



29 August 2007

Tēnā koutou katoa ngā mata waka o ngā hau e whā, he mihi nui, he mihi aroha ki runga i te ahua o te ra nei..

Proposed amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998

The Ministry of Fisheries (the Ministry) is proposing to amend the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the Kaimoana Regulations) to extend the application of the regulations to fresh water. The Minister of Fisheries has approved the Ministry consulting with interested parties. Once consultation is completed, the Minister will decide whether to seek Cabinet approval to amend the Kaimoana Regulations so they apply to fresh water.

Current situation for the North Island and Chatham Islands customary fishing
Customary fishing by tangata whenua in the North and Chatham Islands is regulated by two sets of regulations:

- the Kaimoana Regulations; and
- regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 (Amateur Fishing Regulations).

The Kaimoana Regulations provide for the devolution of management authority for customary non-commercial fishing to tangata whenua in the marine environment only and specifically excludes fisheries resources taken in fresh water. The Kaimoana Regulations provide for two types of management by tangata whenua. The first is the management of customary non-commercial fishing activity within a hapu or iwi's area, through the issuing of authorisations for fishing. The second provides for tangata whenua to apply for mātaihai reserves, which are areas where there is a special relationship between tangata whenua and an area of customary food gathering importance. Mātaihai reserves generally exclude some or all commercial fishing and provide for tangata whenua to manage all non-commercial fishing in these areas through by-laws approved by the Minister of Fisheries.

Some aspects of customary fishing in fresh water for tangata whenua in the North Island and Chatham Islands can be conducted under the provisions of the Amateur Fishing Regulations. The 1992 Fisheries Deed of Settlement provided for regulations

27 and 27A as an interim mechanism to allow for some aspects of customary non-commercial fishing rights until regulations consistent with section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 could be used by tangata whenua. Regulations 27 and 27A were an interim measure that provided an exemption from prosecution for customary harvest.

Regulations 27 and 27A do not provide for input into sustainability measures (as do the Kaimoana Regulations and Fisheries Act), nor does it provide for resolution of governance or boundary disputes. Use of regulations 27 and 27A will be phased out over time as they are replaced by the management tools available in the Kaimoana Regulations.

Why amend the Kaimoana Regulations?

Section 10(c) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 imparts an active obligation on the Minister of Fisheries to recommend regulations to recognise and provide for customary food gathering by Māori to the extent such food gathering is not for sale or trade, and the special relationship between tangata whenua and those places which are of customary food gathering importance. Consistent with the 1992 Fisheries Deed of Settlement, the Minister has an obligation to develop and recommend regulations where the Minister is aware of the need for such regulations.

The Ministry considers that regulations 27 and 27A do not adequately recognise and provide for customary food gathering to the extent required by sections 10(b) and (c) of the Settlement Act. The Ministry is proposing to amend the Kaimoana Regulations so that tangata whenua in the North Island and Chatham Islands can manage customary fishing in their rohe whether it takes place in the marine or the fresh water environment.

Extent of proposed amendment

The Ministry notes that the obligation to make customary regulations only applies to species subject to the Fisheries Act 1996 – including many fresh water species – but it may not include some fresh water species governed by other legislation such as the Conservation Act 1987. Regulations made under the Fisheries Act 1996 (the Kaimoana Regulations and the South Island Regulations) also only apply to fish subject to the Fisheries Act 1996. The proposal to amend the Kaimoana Regulations will not affect that position.

The proposal to amend the Kaimoana Regulations will allow tangata whenua to exercise customary management of fisheries resources, subject to the Fisheries Act 1996, in the fresh water environment in the same way as it is for the marine environment. Under these regulations, tangata whenua in the North Island and Chatham Islands will be able to:

- notify Tangata Kaitiaki who, once their appointments have been confirmed by the Minister, will be able to issue permits to take fisheries resources for customary non-commercial purposes;
- apply for mataitai reserves; and
- have the ability to propose by-laws in mataitai reserves to manage non-commercial fishing.

in both the marine and fresh water environments. This will make the Kaimoana Regulations consistent with those already in use in the South Island.

Administration of regulations

The Ministry notes that by extending the scope of the Kaimoana Regulations to cover fresh water, the mandatory administrative functions, which are undertaken under the regulations by tangata whenua and the Tangata Kaitiaki in the North Island and Chatham Islands, will be extended. Information and assistance provided by the Ministry to assist tangata whenua in the proper administration of the regulations will be extended to cover fresh water issues. The application process when tangata whenua apply for mataitai reserve will remain the same as will the Ministry's procedures in assessing the applications.

The Ministry has developed a training package for Tangata Kaitiaki who operate in the marine environment. If the proposal to extend the Kaimoana Regulations is given Cabinet approval, the Ministry will amend the training package to recognise the amendment.

The Ministry's compliance role in the North Island and Chatham Islands for fresh water has been to enforce regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 and to provide information and assistance to tangata whenua on clarification of customary regulations and training to assist Kaitiaki in meeting their obligations as a gazetted permit issuer. Under the new proposal the Compliance business group will continue to support Tangata kaitiaki and issuing authorities in gaining optimal levels of compliance in the customary freshwater fishery as well as supporting compliance aspects of the Kaitiaki training package.

Consultation

The Minister has approved the Ministry consulting with interested parties prior to seeking approval from Cabinet to amend the Kaimoana Regulations. The Ministry is now seeking views from interested parties on the proposed amendment. The consultation process will run till **23 November 2007**. If you would like to provide a submission on this proposal please forward your views to:

Tania Gerrard
Ministry of Fisheries
P.O. Box 1020
WELLINGTON

Or email them to: tania.gerrard@fish.govt.nz by 23 November 2007.

If you or your group wish to discuss this proposal further with the Ministry please contact Tania Gerrard on (04) 819-4656.

I look forward to receiving your response.

Nāku noa, nā

Terry Lynch
Policy Manager

