



19 March 2020

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Bylaws for Whakaraupō Mātaitai Reserve

Purpose:

This paper seeks your agreement to approve bylaws for the Whakaraupō Mātaitai Reserve. 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	<p>Approve bylaws proposed for the Whakaraupō Mātaitai Reserve.</p> <p>Sign the attached letters to Tangata Tiaki/Kaitiaki</p> <p>Sign the attached <i>Gazette</i> notice.</p>	A decision is preferred before 1 April but no later than 8 April 2020.

Contact for telephone discussion (if required)

	Name	Position	Work	Mobile
Responsible Manager	[REDACTED]	Manager Inshore Fisheries	[REDACTED]	[REDACTED]
Principal Author	[REDACTED]	Fisheries Analyst	[REDACTED]	-

Key Messages

1. Tangata Tiaki/Kaitiaki have made bylaws for the Whakaraupō Mātaitai Reserve to manage recreational shellfish and finfish fishing within the mātaitai area. The mātaitai occupies the majority of Lyttelton Harbour, the remaining area being the Rāpaki Mātaitai Reserve.
2. Complimentary bylaws are also being made for the Rāpaki Mātaitai, also for your approval. However, these bylaws have been delayed by the Tangata Tiaki/Kaitiaki as they are reconsidering additional shellfish bylaws, which would require further consultation.
3. Surveys conducted by Te Tiaki Mahinga Kai (a research and monitoring support team centred at the University of Otago) suggest that:
 - only approximately 10% of pāua in the Whakaraupō Mātaitai are at or above the minimum legal size for recreational fishing;
 - other important mahinga kai shellfish are present in low densities; and
 - habitat-forming kelps in the upper harbour have been severely depleted.
4. The Tangata Tiaki/Kaitiaki wish to take proactive steps to prevent any further reduction in important mahinga kai stocks, including the quality of their habitats. The proposed bylaws would close the mātaitai to harvesting shellfish, except those species with a bag limit specified in the bylaws. They would also reduce daily bag limits for most finfish species (the existing combined daily bag limit of 30 finfish would still apply).
5. Two submissions on the proposal were received, despite wide advertising. One submission supported the proposed bylaws but sought a lower daily limit for cockles, the other suggested the proposed measures should include pioke (rig).
6. Fisheries New Zealand considers the bylaws will contribute to the mātaitai objectives, while still allowing continued access to the key recreational species in the harbour (albeit at reduced levels). There are no impacts on commercial fishers from the proposed bylaws, since commercial fishing is already prohibited in the reserve.
7. 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 8 April 2020.
8. As the bylaws are consistent with the requirements of the legislation and the objectives of the mātaitai, Fisheries New Zealand recommends you approve the proposed bylaws and sign the attached (**Appendix Four**) *Gazette* notice to give effect to the bylaws.
9. We also recommend you sign the letters to the Tangata Tiaki/Kaitiaki of the mātaitai informing them of your decision (**Appendix Three**).

Recommendations

10. Fisheries New Zealand recommends that you:

- a) **Approve** bylaws for the Whakaraupō Mātaitai Reserve that prohibit the harvest of shellfish, other than pāua, tuaki (cockles), pipi, kūtai (mussels), pāpaka (crabs) or tio (oysters). And, for these species set a daily bag limit of:

- Five pāua;
- Thirty tuaki (cockles)
- Thirty pipi;
- Thirty kūtai (mussels);
- Ten pāpaka (crabs);
- Ten tio (oysters):

Approved / Not Approved

- b) **Approve** a bylaw for the Whakaraupō Mātaitai Reserve that prohibits taking tuaki (cockles) from Walkers Beach (Ōtamahua/Quail Island) and Rec Bay (Purau).

Approved / Not Approved

- c) **Approve** a bylaw for the Whakaraupō Mātaitai Reserve that sets a daily bag limit for the following finfish of;

- Twenty pātiki (flounder);
- Two rāwaru (blue cod);
- Five hoka (red cod);
- Ten mararī (butterfish);
- Ten moki;
- Two kōiro (conger eel):

Approved / Not Approved

- d) **Approve** a bylaw for the Whakaraupō Mātaitai Reserve that sets a daily limit of 10 finfish, within the maximum combined daily limit of 30, for any other species not named above.

Approved / Not Approved

- e) **Approve** a bylaw for the Whakaraupō Mātaitai Reserve that prohibits taking whai repo (skates and rays) from within the Whakaraupō Mātaitai Reserve.

Approved / Not Approved

- f) **Approve** a bylaw for the Whakaraupō Mātaitai Reserve that prohibits taking seaweed (other than karengo (*Ulva spp*, *Porphyra spp*) or wakame (*Undaria pinnatifida*) from within the Whakaraupō Mātaitai Reserve.

Approved / Not Approved

- g) **Agree** to sign the attached *Gazette* notice to establish the bylaws for the Whakaraupō Mātaitai Reserve,

And;

The attached letters to Tangata Tiaki/Kaitiaki for the Whakaraupō Mātaitai Reserve informing them of your decision.

Agreed / Not Agreed

Stuart Anderson
Director Fisheries Management
Fisheries New Zealand

Hon Stuart Nash
Minister of Fisheries
/ / 2020

Background

Regulatory Framework

11. The Fisheries (South Island Customary Fishing) Regulations 1999 (the Regulations) enable Tangata Whenua or Tangata Tiaki/Kaitiaki to apply to the Minister of Fisheries for a mātaihai in respect of any part of the area/rohe moana for which they are Tangata Whenua or Tangata Tiaki/Kaitiaki.
12. Once a mātaihai is declared, it is managed by Tangata Tiaki/Kaitiaki appointed for the mātaihai.
13. Under regulation 25, the Tangata Tiaki/Kaitiaki appointed for a mātaihai 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 for any purpose that the Tangata Tiaki/Kaitiaki considers necessary for the sustainable management of the fisheries resources in that mātaihai. These bylaws apply generally to all persons fishing in the mātaihai.
14. Tangata Tiaki/Kaitiaki are empowered to propose measures to achieve the objective of the mātaihai, which can provide for different levels of abundance and values, provided the measures are consistent with sustainability.
15. Bylaws may impose restrictions or prohibitions relating to all or any of the matters listed in regulation 25(2), 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.
16. 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.
17. Following the submission process, the Tangata Tiaki/Kaitiaki must, under regulation 26, notify you of the bylaw, provide you with a copy of the bylaw and a statement of reasons why the proposed restriction or prohibition is necessary or desirable for sustainable management.
18. 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 8 April 2020.
19. 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.

20. 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.

Whakaraupō Mātaitai Reserve

21. The Whakaraupō Reserve was established on 20 July 2017. This mātaitai, and the much smaller Rāpaki Mātaitai Reserve, cover most of Lyttelton Harbour (see attached map, **Appendix One**).
22. The vision and objectives of the 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 Reserve

23. To ensure sustainable use of shellfish, finfish, and seaweed, the Mātaitai Tangata Tiaki/Kaitiaki believe the following bylaws are necessary:

Proposed Shellfish bylaws

- a) No person may, in any one day, take more than:
- i. Five pāua;
 - ii. Thirty pipi;
 - iii. Thirty kūtai (mussels);
 - iv. Ten pāpaka (crabs);
 - v. Ten tio (oysters):
- from within the Whakaraupō Mātaitai Reserve.¹
- b) No person may, in any one day, take more than 30 tuaki (cockles) from within the Whakaraupō Mātaitai Reserve (excluding Walkers Beach (Ōtamahua/Quail Island) and Rec Bay (Purau)).
- c) The taking of tuaki (cockles) from Walkers Beach (Ōtamahua/Quail Island) and Rec Bay (Purau) within the Whakaraupō Mātaitai Reserve is prohibited.

¹ There is no combined daily limit for shellfish.

- d) The taking of shellfish (other than pāua, tuaki (cockles), pipi, kūtai (mussels), pāpaka (crabs) or tio (oysters)) from within the Whakaraupō Mātaitai Reserve is prohibited.

Proposed Finfish bylaws

- e) The taking of whai repō (skates and rays) from within the Whakaraupō Mātaitai Reserve is prohibited.
- f) No person may, in any one day, take more than:
- i. Twenty pātiki (flounder);
 - ii. Two rāwaru (blue cod);
 - iii. Five hoka (red cod);
 - iv. Ten mararī (butterfish);
 - v. Ten moki;
 - vi. Two kōiro (conger eel):
- from within the Whakaraupō Mātaitai Reserve.
- g) No person may, in any one day, take more than ten finfish (other than whai repō (skates and rays), pātiki (flounder), rāwaru (blue cod), hoka (red cod), mararī (butterfish), moki or kōiro (conger eel)) from within the Whakaraupō Mātaitai Reserve.²

Proposed Seaweed bylaw

- h) Taking seaweed, other than karengo (*Ulva spp*, *Porphyra spp*) or wakame (*Undaria pinnatifida*), from within the Whakaraupō Mātaitai Reserve is prohibited.³

Sustainable Management of Fisheries Resources

24. The Tangata Tiaki/Kaitiaki for the Whakaraupō Mātaitai Reserve, 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. A copy of their notification is attached as **Appendix Two**.

Shellfish catch limits, prohibitions and closures

25. The mātaitai Tangata Tiaki/Kaitiaki believe the above bylaws are necessary to meet the mātaitai vision and objectives, and to restore shellfish stocks in the mātaitai, while maintaining access to some important species.

² The existing combined daily bag limit of 30 finfish would continue to apply.

³ No daily bag limits apply to seaweed.

26. In particular, the Tangata 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, except for pāua, tuaki (cockles), pipi, kūtai (mussels), pāpaka (crabs) or tio (oysters), is required.
27. The Tangata Tiaki/Kaitiaki also wish to maintain access to species important to recreational fishers but believe current recreational bag limits for many species are too high and inconsistent with the underlying customary philosophy of a mātaimai, which is focussed on 'catching a feed'.
28. A survey of the mātaimai was carried out in 2015 by Te Tiaki Mahinga Kai, which is a research team at the University of Otago established to support Tangata 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. The survey showed;
 - that approximately 10% of pāua in the Whakaraupō Mātaimai were at or above the minimum legal size for recreational fishing;
 - other important mahinga kai shellfish species are present in low densities also at the sites surveyed; and
 - stands of habitat forming kelps in the upper harbour appear to be severely depleted.
29. The Tangata Tiaki/Kaitiaki wish to take proactive steps to prevent any further reduction in important mahinga kai stocks and their habitats. Instead, they wish to rebuild populations to the levels of abundance enjoyed by their ancestors.
30. Further, to protect translocated tuaki stocks from unintended interference and allow enhancement to succeed, the Tangata Tiaki/Kaitiaki believe closing Walker's Beach (Quail Island) and Rec Bay (Purau) to tuaki gathering is necessary.
31. Overall, Fisheries New Zealand considers the proposed bylaws should contribute to ensuring the sustainability of shellfish stocks and the marine environment, while still allowing utilisation of the key recreational species.

Finfish catch limits and prohibition

32. Tangata Tiaki/Kaitiaki wish to enhance finfish stocks in the Whakaraupō Mātaimai. Through rebuilding these stocks they seek to increase future access to this fishery for customary and recreational fishers. Tangata Tiaki/Kaitiaki believe reducing the recreational daily bag limits within the mātaimai will contribute to an improvement in the abundance, accessibility and sustainability of finfish in the mātaimai.

33. Tangata Tiaki/Kaitiaki consider whai repo a tipuna (ancestor) who is the guardian of the bay. The presence and protection of whai repo is a necessity for ensuring the overall health of the bay, including the availability of the other species inhabiting the bay.
34. Fisheries New Zealand notes constraining catch is likely to improve the opportunity for the finfish stocks in the mātaimai to increase.

Seaweed harvesting prohibition

35. By protecting kelps and seaweeds, Tangata Tiaki/Kaitiaki seek to recognise the important role seaweeds and kelps play in creating fisheries habitat and providing ecosystem services. They play a foundation role in maintaining the marine environment.

Consultation

36. 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 Christchurch Press* and the *Bay Harbour News*), and through Fisheries New Zealand web and social media channels. The submission period was over six weeks from 1 November until 13 December.
37. Two submissions were received. One submission supported the proposed bylaws but advocated for a lower daily limit for cockles, while the other asked why the proposed measures did not include pioke (rig) (**Appendix Two**).
38. Tangata Tiaki/ Kaitiaki have considered these submissions and have determined no changes to the bylaws are required.

Analysis

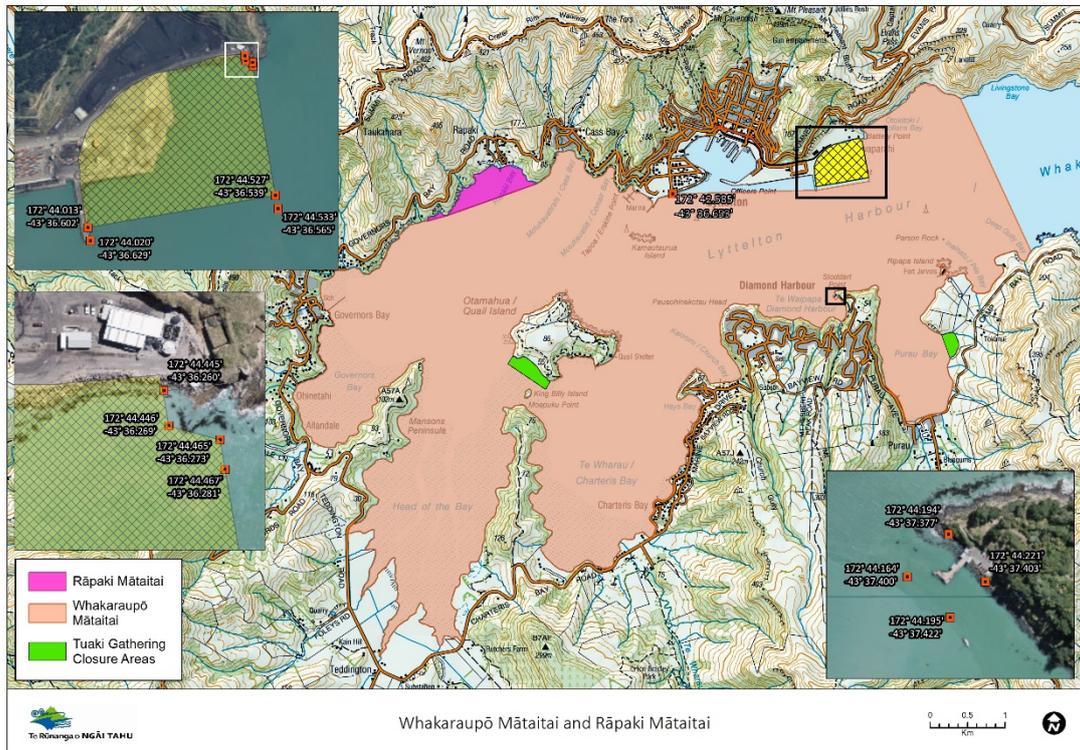
39. The process for establishing the bylaws, as set out in the Regulations, has been adhered to, including:
 - the legal validity of the proposing Tangata Tiaki/Kaitiaki;
 - the advertising requirements for consultation;
 - reviewing the wording and enforceability of the proposed bylaws; and
 - consistency with the intention of the Regulations, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1996.
40. Fisheries New Zealand and MPI Fisheries Compliance have analysed the bylaws and have concluded that there is nothing in the bylaws that is inconsistent with these legislative requirements.

41. Fisheries New Zealand considers the proposed bylaws are consistent with the principles of the Treaty of Waitangi and the objectives of the mātaihai (i.e. 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 marae functions); and the long-term sustainability of fisheries resources and the recreational fishing experience).
42. 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

43. Fisheries New Zealand considers the bylaws to be consistent with the requirements of the Regulations.
44. Fisheries New Zealand is not aware of any reason why you should not approve the bylaws.
45. Should you approve the bylaws, attached for your signature are letters to the Tangata Tiaki/Kaitiaki for the Whakaraupō Mātaihai Reserve, and a notice for publication in the *New Zealand Gazette*.
46. 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.
47. Fisheries New Zealand will also arrange for the approved bylaws to be published in *The Christchurch Press* and the *Bay Harbour News* newspapers, and will work with your office to determine whether any wider media messaging is appropriate.

Appendix One: Map of the Whakaraupō Mātaitai Reserve



Map: –Showing Whakaraupō Mātaitai and Rāpaki Mātaitai and tuaki gathering closure areas.

Appendix Four: Gazette Notice
