

# Initial analysis of Marine Protected Areas proposals and Preliminary view of the New Zealand Sport Fishing Council



January 2016

## Introduction

On 12 January the Government released a consultation document: *A New Marine Protected Areas Act*, with the aim of providing a better system of marine protected areas in the territorial sea, from the coastline out to the 12 nautical mile (nm) limit. The existing Marine Reserves Act would be repealed and replaced by the new Marine Protected Areas Act (the Act). This Act would enable different protection measures to be applied in the same area ie. a species sanctuary could be established in a recreational fishing park.

The Act would require an economic analysis to determine the potential costs and benefits of any changes, and more community involvement in decision-making is proposed.

Government is seeking feedback on whether reforms are required, if there are other issues need to be considered, and if any existing measures ought to be retained. More info here <http://goo.gl/2wx0pJ>. Feedback can be sent to [mpaconsultation@mfe.govt.nz](mailto:mpaconsultation@mfe.govt.nz) by March 11<sup>th</sup> 2016.

The New Zealand Sport Fishing Council has reviewed the proposals and provides this initial analysis and Preliminary view.

**Please send your feedback and questions to the NZSFC Fisheries Management Committee by 6th March.**

## Proposals

Four types of Marine Protected Areas are proposed with some overlap among three types, excluding marine reserves. The consultation document describes the Areas as:

- **Marine reserves.** Strict controls to conserve biodiversity in its natural state.
  - Current process to establish marine reserves can be complex, rigid, costly and cumbersome.
  - New Act enables a faster and simpler process to establish marine reserves.
- **Species-specific sanctuary.** Controls to protect marine life, including mammals, birds, sharks.
  - Important feeding or breeding areas could be protected.
  - Could restrict seismic surveys or fishing methods.
- **Seabed reserves.** Controls to protect the specific habitats or ecosystems such as seagrass or mussel beds.
  - Could be restrictions or prohibitions on certain activities, including anchoring, mooring, seabed mining, bottom trawling and dredging.
- **Recreational fishing parks.** Aim is to improve the recreational fishing experience by providing a preference for non-commercial fishing for some species.
  - Government policy to create two parks, in the Hauraki Gulf and Marlborough Sounds.
  - Could be restrictions on recreational methods and species.
  - Restrictions on some commercial methods and species.

## Preliminary view

### **Marine reserves**

New Zealand is a party to the UN Convention on Biological Diversity<sup>1</sup>, committing NZ to –

- Establishing a system of protected areas to conserve biological diversity
- Regulating or managing biological diversity outside and inside protected areas.

The 20 UN Convention Aichi Biodiversity Targets are more specific, including -

*“Target 11: By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape.”* (<https://www.cbd.int/sp/targets>)

It is no longer a matter of **if**, it is now a question of **where** the proposed network will be established.

Setting aside 10% of coastal and marine areas will have a significant affect on all fishers. On a regional basis 10% would be a substantial chunk of available fishing area, especially in the South Island where weather conditions already restrict fishing days and locations. It is also not clear how this arbitrary figure would work in reality in the Hauraki Gulf, Northland, Bay of Plenty, East Coast, Wellington and other North Island areas.

As new marine reserves are established fishing will be displaced, often into neighbouring areas, with potentially disastrous consequences for abundance and diversity in those areas. This outcome would contravene both the UN Convention to conserve biological diversity and the Government’s objective to enhance, protect and restore marine biodiversity in the territorial sea.

There is no mention of how displaced fishing effort will be managed. Clearly in many places the Total Allowable Catch (TAC) will need to be reduced for some species, with consequences for the Total Allowable Commercial Catch (TACC).

There could also be consequences for recreational controls. The near-shore waters are used intensively, and any reserve has the potential to impact on recreational fishing access to available fish stocks and to fish of suitable, legal size.

There is no analysis included of the social and economic costs of this provision, which in itself is unusual as Treasury usually demands an economic impact study, and if one has been completed it would naturally form part of the proposal. While marine reserves are not fisheries management tools in themselves they do have large spatial implications for fisheries management.

The proposals for connected and replicated marine reserves, in the name of improved biodiversity, are largely faith based. There is no requirement to identify species at risk and determining where a reserve would provide the greatest benefit. Nevertheless, Government intends establishing many more marine reserves on the basis they must be good for you and 10% sounds right.

Provision is being made for compensation to be paid to quota holders having an interest in areas affected by the establishment of recreational fishing parks. No compensation is proposed for establishing marine reserves, species-specific sanctuaries or seabed reserves, on the basis that these three measures are taken for purpose of ensuring sustainability and are therefore immune from any claim for compensation. It is doubtful that Maori will see it that way.

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<sup>1</sup> <https://www.cbd.int/convention/text/default.shtml>

<sup>2</sup> Tipping SNA\_CA\_797 p. 15

### **Species sanctuaries**

Species-specific sanctuaries would permit targeted conditions to be put in place to provide protection for Maui dolphins, Brydes whales etc. It is not anticipated that this provision would be widely used; rather it would be reserved to preserve and protect one or more named species while allowing some fishing. The Department of Conservation (DoC) would be the lead agency for these sanctuaries. Any species sanctuary would contribute to the 10% MPA target. If successful, the Government could claim up to 20% of coastal waters are protected by an MPA, because there is already around 10% of those waters protected by some form of MPA.

### **Seabed reserves**

Benthic protection within the 12-nm limit has been a topic covered in many submission made by the NZSFC over many years. For most shallow areas that traditionally held large and highly productive benthic species, assemblages have been destroyed by a century of bottom trawling. The use of bobbins to permit trawling over rocky ground continues today.

It is long overdue that the shallow waters driving productivity and providing habitats for juvenile fish are protected from the large-scale damage resulting from mobile fishing gear. [The NZSFC policy for FMA1](#) targets no trawling of Danish seine fishing in waters less than 100m deep to protect juveniles and their preferred habitat. Any package of MPA proposals must consider the protection of habitat critical to the early life stages of finfish species.

### **Recreational fishing parks**

A recreational fishing park for both the Hauraki Gulf and Marlborough Sounds has attracted the most attention. The parks purpose is stated as:

*“To enhance the enjoyment and value of recreational fishing in high-demand areas by reducing the impact of commercial fishing and enabling recreational fishers to take more responsibility for the effects of their activities in these areas and the sustainability of the fishery.”*

The purpose statement is meaningless and disingenuous. The quality of recreational fishing is ignored and the focus is on shifting some commercial effort from an area to enable a new administrative structure to be created, one that would see a governance body for recreational fishers outside of the Ministry for Primary Industries (MPI). Again, the need, the costs, and benefits of such a governance change have not been revealed; yet must exist.

Many people may be initially attracted to the notion of recreational fishing parks due to the expectation of improvement in recreational fishing conditions. Even if the boundaries are considered too small there will be voices saying it is a start and we can work on increasing the area over time.

Any fishing park needs the following elements to succeed:

1. A clear purpose statement.
2. It is large enough to sustain and replenish itself.
3. It has clear abundance goals.
4. There is a realistic way to measure progress and success.

The following conditions also need to be analysed and tested for their effectiveness in achieving the Government’s stated goal of increasing biodiversity and improving recreational fishing:

- Is the area large enough to encompass a diverse ecosystem? The catch of fish taken in the recreational fishing park must be mostly replenished from within the park. If the fish being available to recreational fishers must first run the gauntlet of industrial fisheries at the boundaries then success would seem remote.
- Some clear economic benefit needs to underpin the establishment of recreational fishing parks. It is essential to move all policy settings to combine and drive the benefits. A singular focus only on spatial policy will certainly fail.

Abundance and availability are the key drivers of recreational fishing. Under the Quota Management System inshore fish stocks have been managed at levels of sustained depletion. A sea change is required if we are to achieve the abundance levels that provide for the social, economic and cultural wellbeing of fishers.

A well managed recreational fishing park may better provide for those wellbeings however, the proposed removal of 260 tonnes of commercial snapper catch from the inner Hauraki Gulf is unlikely to make a difference to catch rates considering recreational snapper harvest has reduced by more than 50% (over 1000 tonnes) since 2011-12.

Therefore, any plan to improve recreational fishing success will have in its core a strategy to increase abundance and have fish available where recreational fishers fish; mostly inside the 12 nautical mile limit, or waters less than 100m deep.

### **Compensation**

One aspect of the recreational fishing park proposal is to compensate quota holders if it is “justified”; there is to be a type of Undue Adverse Effects test, based on the model used for granting aquaculture space.

Environment Minister Dr. Nick Smith has indicated that a recreational fishing park will only be contemplated if the impact on commercial use is small, limiting the cost of compensation. If this is so, the future prospects for additional parks looks dim to impossible, that is because the Government has already suggested the cost of displacing some small-scale effort from the inner Hauraki Gulf and Marlborough Sounds will be around \$20 million. If so, the cost of establishing something useful, say, in the entire Hauraki Gulf, will never be possible.

Notwithstanding that, the Government is not bound to pay compensation – it is voluntarily proposing it!

When considering what constraints might apply to a Minister altering the Total Allowable Commercial Catch (TACC) the Appeal Court had this to say:

*While acknowledging the extensive arguments which we heard on the property rights point, we consider the answer is quite straight forward. While quota are undoubtedly a species of property and a valuable one at that, the rights inherent in that property are not absolute. They are subject to the provisions of the legislation establishing them. That legislation contains the capacity for quota to be reduced. If such reduction is otherwise lawfully made, the fact that quota are a “property right”, to use the appellants’ expression, cannot save them from reduction. That would be to deny an incident integral to the property concerned. There is no doctrine of which we are aware which says you can have the benefit of the advantages inherent in a species of property but do not have to accept the disadvantages similarly inherent.<sup>2</sup>*

Providing no quota shares or Annual Catch Entitlement (ACE) are appropriated then changes to the TACC, for whatever purpose, is fully provided for in the Fisheries Act, without a need to pay compensation.

If Government really believes greater benefits to the nation result from increasing the recreational fishing industry then it cannot hobble future governments by imposing a compensation regime that makes future changes in use impossible. Yet legislating for compensation to be paid when use changes from commercial to non-commercial cements the status quo in place. What’s more, no such compensation mechanism exists for the opposite – when commercial catch is increased or taken at the cost of falling non-commercial catch.

We agree wholeheartedly that better value can be derived from the recreational and sport use of our inshore fisheries, that is why the NZSFC has supported the New Zealand Marine Research Foundation’s recent project to measure the contribution that recreational makes to the New Zealand economy<sup>3</sup>.

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<sup>2</sup> Tipping SNA\_CA\_797 p. 15

<sup>3</sup> [www.nzmr.org.nz](http://www.nzmr.org.nz)

Without a clear purpose in the MPA legislation to both improve the recreational fishing industry and create an achievable process for establishment, these parks are an illusion.

The parks discussion distracts people's attention away from the fundamental changes proposed to the marine reserves regime, and are nothing more than a clumsy attempt at mollifying a disillusioned fishing public.

### ***Hauraki Gulf Recreational Fishing Park***

The proposed boundary of the Hauraki Gulf Recreational Fishing Park is, in management terms, Statistical Area 007 with Omaha Bay added (Figure 1). This area already has no trawl or Danish seine fishing and only seasonal longline effort (Figure 2). Most of the commercial catch is kahawai, mullet, and flounder taken mainly by set nets.

Map 1: Proposed location for a Hauraki Gulf Recreational Fishing Park based on Statistical Area 7 in Fisheries Management Area 1 and Omaha Bay



**Figure 1:** Proposed Hauraki Gulf Recreational Fishing Park boundaries.

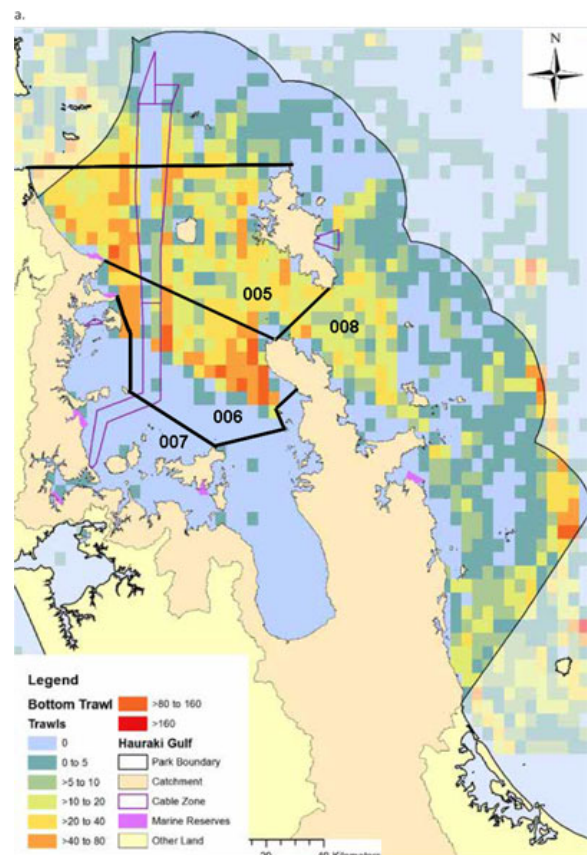


Figure 5-g: Spatial distribution of a) bottom trawls undertaken between 1 January 2011 and 01 January 2014.

**Figure 2:** Distribution of bottom trawls in the Hauraki Gulf Marine Park between 2011 and 2014.

The intense trawl effort applied to areas 005 and 006, the outer Hauraki Gulf, is apparent from the above plot. Fishing conditions in the inner Gulf cannot be improved without eliminating the trawl and Danish seine effort in the outer Gulf.

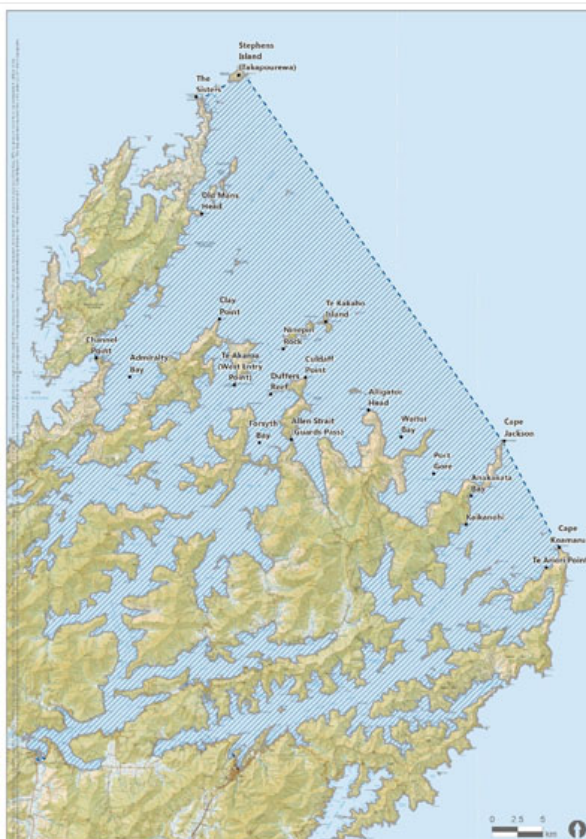
The areas of intense trawling are known nursery areas and, before the onslaught of trawl, the seabed comprised large areas of hard bottom supporting sponge gardens and acting as a nursery. These hard bottom surfaces have all been stripped bare and turned into soft, barren, and mobile seabed.



### ***Marlborough Sounds Recreational Fishing Park***

The proposed boundary of the Marlborough Sounds Recreational Fishing Park is based on the Blue cod Management Area.

Map 2: Proposed location of a Marlborough Sounds Recreational Fishing Park based on the Blue Cod Management Area



**Figure 3:** Proposed Marlborough Sounds Recreational Fishing Park boundaries.

Other than Blue cod and Gurnard the commercial catch in the proposed Marlborough Sounds Recreational Fishing Park is small. With the uncertainty around the extent of the Blue cod catch, this Park proposal also closely resembles the status quo. If there are no expected improvements in fish stock abundance or availability, what does this proposal try to achieve?

It is impossible to ignore the proposition that recreational parks are proposed as a pathway to self governance by the recreational fishing public. Again we see no case studies, or examples of any kind, as to how this might operate and what outcome is sought.

Table 3: Top 12 fish stocks by average annual commercial catch (tonnes) for the past five fishing years (2010/11 – 2014/15) in the Marlborough Sounds

Stock	Estimated commercial catch within proposed park (tonnes)	Percentage of total allowable commercial catch caught within proposed park
Gurnard (GUR7)	26	3.3
Red cod (RCO7)	21	0.7
Flatfish (FLA7)	14	0.7
Spiny dogfish (SPD7)	13	0.7
Snapper (SNA7)	6	2.9
Barracouta (BAR7)	6	0.1
Leatherjacket (LEA2)	6	0.5
John dory (JDO7)	5	3.2
School shark (SCH	4	0.6
Rig (SPO7)	4	1.6
Tarakihi (TAR 7)	3	0.3
Blue cod (BCO7)	31*	44.3
<b>Total</b>	<b>139</b>	

\* This figure includes 29 tonnes of blue cod catch taken by potting across the whole of Statistical Area 017 (this includes the Marlborough Sounds plus the area south to Cape Campbell). Potting fishers are only required to report their catch by statistical area and there is no reliable estimate of what proportion of blue cod catch taken by potting within Statistical Area 017 is caught within the proposed park boundaries.

Note: the total allowable commercial catch is within the relevant quota management area for each species.

## Other aspects to be considered

The Hauraki Gulf Marine Park Act 2000, that includes the waters of the proposed Recreational Fishing Park, obliges decision-makers to provide for recreational opportunities on the islands and in the waters of the Park, when making decisions on fisheries matters. These MPA proposals are made as if the Hauraki Gulf Marine Park Act and the marine spatial planning process, Sea Change, do not exist.

Commercial and Maori interests have strongly opposed the inclusion of recreational fishing parks in MPA legislation.

Environmental groups have already claimed that a park will not qualify as an MPA and does not protect biodiversity. On that basis the seabed reserves and species sanctuaries are not MPAs either as they allow some commercial and non-commercial fishing.

A park could offer more protection than the proposed seabed reserves and species sanctuaries as there could be method restrictions such as no set nets, no dredging or potting.

Recreational catch in the Hauraki Gulf is almost exclusively snapper, kahawai and trevally which are not rare or endangered and move in and out of the Hauraki Gulf. Gurnard and flatfish are more residential. Biodiversity is about all the plants and animals, 99% of which are not taken by recreational fishing.

On the basis of protecting biodiversity, the existing cable zones can be classed as MPAs.

In the past NZSFC has been supportive of a mix of protection levels when considering MPAs - as is the case with Mayor Is. (possible case study). Where a marine reserve or other MPA is proposed a buffer zone could be created around its margins. The Ministers could see buffer zones around MPAs as a way to get recreational fishers' support for more marine reserves.

Compensation and Maori settlements could be used as a justification to minimise the impact of recreational fishing parks on commercial fishing.

As a way of reducing conflict a number of Ministers, four as a minimum, will first be consulted for their views on any proposal. If agreed for public release, there are two different ways consultation will be delivered, via a collaborative process involving the community, or a Board of Inquiry chaired by an Environment Court judge, "*if parties' views are, or likely to be, too divergent*". More consideration needs to be given to this aspect prior to the submission development.

No-take marine reserves could be included in a recreational fishing park. More consideration will be given to the implications for the Marlborough Sounds and Hauraki Gulf.