

Regulatory Impact Statement

Amendment of the Akaroa Harbour Taiāpure boundary.

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI).

It provides an analysis of an option to incorporate an additional 55 hectares (ha) between Elephant Head and the Manukatahi Stream (the Additional Area) within the Akaroa Harbour Taiāpure¹ (the Taiāpure). MPI prefers this option to the status quo.

MPI also proposes the Akaroa Harbour Taiāpure Order 2006 (the Order) be amended to:

- Better align the boundary of the Taiāpure with two neighbouring marine reserves; and
- Correct the description of the boundary of the Taiāpure.

MPI considers that these two changes are technical amendments which do not require regulatory impact analysis. So, the analysis in this RIS focuses on the proposal in regard to the Additional Area.

The analysis in this RIS relies on submissions made during previous consultation processes (between 1996 and 2013). Those processes related to the establishment of a marine reserve over part of the Akaroa Harbour. The analysis assumes that the proposal to incorporate the Additional Area in the Taiāpure does not raise any issues not traversed in those consultations. MPI has not undertaken further consultation.

The proposal to incorporate the Additional Area is consistent with and would implement previous ministerial decisions.

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¹ A taiāpure-local fishery is a local management tool established in an area that has customarily been of special significance to an iwi or hapū as a source of food or for spiritual or cultural reasons (s 174 of the Fisheries Act 1996). Taiāpure-local fisheries provide a way for Tangata Whenua to become involved in the management of fishing in their area.

Executive summary

MPI proposes that the Fisheries (Akaroa Harbour Taiāpure) Order 2006 (the Order) be amended to incorporate an additional 55 ha area between Elephant Head and the Manukatahi Stream (the Additional Area) into the Akaroa Harbour Taiāpure (the Taiāpure). See Map 1.

This proposal is a result of a series of processes around the Taiāpure and the Akaroa Marine Reserve. It is consistent with previous ministerial decisions and the recommendations of a Tribunal of the Maori Land Court. The Additional Area is the only part of the Harbour not currently covered by the Taiāpure, the Akaroa Marine Reserves or fish farm designations.²

The Additional Area is of special significance to the three local Ngāi Tahu rūnanga (Ōnuku, Wairewa and Koukourārata). Including the Additional Area in the Taiāpure would provide recognition of that special significance and better provide for rangatiratanga and the right secured in relation to fisheries under Article II of the Treaty of Waitangi.

Not including the Additional Area in the Taiāpure means three different sets of rules apply in close proximity. This makes fisheries management rules more complex and could cause confusion. Lower bag limits and no take areas in other parts of the Akaroa Harbour could also result in increased recreational fishing pressure within the Additional Area.

MPI also proposes the Order be amended to better align the boundaries of the Taiāpure with neighbouring marine reserves and to correct an error in the description of the boundary of the Taiāpure.

Status quo

In 2005, the then Minister of Fisheries, the Hon David Benson-Pope, approved the Maori Land Court Tribunal's (the Tribunal) recommendation that the Taiāpure be established. As part of its report, the Tribunal recommended that the Dan Rogers area be excluded from the Taiāpure. The Dan Rogers area was then the subject of a marine reserve application. The Tribunal also recommended the Dan Rogers area become part of the Taiāpure in the event it did not become a marine reserve. The Additional Area is part of the Dan Rogers area.

The Akaroa Marine Reserve was established in 2014, over most of the Dan Rogers area. However, the then Minister of Conservation, Hon Nick Smith, excluded the Additional Area from the marine reserve and recommended it instead be included in the Taiāpure. Minister Smith's recommendation is consistent with the Tribunal's recommendation that the Dan Rogers area should be included in the Taiāpure if it did not become a marine reserve.

In 2009, following the recommendation of the Akaroa Taiāpure Management Committee (the Committee), the Government reduced recreational fishing bag limits³ and prohibited the recreational take of sea horse from the Taiāpure.⁴ In the Additional Area (and in marine

² The Additional Area comprises around 10% of the Dan Rogers Area. The Akaroa Marine Reserve covers 512.15 ha of the Harbour. The four marine farms total around 10 ha. The Taiāpure comprises the remainder of the Harbour (extending beyond the entrance) plus Haylocks and Damons bays.

³ Section 123 of the Fisheries (Amateur Fishing) Regulations 2013 (the Amateur Regulations) sets out the lower daily bag limits that apply within the Taiāpure. Limits include: 10 combined finfish (compared to 30 finfish elsewhere in the South-East Fisheries Management Area); 3 blue cod (30 elsewhere); 3 blue moki (15 elsewhere); 3 butterfly (15 elsewhere), 20 cat's eye (no limit elsewhere); 20 cockles (150 elsewhere); 3 red cod (10 elsewhere); 3 rock lobster (6 elsewhere), 3 sea perch (no limit elsewhere), 3 trumpeter (15 elsewhere).

⁴ Regulation 132 of the Amateur Regulations prohibits the taking of sea horse from the Taiāpure.

farms), higher bag limits continue to apply and sea horse may be taken. The Akaroa Marine Reserve is a no-take area.

Problem definition

The different rules between areas within the Akaroa Harbour, and in close proximity to each other, has the potential to confuse recreational fishers. The different bag limits could also result in increased recreational fishing pressure on fish stocks within the Additional Area.

There are also issues with the boundary description in the Order. These are:

- Differences in the Department of Conservation's and MPI's mapping standards have resulted in misalignment between the Taiāpure and the neighbouring Akaroa and Pohatu Marine Reserves;
- One of the Taiāpure reference points (the Wainui Leading Lights) is not a stationary point and has moved subsequent to the establishment of the Taiāpure; and
- One of the coordinates (at Timutimu head) is incorrect.

Objectives

Objectives against which options are assessed include:

- The objective for provisions under the Fisheries Act 1996 relating to taiāpure-local fisheries and customary fishing, as set out in s 174, which is:
 - to make, in relation to areas of New Zealand fisheries waters that have customarily been of special significance to any iwi or hapu, either as a food source or 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 (Objective 1);
- Consistency with previous ministerial decisions and the Tribunal's recommendations (Objective 2); and
- The government objective of better and less regulation⁵ (Objective 3).

Options and impact analysis

Two options are considered (see Table 1):

- Option 1 – status quo (no action): The Additional Area does not become part of the Taiāpure.
- Option 2: The Order is amended to incorporate the Additional Area into the Taiāpure. Lower bag limits and a prohibition on taking sea horse would apply to recreational fishing within the Additional Area (MPI's preferred option).

Non-regulatory options would not provide recognition of rangatiratanga. Primarily, this is because the Committee is not empowered to recommend regulations for areas (such as the Additional Area) outside the Taiāpure. Non-regulatory options also do not provide recognition of the special significance of the area to Ngāi Tahu runanga.

⁵ As expressed in the Government Statement on Regulation: Better Regulation, Less Regulation (issued on 17 August 2009).

Table 1: Assessment of options

Key: ✓ = option meets the objective; ✕ = option does not meet the objective; ? = uncertain if the option meets the objective; N/A = assessment against the option is not applicable to the option

	Option 1: Status quo	Option 2: Amend the Order to incorporate the Additional Area (preferred option)
Objective 1: Better provision for rangatiratanga	✕ Rangatiratanga is provided for within the Taiāpure, but not within the Additional Area. The Committee is not able to make recommendations for regulations outside the boundaries of the Taiāpure.	✓ The Additional Area is of special significance to the three local Ngāi Tahu rūnanga (Ōnuku, Wairewa and Koukourārata). Including the Additional Area in the Taiāpure would recognise that special significance and better provide for rangatiratanga and the right secured in relation to fisheries under Article II of the Treaty of Waitangi.
Objective 2: Consistency with previous decisions and recommendations	✕ All decisions and recommendations have been clear that the Dan Rogers area should be either a marine reserve or part of the Taiāpure. Leaving the Additional Area with neither status is inconsistent with those decisions and recommendations.	✓ Incorporating the Additional Area within the Taiāpure is consistent with and implements the outstanding recommendations and decisions of the Tribunal and Ministers.
Objective 3: Better and less regulation	✕ There are three different sets of rules that apply to recreational fishing in Akaroa Harbour: no-take from the Marine Reserve; standard recreational fishing rules that apply within the South-East Fisheries Management Area, ⁶ and Taiāpure-specific rules (lower bag limits and a prohibition on taking sea horse.	✓ Fishing rules would be simplified. With the exception of the marine farms that are excluded from the Taiāpure, the Akaroa Harbour would either be in the no-take Marine reserve or subject to the Taiāpure-specific regulations. Under Option 2, fishing effort would be less likely to be displaced into the Additional Area.

⁶ The Akaroa Harbour is within the South-East Fisheries Management Area.

Compared to the status quo, Option 2 would also result in some lost opportunities for tourist and charter boat operators and for recreational fishers in the short to medium term. This is due to the extension of the Taiāpure Regulations to the Additional Area. MPI does not have accurate information about recreational take to quantify this cost. But, it may be offset by opportunities outside the harbour and by improvements in species abundance over time.

There are no impacts on commercial fishing, marine farming or other interests under either option.

The proposal to incorporate the Additional Area into the Taiāpure could also be approached as a new taiāpure proposal under Part 9 of the Fisheries Act 1996. However, this would likely delay resolution of this issue for a number of years, particularly as it would require a further public inquiry by a Tribunal of the Maori Land Court.

The statutory process set out under Part 9 would provide a further opportunity for interested parties to object and make submissions. However, MPI considers that all relevant matters have already been covered during previous process, particularly as the Additional Area was considered in those previous processes. MPI does not consider that the further cost and delay in approaching this as a new taiāpure proposal is justified.

Consultation

No consultation has been undertaken on the specific proposal to incorporate the Additional Area in the Taiāpure. MPI considers previous consultation processes have traversed all relevant issues and that no new concerns would be raised in any further consultation. The proposal arose out of those previous consultation processes and has taken into account concerns raised during those processes.

In 2002, the Ministry of Fisheries (MFish) consulted on the proposal to establish a taiāpure-local fishery over the whole of Akaroa Harbour. In 2004, and in a re-hearing in 2005, a Tribunal of the Maori Land Court undertook a public enquiry into all objections and submissions on the proposed taiāpure-local fishery. In 2008, MFish consulted on proposed amateur fishing regulations for the Taiāpure. The Committee also undertook its own consultation with the local community prior to proposing the regulations.

In 1996, 2006 and 2012, the Department of Conservation consulted on the application to establish a marine reserve over part of the Akaroa Harbour. MPI undertook consultation on the marine reserve application in 2013.

No one has challenged Minister Smith's decision to exclude the Additional Area from the Marine Reserve or his recommendation that it be included in the Taiāpure. Minister Smith took submissions on the Marine Reserve into account in making his recommendation in regard to the Taiāpure. The Tribunal also took objections and submissions into account when it made its recommendation in regard to the Dan Rogers area.

Conclusions and recommendations

MPI considers that the proposal to incorporate the additional 55 ha into the Taiāpure better provides for rangatiranga and the right secured in regard to fisheries under Article II of the Treaty of Waitangi. MPI also considers that it is consistent with previous ministerial decisions and recommendations, and the Tribunal's recommendations.

MPI recommends the Additional Area be incorporated by amending the Order. The technical amendments required to address the boundary issues could be done concurrently.

Implementation plan

If approved, MPI expects the amendments to come into effect on October 2015.

Following the amendments to the Order, the Taiāpure-specific regulations will automatically apply to the additional area. MPI will update its signage, pamphlets and material posted on its website and in the NZ Fishing Rules app to reflect the changes. Enforcement of the regulations will be carried out by MPI's compliance officers, supported by Honorary Fishery Officers.

Monitoring, evaluation and review

No monitoring specific to the Taiāpure is planned. No concerns have been raised about the Taiāpure-specific regulations since they came into effect in 2009. MPI will respond to any concerns that may be raised in the future, on a case-by-case basis.

Appendix

Map 1: Akaroa Harbour Taiāpure, Elephant Head - Manukatahi Stream area (the Additional Area), Marine Reserves and marine farms.

