

# MFISH INITIAL POSITION PAPER: EAST OTAGO TAIAPURE – LOCAL FISHERY PROPOSALS

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## Executive Summary

- 1 This paper describes a proposal to recommend regulations to restrict non-commercial and commercial harvest of shellfish and finfish from within the East-Otago taiāpure local-fishery (the taiāpure).
- 2 Section 185 of the Fisheries Act 1996 (the Act) allows a taiāpure-local fishery management committee to recommend to the Minister of Fisheries (the Minister) the making of regulations for the conservation and management of fish, aquatic life, or seaweed in the taiapure local fishery.
- 3 The East Otago Taiāpure Management Committee (the Committee) is concerned that key fishery stocks within the taiāpure are in a depleted or severely depleted state and that the current level of harvest is not sustainable. To reduce fishing pressure and encourage the recovery of these key fish stocks, the Committee has proposed regulatory changes. The Committee’s recommendations are attached (appendix 3).
- 4 The Committee proposes reducing bag limits for shellfish and finfish species within the taiāpure, and setting regulatory limits on the spatial extent of commercial cockle fishing within the taiāpure. A temporary closure of Huriawa Peninsula for paua fishing is also proposed. These measures are not expected to significantly impact on commercial fishing, but would impact on recreational fishing activity within the Taiāpure. There would also be increased compliance and enforcement costs.
- 5 The Committee considers these measures are important for the future of fisheries resources in the area, and that the Committee should be taking a leadership role in encouraging sustainable harvest and protection of the marine environment within the taiāpure.
- 6 Local fisheries and community groups represented on the Committee endorse the proposals, as do tangata whenua and cockle quota holders. Some recreational fishing groups in the wider Dunedin area have indicated they oppose any reduction in daily bag limits within the taiāpure.
- 7 Consultation on the Committee’s recommendations is now being undertaken by the Committee, and by the Ministry of Fisheries (MFish) on behalf of the Minister particular, submissions are requested from fishers outlining the impact of the proposals on their activities.

## Regulatory Impact Analysis Requirements

- 8 This Initial Position Paper required a Regulatory Impact Statement which was reviewed internally by MFish.

## **The Issue**

- 9 Section 185 of the Act allows a taiāpure-local fishery management committee to recommend to the Minister the making of regulations under sections 186 or 297 for the conservation and management of fish, aquatic life, or seaweed in the taiapure-local fishery.
- 10 The Kati Huirapa Runanga ki Puketeraki application for a taiāpure-local fishery was gazetted as the East Otago Taiāpure-Local Fishery in 1999 and the management committee appointed in 2001. The Committee is made up of representatives from the following local groups: the East Otago Boating Club, Kati Huirapa Runanga ki Puketeraki, Karitane Commercial Fisherman's Cooperative, Rivercare-Estuary Care: Waikouaiti-Karitane and the University of Otago.
- 11 Having observed fishing practices since the establishment of the taiāpure, the Committee considers that immediate action is required to address fishing pressure within the taiāpure. The Committee is concerned that key fishery stocks within the Taiapure are in a depleted or severely depleted state and that the current level of harvest is not sustainable.
- 12 In particular, the Committee has concerns regarding finfish, paua and kina stocks. The Committee has also expressed concern about the reduced size of cockles and localised over-fishing within the taiāpure and the state of the paua populations around the Huriawa Peninsula.
- 13 The Committee's concerns are outlined in more detail in appendix 3.
- 14 Consultation on the Committee's recommendations is being undertaken by the Committee, and MFish on behalf of the Minister. The proposal is being notified in the local newspapers, sent to interested parties, and posted in full on the MFish website. The Committee has already taken the proposal to the groups they represent and it has been endorsed.

## **Summary of Options**

### ***Option 1 – Status Quo***

- 15 The status quo is that the Minister does not accept the Committee's recommendations and the proposals do not proceed. The bag limits and other rules set under the Fisheries (South-East Area Amateur Fishing) Regulations 1986, the Fisheries (Amateur Fishing) Regulations 1986 and the Fisheries (South-East Area Commercial Fishing) Regulations 1986 would apply as they currently stand.

### ***Option 2 – Committee's Proposals***

- 16 The Minister accepts all, or some of, the Committee's recommendations, which are summarised as follows:
  - a) Reduce the amateur maximum daily bag limit of paua from 10 to 5, and kina from 50 to 10 within the taiāpure;

- b) Set a maximum combined daily limit for 50 shellfish\* within the taiāpure;
  - c) Reduce the maximum combined finfish† daily bag limit from 30 to 10 within the southern part of the taiāpure;
  - d) Prohibit the commercial take of cockles outside of the ‘non- sanitation areas’ within Waitati Inlet (refer map in appendix 3);
  - e) Temporarily prohibit the harvest of paua from Huriawa Peninsula for two years.
- 17 The proposed regulations would be made under 185 (taiāpure regulations) of the Act. Regulations would be implemented under s 297 (1) (a) through amendments to the Fisheries (South-East Area Amateur Fishing) Regulations 1986, the Fisheries (Amateur Fishing) Regulations 1986, and the Fisheries (South-East Area Commercial Fishing) Regulations 1986.
- 18 The Committee requests the measures be in place for the 2009/2010 summer.

## **Rationale for Management Options**

- 19 One of the objectives of the taiāpure provisions of the Act (Part IX) is to make better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi. The general objectives for the taiāpure (outlined in the Committee’s proposal, appendix 3) are the protection of fisheries, fish and habitat, the protection of sites customarily important to local runanga, and to integrate and involve local resource users in the management of their resources.
- 20 The Committee’s proposal outlines in detail the rationale for the regulations. The Committee considers that action is required to address fishing pressure on shellfish and finfish stocks within the taiāpure and meet the objectives they have set for the Taiapure. The Committee believes it should be taking a leadership role by encouraging sustainable harvest and protection of the marine environment within the taiāpure. The proposed regulations aim to increase key fisheries resources within the taiāpure and ‘future proof’ access to these resources by the wider community.
- 21 Proceeding with the recommendations (Option 2) furthers both the object of Part IX of the Act, and the objectives for the Taiapure.
- 22 Despite this, the status quo (Option 1) could be preferred if it is determined the recommendations have an unreasonable impact on the utilisation of fisheries resources within the taiapure.
- 23 MFish’s assessment of the Committee’s rationale for Option 2 is set out below.
- 24 The Committee believes that a maximum combined daily bag limit is necessary to further mitigate increasing recreational fishing pressure on all species of shellfish and finfish.

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\* For the purpose of this regulation the definition of ‘shellfish’ includes rock lobster.

† For the purpose of this regulation the definition of ‘finfish’ includes long and short finned eels.

- 25 Recreational fishing surveys of the region do not provide a time series at the scale of the taiāpure, which would allow the Committee’s claim of increasing recreational fishing pressure to be assessed. Anecdotally, increased diving activity in the area, along with improved boat technology, is providing better access to fishing grounds within the taiāpure. The makeup of the Committee ensures that members are well placed to assess changes in fishing pressure in their local area.
- 26 Indicative results from surveys undertaken by the University of Otago<sup>‡</sup> support the Committee’s anecdotal reports of depleted stocks of kina and paua, particularly in the more accessible parts of the taiāpure. However, these surveys are not yet completed, nor have they been reviewed by MFish.
- 27 A voluntary agreement that there will be no commercial trawling within the taiāpure is in place. This agreement appears to be largely effective<sup>§</sup> and should assist the Committee’s objective of increasing fisheries resources within the taiāpure. The Committee is looking to ratify this agreement with commercial trawler fishers again in the near future.
- 28 The recommended changes to finfish bag limits apply only in the southern part of the taiāpure; from Huriawa Peninsula-south. This is to ensure recreational fishers fishing outside the taiāpure area who transit through the taiāpure into the wharf at Karitane are not affected by the proposals.
- 29 To address concerns over the status of paua stocks on the Huriawa Peninsula, the Committee believes a temporary prohibition on harvesting of paua is necessary.
- 30 Surveys by the University of Otago indicate that less than one percent of paua in this area are above the legal size limit of 125 mm. These surveys have not yet been reviewed through MFish processes, however, this and anecdotal evidence suggests that fishers struggle to find legal-sized paua on the peninsula but fishing pressure remains high. Under these circumstances, there is potential for significant incidental mortality of paua through fishers removing and measuring paua while trying to find legal-sized individuals.
- 31 The Committee has proposed that Huriawa Peninsula would be surveyed for at least the next two years to determine if paua stocks are responding to the closure. This work would be conducted by the University of Otago with the guidance and support of the Committee. During the closure, growth rates of paua would also be determined. The closure would support this work by ensuring tagged paua are not removed.
- 32 The Committee would also be seeking to discuss future management of paua within the taiāpure, and an ‘opening strategy’ for Huriawa Peninsula, with commercial and recreational fishers.
- 33 To address concerns over the status of cockle stocks in the taiāpure, the Committee believes a limit on the spatial extent of commercial harvesting of cockle is necessary. A long-running time series of surveys suggests there are no sustainability concerns in

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<sup>‡</sup> Under FRST Te Tiaki Mahinga Kai project

<sup>§ §</sup> MFish (FIS) data, based on returns from commercial fishers

terms of cockles within the taiāpure, however, they do indicate a shift in some beds towards smaller size classes of cockle. Larger cockles are preferred by both customary and recreational fishers.

- 34 MFish is unsure that limiting commercial cockle harvest to the commercial sanitation areas and reducing recreational take of shellfish to 50 will necessarily lead to an increase in the number of large cockles. It is probable that cockle size is not only limited by harvest rates but also by environmental factors.
- 35 This proposal is supported by commercial cockle quota holders for the relevant QMA (COC3).

## **Assessment of Management Options**

### ***Option 1 – Status Quo***

#### ***Impact***

- 36 The Committee has expressed concerns about the state of fish stocks in the taiāpure. These views are endorsed by the groups with representation on the Committee. The status quo option means that these concerns are not addressed. Despite this, this option could be preferred if it is determined the recommendations have an unreasonable impact on the utilisation of fisheries resources within the taiāpure. In particular, information may be provided in submissions from fishers that the impact on their activities would be significant.

#### ***Costs***

- 37 This option could potentially undermine the purpose of the taiāpure and appointment of the Committee and the Committee's concerns about the current state of fish stocks in the taiāpure would not be addressed. Anecdotal information, supported by indicative results from surveys, suggests that some fishery stocks, particularly paua and other shellfish species, are being depleted at current levels of harvest. Under these circumstances, stocks could decline to a point where the community was unable to utilise key fisheries resources within the Taiāpure.

#### ***Benefits***

- 38 Under this option, the committee would need to rely on voluntary measures to address their concerns. Some voluntary agreements are already in place within the taiāpure, including; no trawling within the taiāpure, shellfish sanitation zone limits on commercial cockle harvesting and a voluntary closure for Huriawa Peninsula. The effectiveness of some of these agreements is patchy (particularly the voluntary paua closure for Huriawa Peninsula) and there is doubt over their longevity into the future.

### ***Option 2 – Committee's Proposals***

#### ***Impact***

- 39 Under this option the Committee's concerns about the state of fish stocks in the taiāpure are addressed. However, implementation of the recommended regulations

would mean, in particular, recreational fishing practices within the taiāpure would be affected.

## Costs

- 40 The proposals are expected to have no significant cost in terms of commercial fishing for finfish within the taiāpure. The recommended regulations do not relate to commercial finfishing. The Committee is in discussion with commercial trawlers to look at ratifying the existing voluntary agreement within the taiāpure.
- 41 Similarly, the proposals are not expected to significantly affect commercial fishing for paua. Although the southern side of Huriawa Peninsula is open to commercial paua fishing, no paua has been commercially taken within the relevant statistical area (which covers a much larger part of the taiāpure ) since 2003, and before that, only small amounts have been reported (less than 0.15 t in total).<sup>\*\*</sup>
- 42 Cockles are commercially harvested from within the taiāpure area but the proposal to limit the spatial extent of harvesting to currently fished beds has the support of cockle quota owners.
- 43 The main impact of the proposed regulations is on recreational fishing. The proposed bag limits for shellfish and finfish would reduce the amount of fish and shellfish recreational fishers would be able to take on a daily basis.
- 44 MFish considers the proposed new limits would particularly affect recreational fishers targeting: finfish (the current combined bag limit would be reduced from 30 to 10), paua (the current limit would be reduced from 10 to 5), kina (the current limit would be reduced from 50 to 10), and cockles (the current limit would be effectively reduced from 150 to 50).
- 45 While many recreational fishers within the taiāpure do not meet these current daily bag limits, MFish wishes to receive submissions on the impact of the proposals from recreational fishers.
- 46 The Committee believes that Huriawa Peninsula has so few legal-sized paua that a closure is unlikely to impact on fishers. On this basis, they argue the benefits of a revitalised fishery on the Peninsula would far outweigh any negatives associated with a closure.
- 47 Additional compliance costs would be incurred under Option 2. Specific recreational bag limits for the taiāpure would demand additional effort to educate recreational fishers and enforce the reduced limits. Direct costs of up to \$10K are anticipated for new signage and amendments to brochures. The Committee has indicated it will take a proactive approach to support education within the local community about the need for the new rules. For example, the Committee is running a ‘Kids as Tangata Tiaki’ programme in association with local schools.
- 48 In spite of the proposal allowing transit through Karitane for people that fish for finfish outside the taiāpure and the possession restrictions proposed, certain

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<sup>\*\*</sup> MFish (FIS) data, based on returns provided by paua fishers.

compliance risks would be created. These risks would be associated with individuals fishing inside the taiāpure and landing catch in excess of the reduced bag limits as if it was taken outside the taiāpure, particularly in the case of finfish. These risks stem from the difficulties inherent to compliance with, and enforcement of, different bag limits in small adjacent and not noticeably discrete areas, as would the case here. These difficulties would increase compliance and enforcement costs and may undermine the purpose of the changes proposed and the objectives they support. Although the Committee took these risks into account when developing this proposal, it deemed them to be acceptable at this time.

### ***Benefits***

- 49 Proceeding with these proposals furthers the object of Part IX of the Act, in particular recognition of rangatiratanga.
- 50 This option addresses the Committee's concerns about management of the fisheries resources within the taiāpure, and furthers the general objectives for the taiāpure as outlined in appendix 3.

### ***Other Management Measures***

- 51 The Committee is pursuing voluntary measures to support the regulatory process. In particular, the Committee is seeking to ratify an existing agreement with commercial trawlers, and will be seeking to discuss future management of paua within the taiāpure area with commercial paua fishers.

## Appendices

### Appendix 1: Statutory Considerations

52 When considering these options, the Minister is required to take into account relevant statutory criteria contained in the Act, as follows:

- a) **Section 5(b):** The Minister is required to act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act). The Preamble to the Settlement Act states that, “The Crown recognises that traditional fisheries are of importance to Maori and that the Crown’s Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries.” The Settlement Act is stated to be, *inter alia*, an Act “To make better provision for Maori participation in the management and conservation of New Zealand’s fisheries”. MFish considers that the approval of the Committee’s recommendation is the option which is most consistent with better providing for Maori participation in the management and conservation of New Zealand’s fisheries, and therefore with the Settlement Act. Due to the limited nature of commercial fishing in the area, the proposed regulations do not negatively impact on commercial stakeholders. The proposed regulations will reduce opportunities for non-commercial fishers. Customary authorisations could still be issued.
- b) **Section 8:** None of the management options proposed are contrary to the purpose of the Act, which is to provide for utilisation of fisheries resources whilst ensuring sustainability. Part of the definition of utilisation is “conserving”, which means providing for the maintenance or restoration of fisheries resources for their future use. The proposed regulations are aimed at restoring and maintaining the fisheries resources of the Taiāpure. The proposed regulations also seek to ensure sustainability of the fisheries resources of the Taiāpure by reducing non-commercial bag limits for shellfish and finfish, prohibiting the taking of paua from Huriawa Peninsula, and closing non-fished parts of the taiapure to commercial cockle harvest.
- c) **Section 9(a) - (c):** None of the management options proposed will negatively impact associated and dependent species or the biological diversity of the aquatic environment, or habitats of particular significance for fisheries management.
- d) **Section 10:** The Minister is required to base his fisheries management decisions on the best available information that, in the particular circumstances, is available without incurring unreasonable cost, effort, or time. He should consider any uncertainty in the information available and be cautious when information is uncertain, unreliable or inadequate. But, 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. The best available information has been incorporated into this assessment of management options. MFish considers that the Committee has based its recommendations on the best available information, including local knowledge of the fisheries resources. There are uncertainties in the information due to a lack of scientific information, the fact that the amount of recreational take is unknown, and fact that the costs and benefits of the proposed regulations cannot be quantified. The Minister can take into account anecdotal

evidence and the views expressed in the submissions as part of the available information.

- e) **Section 174** sets out the object of sections 175 to 185 of the Act as, “...to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—
  - (a) As a source of food; or
  - (b) For spiritual or cultural reasons,—better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.”
- f) **Section 185** empowers a management committee to recommend to the Ministry of Fisheries the making of regulations for the conservation and management of the fish, aquatic life, or seaweed in the taiāpure-local fishery.
- g) **Section 186 (1)** confers a broad power to make regulations. It provides that the Governor General may make regulations providing for customary food gathering by Maori.
- h) **Section 297(1)(a)** prescribes the power to make regulations to regulate or control fishing and the possession, processing, and disposal of fish, aquatic life, or seaweed. It includes the power to prohibit the taking or possessing of fish from any area and the power to regulate the number of fish that may be taken or possessed.
- i) **Regulation 3A of the Fisheries (South-East Area Amateur Fishing) Regulations 1986** sets out the maximum daily number of finfish that may be taken or possessed by an individual in any one day.
- j) **Regulation 19 of the Fisheries (Amateur Fishing) Regulations 1986** sets out the maximum daily number of shellfish that may be taken or possessed by an individual in any one day.
- k) **Regulation 10 of the Fisheries (South-East Area Commercial Fishing) Regulation 1986** sets out restrictions on taking shellfish from parts of Otago coast.

## **Appendix 2:**

### **REGULATORY IMPACT STATEMENT**

#### **East Otago Taiāpure– Local Fishery: Taiapure Regulatory Proposals**

**l) Executive summary**

- i) The East Otago Taiapure Management Committee (the Committee) has proposed regulatory changes for the East Otago Taiapure. The Committee is concerned that key fishery stocks within the taiapure are in a depleted or severely depleted state, and the current level of harvest is not sustainable. The Committee considers the changes will reduce fishing pressure and encourage the recovery of these key fish stocks. The Committee proposes reducing bag limits for shellfish and finfish, along with limits to the spatial extent of commercial cockle fishing in the taiapure. A temporary closure of Huriawa Peninsula for paua fishing is also proposed. These proposals are not expected to significantly affect commercial fishing, but will impact on recreational fishing activity within the taiapure. More information on the level of impact will be sought during consultation. Local fisheries and community groups represented on the committee endorse the proposals, as do tangata whenua and cockle (COC3) quota holders.

**m) Adequacy statement**

- i) This RIS has been approved by the RIA Review Group, according to criteria agreed by Cabinet.

**n) Status quo and Problem**

- i) Section 185 of the Fisheries Act 1996 allows a taiapure-local fishery management committee to recommend to the Minister of Fisheries the making of regulations for the conservation and management of fish, aquatic life, or seaweed in the taiapure local fishery.
- ii) The East Otago Taiapure Management Committee is concerned that key fishery stocks within the taiapure are in a depleted or severely depleted state and that the current level of harvest is not sustainable. This assessment is supported by anecdotal information, and by indicative results from surveys for paua and other shellfish species.

**o) Objectives**

- i) The fisheries management objectives being addressed by this proposal are:
- Part IX of the Fisheries Act (better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi);
  - The general objectives for the Taiapure, including the sustainable utilisation of fisheries resources in the Taiapure;
  - The value of the resource is maximised for the local community and management of the resource is credible.

p) **Alternative options**

- i) Status quo (Option 1): the Minister does not accept the Committee's recommendations and the proposals do not proceed. This option could potentially undermine the purpose of the taiapure and appointment of the Committee. Under this option the Committee must rely on voluntary measures to address their concerns about the state of fish stocks in the taiapure. Despite this, the status quo could be preferred if it is determined the proposals have an unreasonable impact on the utilisation of fisheries resources within the taiapure.
- ii) Changes to regulations as recommended by the Committee (Option 2):
  - Reduce the amateur maximum daily bag limit of paua from 10 to 5, and kina from 50 to 10 within the Taiapure;
  - Set a maximum combined daily limit to 50 shellfish within the taiapure;
  - Reduce the maximum combined finfish daily bag limit from 30 to 10 within the southern part of the Taiapure;
  - Prohibit the commercial take of cockles outside of the 'non-sanitation areas' within Waitati Inlet;
  - Temporarily prohibit the harvest of paua from Huriawa Peninsula for two years.
- iii) This option is likely to impact on recreational fishing activity within the taiapure.
- iv) This option is expected to have no significant cost in terms of commercial fishing within the taiapure. Although the southern side of Huriawa Peninsula is open to commercial paua fishing, no paua has been commercially taken within the relevant statistical area in the last five years.
- v) Cockles are commercially harvested from within the taiapure area, but the proposal limits harvesting to currently fished beds.
- vi) This option is endorsed by the local fisheries and community groups represented on the Committee, tangata whenua and all cockle quota holders. Some recreational fishing groups in the wider Dunedin area have indicated they oppose any reduction in daily bag limits within the taiapure area.
- vii) There will be increased compliance and enforcement costs for aspects of this option.

q) **Preferred option**

- i) Modification of the Committee's proposals after consultation with the community and affected fishers has been completed. This would allow for consideration of information received in submissions, and mitigation of any costs identified during the consultation process.

r) **Implementation and review**

- i) The Committee requests the measures be in place for the 2009/2010 summer.
- s) **Consultation**
  - i) Consultation on the proposals will be undertaken by the Committee, and by MFish on behalf of the Minister of Fisheries.
  - ii) The proposals will be notified in local newspapers, sent to interested parties and posted in full on the MFish website. The Committee has taken the proposal to the groups they represent and it has been endorsed.

**Appendix 3: East-Otago Taiapure Proposal to Establish Regulations  
(February 2009)**

<http://www.fish.govt.nz/NR/rdonlyres/3D68DF09-2BB6-449B-8BE4-B050D799111B/0/EOTaiapurecommitteerecommendations.pdf>