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Using different processes to protect marine environments

Using different processes to protect marine environments

Contents

Overview

E ngā mana, e ngā reo, e ngā karangarangatanga maha o te motu, tēnā koutou.

New Zealand's marine environment covers over 4 million square kilometres of ocean and is home to more than 15,000 species, many found only here. To iwi and hapū, water is taonga. The marine environment is also used for a range of popular activities such as swimming, fishing, and boating. For economic purposes, this marine environment supports important economic activities, including commercial fishing and aquaculture, hydrocarbon exploration, extracting mineral deposits, tourism, and biotechnology.

New Zealand has 44 marine reserves. The first of these was established in 1975 at Goat Island, north of Auckland. Proposals for establishing new marine reserves have been infrequent. As a result, many of New Zealand's coastal regions have little or no marine protected areas. Only 0.4% of the mainland territorial sea has marine reserves.

Decisions to establish marine reserves, in effect, prioritise access to, and use of, parts of the marine environment. Those decisions need to consider and balance the unique circumstances of different areas, including communities, biodiversity values, and social, cultural, and commercial interests.

We looked at how two groups used two different processes that generated advice to Ministers for establishing marine protection, including marine reserves. The two groups were the South-East Marine Protection Forum – Te Roopu Manaaki ki te Toka (the South-East Forum) and Te Korowai o Te Tai ō Marokura, the Kaikōura Coastal Marine Guardians (Te Korowai).

Each group used a process that was different in terms of its origin, purpose, scope, and expected outcomes. We examined how inclusive, transparent, and well informed the processes were to identify lessons that could be applied to support the establishment of other marine protection measures. We did not look at the biodiversity objectives of the respective processes.

Main findings

Establishing marine protection is not easy. Approaches to establishing marine reserves and marine protected areas are fraught with tension and have historically taken a long time.

Te Korowai used a community-led process that, with support from government agencies, prepared a marine strategy for the Kaikōura coast. Te Korowai met its community's expectations for being inclusive, well informed, and transparent. Although the process took time and commitment, many participants in Te Korowai told us that they are proud of what Te Korowai achieved.

The South-East Forum was established April in 2014 to make recommendations to establish a network of marine protected areas consistent with the Marine Protected Areas policy. The South-East Forum mostly met our expectations for inclusiveness, being informed by the best information that was available at the time, and achieving a good level of transparency. However, there are some practical lessons for agencies to take note of to improve future Marine Protection Planning Forums. Roles and responsibilities need to be clear and followed by all, the criteria for selecting Forum members need to be transparent, and information needs to be prepared in advance and provided in a timely way. In my view, getting these aspects right will reduce frustration and support better outcomes.

Despite the South-East Forum largely meeting our expectations, our work highlighted how some aspects of the guidelines for implementing the Marine Protected Areas policy are not supporting the achievement of New Zealand's marine biodiversity objectives.

Guidelines to implement the Marine Protected Areas policy are limited

In my view, aspects of the implementation guidelines are too restrictive. They limit the marine protection tools that can be recommended to Ministers, and state that Marine Protection Planning Forums should not be diverted by Resource Management Act 1991, aquaculture, or fisheries management matters. However, these matters are important to many New Zealanders. In practice, some of the South-East Forum members did not feel that recommendations to the Ministers could adequately address the concerns of the people they represented. As a consequence, some members' participation and confidence in the South-East Forum was undermined, contributing to the creation of factions in the South-East Forum that appeared, at times, to operate in an adversarial way.

Our findings, the fact that Marine Protection Planning Forums have been attempted only three times since 2005, and that many of New Zealand's coastal regions have little or no marine protected areas, support my view that aspects of the implementation guidelines make it difficult to achieve New Zealand's marine biodiversity protection objectives.

In my view, New Zealanders would value an approach that encourages and enables communities to better support marine protection measures. A more flexible way needs to be found to balance the views and values of those with an interest in the marine environment. This is to establish a sustainable level of protection for New Zealand's marine biodiversity that is consistent with long-term stewardship of an important natural resource.

I encourage the Department of Conservation and the Ministry for Primary Industries, as the stewards of an important natural resource, to consider how any reform to marine biodiversity protection legislation, policy, or planning could support greater collaboration between parties, and ultimately protect New Zealand's unique marine biodiversity in a more effective way.

I thank the members of the South-East Forum and Te Korowai and staff in the Department of Conservation and the Ministry for Primary Industries for their co-operation.

Nāku noa, nā,

Greg Schollum
Deputy Controller and Auditor-General

20 June 2019

Our recommendations

We recommend that the Department of Conservation and the Ministry for Primary Industries:

1. consider how any reform to marine biodiversity protection legislation, policy, or planning could support greater collaboration between parties, and ultimately provide more timely, appropriate, and sustainable protection for New Zealand's unique marine biodiversity; and

2. work together ahead of time to collect and collate all available information on an area that is being considered for marine protection or management to ensure that it is available to members of Marine Protection Planning Forums or working groups in a timely way.

Introduction

1.1 New Zealand's marine environment covers over 4 million square kilometres of ocean. It includes New Zealand's exclusive economic zone, which includes the Kermadec Islands and the subantarctic islands. For economic purposes, this marine environment supports the fishing industry, aquaculture, hydrocarbon exploration, extraction of mineral deposits, tourism, and biotechnology. It is also used recreationally by many New Zealanders each year for swimming, fishing, and boating.

1.2 As an island nation, New Zealand's marine environment serves many purposes and roles, and is a matter of significant cultural, spiritual, and economic importance. To iwi and hapū, water is taonga. The geographic remoteness of the country is also what makes the sea life rich and diverse. Many of the 15,000 species living in the marine environment are only found here.[1]

1.3 The *New Zealand Biodiversity Strategy 2000-2020* is part of the Government's commitment, as a signatory to the United Nations Convention on Biological Diversity, to maintain and preserve New Zealand's natural environment, both on and offshore. Aims of the Strategy include:

- stopping the decline in New Zealand's biodiversity and restoring the remaining natural habitats; and
- maintaining the genetic resources of introduced species that are important for economic, biological, and cultural reasons by conserving their genetic diversity.

1.4 In 2005, the Government released *Marine Protected Areas: Policy and Implementation Plan* (the MPA policy). The MPA policy was to be led by the Ministry of Fisheries, which is now part of the Ministry for Primary Industries (MPI), and the Department of Conservation (DOC). The MPA policy is currently the government-mandated process for creating marine protected areas (whether in the form of marine reserves or areas where certain activities are regulated or prohibited). This was followed up with the *Marine Protected Areas: Classification, protection standard and implementation guidelines* in 2008. The aim of the MPA policy is to protect "marine biodiversity by establishing a network of [marine protected areas] that is comprehensive and representative of New Zealand's marine habitats and ecosystems."[2]

1.5 We looked at two different processes that resulted in recommendations for establishing marine protection. Although only one process started with the formal goal of creating a marine protected area, both had the objective of protecting the marine environment and both resulted in recommendations for the Government to establish marine protected areas off New Zealand's coastline. We looked at whether each process was transparent, inclusive, and informed and what lessons could be learned from them.

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1 For more information on New Zealand's marine environment, see www.doc.govt.nz.

2 Department of Conservation (2005), *Marine Protected Areas: Policy and Implementation Plan*, at www.doc.govt.nz, page 6.

Why we chose this audit

1.6　New Zealand has 44 marine reserves. The first of these was established in 1975 at Goat Island, north of Auckland. Since then, proposals for establishing new marine reserves have been infrequent. Only 0.4% of the mainland territorial sea has marine reserves.

1.7　When a decision is made to accept a marine reserve proposal, it effectively prioritises access to and the use of a particular body of water. As a result, each new proposal has the potential to affect a broad range of interests and values. This can lead to tensions between a desire to protect New Zealand's biodiversity and the perceived effect that this will have on existing rights and values. Getting the process of creating marine protected areas right is important, particularly when establishing marine reserves.

1.8　Previous attempts to establish marine reserves have at times been fraught. In some instances, these attempts have led to legal cases and judicial reviews. For example, the original application for the Akaroa Marine Reserve was publicly notified in 1996. It got to the High Court in 2012 and the marine reserve was finally approved in 2013.

The focus of our audit

1.9　Our audit looked at the development of marine reserve proposals. There are three ways in which a marine reserve proposal can be established:

- using Marine Protection Planning Forums (under the MPA policy);
- through the statutory processes under the Marine Reserves Act 1971; and
- through special legislation.

1.10　We looked at two processes that resulted in recommendations to create marine reserves:

- the "MPA policy process", which was used by the South-East Coast Marine Forum (the South-East Forum); and
- a "community-led process", which led to the creation of special legislation, was used by Te Korowai o Te Tai ō Marokura, the Kaikōura Coastal Marine Guardians (Te Korowai).

1.11   We looked at whether the processes were **transparent**, **inclusive**, and **well informed**. By examining how inclusive, transparent, and well informed the processes were, we wanted to identify lessons that could be applied to support the establishment of other marine reserves and marine protection. These three principles are part of the MPA policy.

1.12   We did not assess the biodiversity outcomes that were achieved or likely to be achieved by the two processes.

How marine reserves are established

1.13   The MPA policy is the government-mandated process for creating marine reserves. Its aim is to create marine biodiversity protection. The MPA policy provides the framework for creating a process that is designed to be inclusive and transparent, with decisions about marine protection based on the best available information. It was also designed to minimise the effects of changes on existing users of a marine area.

1.14   A set of implementation guidelines are provided to assist the process for proposing marine protected areas as defined by the MPA policy. These implementation guidelines also define the protection standard that a marine protected area must meet, but not at the expense of biodiversity protection.

1.15   Marine protected areas that are established through marine planning processes must meet the protection standard of the MPA policy. There are different tools for establishing marine protection. Two of these tools, called "Type 1" and "Type 2" marine protected areas, meet the protection standard. Type 1 marine protected areas are marine reserves with the highest level of marine protection and are normally established under the Marine Reserves Act. Type 2 marine protected areas are protected areas established outside of the Marine Reserves Act, and are intended to provide enough protection from the adverse effects of fishing to meet the Marine Protected Area Protection Standard.

1.16   Under the Marine Reserves Act, marine reserves can be proposed to the Director-General of Conservation by community groups, or through institutions with a science or conservation focus, such as various environmental non-governmental organisations. The Director-General can also make an application for a marine reserve.

1.17   Marine reserves can also be formed through special legislation. This is when legislation is created to provide particular solutions for marine protection. Special legislation is usually used to provide support to local or regional planned efforts that have come up with marine management plans. It can address the challenge of implementing a range of proposals and initiatives at the same time.

The Marine Reserves Act 1971

1.18   "The main aim of a marine reserve is to create an area free from alterations to marine habitats and life, providing a useful comparison for scientists to study." Under the Marine Reserves Act, marine reserves may be established in areas with distinctive or unique marine life, or where continued preservation is in the national interest.

1.19   DOC is responsible for administering the Marine Reserves Act through both statutory and non-statutory processes. The non-statutory process involves defining the objectives and forming a team, initial consultation with interest and user groups, site survey and investigation, preparing and releasing a draft proposal for public comment, and preparing a formal application.

1.20   The statutory process involves making a formal application to the Director-General of Conservation for an Order in Council to declare a marine reserve. The applicant then notifies the public of the application. The public can object to the proposed marine reserve in writing to the Director-General, which the applicant can respond to. The Director-General then presents the application, objections, and any responses to objections to the Minister of Conservation.

1.21   The Minister of Conservation decides whether any objection should be upheld. If none are upheld, the Minister decides whether the proposed marine reserve will be in the best interests of scientific study and will benefit the public. The Minister will also consider if it is expedient to declare a marine reserve. If the Minister concludes yes to these requirements, they will seek agreement from the Minister of Fisheries and the Minister of Transport and, if required, the relevant council. The Minister then makes a recommendation to the Governor-General for the Order in Council to declare the marine reserve.

The processes we looked at

The MPA policy process

1.22   The South-East Forum was a Marine Protection Planning Forum that operated under the direction of the MPA policy and the implementation guidelines. It was led by DOC and supported by MPI. In 2014, the South-East Forum was appointed by the Minister of Conservation and the Minister of Fisheries.

1.23   The South-East Forum was to recommend which sites on the south-east coast of the South Island should be considered for marine protection (see Figure 1).

Figure 1
The region covered by the South-East Marine Protection Forum

This figure shows that part of the south-east coast of the South Island that was the area under consideration by the South-East Forum for marine protection.
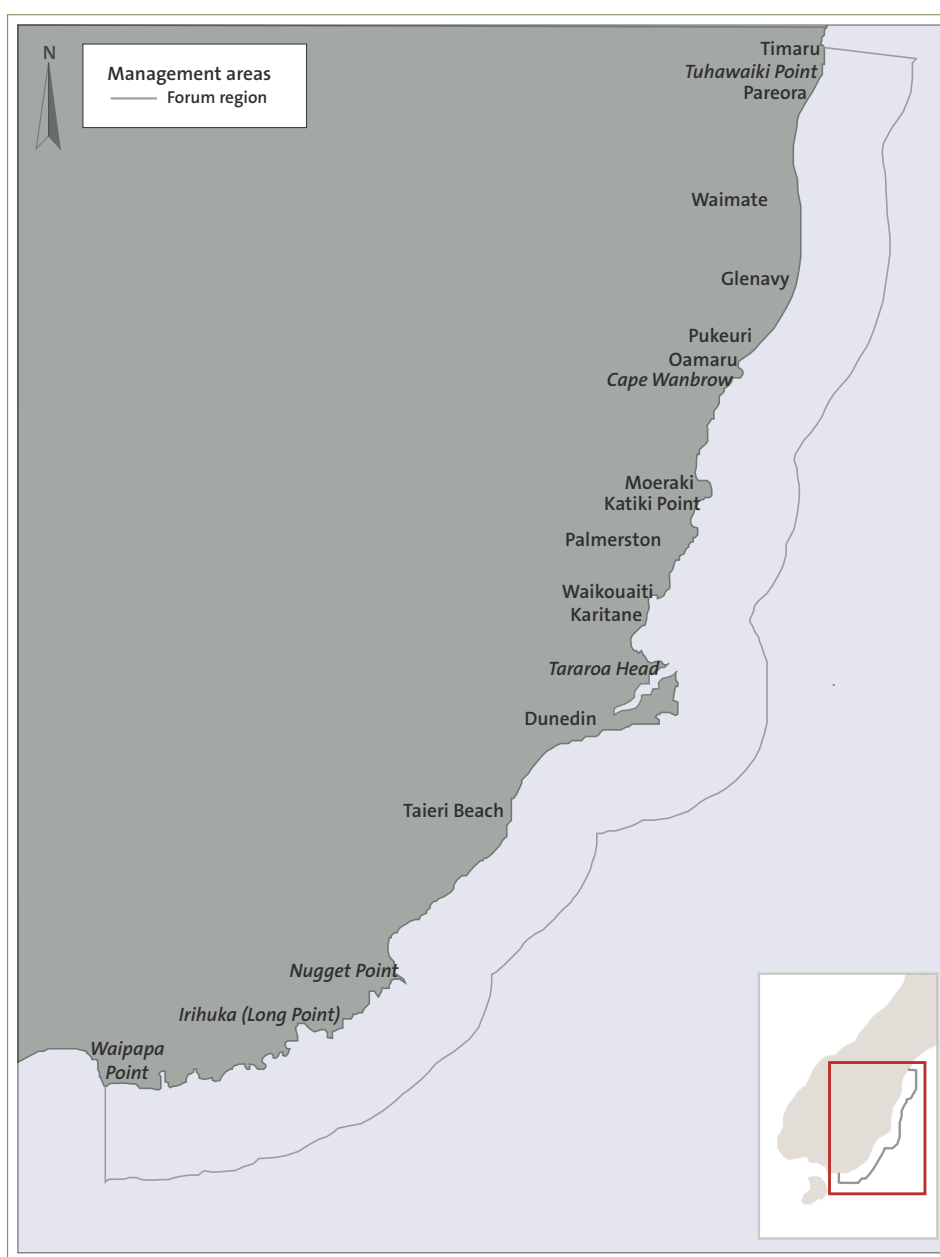
Source: Adapted from South-East Marine Protection Forum (February 2018), *Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected, Areas Policy on the South Island's south-east coast of New Zealand*, Wellington, page 35.

1.24   The South-East Forum included 16 people[3] who were appointed to represent the views and values of the different groups with interests in the area. They represented:

- tāngata whenua;
- commercial and recreational fishing;
- the environment, science, and tourism sectors; and
- the local community.

1.25   There was also an independent chairperson.

1.26   The South-East Forum was supported by a governance group with members from DOC, MPI, and Ngāi Tahu.

1.27   DOC provided the South-East Forum with financial contributions, governance members, project staff, and technical experts. MPI provided governance members and project staff.

1.28   The South-East Forum proposed two options for networks of marine protected areas, called "Network 1" and "Network 2" (see the Appendix). Ministers have considered joint advice from DOC and MPI and intend to consult on progressing Network 1 in its entirety, noting that amendments might be made based on the outcomes of public consultation and assessments against relevant statutory requirements.

The community-led process

1.29   Te Korowai are a group of community members who, from the initiative of Ngāti Kuri of Ngāi Tahu and with the support of government agencies, prepared a marine strategy for the Kaikōura coast.

1.30   The Kaikōura coast has many unique marine features, such as the biologically rich undersea Kaikōura Canyon. It is also home to several types of marine mammals, including New Zealand's only population of resident sperm whales.

1.31   Te Korowai was formed with a shared vision to create a more sustainable marine environment and included people from local groups directly involved with the coastal marine area. DOC provided financial support and technical experts. The group was self-governed.

1.32   Previous attempts had been made to create a marine reserve off the coast of Kaikōura, including one from the Royal Forest and Bird Protection Society of New Zealand (Forest and Bird). Forest and Bird applied to the then Minister of Conservation for a marine reserve on the Kaikōura peninsula, but the application did not proceed. However, in recognition of the importance of the marine

environment, the Minister of Conservation invited Ngāti Kuri to plan formally for the future of the Kaikōura marine environment.

1.33   Funding and support came from a range of sources, including DOC, Kaikōura District Council, Environment Canterbury, the Encounter Foundation, Solution-Multipliers NZ Limited, Canterbury Community Trust, Te Rūnanga o Kaikōura, Ngāi Tahu Communication, Takahanga Marae, the Lobster Inn, the Ministry for the Environment, and MPI. Members of Te Korowai donated much of their time and some also made financial donations.

1.34   The strategy was not prepared under the MPA Policy, and the Minister of Conservation specifically excluded Kaikōura from the national process. However, Te Korowai took the MPA policy's practice guidance into account.

1.35   In 2008, Te Korowai published a characterisation report on the environment of the Kaikōura coast, followed by the *Kaikōura Marine Strategy*. The strategy proposes several marine protection and fisheries mechanisms to manage coastal and marine resources. The Government has implemented the main elements of this strategy through the Kaikōura (Te Tai ō Marokura) Marine Management Act 2014, which came into force in August 2014.

Figure 2
The Kaikōura Marine Management Area

This figure indicates the extent of the Kaikōura Marine Management Area, showing the Kaikōura Whale Sanctuary, the Hikurangi Marine Reserve, two taiāpure (food-gathering areas), three mātatai (no commercial fishing) reserves, and the Ōhau Point New Zealand Fur Seal Sanctuary.
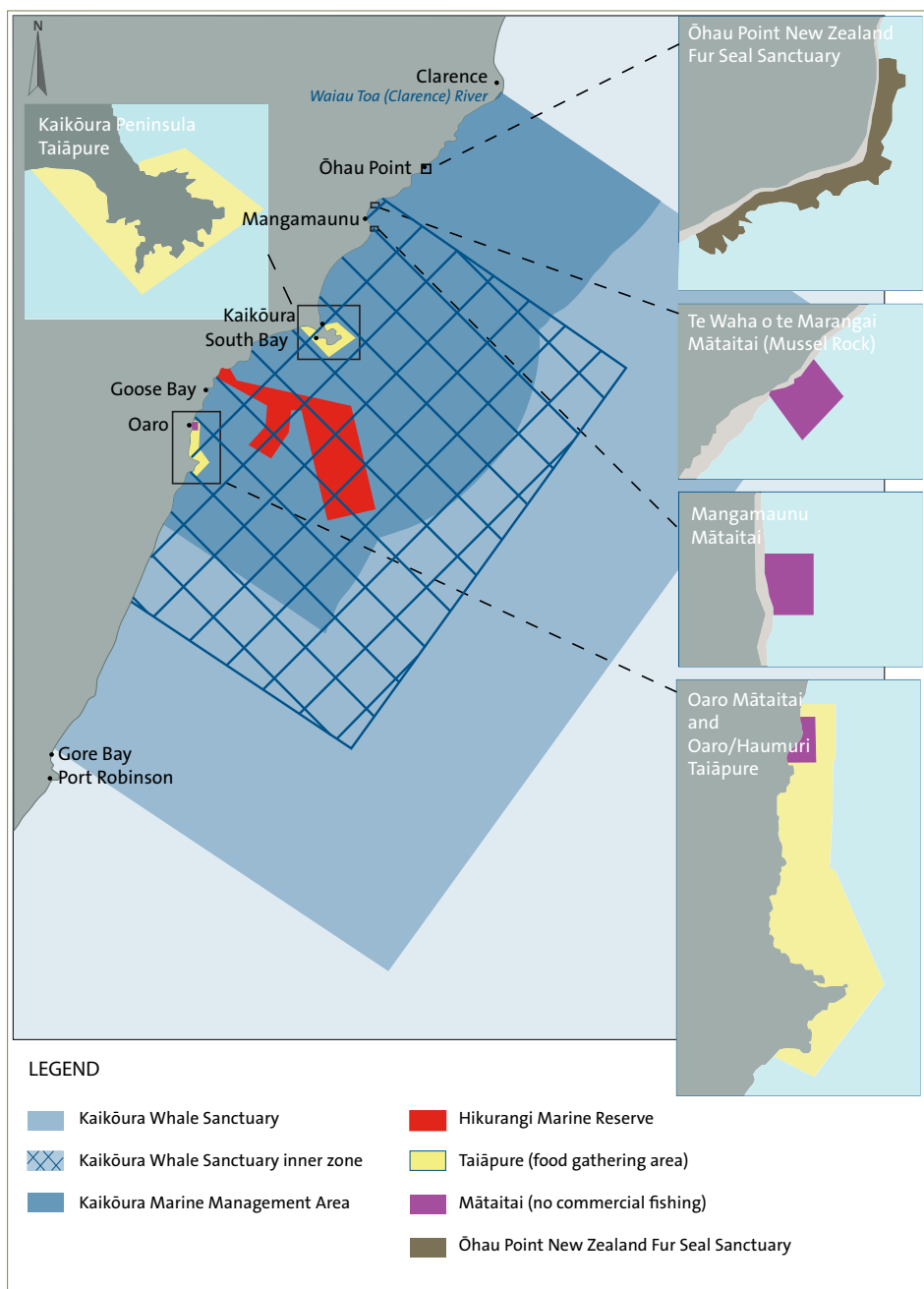
Source: Adapted from www.howtokit.org.nz.

1.36   The Kaikōura (Te Tai ō Marokura) Marine Management Act 2014 established several marine protection and sustainable fisheries measures (see Figure 2). These include:

- Hikurangi Marine Reserve, covering the Kaikōura Canyon area and connecting to the coast south of the Kaikōura township;

- Te Rohe o Te Whānau Puha/Kaikōura Whale Sanctuary;

- Ōhau Point New Zealand Fur Seal Sanctuary;

- two taiāpure – local fisheries around the Kaikōura Peninsula that provide traditional food-gathering areas; and

- three mātaitai reserves where commercial fishing is prohibited.

1.37   It also established an advisory committee called the Kaikōura Marine Guardians to advise Ministers and those exercising statutory powers. The Kaikōura Marine Guardians represented Te Rūnanga o Ngāi Tahu and the Kaikōura community, as well as biosecurity, conservation, education, environment, fishing, marine science, and tourism interests.

How we carried out our audit

1.38   To carry out our audit, we:

- interviewed staff from DOC and MPI, including staff who work on marine strategy and who made up the governance group members of the South-East Forum;

- interviewed members of the South-East Forum and Te Korowai and the support staff who directly worked with them; and

- examined documents related to the processes.

2

Limitations of the marine protection planning process

2.1   Many of New Zealand's coastal regions are under-represented or have no marine protected areas. In our view, aspects of the MPA policy's implementation guidelines make it difficult to achieve New Zealand's marine biodiversity objectives. In particular, the South-East Forum faced some unintended consequences from following the implementation guidelines, which undermined its overall effectiveness.

2.2   In this Part, we discuss:

- previous attempts at establishing Marine Protection Planning Forums;
- New Zealand's marine biodiversity objectives;
- the MPA policy's implementation guidelines;
- tensions we saw in the South-East Forum; and
- possible reforms to the implementation guidelines.

Previous attempts at establishing Marine Protection Planning Forums

2.3   Since 2005, there have been three attempts at marine protection planning using the MPA policy. These have been on the west coast of the South Island, the subantarctic islands, and the south-east coast of the South Island.

2.4   The West Coast Marine Protection Forum was established in 2005 in response to considerable interest from local stakeholder groups. This was before the MPA policy was developed. It was New Zealand's first Marine Protection Planning Forum. In 2011, based on recommendations from the Forum, the Minister of Conservation and the then Minister of Fisheries and Aquaculture proposed a package of marine protected areas and marine reserves. Of these proposals, the Kahurangi Marine Reserve, the Punakaiki Marine Reserve, the Waiau Glacier Coast Marine Reserve, the Tauparikaka Marine Reserve, and the Hautai Marine Reserve were established. These marine reserves were established, along with other fisheries management tools, in September 2014.

2.5   The Subantarctic Marine Protection Forum was established in 2008. This Forum consisted of representatives of different interests and considered a range of information about the subantarctic islands, including Treaty of Waitangi obligations. Its recommendations were presented for public consultation in 2009. In 2010, after consultation, the Forum made two sets of recommendations. The Minister of Conservation and the Minister of Fisheries and Aquaculture agreed in December 2010 on a preferred form of marine protection for each of the island groups.

2.6   On 23 March 2011, the Cabinet Domestic Policy Committee agreed to progress the Subantarctic Islands Marine Reserves Bill, which would create three new marine

reserves: one over the entire territorial sea surrounding Antipodes Island and two around the Bounty Islands and Campbell Island/Motuere Ihupuku. The latter two marine reserves would cover 58% of Bounty Islands' and 39% of Campbell Island/Motuere Ihupuku's territorial seas. The Subantarctic Islands Marine Reserves Act 2014 came into force in March 2014.

2.7   The South-East Forum made two proposals – Network 1 and Network 2. The Ministers chose to progress Network 1 (see the Appendix).

2.8   Although Marine Protection Planning Forums have been established and have resulted in areas of marine protection, the proportion of the marine environment that is protected is still limited. The total area that is protected in marine reserves is 615 square kilometres or 0.4% of New Zealand's territorial and internal waters. The total area that is protected with both Type 1 and Type 2 marine protected areas is 2792 square kilometres or 1.9% of New Zealand's territorial and internal waters. Large parts of marine protected areas are located in areas with sparse or no population.[4]

2.9   We note that, with the exception of Dunedin, Marine Protection Planning Forums have not been attempted in populous areas. We were also told that MPI and DOC are less likely to use this approach in the North Island because of the complexity of existing and perceived rights and uses of the marine environment.

Role of policy in meeting marine biodiversity protection objectives

2.10   MPI and DOC are jointly responsible for implementing the MPA policy. The MPA policy aims to protect "representative examples of the full range of marine habitats and ecosystems, and also outstanding, rare, distinctive or internationally or nationally important marine habitats and ecosystems."[5] The MPA policy includes "implementing principles" that are designed to help implement the MPA policy. The implementing principles are divided into two categories: "network design principles" and "planning principles".

2.11   Network design principles are intended to aid the process of designing a marine protected area network. The six network design principles provide guidance on matters such as the range of habitats and ecosystems that must be included in the network, guidance on what makes a viable network, and monitoring requirements.

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4   This figure excludes marine reserves around the Chatham, Snares, Three Kings, and Kermadec Islands, and the subantarctic islands.

5   Department of Conservation and Ministry of Fisheries (2011), *Coastal marine habitats and marine protected areas in the New Zealand Territorial Sea: a broad scale gap analysis*, Wellington, page 6.

2.12 Planning principles are intended to guide the planning and management of marine protected areas and cover matters such as transparency, providing advice that is based on the best available information, and processes being conducted in a timely and inclusive way. There are 10 planning principles. Planning Principle Three specifically identifies the importance of adequately recognising the special relationship between the Crown and Māori in the planning process. Planning Principle Five states that adverse effects on those who already use the marine environment should be minimised. Planning Principle One states that every marine protected area should be designated and representative of one or more habitats or ecosystems.

The implementation guidelines

2.13 The MPA policy is supported by the *Marine protected areas: Classification, protection standard and implementation guidelines* (the implementation guidelines). This document provides a framework for planning and establishing a network of marine protected areas.

2.14 In line with the MPA policy's network design and planning principles, the implementation guidelines require planning processes to be inclusive and transparent. The implementation guidelines also state that marine planning processes are to be based on the best available information. The implementation guidelines set the expectations for planning marine protected areas and define the protection standard that planning must achieve.

2.15 The MPA policy and the implementation guidelines introduced Marine Protection Planning Forums, which are designed to create proposals that recommend a network of marine protection tools. Forums are expected to be representative and collaborative in order to try to reach a consensus.

2.16 However, the implementation guidelines state that, if a consensus cannot be reached, the Marine Protection Planning Forum should provide a range of recommendations, making the advantages and disadvantages of each recommendation clear. The Forum should also communicate which recommendations are favoured by which stakeholders or parts of the community.

2.17 The protection standard is the standard that must be met by all marine protected areas established through marine planning processes. Marine protection "tools" that meet this protection standard are Type 1 and Type 2 marine protected areas (see Part 1). The MPA policy states that other marine protection tools can be included in the network if they meet the same protection standard as these.

2.18   The implementation guidelines emphasise protecting biodiversity. They require that a marine reserve be established to protect at least one sample of each habitat and ecosystem type in the network. They also state that Marine Protection Planning Forums should not be diverted by the Resource Management Act or by aquaculture or fisheries management issues.

2.19   Under the implementation guidelines, there are clear expectations of Marine Protection Planning Forums. Marine Protection Planning Forums can have a maximum of 14 stakeholders, including the chairperson, but proxy members are not permitted. After they have been established, Marine Protection Planning Forums are expected to produce a set of recommendations for Ministers within 18 months.

2.20   These expectations must be applied in all 14 coastal biogeographical regions identified in the implementation guidelines. However, this approach to planning does not enable the form or function of Marine Protection Planning Forums to be modified to meet the different needs of New Zealand's unique regions. This amounts to a "one size fits all" approach, which, in our view, is unlikely to succeed in every situation.

2.21   Although some marine protected areas have been created since 2005, DOC's 2017/18 annual report stated that many of New Zealand's coastal regions are under-represented or have no marine protected areas. In our view, the implementation guidelines alone are inadequate to support New Zealand's marine biodiversity objectives. An MPA implementation plan needs to be fully embraced by the agencies that own the MPA policy and the implementation guidelines.

Unintended consequences from following the implementation guidelines

2.22   The MPA policy states that the process "will be underpinned by a commitment to minimise the impact of new protected areas on existing users of the marine environment and Treaty settlement obligations."[6] Marine Protected Area Planning Principle Five also notes that "MPAs are more likely to be established in a timely and efficient manner where appropriate recognition is given to the rights and responsibilities of users of the marine environment."[7]

2.23   Some members of the South-East Forum did not feel that the process allowed them to adequately minimise the adverse effects on their stakeholders. In some instances, members proposed marine management tools that did not meet the

6   Department of Conservation and Ministry of Fisheries (2005), *Marine Protected Areas: Policy and Implementation Plan*, Wellington, page 3.

7   Department of Conservation and Ministry of Fisheries (2005), *Marine Protected Areas: Policy and Implementation Plan*, Wellington, page 18.

protection standard in the implementation guidelines (see paragraph 2.17) but would have addressed their concerns about the adverse effects on existing users of the marine environment.

2.24   For example, some members advocated for recommending changes to land-based activities under the Resource Management Act. These members wanted to recommend measures that would improve the quality of the rivers that flow out to sea to protect fish that spawn in estuaries.

2.25   However, because the implementation guidelines focus on marine biodiversity protection, these proposals were out of scope and could not be included in the South-East Forum's network recommendations.

2.26   As a result, some of the South-East Forum members did not feel that recommendations to the Ministers adequately addressed the concerns of the people they represented. This undermined their participation and confidence in the South-East Forum and contributed to members forming into factions according to their different points of view. These different factions appeared to operate in an adversarial way at times.

2.27   The view that adverse effects of the proposed marine protected areas on members of the community or stakeholders could not be adequately minimised had some unintended consequences, including:

- undermining efficiency;
- undermining collaboration; and
- the process resulting in split recommendations.

2.28   In our view, these unintended consequences go to the heart of the complexity involved in recommending marine protection, and demonstrate the importance of running a process that can help agencies effectively navigate that complexity.

2.29   Collectively, these unintended consequences undermined the effectiveness of the South-East Forum.

Undermining efficiency

2.30   The South-East Forum meetings were at times focused on members debating the purpose of the South-East Forum – in particular, whether the South-East Forum should limit its recommendations for new marine protected areas (which is in line with the MPA policy scope for all Marine Protection Planning Forums) or consider broader marine management issues. It became clear from reviewing minutes and interviewing participants and support staff that these debates contributed to tension, frustration, and slowed progress.

2.31   Some participants were frustrated by the South-East Forum's inability to recommend a broader range of measures that could, in their view, adequately minimise the adverse effects of new marine protected areas on the stakeholders they represented. Other members were frustrated by the South-East Forum being, in their view, distracted by matters that, if recommended, would undermine its ability to achieve the policy objectives it was established to meet. Debating these matters diverted time and resources away from the South-East Forum's central planning objective.

2.32   Ultimately, and in apparent recognition of this issue, the South-East Forum's recommendations to the Minister of Conservation and the Minister of Fisheries stated that "land-based impacts are a significant issue for this bioregion, particularly for estuaries, embayments and kelp".[8] It recommends that agencies with jurisdiction over activities that could affect the coastal environment to protect and safeguard the coastal habitats and ecosystems. However, this is not part of the network recommendations.

Undermining collaboration

2.33   The model used in the South-East Forum to support collaboration, and as a way to minimise adverse effects on users of the marine environment, was the "gifts and gains" model. The gifts and gains model, which was also used by Te Korowai, is a process that supports compromise. The gifts were what people were willing to part with and the gains were what they got out of the compromise. This could, for example, be the agreement of a marine reserve or the inclusion of a marine mammal sanctuary.

2.34   In practice, the South-East Forum found limited success with the gifts and gains model. Although the gifts and gains model could lead to concessions on the size and number of proposed marine protected areas, because extractive activities (such as fishing) are generally excluded from marine protected areas, we were told that the chances of reaching consensus or compromise were reduced. The reaction of some members was to try to limit perceived adverse effects on the users they represented in two ways: by proposing fewer marine protected areas compared with what other members of the South-East Forum wanted and by advocating for measures that provided a lesser protection standard than required by the implementation guidelines. In our view, the gifts and gains model had limited success in the South-East Forum.

8   South-East Marine Protection Forum (2018), *Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand*, Wellington, page 236.

2.35   Despite the South-East Forum's clear terms of reference and internal protocol, tensions, and frustrations experienced by some members limited the constructive engagement envisaged by the Marine Protected Area Planning Principle Four. This states:

> *MPA establishment will be undertaken in a transparent, participatory, and timely manner... Support for MPAs is likely to be increased where affected parties are adequately informed and have confidence in the integrity of the decision-making process. MPA implementation will be undertaken in a manner that constructively engages tangata whenua, regional councils, other government agencies and particular interests whose use of marine areas will be affected by MPAs, in addition to groups with an interest in marine biodiversity. These processes will be undertaken in a transparent manner that informs and allows for participation and input from the public.*[9]

2.36   Although the implementation guidelines allow for different recommendations to be presented, the factions that had formed within the South-East Forum at times worked in an adversarial manner. This happened particularly after public submissions were received. A strong theme emerging from our interviews was that, from that point on in the process, the members of the South-East Forum tended to operate as two distinct factions.

The process resulted in split recommendations

2.37   Two networks of marine protected areas were recommended for the Ministers to consider. Although the implementation guidelines allow for different recommendations to be presented, and the South-East Forum signed off the recommendation report, supporters of Network 2 withdrew their support for the Forum's recommendations and for the process that had produced them just before the report was to be provided to Ministers.

2.38   Both networks were published and formally recommended to the Minister of Conservation and the Minister of Fisheries in February 2018. In May 2019, the Government announced it would be progressing the recommendations from Network 1.

9   Department of Conservation and Ministry of Fisheries (2005), *Marine Protected Areas: Policy and Implementation Plan*, Wellington, page 18.

Potential changes to how marine protection is established

2.39   In 2016, the Ministry for the Environment published a consultation document, *A New Marine Protected Areas Act*. Although it focused on New Zealand's approach to marine biodiversity protection generally, the document noted the Government's view that the current approach to marine protection is not the most effective for managing New Zealand's marine environment. It described the current process as complex and inflexible, noting that consultation and decision-making processes are overly long, costly, and cumbersome.

2.40   The consultation document summarised what the Government viewed as the shortcomings of the current approach to marine protection, including that:

- decisions on marine protection are made with little co-ordination;
- consultation processes in statute do not provide for different tools to be considered through a collaborative process and can lack credibility;
- consideration of the effects on existing and future uses and values is inadequate, potentially limiting the sustainable growth of the marine economy; and
- provision for iwi/Māori involvement in the development and management of marine protected areas is inconsistent and often inadequate.

2.41   Responsibilities for reform of the MPA policy have been transferred from the Ministry for the Environment to DOC and MPI.

2.42   In our view, this provides DOC and MPI with an opportunity to consider how any reform could support greater collaboration between parties that would lead to more timely appropriate and sustainable protection for New Zealand's unique marine environment.

Recommendation 1

We recommend that the Department of Conservation and the Ministry for Primary Industries consider how any reform to marine biodiversity protection legislation, policy, or planning could support greater collaboration between parties, and ultimately provide more timely, appropriate, and sustainable protection for New Zealand's unique marine biodiversity.

3

Inclusiveness of the two processes we looked at

3.1 Although the South-East Forum had to meet the MPA policy requirement of inclusiveness, Te Korowai did not. However, Te Korowai's community did expect the process to be inclusive.

3.2 In this Part, we discuss:

- how the South-East Forum met MPA policy expectations for inclusiveness;
- how Te Korowai met the expectations of its community for inclusiveness; and
- the importance of having clear roles and responsibilities to establish and manage an inclusive process.

The South-East Forum met MPA policy expectations for inclusiveness

3.3 Marine Protection Planning Forums are expected to be inclusive. The MPA policy states that each Marine Protection Planning Forum will:

… involve and engage tangata whenua, regional councils, marine biodiversity interest groups and the users and stakeholders whose use of marine areas may be affected by MPAs. The Department and the Ministry will service the forums with information, advice, facilitation and guidance. It is expected that relevant agencies will develop and maintain a separate dialogue with tangata whenua.[10]

3.4 The South-East Forum met these expectations. DOC and MPI worked together to ensure that the South-East Forum was made up of a broad range of stakeholders. They also worked to ensure that the process was flexible for iwi to be involved in a way that worked for them. We also saw evidence that the South-East Forum was adequately supported to collect the views of the public, and that those views were fed back to the South-East Forum.

3.5 A formal recruitment process was used when setting up the South-East Forum, through which members of the public could apply to become a member. Applications were assessed against set criteria to decide on an applicant's suitability. DOC and MPI worked together to ensure that there was adequate representation for different groups that have an interest in the marine environment of the south-east coast of the country.

3.6 As a result of this process, the South-East Forum involved a full range of stakeholders. There were two recreational fishing, three commercial fishing, one environmental, one science, one community, and three Ngāi Tahu representatives, with three alternative members and an independent chairperson. Those we spoke with generally felt the representation was appropriate, and we agree.

10 Department of Conservation and Ministry of Fisheries (2005), *Marine Protected Areas: Policy and Implementation Plan*, Wellington, page 23.

3.7   The South-East Forum gathered feedback before preparing their consultation approach. This was part of its efforts to create an inclusive process. The public was given the opportunity to provide their views through a consultation process. DOC supported the South-East Forum through this submission process. Submissions were received online and on paper, allowing a wide range of people to submit their views.

3.8   We heard from a Rūnanga representative that they were engaged as Treaty partners. The first meeting of the South-East Forum was held at the Ōtākou Marae in Dunedin. The Forum members we spoke with felt that this was significant and it helped to reinforce the important role tāngata whenua play in these types of processes.

3.9   In our view, having members that broadly represented the stakeholders, collecting views from the public, and ensuring that tāngata whenua were represented and involved demonstrated how the expectations of the MPA policy for inclusiveness were met for the South-East Forum.

Te Korowai met its community's expectations for inclusiveness

3.10   Te Korowai involved a broad range of stakeholders and interested parties. Building relationships and having a shared vision among participants were prioritised during its early stages. In our view, these efforts helped to create an inclusive environment that supported compromise among members.

3.11   Te Korowai involved the range of stakeholders that the community felt needed to be involved. The Rūnanga wanted it to be truly representative of the local community. We were told that they wanted local solutions to the local problems facing the environment. The Rūnanga was the driving force of Te Korowai.

3.12   Members also included representatives from Forest and Bird; the recreational fishing, commercial fishing, and tourism sectors; and a local government staff member who represented the local community. Some parties were not involved initially but became more closely involved over time, such as the University of Canterbury. People we spoke with considered representation to be generally appropriate and told us that they appreciated being able to contribute.

Building relationships

3.13   From the beginning of the process, Te Korowai put a strong emphasis on building relationships. These relationships helped to keep the process going during the long period that led to passing the Kaikōura (Te Tai ō Marokura) Marine Management Act 2014. Having established relationships, where the views of all

involved were respected and included, also helped to ensure that the process remained inclusive.

3.14　One of the ways relationships were established and maintained was by holding the meetings on the Takahanga Marae in Kaikōura. Ngāti Kuri of Ngāi Tahu provided meals at these meetings as their contribution to the project. Members of Te Korowai told us they built relationships over these shared meals because differences in opinion seemed less significant when people were sharing a meal together.

3.15　A member of Te Korowai told us that:

> … *it is hard to stay angry at each other over a kai. After a while, we would still disagree, but we liked each other* [as people] *and I think that … was genuine.* [Achieving that atmosphere] *took leadership and the Rūnanga provided that by deliberately taking the welcoming approach.*

3.16　We were also told that "it probably took three years for all of us to stop talking past each other. Once we built that trust, we started to make progress."

3.17　Because Te Korowai was made up of locals, relationships were easier to strengthen and maintain. We were told that people were less likely to be unreasonable during meetings when they knew they might see each other at the supermarket. In our view, this relationship building was an important reason for keeping the group together through the process.

Te Korowai's shared vision

3.18　The shared vision of Te Korowai – to establish a more sustainable environment for the community – was clear from the beginning. This shared vision was understood and agreed by all involved, and was expressed in the shared vision that Te Korowai prepared early in its process. We were told that it was easy for members to agree to this shared vision because they all wanted a more sustainable marine environment for Kaikōura.

3.19　The shared vision also acted as a "circuit breaker" when people disagreed. Members could always go back to their intent and purpose and generally people could work out disagreements. We were told that when discussions got heated the facilitator could point to their shared vision, which was displayed during meetings, to keep members focused.

3.20　In our view, having this shared vision and purpose created a strong foundation for Te Korowai to work from. It also facilitated a process that participants thought genuinely considered the views and values associated with the Kaikōura marine environment.

Clear roles and responsibilities support inclusiveness

3.21 There were clear protocols for how Te Korowai was to operate. In our view, these models helped to make the process inclusive.

3.22 Te Korowai used an "egg model" for working out roles and responsibilities (see Figure 3). Local groups directly involved with the coastal marine area were the yolk of the egg. Agency and authority members of Te Korowai responsible for managing aspects of the coastal marine area played a support role, and they were the white of the egg.

3.23 Despite the South-East Forum's terms of reference and internal protocol to guide it, there was uncertainty and debate about the roles and responsibilities of the members, the chairperson, and officials. This uncertainty contributed to tension and frustrations, further undermining collaboration between members.

3.24 The South-East Forum members were also unclear about their own role in the process. Some felt they were there because of their experience and because they were able to make decisions. Others saw themselves as delegates working on behalf of the sector they represented. This lack of clarity about roles contributed to frustrations, delays, and a lack of cohesion.

3.25 There was also some ambiguity understanding the roles of DOC and MPI, including at the governance level. We were told by a member of the South-East Forum governance group that governance meetings were often taken up by debate about roles and responsibilities rather than providing direction on decision-making. We saw examples of members getting conflicting advice from DOC and MPI.

3.26 At times, focusing on roles and responsibilities and understanding them, alongside debating the South-East Forum's purpose, made the process inefficient. In particular, it diverted time and resources away from working towards an outcome that could be supported by all.

3.27 In contrast, the egg model used by Te Korowai helped members to clearly determine roles and responsibilities and allowed the group to consider the views and interests of all involved (see Figure 3).

Figure 3
Egg model for Te Korowai

The egg model consists of an outer circle (the white) and an inner circle (the yolk). The outer circle consists of members playing a support role. The inner circle consists of members who are directly involved in the process.

Source: Adapted from Te Korowai o Te Tai ō Marokura, Kaikōura Coastal Marine Guardians (2012), *Kaikōura Marine Strategy 2012: Sustaining our sea*, page 14.

3.28 All Te Korowai members we spoke with understood the egg model. In our view, this was one of the main strengths of the process, because all those involved understood:

- each other's roles;
- how to approach disagreements; and
- what was expected of them and others.

Quality of information available for the different processes

<div style="text-align: right">4</div>

4.1 MPI and DOC were expected to provide the best available scientific, environmental, and social information to support the South-East Forum and Te Korowai in a timely way for efficient decision-making.

4.2 In this Part, we discuss:

- how DOC and MPI provided the best available information;
- how public submissions informed both processes; and
- how some information was delayed and caused frustration.

Providing the best available information

4.3 DOC and MPI made efforts to provide the best available information to Te Korowai and the South-East Forum. This information was about the biodiversity of the region, including fish species, marine habitats, and marine mammals. DOC and MPI also provided information about commercial fishing in the areas being considered for a marine reserve. Generally, those we spoke with felt that the best information at the time was made available to them.

4.4 DOC provided the South-East Forum and Te Korowai with scientific and environmental information about the marine environment. This included scientific information about the marine environment's biodiversity. This information was provided in a timely way to South-East Forum members through SeaSketch, an electronic tool that is used in marine spatial planning to find information about the natural history of an area, as well as information on resource consents, fishing, and administrative boundaries. For Te Korowai, the information was provided in paper format and in presentations.

4.5 MPI provided Te Korowai and the South-East Forum with information about fishing practices in the region. This information was about commercial catch, existing fishing tools, and customary fishing information, such as whether any mātaitai or taiāpure were in place. Members from both groups were concerned at the time it took for some of this information to be provided.

4.6 SeaSketch made information about the country's south-east coast's marine environment available to the South-East Forum.

4.7 Most of the people we spoke with considered SeaSketch to be a useful tool. Some members had difficulties accessing the information in SeaSketch, but this was mainly because of unfamiliarity with using computers rather than a problem with the tool. Support and training was made available to members. In our view, DOC could have spent more time on training members so they could more effectively access the information available through SeaSketch.

4.8   For the South-East Forum members, the existing information did not cover everything that they wanted to know. Although some members of the South-East Forum accepted that decisions needed to be made using the best available information, the absence of certain information (such as the extent of recreational fishing in a particular area) caused some members to question the South-East Forum's ability to make informed decisions. It was made clear to the members that they were not able to commission new research if they had outstanding concerns.

4.9   In our view, it is neither practical nor possible to provide information about every aspect of the marine environment for a marine protection forum to consider. However, DOC and MPI should ensure that future Marine Protection Planning Forums and working groups have as much information as possible on the marine environment being considered for marine protection. This might involve commissioning research ahead of time to ensure that there is enough information.

Public submissions informed both processes

4.10   Public submissions were sought through a formal consultation process for both Te Korowai and the South-East Forum. However, for the South-East Forum, there were delays in analysing this information. This created frustration for some members and left others feeling that they were not able to make informed decisions.

4.11   The South-East Forum and Te Korowai carried out formal consultation processes to collect information about social values. The public was asked to comment on the potential proposed sites for the marine protected areas. In our view, the processes were carried out in a way that made it easy for people to submit their views, creating a valuable source of information.

4.12   However, for the South-East Forum, there was a lack of clarity in the contracts of those who provided the analysis, which led to issues with the quality of analysis. This also led to delays in members being provided with social values information in a usable format, contributing to the frustration from some members.

4.13   Scientific information that was provided by the public during the consultation process was analysed by a separate contractor. This was done well, and the South-East Forum members appreciated the information provided from this analysis. This also allowed for scientific information to be presented to the South-East Forum in a way that was accessible to those without technical knowledge.

Delays in some information provided by the Ministry for Primary Industries caused frustration

4.14   There were delays in MPI providing commercial fishing information to Te Korowai and the South-East Forum. Members wanted information about types of fish and methods used to catch fish in particular areas, the number of fish caught, and the value of that catch. This was so they could consider this information alongside the scientific information on biodiversity, look at the relevant significance of a particular spot, and balance proposed marine protected areas with the likely effects it would have on existing users of the marine environment. The delay in receiving the information was a significant concern to the South-East Forum members because they were working under a tight time frame.

4.15   MPI told us that at least some of the delays were because of the constraints on releasing fishing catch and effort data, which it gathers from commercial fishers. MPI needed to obtain permission from commercial sector organisations before releasing this data to Te Korowai and the South-East Forum. MPI acknowledges that members in both Te Korowai and the South-East Forum expressed frustration with the time it took to provide fishing catch and effort data. MPI also accepts that it is obligated to provide information in a timely manner.

4.16   In future processes, members should be able to rely on information that supports the delivery of its objectives being provided in a timely way.

Recommendation 2

We recommend that the Department of Conservation and the Ministry for Primary Industries work together ahead of time to collect and collate all available information on an area that is being considered for marine protection or management to ensure that it is available to members of Marine Protection Planning Forums or working groups in a timely way.

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5

Transparency of the different processes

5.1   Transparency is an important part of the process for establishing a marine protected area because it helps users of the marine environment to understand and anticipate changes. It also allows opportunities for the public to provide input into those changes.

5.2   In this Part, we discuss:

- how information and decisions were shared to support transparency; and
- how transparency could be improved.

Information and decisions were shared, and the processes were mostly transparent

5.3   Te Korowai and the South-East Forum members recognised the importance of transparency. Everyone we spoke to acknowledged that being open and honest and sharing information with the public was important.

5.4   Marine Protected Area Planning Principle Four states:

> … MPA establishment will be undertaken in a transparent, participatory and timely manner. Support for marine protected areas is likely to be increased where affected parties are adequately informed and have confidence in the integrity of the decision-making process.[11]

5.5   It also states that "these processes will be undertaken in a transparent manner that informs and allows for participation and input from the public". It requires DOC and MPI to document any statutory consultation processes in a way that helps transparency for stakeholders.

5.6   To be transparent about what they were planning, Te Korowai and the South-East Forum planned a range of activities to communicate what was happening, what progress had been made, and what was planned to happen next. For example, both groups held regular public meetings, which allowed them to share what was coming up or the status of initiatives. There were also opportunities for the public to provide input into the processes. Public information was made available online, such as through social media platforms and online newsletters. We saw examples of community members being encouraged to share their views, which supported a good level of transparency.

5.7   Te Korowai had regular times during their monthly meetings for members of the public to provide their views. They also used Facebook and newsletters to share information.

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11   Department of Conservation and Ministry of Fisheries (2005), *Marine Protected Areas: Policy and Implementation Plan*, Wellington, page 18.

5.8   The South-East Forum had individual members share information with their respective stakeholders. Members actively provided information to sector groups and encouraged the public to participate with the formal consultation process that considered the potential sites for marine protection.

5.9   In our view, MPI and DOC did an effective job supporting the South-East Forum and Te Korowai to share information and decisions with the public. For example, DOC supported the South-East Forum by sharing information and decisions through a communications expert, (who was initially a DOC staff member and was later contracted by the South-East Forum). The communications expert's role was to liaise with the media about the South-East Forum, help with publicity, and build community awareness.

How transparency can be improved

5.10   Some South-East Forum members were not always clear about why they had been selected to be on the Forum. Some members believed that the selection process was a negotiation between DOC and MPI about the adequate representation of views rather than using the selection criteria. We saw evidence of the selection criteria but it was not clear that it was applied to all members.

5.11   Agencies should ensure that all participants are clear on why they were or were not selected. This would contribute to a transparent process and to community members supporting a process.

5.12   It took more than a year after the South-East Forum's completion for the Government to announce that it will progress Network 1. When we spoke to members of the South-East Forum before this announcement, they told us that they were not aware of how the recommendations were being progressed. This highlighted to us the importance of maintaining communication with stakeholders on progress to support a sense of ongoing ownership.

The South-East Marine Protection Forum's network recommendations

Figure 4

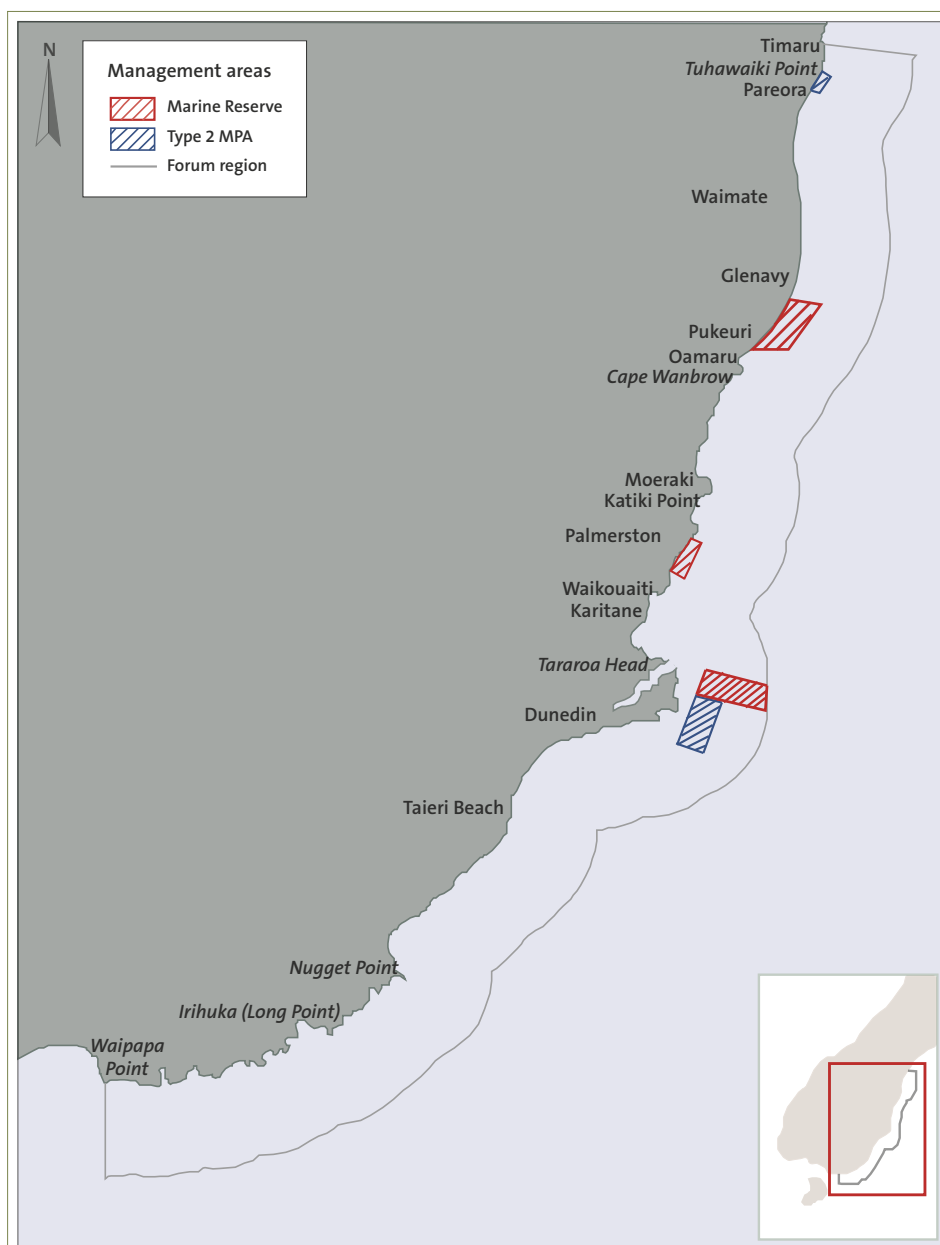**Network 1 in the South-East Marine Protection Forum's recommendations**

Network 1 covers 14.2% (1267 km²) of the Forum region and includes six marine reserves and five Type 2 marine protected areas. Network 1 was supported by the South-East Forum's environment, tourism, community, and science representatives, as well as one of the two recreational fishing representatives.
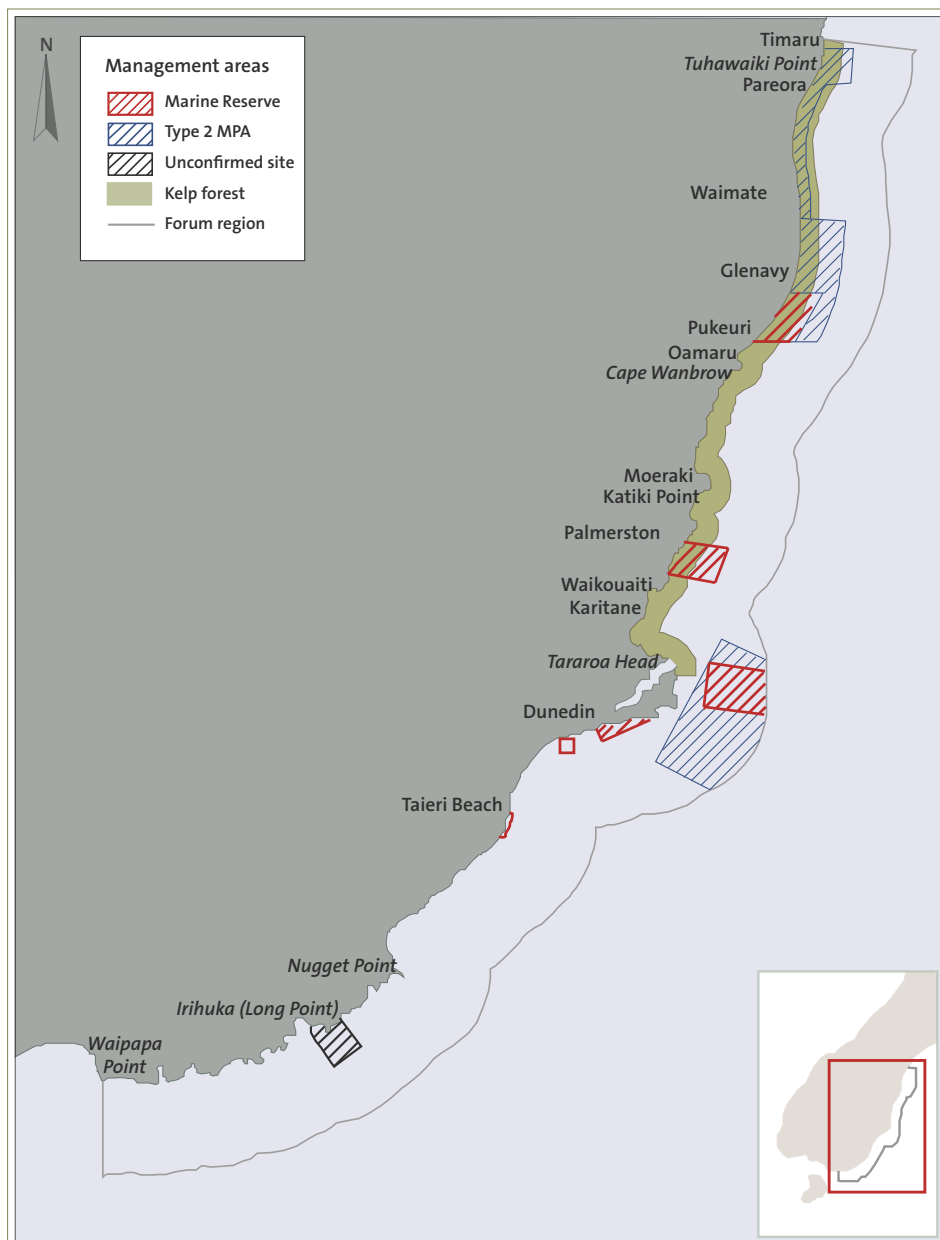
Source: Adapted from South-East Marine Protection Forum (2018), *Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected, Areas Policy on the South Island's south-east coast of New Zealand*, Wellington, page 22.

Figure 5
Network 2 in the South-East Marine Protection Forum's recommendations

Network 2 covers 4.1% (366 km²) of the Forum region and includes three marine reserves and two Type 2 marine protected areas. Network 2 was supported by the commercial fishing representatives and one of the two recreational fishing representatives.

Source: Adapted from South-East Marine Protection Forum (2018), *Recommendations to the Minister of Conservation and the Minister of Fisheries: Recommendations towards implementation of the Marine Protected Areas Policy on the South Island's south-east coast of New Zealand*, Wellington, page 22.

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