

PUKERUA BAY – PROHIBITION OF ALL FISHING METHODS EXCEPT HAND-HELD LINE FISHING - INITIAL POSITION PAPER

Executive Summary

- 1 This paper proposes two management measures to ensure the long-term protection of fisheries resources within Pukerua Bay, Wellington. These measures are:
 - a) **Interim measure:**

Consult on a request from Te Runanga o Toa Rangatira (Ngāti Toa) for a new temporary prohibition (under s 186A of the Fisheries Act 1996) on all fishing methods, except hand-held line fishing, in Pukerua Bay, Wellington from 7 June 2009 for a one-year period (expiring 6 June 2010); and
 - b) **Long-term measure:**

Introduce a fisheries regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay commencing 1 October 2009 for a five-year period (expiring 30 September 2014).
- 2 The Ministry of Fisheries (MFish) seeks tangata whenua and stakeholder feedback on this twofold proposal.
- 3 If the Minister of Fisheries (the Minister) approves this proposal, he accepts both interim and long-term measures.
- 4 Pukerua Bay is an area that has been subject to intense fishing pressures because of its ease of access and proximity to the Wellington metropolitan area. The effects of this fishing pressure has caused significant localised depletion of many fisheries resources, particularly paua and kina. This has adverse effects on the use and management practices of Ngāti Toa in providing for their customary needs.
- 5 In response to these concerns, Pukerua Bay is currently subject to a s 186A temporary prohibition¹ on all fishing methods, except hand-held line fishing. The Minister twice reinstated the prohibition since 2002 expiring 7 June 2009. Reopening Pukerua Bay to fishing will subject the main fisheries resources in the bay to intense fishing pressures again.
- 6 Ngāti Toa has customary interests in Pukerua Bay. Ngāti Toa considers Pukerua Bay to be a highly significant area.
- 7 Ngāti Toa wishes to manage the fisheries resources in Pukerua Bay under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (Kaimoana

¹ Fisheries (Pukerua Bay Temporary Closure) Notice 2007

Regulations) in the long term. Issues regarding disputed rohe moana² boundaries prevent Ngāti Toa from applying these provisions at this time. As a result, Ngāti Toa, with full support from Pukerua Bay Residents Association, requests further long-term protection of Pukerua Bay.

- 8 Ngāti Toa also requests a new temporary s 186A 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 during the intervening period in advance of the proposed five-year regulatory prohibition.
- 9 The proposed regulation provides for the use and management practices of tāngata whenua in the long term. The proposed s 186A temporary prohibition provides the same protection during the intervening period between expiry of the s 186A prohibition (7 June 2009) and the proposed regulation commencing 1 October 2009. MFish considers 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 short-term temporary situations.

Regulatory Impact Analysis Requirements

- 10 This IPP required a Regulatory Impact Statement, which MFish's Regulatory Impact Analysis Steering Committee reviewed.
- 11 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word 'significant' with reference to an IPP, please refer to the Treasury website www.treasury.govt.nz.

The Issue

- 12 Ngāti Toa has strong customary interests in Pukerua Bay and considers the area of high significance. Ngāti Toa wishes to manage the fisheries resources in Pukerua Bay under the Kaimoana Regulations and has notified their Tāngata Kaitiaki/Tiaki³ in July 2000. 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 the Minister is able to appoint Tāngata Kaitiaki/Tiaki.
- 13 Prior to 2002, the public used Pukerua Bay for fishing 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, such as paua and kina. This has had adverse effects on the use and management practices of Ngāti Toa in providing for their customary needs.

² 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).

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.

- 14 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 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.
- 15 Ngāti Toa submitted another 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. From 20 December 2006 until 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 quickly depleted resources in the bay in just six months. Anecdotal information from Ngāti Toa and residents suggests that during these six months fishers were not adhering to restrictions under the Fisheries (Central Area Amateur Fishing) Regulations 1986 (the amateur fishing regulations).
- 16 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. The study suggests paua within the bay have generally not reached minimum legal size, most likely due to past fishing pressures. Local customary and recreational fishers advise that legal size paua were once abundant within the bay.

Interim Measure: Temporary prohibition of all fishing methods except hand-held line from 7 June 2009 for a one-year period

- 17 The purpose of this section is to consult with interested parties on a request from Ngāti Toa to implement a further 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.
- 18 MFish will send letters to those stakeholders that made submissions during the last s 186A temporary prohibition consultation period, notifying them of this proposal.
- 19 The defined area of the proposed s 186A temporary prohibition is shown in Figure 1.

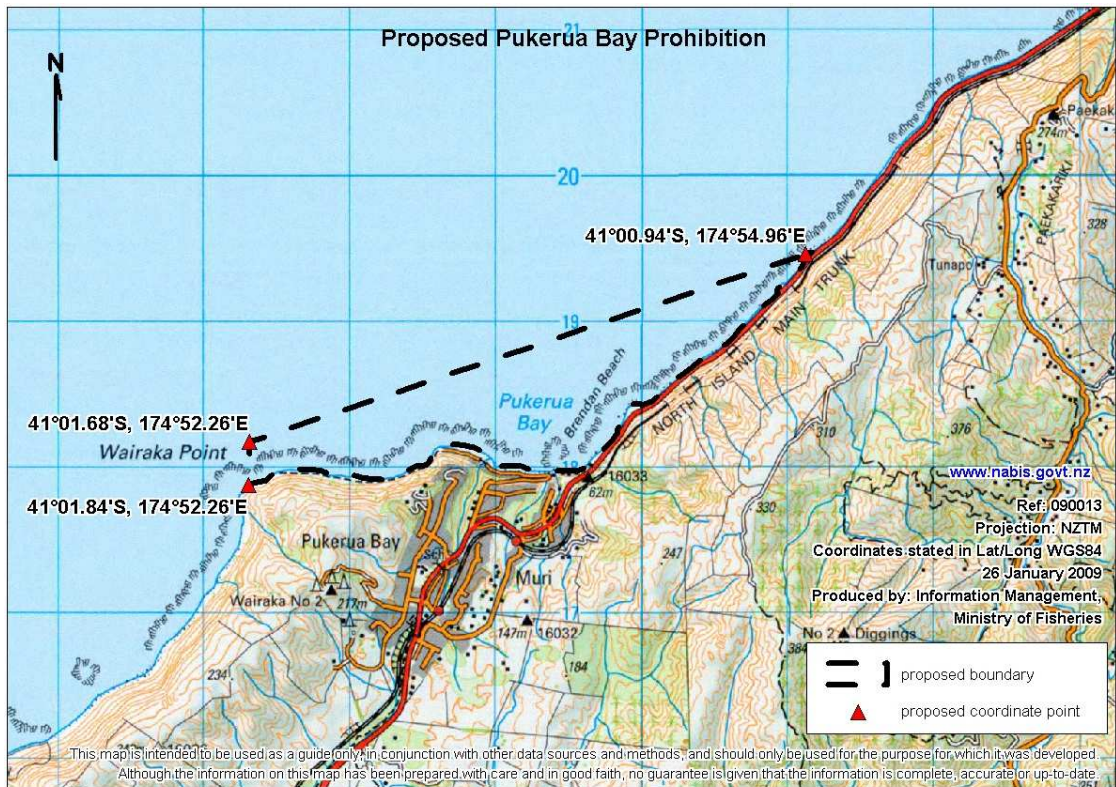


Figure 1: Map showing proposed Pukerua Bay prohibition under interim and long-term measures

- 20 Section 186A provides for the Minister to temporarily close an area, or restrict or prohibit the use of any fishing method in respect of an area by way of a notice in the Gazette if satisfied that the closure, prohibition or restriction will recognise and provide for the use and management practices of tāngata whenua. The purpose of the prohibition is to improve the availability and size of fisheries resources to allow for customary use and management practices of Ngāti Toa. Any notice given under s 186A can remain in force for a maximum period of two years. Nothing under s186A of the Act prevents the Minister from giving a further notice for an additional two-year period.
- 21 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.
- 22 Before determining whether to give notice under s 186A, the Minister must first consult those he considers are representative of interested parties in the species or the area concerned. The Minister must also provide for tāngata whenua input and participation in the decision-making process with an interest in the species or the effects of fishing in the area concerned. MFish invites interested parties to provide feedback on the proposed s 186A temporary prohibition in Pukerua Bay. Those parties who wish to make a submission must submit it by 6 April 2009.

Long-term Measure: Prohibition on all fishing methods, except

hand-held line fishing from 1 October 2009 for a five-year period

Summary of Options

Option 1 – Status Quo

- 23 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, Option 1 opens Pukerua Bay to all legal fishing methods under the amateur and commercial fishing regulations.
- 24 The reinstatement of fishing is likely to lead to significant over-harvesting and localised depletion of fisheries resources within Pukerua Bay.
- 25 Retaining the *status quo* will adversely affect the use and management practices of Ngāti Toa in exercising their customary rights.

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

- 26 This option prohibits all fishing methods except hand-held line fishing in Pukerua Bay between 1 October 2009 and 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 allows for recognition of customary fishing practices in the area.
- 27 The defined area of the proposed long-term prohibition is shown in Figure 1.
- 28 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 once the newly requested s 186A temporary prohibition expires (6 June 2010) if authorised to do so under r 27A and the Kaimoana Regulations. Ngāti Toa indicates they are unlikely to issue authorisations enabling take that is not consistent with the proposed regulation.
- 29 The timeframe for the long-term prohibition is from 1 October 2009 to 30 September 2014. MFish expects that after a further five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished state, providing Ngāti Toa with the ability to exercise their customary fishing rights.
- 30 MFish considers the use of fisheries regulations 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 short-term, temporary situations.

Rationale for Management Options

- 31 MFish's preferred option is a fisheries regulation, which prohibits all fishing methods except hand-held line fishing in Pukerua Bay starting 1 October 2009 for a five-year period.
- 32 The key factors to consider for Pukerua Bay are:
- i) MFish expects 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.
 - ii) Section 297 (1) (a) (vii) of the Act provides for making regulations in order to regulate or prohibit any method of fishing, quite differently from the two-year temporary prohibition afforded by s 186A.
 - iii) 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.
 - iv) Ngāti Toa wishes 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.
 - v) Customary practices of Ngāti Toa recognise the concept to safeguard the ecosystem. Ngāti Toa is concerned over the sustainability of certain fishing methods, including netting, diving, snorkelling and handgathering. They have had particular concerns over the set netting⁷ method due to the threat of sea floor damage to sponge assemblages and the high catch of non-target species.
 - vi) Ngāti Toa believes that significant fishing pressures and illegal fishing have reduced the availability 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 believes 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.
 - vii) 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

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.

cucumber), and all marine life and seaweeds, with the only exception being the method of hand-held line fishing.

- viii) 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.
- ix) A 2008 study by NIWA concludes that paua and kina populations within the prohibited area are recovering due to fishing restrictions over the past six years. The study indicates paua within the bay have generally not reached minimum legal size, most likely due past fishing pressures. Local customary and recreational fishers advise that legal size paua were once abundant within the bay. 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 Management Options

Option 1 – Status Quo

33 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

34 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 quickly lead to significant over-harvesting and localised depletion of fisheries resources in Pukerua Bay.

35 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

36 From 20 December 2006 until 7 June 2007, Pukerua Bay was under no protection. During that time, the area was subject to intense fishing pressures and this quickly depleted the still recovering resources in the bay in just six months.

37 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.

- 38 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

- 39 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

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

Note: The preferred regulatory option assumes approval of the requested s 186A temporary prohibition commencing 7 June 2009 for a one-year period.

Impact

- 41 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.
- 42 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 fishing practices in that area.

Costs

- 43 MFish expects compliance costs to remain at the same levels as those that have applied to Pukerua Bay since late 2002.
- 44 Once the newly requested s 186A temporary prohibition expires (6 June 2010), customary fishers can take fisheries resources from Pukerua Bay if authorised to do so under r 27A and the Kaimoana Regulations. Ngāti Toa indicates they are unlikely to issue authorisations enabling take that is not consistent with the proposed regulation.

Benefits

- 45 The proposed regulation recognises and makes provision for the use and management practices of Ngāti Toa in the exercise of non-commercial fishing rights.
- 46 This proposal maintains the legislative and regulatory intent of the Act by proposing a measure for an area that requires long-term management.
- 47 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.

- 48 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.
- 49 Ngāti Toa and residents are keen to assist MFish to ensure full compliance with the proposed fishing restrictions.
- 50 MFish expects that after an additional five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished fishery, recognising use and management practices of Ngāti Toa in providing for their customary needs.

Other Management Issues

- 51 If the Minister approves 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.
- 52 MFish could propose restrictions through voluntary means. 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

- 53 In forming the proposed management actions, MFish has taken into account the following statutory considerations:
- x) **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.
 - xi) **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.

xii) **Section 9 – Environmental principles:** Section 9 requires the Minister to take into account the following environmental principles:

- vii) *“Associated or dependent species should be maintained above a level that ensures their long-term viability;*
- viii) *Biological diversity of the aquatic environment should be maintained;*
- ix) *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.

xiii) **Section 10 – Information principles:** MFish has relied upon the following information sources:

- x) “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”
- xi) Anecdotal information provided by Ngāti Toa and local residents.

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

xiv) **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.

xv) **Section 186A – Temporary closure of fishing area or restriction on fishing methods:** Section 186A empowers the Minister to temporarily restrict or prohibit the use of any fishing method in respect to any area or species. 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.

REGULATORY IMPACT STATEMENT

Pukerua Bay – Prohibition of all Fishing Methods except Hand-held Line Fishing

a) Executive summary

The Ministry of Fisheries (MFish) proposes two management measures for the long-term protection of fisheries resources within Pukerua Bay, Wellington. These are:

i) Interim measure:

Consult on a request from Te Runanga o Toa Rangatira (Ngati Toa) for a new temporary prohibition on all fishing methods, except hand-held line fishing, in Pukerua Bay, Wellington from 7 June 2009 for a one-year period (ending 6 June 2010); **and**

ii) Long-term measure:

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

A regulation that prohibits all fishing methods, except hand-held line fishing, will continue to allow fisheries resources within Pukerua Bay to recover and provide protection from the effects of intense localised fishing, while recognising and providing for customary fishing practices in that area.

The purpose of the temporary prohibition is to provide protection to Pukerua Bay during the intervening period from 7 June 2009 and the commencement of the proposed regulation on 1 October 2009.

If the Minister approves this proposal, he accepts both interim and long-term measures.

Pukerua Bay has been subject to several s 186A temporary prohibitions of all fishing methods, except hand-held line fishing since 2002. These prohibitions have improved the state of fisheries resources within Pukerua Bay. However, the area requires further long-term protection to achieve the objective of recognising and providing for customary practices.

MFish considers 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 short-term, temporary situations.

b) Adequacy statement

This RIS has been reviewed/approved by the Regulatory Impact Analysis (RIA) Steering Committee according to criteria agreed by Cabinet.

c) *Status quo* and Problem

Under the *status quo*, Pukerua Bay is subject to a temporary prohibition on all fishing methods, except hand-held line fishing. This prohibition will expire on 7 June 2009.

After expiry of the prohibition, the *status quo* opens Pukerua Bay to all legal fishing methods under the amateur and commercial fishing regulations.

i) Impact

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 significant over-harvesting, and localised depletion of fisheries resources in Pukerua Bay will occur very quickly.

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

ii) Costs

From 20 December 2006 until 8 June 2007, Pukerua Bay was under no protection. During that time, the area was subject to intense fishing pressures quickly depleting the still recovering resources in the bay in just six months.

Reopening Pukerua Bay to fishing will quickly lead to significant over-harvesting and localised depletion will again occur, adversely affecting the use and management practices of Ngāti Toa in providing for their customary needs.

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.

iii) Benefits

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.

d) Objectives

The key fisheries management objective for Pukerua Bay is:

- i) *Recognising and making provision for the use and management practices of tāngata whenua in the exercise of non-commercial fishing rights by –*
 - *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*
 - *Recognising a customary fishing practice in that area.*

e) Alternative options

N/A

f) Preferred option

The preferred option is a fisheries regulation prohibiting all fishing methods, except hand-held line fishing, in Pukerua Bay for a five-year period, beginning 1 October 2009.

Impact

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 under s 186A.

A regulation that prohibits all fishing methods, except hand-held line fishing, in Pukerua Bay will continue to allow fisheries resources to recover and provide long-term protection from the effects of intense localised fishing, supporting customary fishing practices in that area.

Costs

MFish expects compliance and enforcement costs to remain at the same levels as those that have applied to Pukerua Bay since late 2002.

Unlike under a s 186A temporary prohibition, customary fishers are able to take fisheries resources from Pukerua Bay if authorised to do so under r 27A, and subsequently the c, once iwi are able to operate under them. Ngāti Toa indicates they are unlikely to issue permits authorising take that is not consistent with the proposed regulation.

Benefits

The proposed regulation recognises and makes provision for the use and management practices of Ngāti Toa in the exercise of non-commercial fishing rights.

This proposal maintains the legislative and regulatory intent of the Fisheries Act 1996 by proposing a long-term measure for an area that requires long-term management.

The proposed regulation mirrors the current prohibition on all fishing methods, except hand-held line fishing, 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.

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 will 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.

Ngāti Toa and residents are keen to assist MFish to ensure full compliance with the proposed fishing restrictions.

MFish expects that after an additional five years of protection, fisheries resources in Pukerua Bay will recover to a healthy and replenished fishery, offering Ngāti Toa the ability to provide for their customary needs.

Existing rules

The proposed regulatory prohibition will overlap with the s 186A temporary prohibition. The proposed regulation mirrors the one-year s 186A temporary prohibition. The Minister would not need to revoke the temporary prohibition, as it does not adversely affect the integrity of the proposed regulation or any other legislation. Once the new s 186A prohibition expires, customary fishers are able to take fisheries resources from Pukerua Bay if authorised to do so under r 27A, and subsequently the customary fishing regulations, once iwi are able to operate under them. Ngāti Toa indicates they are unlikely to issue permits authorising take that is not consistent with the proposed regulation.

g) Implementation and review

The proposed regulation will come into effect on 1 October 2009 for a five-year period (expiring 30 September 2014).

MFish have existing signs notifying the general public of the existing prohibition on fishing methods in Pukerua Bay. Fishery Officers will need to update signs posted around the area to show that the prohibition will remain in effect until 30 September 2014 as budgets allow.

The compliance strategy relies mainly on local iwi and residents. Ngāti Toa and residents are keen to assist MFish to ensure full compliance with the proposed fishing restrictions.

If the Minister approves the proposed regulation, it is appropriate to repeat the 2008 NIWA study on paua and kina populations in Pukerua Bay within 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.

h) Consultation

MFish has recently met with Pukerua Bay Residents Association and Ngāti Toa to discuss potential future management measures for Pukerua Bay fishery resources. MFish gained full support of this proposal from these groups.

MFish will send letters to those stakeholders that made submissions during the last s186A temporary prohibition consultation period to notify them of this proposal.

PUKERUA BAY – PROHIBITION OF ALL FISHING METHODS EXCEPT HAND-HELD LINE FISHING - SUMMARY OF SUBMISSIONS

Submissions Received

54 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

55 No substantive issues were raised in the submissions that would require MFish to propose new measures or vary existing options (see Summary of Submissions).

56 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.

57 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”.

58 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.

59 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.”

60 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.

61 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

62 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.

63 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.

64 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.

65 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

66 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

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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.

67 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.

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

69 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.

70 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.

71 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.

72 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.