

Spatial Allocations
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Submission on proposed temporary fishery closures for 4 areas in the Hauraki Gulf: Waiheke Island, Umupuia Beach, Te Mātā and Waipatukahu, and East Coromandel

1 Introduction

- 1.1 This is a submission on 4 proposed temporary fisheries closures in coastal waters at Umupuia Beach, Te Mātā and Waipatukahu, Waiheke Island and East Coromandel as respectively sought by Ngāi Tai ki Tāmaki, Ngāti Tamaterā, Ngāti Pāoa and Ngāti Hei. The requests are supported by Ngāti Rehua Ngātiwai ki Aotea as part of the *Pou rāhui, pou tikanga, pou oranga: reigniting the mauri of Tikapa moana and Te Moananui-ā-Toi* project (**Pou Rāhui Project**).¹
- 1.2 The Environmental Defence Society (**EDS**) is an independent not-for-profit organisation conducting interdisciplinary policy research and litigation. It was established in 1971 with the purpose of improving environmental outcomes in Aotearoa New Zealand.
- 1.3 EDS has a special interest in the marine environment and has completed the first phase of a multi-year project looking at options for future reform of the oceans management system.² This included, among other things, fisheries management. In 2018, EDS led an in-depth review of the national fisheries management system and published findings in a report

¹ Herearoha Skipper *Request for Further Extension of Temporary Closure of Mahinga Mātaitai for 6 years: Application by 5 Iwi Organisations* (Ministry of Primary Industries, November 2023) <<https://www.mpi.govt.nz/dmsdocument/61774-Request-for-Further-Extension-of-Temporary-Closure-of-Mahinga-Mataitai-for-6-Years-186A-Fisheries-Act>>

² Greg Severinsen and others *The Breaking Wave: Oceans Reform in Aotearoa New Zealand* (EDS, Auckland, June 2022) <www.eds.org.nz>

entitled *Voices From the Sea: Managing New Zealand's Fisheries*.³ It has also sought to improve fisheries decision-making by submitting on proposals to set sustainability measures for the management of various wild fish stocks.⁴

- 1.4 EDS is currently undertaking Phase 2 of EDS's ocean reform project, with the first working paper focusing on marine spatial planning. As part of this EDS is researching marine initiatives around Aotearoa New Zealand, including the Pou Rāhui project, that can guide options for future oceans system reform.

2 Summary of submission

- 2.1 EDS supports the 4 closure requests as sought by Ngāti Pāoa, Ngāi Tai ki Tāmaki, Ngāti Tamaterā, and Ngāti Hei. This is on the basis that they meet the purposes, criteria and requirements of the Fisheries Act 1986 (**the Act**) and the Hauraki Gulf Marine Park Act 2000 (HGMPA).
- 2.2 EDS submits the closures are required to enable the restoration of locally significant fish stocks and associated marine habitats. They also support the innovative Pou Rāhui Project which is seeking to implement ecological monitoring, based on mātauranga Māori, to inform future management.
- 2.3 Due to section 186A of the Act only contemplating closures for up to 2 years, EDS submits that a 2-year closure be granted initially and that the Act then be amended to remove the time period restriction, thereby allowing the closures to continue for the full 6 year period as requested.
- 2.4 Alternatively, EDS submits that a 6-year closure should be granted as a sustainability measure under section 11 of the Act.
- 2.5 EDS also submits that section 186A should be further amended, to better accommodate the developing ways in which Māori are seeking to use rāhui, and informed by the Pou Rāhui Project.

3 The temporary closure proposals

3.1 Umupuia Beach

- 3.1.1. Ngāi Tai Umupuia Te Waka Totara Trust and its Trustees have requested a 6-year extension to the section 186A closure under the the Act at Umupuia Beach for the harvest of Tuangi (cockles).
- 3.1.2. The closure aims to sustain the positive outcomes observed since the rāhui/section 186A temporary closure of Umupuia Beach in 2012, including an increase in the number and size of Tuangi, as well as an increase in other fish and shellfish stocks and associated seabirds in the area. A further closure is considered necessary to maintain these benefits (and avoid a potential repeat collapse) and protect the shellfish stock from growing threats such as a rapidly increasing population nearby.

³ Raewyn Peart *Voices from the Sea: Managing New Zealand's Fisheries* (EDS, Auckland, 2018) <www.eds.org.nz>

⁴ Copies of EDS's recent submissions on a range of wild fish stocks are available from www.eds.org.nz

3.1.3. The closure request is part of the Pou Rāhui Project which, amongst other things, seeks to enable the distinctive contribution of Ngā Tai to improving the health and wellbeing of the Hauraki Gulf.

3.2 *Te Mātā and Waipatukahu*

3.2.1 The Ngāti Tamaterā Treaty Settlement Trust has requested a 6-year extension to the section 186A temporary closure for the harvest of Tio (rock oyster), Kūtai (mussels), Pipi and Tuangi at Te Mātā and Waipatukahu. The rāhui was applied in 2019 and section 186A temporary closure approved in 2020.

3.2.2 This closure request is in response to concerns over a marked reduction in the availability and acceptable size of the shellfish, unsustainable harvesting pressures, and lack of monitoring. Extreme weather events are also resulting in shellfish being smothered by large amounts of sediment from time to time.

3.2.3 The closure request is part of the Pou Rāhui Project which, amongst other things, seeks to enable the distinctive contribution of Ngāti Tamaterā to improving the health and wellbeing of the Hauraki Gulf.

3.3. *Waiheke Island*

3.3.1. Ngāti Paoa has requested a 6-year extension to a 2021 section 186A temporary closure around Waiheke Island from the foreshore to 1 nautical mile offshore for the harvest of Tipa (scallops), Kūtai, Kōura (crayfish) and Pāua (abalone).

3.3.2 The closure request is in response to concerns about the degraded state of kaimoana beds and declining abundance of taonga species in the marine area around Waiheke Island.

3.3.3 The closure request is part of the Pou Rāhui Project which, amongst other things, is resourcing Ngāti Pāoa to restore and improve marine biodiversity around Waiheke Island.

3.4. *East Coromandel*

3.4.1 The Hei o Wharekaho Settlement Trust has requested a 6-year extension to a 2021 section 186A temporary closure for the harvest of Tipa in their rohe which extends out to Repanga Cuvier Island to the north and Ahuahua Great Mercury Island to the east, and stretches along the eastern Coromandel coastline from Whangapoua to Onemana.

3.4.2 The closure request is in response to concerns about the unconstrained harvest and overfishing of scallops coupled with the continuous decline of the marine environment where scallops spawn and grow.

3.4.3 The closure request is part of the Pou Rāhui Project which, amongst other things, seeks to enable the distinctive contribution of Ngāti Hei to improving the health and wellbeing of the Hauraki Gulf.

4 EDS's Submission

- 4.1 EDS commends the collective leadership shown by these iwi and positive efforts they have undertaken to support the restoration of marine species and their habitats in the Hauraki Gulf.
- 4.3 EDS also commends the Pou Rāhui project which is an innovative approach to marine management and restoration building on mātauranga Māori and the tradition of rāhui. It also aims to develop an *“ecological monitoring system to be implemented by iwi which is scientifically robust, is informed by mātauranga Māori and coordinates well with environmental monitoring undertaken by other parties.”*⁵
- 4.4 EDS considers the requested temporary closures support achieving the purpose of the Act which is to *“provide for the utilisation of fisheries resources while ensuring sustainability”*.⁶ Under section 8(2) of the Act, “ensuring sustainability” is stated as meaning *“maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations”*. Temporarily excluding harvest of the stocks described above, will assist in their survival and recovery, thereby maintaining their potential for the future.
- 4.5 EDS also considers that the requested temporary closures meet the requirements under section 186A(2) of the Act which is *“to recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights”* by improving the availability and/or size of the stocks. This aligns with the purpose of the Pou Rāhui Project and associated closures as outlined above.
- 4.6 In addition, the requested temporary closures will promote the objectives of the HGMPA. The purpose of the HGMPA includes recognising *“the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf and its islands”*.⁷ When making decisions under the Act (including under section 186A) the Minister is required to have particular regard to sections 7 and 8 of the HGMPA. Under section 7, sustaining the life-supporting capacity of the environment of the Hauraki Gulf and its islands is a matter of national significance and this explicitly includes *“the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands”*.⁸
- 4.7 It is also clear that the stocks concerned, namely Tipa, Kūtai, Kōura, Pāua, Tuangi, Pipi and Tio, are severely depleted in the Hauraki Gulf despite some positive results from existing temporary closures. This is supported by iwi observations as well as the 2023 *State of the Gulf Report*. That report highlighted that the Kōura population in the Hauraki Gulf Marine Park has been substantially reduced and is now regarded as functionally extinct. In addition, surveys conducted in 2021 found that the overall Tipa biomass had decreased by 82% since the

⁵ Herearoha Skipper, *Request for Further Extension of Temporary Closure of Mahinga Mātaitai for 6 years: Application by 5 Iwi Organisations* (Ministry of Primary Industries, November 2023)

<<https://www.mpi.govt.nz/dmsdocument/61774-Request-for-Further-Extension-of-Temporary-Closure-of-Mahinga-Mataitai-for-6-Years-186A-Fisheries-Act>, at 3

⁶ Fisheries Act 1986, Section 8(1)

⁷ Hauraki Gulf Marine Park Act 2000, section 3(d)

⁸ Hauraki Gulf Marine Park Act 2000, section 7(2)(a)(i)

previous survey in 2012.⁹ Also, mass mortalities of cockles due to disease, environmental stress and sedimentation (combined with over-harvesting) have decimated populations.¹⁰

- 4.8 EDS recognises that over-harvesting is not the only reason for the decline of some of these species and a range of factors are responsible for the depletion of these stocks. However, EDS acknowledges that the temporary closures under the umbrella of the Pou Rāhui Project will not only restrict harvest but also provide for ecological monitoring. The aim of the Project is to develop an evidence base, which provides greater clarity on the factors that are depleting these species, as well as a path forward to improve their overall health and wellbeing.

5 Other Matters

- 5.3 EDS recognises that the request seeks to establish temporary closures for a period of 6 years which brings into question the remit of the Minister's powers under the Act. Pursuant to section 186A(5)(a), a temporary closure notice may be in force for a maximum period of 2 years. However, under section 186A(6), nothing prevents a further notice being given before or on the expiry of an existing notice.
- 5.4 EDS submits that a request for a 6-year closure, framed as one closure notice, is beyond the remit of the Minister's powers under section 186A(5). This does not prevent three 2-year closures, for a total period of 6 years, being issued sequentially pursuant to section 186A(6). However, this would necessitate new applications being prepared, assessed and consulted on every two years, with no certainty of the closure being maintained for the full six year period as this is ultimately at the discretion of the Minister. This could undermine the recovery objectives and those of the Pou Rāhui Project.
- 5.5 This serves to highlight the current deficiencies in the Act. EDS submits that a temporary closure should be granted for 2 years and, during that period, section 186A should be amended to remove the 2 year limit under section 186A(5)(a). This would recognise that it is very rare for such a short closure (of 2 years) to improve the availability or size (or both) of a stock, and that applicants have had to re-apply repeatedly over the years to maintain temporary closures long enough to replenish species.
- 5.6 Alternatively, a 6 year closure could be granted under section 11 of the Act, which provides for the Minister to set sustainability measures. These do not have a time limit imposed. Under section 11(3)(c) sustainability measures "*may relate to the areas from which any fish, aquatic life ... may be taken*" and they therefore could effectively implement the spatial closures sought in the requests.
- 5.7 If section 186A were to be amended, as proposed above, it could be given further scrutiny to identify others way in which the provisions could be better trailored to reflect contemporary rāhui practice. A Sustainable Seas National Science Challenge discussion paper titled *How Current legislative frameworks enable customary management and ecosystem-based management in Aotearoa New Zealand – the contemporary practice of rāhui* has highlighted that:¹¹

⁹ *State of our Gulf: 2023: Hauraki Gulf / Tikapa Moana / Te Moananui-ā-Toi State of the Environment Report 2023* (Hauraki Gulf Forum, August 2023) at 17

¹⁰ *Ibid* at 73

¹¹ Lara Taylor, *Discussion Paper: How current legislative frameworks enable customary management an ecosystem-based management in Aotearoa New Zealand – the contemporary practice of rāhui* (National Science Challenges: Sustainable Seas, April 2018) at 17

“rāhui has been presented as a legislative construct without appropriate understanding and provision for the full worldview and accompanying tikanga necessary for culturally appropriate rāhui application.”

- 5.8 EDS submits that legislative changes required to accommodate developing ways in which Māori seek to use rāhui should be investigated so it can be utilised as effectively as possible for ecosystem restoration and healing. Such changes could be informed by the Pou Rāhui Project.