



West Coast South Island: Proposed Marine Protected Areas (using fisheries regulations)

Regulatory Impact Statement

ISBN No: 978-0-908334-86-5 (online)

July 2015

Disclaimer

While every effort has been made to ensure the information in this publication is accurate, the Ministry for Primary Industries does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.

Requests for further copies should be directed to:

Publications Logistics Officer
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

Email: brand@mpi.govt.nz
Telephone: 0800 00 83 33
Facsimile: 04-894 0300

This publication is also available on the Ministry for Primary Industries website at <http://www.mpi.govt.nz/news-and-resources/publications/>

© Crown Copyright - Ministry for Primary Industries

1	Regulatory Impact Statement	1
	Agency Disclosure Statement	1
2	Executive summary	2
3	Status quo and problem definition	2
3.1	Existing international and domestic policy commitments	2
3.2	The West Coast Marine Protection Forum	3
3.3	Previous Ministerial decisions	3
3.4	Proposed Type 2 MPAs	3
3.5	Consultation on the Ministers' proposals	4
4	Summary	5
5	Objectives	5
6	Options and impact analysis	5
7	Consultation	9
8	Conclusions and recommendations	9
9	Implementation plan	10
10	Monitoring, evaluation and review	10

1 Regulatory Impact Statement

West Coast South Island: Proposed Marine Protected Areas (using fisheries regulations).

AGENCY DISCLOSURE STATEMENT

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI).

It provides an analysis of options to help meet international and domestic policy commitments to protect marine biodiversity. Those commitments include a planned national marine protected area (MPA) network. This RIS considers proposals for three new MPAs for the West Coast of the South Island (WCSI) which would form part of that network. The MPAs would be established using regulations under the Fisheries Act 1996 (the Act).

The options are constrained by decisions of the then Ministers of Conservation and Fisheries and Aquaculture in 2011. Guided by recommendations of the West Coast Marine Protection Forum (the Forum), then Ministers proposed a package of MPAs, including the current proposed MPAs.

The analysis assumes that the MPA network will continue to be developed around the rest of New Zealand.

Scott Gallacher
Deputy Director-General
Regulation and Assurance

4 December 2014

2 Executive summary

Fisheries regulations are proposed that would establish three new MPAs by prohibiting the use of mobile, bottom-impacting commercial fishing methods (Danish seining, bottom trawling and dredging). The MPAs would help to meet New Zealand's commitments to protecting biodiversity by contributing to an MPA network.

The proposals are part of a package that arose out of the work of the Forum which was established under the MPA Policy to develop recommendations to Ministers. That package included five new marine reserves. The proposals are not expected to have significant adverse effects on existing users.

MPI recommends the fisheries regulations be made under s 297 of the Act to establish the MPAs. There is evidence of the potential for mobile, bottom-impacting commercial fishing methods to have adverse effects on the aquatic environment and biodiversity. MPI considers the proposed prohibitions on Danish seining, bottom trawling and dredging would protect the areas from such potential adverse effects and maintain biodiversity in the three areas. This would be consistent with the Act.

3 Status quo and problem definition

3.1 EXISTING INTERNATIONAL AND DOMESTIC POLICY COMMITMENTS

Under the *United Nations Convention on Biodiversity* (the Convention),¹ New Zealand is committed to protecting biodiversity. The *Marine Protected Areas Policy and Implementation Plan* (the MPA Policy)² is designed to help meet those commitments. The MPA Policy objective is to:

Protect marine biodiversity by establishing a network of MPAs that is comprehensive and representative of New Zealand's marine habitats and ecosystems.

An MPA is defined in the MPA Policy as:

An area of the marine environment especially dedicated to, or achieving through adequate protection, the maintenance and/or recovery of biological diversity at the habitat and ecosystem level in a healthy functioning state.

The MPA Policy prescribes an integrated approach via regionally-based marine protection planning forums (MPPFs). MPPFs are tasked with developing recommendations for Ministers for regional marine protection. The MPA Policy sets guidelines for MPPFs, including network design and planning principles, which aim to ensure the MPA network gives effect to New Zealand's international and domestic commitments to protect marine biodiversity. MPPFs undertake community consultation to identify sites and tools which are consistent with those principles.

For MPA planning purposes, the nearshore marine environment (within 12 nautical miles of the coast) has been divided into 14 biogeographic regions. Planning is being undertaken in stages.

¹ New Zealand ratified the Convention in 1993.

² Department of Conservation and Ministry of Fisheries, December 2005.

3.2 THE WEST COAST MARINE PROTECTION FORUM

The Forum was the MPPF for the WCSI Biogeographic Region; the first region to have an MPPF established. The Forum included representatives of tangata whenua, recreational and commercial fishing interests, environmental interests, the West Coast Regional Council and the local community.

The Forum began by considering the whole WCSI Biogeographic Region. The Forum undertook extensive consultation to narrow down the options presented to Ministers. This consultation was focused in particular on the WCSI community and other stakeholders with an interest in the WCSI Biogeographic Region.

The then Minister of Conservation opened five new marine reserves in September 2014. The marine reserves were among the options recommended by the Forum. There are currently no other MPAs in the WCSI Biogeographic Region.³

3.3 PREVIOUS MINISTERIAL DECISIONS

The Forum recommended a range of protection options to the then Ministers of Conservation (Hon Kate Wilkinson) and Fisheries and Aquaculture (Hon Phil Heatley).

Based on these recommendations, in 2011, the then Ministers proposed three Type 2 MPAs (MPAs to be established using regulations under the Act) as part of a package of MPAs for the WCSI.

The Ministers' decisions were consistent with the recommendations of the Forum, except for some changes to the proposed Gorge MPA. These changes were done in consultation with commercial fishing interests and were made to simplify the MPA boundary.

The package of proposed MPAs is described below.

3.4 PROPOSED TYPE 2 MPAS

To establish the Type 2 MPAs, regulations would prohibit mobile, bottom-impacting commercial fishing methods (bottom trawling, Danish seining and dredging) in three areas. The three areas are:

- Two coastal areas (totalling 326 ha or 3.26 sq km), adjoining and completely enclosed by the Punakaiki Marine Reserve, located north and south of Dolomite Point and *in the central part of the WCSI Biogeographic Region*.
 - The northern area extends up to 700 m (0.38 nautical miles (nm)) offshore from mean high water springs (MHWS) and alongshore 1.7 km (0.92 nm). It includes the estuary in the lower reaches of the Porarari River (Northern Punakaiki).
 - The southern area extends up to 800 m (0.43 nm) offshore from MHWS and alongshore 2.9 km (1.56 nm). It includes the estuary in the lower reaches of the Punakaiki River (Southern Punakaiki).

³ The WCSI Biogeographic Region extends from Kahurangi Point in the north to Awarua Point in the south and offshore to the 12 nm limit of the territorial sea.

- An area totalling 9,231 ha (92.31 sq km), extending from the vicinity of the Gorge River southwards to Awarua Point and *located at the southern end of the WCSI Biogeographic Region*. The area adjoins and completely encloses the Hautai Marine Reserve. At its southern point, it extends approximately 4 km (2.15 nm) offshore from MHWS and its northernmost point extends approximately 9.8 km (5.29 nm) offshore (Gorge).

There is little, if any, Danish seining, bottom trawling or dredging undertaken in the three areas. Danish seining is already prohibited within 3 nm of the coast of the South Island. However, the MPA Policy requires the long-term maintenance of the biodiversity of an MPA to be ensured. The maintenance of biodiversity in the proposed MPAs could be threatened if these fishing methods were used there.

Benthic (sea floor) habitats are important for a number of reasons. They provide shelter and refuge for juvenile fish. Fauna associated with benthic habitats can also be the prey of demersal (bottom-dwelling) fish species. Disturbances resulting from the use of mobile, bottom-impacting fishing methods may have both physical and biological impacts on benthic habitats, their fauna and biological communities.

The five recently established marine reserves also formed part of the package of MPAs proposed by then Ministers in 2011. These include the Hautai and Punakaiki Marine Reserves. Together with the marine reserves, the proposed Type 2 MPAs will help to protect a representative range of WCSI Biogeographic Region habitats.

3.5 CONSULTATION ON THE MINISTERS' PROPOSALS

MPI advertised the proposals to establish Type 2 MPAs on its website in mid-2012. MPI received twelve submissions in response.

Environmental organisations and individuals made seven submissions. They are generally supportive of MPAs at Gorge and Punakaiki, but request some increase to the level and/or area of protection. Some submitters advocate for the Punakaiki areas to be marine reserves instead of Type 2 MPAs. This would not minimise adverse effects on existing users as all fishing activities would be prohibited in a marine reserve.

No submitters raise concerns about the impact of the proposed Type 2 MPAs on their activities. Non-regulatory options such as voluntary measures were not considered feasible as they would not be secure in the long term and are not enforceable.

Three commercial fishing organisations submit that the proposed regulations are not consistent with the provisions of the Act and/or that the MPA Policy should be reviewed. Of the two remaining submitters, Te Rūnanga o Ngāi Tahu is in support and Maritime New Zealand does not express support or opposition.

No changes to the proposals were made in response to submissions. MPI considered that the changes proposed in submissions would have been less consistent with the Act and the MPA Policy. MPI considers that the proposals as they stand are consistent with the provisions and purpose of the Act. There is also precedent for using regulations to create marine protected areas.

4 Summary

- The Forum has completed its work under the MPA policy and has made recommendations to Ministers.
- In 2011, Ministers made proposals that were largely consistent with those recommendations. Further consultation on those proposals was undertaken by MPI in 2012 and has not resulted in substantive alternatives.
- Parts of the Forum’s proposals have been implemented through the establishment of five marine reserves in September 2014.
- Final decisions on the MPA proposals are now required.

5 Objectives

The overall objective is to help to meet New Zealand’s international and domestic policy commitments to protect biodiversity (including the Aichi targets⁴ under the Convention). To achieve this, options should be consistent with the planning and network design principles of the MPA Policy. Therefore, the criteria for analysing options are:

1. Help meet international and domestic policy commitments;
2. Be representative of one or more habitat or ecosystem,⁵ help protect the full range of natural habitats and ecosystems,⁶ and provide for replicates of habitat types to be protected;⁷
3. Meet the protection standard;⁸
4. Minimise effects on existing users of the marine environment;⁹ and
5. Be consistent and secure in the long term¹⁰ and enforceable.¹¹

To meet the MPA Policy protection standard, “*a management tool must enable the maintenance and recovery of the site’s biological diversity at the habitat and ecosystem level to a healthy functioning state.*”¹²

6 Options and impact analysis

As outlined in the status quo, the process to date has led to a proposal for three type 2 MPAs but no other substantive options. The following analysis compares this proposal with the status quo.

Assessment of the options against the objectives is summarised in the table below. The options were:

⁴ Specifically, by 2020, at least 10% of coastal and marine areas are conserved through MPAs “and other effective area-based conservation measures” (Aichi Target 11).

⁵ MPA Policy, Planning Principle 1

⁶ MPA Policy, Network Design Principle 1

⁷ MPA Policy, Network Design Principle 3 – The network should be viable. The presence of replicate MPAs is one aspect of this Principle.

⁸ MPA Policy, Planning Principle 2

⁹ MPA Policy, Planning Principle 5

¹⁰ MPA Policy, Planning Principle 6

¹¹ MPA Planning Principle 9

¹² MPA Policy, Planning Principle 2

Option one – status quo: Type 2 MPAs would not be established. Bottom trawling and dredging in all three areas and Danish seining in part of the proposed Type 2 MPA at Gorge would be allowed.

Option two – MPI’s preferred option: Bottom trawling, Danish seining and dredging would be prohibited in the three areas.¹³ The three Type 2 MPAs would be established, protecting 0.73% of the WCSI Biogeographic Region.

Option	1. International and domestic commitments	2. Representative and Replicated	3. Protection Standard	4. Minimise adverse effects	5. Consistent and secure, and enforceable
Option 1: Status quo	✘	N/A	✘	✔	N/A
Option 2: fisheries regulations	✔	✔	✔	✔	✔

Option 1

Current management of the three areas at Punakaiki and Gorge does not meet the MPA Policy protection standard. Consequently, the three areas do not contribute to the MPA network. To address this, alternatives (in other areas, for example) may need to be considered that might have a greater cost to existing users and be less effective in enabling utilisation.

Costs

The buffer offered by a Type 2 MPA at Gorge would not be provided to the Hautai Marine Reserve. There would be fewer replicates of some habitat types¹⁴ and no examples of deepwater habitats would be protected in the WCSI Biogeographic Region. The maintenance of biodiversity in the three areas would not be ensured. Though the risk would be small, there would be potential for adverse effects from fishing.

The Ministers’ proposed package of marine reserves and Type 2 MPAs would protect 2.08% of the WCSI Biogeographic Region and add 0.23% of New Zealand’s Territorial Sea to the MPA network. Without the Type 2 MPAs, these percentages would reduce to 1.35% and 0.15%, respectively.

If the proposed Type 2 MPAs are not established, it could undermine both the value of the work of the WCSI Forum and community support for other MPPF processes. This could impact the implementation of the MPA Policy in other biogeographic regions.

Benefits

¹³ The WCSI Forum did not identify any recreational methods that should be prohibited. Dredging is a recreational method, but is unlikely to be used by recreational fishers in the areas of the three proposed Type 2 MPAs.

¹⁴ See the *Marine Protected Areas Classification, Protection Standard and Implementation Guidelines* (Ministry of Fisheries and Department of Conservation, 2008) which identifies 44 habitat types in the nearshore environment.

There would be no additional compliance costs to MPI (the Department of Conservation (DOC) has responsibility for ensuring compliance within the Marine Reserves). There would be no loss or disruption to commercial fishers. But, this is not expected to be a significant benefit to fishers compared with Option 2 as the methods proposed to be prohibited are seldom, if ever, used in the areas and only a very small proportion of total catch might be displaced.

Option 2

The proposed prohibitions on Danish seining, bottom trawling and dredging aim to avoid any adverse effects of fishing on the aquatic environment in the three areas proposed as Type 2 MPAs. This would be consistent with the Act, help to protect and maintain biodiversity in the areas, meet the MPA Policy protection standard and enable the sites to contribute to the national MPA network.

The MPA Policy calls for each habitat type to be protected in a marine reserve and in at least one other MPA. At Gorge, the proposed Type 2 MPA would protect ten habitat types, including deepwater habitats not protected elsewhere in the WCSI Biogeographic Region. At Punakaiki, the two proposed Type 2 MPAs would each protect five habitat types, including estuarine habitat which will not be represented in the Punakaiki Marine Reserve. The habitats that would be protected in the three proposed Type 2 MPAs also include replicates of all but one of those protected in the adjacent marine reserves. Therefore, in combination with the marine reserves, the Type 2 MPAs provide comprehensive representation of marine habitats along the WCSI.

Costs

The Forum identified areas and tools that minimise the impact on existing users of the marine environment. Ministers also took impacts on existing users into account and consulted with commercial fishing representatives in developing their proposal for Gorge. Consequently, the areas proposed as Type 2 MPAs are not heavily utilised by commercial fishers using the three methods, and the impact of the proposed regulations on existing users is expected to be minor. There is no Danish seining or dredging in any of the areas and bottom trawling only occurs at Gorge.

Based on average catches by bottom trawling at Gorge over the 2007/08 to 2011/12 fishing years, the economic impact of the closure is estimated at \$836,410 (including quota value loss of \$109,747). This includes income loss by the harvesting sector, processing sector, industries that supply the harvesting and processing sector (indirect income), and losses to the broader economy through flow-on effects (induced income).

However, the economic impact model assumes that there will be a permanent loss of catch as a result of fishing restrictions in an area. MPI considers the actual losses from a Type 2 MPA at Gorge would be significantly mitigated by the ability of fishers to catch fish elsewhere and/or use other methods. Also, most target species are mobile and will move in and out of the proposed Type 2 MPAs, leaving them accessible to fishers in other areas on occasion.

MPI notes the volumes involved (18 tonnes annual total) represent a small percentage¹⁵ of mixed bottom trawl catches from the wider fisheries management area (FMA 7) within which the proposed Type 2 MPAs are located. The biggest impact by fish stock would be on tarakihi (TAR7), for which MPI estimates 0.5% of the total quota management area landings could be displaced.

Therefore, MPI considers that the proposals would not adversely affect finfish fisheries in the vicinity. MPI does not know of any adverse impacts on other existing users of the areas.

¹⁵ On average, of the top 12 fish stocks taken at Gorge, the amount taken was between less than 0.1 and 0.5% of total catches caught in the mixed bottom trawl fishery within FMA 7 over 2007/08 to 2011/12. The 12 stocks are tarakihi (TAR7), stargazer (STA7), barracouta (BAR7), red gurnard (GUR7), red cod (RCO7), ling (LIN7), blue warehou (WAR7), spiny dogfish (SPD7), rig (SPO7), flatfish (FLA7), rough skate (RSK7) and smooth skate (SSK7).

There will be some additional compliance work for MPI (see implementation) but compliance activities will be undertaken within existing resources.

Benefits

The proposed regulations would provide for the protection of marine biodiversity by avoiding future potential adverse effects of fishing. Under the Act, “effects” of fishing include future potential effects of low probability which have a high potential impact (s 2).

Mobile, bottom-impacting fishing methods can have a wide variety of adverse impacts on the benthic environment and associated biodiversity. Impacts on benthic habitats and communities tend to be greatest when such methods are first used in an area. Mobile bottom-impacting methods have rarely, if ever, been used in the areas proposed as Type 2 MPAs at Punakaiki, and only a small amount of bottom trawling occurs at Gorge. So, the areas are likely to be more susceptible to the impacts of such methods (compared to areas where these methods have been used more regularly). Therefore, though MPI does not consider the use of these methods in the proposed Type 2 MPAs a high probability, any use of these methods in the areas would undermine their effectiveness as MPAs. The potential adverse effects have a high potential impact.

Prohibiting these methods would ensure that the biodiversity value of the proposed Type 2 MPAs is maintained, consistent with the MPA Policy protection standard.

Regulatory prohibitions are more secure and enforceable than any voluntary measures that might be used to protect the areas.

7 Consultation

The proposal for the MPAs arose from the substantial consultation undertaken by the Forum. As noted above in the status quo, the Forum itself represented a wide range of interests and it consulted widely.

The proposal, as approved by Ministers, was subject to further consultation. An outline of the submissions received and MPI’s response to these is provided in the status quo.

8 Conclusions and recommendations

MPI considers that the proposed Type 2 MPAs would contribute to meeting New Zealand’s commitment to protecting biodiversity under the Convention.

The areas include replicates of representative habitats, the regulations would mean management of the areas met the protection standard, and regulations are consistent, secure and enforceable. Establishing the Type 2 MPAs would not be at significant cost to existing users.

There is evidence of the potential for mobile, bottom-impacting commercial fishing methods to have an adverse effect on the aquatic environment and biodiversity. MPI considers that the proposed regulations would protect the areas from those potential adverse effects. The regulations would also help to achieve the purpose of the Act (enabling utilisation while ensuring sustainability (s 8)).

MPI recommends that regulations be made under s 297 of the Act to establish Type 2 MPAs at Gorge and Punakaiki.

9 Implementation plan

The five new marine reserves have already been established. But, there will be opportunities to coordinate with DOC in distributing information about all the WCSI MPAs.

MPI would deliver information on the new regulations to affected commercial fishers by a mail out of a fact sheet and include information on MPI's fisheries website. The regulations would not be particularly complicated to understand and MPI's view is there would be a high level of voluntary compliance.

Surveillance of the two Punakaiki areas would be relatively easy as they are accessible by road. Enforcement of the new regulations would be incorporated into normal compliance operations in the area.

The proposed Gorge Type 2 MPA is in an isolated area which could be more challenging and costly to police. However, MPI notes commercial vessels over 28 m length are required to carry automatic location communicators which can be used to help monitor compliance in the Gorge area.

DOC is responsible for compliance in the marine reserves. MPI and DOC already cooperate on compliance in other areas (eg Fiordland). MPI Compliance would actively seek to work cooperatively with DOC to patrol both the proposed Punakaiki MPA and the Gorge MPA. By working in cooperation it is believed the cost of patrolling both Gorge and Punakaiki could be kept manageable.

Similarly, there are likely to be opportunities for MPI to minimise other costs associated with signage in the three areas by working with DOC.

10 Monitoring, evaluation and review

Under the MPA Policy, a monitoring programme is planned to assess the performance of the MPA network. This will include the effectiveness of individual MPAs. Where necessary, the tools used to protect an MPA will be reviewed. DOC and MPI are to lead this work, which is to include an annual review of the results of monitoring and evaluation. Agencies will also seek the assistance of independent science advisers, as required.

Details of the monitoring programme are set out in Network Design 6. The MPA Policy states:

The monitoring programme will assess the performance of the MPA network, with respect to its viability, and the effectiveness of the individual MPAs at achieving their own specific biodiversity objectives. Results from the monitoring programme will be publicly available.

For each MPA the monitoring programme will be based on the:

- a) site biodiversity objectives – based on the attributes of the habitat and ecosystem; and*
- b) performance of the MPA management tools.*

Where monitoring reveals that management tools are not adequately protecting the area, the management tools for that MPA will need to be reviewed.