

Marine Reserve (Tāwharanui) Order 2011

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Department of Conservation (DOC). It provides an analysis of options to provide improved marine protection through the establishment of a marine reserve in the territorial sea along the Auckland coastline east of Warkworth, north of the Tāwharanui peninsula.
2. The area proposed for the marine reserve overlaps and extends beyond the boundaries of the current Tawharanui Marine Park. The marine park is proposed to be disestablished soon after the establishment of the marine reserve.
3. There is a process for the establishment of marine reserves under the Marine Reserves Act 1971 (MRA). The statutory process was duly followed for this marine reserve application, which was initiated by the then Auckland Regional Council (ARC).
4. At the time of finalising this RIS, there is a final statutory step pending for the establishment of the marine reserve. That step is under section 5(9) of the MRA for the Minister of Conservation to recommend to the Governor-General to execute the Marine Reserve (Tāwharanui) Order 2011.
5. Currently, DOC officials prepare a report and recommendations on marine reserve applications, but there are no reliable estimates of staff time or costs involved.
6. DOC confirms that Option 2 (establishment of the Tāwharanui Marine Reserve) will provide the greatest net benefits compared to the status quo. Option 2 is likely to have the following impacts on businesses—
 - a. An area of 16.2 hectares between the areas occupied by the marine park and the proposed marine reserve will no longer be available for fishing.
 - b. Only limited minerals-related activities can take place in marine reserves. There is no mining currently occurring in the area under consideration.
 - c. It should be noted that a range of positive economic impacts may emanate from the creation of the marine reserve, which include local nature-related tourism and spill-over effects for commercial and recreational fishing.
7. The establishment of the marine reserve would not impose additional costs on businesses except as flowing from the above-mentioned impacts. Except to the extent fishing in the additional 16.2 hectares would be prohibited outside the boundaries of the current marine park, the proposal does not impair private

property rights, market competition, or the incentives on businesses to innovate and invest. The proposal does not override fundamental common law principles.

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Status quo and problem definition

8. The Tawharanui Marine Park is currently administered by the Auckland Council. Tawharanui Marine Park is located approximately 90 kilometres north of Auckland City. The marine park abuts the Tawharanui Regional Park and Open (wildlife) Sanctuary, also administered by Auckland Council.
9. Currently, fishing is prohibited in the Tawharanui Marine Park under the following fisheries regulations—
 - a. Regulation 6—Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986.
 - b. Regulation 23(1)(a)—Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986.
10. Under section 5 of the Marine Reserves Act 1971, the then ARC applied for a marine reserve to be established in approximately the same area as the current Tawharanui Marine Park.
11. The following statutory steps have taken place following the application for a marine reserve—
 - a. The applicant complied with all the statutory requirements under the MRA.
 - b. The Director-General of Conservation provided a detailed report analysing the marine reserve application and the outcome of consultations to the Minister of Conservation under section 5(5) of the MRA.¹ There is a statutory basis for undertaking the analysis, which is laid down in section 5 of the MRA.
 - c. The then Minister of Conservation, the Hon Tim Groser decided in October 2009 not to uphold any objections to the proposal to establish the marine reserve.
 - d. On October 2009, the Minister of Conservation wrote to the Ministers of Fisheries and Transport, asking for their concurrences to his decision to

¹ Department of Conservation “Report to the Minister of Conservation on the Tawharanui marine reserve application—Assessment of application and analysis of objections” August 2009.

recommend to the Governor-General the making of an Order in Council declaring the marine reserve.

- e. On 1 December 2009, the Minister of Transport, the Hon Steven Joyce provided his concurrence. This was followed by the Minister of Fisheries, the Hon Phil Heatley giving his concurrence on 22 September 2010.
 - f. On 27 September 2010, the Minister of Conservation and Minister of Fisheries and Aquaculture announced that the Tāwharanui Marine Reserve will be established.
12. As the last step in the statutory process, the Minister of Conservation is now required under the MRA to recommend to the Governor-General to execute the Marine Reserve (Tāwharanui) Order 2011, declaring the Tāwharanui Marine Reserve.
13. The Minister of Conservation is scheduled to formally declare the marine reserve in a ceremony at Anchor Bay, Tawaharanui Regional Park on 28 August 2011. The Marine Reserve (Tāwharanui) Order 2011 has a commencement date of 15 September 2011.

Problems with the Status Quo

14. As the last step under the MRA, the Minister of Conservation is required to recommend to the Governor-General to execute the Marine Reserve (Tāwharanui) Order 2011, declaring the Tāwharanui Marine Reserve.
15. Given the statutory decisions and recent public announcements by Government Ministers, there is a public expectation for the Tāwharanui Marine Reserve to be established. Absence of any further Government action could lead to negative commentary in the media and even risk judicial review.

Objectives

16. The primary objective of this exercise is to complete the last step in the statutory process outlined in the MRA—for the Minister of Conservation to recommend to the Governor-General to execute the Marine Reserve (Tāwharanui) Order 2011, declaring the Tāwharanui Marine Reserve.
17. The applicant for the marine reserve provided detailed justifications supporting the establishment of a marine reserve in terms of the purpose and section 3(1) of the MRA. The evidence was put forward by ARC in the following document²—

² Auckland Regional Council “Marine Reserve Application—Tawharanui Marine Reserve—A Re-notified Application by the Auckland Regional Council”, Auckland, April 2007 <http://www.arc.govt.nz/albany/index.cfm?6E4B5600-14C2-3D2D-B9A2-DDD430638301>

- a. Auckland Regional Council “Marine Reserve Application—Tawharanui Marine Reserve—A Re-notified Application by the Auckland Regional Council”, Auckland, April 2007.
18. Their objectives can be summarised as follows—
- a. To ensure that the existing restrictions on taking or disturbing marine life within the marine park would continue to apply within the boundaries of the marine reserve;
 - b. To enable better clarity for users and managers of the marine reserve and adjacent areas;
 - c. To provide for better marine management of the area; and
 - d. To increase the profile of marine protection in the area providing quality marine educational and recreational opportunities for the people of New Zealand.
19. The Minister of Conservation, with concurrences from the Ministers of Fisheries and Transport decided that to declare the marine reserve would achieve the objectives and meet the requirements under the MRA.
20. The outcomes are subject to constraints such as the fact the Ministers have already made decisions and provided concurrences under statute. Their preferences have also been conveyed to the applicant for the marine reserve as well as publicly announced.

Regulatory impact analysis

21. The options to be considered are constrained under the MRA. They are also constrained by the fact that the Ministers who have a decision-making or concurrence role under the MRA have already fulfilled those statutory requirements.

Option One – Status Quo

22. The last step in the statutory process, whereby the Minister of Conservation is required under the MRA to recommend to the Governor-General to execute the Marine Reserve (Tāwharanui) Order 2011, declaring the Tāwharanui Marine Reserve would not occur. This would not deliver upon the expectations of Ministers, the applicant and the general public and may risk judicial review, given the events that have already taken place.
23. The existing restrictions on taking or disturbing marine life within the marine park would continue to apply. However the additional objectives of the applicant would not be achieved.

Option Two – Establishment of Tāwharanui Marine Reserve by Order-in-Council

24. The last step in the statutory process, whereby the Minister of Conservation is required under the MRA to recommend to the Governor-General to execute the Marine Reserve (Tāwharanui) Order 2011, declaring the Tāwharanui Marine Reserve would be achieved. This would deliver upon the expectations of Ministers, the applicant and the general public.
25. In addition, benefits would arise in meeting the applicant's original objectives. Existing restrictions on taking or disturbing marine life within the marine park would continue to apply within the boundaries of the marine reserve that overlap the marine park.
26. Better clarity for users and managers of the marine reserve and adjacent areas would be achieved in the following ways—
 - a. The proposal for the marine reserve straightens the northern seaward boundary of the marine protected area. The current seaward boundaries of the marine park roughly follow the undulations of the coastline.
 - b. Marine reserve status would ensure that the rules affecting use of the area would be clearer and more widely understood. Applicable restrictions are largely consistent across all marine reserves ensuring that the rules affecting use of each marine reserve are clearer and more widely understood. There may be some minor variations to accommodate any local issues. Regulations can differ between marine parks.
27. Better management of the park would be provided in the following ways—
 - a. The Marine Reserve would be managed by the same body (DOC) as the nearby Cape Rodney-Okakari Point Marine Reserve. The Marine Park is currently managed by Auckland Council whereas the nearby Cape Rodney-Okakari Point Marine Reserve is managed by DOC.
 - b. A marine reserve committee could be appointed, which would provide ongoing assistance and input from key stakeholders into the management of the marine reserve after its establishment.
 - c. Marine reserve status would provide protection from the full range of impacts of use, not only fisheries impacts.
28. The change in status from a marine park to a marine reserve more clearly signals the intent to protect the biodiversity of the area and hence may well increase the profile of marine protection in the area.
29. In addition, there are likely to be the following benefits—
 - a. The combination of all of the above factors would lead to greater protection of the marine area and ecosystems within it, leading to enhanced opportunities for the scientific study of marine life at Tāwharanui.

- b. There may also be enhanced benefits to tourism, education and non-extractive recreation resulting from marine reserve status, including diving, kayaking and snorkelling.
 - c. Spill-over effects for fisheries outside the marine reserve may occur.
30. There will be costs for the following—
- a. Displacement of commercial and recreational fishers from the small additional area of 16.2 hectares covered by the proposed marine reserve beyond the boundaries of the current Tawharanui Marine Park. The minor impacts on fishing were considered by the Minister of Conservation and the Minister of Fisheries in the decision-making and concurrence process under subsections (6) and (9) of section 5 of the MRA.
31. There may be costs for the following—
- a. The mining industry as certain minerals related activities will not be permissible in the area proposed for the marine reserve, after its establishment. Although the current Tawharanui Marine Park does not prohibit mining related activities, there is no mining currently occurring in the area under consideration. Given the geology of the area, lack of interest in mineral exploration to date, and the small size of the marine reserve, New Zealand Petroleum and Minerals has no major concern regarding the proposal.

Consultation

32. In 2003, the applicant commenced consultation on the marine reserve proposal. Tangata whenua, local authorities and commercial fishing groups were consulted. Support for the proposal was received from the Rodney District Council and the New Zealand Fishing Board.
33. In 2003, the applicant produced a discussion document *‘Proposal to change the status of the Tawharanui Marine Park into a marine reserve’*, which was distributed to interested parties such as recreational and commercial fishing organisations, as well as being made available to the general public. The majority of the 87 submissions received on the discussion document were in objection, with the main concern being the inclusion of Cigar Reef, a popular recreational fishing spot, in the area proposed for protection.
34. The Minister of Conservation has considered the application for the marine reserve in terms of section 5(6) of the MRA, which requires an analysis of impacts. The Minister decided no objection should be upheld and the Ministers of Fisheries and Transport have provided their concurrences.
35. The Ministry of Transport, Ministry of Agriculture and Forestry (since the merger with the Ministry of Fisheries on 1 July 2011), the Ministry of Economic Development, the Treasury and the New Zealand Geographic Board have been consulted with on a draft version of this the RIS. The Parliamentary Counsel has

been informed. Consultations took place by e-mail. No major concerns were raised and relevant comments were accommodated.

Conclusions and recommendations

36. The Department confirms that Option 2: *Establishment of Tāwharanui Marine Reserve by Order-in-Council* is preferable. Impacts on existing users of the marine park are minimal and there are additional benefits arising from marine reserve status.
37. Given the statutory decisions and recent public announcements by Government Ministers, there is a public expectation for the Tāwharanui Marine Reserve to be established. Absence of any further Government action could lead to negative commentary in the media and even risk judicial review.

Implementation

38. The Marine Reserves (Tāwharanui) Order 2011 is expected to be notified in the Gazette on 11 August 2011. The Order has a commencement date of 15 September 2011. Therefore, Cabinet's 28 day rule will be complied with. The marine park is proposed to be disestablished soon after the establishment of the marine reserve by the revocation of the applicable fisheries regulations. No transitional arrangements are proposed.
39. As the area has been a marine park since 1981, most people will notice little change, as fishing or taking shellfish from this area has been prohibited since 1981. While there is a small change to the boundary of the protected area, the concept of a no-take marine reserve has been in place for 30 years and is widely supported by existing users of the marine park.
40. Currently compliance in the marine park is undertaken by Ministry of Fisheries' staff, based in Auckland. Overall compliance response costs should be reduced as DOC compliance staff are based in Warkworth, which is closer to the site. In addition, it is planned that three on-site Auckland Council Park Rangers will be trained and warranted under the MRA to undertake land based compliance activities.
41. In accordance with the MRA, the marine reserve boundaries will be clearly marked. Global Positioning System (GPS) and nautical paper charts are regularly updated. The marine reserve's boundaries will be updated in the New Zealand Nautical Almanac and the New Zealand Notice to Mariners in due course. Updated signs have been placed at boat ramps in the wider area, flyers advising of the change have been prepared for existing publications and there will be an increase in publicity over the coming spring and summer months.
42. The following current fisheries regulations that apply to the Tawharanui Marine Park will be revoked soon after the marine reserve comes into effect—

- a. Regulation 6 of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986.
 - b. Regulation 23(1)(a)—Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986.
43. DOC's enforcement strategy for Tāwharanui Marine Reserve is contained within the broader 2011/12 Warkworth Area Compliance Plan, Marine section. The strategy broadly has two components—
- a. Targeted enforcement operations conducted as needed with a seasonal and competition focus (for local fishing competitions).
 - b. Routine patrols and remote camera surveillance on an ongoing basis and particularly in summer.
44. In addition, warranted Auckland Council Park Rangers will be present on site to undertake land based compliance activities. The Tawharanui Open Sanctuary has a strong support group of volunteers who will also assist rangers with surveillance, as has been the case to date for the marine park.

Monitoring, evaluation and review

45. DOC undertakes regular monitoring of fish numbers, species richness, habitat and other key ecological indicators in most of New Zealand's marine reserves, and the results are publicly reported on the Department's website. This monitoring data helps DOC to assess the results and effectiveness of the marine reserves regime.
46. In addition, DOC undertakes periodic monitoring and review of its marine protection policy and progress of the New Zealand Biodiversity Strategy.
47. In order to meet the government's expectations outlined in the Government Statement on Regulation, DOC undertakes ongoing regulatory scans in order to identify the regulatory costs and impacts of all its regulation and assess whether any of these impacts are unnecessary or unreasonable.

ANNEX 1

