

In Confidence

Office of the Minister for Fisheries  
Chair, Cabinet Environment, Energy and Climate Committee

## **Approval of fisheries regulations recommended by the East Otago Taiāpure Management Committee.**

### **Proposal**

1. I seek approval to amend the Fisheries (Amateur Fishing) Regulations 2013 and the Fisheries (South-east Area Commercial Fishing) Regulations 1986 to implement regulations for the East Otago Taiāpure (attached Appendix) from 12 December 2019.
2. The regulation changes have been recommended by the East Otago Taiāpure Management Committee (Management Committee) and would:
  - close recreational and commercial pāua fishing within the taiāpure;
  - prohibit the cutting of seven species of kelp: *Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *Marginariella urvilliana* and *Lessonia variegata* within the taiāpure;
  - prohibit the commercial and recreational use of set-nets within the taiāpure;
  - require all recreational fishers to hold only whole or gilled/gutted fish when fishing within the taiāpure.

### **Executive Summary**

3. A taiāpure-local fishery is an area of special significance to tangata whenua either as a source of food, or for spiritual or cultural reasons, and is established to make better provision for the recognition of rangatiratanga (the right to exercise authority) and the rights secured in relation to fisheries by Article II of the Treaty of Waitangi.
4. The management committee for the taiāpure, which is appointed by the Minister of Fisheries, has the power to recommend to the Minister making regulations for the conservation and management of the fish, aquatic life, or seaweed in the taiāpure.
5. The East Otago Taiāpure Management Committee has recommended regulations be made for the conservation and management of fish, aquatic life and seaweed within the taiāpure, and to provide for the rights secured for Māori by way of Article II of the Treaty of Waitangi.
6. Fisheries New Zealand publicly consulted on these recommendations for six weeks from 26 October until 7 December 2018.

7. Twelve submissions were received. While the majority of submissions supported the proposed regulations, there were three objections to the temporary closure of the recreational pāua fishery and to requiring recreational fishers to hold only whole or gilled/gutted fish. There was also an objection to prohibiting cutting the kelp *Macrocystis*.
8. Based on the best available information, I consider that the recommended regulations will improve fisheries outcomes within the taiāpure. While the pāua closures, in particular, will impact utilisation, there is evidence of a sustainability concern, and the scale of impact is not large with the closure being temporary, pending recovery of the pāua stocks.

## Background

9. A taiāpure-local fisheries area is an area of New Zealand fisheries waters (being estuarine or coastal waters) that has customarily been of special significance to an iwi or hapū, either as a source of food; or for spiritual or cultural reasons, and that has been declared a taiāpure by the Minister under Part 9 of the Fisheries Act 1996 (the Act).
10. The objective of Part 9 of the Act is to make better provision for the recognition of rangatiratanga (chiefly authority and self-management) and of the rights secured for Māori by way of Article II of the Treaty of Waitangi.
11. Once a taiāpure has been established a management committee is appointed on the nomination of persons who appear to the Minister to be representative of the local Māori community.
12. Under Part 9 of the Act the Management Committee may recommend making regulations to the Minister of Fisheries for the conservation and management of fish, aquatic life, or seaweed within the area covered by the taiāpure.
13. The East Otago Taiāpure (refer appendix) was gazetted in 1999. The Management Committee was appointed in 2001.
14. The Management Committee is made up of representatives from Kāti Huirapa Rūnaka ki Puketeraki (Kāti Huirapa), local recreational fishers, the Karitane Commercial Fishermen's Cooperative, the University of Otago, River-Estuary Care Waikouaiti-Karitane, as well as representatives from the Warrington and Blueskin Bay communities.

## Pāua regulations

15. Research carried out by the University of Otago at the Management Committee's request, shows that the percentage of pāua in the taiāpure above minimum harvestable size has declined from 14.6% in 2008-09 to 4.0% in 2016<sup>1</sup>. This research has been reviewed by Fisheries New Zealand's Shellfish Working Group.

<sup>1</sup> 0.2 pāua per square metre in 2008-09 down to 0.05 in 2016, in customary harvest depths (0-0.5 m).

16. Consequently, the Management Committee has recommended that the taiāpure area be closed to both recreational and commercial pāua fishing. The closure would be lifted, or partially lifted, when on-going monitoring by the University of Otago shows the pāua population to have recovered sufficiently to support sustainable harvest.
17. Kāti Huirapa and Otago University are also undertaking a pāua reseedling programme to help rebuild the stocks. The programme consists of rearing pāua spat and then using the spat to reseed depleted areas within the taiāpure.
18. The proposed closure to pāua fishing would allow pāua stocks in the taiāpure to recover, however, it will reduce access to pāua for both local and Dunedin based fishers. The taiāpure is a popular location and is regularly visited by recreational shellfish gatherers, from nearby Dunedin, who take pāua as a component of a mixed shellfish bag. Shellfish gatherers will still be able to harvest these other species of shellfish within the taiāpure.
19. As the taiāpure area is already limited to a daily bag of five pāua, compared to a daily bag limit of ten pāua in other areas in Otago, more serious pāua harvesters target other areas outside of the taiāpure to gather their pāua. Based on Fisheries Officer inspections, recreational fisher feedback, and recreational fisher surveys only a relatively small amount of pāua is taken within the taiāpure.
20. Much of the taiāpure is already closed to commercial pāua fishing under existing fisheries regulations. Consequently, commercial pāua fishing in the taiāpure over the last 20 years has been intermittent with an average annual catch of less than 500kg<sup>2</sup>. At a port price value of \$32.50/kg, this equates to an annual value of \$16 250.
21. Commercial fishers (represented by PāuaMAC5) do not object to the proposed closure.

#### *Kelp regulations*

22. The Management Committee has recommended a prohibition on harvesting attached<sup>3</sup> large kelps (*Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *M. urvilliana* and *Lessonia variegata*) from within the taiāpure.
23. The Management Committee notes the important role of these kelps as “ecosystem engineers” and the significant number of functions they perform providing essential habitat, supporting coastal food webs as nutrition sources and absorbing the destructive force of waves. They are concerned that these kelps are generally long-lived and recover slowly, if at all, depending on the harvesting method.

<sup>2</sup> The Total Allowable Commercial Catch for PAU 5D is 89 000kg.

<sup>3</sup> The state of being attached (rooted) to hard surfaces in the natural marine environment.

24. Fisheries New Zealand notes that, as yet, there is no commercial harvesting of these species reported in the taiāpure, and that recreational harvest is limited to beachcast seaweed (for garden composting) and small amounts of other species. Collection of beachcast seaweed will still be allowed under the proposed regulations.

#### *Set-net regulations*

25. The Management Committee proposes the prohibition of set-nets within the taiāpure. While there is no commercial set-netting within the taiāpure, estuaries with the taiāpure remain open to recreational set netting. A prohibition would eliminate interactions with marine mammals and sea birds, especially sea lions and blue penguins, which are regularly observed within these areas.
26. This proposed regulation would supersede another currently in place, which requires set-net fishers active within the taiāpure to remain within the immediate vicinity of their net at all times.<sup>4</sup>
27. Drag netting for flounder is popular in these estuaries but would be unaffected by this proposal.

#### *Filleting at sea*

28. The Management Committee has recommended requiring recreational fishers to possess finfish in a whole or gilled/gutted state when fishing within the taiāpure (i.e. not fillet fish while at sea). This regulation would support the sustainable utilisation of finfish and respect tikanga within the taiāpure. The Management Committee consider that landing whole or gutted fish would encourage fishers to eat all edible parts of the fish rather than just the fillets, in turn, reducing fishing pressure on finfish stocks.
29. Respecting tikanga of tangata whenua is consistent with the purposes of Part 9 of the Act. Fisheries New Zealand also notes that the requirement to land finfish whole is already in place for the Marlborough Sounds blue cod fishery, and is being considered more widely under the National Blue Cod Strategy.
30. Most submitters supported this recommendation, on the basis that the benefits exceeded any inconvenience of not being able to fillet at sea.

#### **Consultation**

31. Section 12 of the Fisheries Act 1996 provides guidance on consultation, being to consult people who have an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including, but not limited to, Māori, environmental, commercial and recreational interests; and provide for the input and participation of tangata whenua, having particular regard to kaitiakitanga.

<sup>4</sup> Regulation 134 of the Fisheries (Amateur Fishing) Regulations 2013 and regulation 3F of the Fisheries (South East Area Commercial Fishing) Regulations 1986.

32. Fisheries New Zealand publicly consulted, on behalf of the Minister of Fisheries, for six weeks from 26 October until 7 December 2018. The document was published on Fisheries New Zealand's website, and persons or organisations with an interest in and/or affected by the proposals were notified of the consultation process by an email directing them to the consultation webpage. Notification of the consultation was sent to 412 recreational fishers located in the Otago region. Additionally, face to face meetings were held with key commercial and recreational fishing groups.
33. Twelve submissions were received. While the majority of submissions supported the proposed regulations, there were three objections to the temporary closure of the recreational pāua fishery on the basis that additional enforcement effort of the existing rules would be a better way to reverse the decline. I am advised, however, that around a third of all recreational compliance inspections in the Otago District already occur within the taiāpure. It is not feasible for Fisheries Officers to divert further capacity into monitoring the paua fishery within the taiāpure.
34. Three submitters were also concerned that prohibiting filleting at sea could be difficult to enforce, and may create problems with the disposal of offal. However, the Management Committee considers this measure will recognise tikanga which forbids the discharge of fish offal into the ocean, and I note that it will assist in enforcing minimum legal sizes for species such as blue cod within the taiāpure.
35. A further concern was raised by a submitter that prohibiting cutting the kelp *Macrocystis* would prevent its commercial utilisation. However, the *Macrocystis* beds within the taiāpure are small, and there has been no commercial cutting of *Macrocystis* to-date within the taiāpure.
36. Having carefully considered these submissions and taking into account the purpose of Part 9 of the Act, I consider these regulations will contribute to the conservation and management of fish, aquatic life and seaweed within the taiāpure, while recognising the rights secured for Māori by way of Article II of the Treaty of Waitangi. While the pāua closures, in particular, will impact utilisation there is evidence of a sustainability concern, and the scale of impact is not large, with the Management Committee proposing to open the fishery once pāua stocks have recovered.

### **Communications/ Media**

36. It is expected that there will be a moderate level of local stakeholder, public and media interest in the proposed amendments.

### **Financial Implications**

37. There are no financial implications for the Crown in this paper. All costs of administering the regulations will continue to be met from existing budgets.

## **Human Rights**

38. The proposals in this paper do not raise any issues in relation to the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

## **Legislative Implications**

39. The regulatory recommendations for the East Otago Taiāpure will be imposed by means of regulations made pursuant to the Fisheries Act 1996. I propose to take the amendments to Cabinet Legislation Committee during November 2019.
40. The regulations will also need to specify offences and infringement offences for the new provisions. It is proposed that penalties for offences be consistent with those currently applying at the national level.

## **Regulatory Impact Analysis**

41. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment, as they have no or minor impacts on businesses, individuals or not for profit entities.

## **Gender Implications**

42. There are no gender issues arising from this paper.

## **Disability Perspective**

43. There are no disability issues arising from this paper.

## **Publicity**

44. The decision relating to the recommended regulations will be publicly notified via *Gazette* notice, prior to the regulations coming into effect in December 2019. A decision letter will also be produced, in which I will inform stakeholders of the rationale for the decision. Notification of the changes will be posted on the Fisheries New Zealand website and social media pages, as well as sent directly to subscribers to the Fisheries New Zealand recreational mailing list.
45. The New Zealand Fishing Rules App and brochures will also be updated.
46. In order to notify recreational fishers locally of these new rules, Fisheries New Zealand will also:
- advertise the new regulations in the Otago Daily Times;
  - educate recreational fishers about the new rules directly through communication channels used by Fishery Officers in the region, including targeted media releases.

47. Fishery Officers will be responsible for ongoing enforcement of the new arrangements, which is expected to fall under their current day-to-day work without requiring additional capacity.

#### **Proactive Release**

48. Following Cabinet consideration, I intend to consider the release of this paper in full.

Proactively Released



## Recommendations

The Minister of Fisheries recommends that the Committee:

1. **Note** the East Otago Taiāpure Management Committee has the power under Part 9 of the Fisheries Act 1996 to recommend fisheries regulations to the Minister of Fisheries for the conservation and management of fish, aquatic life or seaweed in the East Otago Taiāpure.
2. **Note** the East Otago Taiāpure Management Committee has recommended making regulations for the East Otago Taiāpure that would;
  - a. close recreational and commercial pāua fishing within the taiāpure;
  - b. prohibit the harvest of seven species of kelp: *Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *Marginariella urvilliana* and *Lessonia variegata* within the taiāpure;
  - c. prohibit the commercial and recreational use of set-nets within the taiāpure;
  - d. require all recreational fishers to hold only whole or gilled/gutted fish when fishing within the taiāpure.
3. **Note** public consultation has taken place on the recommended regulations.
4. **Agree** to;
  - a. close recreational and commercial pāua fishing within the taiāpure;
  - b. prohibit the harvest of seven species of kelp: *Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *Marginariella urvilliana* and *Lessonia variegata* within the taiāpure;
  - c. prohibit the commercial and recreational use of set-nets within the taiāpure;
  - d. require all recreational fishers to hold only whole or gilled/gutted fish when fishing within the taiāpure.
5. **Invite** the Minister of Fisheries to issue drafting instructions to the Parliamentary Counsel Office to implement these changes through amendments to the Fisheries (Amateur Fishing) Regulations 2013 and the Fisheries (South-east Area Commercial Fishing) Regulations 1986.

Authorised for Lodgement

Hon Stuart Nash  
Minister of Fisheries



## Appendix One: East Otago Taiāpure.

