

# chapter eighteen



Sub-Antarctic Marine  
Protection Planning Forum

## Introduction

The Minister of Conservation, Kate Wilkinson, and Minister of Fisheries, Phil Heatley, announced in January 2011 that three large marine reserves covering a total of 4,351.63 square kilometres would be established around the Sub-Antarctic Islands of Antipodes Island, Bounty Islands and Campbell Island. They would encompass 100 per cent, 58 per cent and 39 per cent of their respective territorial seas.<sup>1</sup> These marine reserves, along with additional Fisheries Act regulations, arose from recommendations made by the Sub-Antarctic Marine Protection Planning Forum, which was responsible for considering marine protection options for the Islands.

There are five island groups in the Sub-Antarctic region, including the Auckland Islands, the Snares Islands, Campbell Island, Antipodes Island and the Bounty Islands (see Figure 18.1). The Auckland Islands are already fully protected by a nature reserve, a marine mammal sanctuary and a marine reserve covering all the territorial sea, so were not considered for further protection by the Forum.<sup>2</sup> The Snares were also not included, but were to be considered at a later date within another biogeographic region. All five island groups and their territorial seas are significant due to high biological diversity. This is reflected in their status as a World Heritage site.<sup>3</sup>

The Sub-Antarctic Marine Protection Planning Forum was established in February 2008 by the Ministers of Fisheries and Conservation.<sup>4</sup> Its purpose was to provide recommendations to government for marine protected areas in the Sub-Antarctic biogeographic region. The Forum consisted of appointed members representing relevant stakeholder interests, including commercial fishing, environment/conservation, tangata whenua and science. Tourism and the mining sector were not represented because they were not considered to be affected by the process.

The members of the Forum were unable to achieve consensus and instead presented two options for each island to the Ministers of Fisheries and Conservation in their recommendation report. The Forum also stated that the islands' status as a World Heritage site influenced the options that were developed, and that similar recommendations were unlikely to apply in other biogeographic regions under the MPA Policy.<sup>5</sup> A regulatory impact statement, compiled by Ministry of Fisheries and Department of Conservation officials, gave further advice on implementation options before the Ministers made their final decision on marine protection. The marine reserves are to be implemented using special legislation in the form of the Sub-Antarctic Island Marine Reserves Bill 2011, which was introduced into

Parliament on the 7 July 2011 but, at the time of writing, had not yet been passed into law.

**Figure 18.1: Map of New Zealand including Subantarctic Islands biogeographic region**

Source: Department of Conservation



This research has been conducted using information and documents publically available on the Department of Conservation website for marine protected areas and on the New Zealand Parliament website. Further insights were gained through interviews conducted with Forum members, agency officials and other relevant experts. A full list of interviewees can be found in Figure 18.9 at the conclusion of this chapter.

# Context

## *Social and economic environment*

Although there has not been a continuous human presence in the Sub-Antarctic Islands, small settlements of Māori, Moriori and European origin have existed in various parts of the Islands at different times; the two former from the 13<sup>th</sup> Century and the latter from the early 19<sup>th</sup> Century.<sup>6</sup> Ngāi Tahu is recognised as tāngata whenua for the region and the special relationship the tribe has with particular species in the area is acknowledged in the Ngāi Tahu Claims Settlement Act 1998.<sup>7</sup> Oral accounts of various hunting and settlement activities passed on through generations are supported by archaeological remains.<sup>8</sup>

Europeans have been associated with the area for around 200 years through various pursuits including hunting, exploration, wartime coast watch, farming and research. Sealers, and later whalers, brought people of mixed races and introduced terrestrial mammals such as rabbits, goats, pigs, rats, sheep and cattle. As a result of hunting, seals and sea lions in the region were driven almost to extinction and human activities modified the land and marine ecosystems to some extent.<sup>9</sup> The overall effects were limited as the settlements were concentrated in the Auckland Islands and Campbell Island, with Antipodes Island virtually unmodified by humans.<sup>10</sup>

The commercial fishing management area for the region is FMA (Fisheries Management Area) 6 with individual transferrable quota for stocks allocated by the Minister for Primary Industries. The region represents 23 per cent of New Zealand's total exclusive economic zone, so there is significant economic value in the Sub-Antarctic commercial catch.<sup>11</sup> Between 71,000 and 97,000 tonnes are caught annually which corresponds to a value of NZ\$114-163 million (2007 export prices). Squid represents around half the catch, with southern blue whiting, hoki and ling comprising the majority of the remainder.<sup>12</sup> The most commonly used fishing method is trawling, followed by bottom long lining.<sup>13</sup>

A tourism industry exists for the Auckland and Campbell Islands, although it is strictly controlled by the Department of Conservation. The number of visitors to each of the islands is limited (per day and per season) and there are rules governing where people can go.<sup>14</sup> The remoteness of the islands makes monitoring of illegal landings and enforcement difficult, but it also limits visits from small private vessels. There is no recreational fishing interest in the area.

## *Natural environment*

There are a total of five island groups in the New Zealand Sub-Antarctic region, which lie to the south-east of New Zealand, in the Southern Ocean. Each island group is separated by almost 1,000 kilometres, so they all have a fully enclosing territorial sea, as can be seen in Figure 18.2.

The islands rest on the southern plateau which extends 1,100 kilometres from the southeast tip of the South Island and includes the Campbell Plateau, Bounty Plateau, Pukaki Rise and Auckland Shelf.<sup>15</sup> This undersea structure creates a large zone of water shallower than the rest of the Southern Ocean, with depths of approximately 600 to 1,000 metres across an area of 433,620 square kilometres. The islands have differing geological origins, with the Snares and Bounty Islands formed from basement granite and metamorphic rock of origins dating back 180 million years, whereas the Auckland Islands, Campbell Island and Antipodes Island are formed on a base of volcanic rock.<sup>16</sup> Campbell Island and the Auckland Islands possess deep inlets and harbours carved out by glaciers.<sup>17</sup>

The islands lie between the subtropical front, which defines the northern limit of the Southern Ocean, and the Antarctic circumpolar current. Sub-Antarctic waters surround the area, which are cooler and less saline than northern parts of the Southern Ocean.<sup>18</sup> The region is exposed and aptly described as “*cold, wet and windy*”<sup>19</sup>, subject to high winds (prevailing westerlies) and the coolest average annual temperatures in New Zealand, ranging between six and eleven degrees Celsius. Average annual rainfall is around 1,360 millimetres, although this varies throughout the islands. Snow fall will also occur at any time of the year, but is heavier in the winter season.<sup>20</sup>

The large distances between the islands have led to distinct ecosystems and high levels of endemism on individual island groups. The biological diversity of the area is high, although less is known about the marine environment than about the terrestrial environment. On many of the islands the vegetation is rich and diverse with a variety of vascular plants and forests. Notable species include the southern-most tree fern and unique megaherbs. The Bounty Islands has virtually no soil or vegetation and only one species of vascular plant. Under the sea, several varieties of kelp and seaweed are recognised as notable and endemic.<sup>21</sup>

The abundance of seabirds and marine mammals attract great interest and the islands are also home to a number of rare and endangered species. Campbell Island supports several vulnerable and endangered albatross and a rare snipe, with bird populations improving since introduced rats were eliminated.<sup>22</sup> Under threat

is also the world's rarest cormorant (the Bounty Island shag), the world's rarest penguin (the yellow-eyed penguin) and the world's rarest duck (the Campbell Island teal).<sup>23</sup>

The New Zealand sea lion (formerly known as the Hooker's sea lion) found on the Auckland Islands and Campbell Islands is listed by the Department of Conservation as 'nationally critical', partly due to highly constrained breeding grounds but also because of the population decline over the last decade at the Auckland Islands.<sup>24</sup> Southern Right Whales are recovering after facing near extinction due to whaling and are drawn to the shallower waters of the region for breeding and calving.<sup>25</sup>

### *Existing marine protection*

The terrestrial ecological communities of the islands enjoy a high level of protection as nature reserves under section 20 of the Reserves Act 1977.

A marine mammal sanctuary and marine reserve are established around the Auckland Islands. One of the key drivers for the establishment of the sanctuary was the level of incidental mortality of New Zealand sea lions resulting from the squid trawl fishery. Protection measures now prohibit fishing within 12 nautical miles of land and by-catch is monitored by the Department of Conservation in conjunction with the Ministry for Primary Industries.<sup>26</sup> The Department of Conservation administers a five-year species management plan, with the timeline of the current plan extending until 2014.

Benthic protection areas are established around Campbell Island, Antipodes Island and the Bounty Islands which prohibit bottom trawling and dredging.<sup>27</sup> Within all the island's territorial seas there are further fisheries regulations prohibiting commercial fishing by any vessels longer than 46 metres in length or foreign charter vessels.<sup>28</sup>

The Resource Management Act 1991 assigns the functions, duties and powers of a regional council and territorial authority to the Minister of Conservation. The 'Proposed Regional Coastal Plan: Kermadec and Sub-Antarctic Islands' was publically notified on 15 January 2011, well after the Forum completed its recommendations to the Ministers. Prior to this, the 'Sub-Antarctic Islands Conservation Management Strategy (1998-2008)' was in place and considered the protection of the marine environment, although no statutory action had been taken through this means.<sup>29</sup>



invertebrates. The bird and plant life, especially the endemic albatrosses, cormorants, landbirds and ‘megaherbs’ are unique to the islands.<sup>31</sup>

The Convention imparts a duty on the respective state to ‘identify’, ‘protect’ and ‘conserve’ heritage areas for future generations. They are obliged to ‘do all to the utmost of their resources’ to achieve this. They must be seen to be taking ‘active and effective measures’. A country is expected to achieve this through the creation of policy, the establishment of services for protection and conducting research.<sup>32</sup>

## **Stakeholder body**

### *Establishment*

The Sub-Antarctic Marine Protection Planning Forum was established as a non-statutory body in February 2008. The chairperson and members of the Forum were appointed by the Ministers of Conservation and Fisheries and provided with terms of reference by which they were to conduct themselves.<sup>33</sup>

### *Purpose*

The Forum’s purpose was to provide options and recommendations to government for marine protection in the Sub-Antarctic biogeographic region.<sup>34</sup> The specific matters the Forum was to consider and present in its report to the Ministers were:<sup>35</sup>

- Classification and inventory of information
- Consultation with existing users and interests in the area
- Sites and potential tools for area-based protection of biodiversity
- Any consensus on proposed areas to be set aside as protected areas
- Consultation conducted on protection options and recommendations to the Ministers

### *Membership*

The Forum consisted of 14 appointed members representing commercial fishing, environment/conservation, Māori and scientific interests. Figure 18.3 details the membership of the Forum and the respective interests represented. Members of the Forum were expected to have strong links with the region, be able to negotiate,

work well with others, engage with their respective interest sectors and put forward these views during decision-making.<sup>36</sup>

The Chairperson, Paul Beverley of Buddle Findlay, was appointed by the Ministers. He is an expert in conservation law as well as Māori interests under environmental legislation and has previously advised the Crown on environmental and conservation legal issues. He leads the environment and resource management team and the Māori Law team at Buddle Findlay, Wellington.<sup>37</sup>

**Figure 18.3: Sub-Antarctic Marine Protection Planning Forum members**

Name	Role	Organisation	Interest
Paul Beverley	Chairperson	Buddle Findlay	
Richard Wells	Member	Deepwater Group	Non-profit, commercial fishing, fisheries sustainability
Andrew Bond	Member	Scampi Quota	Commercial fishing
Andy Smith	Member	Crab Company	Commercial fishing
Kate Bartram	Member	Seafood Industry Council	Commercial fishing
Tania McPherson	Member	Te Ohu Kai Moana	Māori fisheries
Nigel Scott	Member	Ngāi Tahu	Tāngata whenua
Gail Thompson	Member	Southland Kaitiaki Roopu (Awarua Runanga)	Tāngata whenua
Rebecca Bird	Member	World Wildlife Fund	Non-profit environmental
Kevin Hackwell	Member	Royal Forest and Bird Protection Society	Non-profit environmental
Viv Shaw	Member	Southland Conservation Board	Environmental management
Don Robertson	Member	NIWA (now retired)	Science
John Booth	Member	Marine science	Non-profit, science
Barry Weeber	Member	Environment and Conservation Organisations	Non-profit, environmental

# Process

## Overview

The Forum was established as a collaborative stakeholder body to consider how marine protection could be achieved in the Sub-Antarctic biogeographical region. It was expected to meet the requirements of the MPA Policy and Guidelines and comply with the terms of reference provided by the supporting agencies. The Forum was directed to carry out the assessment in two phases:

Phase 1: Consider protection options for the territorial seas of the Campbell, Antipodes and Bounty Island groups

Phase 2: Consider the remainder of the Sub-Antarctic region to the extent of the 200 nautical mile exclusive economic zone

The Forum was originally expected to have Phase 1 completed by August 2008 and Phase 2 was to commence after its recommendations had been delivered to the Ministers. A meeting schedule was outlined in the terms of reference for the completion of Phase 1 as shown in Figure 18.4.

**Figure 18.4: Meeting schedule for the completion of Phase 1**

Date	Meeting Number	Meeting Objective
February 2008	First meeting of Forum	Information and process outline
March 2008	Second meeting of Forum	Marine protected area discussion
March/April 2008	Third meeting of Forum	Marine protected area site selection and development of recommendations to Ministers
April 2008	N/A	Ministerial review of Forum progress
May 2008	Fourth meeting of Forum	Consultation on recommendations and analysis
July 2008	Fifth meeting of Forum	Finalisation of recommendations report for referral to Ministers by August
August 2008		Ministerial review of Forum's progress
August 2008		Meetings after this point would be as required to conclude phase 2.

The Forum did convene in February 2008 and met seven times for full-day meetings during that year. When the time allocated to Phase 1 had passed, the members

had completed only a fraction of the tasks required by the MPA Policy and their terms of reference.<sup>38</sup> They had only just come to terms with the information and policy provided and had conducted a number of discussions around stakeholder interests.

The Forum's process began with mapping existing management tools.<sup>39,40</sup> At this point, the Forum members decided to elect a smaller working group including four representatives of the Forum and the independent Chairperson to prepare the consultation document. The participants of this working group were Kevin Hackwell, Barry Weeber, Tania McPherson, Kate Bartram and Paul Beverley as Chairperson.<sup>41</sup> The consultation document was released on 5 June 2009 with a period of two months for submissions.<sup>42</sup>

The terms of reference indicated that Phase 2 would begin immediately after the recommendations for Phase 1 were delivered. As marine reserves are confined to the territorial sea, it suggested that the Forum would make recommendations that could be implemented once appropriate legislation, providing necessary tools for the exclusive economic zone, was drafted. Alternatively, an expert panel would consider protection within this area from 2013.<sup>43</sup>

### *Role of stakeholder body*

The Forum was responsible for the conduct of its own meetings. The Chairperson's main responsibility was to convene and facilitate meetings, but also to ensure that the requirements of the MPA Policy and the terms of reference were met.<sup>44</sup>

The Chairperson had some experience with the Department of Conservation as a senior lawyer and had a good understanding of the statutory tools and processes under the relevant environmental and conservation legislation. He also had extensive experience in general legal proceedings and negotiations.<sup>45</sup> Forum members reported he was a capable facilitator and crucial to the process. He led the group through the process and drafted key documents and correspondence with the Ministers.

The Forum met for day-long meetings and worked through the tasks in a systematic fashion. Members discussed matters as a group and then formed a smaller working group to prepare the consultation document. Once the consultation period was over, the Forum resumed large group meetings on 14 September 2009 and developed the final recommendations.<sup>46</sup>

## *Role of statutory agencies*

The Department of Conservation and the Ministry of Fisheries were jointly responsible for developing and implementing the MPA Policy. Representatives from these agencies were regarded as *ex officio* members of the Forum, but were also there to provide information and support where required.<sup>47</sup> Officials provided national policy guidance to the Forum, along with planning and technical advice, and their support was consistent with the MPA Policy.

The Department of Conservation also provided funding to enable Forum members to be reimbursed for reasonable and actual expenses incurred from their attendance at meetings. Members were not paid a meeting fee as most were attending in a professional capacity as the representative from their stakeholder bodies.<sup>48</sup> The Forum received secretarial support to assist the organisation and conduct of meetings. This support also aided communication and distribution of information.<sup>49</sup>

The Sub-Antarctic region had been identified in advance by the Department of Conservation as a priority area for marine protection. As a result, the Department had undertaken some preparatory work prior to the Forum being established. This included developing a resource report called a 'background resource document', which contained information about the region in general and specific information about each of the islands. It included ecological, climatic, oceanic and biological characteristics, threats and issues. It also outlined the current management regime.<sup>50</sup>

## *Information and science*

The Department of Conservation and the Ministry of Fisheries were jointly responsible for providing scientific, policy and technical advice to the Forum. The Forum members interviewed reported that they received a high standard of support from the agencies, with the Department of Conservation providing a majority of the general support required and the Ministry of Fisheries providing specialist information and advice when requested.

High quality GIS product was an essential component of the Forum's process. The majority of the mapping was provided by the Department of Conservation, although some mapping showing fishing effort was provided by the Ministry of Fisheries.

One of the first tasks was an analysis of the protection tools available and an assessment of whether they would satisfy the MPA Policy requirements. This

analysis was requested at the first Forum meeting and was presented by the Department of Conservation at the second meeting.

The Department of Conservation indicated that marine reserves and most Fisheries Act tools would meet the protection standard for marine protected areas. Benthic Protection Areas, however, would likely not meet the standard due to the limited protection they provide and the permitting of fishing methods that would, under usual circumstances, be excluded from a marine protected area.<sup>51</sup>

Several documents were provided by supporting agencies to guide and inform the process. These were in addition to the MPA Policy and Guidelines that were completed before the Sub-Antarctic Islands Protection Forum began their process:

- *Terms of Reference (2008)* provided at the commencement of the process to guide the Forum in their process and conduct.
- *A Background Resource Document (2006)* developed by the Department of Conservation to provide the necessary background information for the Forum to better understand the social, economic and ecological context of the Sub-Antarctic region. It included general regional information as well as more detailed descriptions of the three islands being considered for protection.
- *Bibliography: Sub-Antarctic Islands Marine Biogeographic Region (2006)* produced to accompany the *Background Resource Document*. It contains a comprehensive list of research and publications relevant to the Sub-Antarctic region.
- *Analysis of Protection Tools for Sub-Antarctic Marine Protection Planning Forum (2008)* provided at the second Forum meeting on 26 March 2008 by the Department of Conservation. This was an inventory of existing protection measures already in place in the Sub-Antarctic region and included an assessment of whether they would meet the requirements of the MPA Policy.
- *Analysis of Protection Tools against the Protection Standard (2008)* provided at the fourth meeting of the Forum to advise on whether nature reserves and benthic protection areas met the protection standard as set out in the 2008 Guidelines.

Mapping was an essential tool for the Forum members to understand the spatial aspects of their task. Maps were provided by the supporting agencies on request from the Forum. Some key examples of maps that were produced are:

- *Bathymetry* – displaying the depth contours of the waters surrounding the islands
- *Composite maps* – combining exposure, sediment and bathymetry (depth) to be used as a proxy to classify habitats. The locations of corresponding habitats were also displayed graphically.
- *Fishing effort* – the Ministry of Fisheries provided maps of fishing effort. To avoid commercial sensitivity, the maps showed pixelated coloured areas of fishing intensity rather than specific trawl lines or gear sets.

The Forum produced two key documents during their tenure. The first was the consultation document (2009). This was publically released on 5 June, 2009, allowing a period of two months for submissions. The document contained background information about the Sub-Antarctic Islands and about the formation and purpose of the Forum. It presented two options for protection for each of the islands that were basically the same as those options later recommended to the Ministers. The second document was the recommendation report (2010). This was drafted by the Chairperson of the Forum, and addressed to the Ministers of Conservation and of Fisheries. It contained a summary of the Forum's process, submissions received during public consultation, and a brief on the recommended options for protection.

### *Public consultation*

Consultation with key stakeholders began soon after the Department of Conservation initiated the Sub-Antarctic Marine Protection Project in 2003.<sup>52</sup> This was a scoping exercise to contemplate marine protection in the Sub-Antarctic region.<sup>53</sup> A workshop was held by the supporting agencies in 2004 to begin stakeholder engagement. This provided an opportunity to adjust the proposed membership of the Forum and ensure that all stakeholders were fairly represented. There was an expectation that members of the Forum would actively engage with their stakeholder groups, but also with those who may have an interest in, or could be affected by, marine protected areas.<sup>54</sup> There was no residential community to consult within the Sub-Antarctic islands. Therefore a formal consultation process to reach the general public was important.

The terms of reference directed that consultation must be conducted on the recommendations being made to the Ministers, allowing a minimum of 40

working days for submissions to be made.<sup>55</sup> The Forum also visited a Southland marae prior to commencing the formal consultation process.<sup>56</sup>

The Forum released the public consultation document on 5 June 2009 and received 65 submissions. A summary of submissions prepared by the Forum indicated that a majority were in favour of full protection (52 in favour of full protection, eight in favour of partial, one in support of no protection and the remainder unclear).<sup>57</sup> The only submissions received in favour of partial protection were from commercial fishers and other extractive users. Two submissions were received from iwi, with one in support of full protection and one in support of partial.

As the marine reserves are to be implemented using special legislation, there will be a further opportunity for submissions through the select committee process.

## Outcomes

### *Forum recommendations*

The members of the Forum were unable to reach consensus and resolved to present six options, two for each island.<sup>58</sup> In each island scenario, the first option provided a combination of marine protected area tools for partial protection of the territorial sea and the second option provided full protection of the territorial sea with a marine reserve. The recommendation report advised the Ministers that they could select any combination of the six options.

For the Antipodes Island the Forum presented two options as shown in Figure 18.5:

- Option A1: Protect part of the territorial sea. A single marine reserve would extend to the edge of the territorial sea in the south-west quadrant. On the short side, it would extend a minimum of 5.8 kilometres from the island group. The area not in the marine reserve was to be protected by Fisheries Act prohibitions on Danish seining and existing benthic protection area prohibitions on bottom trawling and dredging. The area selected protects all intertidal and subtidal habitats and contains representative examples of all known deep water habitats in the territorial sea.

- Option A2: Protect the whole territorial sea with a marine reserve. This would provide protection for all marine habitats in the territorial sea.

For the Bounty Islands the Forum presented two options as shown in Figure 18.6:

- Option B1: Protect part of the territorial sea. A single marine reserve would extend to the edge of the territorial sea in the south. On the short side, the boundary would be extended a minimum of 6.8 kilometres from the island group. The remainder of the area was to be protected by Fisheries Act prohibitions on Danish seining and existing benthic protection area prohibitions on bottom trawling and dredging. The area selected protects all intertidal and shallow subtidal habitats and contains representative examples of all known deep subtidal and deep water habitats in the territorial sea. The fisheries prohibitions provide protection to benthic habitats.
- Option B2: Protect the whole territorial sea with a marine reserve. This would provide protection for all marine habitats in the territorial sea.

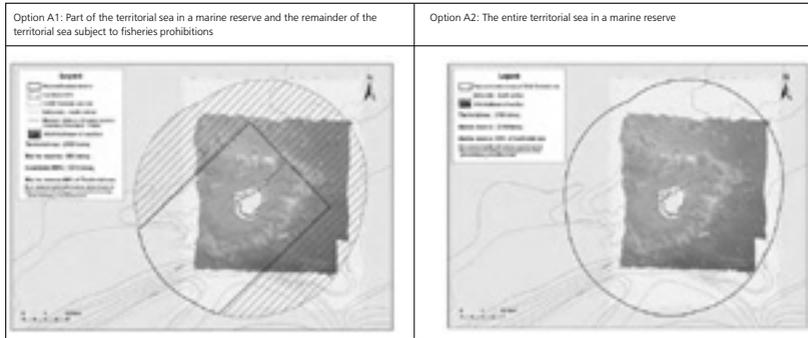
For Campbell Island the Forum presented the two options shown in Figure 18.7:

- Option C1: Protect part of the territorial sea. A single marine reserve would extend to the edge of the territorial sea to the west. The remainder of the area was to be protected by Fisheries Act prohibitions on Danish seining and benthic protection area prohibitions on bottom trawling and dredging. The orientation was selected to include an area that had the highest percentage of habitats in water deeper than 200 metres. The area protects all intertidal and shallow subtidal habitats as well as representative examples of all known deepwater habitats, including those known not to be present in the Auckland Island marine reserve. The Fisheries Act prohibitions in the remainder of the area within the territorial sea was to protect the remaining benthic habitats.
- Option C2: Protect the whole territorial sea with a marine reserve.

All options met the requirements of network design principle 1 as they protect examples of the full range of known or expected habitats and ecosystems, or the entire range of habitats and ecosystems out to the territorial sea. The full marine reserve options have a greater impact on current users, although this was mainly relevant for Bounty Islands, as the Campbell and Antipodes Islands had no established fisheries in the territorial sea. It was considered there would be only positive effects for Treaty obligations due to the remoteness of the islands and the high level of protection it would provide for the species identified as taonga.

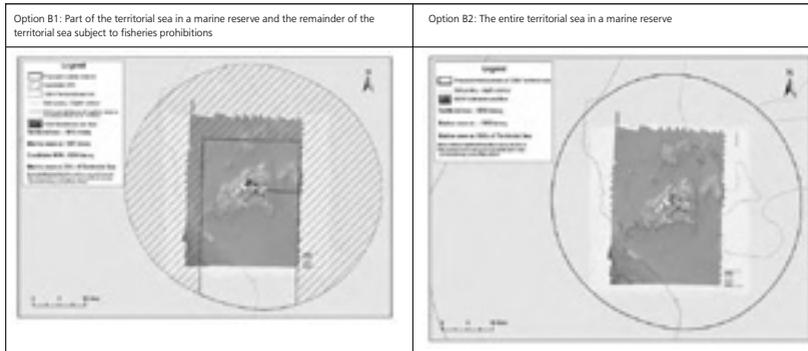
**Figure 18.5: Options presented for Antipodes Island**

Source: Sub-Antarctic Marine Protection Planning Forum



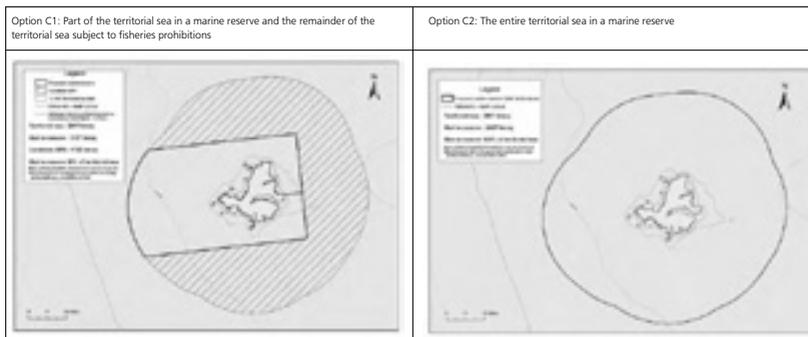
**Figure 18.6: Options presented for the Bounty Islands**

Source: Sub-Antarctic Marine Protection Planning Forum



**Figure 18.7: Options presented for Campbell Island**

Source: Sub-Antarctic Marine Protection Planning Forum



## *Government response*

The government made its announcement in January 2011 that three large marine reserves would be established around the Sub-Antarctic islands of Antipodes Island, the Bounty Islands and Campbell Island.<sup>59</sup> The announcement corresponded to options A2, B1 and C1 of the recommendation report, with some minor differences.

The Antipodes Island is to be fully protected with a marine reserve covering the full territorial sea (option A2). The Bounty Islands included an expanded version of option B1 with 58 per cent of the territorial sea protected by a marine reserve (Type 1 marine protected area) and the remainder protected by Fisheries Act prohibitions on Danish seining and benthic protection area prohibitions on bottom trawling and dredging (Type 2 marine protected area). The proposal for Campbell Island allows for the development of a potential crab fishery. An independent review is to be conducted five years after the establishment of the marine reserve. The review is to assess the value and impact on the marine environment of the marine reserve to determine whether to increase the size of the reserve, potentially expanding it to cover the entire territorial sea.<sup>60</sup>

Ministry officials influenced implementation through a 'regulatory impact statement' prepared by the Department of Conservation and Ministry of Fisheries. In this document, officials provided two options each for the implementation of the proposed marine reserves and for proposed Fisheries Act restrictions. The two options involved either implementing the protection measures through respective statutory processes or through special legislation.

The regulatory impact statement recommended that the marine reserves be implemented through special legislation whilst the Fisheries Act restrictions be implemented through the normal statutory process. The officials argued that the Marine Reserves Act 1971 is only designed to process single marine reserve applications and the lack of statutory time frames within the Act leads to protracted processes (the average time for implementing a marine reserve is 12 years). Special legislation would implement the reserves as a package, be more efficient, and less costly. The report also recommended that the Fisheries Act regulations should follow the usual statutory process as it would be consistent with existing restrictions in place and provide greater flexibility and responsiveness for future adjustment.

## *Future*

The Sub-Antarctic Marine Reserves Bill 2011 was introduced to Parliament on 7 July 2011, but at the time of writing it had not yet been passed into law. The purpose of the Bill is to create three new marine reserves in the territorial sea of Antipodes Island, Bounty Islands and Campbell Island.

Clause 8 directs that an independent review of the Campbell Island marine reserve is to be conducted at least five years after the Bill's commencement. This review is to consider the effects of fisheries on the environment and the proposed expansion of the marine reserve. It provides the Minister of Conservation with authority to recommend the extension of the reserve through an Order in Council, with the agreement of the Minister for Primary Industries (formerly the Minister of Fisheries). The extension must occur no later than seven years after the Bill's commencement. The Bill also assigns Commanding Officers of the New Zealand Defence Force to be rangers under the Marine Reserves Act 1971.

## **Strengths of the approach**

### *Stakeholder representation*

The representation on the Forum contained an even balance between commercial fishing and environmental interests and included a majority of the key stakeholders, although none from the tourism or mining industries. Interests that were represented included commercial fishing, Māori, environment and science. There were several environmental non-government organisations and scientists on the Forum; significantly more than on the West Coast Marine Protection Forum.

### *Agency support and resourcing*

The agencies provided a good level of technical support and resourcing. The Forum members were provided with guidance, advice, information and GIS mapping products whenever requested. The Department of Conservation, especially, was regarded as integral to holding the process together and provided the majority of support.<sup>61</sup> Paul Beverley, the Chairperson for the Forum, commented that in order for a process involving stakeholder fora to be successful, it must be adequately resourced.<sup>62</sup>

### *Independent chairperson*

The appointment of an independent chairperson was crucial to the process and eliminated the need to have an independent facilitator. Members of the Forum reported that the chairperson was highly skilled and important to the process.<sup>63</sup>

### *Legal approach*

The MPA Policy provided a useful mechanism to keep the Forum focused on working towards recommendations. When disagreement appeared to halt progress, the Chairperson was able to refer back to the policy and the Forum's terms of reference to work through issues. He could use the policy to map out decision points and prepare a logical process for the Forum to follow towards its desired outcome. If there had not been a process laid out, it would have been much more difficult to proceed.

## **Weaknesses of the approach**

The Sub-Antarctic Islands were identified for protection whilst the policy was still under development. Due to its status as a world heritage site, and high level of biological diversity value, it was an area that was considered to need priority attention. In terms of fishing interest, there was much less competition for space than on mainland New Zealand as there were no inshore operators, recreational fishers, or customary fishers and the offshore fisheries were well defined. In the words of one Forum member, "*it should have been a no-brainer*".<sup>64</sup> However, the Forum members were unable to achieve consensus, took much longer than expected to provide recommendations, and the size of the marine reserves announced by the Ministers at the Bounty and Campbell Islands seem small for an area recognised as internationally significant.

### *Insufficient time allocated*

The terms of reference allocated insufficient time, just six months involving seven meetings, for the Forum to develop recommendations for the Ministers. In practise, the stakeholder process took three years. The Forum was constantly under pressure to produce results, but the supporting agencies underestimated the complexity of the policy and issues involved.<sup>65</sup> The Forum members reported

they needed at least a whole day to become familiar with the policy alone. Time was also required to establish trust and develop useful dialogue between members.<sup>66</sup>

### *Stakeholder barriers to consensus building*

Forum members describe a definitive split between environmental advocates and commercial fishing representatives.<sup>67</sup> The Te Ohu Kai Moana and Seafood Industry Council representatives preferred the use of a range of tools, rather than reliance on marine reserves. These representatives were concerned about setting a precedent for future marine reserve applications. Their argument was that if the commercial fishing industry was seen to give in too easily, and the Sub-Antarctic region was afforded complete protection, they would have less bargaining power in future negotiations in the other biogeographic regions of New Zealand.<sup>68</sup>

The Forum was not able to achieve consensus for the consultation document or the recommendation report. The options in the consultation document revealed two main positions, with submitters either in favour of a range of protection tools, or full protection using marine reserves. Presenting only one option for each island may have drawn a more varied response.

Forum members commented that the matters raised in submissions were as expected, therefore little was changed in the recommendations made to the Ministers.<sup>69</sup> Consensus was never achieved at any stage of the process and after the submission process, environmental advocates argued more strongly for full protection. The approach became less collaborative and more a battle of ‘use’ versus ‘environmental protection’. If members had been better positioned to negotiate, more progress might have been made.

### *Not all sectors represented*

Not represented on the Forum were the tourism and mining sectors. Both these sectors made submissions on the consultation document, with tourism being in favour of larger marine reserves and the mining industry in favour of smaller reserves, or wanting reassurance that there will still be potential for mining, if large marine reserves were established. Neither of these stakeholders caused disruption in the Forum’s process. However, Forum members commented that their presence may have diffused the environment protection – commercial fishing impasse.<sup>70</sup>

## *Legislation*

The regulatory impact statement produced by the Department of Conservation and the Ministry of Fisheries highlighted a number of deficiencies in the Marine Reserves Act 1971, opting in favour of special legislation to implement the marine reserves, instead of the usual statutory process. The argument in favour of special legislation covered key points as follows:

- A lack of statutory time frames can lead to a long processing period under the Marine Reserves Act 1971
- Fisheries Act regulations can be progressed relatively quickly compared to marine reserves applications, leading to a fragmented approach
- Given the timeframes imposed on the Forum to deliver recommendations, it would be appropriate to implement the package in a timely fashion also
- The consultation process is duplicated in the Marine Reserves Act 1971, and requires concurrence from the Minister for Primary Industries and the Minister of Transport, which can involve further consultation
- Special legislation is considered more efficient and less costly than applications under the Marine Reserves Act 1971 and carries less risk

However, the processing time for the special legislation is dependent on government legislative priority. The fishing industry representatives considered that Ministers acted in bad faith by introducing special legislation – industry participation in the Forum was on the understanding that any proposed marine reserves would be progressed through the Marine Reserves Act.<sup>71</sup>

## **Conclusion**

The Sub-Antarctic was identified as an appropriate region in which to continue the implementation of the MPA Policy because of its remoteness and consequent perceived lack of complex stakeholder interests. Its World Heritage status provided further impetus for the implementation of effective management measures. However, stakeholder positions on the Forum were highly polarised and the members were unable to achieve consensus. Nevertheless, the initiative resulted in proposals for new marine reserves, although at the time of writing these have not yet been finalised.

**Figure 18.8: Timeline of key events in the Sub-Antarctic marine protection planning process**

Date	Event
1910	Adams Island in the Auckland Islands declared a 'reserve for the protection of fauna and flora'
1934	Same designation extended to all of the Auckland Islands group
1954	Same designation applied to Campbell Islands
1961	Same designation applied to Antipodes, Bounty and Snares Islands
1978	All five island groups reclassified as nature reserves under the Reserves Act 1977 and subsequently accorded national nature reserve status by the United Nations Environment Programme
1993	Marine mammal sanctuary established in Auckland Islands under the Marine Mammals Protection Act 1978, to protect the breeding population of New Zealand sea lion
1998	UNESCO listed the Sub-Antarctic islands and their territorial seas as World Heritage sites
2004	Auckland Islands / Motu Maha marine reserve declared out to edge of 12nm territorial sea
2006	Fishing industry recommends the establishment of a series of benthic protection areas
2007	Minister of Fisheries approved the proposals through the Fisheries Act regulations (Fisheries (Benthic Protection Areas) Regulations 2007) which prohibit contact with seabed by dredge or trawling methods
2008	Ministers of Fisheries and Conservation appoint 14-member Sub-Antarctic Marine Protection Planning Forum
2009	Consultation document published and released, June
2009	Public submissions close, 31 July
2009	Forum reconvenes on 14 September to consider submissions and to develop final recommendations
2010	Forum delivers final report and recommendations to the Ministers on 12 January
2011	The Ministers announce the formation of three new marine reserves around Antipodes Island, Bounty Islands and Campbell Island
2011	Sub-Antarctic Islands Marine Reserves Bill 2011 introduced to Parliament on 7 July, but at time of writing not yet passed

**Figure 18.9: List of interviewees for the Sub-Antarctic Marine Protection Planning Forum case study**

Name	Role on the Forum	Current Occupation/Organisation
Paul Beverley	Chairperson	Lawyer, Buddle Findlay
Kevin Hackwell	Member	Advocacy Manager, Royal Forest and Bird Protection Society
Richard Wells	Member	Fisheries Specialist, Deepwater Group
Nigel Scott	Member	Ngāi Tahu

## Endnotes

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