SUPPLEMENT TO

New Zealand Gazette

OF THURSDAY, 17 NOVEMBER 2005

WELLINGTON: FRIDAY, 18 NOVEMBER 2005 — ISSUE NO. 194

MINISTRY

OF

FISHERIES

PURSUANT TO THE FISHERIES ACT 1996

Fisheries (Akaroa Harbour Taiapure-Local Fishery Proposal Recommendations and Decisions) Notice (No.F334)

"Pursuant" to section 181(9)(b)(i) of the Fisheries Act 1996, the Minister of Fisheries hereby publishes the report and recommendations of the Tribunal concerning the Akaroa Harbour taiapure-local fishery proposal and his decision on the Tribunal's report and recommendations.

1 Report and Recommendations of the Tribunal

In the matter of Part IX of the Fisheries Act 1996 and in the matter of an application by the rūnaka of Ōnuku, Wairewa and Koukourārata pursuant to Part IX of the Fisheries Act 1996 for a taiapure-local fishery at Akaroa Harbour.

Report And Recommendation to The Minister Of Fisheries

The above application on behalf of the rūnaka of Ōnuku, Wairewa and Koukourārata was agreed to in principle by the Minister of Fisheries acting under section 178 of the Fisheries Act 1996 and publicly notified in the *New Zealand Gazette* on 6 June 2002.

INDEX PAGE

Introduction

This is the report and recommendations to the Minister of Fisheries on the establishment of a taiāpure-local fishery at Akaroa Harbour.

The report and recommendations that follow are made by the taiāpure tribunal established under section 181(2) of the Fisheries Act 1996 ('the Act') for the purpose of inquiring into objections and submissions received on the proposal to establish a taiāpure-local fishery at Akaroa Harbour, and reporting to the Minister with recommendations on the proposal.

The area that is the subject of the application is those waters of Akaroa Harbour, Haylocks Bay and Damons Bay that are enclosed by a line commencing at Ōunuhau Point (at 43°53.15′S and 173°00.70′E), then proceeding on a true bearing of 150° for 500 metres to a point at 43°53.38′S and 173°00.88′E, then proceeding in a westerly direction on a true bearing of 252° to a point at 43°54.23′S and 172°57.14′E, then proceeding on a true bearing of 330° for 500 metres to Timutimu Head (at 43°53.99′S and 172°56.96′E).[1]

Background

Previously, on 16 January 2004, I reported to the Minister of Fisheries on behalf of this tribunal. As now, we then comprised Dr Wharehuia Milroy (a leading expert on tikanga Māori, and former Professor at and recent recipient of an honorary doctorate from Waikato University), Dr Tish Pankhurst (a Māori marine biologist working as a senior lecturer at the School of Marine Biology and Aquaculture at James Cook University, Townsville, Queensland, Australia), and myself. Our report and recommendations to the Minister were made under section 181, and were to form the basis upon which he would make a decision on the taiāpure.

Sea-Right Investments Limited ('Sea-Right') had made submissions to the tribunal in opposition to the proposed taiāpure. Following the circulation of the tribunal's report and recommendations, Sea-Right appealed against the tribunal's report and recommendations by way of case stated. The main thrust of the appeal was that the tribunal had misinterpreted the meaning of the phrase "littoral coastal waters" as used in section 174 of the Act. The result of the tribunal's mistaken view, the appellant said, would be to bring into the taiāpure "an area much larger than Parliament ever intended when it established a special management regime for such areas."[2]

In his judgment dated 20 May 2004,[3] His Honour Justice Ronald Young determined that the tribunal had applied the wrong test. He considered that, in applying the phrase "littoral coastal waters", we had given insufficient emphasis to the limiting effect of the adjective "littoral" on the words "coastal waters". His Honour also said that we had not adequately explained how the whole of Akaroa Harbour had been of special significance as a food source or for spiritual or cultural reasons. He emphasised that an area that is occupied by Māori and used for food gathering may not necessarily have the special significance required by the statutory tests. His Honour expressed no view on whether the whole of Akaroa Harbour could or could not come within the concept of littoral coastal waters of special significance to hapū and iwi, nor on whether further evidence was required. He set aside the

---

[1] While these are the general parameters of the area, two zones lying within the area described have now been excluded from the application. See below at the heading 'Application amended'. Please note that the area description provided in the first version of our second Report and Recommendation, dated 13 July 2005, is incorrect. The description above is accurate and contains the correct co-ordinates.

[2] *Sea-Right Investments Limited v The Minister of Fisheries and Te Runanga of Ngāi Tahu,* (Unreported judgment of the High Court, Hearing 26 April 2004, Judgment 20 May 2004, per Ronald Young J.), page 3[1].

[3] *Sea-Right Investments Limited v The Minister of Fisheries and Te Runanga of Ngāi Tahu,* (Unreported judgment of the High Court, Hearing 26 April 2004, Judgment 20 May 2004, per Ronald Young J.)

tribunal's recommendations, and referred them back to us for our reconsideration in light of his judgment.

Re-hearing

In that light, I determined that the tribunal needed to hear further evidence.

I issued a direction

(1) seeking from the applicant rūnaka a presentation of evidence identifying for the tribunal the special significance of the whole area comprised in the proposed taiāpure; and

(2) seeking from the parties expert evidence on the nature of the waters in Akaroa Harbour

(3) in scientific terms, addressing the question of whether they should properly be regarded as littoral.

The re-hearing took place at Christchurch on 21 and 22 February 2005.

In the event, it was not necessary to hear from the rūnaka further on the cultural and spiritual significance of the sites in and around the harbour. The evidence that had been presented by witnesses for the rūnaka at the hearing was transcribed, and its usefulness was enhanced by the rūnakas' filing a map plotting all sites to which particular significance attaches. The transcribed evidence was helpfully cross-referenced to the sites shown on the map, and a commentary provided by the person who had co-ordinated the rūnakas' case, Nigel Scott, helped put the evidence in context. None of the interested parties sought to ask questions, and as a tribunal we decided that the evidence as transcribed, mapped and commented upon, was sufficiently comprehensive for our purpose.

So the hearing focused on the further scientific evidence adduced by the applicant rūnaka, the Department of Conservation, and Sea-Right. The tribunal heard from four scientists with expertise in the fields of marine biology and coastal processes, and we asked them questions in order properly to understand the technical information contained in their evidence, and to apply it to the present context.

In the course of the hearing of the expert evidence, it became clear that the tribunal's earlier assumption that Akaroa Harbour was not estuarine in nature might be incorrect. Neither evidence nor argument had previously been addressed to the estuarine nature of the Harbour: it was universally accepted that because no rivers of consequence ran into the Harbour, it was not estuarine in character. But at the re-hearing, it appeared from the evidence of Dr John Zeldis, a marine biologist with NIWA and witness for the applicant rūnaka, that Akaroa Harbour should perhaps be characterised as "estuarine waters" as well as "littoral coastal waters", for the purposes of the Act. At the tribunal's request, the applicant commissioned Dr Zeldis to undertake the further work required to illuminate the question of whether, and to what extent, Akaroa Harbour is estuarine in nature. Dr Zeldis needed some time to undertake the work and file his report, and counsel needed time to ask questions of Dr Zeldis if necessary, and to include his material in their closings and reply. All of these stages were finally complete in early May 2005.

Application amended

Another important development at the hearing was a resolution of the differences between the applicant rūnaka and Sea-Right.

We delayed commencement of the hearing at the request of counsel, to enable the rūnaka and Sea-Right to discuss the matters at issue between them. Over the course of a day's talks, these parties were able to agree upon a way forward. They presented to the tribunal a memorandum

of understanding under which the applicant rūnaka agreed to amend their application to exclude from it the marine farming areas for which Sea-Right holds licences.

Subsequently, the rūnaka updated their agreement with a company called Akaroa Salmon Ltd ('Akaroa Salmon'), which also carries on the business of marine farming in Akaroa Harbour. Akaroa Salmon originally objected to the application by the rūnaka but withdrew its objection when a similar agreement was reached. The taiāpure application is now also amended by the exclusion from the area applied for as a taiāpure of the areas for which Akaroa Salmon holds marine farming permits.

A map of the area now the subject of the application, depicting the Sea-Right and Akaroa Salmon areas that are excluded, is attached to this report as Appendix A.

The matters to be addressed in this report

As a result of the foregoing, it now remains for this tribunal to report anew to the Minister on the merits of the amended application, in the light of His Honour Justice Ronald Young's judgment, and the further evidence received.

When we reported to the Minister on 16 January 2004, we said that the proposal raised six issues upon which we would report. The issues were these:

(1) Should the taiāpure include the Dan Rogers area, which is the subject of a marine reserve proposal?

(2) What is the appropriate size for a taiāpure? Is the area applied for too large?

(3) Can the area applied for properly be regarded as littoral or estuarine, as required by sections 174 and 175 of the Fisheries Act 1996.

(4) Would the establishment of the taiāpure unduly affect existing commercial interests in Akaroa Harbour?

(5) Can the mechanisms in the Act for management and control of the taiāpure be expected to deliver the anticipated environmental and other benefits?

(6) In practice, how will the Management Committee work? Can it be sufficiently inclusive of community interests, at the same time as delivering on the kaupapa Māori agenda of the applicants?

We consider that these remain issues upon which we must report, but there are two further issues.

His Honour's judgment requires us to report more comprehensively on the issue of the special significance of Akaroa Harbour, and sites within it, to the constituent rūnaka as a source of food, and for spiritual and cultural reasons. We now therefore add to the list of issues set out above the following question: Was the area comprised in the application customarily of significance to the hapū of Ōnuku, Wairewa and Koukourārata as a source of food, or for spiritual or cultural reasons?

Upon further consideration of section 174, we think there is a further element that has not been fully addressed. Section 174 says that the object of sections 175 to 185 of the Fisheries Act 1996, in relation to areas of New Zealand fisheries waters that are estuarine or littoral coastal waters, is to make better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi. We will therefore also address this question: How may rangatiratanga, and the fisheries right secured in Article II, be better provided for in terms of this application?

In light of what has happened since our previous report, some of our views have changed, and some have remained the same. But because only some matters were reheard, and some have

assumed a different emphasis, we have changed the order in which we will deal with the issues.

The issues that we will address in this report, and the order in which we will address them, are therefore now these:

(1) Was the area comprised in the application customarily of significance to the hapū of Ōnuku, Wairewa and Koukourārata as a source of food, or for spiritual or cultural reasons, as required by sections 174 and 175 of the Act?

(2) Can the area applied for properly be regarded as littoral or estuarine, as required by sections 174 and 175 of the Act?

(3) How might rangatiratanga, and the fisheries right secured in Article II of the Treaty of Waitangi, be better provided for in terms of this application?

(4) What is the appropriate size for a taiāpure? Is the area applied for too large?

(5) Should the taiāpure include the Dan Rogers area, which is the subject of a marine reserve proposal?

(6) Would the establishment of the taiāpure unduly affect existing commercial interests in Akaroa Harbour?

(7) Can the mechanisms in the Fisheries Act 1996 for management and control of the taiāpure be expected to deliver the anticipated environmental and other benefits?

(8) In practice, how will the Management Committee work? Can it be sufficiently inclusive of community interests, at the same time as delivering on the kaupapa Māori agenda of the applicants?

We now deal with each of these issues in turn.

Issue 1

Was the area comprised in the application customarily of significance to the hapū of Ōnuku, Wairewa and Koukourārata as a source of food, or for spiritual or cultural reasons, as required by sections 174 and 175 of the Act?

Section 174 of the Fisheries Act 1996 provides as follows:

> 174. Object – The object of sections 175 to 185 of this Act is to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapū either -
>
> (a) As a source of food; or
>
> (b) 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.

This tribunal must first, therefore, be satisfied that the areas over which a taiāpure is sought are areas that were customarily of special significance to the hapū in question either as a source of food, or for spiritual or cultural reasons.

There was certainly no challenge to the evidence of the applicant rūnaka concerning the occupation of Akaroa Harbour by the people of Ōnuku, Wairewa and Koukourārata since 1650-1700. At that time Ngāi Tahu people arrived aboard the Makawhiu waka captained by a tupuna called Moki. Thereafter, Ngāi Tahu people became tangata whenua of this beautiful

place known to them variously as "Te Pātaka" or "Te Whata[4] a Irakehu", "Te Pātaka o Rākaihautu"[5] and "Whangaroa."[6] We heard extensive evidence from rūnaka representatives about the mahinga kai and wāhi tapu all around the harbour, and their significance to the resident hapū over time. This evidence was accepted by other submitters, and certainly satisfied us.

There was, and is, no doubt in our minds that Akaroa Harbour is a place of no ordinary significance to the Māori people traditionally associated with it. However, the judgment of Honour Justice Young made it clear that it is necessary for the tribunal to articulate the special significance to the tangata whenua of the Harbour and the sites within it and along its shores. We now do so.

The harbour as a source of food

Its special significance arises firstly from the abundance of kaimoana that the people who lived in its immediate vicinity, and who came also from further afield, were able to obtain there. While the fishery has been depleted in recent times, formerly it produced a wide range of edible species upon which Ngāi Tahu people – and especially the resident hapū – relied for their sustenance.

In his evidence, Wade Wereta-Osborn spoke of how the resident hapū of Akaroa Harbour established their manawhenua and manamoana there. He showed how these hapū were able to maintain their ahi kā roa[7] in and around Akaroa because of the abundance and ready availability of food resources within the harbour and its surrounding bays.

The traditional use of Akaroa Harbour as a mahinga kai[8] was best captured in the evidence of Iaean Cranwell. Mr Cranwell's evidence made these important points:

(a) Archaeological digs around the harbour have indicated that a considerable variety of species was taken for food. Mr Cranwell listed seven different species of flatfish, and five different species of shellfish the remains of which have been found in middens at a number of different sites;

(b) The harbour provides sheltered spots for the taking of kai in virtually any weather or season. The moods of the harbour were intimately known, as were the places to go to avoid wind and waves, whatever their direction;

(c) Seasonal events, such as the laying of nets across the harbour to take mako,[9] involved the gathering of people together in an activity that had spiritual and cultural significance, with special karakia used and practices taught and learned – as well as meeting the practical need to gather food. These seasonal highlights confirmed the links between people and with the harbour, and reinforced hapū identity and belonging;

(d) Ngāi Tahu people practised kaihaukai, a tradition that involved the meeting together of people from different marae and hapū for the purpose of exchanging food, and feasting. People would bring to a pre-arranged rendezvous the food or other resource for which their particular locality was known. For the people of Te Pātaka o

---

[4] 'Pātaka' and 'whata' are both words connoting a food storehouse, so 'Te Whata a Irakehu' means 'Irakehu's pantry'.

[5] Thus, 'Rakaihautu's pantry'.

[6] 'Whangaroa' means 'long harbour'.

[7] Literally "fires burning over a long period", indicating the unbroken occupation and assertion of mana in the area.

[8] A 'mahinga kai' was a place where the business of taking resources for food was undertaken.

[9] 'Mako' is a particular species of shark.

> Rākaihautū (Akaroa Harbour), the food they would bring, and for which they were renowned, came from the bounty of their harbour.

Pollution and over-fishing of the harbour means that its use as a mahinga kai for local Māori is now much more limited, as Mr Cranwell told us.[10] This initiative by the rūnaka to establish a taiāpure is the best remedy for these problems that seems to be available to them.

The harbour's spiritual and cultural significance

The special significance of the Harbour arises secondly – but not secondarily – from the large part it played, and for some Māori continues to play, in their spiritual and cultural lives. Akaroa Harbour features prominently in the stories of identity and occupation that define the applicant hapū. Their mana arises from, and is intimately connected to, their ancestral bond with this harbour.

Rākaihautū, the Waitaha tupuna who dug the southern lakes with his kō,[11] returned to Canterbury with his people and on the way buried the kō on a hill overlooking Akaroa Harbour. The hill was called Tuhiraki. Rākaihautū took up residence in the area, and lived there for the rest of his life.[12]

As set out earlier, Ngāi Tahu came to Akaroa in the waka Makawhiu. The arrival of that canoe is dated to a time approximately thirteen generations ago.[13] They were looking for fresh lands to settle. Ngāi Tahu defeated Ngāti Māmoe in battle at the pā known as Parakākāriki. The leaders of the successful taua[14] took as captives the two daughters of the conquered chief Te Ao Tūtahi, and by marrying these Ngāti Māmoe women created a line of whakapapa that linked them with this new land.[15] Mr Wereta-Osborn's evidence related how places around the harbour were named for the incidents by which Ngāi Tahu rangatira of the day claimed mana over Horomaka (Banks Peninsula), and established their respective areas of influence.[16] The resident hapū of the harbour trace their whakapapa – and therefore their rightful connection to the land and the harbour – from these rangatira to this day.

In his evidence, Reverend Maurice Gray gave particular emphasis to the spiritual significance of the waters of Akaroa Harbour. He told us of the guardian taniwhā that live there, and how those taniwhā operate under the mauri[17] of Tangaroa, the deity of the oceans, to protect the people and resources of the harbour:

> Ā, hīkoi haere ahau ki te rohe o Ōpukutahi kei Wainui. Kei reira ko te hapū o te Kahukura. Ko te Kahukura hei mātakitaki kei ruka i te rua, te rua taniwhā o te Raki-horahina, o Te Wahine-marukore. Kei a rāura kā taniwha o tēnei moana a Whakaroa, hei mātakitaki kei ruka i te mauri a Takaroa hei paika mō kā uri o Akaroa, kōura, ika ēnei mea katoa.[18]

---

[10] All the references to Mr Cranwell's evidence come from the transcript of his evidence contained in the Nigel Scott submission, op.cit., pages 15-18.

[11] "Kō" means "spade" or "digging implement".

[12] Submission of Nigel Scott, Senior Policy Analyst, Kaupapa Taiao, dated 28 September 2004, quoting Schedule 101 to the Ngāi Tahu Claims Settlement Act 1998, Te Tai o Mahaanui/Statutory Acknowledgement.

[13] Ibid, page 9.

[14] "Taua" means "war party".

[15] Transcript of evidence reproduced in Nigel Scott submission, ibid, page 6.

[16] Idem, pages 6-8.

[17] Essential life force.

[18] Transcript of Rev Maurice Gray's evidence reproduced in Nigel Scott submission, ibid, page 13.

The significance of these taniwhā was also recognised in the Statutory Acknowledgement in the Ngāi Tahu Claims Settlement Act 1998.[19]

Likewise, the harbour is recognised by all of Ngāi Tahu as the dwelling place of the sacred white whale, who is closely linked with the mauri of Tangaroa. The white whale is a kaitiaki[20] who is a tohu[21] for Ngāi Tahu people. If for no other reason than to ensure the ongoing wellbeing of this kaitiaki, te tohorā tapu,[22] the harbour's ecology is of central concern to Ngāi Tahu people.

The cultural significance of the harbour to Ngāi Tahu over time can also be linked to two historical occurrences in the post-contact period.

First, the Treaty of Waitangi was signed at Akaroa (Ōnuku) by prominent chiefs Iwikau and Tīkao, and by the Crown officials present.

Secondly, of the many kāika[23] and pā of Ngāi Tahu throughout Horomaka, two significant kāika are located on the shores of the harbour itself: Ōnuku and Ōpukutahi. When the Crown bought the land in 1856, a reserve was established at each of these places. That reserves were established, in a time when reserves were meagre and often overlooked, indicates both the recognition by the Crown officials of the significance of those settlements, and the determination of tangata whenua for these areas to be excluded from the lands sold.

Because Ngāi Tahu people have lived in and around the Akaroa Harbour for many generations, it is to be expected that a number of urupā,[24] pā kakari[25] and tūraka tipuna[26] exist there. Some of the sites remain confidential to Ngāi Tahu because of their sacredness, but others have been logged on the map provided by the applicant and now attached to this report as Appendix B. The numbers on the map that relate to the attached schedule are numbers 1.1 -10.26. The schedule is attached as Appendix C.[27]

We are satisfied that the whole harbour is of special significance to Ngāi Tahu, both as a mahinga kai and as the locus of the spiritual life of local hapū. The attached map, and the many sites marked on it, testify the very wide spread of places of particular significance. It will be apparent from the account of evidence in the preceding paragraphs that much of the spiritual significance is not susceptible of being allocated to specific sites only. For instance, the tohorā tapu did not swim only in specific reaches of the harbour, and nor can his mauri be sustained if only part of the harbour is free from pollution. Similarly, Moki and his fellow Ngāi Tahu rangatira who conquered the Ngāti Māmoe people at the pā known as Parakākāriki did not leave it at that. One by one, they moved throughout the peninsula they called Horomaka, laying out their claims over the harbour and the land surrounding it until their mana lay like a cloak over the whole area.

Certainly, there *are* particular harbour sites of special significance, and some of these are shown on the map; but it was to the mana and mauri of the harbour as a single entity that the applicant hapū primarily related. From a tikanga Māori point of view, it is simply vital to the mana of these rūnaka that they do all they can as kaitiaki to maintain the health and spiritual

---

[19] Nigel Scott submission, ibid, page 14.

[20] "Kaitiaki" means "guardian" in this context.

[21] A tohu is an omen or special sign.

[22] "Te tohorā tapu" means "the sacred whale".

[23] "Kāika" is the rendition in Ngāi Tahu dialect of the word "kāinga", which means settlement.

[24] "Urupā" means "cemetery".

[25] "Pā kakari" are battlefields.

[26] "Tūraka tipuna" are ancestral areas.

[27] There are other numbers shown on the map (1-12) that relate to a transcript of the first hearing and these numbers should be disregarded for the purposes of this report.

integrity of the harbour, its mauri, and the special sites within and around it. The creation of this taiāpure is a vehicle for them to fulfil their duties in this regard.

Thus, we conclude for the purposes of section 174 of the Fisheries Act 1996 that Akaroa Harbour has customarily been an area of special significance to the constituent hapū of the rūnaka as a source of food, and for spiritual and cultural reasons. We have no doubt that a taiāpure as applied for (depicted on the map attached as Appendix A) would better provide for the recognition of rangatiratanga and the Māori interest in fisheries secured by Article II of the Treaty of Waitangi.

Issue 2

Can the area applied for properly be regarded as littoral or estuarine, as required by sections 174 and 175 of the Act?

Having determined that the marine areas to which the application relates are areas of special significance as required by section 174, the next task of this tribunal is to ascertain that those areas are also "areas of New Zealand fisheries waters (being estuarine or littoral coastal waters)".[28] Thus, it is not enough that the areas are of special significance to applicant iwi and hapū: they must also be areas that are properly characterised as estuarine coastal waters or littoral coastal waters.

In our earlier report, we noted that neither the Fisheries Act 1996 nor its predecessor, the Fisheries Act 1983, contains a definition of estuarine or littoral waters.

We therefore looked to how previous tribunals have interpreted this language in exercising the jurisdiction to recommend taiāpure.

The approach taken by previous taiāpure tribunals

Previous taiāpure tribunals have developed the definition of littoral coastal waters. In the Report and Recommendations of the tribunal relating to the East Otago taiāpure application, Deputy Chief Judge Isaac considered the definition of "littoral coastal waters".[29] A submitter there had referred to this definition of "littoral" in the Shorter Oxford English Dictionary:

> …of or pertaining to the shore of the sea…existing or occurring on or adjacent to the shore…or designating, or pertaining to the zone of the shore extending from the high-water mark to the low water mark or to the edge of the continental shelf…

Deputy Chief Judge Isaac noted the focus here to the land on shore rather than to the fishery waters adjacent to the shore. He referred to the object and purpose of Part IX of the Fisheries Act 1996, which is to set aside certain areas of New Zealand fishing waters, being littoral coastal waters. In other words, the focus of the Act is on the littoral region of the ocean – that is, on the waters adjacent to shore, and not the strip of land along the coast between the high and low water mark.

Deputy Chief Judge Isaac regarded as more apposite this definition in the Dictionary of Geography:

> The littoral region of the ocean comprises the shallow waters adjacent to the sea coast; this region has the richest vegetation and so supports the most abundant animal life.

Deputy Chief Judge Isaac also stated that the size or limits of the littoral zone may differ in each proposed taiāpure depending on the areas fished and the type of fishing customarily carried out.

---

[28] Section 174 of the Act.

[29] 25 August 1997, page 8.

In the Report and Recommendations of the tribunal relating to the Whakapuaka taiāpure application, Judge Carter determined what constituted littoral coastal waters within the meaning of the Act:[30]

> I have already determined that coastal waters applies to the waters along the entire coastline of New Zealand and the word "littoral" qualifies their breadth or extent. While littoral can mean between high and low watermark, it would make a nonsense of the legislation to apply this meaning. In this regard I prefer the meaning which relates to of or pertaining to the shore of the sea or adjacent to the shore. In this regard the littoral zone would comprise mostly shallow waters where the effect of tidal phenomena and currents is apparent. It would generally include those areas which have been significantly rich in sea life.
>
> I would be loathe to prescribe a finite limit to how far a littoral zone or region might extend. To be constituted a taiāpure the fishery must be of special significance. Reefs, islands and other landmarks might well play a part on interpreting whether a particular area fell within the littoral coastal area.

We agreed with these statements.

The High Court judgment

When His Honour Justice Young reviewed our interpretation of "littoral" in the context of the Act, he determined that we had given insufficient weight to the limiting effect of the word "littoral" as an adjective for "coastal waters".[31] In essence, we had not identified sufficiently clearly what we considered the meaning of "littoral coastal waters" to be.[32]

Taking that criticism on board, we determined to investigate the question further. In his judgment, His Honour Justice Young had (like Māori Land Court judges before him) considered a number of dictionary definitions of the words "coastal waters" and "littoral". Considering the meaning of words inevitably leads to looking at dictionary definitions, and that is of course a conventional part of statutory interpretation. But it seemed to us that the range of definitions in dictionaries really offered no more than smorgasbord of options. They did not give real insight into the term "littoral" in a way that would enable us to move to another level of understanding of the connotations of the word in the present legislative (section 174) and physical (Akaroa Harbour) contexts. Unlike His Honour, we were in the fortunate position of being able to seek evidence on the issue, and that is what we did.

The new evidence

At our re-hearing, we heard the evidence of four marine scientists on their understanding of what coastal waters would be considered "littoral" in the context of Akaroa Harbour. The applicant rūnaka called as expert witnesses Dr John Zeldis, a senior marine scientist from NIWA, and Derek Todd, a consulting coastal geomorphologist; Sea-Right called Dr Derek Goring, a consulting engineer specialising in coastal hydraulics; and the Department of Conservation called Dr Kenneth Grange, a marine ecologist from NIWA. As noted earlier, in our first report we had not seriously addressed the question of whether Akaroa Harbour might also be considered "estuarine". This was because nobody who appeared before us contended that it was, and also because we supposed – wrongly, as we now know – that an absence of significant rivers running into the harbour meant that it would not be estuarine in nature.

We found the new evidence very helpful in illuminating for us the concepts of "littoral" and "estuarine" in the coastal marine area. We set out below our understanding of the substance of the evidence, and our application of it to the facts before us.

---

[30] 6 June 2000, pages 4-5.

[31] *Sea-Right Investments Limited v. The Minister of Fisheries and ors*, op.cit., paragraph 30, page 11.

[32] Ibid, paragraph 26, pages 13-14.

The classical definition of "littoral zone" when applied to marine environments relates to the sea-land margin that is influenced by tidal movements: the region between the maximum spring-tide high water mark and maximum spring-tide low water mark (spanning the region of largest tidal variation). Eulittoral has been used to define the narrower region of tidal influence within the littoral zone that is exposed and submerged on a daily basis (irrespective of maximum tidal range that varies in conjunction with the lunar cycle).

However, like other taiāpure tribunals before us, we rejected this narrow interpretation of "littoral" as inapplicable to the taiāpure legislative context. His Honour Justice Young supported this view in his judgment. He said:[33]

> [15] The use of the word littoral is there to emphasise and restrict the words "coastal waters". I do not consider, however, it is intended to restrict them to an area between the high and low level mark as contended for by the appellants. This interpretation does not fit either with the statutory regime or with the words used in s174, s175 and s176 referring as they do to areas of "New Zealand fisheries waters". The statutory regime is concerned with the management and conservation of fish, aquatic life and seaweed in the littoral coastal waters and estuarine waters. This implies sea life beyond the high and low tide mark. The sections of the Fisheries Act are concerned with littoral coastal waters. The phrase within which littoral sits contemplates coastal water rather than a tidal area. [Emphasis original]

Witnesses told us that the term sublittoral has been used to describe the biological zone beneath the region of immediate tidal influence. This is the region of most prolific plant and animal life and extends from the water surface to the depth of light penetration sufficient to support growth of large attached foliose plants (macrophytes). Drs Kenneth Grange and John Zeldis agreed that for the purpose of this application, understanding the term littoral to include this sublittoral zone made most sense with respect to future fisheries management. Because this zone contains the greatest biological diversity and abundance it is essential that it is included in the fishery management area if management practices are to be effective. There is a precedent for adopting this broader meaning of "littoral" because in the field of fresh water biology it is accepted that the littoral zone extends from the land/water margin to the depth at which macrophyte presence ceases.

After considering a number of sources, Dr Kenneth Grange told us:[34]

> It is my interpretation, therefore, that the term "littoral" encompasses the intertidal area (including the splash zone)[[35]] and the area that supports the majority of plants in the subtidal area (where suitable habitat allows plants to grow). The outer (or depth) limit is where light penetration is insufficient to support plant growth and it may even extent across the continental shelf…

This definition incorporates the classical littoral, eulittoral and sublittoral zones.

But would the deepest part of Akaroa Harbour be included in this definition? Dr Grange provided data to show macrophyte distribution to depths of 20m on the rock walls near the harbour. However, they were not reported as growing on the soft sediment in the middle region of the outer harbour. Dr Grange contended that their absence probably relates to their requirement for firm substrates for attachment rather than a lack of light. The outer region of the harbour to 25 metres depth has not been surveyed for presence/absence of macrophytes, but Dr Grange argued that water turbidity is lower here and so the depth of light penetration

---

[33] Op.cit. page 10.

[34] Statement of evidence, Kenneth Robert Grange, paragraph 10, page 5.

[35] The splash zone is where waves splash, which includes areas above the high tide mark.

to support plant growth would probably be greater and thus extend to the harbour bed. Although Dr Grange's views on these two points were unsupported by data, they were based on his considerable experience, and appeared to us to be logical, and therefore persuasive, in the present context.

Thus, using Dr Grange's definition for littoral coastal waters, and in the absence of plant or light distribution data for the entire harbour, we think that even the deeper reaches of the harbour at depths greater than 20 metres may properly be regarded as "littoral".

Any doubt about this may not be material, however, in light of Dr Zeldis's further evidence about the estuarine characteristics of the harbour.

Dr Zeldis put forward a number of definitions of estuaries. A common feature is that estuaries are coastal regions in which salinity varies as a result of fresh water runoff from the land. There is an issue as to how much fresh water runoff, and what salinity variation, determines the estuarine characteristic of the waters. We found Dr Zeldis's evidence about the estuarine nature of the upper reaches of Akaroa Harbour very compelling. He relied for his opinion upon the presence there of estuarine species. The other estuarine characteristic upon which Dr Zeldis relied was the data relating from salinity variation in the upper harbour arising from input of streams from the local catchment.

Dr Zeldis also provided evidence of salinity variation throughout the rest of the harbour with a characteristic salinity gradient from the upper reaches to the harbour mouth. Everywhere in the harbour, the salinity is "typically lower than purely subtropical water offshore".

The levels of salinity in the inner harbour are certainly lower than in the outer harbour, suggesting that the inner harbour is more estuarine in nature than the outer harbour. However, Dr Zeldis's expert opinion on whether the whole of Akaroa Harbour may be characterised as estuarine in nature was this:[36]

> 5. Conclusion
>
> 5.1 It is clear, from both biological and physical standpoints, that Akaroa Harbour is estuarine. It supports estuarine fauna in its inner half, and its salinity is variable throughout its length and typically lower than purely subtropical water offshore. The main reason for this salinity depression is stream flow from the surrounding catchment, although it is clearly periodically influenced by other Canterbury rivers draining the Southern Alps.

We accept his expert opinion.

Conclusion

On the basis of the evidence before us about the terms "littoral" and "estuarine" as they apply to Akaroa Harbour, we conclude that the whole of Akaroa Harbour comprises coastal waters that are both littoral and estuarine. While there is a lack of data as to light penetration in the outer harbour, raising a question as to whether that area is "littoral" in the terms that were presented to us, we accept Dr Grange's hypothesis. Moreover, we accept Dr Zeldis's view (which was unchallenged before us) that the whole of the harbour is estuarine in any event, so the statutory criteria are met even if a small area of the outer harbour may fail to meet the "littoral" tests.

---

[36] Supplementary statement of evidence, John Raymond Zeldis, paragraph 5.1, page 4.

Issue 3

How might rangatiratanga, and the fisheries right secured in Article II of the Treaty of Waitangi, be better provided for in terms of this application?

Perhaps too little attention has previously been given to the historical context of the provisions in the general fisheries legislation relating to taiāpure. The legislation was enacted as part of the Crown's settlement of Māori Treaty claims to the commercial fishery. The provisions are part of a range of measures designed to make better provision for the Māori Treaty interest in the non-commercial fishery.

Section 174 specifically talks about the creation of taiāpure being a way of recognising rangatiratanga, and recognising too the right to fisheries secured to Māori under Article II of the Treaty. In the English version, the guarantee was to "the full exclusive and undisturbed possession of their Lands Estates Forests Fisheries and other properties…". The Māori version guaranteed te tino rangatiratanga over these things.

In relation to Akaroa Harbour, making better provision for the recognition of rangatiratanga and the Treaty fisheries guarantee through the creation of a taiāpure militates against a piecemeal approach. We think it would run counter to the exercise of mana by the rūnaka in relation to the taiāpure and the harbour if we were to limit the taiāpure to specific sites, or limited zones, in the harbour. There is a fisheries management argument to be made about this, and we refer to that later. Provided the other tests in section 174 are met – and in addressing issues 1 and 2, we have concluded that they are – we consider that recognising rangatiratanga here means the creation of a taiāpure that gives effect to the applicants' traditional dominion over the whole of the harbour area. In saying that, we acknowledge that the amended application excepts those areas where Sea-Right and Akaroa Salmon have marine farming licences. These are areas that the applicants have chosen to exclude, arguably an exercise of rangatiratanga in itself. Also excepted is the relatively small area that we address in the context of the marine reserve proposal. If our recommendation is accepted, these areas would not be within the taiāpure. But the taiāpure management committee will be managing the balance of the harbour, which is a much larger area. The special role of tangata whenua in the life of the whole harbour would, we feel, be thereby secured.

Issue 4

What is the appropriate size for a taiāpure? Is the area applied for too large?

There were three submitters who pointed us to the fact that the rūnaka's taiāpure application was originally for a smaller area entirely within Akaroa Harbour.[37] Obviously, the thinking of the rūnaka changed over time, so that the application ultimately related to the whole of Akaroa Harbour, plus an area just outside the heads so that the taiāpure would be contiguous with the Pōhatu Marine Reserve.

The area applied for is not out of keeping with other taiāpure that have been established. Unfortunately, the data we were able to access about the comparative dimensions of taiāpure is not helpful for the purposes of comparing dimensions, as their areas are given only as map co-ordinates rather than in hectares. However, at least one taiāpure is as large as that applied for at Akaroa Harbour. It is the Kawhia Aotea taiāpure, which includes both the Aotea and Kawhia Harbours on the North Island west coast. It is possible that the Maketu and Porangahau taiāpure are also as large. The Maketu taiāpure runs from the shoreline to 1-3 kilometres offshore, and for 32 kilometres along the coast. The Porangahau taiāpure runs for 42 kilometres along the coast enclosing an area one nautical mile from the shoreline.

---

[37] See the written submissions of Sea-Right Investments Ltd, paragraphs 15-17; Akaroa Salmon (NZ) Ltd, paragraph 2; and Akaroa Harbour Marine Protection Society, page 4.

There is also an appeal both logically and in terms of customary usage in the inclusion of the whole of the harbour in the taiāpure. A management regime that left out part of the harbour is less likely, we think, to achieve the desired outcomes – although, as we have said, we think different management regimes can work in conjunction.

We said in our first report and recommendations that although it was suggested to us at the hearing that the use of the words "being estuarine or littoral coastal waters" (section 175) carried with them an implication that taiāpure would be generally smaller than that contemplated here, we did not think that is necessarily the case. We said that provided that the criteria in the Act relating to customary association are met, the only physical criterion is that the coastal waters in question are estuarine or littoral. We pointed out that estuarine and littoral waters are not necessarily small in dimension.

In his judgment, His Honour Justice Young agreed with this approach as a matter of principle. As we have observed, His Honour thought we needed to do more to identify how the whole of Akaroa Harbour had been of special significance either as a food source or for spiritual or cultural reasons, and to explain our understanding of littoral coastal waters. That is what we have now sought to do. But, speaking of our earlier report, His Honour said:[38]

> Clearly the Tribunal were correct when they observed that measuring physical dimensions of the proposal is not by itself determinative. If the total area is seen as "too large" then the Minister deciding whether to recommend the appropriate taiāpure is entitled to take this into account (see s176(2)(b)).

And later,[39]

> I express no view on whether the whole of Akaroa Harbour could or could not come within the concept of littoral coastal waters of special significance to Hapū and iwi for the reasons given. The issue is not size *per se* of any taiapure-local fishery, but whether the evidence satisfies these statutory requirements of special significance of littoral coastal waters for the purposes identified in s174.

We have set out above (issues 1, 2 and 3) our conclusions that the statutory requirements *have* been fulfilled. This analysis of whether these requirements have been met is the thrust of our statutory task. We do not think there is any statutory basis for considering that the area proposed for the taiāpure at Akaroa Harbour is too large. Its dimension is in keeping with taiāpure gazetted in other parts of the country; and for rangatiratanga and fisheries management reasons, we consider that its size is appropriate.

Issue 5

Should the taiāpure include the Dan Rogers area, which is the subject of a marine reserve proposal?

It was to this issue that the bulk of hearing time was devoted at our initial hearing.

The area proposed as a marine reserve at Dan Rogers is a small zone[40] lying on the south-eastern arm of Akaroa Harbour, extending around the head of the Harbour to Gateway Point.[41] It lies completely within the area proposed for the taiāpure, and comprises 8% of its area. In this report, we will refer to the area proposed as a marine reserve as "Dan Rogers".

---

[38] *Sea Right Investments Limited v. The Minister of Fisheries*, op. cit., paragraph 24, page 13.

[39] Ibid, paragraph 27, page 14.

[40] 530 hectares.

[41] Boundaries of the proposed Dan Rogers marine reserve are from the entrance of Manukatahi Stream, near Nine Fathom Point (at 43°51.48′S and 172°56.55′E) following a line bearing 220° to the line described as the Wainui Leading Lights. From Gateway Point (at 43°53.52′S and 172°59.05′E) following a line bearing 200° to the line described as the Wanui Leading Lights.

What might broadly be called the conservationist lobby in Banks Peninsula, and also the Department of Conservation, support the exclusion of Dan Rogers from the taiāpure so that it can be designated as a marine reserve. Their support for the taiāpure was expressed as being conditional upon the exclusion of Dan Rogers from the taiāpure area.[42] These were the groups and representatives expressing this point of view:

- Eugenie Sage and Chris Denny for the Royal Forest & Bird Protection Society; and
- Brian Reid, Kathleen Reid, Steve Carswell, Jan Cook (also representing Friends of Banks Peninsula Inc), Richard Boleyn, Jeff Hamilton and Suky Thompson for the Akaroa Harbour Marine Protection Society.

Mike Cuddihy of the Department of Conservation also supported the establishment of the marine reserve, but his support did not expressly require exclusion of this area from the taiāpure. Rather, he favoured a taiāpure and a marine reserve operating alongside each other.[43] In effect, we think this amounts to much the same thing.

We summarise the arguments in favour of the establishment of a marine reserve at Dan Rogers as follows:

(a) The marine reserve proposal has considerable community support

It was apparent from the material presented to us that there was considerable community support for the Dan Rogers marine reserve proposal in 1996.[44] There were 2387 submissions in support of the proposal and 709 objections. A further 187 objections to the application were received outside the statutory closing date for objections.[45]

The rūnaka's taiāpure proposal involves the appointment of a management committee that will have a broad community base, and which will require community goodwill if it is to work. Accordingly, we felt that the level of support for the marine reserve as a necessary adjunct to the taiāpure was a factor that we needed to take into account in order to ensure the necessary broad community support for the concept, and for the work of the management committee.

We were also mindful of the requirement in section 176 of the Act for us to take into account in making a recommendation to the Minister the impact of a taiāpure order on the general welfare of the community in the vicinity (section 176(2)(b)(ii)), and the impact of the order on persons having a special interest in the area that would be declared a taiāpure (section 176(2)(b)(iii)). We were satisfied that for a good number of those living around Akaroa Harbour, environmental concerns rate highly, and this has been expressed in support for the marine reserve proposal, and in the conditional support for the taiāpure proposal. We felt that this interest group is a significant and committed voice in the Akaroa Harbour community. Moreover, it seemed to us that

---

[42] Akaroa Harbour Marine Protection Society Submission, 2 August 2002 and Royal Forest and Bird Protection Society, Submission of Eugenie Sage, pararaph 8.

[43] Department of Conservation, Submission of Mike Cuddihy, 6 August 2002, paragraph 4.

[44] On 6 January 1996, the Akaroa Harbour Marine Protection Society made a formal application to the Director-General of Conservation for the establishment of a marine reserve at Dan Rogers. Having been satisfied that the application fulfilled the procedural requirements of the Marine Reserves Act 1971, the Director-General of Conservation forwarded the application, objections and answers to the Minister of Conservation for his consideration. Since that time, the Dan Rogers marine reserve application has not progressed. On 18 December 1998, the Minister of Conservation reached an agreement with both the marine reserve and taiāpure applicants that stated that the marine reserve application would not be progressed further by the Minister of Conservation until the taiāpure application had been resolved.

[45] Akaroa Harbour Marine Protection Society document *Akaroa Marine Reserve: Answer to Objections*, page 1 and submission of the Director-General of Conservation on the proposed Akaroa Taiāpure-Local Fishery, 6 August 2002, paragraph 1.5.

their views made sense. We were therefore minded to accommodate those views as far as possible, consistent with the equally valid concerns and aspirations of the applicant rūnaka.

(b) A marine reserve would more reliably produce important environmental outcomes

The land adjacent to Dan Rogers contains two of the three remnant breeding populations of the environmentally "endangered"[46] white- flippered penguin. This species is endemic to Banks Peninsula. The proposed marine reserve is the entry and exit point for breeding birds. Because a marine reserve is a no-go zone for fishers, it would afford better protection than a taiāpure for this species: there would be no set netting, and the feeding grounds immediately adjacent to the breeding areas would be replenished.

It was also argued that a marine reserve would more effectively ensure the ongoing protection of marine diversity in the Harbour. Although there is another marine reserve in the vicinity – at Pōhatu, just outside the Harbour entrance – a reserve at Dan Rogers would protect another kind of marine environment, and ensure the preservation of an area within the harbour.

(c) Taiāpure are first and foremost a management tool for customary fisheries

The success of taiāpure as a conservation measure is unknown at this point, as no relevant studies of existing taiāpure have been undertaken. While taiāpure may deliver good conservation outcomes, equally they may not. Although rāhui may be declared over parts of a taiāpure to prevent fishing for short or even long periods, the "no-take" premise of marine reserves will better ensure the long-term protection of the marine environment in a small but important portion of Akaroa Harbour. Essentially, a taiāpure is a management tool for use, whereas a marine reserve is a tool for preservation and protection. If the Harbour's marine environment requires preservation and protection (and we were assured that it does), then a marine reserve is the better and more reliable tool to use.

Taiāpure are managed by committee. Because it is proposed that the committee for this taiāpure will have on it representatives of the recreational fishing lobby, as well as commercial fishing interests, it was suggested that it may be difficult in practice for the committee to deliver on a purely conservationist agenda for any area of appreciable size, or for any lengthy period.

(d) A marine reserve and taiāpure both operating within the Harbour will be complementary

A marine reserve is a no-take zone for fishers, and although not designed as a fisheries enhancement tool, in fact it is likely that a marine reserve would enhance fish stocks in areas immediately adjacent to the reserve, and possibly even throughout the harbour. A "spill-over" effect, where enhanced fish stocks within the reserve give rise to bigger catches of larger fish by fishers in its vicinity, is a phenomenon that has been observed wherever reserves have been studied.

The notion that a taiāpure and a contiguous marine reserve could operate as effective and complementary management tools for the marine environment was not really challenged by any of the submitters. Mike Cuddihy, of the Department of Conservation, stressed to us that a taiāpure will always have inherent in it an element

[46] On the International Union for Conservation of Nature and Natural Resources (IUCN) scale, an "endangered" species is closer to extinction than a "vulnerable" species, but less threatened than a "critically endangered" species.

of consumption. Thus, in order that use and preservation are kept in balance in Akaroa Harbour, he favoured a marine reserve and a taiāpure working in conjunction.

Against these arguments, we heard from the rūnaka spokespeople, and in particular Reverend Maurice Gray, that the exclusion of the Dan Rogers area from the taiāpure would be a blow to the mana of the hapū who have been tangata whenua of the harbour for centuries. Māori have developed a conservation ethic over this extended period which, when applied to Akaroa Harbour, will ensure its long-term sustainability as an ecosystem and as a fishery. The applicant hapū will work through the management committee to ensure that tikanga Māori are adhered to by users of the harbour, effecting its rehabilitation, and restoring its mauri. Marine reserves were rejected as an "absolutist" approach to conserving the fishery: Ngāi Tahu stressed the flexibility and creativity inherent in allowing the taiāpure management committee to manage the harbour holistically.

We were also pointed to the Ngāi Tahu tribal policy on marine reserves. A marine reserve application will not receive the tribe's support if it:

- relates to an area of importance for customary fishing;
- is an area considered wāhi tapu; or
- would diminish the development of any area management tools such as mātaitai, taiāpure and rāhui.

In questioning, iwi spokesperson Nigel Scott confirmed that this policy makes it unlikely that Ngāi Tahu would support any marine reserve application in an area that was traditionally occupied by Ngāi Tahu. The only marine reserves to have been endorsed by Ngāi Tahu thus far are located in the Auckland Islands, Fiordland, Paterson Inlet and at nearby Pōhatu. Apart from the marine reserve at Pōhatu, none of these marine reserves are places of significant Ngāi Tahu habitation today. We understood that Ngāi Tahu's consent to the establishment of the marine reserve at Pōhatu at the time related to an understanding with the then Minister of Conservation that a taiāpure would be established in Akaroa Harbour in exchange for this support.[47]

Conclusion

Given the heartfelt and principled views on both sides, we found this a difficult issue to resolve.

Nevertheless, we could not avoid making a choice between supporting on the one hand the proposed taiāpure as a stand-alone management and conservation tool for the whole harbour (excluding only the Akaroa Salmon and Sea-Right areas), and supporting on the other hand the taiāpure operating together with a marine reserve at Dan Rogers.

On balance, we favoured the second of these two options. We felt that the establishment of a marine reserve at Dan Rogers would deliver benefits to all concerned. For this reason, we favour the exclusion of this area from the taiāpure.

We were influenced by the following factors:

(a) The Dan Rogers area over which a marine reserve designation is sought comprises only 8% of the proposed taiāpure. We felt that the mana and rangatiratanga of the applicant rūnaka and its constituent hapū could be amply and properly expressed in the designation of a taiāpure over the balance area of the application, which is after all larger by far;

[47] Taiāpure Application for Akaroa Harbour on behalf of Ōnuku, Wairewa and Koukourārata Rūnaka August 2002, paragraph 4.1.

(b) We were persuaded by the scientific views put to us both in relation to Akaroa Harbour specifically, and deriving from relevant experience at other marine reserves in New Zealand, that a reserve at Dan Rogers would offer an excellent benchmark against which the success of measures implemented in the balance of the harbour area may be assessed;

(c) Dan Rogers is an area of some considerable cultural significance. It includes burial caves that are wāhi tapu, and also important mahinga kai. We neither discount nor minimise these factors. However, we felt that it would be possible to make special arrangements for input by the rūnaka in the management and control of this marine reserve. It would certainly be necessary to recognise as far as possible the special significance of Dan Rogers to the people of Ōnuku in particular. Their involvement in the management of the reserve would be important in order that tikanga Māori applying to this area of coast are understood and, where possible, implemented. Dan Rogers would nevertheless be lost to Ōnuku as a mahinga kai, and we agree that this is a significant sacrifice, justified only by the desirability of returning part of the harbour to a pristine state. The marine reserve would then act as a benchmark and indicator of the health of the rest of the harbour, and also as a breeding ground to replenish and re-seed other depleted areas. We note that the agreement by Ngāi Tahu to the establishment of the marine reserve at Pōhatu carried with it an understanding that fish and shellfish stocks at Pōhatu could be used for re-seeding of fisheries in other areas of the harbour and surrounding waters. Such an arrangement could be duplicated at Dan Rogers. Use of an appropriate Māori name for the reserve would also be a fitting recognition of the significance of the area to tangata whenua;

(d) All those who appeared before us agreed that Akaroa Harbour is in a degraded state ecologically compared with what they have known even in their own lifetimes. We think it highly desirable that a conservation zone be established within the harbour, so that one small area at least is assured of protection from fishing and other exploitation over the long-term. The evidence from other marine reserves encouraged us in the belief that the establishment of a marine reserve at Dan Rogers will be a worthwhile exercise for all. While the taiāpure management committee may take some time to get up and running (for that has been the experience with other taiāpure), the evidence is that once a marine reserve is established, excellent results can be seen almost immediately. This has been the experience at the nearby Pōhatu Marine Reserve, and we are confident that the establishment of a marine reserve at Dan Rogers would begin delivering benefits almost immediately to all those who use and enjoy Akaroa Harbour;

(e) It seemed to us that there was considerable community support for the marine reserve proposal, and that a recommendation by us to establish a taiāpure that would preclude the possibility of a marine reserve at Dan Rogers would, or might, cause conflict within the community. We think it important that the taiāpure concept goes forward with full community support. If a marine reserve is also established, we think that the support for the taiāpure in the community will now be unanimous,[48] and this will be critical to its effectiveness;

(f) The effect of the marine reserve would be to create a permanent rāhui at Dan Rogers. We accept that a measure like this may well have been implemented under tikanga Māori through the taiāpure management committee. However, given the range of interests represented on the committee (see the discussion under Issue 6), the politics of such a move may have proved difficult. By creating the space for the Minister to

[48] The agreements reached with Sea-Right and Akaroa Salmon dispose of the only real opposition to the taiāpure.

declare Dan Rogers a marine reserve, we think we have relieved the management committee of an inevitable point of conflict early on in its life.

Issue 6

Would the establishment of the taiāpure unduly affect existing commercial interests in Akaroa Harbour?

As already stated, section 176 requires us to have regard to the impact of a taiāpure order on "those persons having a special interest in the area that would be declared by the order to be a taiāpure-local fishery" (section 176(2)(b)(iii)). We must have regard also to "the impact of the order on fisheries management" (section 176(2)(b)(iv)).

The commercial fishing interests in Akaroa Harbour are now more or less confined to marine farming. Although once a sizeable commercial fishing port, the fishery in the harbour can no longer support a commercial fishery.

We heard, however, from two marine farmers, Roger Beattie of Sea-Right Investments, and Tom Bates of Akaroa Salmon (NZ) Limited. Both men have made a considerable investment in marine farming. Roger Beattie's company grows pāua and mussels, and extracts seaweed from the harbour. Tom Bates's business is in producing salmon.

As already explained, Roger Beattie's concerns about the establishment of the taiāpure led to his appealing to the High Court in respect of our earlier report and recommendations. The re-hearing commenced on the footing that Sea-Right's counsel would participate in an oppositional capacity. Happily, however, the rūnaka were able to reach agreements with both Sea-Right and Akaroa Salmon which effectively dealt with their concerns about the taiāpure.

Taiāpure are a new and largely untried fisheries management tool, and it is perhaps inevitable that those holding valuable existing use rights will be apprehensive about their establishment. It is to the credit of Mr Beattie, Mr Bates and the rūnaka that they were able to sit down and find a way of managing their competing interests and aspirations. Our impression was that the accommodation was reached established a platform for a positive ongoing relationship between the rūnaka on the one hand, and the marine farming interests represented by Mr Beattie and Mr Bates on the other. It is to be hoped that this co-operative approach would continue into the life of the management committee.

The result of the agreements reached between the parties is that any effects on existing commercial interests in the harbour have been disposed of as between the parties, and we may therefore infer that there are no interests that will be adversely affected by the creation of the taiāpure as sought.

Issue 7

Can the mechanisms in the Fisheries Act 1996 for management and control of the taiāpure be expected to deliver the anticipated environmental and other benefits?

When we held our first hearing over five days at Akaroa from 1-5 December 2003, we found the submissions to be of a high standard. The level of community support for, and engagement in, the taiāpure proposal particularly impressed us. A brief outline of submissions presented orally at the first hearing is attached to this report as Appendix D.[49]

From the submitters who spoke to us, we learned that Akaroa Harbour has within living memory undergone considerable degradation in terms of the decline of fish and shellfish stocks, and water quality parameters. There was general agreement that different management practices are required for the area. It was evident that the ability for local people to control their marine environment is an idea with tremendous appeal. It seemed to us that

[49] We have summarised the key scientific evidence presented at the re-hearing in the body of this report, and therefore do not repeat it in an appendix.

the taiāpure local fishery concept has been embraced by the Akaroa community as a means of delivering benefit not only to tangata whenua, but to all those who have an interest in the sustainability of Akaroa Harbour as a fishery, as an ecosystem, and as an integral part of the holistic Māori concept of te taiao.[50]

We heard submissions from a number of groups and individuals. Most had devoted a good deal of time and effort to formulating a submission that conveyed to us a clear point of view, and the reasons for it. Significantly, no submitter asked the panel not to recommend the establishment of a taiāpure. Lack of consensus about the proposal related only to the size of the taiāpure, and the location of its boundaries.

We are optimistic about this taiāpure achieving its objectives.

Akaroa Harbour is an enclosed body of water that is effectively part of the public domain in which many different groups and individuals have interests. It seemed to us that there was an acceptance in the community that there is really no alternative to all of these parties working together. The taiāpure model provides a vehicle for this. The various interest groups will be represented on the management committee, and will operate under the mana of the rūnaka. It seemed to us that this community has the potential to work within the taiāpure concept to arrive at new and exciting arrangements for the use and management of this body of water, and that those arrangements can deliver benefits to all.

Issue 8

In practice, how will the Management Committee work? Can it be sufficiently inclusive of community interests, at the same time as delivering on the kaupapa Māori agenda of the applicants?

In the case of this taiāpure application, the applicant rūnaka has already agreed with local organisations the structure of the management committee. Those agreements were amended as part of the accommodation reached with the marine farming interests, Akaroa Salmon and Sea-Right.

It is now proposed that the committee will be constituted as follows:

1. Chairperson from the Papatipu Rūnaka
2. 2 representatives from the Ōnuku marae
3. 1 representative from the Koukourārata Marae
4. 2 representatives from the Wairewa marae
5. 2 recreational fishers
6. 2 commercial fishers
7. 1 marine farmer
8. 1 tourist operator
9. 1 representative of local environmental interests

At the first hearing, it emerged as a key feature of this application that the taiāpure initiative is seen not only as an endorsement of the mana of tangata whenua, but also as an opportunity for the Pākehā community of Akaroa Harbour to be actively involved in managing and protecting their harbour.

No one objected to the proposed membership of the management committee, but as noted above, the membership now proposed by the applicant has changed. As part of the applicants'

[50] "Te taia" is the natural world.

accommodation with Akaroa Salmon and Sea-Right, another position has been made available on the committee for commercial interests. And then, presumably in order to main the balance with tangata whenua interests, another position has been provided for both the Ōnuku and Wairewa marae, taking their membership from one each to two each. This effectively diminishes the voice on the committee of the purely conservationist lobby, who have only one representative.

However, we think that the balance of representatives on the committee remains workable. This is because

(a) the recommendation for the establishment of the taiāpure that follows excludes the area comprised in the Dan Rogers marine reserve proposal. If the relevant ministers go along with our views in this regard, many of the concerns of the conservationist lobby will have been met; and

(b) although the rūnaka have an interest in re-establishing Akaroa Harbour as a functioning mahinga kai for Ngāi Tahu people and as a recreational fishing ground for others, they also indicated to us their strong interesting in introducing Māori ecological practices to restore the health of the harbour. We think, therefore, that the marae representatives are likely to support the conservationist stance on many issues affecting the harbour.

Accordingly, we think that the balance of the committee membership properly represents the interests and opinions presented to us.

We note that the rūnaka clearly intends that the establishment of the taiāpure will be an opportunity for tikanga Māori to be applied to the use and management of the harbour. It was apparent that education about these concepts and their implementation in the management of the taiāpure may need to be drawn from outside the district, leading to upskilling not only of local non-Māori but also the rangatahi[51] of the applicant hapū. The management committee, the rūnaka, and Ngāi Tahu whānui will need to work together to achieve these important outcomes.

RECOMMENDATION

For the reasons set out above, we recommend to the Minister that a taiāpure is gazetted in accordance with the rūnakas' application **except that** the area comprised in the Dan Rogers marine reserve proposal should be excluded from the taiāpure.

We understand that, in effect, the relevant ministers will be considering and deciding upon the taiāpure proposal and the marine reserve proposal at the same time, although of course in accordance with the relevant governing Acts.

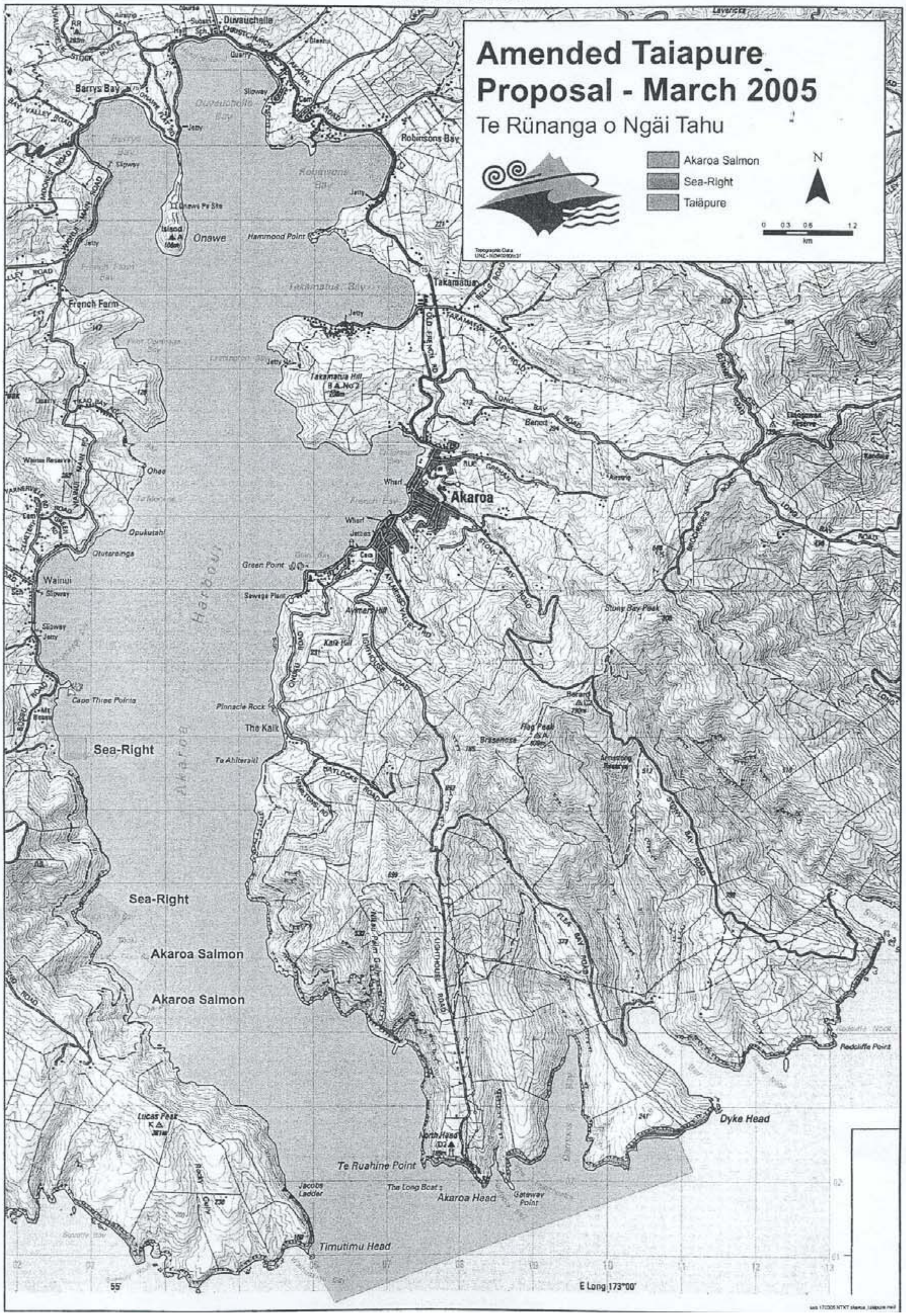
In the event that it is decided that no marine reserve should be created at Dan Rogers, then we recommend that the Dan Rogers area is included in the taiāpure.

Dated at Wellington this 1st day of September 2005

C M Wainwright
JUDGE

[51] "Rangatahi" are people of the younger generation.

APPENDIX A


Amended Taiapure
Proposal - March 2005
Te Rünanga o Ngäi Tahu
Akaroa Salmon
Sea-Right
Taiäpure
N
Duvauchelle
Barrys Bay
Robinsons Bay
Onawe
Hammond Point
Takamatua
French Farm
Akaroa
Wainui
Green Point
Cape Three Points
Pinnacle Rock
The Kaik
Sea-Right
Sea-Right
Akaroa Salmon
Akaroa Salmon
Stony Bay Peak
Dyke Head
Redcliffe Point
Te Ruahine Point
Akaroa Head
Timutimu Head
Lucas Peak
E Long 173°00'

APPENDIX B

Akaroa Taiāpure - spatial location of entered evidence

Te Rūnanga o Ngāi Tahu - September 2004

APPENDIX C

Reference	Name	Description
1.1	Te Whata o Kokiro	The food storehouse of Kokiro, where Kokiro the Ngāti Mamoe rangatira had his storehouse and whare on the landing below the cliffs and the tipuna gathered kai. Increasingly important today as stated in the evidence of Iaean Cranwell.
1.2	The Kaik (Ōnuku)	Mahinga kai including kaio, karengo, kuku, paua and pātiki.
1.3	Mānukatahi	Mahinga kai including moki, kuku, paua, koura and freshwater species.
1.4	Ōpukutahi	Kainga, wāhi tapu/wāhi taonga and mahinga kai including paua, kuku, kahawai and hoka.
1.5	Wainui	Kainga and mahinga kai including paua, kuku, kahawai, hoka, rāwaru, patiki and karengo.
2.1	Tuhiraki	Wāhi tapu.
3.1	Pōhatu Pā	Pā and kainga.
3.2	Te Ruahine	Tūranga Tūpuna. Mahinga kai including kuku, paua, kina, koura, rāwaru, hāpuku, moki, koiro, maka and mako.
3.3	Oinako	Tūranga Tūpuna. Mahinga kai – freshwater species.
3.4	Ōtakamatua	Tūranga Tūpuna (Silent File). Mahinga kai including tuaki and pātiki.
3.5	Ōtokotoko	Kainga.
3.6	Te Iringa parāoa o Te Rangitaurewa.	Tūranga Tūpuna.
3.7	Ōhinepāka	Kainga and Tūranga Tūpuna. Mahinga kai including paua and kuku.

4.1	Te Rautahi	Kainga. Mahinga kai including tuaki, pipi and pātiki.
4.2	Te Ana o Kokiro	Wāhi tapu (Ana Koiwi). Mahinga kai including kina, paua, kaio, moki, koura, rāwaru and hoka.
4.3	Te Ahi Taraiti	An important signal station with a view of most of the harbour. A fire would be lit here to warn Māori at Wainui of trouble. Mahinga kai including kuku, paua and kahawai.
4.4	Raumataki	Important signal station.
4.5	Te One Poto	Tūranga Tūpuna (Silent File). Mahinga kai including moki and mārari.
4.6	Te Wairere	Wāhi taonga/Tūranga Tūpuna. Mahinga kai including kuku, paua, kina, koura, rāwaru, hāpuku, moki, koiro, maka and mako.
4.7	Rangi Riri	Tūranga Tūpuna. Mahinga kai including kuku, paua, kina, koura, rāwaru, hāpuku, moki, koiro, maka and mako.
4.8	Ihutu/Taraouta	Kainga. Mahinga kai including tuaki, pipi and pātiki.
4.9	Timutimu	Tūranga Tūpuna (Silent File). Mahinga kai including moki, mārari, maka, rāwaru, puaihakarua and koura.
4.10	Onawe	Pa site and wāhi tapu. Mahinga kai including kuku, pipi and paua.
4.11	Kaitouna	Tūranga Tūpuna (Silent File). Mahinga kai including tuaki, pipi and pātiki.
4.12	Otipua	Tūranga Tūpuna (Silent File). Mahinga kai including kuku.
4.13	Otahuahua/Kaitangata	Tūranga Tūpuna (Silent File). Mahinga kai including pātiki, hoka, paua and kuku.

4.14	Takapūneke	Wāhi tapu. Pā site of Te Maiharanui that was sacked by Te Rauparaha using the Brig Elizabeth. Ngāi Tahu believe this incident was a contributing factor that lead Queen Victoria to conclude a Treaty was required with the indigenous peoples of New Zealand.
4.15	Te Monene	Tūranga Tūpuna. Mahinga kai including kuku and paua.
4.16	Oteauheke/Teaoheke	Wāhi taonga, pā and Tūranga Tūpuna.
4.17	Ōtureinga	Tūranga Tūpuna (Silent File)
4.18	Te Umu Te Rehua	Tūranga Tūpuna.
4.19	Ohae/Otahukoka	Kainga. Mahinga kai including kuku and paua.
4.20	Te Whata Mako	Mahinga kai including mako. Whata where the mako were dried.
4.21	Opakia	Tūranga Tūpuna. Mahinga kai including flounder, pipi and freshwater species.
4.22	Pupu o Hine Pani	Tūranga Tūpuna.
4.23	Taukakaha	Tūranga Tūpuna.
4.24	Te Umu o Raki	Tūranga Tūpuna
4.25	Te Wharenikau	Tūranga Tūpuna. Mahinga kai including kuku and paua.
4.26	Mairangi	Tūranga Tūpuna.
4.27	Tahunatorea	Tūranga Tūpuna. Mahinga kai including kuku and paua.
4.28	Te Aka Tarewa	Tūranga Tūpuna. Mahinga kai including kuku and paua.
4.29	Te Ana o te Kororiwha	Tūranga Tūpuna (Silent File)
4.30	Wharetuere	Tūranga Tūpuna (Silent File). Mahinga kai particularly for the hagfish (blind eel).

4.31	Ohine te Atua	Tūranga Tūpuna. Mahinga kai including moki, mārari, puaihakarua, paua and kuku.
4.32	Otehe	Tūranga Tūpuna. Mahinga kai including moki, mako, maka, puaihakarua, rāwaru, mārari and koura.
4.33	Pariwhero	Tūranga Tūpuna. Mahinga kai including moki, mako, maka, puaihakarua, rāwaru, mārari and koura.
4.34	Oteouhou	Tūranga Tūpuna. Mahinga kai including moki, mārari, maka, rāwaru, puaihakarua and koura.
4.35	Mangarowhitu	Tūranga Tūpuna. Mahinga kai including rāwaru, paua, koura and hāpuku.
4.36	Omianga	Tūranga Tūpuna.
4.37	Ounuhau	Tūranga Tūpuna. Mahinga kai including paua and koura.
4.38	Te Papaki	Tūranga Tūpuna. Mahinga kai including paua and mussels.
4.39	Te Pito o Tutuki	Mahinga kai including paua and mussels.
4.40	Poho Tarewa	Mahinga kai including paua and mussels.
4.41	Kaitangata	Mahinga kai including paua and mussels.
9.1	Ngā Kākaiau	One of the best bays in the harbour for catching pātiki.
9.2	Ōkoropeke	Mahinga kai including tuaki, pipi, patiki, mako, maka and hoka.
9.3	Ngā Mataurua	Mahinga kai including kahawai, rāwaru, hoka, maka and mako.
9.4	Whakakuru	Mahinga kai including moki, mako, maka, puaihakarua, rāwaru, mārari and koura.

9.5	Ōputaputa	Mahinga kai including moki, mako, maka, puaihakarua, rāwaru, mārari and koura.
9.6	Orukuwai	Mahinga kai including paua and mussels.
10.1	Te Kaio/Ngāio	Gathering place of Kaio.
10.2	Pipi Karetu	Means hanging shellfish – a place where great quantities of shellfish were consumed.
10.3	Te Kororiwha	A mahinga kai including small silver paua.
10.4	Te Rapa Te Kakau	Used to tie up top line of nets used to catch sharks and other fish.
10.5	Te Kohuwai	Mahinga kai particularly for blue cod.
10.6	Te Waipirau	Mahinga kai – freshwater species.
10.7	Tokoroa	Mahinga kai including kuku, paua and rimurapa.
10.8	Te Whare Kakahu	Mahinga kai – freshwater species.
10.9	Te Waikopani	Mahinga kai including paua, kuku and freshwater crayfish.
10.10	Opuaterehu	Mahinga kai – freshwater species.
10.11	Kaiwaka	Big rock where the canoe were tied after gathering of kai. Also mahinga kai for paua.
10.12	Kauwae Wiri	Mahinga kai including moki, mārari, puaihakarua and paua.
10.13	Whakakuku	Mahinga kai for kuku.
10.14	Kaimatarau	Mahinga kai including mārari, moki, puaihakarua kuku and paua.
10.15	Te Karetu	Mahinga rongoa.
10.16	O Te Rako	Mahinga kai including kina, paua, moki and kuku.

10.17	Whakahopekakahu/Te Waihi	Mahinga kai including kuku, paua, kina, rāwaru, hāpuku and mako.
10.18	Awa Hohuna	Mahinga kai including mako and kina.
10.19	Kororataniko	Mahinga kai including kina, mako, kuku and paua.
10.20	Otuhaekawa	Mahinga kai including moki, mārari, koura and hāpuku.
10.21	Te Kohuwai	Mahinga kai – freshwater species.
10.22	Kaituna/Te Wairori	Mahinga kai – freshwater species.
10.23	Te Wharau	Mahinga kai – freshwater species.
10.24	Wai iti	Mahinga kai – freshwater species.
10.25	Pakaiariki	Mahinga kai – freshwater species.
10.26	Otangataiti	Mahinga kai – freshwater species.

APPENDIX D

OUTLINE OF SUBMISSIONS PRESENTED AT THE FIRST HEARING (in order of their presentation)

Ōnuku, Wairewa and Koukourārata Rūnaka

The key representatives of the Ōnuku, Wairewa and Koukourārata Rūnaka were Ngāi Tahu kaumātua Sir Tipene O'Regan and Morehu Gray, Nigel Scott (Senior Policy Analyst, Kaupapa Taiao) and Ngāi Tahu representatives Robin Wybrow, Charlie Crofts, Edward Ellison and Iaean Cranwell.

As the applicants requesting a taiāpure over Akaroa Harbour, the rūnaka advocate the placing of a taiāpure over the whole of Akaroa Harbour and oppose any amendment of the taiāpure boundaries.

Accordingly, the rūnaka oppose the designation of the Dan Rogers area as a marine reserve and its exclusion from the proposed taiāpure.

Royal Forest & Bird Protection Society

The representatives from Royal Forest & Bird were Eugenie Sage (Regional Field Officer for North & South Island) and Christopher Denny (Marine Biologist).

Forest & Bird supports a taiāpure in Akaroa Harbour but object to the current proposal on the basis that it makes no provision for the Dan Rogers marine reserve.

Forest & Bird submitted that the establishment of a marine reserve at Dan Rogers would ensure that a part of Akaroa Harbour is conserved and protected. Their central submission is that a marine reserve should be created at Dan Rogers in conjunction with the taiāpure over the balance of Akaroa Harbour.

Sea-Right Investments Ltd

The representative from Sea-Right Investments was Roger Beattie (Managing Director). Sea-Right Investments Ltd is a Christchurch-based fishing, marine farming and marketing company that holds resource consents and marine farming permits in Akaroa Harbour.

Sea-Right Investments Ltd agrees in principle with a taiāpure being established over only part of Akaroa Harbour. Their objection to the current proposal is that it is for a harbour-wide taiāpure.

Sea-Right Investments Ltd submits that the present harbour-wide proposal gives disproportionate weighting to one sector group in a multiple-use environment. Instead, the harbour should be divided according to the user groups of the harbour and their specific areas of interest.[52]

Department of Conservation

The representative from the Department of Conservation was Mike Cuddihy (Canterbury Conservator).

The Department of Conservation supports a taiāpure over most of Akaroa Harbour. The Department also supports the Dan Rogers marine reserve application.

The Department of Conservation submits that the taiāpure and the Dan Rogers marine reserve would complement each other and are both mechanisms that would make a contribution to the Government's policy objectives of establishing a network of protected marine areas.

---

[52] As explained in the body of the report, Sea-Right appealed against our initial report and recommendations, and has subsequently amended its position in relation to the taiāpure in the light of the agreement reached between it and the applicants.

The Department of Conservation also submitted that the taiāpure management committee should be modelled on the Pōhatu marine reserve committee to ensure that all important interests groups are represented. The Department offered its full support and assistance to the committee.

Akaroa Harbour Recreational Fishing Club Inc.

The representatives from the Akaroa Harbour Recreational Fishing Club were Robert Meikle (President) and James Crossland (Vice-President).

The Club submits that a taiāpure over Akaroa Harbour is the most acceptable and satisfactory mechanism available to preserve and enhance the Akaroa fishery and it supports the current formulation of the taiāpure boundaries.

The Club firmly opposes the Dan Rogers marine reserve application. It is the Club's submission that a reserve would unduly interfere with recreational fishing and use, and the public interest.

Akaroa Harbour Marine Protection Society

The representatives from the Akaroa Harbour Marine Protection Society were Brian Reid (President), Kathleen Reid, Steve Carswell, Jan Cook (also representing Friends of Banks Peninsula Inc), Richard Boleyn, Jeff Hamilton and Suky Thompson. The Society is the Dan Rogers marine reserve applicant.

The Akaroa Harbour Marine Protection Society supports a taiāpure in Akaroa Harbour, but objects to the current proposal on the basis that it makes no provision for the Dan Rogers marine reserve. It is the Society's submission that while a taiāpure may prove to be a valuable marine management mechanism, there is no substitute for the certainty of a marine reserve, which will ensure a part of the Harbour is restored and replenished. Accordingly, they submit that a marine reserve at Dan Rogers should exist in conjunction with a taiāpure.

In relation to the taiāpure management committee, the Society also submits that it is important that the views of conservationist groups are adequately represented so that community support for the taiāpure is retained and fostered.

Akaroa Salmon (NZ) Ltd

The representative from Akaroa Salmon (NZ) Ltd was Tom Bates (Managing Director).

Akaroa Salmon supports the taiāpure in principle but expressed concern about the taiāpure management committee's powers in relation to the renewal of consents, permits and licences required by marine farms in general.

The rūnaka entered into a memorandum of consent with Akaroa Salmon to alleviate this concern.[53] As a consequence, Akaroa Salmon (NZ) Ltd now gives full support to a taiāpure over Akaroa Harbour.

2. Decision of the Minister

Acting pursuant to section 181(9)(a)(i) of the Fisheries Act 1996, as Minister of Fisheries, I have taken into account the report and recommendation of the Tribunal and having had regard to the provisions of section 176(2) of the Act, and after consultation with the Minister of Maori Affairs, I hereby publish my decision on the report and recommendation of the Tribunal concerning the Akaroa Harbour taiapure-local fishery proposal.

---

[53] As explained in the body of the report, Akaroa Salmon entered into a further agreement with the applicants, following the applicants' agreement with Sea-Right.

In regard to the recommendations in the Tribunal report that a taiapure-local fishery should be established over Akaroa Harbour, Banks Peninsula, from the south-easternmost extremity of Timutimu Head to the southernmost extremity of Gateway Point, but excluding marine farming areas of Sea-Right and Akaroa Salmon, as outlined in the Sea-Right agreement, and the area of the Dan Rogers marine reserve application, I have decided to accept the recommendation.

Dated at Wellington this 6th day of September 2005

Hon David Benson-Pope
Minister of Fisheries

PUBLISHED BY THE
DEPARTMENT OF INTERNAL AFFAIRS
PRINTED BY WICKLIFFE LIMITED

THE DEPARTMENT OF INTERNAL AFFAIRS
Te Tari Taiwhenua

ISSN 0111-5650
Price $7.00 (inc. G.S.T.)