

chapter one



Introduction

Context

Historically, New Zealand has achieved some significant management successes in marine protection, and has been recognised on the international stage as a trailblazer in the field. Notably, the Marine Reserves Act 1971 and the introduction of the fisheries quota management system in 1986, were ahead of their time. However, in recent years, progress has stalled and numerous marine species are threatened. Today, New Zealand is falling behind international best practice in oceans management.

In 1999, the Parliamentary Commissioner for the Environment noted that it has become “*something of a cliché*” to draw attention to the benefits provided by New Zealand’s marine environment and the need to manage it better.¹ Unfortunately, 13 years later, little progress has been achieved.

When it was promulgated in 1971, the Marine Reserves Act was an innovative piece of legislation, but it is now out-of-date and not reflective of international best practice. The Act provides for the preservation of marine areas for the purpose of scientific study, with extractive activities effectively excluded. The inflexibility of the legislation has meant that a range of other tools, which do not have the protection of the marine environment as their core purpose, have been used to achieve less restrictive protection measures in New Zealand’s marine area.

In 2000, the Department of Conservation released the ‘New Zealand Biodiversity Strategy’ (Biodiversity Strategy) which emphasised the need for the establishment of a representative network of marine protected areas. It committed the government to achieving a target of protecting ten per cent of New Zealand’s marine environment by 2010 “*in view of establishing a network of representative protected marine areas*”. The strategy also highlighted the need to use a range of tools in addition to the Marine Reserves Act (such as those under the Fisheries Act 1996) to achieve this network. In doing so, greater integration between these different tools would be required.²

In the Biodiversity Strategy, the government also committed to reviewing the Marine Reserves Act 1971, “*to better provide for the protection of marine biodiversity, including extending its jurisdiction to protect marine biodiversity within and beyond the 12 mile limit*.”³ The Department of Conservation soon embarked on the review, holding numerous hui and public meetings between November 2000 and February 2001. It received 256 submissions on a discussion document.⁴ The Department identified a number of deficiencies with the Marine Reserves Act which rendered it inconsistent with current government policy. Key criticisms included:⁵

- The Act is intended to preserve areas in their natural state for the purpose of scientific study only and does not recognise the importance of other benefits derived from protecting marine life
- The Act is limited to the territorial sea and it is not possible to establish marine reserves in the exclusive economic zone
- The Act provides no guidelines regarding Treaty of Waitangi obligations
- The Act is devoid of appropriate linkages to recent marine management legislation
- Timeframes and processes are vague or unspecified, causing delays in processing applications

As a result of the review, replacement legislation was drafted. A Marine Reserves Bill was introduced into Parliament on 7 June 2002 and passed its first reading in the House of Representatives on 15 October that year. The Bill was referred to the Local Government and Environment Select Committee where it received 165 submissions. The Select Committee conducted a hearings process from February 2003.⁶ Progress on the Bill then stalled. This was due to the controversy over Māori ownership of the foreshore and seabed, which erupted in 2003, and which brought all significant marine policy initiatives to a halt. Subsequent to this, the Labour-led minority government was unable to garner sufficient votes for the Bill's passage, and it languished in Parliament.

In 2005, the Department of Conservation and the Ministry of Fisheries jointly published the 'Marine Protected Areas Policy and Implementation Plan' (MPA Policy).⁷ This was intended to give effect to the obligations set out in the Biodiversity Strategy and to employ a strategic approach to the establishment of marine protected areas. The objective of the MPA Policy is to "*Protect marine biodiversity by establishing a network of MPAs that is comprehensive and representative of New Zealand's marine habitats and ecosystems.*"⁸ The network is intended to protect representative examples of all marine habitats and ecosystems, as well as outstanding, rare, distinctive or internationally or nationally important marine habitats and ecosystems.

In 2008, the MPA Policy was further elaborated upon by the 'Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines' (MPA Guidelines).⁹ The guidelines provided for the establishment of 14 community-based marine protection planning fora, which were to be tasked with identifying representative networks of marine protected areas in each coastal biogeographic region. The networks could potentially incorporate marine reserves as well as

areas protected under other legislation such as the Fisheries Act, the Resource Management Act 1991, and the Marine Mammals Protection Act 1978.

Only two fora were established before the further implementation of the MPA Policy was put on hold. The West Coast Marine Protection Forum was set up in 2005, to identify prospective marine protected areas along the west coast of the South Island. In 2008, the Sub-Antarctic Regional Marine Protection Planning Forum was established, to focus on protection in the territorial seas surrounding the Sub-Antarctic Islands. Both fora reported their recommendations to government in 2010, but at the time of writing these had yet to be implemented. Whilst the two fora met with some success, their experiences have highlighted the inadequacies of the current management framework, and the need for a wider overhaul of the system.

As a result, significant gaps in New Zealand's system of marine protection remain. In August 2012 a broad scale analysis of existing marine protection in New Zealand's territorial sea, undertaken by the Department of Conservation, found that "... *there are many large gaps in the current network of MPAs.*" It found that "[i]n some bioregions, very few, if any habitats are" in marine protected areas which meet the protection standard required.¹⁰

The National-led minority government has stated its intention to review the Marine Reserves Bill later in 2012. This provides an excellent opportunity to overhaul the current fragmented system of marine protection and to replace it with a comprehensive piece of legislation that reflects international best practice, provides for flexible management tools, ensures consistency of management, and creates a coherent, transparent establishment process.

Figure 1.1 Summary of the historical context to marine protected areas legislation in New Zealand

1971	Marine Reserves Act promulgated
1993	New Zealand ratifies the Convention on Biological Diversity
2000	New Zealand Biodiversity Strategy sets a target of protecting 10 per cent of New Zealand's marine environment by 2010 and indicates the need to review the Marine Reserves Act
2002	Marine Reserves Bill introduced to Parliament
2003	Progress on Bill stalls
2005	Marine Protected Areas Policy and Implementation Plan finalised
2008	Marine Protected Areas Classification, Protection Standard and Implementation Guidelines finalised
	Further roll-out of MPA Policy around the country put on hold after only 2 fora established out of 14 coastal biogeographic regions
2012	Government indicates an intention to revise the Marine Reserves Act

Purpose of report

This Environmental Defence Society policy report is designed to inform constructive debate on new marine protected areas legislation for New Zealand. It reviews the country's current marine protection framework, developments in other countries, and international best practice. It identifies weaknesses in New Zealand's current approaches, and develops recommendations for the design of new marine protection legislation.

Structure and methodology

The report is structured in three parts. The first part provides a description of marine protected areas; a review of their value and what they can achieve; and an overview of international experience and best practice. The second part contains an assessment of New Zealand's performance; a discussion of matters to be considered in the design of new legislation; and the identification of some legislative options. The third part of the report sets out eight case studies which cover experiences of establishing marine protected areas in New Zealand and other countries.

The international case studies include English marine conservation zones, marine protection under the California Marine Life Protection Act 1999, Australian Commonwealth marine reserves and New South Wales marine parks. The New Zealand case studies include approaches to marine protection by the Guardians of Fiordland, the West Coast Marine Protection Forum, the Sub-Antarctic Regional Marine Protection Planning Forum and Ngātiwai.

The material for the case studies was obtained from literature reviews and, in some cases, interviews with people involved in the marine protected area processes. The case study material has been synthesised and lessons learnt identified. The key findings from the case studies have been incorporated into the main body of the report and have informed the development of recommendations for new legislation in New Zealand.

Acknowledgements

We would like to acknowledge all the people and organisations who contributed to this report. Many generously gave their time to be interviewed for this project and they are identified at the end of each case study chapter. We would like to thank them all and acknowledge their valuable contributions. Kelsey Serjeant assisted with the preparation of the California case study. Keir Volkerling assisted with the preparation of the Ngātiwai case study and provided peer review comments on the report. Nicola de Wit assisted with proofreading and Carol Linthwaite provided the index.

We received many excellent comments on an early version of this report and would like to thank the Ministry for Primary Industries, Nici Gibbs, Dr Roger Grace, Tim Higham, Tom Hooper, Murray Hosking, Dr Andrew Jeffs, Scott McIndoe, Clive Monds, Dr Mike McGinnis, Gary Taylor, Dr Simon Thrush and Sue Wells for taking the time to read and comment on draft material. Responsibility for the final form and content of the paper, however, remains with the authors.

We would also like to acknowledge the support of the Lion Foundation and the ASB Community Trust for our work.

Endnotes

1. Parliamentary Commissioner for the Environment, 1999, 1
2. Department of Conservation, 2000, 67
3. Department of Conservation, 2000, 67
4. Boffa Miskell Limited, 2001
5. Department of Conservation, 2002, 1
6. Boffa Miskell, 2001
7. Department of Conservation and Ministry of Fisheries, 2005, 8
8. Department of Conservation and Ministry of Fisheries, 2005, 10
9. Ministry of Fisheries and Department of Conservation, 2008