maataitai	a place where food is gathered or harvested. Also referred to as "mahinga kai". Provided for under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
Rununga	council
Statutory approval	consent or permission issued pursuant to a role provided for and defined by legislation
Taiapure	established under the Maori Fisheries Act 1989, taiapure are estuarine or shoreline coastal fishing areas set aside as areas of special significance to any Iwi or Hapu as a source of food or for spiritual or cultural reasons
Tangata whenua	Maori with traditional cultural association with the particular location
Whakapapa	geneology

Marine Reserves in New Zealand

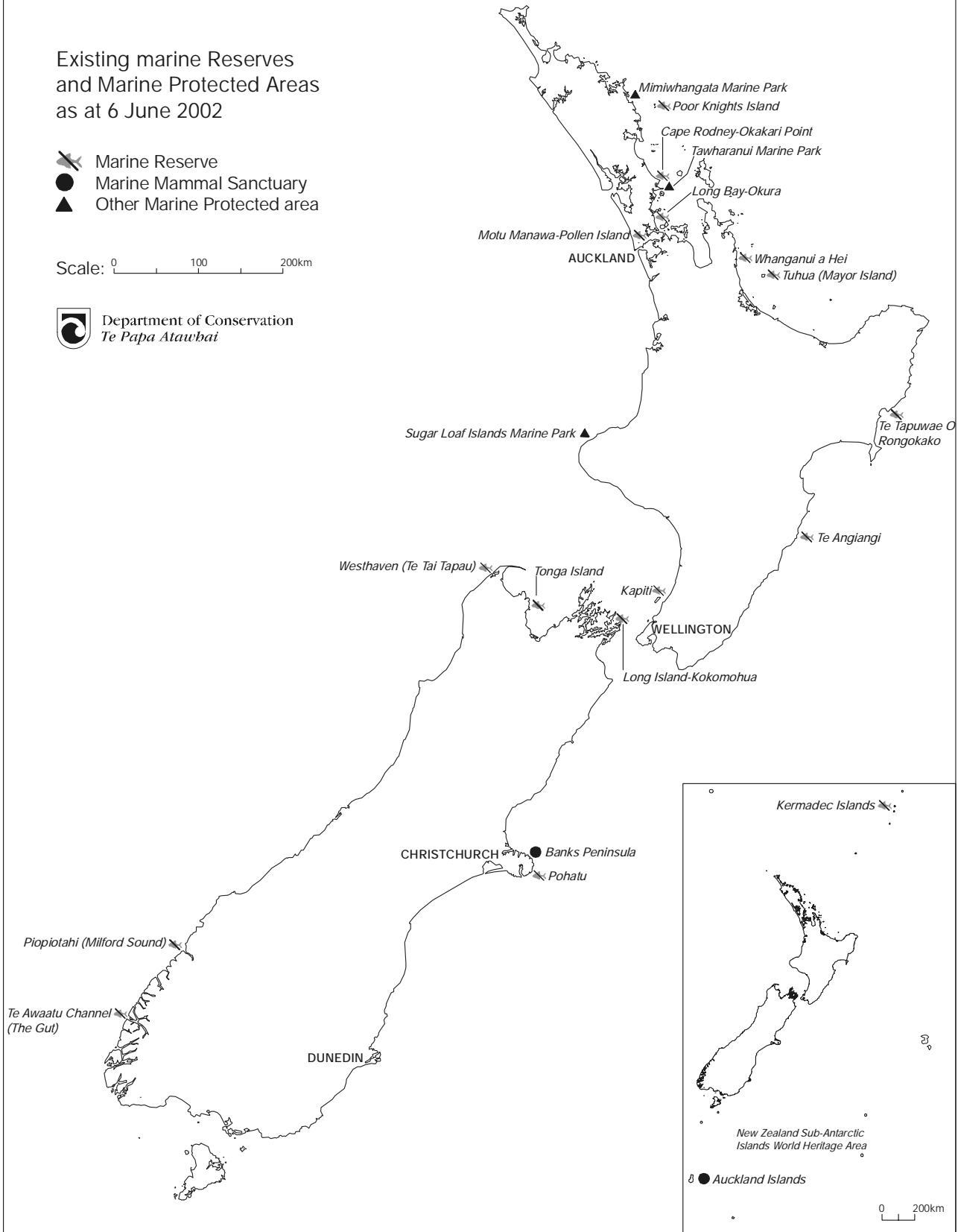
Existing marine Reserves
and Marine Protected Areas
as at 6 June 2002

-  Marine Reserve
-  Marine Mammal Sanctuary
-  Other Marine Protected area

Scale: 0 100 200km



Department of Conservation
Te Papa Atawhai



6. Department of Conservation Address List

Northland Conservancy

P.O. Box 842
WHANGAREI
Phone (09) 438 0299
Fax (09) 438 9886

Auckland Conservancy

Private Bag 68908
AUCKLAND
Phone (09) 307 9279
Fax (09) 3772919

Waikato Conservancy

Private Bag 3072
HAMILTON
Phone (07) 838 3363
Fax (07) 838 1004

Bay of Plenty Conservancy

P.O. Box 1146
ROTORUA
Phone (07) 347 9179
Fax (07) 347 9115

Tongariro/Taupo Conservancy

Private Bag
TURANGI
Phone (07) 386 8607
Fax (07) 386 7076

East Coast/Hawkes Bay Conservancy

P.O. Box 668
GISBORNE
Phone (06) 867 8531
Fax (06) 867 8015

Wanganui Conservancy

Private Bag 3016
WANGANUI
Phone (06) 345 2402
Fax (06) 345 8712

Wellington Conservancy

P.O.Box 5086
WELLINGTON
Phone (04) 472 5821
Fax (04) 499 0077

Nelson / Marlborough Conservancy

Private Bag 5
NELSON
Phone (03) 546 9335
Fax (03) 548 2805

West Coast Conservancy

Private Bag 701
HOKITIKA
Phone (03) 755 8301
Fax (03) 755 8425

Canterbury Conservancy

Private Bag
CHRISTCHURCH
Phone (03) 379 9758
Fax (03) 371 3770

Otago Conservancy

P.O. Box 5244
DUNEDIN
Phone (03) 477 0677
Fax (03) 477 8626

Southland Conservancy

P.O. Box 743
INVERCARGILL
Phone (03) 214 4589
Fax (03) 214 4486

Head Office

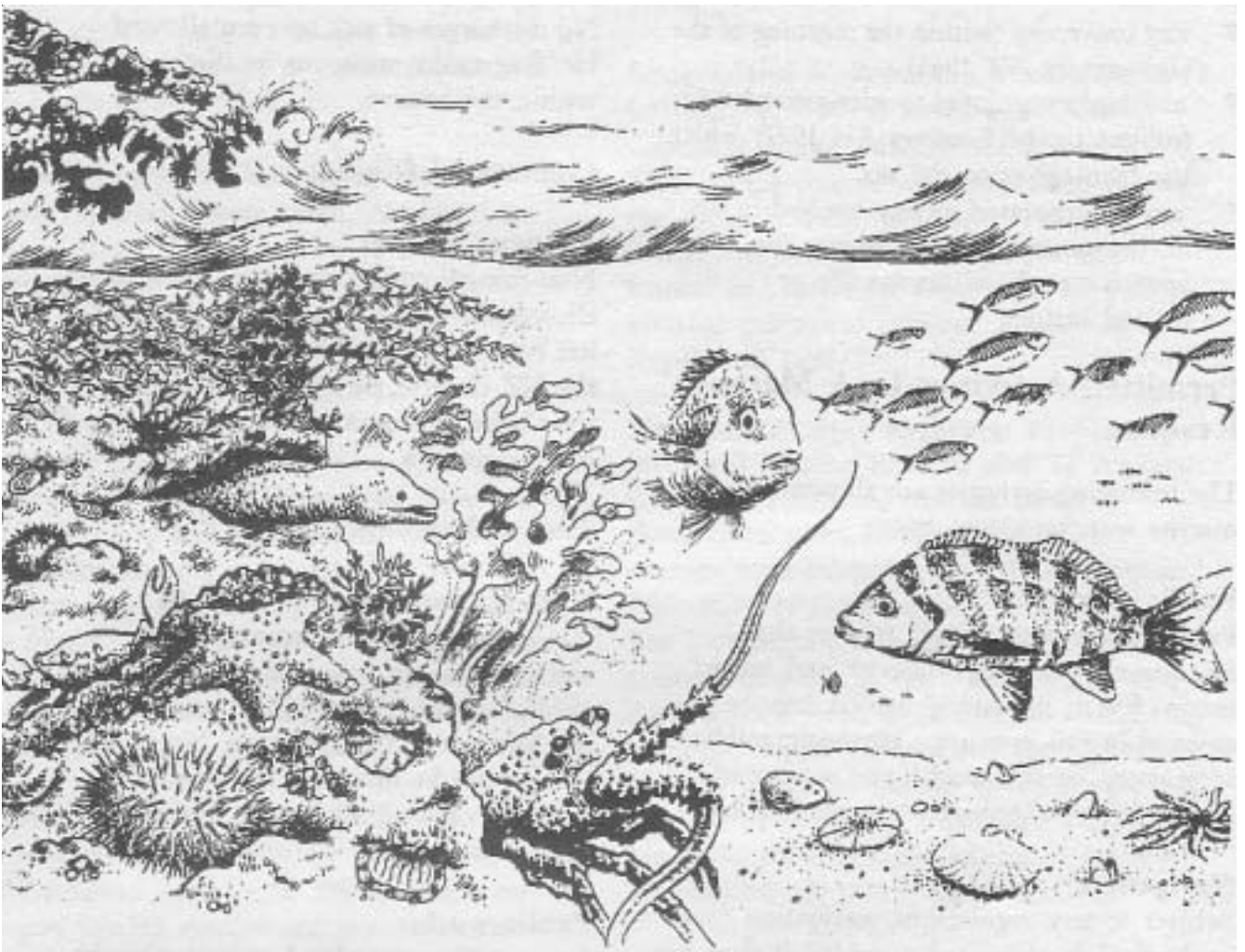
P.O. Box 10420
WELLINGTON
Phone (04) 471 0726
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MARINE RESERVES HANDBOOK FOR PROSPECTIVE APPLICANTS

WORKING DRAFT

August 2002



Department of Conservation
Te Papa Atawhai

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August 2002

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Foreword

This handbook is an update of *Marine Reserves – A Guide for Prospective Applicants* (the *Guide*).

This handbook provides guidance in the preparation of an application for the establishment of a marine reserve by applicants other than the Department of Conservation. The handbook follows the format of the *Guide*.

It is important to note that this is a working draft. The Department of Conservation intends to publish a new version once the legislative review of the Marine Reserves Act is completed.

In 1994, the department produced the *Guide*. This has proved very useful and valuable but some applicants have noted that they did have difficulties from time to time. Also, the *Guide* is eight years old and is in need of updating. In addition, while the department in the '90s encouraged applicants to work independently from the department, in the main, hence the *Guide*, there is now a greater emphasis on working along side the community and building strong relationships. For these reasons, a review is timely.

Two handbooks have been prepared. This one, *Marine Reserves Handbook for Prospective Applicants – Working Draft*, is for use by applicants other than the Department of Conservation. The other, entitled *Marine Reserves Handbook for the Department of Conservation – Working Draft – Preparing and Making Applications to Establish a Marine Reserve and Processing Marine Reserve Applications*, is for use by the department.