



Briefing: Decision to approve six marine reserves in the southeast of the South Island (SEMP)

To	Minister of Conservation	Date submitted	10 July 2023
Risk Assessment	<p>High</p> <p>Delays in declaring marine reserves in the SEMP network will likely risk an opportunity to protect biodiversity and mitigate climate change impacts with our Treaty partner's support.</p> <p>9(2)(g)(i)</p> <p>Decisions to declare or not declare risk public criticism and/or legal challenges against DOC or Ministers – e.g. impacts on commercial fishers, or ENGOs who consider the proposed protection is inadequate.</p>	Priority	High
Reference	23-B-0199	DocCM	DOC-6910944
Security Level	In Confidence		

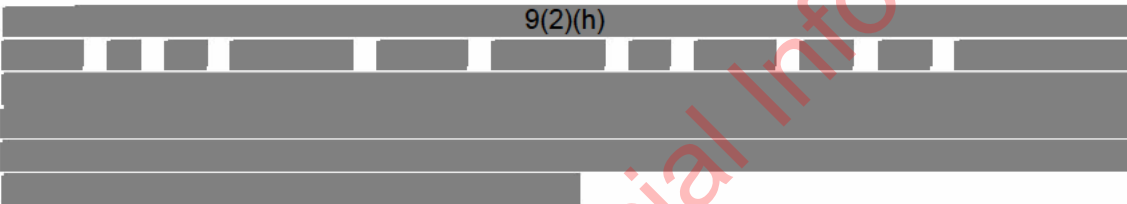
Action sought	Make decisions on the six proposed marine reserves and agree to seek Ministerial concurrence as appropriate.	Timeframe	We recommend your decision-making be undertaken and concurrence sought by 31 July 2023. The Marine Reserves Act 1971 imposes no statutory deadline but this advice will become out of date over time.
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Attachments	<p>Attachment A (Volume 1): The Departmental report to the Minister of Conservation on the southeast marine reserves application (executive summary and full advice).</p> <p>Attachment B (Volume 2): The Departmental report to the Minister of Conservation on the southeast marine reserves application (appendices to Attachment A/Volume 1)</p> <p>Volume 3 (includes attachments as below):</p> <p>Attachment C: A3 summary of Departmental advice – key recommendations</p> <p>Attachment D: Independent review report on the Director-General's process and advice</p> <p>Attachment E: Index of public submissions received during statutory consultation</p> <p>Attachment F: 13 December 2022 letter from Kāi Tahu to the Director-General of Conservation regarding South East Marine Protection Draft Advice</p> <p>Attachment G: 13 December 2022 letter from Kāi Tahu to the Minister for Oceans and Fisheries and Minister of Conservation regarding South East Marine Protection Proposals</p> <p>Attachment H: 21 June 2023 letter from Kāi Tahu to the Minister of Conservation and Minister for Oceans and Fisheries regarding South East Marine Protection Proposals</p> <p>Attachment I: Draft concurrence letters to the Minister for Oceans and Fisheries and the Minister of Transport</p>
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Contacts	
Name and position	Cell phone
Marie Long – Deputy Director-General, National Operations and Regulatory Services	9(2)(a)
Anna Cameron – Senior Manager, Regulatory Strategy and Design	
Rebecca Bird – Team Lead, National Marine Protection Programme	

Executive summary – Whakarāpopoto ā kaiwhakahaere

1. This briefing seeks your decision on an application made by the Director-General of Conservation (the Application) to create six marine reserves in the southeast of the South Island under the Marine Reserves Act 1971.
2. The six marine reserves are part of a proposed 'Network' of 12 marine protected areas (MPAs), collectively referred to as Southeast Marine Protection (SEMP). Decisions on the other six MPAs are the responsibility of the Minister for Oceans and Fisheries under the Fisheries Act 1996.
3. No marine reserves have been declared since 2014. Collectively, the six proposed marine reserves would nearly double the area currently protected as marine reserves around mainland New Zealand (from ~485 km² to ~894 km²).
4. If advanced as recommended, the Network will significantly advance marine protection goals set out in Te Mana o te Taiao, as well as New Zealand's commitment to the United Nations Convention on Biological Diversity.
5. The Department previously recommended that you do not make your statutory decisions under the Marine Reserves Act until implementation funding for any approved marine reserves has been confirmed (23-B-0232, 23-M-0080 refer). You have also received a briefing setting out funding options for you to consider prior to making your statutory decisions (23-B-0299 refers).
6. The Department's report in Attachment A and its appendices (Attachment B) provide you with background information and advice to support your decision-making on the proposed marine reserves. Your decisions must be made in accordance with the Marine Reserves Act and the Crown's obligations in respect of the Treaty of Waitangi. Summaries of the Department's advice and key recommendations are provided in the executive summary of Attachment A and in Attachment C.
7. In accordance with the two-stage test in the Marine Reserves Act, the Department considers that:
 - subject to our recommended mitigations of the impacts of the proposed marine reserves, no objections under section 5(6) of the Marine Reserves Act should be upheld
 - pursuant to section 5(9) of the Marine Reserves Act, and subject to our recommended conditions and measures, declaration of the proposed marine reserves will be in the best interests of scientific study, will be for the benefit of the public and will be expedient.
8. We consider that our recommendations on the proposals meet statutory requirements, including those relating to Treaty settlement obligations and the principles of the Treaty of Waitangi.
9. For added robustness, a previous Minister of Conservation commissioned an independent review report on the Department's statutory process and advice (Attachment D). The independent review found that we have met statutory process requirements and statutory obligations, our advice to you fairly reflects the objections received, and, if implemented, our recommended mitigations are sufficient to ensure there is no undue interference with existing users so that no objections to the proposed marine reserves should be upheld.
10. The region covered by the proposed marine reserves is within the Kāi Tahu takiwā. Kāi Tahu, as the Crown's Treaty partner, have been integrally involved in the project since its inception. [REDACTED] 9(2)(g)(i) [REDACTED] These seek to address the impact of the proposed Network on the rights and interests of Kāi Tahu.

11. In December 2022, Kāi Tahu stated support for the marine reserves as they are proposed in our advice. There are some conditions on this support, notably that co-management arrangements and Crown funding of co-management are suitably addressed. In May 2023, our Departmental report was updated to reflect the most recent commercial fisheries data. Kāi Tahu were advised of these changes, and consider they need further data from Fisheries New Zealand in order to meaningfully engage and to develop an informed view. We therefore do not know if the updates affect their support for the proposed marine reserves.
12. Kāi Tahu have requested a meeting with you and the Minister for Oceans and Fisheries regarding SEMP. We consider a meeting with Kāi Tahu would be beneficial to continue the Ministerial-level relationship on this kaupapa and allow Kāi Tahu to convey their views to you directly as they have done with previous Ministers.
13. It is your decision whether to agree to recommend to the Governor-General the making of Orders in Council, subject to conditions, to declare each of the six proposed marine reserves under the Marine Reserves Act. Agreement will include you seeking the concurrence of the Minister for Oceans and Fisheries and Minister of Transport. Following those decisions, the Minister for Oceans and Fisheries is expected to make decisions on the rest of the proposed Network.
14.  9(2)(h)
15. Successful implementation of the proposed marine reserves, with the suite of measures the Department recommends, requires adequate funding. Failure to sufficiently resource implementation will create several risks: Treaty partner and other relationships, statutory (including Treaty of Waitangi obligations), and reputational (domestic and international).
16. The timing of Ministerial decisions made under the Marine Reserves Act and Fisheries Act, and Ministerial preference, will determine whether any public announcement on decisions is made on the Network or on the marine reserves/Type 2 MPAs and kelp protection area separately. We will work with your office to develop a comprehensive communications plan for any announcement. This will help mitigate any public and stakeholder concerns, since decisions, particularly yours, are likely to attract media interest.
17. Should you approve any of the proposed marine reserves, we will continue to work closely with Kāi Tahu, at all levels, to ensure we are providing for appropriate rebalancing and co-management in implementation of the Network.

We recommend that you ... (Ngā tohutohu)

	Reference	Decision
General matters		
a)	<u>Note</u> you have received briefing 23-B-0299 regarding options for funding implementation of any approved marine reserves.	Noted

- b) Note attached information to support your decisions, in particular the Director-General's Application (Appendix 1, Attachment A) and the Department's report (Attachment A), which provides you with advice and background information to support your decision-making on the proposed marine reserves, as well as the independent review report by EnviroStrat in Attachment D, requested by a previous Minister of Conservation under the Marine Reserves Act.
- Attachment A
Attachment B
Attachment C
Attachment D
Attachment E Noted
Attachment F
Attachment G
Attachment H
Attachment I
- c) Note that in December 2022, Kāi Tahu stated support for the marine reserves as proposed in our advice to you and sought your commitment around co-management aspects and Crown funding. We subsequently updated our advice to account for new commercial fisheries data. These new data did not result in our recommendations to you changing. Kāi Tahu consider they need further data from Fisheries New Zealand before deciding whether any updates affect their support for the proposed marine reserves.
- Attachment F Noted

Statutory process requirements

- d) Agree the Application, the Department's actions (as the applicant), and our development of advice to you, has met the statutory process requirements of sections 4 and 5 of the Marine Reserves Act 1971.
- Chapter 4, Attachment D Yes / No
- e) Agree the Application, the Department's actions (as the applicant), and our development of advice to you has met the statutory process requirements of sections 47 and 48 of the Marine and Coastal Area (Takutai Moana) Act 2011.
- Chapter 4, Attachment D Yes / No
- f) Agree the Application, the Department's actions (as the applicant), and our development of advice to you, has met the Crown's obligations under the Ngāi Tahu Claims Settlement Act 1998 and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- Chapter 4, Attachment D Yes / No
- g) Agree the Application, the Department's actions (as the applicant), and our development of advice to you has given effect to the principles of the Treaty of Waitangi as required by section 4 of the Conservation Act 1987.
- Chapter 4, Attachment D Yes / No

Proposed Waitaki marine reserve – Chapter 7

- h) Note that if any objections are upheld under section 5(6) of the Marine Reserves Act 1971, the marine reserve cannot be declared.
- Section 3.2.2, Attachment A Noted

- i) Agree to have particular regard to the views of affected iwi, hapū, or whānau, pursuant to section 49 of the Marine and Coastal Area (Takutai Moana) Act 2011. Sections 6.3-6.5, 6.7-6.8, 7.3-7.5, 7.7-7.8, Attachment A Yes / No
- j) Have regard to submissions made by or on behalf of objectors, and either: Attachment E Yes / No
Agree that, subject to your approval of the recommended Order in Council conditions and other measures at m) and n) below, no objections be upheld under section 5(6) of the Marine Reserves Act 1971 Yes / No
 OR
Specify the Marine Reserves Act 1971 section(s) under which objection(s) should be upheld:
- (a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve Yes / No
- (b) interfere unduly with any existing right of navigation Yes / No
- (c) interfere unduly with commercial fishing Yes / No
- (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes Yes / No
- (e) otherwise be contrary to the public interest Yes / No
- k) If no objections are upheld, agree that a decision to declare the proposed Waitaki marine reserve, with the recommended Order in Council conditions and other measures at m) and n) below, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Marine Reserves Act 1971). Section 7.8, Attachment A Yes / No
- l) Agree section 4 of the Conservation Act 1987 has been met. Sections 6.3-6.9, Chapter 7, Attachment A Yes / No

m) Either agree all the following proposed Order in Council conditions

Section 7.8.1,
Attachment A

Yes / No

OR

Agree some of the following proposed Order in Council conditions, and specify which:

- | | |
|--|----------|
| a) Condition for continued enhancement of mātauraka Māori and wānaka | Yes / No |
| b) Condition for the retrieval of kōiwi tākata and archaeological artefacts | Yes / No |
| c) Condition for retrieval of dead marine mammals and marine mammal parts | Yes / No |
| d) Condition to allow the removal of <i>Undaria pinnatifida</i> | Yes / No |
| e) Condition to require generational reviews | Yes / No |
| f) Condition for fossicking of beach materials | Yes / No |
| g) Provision for existing discharges of contaminants and associated monitoring | Yes / No |
| h) Condition for pollution response | Yes / No |

n) Either agree all the following proposed other measures

Section 7.8.2,
Attachment A

Yes / No

Agree some of the following proposed other measures and specify which:

- | | |
|---|----------|
| i) Recommendation for establishing formal co-management with Kāi Tahu | Yes / No |
| j) Recommendation for the establishment and support of Kāi Tahu rangers | Yes / No |
| k) Recommendation for periodic reviews | Yes / No |
| l) Recommendation to use te reo Māori name 'Waitaki Marine Reserve' confirmed by Kāi Tahu | Yes / No |
| m) Recommendation that pou whenua be installed | Yes / No |
| n) Recommendation to record that marine reserve declaration is unlikely, and is not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title | Yes / No |

o) Agree declaration of the marine reserve is consistent with the Conservation General Policy and the Otago Conservation Management Strategy.

Section 7.8.3.2,
Attachment A

Yes / No

p) Agree to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport.

Sections 3.2.2, 7.11,
Attachment A

Yes / No

Attachment I

- q) Note the proposed name for the marine reserve is subject to review by the New Zealand Geographic Board. Section 7.9, Attachment A Noted

Proposed Te Umu Koau marine reserve – Chapter 8

- r) Note that if any objections are upheld under section 5(6) of the Marine Reserves Act 1971, the marine reserve will not be declared. Section 3.2.2, Attachment A Noted
- s) Agree to have particular regard to the views of affected iwi, hapū, or whānau, pursuant to section 49 of the Marine and Coastal Area (Takutai Moana) Act 2011. Sections 6.3-6.5, 6.7-6.8, 8.3-8.5, 8.7-8.8, Attachment A Yes / No
- t) Have regard to submissions made by or on behalf of objectors, and either:
Agree that, subject to your approval of the recommended Order in Council conditions and other measures at w) and x) below, no objections be upheld in terms of section 5(6) of the Marine Reserves Act 1971
 OR
Specify the Marine Reserves Act 1971 section(s) under which objection(s) should be upheld:
- (a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve Yes / No
- (b) interfere unduly with any existing right of navigation Yes / No
- (c) interfere unduly with commercial fishing Yes / No
- (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes Yes / No
- (e) otherwise be contrary to the public interest Yes / No
- u) If no objections are upheld, agree that a decision to declare the proposed Te Umu Koau marine reserve, with the recommended Order in Council conditions and other measures at w) and x) below, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Marine Reserves Act 1971). Section 8.8, Attachment A Yes / No
- v) Agree section 4 of the Conservation Act 1987 has been met. Sections 6.3-6.9, Chapter 8, Attachment A Yes / No

- w) Either agree all the following proposed Order in Council conditions
- Section 8.8.1, Attachment A Yes / No
- OR
- Agree some of the following proposed Order in Council conditions, and specify which:
- a) Condition for continued enhancement of mātauraka Māori and wānaka Yes / No
 - b) Condition for the retrieval of kōiwi tākata and archaeological artefacts Yes / No
 - c) Condition for retrieval of dead marine mammals and marine mammal parts Yes / No
 - d) Condition to allow the removal of *Undaria pinnatifida* Yes / No
 - e) Condition to require generational reviews Yes / No
 - f) Condition for fossicking of beach materials Yes / No
 - g) Condition for vehicle access over the foreshore for launching or retrieving a vessel Yes / No
 - h) Condition for gamebird and unprotected waterfowl hunting Yes / No
 - i) Condition for pollution response Yes / No
- x) Either agree all the following proposed other measures
- Sections 8.8.2-8.8.3, Attachment A Yes / No
- OR
- Agree some of the following proposed other measures and specify which:
- j) Recommendation to amend the boundary of the proposed marine reserve (amendment D1-A) Yes / No
 - k) Recommendation for establishing formal co-management with Kāi Tahu Yes / No
 - l) Recommendation for the establishment and support of Kāi Tahu rangers Yes / No
 - m) Recommendation for periodic reviews Yes / No
 - n) Recommendation to use te reo Māori name 'Te Umu Koau Marine Reserve' confirmed by Kāi Tahu Yes / No
 - o) Recommendation that pou whenua be installed Yes / No
 - p) Recommendation to record that marine reserve declaration is unlikely, and is not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title Yes / No
- y) Agree declaration of the marine reserve is consistent with the Conservation General Policy and the Otago Conservation Management Strategy.
- Section 8.8.4.2, Attachment A Yes / No

z) Agree to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport. Sections 3.2.2, 8.11, Attachment A Yes / No
Attachment I

aa) Note the proposed name for the marine reserve is subject to review by the New Zealand Geographic Board. Section 8.9, Attachment A Noted

Proposed Papanui marine reserve – Chapter 9

bb) Note that if any objections are upheld under section 5(6) of the Marine Reserves Act 1971, the marine reserve will not be declared. Section 3.2.2, Attachment A Noted

cc) Agree to have particular regard to the views of affected iwi, hapū, or whānau, pursuant to section 49 of the Marine and Coastal Area (Takutai Moana) Act 2011. Sections 6.3-6.5, 6.7-6.8, 9.3-9.5, 9.7-9.8, Attachment A Yes / No

dd) Have regard to submissions made by or on behalf of objectors, and either: Attachment E Yes / No

Agree that, subject to your approval of the recommended Order in Council conditions and other measures at gg) and hh) below, no objections be upheld in terms of section 5(6) of the Marine Reserves Act 1971 Yes / No
Attachment A

OR

Specify the Marine Reserves Act 1971 section(s) under which objection(s) should be upheld:

(a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve Yes / No

(b) interfere unduly with any existing right of navigation Yes / No

(c) interfere unduly with commercial fishing Yes / No

(d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes Yes / No

(e) otherwise be contrary to the public interest Yes / No

ee) If no objections are upheld, agree that a decision to declare the proposed Waitaki marine reserve, with the recommended Order in Council conditions and other measures at gg) and hh) below, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Marine Reserves Act 1971). Section 9.8, Attachment A Yes / No

- ff) Agree section 4 of the Conservation Act 1987 has been met. Sections 6.3-6.9, Chapter 9, Attachment A Yes / No
- gg) Either agree all the following proposed Order in Council conditions Section 9.8.1, Attachment A Yes / No
- OR
- Agree some of the following proposed Order in Council conditions, and specify which:
- a) Condition for continued enhancement of mātauraka Māori and wānaka Yes / No
- b) Condition to require generational reviews Yes / No
- c) Condition for pollution response Yes / No
- hh) Either agree all the following proposed other measures Section 9.8.2, Attachment A Yes / No
- OR
- Agree some of the following proposed other measures and specify which:
- d) Recommendation for establishing formal co-management with Kāi Tahu Yes / No
- e) Recommendation for the establishment and support of Kāi Tahu rangers Yes / No
- f) Recommendation for periodic reviews Yes / No
- g) Recommendation to use te reo Māori name 'Papanui Marine Reserve' confirmed by Kāi Tahu Yes / No
- h) Recommendation to record that marine reserve declaration is unlikely, and is not intended, to preempt or negatively impact on the Ngāi Tahu Whānui application for customary marine title Yes / No
- ii) Agree declaration of the marine reserve is consistent with the Conservation General Policy and the Otago Conservation Management Strategy. Section 9.8.3.2, Attachment A Yes / No
- jj) Agree to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport. Sections 3.2.2, 9.11, Attachment A Attachment I Yes / No
- kk) Note the proposed name for the marine reserve is subject to review by the New Zealand Geographic Board. Section 9.9, Attachment A Noted

Proposed Ōrau marine reserve – Chapter 10

- ll) Note that if any objections are upheld under section 5(6) of the Marine Reserves Act 1971, the marine reserve will not be declared. Section 3.2.2, Attachment A Noted

- mm)** Agree to have particular regard to the views of affected iwi, hapū, or whānau, pursuant to section 49 of the Marine and Coastal Area (Takutai Moana) Act 2011. Sections 6.3-6.5, 6.7-6.8, 10.3-10.5, 10.7-10.8, Attachment A Yes / No
- nn)** Have regard to submissions made by or on behalf of objectors, and either: Attachment E Yes / No
- Agree that, subject to your approval of the recommended Order in Council conditions and other measures at qq) and rr) below, no objections be upheld in terms of section 5(6) of the Marine Reserves Act 1971 Sections 10.4-10.7, Attachment A Yes / No
- OR
- Specify the Marine Reserves Act 1971 section(s) under which objection(s) should be upheld:
- (a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve Yes / No
- (b) interfere unduly with any existing right of navigation Yes / No
- (c) interfere unduly with commercial fishing Yes / No
- (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes Yes / No
- (e) otherwise be contrary to the public interest Yes / No
- oo)** If no objections are upheld, agree that a decision to declare the proposed Ōrau marine reserve, with the recommended Order in Council conditions and other measures at qq) and rr) below, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Marine Reserves Act 1971). Section 10.8, Attachment A Yes / No
- pp)** Agree section 4 of the Conservation Act 1987 has been met. Sections 6.3-6.9, Chapter 10, Attachment A Yes / No

qq) Either agree all the following proposed Order in Council conditions

OR

Agree some of the following proposed Order in Council conditions, and specify which:

Section
10.8.1,
Attachment A

Yes / No

- | | |
|---|----------|
| a) Condition for continued enhancement of mātauraka Māori and wānaka | Yes / No |
| b) Condition for the retrieval of kōiwi tākata and archaeological artefacts | Yes / No |
| c) Condition for retrieval of dead marine mammals and marine mammal parts | Yes / No |
| d) Condition to allow the removal of <i>Undaria pinnatifida</i> | Yes / No |
| e) Condition to require generational reviews | Yes / No |
| f) Condition for fossicking of beach materials | Yes / No |
| g) Condition for vehicle access over the foreshore for launching or retrieving a vessel | Yes / No |
| h) Condition for vehicle access over the foreshore for lifeguard duties | Yes / No |
| i) Condition for existing discharges of contaminants and associated monitoring | Yes / No |
| j) Condition for existing structures, replacement of existing structures and associated maintenance | Yes / No |
| k) Condition for future structures at Oceans Beach, specifically sand sausages and Reno mattresses, including maintenance and replacement by 'like for like' structures | Yes / No |
| l) Condition for existing remedial activities associated with the historic landfill at Kettle Park, including any associated monitoring | Yes / No |
| m) Condition for existing deposition of sand at Oceans Beach | Yes / No |
| n) Condition for disturbance of the foreshore at the Tomahawk Creek river mouth for the purposes of flood protection | Yes / No |
| o) Condition for existing discharges of contaminants and associated monitoring | Yes / No |
| p) Condition for specific infrequent discharges for a finite period | Yes / No |
| q) Condition for future stormwater discharges and associated structures | Yes / No |
| r) Condition for future erosion protection measures at St Clair and St Kilda beaches | Yes / No |
| s) Condition for pollution response | Yes / No |

- | | | | |
|------------|---|---|---|
| rr) | Either <u>agree</u> all the following proposed other measures
OR
<u>Agree</u> some of the following proposed other measures
and specify which: | Sections
10.8.2,
10.8.3,
Attachment A | <input checked="" type="radio"/> Yes / No |
| | t) Recommendation to amend the boundary of the
proposed marine reserve | | Yes / No |
| | u) Recommendation for establishing formal co-
management with Kāi Tahu | | Yes / No |
| | v) Recommendation for the establishment and
support of Kāi Tahu rangers | | Yes / No |
| | w) Recommendation for periodic reviews | | Yes / No |
| | x) Recommendation to use te reo Māori name 'Ōrau
Marine Reserve' confirmed by Kāi Tahu | | Yes / No |
| | y) Recommendation that pou whenua be installed | | Yes / No |
| | z) Recommendation to record that marine reserve
declaration is unlikely, and is not intended, to pre-
empt or negatively impact on the Ngāi Tahu
Whānui application for customary marine title | | Yes / No |
| ss) | <u>Agree</u> declaration of the marine reserve is consistent with
the Conservation General Policy and the Otago
Conservation Management Strategy. | Section
10.8.4.2,
Attachment A | <input checked="" type="radio"/> Yes / No |
| tt) | <u>Agree</u> to seek the concurrence of the Minister for Oceans
and Fisheries and the Minister of Transport. | Sections
3.2.2, 10.11,
Attachment A
Attachment I | <input checked="" type="radio"/> Yes / No |
| uu) | <u>Note</u> the proposed name for the marine reserve is subject
to review by the New Zealand Geographic Board. | Section 10.9,
Attachment A | <input checked="" type="radio"/> Noted |

Proposed Okaihae marine reserve – Chapter 11

- | | | | |
|------------|---|--|---|
| vv) | <u>Note</u> that if any objections are upheld under section 5(6)
of the Marine Reserves Act 1971, the marine reserve will
not be declared. | Section 3.2.2,
Attachment A | <input checked="" type="radio"/> Yes / No |
| ww) | <u>Agree</u> to have particular regard to the views of affected
iwi, hapū, or whānau, pursuant to section 49 of the
Marine and Coastal Area (Takutai Moana) Act 2011. | Sections 6.3-
6.5, 6.7-6.8,
11.3-11.5,
11.7-11.8,
Attachment A | <input checked="" type="radio"/> Yes / No |

- xx) Have regard to submissions made by or on behalf of objectors, and either: Attachment E Yes / No
Sections 11.4-11.7, Yes / No
Attachment A
- Agree that, subject to your approval of the recommended Order in Council conditions and other measures at aaa) and bbb) below, no objections be upheld in terms of section 5(6) of the Marine Reserves Act 1971
- OR
- Specify the Marine Reserves Act 1971 section(s) under which objection(s) should be upheld:
- (a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve Yes / No
 - (b) interfere unduly with any existing right of navigation Yes / No
 - (c) interfere unduly with commercial fishing Yes / No
 - (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes Yes / No
 - (e) otherwise be contrary to the public interest Yes / No
- yy) If no objections are upheld, agree that a decision to declare the proposed Okaihae marine reserve, with the recommended Order in Council conditions and other measures at aaa) and bbb) below, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Marine Reserves Act 1971). Section 11.8, Attachment A Yes / No
- zz) Agree section 4 of the Conservation Act 1987 has been met. Sections 6.3-6.9, Chapter 11, Attachment A Yes / No
- aaa) Either agree all the following proposed Order in Council conditions Section 11.8.1, Attachment A Yes / No
- OR
- Agree some of the following proposed Order in Council conditions, and specify which:
- a) Condition for continued enhancement of mātauraka Māori and wānaka Yes / No
 - b) Condition for the retrieval of kōiwi tākata and archaeological artefacts Yes / No
 - c) Condition to allow the removal of *Undaria pinnatifida* Yes / No
 - d) Condition to require generational reviews Yes / No
 - e) Condition for existing discharge of contaminants and associated monitoring Yes / No
 - f) Condition for pollution response Yes / No

- bbb)** Either agree all the following proposed other measures
OR
Agree some of the following proposed other measures
and specify which:
- g) Recommendation for establishing formal co-management with Kāi Tahu Yes / No
 - h) Recommendation for the establishment and support of Kāi Tahu rangers Yes / No
 - i) Recommendation for periodic reviews Yes / No
 - j) Recommendation to use te reo Māori name 'Okaihae Marine Reserve' confirmed by Kāi Tahu Yes / No
 - k) Recommendation to record that marine reserve declaration is unlikely, and is not intended, to preempt or negatively impact on the Ngāi Tahu Whānui application for customary marine title Yes / No

ccc) Agree declaration of the marine reserve is consistent with the Conservation General Policy and the Otago Conservation Management Strategy. Section 11.8.3.2, Attachment A Yes / No

ddd) Agree to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport. Sections 3.2.2, 11.11, Attachment A Attachment I Yes / No

eee) Note the proposed name for the marine reserve is subject to review by the New Zealand Geographic Board. Section 11.9, Attachment A Noted

Proposed Hākinikini marine reserve – Chapter 12

fff) Note that if any objections are upheld under section 5(6) of the Marine Reserves Act 1971, the marine reserve will not be declared. Section 3.2.2, Attachment A Noted

ggg) Agree to have particular regard to the views of affected iwi, hapū, or whānau, pursuant to section 49 of the Marine and Coastal Area (Takutai Moana) Act 2011. Sections 6.3-6.5, 6.7-6.8, 12.3-12.5, 12.7-12.8, Attachment A Yes / No

- hhh) Have regard to submissions made by or on behalf of objectors, and either: Attachment E Yes / No
Sections 12.4-12.7, Yes / No
Attachment A
- Agree that, subject to your approval of the recommended Order in Council conditions and other measures at kkk) and III) below, no objections be upheld in terms of section 5(6) of the Marine Reserves Act 1971
- OR
- Specify the Marine Reserves Act 1971 section(s) under which objection(s) should be upheld:
- (a) interfere unduly with any estate or interest in land in or adjoining the proposed reserve Yes / No
 - (b) interfere unduly with any existing right of navigation Yes / No
 - (c) interfere unduly with commercial fishing Yes / No
 - (d) interfere unduly with or adversely affect any existing usage of the area for recreational purposes Yes / No
 - (e) otherwise be contrary to the public interest Yes / No
- iii) If no objections are upheld, agree that a decision to declare the proposed Hākinikini marine reserve, with the recommended Order in Council conditions and other measures at kkk) and III) below, will be in the best interests of scientific study, will be for the benefit of the public, and be expedient (in accordance with section 5(9) of the Marine Reserves Act 1971). Section 12.8, Attachment A Yes / No
- jjj) Agree section 4 of the Conservation Act 1987 has been met. Sections 6.3-6.9, Chapter 12, Attachment A Yes / No
- kkk) Either agree all the following proposed Order in Council conditions Section 12.8.1, Attachment A Yes / No
- OR
- Agree some of the following proposed Order in Council conditions, and specify which:
- a) Condition for continued enhancement of mātauraka Māori and wānaka Yes / No
 - b) Condition for the retrieval of kōiwi tākata and archaeological artefacts Yes / No
 - c) Condition for retrieval of dead marine mammals and marine mammal parts Yes / No
 - d) Condition to allow the removal of *Undaria pinnatifida* Yes / No
 - e) Condition to require generational reviews Yes / No
 - f) Condition for fossicking of beach materials Yes / No
 - g) Condition for pollution response Yes / No

- | | | |
|---|---|--|
| <p>III) Either <u>agree</u> all the following proposed other measures
OR
<u>Agree</u> some of the following proposed other measures
and specify which:</p> <p>h) Recommendation for establishing formal co-
management with Kāi Tahu</p> <p>i) Recommendation for the establishment and
support of Kāi Tahu rangers</p> <p>j) Recommendation for periodic reviews</p> <p>k) Recommendation to use te reo Māori name
'Hākinikini Marine Reserve' confirmed by Kāi Tahu</p> <p>l) Recommendation that pou whenua be installed</p> <p>m) Recommendation to record that marine reserve
declaration is unlikely, and is not intended, to pre-
empt or negatively impact on the Ngāi Tahu
Whānui application for customary marine title</p> | <p>Section
12.8.2,
Attachment A</p> | <p><input checked="" type="radio"/> Yes / <input type="radio"/> No</p> |
| <p>mmm) <u>Agree</u> declaration of the marine reserve is consistent with
the Conservation General Policy and the Otago
Conservation Management Strategy.</p> | <p>Section
12.8.3.2,
Attachment A</p> | <p><input checked="" type="radio"/> Yes / <input type="radio"/> No</p> |
| <p>nnn) <u>Agree</u> to seek the concurrence of the Minister for Oceans
and Fisheries and the Minister of Transport.</p> | <p>Sections
3.2.2, 12.11,
Attachment A
Attachment I</p> | <p><input checked="" type="radio"/> Yes / <input type="radio"/> No</p> |
| <p>ooo) <u>Note</u> the proposed name for the marine reserve is subject
to review by the New Zealand Geographic Board.</p> | <p>Section 12.9,
Attachment A</p> | <p><input checked="" type="radio"/> Noted</p> |

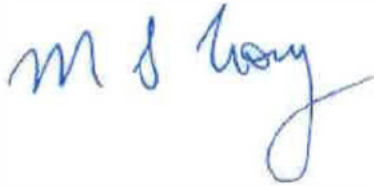
Next steps

- | | | |
|---|---------------------|--|
| <p>ppp) <u>Agree</u> to meet with officials to discuss any aspect of this
substantive advice.</p> | <p>Attachment I</p> | <p><input checked="" type="radio"/> Yes / <input type="radio"/> No</p> |
| <p>qqq) Either <u>forward</u> the drafted concurrence letters to the
Minister for Oceans and Fisheries and the Minister of
Transport for those proposed marine reserves you
recommend the making of an Order in Council for
OR
<u>Request</u> the Department to redraft concurrence letters to
the Minister for Oceans and Fisheries and the Minister of
Transport with any changes you instruct.</p> | <p>Attachment I</p> | <p><input checked="" type="radio"/> Yes / <input type="radio"/> No</p> |

rrr) Note that following your decisions, the Minister for Oceans and Fisheries is expected to make decisions under the Fisheries Act 1996 on the other marine protected areas that form part of the proposed Network.

Section 2.7,
Attachment A

Noted



Date: 07/07/2023

Marie Long
Deputy Director-General, National
Operations and Regulatory Services
For Director-General of Conservation



Date: 16/08/23

Hon Willow-Jean Prime
Minister of Conservation

Released under the Official Information Act

Purpose – Te aronga

1. This briefing seeks your decision on the Application by the Director-General of Conservation for six marine reserves in the southeast of Te Waipounamu under the Marine Reserves Act.
2. If you decide marine reserves should be declared, the next step in the statutory process is to gain the concurrence of the Minister for Oceans and Fisheries and Minister of Transport for the establishment of the six marine reserves.

Background and context – Te horopaki

3. In 2014, Government directed the appointment of an independent forum (the Forum) to provide recommendations for Marine Protected Areas (MPAs) for the area from Timaru to Waipapa Point (The Catlins), out to 12 nautical miles offshore.
4. In 2018, the Forum presented their recommendations for two alternate networks of MPAs to the Ministers of Conservation and Fisheries. In 2019, Ministers directed the Department and Fisheries New Zealand (the Agencies) to proceed with statutory consultation processes for one of the Forum's recommended networks (Network 1, consisting of 12 proposals: six marine reserves, five Type 2 MPAs and one kelp protection area, the Network) (Figure 1).
5. On 3 June 2020, the Director-General of Conservation formally notified the Application under the Marine Reserves Act for Orders in Council declaring six areas of sea and foreshore as marine reserves. The six proposed areas closely matched Network 1 recommended by the Forum. Statutory public consultation occurred June to August 2020. Treaty partner engagement with Kāi Tahu has been undertaken since the project's inception and is ongoing.
6. Te Mana o te Taiao, as well as New Zealand's commitment to the United Nations Convention on Biological Diversity recognise the importance of establishing an effective network of MPAs that protect a full range of biodiversity. Given the southeast region of the South Island currently has no MPAs that meet New Zealand's 'protection standard'¹, the proposal will make a significant contribution to our domestic and international commitments.
7. The next step in the statutory process is for you to make decisions, under the Marine Reserves Act, on the Director-General's Application for six marine reserves in the southeast of the South Island. For any proposed marine reserve you approve, the concurrence (agreement) of the Minister for Oceans and Fisheries and Minister of Transport will then be required for the Application to proceed.
8. Following those decisions, the Minister for Oceans and Fisheries is expected to make decisions under the Fisheries Act on the proposed Type 2 MPAs and kelp protection area, that form part of the proposed Network.
9. The Department's report in Attachment A provides you with advice and background information to support your decision-making on the proposed marine reserves. Appendices to the Department's report are provided in Attachment B. Summaries of the Department's advice and key recommendations are provided in the executive summary of Attachment A and in Attachment C. The report has been informed by the Application, Consultation Document, Forum's Recommendation Report, and new information provided by Treaty partner engagement, Fisheries New Zealand and in submissions from the statutory consultation process.
10. 4,056 submissions were received through the statutory consultation process. Within these, objections were identified, triaged and classified. Our analysis of objections was informed by existing science and other information already developed through the

¹ As defined in: Department of Conservation; Ministry of Fisheries 2008: Marine Protected Areas: Classification, Protection Standard and Implementation Guidelines, Wellington. 54 p, at paragraph 14 – 15.

Forum process and by our science, technical, policy and legal expertise. Published literature, case law, and information provided by other local and central government agencies assisted with the analysis of issues raised in submissions.

11. As a result of statutory consultation and Treaty partner engagement, the Department recommends a number of conditions and other measures be applied to the proposed marine reserves.
12. The independent review report in Attachment D, sought by a previous Minister of Conservation under the Marine Reserves Act (20-B-0808 refers), is relevant to your decision-making.

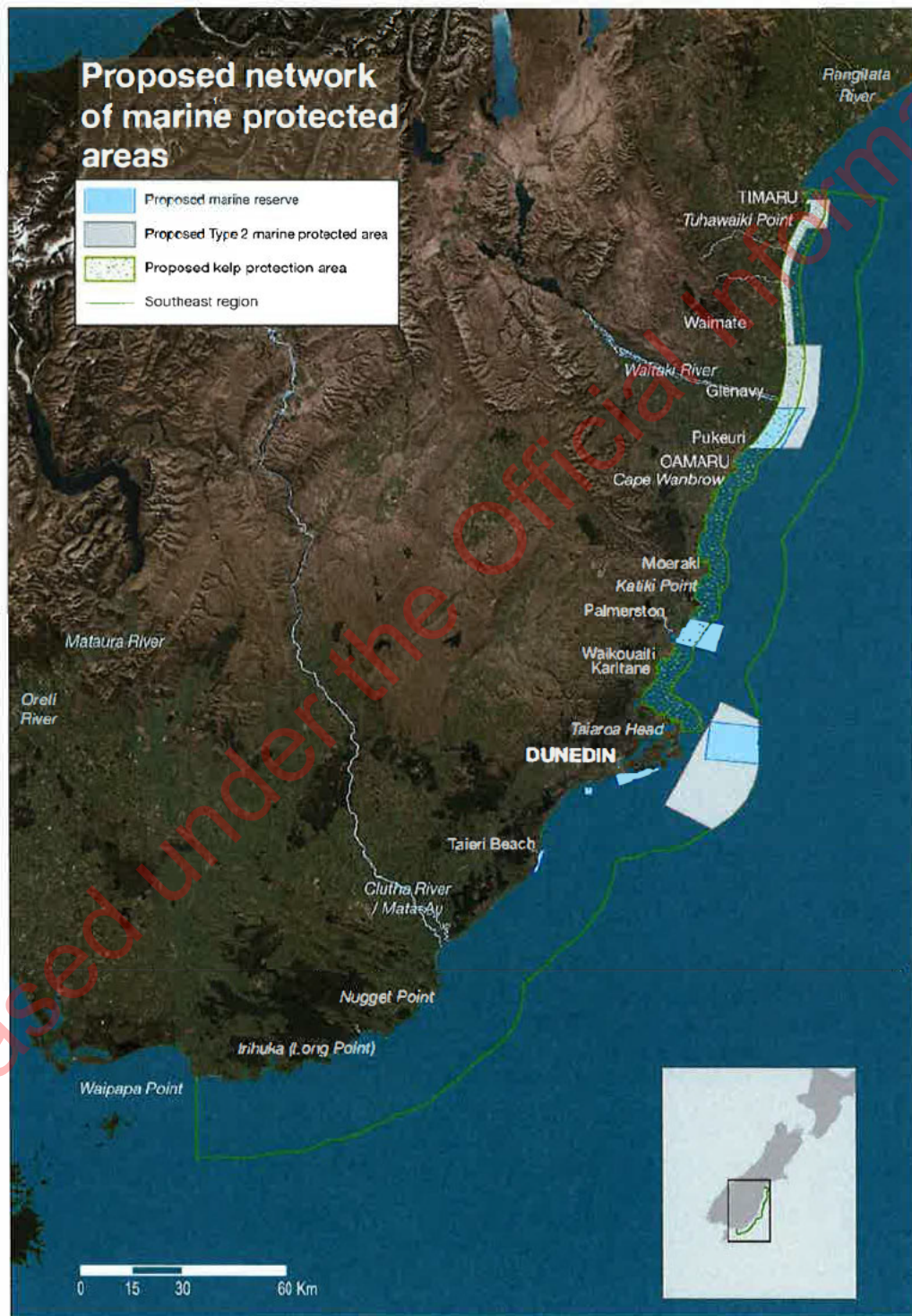


Figure 1: Locations of the proposed marine protected areas.

Statutory framework for decision-making

13. Your decisions on the six proposed marine reserves must be in accordance with the Marine Reserves Act and several statutory obligations in relation to the Treaty of Waitangi. Below is a summary of these requirements. These are outlined in full in sections 3.2 and 3.3, and chapter 4 of the Department's report (Attachment A).

Compliance with statutory process requirements (chapter 4 of Attachment A)

14. As set out in the Department's report (Attachment A), you and the Director-General must agree that a number of process requirements under sections 4 and 5 of the Marine Reserves Act have been met before you can consider the marine reserve proposals under sections 5(6) and 5(9) of the Marine Reserves Act. You and the Director-General also have obligations under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Takutai Moana Act) and Ngāi Tahu Claims Settlement Act 1998. Additionally, you should be satisfied that the process leading to this point and the development of this advice has been carried out to give effect to the principles of the Treaty of Waitangi as required by section 4 of the Conservation Act.
15. If you consider the statutory process requirements have been met, you can proceed to considering the objections to the proposed marine reserves in accordance with section 5(6), and if you decide not to uphold any objections, consider the proposed marine reserves in accordance with section 5(9) of the Marine Reserves Act.
16. The independent report in Attachment D separately assesses the Director-General's compliance with the statutory process requirements.

Your decision-making under the Marine Reserves Act (sections 3.2.1 – 3.2.6 and 3.2.8 of Attachment A)

17. Central to your decision-making on each of the proposed marine reserves are sections 5(6) and 5(9) of the Marine Reserves Act. These sections set out a two-stage process.
18. First, pursuant to section 5(6), you must decide whether to uphold any 'objections' to each proposed marine reserve. If an objection is upheld, the area shall not be declared a marine reserve. You must uphold an objection if satisfied that declaring the area as a marine reserve would:
 - (a) *interfere unduly with any estate or interest in land in or adjoining the proposed reserve:*
 - (b) *interfere unduly with any existing right of navigation:*
 - (c) *interfere unduly with commercial fishing:*
 - (d) *interfere unduly with or adversely affect any existing usage of the area for recreational purposes:*
 - (e) *otherwise be contrary to the public interest.*
19. You may also consider whether the inclusion of a condition in the Order in Council for a proposed marine reserve or other mitigation would be appropriate to respond to any objection raised, so that the objection does not need to be upheld.
20. In accordance with section 5(6), you must take into consideration:
 - Any answer given by the applicant to the Director-General on any objections received. As the applicant is the Director-General in this case, no such answers were given. Instead, the Department's report (Attachment A) should support your decision-making.
 - Any report on the objection and the Application you as the Minister may have obtained from an independent source (see Attachment D).

21. Second, pursuant to section 5(9), if you decide not to uphold any of the objections against the Network and each marine reserve, you must make a broader assessment and decide whether declaring the area a marine reserve will: '... be in the best interests of scientific study and will be for the benefit of the public, and it is expedient that the area should be declared a marine reserve, either unconditionally or subject to any conditions...'
22. Your assessment under sections 5(6) and 5(9) should take into account that the six marine reserves are proposed as part of a Network. It should consider the reserves individually and as part of the wider Network.

Your obligations in relation to the Treaty of Waitangi (sections 3.2.7 and 3.3 of Attachment A)

23. Your decisions on the proposed marine reserves must be in accordance with the Crown's obligations in relation to the Treaty of Waitangi.
24. When making your assessment of objections under section 5(6) of the Marine Reserves Act you have an obligation to have particular regard to the views of 'affected iwi, hapū, or whānau', in this case Kāi Tahu², under the Takutai Moana Act. You also have an obligation to give effect to the principles of the Treaty of Waitangi under section 4 of the Conservation Act. The principles of partnership, informed decision-making, active protection and redress are of particular relevance to your decisions.
25. Given the views of Kāi Tahu have predominantly been provided via direct engagement with Agencies rather than through submissions under the statutory process, they cannot be considered as objections for the purposes of section 5(6). You must instead consider these views as part of your decision-making under section 5(9), in accordance with your obligations under section 4 of the Conservation Act. You must also consider any other views received through the statutory consultation process that are relevant to the Crown's Treaty of Waitangi obligations for this step of the process (i.e., views received from 'other Māori', defined for this process as Māori who do not whakapapa to Kāi Tahu).
26. To aid informed decision-making, where relevant, the Department's report classifies the objections/submissions as those of 'affected iwi, hapū, or whānau', 'other Māori', or 'all other submitters'.

Concurrence requirements and subsequent statutory process (section 3.2.2 of Attachment A)

27. For any marine reserves you approve, you will need to gain the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport. If concurrence is received, you can recommend to the Governor-General the making of an Order in Council, either unconditionally or subject to conditions, to declare each proposed area a marine reserve under the Marine Reserves Act.

The Department's advice on the six proposed marine reserves and the proposed Network (chapters 6-12 of Attachment A)

28. Our detailed advice to support your decision-making on each of the six proposed marine reserves is in the Department's report (Attachment A).
29. The advice also includes a chapter on the proposed Network (chapter 6). Although your decisions regard the six proposed marine reserves, it is important your decisions are also informed by objections/submissions relating to the proposed Network (and so

² The Crown has acknowledged Kāi Tahu rights under the Treaty of Waitangi over the southeast region of Te Waipounamu through various pieces of legislation, most relevantly the Ngāi Tahu Claims Settlement Act 1998.

applying to each of the proposed marine reserves) as well as an understanding of how each of the proposed marine reserves would contribute to the proposed Network.³

30. Chapter 6 also includes the substantive summary of the Agencies' joint engagement with Kāi Tahu.
31. The Director-General considers the Application, the public notice actions (as the applicant), and the Department's development of advice to you on each of the six proposed marine reserves:
 - Meets the statutory process requirements of sections 4 and 5 of the Marine Reserves Act
 - Meets the requirements of sections 47 and 48 of the Takutai Moana Act
 - Meets Ngāi Tahu Claims Settlement Act and Treaty of Waitangi (Fisheries Claims) Settlement Act obligations
 - Gives effect to the principles of the Treaty of Waitangi in accordance with section 4 of the Conservation Act.
32. We consider that for each of the six proposed marine reserves:
 - No objections received under section 5(6) of the Marine Reserves Act should be upheld, on the proviso that the recommended Order in Council conditions and 'other measures' detailed in the Department's report (Attachment A), and summarised in Table III and Table IV of that report are implemented.
 - The broader assessment under section 5(9), being in the best interests of scientific study, for the benefit of the public, and expedient, including with the recommended Order in Council conditions and 'other measures' detailed in the Department's report (Attachment A), and summarised in Table IV of that report, has been met.
 - A decision to declare the proposed marine reserves with the recommendations detailed in the Department's report (Attachment A), and summarised in Table IV of that report, would be consistent with all relevant provisions of the Conservation General Policy and the Otago Conservation Management Strategy.
 - A decision to declare the proposed marine reserves with the recommendations detailed in the Department's report (Attachment A) and summarised in Table IV of that report would fulfil the Crown's obligations in relation to the Treaty of Waitangi.
33. The independent review report prepared by EnviroStrat (Attachment D) agrees with our assessment. The independent reviewer found that we have met statutory process requirements and statutory obligations, our advice to you fairly reflects the objections received, and, if implemented, our recommended mitigations are sufficient to ensure there is no undue interference with existing users so that no objections to the proposed marine reserves should be upheld.⁴ Note, the Department's report was updated with new commercial fisheries data following the receipt of the independent review report. EnviroStrat were given the opportunity to consider the changes made to the Department's report and concluded that the findings of their review report stand (see page 1 of Attachment D).

³ An index of submissions received through the statutory consultation process is provided at Attachment E. Electronic copies of the submissions were provided to your office concurrently with this briefing.

⁴ The independent review report did not include consideration of the merits of the Application under section 5(9) of the Marine Reserves Act, nor did it provide advice on your final decisions on the Application.

The proposed marine reserves as part of the Network

34. The proposed Network was designed to protect a range of representative habitats and unique features, while minimising adverse effects on existing interests. Each marine reserve would protect regionally or nationally important natural features and provide unique scientific opportunities. Implementing multiple marine reserves would also provide the opportunity for scientific study of responses to different management approaches (e.g. marine reserves, Type 2 marine protected areas, customary protected areas) across different habitat types in the region.
35. The benefits and impacts of each proposed marine reserve therefore should be considered in the context of the overall proposed Network. Implementing marine reserves as part of a network of MPAs is known to provide greater benefits than ad hoc protection of individual MPAs⁵.
36. However, establishment of the six proposed marine reserves will have significant ecological, scientific, recreational, wellbeing, tourism, and fisheries benefits, and will contribute to New Zealand's marine protected area goals, regardless of the Minister for Oceans and Fisheries' decisions on the rest of the proposed Network. Collectively, the six proposed marine reserves would nearly double the area currently protected as marine reserves around mainland New Zealand (from ~485 km² to ~894 km²).

The position of Kāi Tahu on the proposed marine reserves and the Network

37. To ensure our advice to you accurately conveys the views of Kāi Tahu, and to share our recommendations on the proposed marine reserves, in October 2022 we provided Kāi Tahu the opportunity to give feedback on relevant excerpts of the Department's draft report (i.e. excerpts of Attachment A). Kāi Tahu provided minor feedback and we updated the advice as appropriate. No recommendations were changed.
38. On 13 December 2022, Kāi Tahu also sent letters to the Director-General (Attachment F) and to the former Ministers of Conservation and Oceans and Fisheries (Attachment G).
39. Kāi Tahu's letter to the Director-General is very positive, stating support for the marine reserves as they are proposed in our advice, including our recommendation that you approve an amended boundary for the proposed Te Umu Koau marine reserve (see the Department's report, Attachment A, sections 6.3.6.4, 8.3.1, 8.6.4.2, 8.8.2).
40. Previously Kāi Tahu neither supported or opposed the proposed Network, and the boundary amendment was a significant sticking point (refer to the Department's report, Attachment A). Although our recommendations do not meet all of Kāi Tahu's expectations, they encapsulate work that goes a long way towards addressing the concerns held by Kāi Tahu regarding potential impacts on their rights and interests.
41. Kāi Tahu's support is qualified, however. They will not support any further marine reserves in the southeast region and, if the Network is established, Kāi Tahu consider no further marine reserves or Type 2 MPAs are necessary there. Kāi Tahu also state that any significant changes to the Type 2 MPA and kelp protection area proposals (we understand this to mean changes that may increase impacts on Kāi Tahu rights and interests) may affect their support for the proposed Network. We expect decisions on these MPAs will be made by the Minister for Oceans and Fisheries following your decisions on the proposed marine reserves (refer paragraph 8).
42. In terms of your decision-making process, Kāi Tahu seek your written commitment that:
 - Kāi Tahu will hold 50% of the seats on the co-management groups

⁵ For example: IUCN World Commission on Protected Areas, 2008. Establishing Marine Protected Area Networks—Making It Happen. Washington, D.C. IUCN-WCPA, National Oceanic and Atmospheric Administration and The Nature Conservancy. 118 p.

- the Crown will commit sufficient funding to ensure success of the marine reserves, including funding co-management and associated activities, such as Kāi Tahu rangers
- the proposed marine reserves are unlikely, and are not intended, to pre-empt or negatively impact on the Ngāi Tahu Whānui application for customary marine title.

43. [REDACTED] 9(2)(g)(i)
[REDACTED] We recommend Agencies do further work with Kāi Tahu on the co-management framework once Ministerial decisions are made, at which point Agencies anticipate providing you and the Minister for Oceans and Fisheries further advice on this matter.

44. [REDACTED] 9(2)(g)(i)
[REDACTED]
[REDACTED]

45. The requested wording regarding the Ngāi Tahu Whānui application for customary marine title is incorporated into the Department's report (Attachment A) and the decision-making recommendations table above. We anticipate this will suffice as your written commitment.

46. Kāi Tahu's 13 December 2022 letter to the former Ministers of Conservation and Oceans and Fisheries requested a meeting with them before Ministerial decisions are taken on the proposed marine reserves. Agencies advised the former Ministers that this meeting should occur, and still support this approach.

47. Subsequent to Kāi Tahu's feedback on the Department's draft report and their letter to the former Ministers of Conservation and Oceans and Fisheries in late 2022, we have updated the Department's report so it reflects the most recent commercial fisheries data provided by Fisheries New Zealand (update occurred May 2023). Kāi Tahu were also informed of the updated data in May. Due to commercial sensitivity, only some of the new data could be provided to Kāi Tahu. Kāi Tahu consider that being provided with only partial information limits their ability to meaningfully engage and to develop an informed view. We understand Fisheries New Zealand intend to provide further information to Kāi Tahu but is unlikely to release the full set of updated data. Kāi Tahu may raise this matter should you agree to meet with them.

48. Kāi Tahu most recently wrote to you and the Minister for Oceans and Fisheries regarding SEMP on 21 June 2023. They expressed "disappointment and frustration", including at the lack of progress since their last hui with Ministers in November 2021, the repeated requests from the Department for their urgent input, and the lack of response to two letters sent to previous Ministers requesting hui. Kāi Tahu's letter states they remain committed to working with the Crown on SEMP and reiterates their wish to meet with you and the Minister for Oceans and Fisheries.

49. We consider a meeting with Kāi Tahu would be beneficial to continue the Ministerial-level relationship on this kaupapa and allow Kāi Tahu to convey their views to you directly as they have done with previous Ministers. It is important to Kāi Tahu that any meeting occurs before Ministerial decisions are made on the proposed MPAs.

Aspects of Kāi Tahu support for the Network relate to fisheries regulatory change

50. As part of their 'rebalancing package' (see the Department's report, Attachment A, section 6.3), Kāi Tahu seek two types of fisheries regulatory change to address the displacement of fishing effort they consider will occur due to establishment of the proposed marine reserves. With these changes, Kāi Tahu seeks better enablement of their role as kaitiaki over their rohe moana, especially within mātaimai reserves and taiāpure, and rebalancing of the economic impacts Kāi Tahu anticipate if the proposed Network is implemented. These regulatory changes relate to the Fisheries Act and so sit with Fisheries New Zealand. They are described here for your context as they are matters important to Kāi Tahu's overall position on the Network.

51. One regulatory amendment was made in November 2022⁶. We understand it introduces a new, more efficient, instrument for responding to fishing pressures in areas defined in regulation (e.g. Kāi Tahu's East Otago Taiāpure) and on fishing controls already stipulated in regulation (e.g. bag limits, accumulation limits, minimum or maximum length for fish/shellfish). We understand the regulatory process is still required for fishing controls or areas not already enabled or defined in regulation. In their letter of 15 December 2022 to the Director-General, Kāi Tahu state they are pleased with these changes.
52. Kāi Tahu seek commitment from the Minister for Oceans and Fisheries on a reduction in the annual amount of pāua recreational fishers can take from Fisheries Management Area PAU5D and several supporting changes (bag/accumulation/vehicle/vessel limits, review of minimum legal size etc.).

9(2)(j)

Risk assessment – Aronga tūraru

Timing of decisions on the rest of the proposed Network

53. A parallel process is being carried out under the Fisheries Act for the five proposed Type 2 MPAs and the kelp protection area. The Minister for Oceans and Fisheries is expected to make her decisions on these after you have made your decisions on the proposed marine reserves.
54. The sequential timing of the two processes means you will likely make your decisions under the Marine Reserves Act without knowing the outcome for the other proposals in the Network. This presents some challenges as the objections you must consider in your decision-making were made in the context of the Network as a whole, and in some cases clearly refer to the potential cumulative effect of all proposed MPAs.
55. Our advice has been developed on the basis that all proposed MPAs will be established, as we consider this is the most precautionary and conservative approach, in terms of any assessment of cumulative impacts. Treasury is satisfied with this approach in terms of regulatory impact analysis requirements.
56. Delay in the Minister for Oceans and Fisheries making decisions on the rest of the Network or the associated Cabinet approval process, will have implications for joint implementation. This can be dealt with through continued discussions between the Agencies and Kāi Tahu, and adjustments to implementation planning.

Recommended boundary amendment for the proposed Te Umu Koau marine reserve

57. We recommend a boundary change to the proposed Te Umu Koau marine reserve. This change is the largest departure from the Application we publicly consulted on. We consider this change will mitigate likely undue interference on the commercial rock lobster fishery while still protecting the significant ecological values of the proposed marine reserve and its contribution to the Network.
58. As at December 2022, Kāi Tahu supported this change, on the proviso of sufficient Crown funding and co-management arrangements.⁷ Kāi Tahu want to fully understand

⁶ [Fisheries notices | NZ Government \(mpi.govt.nz\)](https://www.mpi.govt.nz/fisheries-notices/).

⁷ Since it is a more recent development, Kāi Tahu's 13 December 2022 position differs from that discussed in Attachment A.

the implications of the new commercial fisheries data at this site before determining if their position of support is affected.

59. Kāi Tahu's position aside, we anticipate questions and possible challenges, on this proposed marine reserve boundary amendment and on the rest of the Network as a result, most likely from submitters who sought a larger marine reserve at this site. Clear communication regarding the rationale for this amendment will help to mitigate this risk.

Implications if you only agree to some of the recommendations

60. The marine reserves have been collectively proposed, with the proposed conditions to each Order in Council and 'other measures' being the result of extensive engagement with Kāi Tahu, central government, the public, and in some cases, with local government.
61. While your decisions are required on each marine reserve independently, we note that if you agree only in part to the recommendations this will have implications on the effectiveness of the Network as a whole and wider implications on the environment, on our relationships with other agencies/organisations and our relationship with Kāi Tahu.
62. It may also have implications on whether obligations under the Treaty of Waitangi have been met and whether the Minister for Oceans and Fisheries and Minister of Transport will each concur with your decisions.

Opposition to your decisions on the proposed marine reserves

63. Your decisions on the proposed marine reserves are likely to result in media attention, with some stakeholders considering the marine reserves inappropriate, impeding on their interests, and others considering they do not go far enough. 9(2)(g)(i)
64. The timing of Ministerial decisions, and Ministerial preference, may determine whether any public announcement on decisions is made on the Network or on the marine reserves/Type 2 MPAs and kelp protection area separately.
65. We will work with your office to develop a comprehensive communications plan for any announcement, including addressing potential concerns with co-management. This will help mitigate any public and stakeholder concerns, since decisions, yours in particular, are likely to attract media interest.

Implications if you delay decisions on the marine reserves

66. The Marine Reserves Act does not stipulate a process or timeframe for your decisions on the proposed marine reserves. If you delay decisions, then this will delay concurrence and subsequent statutory processes leading to establishment of the marine reserves. It may delay the Minister for Oceans and Fisheries' decisions on the remainder of the proposals that make up the Network.
67. If facing delays, the Minister for Oceans and Fisheries may choose to make their decisions before yours. Delay may compromise delivery of the marine reserves and the Network as the technical advice and public consultation will become out of date. It will likely result in negative media attention. We will support your decision-making process and consider your decisions need not be delayed.

Implications if you do not make decisions on the marine reserves

68. You are the key decision-maker under the Marine Reserves Act. If you do not make decisions then the marine reserves cannot be established. Failure to establish the marine reserves will undermine the purpose and objectives of the proposed Network, even if the remaining Type 2 MPAs and the kelp protection area are established. An opportunity to protect biodiversity and mitigate climate change impacts with our Treaty partner's support would be lost. Negative media attention is almost certain given the

delays have already been the subject of media reports. We anticipate the Department will need to manage reputational and relationship damage with Kāi Tahu, the Forum and wider public, and possibly internationally given New Zealand's commitment to the United Nations Convention on Biological Diversity.

Funding for implementation of the Network

69. [REDACTED] 9(2)(g)(i)
70. You have received a concurrent briefing with advice on options for funding implementation of any marine reserves approved, including the recommended co-management of the Network (23-B-0299 refers).
71. Kāi Tahu's support for the proposed marine reserves and the Network as proposed in the Department's report (Attachment A) depends on the Crown committing to co-management. [REDACTED] 9(2)(g)(i)
[REDACTED]
[REDACTED]
72. The Agencies will face reputational risk if unable to meet public and stakeholder expectations to fulfil basic marine reserve and MPA management activities such as boundary marking and signage, compliance and monitoring. We will also be at risk of not being able to fulfil our statutory responsibilities through compliance and enforcement and there will likely be ecological implications if marine reserves are not fully managed and monitored.

Legal risks [legally privileged advice]

9(2)(h)



~~Treaty principles (section 4) – Ngā mātaḡpono Tiriti (section 4)~~

86. The Department has acted in accordance with section 4 of the Conservation Act by giving effect to the principles of the Treaty, both through its process to date and the recommendations in this advice. It has also acted consistently with Kāi Tahu's settlement legislation. You will need to be satisfied of this prior to making your decisions on the six proposed marine reserves. Implementation of any recommendations you agree to will require adequate funding in order for the Crown and the Department to demonstrably act in good faith with Kāi Tahu.
87. The proposals are within the takiwā of, and affect, Kāi Tahu. Kāi Tahu have been integrally involved with the project since its inception. Kāi Tahu representatives were appointed as Forum members and the Forum's process included engaging with Kāi Tahu more generally. Since the conclusion of the Forum's process in 2018, the Agencies

and Kāi Tahu have undertaken significant engagement. During this time Kāi Tahu proposed a suite of 'rebalancing' and co-management measures (the 'proposed measures') to address their concerns in relation to the impact of the proposed Network on their customary and commercial rights and interests.

88. The Department's advice on these proposed measures is detailed in Chapter 6 of the Department's report (Attachment A). The Rōpū report (Appendix 9, Attachment B) is the record of engagement up to July 2021. In their letter of 13 December 2022, and following their review of our draft advice, including all recommendations, Kāi Tahu stated their support for the proposed marine reserves as proposed in our advice. Their support has conditions (paragraphs 41-42, and Attachment F).
89. Following minor updates to our advice in May 2023 as a result of new commercial fisheries data, our recommendations regarding the proposed marine reserves and the Crown's compliance with Treaty of Waitangi obligations are unchanged. We await any updated position from Kāi Tahu relating to these updates (paragraphs 47-48).
90. You will need to consider Kāi Tahu's position and our advice as part of your decisions on each of the proposed marine reserves.

Consultation – Kōrero whakawhiti

91. The six marine reserve proposals and wider Network proposal are based on the work undertaken by the Forum. The proposed Network closely matches Network 1 recommended by the Forum and agreed to by the former Ministers of Conservation and Fisheries in 2019. The proposed Network is also the result of ongoing Treaty partner engagement and statutory public consultation under the Marine Reserves Act that occurred in mid-2020. The latter followed COVID-19 related delays.
92. The process and results of Treaty partner engagement and public consultation are detailed in the Department's report (Attachment A). Attachment E is an index of all submissions received, while all submissions (with redactions) are provided on the Department of Conservation website⁸ and unredacted submissions were provided to your office concurrently with this briefing.
93. Our advice to support your decision-making on the proposed marine reserves (see Attachment A) has been reviewed by Fisheries New Zealand. The Ministry of Transport has reviewed relevant elements. The Office for Māori Crown Relations has been engaged on the Takutai Moana Act elements. Crown Law reviewed much of our advice, especially components relating to Treaty obligations. Our process and advice was independently reviewed by EnviroStrat. Relevant excerpts of the advice were reviewed by Kāi Tahu in late 2022 as outlined above (paragraph 37).

Financial implications – Te hiraunga pūtea

94. The proposed Network would be implemented by the Agencies and Kāi Tahu, with the Department responsible for funding the six proposed marine reserves. The measures agreed with Kāi Tahu, and if approved or directed by you, will, in large part, determine how the marine reserves are implemented and funded.
95. During the Budget 22 Natural Resource Cluster process, we estimated Network implementation would cost \$13.3m over four years across the Agencies and Kāi Tahu. The Department was allocated \$2.73m over four years to implement both the Revitalising the Gulf initiative⁹ and the marine reserve components of the Network. The

⁸ <https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2020-consultations/consultation-on-south-eastern-south-island-marine-protected-areas/>

⁹ The Government's strategy in response to the call for action made by the 2017 Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan (the Sea Change Plan).

previous Minister of Conservation agreed to reallocate the \$2.73m to cover additional costs with the Ngā Whatu-a-Māui Ocean Sanctuary initiative (22-B-0669 refers).

96. In March 2023, and in accordance with Departmental advice, you directed that Vote Conservation not be used to fund SEMP implementation at that time (23-B-0049 refers).
97. This means implementation of the SEMP initiative is currently unfunded. Briefing 23-B-0299 provides options for you to decide how SEMP implementation will be funded (if MPAs are approved).
98. The Department's revised estimate is that \$2.89m over four years is required to implement and then manage the six proposed marine reserves with additional ongoing costs in outyears. The Department would also have shared responsibility, alongside Fisheries New Zealand (and possibly Kāi Tahu), for costs associated with co-management of the Network of up to \$5.6m over four years (23-B-0232 refers), with additional ongoing costs in outyears.
99. Agencies will refine the required cost to implement the Network once Ministerial decisions are made. Further conversations with Fisheries New Zealand and Kāi Tahu would be required.

Legal implications – Te hiraunga a ture

100. You, as Minister of Conservation, are the decision-maker under the Marine Reserves Act with respect to the Director-General's Application.
101. If you decide to approve any marine reserves, and gain the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport, you will recommend to the Governor-General the making of Orders in Council.
102. Orders in Council declaring marine reserves will be made by the Governor-General and notified in the New Zealand Gazette. Orders will come into force 28 days after being notified, at which point the marine reserves will take legal effect.
103. The Minister for Oceans and Fisheries will be responsible for making decisions on the proposed Type 2 MPAs and kelp protection area that form the rest of the Network. These would be created through regulations under the Fisheries Act and via a Cabinet process.
104. Some of the rebalancing measures sought by Kāi Tahu will need to be progressed through separate legislative processes. Fisheries New Zealand are responsible for these.
105. The Agencies have worked jointly with The Treasury to ensure the dual legislative processes are consistent with The Treasury's requirements from a regulatory impact assessment perspective.

Next steps – Ngā tāwhaitanga

106. Briefing 23-B-0299 provides you with options for funding implementation of any marine reserves approved. We recommend you consider this briefing prior to making your statutory decisions on the proposed marine reserves.
107. The Department recommends that you and the Minister for Oceans and Fisheries meet with Kāi Tahu prior to statutory decision-making. We consider this would be beneficial to continue the Ministerial-level relationship on this kaupapa and allow Kāi Tahu to convey their views to you directly as they have done with previous Ministers.
108. Should you decide to progress recommending the making of Orders in Council for all or any the six proposed marine reserves, your next step is to seek the concurrence of the Minister for Oceans and Fisheries and the Minister of Transport. We have prepared draft letters in Attachment I for this purpose. If concurrence is withheld, the Application does not proceed.

109. If concurrence is obtained, the Department will notify objectors of the decision and seek the review of the name of each proposed marine reserve from the New Zealand Geographic Board (under section 27(2) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008). Each proposed marine reserve must be named in accordance with the requirements of the New Zealand Geographic Board. We have discussed the naming of each proposed site with Kāi Tahu, who have endorsed all six names to be taken forward for review. Parliamentary Counsel Office will draft the Orders in Council and the Department will commission Survey Office Plans for each proposed marine reserve.
110. You will then recommend that the Governor-General make Orders in Council to establish the new marine reserves. These are made and notified in the New Zealand Gazette and come into force 28 days after notification.
111. Following your recommendations and the associated concurrence decisions on the marine reserves, the Minister for Oceans and Fisheries is expected to make decisions under the Fisheries Act on the proposed Type 2 MPAs and the kelp protection area. The Minister for Oceans and Fisheries may wish to have a discussion with you ahead of her decisions. You may wish to seek advice to support this discussion.
112. Should you and the Minister for Oceans and Fisheries decide to approve any of the proposed sites, the Agencies will support you with a communications plan for any announcements you wish to make. Note, we understand that Kāi Tahu want to stand with Ministers for any announcements on new marine reserves or other MPAs being established.
113. Implementation of the Network will follow statutory decisions. Subject to your decisions, the Agencies will be co-managing the Network with Kāi Tahu. Agencies will work with Kāi Tahu to finalise details for establishing a bespoke co-management framework (see the Department's report, Attachment A, section 6.3 for more detail).

ENDS