



Fisheries (South Island Customary Fishing) Amendment Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 25th day of November 2019

Present:
Hon Kelvin Davis presiding in Council

These regulations are made under sections 186 and 297 of the Fisheries Act 1996 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Fisheries (South Island Customary Fishing) Amendment Regulations 2019.

2 Commencement

These regulations come into force on 1 January 2020.

3 Principal regulations

These regulations amend the Fisheries (South Island Customary Fishing) Regulations 1999 (the **principal regulations**).

4 Regulation 2 amended (Interpretation)

- (1) In regulation 2(1), definition of **customary food gathering**,—
 - (a) after “means the”, insert “exercise of”;
 - (b) replace “Tangata Tiaki/Kaitiaki” with “Tāngata Tiaki/Kaitiaki”.
- (2) In regulation 2(1), definition of **mātaitai reserve**,—
 - (a) replace “established” with “declared”;
 - (b) replace “regulation 20” with “regulation 22”.
- (3) In regulation 2(1), replace the definition of **Tangata Tiaki/Kaitiaki** with:

Tangata Tiaki/Kaitiaki means any person, and **Tāngata Tiaki/Kaitiaki** means any persons, appointed as a Tangata Tiaki/Kaitiaki under these regulations
- (4) In regulation 2(1), replace the definition of **tangata whenua** with:

tāngata whenua,—

 - (a) in relation to a particular area, means the hapū or iwi that hold mana whenua and mana moana over that area and are represented by 1 of the following bodies or trusts, or the bodies or trusts that replace them:
 - (i) Te Rūnanga o Ngāi Tahu;
 - (ii) Ngāti Apa ki te Rā Tō Post-Settlement Trust;
 - (iii) Te Pātaka a Ngāti Kōata;
 - (iv) Ngāti Rārua Iwi Trust;
 - (v) Ngāti Tama ki Te Waipounamu Trust;
 - (vi) Te Rūnanga o Toa Rangatira Incorporated;
 - (vii) Te Ātiawa o Te Waka-a-Māui Trust;
 - (viii) Rangitāne o Wairau Settlement Trust;
 - (ix) Te Rūnanga o Ngāti Kuia Trust; and

(b) in relation to an area where 2 or more customary food gathering areas/rohe moana overlap, means the tāngata whenua (as defined by paragraph (a)) of each of those areas/rohe moana

(5) In regulation 2(2), replace “the Schedule” with “Schedule 2”.

5 New regulation 2A inserted (Transitional, savings, and related provisions)

After regulation 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

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

Replace regulation 3(2) with:

(2) These regulations apply only in respect of fisheries resources managed under the Fisheries Act 1996 or any regulations made under that Act.

7 Regulation 4 amended (Relationship between these regulations and other regulations)

(1) In regulation 4(1), delete “the Fisheries Act 1983 or”.

(2) Replace regulation 4(2) with:

(2) Until a Tangata Tiaki/Kaitiaki is appointed for a customary food gathering area/rohe moana, regulations 50 to 52 of the Fisheries (Amateur Fishing) Regulations 2013 apply to the taking of fish, aquatic life, or seaweed for customary food gathering purposes from that customary food gathering area/rohe moana.

8 Regulation 5 and cross-heading replaced

Replace regulation 5 and the cross-heading above regulation 5 with:

Confirmation of customary food gathering area/rohe moana and tāngata whenua

5 Notice from tāngata whenua

(1) The tāngata whenua may, in accordance with these regulations, manage customary food gathering within the area/rohe moana for which they are tāngata whenua.

(2) Before the tāngata whenua begin the management of customary food gathering under these regulations, they must give the Minister a notice that sets out—

(a) the name or description of the tāngata whenua; and

(b) a description, and map, of the boundaries of their customary food gathering area/rohe moana; and

(c) a physical or electronic address for notices to the tāngata whenua.

9 Regulation 6 amended (Public notice)

In regulation 6,—

- (a) replace “On being notified of a proposed Tangata Tiaki/Kaitiaki” with “On receiving a notice”;
- (b) replace “the receipt of such a notification” with “receipt”;
- (c) replace “that notification” with “the notice”.

10 Regulations 7 to 10 replaced

Replace regulations 7 to 10 with:

7 Submissions

- (1) Within 20 working days after the date of the second publication of a notice under regulation 6, any person referred to in subclause (2) may make a submission concerning the notice in writing or electronically to any office of the Ministry.
- (2) A person may make a submission under subclause (1) if the person belongs to—
 - (a) the tāngata whenua to whom the notice relates; or
 - (b) any hapū or iwi claiming mana whenua and mana moana in respect of customary food gathering in any part of the proposed customary food gathering area/rohe moana; or
 - (c) the rūnanga or other organisation representing—
 - (i) the tāngata whenua to whom the notice relates; or
 - (ii) the hapū or iwi referred to in paragraph (b).

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 tāngata whenua; or
 - (b) the boundaries of the proposed customary food gathering area/rohe moana.
- (2) If this regulation applies, the Minister must, as soon as practicable,—
 - (a) notify the tāngata whenua who gave the notice under regulation 5, and any person who has made a submission, that this regulation applies; and
 - (b) require the parties to the dispute to resolve the dispute in accordance with subclause (4); and
 - (c) date the notice, and that date is the **start date** for resolving the dispute.

(3) In resolving the dispute, the parties may agree to boundaries of the proposed customary food gathering area/rohe moana that differ from, but are not outside, those contained in the notice given under regulation 5.

(4) The parties must follow these steps until a dispute is resolved:

- (a) they must try to agree on a dispute resolution process that is consistent with tikanga Māori and use that process to try to resolve the dispute; and
- (b) if that does not resolve the dispute within 3 months after the start date, they must use mediation to try to resolve the dispute; and
- (c) if that does not resolve the dispute within 6 months after the start date, the dispute must be referred to arbitration under the Arbitration Act 1996, which applies with any necessary modifications.

(5) The mediator or arbitrator must have knowledge of tikanga Māori and of the geographical area to which the dispute relates.

(6) The mediator or arbitrator—

- (a) must be agreed on by the parties within 10 working days after the start of the mediation or arbitration step; but
- (b) if that fails, must be appointed by the chief executive.

(7) However,—

- (a) the parties may agree to change any deadline in subclause (4)(b) or (c) or (6)(a);
- (b) if a party refuses to participate in mediation under subclause (4)(b), the chief executive may determine the dispute in favour of the other party or parties (without the need for mediation or arbitration).

(8) As soon as practicable after the dispute is resolved, the tāngata whenua who gave the notice under regulation 5 must give the Minister a notice that sets out—

- (a) the name or description of the tāngata whenua; and
- (b) a description, and map, of the boundaries of their customary food gathering area/rohe moana.

9 Confirmation of customary food gathering area/rohe moana and tāngata whenua

(1) The Minister must confirm the boundaries of the customary food gathering area/rohe moana and who the tāngata whenua of the area/rohe moana are if satisfied that—

- (a) no submission in opposition has been received under regulation 7; or
- (b) a dispute resolution process has been concluded under regulation 8, all disputes have been resolved through that process, and the boundaries are not outside the boundaries set out in the notice given under regulation 5.

- (2) As soon as reasonably practicable after the Minister confirms those matters (the **confirmation date**), the chief executive must cause to be published in a newspaper circulating in the locality of the customary food gathering area/rohe moana, and in the *Gazette*, a notice—
 - (a) describing the boundaries of the customary food gathering area/rohe moana; and
 - (b) naming or describing the tāngata whenua of the area/rohe moana; and
 - (c) specifying the confirmation date.
- (3) The area/rohe moana and the tāngata whenua are recognised for the purposes of these regulations on and from the confirmation date.
- (4) The area/rohe moana and the tāngata whenua continue to be recognised for the purposes of these regulations even if the notice is revoked unless that recognition is expressly ended.

Appointment and cancellation of Tāngata Tiaki/Kaitiaki for customary food gathering area/rohe moana

10 Appointment and cancellation of Tāngata Tiaki/Kaitiaki for customary food gathering area/rohe moana

Appointing

- (1) The tāngata whenua of a customary food gathering area/rohe moana may appoint 1 or more people to be Tāngata Tiaki/Kaitiaki for the area/rohe moana.
- (2) A person who is appointed as a Tangata Tiaki/Kaitiaki must be a member or nominated representative of the tāngata whenua or of any organisation of the tāngata whenua.
- (3) When the tāngata whenua decide to appoint a Tangata Tiaki/Kaitiaki, they must also decide—
 - (a) whether the person is to be a Tangata Tiaki/Kaitiaki for the whole or a part of the area/rohe moana and, if a part, which part; and
 - (b) when the appointment is to start; and
 - (c) when the appointment is to end, or that the appointment has no specified end date.
- (4) When the tāngata whenua appoint a Tangata Tiaki/Kaitiaki, they must—
 - (a) give the Minister a notice setting out—
 - (i) the person's name and contact details; and
 - (ii) the details they decided under subclause (3); and
 - (b) publish the notice and the updated list of Tāngata Tiaki/Kaitiaki for the area/rohe moana.

Cancelling appointments

(5) The tāngata whenua—

- (a) must cancel the appointment of a Tangata Tiaki/Kaitiaki who resigns or dies in office;
- (b) must cancel the appointment of a Tangata Tiaki/Kaitiaki as soon as practicable after receiving a notice from the Minister under regulation 31 requiring the cancellation;
- (c) may cancel the appointment of a Tangata Tiaki/Kaitiaki for any other reason.

(6) When the tāngata whenua cancel the appointment of a Tangata Tiaki/Kaitiaki, they must—

- (a) give the Minister a notice setting out—
 - (i) the person's name and contact details; and
 - (ii) the date on which the cancellation takes effect; and
- (b) publish the notice, unless the person died in office; and
- (c) publish the updated list of Tāngata Tiaki/Kaitiaki for the area/rohe moana.

Reappointing

(7) The tāngata whenua—

- (a) may reappoint any person as a Tangata Tiaki/Kaitiaki; and
- (b) must comply with subclauses (3) and (4) when reappointing.

(8) However, the Minister's approval is required for a person to be reappointed within 5 years after their appointment was cancelled under subclause (5)(b).

Giving notices and publishing notices and updated lists

(9) The tāngata whenua must give notices to the Minister under this regulation—

- (a) in writing or electronically; and
- (b) as soon as practicable.

(10) The tāngata whenua must publish notices and updated lists under this regulation—

- (a) on the Internet site of the body or trust that represents the tāngata whenua; and
- (b) as soon as practicable after giving the notice to the Minister under subclause (4)(a) or (6)(a).

11 Cross-heading above regulation 11 replaced

Replace the cross-heading above regulation 11 with:

Powers of Tāngata Tiaki/Kaitiaki concerning customary food gathering

12 Regulation 11 amended (Power to authorise taking of fish, aquatic life, or seaweed for customary food gathering)

(1) Replace regulation 11(1) with:

(1) A Tangata Tiaki/Kaitiaki may authorise any individual to take fish, aquatic life, or seaweed for customary food gathering purposes from within the following:

- (a) the whole or any part of the customary food gathering area/rohe moana for which the Tangata Tiaki/Kaitiaki is appointed, except from a mātaitai reserve in the area/rohe moana;
- (b) the whole or any part of the mātaitai reserve for which the Tangata Tiaki/Kaitiaki is appointed.

(2) Replace regulation 11(3) with:

(3) Despite subclause (2),—

- (a) the chief executive and the Tāngata Tiaki/Kaitiaki for a customary food gathering area/rohe moana or mātaitai reserve may agree that, from an agreed date, different requirements apply to authorisations in that area/rohe moana or mātaitai reserve (which may include the granting of electronic or oral authorisations); and
- (b) if so, an authorisation has effect if it complies with those requirements.

(3) In regulation 11(5), replace “this regulation” with “these regulations”.

(4) Replace regulation 11(6) with:

(6) *See regulation 35 for requirements to report fish, aquatic life, or seaweed taken under an authorisation.*

13 Regulation 13 amended (Commercial fishing and customary fishing on same trip)

In regulation 13(1)(b), delete “the Fisheries Act 1983 or”.

14 Cross-heading above regulation 14 replaced

Replace the cross-heading above regulation 14 with:

Participation of Tāngata Tiaki/Kaitiaki in fisheries management

15 Regulation 14 amended (Sustainability measures)

In regulation 14,—

- (a) after “A Tangata Tiaki/Kaitiaki”, insert “for a customary food gathering area/rohe moana”;
- (b) replace “customary food gathering area/rohe moana concerned” with “area/rohe moana”.

16 Regulation 15 replaced (Information to be provided)

Replace regulation 15 with:

15 Information to be provided

- (1) This regulation applies to the copies of the records kept by the Tāngata Tiaki/Kaitiaki under regulations 32 and 33 that are provided to the agreed person under regulation 36(1).
- (2) The agreed person must,—
 - (a) before 1 November in each year, provide summarised information from those records about all species taken in the 12-month period ending on 30 September in that year; and
 - (b) as required by the chief executive, provide summarised information from those records in respect of any species for which the chief executive considers that more frequent reporting is useful to ensure the sustainability of the species.
- (3) The summarised information must be provided in form 3.
- (4) The information must be provided in writing or electronically to any office of the Ministry.
- (5) The information is provided for the sole purpose of setting or varying sustainability measures or developing management controls.
- (6) In making any decision under section 20 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 (in addition to the other matters required by that Act).

17 Regulation 16 amended (Iwi planning document)

In regulation 16(2), replace “tangata whenua” with “tāngata whenua”.

18 Regulation 17 replaced (Application for mātaitai reserve)

Replace regulation 17 with:

17 Application for mātaitai reserve

- (1) The tāngata whenua of a customary food gathering area/rohe moana may apply to the Minister for a mātaitai reserve in any part of the area/rohe moana.
- (2) The application must set out the following for the proposed mātaitai reserve:
 - (a) a description, and map, of the traditional fishing ground comprising the mātaitai reserve;
 - (b) the special relationship between the tāngata whenua and the mātaitai reserve;
 - (c) the general aims of managing the mātaitai reserve;
 - (d) any proposed conditions for the mātaitai reserve, including any exceptions to the prohibition on commercial fishing to allow 1 or both of the following:

- (i) the commercial taking of specified species of fish, aquatic life, or seaweed in the reserve;
- (ii) the carrying out of specified commercial fishing activities in the mātaitai reserve;
- (e) any agreements about those conditions with persons affected by them.

19 Regulation 18 amended (Notification of application)

- (1) In the heading to regulation 18, replace “Notification” with “Public notice”.
- (2) In regulation 18(2), replace “submissions to be made by” with “or electronic submissions from”.

20 Regulation 19 amended (Consultation)

- (1) In regulation 19(2) and (3), replace “tangata whenua” with “tāngata whenua”.
- (2) In regulation 19(5)(b), after “invite written”, insert “or electronic”.
- (3) Replace regulation 19(6)(a) with:
 - (a) advise the tāngata whenua of the submissions; and
- (4) In regulation 19(6)(b), replace “tangata whenua” with “tāngata whenua”.

21 Regulation 20 amended (Declaration of mātaitai reserve)

- (1) In the heading to regulation 20, replace “Declaration of” with “Decision to establish”.
- (2) In regulation 20(1), replace “, by notice in the *Gazette*, declare an area to be” with “decide to establish an area as”.
- (3) In regulation 20(1)(a), replace “tangata whenua” with “tāngata whenua”.
- (4) In regulation 20(1)(b), delete “under regulation 17”.
- (5) In regulation 20(1)(c) and (d), replace “tangata whenua” with “tāngata whenua”.
- (6) Replace regulation 20(3) and (4) with:
 - (a) the Minister from making a decision under this regulation; or
 - (b) the declaration of a mātaitai reserve under regulation 22.

22 Regulation 21 revoked (Appointment of Tangata Tiaki/Kaitiaki for mātaitai reserve)

Revoke regulation 21.

23 Regulations 22 and 23 replaced

Replace regulations 22 and 23 with:

22 Declaration to establish mātaitai reserve

- (1) As soon as practicable, but no later than 20 working days, after the Minister decides under regulation 20 to establish a mātaitai reserve, the chief executive must cause to be published in a newspaper circulating in the locality of the mātaitai reserve, and in the *Gazette*, a notice—
 - (a) declaring the establishment of the mātaitai reserve; and
 - (b) describing the boundaries of the mātaitai reserve; and
 - (c) specifying the conditions imposed for the mātaitai reserve (if any), including any exceptions to the prohibition on commercial fishing in the mātaitai reserve.
- (2) The declaration of the establishment of the mātaitai reserve takes effect on a date to be specified in the *Gazette* notice under this regulation.

23 Appointment and cancellation of Tāngata Tiaki/Kaitiaki for mātaitai reserve

Appointing

- (1) The tāngata whenua who have had a mātaitai reserve established may appoint 1 or more people to be Tāngata Tiaki/Kaitiaki for the mātaitai reserve.
- (2) A person who is appointed as a Tangata Tiaki/Kaitiaki must be a member or nominated representative of the tāngata whenua or of any organisation of the tāngata whenua.
- (3) When the tāngata whenua decide to appoint a Tangata Tiaki/Kaitiaki, they must also decide—
 - (a) whether the person is to be a Tangata Tiaki/Kaitiaki for the whole or a part of the mātaitai reserve and, if a part, which part; and
 - (b) when the appointment is to start; and
 - (c) when the appointment is to end, or that the appointment has no specified end date.
- (4) When the tāngata whenua appoint a Tangata Tiaki/Kaitiaki, they must—
 - (a) give the Minister a notice setting out—
 - (i) the person's name and contact details; and
 - (ii) the details they decided under subclause (3); and
 - (b) publish the notice and the updated list of Tāngata Tiaki/Kaitiaki for the mātaitai reserve.

Cancelling appointments

- (5) The tāngata whenua—
 - (a) must cancel the appointment of a Tangata Tiaki/Kaitiaki who resigns or dies in office;

- (b) must cancel the appointment of a Tangata Tiaki/Kaitiaki as soon as practicable after receiving a notice from the Minister under regulation 31 requiring the cancellation;
- (c) may cancel the appointment of a Tangata Tiaki/Kaitiaki for any other reason.

(6) When the tāngata whenua cancel the appointment of a Tangata Tiaki/Kaitiaki, they must—

- (a) give the Minister a notice setting out—
 - (i) the person's name and contact details; and
 - (ii) the date on which the cancellation takes effect; and
- (b) publish the notice, unless the person died in office; and
- (c) publish the updated list of Tāngata Tiaki/Kaitiaki for the mātaitai reserve.

Reappointing

(7) The tāngata whenua—

- (a) may reappoint any person as a Tangata Tiaki/Kaitiaki; and
- (b) must comply with subclauses (3) and (4) when reappointing.

(8) However, the Minister's approval is required for a person to be reappointed within 5 years after their appointment was cancelled under subclause (5)(b).

Giving notices and publishing notices and updated lists

(9) The tāngata whenua must give notices to the Minister under this regulation—

- (a) in writing or electronically; and
- (b) as soon as practicable.

(10) The tāngata whenua must publish notices and updated lists under this regulation—

- (a) on the Internet site of the body or trust that represents the tāngata whenua; and
- (b) as soon as practicable after giving the notice to the Minister under subclause (4)(a) or (6)(a).

24 Cross-heading above regulation 24 replaced

Replace the cross-heading above regulation 24 with:

Powers of Tāngata Tiaki/Kaitiaki in mātaitai reserves

25 Regulation 24 amended (Fishing in mātaitai reserve)

- (1) In the heading to regulation 24, replace “reserve” with “reserves”.
- (2) Replace regulation 24(1) and (2) with:

- (1) If any Tangata Tiaki/Kaitiaki has been appointed for a mātaitai reserve, the taking of fish, aquatic life, or seaweed for customary food gathering purposes in the mātaitai reserve is—
 - (a) subject to regulations 11 and 25 to 29; and
 - (b) not subject to sections 50 to 52 of the Fisheries (Amateur Fishing) Regulations 2013, despite regulation 4(2).
- (2) No person may engage in commercial fishing in a mātaitai reserve except in accordance with—
 - (a) an exception that is a condition imposed for the mātaitai reserve under regulation 22(1)(c) or that is provided for in any regulations made in accordance with subclause (4); and
 - (b) the Fisheries Act 1996 and the relevant regulations under that Act.
- (3) In regulation 24(3), replace “Despite subclause (2), the Tangata Tiaki/Kaitiaki” with “The Tāngata Tiaki/Kaitiaki”.
- (4) In regulation 24(4), replace “Tangata Tiaki/Kaitiaki” with “Tāngata Tiaki/Kaitiaki”.
- (5) Revoke regulation 24(5).

26 Regulation 25 amended (Power to restrict or prohibit fishing in mātaitai reserve)

- (1) In the heading to regulation 25, replace “reserve” with “reserves”.
- (2) In regulation 25(1),—
 - (a) replace “Tangata Tiaki/Kaitiaki of” with “Tāngata Tiaki/Kaitiaki of”;
 - (b) replace “Tangata Tiaki/Kaitiaki considers” with “Tāngata Tiaki/Kaitiaki consider”.
- (3) In regulation 25(2)(f), replace “Tangata Tiaki/Kaitiaki considers” with “Tāngata Tiaki/Kaitiaki consider”.
- (4) Replace regulation 25(4) with:
- (4) Bylaws made under this regulation—
 - (a) must be deposited with any office of the Ministry; and
 - (b) must be open to inspection by, and for the purposes of receiving submissions from, the public at the following places 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:
 - (i) the office of the Ministry nearest the mātaitai reserve; and
 - (ii) a place near the mātaitai reserve that is designated by the chief executive for the purpose.
- (5) In regulation 25(6), replace “A Tangata Tiaki/Kaitiaki” with “The Tāngata Tiaki/Kaitiaki”.

27 Regulation 26 amended (Notification of restriction or prohibition)

- (1) In regulation 26(1)(a), replace “Tangata Tiaki/Kaitiaki” with “Tāngata Tiaki/Kaitiaki”.
- (2) In regulation 26(1)(b), replace “Tangata Tiaki/Kaitiaki considers” with “Tāngata Tiaki/Kaitiaki consider”.
- (3) In regulation 26(5), replace “Tangata Tiaki/Kaitiaki” with “Tāngata Tiaki/Kaitiaki”.

28 Regulation 27 replaced (Power to authorise fishing for functions of marae)

Replace regulation 27 with:

27 Power to authorise fishing for functions of marae

- (1) If any bylaws made under these regulations apply to a mātaitai reserve, a Tangata Tiaki/Kaitiaki for the mātaitai reserve may authorise the taking of fish, aquatic life, or seaweed in the mātaitai reserve for purposes that sustain the functions of a marae, despite those bylaws.
- (2) The Tangata Tiaki/Kaitiaki must grant the authorisation in accordance with regulation 11(2) to (4), and the holder of the authorisation must comply with regulations 11(5) and 35.

29 Regulation 28 amended (Fishing from registered commercial vessels for customary food gathering purposes)

In the heading to regulation 28, replace “customary food gathering purposes” with “functions of marae”.

30 Regulation 29 amended (Enhancement of fish stocks)

- (1) In regulation 29, replace “Subject to regulation 11 and despite” with “Despite”.
- (2) In regulation 29, insert as subclause (2):
 - (2) The Tangata Tiaki/Kaitiaki must grant the authorisation in accordance with regulation 11(2) to (4), and the holder of the authorisation must comply with regulations 11(5) and 35, which apply with any necessary modifications.

31 New regulations 29A to 29C and cross-headings inserted

After regulation 29, insert:

Part-appointments and delegation by Tāngata Tiaki/Kaitiaki

29A Tangata Tiaki/Kaitiaki appointed for part of area/rohe moana or mātaitai reserve

If a Tangata Tiaki/Kaitiaki is appointed for only part of a customary food gathering area/rohe moana or mātaitai reserve, the powers and duties of the Tangata Tiaki/Kaitiaki under these regulations apply only to that part.

29B Delegation by Tāngata Tiaki/Kaitiaki

- (1) A Tangata Tiaki/Kaitiaki for a customary food gathering area/rohe moana, or for a mātaitai reserve, may delegate their powers under these regulations to a member of the tāngata whenua of the area/rohe moana, or the tāngata whenua who had the mātaitai reserve established.
- (2) The powers may be delegated only—
 - (a) while the Tangata Tiaki/Kaitiaki is ill or absent; or
 - (b) for any other temporary purpose.
- (3) The Tangata Tiaki/Kaitiaki must first—
 - (a) agree on the duration of the delegation with the tāngata whenua of the area/rohe moana; and
 - (b) give notice of the delegation to the chief executive.

Overlapping customary food gathering areas/rohe moana

29C Overlapping customary food gathering areas/rohe moana

- (1) This regulation applies if 2 or more customary food gathering areas/rohe moana overlap (so that there are 2 or more groups of tāngata whenua for the overlapping area).

Areas/rohe moana in general
- (2) Each group of tāngata whenua may appoint, or cancel the appointment of, its own Tāngata Tiaki/Kaitiaki for its area/rohe moana, including the overlapping area.
- (3) If only 1 or some of the groups of tāngata whenua have appointed Tāngata Tiaki/Kaitiaki for their own area/rohe moana, including the overlapping area, then—
 - (a) each of those Tāngata Tiaki/Kaitiaki may act under these regulations in relation to the overlapping area (for example, to authorise any individual to fish within the overlapping area under regulation 11); but
 - (b) the other group or groups of tāngata whenua are still subject to regulations 50 to 52 of the Fisheries (Amateur Fishing) Regulations 2013, and regulation 51(2)(b) of those regulations prevents an authorised representative from issuing an authorisation for the overlapping area.

Mātaitai reserve in overlapping area

- (4) A mātaitai reserve may be established in the overlapping area—
 - (a) on the application of 1 of the groups of tāngata whenua; or
 - (b) on the joint application of 2 or more of the groups of tāngata whenua (a **joint mātaitai reserve**).

Joint mātaitai reserve in overlapping area

- (5) Each of the groups of tāngata whenua who have a joint mātaitai reserve established may appoint, or cancel the appointment of, its own Tāngata Tiaki/Kaitiaki for the joint mātaitai reserve, unless a condition imposed for the joint mātaitai reserve under regulation 22(1)(c) provides otherwise.
- (6) Each of those Tāngata Tiaki/Kaitiaki may act under these regulations in relation to the joint mātaitai reserve (for example, to authorise a person to do something under regulation 27, 28, or 29).
- (7) But all of the Tāngata Tiaki/Kaitiaki must act together in relation to the joint mātaitai reserve to—
 - (a) request regulations to allow commercial fishing (see regulation 24(3)); or
 - (b) make or amend bylaws (see regulation 25(1) and (6)).

32 Regulation 30 amended (Minister’s powers concerning management by Tangata Tiaki/Kaitiaki)

- (1) In the heading to regulation 30, replace “**Tangata Tiaki/Kaitiaki**” with “**Tāngata Tiaki/Kaitiaki**”.
- (2) Replace regulation 30(1) with:
 - (1) This regulation applies if the Minister considers, after consulting with the relevant tāngata whenua and Tāngata Tiaki/Kaitiaki, that, for the purposes of these regulations and in accordance with tikanga Māori,—
 - (a) a customary food gathering area/rohe moana is not being sustainably managed; or
 - (b) a mātaitai reserve is not being sustainably managed; or
 - (c) the management of a mātaitai reserve is not in accordance with any conditions imposed for the mātaitai reserve; or
 - (d) the management of any mātaitai reserve is significantly inconsistent with the general aims of managing the reserve set out in the application for the mātaitai reserve; or
 - (e) the requirements under regulations 32, 33, 36, and 37 are not being met by a Tangata Tiaki/Kaitiaki; or
 - (f) a Tangata Tiaki/Kaitiaki is acting in contravention of his or her authority under these regulations.
- (3) In regulation 30(3), (3)(a), and (3)(b), replace “tangata whenua” with “tāngata whenua”.

33 Regulation 31 replaced (Cancellation of appointment of Tangata Tiaki/Kaitiaki)

Replace regulation 31 with:

31 Requirement to cancel appointment of Tangata Tiaki/Kaitiaki

If any Tangata Tiaki/Kaitiaki fails to follow a management strategy provided under regulation 30(3), the Minister may give notice to the tāngata whenua who appointed the Tangata Tiaki/Kaitiaki requiring them to cancel the appointment.

34 Regulation 32 amended (Records of authorisations)

In regulation 32, after “authorisation granted”, insert “(including any purported authorisation that was not properly granted)”.

35 Regulation 34 amended (Authorisation to be held)

In regulation 34(1) and (2), replace “under regulation 11(3)” with “in accordance with regulation 11(3)”.

36 Regulation 35 amended (Reporting)

- (1) Replace the heading to regulation 35 with “**Reporting by authorised person**”.
- (2) In regulation 35(1) and (2), after “advise the”, insert “relevant”.

37 Regulation 36 amended (Notification)

- (1) Replace the heading to regulation 36 with “**Records must be provided by Tangata Tiaki/Kaitiaki**”.
- (2) In regulation 36(1), replace “provide to such person, as is agreed between the tangata whenua” with “provide, to such person as is agreed between the tāngata whenua”.

38 Regulation 37 amended (Tangata Tiaki/Kaitiaki to meet and inform tangata whenua)

- (1) Replace the heading to regulation 37 with “**Tāngata Tiaki/Kaitiaki to meet and inform tāngata whenua**”.
- (2) In regulation 37(1) and (1)(a), replace “Tangata Tiaki/Kaitiaki” with “Tāngata Tiaki/Kaitiaki”.
- (3) In regulation 37(1) and (1)(d), replace “tangata whenua” with “tāngata whenua”.
- (4) Replace regulation 37(2) with:
 - (2) The Tāngata Tiaki/Kaitiaki must arrange for the date of every meeting to be held under subclause (1) to be publicly notified—
 - (a) on the Internet site of the body or trust that represents the tāngata whenua; or
 - (b) in another way.

39 Regulation 38 amended (Assistance to Tangata Tiaki/Kaitiaki)

Replace the heading to regulation 38 with “**Assistance to Tāngata Tiaki/Kaitiaki**”.

40 Regulation 39 amended (Taking of fish, aquatic life, or seaweed without approval or authorisation prohibited)

Replace regulation 39(a) and (b) with:

- (a) 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, 27, or 29; and
- (b) that taking is consistent with the authorisation.

41 Regulation 40 replaced (Possessing fish, aquatic life, or seaweed taken without approval or authorisation prohibited)

Replace regulation 40 with:

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 those fish, aquatic life, or seaweed were taken under an authorisation granted by a Tangata Tiaki/Kaitiaki under regulation 11, 27, or 29.

42 Regulation 41 amended (Defence available if unauthorised catch taken as inevitable consequence of lawful taking)

- (1) In regulation 41, replace “authority” with “authorisation”.
- (2) In regulation 41(c) and (d), replace “the Tangata Tiaki/Kaitiaki” with “a Tangata Tiaki/Kaitiaki”.

43 New Schedule 1 inserted

Before the Schedule, insert the Schedule 1 set out in the Schedule of these regulations.

44 Schedule amended

- (1) In the Schedule heading, replace “**Schedule**” with “**Schedule 2**”.
- (2) In the Schedule, revoke forms 1 and 4.
- (3) In the Schedule, form 3, replace the items relating to Harvest period and Year with:

Harvest period: 1 October [year] to 30 September [year] [or specify other period if more frequent reporting required]

- (4) In the Schedule, form 3, Notes, replace the first note with:

- This form must be submitted in writing or electronically to any office of the Ministry for Primary Industries before 1 November (or as required for more frequent reporting of any species).

(5) In the Schedule, form 3, Notes, final note, replace “Ministry of Fisheries” with “Ministry for Primary Industries”.

**Schedule
New Schedule 1 inserted**

r 43

**Schedule 1
Transitional, savings, and related provisions**

r 2A

Part 1

**Provisions relating to Fisheries (South Island Customary Fishing)
Amendment Regulations 2019**

1 Interpretation

In this Part, **2019 amendments** means the Fisheries (South Island Customary Fishing) Amendment Regulations 2019.

2 Existing customary food gathering area/rohe moana and tāngata whenua

(1) This clause applies to a *Gazette* notice—

- (a) that was published under regulation 9(2) before the commencement of the 2019 amendments; and
- (b) that described the boundaries of the customary food gathering area/rohe moana of the relevant tāngata whenua who gave the notice under regulation 5 or 8.

(2) The customary food gathering area/rohe moana and the tāngata whenua are to be treated as if—

- (a) they were confirmed by the Minister under regulation 9(1), as amended by the 2019 amendments; and
- (b) they were recognised under regulation 9(3), as amended by the 2019 amendments, on and from the date of commencement of the *Gazette* notice (or any other relevant date specified in the *Gazette* notice).

3 Existing appointments of Tāngata Tiaki/Kaitiaki do not expire

(1) This clause applies to a person who is a Tangata Tiaki/Kaitiaki for a customary food gathering area/rohe moana or a mātaitai reserve—

(a) at the commencement of the 2019 amendments; or

(b) as the result of a process to which clause 4 applies.

(2) The person's appointment does not expire despite—

(a) anything in these regulations at the time of the appointment; or

(b) anything in the terms of the person's appointment at the time of the appointment; or

(c) the expiry of the *Gazette* notice that appointed the person.

(3) But this clause does not prevent the appointment from being cancelled.

4 Existing disputes

(1) This clause applies to a dispute that was subject to regulation 8 immediately before the commencement of the 2019 amendments.

(2) The Minister must comply with regulation 8(2), as amended by the 2019 amendments, in relation to the dispute within 20 working days after the commencement of the 2019 amendments.

(3) The dispute is then subject to the process in regulation 8, as amended by the 2019 amendments, as if it were a new dispute.

5 Other existing processes

(1) This clause applies to any process that—

(a) has been started but not completed under these regulations at the commencement of the 2019 amendments; and

(b) is not a process to which another clause of this Part applies.

(2) The process must be completed in accordance with the regulations as amended by the 2019 amendments.

(3) For those purposes,—

(a) the regulations apply with any necessary modifications; and

(b) if any matter complied with the regulations immediately before the commencement of the 2019 amendments, the matter must be treated as if it complied with the equivalent provisions of the regulations as amended by the 2019 amendments.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Fisheries (South Island Customary Fishing) Regulations 1999 (the **principal regulations**). The amendments commence on 1 January 2020.

The more significant amendments are summarised below by reference to the principal regulations. The other amendments are generally minor or technical or clarify or update things.

People can still dispute proposals about who are tāngata whenua and the boundaries of customary food gathering areas/rohe moana. But they can no longer dispute who the tāngata whenua appoint as Tāngata Tiaki/Kaitiaki. Dispute resolution now follows certain steps until the dispute is resolved: first by using an agreed process, then by mediation, and finally by arbitration. *See new regulation 5, regulation 6, and new regulations 7 and 8.*

It is now clear that a customary food gathering area/rohe moana and its tāngata whenua are recognised for the purposes of the regulations after the Minister confirms them and notices are published. *See new regulation 9.*

And it is now clear that a mātaitai reserve is established by declaration after the Minister makes a decision and notices are published. *See regulation 20 and new regulation 22.*

The tāngata whenua now directly appoint, reappoint, and cancel the appointment of Tāngata Tiaki/Kaitiaki for their customary food gathering area/rohe moana or mātaitai reserves. The Minister no longer makes, confirms, or cancels appointments (but can require a cancellation). Tāngata Tiaki/Kaitiaki can now be appointed for more than 5 years. *See new regulations 10, 23, and 31.*

The ban on commercial fishing in mātaitai reserves can have exceptions provided for in regulations. There can now also be exceptions under conditions imposed when a mātaitai reserve is established. *See new regulation 22 and regulation 24.*

Records of authorisations granted by Tāngata Tiaki/Kaitiaki, and of fish, aquatic life, and seaweed taken under those authorisations, must be provided as summarised information to the Ministry for Primary Industries. The summarised information must now be provided once a year (instead of once a quarter) except for species where the chief executive requires more frequent reporting. *See new regulation 15.*

There is now provision for what happens if 2 or more customary food gathering areas/rohe moana overlap (so that there are 2 or more groups of tāngata whenua for the overlapping area). *See new regulation 29C.*

There is now provision for various notices, submissions, authorisations, information, or reports to be given electronically. *See new regulations 5, 7, and 10, regulation 11, new regulation 15, regulations 18 and 19, new regulation 23, regulation 37, and form 3 in Schedule 2.*

**Fisheries (South Island Customary Fishing)
Amendment Regulations 2019**

2019/293

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