



Department of Conservation  
*Te Papa Atawhai*

29 Mar 2002

Wellington Regional Council  
04 JUN 2002

| FILE REF     |          |
|--------------|----------|
| ENV/13/49/01 |          |
| Doc. No.     | 22-1     |
| Referred to  | Date/Int |
| H. Stone     | 29/3/02  |
| TTC          |          |
| MWP          |          |
|              |          |
|              |          |

Howard Stone  
Chief Executive  
Wellington Regional Council  
PO Box 11646  
WELLINGTON

Dear Mr Stone

You will be aware of the application by Forest and Bird and the South Coast Marine Reserve Coalition for a marine reserve on Wellington South Coast.

Section 4(2) of the Marine Reserves Act indicates "(2) no area within the jurisdiction of any harbour board shall be declared a marine reserve without the consent of the harbour board."

As the proposed Taputeranga Marine Reserve is within the coastal marine area of the Wellington Regional, your consent as the body now carrying out the jurisdiction of the previous harbour board is now sought. I enclose a report summarising the process that has been followed and a map showing the location of the proposed reserve.

On 7 May the Minister of Conservation decided in terms of section 5(9) of the Act not to uphold any of the objections received on the application and sought the concurrence of the Ministers of Transport and Fisheries, as required by section 5(9). I have now received the concurrence of the Minister of Transport and attach for your information a copy of that concurrence along with the (yet unsigned) Minister of Conservation's assurance on the matters he raised. I mention this as it is likely you will consider similar matters in considering your consent.

I attach also a copy of your Council's 15 December 2001 submission in support of the reserve. That submission recognises the benefits the reserve would bring and its consistency with Council plans and policies.

I can advise that with respect to the issues Council raised in that submission –

1. The Minister has directed that Island Bay remain in the reserve and that the Order in Council specifically provide for the existing moorings at Island Bay to be retained. Staff from my department have been in contact with your staff to identify the owners, to advise them of this provision and to have those moorings considered for resource consent by Council.
2. The Order in Council will recognise the existing discharge structures. The Marine Reserves Act does not overtake any resource consent for the discharge. The Department of Conservation may advocate for improvement in discharge quality should this be appropriate, in any consent review forum that arises in future.
3. The Minister of Conservation acknowledged that the applicant did not consult Ngati Toa, despite being advised to by the Wellington Conservancy of the Department. The Minister

Wgnc-33021

recognised this was a deficiency and consulted Ngati Toa herself, meeting their CEO and Kaumatua twice and exchanging letters and providing information to them. It is fair to say Ngati Toa were still opposed to the reserve, although supportive of the wise and balanced management of marine resources. The Minister did however consult fairly and made her decision in clear knowledge of Ngati Toa's views.

4. I can confirm that the Marine Reserves Act does not overtake the powers to use oil dispersants provided by the Maritime Transport Act, so Council's oil spill response is not compromised.

Your Council has shown support in its Environment Committee 7 December 2000 minutes so I hope the requested consent will be straight forward.

If I can be of any further help please call me or call Dr Colin Miskelly our Technical Support Manager.

Yours sincerely



Allan Ross  
Conservator

**DECISIONS OF THE MINISTER OF CONSERVATION**  
**ON THE WELLINGTON SOUTH COAST**  
**MARINE RESERVE APPLICATION**

**A. INTRODUCTION**

The Minister of Conservation, the Hon Sandra Lee, received an application from the South Coast Marine Reserve Coalition and the Royal Forest and Bird Protection Society of New Zealand to establish a marine reserve over a part of the south coast of Wellington City. The proposed reserve covers approximately 969 hectares.

The marine reserve application was notified on 18 October 2000. A total of 597 objections; 630 submissions in support, 30 submissions in conditional support, and 8 neutral submissions were received within the two-month period for submissions. A further 29 late submissions (7 opposed, 21 in support and 1 in conditional support) were received after 18 December 2000. Of the 597 objections, 520 were form objections, 74 were detailed, personalised objections, and three were petitions. The Applicants' answer to objections was received by the Department on 18 January 2001.

Section 5(6) of the Marine Reserve Act 1971 requires that the Minister shall, before considering the application, decide whether or not any objections should be upheld and, in doing so, shall take into consideration any answer made to the objections by the Applicant. She is required to have regard to all submissions made by or on behalf of each objector, and to the answer made by the Applicant. Further, she is required to uphold any objection if she is satisfied that declaring the area 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.

The Minister has carefully considered each of the objections and the Applicants' answer to those objections in terms of Section 5(6) of the Marine Reserves Act 1971. The Minister has decided that none of the objections should be upheld and has instructed her department to prepare letters to the objectors and the Applicants, notifying them of her decision. She has decided that the boundaries of the marine reserve should be the same as those shown on the plan in the application (Appendix 1, page 52).

The grounds for her decision not to uphold the objections are outlined below. The objections covered a range of issues, many of which were common to many of the objections. These are addressed collectively below.

## **B. APPLICATION**

### **Section 5( 1):**

Under Section 5( 1) of the Marine Reserves Act 1971, an application for a marine reserve must be made by one or more of the following, including, :

*“(iii) Any body corporate or other organisation engaged in or having as one of its objects the scientific study of marine life or natural history:”*

As permitted in section 5( 1) this application is made by joint applicants.

From an assessment of the application and the Applicants’ answer, the Minister is satisfied the Applicants meet the requirements of Section 5(1)(a)(iii) as an *“...organisation engaged in or having as one of its objects the scientific study of marine life or natural history”*.

In terms of Section 3(1) of the Marine Reserves Act 1971, a proposed marine reserve must meet the requirements of preserving for scientific study of marine life, an area *“of New Zealand that contains natural features, underwater scenery, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that its continued preservation is in the national interest”*. One or more of these establishment criteria have to be satisfied.

The marine life, habitats and natural features of Wellington south coast are described on pages 31 - 36 of the application document. Key features identified in the application are:

- The proposed reserve lies in the confluence of three oceanic water bodies or currents, which bring a richly varied mixture of warm, cold temperate and subantarctic fauna and flora together. This mixture of plants and animals is unique in New Zealand.
- The northern and southern limits of many fish, invertebrate and algal species occur in the waters within which the reserve is proposed. The resulting variety is unusual and worthy of protection.
- The complex topography of the coast, and high energy of the coastal waters, has created a wide variety of habitats within the relatively small area of the reserve.

The Wellington south coast has a series of rocky headlands interspersed with gravel or sand beaches. Offshore reef systems extending out into Cook Strait provide an extensive variety of habitats for fish, invertebrates and algae. These reef systems in places run parallel to the shore, thus absorbing much of the wave energy striking the coast, and creating a mosaic of high and low energy habitats

The biological communities of the area proposed for the reserve reflect the range of habitats present, and are representative of the Wellington south coast. The area has

particularly diverse seaweed communities, including almost half of the species known from New Zealand.

The great diversity of algal communities supports a rich invertebrate and fish fauna, with a mix of warm water, cool water and subantarctic elements. Unusual and important features include the seasonal abundance of juvenile crayfish, the presence of an unusual mollusc (*Smeagol climoi*) known only from intertidal gravels in Houghton Bay, and the comparative absence of suspension feeding mussels.

Over 180 fish species are recorded from the coast, including 13% at the southern limit of their distribution, and 7% at their northern limit. This high species diversity and abundance includes species targeted by recreational and commercial fishers, including butterflyfish, blue cod, blue moki, tarakihi and warehou.

The proposed marine reserve is also notable for its proximity to marine researchers based at Victoria University, the National Institute of Water and Atmospheric Research (Greta Point), Te Papa Tongarewa, Island Bay Marine Laboratory and the Department of Conservation.

The Minister is satisfied that the application meets the criteria set out in Section 3(1) of the Marine Reserves Act 1971. The area applied for is *typical* of the coastline of the Wellington south coast. It contains a number of examples of *underwater scenery, natural features or marine life that are so distinctive, beautiful or unique that their continued preservation is in the national interest*. The creation of a marine reserve would make this area an important one for *scientific study of marine life*.

#### **Section 5(1) - (5):**

Section 5(1) - (5) of the Marine Reserves Act 1971 outlines the procedure for declaring a marine reserve to the point the Minister considers the objections, answer and application. She is satisfied that these statutory procedures have been followed correctly.

### **C. SECTION 4 OF THE CONSERVATION ACT**

The Minister's legal advisers note that Section 4 of the Conservation Act requires the Marine Reserves Act to be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. That obligation extends to the Marine Reserves Act, as it is an Act listed in the First Schedule of the Conservation Act.

Two iwi claim tangata whenua status over the Wellington south coast: Taranaki W'anui / Ati Awa o Poneke (represented by the Wellington Tenth Trust) and Ngati Toa (represented by Te Runanga o Toa Rangitira). The Applicants undertook consultation with Wellington Tenth Trust, who supported the application (submission 866), but chose not to consult with Ngati Toa.

The Department of Conservation can not demand that the Applicant undertake further consultation with iwi. The obligation to consult, arising out of Section 4 of the Conservation Act, rests with the Crown. That obligation does not extend to outside applicants under the Marine Reserves Act.

Accordingly, the Director-General initiated consultation with iwi in terms of his responsibilities under s.4 of the Conservation Act. The Conservator, Wellington met with the Chief Executive of Ngati Toa on 13 August 2001, who confirmed their extreme disappointment at not being recognised as tangata whenua by the Applicants. Ngati Toa strenuously objected to the proposed reserve (submission 671), on the grounds that they are generally against the concept of marine reserves because in their view they alienate the customary fishing rights of Maori. Ngati Toa also cited the Applicants' failure to consult as grounds for objection.

The Minister also met with Ngati Toa representatives on 12 March and 11 April 2002. Ngati Toa remain concerned at; the lack of recognition of their status by the applicant, the accumulated effect of Government actions on their access to traditional natural resources, including the operation of the Quota Management System, allocation of coastal space in the Marlborough Sounds, and the creation of marine reserves and the impact of the reserve on their traditional use of and their values of the Taputeranga area. Ngati Toa thus oppose the proposed marine reserve.

Legal advice provided to the Minister is that if particular customary fishing concerns are identified she must address them explicitly and weigh them against the statutory criteria. Decisions may include-

- (a) Preserving customary fishing rights under Sections 3(3) or (4) of the Marine Reserves Act;
- (b) Excluding customary fishing areas of significance from the marine reserves so that alternative protection measures of these areas, e.g. mataitai reserve might be implemented in terms of the customary fishing regulations;
- (c) Where the conservation values are so significant that no customary fishing is warranted, excluding customary fishing

Legal advice to the Minister also notes that a claim to customary fishing does not operate as a veto. Nevertheless, any objection on the grounds of customary fishing must be addressed by her. In deciding whether to uphold the objection she must have regard to the purpose and principles of the Marine Reserves Act, Treaty obligations on the Crown, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the "wider picture" that the creation of a marine reserve gives rise to. That wider picture includes all the statutory matters she must have regard to in dealing with objections, i.e. the criteria listed in Section 5(6)(a) through (e), including the public interest.

The Minister takes the view, having heard clearly the views of both iwi who claim tangata whenua status, and having considered the provisions of these various Acts and the wider picture, that the conservation values are so significant that no customary fishing is warranted and therefore she has decided not to uphold the objections as they pertain to customary fishing.

#### **D. SECTION 5(6)**

Under Section 5(6) of the Marine Reserves Act the Minister is required to uphold any objection if she is satisfied that the proposal 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) *In t erfere 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.”*

The grounds for not upholding the objections in terms of Section 5(6)(a) - (e) are detailed below.

**1. Interfere unduly with any estate or interest in land in or adjoining the proposed reserve Section 5(6)(a)**

This ground relates mainly to the impacts of the reserve on owners and occupiers of land in or ad-joining the proposed reserve. For example, if creation of a reserve were to directly affect property values and/or commercial activities on adjoining land. The Minister considers that none of the objectors presented evidence of potential impacts of the proposed reserve that would interfere unduly with any estate or interest in land in or ad-joining the proposed marine reserve.

The objecting landowners and their supporters were concerned about:

- the loss of the right to gain access by boat,
- the loss of rights to anchor their boats,
- a management committee under the Marine Reserves Act prohibiting or restricting their access or mooring activities at some stage in the future.

In terms of the first matter raised, the Act does not preclude taking a boat into or navigating through a marine reserve.

With regard to anchoring of boats, there are a number of existing moorings within the area of the proposed marine reserve. The Minister is of the view that it would be reasonable to allow these moorings to remain, in terms of the Marine Reserves Act. This can be done by way of a condition attaching to the Order-in-Council declaring the area to be a marine reserve. Such an Order in Council would not dispense with the need for any such mooring to have a resource consent in terms of the Resource Management Act 199 1.

In terms of the concerns regarding a management committee prohibiting or restricting their activities at some stage in the future, the Act preserves the right of access and this cannot be changed through management decisions.

The Minister is of the view that the proposed marine reserve would not “*interfere unduly with any estate or interest in land in or adjoining the proposed reserve*”.

**2. Interfere unduly with any existing right of navigation Section 5(6)(b)**

There were a large number of responses from recreational fishers who have an interest in a boat-launching ramp near Owhiro Bay, within the boundaries of the proposed reserve. They foresee problems when transporting legally caught marine life through the reserve to the boat ramp. The Minister is aware of similar situations that exist elsewhere, where marine life which has been legally taken is conveyed through a marine reserve (e.g. at Kapiti) and this has not caused compliance and enforcement problems.

In addition, some objections pointed out that the southeastern corner of the proposed reserve will extend into the safe approaches to Wellington Harbour, specifically the lane used by the inter-island fast ferry. They assert that this would cause safety problems for any users of the marine reserve at this site. The Department has consulted with the Ministry of Transport, the Maritime Safety Authority, and the Harbours Department of the Wellington Regional Council (which administers the Harbour and its approaches). While the MSA recognises that the normal routes for some vessels entering and leaving Wellington Harbour will pass through the proposed marine reserve, it considers that, given the current level of navigational safety measures in place, no significant risk will arise from the establishment of the marine reserve as it is proposed. The Minister accepts this advice and considers that boats and ships will continue to be able to navigate freely through the reserve.

The Minister is of the view that the marine reserve would not “*interfere unduly with any existing right of navigation.*”



**3. Interfere unduly with commercial fishing Section 5(6)(c)**

The criteria in Section 5(6)(c) is not restricted to commercial fishing in the area of the proposed marine reserve alone, and in considering objections the Minister must examine the wider impacts a marine reserve would have on commercial fishing generally. In addition, Section 5(6)(c) is qualified by the use of the word ‘undue’. This qualification makes it clear that the Act contemplates there may be some interference with commercial fishing.

There are a small number of commercial fishers who reside in the region, several of whom operate on the south coast. The Applicants in response to objections (Annex 7, pp 24-30), prepared a detailed analysis of the potential impacts of the marine reserve on commercial fishing activity. The analysis indicates that the fisheries potentially impacted would be rock lobster, warehou trawl, and the butterfish gillnet fisheries. Some rock lobster are potted on the outer reefs within the proposed reserve, but this is less than 0.1% of the area of Quota Management Area 4 from which rock lobster can be commercially caught. One fisher stated that he trawled for warehou within the proposed reserve area (Objection No. 1100). Because of the predominantly rocky bottom, the Department estimates that a maximum of two square nautical miles of the area encompassed by the proposed marine reserve can be successfully trawled. This represents less than 0.05% of Quota Management Area 2 that is available to catch warehou. Butterfish are an inshore reef species, targeted by both recreational and commercial fishers, generally by gill net although some recreational divers spear butterfish. Butterfish are currently not included in the Quota Management System. The Department estimates that a maximum of one square nautical mile of inshore reef habitat would no longer be available for extractive use. More than 0.5 square nautical miles of butterfish habitat on the Wellington south coast remains outside the proposed marine reserve.

The Minister holds the view that the proposed marine reserve is not a crucial area in terms of the viability of the wider commercial fisheries. Furthermore, an indirect effect of the marine reserve could be improved fishing of some species around its margins due to marine life building up in the reserve and “spilling over” to adjacent areas.

The Minister has concluded that the effect of the reserve on commercial fishing would not be significant and accordingly the marine reserve would not “*interfere unduly with commercial fishing.*”

**4. Interfere unduly with or adversely affect any existing usage of the area for recreational purposes Section 5(6)(d)**

This ground accounted for most (81%) of the objections, the majority of which came from recreational fishers as tick-and-post form letters. Press reports stated that concerns were expressed about low impact recreational activities (e.g. building sandcastles, fossicking in rock pools, throwing stones, etc.) being banned under the offence provisions of the Marine Reserves Act. Over 30 objections specifically mentioned concern that creation of a marine reserve would prevent such activities. The Minister does not consider that creation of a marine reserve would impact on those low impact recreational activities. Those activities continue in existing marine

reserves as part of the public's right of freedom of access and entry so that they may enjoy in full measure the opportunity to study, observe and record marine life in its natural habitat.

Creation of a marine reserve will however impact on some recreational activity on the Wellington south coast. The taking of marine life (fishing and seafood gathering) is not normally permitted within marine reserves, unless provided for by way of Section 3(3) of the Marine Reserves Act, 1971. People wishing to take marine life would need to move to adjacent areas. Conversely, creation of a marine reserve is likely to attract increased non-extractive recreational interest in the area.

A recent report on recreational fishing around Wellington (Bell *et al.* 2000) revealed that only 4.5% of the total fishing trips in the Wellington area were within the proposed reserve (101 trips from total of 2230 reported). This suggested that less than 5% of recreational fishing activity in the Wellington region will be affected by the reserve. The applicants conducted their own surveys, with the assistance of a professional statistician, and the results appeared to accord with the Bell Report.

The Minister's staff and the Department met with a delegation of those objecting on the grounds of the impacts on recreational fishing. The content of this meeting was reported to the Minister.

The Minister accepts that creation of a marine reserve will affect those residents and recreational fishers who regularly fish the area. However, she holds the view that there is severe local depletion of desirable fish species, and that there are many alternative sites that are recognised as productive areas for recreational fishing.

The Minister is required under Section 5(6)(d) to consider the consequences of declaring an area a marine reserve in terms of undue interference and adverse effect on existing recreational use overall. The Minister is not required to consider each recreational use in isolation. If enhancement of overall recreational uses will be sufficient to outweigh undue interference or adverse effect on any particular existing usage then there are no grounds for upholding the individual objection.

While there is provision under Section 3(3) of the Marine Reserves Act to allow for non-commercial fishing by notice in the gazette, the Minister's view is that marine reserves should be no-take areas in order that the ecological integrity of such reserves is protected as far as possible, and therefore recreational fishing and shellfish gathering should be prohibited.

Recreational boating would not be interfered with as boats can enter a marine reserve and the Act does not expressly prohibit anchoring. The Marine Reserves Regulations 1993 make provision for anchoring to be regulated, but also provides that "any person may anchor in any part of a reserve in such a manner that damage to the reserve does not occur or is kept to the minimum practicable level".

The Minister notes that sightseeing and boating are likely to increase if the area were to be declared a marine reserve. More people would be interested in visiting the area and their pleasure is likely to be enhanced knowing that the area has been set aside for

preservation. Recreational diving not involving a take may increase, especially as fish stocks recover from exploitation.

The Minister is therefore of the view that the marine reserve would not “*interfere unduly with or adversely affect any existing usage of the area for recreational purposes*”.

#### **5. Otherwise be contrary to the public interest**

Most of the respondents on this ground did not identify exactly what was contrary to the public interest, stating simply that the marine reserve and scientific study were not in the national interest. Some respondents noted that the marine reserve proposal had the potential to divide the community. There also appeared to be much overlap with the previous four grounds for objection.

Further issues raised included:

- **Customary Fishing**

A small number of respondents identified customary fishing as an issue, but did not identify themselves as belonging to an iwi or hapu having a rohe within the area proposed as a marine reserve. Customary fishing in a marine reserve could be permitted by section 3(3) of the Marine Reserves Act, or by Order in Council declaring the area a marine reserve (section 3(4)). However, the Minister considers that customary fishing should not be permitted.

Wellington Tenth Trust/Ati Awa o Poneke (Submission No 866), while acknowledging the marine reserve would prevent customary fishing within a part of their rohe, were supportive of the proposal. This is because of the prospect of recovering marine life spilling over from the marine reserve into the adjacent maataitai reserve that they propose to establish on at least one of the boundaries of the marine reserve.

Conversely, Te Runanga o Toa Rangitira Inc. (Objection No 671) remain opposed to marine reserves because of what they perceive as the alienation of their customary fishing rights (see Section C). The Department and the Minister met with Ngati Toa and heard directly of their views.

- **Parliamentary review of the Marine Reserves Act is underway, and consideration of the marine reserve proposal should await this process.**

Although a new Marine Reserves Bill is currently being drafted, application was made under the existing Marine Reserves Act (1971), and the application must be assessed under the criteria of that Act.

- **The scientific values of the proposed reserve are not of national interest.**

The proposed reserve is an example of a high-energy Cook Strait marine ecosystem, not otherwise represented in the existing protected marine area network. The Minister recognises that the area is notable for having the greatest diversity of marine algae known in New Zealand, and also for its proximity to researchers based at Victoria University, NIWA, Te Papa Tongarewa, Island Bay Marine Laboratory and the Department of Conservation.

- **Lack of consultation with one of two iwi claiming tangata whenua status over the area.**

This matter has already been addressed earlier in this report (see Section C page 3).

- **The reserve would endanger the safety of recreational users (i.e. those 'seeking to obtain kaimoana/seafood) by forcing them to go to more exposed sites.**

The Minister accepts that creation of the marine reserve would decrease (but not eliminate) the number of sheltered fishing sites available for boats during northerly winds. However, it remains a skipper's responsibility to ensure that his/her boat is operated in a safe manner. The Maritime Safety Authority did not identify this issue in its submission.

- **Research is already happening without the area being protected.**

The Minister recognises that many research projects would benefit by being conducted within an area that is not subjected to commercial or recreational harvest.

- **Loss of enjoyment or educational opportunities for children.**

The Minister considers that creation of a marine reserve will increase the range of educational opportunities on the Wellington south coast. Children will benefit from the opportunity to learn the difference between exploited and protected marine habitats, and to observe a greater diversity, abundance and size of marine life. As noted earlier, claims that low impact activities carried out by children would be prohibited are unfounded.

- **The reserve would be better sited elsewhere.**

A range of sites and possible boundary locations were considered during the long gestation of the proposal. The site endorsed by the Minister is a compromise between those submitters seeking protection of a larger area of the south coast, and those seeking to minimise impacts on recreational fishing. Significantly enlarging or moving the location of the proposed marine reserve would require the current Applicants or a new applicant to repeat the process undertaken to date.

- **Fishing should continue to be permitted in Island Bay.**

This issue was a focus of disagreement between marine reserve supporters and opponents. The Applicants argue that exclusion of the embayment “would seriously undermine the diversity and scientific value of the reserve”. A 1994 survey found that 41% of respondents favoured exclusion of the embayment from the marine reserve, mainly to allow children to fish in a sheltered site. However, the Minister considers the embayment will be an obvious site for education and interpretation of the proposed reserve.

- **Historical values of Island Bay will be compromised.**

Conditions attached to the Order-in-Council declaring the area a marine reserve will allow fishing boats to continue to moor in Island Bay. Access to a marine reserve is not restricted, and so the Order would not need to make provision for launching or passage of boats. The Minister considers that creation of a marine reserve is likely to create further opportunities for interpreting the history of Wellington’s south coast.

- **Wider consultation is required.**

The Minister is satisfied that the Applicants followed the required consultation process except for the lack of consultation with Ngati Toa. Additional consultation by the Department and the Minister with iwi claiming tangata whenua status over the area is discussed in Section C.

Subsequent to the submission process the “Sink F69 Trust” applied to the Wellington Regional Council for resource consent to sink the Frigate Wellington in the area proposed for the marine reserve. The Director General submitted neither in support or opposition but seeking conditions. The Council approved the resource consent with most of the conditions the Director General sought. The Minister noted that the sinking will need approval of the Director General under the Marine Reserves Act and that it would be inappropriate to provide for the sinking in the Order-in-Council establishing the Marine Reserve.

## **E. DECISION IN TERMS OF S 5(9) MARINE RESERVES ACT**

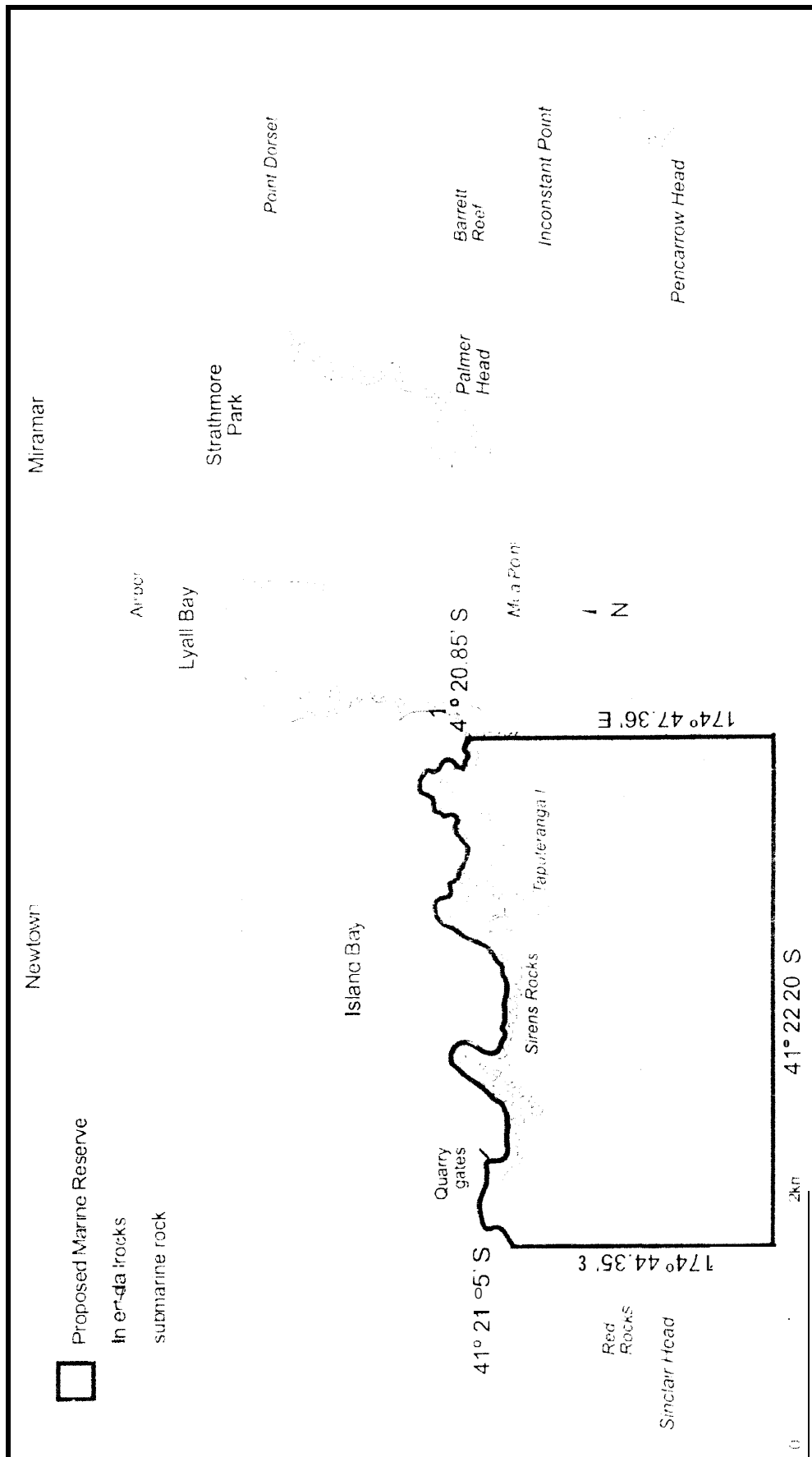
Having made the decision not to uphold the objections, the Minister considered the application itself.

Section 5(9) of the Marine Reserves Act 1971 states that if after considering all the objections, the Minister is of the opinion that:

*"... no objection should be upheld and that to declare 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 (including any condition as to providing the cost of marking the boundaries of the marine reserve under Section 22 of this Act, and any condition permitting fishing within the reserve by persons not holding a permit issued under Part IV of the Fisheries Act 1983), the Minister shall, if the Ministers of Transport and Fisheries concur, recommend to the Governor-General the making of an Order in Council accordingly."* [Section 5(9)].

In accordance with the matters that the Minister is bound to have regard to under Section 5(9), the Minister is of the view that she should seek concurrence from the Ministers of Transport and Fisheries for the establishment of a marine reserve on the Wellington South Coast as shown on the enclosed map (Enclosure 1) and with provision for existing moorings to remain. If the Ministers' concurrence is forthcoming, the Minister of Conservation intends to recommend to the Governor-General the making of an Order in Council establishing the marine reserve, and also recommends that the name of the reserve should be Taputeranga Marine Reserve.

14 May 2002



necessary for the preservation of the marine life or for the welfare in general of the reserves, the public shall have freedom of 'access and entry to the reserves, so that they may enjoy in full measure the opportunity to study, observe, and record marine life in its natural habitat.

[(3) For the purposes of this section but subject to any authorisation given under section 11 (b) of this Act, no person shall fish in a marine reserve except—

- (a) Persons (not being persons holding a permit issued under Part IV of the Fisheries Act 1983) authorised by notice in the Gazette given by the Minister after having regard to the purpose specified in subsection (1) of this section; and
- (b) In accordance with such conditions as to time, place, species of fish, methods, and gear to be used in fishing, as may be specified in the notice; and
- (c) Where not inconsistent with any conditions imposed under paragraph (b) of this subsection, in compliance with restrictions imposed on fishing by the Fisheries Act 1983 and any regulations made under it.]

[(4) Nothing in this section shall apply to prohibit any person from fishing in the reserve in accordance with any conditions imposed by any Order in Council made under section 5 of this Act.]

Subs. (3) was substituted for the former subs. (3) (as added by s. 2 of the Marine Reserves Amendment Act 1977) by s. 50 of the Conservation Law Reform Act 1990.

Subs. (4) was added by s. 2 of the Marine Reserves Amendment Act 1980.

**4. Governor-General may declare an area to be a marine reserve—**(1) Subject to section 5 of this Act, the Governor-General may from time to time, by Order in Council, declare that any area described in the Order shall be a marine reserve subject to this Act., and to such conditions as may be recommended to him by the Minister under subsection (9) of section 5 of this Act; but no area in respect of which any lease or licence under the Marine Farming Act 197 1 is for the time being in force shall be declared a marine reserve.

(2) No area within the jurisdiction of any harbour board shall be declared a marine reserve without the consent of the harbour board.

(3) Notwithstanding anything in [the Public Works Act 198 1] or any other Act, no public work, other than a work authorised by this Act, may be undertaken or constructed on any area included in a marine reserve except with the consent of the

[Minister . . .], and the Minister in charge of the department in **control of the work**, and subject to such conditions as those Ministers may jointly impose.

(4) Subject to subsection (5) of this section, and to section 25 of this Act, nothing in this Act . . . or regulations made under this Act shall affect [the Coal Mines Act 1979], the Mining Act 1926, the Mining Act 1971, the Petroleum Act 1937, the Iron and Steel Industry Act 1959, or the Continental Shelf Act 1964.

(5) The right to do anything in a marine reserve by virtue of a mining interest (whether in force at, or after, the commencement of this Act) may, notwithstanding anything in the interest or in any of the Acts mentioned in subsection (4) of this section, be made subject to this Act or to any provision of it by [the Minister of Energy], with the concurrence of the [Minister . . .], so notifying in writing the holder of the interest.

(6) If the right to do anything in a marine reserve by virtue of a mining interest is made subject to this Act or to any provision of this Act, it may continue to be exercised in the marine reserve only to the extent that it can be exercised in accordance with this Act or with the provision, as the case may be; and if it cannot be exercised in accordance with this Act or with the particular provision of this Act, it shall not be exercised at all.

In subs. (3), the Public Works Act 1981, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Public Works Act 1928.

In subs. (3) and (5) the word "Minister . . ." was substituted for the words "Minister of Marine" by s. 6 (1) of the Ministry of Agriculture and Fisheries Amendment Act 192? the words "of Agriculture and Fisheries" having been omitted subsequently by s. 11 (1) and (2) of the State-Owned Enterprises Amendment Act 1987.

In subs. (4) words were omitted by s. 5 1 of the Conservation Law Reform Act 1990: and the Coal Mines Act 1979, being the corresponding enactment, has been substituted for the repealed Coal Mines Act 1925. The Coal Mines Act 1979., the Mining Act 1971 and the Petroleum Act 1937 were repealed by s. 62 (1) of the Health and Safety in Employment Act 1992. The Mining Act 1926 was repealed by s. 247 (1) of the Mining Act 197 1, and the Iron and Steel Industry Act 1959 was repealed by s. 361 (1) of the Resource Management Act 1991.

In subs. (5) the reference to the Minister of Energy was substituted for a reference to the Minister of Mines by s. 16 (2) (a) of the Ministry of Energy Act 197 7. As to the Minister of Energy, see s. 4 (a) of the Ministry of Energy (Abolition) Act 1989.

**5. Procedure for declaring a marine reserve—**( 1) No Order in Council shall be made under section 4 of this Act unless —

- (a) Application for the Order in Council is made to the Director-General by one or more of the following:
  - (i) Any university within the meaning of the Universities Act 196 1:





987

*caring about you & your environment*

File: ENV 13/4/1

15 December 2000

Taputeranga Marine Reserve  
C/- South Coast Marine Reserve Coalition  
PO Box 4183  
Wellington

Dear Sir/Madam

**Taputeranga Marine Reserve application - WRC Submission**

Here is the Regional Council's submission on the Taputeranga Marine Reserve. If you wish to discuss the matters raised in the submission please feel free to ring me.

Yours sincerely

RICHARD PETERSON  
Policy Advisor (Statutory)



*caring about you & your environment*

## **Taputeranga Marine Reserve Application Wellington Regional Council Submission**

### **1. Introduction**

The Wellington Regional Council generally supports the Taputeranga Marine Reserve Proposal and asks the Minister of Conservation to recommend its approval.

However, the Council's support is conditional on a number of issues being given further consideration and, where appropriate, being provided for in the Order in Council. The issues are:

- the inclusion of Island Bay and, in particular, the Island Bay Mooring Area;
- the existing discharges;
- the need to consult Ngati Toa Rangatira;
- the Regional Council's Oil Spill Response Plan and the use of approved oil dispersants in the marine reserve.

### **2. Relationship to the Regional Policy Statement and the Regional Coastal Plan**

#### ***Introduction***

Under the Resource Management Act 1991, the Regional Council has responsibility to establish, implement and review objectives, policies and methods to achieve the integrated management of the natural and physical resources of the Wellington Region. Further, it has specific responsibility to manage a range of activities and uses within the coastal marine area, including the discharge of contaminants and the development of land.

In the fulfilment of these functions the Regional Council is required to produce a Regional Policy Statement (RPS) and a Regional Coastal Plan (RCP). Both the RPS and the RCP for the Wellington Region are operative. The RCP was approved by the Minister of Conservation in May 2000.

A number of objectives and policies in both of these documents are relevant to the Taputeranga Marine Reserve Proposal, and on balance give support to the application.

### ***The Regional Policy Statement***

There are two chapters within the RPS which lend particular support to the Proposal. These are:

- Chapter 7 - The Coastal Environment
- Chapter 9 - Ecosystems.

Chapter 7 contains four objectives which address different aspects of the management of the coastal environment. These four aspects are the natural character of the coast, access to and along the coast, coastal water quality and the aspirations of tangata whenua. Each aspect is of relevance to the marine reserve proposal.

To a large extent the first three of these objectives and their related policies can be used to support the marine reserve proposal. For example, Objective 1 intends that the natural character of the coastal environment be preserved through (among other things):

- *The protection of the integrity functioning and resilience of physical and ecological processes in the coastal environment.*

If approved, the marine reserve proposal will help ensure that this outcome is achieved for this part of the Region's coast.

Objective 2 states that:

- *Existing provisions for public access to and along the coastal marine area remain and appropriate opportunities are take to enhance public access.*

AS the RPS recognises, the notion of public access is a broad concept and includes both physical and legal access and also access to views. Given this, and the vicinity of the current proposal to a large population, it is unlikely that the applicants will ever be able to get unanimous support for a marine reserve proposal along this portion of the south coast. With this in mind, the Regional Council asks that particular attention be given to the question of whether Island Bay should be included in the marine reserve.

However, the Regional Council acknowledges that the applicants have gone to some length to address concerns about recreational fishing. In this regard, the current proposal excludes Lyall Bay and most of the area from the Owhiro Bay Quarry to Sinclair Head.

The Regional Council also notes that the restriction on fishing and the gathering of shellfish will benefit other users of the area, The marine reserve will provide the public with convenient access to observe marine life that is free from recreational and commercial harvesting. Access to this length of protected rocky shore will also be of value for environmental study.

Chapter 9 (Ecosystems) of the RPS includes several objectives and policies which, among other things, promote the enhancement and protection of the Region's ecosystems. Generally, these provisions support the marine reserve proposal.

### ***The Regional Coastal Plan***

Like the RPS, the Regional Coastal Plan (RCP) includes numerous objectives and policies which are of relevance to the marine reserve proposal. Again like the RPS, many of these provisions provide support for the proposal. Having said this, the RCP gives a clear direction that preservation should be balanced against the need to use the coastal marine area. For example Policy 4.2.1 aims to:

*recognise that the intrinsic values of the coastal marine area and its components are the heritage of future generations and are worthy of protection in their own right, while acknowledging the need to allow for appropriate use and development.*

The Regional Coastal Plan uses its rules and the resource consent process to determine what is an appropriate use. Two uses that the Regional Council believes are appropriate, and which should be provided for are the existing discharges in the area and the Island Bay Mooring Area (Planning Map 3F of the RCP).

From discussions and communications with staff from the **Department of Conservation**, the Regional Council understands that both activities can be provided for through conditions in the “Order In Council” (OIC) which creates the marine reserve.

### ***Taputeranga Island***

While only its foreshore will be part of the marine reserve, Taputeranga Island is a central feature of the area of the Taputeranga Marine reserve. The Island is given significant status in both the RPS and RCP. In Chapter 7 of the RPS (the Coastal Environment) Taputeranga Island is identified as *a site of regional significance for indigenous vegetation or significant habitat for indigenous fauna*. Chapter 7 also identifies the Island as *a landscape and seascape of national significance and a geological feature and landform of regional significance*.

In addition, the RCP identifies the foreshore of the Taputeranga Island as an *Area of Important Conservation Value*.

Provision of a marine reserve in the area around Taputeranga Island will support the status the Regional Council has already given to the Island and its foreshore. If Island Bay is to be excluded from the reserve, the Regional Council asks that the foreshore of the Island remain in the Reserve to reflect the status given to it in the RCP.

### **3. Further issues to be addressed**

The discussion above has already identified two activities (the existing discharges and mooring in Island Bay) which should be provided for in the OIC. The Regional Council has also asked the applicant and the Minister to give particular attention to whether Island Bay should be included within the Reserve.

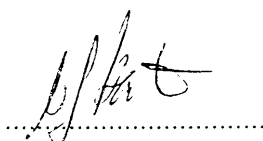
In addition to these issues the Regional Council asks that two other issues be addressed before the application proceeds further.

The first relates to the extent of consultation undertaken as part of the development of the application. In this regard the Regional Council is aware of concerns expressed by Ngati Toa Rangatira that they have not been consulted about the proposal, and asks that appropriate consultation through Te Runanga o Toa Rangitira take place before the application proceeds further.

The second issue relates to the potential response to an oil spill in the vicinity of the reserve. An oil spill near the Reserve would pose a significant threat to the marine life within the Reserve. Given this it is important that the use of approved oil dispersants is permitted in the Reserve.

The Wellington Region Marine Oil Spill Tier Two Response Plan identifies part of the area of the proposed marine reserve as an ecological site for special protection. Given this status, the Plan makes specific reference to the response options that may need to be used to protect the area from an oil spill. One option identified is the use of approved dispersants.

The Regional Council understands that its powers under the Maritime Transport Act 1994 allow it to use approved oil dispersants in the area of a marine reserve in the event of an oil spill. If this understanding is incorrect, then the Regional Council asks that the use of dispersants and the implementation of the Region's Marine Oil Spill Tier Two Response Plan more generally, be permitted by a condition in the OIC. The Regional Council would appreciate written confirmation that its understanding is correct.



Wayne Hastie  
Manager, Resource Policy

15/12/00  
Date

Address for service:

Wellington Regional Council  
PO Box 1 1-646  
Wellington

Attention: Richard Peterson

Telephone No: (04) 384 5708  
Facsimile No: (04) 385 6960

Andrew, sorry I left this out of my fax.  
Anyway here for your information is the  
Council resolution.

Richard.

File: ENV/13/4/1

**Report 00.827**

## **Wellington Regional Council**

Minute extract from meeting held on 7 December 2000

### **Report of Environment Committee – 30 November 2000**

#### **E 312 - Regional Council Submission on Taputeranga Marine Reserve**

##### **Recommendation**

- That the Regional Council make a submission generally supporting the Taputeranga Marine Reserve proposal in principle, but asking that the issues identified in Section 10 be given further consideration and that particular attention be given to Island Bay and no decision be made until further discussion takes place with Ngati Toa.*

Hon Mark Gosche  
Minister of Transport  
Parliament Buildings

DRAFT

Dear Mark

Thank you for your quick response giving concurrence to the proposed Taputeranga Marine Reserve.

I can confirm that the Marine Reserve Act poses no restriction to the navigation of vessels through a reserve. I do not expect any increased use of the outer (southern) reaches of the reserve by divers taking advantage of the improved fish life as the sea is too deep there, so there will be no practical change to the passage of vessels of concern to you. Temporary anchoring for safety or emergency purposes, are likewise not restricted by the Act.

There is therefore no need for the Order in Council to specifically mention these matters although existing fixed moorings are to be provided for in the Order in Council.

I look forward also to the concurrence of our colleague the Minister of Fisheries and then to see the reserve established, an achievement for our Government to be proud of.

Yours sincerely

Sandra Lee  
Minister of Conservation

02-A-0542

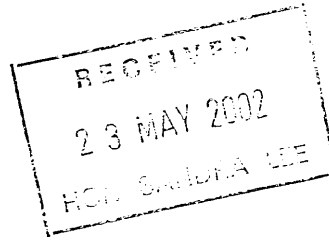


**Office of Hon Mark Gosche**  
Minister of Transport  
Minister of Housing  
Minister of Pacific island Affairs  
MP for Maungakiekie

23 MAY 2002

Hon Sandra Lee  
Minister of Conservation  
6.5

27 MAY 2002



**PARLIAMENT BUILDINGS**

Dear Sandra

Thank you for your letter received 13 May 2002 in which you seek my concurrence with your proposed recommendation for the establishment of a marine reserve on the Wellington south coast, including Taputeranga and its environs.

Of the 597 objections received in respect of the application, concern was expressed about the possible restriction of navigation through the area due to the south eastern corner of the proposed reserve extending into the safe approaches of Wellington Harbour, specifically the lane used by the inter-island ferry.

Officials at the Maritime Safety Authority have assured me that it would be normal for some vessels entering and leaving Wellington Harbour to pass through the proposed marine reserve and given the current level of navigational safety measures in place, no significant risk would arise from the establishment of the proposed reserve.

The proposed reserve does indeed showcase the large and diverse range of habitats and marine life presently typical of Wellington's south coast. Preservation of this area is in the national interest and I agree that the creation of a marine reserve would make this area an important one for scientific study of marine life. I would, however, need your assurance that the proposed marine reserve would not, in any way, restrict the ability of vessels to navigate through or anchor, for emergency or safety purposes, within the proposed area.

I can give you my concurrence to proceed with this application to establish a marine reserve on the Wellington South Coast, including Taputeranga and its environs. This proposal should be recommended to the Governor-General subject to this matter being appropriately addressed by an Order in Council.

Yours sincerely

Mark Gosche  
Minister of Transport