

Southland Regional Council (Environment Southland)

Proposed Fiordland Marine Regional Pathway Management Plan

pursuant to the
Biosecurity Act 1993

MINUTE AND DIRECTIONS OF HEARING PANEL

Minute 3

INTRODUCTION

1. The Biosecurity Act 1993 (**Biosecurity Act**) provides a step by step process which must be followed in the preparation of a Regional Pathway Management Plan.
2. The Southland Regional Council (**Council**) completed Steps 1 and 2 of the plan making process by resolving on 23 March 2016 that it was satisfied that the proposal for a Fiordland Marine Regional Pathway Management Plan (**Fiordland Marine RPMP**) met the requirements of sections 90 and 91 of the Biosecurity Act.
3. The Council also resolved to:
 - a. further consult with the Ministers of Conservation and Primary Industries, tangata whenua and the Southland community; and
 - b. publicly notify the proposal on 9 March 2016, call for submissions and conduct a public hearing.
4. At its meeting on 3 August 2016, the Council under clause 32 of Schedule 7 of the Local Government Act 2002 appointed us as the Hearing Panel on the proposed Fiordland Marine RPMP.
5. The Council delegated to us all of its powers, functions and duties set out in sections 92 to 94 (excluding section 92(5)) and section 95(1) and 95(2) of the Biosecurity Act in relation to the proposed Fiordland Marine RPMP. This involves Steps 3 to 6 of the plan making process and includes the functions and duties of hearing submissions on the proposed Fiordland Marine RPMP and of making recommendations to the Council on the proposed Fiordland Marine RPMP.
6. On 15 September 2016, we held a hearing to hear submissions on the proposed Fiordland Marine RPMP.
7. This Minute addresses Steps 3 and 4 of the plan making process as set out in sections 92 and 93 of the Biosecurity Act:
 - a. Step 3: satisfaction with consultation or requirement of more consultation
 - b. Step 4: approval of preparation of plan and decision on management agency

8. A further Minute or Minutes will be issued to deal with Steps 5 and 6 of the process in accordance with sections 94 and 95 once the directions in this Minute and the preparation of the plan have been completed.

STEP 3: SATISFACTION WITH CONSULTATION

9. Under section 92(1) of the Biosecurity Act we are required to be satisfied:
 - (a) *that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and*
 - (b) *that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and*
 - (c) *that the tangata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal runanga; and*
 - (d) *that, if consultation with other persons is appropriate, sufficient consultation has occurred.*
10. The proposal to implement a Fiordland Marine RPMP has been developed by a partnership group including Environment Southland, the Fiordland Marine Guardians, Ministry for Primary Industries, Department of Conservation and Ngāi Tahu. The Steering Group has consulted with affected parties during the proposal's development.
11. The proposal was publicly notified on 9 March 2016 with the submission period closing on 13 May 2016. A public notice was published in the Southland Times, and advertisements were placed in the Advocate, Southland Express and Ensign. Seventeen submissions were lodged on the proposal and five parties attended the hearing on 15 September 2016 to speak to their submission.
12. We address each of the requirements of section 92(1) below.

Consultation with Ministers

13. The responsibilities of the Minister for Primary Industries and the Minister of Conservation will be affected by the plan. These Ministries have been involved in the Steering Group and the proposal was sent to them. In addition, staff from Maritime New Zealand and Ministry for the Environment were sent the proposal.
14. Following public notification of the proposal, the Ministry for Primary Industries lodged a submission on the proposal.
15. We are satisfied, in accordance with section 92(1)(a) that the Ministers whose responsibilities may be affected by the proposed Fiordland Marine RPMP have been consulted.

Consultation with local authorities

16. The responsibilities of local authorities will not be affected by the proposed Fiordland Marine RPMP. Therefore there is no need to consult with local authorities in accordance with section 92(1)(b). Nevertheless, we are satisfied that local authorities have been consulted with as they have had an opportunity to submit on the proposal and attend the hearing to speak to any submission lodged.

Consultation with tangata whenua

17. Ngāi Tahu are the tangata whenua of Southland/Murihuku who may be affected by the proposed Fiordland Marine RPMP. Te Runanga O Makaawhio represent the tangata whenua of part of the southern West Coast.
18. Environment Southland staff have met with Te Ao Marama Inc who are the Ngāi Tahu (Murihuku) Resource Management Consultants representing Te Runanga o Awarua, Te Runanga O Hokonui, Te Runanga O Oraka/Aparima, and Te Runaka O Waihopai and the proposal was also sent to three people within Ngāi Tahu. Te Ao Marama Inc also lodged a submission on the proposal.
19. We also observe that a representative from Kai Tahu Oraka / Aparima Runaka was on the Steering Group that developed the proposal.
20. We note that Te Runanga O Makaawhio were consulted by way of public notice which was placed in newspapers circulating in their takiwa and they had an opportunity to lodge a submission.
21. We are satisfied that the tangata whenua of the area who may be affected by the plan have been consulted in accordance with section 92(1)(c).

Consultation with other persons

22. In considering whether we are satisfied that sufficient consultation has occurred with other appropriate persons, we must have regard to the following matters set out in section 92(2) of the Biosecurity Act:
- (a) *the scale of the impacts on persons who are likely to be affected by the plan; and*
 - (b) *whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation;*
 - (c) *the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.*
23. The consultation undertaken during the development of the proposal is described in section 11 and 12 of the proposal. Considerable efforts have been made to ensure a wide distribution of information to those likely to be affected by the proposal, particularly vessel owners/operators, marine biosecurity interests and the wider community.

24. We note that the impacts of the plan on vessel operators are potentially significant given the requirements to clean their vessels and gear. As set out in the proposal, information has been circulated to commercial tourist charters, recreational fishing, diving and hunting operators and all commercial fishers operating within the Fiordland Marine Area since July 2014, together with private recreational users using Wilmot Pass, the Deep Cove hostel and Milford Sound launching and 15 fishing, diving and yachting clubs including the NZ Underwater Association and the NZ Sport Fishing Council. Local and visitor vessel owners/operators have also been given an opportunity to respond to the draft proposal.
25. Vessel owners/operators have provided feedback about the Clean Vessel Pass, clean vessel standards and other aspects of the proposal. The feedback received during consultation is summarised generally in section 12.1 of the proposal.
26. Further opportunity for feedback has also been provided through the public notification of the proposal where persons have had an opportunity to submit on the proposal and speak to their submission at the hearing.
27. Having regard to the matters set out in section 92(2) of the Biosecurity Act we are satisfied that the requirements of section 92(1)(d) have been met and sufficient consultation has occurred with other appropriate persons.

Whether issues raised in all the consultation undertaken on the proposal have been considered

28. We are also required to be satisfied under section 93(1) that all issues raised in all the consultation undertaken on the proposal have been considered.
29. As set out in section 12.1 of the proposal, the issues raised during informal consultation have been considered by the Steering Group as well as others with experience of the Fiordland situation. Possible solutions have been integrated into the appropriate sections of the proposal.
30. Following notification of the proposal and receipt of submissions, we directed Council staff to prepare:
 - a. a report containing a summary of submissions received highlighting key issues raised in submissions; and
 - b. a report containing recommendations in response to submissions.
31. These reports were provided to us on 29 August and 7 September respectively, and made available on the Council's website.
32. We have carefully considered the issues raised in submissions together with the evidence lodged and any further matters raised at the hearing. In response we have recommended some changes to the plan in our directions below.¹

¹ We note that a full report under section 95 of the Biosecurity Act will be issued providing our recommendations on the plan and the reasons for accepting or rejecting the submissions.

Conclusion on consultation

33. We are satisfied that the consultation required by section 92(1) has occurred and that all of the issues raised in all the consultation undertaken on the proposal have been considered in accordance with section 93(1).

STEP 4: APPROVAL OF PREPARATION OF PLAN AND DECISION ON MANAGEMENT AGENCY

Approval of preparation of plan

34. Having been satisfied that the consultation required by section 92(1) has occurred and that all of the issues raised in all the consultation undertaken on the proposal have been considered as required by section 93(1), the Panel now approves the preparation of a plan. We make directions as to its preparation below.

Management Agency

35. Having approved the preparation of a plan, the Panel must apply section 100 of the Biosecurity Act to decide which body is to be the management agency. Under section 100(1), the management agency specified in a plan must be a department, a council, a territorial authority or a body corporate.
36. In deciding which body is to be the management agency, the Panel must take the matters set out in section 100(2) into consideration:
- (a) *the need for accountability to those providing the funds to implement the plan; and*
 - (b) *the acceptability of the body to –*
 - (i) *those providing the funds to implement the plan; and*
 - (ii) *those subject to management provisions under the plan; and*
 - (c) *the capacity of the body to manage the plan, including the competence and expertise of the body's employees and contractors.*
37. The implementation of the plan is to be funded by the Council, the Ministry for Primary Industries and the Department of Conservation, with a possible contribution in kind from other sources such as the Royal NZ Navy.
38. The proposal has been developed in partnership with these parties and as notified indicated that the Council would be the management agency for the plan. No submission was lodged on the proposal objecting to this. On that basis we see no reason why the Council would not be an acceptable body to those providing the funds to implement the plan and those subject to management provisions under the plan.
39. In light of the answers given to questions of the Reporting Officer at the hearing, we are satisfied that the Council has experience and expertise in marine biosecurity in Fiordland and has the capacity to manage the plan.
40. Taking these matters into consideration, we determine that Environment Southland be the management agency for the plan.

DIRECTIONS

Draft Fiordland Marine RPMP

41. The Panel directs Environment Southland Staff to prepare a draft Fiordland Marine RPMP in response to matters raised in submissions. The draft Plan must specify the matters set out in section 93(3) and may contain the matters set out in section 93(4) to (6) of the Biosecurity Act.
42. The Panel also directs that:
 - a. The draft Plan includes an Implementation section, which requires the development of a Communications Plan. The Communications Plan is to, among other things:
 - i. Encourage vessel operators to conform to the Bilge Water Code of Practice; and
 - ii. Consider all users entering the Fiordland Marine area and how they should be targeted accordingly.
 - b. The draft Plan is amended so that it is clear that equipment to establish new moorings is required to meet the clean vessel standard.
 - c. The draft Plan is clear that an exemption from the rules for an emergency does not allow gear to be deployed and that it only allows vessels to come into the Fiordland Marine Area in circumstances of an emergency.
 - d. The draft Plan refers to 'hull' or 'craft' as appropriate to ensure consistency with the Ministry for Primary Industries' Craft Risk Management Standard.
 - e. The draft Plan explicitly states that it is intended to last in perpetuity and will be reviewed after the first five years, and ten years thereafter.
 - f. The draft Plan will not apply to craft that do not come within one nautical mile of the landward edge of the Fiordland Marine Area.
 - g. The draft Plan expressly states that out of water cleaning is the preferred technique.
 - h. The draft Plan contains the correct Biosecurity Act reference to section 154N for offences.
 - i. The draft Plan requires all vessels within the Fiordland Marine Area to hold a clean vessel pass.
 - j. The draft Plan includes the statutory basis for the Plan in an Introduction section.
43. The draft Fiordland Marine RPMP is to be provided to the Panel by 2 December 2016.

Staff Report

44. Environment Southland Staff are also directed to prepare a Staff Report containing:
 - a. An assessment of the draft Plan against the matters specified in section 93 of the Biosecurity Act.

- b. An assessment of the draft Plan against the requirements of section 94 of the Biosecurity Act.
 - c. A response to the questions asked by Mr William Watt from the Southland Conservation Board at the hearing on 15 September 2016.
45. The Staff Report is also to be provided to the Panel by 2 December 2016.



Cr Maurice Rodway (Chairperson)



Cr Ross Cockburn



Mr Peter Jones

23 November 2016