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**MINUTES**

**MARINE PROTECTION FORUM MEETING**

**26th MEETING – 20/21 October 2009**

Regular meeting held at St Johns Rooms, Stafford Street, Hokitika.

**Present**

Bruce Hamilton (Chair), Denis Shannahan, Stuart Thomson, Bruce Watson, Eugenie Sage, Richard Wallace, Geoff Rowling, Carrol Browne, Ben Hutana, Carol Scott, Ian McKenzie

**In Attendance**

Campbell Robertson and Don Neale (Department of Conservation), Rob Tinkler, Niki Pindur (Ministry of Fisheries), Sarah Wilson (Facilitator) and Helen Gillespie (Minute Secretary)

**1.0 Apologies**

Apologies were received from Emily Arthur, Kerry Eggeling, and Brad Stenhouse. Ben Hutana sent his apologies for day two.

**Moved apologies be accepted – Eugenie Sage / Dennis Shanahan - Apologies Accepted**

**2.0 Agenda Confirmation, Timetable and Declarations of Conflict of Interest**

The meeting agenda was confirmed and no conflicts of interest were declared.

**3.0 Correspondence**

Outwards mail:

Inwards: Denis presented an article from the RMLA journal with regard to the MPA's (Planning for marine protected areas – What we have learnt? – Nici Gibbs, Policy Manager, SEAFIC) – attached to these minutes.

**4.0 MFish Update**

Niki gave a brief update on the outcome of the MFish restructure. This week is Niki's last week with MFish and Rob Tinkler is relieving in the role until December when he will also be leaving the Ministry. Another person will then be appointed to the role. Rob has worked for MFish for 7 years and is experienced in deep water and inshore fisheries. He has a good knowledge of the West Coast fishery.

The inshore team in Nelson has been disestablished. Support for the Forum beyond December will come from another staff member based in Wellington. Carol S. voiced her disappointment about the lack of continuity that the Forum has had with MFish staff.

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❖ *Eugenie requests that this point be included in the report to the Ministers<sup>1</sup>.*

## 5.0 Update on Consultation Process

There was a general discussion on the consultation process that had been run since release of the consultation document.

The chair gave a brief overview of the hearings process and his impression was that they had gone well. In summary:

Nelson – a good turnout, predominantly commercial fishers

Westport – the bulk of presentations were about Tauranga Bay

Hokitika – a good cross section of submitters

Teleconference – a cross section with mostly conservation related submitters.

There was a general discussion and comments were invited on member's personal views and observations of the consultation process, the road shows and hearings since the May meeting. Most members had made as many meetings/hearings as they could, but acknowledged that they were all busy with a variety of other matters and this was often difficult.

There was then a general discussion initiated by Geoff around the principles of the MPA policy. He felt that there was a flaw in the entire process. Central Government has not decreed what has to be in terms of interpretation of the Policy. This was particularly in relation to a percentage of the area that needed to be set aside. The Forum is trying to make compromises that are virtually impossible to make.

There was discussion around the lack of scientific fisheries information and why it is not available. The discussion pointed to the existence or otherwise of the information, the unwillingness to part with it and the resources available to collect and analyse the information.

Eugenie noted that it is not the individual information that is needed, rather the aggregated MFish catch data information. She supports using local knowledge in the absence of this i.e. catch data, especially in relation to nursery areas.

Carol outlined that the Fish Plan process is trying to establish where these areas are and she is happy to support these if they are proven. She suggested a recommendation from this process should be

❖ *The Crown needs to cover further research, particularly regarding nursery areas*

Carrol Browne said that the commercial sector needed to help guide the Forum through the process. There's not that much science available so we need experience. She was concerned that if the Forum waits for the science then it won't get to its end point.

Richard felt that the Forum shouldn't be taking into account future industries – for example, surf clams and geoduck.

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<sup>1</sup> Bullet points marked with an asterix have been agreed to be matters that need to be included in the final recommendations to Ministers.

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## 6.0 Outcomes from the submissions

Campbell updated the Forum on the summary of submissions and the peer review of the summary. Everyone now had copies of these documents along with the CD of all submissions received.

He gave an overview of the analysis process used. A database had been used to capture the majority of submissions and this was structured around the format of the report. Information had been entered into the database as received. The content of submissions included; concerns about the policy itself, interpretation of the policy and recommendations about the process as well as sites.

Jane Gunn of Enfocus Consultants was employed to peer review the submission analysis. Campbell walked the forum through Jane's report discussing the main points raised. She felt that the summary had been undertaken in a thorough, fair and transparent manner, however there were a number of weaknesses which meant that submitters were unlikely to be confident that the Forum has been fully appraised of their views. These points were covered in discussion.

Jane recommended that more work was required before the document could be used by the Forum to make formal decisions in relation to the proposals, although she felt that it could usefully consider many of the particular issues raised in the submissions.

Campbell explained that he had spoken to Jane about her findings and she did not feel that work should stop in the interim. There was plenty they could be going on with. He had also discussed with her the option of completing the draft analysis and she was available to do this within the timeframes required by the Forum.

Forum members discussed and agreed that it would be good if Enfocus could complete this work for the forum.

### Motion

**Recommend to Agencies that Enfocus be contracted to review and rewrite the summary of submissions to more accurately reflect the views and recommendations of submitters and including the hearings.**

**Moved: Eugenie Sage**

**Seconded: Carol Scott**

**Carried**

(Note: Later in the meeting when the discussion turned to sites, the Forum agreed that it would also be useful if the analysis could include a table of issues/requests for each site, and this should be added to the request for further work from Enfocus)

Forum members sought information with regard to the Fisheries 2030 Strategy recently released by MFish. Niki advised that the document could be found on the MFish website, including the five year implementation plan. Broadly, it has the potential to enhance management of fisheries. Several sections of the document refer to a revised MPA Policy framework. This drew discussion and while it was generally accepted that these reviews are

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just part of good policy development, it was agreed that Rob would investigate sections 6.1, 6.2 and 6.3 further and report back to the next meeting.

## Recommendations to Ministers.

The forum discussed the content and style of the report to Ministers. The agreed general principles were;

- The report needs to stand on its own right, and be sufficient to make decisions
- The report must be succinct
- Recommendations should be based on submissions and include reasons as the basis for decisions
- In the case of recommendations for Marine Reserves, they should include reference to the criteria in the Marine Reserves Act.
- Explain why sites are being recommended
- Explain the process used by the forum in getting to the final recommendations
- Show how the policy and legislation has been implemented through decision
- The report should be accompanied by the summary of submissions and the consultation document.

The forum decided that the key question that the forum needs to consider in making its decisions on final recommendations was "Was the policy applied appropriately?"

Members then discussed the Summary of Submissions under the headings used in that document. A number of matters were agreed as matters to go in the final recommendations to Ministers. These have been bulleted and marked with a large asterix.

## Forum makeup and Consultation

While there were various comments in the submissions about the forum make up. Following discussion it was agreed that to have too many people/interests represented at the Forum risked the Forum being unwieldy. It was felt that it was more important to consult well with those not represented at the table.

Campbell advised that there may need to be some further consultation with some Iwi. This will be done by agencies and the Forum.

The following were agreed as recommendations on the establishment of any future forum to go in a report to Ministers

- ❖ *SEAFIC should be involved earlier to provide generic policy discussion*
- ❖ *Other interests be identified and invited to make presentations to the Forum. These may include Seafic, Environmental NGO's, TOKM, Minerals, Customary and Commercial.*
- ❖ *There is a need to define the gathering rights of Iwi more clearly, i.e. customary rights (Mataitai) vs. property rights (MPA).*

Sarah pointed out to the group that they had been appointed to the Forum by the DoC Regional Conservator and that this is unlike future forums that would be established under the implementation guidelines. The question was then asked is the forum constituency ok to move

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forward? There was agreement that Forum can move forward with its current membership to put forward recommendations to Ministers. This was provided that there are recommendations on the constituency of future forums in the recommendations. Carol S will confirm whether others from the industry wish to be involved from this point forward.

Following further discussion the following matters were agreed in response to matters raised in submissions and should also be noted in the report to ministers.

- ❖ *The Forum believes that the full range of people with an interest in the process have had the opportunity to speak with the forum.*
- ❖ *The Forum believes its processes have provided an opportunity for all views to be heard.*
- ❖ *The Forum was established prior to the implementation guidelines being approved and therefore the makeup does not accurately reflect the recommendations in the guidelines.*
- ❖ *There have been huge challenges for Forum members in representing the diversity of views.*

### Agency advice and Forum Interpretation of the Policy and Implementation Guidelines

Niki provided some advice on whether Mataitai qualify as Type II MPAs. So long as commercial fishing is not allowed and fishers are not using bottom impacting methods they would qualify. However, as with all MPAs, this would need to be assessed on a case by case basis.

Richard advised that Mataitai can be closed to all fishing and then opened up for hui gathering or for recreational fishing. He advised that they are not applying for any taiapure

It was agreed that further written clarification was required on whether Mataitai Reserves do qualify as type II MPAs. (MFish to clarify in writing)

In relation to the concern about the emphasis put on remote or inaccessible sites. This was an attempt to minimise costs to users which is part of the policy guidelines. This then led to the development of the educational showcase sites that were close to populations. – To be discussed later, but there needs to be an emphasis on the explanation and rationale for these.

Terminology around Fisheries Act Protected Area – agreed that this could be changed as requested to Fisheries Act Regulations and Tools.

In response to submitters concerns about the information the Forum used:

Geoff felt that to use MFish info to close areas would be dangerous. In his experience sometimes where the fish are is not because it's rich in biodiversity. He acknowledged that in time MFish data might be useful.

It was suggested that the Forum might have involved specialists in marine reserve design and/or marine science experts. The report should note that,

- ❖ *The Forum used all the available information at the time of putting proposals together. Although much of the information was collected for a purpose other than for this process.*

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## *Matters that weren't appropriately considered by the Forum*

Niki talked to the advice she had received from the MFish science team on the NIWA trawl surveys. In summary removing the proposed MPA areas from the surveys would not change the sampling strategy, as these areas would be classified as foul ground. They felt that it would not have a significant effect on the previous surveys or the information gathered.

The forum asked for this advice in a written form and Carol also requested that the Forum receive written advice from NIWA as to the impact on the CVs (Co-efficient of Variation) of reducing the survey area. (MFish to follow up)

- ❖ *The final recommendations include mention on the implications that closing areas would have on the NIWA trawl surveys*

Compliance and Enforcement:

Niki advised that she had written advice on compliance and this would be tabled at the beginning of day two (Appended) This included advice on using the depth contour, using clear easily definable boundaries and the shape of the Gorge site in particular.

Consideration of the cumulative effects of different area closures either spatial or exclusion of allocation. The forum needs to be aware of the closures in other areas/regions but it will be the Agencies work to make recommendations on whether the recommendations pass the Undue Adverse Effects (UAE) test in the Marine Reserves Act.

The Forum acknowledged that ideally the Maitaitai/MPA processes needed to be coordinated as much as possible - from now on and from the point where agencies take the forums recommendations.

- ❖ *The final report will reference the need to co-ordinate with the Maitaitai Reserve application process*

Carol was disappointed with the lack of coordination internally within and between agencies.

- ❖ *In future there needs to be better coordination between central and regional agencies and providing up to date and accurate information*

Impacts of proposals on Treaty claims/compensation - Cognisance is required at the highest level that there will be a reallocation of resources.

The agencies will speak with the developmental fisheries groups to determine what further information they wish to provide for the forum to help them make decisions. (DOC/MFish to follow up)

The use of options in the consultation document - Campbell advised that Ministers would like consensus on the package of recommendations. If the Forum is not able to reach consensus then options would be considered. The MPA Policy does provide for the use of options. Campbell advised that Ministers will assess all proposals against the objectives of the policy

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and terms of reference of the forums and how well they meet the relevant legislative criteria. Should they meet these requirements, Ministers will need to make some decisions.

They may progress a suite of MPA options from those the MPA forum recommends, seek wider public views on options presented, or progress all marine reserve options through the statutory process.

Geoff reminded the Forum that options weren't included in the consultation document because we wanted the public to come up with options.

Social or Economic Impact Assessment: The Standards don't explicitly state that it must be done. It could be said that informally social impact assessments have been done by engaging with local people and through the submission process. The forum also referred to planning principle 7 as being relevant to this discussion and further reasons why not to carry out a formal EIA..

### **Recommendations for the Remainder of the West Coast MPA Process**

Another discussion about compensation was had.

The Forum considered that either the option of compensation or retiring of quota should be progressed. However, Niki advised that if an area is of such great impact that compensation is the only resolution, then it is unlikely that the area would be adopted due to the precedents adopted through UAE tests run in the past. The forum agreed

- ❖ ***While the forum acknowledge that compensation is not available under the current regime where the recommendations result in spatial exclusion and loss of property rights. There needs to be a recommendation in the final report that, the Government needs to consider mechanisms that adequately recognise compensation for this loss of property rights.***

It was agreed that the Forum should continue to opt into "In Committee" if needed.

It was thought that the Ministers could commission an economic impact analysis upon receipt of the Forum's recommendations. Ian noted that the Great Barrier Marine Reserve proposal was rejected because the economic impact was too great. The EIA (Economic Impact Assessment) was done after the recommendations went to the Ministers.

Eugenie noted that the positive as well as negative economic impacts needed to be looked at. Lincoln University have done tourism research on the West Coast on what value people place on the natural environment and this may be useful.

- ❖ ***Acknowledge in the final report that a formal economic assessment has not been done and that Ministers may wish to do one, including positive and negative socio economic impacts.***

It was acknowledged that the Forum lacked marine science representation on its membership.

Discussion on the use of special legislation followed:

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- The Forum can use it as it is referred to in the policy and this allows the forum to be creative. However this is a decision for Ministers.
- It was noted that Ministers want to reduce legislation rather than increase it.

The discussion then flowed onto how special legislation worked in the Fiordland Marine Guardians process and the differences between that and the WC MPA process.

- The wide divergence of views – creates difficulty if we don't recognise the significance of the impact on existing users. If there's no redress for industry it pushes amateur and other users further apart from industry. There must be a redress for loss of rights.
  - Gifts and gains can't work under the framework that we've been given. Industry has nothing to gain from the proposals. However gifts and gains can work with a change in attitude e.g. corporate responsibility for environmental protection i.e. BP or Progressive Enterprises.
  - Include some recommendations in our final report acknowledging that where biodiversity protection is implemented on private land there is generally some form of compensation and something similar should be undertaken in the marine environment, perhaps along the lines of the Nature Heritage Fund e.g. willing buyer/willing seller philosophy.
  - Need to find a way through people being broadly happy in the end. Compulsion of some sort or some way of compensating – broader than quota owners and including actual fishers. Want to find a way to make this easy nationwide.
  - People need time to get used to change. Perhaps roll out the proposals slowly.
  - Small owner/operator – compensation isn't going to make the difference to those who've fished their whole lives if they don't own quota. There needs to be a mechanism to address this.
  - Quota has to be retired – it's the only way it can work.
- ❖ *Include further discussion in the report on the difficulties with the current policy and legislative framework and the problems associated with the inability to use compensation to provide workable solutions.*

Enforcement and compliance:

There was discussion and agreement around the value in having honorary fisheries officers, Conservation Officers or Interagency agreements to get DOC or Police support. While the commercial sector has good compliance overall it's the recreational sector where most of the problems lie.

Guardians of Fiordland involved a wider suite of agencies from which to leverage funds (produced a brochure of the new protection areas). Niki acknowledged this was a good idea and should be put forward in the recommendations

Agencies are responsible for compliance and in the case of the showcase sites then community groups could establish or adopt a guardianship type model.

- ❖ *There needs to be adequate resourcing and educational material available to encourage compliance*
- ❖ *Interagency links should be pursued to strengthen enforcement*

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- ❖ *Acknowledge the value in engaging the community in the care of the reserves*
- ❖ *Conservation Boards could have an overview of the implementation of Forum recommendations*

## Site Summary

Don presented an overlay map and summary of the options presented at the hearings. Carol asked that the requests and their reasons, made by submitters, be presented into a table format and this request be included in the brief to Enfocus (**DOC to action**)

Eugenie requested that Gary Eason be thanked for the mapping work which he has done.

Campbell reminded the members that no decisions would be made at this meeting. It is an opportunity to explore the issues around each of the sites and see how progress can be made, and to take the information away to talk with associates.

## Punakaiki

Don outlined the original proposal.

Forest & Bird option – 12 NM, 150m depth, and would add some additional habitats

Commercial Stakeholder Organisations (CSO) option – 10m depth, Marine Reserve to 2km. Fisheries Act tools near the Truman Track. Covers 7 habitats – with two of these only very slight coverage. Fisheries Act tools onshore in two places. Enables paua fishery to continue. Southern boundary changed.

Sarah outlined an important process decision. After discussion how much further information from constituents does the Forum need? It was agreed that there is a need to be clear about the kind of information required.

Discussion focused around the CSO proposal and the extension of the type II MPA at the North of the site to accommodate paua fishers. Niki outlined the Paua situation. Of the total 1 tonne TAC in area 6, 800kg is owned by the Crown (the remainder is owned by Iwi). This is tendered annually. There is a proposal to remove Pau6 and allocate this area into Pau5 and Pau7. The boundary has been proposed as the Heaphy River. This proposal is on hold awaiting the outcome of the MPA process. The entire quota is currently being caught in Kahurangi. The forum was told at the hearings by one of the PauMac submitters that they think there is potential for a 6 tonne TAC in the Kahurangi area. No reseeded is being done at the moment giving the uncertainty about pending Marine Reserve status.

Helen reminded members that Emily had asked a paua industry submitter what their concerns were about the Punakaiki proposal. The response was "It forms part of the fishery but it's not being utilised because it forms part of the local take." He went on to say that if they were shut out of Kahurangi then they'd have to move to Punakaiki.

This point raised for the group the fact that each of the proposals would likely have an impact on one or more of the other proposals.

Carol said that the CSO option for Punakaiki was put forward on the basis that Kahurangi went ahead as planned.

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Bruce Watson suggested that:

A letter should be sent to the Minister of Fisheries asking that he hold off making any decision about the amalgamation of Paua Areas until the recommendations of the Forum are received.

**This was agreed and Bruce Hamilton would draft a letter for circulation.**

## Kahurangi

Don outlined the proposals by Forest & Bird and the CSO's.

CSO Option 1 would include 7 habitats

CSO Option 2 would include 9 habitats

Forest & Bird would include 11 habitats

Campbell outlined the various points raised in submissions. There was both strong support and concern for the size of the proposed Kahurangi site. Petroleum industry had concerns although currently there are no permits in place. They wished to see the MR only go out to 1NM. There was also concern about safe passage through the MR for fishing vessels.

Eugenie asked for clarification of submitters concerns about anchoring in a marine reserve. Campbell said the issues come with commercial boats and the fact that they can't do any fishing related activities while anchoring or motoring through a MR, i.e., no baiting hooks, filleting, mending nets etc

Geoff pointed out that other mechanisms have been used in other areas to allow passage or anchor. The Forum needs to decide what would be permissible activities when anchored in a MR. They need to look at what's happened elsewhere. An Order in Council would be required to achieve this.

Dennis suggested moving the Northern Boundary southward by 15-20km as a MPA and out to 200m so that the paua take can still happen. Niki explained that the paua sector would need to be consulted because the fish stock does move.

Bruce W pointed out that the Crown has the capacity to retire or not lease the 800kg of paua quota with less impact on the sector.

Niki advised that as MFish bring information such as UAE (Undue adverse effects) to the group it needs to be considered, and Bruce's suggestion would most likely not pass the legal tests established through the court process. However the forum could if they chose make such recommendations, but it would be against the advice of the agencies. This reflected a need to get further information from Paua 6 and the Paua Industry Council.

Carol reminded the group that the Paua sector had aligned with the CSO submission. It is noted that the Paua submission was based on a future potential fishery rather than the current.

Discussion around defining a representative size and viability was raised. Don suggested that hard rocky habitats probably need less area to be viable as opposed to continental shelf soft floor. What size is adequate? Sometimes the best way to determine this is to look at the species being protected although this falls outside the work of the Forum.

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Carol questioned the "cross shelf variation" – and the need to go out to 12NM. She felt that if we met policy and the area was in excess of 10kmsq then it should be put forward.

Bruce W felt that going out to 12NM was good scientific marine reserve design.

Carol suggested that the two options put forward by CSO's might be a combined proposal with option 1 being MPA/FA and the outer option 2 as Marine Reserve.

Bruce W felt that the submissions broadly represented the division among the Forum members. By way of moving forward perhaps two options should be put forward.

It was suggested that members spend time over the next 5 weeks canvassing stakeholders about all of the proposals put forward. If a different proposal is put forward to Ministers, the Forum will acknowledge that no further consultation is required by them and any further consultation will be at the discretion of the Ministers and/or in accordance with statutory process.

**Don is to supply the overlay maps to all members.**

## Okarito

Bruce H began by suggesting that based on submissions the marine reserve proposed for the northern part of the lagoon should be changed to a Type II MPA.

Richard requested that the agencies meet with Runanga to further discuss any proposed change in light of the Mataitai process underway. **(Agencies to action)**

The collection of seaweed, driftwood and general fossicking was raised as a concern by submitters. It is prohibited where a National Park borders a marine reserve. Carol suggested that the group may need to look at the tools available to allow collection/fossicking – such as "a collection corridor".

Carol felt it reasonable to take up the suggestion from the Okarito Community Assn – round to Abut Head and to Saltwater Lagoon.

Stu felt that the seaward boundary in this extension should not be more than 1km .

Ulipa Hill as suggested by many submitters had been excluded during Forum discussions because of the significant mussel beds.

Carol advised that the CSO had prepared an option for this site. Suggesting an area around the Waiho beach and river mouth and out to 2 NM. The sector are not prepared to accept the current extend as proposed. It is a high use area and an important flat fish fishery.

**Don will arrange for the CSO option to be mapped.**

Note Emily's support for the current proposal but removing the MR in the lagoon and replacing with Mataitai.

Bruce H suggested that the Forum should discuss the Gorge site when Kerry was present.

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Bruce Hamilton thanked Niki Pindur (long standing MFish member) for her valuable contribution to debates and background work. He acknowledged that she often worked without support and had done a wonderful job. He wished to extend the thanks of Forum members and wished her well with her new endeavours in Palmerston North.

Next meeting agreed for 26/27 November and then 15 December.

Agreed milestones by the end of the December 15<sup>th</sup> meeting

- Decisions on Submissions
- Decisions on a revised package
- New information supplied to the forum (as agreed by the forum)
- Clear drafting instructions to agencies or have appointed a "recommendations drafting sub-committee"

Closed 4pm

Confirmed  
Bruce Hamilton  
Chair

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□ **Papers Tabled**

1. Submissions analysis
2. Emily Arthur's notes
3. Brad Stenhouse's notes
4. Proposed West Coast Fisheries closures and restricted areas – compliance and enforcement implications
5. Peer review of the draft summary of submissions
6. RMLA journal article.