

## chapter seven



New Zealand's experience with  
collaborative processes

Generally individual marine protected areas have been established in New Zealand on an *ad hoc* basis. In some areas, however, projects have been undertaken to implement marine protection measures on a broader scale.

Two areas, off the Sub-Antarctic Islands and the west coast of the South Island, have been the subject of marine protected area identification processes initiated by the Department of Conservation and Ministry of Fisheries under the MPA Policy. These two processes, together with the community-led initiative established by the Fiordland Marine Guardians to improve management measures in their local marine area, are set out in detail as case studies in Part Three of this report and are summarised in this chapter.

## Fiordland Marine Guardians

In 1995 the ‘Guardians of Fiordland’s Fisheries’ was established by representatives of commercial fishing, recreational fishing, charter boat operators and iwi in the Fiordland area. They were motivated by concerns amongst the local community about growing tourism in the region and the sustainability of local fisheries. Their vision was “... *that the quality of Fiordland’s marine environment and fisheries, including the wider fishery experience, be maintained or improved for future generations to use and enjoy.*”<sup>1</sup>

Resident fishers observed that a 1994 working group approach in Southland had successfully developed a fisheries plan for the Paterson Inlet (Stewart Island), assisted by the Ministry of Fisheries. Representatives from the fishing community approached the Ministry to assist with a similar initiative in Fiordland. The Guardians were thus initially supported by the Ministry of Fisheries, but this support was subsequently replaced by funding from the Ministry for the Environment through the Sustainable Management Fund.

Initially, the group focussed on developing agreements on fish stock management and measures to protect the fisheries, rather than on conservation of the marine environment more broadly. Representatives of conservation interests were not included in the group, as members felt that the inclusion of such ‘extreme’ views, would have prevented the cooperation and cohesion that the Guardians achieved and would have slowed down the process.

Over time this approach was modified and protection of the marine environment became the key focus of the group. Scientists and environmentalists were brought into the group and in May 1995, the organisation changed its name

to 'Guardians of Fiordland's Fisheries and Marine Environment Incorporated', reflecting its broader scope.

Using an independent facilitator, the group met every two months to develop the Fiordland Marine Conservation Strategy, completed in 2003. Gaps in available data were filled and supplemented by information provided by members about their own fishing activities. Further anecdotal evidence was gathered through communication with local communities. This kind of knowledge was exceptionally valuable and enabled the Guardians to develop an intimate knowledge of their marine space.

The strategy identified around 45 issues that affect fisheries and the marine environment. These issues were grouped into four general components:

- Provisions to address fisheries management
- Commitments to protect values of special significance
- Identification of potential risks and measures to respond to them
- Expression of kaitiakitanga, recognising Māori ties to the area

The Strategy set out a range of measures that were to be used to achieve the Guardians' aims. Members were able to identify areas of high biodiversity and those with fragile species, termed 'china shops'. Proposed protection measures for these areas included anchoring prohibitions and diving regulations.

Restrictions on commercial and recreational fishing were established, including catch limits and closed areas. There were also areas designated as no-take, although in the early years, marine reserves were not identified as the appropriate tool to achieve this.

The Strategy was given effect in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005. This formalised the Guardians' strategy into law. The legislation included the creation of eight new marine reserves within the fiords to protect the representative areas identified in the Strategy. As a result, the total marine area within Fiordland protected as marine reserves now totals 103 square kilometres. However, this comprises only 1.01 per cent of the Fiordland marine biogeographic region (which totals 10,246 square kilometres) and there are no marine reserves in the coastal marine area outside the fiords.

Through the Act, the Fiordland Marine Guardians are assigned an enduring role as government-appointed advisors responsible for monitoring and management of the area. They can continue to monitor the health of their environment and ensure that measures taken are having the desired effect. They can also apply

adaptive management and continue to make adjustments that reflect changing demands and environmental conditions. The Fiordland Marine Guardians do not see their work as a marine protected areas initiative. They take into consideration the ecological health of the whole area and apply their own approach.

In 2007, and then again in 2010, the Guardians conducted a user survey to investigate what activities people are conducting in Fiordland and to understand their perceptions and values associated with the area. The Guardians, in conjunction with support agencies, have a number of monitoring projects underway. The 'Fiordland marine area monitoring programme' involves research commissioned in several areas over both biological and social issues.

Broad stakeholder involvement during the early stages has been important to the ongoing success of this model. If not from the beginning, the Guardians model now involves wide representation from across the district including commercial and recreational fishers, divers, charter boat and tourism operators, environmentalists, scientists, community representatives and tangata whenua (Ngāi Tahu). This community-led approach, with strong local involvement, ensured stakeholder 'buy in' and agreement on major issues. Enforcement requires resources, and the more 'self-enforcement' that occurs, the more efficient the system will be.

## **West Coast Marine Protection Forum**

The West Coast Marine Protection Forum was established in 2005 as a non-statutory body by the West Coast Conservator of the Department of Conservation, essentially as a test case for the implementation of the new MPA Policy. The area was chosen for a number of reasons – it is less densely populated than many other regions and there were no existing marine reserves or any other form of marine protection. In addition, staff from the Department of Conservation's Conservancy office, based in Hokitika, were enthusiastic about getting a process underway and were optimistic that it could work.

The Forum first convened in April 2005, prior to the release of the MPA Policy, which was published in December that year. The Forum was issued with terms of reference to assist with procedural matters. When the MPA Guidelines were published in 2008, new terms of reference were released, but the Forum decided to retain its original terms of reference for continuity and consistency.<sup>2</sup>

Stakeholder representatives were identified by Conservancy staff, who approached individuals in the community. The individuals invited to join were those who represented key interests, who had influence and connections in the community, and preferably who represented more than one interest. The result was that the group did not necessarily represent all users or interest groups in the area. The composition of the Forum would have been slightly different if the 2008 terms of reference had been issued from the outset, as these require the inclusion of other stakeholders (specifically science and mining industry representatives) that were not in fact included.<sup>3</sup>

Based on a consultative process, the Forum was expected to evaluate options for achieving a representative network of marine protected areas. These options would include mechanisms for statutory protection available under fisheries regulations, the Marine Reserves Act 1971 or other legislation if appropriate.<sup>4</sup>

The process was undertaken in three phases:

- Phase One: Information gathering and facilitation of stakeholder engagement
- Phase Two: Evaluation of the advice and viewpoints provided in order to develop options
- Phase Three: Reporting options back to the Department of Conservation, the Ministry of Fisheries and other agencies as required<sup>5</sup>

The Forum first met in April 2005 and then around another 29 times before producing its 'recommendation report' in July 2010.<sup>6</sup> Meetings would typically last one to two days and would often include a tour or field trip. The Forum was able to use an independent facilitator to assist in progressing discussion, decision-making and achieving consensus.

The Forum was allocated assistance from a number of organisations and individuals to inform or support the process and aid decision-making. As the Department of Conservation and the Ministry of Fisheries (now Ministry for Primary Industries) are jointly responsible for developing and implementing the MPA Policy, both assigned multiple staff members (six to seven each) in a support role. Their staff provided science and policy advice where requested and were regarded as *ex officio* members of the Forum. The Department of Conservation largely funded the process.

The Department of Conservation and Ministry of Fisheries had very different approaches towards marine protection. The Ministry was more reluctant to support the creation of marine reserves, preferring instead Fisheries Act mechanisms.

Disagreement between the two agencies on the interpretation of the MPA policy, and on its implementation in practice, trickled down to the stakeholders causing confusion and frustration.

The Forum was ultimately unable to reach consensus. Although the Forum's 'consultation document' (August 2009) gave the impression that consensus had been reached, providing for one set of proposals with no options or alternatives, some of the commercial fishing representatives on the Forum did not agree with these proposals. Not all commercial fishers had equal interests, however, with the small owner-operator commercial fishers having different views to the large corporate entities. The lack of consensus did not 'officially' become apparent until after the submission phase was completed, and the Forum had to make final recommendations to Ministers.

The Forum made recommendations on four primary locations for marine protected areas. Having been unable to reach consensus, it presented alternative protection options which gave greater weight to either maximising the benefits for biodiversity protection or minimising impacts on users. Secondly, the Forum presented five additional educational showcase sites, which were intended to increase public understanding and appreciation of the marine area.

On receiving the recommendation report, the Ministers requested that their officials draft an advice paper, before making a decision.<sup>7</sup> This paper was completed on 2 June 2011 and the Ministers' decision was released through a media statement on 26 August 2011.<sup>8</sup>

The officials' advice was that the smallest options presented by the Forum, in each of the primary sites, provided the best balance between biodiversity protection and minimising adverse impacts on existing users of the West Coast marine environment. They also advised that the educational sites were additional to the requirements of the MPA Policy but that the Ministers could consider them on their merits. The Ministers accepted most of the recommendations set out in the advice paper and opted to establish one educational site.

A total of 175.28 square kilometers of marine reserve was endorsed by the Ministers. Once established, Kahurangi and Ōkārito will be the two largest marine reserves on New Zealand's mainland coastline. Less restrictive marine protected areas, covering another 95.57 square kilometers, will adjoin two of the marine reserves using Fisheries Act tools to protect them from bottom trawling, dredging and Danish seining.<sup>9</sup> The overall effect was to take the area fully protected within the west coast South Island bioregion (which covers 13,112 square kilometres) from zero to 1.3 per cent.

Following provision of the recommendations, the stakeholder group was disbanded and is not intended to have a role in the ongoing management of the marine protected areas.

The lack of direct implementing power for the MPA Policy proved a problem. The stakeholder forum was established only to make recommendations to Ministers. Once the respective Ministers made a decision on the recommendations, the full statutory process to implement the protection tools under both the Marine Reserves Act and Fisheries Act was initiated, including consultation.

This significant duplication of effort further delayed progress, and provides no certainty that the recommendations will be implemented. The West Coast Forum took five years to develop recommendations, and although the Department of Conservation expected to establish the marine reserves within 12 months, they have not yet been established. Despite the thorough process undertaken, the Ministers did not opt to establish the marine reserves by deeming legislation as had been done for Fiordland and which is in process for the Sub-Antarctic Islands.

## **Sub-Antarctic Marine Protection Planning Forum**

The Sub-Antarctic Marine Protection Planning Forum was established as a non-statutory body in February 2008. The Forum's purpose was to provide options and recommendations to government for marine protection in the Sub-Antarctic biogeographic 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 specific matters the Forum was to consider and present in its report to the Ministers were:

- Classification and inventory 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

The Chairperson and members of the Forum were appointed by the Minister of Conservation and Minister of Fisheries and were provided with terms of

reference by which they were to conduct themselves. The Forum consisted of 14 members representing commercial fishing, environment/conservation, Māori and scientific interests. Members of the Forum were expected to have strong links with the region, be able to negotiate, work well with others and be able to engage with their respective interest sectors and put forward these views during decision-making. An independent chairperson was appointed to ensure the delivery of recommendations to the Ministers. His 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.

The Forum convened in February 2008 and met seven times for full-day meetings during that year. By the end of the year it had fallen behind schedule, due to the time taken to understand and process the available information, and to begin network design work.

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.

Representatives from the Department of Conservation and the Ministry of Fisheries were regarded as *ex officio* members of the Forum, but were also there to provide information and support where required. Officials provided national policy guidance to the Forum, along with planning and technical advice, and their support was consistent with the MPA Policy.

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. There was no residential community to consult within the Sub-Antarctic islands. Therefore a formal consultation process to reach the general public was undertaken, which allowed an opportunity for written submissions.

The members of the Forum were unable to reach consensus and resolved to present six options, two for each island. 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 through the establishment of a marine reserve. The recommendation report advised the Ministers that they could select any combination of the six options. Following the making of recommendations to the government, the Forum disbanded and will have no future role in management of the new marine protected areas.

In January 2011, the government announced that three large marine reserves would be established around the 6,885 square kilometres of territorial seas of the Sub-Antarctic islands. Marine reserves were proposed to cover the entire territorial sea around Antipodes Island, 58 per cent of the territorial sea around the Bounty Islands, and 39 per cent of the territorial sea around Campbell Island. This means that a total area of 4,351 square kilometres will be protected in marine reserves. Prohibitions on Danish seining, bottom trawling and dredging under the Fisheries Act cover the remaining territorial sea areas.<sup>10</sup>

The marine reserves are to be implemented through special legislation. The government reported 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 enable the reserves to be implemented as a package, which would be more efficient and less costly. It also recommended that the Fisheries Act regulations should follow the usual statutory process, as this would be consistent with existing restrictions in place, and provide greater flexibility and responsiveness for future adjustment.

The Sub-Antarctic Islands Marine Reserves Bill was introduced into Parliament on 7 July 2011. The Bill establishes the Moutere Mahue–Antipodes Island Marine Reserve; the Moutere Hauriri–Bounty Islands Marine Reserve, and the Moutere Ihupuku–Campbell Island Marine Reserve. In addition, the Bill requires the Department of Conservation, in consultation with the Ministry for Primary Industries, to commission an independent review of the Moutere Ihupuku–Campbell Island Marine Reserve at least five years after the Bill's commencement. This is to consider the effects on conservation and fisheries of extending the boundaries of the marine reserve. At the time of writing the Bill had not yet been passed.

## Conclusions

As shown in Figure 7.1, each of the initiatives studied has resulted in proposals for the establishment of new marine protected areas.

### *Legislative framework*

Initially the Guardians of Fiordland was an organisation with no statutory basis. However, its work was given statutory recognition through the passage of special

legislation creating the Guardians of Fiordland as a statutory body. Marine reserves in Fiordland were established under the same special legislation. Fisheries management measures were established separately under the Fisheries Act.

The other marine protection fora were established in accordance with the MPA Policy, and thus had no statutory basis, but could make recommendations for the establishment of marine reserves or spatial protection measures using Fisheries Act tools. Although marine reserves recommended by the West Coast Marine Protection Forum are to be established under the Marine Reserves Act, special legislation is being used to create marine reserves in the Sub-Antarctic Islands, in recognition of the fact that the Marine Reserves Act does not fit easily with the establishment of reserve networks under the MPA Policy.

### *Management measures*

In developing proposals for management measures, both the Guardians of Fiordland and the marine protection fora were restricted to the use of fisheries management measures under the Fisheries Act and no-take marine reserves under the Marine Reserves Act. The use of fisheries tools for marine protection encouraged division between stakeholders, about whether marine reserves were required at all, as fisheries management tools were argued to be sufficient to achieve marine protection.

### *Design and implementation*

The Guardians of Fiordland's initiative was a 'pure' collaborative process, started from the bottom up by interested stakeholders. Its outcomes reflected stakeholders concerns. Conversely, the initiatives implemented under the MPA Policy represent a combination of top-down and bottom-up approaches, as collaborative processes that were initiated and managed by government.

The collaborative approach employed in Fiordland has been successful, both in achieving the implementation of new marine protected areas, and developing a strong unified management body which retains a continued sense of ownership. However, the focus on marine protection was by no means assured. In the early days the Guardians were concerned with fisheries management rather than marine protection. Local initiatives benefit from strong stakeholder ownership, but are subject to local sensibilities, which may not be consistent with best practice marine protection.

The MPA Policy has also only been implemented in two coastal regions although the Policy envisages its application throughout New Zealand waters. The fora which were established struggled to some extent, partially because they were dealing with a new concept, but also because stakeholder agreement was difficult to achieve. In contrast to the Fiordland Marine Guardians, government involvement meant that there was not the same sense of ‘voluntariness’ about the process. It was anticipated that agreement would be easily achieved in the Sub-Antarctic Islands, where the isolation and absence of a resident population was believed to reduce the complexity of stakeholder needs. In fact, extractive users (in particular commercial fishers) were concerned about the potential precedent effect of agreeing to large marine protected areas in this region, as a similar approach may then be applied to other areas where there were established fisheries.

This experience illustrates that collaborative processes initiated by government operate in a significantly different context to collaborative processes developed from the ‘bottom up’. The possibility that agreement will not be reached must be taken into account in the planning stages, with sufficient resources invested in the initiative to limit the risk of failure. Measures such as the use of independent facilitation were reported to be very useful, but stakeholders in both the initiatives undertaken under the MPA Policy indicated that more guidance could have been provided to the groups, on both the process and what they were expected to achieve.

### *Ongoing management*

In contrast to the Fiordland Marine Guardians, the Sub-Antarctic and West Coast fora will not have an ongoing role in management of the relevant marine area. The ongoing benefits that could have been achieved through the implementation of a collaborative process were lost when the fora were disbanded having made their recommendations.

New Zealand’s MPA Policy has resulted in proposals for new marine protected areas, but it has not generated the strong stakeholder ownership characteristic of the Guardians of Fiordland’s initiative. Stakeholders found it difficult to agree, and it is arguable whether the MPA Policy has resulted in the development of much of the ‘social capital’ that is one of the key potential benefits of collaborative processes. The stark choice between Fisheries Act tools and no-take marine reserves compounded that discord.

**Figure 7.1: Summary of New Zealand’s experience with collaborative processes for identifying marine protected areas**

Key characteristics	Guardians of Fiordland	West Coast Marine Protection Forum	Sub-Antarctic Marine Protection Planning Forum
Date established	1995	2005	2008
Purpose	To maintain or improve the quality of Fiordland’s marine environment and fisheries, including the wider fishery experience, for future generations to use and enjoy	To give effect to the MPA Policy	To give effect to the MPA Policy
Representation	Initially dominated by fishers; scientists and conservationists later permitted membership	A range of stakeholders included. Mining interests left out	A range of stakeholders included
Independent facilitation	Yes	Yes	Yes
Science input	At later stages	Yes but limited social science/economics input	Yes but limited social science/economics input
Public consultation	Public consultation on draft strategy 2003	Public consultation following forum recommendations	Public consultation during forum process
Consensus reached	Yes	No	No
Date of recommendations	2003	2010	2010
Level of protection	Brought full protection up to 1.01% of Fiordland bioregion	Will bring full protection up to 1.3% of West Coast South Island bioregion	Will bring full protection up to 42% of Sub-Antarctic bioregion
Implementation mechanism	Special legislation and Fisheries Act processes	Marine Reserves Act and Fisheries Act processes	Special legislation and Fisheries Act processes

Key characteristics	Guardians of Fiordland	West Coast Marine Protection Forum	Sub-Antarctic Marine Protection Planning Forum
Ongoing role for Forum	Yes	No	No
Strengths	<ul style="list-style-type: none"> <li>• Ongoing involvement</li> <li>• Strong community and stakeholder buy-in</li> <li>• Achieved and maintains consensus on decisions</li> <li>• Speedy implementation through special legislation (although ad hoc)</li> <li>• Independent facilitator</li> </ul>	<ul style="list-style-type: none"> <li>• Broad range of stakeholders represented</li> <li>• Local fishers able and willing to provide valuable information about commercial trawl</li> <li>• Independent facilitator</li> <li>• Good commitment and continuity provided by members</li> <li>• Good technical support and policy advice provided by agency representatives at local level</li> <li>• Stakeholders selected had good standing in the community</li> </ul>	<ul style="list-style-type: none"> <li>• A good balance between fishing (extractive users) and environmental interests</li> <li>• Broad representation from non-governmental organisations</li> <li>• Independent chairperson skilled in environmental law and legal proceedings</li> <li>• Good technical support including GIS</li> <li>• Strong policy guidance</li> <li>• Adequate resourcing</li> <li>• Use of special legislation and introduction of tools as a package</li> <li>• Good commitment and continuity by stakeholder members</li> </ul>

Key characteristics	Guardians of Fiordland	West Coast Marine Protection Forum	Sub-Antarctic Marine Protection Planning Forum
Weaknesses	<ul style="list-style-type: none"> <li>• Marine protected areas small and none on the outer coast</li> <li>• Protection of marine mammals over-looked</li> <li>• Slow and reluctant to include environmental groups</li> <li>• Slow to include science representative</li> </ul>	<ul style="list-style-type: none"> <li>• Representation weighted towards extractive users</li> <li>• Marine science and mining industry not represented</li> <li>• Lack of priority given to marine science and data</li> <li>• Background information prepared after process underway causing delay</li> <li>• Lack of clarity provided by agencies at higher level when interpreting policy</li> <li>• No independent science advice</li> <li>• Constraints on information provided by Ministry of Fisheries</li> <li>• Took longer than expected</li> <li>• Consensus not achieved</li> <li>• Duplicated effort in implementation</li> <li>• Lack of integration of customary approaches</li> <li>• No ongoing involvement once recommendations made</li> </ul>	<ul style="list-style-type: none"> <li>• No representation from some interests including tourism and mining industries</li> <li>• Took longer than expected to complete</li> <li>• Forum was polarized between fishing interests in favour of mixed protection tools and environmental advocates in favour of no take reserves</li> <li>• No consensus achieved</li> <li>• No ongoing involvement once recommendations made</li> <li>• Duplicated effort in implementation</li> </ul>

## Endnotes

- 1 Ministry for the Environment, 2005
- 2 Bruce Hamilton, August 2011, *pers comm*
- 3 Campbell Robertson and Don Neale, August 2011, *pers comm*
- 4 <http://www.westmarine.org.nz/objectives.aspx> (accessed 31 July 2012)
- 5 <http://www.westmarine.org.nz/objectives.aspx> (accessed 31 July 2012)
- 6 West Coast Marine Protection Forum, 2010, 11
- 7 <http://www.doc.govt.nz/conservation/marine-and-coastal/marine-protected-areas/other-protected-areas/proposed-west-coast-marine-protected-areas/>
- 8 'Five marine reserves announced for West Coast', 2011, Media release, 26 August 2011 <http://www.beehive.govt.nz/release/five-marine-reserves-announced-west-coast> (accessed 31 July 2012)
- 9 'Five marine reserves announced for West Coast', 2011, Media release, 26 August 2011 <http://www.beehive.govt.nz/release/five-marine-reserves-announced-west-coast> (accessed 31 July 2012)
- 10 'Subantarctic Islands to become marine reserves', 2011, Media release, 29 January, <http://www.beehive.govt.nz/release/subantarctic-islands-become-marine-reserves> (accessed 31 July 2012)

