



# Akaroa Harbour Taiāpure: Boundary Amendments

## Decision Document

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# 1 Executive Summary

The Ministry for Primary Industries (MPI) seeks your agreement to recommend that the Governor-General amend the *Fisheries (Akaroa Harbour Taiāpure) Order 2006* (the Order) to:

- Incorporate the area between Elephant Head and Manukatahi Stream (the additional area) into the Akaroa Harbour Taiāpure (the Taiāpure); and
- Align the Taiāpure boundary with that of adjoining marine reserves and correct coordinates.

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. In its report, the Tribunal recommended that an area that was then subject to a marine reserve application (the Dan Rogers area) be excluded from the Taiāpure. The Tribunal further recommended the Dan Rogers area be included in the Taiāpure should it not be made a marine reserve.

In 2013, the then Minister of Conservation, the Hon Dr Nick Smith, approved part of the marine reserve application for the Dan Rogers area. The Minister's decision excluded the area between Elephant Head and Manukatahi Stream (approximately 55 hectares; the additional area) and recommended it be made part of the Taiāpure. He did this to address the concerns of customary fishing and recreational interests. You concurred with his decision in 2013 (B13-031) and the Akaroa Marine Reserve was established in 2014. Map 1 shows the Taiāpure, adjacent marine reserves, marine farms, and the additional area.

The additional area is neither part of the Taiāpure nor the Akaroa Marine Reserve. However, previous ministerial decisions and recommendations show a consistent intention that the Dan Rogers area (of which the additional area is part) would either be a marine reserve or included in the Taiāpure.

The additional area is part of an area of special significance to the Rūnanga of Ōnuku, Waiwera and Koukourārata (the three Rūnanga; the taiāpure applicants).<sup>1</sup> 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.

MPI has identified some issues with the existing description of the Taiāpure boundary in the Order. These are:

- Differences in the Department of Conservation's (DOC) and MPI's mapping standards have resulted in misalignment between the Taiāpure and the neighbouring Akaroa and Pohatu Marine Reserves; and
- The existing description for the Taiāpure references the Wainui Leading Light. This is not a stationary point and has moved since the Taiāpure was established. One of the coordinates at Timutimu Head is incorrect.

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<sup>1</sup> In 1998 the three Rūnanga proposed a taiāpure be established in Akaroa Harbour, including the Dan Rogers area.

There is no express provision in the Fisheries Act 1996 (the Fisheries Act) to allow for amendment of the Order. So, MPI proposes the amendments be made in reliance on section 15 of the Interpretation Act 1999 (the Interpretation Act), which states that the power to make an Order in Council includes the power to amend it.

The proposed inclusion of the additional area could be approached as a new taiāpure proposal. 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 Māori Land Court. MPI considers that this delay and associated additional cost is not justified.

Extensive consultation was undertaken in previous processes in relation to the taiāpure and marine reserve applications, and fisheries regulations which were introduced for the Taiāpure in 2009. MPI considers that all relevant matters have already been covered in these previous processes and taken into account in resulting decisions and recommendations and that further consultation is not necessary.

MPI will prepare appropriate letters to inform the Minister of Māori Development, the Minister of Conservation, the Akaroa Taiāpure Management Committee, local Rūnanga, Te Rūnanga o Ngāi Tahu and the Akaroa Marine Protection Society<sup>2</sup> of your decision.

## 2 Purpose

This Decision Document provides you with advice on:

- a) including the additional area in the Taiāpure; and
- b) addressing discrepancies in the Taiāpure boundaries.

### 2.1 BACKGROUND

In 1996, the Akaroa Marine Protection Society applied for a marine reserve over the Dan Rogers area, in the southeast part of Akaroa Harbour adjacent to the Dan Rogers cliffs and near the Harbour entrance. In 1998, the three Rūnanga proposed a taiāpure-local fishery over Akaroa Harbour, including the Dan Rogers area.

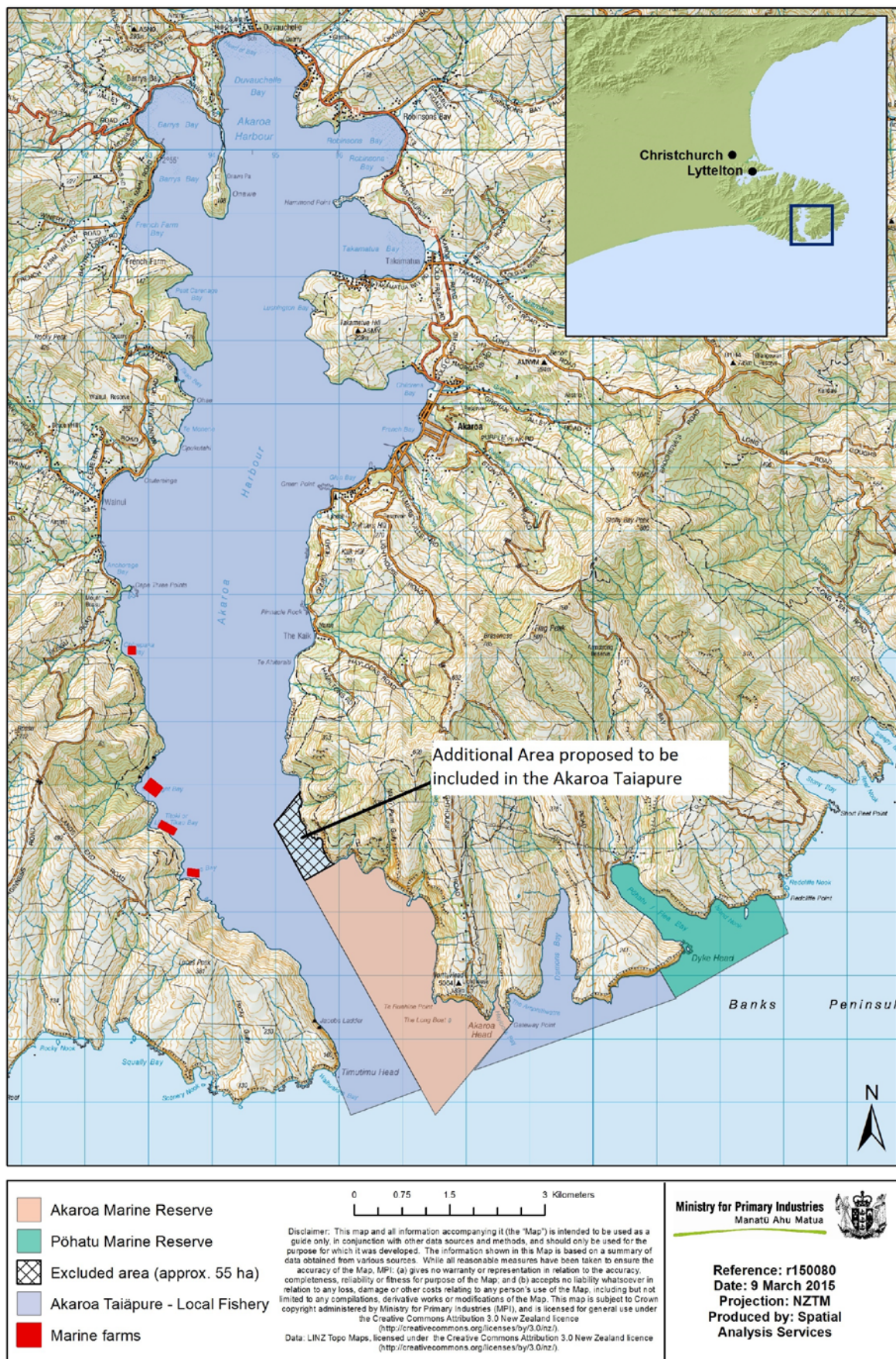
Various meetings, legal challenges and agreements followed. In 1999, the parties agreed that the marine reserve application would not be progressed further until the taiāpure was established.<sup>3</sup> In 2005, the three Rūnanga amended the proposal for a taiāpure-local fishery to exclude four marine farming areas<sup>4</sup> (see Map 1).

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<sup>2</sup> The Akaroa Marine Protection Society was the applicant for the Akaroa Marine Reserve.

<sup>3</sup> That agreement was part of a wider agreement between Te Rūnanga o Ngāi Tahu, the three Rūnanga, commercial and recreational fishers, Forest and Bird, and the Akaroa Harbour Protection Society. The wider agreement included support for the Pohatu (Flea Bay) Marine Reserve, which was subsequently established in July 1999.

<sup>4</sup> The marine farming areas were excluded by agreement between Sea-Right Investments Limited and the taiāpure applicants. The agreement followed High Court action taken by Sea-Right in response to the Tribunal's first report, released in 2004. Two of the areas were owned by Sea-Right and two by Akaroa Salmon Ltd.



**Map 1:** Akaroa Harbour Taiapure, the additional area (between Elephant Head and the Maukatahi Stream), Akaroa Marine Reserve, Pohatu Marine Reserve and marine farms.

In 2005, the Tribunal recommended a taiāpure-local fishery be established over the Akaroa Harbour Haylocks Bay and Damons Bay, excluding the four marine farming areas and the Dan Rogers area. The Tribunal's report included the following recommendation:

*In the event that it is decided that no marine reserve should be created at Dan Rogers, then we recommend that the Dan Rogers area is included in the taiāpure*".<sup>5</sup>

The Hon David Benson-Pope accepted the Tribunal's recommendations and the Akaroa Harbour Taiāpure was established in 2006.

On 20 August 2010, the then Minister of Conservation, the Hon Kate Wilkinson, declined the marine reserve application due to the adverse impact of a marine reserve on existing recreational use of the area. On 23 August 2010, the Akaroa Taiāpure Management Committee (the Committee) requested that the Tribunal's recommendation to include the Dan Rogers area in the Taiāpure be implemented.<sup>6</sup>

In October 2010, the then Minister of Fisheries and Aquaculture, the Hon Phil Heatley, agreed to implement Minister Benson-Pope's 2005 decision to accept the Tribunal's recommendation in regard to including the Dan Rogers area in the Taiāpure. However, due to legal proceedings in relation to the marine reserve application, Minister Heatley's decision was never formalised.

In November 2010, the Akaroa Marine Protection Society sought judicial review of Minister Wilkinson's decision in regard to the marine reserve. In May 2012, the High Court quashed Minister Wilkinson's decision and directed the Minister to reconsider the assessment in light of the countervailing benefits of the proposed marine reserve.<sup>7</sup>

In 2013, the marine reserve application came before Minister Smith, then the Minister of Conservation. He reconsidered and approved the application in part. He excluded the additional area in response to concerns from customary fishing and recreational interests. His decision included a recommendation that the additional area be included in the Taiāpure. You and the then Minister of Transport, the Hon Gerry Brownlee, concurred with Minister Smith's decision. The Akaroa Marine Reserve was established in 2014.

## 2.2 RATIONALE FOR MANAGEMENT INTERVENTION

The additional area is neither part of the Taiāpure nor the Akaroa Marine Reserve. However, previous ministerial decisions and recommendations show a consistent intention that the Dan Rogers area (of which the additional area is part) would either be a marine reserve or included in the Taiāpure.

The additional area is part of an area of special significance to the three Rūnanga. 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.

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<sup>5</sup> *Fisheries (Akaroa Harbour Taiāpure-Local fishery Proposal Recommendations and Decisions) Notice (No.F334)*, New Zealand Gazette Issue No. 194, 18 November 2005, pp 4849-4882, at p 4871.

<sup>6</sup> The Fisheries Act requires management committees to be appointed for taiāpure-local fisheries. The Akaroa Taiāpure Management Committee were appointed in 2006. It includes members of the three Rūnanga, representatives from local commercial and recreational fishing groups and a University of Canterbury academic staff member.

<sup>7</sup> *Akaroa Marine Protection Society Incorporated v The Minister of Conservation* HC CHC CIV 2010-409-002970 [8 May 2012].



Further, MPI has identified some issues with the existing description of the Taiāpure boundary in the Order. These are:

- Differences in the Department of Conservation's (DOC) and MPI's mapping standards have resulted in misalignment between the Taiāpure and the neighbouring Akaroa and Pohatu Marine Reserves; and
- The existing description for the Taiāpure references the Wainui Leading Light. This is not a stationary point and has moved since the Taiāpure was established. One of the coordinates at Timutimu Head is also incorrect.

### 3 Consultation

No consultation has been undertaken on the specific proposal to incorporate the additional area in the Taiapure. 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 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 Taiapure. The Committee also undertook its own consultation with the local community prior to proposing the regulations.

In 1996, 2006 and 2012, DOC consulted on the application to establish a marine reserve over part of the Akaroa Harbour (the Dan Rogers area). Between 1999 and 2013, the Ministers of Conservation also met with relevant parties.<sup>8</sup> MPI undertook targeted 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 Taiapure. Minister Smith took submissions on the Marine Reserve into account in making his recommendation in regard to the Taiapure. The Tribunal also took objections and submissions into account when it made its recommendation in regard to the Dan Rogers area.

The Committee, the three Rūnanga and Te Rūnanga o Ngāi Tahu have been advised of the intention to provide advice to you on the proposal to incorporate the additional area into the Taiāpure. MPI and DOC have discussed the issues relevant to the boundary misalignment between the Taiāpure and the neighbouring Akaroa and Pohatu Marine Reserves.

MPI will prepare appropriate letters to inform the Minister of Māori Development, the Minister of Conservation, the Committee, the three Rūnanga, Te Rūnanga o Ngāi Tahu, and the Marine Protection Society of your decision.

### 4 Legal Considerations

The implementation of the 2005 ministerial decision and addressing the Taiāpure boundary discrepancies require amendments to the Order.

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<sup>8</sup> Representatives of Ngāi Tahu, the three local rūnanga, the Marine Protection Society, Forest and Bird, the Fishing Club and members of the public

The Taiāpure was established following the process set out in sections 175 to 185 of the Fisheries Act. The purpose of these sections is to provide for recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi. Taiāpures can be established over the estuarine or littoral coastal waters that have customarily been of special significance to any iwi or hapu either as a source of food or for spiritual or cultural reasons.

There is no express provision in the Fisheries Act to allow for amendment of the Order. So, MPI proposes the amendments be made in reliance on section 15 of the Interpretation Act 1999, which states that the power to make an Order in Council includes the power to amend it.

MPI considers that a decision to amend the Order would be consistent with the legislative framework within which the power to make the Order exists, including the purpose of the Fisheries Act.

## 5 Management Options

There are two main options:

- **OPTION 1 – Status quo (no action):** The additional area does not become part of the Taiāpure.
- **OPTION 2 (MPI's preferred option):** The Order is amended to: (a) incorporate the additional area into the Taiāpure; and (b) address the issues with the Taiāpure boundary description.

You may consider that the proposal to incorporate the additional area into the Taiāpure should be approached as a new taiāpure-local fishery proposal under Part 9 of the Fisheries Act. 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 processes, 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-local fishery proposal is justified.

Whichever of the following 2 options you chose in relation to the amendment of the Akaroa Harbour Taiāpure, MPI recommends that you agree to amend the Order to address the issues with the boundary description.

### 5.1 Option 1 – Status quo (no action)

All previous ministerial 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.

Under the status quo, Rangatiratanga is provided for within the Taiāpure, but not within the additional area. For example, the Committee is not able to make recommendations for regulations outside the boundaries of the Taiāpure.

Three sets of fishing rules apply within the Akaroa Harbour: no-take within the Akaroa Marine Reserve; Taiāpure-specific regulations (including lower bag limits and a prohibition on taking sea horse); and standard recreational fishing rules elsewhere.<sup>9</sup> This makes fishing rules more complex and could cause confusion for recreational fishers. Higher bag limits within the additional area compared to the Taiāpure could also attract greater fishing pressure to that part of the Harbour and cause localised depletion for popular stocks like blue cod.

## 5.2 Option 2 – Amendment the Order to incorporate the additional area and address the issues with boundary description

### Additional Area

Incorporating the additional area within the Taiāpure is consistent with and implements the outstanding recommendations and decisions of the Tribunal and Ministers. Those previous ministerial decisions and recommendations show a clear intention that the Dan Rogers area (of which the additional area is part) would either become be established as a marine reserve or would become part of the Taiāpure.

The additional area is of special significance to the three Rūnanga. 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.

Under Option 2, fishing management rules would be simplified and the risk of confusion for fishers reduced. The Taiāpure-specific regulations would apply to the additional area automatically should it be included in the Taiāpure. 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 as higher bag limits would no longer apply. However, 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-specific 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.

### Boundary Corrections

MPI proposes the following issues with the boundary description be addressed through an amendment to the Order:

- The Taiāpure and the Pohatu Marine Reserve were intended to adjoin each other. However, a difference in mapping standards between DOC and MPI has created a gap between the boundaries.
- One of the Taiāpure reference points (the Wainui Leading Lights) has moved; and
- One of the coordinates at Timutimu Head is incorrect.

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<sup>9</sup> Marine farms within the Harbour are outside the Taiāpure. These would be unaffected by any of the proposed changes to the Order and would continue to be subject to standard recreational fishing rules for the wider South-East fisheries management area.

Aligning the Akaroa Harbour Taiāpure boundary with that of the adjoining marine reserves and correcting coordinates is necessary to ensure that the boundaries are correctly described. This will also avoid management and compliance issues.

The Interpretation Act allows for the correction of errors in an Order in Council. MPI recommends that you approve MPI's proposal to correct these errors.

## 6 Other Matters

### ***The Akaroa Taiāpure Management Committee***

Pursuant to s 184 of the Act, the Minister of Fisheries, after consultation with the Minister of Maori Affairs, must appoint a committee of management for a taiāpure-local fishery. The Committee is appointed on the nomination of persons who appear to the Minister to be representative of the local Maori community. There is no provision for the Minister to nominate members to the Committee.

The Akaroa Taiāpure Management Committee was appointed in 2006. The committee includes members of the Onuku, Wairewa and Koukourārata Rūnanga and representatives from the tourism, recreational fishing, marine farming and commercial fishing sectors. The Rūnanga chose not to seek nominations from the environmental sector, despite the proposed membership presented to the Tribunal including a representative of local environmental interests.

In keeping with the previous Ministers' decisions, the existing Akaroa Taiāpure Management Committee would assume responsibility for the additional area, if it is included in the Taiāpure.

## 7 Conclusion

Incorporating the additional area into the Taiapure (OPTION 2) is consistent with and implements the outstanding recommendations and decisions of the Tribunal and Ministers. Given the extensive consultation already undertaken under previous processes and the clear intention of the previous ministerial decisions, MPI Recommends the proposed approach as the most practicable and timely approach to resolve outstanding issues with the Taiāpure boundaries.

MPI considers that incorporating the additional area into the Taiapure would better provide for rangatiranga and the right secured in regard to fisheries under Article II of the Treaty of Waitangi. It would also simplify fisheries management rules within the Harbour.

MPI, therefore, recommends you agree to recommend that the Governor-General amend the Order to incorporate the additional area into the Taiāpure. MPI recommends that the technical amendments required to address the boundary issues are done concurrently.