



# Review of Closure for Earthquake-affected Fisheries

Proposal to replace the current emergency closure  
along the Kaikōura and Cape Campbell coastlines with  
a new closure under section 11 of the Fisheries Act  
1996

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<b>1</b>	<b>Submission Information .....</b>	<b>1</b>
<b>2</b>	<b>Statutory Considerations .....</b>	<b>2</b>
<b>3</b>	<b>What is proposed? .....</b>	<b>5</b>
<b>4</b>	<b>Why the need for change? .....</b>	<b>5</b>
<b>5</b>	<b>What are the options proposed?.....</b>	<b>7</b>
<b>6</b>	<b>Other Relevant Matters .....</b>	<b>8</b>
<b>7</b>	<b>Further Information .....</b>	<b>9</b>

## Submission Information

The Ministry for Primary Industries (MPI) welcomes written submissions on any or all of the proposals contained in the Discussion Document. All written submissions must be received by MPI no later than 5 pm on 7 July 2017.

Submission can be emailed to: [FMsubmissions@mpi.govt.nz](mailto:FMsubmissions@mpi.govt.nz)

Alternatively, the postal address is:

Sustainability Review 2017  
Fisheries Management  
Ministry for Primary Industries  
P O Box 2526  
Wellington 6011

### OFFICIAL INFORMATION ACT 1982

All submissions are subject to the Official Information Act and can be released (along with personal details of the submitter) under the Act. If you have specific reasons for wanting to have your submission or personal details withheld, please set out your reasons in the submission. MPI will consider those reasons when making any assessment for the release of submissions if requested under the Official Information Act.

# Statutory Considerations

The Minister's central statutory considerations for establishing sustainability measures under the Fisheries Act 1996 are outlined in this section.

## PURPOSE OF THE ACT

The purpose of the Fisheries Act 1996 (the Act) is set out in section 8 and states:

- 1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.
- 2) In this Act,—

**ensuring sustainability** means—

- (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
- (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment

**utilisation** means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

MPI considers that Option 2 in this paper, to replace the current emergency closure with a new closure under section 11 of the Act implemented through a gazette notice, aligns with the purpose of the Act. However, MPI does not consider that Option 1 – allowing the current fishery emergency closure to expire – will achieve the purpose of the Act. The purpose of this consultation document is to seek the views of the public opinion on these proposals.

## SECTION 9

MPI considers Option 2 is consistent with the environmental principles set out under section 9 of the Act. This relates to:

- (a) maintaining associated or dependent species above a level that ensures their long-term viability;
- (b) maintaining biological diversity of the aquatic environment;
- (c) protecting habitat of particular significance for fisheries management.

## SECTION 10

Section 10 of the Act states that all persons exercising or performing functions, duties, or powers under the Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles:

- (a) decisions should be based on the best available information;
- (b) decision makers should consider any uncertainty in the information available in any case;
- (c) decision makers should be cautious when information is uncertain, unreliable, or inadequate;

- (d) the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.

Given the unexpected nature of the earthquake and the need to act quickly following the earthquakes, there is limited information available to inform management decisions, and there is uncertainty within the available information. MPI has used the best available information in developing and evaluating the proposals in this paper.

## SECTION 11

Subsection 1 of section 11 of the Act states:

- (1) The Minister may, from time to time, set or vary any sustainability measure for 1 or more stocks or areas, after taking into account—
- (a) any effects of fishing on any stock and the aquatic environment; and
  - (b) any existing controls under this Act that apply to the stock or area concerned; and
  - (c) the natural variability of the stock concerned.

MPI has taken into account the potential effects of fishing on the fisheries impacted by the closure, as well as existing controls and the natural variability of stocks. Under the existing controls, the fishery will be reopened to fishing pressure on 20 November 2017. MPI does not consider that the fisheries in the closed area can sustain fishing pressure at this time. MPI considers that the proposal to replace the emergency closure with a new closure under section 11 of the Act is therefore necessary to ensure sustainability of the earthquake-affected fisheries.

Subsection (2) of section 11 of the Act states:

- (2) Before setting or varying any sustainability measure under subsection (1), the Minister shall have regard to any provisions of—
- (a) any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991; and
  - (b) any management strategy or management plan under the Conservation Act 1987; and
  - (c) sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (for the Hauraki Gulf as defined in that Act); and
  - (ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
  - (d) a planning document lodged with the Minister of Fisheries by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011— that apply to the coastal marine area and are considered by the Minister to be relevant.

MPI is not aware of any of the matters in 11(2)(a) to (d) above that impact on the proposal in this paper.

Subsection (2A) of section 11 of the Act states that:

- (2A) Before setting or varying any sustainability measure under this Part or making any decision or recommendation under this Act to regulate or control fishing, the Minister must take into account—
- (a) any conservation services or fisheries services; and
  - (b) any relevant fisheries plan approved under this Part; and
  - (c) any decisions not to require conservation services or fisheries services.

MPI does not consider any existing conservation services, which are administered by the Department of Conservation for protected species, in relation to the shellfish and seaweed fisheries impacted by the 14 November 2016 earthquake to adequately achieve the purpose of the Act as they do not concern these fisheries. There are no relevant fisheries plans approved under subsection (2A). There is a draft National Fisheries Plan for Inshore Shellfish. MPI has considered the application of this draft plan in the *Other Relevant Matters* section of this discussion document.

Subsection 11(3) states:

- (3) Without limiting the generality of subsection (1), sustainability measures may relate to—
- (a) the catch limit (including a commercial catch limit) for any stock or, in the case of a quota management stock that is subject to [section 13](#) or [section 14](#), any total allowable catch for that stock:
  - (b) the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken:
  - (c) the areas from which any fish, aquatic life, or seaweed of any stock may be taken:
  - (d) the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area:
  - (e) the fishing season for any stock, area, fishing method, or fishing vessels.

MPI proposes to set a continued closure in the earthquake-affected area under section 11(3)(c). This closure would not apply to customary take. The waters of the current emergency closure are part of the South Island Fisheries Waters. Subsection 4(1) of the Fisheries (South Island Customary Fishing) Regulations states:

4(1) In the event of any inconsistency between these regulations and any other regulations made under the [Fisheries Act 1983](#) or the [Fisheries Act 1996](#), these regulations prevail over such other regulations.

Under section 11 of the Act, customary take will therefore not be prohibited within the closed area.

# Review of the emergency closure for earthquake-affected fisheries along the Kaikōura and Cape Campbell coastlines

## 1. What is proposed?

MPI proposes to review the emergency closure that is in place to protect shellfish and seaweed fisheries (excluding rock lobster and scampi) negatively impacted by the 14 November 2016 earthquakes within the Kaikōura and Cape Campbell areas. MPI proposes the following initial options and seeks information and views from tangata whenua and stakeholders (Table 1):

**Table 1: Proposed options for the earthquake-affected fisheries in Kaikōura and Cape Campbell**

Management action	
Option 1	Take no action. The current emergency closure will expire at 5pm 20 November 2017 and the affected shellfish and seaweed fisheries will be reopened.
Option 2	Replace the emergency closure with a closure under section 11 of the Fisheries Act 1996.

## 2. Why the need for change?

Earthquakes on 14 November 2016 had a considerable impact on the coastline around Kaikōura and Cape Campbell. There have been substantial adverse effects on the intertidal and subtidal marine ecosystems, and on some fisheries associated with these ecosystems.

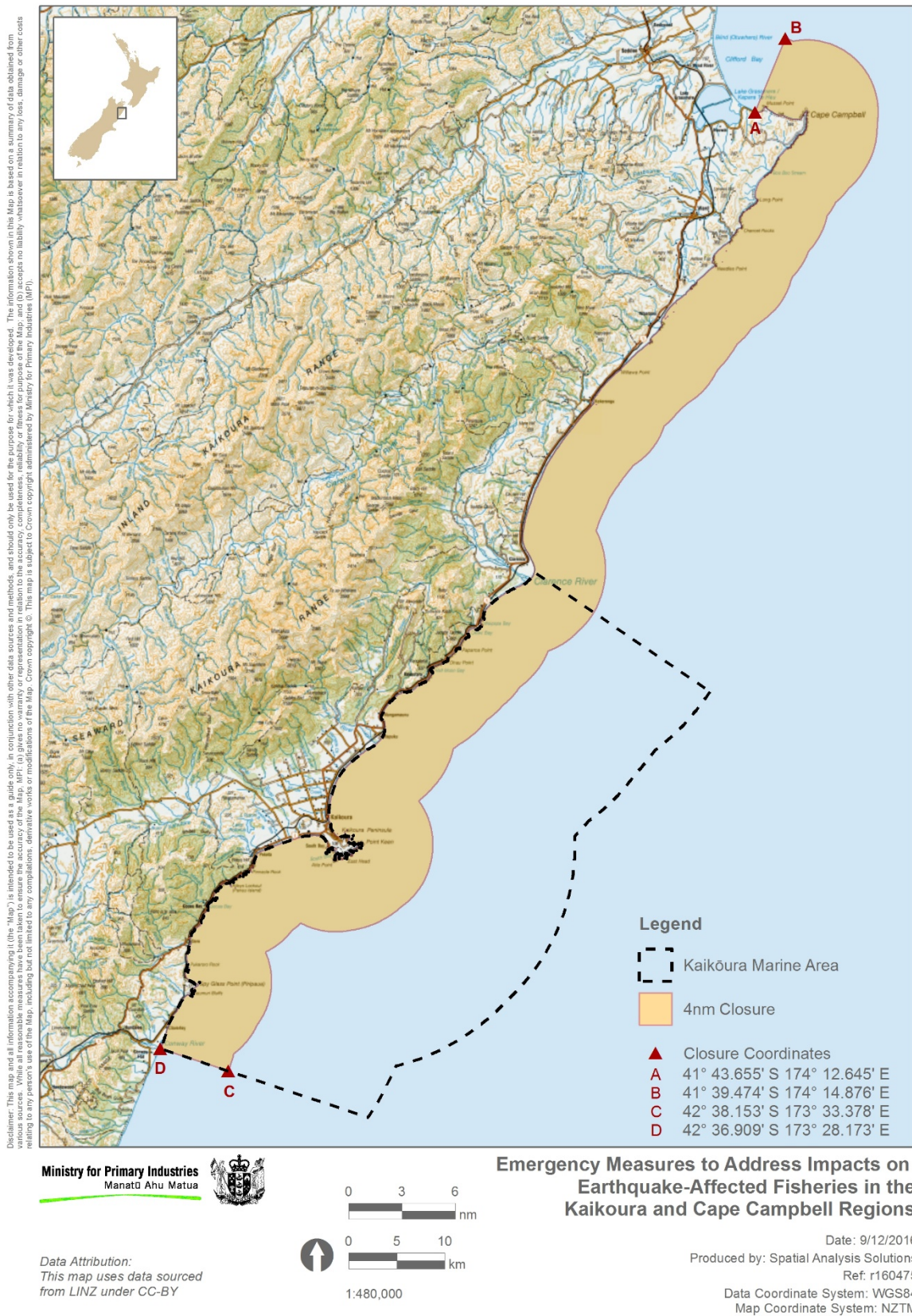
As a result of the earthquakes, the Minister for Primary Industries implemented emergency closures for inshore shellfish (excluding scampi) and seaweed on the earthquake affected coast on 20 November 2016 (Figure 1). This was done under section 16 of the Fisheries Act 1996 (the Act). The harvest of rock lobster was prohibited for a period of one month up to 20 December 2016, and the harvest of all other shellfish and seaweed species was prohibited for a period of three months up to 20 February 2017.

The rock lobster closure was not extended beyond one month because information suggested there had not been a serious decline in the abundance of rock lobster in the affected area. However, the closure for all other shellfish (excluding scampi) and seaweed was subsequently renewed to end on 20 November 2017. Retaining the closure was considered critical to providing the best opportunity for these species, particularly paua, to recover.

Under the Act, the emergency closure cannot be renewed beyond 20 November 2017 (it may only be renewed once for a period not exceeding 9 months after the initial 3 month closure). When the closure expires, the fisheries will automatically be reopened under the management settings (TACC, recreational bag limits) that were set prior to the earthquakes occurring. These rules do not account for the significant mortality of fisheries species and the changes to the environment caused by the earthquakes. MPI expects that the fisheries will not be able to sustain fishing pressure allowed for by these rules. If the fisheries are reopened under these rules, MPI expects the fisheries will become depleted and their sustainability will be compromised.



MPI, therefore, proposes that the emergency closure is replaced with a closure under section 11 of the Act. This is while other sustainability measures and management controls are considered for the future management of the affected fisheries.



**Figure 1. Map of the earthquake-affected area that was closed under section 16 of the Fisheries Act 1996.**

## 3. Why are these options proposed?

### 3.1 OPTION 1

Under Option 1, no further action will be taken. The current emergency closure will expire on 20 November 2017 and the shellfish and seaweed fisheries currently prohibited by the closure will reopen.

MPI does not consider that Option 1 will meet the purpose of the Act: to provide for utilisation of fisheries resources while ensuring sustainability. The observed scale of habitat loss following the earthquakes was, and continues to be, sufficient to raise concerns about potentially significant loss of abundance and future productivity from existing fisheries. This is a particular concern for paua because they rely on the presence of coralline algae to live in when they recruit to the reef as juveniles; uplift has caused major areas of coralline algae to be destroyed, reducing the habitat available for recruiting paua, and therefore potentially reducing recruitment of new paua to the reef<sup>1</sup>.

Further research is needed to determine impacts on fisheries species, and how mortalities and alterations to habitat may impact on recovery of the fisheries. MPI expects that habitat recovery will take some time, and this is likely to impede the recovery of other species, such that recovery of some species (including paua) may take up to 5 – 10 years.

MPI does not believe the commercial catch limits and non-commercial regulations put in place pre-earthquake can ensure sustainability of the fisheries resources in the earthquake-affected area if it is allowed to reopen.

MPI is reviewing the commercial catch limits for PAU3 and PAU7, both of which are partially closed under the emergency closure (see section 3.3). That review aims to adjust commercial catch limits to sustainable levels for the areas that remain open. It is possible that, as part of that review, MPI could aim to set catch limits that would account and allow for reopening of the closed area. However, MPI considers that doing so would lead to commercial catch limits that are so low that they unnecessarily inhibit utilisation of the parts of the fisheries that have not been impacted by the earthquakes. Furthermore, reviewing catch limits for paua alone would not address sustainability concerns for other shellfish species and seaweed species that have suffered mortality following the earthquakes.

MPI is also proposing to review non-commercial regulations that apply to earthquake-affected fisheries (see section 3.3). However, any changes to non-commercial regulations are also not expected to be comprehensive enough to adequately manage all of the affected species for sustainability and future utilisation, and any changes will not come into effect in time for the expiration of the current emergency closure.

### 3.2 OPTION 2

Under Option 2, MPI proposes to replace the current emergency closure with a new closure that applies to the same area (Figure 1) under section 11 of the Fisheries Act 1996. A closure under section 11 would not apply to customary fisheries (see Statutory Considerations). Te Runanga o Kaikōura are concerned for the wellbeing of the fisheries and have discussed limiting customary take to the purposes of tangi only. Their entire rohe has been affected by the earthquakes. Te Tau Ihu iwi have indicated that they intend to continue a voluntary hold

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<sup>1</sup> Neubauer, Philipp (2017). Area lost to the pāua fishery from the November 2016 Kaikoura earthquake, 7 pages. Report to the Ministry for Primary Industries (MPI)

on issuing permits for the earthquake affected areas in their role until science becomes available to help inform their management decisions.

MPI considers that a further closure under section 11 is necessary to ensure the sustainable utilisation of fisheries resources in the future. The long-term impacts of the significant mortality suffered by affected species and the damage and alterations to habitat are not yet clearly understood. It is unclear also how long it will take the environment to recover from the impacts of the earthquakes. A further closure will ensure that these fisheries continue to be relieved from fishing pressure and provided time to recover, and it also allows time for results from the science to become available to inform further management action.

It is proposed that a new closure under section 11 would remain in place until results from the science become available and are able to help inform fisheries management decisions. The amount of time required under closure may vary among species, and under section 11, MPI will be able to review management controls for different species separately as the results from the science become available. A rocky reef project commissioned to University of Canterbury aims to assess impacts on and recovery of intertidal and subtidal organisms along the earthquake-affected coastline, including juvenile paua, pupu, karengo, and rimurapa. There will also be targeted research on adult paua to assess changes in abundance, length-frequency, and growth following on from the earthquakes. Final results and reports are due to be made public by June 2018.

Section 11 of the Act provides for greater flexibility in management than section 16, under which the current emergency closure is set, and there is scope for including further species, or excluding further species, within the closure. MPI requests feedback from stakeholders on whether a further closure under section 11 should include any additional fisheries species that are not currently prohibited under the emergency closure, or exclude any fisheries species that are currently prohibited by the emergency closure.

### 3.3 OTHER PROPOSALS

There are two parallel processes underway in addition to this closure review to address management measures for earthquake-affected fisheries. MPI is concurrently consulting on changes to the Total Allowable Commercial Catches for PAU 3 and PAU 7 as part of the October 2017 sustainability round<sup>2</sup>, both of which overlap with the earthquake-affected coastlines. MPI is also initiating pre-consultation on a regulatory package that proposes to amend regulations for recreational fisheries that include earthquake-affected areas.

These review processes will make appropriate changes to fisheries sustainability measures and regulations following on from the impacts of the earthquake; however, they will not address complications that are likely to arise if the current closed area were to reopen on 20 November 2017. The regulatory package will not be able to be implemented in time for the expiry of the closure on 20 November, and therefore there will be an extended period of time when the earthquake-affected fisheries are open to fishing pressure under regulations that assume no mortality or habitat destruction.

## 4. Other Relevant Matters

Management of shellfish and seaweed species is guided by the Draft National Fisheries Plan for Inshore Shellfish (the Shellfish Plan). The Shellfish Plan organises fisheries stocks into

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<sup>2</sup> Consultation document available at: <http://www.mpi.govt.nz/news-and-resources/consultations/?opened=1&cat=8>

Groups for multi-stock objective-based management. Stocks that are impacted by the current fisheries closure range from Group 1 (fully-utilised highly-desired stocks) to Group 5 (least desired and lowest fishing pressure). The objectives and management approaches for the fisheries influenced by the closure vary depending on their Group and therefore desirability to fishers and the amount of fishing pressure they would typically be under. All objectives for the Groups are consistent with the purpose of the Act (section 8), and MPI considers that Option 2 is consistent with the purpose of the Act and therefore the specific stock and species objectives under the Shellfish Plan.

#### 4.1 INPUT AND PARTICIPATION OF TANGATA WHENUA

The proposal to consult on a section 11 closure was presented to Te Runanga o Kaikōura as well as both Iwi Fisheries Forums relating to South Island iwi: the Te Waka a Māui me Ōna Toka Iwi Forum and the Te Tau Ihu Iwi Forum. Overall, feedback on the proposal was strongly in support of Option 2.

#### 4.2 TE KOROWAI AND THE KAIKŌURA MARINE GUARDIANS

Te Korowai is a multisector community group based in and around Kaikōura. The Kaikōura Marine Guardians are a ministerially-appointed advisory body established under the Kaikōura (Te Tai o Marokura) Marine Management Act 2014. Their functions include providing advice to the Minister for Primary Industries on any biosecurity, conservation, or fisheries matter related to the marine and coastal environment within Te Whata Kai o Rakihouia i Te Tai o Marokura—Kaikōura Marine Area.

Preliminary discussions with each Te Korowai and the Kaikōura Marine Guardians indicated that they are supportive of continued protection for fisheries that have been adversely affected by the earthquakes.

## 5. Further Information

Should you require further information, please see:

Fishing Rules for the Kaikōura Area

<https://www.mpi.govt.nz/travel-and-recreation/fishing/fishing-rules/kaikoura-area-fishing-rules/>

Information on the renewed emergency closures

<https://www.mpi.govt.nz/news-and-resources/consultations/proposed-extension-of-emergency-fishing-closure-kaikoura/>

Information on the Kaikōura Earthquake and MPI's response

<https://www.mpi.govt.nz/protection-and-response/responding/adverse-events/kaikoura-earthquake/>

Fisheries Act (1996)

<http://www.legislation.govt.nz/act/public/1996/0088/latest/DLM394192.html>