

Friday, 25 February 2005

File: C162-14-00/TM

Lean Neoh  
Ministry of Fisheries  
P.O. Box 1020  
Wellington

Tena koe

### **Consultation on the Marine Protected Areas Policy Statement & Implementation Plan**

Thank you for the opportunity to comment on the Draft *Marine Protected Areas Policy Statement and Implementation Plan* ("the MPA policy") dated 8 November 2004. This submission is from Te Ohu Kai Moana Trustee Limited (Te Ohu). Te Ohu has consulted with iwi and Maori Fishing Companies to develop this submission - taking into account the common concerns of iwi/Maori. This submission does not seek to undermine any submission that you may receive from individual iwi or any iwi collectives.

Staff have attended meetings with other industry members and government officials during December 2004 to clarify the intent of the policy. It is clear that this policy aims to be a continuation of the Government's goal of protecting marine biodiversity as detailed in the Biodiversity Strategy. However we consider that the document has incorrectly interpreted the strategy and provide our reasons for this throughout this submission. The main thrust of this submission is that insufficient attention has been placed on the need to address risks to biodiversity as a means of identifying the appropriate level of protection, while taking into account the sustainable utilisation of biodiversity.

In this light, key elements of the policy should include:

- development of an agreed classification system and appropriate management units
- risk assessment
- identification of management objectives
- identification of the most appropriate tools, based on cost effectiveness, efficiency and equity
- monitoring and review (inclusive of the need for contingency plans).

A key concern is the potential erosion that the policy may have on the commercial and non-commercial assets and management options that were promised as a result of the Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 ("the Settlement").

Te Ohu considers that it is important that human impact on biodiversity is managed so that biodiversity is not irreversibly damaged and consistent with Maori resource management, sustainable utilisation of biodiversity should be allowed, with activities being managed so that the biodiversity involved is not subject to unacceptable risk. Measures to restrain activities

should reflect the risks to biodiversity. There should be no additional restraints over and above those needed to ensure the risks to biodiversity are managed to acceptable levels of risk.

This submission is presented in two parts:

- Part I – Key Concerns with the policy scope, context and content and
- Part II - Detailed comments on the consultation document including alternative proposals to implement the Biodiversity Strategy objectives in the correct context.

Naku noa, na

Craig Lawson  
General Manager, Policy

## Executive Summary

---

Te Ohu agrees that where biodiversity needs protection from identifiable threats then action should be taken to provide the necessary protection. However, there are a number of ways to achieve suitable protection that can still allow for some levels of use. We have a number of key concerns about the MPA consultation document including:

1. the MPA policy is occurring out of context (e.g. there is no Oceans Policy). There is a danger that the MPA policy could inadvertently allocate or reallocate rights if it is not developed with the correct strategic scope;
2. the MPA policy does not seem to provide for any satisfactory links to Regional Councils control of land use to mitigate the adverse effects of land use on coastal biodiversity;
3. the process need not import MPA models that seek to manage fisheries as this is already done under the Quota Management System and the Fisheries Act;
4. the process in the document leaps from statement of principles to implementation without an adequate explanation of the process in between. Therefore the consultation document contains no clear explanations of how key analysis will be incorporated or applied consistently – across the country and across agencies.

A properly considered process taking into account all strategic level factors and robust analysis should include:

- an inclusive inventory of what marine protection exists;
- a threat analysis (i.e. what needs to be protected from what) and a risk evaluation (i.e. what priority areas of risk should be addressed first, second, etc, etc.);
- a tool selection analysis including the costs and benefits of using different types of tools (what option would minimise the threat at least cost to all other legitimate operations and uses);
- an overarching national strategy setting out how this type of analysis should be consistently applied at the national and regional level.

Finally, there are a number of areas in the policy that refer to experts providing input on a whole range of matters that are not just technical issues. We are concerned that the process to establish the MPA policy, and its proposed implementation do not provide for Maori input and participation as required by the Fisheries Settlement<sup>1</sup>. We reject any attempt to reduce Maori input and participation in this way. The entire process of developing the Marine Protected Areas policy must be open for participation from conception to implementation as required by the Treaty and subsequent settlements.

---

<sup>1</sup> See the Preamble to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

**1. The MPA policy is occurring out of context (e.g. there is no Oceans Policy). There is a danger that the MPA policy could inadvertently allocate or reallocate rights if it is not developed with the correct strategic scope.**

The strategic context in which the policy is being developed is not adequately reflected in the scope and therefore does not adequately address all the relevant issues. We have identified the following key contextual documents that should be given further consideration when developing the policy:

- a) The Convention on Biological Diversity (international driver);
- b) The Biodiversity Strategy and the Treaty of Waitangi (national drivers);
- c) The Oceans Policy (cutting across all marine management);
- d) The Marine Reserves Reform;
- e) The Marine Protected Areas Policy.

We have not commented in any detail on the implications of UNCLOS however we support the comments made by SeaFIC in this regard.

a) The Convention on Biological Diversity

The central international Convention in relation to biodiversity and the origin of the New Zealand Biodiversity Strategy is the Convention on Biological Diversity<sup>2</sup>. We consider that the first article<sup>3</sup> very clearly articulates some of the key concerns that we have with the policy. We note the dual objectives of both conserving and sustainable use of biodiversity together with matters of equity and recognition of rights. In particular, Article 8(j) and 10(c) specifically relate to how indigenous peoples should be treated in relation to natural resource management and use. Protecting natural resources from harm, degradation or destruction, for the benefit of future generations is consistent with the concept of kaitiakitanga. Clearly sustainability of natural resources is central to the continuation of all life.

However, the ultimate aim of Maori resource management is to provide for sustainable use while protecting biodiversity from harm. This is consistent with Article 1 of the Convention on Biological Diversity. The reality is that in New Zealand conservation and sustainable use are often seen as opposing and opposite ends of a continuum, that the objectives are competing or irreconcilable. Te Ohu Kai Moana submits that this is not the case and that the international community have agreed to very clearly set out guidelines on how integrating two or more objectives can be achieved<sup>4</sup>

If biodiversity is in danger from harm or destruction then the threats to that biodiversity must be identified and managed appropriately. Therefore, in these circumstances Te Ohu supports measures that can be put in place to protect marine biodiversity that are consistent with the levels of risk to that marine biodiversity. When doing this Te Ohu considers it must be looked at from an appropriate scale that allows some damage to occur or risks to continue at some sites while overall New Zealand's marine habitats and ecosystems are maintained in a healthy functioning state provided the integrity of each element of biodiversity is maintained.

---

<sup>2</sup> Foreword in The New Zealand Biodiversity Strategy, February 2000, "The New Zealand Biodiversity Strategy fulfils in part, commitments New Zealand made under the Convention of Biological Diversity"

<sup>3</sup> See Appendix 1.

<sup>4</sup> Best Practice Protected Areas Guidelines Series No. 3, 1999.

<http://wcpa.nos.noaa.gov/pubs/publications.html#guidelines> "The fundamental criterion for success is to bring in from the beginning every significant sector that will affect, or be affected by, the MPA"

## b) The New Zealand Biodiversity Strategy

The New Zealand Biodiversity Strategy repeats the need to reconcile dual objectives. The foreword of the Biodiversity Strategy makes the following statement:

*The purpose of the Strategy is to establish a strategic framework for action, to **conserve and sustainably use and manage New Zealand's biological diversity.** (emphasis added)*

The Biodiversity Strategy requires the development of a network of marine protected areas using a range of appropriate mechanisms. The guide for choosing the correct type of protection mechanisms is currently being drafted within the context of the MPA policy. In this policy marine reserves are only one of a number of legislative means by which the overall purpose of protecting biodiversity can be considered.

Te Ohu and iwi have noted with great concern the manner in which political parties are volleying for support with slogans promising 10% to 20% of New Zealand's marine environment as the target for marine reserves. This is very disturbing – it generally demonstrates that political policy makers and their audience are unaware that the same outcomes of protection of biodiversity can be achieved by other legitimate management measures that do not have the same level of exclusion as a marine reserve. It would be opportunistic but bad public policy if officials advanced reserves as the first or best means of achieving protection without informing decision-makers and the public that the same outcomes could be achieved by other means along with the consequent risks and benefits

Unlike the MPA policy the Biodiversity Strategy very clearly identifies the strategic context in which marine management is occurring<sup>5</sup>. In this context the Treaty of Waitangi, subsequent Treaty Settlements and the Treaty partnership are central issues for consideration. While there is mention of the Treaty relationship there is very little acknowledgement in the MPA policy about the need to preserve the integrity of current and future settlements or the obligation on the Crown to provide for Maori input and participation in both conservation and fisheries management of New Zealand's fisheries. It has been drawn to our attention that the MPA policy is proposing the establishment of expert groups to address a number of issues that are not simply technical. We have been advised<sup>6</sup> that inclusion in the process is by invitation. We strongly object to such an exclusive decision-making forum and recommend that any "expert group", while it may be useful for compiling information and providing advice, is not the correctly mandated body to make any decisions of a policy nature. We recommend therefore that after any workshops have been completed (including workshops on protection standards and marine classification systems), that the information is made available for further submission on the substantive underlying policy matters.

## c) The Oceans Policy

The Oceans policy was promoted as the means by which New Zealand would achieve an overarching set of high level principles and guidelines that would steer us in the correct direction to implement management decisions in the marine environment and therefore reduce conflict. It was also intended to coordinate and consolidate marine statutes and their implementation. To date the Oceans Policy has established a vision statement and four goals for achieving the vision<sup>7</sup>.

---

<sup>5</sup> See the illustration on page 13 of the Biodiversity Strategy.

<sup>6</sup> Questions Arising from the meeting on the Marine Protected Areas Policy Statement and Implementation Plan. Friday, 17 December 2004.

<sup>7</sup> See Appendix 2.

Te Ohu notes that the Government has identified as one of its key goals, the need to identify the nature and extent of the Treaty Partnership in relation to the marine environment. We also understand that Ministers are committed to ensuring that both the process to develop an Oceans Policy and the content of the policy are consistent with the provisions of the Treaty. Te Ohu Kai Moana would expect an Oceans Policy to provide for Maori values and rights to be treated consistently across all decisions, both in law, and in practice. The development of the MPA policy, in its current form and ahead of the Oceans Policy, is inappropriate and inconsistent with the commitment made to this process by the Crown.

#### d) The Marine Reserves Bill

The Marine Reserves Bill, which was put on hold along with the Oceans Policy, is now due to be reported back to the Government on 30 April 2005. Te Ohu has, in the past, strongly recommended to Government that the Oceans Policy should be completed ahead of both the MPA policy and the Marine Reserves Bill because this is where the high level principles, goals and objectives (including Treaty Issues) should be addressed.

Once these matters have been resolved, the MPA policy and finally the Marine Reserves Bill could be completed consistent with the high level issues that are resolved in the Oceans Policy. We consider that without further clear overarching policy, there is a risk that marine reserves will continue to be advanced and put in place even though the level of risk to biodiversity is not identified or other protection measures that have lesser impacts on rights holders assessed. This could include Marine Reserves being established over traditional fishing grounds or other important commercial fishing areas. Where this happens the commercial and customary value of the Maori fisheries settlement will be eroded and devalued.

Marine Reserves are uncompromising because they are complete lock-out measures and they are permanent. This means that once they have become established the areas involved can never return to being sustainably fished.

In April 2003 as part of our work on the Marine Reserve Bill submission<sup>8</sup> we undertook some preliminary analysis of the potential economic impact on Maori/Iwi quota holdings that were delivered through the Settlement. We estimated the reduction in the order of \$100 million. However, more importantly the analysis clearly demonstrated that there is considerable scope for controlling the impact of further marine reserve creation on commercial quota values, without compromising the range and level of biodiversity if the costs and benefits are considered when siting any reserves.

#### e) Marine Protected Areas Policy

It is not clear how the MPA policy can proceed in the absence of an Oceans Policy, which would provide goals and principles that apply consistently across different legislation governing the use of coastal and marine space. In this respect, the number of reforms that have proceeded in the absence of an Oceans Policy is of some concern to us (e.g. Marine Reserves, Mātaihai Reserves, closed areas under the Fisheries Act, Resource Management Act, "Recreational Rights" and Aquaculture). These tasks would logically have been completed prior to the introduction of a Marine Reserves Bill and the MPA policy so that better co-ordination across all protection mechanisms could be achieved.

Finally, it is also unclear to us how Treaty Settlements (including the fisheries settlement) will be protected and monitored to ensure that their integrity is maintained.

---

<sup>8</sup> Submission to the Local Government and Environment Select Committee on the Marine Reserves Amendment Bill from Te Ohu Kai Moana Treaty of Waitangi Fisheries Commission. Dated Friday, 28 February 2003.

**2. The MPA policy does not seem to provide for any satisfactory links to Regional Council control of land use to mitigate the adverse effects of land use on coastal biodiversity.**

While there is some discussion in the Policy Statement about Resource Management Act tools including Regional Coastal Plans and the need for them to be consistent with the New Zealand Coastal Policy Statement, both the tools available under the RMA and the agencies concerned (i.e. Regional Councils) are nowhere to be found in the implementation plan or the Annual Operating plan. This is the cause of some concern. We consider that these agencies are likely to provide good ground level information about the impacts of land management practices and the priority mitigation areas as they relate to the near shore area consistent with action b) of Objective 3.3 in the Biodiversity Strategy which states:

*Expand programmes to mitigate the adverse effects of land use on coastal biodiversity, and incorporate marine biodiversity priorities into programmes for sustainable land use, including the Sustainable Land Management Strategy, National Agenda for Sustainable Water Management (NASWM), and related strategies.*

**3. The MPA policy need not import tools that seek to manage fisheries as this is already done under the Quota Management System and the Fisheries Act.**

It is critically important that the MPA policy develops in a manner consistent with the existing underlying management regimes already present in New Zealand. This includes the Fisheries Act property rights based Quota Management System which delivered a Treaty Settlement to Maori supported by the use of further measures under Fisheries Act - in particular those aspects of the Fisheries Act which support the biodiversity protection objective. We refer particularly to the Purpose and Environmental Principles of the Fisheries Act<sup>9</sup>. In the context of sustainable utilisation of fisheries resources the protection of biodiversity is addressed by the Fisheries Act through the environmental principles. Therefore any new MPA models or tools need not seek to manage fisheries as this is already addressed under the Fisheries Act.

Where the development of new tools is proposed, their need should be justified in light of existing tools and their ability to address risks to biodiversity at least cost.

**4. The process in the document leaps from a statement of principles to implementation without an adequate explanation of the process in between. Therefore the consultation document contains no clear explanations of how key analysis will be incorporated or applied consistently.**

A properly considered process should include:

- An inclusive inventory of what marine protection exists;
- A threat analysis (i.e. what needs to be protected from what) and a risk evaluation (i.e. what priority areas of risk should be addressed first, second, etc, etc.)
- A tool selection analysis including the costs and benefits of using different types of tools (what option would minimise the threat at least cost to all other legitimate operations and uses);
- An overarching national strategy setting out how this type of analysis should be consistently applied at the regional level.

We discuss how these matters should have been considered and integrated in Part II of this submission.

---

<sup>9</sup> See Appendix 3.

### **Marine Protected Areas – Policy Statement (page 4)**

The first part of the policy statement is intended to provide details of the Government's commitment to marine biodiversity conservation and thereby outline the scope of the MPA policy. Despite our earlier comments, we consider that in the absence of an overarching Oceans Policy the Government's Biodiversity Strategy provides the only context and direction for the establishment of the Marine Protected Areas policy.

### **Biodiversity Strategy & Marine Protected Area Strategy Objectives (page4-5)**

The document accurately states the desired Biodiversity Strategy outcomes for 2020 within the Coastal and Marine Biodiversity theme but it does not accurately identify the full range of priority areas for the marine thematic area as outlined below. If the full range of priority areas had been considered the narrow focus on developing the MPA network and the 10% target would have been put into perspective. Many of the priority areas (e.g. develop the agreed bioregional classification system, define agency responsibilities, expand programmes to mitigate the adverse effects of land use, etc, etc,) form a component of the proposal anyway but they are not all included and not well integrated. This needs to be addressed.

#### Theme Coastal and Marine Priority Areas

##### Objective 3.1 Improving our knowledge of coastal and marine ecosystems

- Survey, assess, and map habitats and ecosystems important for indigenous biodiversity and develop an agreed bioregional classification system<sup>10</sup>.
- Identify, assess, map and rank the threats to New Zealand's coastal and marine biodiversity.

##### Objective 3.2 Co-ordinate marine management

- Clarify and agree on comprehensive government policy objectives for marine biodiversity management, considering all stakeholder and public interests. Define agency responsibilities, especially for areas outside of the 12 nautical mile limit, and revise these if necessary.

##### Objective 3.3 Sustainable coastal management

- Expand programmes to mitigate the adverse effects of land use on coastal biodiversity, and incorporate marine biodiversity priorities into programmes for sustainable land use, including the Sustainable Land Management Strategy, National Agenda for Sustainable Water Management (NASWM), and related strategies.

##### Objective 3.4 Sustainable marine resource use practices

- Ensure implementation of the purpose and principles of the Fisheries Act 1996, including programmes to sustain or restore harvested species and associated and dependent species to ecologically sustainable levels, and integrate marine biodiversity protection priorities into programmes for sustainable fisheries use, such as fisheries plans, using an ecosystem approach.
- Identify the coastal and marine species and habitats most sensitive to harvesting and other disturbances and put in place measures to avoid, remedy or mitigate adverse effects from commercial, recreational and Maori customary fishing practices.

---

<sup>10</sup> Bioregional classification is based on a combination of biological, geographical and social or management criteria.

#### Objective 3.5 Managing marine biosecurity risks

- Enhance border control to prevent harmful species and diseases establishing and being spread within New Zealand's marine environment (by practices such as discharge of ballast water and the de-fouling of ship hulls).

#### Objective 3.6 Protecting marine habitats and ecosystems

- Develop and implement a strategy for establishing a network of areas that protect marine biodiversity, including marine reserves, world heritage sites, and other coastal and marine management tools such as mataitai and taiapure areas, marine area closures, seasonal closures and area closures to certain fishing methods.
- Achieve a target of protecting 10 percent of New Zealand's marine environment by 2010 in view of establishing a network of representative protected marine areas.
- Review the Marine Reserves Act 1971 to better provide for the protection of marine biodiversity, including extend its jurisdiction to protect marine biodiversity within and beyond the 12 mile limit.

### Key Players (page 5)

The document identifies the Department of Conservation and the Ministry of Fisheries having joint responsibility for developing and implementing the MPA policy. However the Biodiversity Strategy identifies the following key players in relation to each of the objectives above.

Objective	Key Players
3.1	MfE*, CoC*, LINZ, Mfish, NIWA, MSA, RCs, museums, fishing industry, iwi/hapu
3.2	DPMC*, MfE, MMFAT, Mfish, DoC, LAs, LINZ
3.3	MfE*, MAF, DoC, Las, iwi/hapu, community groups
3.4	Mfish*, DoC, RCs, fishing industry, iwi/hapu, NGOs
3.5	Mfish*, MAF, DoC, MfE, Biosecurity Council, fishing and marine industry, iwi/hapu
3.6	DoC*, Mfish*, TPK, RCs, iwi/hapu, fishing industry, NGOs

Even if the narrow focus on protecting marine biodiversity is only aimed at objective 3.6 there are a number of other key players that have not been accurately identified in the consultation document and therefore not included in the operational plan.

### Definition of Marine Protected Area (page 5)

It is not clear where the definition of MPA, provided in the consultation document originates from or what it's rationale is.

*an area of the marine environment especially dedicated to or achieving the protection and maintenance of biological diversity at the marine community, habitat and ecosystem level.*

While we agree with the need to include areas of the marine environment that are achieving protection, despite their purpose, returning to the full range of priority objectives in the Biodiversity strategy and Article 1 of the CBD we consider that the proposed definition does not take into account the need to protect marine biodiversity from identified risks (see objective 3.1)

Taking these additional matters into account for the purposes of agreeing on a definition for Marine Protected Areas we consider that the definition needs to integrate these concepts by including a statement about what biodiversity is being protected from, within the concept of sustainable use and management. For example,

*an area of the marine environment especially dedicated to, or achieving, the protection and maintenance of biological diversity **from identifiable threats or risks** at the marine community, habitat and ecosystem level.*

### **Policy Scope (page 5)**

Consistent with our explanation above we agree that any measure that achieves the objective of protecting marine biodiversity, consistent with objective 3.6, is to be included in the MPA network. We discuss how this is reconciled with the concept of standards of protection later in this submission.

We agree also that the scope of the policy must not attempt to address any allocative or reallocative matters, such as providing for new uses in the marine environment (i.e. tourism or recreational opportunities). We agree that these high level matters are the sole jurisdiction of the Oceans Policy.

We note that the MPA policy is intended to cover both the territorial sea and the exclusive economic zone (EEZ). However we have concerns about how the policy may be applied, particularly in the EEZ. We also note the comment that the Marine Reserves Bill if passed in its current form will apply in the EEZ. We support the concerns raised by SeaFIC about the implications for UNCLOS and large permanent closures.

We agree that the policy must co-ordinate the activities and management tools available to all agencies who are key players (identified above) consistent with objective 3.6 of the biodiversity strategy which requires the development of a “Strategy for establishing a network of areas that protect marine biodiversity” not a policy statement and implementation plan.

A “strategy” is a plan for achieving an objective. The process of developing a strategy involves identification of the means of achieving the objective in any given circumstances. We do not consider that the policy statement and implementation plan work to clear goals and objectives. Consistent with the biodiversity objective 3.6 we would expect to see the development of a comprehensive strategy that addresses all of the priority objectives in the Coastal and Marine thematic area.

### **MPA Implementing Principles (page 6-10)**

A principle is a general rule that guides the way something should be done. However the way action is carried out may vary in practical terms, depending on the circumstances. We are unclear how the principles will be implemented in the plan. We provide suggestions to improve systems and clarity below and later in this submission.

#### *Generic Principles (page 6)*

The proposed list of generic principles is a mixture of statements, proposed actions and some principles. For example principles 1, 2, 6 and 9 are all tangible actions that have already been operationalised later in the document. There is no need to retain them in the principles section. The remainder are too long and confusing. If the aim is to give clarity and guidance it is better to use fewer straight forward statements such as:

- a nationally consistent and transparent approach to undertaking all processes and analysis will be followed (combines principles 3 and 10);
- rights and responsibilities of existing users of the marine environment will be respected (principle 4);

- the Treaty Principles and the Crown/Maori Partnership will be provided for (principles are already available – better to use them than to create new ones);
- best available information and a precautionary approach, including consideration of threats/risks to biodiversity and cost effective measures to achieve the biodiversity objective, will guide decision making (combines principles 7 and 8).

## Standards (page 6)

Generic Principle 3 discusses the idea of standards for the first time in this document. The statement is simply:

*In order to achieve this objective, the protection offered within the MPA needs to be **of a sufficient standard**. The site and tool selection principles set out later in this Policy Statement include the requirements to meet this standard in a nationally consistent way.*

While the idea of a standard is alright in principle the issue is how a “sufficient standard” is achieved in any given circumstance and who achieves it. Te Ohu considers that the focus should be truned to the management objective. In this context there is a need to:

- agree on the management objective
- consider how interventions contribute to the management objective and
- consider additional interventions or contingency plans if the initial intervention is not meeting its objective

This requires the development of a robust process of consultation to determine how objectives will be set and how they will be measured. We discuss this further in the submission under the heading Intergration of Protection Tools.

We propose that all MPAs by definition (i.e. that they are “*especially dedicated to, or achieving, the protection and maintenance of biological diversity*”) are to be included into the network. Once they have been established and included in the inventory their relative contribution to the overall objective of biodiversity protection can then be measured, monitored and reviewed.

## The Precautionary Approach & Information Principles (page 7)

The precautionary approach developed by the international community originates from Principle 15 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, 1992. It states:

*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. **Where there are threats** of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing **cost-effective measures** to prevent environmental degradation.*

We have noted that there is often confusion about how the precautionary approach and the information principles should be applied. For the purpose of providing clarity the Rio definition is consistent with our proposed changes to the MPA policy. It includes two key concepts:

- a risk (or threat) based approach; and
- a best method at least cost (or cost-effective application of measures) approach.

While the consultation document acknowledges the information and precautionary principles in the policy statement component of the document, it does not translate these key concepts into clearly articulated processes in the implementation plan or annual plan. We propose that they are integrated into the implementation plan through the development of:

- risk profiles for each management unit( based on the agreed classification system) and
- guidelines that assist tool selection (consistent with the need to identify threats/risks to biodiversity and cost effective measures discussed above).

### **Network Principles (page 8)**

We have already addressed the need for tool selection guidelines (above). We do however recognise the need to translate them into tangible actions in the implementation stage of the policy and we make suggestions on how this might be done later in this submission. We make specific comments on the network principles below.

Network Principle 1. We would agree with this principle provided that the risk/threat component is added to it consistent with the CBD and the New Zealand Biodiversity Strategy. We suggest a simple addition as follows:

*MPA network design will be based on the protection of biodiversity from identified threats to biodiversity and ecosystem function.*

Network Principle 2. We disagree that MPAs should be distributed on the basis of a classification system alone but propose instead that MPAs are distributed where there are identifiable threats and where the objective of protecting biodiversity from those threats can be managed and mitigated using the correct tool for the job.

Network Principle 3. Again we return to the need to protect biodiversity from identifiable threats using the least cost best method to achieve the objective of protecting biodiversity.

Network Principle 4. We suggest the following addition:

*The MPA network should be viable in achieving the objective of protecting biodiversity from identifiable threats.*

Network Principle 5. We suggest that the principle is reworded to state:

*Priority will be given to establishing MPAs where the most significant threats to biodiversity are identified.*

### **Site and Tool Selection Principles (page 9)**

S & T Principle 1. We agree with this principle but suggest the following wording to make it more clear:

*Every MPA will be designated on the basis of a clearly defined risk based management objective, consistent with the MPA policy objective.*

S & T Principle 2. Again we reiterated the need for objective based management and suggest the following wording will provide better clarity.

*The location, design and selection of tools for an MPA should be sufficient to meet the risk based management objective.*

S & T Principle 3. Consistent with our comments above we propose the following wording.

*The mechanism used to establish MPAs should be appropriate to achieve protection from identified risks that are then monitored and reviewed to ensure they are meeting the objective and if not a contingency plan should be implemented to ensure that the objective is achieved.*

S & T Principle 4. We completely agree that the MPA management system must be enforceable. We note that the way in which MPAs are established and the rationale for why they are established will have a great deal of influence on stakeholders acceptance and support.

S & T Principle 5. We agree with this principle and would add that both design and site selection will be improved if consideration is given using the best method at the least cost.

S & T Principle 6. We note the reference to “redress” in this principle and accept that if rights are to be displaced or reallocated then the process for how this will be achieved needs to be clearly developed and integrated into the MPA policy. We would expect to see a transparent process that clearly identifies the extent to which right holders assets are evaluated and an equitable process for redress to be provided.

### **Integration of Protection Tools (page 11)**

It is at this point in the document that the logical flow is lost. After the extensive list of “principles” there is a very unconvincing discussion about how the potential range of tools will be integrated. The section commences:

*The different tools used for protection of marine biodiversity are governed by different legislative criteria and processes and are administered by different agencies. The extent to which each agency can work towards the MPA policy objective is **constrained by the legislation** that it has the mandate to deliver*

We do not agree with this statement. While it is true that different agencies have different legislation and processes we consider that the constraint to working collaboratively towards the MPA objective is willingness to develop a co-operative and co-ordinated approach to consultation rather than legislative process.

Indeed the Biodiversity strategy objective 3.2 requires and provides the mandate for agencies to “Co-ordinate marine management”. Whatever tool is delivered will be determined by the extent to which effective integration of processes and consistent application of principles (see those we propose earlier) are developed to achieve the MPA objective. Because this has been avoided the remainder of the document is disjointed and has no logical basis.

The next problem area seems to revolve around the following statement.

*Whether a management tool will offer sufficient protection to be classified as an MPA, will be determined using the **protection standard***

We recommend that this conflict can be resolved (as discussed earlier). The Biodiversity Strategy priority areas in the thematic area “Coastal and Marine Biodiversity” provide the broad context for the strategy – including an appreciation of risk evaluation and sustainable use & management. This in turn provides a more encompassing definition for MPAs. Once the scene is set in this way, rather than attempting to create a protection standard against which each MPA can be tested for acceptability or not, the focus is turned to the total contribution of all MPAs towards the agreed biodiversity objective. This process admits all existing interventions into the network and then assesses their relative contribution towards the protection objective. In light of this we object to the following statement which makes very little sense to us.

*In implementing measures to manage the effects of fishing on the marine environment, MFish takes a risk-based approach, and seeks to use the lowest cost approach capable of achieving the*

*desired outcomes. **This means** that where an area is a priority for protection but is not impacted on by fishing, a marine reserve is likely to be the choice of tool to use*

This statement seems to be suggesting that the only tool available that is not fishing related is a marine reserve. There is no clear explanation as to why a Marine Reserve will be the only tool applied where risks to biodiversity are not fisheries related. For example, if a major risk to biodiversity is caused by land management, or biosecurity incursions, it would seem to us that other responses (e.g. under the Resource Management Act or Biosecurity Act) would be more appropriate. It is unclear to us where this statement has originated or why it is in this document. It certainly does not originate from any of the strategic documents that we have discussed earlier in this submission and certainly not the Biodiversity Strategy.

Clearly, Marine Reserves are only one of a number of tools to address marine biodiversity and contribute to the network. The choice about which tool is needed to protect marine biodiversity and under what circumstances must be consistent with the Biodiversity Strategy objectives, including the need to consider risk levels and sustainable use & management. It must also be clearly built into and articulated in the policy but it is not present at this time.

The apparent attempt to impose Marine Reserves as the tool of choice – despite a lack of assessment of any risks and including impacts on property rights, while simultaneously attempting to reject Fisheries Act tools (including mataitai, and taiapure) as insufficient to meet some undefined standard is unacceptable.

## **Marine Protected Areas – Implementation Plan (page 15)**

### **Purpose (page 15)**

We agree that an initial time frame of three years will be necessary to enable operational realignments to occur within departments and to enable them to establish working tools and consultation protocols. However we believe that the plan itself needs to be consistent with the principles we have put forward (see earlier comments about generic principles). In addition, it needs to provide for greater coordination of departmental processes between agencies – particularly in the development of risk profiles, management objectives and tool selection at the regional level. More detailed comment is provided below.

### **Background (page 15)**

We have already discussed the definition of Marine Protected Areas in the policy statement and proposed the following alternative:

*an area of the marine environment especially dedicated to, or achieving, the protection and maintenance of biological diversity **from identifiable threats or risks** at the marine community, habitat and ecosystem level.*

By definition any tool that directly or indirectly achieves protection of biological diversity should be included in the MPA network. This is consistent with objective 3.6 of the Biodiversity Strategy.

### **Integration of Departmental Processes (page 15)**

Te Ohu considers that the process diagram attached as Annex One of the consultation document illustrates a lack of integration and coordination between agencies, particularly at the regional level, where objectives need to be agreed and appropriate tools selected. We believe

that it is neither efficient nor effective to carry out two separate sets of consultation processes, given the duplication of costs and the imposition of additional time on key stakeholders.

As an alternative we propose the process illustrated in Annex 1 to this submission. It provides for better coordination between agencies at a national and regional level, as well as consultation with stakeholders. This process will aim to develop and refine the classification system as suggested in the MPA policy, along with the performance measures and contingency plans for all interventions established in each region. Agencies would not act independently until appropriate management tools have been agreed.

We have proposed that all potential tools, including those that do not have biodiversity protection as their purpose, but which still achieve that objective, should be recognised in the implementation of the policy. Given this, we propose that the following broad components should be build into the implementation plan:

- a preparatory planning stage,
- an operational/consultation stage, and
- a performance review stage (see table 1).

We believe this process is considerably more co-operative, efficient and logical than that provided in the consultation document.

### **Policy/Standards Phase (page 16)**

We referred earlier to the different objectives of the Biodiversity Strategy that should have a bearing on the development of a Marine Protected Areas policy. We refer again to objective 3.1, which identifies the following priority actions:

- *Survey, assess, and map habitats and ecosystems important for indigenous biodiversity and **develop an agreed bioregional classification system.***
- ***Identify, assess, map and rank the threats** to New Zealand's coastal and marine biodiversity*

Thus we agree that information on biodiversity and an appropriate classification system are key elements of the MPA policy as they will provide the basis for carrying out risk assessments, identifying objectives and relevant management tools.

How a classification system will lend itself to the identification of "bioregions" is not clear to us at this stage however we note that the Biodiversity Strategy states that:

*Bioregional classification is based on **a combination of biological, geographical and social or management criteria***

The following comments put forward by the IUCN should also be considered in the development of the classification framework and any relevant management units or regions:

*By switching the focus from individual protected areas to looking at the relationships between them, and putting the whole protected area network into its broader context, system planning provides the means for ensuring that the total significance and effectiveness of the national protected areas system is much more than the sum of the parts. There are five key characteristics of a system of protected areas:*

- *Representativeness, comprehensiveness and balance;*
- *Adequacy;*
- *Coherence and complementarity;*
- *Consistency; and*

- *Cost effectiveness, efficiency and equity*<sup>11</sup>

We note that the implementation plan provides for DOC to carry out its role within “regions”. The development of some form of appropriate “region” or management unit, based on an agreed classification may be a sensible basis for identifying risks to biodiversity, agreeing on management objectives and agreeing on the means to achieve them. However we think that the units or regions that are identified should be consistent and applicable to all agencies that have a role in implementing the MPA policy. Clearly the basis for establishing management units will need further analysis and consultation but it may be useful to consider:

- existing management units such as quota management areas
- the best available scientific information and
- the five characteristics identified by IUCN.

We are aware that officials in the Ministry for the Environment have been working on the development of a marine environment classification system (MEC) in consultation with stakeholders. We understand that it requires further development and suggest that further testing occurs before implementation takes place. We consider that efforts should be made to develop this system as a comprehensive management unit that will be used by all agencies. Thus we do not support the implementation of the Interim Near Shore Marine Classification System (INMARC), which has not been developed in consultation with stakeholders, and which appears to have the aim of providing a framework for implementing marine reserves. The use of two systems, even if only on an interim basis, will undermine any attempts to take an integrated and strategic approach to the implementation of the policy.

With the development of an agreed classification system (along with appropriate management units or “regions”), the following will need to be addressed:

- potential realignment or redeployment of staff within agencies to accommodate consultation (see below) at the regional and national level;
- development of regional profile templates for risk evaluation within the agreed regions. Risk profiles should be standardised across the country and include:
  - identification of risk (what biodiversity is under threat from what risk)
  - assessment of risk (severity and intensity of risk)
  - rank or prioritise risk areas (in accordance with assessment) and
  - mapping of risk areas;
- development of an inventory of existing MPAs within each region including:
  - all available management tools (i.e. marine reserves, World Heritage sites, other coastal and marine management tools such as mataitai and taiapure areas, marine area closures, seasonal closures and closures to certain fishing methods<sup>12</sup>) and
  - the costs to both Government and stakeholders of maintaining existing tools (providing the essential economic information needed later to consider the best method at the least cost).
- Develop operating guidelines for officials and stakeholders that are transparent and consistent including:

---

<sup>11</sup> National System Planning for Protected Areas”, Chapter 3 - Protected Area Systems and Characteristics of a system

<sup>12</sup> As instructed in objective 3.6 of the Biodiversity Strategy

- tool selection guidelines - using the best method at least cost approach in each region.
- performance measures – what will be measured to determine if each tool is achieving the biodiversity objective within each region
- contingency plans guidelines – including the use of alternative tools and performance measures in the event that the initial tool is not meeting its objective.

### **Operational/Consultation Stage (page 17)**

We believe that the operational phase as set out in the MPA policy reflects the lack of integration in the policy and standards phase, and suggest instead that this stage should be guided by the framework that we have suggested above. As such it should provide for:

- interagency realignment, improved co-ordination and co-operation, rather than separate actions by agencies, and
- national and regional stakeholder consultation (involving experts where available to provide supporting information but not to make unilateral decisions on the underlying policy matters)

In order for this to be achieved the following should take place:

- departments jointly appoint a small number of key staff who will regularly work together. Their key role will be to jointly:
  - develop and implement an interdepartmental working protocol which specifies who is responsible for each component of the implementation programme;
  - identify regional stakeholder groups (including relevant subject matter experts) within each region and establish suitable regional consultation forums;
  - identify national stakeholder groups (including relevant subject matter experts) and establish a national consultation forum;
  - establish and consult on the templates and guidelines (described earlier) and subsequent to that review the application of the templates and guidelines as they are applied in the regions;
- officials review regional proposals and ensure that the tool selection guidelines have been applied correctly in the regions and that performance measures and contingency plans are suitable to meet the regional biodiversity objectives.

Note that In each of these areas, the emphasis will be on reducing consultation duplication and achieving consistent guidelines, processes and procedures for developing the MPA network.

### **Coordination of Processes (page 20)**

Each department will be responsible for undertaking its own analytical process to establish any intervention within their jurisdiction consistent with the requirements to meet its respective legislative obligations. However, this should only happen after the consultation process we have proposed has been completed and the regional proposals have been reviewed and checked for consistency with the guidelines.

This will mean that departments will not be able to implement more than one management tool for a single site unless they are agreed that the combined measures are complementary and together will achieve the biodiversity objective.

Departments should continue to collect information about risks to biodiversity as the implementation programme develops and should update regional risk profiles and the inventory of MPAs on an annual basis as the programme is bedded down.

### **Performance Review Stage (page 21)**

We agree that officials should be responsible for monitoring the performance of each MPA within each region and monitoring the performance of each region against the objective of protecting marine biodiversity. Annual reports to Ministers should be prepared reporting on progress. As part of this review officials will provide an assessment of:

- any tool that is no longer required because the risks are no longer present or
- any tool that is not achieving its objective and either:
  - recommend that the tool is removed, or
  - replaced with a more suitable tool that can achieve the objective.

Finally, at the end of the three year time frame officials should provide a systems review of the strategy over that time period including:

- the updated inventories for each region and
- a regional evaluation of residual risk indicating priority areas for further investigation over the next five to ten year period.

### **Annual Operating Plan (page 22)**

The process for implementing a network of marine protected areas consistent with the Biodiversity Strategy is unlikely to change substantially over time, given that it is not dependent on any legislative changes taking place. The process is however, likely to become refined and streamlined as it is bedded down. Implementation of specific tools consistent with the priority risk areas are likely to take time to pass through legislative procedures and so in some cases there may be some time lag between reaching agreement on the correct tool for the job and its designation being gazetted.

In the short term, it is anticipated that greater clarity and transparency provided in the process for implementation of the MPA network will assist the development of improved working relationships between departments, and subsequently between the Crown and stakeholders.

For MFish the completion of a risk evaluation for fisheries management is already under development and this information will contribute significantly to the preparatory stage. DOC however will need to implement a similar procedure for identifying risks to conservation management. The combined risk profiles will together provide the key information needed to set priorities for MPA implementation and decision making.

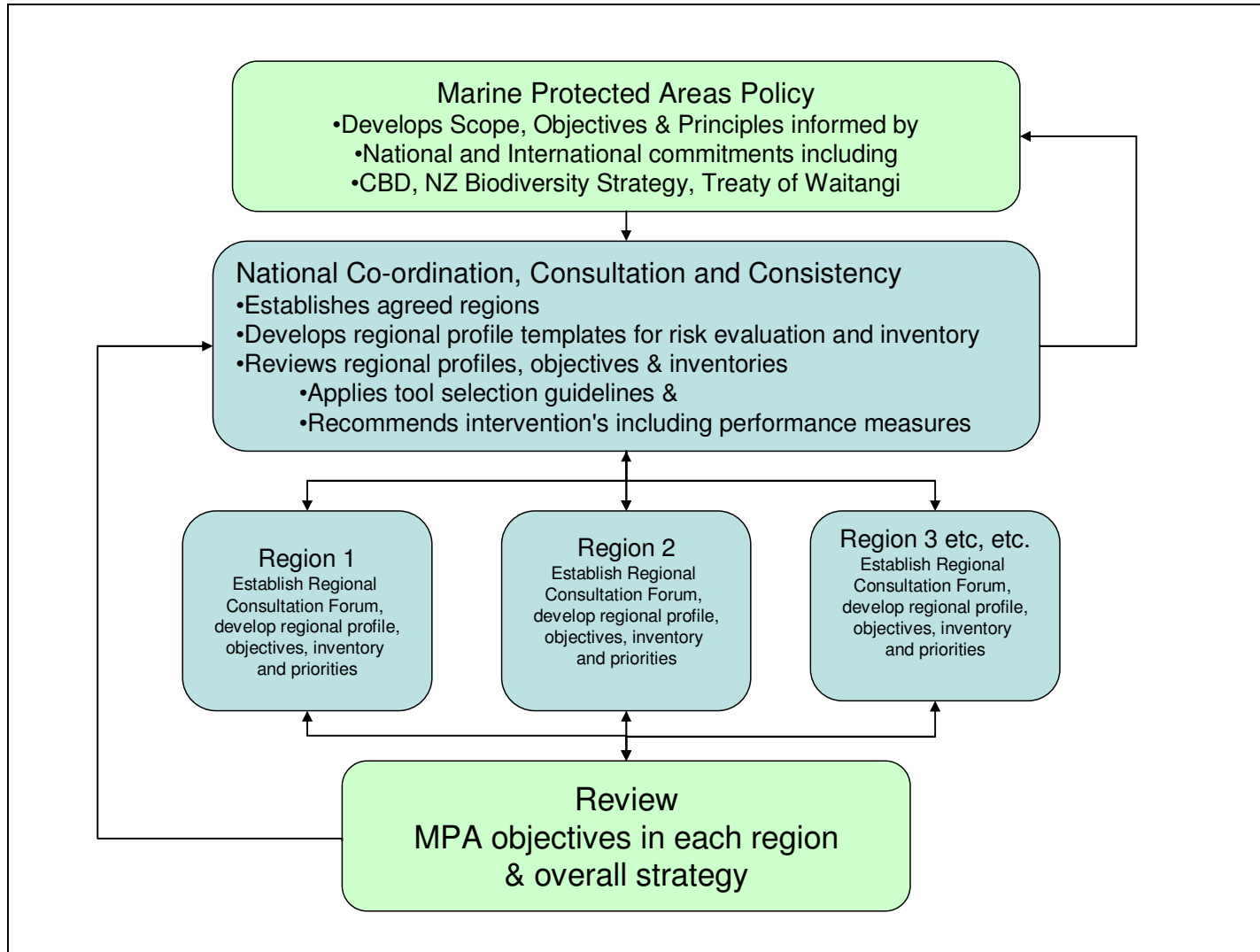
We envisage that the three year time frame will be a transitional phase where processes are established and officials learn to work in a more co-operative and constructive manner.

Annual Operating Plan (2004/05 to 2006/07) will consist of the following elements:

	2004/05	2005/06	2006/07
<b><i>Preparatory/Planning Stage</i></b>			
<b>Annual operating plan &amp; priorities</b>		Consider priority work areas based on risk profiles and inventory	Establish priorities based on risk profiles and inventory for each management unit/region
<b>Regional management units</b>	Agree initial classification of management units/ regions	Align organisational capacity based on agreed management units/regions	Revise management units/regions and operational alignment if not practical
<b>Information collection</b>	Develop first generation risk profiles and establish inventory of MPAs within management units/regions	Continue to develop and refine risk profiles for all regions and update inventory as required	Finalise risk profiles and complete inventory for all regions
<b>Guidelines for tool selection, performance measures &amp; Contingency Plan</b>	Develop tool selection guidelines consistent with risk status within management units/regions	Develop guidelines for establishing performance measures & contingency plans for each tool selected	Implement guidelines for tool selection, performance measures and contingency plans
<b><i>Operational/ Consultation Stage</i></b>			
<b>Interagency coordination/National consultative forum</b>	Identify key staff and develop working protocols Identify national stakeholder groups and suitable venue to consult	Establish and consult on risk profiles and inventory	Consult on tool selection and performance measures
<b>Regional stakeholder consultative forum</b>	Identify regional stakeholders groups and suitable venue to consult	Establish and consult on risk profiles and inventory	Consult on tool selection and performance measures
<b><i>Performance Review Stage</i></b>			
<b>Review individual MPA effectiveness against network objective</b>	Review any MPAs that are not achieving objective and review risk profile to determine if risk still exists	Remove any MPAs that are not achieving objective or if risk still exists develop contingency plan	Remove any MPAs that are not achieving objective or if risk still exists implement contingency plan
<b>Review MPA network against biodiversity objective</b>	Provide progress report on each element above	Provide progress report on each element above	Provide progress report on each element above and establish plan for meeting priority risk areas over next 5-10 years

Table 1. Showing Annual Operations for the first three years of the Transitional Plan.

Annex One: for MPA Implementation alternative (page 24)



## Appendix 1.

Extracts from the Convention on Biological Diversity

### **Article 1 states:**

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the **conservation** of biological diversity, the **sustainable use** of its components and the **fair and equitable sharing of the benefits** arising out the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, **taking into account all rights** over those resources and to technologies, and by appropriate funding. (emphases added)

### **Article 8 (j) states:**

Each contracting party shall, as far as possible and appropriate:

...Subject to national legislation, **respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles** relevant for the conservation and sustainable use of biological diversity and promote their wider application, **with the approval and involvement** of the holders of knowledge, innovations and practices and encourage **equitable sharing of the benefits** arising from the utilisation of such knowledge, innovations and practices...

### **Article 10 (c) states:**

Each Contracting Party shall, as far as possible and as appropriate:

...Protect and encourage **customary use** of biological resources in accordance with **traditional cultural practices** that are **compatible with conservation or sustainable use** requirements;...

## Appendix 2.

### Extracts from the Oceans Policy

#### Vision statement:

Healthy Oceans: New Zealanders understand marine life and marine processes, and accordingly take responsibility for wisely managing the health of the ocean and its contribution to the present and future social, cultural, environmental and economic wellbeing of New Zealand.

#### Goals:

- New Zealanders having confidence in, supporting and participating in the wise management, stewardship **and sustainability** of New Zealand's oceans.
- Ecological integrity and abundant biodiversity within New Zealand's oceans.
- New Zealand's oceans providing the **best value** for New Zealand society now and in the future.
- A framework that **identifies the nature and extent of the rights and responsibilities of each Treaty partner** in relation to the marine environment<sup>13</sup>.

---

<sup>13</sup> Letter dated 30 August 2002 from Lindsay Gow, Chair of the Oceans Policy Steering Group

## Appendix 3

Extracts from the Fisheries Act 1996

### **8 Purpose**

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act—

Ensuring sustainability means—

(a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment:

Utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.

### **9 Environmental principles**

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability shall take into account the following environmental principles:

(a) Associated or dependent species should be maintained above a level that ensures their long-term viability:

(b) Biological diversity of the aquatic environment should be maintained:

(c) Habitat of particular significance for fisheries management should be protected.