

**proposed Fiordland Marine Regional Pathway Management Plan**

pursuant to the  
Biosecurity Act 1993

**MINUTE AND DIRECTIONS OF HEARING PANEL**

**Minute 4**

**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. In our Minute 3 dated 23 November 2016 we made a number of directions, including that Environment Southland Staff prepare a draft Fiordland Marine Regional Pathway Management Plan (**draft Plan**) in response to matters raised in submissions, together with 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; and
  - c. A response to the questions asked by Mr William Watt from the Southland Conservation Board at the hearing on 15 September 2016.
3. We received the draft Plan and Staff Report on 2 December 2016.
4. This Minute addresses Steps 5 and 6 of the plan making process as set out in sections 94 and 95(1) and (2) of the Biosecurity Act:
  - a. Step 5: satisfaction on contents of plan and requirements
  - b. Step 6: decision on plan

**Step 5: satisfaction on contents of plan and requirements**

5. Under section 94 of the Biosecurity Act we are required to be satisfied that section 93 has been complied with.
6. In our Minute 3 we addressed sections 93(1) and (2):
  - a. Under section 93(1), having been satisfied that the consultation required by section 92(1) had occurred and that all of the issues raised in all the consultation undertaken on the proposal had been considered as required by section 93(1), we approved the preparation of a plan.

- b. Under section 93(2), having approved the preparation of a plan, we applied section 100 of the Biosecurity Act to decide that Environment Southland be the management agency of the plan.
7. We now address sections 93(3) to (6) of the Biosecurity Act which set out the matters that the plan must specify and matters that the plan may, or must not, include.
8. Section 93(3) sets out that plan must specify the following matters:
- a. *the pathway or pathways to be managed:*
  - b. *the plan's objectives:*
  - c. *the principal measures to be taken to achieve the objectives:*
  - d. *the means by which the achievement of the plan's objectives will be monitored or measured:*
  - e. *the sources of funding for the implementation of the plan:*
  - f. *the limitations, if any, on how the funds collected from those sources may be used to implement the plan:*
  - g. *the powers in Part 6 to be used to implement the plan:*
  - h. *the rules, if any:*
  - i. *the management agency:*
  - j. *the actions that local authorities, local authorities of a specified class or descriptions, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:*
  - k. *the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:*
  - l. *the plan's commencement date and, if there is one, its termination date:*
  - m. *any matters required by the national policy direction.*
9. Council staff identified in the Staff Report dated 2 December 2016<sup>1</sup> where each of these matters are specified in the Draft Plan. We adopt this assessment and are satisfied that the Plan specifies the matters listed in section 93(3) of the Biosecurity Act.
10. Section 93(4) states that a plan:
- a. *may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:*
  - b. *must not provide for the payment of compensation for the following losses:*
    - i. *loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:*
    - ii. *loss suffered by a person who fails to comply with the plan.*

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<sup>1</sup> Part 1 of the Staff assessment against requirements of the Biosecurity Act 1993 and National Policy Direction for Pest Management 2015 dated 2 December 2016.

11. The Plan does not provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan or for the losses listed in section 93(4)(b). Therefore we are satisfied that section 93(4) has been complied with.
12. Section 93(5) sets out that a plan may include rules for all or any of the purposes listed and section 93(6) sets out that a rule may:
  - a. *apply generally or to different classes or descriptions of persons, places, goods, or other things:*
  - b. *apply all the time or at 1 or more specified times of the year:*
  - c. *apply throughout the region or in a specified part or parts of the region, with, if necessary, another rule on the same subject matter applying to another specified part of the region:*
  - d. *specify that a contravention of the rule creates an offence under section 154N(19).*
13. Rules 1, 2 and 3 of the Plan fall within the purposes set out in section 93(5). In particular:
  - a. *requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records (section 93(5)(a)); and*
  - b. *requiring the owner or person in charge of goods or craft to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway (section 93(5)(g)).*
14. The rules apply generally to all owners or persons in charge of vessels and apply all of the time. The rules apply within a specified area and each rule states that the contravention of that rule creates an offence under section 154N(19) of the Biosecurity Act. Therefore we are satisfied that section 93(5) has been complied with.
15. Having been satisfied that section 93 of the Biosecurity Act has been complied with, section 94 requires us to consider whether we are satisfied:
  - a. *that the plan is not inconsistent with –*
    - i. *the national policy direction; or*
    - ii. *any other pathway management plan or pest management plan; or*
    - iii. *a regional policy statement or regional plan prepared under the Resource Management Act 1991; or*
    - iv. *any regulations; and*
  - b. *that, for each subject of the plan, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and*
  - c. *that, for each subject of the plan, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan –*
    - i. *will accrue, as a group, benefits outweighing the costs; or*
    - ii. *contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and*

- d. *that, for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and*
  - e. *that each rule –*
    - i. *will assist in achieving the plan's objectives; and*
    - ii. *will not trespass unduly on the rights of individuals.*
16. Council staff have addressed whether the Panel can be satisfied of these matters in their Report dated 2 December 2016.
17. We are satisfied of these matters in section 94 of the Biosecurity Act and adopt the reasons set out in the staff assessment.

### **Step 6: decision on plan**

18. Having been satisfied of the matters in section 94 of the Biosecurity Act, sections 95(1) and (2) require the Council to prepare a written report on the plan and set out in the report the reasons for accepting or rejecting the submissions received on the proposal. Section 95(3) provides that the report must give the council's decision on the plan.
19. The Council has delegated to us the function of preparing the written report on the Plan and setting out in the report the reasons for accepting or rejecting the submissions received on the proposal under sections 95(1) and (2).
20. Our Hearing Panel Report provides our recommendations to the Council on the Plan and will be provided to submitters and made available on Council's website once Council has made a decision on the Plan.
21. Following receipt of our recommendations, the Council will give its decision on the plan under section 95(3) and give public notice of its decision under section 95(4) of the Biosecurity Act.



Cr Maurice Rodway (Chairperson)



Cr Ross Cockburn



Mr Peter Jones

**13 February 2017**