

PUKERUA BAY – PROHIBITION OF ALL FISHING METHODS EXCEPT HAND-HELD LINE FISHING - FINAL ADVICE

Executive Summary

- 1 This paper recommends two management measures to ensure the long-term protection of fisheries resources within Pukerua Bay, Wellington. These measures are:
 - a) **Long-term measure:**
 - b) A fisheries regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay, Wellington commencing 1 October 2009 for a five-year period (expiring 30 September 2014);
 - c) AND
 - d) **Interim measure:**
 - e) A temporary prohibition on all fishing methods, except hand-held line fishing, in Pukerua Bay from 7 June 2009 until the commencement of the proposed regulation on 1 October 2009 requested by Te Runanga o Toa Rangatira (Ngāti Toa).
- 2 Pukerua Bay is an area of high significance to Ngāti Toa, who hold customary interests in Pukerua Bay, and wish to ensure the fisheries resources of the bay are managed sustainably to provide for their customary needs.
- 3 During the 1990s, the quantity and diversity of fish stocks in Pukerua Bay became an urgent concern to Ngāti Toa and the local community. Pukerua Bay has been subject to intense fishing pressure because of its ease of access and proximity to the Wellington metropolitan area. The effects of this fishing pressure have caused significant localised depletion of many fisheries resources, particularly paua and kina. This has adversely affected the use and management practices of Ngāti Toa in providing for their customary needs.
- 4 Ngāti Toa wish to manage the fisheries resources in Pukerua Bay under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (Kaimoana Regulations) in the long term. Issues regarding disputed rohe moana¹ boundaries prevent Ngāti Toa from applying these provisions at this time. As a result, Ngāti Toa, with full support from Pukerua Bay Residents Association, requested a temporary prohibition on all fishing methods except hand-held line fishing, in August 2001.
- 5 In response to this request, in 2002 the Minister of Fisheries introduced a temporary prohibition under s 186A of the Fisheries Act 1996 (the Act) for a two-year period. The Minister reinstated the temporary prohibition for another two-year period in 2004, at the request of Ngāti Toa.

¹ Geographical area along foreshore and seabed. A rohe moana is a customary food gathering area, the area of coastline over which a particular tāngata whenua group has mana moana (customary authority).

- 6 Ngāti Toa submitted a further request for a s 186A temporary prohibition on 13 December 2006, which the Minister enacted on 8 June 2007². This prohibition is due to expire on 7 June 2009.
- 7 For a six-month period (20 December 2006 - 8 June 2007), there was no protection other than that provided by the normal fisheries regulations for the bay and the area was subject to intense fishing pressures that seriously depleted resources. Anecdotal information from Ngāti Toa and residents suggests that during this time fishers were not adhering to restrictions under the amateur fishing regulations.
- 8 A 2008 study by NIWA indicates that paua and kina populations within Pukerua Bay are recovering in response to fishing restrictions over the past six years. This suggests that the fishery has been rebuilding towards a healthy state during the prohibitions, although the bay still requires long-term protection.
- 9 Reopening the area to fishing will again subject the main fisheries resources in Pukerua Bay to intense harvest pressures.
- 10 Ngāti Toa request another s 186A temporary prohibition on all fishing methods, except hand-held line fishing, from 7 June 2009 for a one-year period. This measure provides continued protection to Pukerua Bay from 7 June 2009 in advance of the proposed five-year regulatory prohibition, which would commence on 1 October 2009. The proposed measures provide for the customary use and management practices of Ngāti Toa in the long term.
- 11 The Ministry of Fisheries (MFish) considers that the use of a fishery regulation provides a more appropriate means to manage fisheries resources in Pukerua Bay in the long term rather than continuing to apply the s 186A provision that provides for temporary measures.
- 12 MFish anticipates that after a further five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished state, providing Ngāti Toa the ability to provide for their customary needs.
- 13 MFish will work closely with Ngāti Toa and competing interests during the proposed prohibitions to resolve the issues that prevent the appointment of Tāngata Kaitiaki/Tiaki³ and management of fisheries resources in Pukerua Bay under the Kaimoana Regulations.

The Issue

- 14 Ngāti Toa have strong customary interests in Pukerua Bay and consider the area of high significance. Ngāti Toa wish to manage the fisheries resources in

² Fisheries (Pukerua Bay Temporary Closure) Notice 2007

³ Local guardian or trustee of a specific area, also known as Kaitiaki. A Tāngata Kaitiaki/Tiaki appointed under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 may authorise any individuals, in accordance with these regulations, to take any fish, aquatic life, or seaweed for customary food gathering purposes from within the whole or any part of the area/rohe moana, for which the Tāngata Kaitiaki/Tiaki has been appointed.

Pukerua Bay under the Kaimoana Regulations and in July 2000, notified their Tāngata Kaitiaki/Tiaki. The notification remains in dispute, as submissions objecting to the notification are not resolved. Ngāti Toa cannot apply the Kaimoana Regulations in the Pukerua Bay area until you are able to appoint Tāngata Kaitiaki/Tiaki.

- 15 Prior to 2002, the public fished in Pukerua Bay because of its ease of access and proximity to the Wellington metropolitan area. Intense harvesting pressure and illegal fishing led to significant localised depletion of several valuable fisheries resources, particularly paua and kina. This has had adverse effects on the use and management practices of Ngāti Toa in providing for their customary needs.
- 16 Due to the effects of fishing, Pukerua Bay is currently managed under a s 186A temporary prohibition on all fishing methods, except hand-held line fishing. The previous Minister enacted the initial prohibition in 2002 for a two-year period. In 2004, the Minister reinstated another temporary prohibition at the request of Ngāti Toa from 20 December 2004 to 19 December 2006.
- 17 Ngāti Toa submitted an additional s 186A temporary prohibition request on 13 December 2006. The prohibition took effect on 8 June 2007 and is now due to expire on 7 June 2009. During a six-month period (20 December 2006 - 8 June 2007), there was no protection other than the normal fisheries regulations for the bay and the area was subject to intense fishing pressures that seriously depleted resources in the bay. Anecdotal information from Ngāti Toa and residents suggests that during these six months fishers were not adhering to restrictions under the amateur fishing regulations.
- 18 A 2008 study by NIWA indicates that paua and kina populations within Pukerua Bay are recovering in response to the fishing restrictions in place over the past six years. The study suggests paua within the bay have generally not reached minimum legal size, most likely due to past fishing pressures. This suggests that the fishery has been rebuilding towards a healthy state during the prohibitions although the bay still requires long-term protection.

Summary of Options

Initial Proposals

- 19 The initial position paper (IPP) proposed the following two measures for long-term protection of fisheries resources in Pukerua Bay:
 - a) **Long-term measure:** A fisheries regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay, Wellington commencing 1 October 2009 for a five-year period (expiring 30 September 2014);
- AND
- b) **Interim measure:** A temporary prohibition of all fishing methods except hand-held line from 7 June 2009 for a one-year period (expiring 6 June 2010).

a) Long-term measure: Section 297 fisheries regulation

Option 1 – Status Quo

20 Pukerua Bay is currently subject to a temporary prohibition on all fishing methods, except hand-held line fishing (expiring 7 June 2009). After expiry of the prohibition, Option 1 opens Pukerua Bay to all legal fishing methods under the amateur and commercial fishing regulations.

21 The reinstatement of fishing is likely to lead to significant over-harvesting and localised depletion of fisheries resources within Pukerua Bay.

22 Retaining the *status quo* will adversely affect the customary use and management practices of Ngāti Toa.

Option 2 – Prohibition of all fishing methods, except hand-held line fishing from 1 October 2009 – 30 September 2014

23 This option proposes a fisheries regulation, which prohibits all fishing methods except hand-held line fishing in Pukerua Bay, for a five-year period (1 October 2009 - 30 September 2014). This measure will continue to allow fisheries resources within Pukerua Bay to recover and will provide long-term protection from the effects of intense localised fishing. This also recognises and makes provision for the customary use and management practices of Ngāti Toa.

24 The defined area of the proposed long-term prohibition is shown in Figure 1.

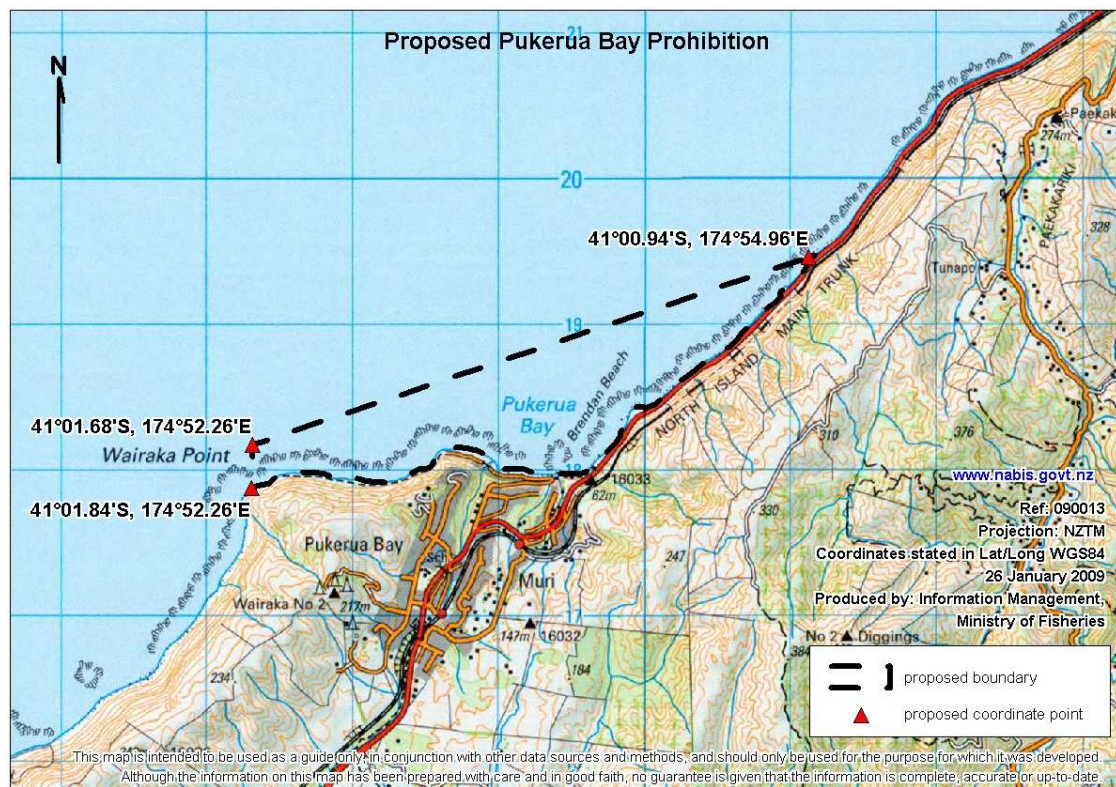


Figure 1: Map showing proposed Pukerua Bay prohibition under interim and long-term measures

- 25 The proposed measure will have no immediate impact on commercial and recreational fishers, as it maintains the integrity of the current prohibition in Pukerua Bay (which has been in place since late 2002). Customary fishers can take fisheries resources from Pukerua Bay if authorised to do so under r 27A of the Fisheries (Amateur Fishing) Regulations 1986 (Amateur Regulations) and the Kaimoana Regulations. Ngāti Toa indicates they will not issue authorisations enabling take that is inconsistent with the proposed regulation.
- 26 The timeframe for the long-term prohibition is from 1 October 2009 to 30 September 2014. MFish anticipates that after a further five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished state, and that the availability or size (or both) of resources, particularly paua and kina will be improved, providing Ngāti Toa with the ability to provide for their customary needs.
- 27 MFish considers that the use of a fisheries regulation provides a more appropriate means to manage fisheries resources in Pukerua Bay in the long term rather than continuing to apply the s 186A provision that provides for temporary measures.

b) Interim Measure: Section 186A temporary prohibition

- 28 The purpose of this section is to propose an interim management measure at the request of Ngāti Toa, which implements a further temporary prohibition. This request is made under s 186A of the Act on the use of all fishing methods, except hand-held line fishing, from within the Pukerua Bay area for a one-year period, from 7 June 2009 (expiring 6 June 2010). However, should you approve and enact the proposed regulation under s 297 on 1 October, the s 186A temporary prohibition will expire on 30 September 2009.
- 29 MFish sent letters to those stakeholders that made submissions during the last s 186A temporary prohibition consultation period, notifying them of this proposal.
- 30 The defined area of the proposed s 186A temporary prohibition is shown in Figure 1.
- 31 Section 186A empowers you to temporarily close any area, or restrict or prohibit the use of any fishing method in respect of an area and in respect of any species of fish, aquatic life, or seaweed by way of notice in the Gazette. You may impose such a closure, restriction or prohibition if you are satisfied that the closure, prohibition or restriction will recognise and provide for the customary use and management practices of tāngata whenua.
- 32 Ngāti Toa considers the purpose of the prohibition is to improve the availability or size (or both) of fisheries resources to provide for their customary use and management practices. Any notice given under s 186A can remain in force for a maximum period of two years. Nothing under s186A of the Act prevents you from giving a further notice for up to an additional two years.

- 33 Ngāti Toa believes that although fishery resources are rebuilding within the bay, they have not recovered sufficiently in terms of availability and size. In order to meet their customary needs, further protection is required for these fisheries resources during the intervening period from when the current temporary prohibition expires on 7 June 2009, until the commencement of the proposed five-year regulation on 1 October 2009.

Final Proposal

- 34 MFish recommends that you **AGREE** to:

a) Introduce a fisheries regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay, Wellington commencing 1 October 2009 for a five-year period (expiring 30 September 2014);

AND

b) Approve a s 186A temporary prohibition on all fishing methods, except hand-held line fishing, in Pukerua Bay from 7 June 2009 for a one-year period (expiring 6 June 2010),

in order to make provision for the use and management practices of Ngāti Toa in the exercise of their non-commercial fishing rights.

Consultation

- 35 Section 186A of the Act states that before giving a notice to reinstate a temporary closure, restriction or prohibition, you must consult with those whom you consider representative of persons having an interest in the species concerned or the effects of fishing in the area, including tāngata whenua, environmental, commercial, recreational and local community interests. You must also provide for the input and participation in the decision-making process of tāngata whenua with a non-commercial interest in the species or the effects of fishing in the area, having particular regard to kaitiakitanga.
- 36 MFish has provided for the input and participation of tāngata whenua in the consultation and decision-making process by meeting with Ngāti Toa to discuss the proposed options prior to the initial position. During the consultation period, MFish provided Ngāti Toa with the consultation letters and list of those consulted. Copies of the submissions received were also sent to representatives of Ngāti Toa for consideration. MFish informed the representatives of Ngāti Toa of the contents of this paper and will also inform Ngāti Toa of your decision.
- 37 You can be assured that MFish has consulted appropriately with tāngata whenua and stakeholders on both interim and long-term measures proposed in the IPP.
- 38 The decisions on the two proposed measures are to be made under:

- a) s 186A of the Act, which, under sub-section (1) (b), empowers the Minister to temporarily, restrict or prohibit the use of any fishing method in respect of any area of New Zealand fisheries waters (other than South Island fisheries waters as defined in s 186B(9)) and any species of fish, aquatic life, or seaweed, and
- b) s 297 of the Act, which empowers the Governor-General, by Order in Council, to make fisheries regulations including, under sub-section (1) (a) (vii) regulating or prohibiting any method of fishing.

Submissions Received

39 Submissions regarding this proposal were received from:

- Graham McLauchlan, Pukerua Bay resident
- New Zealand Recreational Fishing Council – Sheryl Hart
- Pukerua Bay Residents’ Association – Pat Hanley and Tim Bright
- Te Ohu Kai Moana – Alan T. Riwaka
- Te Runanga o Toa Rangatira (Ngāti Toa) – Matiu Rei
- The New Zealand Seafood Industry Council Ltd – Bruce Chapman
- Wellington Recreational Marine Fishers’ Association (Inc) – Jim Mikoz

MFish Discussion

- 40 No substantive issues were raised in the submissions that would require MFish to propose new measures or vary existing options (see Summary of Submissions).
- 41 Consultation on the IPP enabled an assessment of the initial position. The major users of the fisheries resources at Pukerua Bay are customary and recreational fishers who show support for both the proposed interim and long-term measures. On that basis, there are no known significant impacts on the rights of stakeholders.
- 42 Ngāti Toa state that Pukerua Bay has always been “of huge significance to the Iwi” and that the prohibitions have “allowed us to become more involved in the management of our fisheries resources”. Ngāti Toa also state that if you approve the proposed measures, “Ngāti Toa Kaitiakitanga (in terms of coastal management) is being supported and implemented”.
- 43 Ngāti Toa and the Pukerua Bay Residents’ Association indicate that since the initial prohibition in 2002, they have witnessed a positive recovery in finfish populations and a slower but definite recovery of shellfish species within Pukerua Bay.
- 44 Pukerua Bay Residents’ Association state that in Pukerua Bay, since 2002:

- “Populations of juvenile paua have significantly improved (however, the population of legal-sized paua remains very small).
- The abundance and size of crayfish within the restricted area has dramatically increased, with good spill over into adjacent unprotected areas.
- Finfish species vulnerable to gill-netting (notably blue moki and eagle and stingrays) have also increased.
- In 2008, for the first time in at least 25 years, legal-sized blue moki and crayfish have been observed in the inshore shallows.
- Fishers in boats just outside the protection area have noted a considerable increase in the diversity and size of their catch.
- Recreational rod and reel fishing – part of the social fabric of the Pukerua Bay community for over 70 years – is flourishing. Fishers are enjoying regular catches of popular species such as snapper, gurnard, tarakihi and kahawai and appear to be generally appreciative of the benefits the restrictions have achieved.”

45 Ngāti Toa currently undertake volunteer compliance monitoring and regular dives in the area which provides anecdotal evidence that the prohibition is serving the purpose it was established for. The Pukerua Bay Residents’ Association states that local people easily understand the restrictions in place and voluntarily undertake monitoring of fishing related activities in Pukerua Bay.

46 Ngāti Toa stated that the process of seeking protection of Pukerua Bay’s fisheries resources has been particularly beneficial to building a strong working relationship between themselves and the larger Pukerua Bay community.

a) Long-term Measure: Section 297 fisheries regulation

47 Increases in both abundance and size of fisheries resources in Pukerua Bay will be further enhanced with the introduction of a fisheries regulation prohibiting all fishing methods, except hand-held line, from 1 October 2009 for a five-year period, providing for the customary use and management practices of Ngāti Toa.

48 You can be satisfied that the proposed restriction will recognise and make provision for the use and management practices of tāngata whenua in the exercise of their non-commercial fishing rights by improving the availability or size (or both) of paua and kina in the Pukerua Bay area.

49 The proposal for a fisheries regulation prohibiting all fishing methods, except hand-held line fishing, is consistent with the purpose of the Act in terms of providing for utilisation of fisheries resources while ensuring sustainability.

50 MFish also considers that the exception to the requested prohibition on fishing methods (hand-held line fishing) has a minimal effect on the fisheries resources of particular concern (paua and kina) and on reef floor communities.

b) Interim Measure: Section 186A temporary prohibition

51 Section 186A of the Act provides that:

a) You may impose a prohibition only if you are satisfied that it will recognise and make provision for the use and management practices of tāngata whenua in the exercise of their non-commercial fishing rights by –

i) Improving the availability or size (or both) of a species of fish, aquatic life or seaweed in the area subject to the closure, restriction or prohibition; or

ii) Recognising a customary fishing practice in that area.

52 It is reasonable to anticipate that increases in both abundance and size of fisheries resources in Pukerua Bay, particularly paua and kina, will occur under a new temporary prohibition.

53 Ngāti Toa’s customary use and management practices will be recognised under a s 186A temporary prohibition.

54 Having considered the information provided by Ngāti Toa and other submitters, MFish considers the approval of a temporary prohibition at Pukerua Bay meets the requirements of the Act. You can be satisfied that the proposed restriction will recognise and make provision for the use and management practices of tāngata whenua in the exercise of their non-commercial fishing rights by improving the availability or size (or both) of fisheries resources, particularly paua and kina, in the Pukerua Bay area.

55 The proposal for a new temporary prohibition is consistent with the purpose of the Act in terms of providing for utilisation of fisheries resources while ensuring sustainability.

56 MFish also considers that the exception to the requested prohibition on fishing methods (hand-held line fishing) has a minimal effect on the fisheries resources of particular concern (paua and kina) and on reef floor communities.

57 Should you decide to enact the recommended temporary prohibition for Pukerua Bay, from 7 June 2009 until 30 September 2009, a Gazette notice will be prepared for you to sign. Alternatively, a Gazette notice will be prepared in the case you decide to enact a temporary prohibition for Pukerua Bay for a one-year period from 7 June 2009 until 6 June 2010.

Rationale for Management Options

58 MFish’s recommended management measures for Pukerua Bay are a s 186A temporary prohibition from 7 June 2009 to 30 September 2009, in conjunction with a fisheries regulation under s 297, which prohibits all fishing methods

except hand-held line fishing in Pukerua Bay from 1 October 2009 for a five-year period (expiring 30 September 2014).

59 The key factors to consider for Pukerua Bay are:

- a) MFish anticipates that after a further five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished state, providing Ngāti Toa the ability to provide for their customary needs.
- b) Section 297(1)(a)(vii) of the Act provides for making regulations in order to regulate or prohibit any method of fishing long term, quite differently from the two-year temporary prohibition afforded by s 186A.
- c) Pukerua Bay holds considerable importance for Ngāti Toa, as shown in the number of waahi tapu⁴ in the area including battle sites, burial grounds, landing places of the ancestral voyagers, habitation sites, and especially strategic coastal pa sites. The beach below Waimapihi is an important tauranga waka⁵ and mahinga mātaītai⁶.
- d) Ngāti Toa wish to manage the fisheries resources in Pukerua Bay under the Kaimoana Regulations in the long-term. Disputed rohe moana boundaries that are unlikely to be resolved in the short term prevent Ngāti Toa from applying these provisions at this time.
- e) Customary practices of Ngāti Toa recognise the concept to safeguard the ecosystem. Ngāti Toa are concerned about the sustainability of certain fishing methods, including netting, diving, snorkelling and hand gathering. They have had particular concerns about the set netting⁷ method due to the threat of sea floor damage to sponge assemblages and the high catch of non-target species.
- f) Ngāti Toa believe that significant fishing pressures and illegal fishing has reduced the availability and size of the fisheries resources. This has had an adverse effect on the use and management practices of Ngāti Toa providing for their customary needs. Ngāti Toa believe that the recommencement of concentrated intense fishing will likely lead to localised depletion of the fishery, given the location and nature of Pukerua Bay. They feel the fishery is still not healthy enough to cope with the pressures of recreational and customary fishing.
- g) Ngāti Toa, as well as the Pukerua Bay Residents Association, support a long-term prohibition on all fishing methods associated with the taking or disturbance of molluscs (shellfish, sea slugs), crustaceans (barnacles, crabs, shrimps), echinoderms (starfish, urchins, sea cucumber), and all marine life and seaweeds, with the only exception being the method of hand-held line fishing.

⁴ Sacred area

⁵ Landing place of ancestral voyagers

⁶ Kaimoana-gathering area

⁷ A fishing method where fishers place a net in the water with floats at the top and weights on the bottom. The net catches fish as they swim through.

- h) The continuation to exempt hand-held line fishing from the prohibited fishing methods is appropriate at this time because it:
- has minimal effect on reef floor communities;
 - allows for the sustainable fishing of species in season;
 - is selective; and
 - is a popular activity by local fishers.
- i) A 2008 study by NIWA concludes that paua and kina populations within the prohibited area are recovering as a result of the fishing restrictions in place over the past six years. The study indicates paua within the bay have generally not reached minimum legal size, most likely due to past fishing pressures. This information suggests that the fishery has been rebuilding towards a healthy state during the prohibitions, although the bay still requires long-term protection.

Assessment of Regulatory Options

Option 1 – Status Quo

60 Pukerua Bay is currently subject to a temporary prohibition on all fishing methods, except hand-held line fishing due to expire on 7 June 2009. After expiry of the prohibition on 7 June 2009, Option 1 opens Pukerua Bay to all legal fishing methods under the amateur and commercial fishing regulations.

Impact

61 Pukerua Bay will be open to all legal methods of fishing under the amateur and commercial fishing regulations post 7 June 2009. The reinstatement of fishing is likely to lead to over-harvesting and localised depletion of fisheries resources in Pukerua Bay will occur very quickly.

62 MFish will need to monitor carefully the fisheries resources in Pukerua Bay soon after the current temporary prohibition expires to ensure recreational fishers are complying with amateur fishing rules, such as minimum legal size and daily bag limits.

Costs

63 During a six-month period (20 December 2006 - 7 June 2007), Pukerua Bay was under no protection and the area was subject to intense fishing pressures. This seriously depleted the still recovering resources in the bay.

64 Fisheries resources in the bay are very likely to be over-harvested and localised depletion will again occur, adversely affecting the use and management practices of Ngāti Toa in providing for their customary needs.

65 Pukerua Bay could necessitate an increase in monitoring of compliance effort once the prohibition expires, especially during the initial months, thus increasing costs for Compliance.

Benefits

- 66 Retaining the *status quo* will provide for the limited use of the resources in Pukerua Bay, although this use is contrary to the desires of Ngāti Toa and the local community.

Option 2 –Prohibition of all fishing methods, except hand-held line for a five-year period

- 67 This option will prohibit all fishing methods, except hand-held line fishing, in Pukerua Bay from 1 October 2009 to 30 September 2014.

Impact

- 68 The proposed regulation will have no immediate impact on commercial and recreational fishers, as it maintains the integrity of the current prohibition in Pukerua Bay in place since late 2002.
- 69 A regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay will continue to allow fisheries resources within the bay to recover and provide long-term protection from the effects of intense localised fishing, supporting customary use and management practices in that area.

Costs

- 70 MFish anticipates compliance costs to remain at the same levels as those that have applied to Pukerua Bay since late 2002.
- 71 Fishers can take fisheries resources from Pukerua Bay if authorised to do so under r 27A of the Amateur Regulations and the Kaimoana Regulations. Ngāti Toa indicates they will not issue authorisations enabling take that is inconsistent with the proposed regulation.

Benefits

- 72 The proposed regulation recognises and makes provision for the use and management practices of Ngāti Toa in the exercise of non-commercial fishing rights.
- 73 This proposal maintains the legislative and regulatory intent of the Act by proposing a measure for an area that requires long-term management.
- 74 The proposed regulation mirrors the current prohibition on all fishing methods, except hand-held line fishing, that has been in place since 2002 under a s 186A temporary prohibition. Fishers understand and are familiar with the current prohibitions making another one easy to implement.
- 75 From a Compliance perspective, a long-term prohibition would be relatively simple to monitor and enforce, as the only legal method of fishing in Pukerua Bay would be hand-held line fishing. This makes it easier to identify people fishing using illegal methods where officers can be deployed at sea or on the beaches.

- 76 Ngāti Toa and residents are keen to assist MFish to ensure full compliance with the proposed fishing restrictions.
- 77 MFish anticipates that after an additional five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished fishery, recognising the use and management practices of Ngāti Toa in providing for their customary needs.

Other Management Issues

- 78 If you approve the proposed regulation, it is appropriate to repeat the 2008 study on paua and kina populations in Pukerua Bay within three to four years time. This will allow an assessment of the effects of the prohibition on paua and kina populations to ensure local stocks have rebuilt to healthy and desirable levels.
- 79 MFish could propose restrictions through voluntary means. However, because non-compliance has proven to be an issue in Pukerua Bay when prohibitions have not been in place, a voluntary prohibition is not an appropriate measure.

Statutory Considerations

- 80 In forming the proposed management actions, MFish has taken into account the following statutory considerations:
- a) **Section 5(a) and (b) – Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:** This section of the Act requires decision-makers to act in a manner consistent with New Zealand’s international obligations relating to fishing, including the Law of the Sea Convention and the Fish Stocks Agreement as well as regional fishery management agreements. Decision-makers must also act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish considers that the proposed options are consistent with New Zealand’s international obligations relating to fishing and meet the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 by recognising customary use and management practices in Pukerua Bay.
 - b) **Section 8 – Sustainable utilisation of fisheries resources:** Section 8 of the Act provides for the utilisation of fisheries resources while ensuring sustainability. The purpose of the prohibition meets the obligations of ‘ensuring sustainability’ by maintaining the potential of fisheries resources in order to meet the reasonably foreseeable needs of future generations and to avoid any adverse effects of fishing on the aquatic environment. The purpose of the prohibition is also consistent with the obligation of ‘utilisation’ in that it proposes to enhance and develop fisheries resources to enable people to provide for their social, economic and cultural well-being.
 - c) **Section 9 – Environmental principles:** Section 9 requires you to take into account the following environmental principles:

- i) “Associated or dependent species should be maintained above a level that ensures their long-term viability.
- ii) Biological diversity of the aquatic environment should be maintained.
- iii) Habitat of particular significance for fisheries management should be protected.”

The proposed long-term prohibition is consistent with the environmental principles of the Act. By minimising harvest pressures in Pukerua Bay, the proposed action avoids adverse effects on the viability of associated or dependent species and biological diversity of the aquatic environment.

It is unlikely that the fishing using hand-held line within Pukerua Bay will have any adverse impacts on habitats of particular significance to fisheries management.

- d) **Section 10 – Information principles:** Section 10 requires you to take into account the following information principles when making decisions under the Act in relation to the utilisation of fisheries resources or ensuring sustainability:

- i) Decisions should be based on the best available information.
- ii) Decision makers should consider any uncertainty in the information available in any case.
- iii) Decision makers should be cautious when the information is uncertain, unreliable, or inadequate.
- iv) The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.

MFish relied upon the following information sources:

- i) “The distribution, size structure and abundance of paua and kina in the Pukerua Bay area, Final Research Report for Ministry of Fisheries Research Project CUS 2006-06 Objective 2, NIWA, April 2008”
- ii) Anecdotal information provided by Ngāti Toa and local residents.

MFish considers this information to be adequate and reliable, and that it is the best information available.

- e) **Section 297 – Making of fisheries regulations:** Section 297 empowers the Governor-General to make regulations for specific purposes. MFish considers that the proposed long-term prohibition of all fishing methods except hand-held line fishing fit within the relevant provisions of s 297.
- f) **Section 186A – Temporary closure of fishing area or restriction on fishing methods:** Section 186A empowers you to temporarily restrict or prohibit the use of any fishing method in respect to any area or species as described in the Act. The proposed consultation on a new s 186A

temporary prohibition on all fishing methods except hand-held line fits within the provisions of s 186A.

SUMMARY OF RECOMMENDATIONS

81 MFish's recommended management measures for Pukerua Bay are a s 186A temporary prohibition from 7 June 2009 to 30 September 2009, in conjunction with a fisheries regulation under s 297, which prohibits all fishing methods except hand-held line fishing in Pukerua Bay from 1 October 2009 for a five-year period (expiring 30 September 2014). Should you approve both of the proposed measures (long-term and interim), then the temporary prohibition under s 186A should expire immediately prior to commencement of the new fisheries regulation on 1 October 2009, to avoid redundancy in legislation.

82 Therefore, MFish recommends that you **AGREE** to:

a) Introduce a fisheries regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay, Wellington commencing 1 October 2009 for a five-year period (expiring 30 September 2014);

AND

b) Approve a s 186A temporary prohibition on all fishing methods, except hand-held line fishing, in Pukerua Bay from 7 June 2009 until 30 September, so that the s 186A notice terminates immediately prior to the commencement of the fisheries regulation on 1 October 2009,

in order to make provision for the use and management practices of tāngata whenua in the exercise of their non-commercial fishing rights.

83 Should you consider it inappropriate to introduce a fisheries regulation under s 297, MFish considers there is a need to approve the temporary prohibition under s 186A for a one-year period in order to give MFish and Ngāti Toa time to work on alternative management options.

84 In such circumstances, and as an alternative to the management measures outlined in paragraph 84 above, MFish recommends that you **AGREE** to:

a) Approve a s 186A temporary prohibition on all fishing methods, except hand-held line fishing, in Pukerua Bay from 7 June 2009 for a one-year period (expiring 6 June 2010),

in order to make provision for the use and management practices of tāngata whenua in the exercise of their non-commercial fishing rights.