Akaroa Harbour (Dan Rogers) Marine Reserve Application
Submission by option4
13 June 2006

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The Minister of Conservation is seeking updated views from the public on the Akaroa Harbour (Dan Rogers) Marine Reserve proposal, considering the time that has lapsed since the application was first notified (1996) and/or any change in circumstance. The submission period for public comment closes on 13th June 2006.

Submission

This document comprises the submission from option4, an NGO that promotes the interests of the public of New Zealand in non-commercial marine fishing.

We object to the Akaroa Harbour (Dan Rogers) marine reserve application and in doing so we support Te Rūnanga o Ngāi Tahu and the Papatipu Rūnanga, Onuku, Wairewa and Koukourārata, who continue to vehemently oppose the Dan Rogers Marine Reserve application. option4 supports the local community and acknowledges the Akaroa Harbour Recreational Fishing Club in their quest to provide balanced and complete information on the background to this application.

option4 supports kaitiakitanga as a means of addressing people's impact on the environment and the opportunity it creates for tangata whenua and local communities to work together to achieve the best possible outcomes without closing areas permanently.

The Marine Reserves Act 1971 section 3 (1) states as its purpose,

> *"It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest."*

Our objection firstly is based on the fact that this application does not meet the stated purpose of the Act. Dan Rogers is neither an area distinctive, typical, beautiful or unique, nor is it demonstrated in the application as falling into the category that is in the national interest to declare this area a marine reserve.

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option4 also submit that having effectively, by community agreement, had a marine reserve gazetted for Pohatu and a taiapure gazetted for Akaroa Harbour the processing of the Dan Rogers marine reserve proposal is contrary to that agreement, and that it imposes unnecessary expense on those members of the community who opposed the original marine reserve application.

Background

Dan Rogers Marine Reserve Proposal

In January 1996 the Akaroa Harbour Marine Protection Society (Inc), an organisation to which membership is by invitation and approval only and whose specified objectives are such that qualify it to make an application for a marine reserve under the Marine Reserves Act 1971, lodged an application to establish a marine reserve at the eastern entrance to Akaroa Harbour. This area is known as Dan Rogers. This application followed a period of totally unsatisfactory consultation in which the applicant steadfastly refused to accept the views of other harbour users and interests.

An Alternative Marine Reserve

Rather than objecting outright to the establishment of a marine reserve, the Akaroa Harbour Recreational Fishing Club (Inc), with the support of the local Maori community, took the constructive course of selecting nearby Flea Bay as being a more suitable area for a reserve. This alternative area was considered to be more representative of the Banks Peninsula marine environment than Dan Rogers.

Consultation was conducted and in January 1997 the community lodged an application for Flea Bay to be declared a marine reserve. The application asked the Minister of Conservation to consider Flea Bay as an **alternative** to the Dan Rogers application.

Pohatu Reserve Approved

Having gained the approval of all three Ministers involved, Flea Bay was gazetted as a marine reserve in July 1999. It was named Pohatu Marine reserve.

The determination of the Dan Rogers application was left in abeyance; in spite of efforts by the applicants to have it progressed. Tangata whenua, recreational and commercial fishers opposed this and an agreement was reached between all parties. The Pohatu Agreement established that the Dan Rogers application would remain undetermined until an application by tangata whenua to create a taiapure over all of Akaroa Harbour and along a portion of coastline to the east and abutting Pohatu Marine reserve had been considered and established (Appendix One).

Taiapure Approved

On the 31st March 2006 the Akaroa Harbour Taiapure was gazetted.

The approval did not include the area of Dan Rogers despite submissions to the Maori Land Court Tribunal by *"runaka spokespeople, and in particular Morehu Gray, that*

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the exclusion of the Dan Rogers area from the taiapure would be a blow to the mana of the hapu of this harbour who have been tangata whenua there for centuries[1]*"*.

Latest Announcement

The Minister of Conservation has now decided that the Dan Rogers marine reserve application be progressed. DOC published advertisements in the public notice columns of "The Press" on the 6th and 13th May 2006 and local papers requesting updated views on the Akaroa Harbour Marine Reserve application. The DoC website also requests submissions and has the original application, a map of the area and a Frequently asked Questions sheet available to download.

Summary

Main points for objection to this Dan Rogers marine reserve application are:

- Genuine open-minded consultation did not occur before the Dan Rogers marine reserve application was lodged
- The Dan Rogers area is not truly representative of the Banks Peninsula marine environment
- Area does not contain features or unique life warranting specific protection
- Inclusion in the surrounding taiapure would provide protection and active local management in the Dan Rogers marine area
- It denies tangata whenua their right and obligation to exercise kaitiakitanga (guardianship) within their rohe
- It is an area of cultural and customary significance to Maori
- The marine reserve will unduly interfere and will adversely affect existing use of the area for recreational purposes, these are wider than merely recreational fishing use
- Difficult to physically define the boundaries associated with Dan Rogers
- It is against the public interest including customary rights
- Tourism does not qualify under the Marine Reserves Act 1971 as a reason to establish a marine reserve
- It contravenes section 5 (6) (a – e) of the Marine Reserves Act 1971
- With the taiapure being adjacent to the existing Pohatu Marine Reserve a no-take protected reference area is available for scientific study, as per the purpose of the Marine Reserves Act, without the need for another no-take forever area in Akaroa Harbour
- Tangata whenua and the local community have demonstrated a level of cooperation that should be recognised as being positive for ongoing management of the harbour.

[1] Report and recommendation to the Minister of Fisheries by Maori Land Court Tribunal, 16 January 2004, p6.

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Legislation

Marine Reserves Act

The Marine Reserves Act 1971 is,

> *"An Act to provide for the setting up and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their* ***natural state*** *as the habitat of marine life for scientific study"*[2].

The report by the Maori Land Court Tribunal[3] states,

> *"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 the taiapure 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 Maori concept of te taiao"*.

Clearly the Akaroa Harbour marine environment is no longer in its *"natural state"* and therefore does not and cannot meet the purposes of the Act. The term *"natural state"* is not defined in the Marine Reserves Act 1971. We are making further enquiries.

Other Legislation

The customary rights of tangata whenua and the Crown's ongoing obligations to give effect to the principles of the Treaty of Waitangi are confirmed in legislation.

Section 4 of the Conservation Act states the 1987 Act *"should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi"*.

In the context of fisheries management the Crown has specific obligations as contained in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries (Kaimoana Customary Fishing) Regulations 1998, the Fisheries (South Island Customary Fishing) Regulations 1999 and sections five and twelve of the Fisheries Act 1996 to tangata whenua.

Section 12 of the Fisheries Act specifically states the Minister of Fisheries shall *"have particular regard to kaitiakitanga"*.

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[2] Marine Reserves Act, 20 September 1971.

[3] Report and recommendation to the Minister of Fisheries by Maori Land Court Tribunal, 16 January 2004, p2.

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Kaitiakitanga

Maori have a long association with the sea and it plays a very important part of their spiritual and cultural history. Most importantly it is an ongoing source of seafood which Maori have traditionally had reliably available to them to use for special gathering in the marae or feeding of their families. The importance is such that Maori have ensured, since the signing of the Treaty of Waitangi, that marine area guardianship called kaitiakitanga has been built into numerous regulations concerning the sea and coastal areas.

Kaitiakitanga is defined as,

> *The exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori.*[4]

Kaitiakitanga, the legislation and regulations that currently support it, is seen as delivering a very important component of the Treaty of Waitangi that enables Maori to have the ability to manage the marine resources in localised regions to enable them to achieve, as a minimum, their customary rights and traditional ability to successfully gather food as recreational fishers.

Most of the options available to give effect to achieving kaitiakitanga have been eroded in effectiveness by the lack of resources available to tangata whenua to implement Maori customary management tools and also the priority given to competing legislation that affects the same water space.

The Department of Conservation has ignored kaitiakitanga in lieu of a permanent measure that will deny any extractive fishing, be it controlled customary or recreational.

Sir Tipene O'Regan's incisive comments captures this point well when discussing the Akaroa taiapure proposal in April 2004[5],

> *" A **full marine reserve is frozen management** rather than a creative solution. It means nothing can be taken from that area. The taiapure leaves room for some areas to be closed for a while, some to be opened, and some to be restocked" and that **imposing a marine reserve** was **"an absolutist solution, based on ideologically driven theories."***
>
> A ***taiapure "has a local management body** that may have more Pakeha than Maori on it. The runanga are the catalyst to bring together people to work out a management plan for the harbour and fisheries."*

[4] Section 2 (1) of the Fisheries Act 1996

[5] Tangaroa, Issue No. 72 – April 2004

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The author of the Tangaroa article also noted that,

> *"The **taiapure** is designed to conserve marine nursery areas, habitats, spawning areas, shellfish beds and fishing grounds. It **will also help deal with the increasing pollution problems** in the area as a result of sewerage discharge, leachate, and chemical pollutants."*

The benefits of kaitiakitanga include:

- It allows tangata whenua and local communities to work together positively
- It addresses the real issue of people's impact on the environment
- It provides local solutions to local problems without closing areas permanently
- Kaitiakitanga focuses on the social and cultural values of the community
- Fulfils the Crown's ongoing obligation to tangata whenua
- Does not create new grievances, instead it creates an opportunity for people to work together, supporting each other

Marine Reserves

The need for marine reserves is minimal and should be considered as the most extreme form of marine management. Generally, the current proliferation of proposed marine reserves is seen as unnecessary confiscation of traditional rohe. There is strong doubt that marine reserves will achieve stated claims and that the aims are not in the overall interests of tangata whenua or the community.

Marine reserves merely displace current fishing effort into other regions within the rohe thus causing unnecessary conflict, restrictions and undesirable travel.

Fundamental marine management issues are not addressed by marine reserves nor do they:

- Address problems associated with overfishing
- Change people's attitudes to what, how much and how they take life from the sea
- Address water quality issues such as land run-off and sedimentation

Marine biodiversity is accepted as an important aim of all marine management plans. Kaitiakitanga measures such as taiapure, mataitai and temporary area closures are able to address marine biodiversity goals, as biodiversity does not need a virgin or pristine marine environment in order to exist. option4 considers that to enhance marine biodiversity all extraction must be at or above a sustainable harvest level.

Integral to marine management is the quality of water. option4 would endorse measures and controls that improve the quality of water that exists within and outside the Akaroa Harbour, particularly problems associated with sewerage discharge inside the Harbour.

option4 support tangata whenua in their claims that the Dan Rogers marine reserve would be in contravention of section 5 (6) (a – e) of the Marine Reserves Act 1971.

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Apart from the area for the proposed marine reserve not meeting the criteria of section 3(1) of the Marine Reserves Act option4 recommends the Minister of Conservation uphold the objections to this reserve application on the grounds that *"declaring the area a marine reserve would –*

(a) Interfere unduly with any estate or interest in land in or adjoining the proposed reserve:

(b) Interfere unduly with any existing right of navigation:

(c) Interfere unduly with commercial fishing:

(d) Interfere unduly with or adversely affect any existing usage of the area for recreational purposes:

(e) Otherwise be contrary to the public interest."[6]

DoC Support Lacking for Pohatu Reserve

option4 note the concern expressed by the Canterbury Aoraki Conservation Board regarding scientific study within the Pohatu marine reserve. The Board makes the following statement in its 2005 annual report,

> *"The committee is still concerned that there appears to be some slippage in research work being done. The Department recently commissioned NIWA to complete an independent report entitled:* Methods of sampling organisms in low visibility conditions: Pohatu Marine Reserve. *The committee has provided comment regarding the report and is waiting for the department's comment on that feedback. The committee is of the view that in the early years of the Marine Reserve it is imperative that regular research is conducted to build up a database of scientific information*[7]*."*

This is a major concern as the purpose of a marine reserve is to preserve an area for scientific study. Questions need to be asked why this study is not being conducted as extra funding was provided to the Canterbury Conservancy in October 2000.

The Conservancy received an extra $392,000 as a result of the Government's Biodiversity Strategy funding package. The Minister of Conservation at the time made the following statement,

> *"Much of this money - $57,000 - will go towards management and biological monitoring work at Pohatu, one of New Zealand' s newest marine reserves near Akaroa on Banks Peninsula*[8]*".*

If the Department is going to support marine reserves both philosophically and financially, and deprive many New Zealanders access to the area, the least they could do is conduct research to determine whether the reserve is meeting its objectives.

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[6] Marine Reserves Act 1971, section 5 (6) a - e.

[7] Canterbury Aoraki Conservation Board Annual Report for the year ending 30 June 2005, p10.

[8] Minister of Conservation, Sandra Lee, 22 October 2000.

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Summary

Tangata whenua have worked hard to achieve a high level of support from the local community, recreational and commercial fishers for the recently established Akaroa Harbour Taiapure.

The Crown has ongoing obligations to give effect to the principles of the Treaty of Waitangi. To deny tangata whenua the opportunity to exercise their right and obligation to kaitiakitanga is to deny them their statutory rights allowed for in legislation.

A marine reserve for the Dan Rogers area would not fulfil the Crown's obligations to better provide for the recognition of Maori interests in fisheries secured by Article II of the Treaty of Waitangi. It would alienate tangata whenua from its rohe moana and their most fundamental rights and obligations as rangatiratanga and kaitiaki.

The Crown must act in accordance with Treaty principles: the principle of partnership; the principle of active protection, and the principle of redress. A marine reserve at the area contained within the Dan Rogers application would create another grievance for the Crown considering the support of tangata whenua for the Pohatu marine reserve and the Akaroa Harbour Taiapure.

As the application contravenes section 5 (6) (a – e) of the Marine Reserves Act it would be against the law for the Minister of Conservation to approve the Dan Rogers marine reserve application.

Approval for the Dan Rogers marine reserve would be against natural justice and would solidify in the public's mind that the Department of Conservation has little regard for tangata whenua, the people of Akaroa, the public at large and the law of this land.

The Minister of Conservation should not approve the application of a marine reserve for the Dan Rogers marine area. option4 suggest a more constructive response would be to assist the taiapure committee to upskill, provide resources and expertise to make the taiapure the success story of the South.

There are alternatives to marine reserves and tangata whenua and local communities need to be given the opportunity to prove that kaitiakitanga can be best practice.

The deputy CEO of the Ministry of Fisheries, Mr Stan Crothers, summed these feelings up at the conclusion of a recent hui on Great Barrier Island (Aotea) to discuss DoC's proposal for a marine reserve and the Minister of Fisheries concurrence. Mr Crothers final statement was,

> *"I heard speakers today express a sense that the proposed marine reserve is stealing the very essence of what it means to be tangata whenua[9]".*

[9] Barrier Bulletin. Issue No. 450, April 2006

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Not only will Minister of Conservation be stealing the essence of tangata whenua if he approves the Dan Rogers marine reserve, he will also be committing an injustice against the community and the country.

option4 submit that the objections to this marine reserve application should be upheld.

Thank you for the opportunity to make comment on the Akaroa Harbour (Dan Rogers) marine reserve application.

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Appendix One

PÖHATU AGREEMENT:

The agreement reached between all parties present at the 18th of December 1998 meeting was refined at the 12th of March 1999 meeting between the parties. The final agreement is as follows:

1. The parties[10] agree to support the establishment of a marine reserve, to be known as the Pöhatu marine reserve, from the south-west corner of Redcliffe Point to the Öunuhau Point incorporating Flea Bay, Island Nook and extending out 500m from the coastline as detailed in the attached map. The reserve will not allow any marine life to be taken for consumption purposes and no fishing regulations will be advanced.

2. The parties agree to support in principle the establishment of a taiäpure in Akaroa Harbour and entrance area. Further discussions on the choice of management mechanisms within the area will take place.

3. The parties agree to participate, along with a representative of the local landowners and the Banks Peninsula District Council, Te Rünanga o Ngäi Tahu, Department of Conservation and Ministry of Fisheries, in an establishment committee for the Pöhatu marine reserve, reporting to the Minister of Conservation. The Department of Conservation will service the Committee. The Committee will also provide advice to the Minister of Food Fibre Biosecurity and Border Control on the establishment of the Akaroa taiäpure.

4. The parties further agree that the process of public consultation on the taiäpure be advanced as quickly as possible. The consultative process will recognise the existence of the Dan Rogers Marine reserve application and will leave open the option of how best to achieve protection. The process will include working with the Pöhatu marine reserve establishment committee.

5. The parties support the notion that the Dan Rogers application for a marine reserve lie on the table and not be further progressed by the Minister of Conservation, until the taiäpure is established.

6. The parties endorse and encourage the Minister of Conservation to formally protect the nesting sites of the kororä (white flippered blue penguin) colony, and the associated indigenous vegetation on the north face of Flea Bay.

[10] The parties are defined as those who were invited by the Minister to attend the meetings. Those parties are: Önuku and Wairewa Rünanga, Te Rünanga o Ngäi Tahu, Commercial Fishers, Recreational Fishers, Forest and Bird, and the Akaroa Harbour Marine Protection Society. Koukourärata Rünaka were brought into proceedings once Flea Bay was identified as a possible location for a marine reserve.

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