

Regulatory Impact Statement

Amendment to the Fisheries (Kaimoana Customary Fishing) Regulations 1998

Executive summary

The Fisheries (Kaimoana Customary Fishing) Regulations 1998 (“the Kaimoana Regulations”) and the Fisheries (South Island Customary Fishing) Regulations 1999 (“the South Island Regulations”) are designed to allow tangata whenua to exercise customary management of all fisheries resources in their area.

However, only the South Island Regulations encompass fisheries resources in fresh water. Customary fishing in fresh water for tangata whenua in the North Island and Chatham Islands can be conducted for the limited purposes of hui or tangi under the provisions of regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986. That is, tangata whenua can only practice limited aspects of customary gathering and cannot customarily manage fish and aquatic life in fresh water.

The proposal to amend the Kaimoana Regulations will allow North Island and Chatham Islands tangata whenua to determine how customary food gathering is undertaken to exercise customary management of fisheries resources that are subject to the Fisheries Act 1996, in the fresh water environment in the same way as they currently do for the marine environment.

This Regulatory Impact Statement (RIS) has addressed all relevant aspects of the RIS requirements contained in Cabinet Office Circular CO (07) 3. Where a requirement has not been addressed it is considered to be not relevant to this proposal.

Adequacy statement

This Regulatory Impact Statement has been reviewed by the Ministry of Fisheries’ (MFish) Regulatory Impact Analysis Review Committee and is considered adequate according to the criteria agreed by Cabinet.

Status quo and Problem

The Kaimoana Regulations exclude fisheries resources taken from fresh water. It had been the intention of MFish, following the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (“the Settlement Act”), to promulgate one set of customary fishing regulations for the entire country. However, several North Island iwi challenged the application of the Settlement Act to fresh water in the High Court, though South Island iwi accepted that fresh water fisheries were included in the Fisheries Deed of Settlement and the Settlement Act.

Customary fishing in fresh water for tangata whenua in the North Island and Chatham Islands can be conducted for the limited purposes of hui or tangi under the provisions of regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986.

MFish considers that regulations 27 and 27A do not adequately recognise and provide for customary food gathering to the extent required by sections 10(b) and (c) of the Settlement Act because they were an interim mechanism to allow for some aspects of customary non-commercial fishing rights until regulations consistent with section 10 of the Settlement Act are made and in use by tangata whenua.

Objectives

The National Fisheries Outcome is *“the value New Zealanders obtain through the sustainable use of fisheries resources and protection of the aquatic environment is maximised”*.

Section 10(c) of the Settlement Act imparts an active obligation on the Minister to recommend regulations to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance. Consistent with the 1992 Fisheries Deed of Settlement, the Minister has an obligation to develop and recommend regulations where the Minister is aware of the need for such regulations. The extension of the Kaimoana Regulations to fresh water will enable tangata whenua to maximise the social, cultural and economic value of fresh water fisheries resources in their rohe.

Alternative options

There are no options other than the status quo or the preferred option.

Preferred option

The preferred option is to amend the Kaimoana Regulations to allow customary use and management in fresh water. MFish considers that the Kaimoana Regulations (as currently promulgated) and regulations 27 and 27A of the Fisheries (Amateur Fishing) Regulations 1986 do not adequately provide a complete recognition of non-commercial customary freshwater fishing rights set out in the Fisheries Deed of Settlement or the Settlement Act. The proposal to amend the Kaimoana Regulations will allow tangata whenua to exercise customary management practices of fisheries resources that are subject to the Fisheries Act 1996, in the fresh water environment in the same way as it is for the marine environment.

MFish notes that by extending the scope of the Kaimoana Regulations to cover fresh water, the mandatory administrative functions, which are undertaken under those regulations by tangata whenua and the Tangata Kaitiaki (customary managers) in the North Island and Chatham Islands, will be extended. Information and assistance provided by MFish to assist tangata whenua in the proper administration of the Kaimoana Regulations will continue.

Implementation and review

If approved by the Minister of Fisheries and Cabinet, the proposal is anticipated to come into force on 1 April 2008.

Publicity and updating of fishery information (e.g booklets, website) within the North Island and Chatham Island fresh water fisheries will be necessary to ensure that tangata whenua and fishers are aware of the amendment.

MFish has developed a training package for Tangata Kaitiaki. The package, known as KAI 1, has been registered on the New Zealand Qualifications Authority framework. MFish provides regular training to Tangata Kaitiaki, as they are appointed. If the proposal to extend the Kaimoana Regulations is given Cabinet approval, MFish will ensure that the training package is updated and brought into line with the amendment. No additional resources will be required as appointment of Tangata Kaitiaki will be gradual.

MFish's compliance role in the North Island and Chatham Islands for fresh water has been to enforce regulations 27 and 27A of the Fisheries (Amateur Fishing)

Regulations 1986 and to provide information and assistance to tangata whenua on clarification of customary regulations and training to assist Kaitiaki in meeting their obligations as a gazetted permit issuer. Under the new proposal regulations 27 and 27A will be phased out as the Kaimoana Regulations come into effect. The current level of support for regulations 27 and 27A will be transferred to the Kaimoana Regulations. The Compliance business group will continue to support Tangata Kaitiaki and Issuing authorities in gaining optimal levels of compliance in the customary freshwater fishery as well as supporting compliance aspects of the KAI 1 training package. No additional resources are expected to be required.

Consultation

MFish has obligations under the Settlement Act, the Fisheries Act 1996 and fisheries protocols issued through individual Treaty Settlements in terms of consultation with tangata whenua.

MFish has identified that there are many groups that will need to be consulted. These groups are those within the Iwi Regional Forums, iwi and hapu who have yet to join an Iwi Regional Forum, Iwi who have a fisheries protocol through their individual Treaty settlement and Te Ohu Kaimoana and fishing industry organisations.

MFish has identified all groups that will need to be consulted with through the Pou Hononga unit. MFiSh will write to all of the groups advising them of the intention to amend the Kaimoana Regulations and provide them with an opportunity to provide a submission and if needed meet with MFiSh for further explanation.

MFish is providing three months for consultation with affected parties. This extended time will allow for groups to carefully consider the amendment and provide feedback in a timely manner. It will also allow MFiSh to plan for meetings if requested and to provide feedback on matters prior to MFiSh developing the Cabinet paper.

During the development of the briefing to the Minister of Fisheries MFiSh consulted with the Department of Conservation (DoC) and Te Puni Kōkiri. DoC was concerned that jurisdiction between DoC and MFiSh over fisheries resources may not be clear. MFiSh addressed that concern by making it clear in the MFiSh briefing and the consultation letter that the fisheries resources concerned are those subject to the Fisheries Act 1996.