

Reprint
as at 23 April 2014



**Fisheries (South Island Customary Fishing) Regulations
1999**
(SR 1999/342)

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 11th day of October 1999

Present:

The Right Hon Jenny Shipley presiding in Council

Pursuant to section 89 of the Fisheries Act 1983 and section 186 of the Fisheries Act 1996, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry for Primary Industries.

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Regulations

1 Title and commencement

- (1) These regulations may be cited as the Fisheries (South Island Customary Fishing) Regulations 1999.
- (2) These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

Preliminary provisions

2 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

chief executive means, subject to any enactment, the chief executive for the time being of the Ministry that has, with the authority of the Prime Minister, assumed responsibility for these regulations

customary food gathering means the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, which include, in this context, the right to take, and the right to manage, fisheries resources for a purpose authorised by Tangata Tiaki/Kaitiaki, including koha, to the extent that such purpose is consistent with tikanga Māori

and is neither commercial in any way nor for pecuniary gain or trade; and **customary food gathering area/rohe moana** and **area/rohe moana** have a corresponding meaning

local community means those persons—

- (a) who own any land in the proximity of a proposed mātaimai reserve; or
- (b) who—
 - (i) have a place of residence in the proximity of a proposed mātaimai reserve; and
 - (ii) have been in occupation for a cumulative period of no less than 3 months in the 3 consecutive years immediately preceding the date of the application for that mātaimai reserve

mātaimai reserve means an identified traditional fishing ground established as a mātaimai reserve under regulation 20

Minister means, subject to any enactment, any Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of these regulations

Ministry means, subject to any enactment, the Ministry that has, with the authority of the Prime Minister, for the time being assumed responsibility for the administration of these regulations

South Island fisheries waters means that part of New Zealand fisheries waters shown on Allocation Plan NT 506 (SO 19902); and nothing in this definition limits or affects the meaning the term has in any context outside these regulations

Tangata Tiaki/Kaitiaki means any person or persons appointed as Tangata Tiaki/Kaitiaki under these regulations who are members of the tangata whenua, or of any tangata whenua organisation or their nominated representatives

tangata whenua, in relation to a particular area, means—

- (a) the whānau or hapū of Ngāi Tahu Whānui that hold manawhenua manamoana over that area and are represented by Te Rūnanga o Ngāi Tahu; or
- (b) the whanau, hapū, or iwi that hold manawhenua manamoana over that area and are represented by—
 - (i) Ngati Apa Ki Te Waipounamu Trust; or
 - (ii) Ngati Koata No Rangitoto Ki Te Tonga Trust; or
 - (iii) Ngati Rarua Iwi Trust; or
 - (iv) Ngati Tama Manawhenua Ki Te Tau Ihu Trust; or
 - (v) Te Runanga o Toa Rangatira Incorporated; or
 - (vi) Te Atiawa Manawhenua Ki Te Tau Ihu Trust; or
 - (vii) Te Runanga A Rangitane O Wairau; or

(viii) Te Runanga O Ngati Kuia Trust

working day means any day except—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
 - (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
 - (b) a day in the period commencing with 20 December in any year and ending with 15 January in the following year.
- (2) A reference to a numbered form is a reference to the form so numbered in the Schedule.
 - (3) Expressions not defined in these regulations but defined in the Fisheries Act 1996 have, in these regulations, the meanings defined in that Act.

Regulation 2(1) **tangata whenua** paragraph (b)(v): replaced, on 23 April 2014, by section 23 of the Ngati Toa Rangatira Claims Settlement Act 2014 (2014 No 17).

Regulation 2(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

3 Application of regulations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

- (1) These regulations apply to the taking of fish, aquatic life, or seaweed for customary food gathering purposes from any South Island fisheries waters.
- (2) These regulations apply only in respect of fisheries resources managed under the Fisheries Act 1983, the Fisheries Act 1996, or any regulations made under either or both of those Acts.
- (3) Any person exercising functions, duties, or powers under these regulations must do so in accordance with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

4 Relationship between these regulations and other regulations

- (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.
- (2) Until the Minister confirms a Tangata Tiaki/Kaitiaki for a customary food gathering area/rohe moana in accordance with regulation 9 of these regulations, regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 apply to the taking of fish, aquatic life, or seaweed for customary food gathering purposes from that customary food gathering area/rohe moana.
- (3) Nothing in these regulations prevails over any emergency measures imposed under section 16 of the Fisheries Act 1996.

Regulation 4(2): amended, on 1 March 2006, by regulation 3 of the Fisheries (South Island Customary Fishing) Amendment Regulations 2005 (SR 2005/343).

*Confirmation of Tangata Tiaki/Kaitiaki for general customary food gathering***5 Notification**

- (1) The tangata whenua may, in accordance with these regulations, manage customary food gathering within the area/rohe moana for which they are tangata whenua.
- (2) Before the tangata whenua begin the management of customary food gathering under these regulations, the tangata whenua must notify the Minister, in form 1, of the nominated Tangata Tiaki/Kaitiaki and the customary food gathering area/rohe moana for which they hold management responsibility.

6 Public notice

On being notified of a proposed Tangata Tiaki/Kaitiaki under regulation 5, the Minister, as soon as practicable but no later than 20 working days after the receipt of such a notification, must cause the details of that notification to be published at least twice, with an interval of not less than 5 working days between each publication, in a newspaper circulating in the locality of the proposed customary food gathering area/rohe moana.

7 Submissions

- (1) Within 20 working days after the date of the second publication of a notification under regulation 6, any person referred to in subclause (2) may make a submission concerning the notification to the office of the Ministry nearest the locality of the proposed customary food gathering area/rohe moana.
- (2) A person may make a submission under subclause (1) if the person belongs to—
 - (a) the tangata whenua on whose behalf the notification is made; or
 - (b) the Rūnanga, or other organisation representing the relevant iwi interest; or
 - (c) any marae, hapū, or iwi claiming manawhenua manamoana in respect of customary food gathering in any part of the customary food gathering area/rohe moana for which the proposed Tangata Tiaki/Kaitiaki has been nominated.

8 Dispute resolution

- (1) This regulation applies if the Minister considers that any submission referred to in regulation 7(1) indicates a dispute regarding—
 - (a) who are tangata whenua; or
 - (b) who should be Tangata Tiaki/Kaitiaki; or
 - (c) the boundaries of the area of management responsibility concerned.
- (2) If this regulation applies, the Minister must, as soon as practicable,—

- (a) notify the tangata whenua who made a notification under regulation 5, and any person who has made a submission, that this regulation applies; and
 - (b) recommend that they agree on a dispute resolution process that is consistent with tikanga Māori to resolve any dispute referred to in subclause (1).
- (3) Without limiting subclause (2), in resolving any dispute under that subclause, the parties may agree—
- (a) to nominate a Tangata Tiaki/Kaitiaki not previously nominated in any notification of a customary food gathering area/rohe moana;
 - (b) to boundaries of the proposed customary food gathering area/rohe moana that differ from those contained in any notification of a customary food gathering area/rohe moana.
- (4) If a dispute resolution process has been concluded and no agreement is reached on the notification in accordance with this regulation, the parties must refer the dispute to an authority agreed to between the parties for settlement of the dispute.
- (5) As soon as practicable after the conclusion of the dispute resolution process established under subclauses (2)(b) and (4), the tangata whenua who made the notification under regulation 5 must advise the Minister in writing of—
- (a) the persons who are tangata whenua; and
 - (b) the name of the Tangata Tiaki/Kaitiaki; and
 - (c) the boundaries of the area of management responsibility concerned; and
 - (d) the resolution of any other dispute under subclause (1).

9 Confirmation of Tangata Tiaki/Kaitiaki

- (1) The Minister must confirm the appointment of the person or persons notified as Tangata Tiaki/Kaitiaki of the proposed customary food gathering area/rohe moana if satisfied that—
- (a) no submission in opposition for a general customary food gathering area/rohe moana has been received under regulation 7; or
 - (b) a dispute resolution process has been concluded under regulation 8 and all disputes have been resolved through that process.
- (2) As soon as reasonably practicable and in any case no later than 20 working days after the appointment of any Tangata Tiaki/Kaitiaki under subclause (1), the Minister must cause to be published in a newspaper circulating in the locality of the proposed customary food gathering area/rohe moana, and in the *Gazette*, a notice—
- (a) confirming the appointment of the Tangata Tiaki/Kaitiaki; and

- (b) describing the boundaries of the customary food gathering area/rohe moana for which the Tangata Tiaki/Kaitiaki is to exercise any function under these regulations.
- (3) A Tangata Tiaki/Kaitiaki may be appointed for up to 5 years and confirmation of the appointment takes effect on a date to be specified in the *Gazette* notice under subclause (2).
- (4) At any time during the illness or absence of any Tangata Tiaki/Kaitiaki or for any other temporary purpose, the Tangata Tiaki/Kaitiaki may, with the approval of, and for such period of time as may be agreed to by, the relevant tangata whenua under regulation 5 or regulation 8, and with prior notification to the chief executive, delegate his or her powers under these regulations to any member of the tangata whenua of the customary food gathering area/rohe moana concerned.
- (5) If, on or before the expiration of the appointment of any Tangata Tiaki/Kaitiaki, the relevant tangata whenua under regulation 5 or regulation 8 advise the Minister that they wish to nominate the person confirmed for a further appointment, the Minister must appoint that person for a further period of up to 5 years.
- (6) Unless subclause (5) applies, at the end of the appointment period the Minister must seek new nominations from the relevant tangata whenua under regulation 5 or regulation 8.
- (7) Non-compliance with any time period specified in any of regulations 6 to 8, or in this regulation, does not prevent the Minister appointing a Tangata Tiaki/Kaitiaki.

10 Cancellation of appointment

- (1) The Minister must cancel the appointment of any Tangata Tiaki/Kaitiaki appointed under regulation 9 on receipt of a request in writing from—
 - (a) the tangata whenua who nominated the Tangata Tiaki/Kaitiaki appointed under regulation 9; or
 - (b) the Tangata Tiaki/Kaitiaki of the customary food gathering area/rohe moana concerned.
- (2) If the appointment of a Tangata Tiaki/Kaitiaki is cancelled under subclause (1) or upon the death of a Tangata Tiaki/Kaitiaki, the Minister must appoint another Tangata Tiaki/Kaitiaki nominated by the tangata whenua who made the original nomination of a Tangata Tiaki/Kaitiaki.
- (3) The Minister must cause to be published in a newspaper circulating in the locality of the proposed area/rohe moana, and in the *Gazette*, a notice of—
 - (a) the cancellation of any appointment of a Tangata Tiaki/Kaitiaki under subclause (1); and
 - (b) the appointment of any new Tangata Tiaki/Kaitiaki under subclause (2).

- (4) A cancellation or appointment notified under subclause (3) takes effect on a date to be specified in the *Gazette* notice under that subclause.

Powers of Tangata Tiaki/Kaitiaki concerning general customary food gathering

11 Power to authorise taking of fish, aquatic life, or seaweed for customary food gathering

- (1) A Tangata Tiaki/Kaitiaki appointed under these regulations may authorise any individual, in accordance with this regulation, to take fish, aquatic life, or seaweed for customary food gathering purposes from within the whole or any part of the customary food gathering area/rohe moana concerned.
- (2) No authorisation made under subclause (1) has any effect unless it has been made in form 2, and specifies—
- (a) the persons who are authorised to take the species covered by the authorisation; and
 - (b) the species that may be taken; and
 - (c) the date or dates on which each species may be taken; and
 - (d) the quantity of each species that may be taken; and
 - (e) size limits relating to each species to be taken; and
 - (f) the method by which each species may be taken; and
 - (g) the area or areas in which each species may be taken; and
 - (h) the purpose for which each species may be taken; and
 - (i) the venue at which the catch may be used; and
 - (j) any other matters concerning customary food gathering the Tangata Tiaki/Kaitiaki may reasonably specify.
- (3) Despite subclause (2), if the Tangata Tiaki/Kaitiaki and the chief executive agree to a process and form of authorisation other than that referred to in subclause (2) (which other process and form may include, without limitation, the granting of oral authorisations), that process and form of authorisation replaces the process and form referred to in subclause (2) from an agreed date, and every authorisation made in that agreed form has the same effect as an authorisation referred to in subclause (2).
- (4) An authorisation granted under subclause (3) must specify the matters referred to in paragraphs (a) to (j) of subclause (2).
- (5) The holder of an authorisation granted under this regulation must produce it, or provide details which verify it, when reasonably requested to do so by a fishery officer.
- (6) A person who takes fish, aquatic life, or seaweed under an authorisation given under these regulations must, no later than 5 working days after the taking of

those fish, aquatic life, or seaweed, advise the Tangata Tiaki/Kaitiaki of the species and quantity taken under that authorisation.

12 Record of authorisation to be produced to fishery officer

If a fishery officer has reasonable cause to suspect an offence has been committed against these regulations,—

- (a) any fishery officer may request the relevant Tangata Tiaki/Kaitiaki who granted the relevant authorisation to produce the records concerning the authorisation to which the suspected offence relates; and
- (b) the Tangata Tiaki/Kaitiaki must produce the records when requested to do so by a fishery officer.

13 Commercial fishing and customary fishing on same trip

- (1) Subclause (2) applies if, on any fishing trip, a person—
 - (a) takes fish, aquatic life, or seaweed for customary food gathering purposes under an authorisation granted by a Tangata Tiaki/Kaitiaki; and
 - (b) takes fish, aquatic life, or seaweed for commercial purposes under a fishing permit issued under the Fisheries Act 1983 or the Fisheries Act 1996.
- (2) All fish, aquatic life, and seaweed taken on that trip for customary food gathering purposes must be treated as having been taken otherwise than under these regulations unless they are placed in separate marked containers and are clearly identified as having been taken for customary food gathering purposes.

Participation of Tangata Tiaki/Kaitiaki in fisheries management

14 Sustainability measures

A Tangata Tiaki/Kaitiaki may provide input to and participate in the process of setting or varying sustainability measures, or developing management measures, concerning the whole or any part of the customary food gathering area/rohe moana concerned.

15 Information to be provided

- (1) Within 1 month after the end of each quarter in each calendar year, a Tangata Tiaki/Kaitiaki, or such other person as may be agreed between the tangata whenua and the Ministry under regulation 35, must provide in form 3, for the sole purpose of setting or varying sustainability measures or developing management controls, a summary of information collected under regulations 32 and 33.
- (2) The information referred to in subclause (1) must be provided to the office of the Ministry nearest the customary food gathering area/rohe moana concerned.

- (3) In making any decision under section 21 of the Fisheries Act 1996, the Minister must have regard to information provided under this regulation or provided by a Tangata Tiaki/Kaitiaki under regulation 14.

16 Iwi planning document

- (1) Any Tangata Tiaki/Kaitiaki may prepare a management plan or strategy for any part of the customary food gathering area/rohe moana concerned.
- (2) When a plan is prepared by a Tangata Tiaki/Kaitiaki and that plan is agreed to be authorised by the tangata whenua of the part of the area/rohe moana concerned, the plan—
- (a) may be treated as a planning document recognised by an iwi authority for the purposes of the Resource Management Act 1991, if it meets the requirements of that Act:
 - (b) must be taken into account by the Minister for the purposes of section 10(b) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Mātaitai reserves

17 Application for mātaitai reserve

- (1) The persons referred to in subclause (3) may from time to time apply to the Minister, in form 4, for a mātaitai reserve in respect of any part of the area/rohe moana for which they are the tangata whenua or Tangata Tiaki/Kaitiaki.
- (2) The application must include the name of the person or persons being nominated as the Tangata Tiaki/Kaitiaki for the mātaitai reserve.
- (3) The persons who may apply under subclause (1) are—
- (a) the nominating tangata whenua under regulation 5:
 - (b) the nominating tangata whenua under regulation 8:
 - (c) the Tangata Tiaki/Kaitiaki whose appointment is confirmed under regulation 9.

18 Notification of application

- (1) No later than 20 working days after receipt of any application under regulation 17, the Minister must cause notice of the application to be published at least twice, with an interval of not less than 5 working days between each publication, in a newspaper circulating in the locality of the proposed mātaitai reserve.
- (2) The notice must invite written submissions to be made by the local community, and allow a minimum of 20 working days for such submissions to be made.

19 Consultation

- (1) As soon as practicable, and in any case no later than 20 working days after the closing date for receiving submissions under regulation 18, the Minister must cause notice of a meeting to be published at least twice, with an interval of not

less than 5 working days between each publication, in a newspaper circulating in the locality of the proposed mātaimai reserve.

- (2) The Minister and the tangata whenua applying for the proposed mātaimai reserve must together consult with the local community at the meeting.
- (3) After consultation with the local community, the tangata whenua may amend an application made under regulation 17 and must advise the Minister of any amendments to the application.
- (4) As soon as practicable after consultation with the local community under subclause (2) or on being advised of an amended application under subclause (3) (as the case may be), the Minister must give a notice in accordance with subclause (5).
- (5) The notice referred to in subclause (4) must be published in a newspaper circulating in the locality of the proposed mātaimai reserve, and—
 - (a) set out details of the application for a mātaimai reserve; and
 - (b) invite written submissions about the fish stocks in the area specified in the application from persons who take fish, aquatic life, or seaweed or own quota, and whose ability to take such fish, aquatic life, or seaweed or whose ownership interest in quota may be affected by the proposed mātaimai reserve; and
 - (c) allow a minimum of 20 working days for such submissions to be made.
- (6) As soon as practicable after submissions have been made in accordance with subclause (5), the Minister must—
 - (a) advise the tangata whenua or the applicant under regulation 17 of the submissions; and
 - (b) discuss with the tangata whenua any conditions relating to the mātaimai reserve that the Minister considers may be necessary to address issues raised by those submissions.

20 Declaration of mātaimai reserve

- (1) Subject to regulation 19, the Minister must, by notice in the *Gazette*, declare an area to be a mātaimai reserve if satisfied that—
 - (a) there is a special relationship between the tangata whenua making the application and the proposed mātaimai reserve; and
 - (b) the general aims of management specified in the application under regulation 17 are consistent with the sustainable management of the fishery to which the application relates; and
 - (c) the proposed mātaimai reserve is an identified traditional fishing ground and is of a size appropriate to effective management by the tangata whenua; and

- (d) the Minister and the tangata whenua are able to agree on suitable conditions for the proposed mātaimai reserve; and
 - (e) the proposed mātaimai reserve will not—
 - (i) unreasonably affect the ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes; or
 - (ii) prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species; or
 - (iii) prevent persons with a commercial fishing permit for a non-quota management species taking fish, aquatic life, or seaweed under their permit within the area for which that permit has been issued; and
 - (f) the proposed mātaimai reserve is not a marine reserve under the Marine Reserves Act 1971.
- (2) If the Minister considers that an application for a mātaimai reserve under regulation 17 does not meet 1 or more of the criteria set out in subclause (1), the Minister must decline that application as soon as reasonably practicable and, in any case no later than 30 working days after the date of the Minister's decision to decline the application, the Minister must notify the applicant in writing of that fact and state the reasons for declining.
- (3) Non-compliance with any time period specified in regulation 18 or regulation 19 does not prevent the Minister declaring a mātaimai reserve in accordance with this regulation.
- (4) If the Minister declares a mātaimai reserve under subclause (1), the Minister must cause an appropriate notice to be published in the *Gazette* as soon as practicable.

21 Appointment of Tangata Tiaki/Kaitiaki for mātaimai reserve

- (1) The Minister must appoint the Tangata Tiaki/Kaitiaki nominated on the approved form under regulation 17 for the corresponding mātaimai reserve declared under regulation 20.
- (2) A Tangata Tiaki/Kaitiaki may be appointed under subclause (1) for up to 5 years.
- (3) At any time during the illness or absence of any Tangata Tiaki/Kaitiaki or for any other temporary purpose, the Tangata Tiaki/Kaitiaki may, with the approval of, and for such period of time as may be agreed to by the tangata whenua who nominated the Tangata Tiaki/Kaitiaki under regulation 17(2), and on prior notification to the chief executive, delegate his or her powers under these regulations to any member of the tangata whenua of the customary food gathering area/rohe moana concerned.

22 Notification of mātaimai reserve and Tangata Tiaki/Kaitiaki

- (1) As soon as practicable, and in any case no later than 20 working days, after the appointment of a Tangata Tiaki/Kaitiaki for a mātaimai reserve under regulation 21, the chief executive must cause to be published in a newspaper circulating in the locality of the mātaimai reserve, and in the *Gazette*, a notice—
 - (a) stating that the mātaimai reserve has been declared under regulation 20; and
 - (b) describing the boundaries of the reserve; and
 - (c) naming the Tangata Tiaki/Kaitiaki.
- (2) The declaration of a mātaimai reserve under regulation 20 and appointment of Tangata Tiaki/Kaitiaki under regulation 21 takes effect on a date to be specified in the *Gazette* notice under this regulation.
- (3) If, on or before the end of a person's appointment as a Tangata Tiaki/Kaitiaki, the relevant tangata whenua under regulation 5 or regulation 8 advise the Minister that they wish to nominate that person for a further appointment, the Minister must appoint that person for a further period of up to 5 years.
- (4) Unless subclause (3) applies, at the end of a person's appointment as a Tangata Tiaki/Kaitiaki, the Minister must seek new nominations from the relevant tangata whenua under regulation 5 or regulation 8.

23 Cancellation of appointment

- (1) Subject to this regulation, the Minister must cancel the appointment of a Tangata Tiaki/Kaitiaki in respect of a mātaimai reserve on receipt of a request in writing from—
 - (a) the tangata whenua who nominated the Tangata Tiaki/Kaitiaki under regulation 17; or
 - (b) the Tangata Tiaki/Kaitiaki of the mātaimai concerned.
- (2) If the appointment of a Tangata Tiaki/Kaitiaki is cancelled under subclause (1) or upon the death of a Tangata Tiaki/Kaitiaki, the Minister must appoint another Tangata Tiaki/Kaitiaki nominated by the tangata whenua who made the original proposal for a Tangata Tiaki/Kaitiaki.
- (3) The Minister must cause to be published in a newspaper circulating in the locality of the area/rohe moana concerned, and in the *Gazette*, a notice of—
 - (a) the cancellation of the appointment of a Tangata Tiaki/Kaitiaki; and
 - (b) the appointment of a new Tangata Tiaki/Kaitiaki.
- (4) The cancellation or appointment takes effect on a date to be specified in the *Gazette* notice under subclause (3).

Powers of Tangata Tiaki/Kaitiaki in mātaimai reserve

24 Fishing in mātaimai reserve

- (1) Subject to this regulation and to regulations 25 to 29, regulation 11 and the Fisheries (Amateur Fishing) Regulations 1986 apply to fishing in a mātaimai reserve.
- (2) No person may engage in commercial fishing in a mātaimai reserve.
- (3) Despite subclause (2), the Tangata Tiaki/Kaitiaki of the mātaimai reserve may request the Minister to recommend the making of regulations to allow the commercial taking of specified species of fish, aquatic life, or seaweed, by quantity or time period, within that mātaimai reserve.
- (4) On receipt of a request from the Tangata Tiaki/Kaitiaki made under subclause (3), the Minister may recommend to the Governor-General the making of regulations under Part 16 of the Fisheries Act 1996 to provide for commercial fishing in that mātaimai reserve for such species of fish, aquatic life, or seaweed in such quantities and for such time as may be requested under subclause (3).
- (5) If regulations of the kind referred to in subclause (3) are made, such commercial fishing must be conducted in accordance with the provisions of the Fisheries Act 1996 and the relevant commercial fishing regulations applying under that Act.

25 Power to restrict or prohibit fishing in mātaimai reserve

- (1) The Tangata Tiaki/Kaitiaki of a mātaimai reserve may make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed from within the whole or any part of the mātaimai reserve for any purpose that the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of the fish, aquatic life, and seaweed in that mātaimai reserve.
- (2) Bylaws made under this regulation may impose restrictions or prohibitions relating to all or any of the following matters:
 - (a) the species of fish, aquatic life, and seaweed that may be taken:
 - (b) the quantity of each species that may be taken:
 - (c) size limits relating to each species to be taken:
 - (d) the method by which each species may be taken:
 - (e) the area or areas in which each species may be taken:
 - (f) any other matters the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of fisheries resources, including (without limitation) customary food gathering purposes, in the mātaimai reserve.
- (3) Bylaws made under this regulation apply generally to all persons fishing in the mātaimai reserve.
- (4) Bylaws made under this regulation—

- (a) must be deposited with the office of the Ministry nearest the mātaimitai reserve and also at a place near the mātaimitai reserve that is designated by the chief executive for the purpose; and
 - (b) must be open to inspection by, and for the purposes of receiving submissions from, the public during office hours for at least 15 working days immediately before the date on which the restriction or prohibition is notified to the Minister under regulation 26.
- (5) The chief executive must notify in a newspaper circulating in the locality of the mātaimitai reserve the fact that a bylaw has been deposited under subclause (4) and the place where that bylaw may be inspected.
- (6) A Tangata Tiaki/Kaitiaki may amend any bylaw deposited with the Ministry under subclause (4), in light of any submission received, and need not deposit the amended bylaw with the Ministry before notifying the Minister of that restriction or prohibition under regulation 26.

26 Notification of restriction or prohibition

- (1) On the making of a bylaw under regulation 25 restricting or prohibiting the taking of fish, aquatic life, or seaweed within a mātaimitai reserve,—
- (a) the Tangata Tiaki/Kaitiaki must notify the Minister of the bylaw; and
 - (b) the notification must be accompanied by a copy of the bylaw and a statement of the reasons why the Tangata Tiaki/Kaitiaki considers the proposed restriction or prohibition necessary or desirable for the sustainable management of the fish, aquatic life, or seaweed in that mātaimitai reserve.
- (2) On receipt of any notice under subclause (1), the Minister must decide, as soon as practicable and in any case no later than 40 working days after the making of the bylaw, whether to approve the bylaw.
- (3) Non-compliance with any time period specified in regulation 25 or in this regulation does not prevent the Minister approving a bylaw in accordance with this regulation.
- (4) On approving the imposition of a bylaw in a mātaimitai reserve under subclause (2), the Minister must, as soon as practicable after approving such a bylaw, publish the approved bylaw in the *Gazette*.
- (5) On rejecting the imposition of a bylaw in a mātaimitai reserve under subclause (2), the Minister must notify the Tangata Tiaki/Kaitiaki of his or her decision.
- (6) Any bylaw approved under this regulation takes effect on a date to be specified in the approved bylaw published in the *Gazette*.

27 Power to authorise fishing for functions of marae

Subject to regulation 11, the Tangata Tiaki/Kaitiaki for a mātaimitai reserve may authorise the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of a marae, despite any bylaws applying under this Part.

28 Fishing from registered commercial vessels for customary food gathering purposes

No person may fish from any New Zealand fishing vessel in a mātaimai reserve for the purpose of sustaining the functions of a marae unless expressly authorised to do so by a Tangata Tiaki/Kaitiaki under regulation 27.

29 Enhancement of fish stocks

Subject to regulation 11 and despite any bylaw applying under these regulations, any Tangata Tiaki/Kaitiaki for a mātaimai reserve may authorise any person to take fish, aquatic life, or seaweed from any area within that mātaimai reserve and to release those fish, aquatic life, or seaweed within another part of that mātaimai reserve, for the purpose of enhancing the stock or stocks.

Powers of Minister

30 Minister's powers concerning management by Tangata Tiaki/Kaitiaki

- (1) This regulation applies if the Minister considers, after consulting with the tangata whenua and the Tangata Tiaki/Kaitiaki, that, for the purposes of these regulations and in accordance with Tikanga Māori,—
 - (a) the general customary food gathering area/rohe moana is not being sustainably managed; or
 - (b) the management of any mātaimai reserve will adversely affect the sustainable management of that mātaimai reserve; or
 - (c) the management of the mātaimai reserve is not in accordance with any conditions agreed by the Minister and the tangata whenua under regulation 20; or
 - (d) the management of any mātaimai reserve is significantly different from the aims specified in the approved form under regulation 17 for managing the mātaimai reserve; or
 - (e) the requirements under regulations 32, 33, 36, and 37 are not being met by the Tangata Tiaki/Kaitiaki; or
 - (f) a Tangata Tiaki/Kaitiaki is acting in contravention of his or her authority under these regulations.
- (2) If this regulation applies, the Minister must provide such advice and assistance as he or she considers necessary to enable the Tangata Tiaki/Kaitiaki to remedy the matters forming the basis of the Minister's concerns.
- (3) If, after consultation with the tangata whenua, the Minister considers that a Tangata Tiaki/Kaitiaki is unable or unwilling to implement any advice or assistance provided under subclause (2),—
 - (a) the Minister and the tangata whenua must, as soon as reasonably practicable, and in any case no later than 60 working days after the commence-

ment of consultation by the Minister, develop a management strategy to sustainably manage the customary food gathering area/rohe moana; and

- (b) the Minister must require the Tangata Tiaki/Kaitiaki, by notice in writing, to observe the management strategy until such time as the Minister, after consultation with the tangata whenua, is satisfied that the stock concerned is being sustainably managed.
- (4) If the Minister requires the Tangata Tiaki/Kaitiaki to observe a management strategy under subclause (3), no restriction or prohibition or bylaw may be made under regulation 25 that is inconsistent with that management strategy.

31 Cancellation of appointment of Tangata Tiaki/Kaitiaki

- (1) If any Tangata Tiaki/Kaitiaki fails to follow a management strategy provided under regulation 30(3), the Minister, by notice in the *Gazette*, must notify the local tangata whenua of that Tangata Tiaki/Kaitiaki and may cancel the appointment of that Tangata Tiaki/Kaitiaki.
- (2) A person whose appointment as Tangata Tiaki/Kaitiaki is cancelled under subclause (1) is not eligible for reappointment for a period of up to 5 years after the date of cancellation without the Minister's approval.
- (3) The Minister must, within 60 working days after the date of the notification in the *Gazette* under subclause (1), appoint another Tangata Tiaki/Kaitiaki nominated by the tangata whenua who made the original nomination of the Tangata Tiaki/Kaitiaki appointed under regulation 9 or regulation 21.
- (4) The Minister must cause to be published in a newspaper circulating in the locality of the customary food gathering area/rohe moana or mātaaitai reserve concerned, and in the *Gazette*, a notice of—
 - (a) the cancellation of any appointment of a Tangata Tiaki/Kaitiaki under subclause (1); and
 - (b) the appointment of any new Tangata Tiaki/Kaitiaki under subclause (3).
- (5) A cancellation or appointment notified under subclause (4) takes effect on a date to be specified in the *Gazette* notice under that subclause.

Accountability mechanisms

32 Records of authorisations

Every Tangata Tiaki/Kaitiaki appointed under these regulations must keep accurate records of every authorisation granted, and the records must specify full particulars of that authorisation.

33 Records of fish, aquatic life, and seaweed taken

Every Tangata Tiaki/Kaitiaki appointed under these regulations must keep accurate records of the species and quantities of fish, aquatic life, and seaweed

taken by those persons authorised under these regulations to take fish, aquatic life, or seaweed, as advised by those persons under regulation 35.

34 Authorisation to be held

- (1) Persons authorised under these regulations to take fish, aquatic life, or seaweed, except those authorised under regulation 11(3), must hold in their possession proof of the authorisation when fishing under that authorisation.
- (2) Persons authorised under regulation 11(3) to take fish, aquatic life, or seaweed must have in their possession details that verify that the authorisation was given in accordance with regulation 11(3) when fishing under the alternate authorisation.

35 Reporting

- (1) Any person authorised under these regulations to take fish, aquatic life, or seaweed must advise the Tangata Tiaki/Kaitiaki of the species and quantity of fish, aquatic life, and seaweed taken under that authorisation, no later than 5 working days after the taking of that fish, aquatic life, or seaweed.
- (2) Any person authorised under these regulations to take fish, aquatic life, or seaweed must advise the Tangata Tiaki/Kaitiaki as soon as practicable of any other species and quantities of such species taken as a result of the lawful taking of the fish, aquatic life, or seaweed authorised.

36 Notification

- (1) Within 1 month after the end of each quarter in each calendar year, every Tangata Tiaki/Kaitiaki appointed under these regulations must provide to such person, as is agreed between the tangata whenua and the Ministry, copies of every record kept by the Tangata Tiaki/Kaitiaki under regulations 32 and 33 during the preceding 3 months.
- (2) Fishery officers may have access to the records referred to in subclause (1), for general compliance purposes, provided agreement is reached with the Tangata Tiaki/Kaitiaki for such access.

37 Tangata Tiaki/Kaitiaki to meet and inform tangata whenua

- (1) The Tangata Tiaki/Kaitiaki must, no later than 31 March in each year, hold a meeting with the tangata whenua, and must at that meeting report on—
 - (a) the administration of these regulations by the Tangata Tiaki/Kaitiaki within the customary food gathering area/rohe moana; and
 - (b) the number of authorisations granted for the period, including those granted for the purpose of sustaining the functions of the marae, and the species and quantities of each species for which authorisations were granted; and
 - (c) any restrictions or prohibitions, including rāhui, in force for that period; and

- (d) the number of mātaítai reserves and other places of customary food gathering importance in the area/rohe moana of the tangata whenua; and
 - (e) any other matters arising.
- (2) The Tangata Tiaki/Kaitiaki must publicly notify the date of every meeting to be held under subclause (1).

38 Assistance to Tangata Tiaki/Kaitiaki

The Minister must provide to any Tangata Tiaki/Kaitiaki such information and assistance as may be necessary for the proper administration of these regulations and do so in accordance with section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Offences and penalties

39 Taking of fish, aquatic life, or seaweed without approval or authorisation prohibited

A person commits an offence against these regulations if the person takes fish, aquatic life, or seaweed in circumstances to which these regulations apply, whether from a New Zealand fishing vessel or otherwise, unless—

- (a) either—
 - (i) that person has been authorised, and is in possession of an authorisation, to take fish, aquatic life, or seaweed, and that authorisation has been granted by a Tangata Tiaki/Kaitiaki under regulation 11; or
 - (ii) that person has been authorised, and is in possession of an authorisation, to take fish, aquatic life, or seaweed within the whole or any part of a mātaítai reserve for the purpose of sustaining the functions of a marae, and that authorisation has been granted by a Tangata Tiaki/Kaitiaki under regulation 27; and
- (b) that taking is consistent with the authority granted under regulation 11 or regulation 27.

40 Possessing fish, aquatic life, or seaweed taken without approval or authorisation prohibited

A person commits an offence against these regulations if the person is in possession of fish, aquatic life, or seaweed in circumstances to which these regulations apply, unless—

- (a) those fish, aquatic life, or seaweed were taken under an authorisation to take fish, aquatic life, or seaweed granted by a Tangata Tiaki/Kaitiaki under regulation 11; or

- (b) those fish, aquatic life, or seaweed were taken under an authorisation to take fish, aquatic life, or seaweed granted by a Tangata Tiaki/Kaitiaki under regulation 27.

41 Defence available if unauthorised catch taken as inevitable consequence of lawful taking

A person charged with an offence of taking fish, aquatic life, or seaweed contrary to these regulations or to any authority given under these regulations has a defence to those proceedings if the person can show that—

- (a) the fish, aquatic life, or seaweed were taken as an inevitable consequence of the lawful taking of other fish, aquatic life, or seaweed; and
- (b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention; and
- (c) the defendant advised the Tangata Tiaki/Kaitiaki as soon as practicable after the fish, aquatic life, or seaweed were taken as an inevitable consequence of the lawful taking of other fish, aquatic life, or seaweed; and
- (d) the defendant disposed of the fish, aquatic life, or seaweed taken as an inevitable consequence of the lawful taking of other fish, aquatic life, or seaweed in accordance with any direction from the Tangata Tiaki/Kaitiaki.

42 Altering authorisation is offence

A person commits an offence against these regulations if, otherwise than in accordance with these regulations, the person alters in any way any authorisation granted under these regulations.

43 Breach of bylaws is offence

A person commits an offence against these regulations if the person breaches any bylaw notified under regulation 26.

44 Penalties

A person who commits an offence against these regulations is liable as follows:

- (a) on the first occasion on which the person is convicted of 1 or more offences, the person is liable in respect of that offence or each of those offences (as the case may be) to a fine not exceeding \$10,000;
- (b) on every subsequent occasion on which the person is convicted of 1 or more offences, the person is liable in respect of that offence or each of those offences (as the case may be) to a fine not exceeding \$20,000.

Regulation 44: substituted, on 1 October 2001, by regulation 3 of the Fisheries (South Island Customary Fishing) Amendment Regulations 2001 (SR 2001/269).

*Revocation and saving***45 Revocation**

The Fisheries (South Island Customary Fishing) Regulations 1998 (SR 1998/72) are revoked.

46 Saving

Without limiting anything in the Interpretation Act 1999, the revocation of the Fisheries (South Island Customary Fishing) Regulations 1998 by regulation 45 does not affect the validity of any document made or anything done under those regulations.

Schedule
Forms

Form 1

Notification of Tangata Tiaki/Kaitiaki for management of customary food
gathering

r 5

Notifying authority

Tangata Whenua (whanau, hapū, iwi, or representative):

Address:

Signature: / Seal

Area of authority of Tangata Whenua (manawhenua, manamoana)

Please identify the boundary points of your area of management responsibility for
customary food gathering (attach maps):

Tangata Tiaki/Kaitiaki being nominated

Please state the name, address, and phone number of the Tangata Tiaki/Kaitiaki you
wish to notify to the Minister, and the location of the area of management responsibil-
ity of the Tangata Tiaki/Kaitiaki, in the space provided. Please attach an additional
page if required.

Name:

Address:

Signature:

Phone:

Boundary of proposed area of management responsibility for Tangata Tiaki/Kaitiaki:

Form 2
 Authorisation to take for customary purposes

r 11

Authorisation No:

**TE IKA-A-MATUA
 KAI-MOANA, KAI-AWA, KAI-ROTO**

For: marae/whanau/hapū/iwi

Authorisation holder:

Address:

Phone No:

Associated harvesters (optional):

Catch may be used at:

Purpose:

Authorised harvest and conditions

Date when species to be taken	Species	Size limit		Quantity (number or greenweight)	Area from which species to be taken	Method	Actual quantity gathered
		Lower	Upper				

Any other conditions:

The above harvester/s is/are authorised to take quantities of Kai-Moana, Kai-Awa, and/or Kai-Roto, as approved in this authorisation, provided that they are only taken from the area specified and for the purpose notified. This authorisation is not transferable. It must be shown to any fishery officer on request. This authorisation is valid only for the date specified.

Tangata Tiaki/Kaitiaki: [*print name*]

Address:

Phone No:

Signature:

Date signed:

The harvester must report his/her actual catches to the Tangata Tiaki/Kaitiaki within 5 working days of the harvesting date specified on this authorisation.

Form 3
Customary food gathering catch landing report

r 15

Reporting officer:

Reporting officer number:

Harvest period: *January to March*
 April to June
 July to September
 October to December

Year:

Species name/code	Quantity approved (circle one)		Actual quantity harvested (circle one)		Fisheries management area
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		
	Kg / No		Kg / No		

Notes:

- This form must be submitted to the nearest regional office of the Ministry of Fisheries within 1 month of the end of the specified quarterly reporting period.
- If approvals or landings for a single species have been made with different measurement units (ie, sometimes in “Kg” and other times in “No”), then 2 lines of information must be provided for that species.
- Use additional forms if required.
- Additional information on species codes or Fisheries Management Areas may be obtained from the Ministry of Fisheries.

Form 4
Application for mātaimai reserve

r 17

Applicant: (Tangata Whenua or Tangata Tiaki/Kaitiaki):

Address:

Signature: / Seal

Phone:

Area of application (Identified Traditional Fishing Ground):**Location:**

Please specify the geographic location of the area of application and attach a map of the site:

Relationship of applicant with that fishing ground:**Aims of management for the mātaimai reserve:****Tangata Tiaki/Kaitiaki nominated to manage the mātaimai reserve:**

Name:

Address:

Phone:

*[Attach any supporting documents or additional information if required.]*Please send this form to:
Chief Executive
Ministry of Fisheries
PO Box 1020
Wellington

Reprinted as at
23 April 2014

**Fisheries (South Island Customary Fishing) Regulations
1999**

Schedule

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 14 October 1999.

Reprints notes

1 *General*

This is a reprint of the Fisheries (South Island Customary Fishing) Regulations 1999 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Ngati Toa Rangatira Claims Settlement Act 2014 (2014 No 17): section 23

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Fisheries (South Island Customary Fishing) Amendment Regulations 2005 (SR 2005/343)

Fisheries (South Island Customary Fishing) Amendment Regulations 2001 (SR 2001/269)