

Establishment of Mataitai Reserves

What is a mataitai reserve?

Mataitai reserves are areas where the tangata whenua manage all non-commercial fishing by making bylaws. The bylaws must apply equally to all individuals. mataitai reserves may only be applied for over traditional fishing grounds and must be areas of special significance to the tangata whenua. Generally there is no commercial fishing within mataitai reserves.

Who can apply for a mataitai reserve?

Only tangata whenua, or Tangata Kaitiaki/Tiaki nominated by tangata whenua, can apply for a mataitai reserve in any part of their rohe moana. Any disputes over the status of tangata whenua or Tangata Kaitiaki/Tiaki must be resolved before a mataitai reserve application is lodged.

Who must be consulted on a mataitai reserve proposal?

When a mataitai reserve application is received, the Minister must publicly notify the application twice in a newspaper circulating in the area of the proposed reserve. The Minister must also call for written submissions on the application from the local community in that area. After the closing date for submissions, the Minister must call a meeting near the proposed mataitai reserve.

The local community must be consulted together by the tangata whenua and the Ministry of Fisheries. The regulations define local community as people who own land in the proximity of the proposed mataitai reserve, or people that have been resident in the area for at least three months in the preceding three years. The tangata whenua may amend their application following consultation with the local community.

Do fishers have the right to make submissions on mataitai reserve proposals?

Yes. After consulting the local community and learning of any changes that the tangata whenua have made to the application, the Minister must advertise the application and call for submissions from persons who own quota or fish, either commercially or as amateurs, in the area of the proposed mataitai reserve.

The Ministry of Fisheries will decide which newspapers are used to notify a mataitai reserve. The Ministry will need to ensure that all interested parties are properly informed of the proposal.

What happens if concerns are raised about a mataitai reserve proposal?

If the Minister of Fisheries has concerns regarding a mataitai reserve proposal, these issues can be discussed with the applicants before the Minister makes a final decision. The tangata whenua and the Minister may wish to agree on conditions for the mataitai reserve in order to address issues raised in any submissions. This will increase the likelihood of mataitai reserve proposals meeting the necessary criteria, gaining final approval and being effective.

What are the criteria which must be met for a mataitai reserve to be approved?

The Minister approves a mataitai reserve proposal when satisfied that the following criteria have been met:

- a special relationship exists between tangata whenua and the area of the proposed reserve
- the proposed reserve is a traditional fishing ground
- the proposed reserve can be effectively managed by tangata whenua
- the general management aims are consistent with the sustainable use of the fisheries resources in the area
- the proposed mataitai reserve is not a marine reserve.

The Minister must also be satisfied that the mataitai reserve will not:

- unreasonably affect the ability of the local community to take fish for non-commercial purposes; or
- prevent persons with a commercial interest in a species from taking their quota or annual catch entitlement within the Quota Management Area for that species; or
- unreasonably prevent persons with a commercial fishing permit for a non-QMS species from taking fish within the Fisheries Management Area for which that permit has been issued; or
- unreasonably prevent non-commercial fishers from fishing within the Quota Management Area or Fisheries Management Area for that species.

The criteria take account of the fact that a mataitai reserve could have impacts on other users of the fishery, such as commercial and recreational fishers. However, the Minister will not decline a mataitai reserve proposal simply because the area is used by commercial or recreational fishers.

As long as commercial and recreational fishers are able to fish successfully in other parts of the Quota Management or Fisheries Management Area, the Minister may approve the mataitai reserve proposal.

Once a mataitai reserve has been approved and notified in the Gazette, the Minister must confirm and notify the appointment of Tangata Kaitiaki/Tiaki chosen by the tangata whenua to manage the mataitai reserve.

Is the overall number of mataitai reserves taken into account by the Minister?

Yes. The Minister will take into account any other mataitai reserves within the Quota Management Area or Fisheries Management Area when the potential effects of any new proposal are assessed. So while the first proposals for mataitai reserves within a particular area may be approved, later applications may not because of the cumulative impact of all the reserves on commercial and/or recreational fishing.

Tangata whenua organisations should work with neighbouring tangata whenua and local communities on the development of their mataitai reserve proposals. This will help ensure that mataitai reserves are spread evenly around the coast and that everyone's needs are met.

(This section refers to regulations 18-26)

Management of mataitai reserves

Who manages fishing within mataitai reserves and how?

Non-commercial fishing in mataitai reserves is managed by Tangata Kaitiaki/Tiaki through the making of bylaws. If no bylaws have been made, then the amateur fishing regulations apply.

What can bylaws be made to cover?

Bylaws can be made covering the following matters:

- a) species that can be taken;
- b) quantity of each species that can be taken;
- c) size limits relating to each species to be taken;
- d) the method by which each species can be taken;
- e) area or areas in which the species can be taken; and
- f) any other matters the Tangata Kaitiaki/Tiaki considers necessary for the sustainable management of fisheries resources.

Who do mtaitai reserve bylaws apply to?

Bylaws apply equally to all individuals, Maori and non-Maori.

How are bylaws made and do fishers have the opportunity to make submissions?

Any proposed bylaw has to be made available for public inspection and submissions. Bylaws proposed by the Tangata Kaitiaki/Tiaki are placed in the nearest office of the Ministry of Fisheries, and also at a location near the proposed reserve.

When a bylaw has been deposited, notification is made in a newspaper circulating in the area. Interested parties will have a minimum of fifteen days to make submissions on any proposed bylaw. The Tangata Kaitiaki/Tiaki may amend the proposed bylaw in light of any submissions received.

The Tangata Kaitiaki/Tiaki must then submit the proposed bylaw to the Minister. The Minister may approve the proposed bylaw if satisfied that the proposed bylaw:

- is necessary or desirable for the sustainable management of the fish in that mataitai reserve;

- has been properly deposited with the Ministry for public viewing and submissions; and
- is consistent with the stated management aims or conditions of the mataitai reserve proposal.

How do fishers become aware of what bylaws are in place for a mataitai reserve?

Bylaws approved by the Minister are notified in the Gazette and published in a newspaper circulating in the locality of the mataitai reserve. Information will be made available to ensure that all people fishing within mataitai reserves know of the bylaws which apply within those areas.

What about customary fishing authorisations for fishing in mataitai reserves?

In order to sustain the fishery Tangata Kaitiaki/Tiaki can recommend the making of bylaws that restrict or prohibit the taking of a particular species within a mataitai reserve.

While a bylaw may close a particular fishery to individual fishers, the Tangata Kaitiaki/Tiaki may still allow customary fishing for marae purposes. The needs of the local marae take precedence over those of individual fishers if there is only a limited amount of fish that can be harvested sustainably.

Is commercial fishing allowed within mataitai reserves?

Generally, commercial fishing is prohibited within mataitai reserves. The exception to this is where the Tangata Kaitiaki/Tiaki proposes to the Minister of Fisheries that a commercial harvest be allowed for specified species and quantities of fish, for a specified period.

The Minister must then consult with tangata whenua and representatives of people with an interest in the fish stock, and may recommend the making of a regulation to enable a commercial harvest to take place.

Any commercial harvest would be conducted under the provisions of the Fisheries Act and any relevant commercial fishing regulations, and would only be open to those with a commercial entitlement to fish the relevant species within the wider area.

Can Tangata Kaitiaki/Tiaki enhance fishstocks in mataitai reserves?

Yes. The Tangata Kaitiaki/Tiaki of a mataitai reserve may authorise the transfer of fish from within the mataitai reserve, regardless of any bylaws in place, in order to enhance the fishstocks of the reserve.

This section refers to regulations 27-32

Powers of the Minister

What assistance does the Minister provide to Tangata Kaitiaki/Tiaki?

The Minister must provide Tangata Kaitiaki/Tiaki with the necessary information and assistance to properly administer the regulations. This includes published research material and information on management of the fisheries in their areas. In most cases the processes described in the regulations are obligations for the Minister to carry out.

The Ministry of Fisheries and tangata whenua need to ensure that the roles and responsibilities of the Ministry and Tangata Kaitiaki/Tiaki are carried out by the most appropriate group. This could mean that the Ministry might contract out some of its roles to tangata whenua.

Can the tangata whenua intervene in the management of customary fishing by Tangata Kaitiaki/Tiaki?

Yes. The tangata whenua can cancel the appointment of any Tangata Kaitiaki/Tiaki notified by them, by making a written statement to the Minister. The Minister will then appoint another Tangata Kaitiaki/Tiaki notified by the tangata whenua for that area.

Can the Minister intervene in the management of customary fishing by Tangata Kaitiaki/Tiaki?

The Minister can intervene in the management by a Tangata Kaitiaki/Tiaki, after consultation with the tangata whenua, when the actions of the Tangata Kaitiaki/Tiaki are affecting the sustainability of the fishery in the rohe moana for which they are responsible.

- The Minister must provide advice and assistance to the Tangata Kaitiaki/Tiaki to help them resolve the problem.
- If the Tangata Kaitiaki/Tiaki cannot or will not follow the Minister's advice, the Minister and tangata whenua must develop a management strategy to sustainably manage the fishery, and the Tangata Kaitiaki/Tiaki will have to carry out the management strategy.
- If the Tangata Kaitiaki/Tiaki fails to carry out the management strategy, the Minister must notify the tangata whenua and may cancel the appointment of the Tangata Kaitiaki/Tiaki.

(This section refers to regulations 33-34)

Offences and Penalties

What constitutes an offence under the customary regulations?

It is an offence for any person to gather or possess fish for customary purposes unless:

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- they have been authorised by a Tangata Kaitiaki/Tiaki for the area from which the fish is taken and they are in possession of that authorisation at the time of fishing; and
 - they are taking fish according to the instructions of the Tangata Kaitiaki/Tiaki as specified on the authorisation.

It is an offence to alter any authorisation granted by a Tangata Kaitiaki/Tiaki.

It is an offence to act in breach of any bylaws notified under the regulations.

What are the penalties for offences?

The first time a person is convicted of an offence against the regulations they will be liable to a fine of up to \$5,000. Any subsequent conviction will be liable to a fine of up to \$10,000.

Note: Fishing activity of a commercial nature comes under the Fisheries Act, which allows for forfeiture of property and fines up to \$250,000.

Can Hapu or Iwi carry out enforcement under the customary regulations?

No. The enforcement of the customary regulations remains the responsibility of the Crown and is carried out by Fishery Officers or Honorary Fishery Officers employed by the Ministry of Fisheries. The Ministry is working very closely with iwi and hapu to ensure that they are involved in the process for employing both Fishery Officers and Honorary Fishery Officers, and that they have the opportunity to nominate people to fill those positions.