

**Fisheries New Zealand**

Tini a Tangaroa

1 April 2019

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Bylaws for Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves

Purpose:

This paper seeks your agreement to approve six bylaws for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves. The bylaws, if approved, will be made under the Fisheries (South Island Customary Fishing) Regulations 1999.

Minister	Action Required:	Minister's Deadline
Minister of Fisheries	Approve six bylaws for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves	A decision is required before 17 April 2019.

Contact for telephone discussion (if required)

	Name	Position	Work	Mobile
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Key Messages

1. Tāngata Tiaki/Kaitiaki have made six bylaws for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves to manage recreational shellfish and flatfish fishing within these mātaitai reserve areas. The mātaitai reserves are on the east coast of the South Island near Timaru.
2. Under the Fisheries (South Island Customary Fishing) Regulations 1999, you must decide whether to approve the bylaws before they can be gazetted and take effect. Your decision must be made as soon as practicable and, in any case, no later than 40 working days after the bylaw has been proposed. To meet this requirement, your decision needs to be made by 17 April 2019.
3. The bylaws propose to close the two coastal mātaitai (Tuhawaiki and Te Ahi Tarakihi Mātaitai) to shellfish harvest in general, but retain access to pāua, kina and kūtai (mussels), with reduced daily bag limits (three, 20 and 50 respectively).
4. For Te Ahi Tarakihi and Waitarakao Mātaitai Reserves the bylaws propose that the daily bag limit for pātiki (flatfish) be reduced to 10.
5. Overall, given that the mātaitai are relatively small, and that the bylaws would allow fishing of the key recreational species pāua, kina, mussels and flatfish to continue (albeit at reduced levels), we consider the proposed bylaws would have a minor impact on recreational fishers. Only three submissions on the bylaws were received during consultation, despite wide advertising. These submissions supported the bylaws.
6. There are no impacts on commercial fishers from the proposed bylaws since commercial fishing is already prohibited in the reserve.
7. As the bylaws are consistent with the requirements of the legislation, and the objectives of the three mātaitai reserves, Fisheries New Zealand recommends you approve them and sign the attached *Gazette* notice to give effect to the bylaws.
8. We also recommend you sign the letters to the Tangata Tiaki/Kaitiaki of the three mātaitai reserves informing them of your decision.

Recommendations

9. Fisheries New Zealand recommends that you:

- a) **Approve** bylaws for the Tuhawaiki and Te Ahi Tarakihi Mātaitai Reserves that prohibit the harvest of all shellfish stocks (other than pāua, kina and mussels). And, within those areas set a daily bag limit of:
- three pāua;
 - 20 kina;
 - 50 kūtai (mussels).

Approved / Not Approved

- b) **Approve** a bylaw for the Te Ahi Tarakihi and Waitarakao Mātaitai Reserves that sets a daily bag limit of ten flatfish.

Approved / Not Approved

- c) **Agree** to sign the attached *Gazette* notice to establish the bylaws for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves,

And;

The attached letters to Tāngata Tiaki/Kaitiaki for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves informing them of your decision.

Agreed / Not Agreed

Dan Bolger
Head of Fisheries New Zealand
for Director-General

Hon Stuart Nash
Minister of Fisheries
/ / 2019

Background

Regulatory Framework

10. The Fisheries (South Island Customary Fishing) Regulations 1999 (the Regulations) enable Tāngata Whenua or Tāngata Tiaki/Kaitiaki to apply to the Minister of Fisheries for a mātaihai reserve in respect of any part of the area/rohe moana for which they are Tāngata Whenua or Tāngata Tiaki/Kaitiaki.
11. Once a mātaihai reserve is declared, it is managed by Tāngata Tiaki/Kaitiaki appointed for the mātaihai reserve.
12. Under regulation 25 of the Regulations, the Tāngata Tiaki/Kaitiaki appointed for a mātaihai reserve may make bylaws specifying the quantity of any species that may be taken, and restricting or prohibiting the taking of fish, aquatic life, or seaweed from within the whole or any part of the mātaihai reserve for any purpose that the Tāngata Tiaki/Kaitiaki considers necessary for the sustainable management of the fisheries resources in that mātaihai reserve. These bylaws apply generally to all persons fishing in the mātaihai reserve.
13. Tangata Tiaki/Kaitiaki are empowered to propose measures to achieve the objective of the mātaihai, which can provide for different levels of abundance and value provided the measures are consistent with sustainability.
14. Bylaws may impose restrictions or prohibitions relating to all or any of the matters listed in regulation 25(2) of the Regulations including; the species of fish, aquatic life, and seaweed that may be taken, the numbers of those species and the area(s) in which each species may be taken.
15. Bylaws made under regulation 25 must be deposited with Fisheries New Zealand and be open for inspection by the public so that the public can make submissions on the bylaws.
16. Following the submission process, the Tāngata Tiaki/Kaitiaki must, under regulation 26, notify you of the bylaw and provide you with a copy of the bylaw and a statement of reasons why the proposed restriction or prohibition is necessary or desirable for the sustainable management of the fisheries resources in that mātaihai reserve.
17. Once you have been notified of a bylaw you must decide as soon as practicable and, in any case, no later than 40 working days after the proposing of the bylaw, whether to approve the bylaw. To meet this requirement, your decision needs to be made by 17 April 2019.
18. In considering whether to approve or decline a bylaw under the Regulations, you are required to act in accordance with the principles of the Treaty of Waitangi, confirm that the establishment process has adhered to the legal requirements, and confirm that the wording of the bylaw meets legal requirements. You must also inform the Tangata Tiaki/Kaitiaki of your decision.

19. Upon approving a bylaw you must, as soon as practicable, publish that bylaw in the *New Zealand Gazette*. The bylaw takes effect on a date specified in the published bylaw.

Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves

20. The Tuhawaiki and Te Ahi Tarakihi Mātaitai Reserves were established on 21 July 2016. The Waitarakao Mātaitai Reserve was established on 17 August 2014. The three mātaitai reserves cover three distinct areas around Timaru (see attached map, Appendix 1).
21. The vision and objectives of all three mātaitai are:
- Mātaitai Vision
 - The fisheries resources and marine environment of our mātaitai are protected and enhanced for present and future generations of Ngāi Tahu Whānui to enjoy and use in a sustainable manner.
 - Key Objectives
 - To ensure customary fishers have access to and use of an abundant supply of healthy mahinga kai in order to sustain their customary practices (including sustaining functions of our marae); and
 - To protect the long-term sustainability of the fisheries resources and the recreational fishing experience within our mātaitai for present and future generations to use and enjoy.

Proposed Bylaws to Manage Harvest in the Mātaitai Reserves

22. To ensure sustainable use of pāua, kina, mussels and flatfish, the Mātaitai Tāngata Tiaki/Kaitiaki believe the following bylaws are necessary:

Shellfish prohibitions and catch limits

- **Bylaw: Prohibition on the harvesting of shellfish stocks - Tuhawaiki Mātaitai**
 - No person may, on any day, take shellfish (other than pāua, kina, or mussels) from within the Tuhawaiki Mātaitai.
 - **Bylaw: Prohibition on the harvesting shellfish stocks - Te Ahi Tarakihi Mātaitai**
 - No person may, on any day, take shellfish (other than pāua, kina, or mussels) from within the Te Ahi Tarakihi Mātaitai.
 - **Bylaw: Maximum daily limits on key shellfish stocks – Tuhawaiki Mātaitai**
 - No person may, on any day, take more than;
 - Three (3) pāua (combined blackfoot - *Haliotis iris* and yellowfoot - *H. australis*)
 - Twenty (20) kina
 - Fifty (50) mussels
- from within the Tuhawaiki Mātaitai.

- **Bylaw: Maximum daily limits on key shellfish stocks – Te Ahi Tarakihi Mātaitai**
 - No person may, on any day, take more than;
 - Three (3) pāua (combined blackfoot - *Haliotis iris* and yellowfoot - *H. australis*)
 - Twenty (20) kina
 - Fifty (50) musselsfrom within Te Ahi Tarakihi Mātaitai.

Finfish catch limits

- **Bylaw: Maximum daily limit on pātiki (flatfish) - Waitarakao Mātaitai**
 - No person may, on any day, take more than ten (10) flatfish from within the Waitarakao Mātaitai.
- **Bylaw: Maximum daily limit on pātiki (flatfish) - Te Ahi Tarakihi Mātaitai**
 - No person may, on any day, take more than ten (10) flatfish from within the Te Ahi Tarakihi Mātaitai.

Sustainable Management of Fisheries Resources

23. The Tāngata Tiaki/Kaitiaki for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaitai Reserves, in notifying you of a bylaw, are required to supply you with the reasons why they consider the bylaw is necessary or desirable for the sustainable management of fish, aquatic life, or seaweed in the mātaitai reserve. A copy of their notification is attached as Appendix 2.

Shellfish prohibitions and catch limits

24. The Mātaitai Reserve Tāngata Tiaki/Kaitiaki believe the above bylaws are necessary to meet the mātaitai reserve vision and objectives, and to restore shellfish stocks in the coastal mātaitai reserves, while maintaining access to some important species.
25. In particular, the Tāngata Tiaki/Kaitiaki believe it is necessary to protect critical shellfish stocks at the base of the marine food web, such as limpets, chitons, Cook's turban and pupu/cats eyes to ensure a healthy, functioning ecosystem. To achieve this they consider a bylaw prohibiting the harvest of all shellfish is required.
26. The Mātaitai Reserve Tāngata Tiaki/Kaitiaki also wish to maintain recreational access to pāua, kina and mussels but believe current recreational bag limits for pāua and kina are too high and inconsistent with the underlying customary philosophy of a mātaitai, which is focussed on 'catching a feed'. In the case of mussels the bylaws maintain the status quo daily bag limit of 50 per person per day.

27. Surveys of these mātaimai were carried out in 2018 by Te Tiaki Mahinga Kai, which is a research team at the University of Otago established to support Tāngata Tiaki/Kaitiaki in managing customary areas within Ngai Tahu's rohe. While there is no time series of earlier surveys to compare survey results, the surveys do provide some information on key stocks within these areas.
28. For example, the 2018 survey results show that approximately 12% of pāua in the three mātaimai reserves were at or above the minimum legal size. While this is healthy when compared to many other Ngai Tahu customary areas, Mātaimai Tāngata Tiaki/Kaitiaki for the three mātaimai note the decline of shellfish resources that has occurred within some of those areas, and the significant reductions in bag limits and closures that have been required as a result. They wish to take proactive action now through their bylaws to prevent such declines within their mātaimai.
29. Fisheries New Zealand notes that there are relatively few rocky reefs between Banks Peninsula and Oamaru. Consequently, shellfish stocks in these areas are, on occasion, subject to high fishing intensity. MPI Fishery Officers confirm that, especially during king low tides, fishing pressure can be intense, with reports of up to 100 people at a time hand gathering on some reefs.
30. Overall, Fisheries New Zealand consider the proposed bylaws should contribute to ensuring the sustainability of shellfish stocks in these areas, while still allowing utilisation of the key recreational shellfish species pāua, kina and mussels.

Finfish catch limits

31. Tāngata Tiaki/Kaitiaki wish to enhance pātiki (flatfish) stocks in the Waitarakao and Te Ahi Tarakihi Mātaimai. Through rebuilding these stocks they seek to increase future access to this fishery for customary and recreational fishers. Tāngata Tiaki/Kaitiaki believe reducing the recreational daily bag limit from 30 per person per day to 10 per person per day will contribute to an improvement in the abundance, accessibility and sustainability of flatfish in these mātaimai reserves.
32. Fisheries New Zealand notes that there is a popular drag net fishery for flatfish within these two mātaimai, especially Caroline Bay, and that fishing pressure within these localised areas can be high. Reducing the daily bag limit to 10 flatfish per person per day supports sustainable utilisation of these localised fisheries.

Consultation

33. The public submission process on the bylaws was undertaken in accordance with the Regulations. The proposed bylaws were advertised in major daily newspapers in the area (*The Press* and the *Timaru Herald*), and through Fisheries New Zealand web and social media channels. Three submissions were received. All submissions supported the proposed bylaws (Appendix 3).

34. The Pāua Industry Council supports the shellfish bylaws and consider them a good idea which should help protect shell fisheries in the Timaru area. They also requested the new bylaws be well signposted and include information on the importance of the bylaws so the public can better understand them.
35. PāuaMAC3 support a daily bag limit of three paua. They note that by maintaining access to the key species, this will reduce the pressure on those areas outside the mātaihai boundaries.
36. H. Soares also supports the bylaws and considers they will help preserve fish stocks.

Analysis

37. The process for establishing the bylaws, as set out in the Regulations, has been adhered to, including:
 - the legal validity of the proposing Tāngata Tiaki/Kaitiaki;
 - the advertising requirements for consultation;
 - reviewing the wording and enforceability of the proposed bylaws; and
 - consistency with the intention of the Regulations, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1996.
38. Fisheries New Zealand and MPI Fisheries Compliance have, on your behalf, analyzed the bylaws and have concluded that there is nothing in the bylaws that is inconsistent with the legislative requirements.
39. Fisheries New Zealand considers the proposed bylaws are consistent with the principles of the Treaty of Waitangi and the objectives of the three mātaihai (i.e. to ensure the long-term sustainability of fisheries resources and the recreational fishing experience).
40. Given the small number of submissions and the continued access to key recreational species, Fisheries New Zealand does not consider the bylaws will have a significant impact on recreational fishing.

Conclusion

41. Fisheries New Zealand considers the bylaws are consistent with the requirements of the Regulations.
42. Fisheries New Zealand is not aware of any reason why you should not approve the bylaws.
43. Should you approve the bylaws, attached for your signature are letters to the Tāngata Tiaki/Kaitiaki for the Tuhawaiki, Te Ahi Tarakihi and Waitarakao Mātaihai Reserves, and a notice for publication in *The Gazette*.

44. If you decide to decline the bylaws, you are required to notify the Tangata Tiaki/Kaitiaki of the reasons for your decision. Fisheries New Zealand will provide alternative letters to the Tangata Tiaki/Kaitiaki should you decide not to approve the bylaws.
45. Fisheries New Zealand will also arrange for the approved bylaws to be published in *The Press* and the *Timaru Herald* newspapers, and will work with your office to determine whether any wider media messaging is appropriate.

Appendix One: Map of the Tuhawaiki, Te Ahi Tarakihi and Waitarakao mātaimai reserves

