



Department of Conservation  
Te Papa Atawhai



**Fisheries New Zealand**

Tini a Tangaroa

28 November 2019



MPI Reference: B19-0519

DOC Reference: 19-B-0702

**Decision on the Moutere Ihupuku / Campbell Island Marine Reserve Extension**

**Purpose:**

This briefing seeks a decision from the Minister of Conservation and the Minister of Fisheries on whether or not to extend the Moutere Ihupuku / Campbell Island Marine Reserve.

| Minister   | Action Required:  | Ministers' Deadline             |
|--|---|---------------------------------|
| Minister of Conservation and Minister of Fisheries | Note and agree the recommendations contained in the briefing. | 13 December 2019 (if possible). |

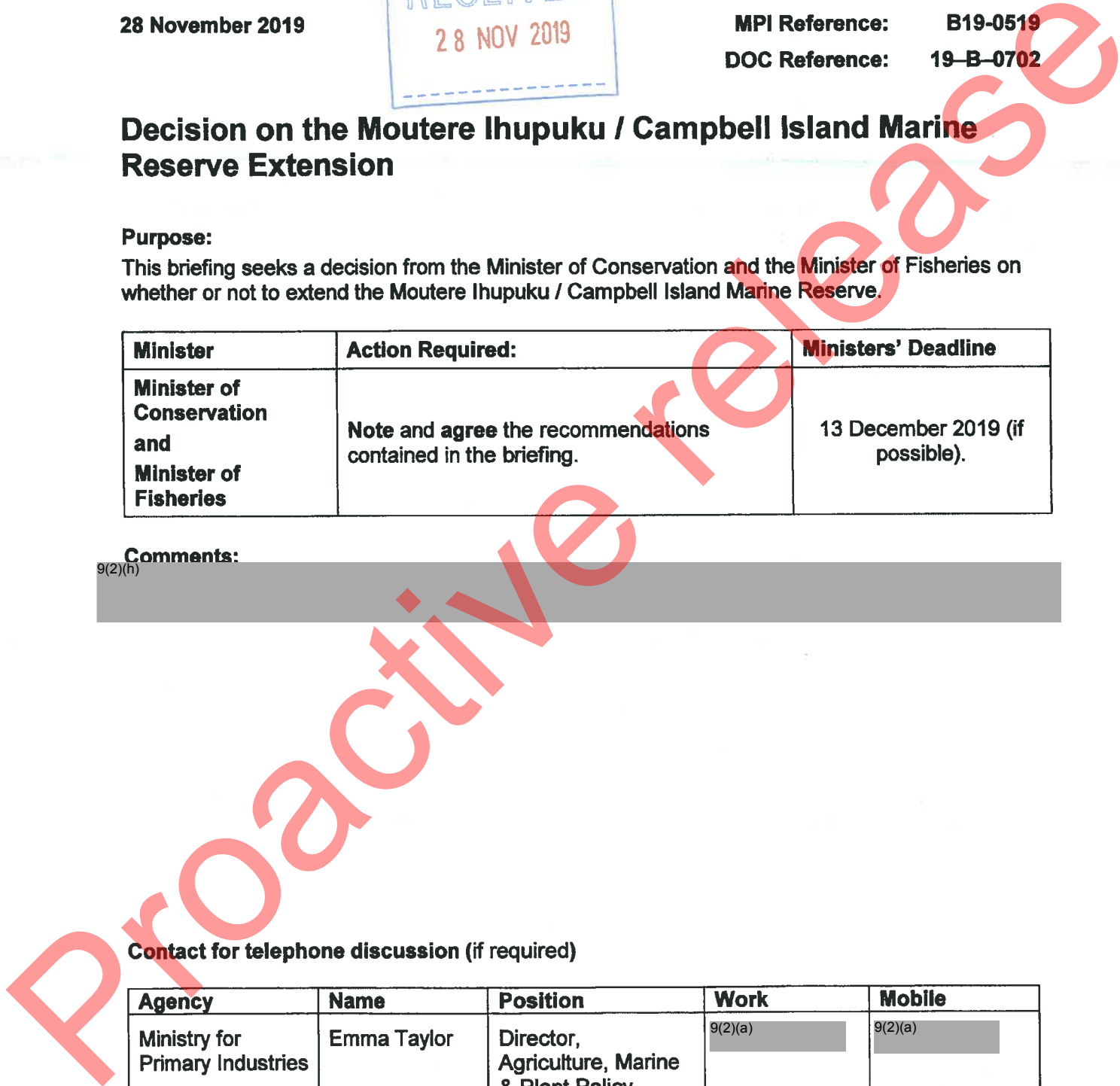
**Comments:**

9(2)(h)




**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. We previously advised you on the independent review (the Review) of the Moutere Ihupuku / Campbell Island Marine Reserve (the marine reserve) [B19-0318 and 18-B-1452 refer]. The Review recommended that the Minister of Conservation and the Minister of Fisheries (the Ministers), extend the marine reserve to include the remaining 61 percent of the territorial sea (the Additional Area) around Campbell Island / Motu Ihupuku.<sup>1</sup>
2. In June 2019, Ministers agreed that further consultation with Ngāi Tahu was needed prior to making a decision and requested officials provide further advice pending feedback from these conversations.
3. Local Ngāi Tahu groups (Kāi Tahu), Te Rūnanga o Ngāi Tahu (Te Rūnanga),<sup>2</sup> and Te Ohu Kaimoana have advised the Department of Conservation (DOC) and the Ministry for Primary Industries (MPI) that they do not support the extension of the marine reserve. This is on the basis that it would impact their commercial and customary fishing rights in that area and that there is insufficient information to justify the extension. Ngāi Tahu considers a decision to extend would be contrary to the principles of the Treaty of Waitangi and undermine the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
4. <sup>9(2)(h)</sup>  

5. Decision-making under the Subantarctic Islands Marine Reserves Act 2014 (the Act) is binary, meaning Ministers can only extend the marine reserve in full or maintain the status quo. Under the Act, the reserve can be extended to the Additional Area through an Order in Council, no later than 2 March 2020.
6. Together you must decide your preferred option. If Ministers choose to extend the marine reserve (Option 1), Officials have asked for a decision by 13 December 2019 to allow time for the Order in Council process.
7. A decision to not extend the marine reserve (Option 2) requires no action and the review clause of the Act will lapse after 2 March 2020.
8. If you decide not to extend the reserve, you may also decide to direct officials to work with our Treaty Partner to explore alternative protection measures outside of the Act.

<sup>1</sup> The gazetted name of the island (and when referring to the sea around the island, including the Additional Area under review) is Campbell Island / Motu Ihupuku, whereas the marine reserve is Moutere Ihupuku / Campbell Island Marine Reserve.


<sup>2</sup> 'Kāi Tahu' includes the Papatipu Rūnanga and local groups of Ngāi Tahu, and in the context of this briefing it refers to those groups representing the mana whenua mana moana for Campbell Island / Motu Ihupuku.


'Te Rūnanga o Ngāi Tahu' (or 'Te Rūnanga') is as defined in Te Rūnanga o Ngāi Tahu Act 1996.

'Ngāi Tahu' is used in the context of this briefing when referring to Kāi Tahu and Te Rūnanga collectively

9. MPI recommends Ministers do not extend the reserve under the Act, but direct officials to explore alternative approaches to marine protection with our Treaty Partner. This would balance the lowest risk to the Māori/ Crown relationship with the potential to apply further protection to the Additional Area in the future.

<sup>9(2)(h) & (2)(g)(i)</sup>



10. After extensive consideration, DOC is not making a recommendation, because DOC considers that the Crown's obligations (including under 'Treaty' & 'environmental' legislation) and risks are finely balanced. DOC considers that your decision should have particular regard to Envirostrat's independent review recommendation to extend the reserve and the government's stated objectives for marine conservation, contrasting with the potential impacts on Crown/Treaty relationships <sup>9(2)(h)</sup>  In this case, the role of agencies is therefore to fully inform the Ministers to enable them to make an independent decision as provided for by the Act.

Proactive release

## Recommendations

11. The Ministry for Primary Industries and Department of Conservation recommend that you:

a) **Note** that decision-making under the Act is binary, meaning the Ministers can only decide to extend the marine reserve in full or maintain the status quo under the Act.

Noted

b) **Note** that a decision to extend the reserve must be completed by 2 March 2020 through an Order in Council as set out in the Act.

Noted

c) **Note** that the independent Review noted that environmental groups and members of the science community support extending the marine reserve, whereas the commercial fishing industry do not support the extension.

Noted

d) **Note** that Ngāi Tahu and Te Ohu Kaimoana do not support the extension of the marine reserve;

Noted

e)

9(2)(h)



Noted

f) **Agree** to your preferred option on the extension of the marine reserve:

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

Agree/ Disagree

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

Agree/ Disagree

- g) If you decide not to extend the marine reserve under the Act, you may wish to direct officials to work with our Treaty Partner to explore alternative protection measures for your consideration.

*Please organise for MOC to meet Ngai Tahu to discuss*

Agree/ Disagree

9(2)(a)



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

Hon Stuart Nash  
Minister of Fisheries

/ /2019

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Astrid Nunns  
Director (Acting)  
Planning Permissions and Land  
Department of Conservation

Handwritten signature of Hon Eugenie Sage in blue ink.

Hon Eugenie Sage  
Minister of Conservation

11 / 12 / 2019

## Background

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### *The Moutere Ihupuku / Campbell Island Marine Reserve*

12. Campbell Island / Motu Ihupuku is an eroded shield volcano located 660 km south of New Zealand and is New Zealand's southernmost island. The remoteness and logistical challenges involved with working in the subantarctic marine environment means that the marine biodiversity of the island and surrounding island group is relatively unstudied.
13. 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.
14. 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.
15. In 2014, the Subantarctic Islands Marine Reserves Act (the Act) established a marine reserve around 39% of the Campbell Island / Motu Ihupuku territorial sea. A Danish Seine Net ban was implemented in the remaining 61% of the territorial sea (the Additional Area). This supplemented restrictions already in place under the existing Benthic Protection Area, creating a Type 2 marine protected area over the Additional Area.
16. The Act contained a review clause that required an independent review be commissioned to consider whether the Additional Area should be included in the marine reserve. A timeframe for commencing the review of between three and five years after establishment of the original marine reserve was chosen to accommodate the commercial fishing industry's interest in exploring a potential deepwater crab fishery in the Additional Area.<sup>3</sup>

### **The Review of the Additional Area**

17. In accordance with the Act, a cross-organisation governance group including DOC, MPI and Ngāi Tahu (Tā Tipene O'Regan) supported DOC to commission Envirostrat to undertake the Review.

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<sup>3</sup> Department of Conservation "Subantarctic Islands Marine Reserves Bill: Report of the Department of Conservation to the Local Government and Environment Committee" 16 April 2013 at [101] to [102].



18. The scope of the Review included consultation with (but not limited to) former members of the Forum and other stakeholders and a technical analysis of:
  - a) The value of the Additional Area to a deepwater crab fishery;
  - b) The value and impact of other commercial fishing in the Additional Area;<sup>4</sup>
  - c) The impact of a deepwater crab fishery in the Additional Area on the marine environment and ecosystems; and
  - d) The biodiversity values in the Additional Area.
19. On the basis of the Review's findings, Envirostrat recommended that the marine reserve be extended to include the Additional Area and cover the entire territorial sea [B19-0318 and 18-B-1452 refer].
20. A synopsis of stakeholders' views and the technical findings can be found in Appendix One.

#### *Agencies Views on the Review*

21. The Review noted several significant constraints on the information available on which the conclusions were based. In reference to the Review's findings agencies views are as follows:
  - a) **The value of the Additional Area to a deepwater crab fishery (and other fisheries)**

It is likely that the Review's assessment of the low value of the Additional Area to a deepwater crab fishery and other fisheries is accurate, based on existing knowledge of the remote location, bathymetry, commercial species, and current status as a type 2 marine protected area. However, we do not have up to date information from the seas around Campbell Island to confirm the reviewer's assessment or model future development potential of crab or other commercial species.
  - b) **The impact of a deepwater crab fishery in the Additional Area on the marine environment and ecosystems**

There has been no subsequent exploration or development of a deepwater crab fishery in the Additional Area and therefore the Review focused on potential impacts of a deepwater crab fishery. We agree with the reviewer's findings that potential impacts of this type of fishery may include; incidental entanglement and capture (including of threatened species), removal of crabs as a functionally important species, altered food webs and physical disturbance of the seafloor. However, we note that current risks to biodiversity from fishing are minimal, given the relatively low impact of crab fishing methods, the existing fisheries restrictions in place, and that negligible fishing has occurred (or is expected to occur) in the area.

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<sup>4</sup> Fisheries New Zealand requested at the time of commissioning the Review that Envirostrat "consider fisheries, other than deep water crab, upon which the outcome of the review might impact – current and potential future impacts." The cross-organisation governance group deemed this to be a relevant consideration for the review.

**c) The biodiversity values in the Additional Area**

The reviewer found little additional information regarding the biodiversity values of the Additional Area beyond what was considered during the Forum process (such as information on species' and habitat distributions) and concluded that the biodiversity value of the Additional Area is very high. We acknowledge there remain gaps in understanding of the biodiversity values of the Additional Area. While marine reserves are not primarily a risk management tool, expanding the marine reserve would provide the highest level of protection available, to fully protect habitats and ecosystems, including those that are deemed "rare or distinctive" and recognised for their high biodiversity value from any future fisheries utilisation and from other extractive activities.

*The limitations of the "best available information" used for the review*

22. While the Review fulfilled the statutory process set out by the Act, it was limited by the age and availability of data relevant to the Additional Area.
23. 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.
24. The lack of recent crab fishery data from Campbell Island was noted by Envirostrat as a significant constraint. The most recent catch records used to inform the review's conclusion that it is unlikely that the Additional Area alone could sustain or be a significant part of a potentially larger viable crab fishery was based from surveys around the island in 1970 and 1976. No sample sites from these surveys were located within the Additional Area.
25. The Act does not explicitly identify who was to be responsible for conducting any research relevant to Section 8(4)(a) "The value of the Additional Area to a deepwater crab fishery", or indicate what would happen if the research did not occur. In their submission to Select Committee on the Subantarctic Islands Marine Reserves Bill, Seafood New Zealand noted that industry planned to evaluate the fishery before the Review was undertaken.
26. DOC officials who worked on the Subantarctic Island Marine Reserves Bill advise that the intent behind the review clause (Section 8(4)(a)) was that new information was not required to extend the reserve, and therefore there was no requirement on the Crown to produce this information. The onus was on the industry to provide evidence that there was a viable fishery, and if evidence was not produced during the review process, then the area would become a marine reserve. However, this intent was not captured by the wording of the Act, and officials do not have any clear documentary record that demonstrates this intent.



27. The lack of recent research was recognised by Agencies as a risk that may hamper the reviewer from coming to a logical conclusion at the time of commissioning the Review. DOC decided that Planning Principle 7 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.
28. However, it is now clear that Ngāi Tahu, Te Ohu Kaimoana and the commercial fishing industry view the lack of current research as a determinative reason to not extend the marine reserve.
29. The Envirostrat report however noted that: “The presentation of technical findings were not disputed (although were limited by a lack of data), and did not serve to change the perspective of any stakeholders involved”.
30. Both Agencies have recently explored whether it may be possible to complete some crab potting surveys through planned research cruises. This was not feasible 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.

#### **Ngāi Tahu's rights and interests**

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31. Following your direction in July, Agencies continued to engage with Ngāi Tahu to understand their views and aspirations for the Additional Area. DOC and MPI discussed the Review with the Kaitiaki Roopū (DOC guardianship forum) hosted by Murihiku Rūnaka (local governance group of Kāi Tahu) on 11 June 2019 and 3 September 2019. Officials also met with Te Rūnanga on 31 July 2019 and subsequently provided the final review document to Te Rūnanga to help understand their views. DOC received a response letter from Te Rūnanga's Acting General Manger Strategy and Influence, <sup>9(2)(a)</sup> on 20 September 2019 (Appendix Two).
32. Ngāi Tahu's views on the possible extension of the marine reserve have evolved since the original forum process. A detailed account of Ngāi Tahu's concerns outlined in correspondence can be found in Appendix Three.
33. In their latest communication with the Crown, Ngāi Tahu (Te Rūnanga and Kāi Tahu) has expressed significant concerns regarding the validity of the Review and its recommendation. They have advised officials that they are opposed to the extension given the current amount of information and their interests as:
  - a) a participant in commercial fishing in which capacity their interests are the same as other fishers;
  - b) a holder of quota pursuant to the Maori fisheries settlement, in which capacity they, along with other iwi are involved in appointing the Te Ohu Kaimoana governance structure and receive fisheries settlement quota; and
  - c) kaitiaki of fisheries within their area of interest.

34. A summary of Kāi Tahu's present position is as follows:
- a) Kāi Tahu see no benefit extending the marine reserve and do not support the extension with the current amount of information provided;
  - b) Kāi Tahu feel there is no proof that a viable fishery could not exist today based on 40 year old data and given the changing climate;
  - c) Kāi Tahu are concerned about the opportunity cost if the extension were to move forward and consider that if their customary fishing rights are to be removed, it needs to be for a good evidence-based reason;
  - d) Kāi Tahu do not feel there is any real urgency for the extension given the geographic remoteness and existing protection;
  - e) Kāi Tahu are adverse to any marine reserves south of Clutha as captured in the feedback during the SEMP process; and
  - f) Kāi Tahu consider the working relationship between government and Ngāi Tahu is a higher priority.
35. Te Rūnanga's present position outlined in their response letter (Appendix two) is as follows:
- a) Te Rūnanga does not consider that the Department or the independent reviewers have adequate information or reliable, up-to-date data on which to base their recommendation to the Ministers;
  - b) Te Rūnanga does not support the establishment of any further protection mechanisms for marine and coastal areas that could compromise or impact adversely upon Kāi Tahu property rights and interests in the fisheries around Moutere Ihupuku or in other areas; and
  - c) Te Rūnanga recommends that the area of coastal waters covered by the Moutere Ihupuku / Campbell Island Marine Reserve remain as it is with no extension.

#### Te Ohu Kaimoana's Views on the extension

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36. Agencies also met with Te Ohu Kaimoana on 16 September 2019. The following key messages were received from Te Ohu Kaimoana:
- a) oppose the extension of the marine reserve and consider the information was not adequate to justify the extension of the marine reserve (the information used is over 40 years old and not fit for purpose);
  - b) consider protection of the marine environment must:
    - i. protect the integrity of the 1992 Deed of Settlement;
    - ii. incorporate the Maori world view - Te Hā o Tangaroa kia ora ai tāua; and
    - iii. protect the long term opportunity for Iwi to exercise their rangatiratanga;
  - c) consider the extension proposed for marine reserve does not protect the marine environment and it conflicts with the three principles above;

- d) consider that there is no rationale for extending the marine reserve rather than retaining current protection that has been provided;
- e) would like to develop solutions for marine protection that are appropriate for the area and time in a targeted way. This means defining a problem and finding the appropriate tool; and
- f) suggested a face to face workshop between Ngāi Tahu, Te Ohu Kaimoana, DOC, and MPI to explore potential tools that could be used to provide for further protection in an agile and adaptive way.

#### **Other Stakeholders views on the extension**

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37. Other parties, such as those involved during the Forum process and the independent review, have not been directly consulted or engaged beyond updates to the general public (email and website). The Review provided a summary of the views of stakeholders in relation to the Additional Area which can be found in **Appendix one.**

9(2)(h)



9(2)(h)

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## Options

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57. Under the Act, the decision is binary, meaning the Ministers can only decide to extend the marine 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. Once this date is reached, the power to extend the marine reserve by the process in the Act disappears.
58. If Ministers want more time to make a decision, or want to commission further research, they would be taking no action under the Act, resulting in a "do not extend" decision. Officials have concluded that legislative amendment to allow more time for Ministers to make a decision is not possible before the 2 March 2020 deadline.
59. To extend the marine reserve after this date, or develop an alternative approach, would require measures to be developed under alternative legislation or regulatory means.

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

60. Option 1 is recommended by the independent reviewer. It 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 marine reserve would provide a land to sea continuum to protect species such as marine mammals and seabirds, and all other species and habitats within the island's territorial limits from all activities.
61. It also represents a tangible demonstration of the Government's commitment to improving marine protection and aligns with the area's World Heritage Area status.
62. However, it is likely this decision would negatively impact the Māori/Crown Treaty Partnership, which may potentially hinder other Government marine protection efforts in the longer-term. As noted above, Ngāi Tahu and Te Ohu Kaimoana oppose the extension and believe the Review's recommendation has been based on inadequate evidence and would unduly preclude the future development and enjoyment of customary and commercial rights in the area.

63. <sup>9(2)(h)</sup>



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

64. Option 2 goes against the Review's recommendation and provides no additional protection from future activities (including but not limited to certain fishing methods that are not already prohibited) 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.
65. Option 2 may however avoid negative impacts on the Māori/Crown relationship by eliminating the associated risks outlined under Option 1 and would allow iwi and industry to explore and develop a fishery in the Additional Area in the future.
66. ENGOs and scientists will likely be dissatisfied with this option and may use it to publicly question the Government's commitment to marine protection. They will likely question the adequacy of the existing fisheries restrictions in the Additional Area and may raise the link between the area's World Heritage Status and existing management measures. Given current philanthropic interest in the subantarctic region (including through the developing Global Wildlife Conservation and Nature Conservancy initiative of a Subantarctic Alliance), there may be international attention on this decision. DOC is co-hosting an international Subantarctic Forum in Australia in July 2020, which will heighten international interest in this region.
67. <sup>9(2)(h)</sup> [REDACTED]

**Alternative approaches to protecting the Additional Area**

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68. If you decide not to extend the marine reserve under the Act, you may wish to direct officials to work with our Treaty Partner (and others) to explore alternative marine protection measures for your consideration.
69. Implementing protection measures beyond the statutory timeframes of the Act would require other legislative or regulatory tools (e.g. Marine Reserves Act 1971 or Fisheries Act 1996) or customary tools (e.g. rāhui).
70. DOC officials estimate it would take at least 12 months to implement a marine reserve under the Marine Reserves Act 1971. Other options for protection could be explored under the Fisheries Act 1996, or via the Regional Coastal Plan for the subantarctic islands.
71. Ngāi Tahu may wish to explore customary tools such as a mataitai reserve (which is a legislative tool under the Fisheries Act 1996) or non-statutory rāhui which could be implemented by the Murihiku Rūnaka over the Additional Area restricting access to, or use of, the area in accordance with kaitiakitanga.


72. An alternative approach avoids negative impacts on the Māori/Crown relationship by providing the chance to mitigate the risks outlined under Option 1. Exploring an alternative approach for the marine protection of Campbell Island / Motu Ihupuku in collaboration with our Treaty Partner and involving wider stakeholders may allow for the opportunity to address their concerns and find a path forward that they support.
73. However, ENGOs and members of the scientific community are likely to be dissatisfied with this approach and will likely use it to publicly question the Government's commitment to marine protection.
74. An alternative approach may also risk duplication (due to the review period and process having been undertaken) and could be perceived by some as going against the intent of the review process and potentially "re-litigating" the work of the Forum.

#### Agencies' recommendation

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75. DOC and MPI have considered the purpose of the Act, the content and recommendations of the Review; respect for the positions of the Crown's Treaty Partner; legal risks; and the previously expressed views of multiple stakeholders.
76. MPI recommends Ministers do not extend the reserve under the Act, but direct officials to explore alternative approaches to marine protection with the Treaty Partner. This would balance the risk to the Māori/ Crown relationship with the potential to apply further protective measures to the Additional Area in the future.

<sup>9(2)(h) & (2)(g)(i)</sup>



77. After extensive consideration, DOC is not making a recommendation, because DOC considers that the Crown's obligations (including under 'Treaty' & 'environmental' legislation) and risks are finely balanced. DOC considers that your decision should have particular regard to Envirostrat's independent review recommendation to extend the reserve and the government's stated objectives for marine conservation, contrasting with the potential impacts on Crown/Treaty relationships <sup>9(2)(h)</sup> In this case, the role of agencies is therefore to fully inform the Ministers to enable them to make an independent decision as provided for by the Act.

## Next Steps

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78. Together you must decide<sup>5</sup> whether or not to extend the Moutere Ihupuku / Campbell Island Marine Reserve.
79. If you decide to extend the marine reserve under the Act (Option 1), this must be recommended by the Minister of Conservation through an Order in Council no later than 2 March 2020.
80. The process to effect an Order in Council for an extension under the Act can be undertaken relatively quickly, depending on your availability. We recommend allowing a period of two months (ideally a decision needs to be communicated to officials no later than 13 December 2019) to enable officials to undertake the process for an Order in Council. This timeframe allows for possible delays.
81. If you decide not to extend (Option 2), no further action is required. However, if you take this decision, you may also decide to direct officials to work with our Treaty Partner to explore alternative protection measures outside of the Act. If you do, Agencies will work with our Treaty Partner and potentially relevant stakeholders (e.g. industry, NGOs, and scientists) to provide further advice on what the alternative process and protection measures could look like for the Additional Area.
82. Agencies are developing a joint communications plan and will liaise with your office regarding the announcement of your decision.

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<sup>5</sup> Section 8 (8) of the Act states "The Minister of Conservation may recommend the making of an Order in Council under subsection (10) only with the agreement of the Minister for Primary Industries after subsections (1) to (7) have been satisfied."

## Appendix One: Findings from the Envirostrat Review

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### Technical findings

1. The Technical analysis commissioned by Envirostrat found:
  - a) "No fishing activity has occurred in the Additional Area since the enactment of the Subantarctic Islands Marine Reserves Act in 2014. Additionally, there are no known exploratory fishing surveys planned in the near future. It has therefore been impossible to establish the viability (or otherwise) of a deepwater crab fishery from recent catch records.
  - b) Based on available data from the 1970's (the only catch records available) and modelling undertaken for this 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 only two fishing surveys; in 1970 and 1976 described the crab fishery in the area surveyed as "poor" and "negligible" respectively.
  - c) There has been no commercial fishing activity in the Additional Area. In view of the shallow bathymetry and 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.
  - d) There is some risk of a deepwater crab fishery, as a result of incidental captures via crab potting. Given the high numbers of endangered and endemic species present, the potential impact on these populations should be considered.
  - e) The biodiversity value of the Additional Area is very high. It benefits from strong land-sea connectivity that provides important habitat and foraging areas and is directly linked to its sheltered inshore waters on the eastern side of the island group." (Envirostrat 2018: p3).

### Stakeholder views on the extension

2. The Review report notes that: "Consultation [during the Review] identified that there has been no change in position of any stakeholders with regard to the marine reserve or Additional Area. Individuals representing environmentally focused entities, and independent scientists all maintain that the marine reserve should be extended to include the Additional Area. Entities interviewed that have a commercial fishery focus maintain a view that the Additional Area should remain as it is; not a marine reserve. Ngāi Tahu did not express a clear preference, although noted its concern regarding impact on Treaty rights for future commercial fisheries. The technical findings were not disputed (although all noted the limitations of a lack of recent data), and did not change the perspective of any stakeholders involved."

3. Parties not consulted during the Review included: (a) the Tourism Industry Association, which supported the extension during the Select Committee process for the Bill; and (b) the minerals industry, as they were not considered relevant stakeholders.

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**Appendix Two: Te Rūnanga o Ngāi Tahu Letter to DOC dated 20 September 2019**

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Proactive release





20 September 2019

Marie Long  
Director, Planning Permissions and Land  
Te Papa Atawhai: Department of Conservation  
P O Box 10420  
Wellington 6143  
[MLong@doc.govt.nz](mailto:MLong@doc.govt.nz)

Tēnā koe Marie,

**Moutere Ihupuku / Campbell Island Marine Reserve**

Thank you for your letter of 21 August 2019, with the independent review of Moutere Ihupuku / Campbell Island Marine Reserve (“**the Reserve**”) and an outline of the formal process followed under the Subantarctic Islands Marine Reserves Act 2014.

You have sought clarification on a number of matters in order to enable you to finalise the review and to provide advice to your Minister, Hon Eugenie Sage, and the Minister of Fisheries Hon Stuart Nash (“**the Ministers**”).

**Concerns about the data used for the report:**

Te Rūnanga o Ngāi Tahu (“**Te Rūnanga**”) has consistently, since the briefing in the Department’s office in Wellington on 14 June 2018, raised with the review team and Department staff our concerns about the reliance on two very limited fisheries studies from the 1970s as the only evidence available on which to base a decision about the future of the Reserve.

We are aware that NIWA and some from the fishing industry advanced proposals for research to be conducted around Moutere Ihupuku in the years between the current Reserve being established and the statutory deadline for this review. We understand that none of these research proposals were successful. Te Rūnanga are concerned that the proposed work, to provide a more robust evidence base for the decision on the Reserve, was not considered of sufficient importance to warrant funding.

Te Rūnanga are concerned that the recommendation of the reviewers is presented as the outcome of sound scientific evidence, when in fact the information on which the recommendation is based is both very narrow in scope and over 40 years old. Absence of evidence (of a fishery in the waters around the island) should not be considered to be evidence of absence, as Tā Tipene O’Regan pointed out in his letter to the Ministers dated 16 December 2018.

Te Rūnanga also requested the review team and Department staff to consider the implications of climate change for the waters around Moutere Ihupuku and the potential fisheries there in light of the significant changes projected for ocean and coastal conditions in New Zealand waters. We have not been advised of any such evaluation being undertaken.

**Concerns about the review:**

The principal concerns of Te Rūnanga about the process of the review are:

- The lack of up-to-date evidence discussed above;
- The implications for Kāi Tahu property rights in fisheries, secured under the Treaty of Waitangi Fisheries Claims Settlement Act 1992 and the Ngāi Tahu Claims Settlement Act 1998 ; and
- The implications of the review, and the Ministers' subsequent decision about the extent of the Reserve, for the possible future fisheries activities of Kāi Tahu within the Ngāi Tahu Zone of Maritime Interest as statutorily defined in the Ngāi Tahu Claims Settlement Act 1998.

**Preferred option for the Moutere Ihupuku / Campbell Island Marine Reserve:**

On 23 October 2018, Te Rūnanga wrote to the review team manager Tania Wrightson, advising that we supported the recommendation of the draft report that the Minister extend the area of the Reserve. This however was a pragmatic position given the absence of any reliable, substantive, up-to-date information on the fisheries potentials for the waters originally excluded from the Reserve.

On 16 December 2018, Tā Tipene O'Regan provided further comment to the Ministers about the concerns of Kāi Tahu regarding the Treaty of Waitangi Fisheries Claims Settlement Act 1992 and the importance of evidence-based sustainability which was the foundation principle underpinning Māori acceptance of the Quota Management System.

Tā Tipene reiterated our concerns about the inadequacy of the research base to support the proposed extension of the Marine Reserve. He pointed out that the area of the proposed Reserve extension is entirely within the Ngāi Tahu Zone of Maritime interest, and that Kāi Tahu has a reasonable prospect of extending our fisheries in this area as circumstance change both with climate change and technological capacity.

Tā Tipene reminded the Ministers that the current position of Kāi Tahu is a pragmatic response to the Terms of Reference of the review and its focus on the proposed extension of the Reserve. He also drew the Ministers' attention to the risks of litigation if the proposed extension compromises or impacts adversely upon Kāi Tahu property rights and interests in the fisheries around the island.

Tā Tipene concluded his remarks to the Ministers with his recommendation that the opportunities with innovative alternatives to the current Marine Reserve system should be explored, although he acknowledged that these options were beyond the mandate of the review process. Te Rūnanga has not been advised of any such consideration of alternatives, although we note the Department's recent plans for reform of the management of New Zealand's marine environment due to get under way in early 2019. We also note the request of Minister Nash, in his letter to Minister Sage, that the Department should work with Kāi Tahu to develop options to address our concerns.

In more recent months, the Department has met with Te Rūnanga and Papatipu Runanga to discuss the proposed South East Marine Protection Forum recommendations. Our position has been clearly articulated to the Department – that we do not support any Marine Reserves that would compromise or impact adversely upon Kāi Tahu property rights and interests in fisheries.

Accordingly, the position of Te Rūnanga on the proposed extension of the Moutere Ihupuku / Campbell Island Marine Reserve is that:

- Te Rūnanga does not consider that the Department or the independent reviewers have adequate information or reliable, up-to-date data on which to base their recommendation to the Ministers;
- Te Rūnanga does not support the establishment of any further protection mechanisms for marine and coastal areas that could compromise or impact adversely upon Kāi Tahu property rights and interests in the fisheries around Moutere Ihupuku or in other areas; and
- Te Rūnanga recommends that the area of coastal waters covered by the Moutere Ihupuku / Campbell Island Marine Reserve remain as it is with no extension.

Te Rūnanga and the representatives of Awarua Rūnanga would be happy to meet with you to discuss the future of the waters around Moutere Ihupuku.

Ngā mihi,

9(2)(a)

9(2)(a), GM Strategy & Influence  
Te Rūnanga o Ngāi Tahu

### Appendix Three: Summary of Ngāi Tahu Rights and Concerns

1. Ngāi Tahu's position has evolved over time. As a participant in the Forum in 2008 that first proposed options on Moutere Ihupuku/Campbell Island marine protection, Te Rūnanga supported a full marine reserve.<sup>6</sup> The submission from Te Rūnanga on the Forum's consultation document indicated a preference for full marine reserves around Campbell Island / Motu Ihupuku (as well as the other two islands considered during that planning process). During consultation on the Review, Ngāi Tahu did not express a clear preference on the extension of the marine reserve but expressed concern about the precedent effect as it relates to Treaty of Waitangi fisheries matters.<sup>7</sup>
2. Ngāi Tahu do not support an extension.<sup>8</sup> The reasons for this are discussed below.
3. Ngāi Tahu interests in this decision fall into three different categories:
  - 1) As a participant in commercial fishing in which capacity their interests are the same as other fishers;
  - 2) As a holder of quota pursuant to the Maori fisheries settlement, in which capacity they, along with other iwi are involved in appointing the Te Ohu Kaimoana governance structure and receive fisheries settlement quota; and
  - 3) As kaitiaki of fisheries within their area of interest.
4. Ngāi Tahu concerns fall into the first two categories. They have also commented on the third.

#### *Commercial fishing issues*

5. Ngāi Tahu is concerned about the lack of up-to-date evidence about the fishery in the Additional Area. Without this data, Ngāi Tahu consider that officials and the Review do not have adequate information on which to base a recommendation to Ministers.<sup>9</sup> Ngāi Tahu is also concerned that the recommendation of the Review is presented as the outcome of sound scientific evidence, when the information on which it is based is both narrow in scope and over 40 years old.<sup>10</sup>

<sup>6</sup> Paper to Cabinet Domestic Policy Committee dated 21 March 2011 at [63]-[64].

<sup>7</sup> Independent Review of the Moutere / Ihupuku Campbell Island Marine Reserve and Additional Area Final Report, Envirostrat Ltd, November 2018 at 3 and 20.

<sup>8</sup> Letter to Marie Long from <sup>9(2)(a)</sup> "Moutere Ihupuku / Campbell Island Marine Reserve" 20 September 2019.

<sup>9</sup> Letter to Marie Long from <sup>9(2)(a)</sup> "Moutere Ihupuku / Campbell Island Marine Reserve" 20 September 2019.

<sup>10</sup> Letter to Marie Long from <sup>9(2)(a)</sup> "Moutere Ihupuku / Campbell Island Marine Reserve" 20 September 2019, Comment from Sir Tipene O'Regan, Kāi Tahu / Te Runaka o Awarua, 16 December 2018 and Letter to Tania Wrightson from <sup>9(2)(a)</sup> "Independent Review of the Moutere Ihupuku / Campbell Island Marine Reserve" 23 October 2018.

6. Ngāi Tahu is also concerned that the Review and officials have not considered the effect of climate change and resulting projected changes in ocean and coastal conditions for the waters around Moutere Ihupuku/Campbell Island, as requested by them.<sup>11</sup>
7. Ngāi Tahu also do not accept that responsibility rested solely on the fishing industry to undertake the necessary research into the possible viability of a crab fishery and potential impacts of such a future fishery on coastal marine ecosystems in that area.<sup>12</sup>
8. Finally, Ngāi Tahu consider there are potentially innovative alternatives which might usefully and collaboratively be explored but these have been put beyond the mandate of the present Governance Group.<sup>13</sup>

#### *Maori Fisheries Settlement issues*

9. Ngāi Tahu has raised concerns about the impact of an extension on the Māori Fisheries Settlement 1992. Sir Tipene O'Regan notes that the Settlement was based on acceptance of the Quota Management System founded on the principle of evidence-based sustainability. However, the evidence relied on by the Review relates only to the crab fishery and is over 40 years old. Sir Tipene notes:
  - 1) The proposed extension is entirely within the Ngāi Tahu area of interests as defined in the Ngāi Tahu Claims Settlement Act 1998. Ngāi Tahu has a reasonable prospect of extending its fishery into the wider zone as circumstances change through climate change and technological capacity.
  - 2) Extending the marine reserve would be to "pre-empt that possibility...by a massive and unilateral reduction of the effective QMA" which would be contrary to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992."<sup>14</sup>
10. Sir Tipene has also stated that the requirements of the Act are in conflict with significant aspects of other Treaty-based legislation and settlements.<sup>15</sup>

<sup>11</sup> Letter to Marie Long from <sup>9(2)(a)</sup> "Moutere Ihupuku / Campbell Island Marine Reserve" 20 September 2019 and Letter to Tania Wrightson from <sup>9(2)(a)</sup> 'Independent Review of the Moutere Ihupuku / Campbell Island Marine Reserve' 23 October 2018.

<sup>12</sup> Letter to Tania Wrightson from <sup>9(2)(a)</sup> 'Independent Review of the Moutere Ihupuku / Campbell Island Marine Reserve' 23 October 2018.

<sup>13</sup> Letter to Marie Long from <sup>9(2)(a)</sup> "Moutere Ihupuku / Campbell Island Marine Reserve" 20 September 2019, Letter from Sir Tipene O'Regan to Rebecca Bird "Moutere Ihupuku / Campbell Island Marine Reserve" 10 January 2019 and Comment from Sir Tipene O'Regan, Kāi Tahu / Te Runaka o Awarua, 16 December 2018.

<sup>14</sup> Comment from Sir Tipene O'Regan, Kāi Tahu / Te Runaka o Awarua, 16 December 2018.

<sup>15</sup> Letter from Sir Tipene O'Regan to Rebecca Bird "Moutere Ihupuku / Campbell Island Marine Reserve" 10 January 2019.

*Kaitiaki of fisheries*

11. Finally, Sir Tipene has noted that the present level and area of protection is appropriate and sufficient. He states that the existing regulations around Moutere Ihupuku include benthic protection measures which already severely limit the form of any potential fisheries which might be developed. Finally, he states that the immediate surrounding waters are already at their maximum available level of protection.<sup>16</sup>

Proactive release

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<sup>16</sup> Comment from Sir Tipene O'Regan, Kāi Tahu / Te Runaka o Awarua, 16 December 2018.



Proactive release