



PĀUA INDUSTRY COUNCIL

Submission on proposed temporary fishing closure of the Leigh-Tawharanui area

Summary

The Pāua Industry Council (PIC) **opposes** the request from the Protect Rock Pools Committee for a two-year closure under section 186A of the Fisheries Act 1996 of the area between Cape Rodney-Okakari Point Marine Reserve and Tawharanui Marine Reserve to hand-gathering of all species of fish, aquatic life, or seaweed, except pāua, rock lobster, kina, cockles, pipis, dredge oysters, scallops, and tuatua.

PIC considers that the proposal is a serious and blatant mis-use of s.186A and should never have been accepted or consulted on by Fisheries New Zealand (FNZ). In particular:

- The proposal does not recognise and make provision for the use and management practices of tangata whenua;
- The proposal will not increase the abundance or size of fish and will instead contribute to cascading localised depletion of harvested species around the Hauraki Gulf;
- The concerns described by the applicant demand an effective fisheries management response – i.e., fine-scale control of recreational fishing effort – rather than a temporary closure to provide for customary use and practices; and
- If approved, the application would set a dangerous precedent that will undermine effective fisheries management and the proper use of customary fishing tools under the Fisheries Settlement.

In spite of our strong opposition to the use of s.186A at Leigh-Tawharahui, PIC acknowledges and shares the concerns of the applicants about the negative impacts of intense recreational fishing pressure on inter-tidal rock pools. We **recommend** that FNZ should urgently develop, consult on and implement measures to manage recreational fishing effectively (including, where necessary, on a fine spatial scale) in the Hauraki Gulf/Coromandel region.

The proposal is contrary to the intent and provisions of s.186A

Section 186A is in Part 9 of the Fisheries Act, which provides for **customary fishing**, including through taiāpure (ss.174-185), customary fishing regulations (s.186), and temporary closures (ss.186A and 186B). Analysis of the wording and legislative history of s.186A confirms that the section cannot be used as a general tool to increase localised fisheries abundance.

Legislative history – use and management practices of tangata whenua

Section 186A was inserted into the Fisheries Act by the Fisheries (Remedial Issues) Amendment Act 1998. The Primary Production Committee report on the Amendment Bill provides useful context for interpreting the purpose of the section.¹

The Committee notes that temporary closures are not sustainability measures and are not intended as measures to rebuild fish stocks:

The clause is not intended to achieve the purpose of rebuilding or restoring a stock in the context of a quota management area (QMA). We also note that localised depletion is not an issue contemplated under Part III of the Act [sustainability measures]. To clearly make this distinction, we recommend that the word "stock" be replaced by the word "species" where it appears in the clause.

Most relevantly, the Committee emphasises the purpose of temporary closures is only to provide for the use and management practices of tangata whenua (i.e., increasing the availability or abundance of fish is simply a means to achieve this and is not an end in itself):

*Clause 43 [which became s.186A] is **not a general closure provision** but is designed to achieve the specific purpose of providing for the use and management practices of tangata whenua in the exercise of their customary rights. We believe that **the sole purpose for a closure, restriction, or prohibition should be to provide for the use and management practices of tangata whenua**. The means of achieving that purpose is to improve the availability of fish or to recognise customary fishing practices.*

In recognition of the potentially serious impacts on other fishers, the Committee also recommended strengthening the burden of proof for establishing a temporary closure:

*We consider that a **higher threshold** than is provided for in the bill is necessary before a temporary closure, restriction or prohibition can be imposed with potential substantial impacts on other fishers. Instead of the Minister having to consider that such action is "likely to assist" in replenishing stocks or in recognising and making provision for the use and management practices of Maori in the exercise of non-commercial fishing rights, **we recommend that the Minister "must be satisfied" that a temporary closure, restriction or prohibition will recognise and make provision for the use and management practices of tangata whenua.***

The Committee's recommendations are reflected in the final wording of s.186A.

Requirements of s.186A are not met

In order to approve a measure under s.186A, the Minister must be satisfied that the closure or restriction:²

¹ Fisheries (Remedial issues) Amendment Bill 1998, as reported by the Select Committee [here](#)

² S.186A(2).

will recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights by—
 (a) *improving the availability or size (or both) of a species of fish, aquatic life, or seaweed in the area subject to the closure, restriction, or prohibition; or*
 (b) *recognising a customary fishing practice in that area.*

If – as in the Leigh-Tawharanui proposal – a fishing method restriction or prohibition is under consideration, then the Minister must also be satisfied that:³

the method is having an adverse effect on the use and management practices of tangata whenua in the exercise of non-commercial fishing rights.

PIC acknowledges that s.186A does not restrict groups who are not tangata whenua from making an application for a temporary closure. It is clear, however, that a closure may be imposed only for the purpose of recognising and making provision for the use and management practices of tangata whenua. The application by the Protect Rock Pools Committee and the supporting information (i.e., evidence presented by Mary Coupe to the Petitions Committee in October 2021)⁴ make no mention whatsoever of the use and management practices of tangata whenua. In particular:

- There is no evidence that the species named in the application (i.e., periwinkles, whelks, limpets, chitons, starfish, and small crabs) are utilised by tangata whenua in the exercise of customary non-commercial fishing rights;
- There is no evidence about the existence, nature or extent of customary fishing practices in the area;
- It is unclear whether the implied support of Ngātiwai is a mandated Ngātiwai position related to the exercise of their customary fishing rights, or simply the views of interested individuals; and
- To the extent that customary use and management practices may be affected by excessive recreational fishing pressure in rock pools, a two year closure will not address this concern – only a concerted and effective fisheries management response will (as discussed below).

Instead of recognising and providing for the use and management practices of tangata whenua, the application is clearly driven by other objectives. What is not clear, however, is whether the applicant's primary objective is (a) to improve the availability or size of fish for utilisation purposes, or (b) to protect marine ecosystems for purposes other than extractive utilisation. The former purpose is a legitimate 'means' of providing for the use and management practices of tangata whenua under s.186A(2)(b) whereas the latter is not.

The original petition of the Protect Rock Pools Committee suggests a sustainable utilisation purpose. It requests: *That the House of Representatives pass legislation to **reduce the limits for collecting sea life** currently set under the Fisheries Act 1996.*⁵

However, the stated reason for the request focuses more on ecological concerns – i.e.:

³ S.186A(3).

⁴ Evidence of Mary Coupe [here](#).

⁵ Parliament webpage for the petition [here](#).

*Our rock pools and shorelines are being harvested at rates that don't allow for adequate regeneration. We are **upsetting the fragile ecosystems** and balances in play. Some shorelines have little or no sea creatures left. Birds, sea life and other creatures depend on the rock pools for food which is disappearing at alarming rates. It is time to **treasure this taonga for today's ecosystems and tomorrow's kiwis.***

The location of the proposed closure between two marine reserves adds support to a protectionist objective rather than one relating to providing for sustainable (extractive) utilisation.

Irrespective of the unclear objectives of the applicant, Mary Coupe's evidence to the Petitions Committee clearly reflects community concerns that the current level of recreational shellfish harvest of rock pool species is unsustainable due to a combination of the high number of recreational fishers and the high combined daily bag limit. However, the applicant provides no evidence that a two year closure will improve the availability or size of fish in the area.

PIC considers that any improvements in availability and size are highly unlikely because:

- In the absence of a genuine fisheries management response to the underlying problem of excessive recreational fishing effort (see below), any improvement in availability or size of fish will be temporary and will immediately be negated if the closure is lifted after two years;
- Experience with s.186A and s.186B closures in other parts of the country is that two year closures are frequently renewed many times without achieving their objectives, primarily because the complex, multiple pressures along popular coastlines cannot be fixed by simplistic temporary fisheries closures.⁶ There is no reason to expect that the Leigh-Tawharanui area is any different; and
- FNZ does not monitor rock pool species and therefore has no way of objectively assessing the current availability or size of fish, no way of predicting whether the closure will increase the availability or size of harvested species, and no way of monitoring whether the closure (if imposed) has achieved its intended effect.

Furthermore, the applicant provides no evidence to support the requirement in s.186A(3) that the fishing method (i.e., hand gathering) has an adverse effect on the use and management practices of tangata whenua. Properly managed hand gathering is a relatively benign fishing method – i.e., in this case it is unlikely to be the *method* which has an adverse effect on the availability and size of fish, but simply the excessive level of recreational fishing pressure.

PIC considers that in these circumstances the Minister cannot possibly '*be satisfied*' that:

- The closure will provide for the use and management practices of tangata whenua by improving the availability or size of fish; and
- The fishing method (hand gathering) has an adverse effect on the use and management practices of tangata whenua.

⁶ For example, Wakatu Quay (closed since 2002), Umupuia Beach (closed since 2008), Maunganui Bay (closed since 2010) and Marsden Bank/Mair Bank (closed since 2018).

An effective fisheries management response is required

In spite of our strong opposition to the use of s.186A at Leigh-Tawharahui, PIC acknowledges and shares the concerns of the applicants about the negative impacts of intense recreational fishing pressure on inter-tidal rock pools.

It is not clear why the Protect Rock Pools Committee amended their original petition (which requested reduced recreational bag limits) to instead request a s.186A closure. We hope that this change of approach was not made at the suggestion of FNZ fisheries managers. FNZ should be well aware that s.186A was never intended to be used for general closures or as a substitute for effective management and constraint of recreational fishing.

PIC considers that by progressing the Leigh-Tawharanui application for a s.186A closure, FNZ is abdicating its responsibilities to manage recreational fishing effectively. We see the current application as yet another example of the inappropriate use of customary tools to address unmanaged recreational fishing pressure, including recent applications for s.186A closures on the eastern Coromandel coast (approved 9 September), Waiheke (approved 29 November) and Whangaroa (still under consideration).

Temporary closures exacerbate risks of local depletion

The use of piecemeal closures in and around the Hauraki Gulf will not address the issues that the applicants for each of these closures are genuinely concerned about. For example, imposing a s.186A closure between Leigh and Tawharanui will neither reduce the high number of recreational fishers nor prevent excessive recreational fishing effort in the wider region's rock pools. Each of the recent and proposed s.186A closures, including the Leigh-Tawharanui application, is more likely to exacerbate local depletion of fisheries resources by displacing the intensive recreational fishing that occurs in the Gulf and surrounding areas. We are already beginning to see a cascading series of *ad hoc* closures in the Hauraki Gulf, with the remaining fishing effort becoming increasingly concentrated in fewer, smaller areas. This is clearly not a sustainable approach to fisheries management, and it undermines customary fishing rights by hindering the ability of other nearby hapū to exercise their customary fishing rights in their own rohe moana.

Imposing a simplistic temporary closure is not an effective fisheries management response in these circumstances, even as a 'stop gap' measure while recreational management settings are reviewed. The existence of a s.186A closure and the expectation that it will be renewed time and again without due scrutiny is likely to detract from, rather than incentivise, the development of more appropriate and effective management responses to high recreational fishing pressure.

Effective fisheries management solutions

In the pāua industry's experience, the only effective management approach for the sustainable utilisation of shellfish populations is careful control of fishing effort (whether customary, commercial or recreational) at a fine spatial scale. In the case of shellfish populations that are subject to high recreational fishing pressure, PIC recognises that effective fine-scale management can be complicated, costly and highly political. Nevertheless, it must be urgently pursued – there is no alternative way of achieving the purpose of the Fisheries Act and complying with the Crown's obligations under the Fisheries Settlement.

We consider that the measures proposed in the Hauraki Gulf Fisheries Plan are a sound starting point for an effective management response to the reported situation at Leigh-Tawharanui – i.e.:

- Review the existing management settings for recreational intertidal shellfish harvesting. PIC recommends that, in addition to reviewing the combined bag limit, particular consideration should be given to new controls such as individual species bag limits, accumulation limits, vehicle limits, and controls on the use of particular harvesting tools;
- Make more use of seasonal closures at a smaller spatial scale; and
- Gather better information on the distribution and abundance of the species in question, and the harvesting of these species.

It is unfortunate that the proposed review of the combined bag limit for shellfish was not undertaken at the same time as the recent finfish bag limit review. However, it is not necessary for FNZ to wait until the Hauraki Gulf Fisheries Plan has been approved before initiating such a review or beginning to implement the other recreational fishing measures proposed in the draft plan. The proposed Fisheries Act amendments to allow the adjustment of recreational management settings by *Gazette* notice (i.e., in a process that is procedurally no more onerous than establishing a s.186A closure) should also help FNZ to use the right tools for the task.

The application sets a dangerous precedent

The approval of a s.186A application from an applicant with no customary fishing interests and for purposes unrelated to customary fishing would set an exceedingly unhelpful precedent. In the footsteps of the approval of this application, any community group or environmental NGO would be able to make use of s.186A closures themselves (or to co-opt iwi or hapū to their cause). The approval of this application would therefore exacerbate the proliferation of s.186A closures not only around Auckland but also in other areas with inadequately managed recreational fishing pressure.

Because s.186A does not distinguish between fishing sectors, the increasing use of s.186A in response to unmanaged recreational fishing also unnecessarily and unfairly restricts the exercise of commercial fishing rights (although not for the species covered by the current application).

PIC considers that iwi and hapū with customary fishing interests should be equally concerned about the cynical appropriation of customary tools by groups with agendas that are unrelated to providing for the use and management practices of tangata whenua. It devalues the Crown's obligations under the Settlement and detracts from the urgent need to develop and implement effective measures to control recreational fishing pressure for the benefit of all fisheries users.

Most importantly, PIC is very concerned that if FNZ fails to effectively manage recreational fishing pressure in areas such as the Hauraki Gulf, fisheries management failures will increasingly be used as pseudo-justification for prohibiting all fishing for 'biodiversity protection purposes' under legislation other than the Fisheries Act (e.g., Resource Management Act, Marine Reserves Act, special legislation). The Fisheries Act and FNZ will become irrelevant in the control of recreational fishing. Biodiversity protection measures will inevitably displace recreational and commercial fishing, resulting in further concentration of fishing effort and potential adverse ecological impacts. This no-win spiral of displacement has no fisheries management benefits. It is contrary to the purpose of the Fisheries Act and to the Crown's obligations under the Fisheries Settlement.

PIC recommends that FNZ must take urgent action to effectively manage recreational fishing pressure – in the Hauraki Gulf and elsewhere – under fisheries legislation before it is too late.

A handwritten signature in black ink that reads "Storm Stanley". The signature is written in a cursive, slightly slanted style.

Storm Stanley
Chair