



Spatial Planning and Allocations  
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Fisheries New Zealand  
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13 April 2021

**RE: Proposed temporary closure of eastern Coromandel waters to the harvest of scallops.**

#### **SUBMITTER DETAILS**

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#### **1. Introduction**

- 1.1. This is a submission on the request prepared by the Ngāti Hei Trust on behalf of Ngāti Hei ki Wharekaho (Ngāti Hei) for a temporary closure of part of the marine and coastal area located off the eastern Coromandel coastline to the harvest of scallops (the request).<sup>1</sup>
- 1.2. The Environmental Defence Society (EDS) is a not-for-profit organisation dedicated to achieving good environmental outcomes for all New Zealanders. It has a track record that demonstrates a long-standing commitment to the improvement of marine species and ecosystem management within Ko te Pataka kai o Tikapa Moana Te Moananui a Toi / Hauraki Gulf Marine Park;<sup>2</sup> and is actively involved in litigation and research programmes that seek to improve oceans management in Aotearoa New Zealand.

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<sup>1</sup> Ngāti Hei Trust, (2021), *Request for Rāhui to be Enforced Under Section 186A*. Request prepared on behalf of Ngāti Hei ki Wharekaho, dated 10 February 2021. Available at: <https://www.mpi.govt.nz/dmsdocument/44497-Proposed-temporary-closure-of-the-eastern-Coromandel-coast-to-the-harvest-of-scallops-application-letter>

<sup>2</sup> Recent publications of relevance to the issues raised by this submission include: Peart, R. and Cox, B. (2019) Governance of the Hauraki Gulf: A review of options. Environmental Defence Society. Auckland, NZ; and Peart, R. (2018) Voices from the Sea. Environmental Defence Society. Auckland, NZ. Both publications are available at: <https://www.eds.org.nz/our-work/publications/>

## 2. Summary of submission

- 2.1. EDS supports Ngāti Hei's request for the Minister of Oceans and Fisheries (the Minister) to implement a temporary closure of a part of the coastal and marine area off the eastern Coromandel coast to the harvest of scallops under section 186A(1)(a) of the Fisheries Act 1996 (the Act).
- 2.2. EDS notes that there appears to be a discrepancy in the spatial extent of the area requested by Ngāti Hei and the area notified by the Ministry for Primary Industries (MPI). EDS submits that the boundaries of the proposed temporary closure area should be amended to encapsulate the full breadth of the territorial sea in accordance with Ngāti Hei's request. The waters encapsulated by the amended area are within the scope of the Minister's powers under section 186A of the Act; and the amendment will enhance the potential for scallop stocks in the area to replenish in accordance with the objectives of Ngāti Hei's request.
- 2.3. EDS urges the Minister to implement the removal of scallop dredging from the Hauraki Gulf Marine Park Act as set out in the Sea Change Tai Timu Tai Pari marine spatial plan.
- 2.4. EDS urges the Minister to undertake a survey of scallop populations within the Hauraki Gulf Marine Park without delay.

## 3. The request

- 3.1. By letter dated 10 February 2021, Ngāti Hei requested that the Minister exercise his powers under section 186(A)(1)(a) of the Act to close part of the eastern Coromandel coastal and marine area to the harvest of scallops for a minimum period of 2 years.<sup>3</sup> The requested closure area is described as Ngāti Hei's rohe (*'Te Rohe Moana O hei O Wharekaho'*) and is located within the Hauraki Gulf Marine Park.
- 3.2. Ngāti Hei advised the Minister that they placed a rāhui over the inshore area of Opito Bay on 17 December 2020, along with a voluntary ban on the customary and recreational harvest of scallops from within the area.<sup>4</sup> Ngāti Hei also advised that they are coordinating a citizen-science initiative to obtain baseline data on the abundance and distribution of scallops within the Opito Bay area.<sup>5</sup> The data will be used to inform the development of a Fisheries Management Plan.
- 3.3. Ngāti Hei expressed concerns about the decline of scallop populations along the eastern Coromandel coastline and adverse impacts on customary harvest practices.<sup>6</sup> They also raised concerns about the impacts of commercial scallop harvest methods (namely dredging) on scallop habitat and the marine environment more broadly.<sup>7</sup>

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<sup>3</sup> Ngāti Hei Trust, above n 1, Appendix 1, at page 6.

<sup>4</sup> Ngāti Hei Trust, above n 1, at page 2.

<sup>5</sup> Ngāti Hei Trust, above n 1, at page 3.

<sup>6</sup> Ngāti Hei Trust, above n 1, at page 4.

<sup>7</sup> Ngāti Hei Trust, above n 1, at page 1 and page 3.

#### 4. Species subject to the proposed temporary closure area

- 4.1. The request seeks to prohibit the harvest of scallops from the coastal and marine area off the eastern Coromandel coastline.
- 4.2. The requested closure area is located entirely within the Hauraki Gulf Marine Park, and within the waters of the territorial sea. The area forms part of the Coromandel scallop fishery (SCA CS).
- 4.3. The SCA CS represents a regionally important commercial fishery extending from Cape Rodney at Leigh in the north to Town Point near Tauranga in the south.<sup>8</sup> Fishing has been undertaken within discrete beds to the west and south of the Mercury Islands, and in the Bay of Plenty (around Motiti and Slipper Islands). All commercial fishing is conducted by self-tipping box dredges.
- 4.4. EDS understands the last biomass survey of SCA CS was undertaken in 2012;<sup>9</sup> and that industry-based surveys were more recently undertaken in 2014 and 2015.<sup>10</sup> Based on the best data available, a plenary report prepared by Fisheries New Zealand in 2019 states:<sup>11</sup>

*“The recruited scallop population in the surveyed area of Hauraki Gulf experienced a major population decrease from 77 million in 2012 to 3 million in 2015; in the other areas surveyed in both years, recruited abundance in 2015 (12 million) was about half the size of that in 2012 (23 million).”*

- 4.5. While the current status of the SCA CS stock is unknown, the trends published by MPI are alarming, and consistent with observed declines in scallop populations off the eastern Coromandel coastline,<sup>12</sup> and elsewhere in the Hauraki Gulf Marine Park.<sup>13</sup> In the face of such marked negative trends in abundance and scientific uncertainty over the status of scallop stocks within the Hauraki Gulf, EDS supports the requested temporary closure of eastern Coromandel waters to the commercial, recreational and customary harvest of scallops for a minimum period of 2 years.
- 4.6. EDS considers the requested temporary closure will promote the objectives of the Hauraki Gulf Marine Park Act 2000 (HGMPA), which seek to recognise and provide for the life-supporting capacity of the Hauraki Gulf as a matter of national significance. Pursuant to section 7 of the HGMPA, the life-supporting capacity of the environment of the Gulf explicitly

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<sup>8</sup> Fisheries New Zealand (2019). Fisheries Assessment Plenary, November 2019: stock assessments and stock status. Compiled by the Fisheries Science and Information Group, Fisheries New Zealand, Wellington, New Zealand. 579p. At page 429.

<sup>9</sup> Fisheries New Zealand, above n 8, at pages 435 to 437.

<sup>10</sup> Fisheries New Zealand, above n 8, at pages 435 to 437.

<sup>11</sup> Fisheries New Zealand, above n 8, at page 437.

<sup>12</sup> Ngāti Hei, above n 1, at 1.

<sup>13</sup> Refer Skipper, H. (2021) Request for Rāhui to be Enforced by the Minister of Oceans and Fisheries. Prepared on behalf of Ngāti Pāoa, dated 25 January 2021. Available at: <https://www.mpi.govt.nz/dmsdocument/43921-Waiheke-Island-application>; and as Hauraki Gulf Forum (2020) “State of our Gulf 2020: Hauraki Gulf / Tikapa Moana / Te Moananui-ā-Toi State of the Environment Report 2020”. Available at: <https://www.aucklandcouncil.govt.nz/about-auckland-council-works/harbour-forums/docsstateofgulf/state-gulf-full-report.pdf>

includes “the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf ...”.

- 4.7. EDS notes that the Sea Change Tai Timu Tai Pari marine spatial plan provided for the removal of commercial and recreational scallop dredging out of the Hauraki Gulf Marine Park due to concerns about the damage dredging causes to the seabed and scallop populations. This needs to be implemented without delay.<sup>14</sup>
- 4.8. EDS notes that the request of Ngāti Hei is not isolated. Indeed, other iwi and hapū have also placed rāhui over parts of their rohe and requested that the Minister exercise his powers to implement temporary closures of important fisheries under the Act. These requests should not be viewed in isolation but taken as a collective call for greater protection of the Hauraki Gulf and marine environment of Aotearoa New Zealand. EDS urges the Minister to consider long-term solutions that are ecosystem focused (i.e. the establishment of a network of permanent no-take areas and implementation of marine spatial plans, including the Sea Change Tai Timu Tai Pari Spatial Plan for the Hauraki Gulf Marine Park).

## 5. Spatial extent of the proposed temporary closure area

- 5.1. There appears to be a discrepancy in the areal extent of the temporary closure area requested by Ngāti Hei and the temporary closure area notified by MPI. The requested temporary closure area is illustrated in a map appended to Ngāti Hei’s letter dated 10 February 2021 and is described as “*Te Rohe Moana O hei O Wharekaho*”.<sup>15</sup> The requested closure area extends seaward to the outer limit of the territorial sea (at 12 nautical miles). In contrast, the closure area notified by MPI encapsulates a smaller area and does not extend to the seaward limit of the territorial sea.<sup>16</sup> The proposed closure area is described as “*all fisheries waters within the Ngāti Hei Coastal and Maritime Area (OYA-100-24)*”.<sup>17</sup> EDS includes an annotated map to illustrate the difference between the requested and notified temporary closure areas as Figure 1 below.

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<sup>14</sup> Seachange Tai Timu Tai Pari, 2017, *Hauraki Gulf marine spatial plan*, Environment Waikato, Hamilton, at page 71

<sup>15</sup> Ngāti Hei Trust, above n 1, Appendix 1, at page 6.

<sup>16</sup> Ministry for Primary Industries (2021) *Map of the proposed Eastern Coromandel temporary closure*, produced by Spatial Intelligence, dated 22/03/2021, included in the documentation released for public consultation purposes. Available at:

<https://www.mpi.govt.nz/dmsdocument/44494-Proposed-temporary-closure-of-the-eastern-Coromandel-coast-to-the-harvest-of-scallops-map>

<sup>17</sup> Ibid. No information was publicly available on the Ngāti Hei Coastal and Maritime Area identified as “OYA-100-24” in the map prepared by MPI.

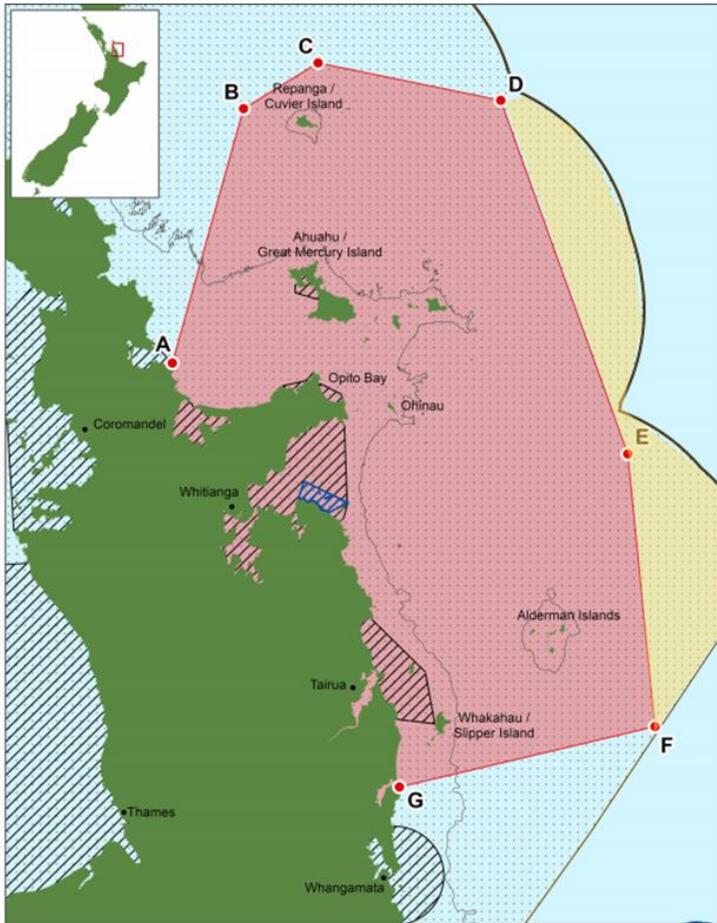


Figure 1. Notified temporary closure area (as issued by MPI; shaded red) and the additional area requested by the Ngāti Hei Trust (annotated by EDS; shaded yellow).

- 5.2. The boundaries of the requested area are consistent with Ngāti Hei’s application for Customary Marine Title and Protected Customary Rights under the Marine and Coastal Area (Takutai Moana) Act 2011, which extends to the outer limit of the territorial sea.<sup>18</sup> Ngāti Hei’s application refers to their reliance on fishing within this area “to feed whanau, kaumatua, hapu, to provide kai for hui, tangaihanga and maerna...”.<sup>19</sup> Ngāti Hei’s application for customary marine title and protected rights is yet to be determined.
- 5.3. EDS submits that the proposed temporary closure area should be extended seaward (to the 12 nautical mile limit) to align with Ngāti Hei’s request.
- 5.4. Section 186A(1)(a) of the Act provides for the temporary closure of “any area of New Zealand’s fisheries waters...in respect of any species of fish, aquatic life, or seaweed...”. New Zealand fisheries waters include the waters of the territorial sea and exclusive economic

<sup>18</sup> Joseph Davis application for recognition orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011(22 March 2017) <https://www.courtsofnz.govt.nz/assets/the-courts/high-court/high-court-lists/applications-marine-coastal-list/civ-2017-404-000480-Ngāti-hei/civ-2017-404-480.pdf>; Application MAC-01-03-02; the application relates to the common marine and coastal area “From Anarake point (36°40’59.3”S, 175°36’18.3”E) down to Ruahiwihiwi Point (37°06’49.7”S, 175°53’22.5”E) out to 12 nautical miles and including the islands within this area” (emphasis added).

<sup>19</sup> Ibid at [6] under the heading ‘Grounds on which protected customary rights order is sought’.

zone.<sup>20</sup> Therefore the full area requested by Ngāti Hei is within the scope of the Minister's powers under s186A(1)(a).

- 5.5. In accordance with section 186A(2) of the Act, the Minister may impose a temporary closure if satisfied that it will recognise and provide for:<sup>21</sup>

*“the use and management practices of tangata whenua in the exercise of non-commercial fishing rights by –*

*(a) 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*

*(b) recognising a customary fishing practice in that area.”*

Based on the map included within Ngāti Hei's request, and the spatial extent of their application for marine customary title and marine protected rights, it is submitted that the extension of the temporary closure area out to 12 nautical miles is consistent with section 186A(2) of the Act.

- 5.6. As previously outlined in Section 3 above, the current status of the Coromandel scallop fishery is uncertain, with the most recent stock assessment being undertaken in 2012. However, the data that is available indicates a marked decline in abundance. There are also anecdotal reports of declines in the abundance of scallops located within the eastern Coromandel coastal and marine area, making it difficult for iwi and hapū to exercise customary harvest practices.<sup>22</sup>
- 5.7. EDS urges the Minister to adopt a precautionary approach in the absence of recent data on the status of scallop stocks in the eastern Coromandel coastal and marine area. Establishing a temporary closure area that extends seaward to the outer limit of the territorial sea will enhance the potential for scallop populations to replenish in the area and is consistent with Ngāti Hei's closure request. It also urges the Minister to undertake a survey of scallop beds within the Hauraki Gulf Marine Park without delay.

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<sup>20</sup> Fisheries Act 1996, section 2.

<sup>21</sup> Fisheries Act 1996, section 186A(2).

<sup>22</sup> Refer to the Ngāti Hei request, at page 1 - *“We request the temporary closure to apply to scallops as we hear from communities along the coastline of our rohe that they have been concerned about the decline of scallop populations for years. Towns along the Eastern Coromandel are close to the coastline so scallop harvesting is a popular means to gather kaimoana.”*