



1. INTRODUCTION

1.1 Opportunity to Answer Objections

An application for a marine reserve for Akaroa Harbour has been made by the Akaroa Harbour Marine Protection Society Incorporated. As part of the statutory process outlined in the Marine Reserves Act 1971, the applicant, via public notices in newspapers, called for objections to the proposal on 6 January 1996. The period for objections closed on 6 March 1996. The applicant has considered the objections and also the submissions received and in terms of section 5(4) of the Act answers those objections.

Section 5(4) of the Marine Reserves Act 1971 provides as follows:

"The applicant may, on receiving any copy of objections under subsection (3) of this section, answer those objections in writing to the Director-General within 3 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1) of this section, and the Director-General shall send any such answer he may receive within that time to the Minister for consideration."

1.2 Overview of Objections Received

A total of 709 objections were received by the closing date, 6 March, two months from the date of first publication of the first notice of intention to apply for an Order in Council declaring the area a marine reserve. An additional 187 objections were received between the statutory closing date and the completion of the analysis. Objections received outside the statutory closing date are noted separately alongside the totals received during the specified two month period (eg, 709 + 187).

TABLE 1: OBJECTIONS

Individual letters*	291 + 30
Form letters	62 + 6
Newspaper coupons	345 + 150
Groups	11 + 1
Total:	709 + 187 = 896

* Fifty (46 + 4) of these letters were not *individually* written i.e. one master letter was written then copied and signed by various people. There were twelve groups. One "individual" letter was copied 16 times.

1.3 Overview of Submissions in Support

A total of 2383 submissions in support were received relating to this application. The statutory function of the Minister is to consider whether or not any objection should be upheld. There is no statutory provision which calls for submissions in support or which outlines how the Minister should deal with any submissions in support which may be received. The Department of Conservation advises that submissions in support are not irrelevant and may be referred to in the answer to objections. Submissions in support may also be referred to when dealing with the question of whether any objection should be upheld in terms of section 5(6) of the Act, especially where that pertains to the public interest.

TABLE 2: SUBMISSIONS OF SUPPORT

Individual letters	127
Form letters	2260
Total	2387

COMMON REASONS FOR SUPPORT

- Diversity of marine life & abuts land reserves
- Preservation of marine life
- Educational and scientific value
- Success of other marine reserves noted
- Supports Akaroa's growing nature tourism industry
- Canterbury needs a marine reserve
- Proposal a compromise following consultation
- Promote fish regeneration and benefit fishers
- Recreational opportunities

2. ANALYSIS OF MATTERS RAISED IN OBJECTIONS

The analysis of objections is made in the light of the statutory criteria set out in section 5(6) of the Marine Reserves Act which the Minister is required to have regard to when dealing with the question of whether or not any objections should be upheld.

2.1 Grounds for Upholding Objections

Under section 5(6) of the Marine Reserves Act the Minister shall uphold an objection if he/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"

TABLE 3

2.2 Objections Received

Concerns expressed were:

Interferes with existing rights of navigation	46 + 6
Effect on commercial fishing	255 + 87
Loss of recreational fishing opportunity	619 + 163
Contrary to the public interest	414 + 127
Does not fit criteria of Marine Reserves Act	54 + 3
Boundary marking	75 + 7
Safety in small boats compromised	128 + 11
No reason given	23 + 16

Note: Objectors generally objected on the basis of more than one issue.

3. ANSWER TO OBJECTIONS RAISED

3.1 Introduction

This section presents the answers to the objections in terms of section 5(4) of the Act. The objections and answers directly related to section 5(6) of the Act are set out under those headings. These are presented in sections 3.2 to 3.6 of this document. Where appropriate a background to each issue is presented followed by the nature of the objection(s) and then the answer to that objection.

Many of the issues raised in objections were addressed in the formal application document.

3.2 Adjoining Landowners (Section 5(6)(a))

"Interfere unduly with any estate or interest in land in or adjoining the proposed reserve."

The Act defines adjoining land as that within 100 metres of the proposed reserve boundaries. No objections received from adjacent landowners. Two privately owned properties adjoin the reserve. Submissions of support have been received from both these landowners (Submission Nos 146 and 493).

The Department of Conservation administers three terrestrial reserves adjoining the reserve - Palm Gully, Dan Rogers Creek and Akaroa Head.

3.3 Navigation (Section 5(6)(b))

"Interfere unduly with any existing right of navigation."

A total of 46 + 6 objectors asserted that their navigational rights would be interfered with and that small boats would be denied the use of the area for shelter.

Many believe that it is prohibited to pass through a marine reserve with fish and fishing equipment on board. Another concern was that of the inconvenience of frequent checks, and that boaters would have to travel a considerable distance out of their way to avoid surveillance.

Answer:

Section 23 of the Marine Reserves Act preserves access rights and navigation through marine

reserves. Sheltering is permitted in a marine reserve. Skippers of larger boats may prefer to fish out of the harbour and the reserve will not restrict navigation.

It is not an offence to carry fishing tackle or fish caught outside a marine reserve through a reserve. In any prosecution the onus of proof is upon the prosecution to prove that the fish was taken from a marine reserve.

3.4 Commercial Fishing (Section 5(6)(c))

"Interfere unduly with commercial fishing"

Objections were received from the Akaroa Fishermen's Association (No. 2459), Federation of Commercial Fishermen (No. 720), Fishing Industry Board (No. 718). D.G. McCormick (affected fisher No. 696). One other affected fisher responded with a form letter (No. 2654). The form letter of objection includes a list of possible reasons to oppose the reserve and does not give specific concerns other than stating: *"It will unduly interfere with commercial fishing."* Respondent No. 2654 has not indicated to what extent he may be affected by a reserve. The applicant is of the opinion that the effect on him is minimal or non-existent.

Additionally, three commercial fishers (Nos. 1830, 270 and 2460) domiciled in Akaroa objected; none are directly affected by the proposed reserve. None of these eight objectors mentioned any fishery other than rock lobster. 247 + 87 submissions were received from objectors who are not commercial fishers.

D.G. McCormick (No. 696) states that 1/3 of his crayfish pots will be affected by the reserve. The Akaroa Commercial Fishermen's Association objects on the grounds that "the livings of two of their members are affected".

Answer

Akaroa crayfishers have traditionally operated from the Lake Forsyth outlet to beyond Le Bons Bay, some 50km of open coastline. The crayfish pots affected by the reserve occupy 1.5km. The crayfishing season is approximately seven months of the year. Seasonal variations occur.

In 1976 17 crayfishers fished this coast and the bays along it, now there are 6 fishers, one of whom fishes a stretch of coast 17 km long. This area of suitable crayfish habitat still exists.

It is the applicant's contention that the *"ripple effect"* would be minimal and that the affected crayfish pots could be relocated.

Federation of Commercial Fishermen Submission No: 720

The Federation includes in its objection the contention that D.G. McCormick may have to purchase new gear and even a new vessel in order to relocate his fishing effort. They also contend that "vessels may not be able to take any other route into the harbour (to avoid the reserve) and this could cause problems if the Marine Reserves Act was ever changed."

Answer

Although some relocation of fishing effort would be required of D.G. McCormick to accommodate the reserve, no changes would be required to his fishing gear or vessel. It is surprising that the Federation has no clear knowledge of the fisherman concerned and his operation.

Navigation is in no way inhibited in a marine reserve and to cite possible changes to the Act is not pertinent.

Fishing Industry Board Submission No: 718

The FIB objects on the grounds that:

- 1) the "site selection is not justified"
- 2) "overall management of the harbour has not been considered."
- 3) "The proposed amendments to the Marine Reserves Act under the Fisheries Bill provide that a person is deemed to have taken marine life from the reserve if found in possession of an amount exceeding three times the amateur individual limit. Therefore, a commercial fisher who is transiting across a reserve could be stopped and deemed to be fishing within the reserve for commercial purposes."

Answer

- 1) The site selected is a result of 5 years of consultation and considerable compromise. Section 5 of the application document explains justification.
- 2) It is not clear what the FIB means by "overall management". This *may* refer to the Banks Peninsula Fisheries Management Plan (BPFMP). The applicant approached the BPFMP Working Group in 1995 to share marine reserve information and to gather opinion. This approach was rebuffed and the applicant was requested to consult with individual BPFMP members. This was undertaken.
- 3) The proposed amendments to the Marine Reserves Act under the Fisheries Bill under Section 18I(1) of the Marine Reserves Act provides: "Every person commits an offence against this Act who without lawful authority or reasonable excuse, takes or removes from a marine reserve for commercial purposes any marine life." The underlined words are an essential part of the offence.

The deeming provision, Section 18I(5) is for the purpose of defining taking for "commercial purposes". That provision however, as presently drafted is ambiguous, but the Department of Conservation has indicated that the deeming provision is to be clarified so as to make it clear that the deeming part relates only to "commercial purposes" and not to the taking from a marine reserve. The "taking from a marine reserve" must be a taking in fact and is not something that can be deemed.

3.5 Recreational Use (Section 5(6)(d))

"Interfere unduly with or adversely affect any existing usage of the area for recreational purposes."

Recreational fishing was the primary area of concern for objectors. 619 + 163 objectors referred to the impact of the reserve on recreational fishing. Of particular concern was that the reserve is the only area sheltered from the north east and north west winds.

Answer

Conflict with recreational fishing and seafood gathering is inevitable with any marine reserve proposal in an area such as Akaroa Harbour. The species of fish most commonly targeted by fishers in the reserve area are blue cod, butterfish, moki, red cod and trumpeter. Wrasse are also

caught but are not considered a delicacy. Blue cod can be caught in the south western area of the harbour; butterfish, moki and trumpeter from the Timu Timu Head to Tikao Bay and also on the Onuku side of the marine reserve including Nine Fathom Point to Manukatahi. Red cod may be caught in many parts of the harbour especially at *The Cod Hole* off Wainui. Observations are that it is rare to see more than two or three boats at any one time in the reserve area. The reserve will not deny fishing opportunities as alternative areas are available for fishing elsewhere in the harbour.

It is clear that many objectors believe that the whole of Akaroa Harbour, or a majority of it is to be reserved. (for examples see submission nos. 267, 704, 1889, 2466, 3056, 3057 and 3145,) The reserve application covers only 12% of the Harbour.

The presence of marine farms has been cited as a hindrance to recreational fishing. One salmon farm exists in Lucas Bay. Licences have been granted for paua farms in Ohinepaka and Mat White Bays. The paua farmers, Sea Right Investments Ltd say in their application to the Canterbury Regional Council:

"Under these conditions recreational fishermen, tourist operators and the public in general could pass through and fish within the permit area subject to the protection of property, farmed fish stock and any areas of commercial operations."

A concern raised by objectors (other than form letters) is that the area is the only place to fish in N.E. conditions. Most recreational fishing takes place over the summer months and at the time the weather is usually "settled." Typically the N.E. wind will start late morning and drop again in the evening. Depending on tide, these are good times to go fishing anywhere in the Harbour. The following northern reaches of the Harbour are sheltered from the N.E. and N.W. winds - parts of Takamatua, parts of French Farm, parts of Robinsons Bay, Petit Carenage, Sandy Bay and French Bay. Also sheltered and already accepted fishing spots are Ohinepaka Bay (in the lee of Cape Three Points), Mat White Bay and the Grasshills area.

Some objectors object on the grounds that they wish to retain the *opportunity* to fish there if they wish.

The most common reason for favouring the reserve was given as promotion of fish regeneration, both within its boundaries and spill over to the benefit of all fishers. Submission Nos: 344, 534, 542, 545, 549 and 550 are examples of fishers who cite potential benefits to their sport from the creation of the reserve.

Fishing is only part of the recreational opportunity provided by the Akaroa Harbour. Many people go to enjoy the area for boating, swimming, exploring, diving, wildlife viewing, photography, kayaking and sailing. More people come to Akaroa to view wildlife and appreciate the scenery than they do to fish. Three hundred people a day may pass through the proposed reserve on charter vessels. Experience at the Leigh marine reserve shows that recreational patterns change over time and that there is an overall increase in recreational activity as a result of the creation of the reserve.

The applicant contends that the objections do not show an "undue interference or adverse effects on existing recreational use of the area."

3.6 Otherwise be Contrary to the Public Interest (Section 5(6)(e))

671 + 148 objectors either cited this as the basis of their objection or for reasons that could be interpreted as concerns of this type.

Tangata Whenua:

Objections were received from the Onuku and Wairewa Runanga (Submission nos: 1673 and 1674). They have expressed concerns that the area of the reserve is *wahi tapu* and that it is in conflict with taiapure. Reference is also made to issues and concerns raised during consultation.

Answer:

The runanga do not explain the reason for the wahi tapu. Some evidence of early Maori occupation has been discovered in a large dry cave near Dan Rogers, also in small caves above Haylocks Bay. This may be the reason for wahi tapu. As a marine reserve would extend to MHWS, the status of nearby land would not be altered.

The applicant suggests that as a marine reserve would prohibit fishing, and discourage sewage discharges and structures, that the natural features of the environment would be protected and remain undeveloped, the additional status of a reserve could elevate the spiritual significance of the area for Ngai Tahu.

Ngai Tahu have aspirations for taiapure in Akaroa Harbour. Marine reserves and taiapure can quite happily co-exist. No formal application for a taiapure has been made. (MoF, Wellington statement M. Hooper 11/3/96). Ngai Tahu representatives had earlier identified mid and inner harbour areas as potential taiapure sites. The reserve boundaries were chosen after careful consideration of Ngai Tahu's intentions. (See Application Document Section 2.3, pg5). Ngai Tahu are positive to the development of marine reserves, one condition being "that the location does not interfere negatively with a traditional Maori fishing site." (Ngai Tahu Maori Trust Board memo November 1992)

Consultation with Ngai Tahu has been ongoing throughout the pre-statutory process. Every endeavour has been made to consult with, and accommodate the views of Ngai Tahu. The applicant has not been informed of any remaining "issues and concerns" and these are not explained in the objection.

The Criteria of the Marine Reserves Act 1971

54 + 3 objectors stated that the Akaroa Marine Reserve application did not fit the criteria of the Marine Reserves Act 1971. Some objectors understood that the Act was created for reasons such as:

- * to protect areas shown to be "at risk"
- * to protect endangered species
- * to protect unique flora or fauna

The application document Section 5.1 (pg 21) justifies the creation of a marine reserve in this area as it includes:

- * Marine life which is typical of parts of the exposed Banks Peninsula coastal environment relatively unmodified by human activity.
- * Spectacular cliffs, caves and reefs unique within Akaroa Harbour
- * Underwater basalt boulders and scenery that is both beautiful and of distinctive quality
- * A unique seaweed to the region of Banks Peninsula in Haylocks Bay (see Appendix)

This area, with its dramatic backdrop of coastal cliffs and small coves, bushed gullies and hillsides, and its wild open water, is within an identified outstanding land/sea-scape of national importance (Wilson, 1992; Boffs Miskell Ltd. and Lucas Associates, 1993)

Boundaries:

75 + 7 objectors stated that adequate boundary marking would be difficult or impossible to achieve and that markers would be expensive to install and maintain.

Answer:

Two of the boundaries are quite clearly marked - southern boundary is indicated by a transit bearing formed by Gateway Point and the western head of Damons Bay, and MHWS. The northern boundary at Manukatahi could be marked to form a transit bearing. The fourth boundary (western) is a line described by the Wainui leading lights. Currently the Canterbury Regional Council is considering the installation of equipment that will mark this line in daylight. The Department of Conservation uses a combination of natural landmarks and shorebased boundary markers to indicate the boundaries of marine reserves. The Department is currently upgrading all markers for its existing marine reserves and plans to install markers in its new marine reserves where these are necessary. The use of buoy markers would not be used for the western boundary at Akaroa because of the exposed nature of the area.

Scientific Research:

Some objections were on the basis that no scientific study appears to be planned for the reserve.

Answer:

The Marine Reserves Act provides for the establishment of marine reserves for the scientific study of marine life (Section 3(1)). It is not a pre-requisite that this research be planned in advance before a marine reserve can be established. Creating a marine reserve provides the opportunity for scientific study of the marine life being protected. Interest has been expressed already by the Yellow-Eyed Penguin Trust (Support submission No. 3362 - individual letter) who may wish to establish nesting boxes in the area which is known to be frequented by yellow-eyed penguins.

Colleagues of respondent (support submission No. 183 - Marine Education Society of Australasia) attending Otago and Canterbury universities already use the reserve area for study.

Safety in Small Boats:

128 + 11 objectors are concerned that fishers in small boats will, because of the reserve, be forced into hazardous situations.

Answer:

The proposed reserve is currently fished from boats that have travelled from other parts of the Harbour, either by crossing the harbour from the Wainui side, or from Akaroa. In either situation the harbour must be navigated to reach the proposed site. As the reserve occupies only 12% of the harbour, loss of recreational fishing opportunity is minimal. The coastline of the harbour is 24 n.m. and the reserve covers 3.4 n.m.. As outlined in section 3.5 alternative sheltered fishing areas are available to fishers and boaters. Historically, mid and inner harbour areas are more popular for fishing than the reserve area.

Boaters should continue to exercise individual responsibility when judging prevailing weather and sea conditions.

Management and Compliance:

Concern that the Department of Conservation is overworked and underfunded and would not be able to satisfactorily police a marine reserve.

Answer:

The Department of Conservation has an enforcement team that currently monitors the Marine Mammal Sanctuary by randomly patrolling Banks Peninsula. The Department's staff would include surveillance of the marine reserve in their enforcement work around the Peninsula. Two Department field staff, based in Akaroa, accompany scientists studying Hector's dolphin in the Akaroa Harbour region each summer and would also be able to assist with enforcement.

The Department of Conservation has a commitment to manage marine reserves. A compliance and law enforcement plan will be developed.

Water Ski-ing:

Concern that water ski-ing will be prohibited

Answer:

Water ski-ing is subject to usual restrictions and not prohibited in a marine reserve.

Tourism:

Concern that the marine reserve will damage tourism and businesses in the area.

Answer:

In 1992 a survey was carried out by Cocklin and Flood on the economic benefits of the Leigh Marine Reserve. 80% of residents surveyed thought that the Leigh township would be worse off if the marine reserve did not exist. The marine reserve appears to have facilitated the establishment of new businesses within the local area. For example, two dive support facilities have been established at Leigh. Nearly the entire sample of the 1992 survey (95%) rated the effects of the marine reserve on the community as positive and very positive. The majority of bach owners (72%) visit Goat Island beach because it is in a marine reserve. As Akaroa has a high ratio of bach owners to residents, comparisons could be made to the studies at Leigh.

Six Akaroa Harbour businesses submitted individual letters of support - Nos. 17, 213, 220, 479, 493 and 3096. The principle charter boat operator (No. 3096) supports the reserve because it is "a natural progression to our existing business."

In recent times, the visitor patterns to Akaroa have changed. Nature based businesses form a vital part of Akaroa's economic base. The Chief Executive of the Canterbury Tourism Council (Submission No. 541) submits that: "By protecting such an important natural asset, Akaroa Harbour will not only be able to offer a meaningful experience to many individuals - New Zealanders and visitors from overseas alike, but the small township of Akaroa will be in a position to continue to benefit from the economic and employment opportunities which result."

Some other reasons for objection:

Commercial fishing (foreign) causes damage not recreational fishers

Reserve will become a feeding ground for seals and sharks

No evidence to suggest a marine reserve is necessary

The area is so remote no further protection is necessary

Property will be devalued

4. SUMMARY

The widespread and solid support for the Akaroa marine reserve, from a diversity of people, is reflected with a large number of submissions in support. A costly, aggressive and orchestrated campaign of opposition by three vocal fishers representing lobby groups has been conducted. A large part of this opposition campaign has consisted of continually providing misleading information to the public and suggesting that marine reserves are something to be feared.

Because of the campaigns associated with "public consultation", the applicant chose a low key approach to the release of the draft proposal (application document 2.4 and 2.5, pg.6). In the absence of organised and public campaigns (either for or against), the result of the consultation from the draft proposal is a direct contrast to the early consultation and the formal process. It is suggested that alternative methods of gauging public opinion on future marine reserve applications be sought that would obviate the need for "the numbers game".

While some fishers wish to retain 100% use of the coastline for their recreational activity, marine reserve advocates, many of whom also fish, feel just as strongly that unmodified areas should be created. The 1994 discussion document showed that 345 recreational fishers supported a marine reserve in Akaroa Harbour.

The debate for the "right place" for a marine reserve is now becoming circular, with current opponents suggesting areas that have previously been disregarded due to earlier opposition.

A common belief, held by objectors, is that there are areas of the Canterbury coast that can be reserved that requires no concessions. Their attitude is that, given time, full consensus of agreement can be achieved and reserves created that impact on no-one. The applicant does not believe this is possible. The influx of small boats including inflatables, rise in popularity of scuba gear and buoyant economic times have allowed more people access to the coast for a wide variety of recreation. As future pressures increase, the reasons for protected areas to become established are more compelling. The applicant has learnt through consultation that no areas of the coast are without pressure of use of some kind.

The Department of Conservation in Canterbury conducts programmes to educate the public, particularly children, on the benefits of marine reserves. The public are invited to become involved with local interest groups promoting reserves. Particularly in Canterbury, such involvement requires entering into a volatile area of debate, which deters many people.

This application is a compromise as it takes opposition into account, has minimal impact on existing users and is well placed to serve Canterbury as an educational tool with the close proximity to Christchurch. Canterbury is disadvantaged by having no marine reserve unlike other provinces. It is the applicant's belief that once a reserve is established, recreational patterns will change as the benefits become apparent and acceptance emerges. With no practical examples of marine reserves in the area it is impossible to demonstrate the benefits.

The applicant anticipates a favourable decision from the Ministers.