



12 July 2019

Document Number: B19-0299

Fisheries Regulations Recommended by the East Otago Taiāpure Management Committee

Purpose:

This briefing seeks your decision on regulations recommended to you by the East Otago Taiāpure Management Committee.

Minister	Action Required:	Minister's Deadline
Minister of Fisheries	<p>Note the contents of this briefing.</p> <p>Agree to the regulations recommended by the East Otago Taiāpure Management Committee.</p> <p>Note that, if you agree to the recommended regulations, Fisheries New Zealand will prepare papers for submission to the Cabinet Economic Development Committee.</p>	As soon as convenient.

Comments:

Some regional public interest is expected relating to your decisions.

Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
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Key Messages

1. This briefing provides you with final advice on regulations recommended to you by the East Otago Taiāpure Management Committee (Management Committee).
2. In summary, the recommended regulations are:
 - Closure of recreational and commercial pāua fishing within the taiāpure.
 - Prohibiting the harvest of seven species of kelp: *Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *Marginariella urvilliana* and *Lessonia variegata* within the taiāpure.
 - Prohibiting the commercial and recreational use of set-nets within the taiāpure.
 - Requiring all fishers to hold only whole or gilled/gutted fish aboard their vessels when fishing within the taiāpure. (Prohibiting filleting at sea)
3. Fisheries New Zealand publicly consulted on your behalf on the recommended regulations for six weeks from 26 October until 7 December 2018. The document was released on Fisheries New Zealand's website, and persons or organisations with an interest in and/or affected by the proposals were notified of the consultation process by an email directing them to the consultation webpage. Notification of the consultation was sent to 412 recreational fishers located in the Otago region, and face to face meetings were held with key commercial and recreational fishing groups.
4. Twelve submissions were received. While the majority of submissions supported the proposed regulations, there were three objections to the temporary closure of the recreational pāua fishery and to prohibiting filleting at sea. There was also an objection to prohibiting cutting *Macrocystis*.
5. Commercial pāua fishers (represented by PāuaMAC5) initially objected to the proposed closure to commercial pāua fishing. However, following meetings facilitated by Fisheries New Zealand between the Management Committee and PāuaMAC5, this objection was withdrawn.
6. Based on the best available information, Fisheries New Zealand considers that the recommended regulations are likely to benefit fisheries within the taiāpure. While the pāua closures, in particular, will impact utilisation, there is evidence of a sustainability concern, and the scale of impact is not large with the closure being temporary, pending recovery of the pāua stocks.

7. Fisheries New Zealand recommends that you approve the regulations recommended to you by the Management Committee.
8. Should you agree to the recommended regulations, amendments to the Fisheries (Amateur Fishing) Regulations 2013 and the Commercial (South-east Area Fisheries) regulations 1986 will be required. After your decisions, Fisheries New Zealand will provide you with an Economic Development (DEV) Cabinet Committee paper to submit to Cabinet for approval at a DEV meeting in August 2019 (to be confirmed).

Recommendations

9. Fisheries New Zealand recommends that you:

- a) **Note** the contents of this briefing.

Noted

- b) **Agree** to close the recreational pāua fishery within the East Otago Taiāpure:

Agreed / Not Agreed

- c) **Agree** to close the commercial pāua fishery within the East Otago Taiāpure:

Agreed / Not Agreed

- d) **Agree** to prohibiting the harvest of seven species of attached kelp: *Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *M. urvilliana* and *Lessonia variegata* within the East Otago Taiāpure:

Agreed / Not Agreed

- e) **Agree** to prohibit the commercial and recreational use of set-nets in the waters of the East Otago Taiāpure:

Agreed / Not Agreed

- f) **Agree** to prohibit filleting fish at sea by requiring all fishers to hold only whole, gilled and/or gutted fish aboard their vessels when fishing within the East Otago Taiāpure:

Agreed / Not Agreed

AND

- g) **Note** that, if you agree to the recommended regulations, Fisheries New Zealand will prepare papers for submission to the Cabinet Economic Development Committee.

Noted

Dan Bolger
Deputy Director General
Fisheries New Zealand

Hon Stuart Nash
Minister of Fisheries
/ / 2019

Background

Purpose

10. This document seeks your approval of regulations recommended to you by the East Otago Taiāpure Management Committee (the Management Committee) to apply within the taiāpure.

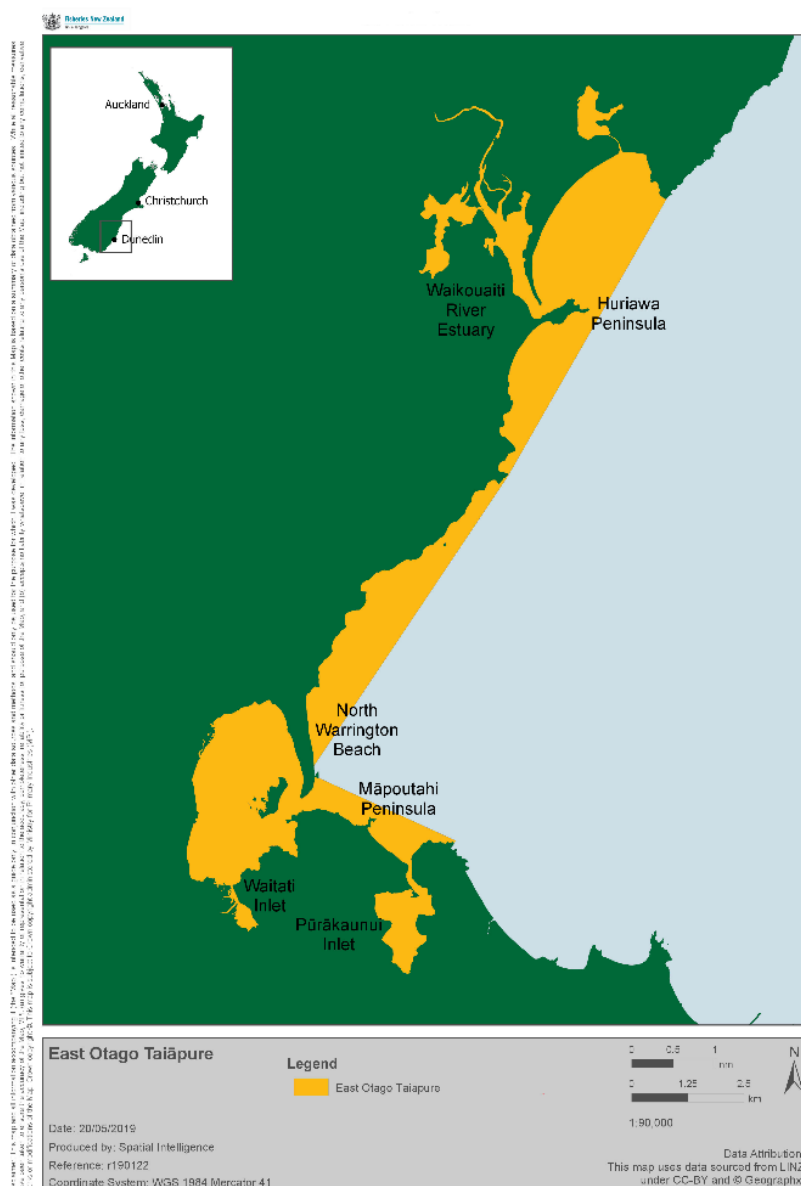


Figure 1: Map of the East Otago Taiāpure.

Objective

11. The objective of the recommendations is to provide for the utilisation of fisheries while ensuring sustainability within the East Otago Taiāpure. The recommendations also recognise rangatiratanga in the management of local fisheries, and the rights secured by Māori in relation to fisheries by Article II of the Treaty of Waitangi.

Proposal

12. The Management Committee is proposing five regulatory changes to apply within the taiāpure:
 - i) closure of the recreational pāua¹ fishery;
 - ii) closure of the commercial pāua fishery
 - iii) prohibiting harvesting of seven species of kelp;
 - iv) prohibiting the use of set-nets; and
 - v) prohibiting filleting fish at sea.
13. The Management Committee considers that the proposed changes are needed to address a decline in fish stocks in the taiāpure and, thereby, enable sustainable use into the future.

Problem Definition and Background

East Otago Taiāpure

14. The East Otago Taiāpure, set up under Part IX of the Fisheries Act 1996 (the Act), was gazetted in 1999 and the committee responsible for management was appointed in 2001 by the Minister of Fisheries.
15. The object of Part IX of the Act is to make better provision for the recognition of rangatiratanga and of the rights secured for Māori by way of Article II of the Treaty of Waitangi in relation to fisheries waters of customary significance.
16. The Management Committee is made up of representatives from Kāti Huirapa Rūnaka ki Puketeraki, local recreational fishers, the Karitane Commercial Fishermans' Cooperative, the University of Otago, River-Estuary Care Waikouaiti-Karitane, as well as representatives from the Warrington and Blueskin Bay communities.
17. The objectives of the Management Committee are to:
 - i) ensure customary, recreational and commercial fishers have access to and sustainable use of fisheries resources within the taiāpure;
 - ii) actively promote the use of tikanga (customs) and kawa (protocols) such as rāhui (temporary closures) through the management regulations for the taiāpure (using law to give effect to 'lore');
 - iii) ensure the adverse impacts of human activities on the marine environment, nursery areas, spawning grounds, fisheries habitat and associated and dependant species are avoided, remedied or mitigated; and
 - iv) ensure all fisheries resources from the taiāpure are fit for human consumption.

¹ Both black foot pāua (*Haliotis iris*) and yellow foot pāua (*H. australis*).

18. Under the Act, the Management Committee may recommend making regulations for the conservation and management of fish, aquatic life or seaweed within the area covered by the taiāpure.
19. Previously, at the Management Committee's recommendation, regulations were implemented in 2007 to reduce bag limits of shellfish and finfish species within the taiāpure, including setting a daily bag limit of five pāua per person. A temporary (two year) closure on taking pāua around Huriawa Peninsula also came into effect in 2010, implemented under section 186B of the Act (customary use). This was renewed in 2012, and again in 2014.
20. In 2016 both the Huriawa and Mapoutahi peninsulas were closed to recreational and commercial pāua harvesting indefinitely (i.e. with no end date under Section 11 of the Act).

Pāua

21. At the Management Committee's request, the University of Otago has carried out research to compare relative changes in pāua population structure and abundance from 2008 to the present.
22. The percentage of pāua above minimum harvestable size outside the closure on Huriawa Peninsula, has declined from 14.6% in 2008-09 down to 4.0% in 2016. Against this trend, the percentage of legal sized pāua within the closed area has increased marginally by 1%.
23. The Management Committee considers that the decline in legal sized pāua outside of the closed area shows the reduced recreational bag limit of five pāua per person (implemented in 2010) has not prevented a decline in the abundance of legal sized pāua outside the closed area.
24. The recreational and commercial closures are intended to be lifted, or partially lifted, when continued monitoring by the University of Otago shows the pāua population to have recovered sufficiently to allow sustainable harvest. Given the slow growth rate of pāua, however, the Management Committee does not expect this to be for at least several years.
25. To assist with a rebuild of the stocks, the Management Committee and Otago University are undertaking a programme of rearing pāua spat and then using the spat to reseed depleted areas within the taiāpure. Commercial fishers have also offered to assist with the programme.
26. A regulation under the Fisheries (Amateur Fishing) Regulation 2013 is required to implement a closure to recreational fishing. And, a regulation under the Fisheries (South East Area Commercial Fishing) Regulations 1986 is required to implement a closure to commercial fishing.

Kelp

27. The Management Committee seeks a prohibition on harvesting attached² kelps (*Durvillaea antarctica*, *D. willana*, *Ecklonia radiata*, *Macrocystis pyrifera*, *Marginariella boryana*, *M. urvilliana* and *Lessonia variegata*) from within the taiāpure.
28. The Management Committee considers these habitat-forming native kelps are long-lived, recover slowly (if at all depending on the harvesting method), and are habitats of particular significance for fisheries management.
29. Under these circumstances, the Management Committee considers harvesting seaweed to be problematic, and the introduction of a regulation that prohibits harvesting larger attached kelp from within the taiāpure to be appropriate.

Set-Nets

30. The Management Committee proposes the prohibition of set-net use in those parts of the taiāpure not covered by the Hector's Dolphin Threat Management Plan (TMP), such as the Waikouaiti River, Waitati, and Purakaunui estuaries.
31. This regulation would supersede another which was implemented in 2007 at the recommendation of the Management Committee, requiring set-net fishers active within the taiāpure to remain within the immediate vicinity of their net at all times.³

Filleting at Sea

32. To assist recovery of finfish stocks and to respect tikanga within the taiāpure, the Management Committee has recommended the introduction of a taiāpure-wide regulation to require fishers to possess finfish in a whole or gutted (measurable) state when aboard fishing vessels within the taiāpure. The Management Committee believes that landing whole or gutted fish would encourage fishers to eat all edible parts of the fish rather than just the fillets, which in turn, may reduce fishing pressure on finfish stocks as fishers will have caught a 'feed' with fewer fish being killed.
33. The Management Committee also notes this measure will recognise the tikanga of Kāti Huirapa ki Puketeraki that requires full use of any fish caught and which forbids the discharge of fish offal into the ocean, and, may also assist in the enforcement of minimum legal sizes, especially with blue cod (*Parapercis colias*).

² The state of being attached (rooted) to hard surfaces in the natural marine environment.

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

Statutory Considerations

34. In addition to the advice provided in this paper, an analysis of the statutory considerations relevant to your decisions is provided in Appendix One.

Input and Participation of Tangata Whenua and Kaitiakitanga

35. Section 12(1) says that before setting or varying any sustainability measure under the Act you are required to:
- Consult with those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including, but not limited to, Māori, environmental, commercial and recreational interests; and
 - Provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned; and have particular regard to kaitiakitanga.
36. Under Section 12(1)(b) you must also have particular regard to kaitiakitanga before setting or varying sustainability measures mentioned under Section 11 of the Fisheries Act 1996. Under the Fisheries Act 1996, kaitiakitanga is the exercise of guardianship, and in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori.
37. With regard to Section 12(1), Fisheries New Zealand notes that Kati Huirapa are tangata whenua and it is they who have sought the establishment of the East Otago Taiāpure and who now chair and comprise 50% of the Management Committee. The implementation of these regulations is their expression of kaitiakitanga.
38. Pāua, bladder kelp (*Macrocystis*) and Bull kelp (*Durvillea*) are listed as a taonga species in the Te Waipounamu Iwi Forum Fisheries Plan. The plan contains three objectives that are relevant:
- a) Management objective 1: to create thriving customary non-commercial fisheries that support the cultural wellbeing of South Island iwi and our whānau;
 - b) Management Objective 2: South Island iwi are able to exercise kaitiakitanga; and
 - c) Management objective 5: to restore, maintain and enhance the mauri and wairua of fisheries throughout the South Island.
39. Fisheries New Zealand considers that the recommended regulations will contribute towards the achievement of these three management objectives by giving expression to kaitiakitanga and in ensuring the fishery remains sustainable and that environmental impacts from fishing are minimised.

Consultation

40. Fisheries New Zealand publicly consulted on your behalf on the recommended regulations for six weeks from 26 October until 7 December 2018. The document was released on Fisheries New Zealand's website, and persons or organisations with an interest in and/or affected by the proposals were notified of the consultation process by an email directing them to the consultation webpage. Notification of the consultation was also sent to 412 recreational fishers located in the Otago region.
41. Following receipt of submissions, the Management Committee met with recreational and commercial representatives at meetings facilitated by Fisheries New Zealand. The recreational representatives supported the regulations at these meetings. PāuaMAC5 for commercial pāua fishers initially opposed the proposals but agreed to support them following the meetings.

Summary of Submissions

42. Fisheries New Zealand received 12 submissions (attached in Appendix Two). Most submissions related to all of the proposed regulations. The two submissions from commercial fishers only related to commercial proposals.
43. Submissions were received from the following individuals and organisations:
 - a) Dr T. Ritchie
 - b) R. Beattie
 - c) PāuaMAC 5
 - d) T.J. Farquhar
 - e) R. Jones
 - f) A. Robertson
 - g) R. Young
 - h) W. Fa'asega
 - i) Dr A. Kainamu-Murchie
 - j) G. Boyle
 - k) M. Linwood
 - l) J. Beattie

Views of submitters

Commercial pāua fishing closure

44. Seven submitters supported a prohibition on commercial pāua fishing in the taiāpure, four submitters didn't comment on the proposal and one, PāuaMAC5, objected. In their submission PāuaMAC5 stated that they;
 - do not object to a regulation prohibiting all pāua fishing within the taiāpure, with a review of the regulation when the population has recovered to levels that enable sustainable utilisation;

- believe that the scientific basis and potential consequences of the regulatory proposals have not been fully thought through and that there may be more effective ways of rebuilding pāua populations within the taiāpure; and
 - would like an opportunity to discuss these matters in more detail directly with the Management Committee.
45. PāuaMAC5 subsequently clarified that they were concerned that the recreational closure was proposed as temporary while, for commercial, it was proposed as permanent. The Management Committee agreed to further discussion with representatives of PāuaMAC5 and, consequently, agreed the commercial and recreational fisheries should be treated equally. The Management Committee has referred to the vision of the taiāpure, “to provide for all sectors of the fishery”, and that it is open to considering commercial access when and if the pāua biomass allows.
46. PāuaMAC5 have since responded by withdrawing their objection and supporting the closure.

Closure to recreational pāua fishing

47. Six submitters supported the recreational pāua closure, three object to closing the recreational pāua fishery and three did not comment.
48. The three who opposed the recreational closure submitted that access to pāua was important and considered that more enforcement of the existing rules would reverse any decline, while one submitter wants to see a number of small closed areas and a reduced daily bag limit of 2 – 5 per person.

Prohibition on the harvest of seven species of kelp

49. Six submitters supported a prohibition on the harvest of large kelps within the area of the taiāpure. There was one submission against this proposal while five submitters did not comment on this proposal.
50. R.Beattie did not object *per se*, but supplied a document “Giant Kelp; Giant Opportunity” in which he objects to area closures, which could restrict or prohibit commercial fishing for seaweed. This document is focused primarily at proposals from the South-East Marine Protection Forum, and Mr Beattie has previously sent your office a copy.

Prohibition on set netting

51. Seven submitters support prohibiting set netting within all the areas of the taiāpure. There were no objections.

Prohibiting filleting fish at sea

52. Six submitters support the prohibition of filleting fish at sea. Three submitters did not support prohibiting filleting at sea, citing problems with the disposal of offal and difficulty enforcing such a rule.

Analysis of the Recommended Regulations

Commercial pāua fishery closure

53. Most of the taiāpure is already closed to commercial pāua fishing under regulation 10 of the Fisheries (South-East Area Commercial) Regulations 1986, and two *Gazette* notices, the Fisheries (Huriawa Peninsula Pāua Harvest Closure) Notice 2016 and the Fisheries (Mapoutahi Peninsula Pāua Harvest Closure) Notice 2016.
54. Many of the remaining areas in the taiāpure are considered to have significant areas of 'stunted' pāua stocks, and only the Warrington reef area has supported commercial pāua fishing. Over the last 40 years, accretion of sand in the Warrington reef area has steadily inundated much of the available pāua habitat with sand and significantly reduced the available resource.
55. Consequently, over the last 20 years, commercial pāua fishing in the taiāpure has been intermittent and the average annual catch has been less than 500kg, with more than a tonne being caught on only three occasions. At port price of \$32.50/ kg, this has an annual value of \$16 250.

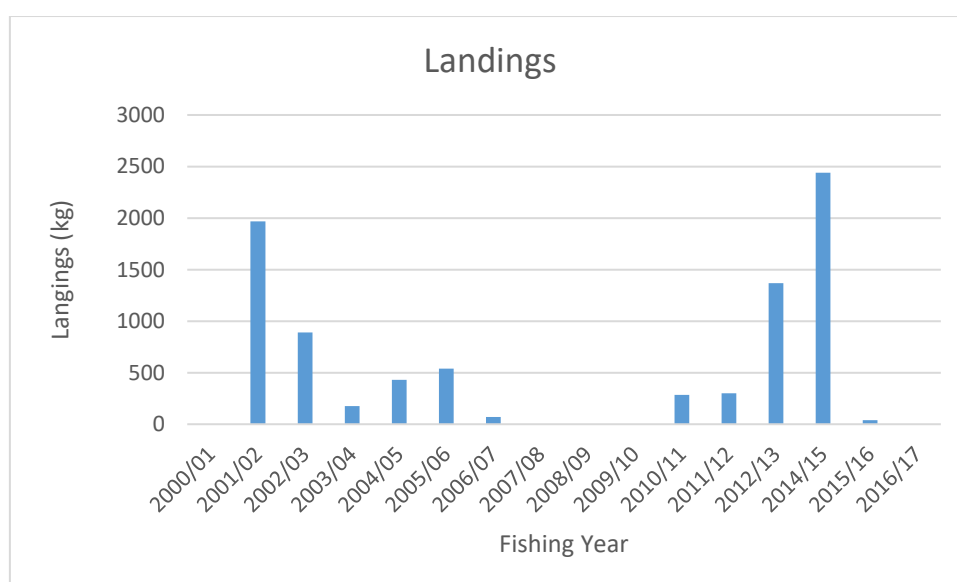


Figure 2: Annual commercial landings of pāua from the East Otago Taiapure area

Recreational pāua fishery closure

56. The taiāpure is popular with shellfish gatherers, especially for cockles from the Waitati Inlet and reef species (including pāua) from the rocky reefs at Warrington Beach.

57. Most recreational pāua fishing within the East Otago Taiāpure tends to be by shore gathering or wading, with a lesser amount gathering by free-diving. Huriawa and Mapoutahi peninsulas are permanently closed to pāua fishing, and much of the remainder of the taiāpure is difficult to access, this means the bulk of recreational pāua harvest is concentrated on the accessible rocky reefs at the north end of Warrington beach.
58. Recreational shellfish gatherers on the Warrington reefs opportunistically take pāua as component of a mixed shellfish bag. As the area is limited to a daily bag of five pāua, while in all other areas in Otago it is ten, more serious pāua harvesters target other areas. Under the Management Committee's proposal, shellfish gatherers will still be able to harvest other shellfish within the taiāpure, however, they will have to forego any pāua they may find on the reefs.
59. Those submitters who oppose the recreational closure submitted that access to pāua was important and considered that other management, such as more enforcement of the existing rules, could also reverse any decline. One submitter suggested a number of small closed areas and a reduced daily bag limit of 2 – 5 pāua per person.
60. The Management Committee notes that the current bag limit within the taiāpure has been already reduced from ten to five since 1 October 2010. Given this reduction has had little effect on the observed decline, further bag limit reductions are unlikely to have a sufficient effect to rebuild the fishery. Further, enforcement of different rules over several small closed areas would be potentially confusing and very difficult to enforce.
61. In terms of the submission that more enforcement would stop the decline, up to a third of all recreational compliance inspections in the whole of the Otago District already occur within the taiāpure. It is not feasible for Fisheries Compliance to divert further capacity into monitoring the pāua fishery within the taiāpure.
62. Concern has been raised that displacement of effort, as a result of the closure, could cause added fishing pressure to other areas within PAU 5D, however, as noted serious pāua fishers targeting more than the restricted daily bag limit within the taiāpure are already fishing in other places. The 2011/12 National Panel Survey estimated recreational harvest in PAU 5D, which covers the area from the Waitaki River to the Waiau River in Te Waewae Bay, to be 22.45 tonnes, and the 2017/18 survey estimated a harvest of 19.28 tonnes. Based on Compliance Officer inspection reports and recreational fishers feedback, while popular, only a modest amount is likely to be taken within the taiāpure.
63. Overall, a temporary closure to recreational pāua fishing in the East Otago Taiāpure, will reduce access to pāua for both local and Dunedin based fishers, however, many other accessible pāua beds are available at Shag Point, Brighton, Bruce's Rocks, the Aramoana Mole and Otago Peninsula.

Prohibition on the Harvest of Seven species of Kelp

64. The role of large kelps in the marine environment is important and wide ranging. Kelps are considered “ecosystem engineers” due to the significant number of functions they perform including providing essential habitat, supporting coastal food webs as nutrition sources and absorbing the destructive force of waves, amongst many others.
65. Fisheries New Zealand notes that the “Giant Kelp” document, submitted by R. Beattie, is aimed at the South East Area Marine Protection, which recommended options involving protection of bladder kelp (*Macrocystis*) beds located to the north of the taiāpure. Relative to these beds the size of the beds within the taiāpure boundaries is small and are unlikely to be of economic size.
66. Fisheries New Zealand also notes that there has been no commercial harvest of bladder kelp within the taiāpure and that commercial landings of bladder kelp within the rest of KBB 3G have averaged only 3% of the 1 236 tonnes Total Allowable Commercial Catch since it entered the Quota Management System (QMS) in 2010. None of the other species are in the QMS.
67. Recreational harvest of seaweeds within the taiāpure is limited to beachcast seaweed (for garden composting) and small amounts of other species (eg *Porphyra* - karengo).

Prohibition on Set Netting

68. There were no submissions against this proposal.
69. The Management Committee proposes the prohibition of set-net use in those parts of the taiāpure not covered by the Hector’s Dolphin Threat Management Plan, such as the Waikouaiti River, Waitati, and Purakaunui estuaries.
70. This regulation would supersede another which was implemented in 2007 at the recommendation of the Management Committee, requiring set-net fishers, active within the taiāpure, to remain within the immediate vicinity of their net at all times.⁴ This regulation would become redundant and would need to be repealed.
71. There is no commercial set-netting and Fisheries New Zealand understands that there is little recreational set-netting within these estuarine waters. Drag netting for flounder is popular but would be unaffected by this proposal.
72. Fisheries New Zealand considers that a prohibition would stop the possibility of interactions with marine mammals and sea birds, especially sea lions and blue penguins, which have been regularly observed within these areas.

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

Prohibition on Filleting at Sea

74. Three submitters did not support prohibiting filleting at sea, citing problems with the disposal of offal and difficulty enforcing such a rule.
75. The Management Committee have responded that while fishers may find a way around this regulation (landing outside the taiāpure boundary) and disposal of offal may locally pose some issues, they see these issues as surmountable. They remain committed to the tikanga of Kāti Huirapa ki Puketeraki that requires full use of any fish caught (landing gilled and gutted is acceptable).
76. The Management Committee also notes this measure will recognise tikanga which forbids the discharge of fish offal into the ocean, and may also assist in enforcing minimum legal sizes, especially with blue cod (*Parapercis colias*).
77. Fisheries New Zealand notes that respecting the tikanga of tangata whenua would be consistent with the purposes of Part IX of the Act. Fisheries New Zealand also notes that the requirement to land fish whole is an existing provision in the Marlborough Sounds and is being considered in the National Blue Cod Strategy.
78. Based on the best available information, Fisheries New Zealand considers that this recommended regulation would not restrict utilisation, would be consistent with the Act and could contribute to better use of the resource.

Implementation, monitoring, and review

79. Should you approve the regulations, Fisheries New Zealand will provide you with an Economic Development (DEV) Cabinet Committee paper to submit to Cabinet seeking their approval.
80. Should DEV agree to implement the regulations, amendments to the Fisheries (Amateur Fishing) Regulations 2013 and the Fisheries (South East Commercial Fishing) Regulations 1986 will be required.
81. Stakeholders and submitters would be made aware of any changes through publication of this Decision Document and a Decision Letter on the Fisheries New Zealand website and through email.
82. If the regulations are made, new brochures including updated bag limit information will be published and circulated. Additionally, Fishery Officers will educate recreational fishers about the new rules. Updating local signage will also be required.

83. Should a regulation prohibiting set netting in all the waters within the taiāpure be introduced, this would render r.3F of the Fisheries (South-East Area Commercial Fisheries) Regulations 1986 and r.134 of the Fisheries (Amateur Fishing) Regulations 2013 redundant. These regulations require set netters to stay with their nets, however, this will be obsolete if set netting itself is a prohibited practice. Fisheries New Zealand recommends these regulations be revoked. Further, r.10BA of the South-East commercial regulations, which closes the Huriawa Peninsula to pāua fishing from 2010 until 2012, would also be redundant and should be revoked.
84. Kati Huirapa and the Management Committee, in conjunction with Otago University, have undertaken to enhance the pāua population using artificially reared juvenile pāua and to also continue the survey programme for pāua first started in 2008.

Conclusion

85. Fisheries New Zealand has consulted on the regulations recommended by the East Otago Taiāpure Management Committee.
86. Based on the best available information, Fisheries New Zealand considers that the recommended regulations would contribute to improved fisheries abundance of the relevant fish stocks in the taiāpure, while noting the proposals, particularly those relating to pāua, would have an impact on utilisation of fish stocks in the short to medium term.
87. Fisheries New Zealand recommends you agree to approve the regulations recommended by the East Otago Taiāpure Management Committee.

Appendix One: Statutory Considerations

1. Beyond the matters already discussed in this briefing, the sections of the Fisheries Act 1996 relevant for your decision are outlined below.

Legal Considerations

Purpose of the Act

2. The purpose of the Fisheries Act 1996 (the Act) is to provide for the utilisation of fisheries resources while ensuring sustainability. “Utilisation” and “ensuring sustainability” are terms that are defined in the Act as follows:
3. *Ensuring sustainability* means—
 - (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
 - (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.
4. *Utilisation* means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.
5. Fisheries New Zealand considers the recommended regulations to be consistent with the purpose of the Fisheries Act. While a loss of utility does accompany three of these proposals, each regulation is expected to provide greater certainty around ensuring sustainability.

Environmental Principles

6. The Act outlines environmental principles that shall be taken into account when exercising or performing functions, duties, or powers under the Act, these being:
 - a) associated or dependent species should be maintained above a level that ensures their long-term viability;
 - b) biological diversity of the aquatic environment should be maintained;
 - c) habitat of particular significance for fisheries management should be protected.
7. Fisheries New Zealand considers all the proposed regulations are consistent with the environmental principles of the Act.
8. There are no known associated or dependent species that will be affected by the proposals except where a set net prohibition would assist protection of marine mammals and sea birds.

9. There is limited information to assess the effects of the pāua population on biological diversity of the coastal environment. Pāua populations are an important part of the ecosystem. It's possible that a cessation in harvest will lead to positive outcomes for ecosystem diversity and health, especially if accompanied by protection of macro-algae.
10. No habitats of particular significance for fisheries management have been identified in these areas. Habitats are unlikely to be negatively affected by any of the recommended measures as all will likely lead to decreased impacts and improved outcomes for habitat quality.

Information Principles

11. Section 10 of the Act says that all persons exercising or performing functions, duties, or powers under the Act in relation to the utilisation of fisheries resources or ensuring sustainability shall take into account the following information principles :
 - a) decisions should be based on the best available information:
 - b) decision makers should consider any uncertainty in the information available in any case:
 - c) decision makers should be cautious when information is uncertain, unreliable, or inadequate:
 - d) 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 this Act.
12. Fisheries New Zealand has based the analysis in this paper on the best available information and noted uncertainties where relevant. Fisheries New Zealand considers that, based on the best available information, the recommended regulatory changes will ensure continued sustainable utilisation while giving expression to rangatiratanga and the right secured in relation to fisheries by Article II of the Treaty of Waitangi, as set-out in Part IX (Taiāpure-local fisheries and customary fishing) of the Act.

Section 11 – Sustainability Measures

13. Section 11(1) allows sustainability measures (such as a bag limits) to be set or varied after the following factors are taken into account:
 - a) *Any effects of fishing on any stock and the aquatic environment.*
Any effects that result from the recommended regulations being implemented are likely to have positive outcomes for the stocks and aquatic environment within the taiāpure.
 - b) *Any existing controls under the Act that apply to the stock or area concerned.*
Fisheries New Zealand notes that, should the regulations be implemented, two regulations (r.3F & r.10BA) in the Fisheries (South East Area Commercial Fishing) Regulations 1989 will become redundant. These are addressed in more detail in section 8.4 Implementation, Monitoring and Review.

- c) *The natural variability of the stock.*
Natural variability of stocks means that stocks will naturally increase and decrease over time. Fisheries New Zealand anticipates that this relationship will favour increases in the stocks of the taiāpure by reducing fishing pressure and improving fishery habitats.
14. Section 11 (2) says that before any sustainability measure is set or varied you must have regard to any provision of any of the following that apply to the coastal marine area and are considered to be relevant:
- a) Any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991 (RMA).
 - b) Any management strategy or management plan under the Conservation Act 1987.
 - c) Sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000.
 - ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
 - d) A planning document lodged with the Minister of Fisheries by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011.
15. Fisheries New Zealand is not aware of any matters in 11(2)(a) to (d) above that impact on the proposals in this paper.
16. Section 11 (2A) says that before any sustainability measure is set or varied you must take into account:
- a) Any conservation services or fisheries services;
 - b) Any relevant fisheries plan approved under this Part; and
 - c) Any decisions not to require conservation services or fisheries services.
17. Conservation services are administered by the Department of Conservation. Fisheries New Zealand is not aware of any existing conservation services concerning these fisheries. There are no relevant fisheries plans approved under subsection (2A). There is a draft National Fisheries Plan for Inshore Shellfish, and Fisheries New Zealand has considered this draft plan in the development of these proposals. Fisheries New Zealand is unaware of any decisions relevant for the purposes of s 11(2A)(c).

SECTION 12 – *Tangata Whenua Input and Participation and Consultation*

18. Section 12(1) says that before setting or varying any sustainability measure under the Act the Minister is required to:
- Consult with those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including, but not limited to, Māori, environmental, commercial and recreational interests; and

- Provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned or an interest in the effects of fishing on the aquatic environment in the area concerned; and have particular regard to kaitiakitanga.
19. Under Section 12(1)(b) you must also have particular regard to kaitiakitanga before setting or varying sustainability measures mentioned under Section 11 of the Fisheries Act 1996. Under the Fisheries Act 1996, kaitiakitanga is the exercise of guardianship, and in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Māori.
 20. With regard to Section 12(1), Fisheries New Zealand notes that Kati Huirapa are the tangata whenua and it is they who have sought the establishment of the East Otago Taiāpure and who now chair and comprise 50% of the Management Committee and the implementation of these regulations is their expression of kaitiakitanga.
 21. Pāua are listed as a taonga species in the Te Waipounamu Iwi Forum Fisheries Plan. The plan contains two objectives that are relevant:
 - a) Management objective 1: to create thriving customary non-commercial fisheries that support the cultural wellbeing of South Island iwi and our whānau;
 - b) Management Objective 2: South Island iwi are able to exercise kaitiakitanga; and
 - c) Management objective 5: to restore, maintain and enhance the mauri and wairua of fisheries throughout the South Island.
 22. Fisheries New Zealand considers that the management settings presented in this advice paper will contribute towards the achievement of these three management objectives by giving expression to kaitiakitanga and in ensuring the fishery remains sustainable and that environmental impacts are minimised.