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Security Level – Restricted



Fisheries New Zealand
Tini a Tangaroa

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Moutere Ihupuku / Campbell Island Marine Reserve: Update on review and further engagement

Purpose:




This briefing updates you on the progress of the statutory review of the Moutere Ihupuku / Campbell Island Marine Reserve and agencies' ongoing engagement with Ngāi Tahu.

Minister	Action Required:	Minister's Deadline
Minister of Fisheries and Minister of Conservation	Note that further engagement is planned with Ngāi Tahu ahead of providing you with advice to inform your decisions on whether to extend the Moutere Ihupuku / Campbell Island Marine Reserve	As soon as practical

Contact for telephone discussion (if required)

Agency	Name	Position	Work	Mobile
Ministry for Primary Industries	Emma Taylor	Director, Agriculture, Marine & Plant Policy	9(2)(a)	9(2)(a)
Department of Conservation	Marie Long	Director, Planning Permissions and Land		9(2)(a)

Key Messages

1. An independent review on whether to extend the Moutere Ihupuku / Campbell Island Marine Reserve to the remaining 61 percent of the island group's territorial sea (the Additional Area), has been undertaken, as required by the Subantarctic Marine Reserves Act 2014 (the Act).
2. The independent review recommends that the Minister of Conservation and the Minister of Fisheries (Ministers), extend the marine reserve to include the Additional Area and cover the entire territorial sea.
3. Local Ngāi Tahu groups (Kāi Tahu) and Te Rūnanga o Ngāi Tahu (TRoNT) have advised the Department of Conservation (DOC) and Fisheries New Zealand (FNZ) that they have significant concerns about the reviewer's recommendation and ^{9(2)(h)}  ^{9(2)(h)} ^{9(2)(g)(h)}  ^{9(2)(g)(h)} 
4. The Act requires that the Minister of Fisheries respond to the Minister of Conservation on the report by 18 July 2019; FNZ will provide a proposed letter for this purpose shortly.
5. Further, the Act requires that the Ministers and decide in agreement whether to extend the reserve, no later than 2 March 2020.
6. While a decision could be made now, we propose to continue to engage with Kāi Tahu and TRoNT, in order to understand their concerns and if necessary develop options to address these. We are meeting with TRoNT on 4 July 2019, and may also need to schedule further meetings with Kāi Tahu.
7. Following this engagement we will provide you with more detailed advice by October, to inform your decisions on the marine reserve within statutory timeframe of the Act.

Recommendations

8. Fisheries New Zealand and Department of Conservation recommend that you:

- a) Note that an independent review of Moutere Ihupuku/ Campbell Island Marine Reserve has been undertaken, which starts a statutory process for decisions on the reserve;

Noted

- b) **[Minister of Fisheries only]** Note that a response to the Minister of Conservation is required by the Subantarctic Islands Marine Reserves Act 2014 by 18 July 2019;

Noted

- c) Note that final decisions on whether to expand the Moutere Ihupuku/ Campbell Island Marine Reserve must be made by no later than 2 March 2020;

Noted

- d) Note that local Ngāi Tahu groups and Te Rūnanga o Ngāi Tahu have significant concerns regarding the recommendation of the independent review and do not support the extension of the reserve due to the limited amount of information available and impacts on their customary and commercial fishing rights;

Noted

- e) Note that FNZ and DOC officials will engage further with local Ngāi Tahu groups and Te Rūnanga o Ngāi Tahu and potentially other stakeholders to better understand their concerns and if necessary develop options for addressing these; and

Noted

- 7) Note that we will provide you with more detailed advice following this engagement by ~~October~~ preferably by 19 September, to inform your decision on the marine reserve.

Please provide MOC with copy of reviewer's report asap. It was not with this briefing. Please ensure Tane Davis is consulted as part of Ngāi Tahu engagement.

Noted

9(2)(a)
[Redacted]

Please ensure no slippage with October deadline. Sooner would be better.

Emma Taylor
Director
Agriculture, Marine & Plant Policy
Ministry for Primary Industries

Hon Stuart Nash
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1 / 2019

ML

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Proactive release

Purpose

9. This briefing:
- a) updates Ministers on the progress of the statutory review of the Moutere Ihupuku / Campbell Island Marine Reserve; and
 - b) informs Ministers of agencies' ongoing engagement with Kāi Tahu¹ and Te Runanga o Ngāi Tahu (TRoNT)².

¹ In the Kāi Tahu dialect 'k' and 'ng' in Maori words are used interchangeably. Kāi Tahu are the Papatipu Rūnaka of Ngāi Tahu with mana whenua mana moana for Moutere Ihupuku.

² Te Rūnanga o Ngāi Tahu represents the broader interests of Ngāi Tahu.

Background

The Moutere Ihupuku / Campbell Island Marine Reserve

10. Campbell Island / Motu Ihupuku is an eroded shield volcano, characterised by large cliffs, boulder beaches and a few sandy bays. Located 660 km south of New Zealand, it is New Zealand's southernmost island. The complex coastline and size of the island (approximately 11,300 hectares) means there is a range of marine habitats around the island group, including sheltered inlets, exposed rocky reef and deep soft sediment habitats.
11. The remoteness and logistical challenges involved with working in the subantarctic marine environment means that the marine biodiversity of the islands is under-classified. However, the surveys that have been undertaken have revealed an array of species and habitats, including some that appear to be unique to the islands. The island is the main breeding location for a number of seabirds, including the yellow-eyed penguin and southern royal albatross.
12. As with all subantarctic islands, Campbell Island / Motu Ihupuku has World Heritage Area status, which also applies to the island's territorial sea. The World Heritage Area status and Statement of Outstanding Universal Value reflects the region's international significance, including the status as some of the world's least modified islands.
13. In 2010, the Subantarctic Marine Protection Planning Forum, consisting of 14 members representing tāngata whenua, commercial fishing, environmental and scientific interests, provided recommendations to the Ministers for the creation of marine protected areas around the Subantarctic Islands.
14. The Ministers' decisions were enacted in the Subantarctic Islands Marine Reserves Act 2014 (the Act), which included implementing a marine reserve over 39 percent of the territorial sea around Campbell Island / Motu Ihupuku. In addition, a Benthic Protection Area and Danish Seine Net Ban exist over the remaining 61 percent of the Campbell Island's territorial sea.
15. The Act also contained the requirement that, between three and five years after establishment, an independent review be commissioned (the review clause). The review was to consider whether the remaining 61 percent of the territorial sea around the Campbell Island / Motu Ihupuku group (the Additional Area) should be included in the marine reserve, by way of a shortened process, rather than the standard full process for a new or amended marine reserve under the Marine Reserves Act 1971.

Statutory deadlines

16. Under the Act:

- a) DOC was required to commission, in consultation with FNZ, an independent review of the Moutere Ihupuku / Campbell Island Marine Reserve;
- b) the review was required to provide a recommendation report [Attachment A] to the Minister of Conservation by 2 March 2019. This deadline was met; and
- c) the Minister of Conservation was then required to provide the recommendation report to the Minister of Fisheries. This occurred on 11 March 2019.

17. The Minister of Fisheries is now required to provide a written response to the report, to the Minister of Conservation, by 18 July 2019.

18. Together you must decide whether to extend the Moutere Ihupuku / Campbell Island Marine Reserve. Under the Act, the reserve can be extended to the Additional Area through an Order in Council, no later than 2 March 2020.

The review clause

19. The purpose of the review clause was to accommodate the fishing industry's interest in exploring a potential deepwater crab fishery in the Additional Area. The outcome of the review would then inform the decision on whether to extend the marine reserve.
20. No data has been gathered, nor has any exploration of a deepwater crab fishery been undertaken by industry or government since the commencement of the Act.
21. The most recent research on the deepwater crab fishery in the Campbell Island / Motu Ihupuku territorial sea was in 1976. DOC decided that Planning Principle 7³ from the Marine Protected Areas Policy would guide the review. This principle states that "best available information will be taken into account in decision-making" and the review proceeded on that basis.

³ Planning Principle 7 further states: "Understanding of marine habitats and ecosystem processes is limited, as is information on current uses and the effects of those uses on biodiversity. MPA decision-making will be informed by the best available information. Best available information means the best information relating to ecological, environmental, social, cultural and economic aspects of the marine environment that is available without unreasonable cost, effort or time. Standards will be developed to outline the quality requirements for the use of information in MPA planning." These standards have not been developed.

The review recommendation

22. On the basis of the Envirostrat Consulting Limited's findings, the report recommends that Ministers extend the Moutere Ihupuku / Campbell Island Marine Reserve to include the Additional Area and cover the entire territorial sea. A synopsis of the review process can be found in Appendix 1.

Findings of the review

The value of the Additional Area to a deepwater crab fishery

23. The review considered the value of the deep water crab fishery and found that there has been no crab fishing in the Additional Area since the Act came into force, and no evidence of an established fishery. The only catch records available are from 1972, in the area which is now a marine reserve. Based on the available data, and modelling undertaken for the review, it is unlikely that the Additional Area alone could sustain a commercially and biologically viable target fishery for giant spider crab, or be a significant part of a potentially larger giant spider crab fishery in subantarctic waters.

The impact of a deepwater crab fishery in the Additional Area on the marine environment and ecosystems

24. The review considered the potential impact of a deepwater crab fishery. If a fishery were to be established, the fishing method utilized would be potting. While the physical impact of potting is generally considered small, there is some evidence of risk to biodiversity including as a result of incidental entanglement of marine mammals and birds via crab potting. Given the high numbers of endangered and endemic species present, the potential impact on these populations should be considered.

The biodiversity values in the Additional Area

25. The review considered the biodiversity value of the Additional Area and suggest that it is high. It benefits from strong land-sea connectivity that provides important habitat and foraging areas. It is also directly linked to its sheltered inshore waters on the eastern side of the island group.

The value and impact of other commercial fishing in the Additional Area

26. The review considered the value and impact of other commercial fishing in the Additional Area, although not explicitly required by the Act. There has been no commercial fishing activity in the Additional Area. In view of the relatively shallow depth (100-250m), current status as a Benthic Protection Area (BPA) and the Danish seine ban, it is unlikely that the Additional Area could sustain other commercial fisheries of value.

*Iwi and agencies views*Te Runanga o Ngāi Tahu and Kāi Tahu

27. Te Rūnanga o Ngāi Tahu initially expressed support for the report recommendation in a letter to DOC in October 2018 but noted its concerns about the age of the crab fishery data.
28. Kāi Tahu have advised DOC that it does not support the review's recommendation stating that:
- they consider the recommendation is "based entirely on values and not on reliable and up-to-date evidence";
 - for the Government to extend the marine reserve is "a massive and unilateral reduction of the effective Quota Management System [and] is contrary to the Treaty of Waitangi Fisheries Claims Settlement Act of 1992".
- 9(2)(h)
29. We attended the kaitiaki rūpu (guardianship forum) hosted by Kāi Tahu in Invercargill on 11 June 2019 to gain a better understanding of their views on the independent report and possible extension of the marine reserve. The following key messages were noted:
- Kāi Tahu does not support the extension with the current amount of information provided. They consider there is not enough evidence to rule out a potentially viable fishery.
 - Further engagement and information would be required for Kāi Tahu to feasibly consider the extension. They consider that if their customary fishing rights are to be removed, there needs to be a strong evidence-based reason.
 - Kāi Tahu feel the actual and foreseeable threats to biodiversity is very low and that further protection is not an urgent priority.
 - The working relationship between government and Kāi Tahu is a higher priority.
 - Kāi Tahu and TRoNT are discussing the project with the aim of developing a unified position regarding the possible extension of the marine reserve.

Agencies

30. Agencies' initial view is that the reviewer's assessment on low fishing potential of the Additional Area, is accurate. This is due to the remote location, the existing BPA status and Danish Seine net ban, and patterns of distribution and abundance of commercial species. Furthermore, we recognise that expanding the reserve would fully protect habitats and ecosystems deemed "rare or distinctive" and recognised for their high biodiversity value from any future fisheries exploitation and from other extractive activities.

9(2)(g)(h)

34. Kāi Tahu, TRoNT and industry have submitted that there is insufficient information to extend the reserve. Fisheries New Zealand is currently exploring whether it may be possible to complete some crab potting surveys through a planned contract with NIWA scheduled to be near Campbell Island in August to research southern blue whiting. This would enable a more informed decision
35. DOC considered using the Operation Endurance⁴ trip to complete crab potting surveys in the Additional Area. This was not viable and it is unlikely it would be possible to collect enough detail to fully assess the crab fishery and remove the uncertainty that exists now before March 2020.

⁴Operation Endurance is the (typically) annual tasking from the NZ Navy to support DOC operational management work at the Subantarctic Islands. Metservice is a partner agency, and DOC and Metservice work together with the Navy to achieve management outcomes.

Te Ohu Kāimoana

36. Te Ohu Kāimoana noted that if the Additional Area is closed permanently to fishing, there are impacts regarding the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Fishing industry

37. The fishing industry still holds strong interest in what they see as a potentially valuable and viable crab fishery in the Additional Area, despite not yet having explored its commercial viability. They are not satisfied by the analysis undertaken as part of the independent review and do not support the recommendation to extend the marine reserve.
38. Other relevant stakeholder views can be found in **Appendix 2**.

Potential options for the Moutere Ihupuku/ Campbell Island Marine Reserve

39. Under the Act the decision is binary, meaning the Ministers can only decide to extend the reserve in full or maintain the status quo. This decision, and its implementation, must be made by 2 March 2020 by an Order in Council as set out in the Act. To extend the marine reserve after this date would require a process under alternative legislation.

40. Agencies have identified three options available:
- Option 1: Extend the marine reserve to include the Additional Area currently not protected under the Act;
 - Option 2: Do not extend the marine reserve to the Additional Area (retaining existing fisheries restrictions) under the Act; or
 - Option 3: Do not extend the marine reserve under the Act; but develop an alternative approach for further protection under the Marine Reserves Act 1971 or Fisheries Act 1996, after March 2020.

Option 1: Extend the marine reserve to include the Additional Area currently not protected under the Act

41. Option 1 provides permanent and comprehensive protection of the full range of ecosystems present at the island group, including precautionary protection of species and habitats that may not yet be known or understood. A full reserve would provide a land to sea continuum to protect species such as marine mammals and seabirds, and the species and habitats they are dependent on.
42. It represents a tangible demonstration of the Government's commitment to improving marine protection and aligns with the area's World Heritage Area status.

43. If decided now without further engagement this is likely to negatively impact the Māori/Crown Treaty partnership. This has the potential to hinder marine protection efforts in the longer-term.

9(2)(g)(h)

45. We are currently engaging with Kāi Tahu and TRoNT and will continue to do so over the next few months to address their concerns and developing a solution so this decision could still be made within the timeframe of the act while minimizing any negative impacts.
46. The fishing industry is likely to oppose this option based on the age of the data on which the assessment was based. This option removes the chance for them to establish any type of fishery in the Additional Area in the future.

Option 2: Do not extend the marine reserve to the Additional Area (retaining existing fisheries restrictions) under the Act

47. Option 2 allows iwi and the industry to explore and develop fisheries in the Additional Area in the future, if there proves to be any (within the existing restrictions). It also avoids the negative impacts on the Māori/Crown relationship by eliminating the associated risks outlined under Option 1.
48. Option 2 provides no additional protection from future activities (including but not limited to fishing) that may present a risk to the area's rare and distinct habitats and protected species in the future. However, this risk is currently low, given the existing protections and absence of fishing activity.
49. Environmental groups will be dissatisfied with this option and will likely use it to publicly question the Government's commitment to marine protection. They will likely question the adequacy of the existing benthic protection area and Danish seine restrictions in the Additional Area. We would expect them to also raise the link between the area's World Heritage Status and existing management measures. Given current philanthropic interest in the subantarctic region⁵, there may be international attention on this decision.

⁵ Global Wildlife Conservation is proposing an International Sub-Antarctic Alliance of all eight countries with islands in the Southern Ocean. NEXT Foundation and The Nature Conservancy have also expressed interest in the proposal. The Morgan Foundation also has significant current and future interest in conservation efforts in the subantarctic.

Option 3: Do not extend the marine reserve under the Act; and develop an alternative approach for further protection under the Marine Reserves Act 1971 or Fisheries Act 1996, after March 2020

50. Option 3 avoids negative impacts on the Māori/Crown relationship by providing the chance to mitigate the risks outlined under Option 1. Further engagement with Kāi Tahu and TRoNT allows the chance to address their concerns and find a path forward that they support.
51. This option also allows time for the fishing industry to apply for relevant permits and conduct exploratory surveys, if there is serious interest in a potential crab fishery. This would provide more evidence for a decision to be made in the future. The Crown could show good faith by exploring potential co-funding options for exploratory surveys.
52. Making this decision beyond the statutory timeframes of the Act means that any decision to extend would need to go through alternative legislation (Marine Reserves Act 1971 or Fisheries Act 1996). This is a more time and resource intensive process. It would also duplicate the time and resource that was spent developing and examining the marine reserve proposals through the work of the collaborative Subantarctic Marine Protection Planning Forum and the development of this Act.
53. The minimum amount of time that it would take to implement the marine reserve using the Marine Reserves Act 1971 is one full working year with a high risk of this timeframe being exceeded.
54. Other options for protection could be explored under the Fisheries Act 1996, such as a Type II Marine Protection Area that bans all fishing methods except for potting in the Additional Area.
55. Environmental groups will be dissatisfied with this option and will likely use it to publicly question the Government's commitment to marine protection as described under Options 1 and 2.
56. It isn't clear over what timeframes or resourcing further fishing exploration could occur to inform a future decision.

Agencies' views

57. We will continue to engage with Kāi Tahu and TRoNT with the objective of addressing their concerns more fully and will advise you in October which option we recommend.

Next steps

58. The Minister of Fisheries must respond to the Minister of Conservation on the report by 18 July 2019; FNZ will provide a proposed letter for this purpose shortly.
59. FNZ and DOC will continue to work with Kāi Tahu and TRoNT to understand and address their concerns. FNZ will also explore the prospect of obtaining additional information on the deepwater crab fishery with NIWA in August
60. We are meeting with TRoNT on 4 July 2019, and may also need to schedule further meetings with Kāi Tahu.
- 19/9/19 61. Following this engagement we will provide you with more detailed advice by ~~October~~ to inform Ministers' joint decisions on the marine reserve within statutory timeframe of the Act.
62. Following further advice, you will need to consult with ~~one another~~ and decide together whether to extend the marine reserve, or another option.
63. If Ministers decide to extend the marine reserve, this must be done by an Order in Council no later than 2 March 2020.

Appendix One: Process for the review

1. The statutory review and decision-making process is set out by the Act. When commissioning the review, DOC was required to consult with FNZ. DOC also consulted with Kāi Tahu and Te Runanga o Ngāi Tahu. The reviewer was required to consult with relevant stakeholders.
2. A cross-organisation governance group consisting of Tā Tipene O'Regan (Kāi Tahu) and representatives from DOC and FNZ, appointed Envirostrat Consulting Limited (Envirostrat) to conduct the independent review.
3. Envirostrat employed a team of experts with experience in stakeholder engagement, marine biodiversity and fisheries (both science and economics). They undertook a comprehensive review that was delivered to DOC in November 2018.
4. The review included consultation with:
 - a. the Subantarctic Regional Marine Protection Planning Forum;
 - b. Kāi Tahu;
 - c. Te Rūnanga o Ngāi Tahu (TRoNT);
 - d. Te Ohu Kāimoana;
 - e. commercial fishers;
 - f. environmental groups; and
 - g. other stakeholders in the marine space.
5. Envirostrat undertook a scientific review of the Additional Area. As required by s8(4) of the Act, this included a technical analysis of the following:
 - a. the value of the Additional Area to a deepwater crab fishery;
 - b. the impact of a deepwater crab fishery in the Additional Area on the marine environment and ecosystems; and
 - c. the biodiversity values in the Additional Area.
6. At the outset of the project, Fisheries New Zealand requested that the reviewer also consider "the value and impact of other commercial fishing in the Additional Area". The cross-organisation governance group deemed this to be a relevant consideration for the review.
7. Envirostrat provided a draft of the recommendation report to the governance group, and each organisation, including Kāi Tahu, provided feedback. Envirostrat considered all feedback in the development of the final report.
8. The Chair of the governance group has advised that Envirostrat executed the review to time and on budget and have provided a report on the review, which satisfies the requirements of the Act. The report includes a recommendation for your consideration.

Appendix Two: Stakeholder views

Environmental groups

1. Environmental groups agree with the report's recommendation to extend the reserve given the low viable fishery prospects, and high biodiversity value of the territorial sea surrounding Campbell Island / Motu Ihupuku. Forest and Bird New Zealand were concerned that Envirostrat considered the value of other fisheries in the Additional Area when that was not a requirement of the legislation.

Mining industry

2. The mining industry was not consulted in the stakeholder engagement process, as they were not considered relevant stakeholders. There is currently no mining activity within the territorial seas of the subantarctic islands; petroleum and mineral miners have stated that they have little interest in the area. The current interface between the Marine Reserves Act 1971 and the Crown Minerals Act 1991 restricts prospecting, exploration or mining in marine reserves to minimum impact activities that do not alter the marine environment from its natural state.

Scientists

3. During the Select Committee process for the Bill, the New Zealand Marine Sciences Society noted support for an extension to the whole territorial sea. They noted that future study in the subantarctics will likely provide "a wealth of knowledge about the dynamics of subantarctic marine communities". This view was reinforced during the review.

Tourism industry

4. The tourism industry was not consulted during the review. During the Select Committee process for the Bill, the Tourism Industry Association supported an extension to the whole territorial sea as it would enhance the attraction of this destination.