

# Marine Reserves: concurrence role of the Minister of Fisheries

## 1. Minister of Conservation decides to declare an area a marine reserve

- Before this decision, the Department of Conservation prepares advice and consults on the Minister's behalf.



## 2. The Minister of Conservation must seek the concurrence of the Minister of Fisheries and the Minister of Transport

- This requirement is outlined in section 5(9) of the Marine Reserves Act 1971.



## 3. During concurrence, the Minister of Fisheries considers...

- The Minister of Fisheries is required to independently take into account the same matters the Minister of Conservation considers.
- These matters are outlined in section 5(6) of the Marine Reserves Act 1971.
- The Minister of Fisheries focuses particularly on those matters within his or her portfolio, namely commercial, recreational and customary fishing, and the effects of the marine reserve upon those matters.
- Matters considered under section 5(6) include whether or not the marine reserve will:
  - Interfere unduly with any estate or interest in land in or adjoining the proposed reserve;
  - Interfere unduly with any existing right of navigation;
  - Interfere unduly with commercial fishing;
  - Interfere unduly with or adversely affect any existing usage of the area for recreational purposes; and
  - Otherwise be contrary to the public interest.



## 4. Does consultation occur?

- The 1971 Act does not require consultation to occur when concurrence is requested. However, the Minister of Fisheries considers submissions, including all objections, received during the statutory consultation process previously undertaken by either the Department of Conservation or an external applicant (if applicable). On a case-by-case basis, the Ministry of Fisheries advises the Minister of Fisheries on whether or not further consultation may be required with all or some stakeholders regarding any matters raised in objections, or due to the duration of time since consultation occurred.



## 5. Concurrence decision

- If, after the Minister of Fisheries considers all objections he/she determines no objection should be upheld; that the proposed marine reserve meets the purpose of the 1971 Act, and that the proposed marine reserve will not interfere unduly with or adversely affect the matters outlined in s 5(6), concurrence is granted;
- Otherwise concurrence will be withheld.

What is the purpose of the Marine Reserves Act?  
- The purpose of the Marine Reserves Act 1971 is to preserve areas of New Zealand as marine reserves for the purpose of scientific study of marine life. These areas may contain such underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.

What does 'interfere unduly' mean?

- The phrase "interfere unduly" has been defined by the courts to mean an effect that is unjustified or unwarranted in the circumstances. In determining whether or not an effect of the marine reserve is "undue", the significance of the effect must be weighed against the benefits flowing from declaring the reserve.

What about effects on customary fishing?

- Effects on Māori customary fishing rights are not expressly mentioned in s 5(6), because the 1971 Act predates the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. However, effects on customary fishing rights fall within the consideration under section 5(6)(e) – "Otherwise be contrary to the public interest" – and must be given due weight in the Minister of Fisheries' concurrence decision.

Either concurrence granted;

OR

Concurrence not granted – marine reserve will not be established