



Ministry of

**Fisheries**

Te Tautiaki i nga tini a Tangaroa

# Guidelines for Mātaimai Reserve Applications



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## Purpose of guidelines

The purpose of these guidelines is to describe the information tangata whenua can provide to support their application for a mātaítai reserve. Mātaítai reserves are identified traditional fishing grounds tangata whenua have a special relationship with.

The criteria for assessing mātaítai reserve applications are set out in the Kaimoana (Customary Fishing) Regulations 1998 (the Kaimoana Regulations), which apply to fisheries waters of the North Island and the Chatham Islands, and Fisheries (South Island Customary Fishing) Regulations 1999 (the South Island Regulations), which apply to the fisheries waters of the South Island and Stewart Island. Both sets of regulations are known collectively as the customary regulations.



The Minister of Fisheries must be satisfied that an application meets all the criteria before an application can be approved. When making a decision on an application the Minister needs to consider the best available information. If applicants supply the information set out in these guidelines, this does not guarantee that the Minister will approve their application, but it is likely to speed up the assessment process and allow the Minister to reach a decision more quickly.

If the Minister considers that an application is not likely to meet one or more of the criteria, the Minister may consult the applicants. Applicants will be given a reasonable opportunity to amend their application or provide better supporting information in accordance with these guidelines. The Minister will then make a decision on the application, based on the best available information and once the required consultation is completed. If applicants do not provide the supporting information that enables the Minister to be satisfied that the criteria have been met, the Minister must decline the application.



## Customary food gathering and integrating tangata whenua fishing interests

Mātaítai reserves are a tool to assist in providing for customary food gathering. Customary food gathering means the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This includes the right to take and manage fisheries resources for a purpose authorised by Tangata Kaitiaki/Tiaki or Tangata Tiaki/Kaitiaki (Kaitiaki), including koha, that is consistent with tikanga Māori, and is neither commercial in any way nor for sale or trade.

To help tangata whenua maximise the benefits of their fisheries within environmental limits, the Ministry is encouraging iwi and hapū to prioritise their fisheries management objectives. This includes setting objectives about the most appropriate ways of providing for customary food gathering.

The Ministry considers that iwi fisheries plans (IFPs) are an efficient way of bringing together iwi and hapū commercial and non-commercial fishing interests, and setting objectives and priorities for the use of fisheries. The Ministry encourages mātaítai reserve applicants to discuss with their iwi, before submitting their application, how creating a reserve will relate to the objectives set out in their IFP, if one is developed.



## Mātaaitai reserves: application process and management

The customary regulations set out the mātaaitai reserve application process, which includes two consultation phases and a public meeting with the local community. The Ministry undertakes the required consultation on the Minister's behalf. The process must be completed before the Minister can make a decision on an application.

In most cases, the only change that initially occurs when a mātaaitai reserve is established is that commercial fishing must stop within the reserve. Kaitiaki can later recommend changes to the management of a reserve. For example, they can recommend bylaws that restrict or prohibit fishing within a reserve for any purpose they consider necessary for sustainable utilisation or sustainable management.<sup>1</sup> They can also recommend that specified commercial fishing be reinstated within the reserve. The Minister may approve or decline any changes to the management of a reserve after public consultation on the proposed changes.

### Evidence to support applications

A mātaaitai reserve application form (Form 4) is attached to the customary regulations. Submitting Form 4 starts the application process. However, the information provided in Form 4 is not usually sufficient to enable the Minister to be satisfied that the criteria in the customary regulations have been met. That is why it is important for applicants to provide further supporting information.

#### **Applicants should provide the best available information on:**

- the special relationship between tangata whenua and the proposed mātaaitai reserve
- the general aims of management for the proposed reserve, and
- whether the proposed reserve is a traditional fishing ground and is of a size appropriate to effective management by tangata whenua.

If the Minister considers that an application does not meet one or more of the criteria, the application must be declined. Before it is declined, applicants will be given an opportunity to address the Minister's concerns. Where the Minister considers that one of the criteria has not been met and the applicant does not wish to amend the application to address that criterion, the Minister may choose to decline the application before completing the assessment of the other criteria.

<sup>1</sup> The Kaimoana Regulations refer to "sustainable utilisation"; the South Island Regulations refer to "sustainable management".

## Criteria for declaring a mātaimai reserve

The criteria for establishing mātaimai reserves and examples of the supporting information applicants can submit for each of the criteria are discussed below.

### (a): Special relationship

There must be a special relationship between tangata whenua making the application and the proposed mātaimai reserve.

The customary regulations do not define what constitutes a “special relationship”; it is assessed on a case-by-case basis. Under the customary regulations, an application may be for any part of the rohe moana for which they are tangata whenua, rather than the whole rohe moana.

Applicants must provide any information that demonstrates that their relationship with the proposed reserve area is of more significance than the other parts of their rohe moana. This includes a clear description of the boundaries of the proposed mātaimai reserve and an explanation of why their relationship to that area is “special”.

#### **Examples of supporting information include:**

- accounts by applicants of historical settlements, occupation and customary practices relating to the area of the proposed reserve
- tangata whenua evidence submitted to the Waitangi Tribunal or other forum relating to their association with the area of the proposed reserve, including interviews with kaumatua
- relevant Waitangi Tribunal findings or recommendations
- relevant Maori Land Court minutes or documentation
- historical Treaty settlements redress instruments relating to the area of the proposed reserve (for example, statutory acknowledgements).

### (b): General aims of management

Applicants must provide a statement of their general management aims for the proposed mātaimai reserve. These aims must be consistent with the sustainable utilisation (for applications under the Kaimoana Regulations) or sustainable management (for applications under the South Island Regulations) of the fishery to which the application applies.

The Ministry encourages applicants to explain why they are seeking the establishment of a mātaimai reserve and what they hope to achieve from the reserve.

Although not required, the Ministry also encourages applicants to explain how the proposed mātaimai reserve is consistent with or relates to the objectives set out in their IFP, if one is developed. This may assist tangata whenua to better coordinate and prioritise their different fisheries objectives.

**(c): Traditional fishing ground and size appropriate to effective management**

The Minister must be satisfied that the proposed mātaimai reserve is an identified traditional fishing ground and is of an appropriate size that can be effectively managed by tangata whenua. The applicant must provide information to establish that the area is a traditional fishing ground.

In addition, the proposed mātaimai reserve must have clearly identifiable boundaries, and the application should include any accessible and manageable landing points and demonstrate knowledge of the area and its resources to ensure it can be managed effectively.

**Examples of supporting information include:**

- a name of the fishing ground and origins of name
- clearly identified boundaries of the proposed reserve
- any accessible and manageable landing points
- a statement by applicants of tangata whenua use of the proposed reserve as a traditional fishing ground and any supporting information (for example, any tangata whenua evidence submitted to the Waitangi Tribunal or other forum relating to their traditional fishing use of the proposed reserve)
- a statement by applicants on why they consider the size of the proposed reserve is appropriate so that it can be effectively managed by tangata whenua
- a statement by applicants on how tangata whenua management of the reserve will achieve their general aims of management, as set out in criterion (b), and, although not required, how their management is consistent with or relates to the objectives in their IFP, if one is developed.

#### (d): Conditions

If the Minister considers conditions are necessary for the proposed mātaimai reserve, tangata whenua will be advised of those conditions and their agreement will be sought. The Kaimoana Regulations specify “suitable conditions (if any) to address issues raised by submissions for the proposed mātaimai reserve”.

The use of conditions would depend on the particular circumstances of each application. Conditions cannot be used to assist in meeting any of the other criteria.

#### (e)(i): Ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes

The proposed mātaimai reserve must not unreasonably affect the ability of the local community to take fish, aquatic life or seaweed for non-commercial purposes.

The Minister must consider the local situation and circumstances to determine if the local community's ability to take fisheries resources for non-commercial purposes will be affected and, if so, to what extent. Should an application include any future management proposals that will restrict non-commercial fishing, the Minister may consider alternative areas for non-commercial fishing and any risks or costs associated with accessing these areas. Where there is an effect, the Minister will decide whether or not the level of effect is “unreasonable” in the particular circumstances.

The Ministry encourages applicants to discuss their application with the local community before submitting it. The Ministry also encourages applicants to explain in their application how they addressed any issues raised by the local community concerning the taking of fish, aquatic life or seaweed for non-commercial purposes.

#### **Examples of supporting information include:**

- any evidence of discussions with the local community before submitting the application, including any minutes or records of any meetings with local community members or stakeholder groups
- a statement by applicants in response to any issues raised by the local community in relation to the taking of fish, aquatic life or seaweed for non-commercial purposes.

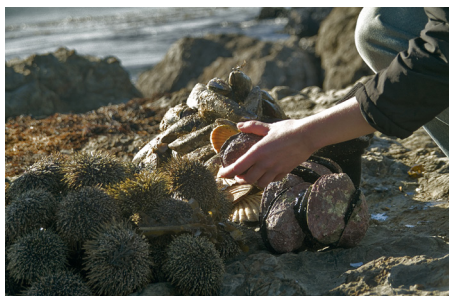


#### (e)(ii): Prevention of commercial interests for QMS species

The proposed mātaimai reserve must not prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area.

Since commercial fishing is excluded when a mātaimai reserve is established, the Minister is required to consider whether commercial fishers will be prevented from taking their entitlements in the quota management area in which the reserve is located. “Prevent” is a hard test for commercial fishers to meet – just restricting or increasing the difficulty of taking their quota or annual catch entitlement is not enough to “prevent” fishers from taking their entitlement.

Before submitting an application, applicants are encouraged to discuss their application with commercial fishers operating in the area of the proposed mātaimai reserve, and with their Mandated Iwi Organisation to further consider iwi commercial fishing interests. The Ministry also encourages applicants to explain in



their applications how they addressed any issues raised by local commercial fishers and the Mandated Iwi Organisation, including any issues concerning relocation of commercial effort to outside of the proposed reserve.

The Ministry appreciates that some applicants may be concerned about discussing their applications with commercial fishers or doing more than what is required by the customary regulations. The Ministry considers there is much to gain from having these discussions and encourages applicants to talk to commercial fishers. The Ministry's assessment of the effects of an application on commercial fishers can take time depending on the particular circumstances of each application. The Ministry's preference is that applicants get as much information as they can about the commercial operations in the area of the proposed mātaimai reserve before submitting an application.

**Examples of supporting information include:**

- any evidence of discussions with commercial fishers operating in the area of the proposed reserve and the Mandated Iwi Organisation before submitting the application
- a statement by applicants in response to any issues raised by commercial fishers for QMS species.

**(e)(iii): Prevention/unreasonable prevention of commercial interests for non-QMS species<sup>2</sup>**

The proposed mātaītai reserve must not prevent or unreasonably prevent (where applicable) any fisher with a commercial fishing permit for non-QMS species from exercising their right to take fisheries resources under their permit. The permit will specify the area and the species for which the permit has been issued.

In line with criterion (e)(ii), applicants are encouraged to have discussions with commercial fishers in the area and the Mandated Iwi Organisation before submitting their application. Applicants should explain in their application how they addressed any issues relating to commercial catch of non-QMS species.

**Examples of supporting information include:**

- any evidence of discussions with commercial fishers operating in the area of the proposed reserve and the Mandated Iwi Organisation before submitting the application
- a statement by applicants in response to any issues raised by commercial fishers for non-QMS species.

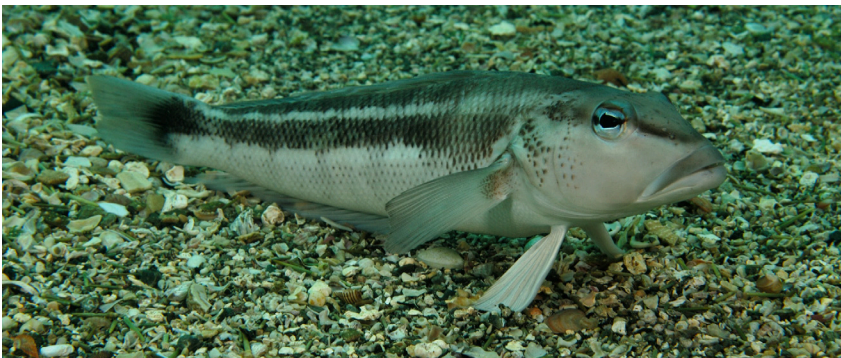


Photo: T and J Enderby

<sup>2</sup> The Kaimoana Regulations specify unreasonable prevention. In applications under the Kaimoana Regulations, where it has been determined that fishers will be prevented from taking non-QMS species, a determination must be made whether or not the level of prevention is “unreasonable”.

(e)(iv): Unreasonable prevention of persons taking fish, aquatic life, or seaweed for non-commercial purposes

This criterion relates only to the Kaimoana Regulations; it is not included in the South Island Regulations.

If the application is made under the Kaimoana Regulations, the proposed mātaimai reserve must not unreasonably prevent persons from taking fish, aquatic life or seaweed for non-commercial purposes within the fisheries management area or quota management area where the reserve will be located.

Should an application include any future management proposals that will restrict non-commercial fishing, the Minister may consider alternative areas for non-commercial fishing and evaluate any risks or costs associated with accessing these areas. Where there is an effect, the Minister must make a decision about whether or not the level of effect is “unreasonable” in the particular circumstances.

Applicants applying for a mātaimai reserve under the Kaimoana Regulations are encouraged to discuss their application with non-commercial fishers and explain in their applications how they addressed any issues raised by these fishers.

**Examples of supporting information include:**

- any evidence of discussions with non-commercial fishers before submitting the application and
- a statement by applicants in response to any issues raised by non-commercial fishers.

(f): Marine reserves

The proposed mātaimai reserve cannot be within a marine reserve established under the Marine Reserves Act 1971. The Ministry expects applicants to submit applications that do not cover any part of a marine reserve. If there is a current application for a marine reserve being considered in the area, this may be a relevant consideration for the Minister’s assessment, depending on its status at the time of decision.

## Further information

Further information about mātaítai reserves can be found on the Ministry's website at [fish.govt.nz](http://fish.govt.nz).

General queries about mātaítai reserves can be directed to your closest Ministry Customary Regulations Advisor based in either:

- Hamilton – Ministry of Fisheries, Private Bag 3123, HAMILTON 3240
- Napier – Ministry of Fisheries, PO Box 12304, NAPIER 4144
- Nelson – Ministry of Fisheries, PO Box 14, NELSON 7042

Queries about the mātaítai reserve application process can be directed to:

The Manager  
Fisheries Management – Spatial  
Ministry of Fisheries  
Private Bag 14  
NELSON 7042

Any queries about IFPs can be directed to:

The Fisheries Manager – Customary  
Ministry of Fisheries  
PO Box 1020  
WELLINGTON 6140